

RESOLUTION

To Authorize the Mayor to Enter into an Agreement with Place Associates in Providing a Comprehensive Plan, Zoning Map and Subdivision Regulations for the City of Alexander City in an Amount not to Exceed \$150,000.00

WHEREAS, the City of Alexander City updated its comprehensive plan in 2014;
and

WHEREAS, the city's growth over the past nine (9) years has stretched the limitations of the 2014 plan; and

WHEREAS, Place Associates has agreed to provide a current comprehensive plan, zoning map and subdivision regulations; and


WHEREAS, the city would like to accept the proposal as shown in Attachment A at a cost of \$130,000.00; and

WHEREAS, in the event of a need for additional services during the scope of work, there is an additional \$20,000.00 allotted, but only with prior authorization by the mayor.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Alexander City authorizes the mayor to enter into an agreement, as shown in Attachment "A", with Place Associates to provide a current comprehensive plan, zoning map and subdivision regulations.

ADOPTED THIS 16TH DAY OF OCTOBER, 2023.

FOR PUBLIC RELEASE

By:  Audrey "Buffy" Colvin, President
Alexander City Council

AUTHENTICATED THIS 16TH DAY OF OCTOBER, 2023.

FOR PUBLIC RELEASE

By: Stephanie J. Southerland,

City Clerk

APPROVED:

FOR PUBLIC RELEASE

By: Curtis "Woody" Baird,
Mayor

Yeas: Tapley, Hardy, Colvin, E. Brown, Keel

Nays: None

Place Associates
CONSULTING AGREEMENT

This agreement is entered into effect as of November 1, 2023 by and between City of Alexander City (Client) and Place Associates, an Alabama limited liability company (Consultant).

Description

Alexander City Comprehensive Plan developed as an update to the 2014 Comprehensive Plan.

Agreement

1. Appointment of the Consultant. The Client hereby appoints the Consultant, and the Consultant agrees to contract with the Client on a non-exclusive basis, to provide advisory services related to the development of a Comprehensive Plan. Subject to limitations set forth in Section Four (4), the Consultant shall have the right, during the term of this Agreement, to represent to the public that it provides consulting services to the Client.

2. Nature of Relationship. The Consultant shall be an independent contractor. Nothing in this Agreement shall be construed to create any partnership, joint venture, employee-employer or relationship other than as principal and independent agent, between the Consultant (including, for purposes of this Section Two (2) any member, manager, officer, employee, agent or other representative of the Consultant) and the Client. The Consultant will be solely responsible for and will file, on a timely basis, all tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to the Consultant's performance of the services and receipt of compensation and expenses under this Agreement. The Consultant will be solely responsible for and must maintain adequate records of expenses incurred in the course of performing services under this Agreement.

3. Consultant's Rights and Duties. The Consultant shall use its best efforts to assist the Client in its project activities set forth on Schedule "A" attached to this Agreement. The Consultant shall comply, and shall cause its employees, agents and other representatives to comply, with all applicable laws in the performance of the services contemplated under this Agreement.

4. Limits of Consultant's Authority. The Consultant shall not, without the prior written approval of an authorized representative of the Client, take any of the following actions:

- A. Incur any expense or obligation in the name of the Client.
- B. Make any representation, contract or commitment on behalf of the Client; or
- C. Incur any reimbursable expenses.

5. Compensation. As compensation for the Consultant's services under this agreement, the Client shall pay to the Consultant the amounts described below.

1. *Comprehensive Planning Services*

\$130,000 lump sum for services as described under Schedule A: Scope of Services, Section 1.

2. *Additional Services*

If a need for Additional Services is identified during the course of work, Scopes and Compensation for Additional Services will be developed and agreed upon prior to commencement of work and will follow the terms of this master agreement. Total compensation for these Services shall not exceed \$20,000 unless prior authorization has been provided in writing by the Client or its representative as defined in Section Sixteen (16): Notices.

6. Invoice Procedures and Payment. The Consultant shall submit invoices to the Client for Services accomplished during each calendar month. For Services provided on a Lump Sum basis, the amount of each monthly invoice shall be determined on the "percentage of completion method" whereby the Consultant will estimate the percentage of the total Services accomplished during the invoicing period. The Consultant shall submit such invoices as soon as possible after the end of the month in which the Services were accomplished and shall be due and payable by the Client upon receipt.

The Client, as owner or authorized agent for the owner, hereby agrees that payment will be made for said Services within thirty (30) days from the date of the invoice; and, in default of such payment, hereby agrees to pay all costs of collection, including reasonable attorney's fees, regardless of whether legal action is initiated. The Client hereby acknowledges that unpaid invoices shall accrue interest at twelve percent (12%) per annum after they have been outstanding for over sixty (60) days. If an invoice remains unpaid ninety days (90) after the date of the invoice, the Consultant may, upon giving seven (7) days written notice of its intent to do so, suspend all Services on the Client's project. This suspension shall remain in effect until all unpaid invoices are paid in full. If an invoice remains unpaid one hundred and twenty days (120) after the date of the invoice, the Consultant may, upon giving seven (7) days written notice of its intent to do so, terminate this Agreement and pursue its remedies for collection.

7. Reimbursement. There are no reimbursable expenses contemplated in Schedule A.

8. Term. This Agreement is effective as of the Effective Date and shall continue for a period of fourteen (14) months unless terminated in accordance with Section Nine (9). The term of this Agreement may be extended for such additional periods and on such terms and conditions as the Client and Consultant mutually determine and agree in writing.

9. Termination.

- A. *Voluntary Termination.* Prior to the completion of the term of this Agreement, or any renewal term, either the Client or the Consultant may terminate this Agreement at any time, without cause, by giving the other party 30 days prior written notice. This Agreement will terminate immediately upon the death or disability of Ben Wieseman, or his removal as a member or manager of the Consultant.
- B. *Involuntary Termination.* Either party may terminate this Agreement immediately, without notice to the other party, for "cause." A termination shall be deemed for "cause" if the other party:
 - i. Commits a material breach of any provision of this Agreement which, if curable, is not cured within fifteen (15) days after written notice thereof;
 - ii. Violates any law or regulation with respect to the activities contemplated in this agreement; or
 - iii. Commits any willful or dishonest act that could injure either party.
- C. *Rights Upon Termination.* Upon the termination of this Agreement, for any reason, the Consultant shall not be entitled to any further payments under the Agreement other than for services rendered, and approved expenses incurred, prior to the effective date of termination. The provision of Sections Two (2) (Nature of the Relationship), Ten (10) (Confidentiality), and Eleven (11) (Return of Materials) shall survive the termination of this Agreement and continue in effect indefinitely.

10. Confidentiality. In the course of performing the Consultant's duties under this Agreement, the Consultant may obtain information relating to the Client, and its officers, shareholders, members, employees, agents, clients and potential clients, which the Client considers proprietary and confidential information (the Confidential Information). The Consultant shall hold, and shall cause its members, managers, employees, agents, and other representatives to hold, at all times, both during the term of this Agreement and at all times, thereafter, all such Confidential Information in the strictest confidence, and shall not use, or allow any third party to use, such Confidential Information for any purpose, other than as may be reasonably necessary for the performance of the Consultant's duties under this Agreement, without the prior written consent of the Consultant. Neither the Consultant, nor any member, manager, employee, agent, or other representative of the Consultant, shall disclose any Confidential Information to any person or entity, other than as may be reasonably necessary for the performance of the Consultant's duties under this Agreement, without the prior written consent of the Client. Notwithstanding the foregoing, the term "Confidential Information" shall not include information which (a) becomes generally available to the public, other than as a result of a breach of this Agreement, (b) was available on a non-confidential basis prior to its disclosure to the Consultant, or (c) becomes

available to the Consultant on a non-confidential basis from a source other than the Client, provided that such source is not bound by a confidentiality agreement with respect to such information.

11. Return of Materials. Upon the request of the Client, the Consultant shall deliver to the Client copies of all memoranda, notes, records, drawings, manuals, disks, or other documents and media pertaining to Client business or the Consultant's activities or duties as a consultant under this Agreement. This obligation shall not apply to publicly distributed documentation.

12. Governing Law. This Agreement shall be governed by and under the laws of the State of Alabama, without giving effect to conflicts of law principles.

13. Arbitration. Any dispute arising under or in any way related to this Agreement shall be submitted to arbitration by the American Arbitration Association (Association), in accordance with the Association's commercial rules then in effect. The arbitration shall be binding upon the parties and the arbitration award may be confirmed by any court of competent jurisdiction.

14. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one document.

15. Notices. Notices under this Agreement shall not be deemed valid unless (i) given or served in writing and (ii) personally delivered; mailed, by prepaid, certified mail or overnight courier; or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly monitored electronic mail address, provided that the sender has received confirmation of such fax or electronic transmission, of such party as follows:

Consultant Ben Wieseman, ben@placeassociates.com
3505 Clayton Place, Birmingham, AL 35216

Client Amanda Thomas, amanda.thomas@alexandercityal.gov
281 James D. Nabors Drive, Alexander City, AL 35011

Such addresses may be changed from time to time by either party by providing notice as set forth below. Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is faxed or sent electronically, provided that the sender has received a confirmation of such fax or electronic transmission.

16. Descriptive Headings. The descriptive headings used in this Agreement are for convenience of reference and shall not be deemed to alter or affect the meaning of any provisions.

17. Severability. If any provision of this Agreement is found invalid or unenforceable, that part shall be amended to achieve as nearly as possible the same effect as the original provision and the remainder of this Agreement shall remain in full force and effect.

18. Assignment. Neither the Client nor the Consultant will assign or transfer its interest in this Agreement without the written consent of the other. The Consultant, however, does reserve the right to subcontract any portion of the Services. The Consultant intends to contract with Leavell Design Consulting, LLC and Byard Associates, LLC for portions of the Services described in Schedule A.

19. Hold Harmless. The Client will hold harmless and indemnify the Consultant and their Subcontractors for any damages resulting from the use of information prepared by others and provided by the Client.

20. Entire Agreement; Amendment. This Agreement constitutes the entire agreement and final understanding of the Consultant and the Client with respect to subject matter hereof. This Agreement supersedes and terminates all prior and/or contemporaneous understandings and/or discussions between the Consultant and the Client, whether written or oral, express or implied, relating in any way to the subject matter of this Agreement. This Agreement may not be altered, amended, modified, or otherwise changed in any way except by a written agreement signed by the Consultant and the Client.

This Agreement has been executed by an authorized representative of the Client and the Consultant to be effective as of the Effective Date.

The City of Alexander City (Client)

FOR PUBLIC RELEASE 1/6/23
Curtis Baird, Mayor

Place Associates, LLC (Consultant)

FOR PUBLIC RELEASE 1/6. 2023
Ben Wieseman, Owner/Manager

Schedule “A” - Scope of Service

The Consultant shall perform the following advisory services for the Client under this Agreement:

1. Comprehensive Planning

- a. **Project Initiation and Preliminary Inventory.** Collect existing mapping and other city information. Conduct an on-site preliminary inventory of community conditions. Set a framework for community engagement through public meetings, one on one meetings, committee meetings and public surveys.
- b. **Analysis and Evaluation of Opportunities.** Prepare working maps, using city, county, regional and federal sources. Analyze and evaluate Alexander City's current environmental conditions, land use and public findings.
- c. **Strategic Development Concept.** Conduct a public planning workshop to devise goals, objectives, a citywide vision, and a strategic development concept that will provide Alexander City officials with an overall, preliminary view of the comprehensive plan early in the process, and review with the Planning Commission.
- d. **Land Use Recommendations.** Refine the strategic development concept in terms of commercial, residential, mixed use and industrial development in a manner compatible with conservation and protection of Alexander City's natural environment and historic resources.
- e. **Zoning Ordinance and Subdivision Regulations.** Review and compare the city's zoning ordinance and subdivision regulations to recommended comprehensive plan policy and maps, propose land use districts regulations. The plan will provide suggestion for the City to update their regulations to support the comprehensive plan goals.
- f. **Strategic Projects and Plan Implementation Recommendations.** Identify key sites and potential development projects. Recommend a comprehensive plan implementation system to include private and public investment and development regulation and review with the Planning Commission and city staff.
- g. **Plan Adoption.** Work with the City to identify the necessary public adoption process and to assist the City staff to receive the necessary approvals.
- h. **Final Deliverable.** The final product will be delivered in a PDF format suitable for printing and reproduction by the Client. One set of revisions to the final product are included in this Scope of Services.

2. Additional Services

The Client and the Consultant may agree in writing that additional information or services are required and define additional or expanded items related to the Comprehensive Plan. In such instances, the scope, cost, and schedule of additional services will be clearly agreed upon in writing before work begins on such services.