

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: Oct 13, 2016

Action Requested By: Planning

Agenda Type: Resolution

Subject Matter:

Resolution authorizing the Mayor to enter into an agreement between the City of Huntsville and Matrix Design Group, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement between the City of Huntsville and Matrix Design Group, Inc. for the preparation of the Redstone Arsenal Joint Land Use Study

**Note: If amendment, Please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: \_\_\_\_\_

Budgeted Item: \_\_\_\_\_

MAYOR RECOMMENDS OR CONCURS: \_\_\_\_\_

Department Head: 

Date: 10/5/16

# ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Planning**

Council Meeting Date: **10/13/2016**

Department Contact: **Kimberly Gosa**

Phone # **427-5115**

Contract or Agreement: **Agreement**

Document Name: **Agreement between the COH and Matrix Design Group, Inc.**

City Obligation Amount: **0.00**

Total Project Budget: **\$438,702.00** (grant total: \$450,000)

Uncommitted Account Balance:

Account Number: 3020-74-00000-515370-PN200012-00010

## Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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## Grant-Funded Agreements

<b>Federal</b>	<b>Grant Name:</b>
<b>Other</b>	<b>Redstone Arsenal Joint Land Use Study Grant</b>

Department	Signature	Date
1) Originating	<i>Miranda</i>	10/15/16
2) Legal	<i>Mary C Cates</i>	10/12/16
3) Finance	<i>m. Gargo</i>	10/13/16
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)	<i>Lu King</i>	10/13/16
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 16-\_\_\_\_\_

**BE IT RESOLVED** by the City Council of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an agreement with Matrix Design Group, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement Between The City of Huntsville and Matrix Design Group, Inc. for Redstone Arsenal Joint Land Use Study" consisting of eleven (11) pages, and the date of October 13, 2016, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the 13th day of October, 2016

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 13th day of October, 2016

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

**AGREEMENT BETWEEN THE CITY  
OF HUNTSVILLE AND MATRIX  
DESIGN GROUP, INC. FOR  
REDSTONE ARSENAL JOINT LAND  
USE STUDY**

STATE OF ALABAMA    )  
  )  
COUNTY OF MADISON    )

**AGREEMENT FOR REDSTONE ARSENAL  
JOINT LAND USE STUDY**

This Agreement is made this 13th day of October, 2016, by and between the City of Huntsville, Alabama, a municipal corporation (hereinafter referred to as the “City”) and Matrix Design Group, Inc., a Colorado corporation (hereinafter referred to as “Matrix”) for the preparation of a Joint Land Use Study (JLUS) for Redstone Arsenal and the surrounding communities. The City and Matrix hereby agree as follows:

**RECITALS**

WHEREAS, the City received OEA Grant Award # EN1509-15-01 from the Department of Defense Office of Economic Adjustment (OEA) to conduct a JLUS to support the long-term sustainability and operability of the military installation complex; and

WHEREAS, the City issued Request for Proposals Number 60-2016-63-3 for a “Joint Land Use Study”, dated June 24, 2006. This Request for Proposals, together with all attachments and amendments, is referred to as the “RFP” and is incorporated herein by reference as Exhibit “A”; and

WHEREAS, in response to the RFP, Matrix submitted to the City a proposal dated July 21, 2016. This proposal, together with all attachments, is referred to herein as the “Proposal” and which is attached hereto and incorporated herein by reference as Exhibit “B”; and

WHEREAS, the City and Matrix have negotiated and now desire to enter into an arrangement for Matrix to prepare a JLUS for Redstone Arsenal and the surrounding cities of Huntsville and Madison, the Town of Triana, and the counties of Madison, Morgan and Marshall Alabama, all in accordance with the terms and conditions set forth herein.

**WITNESSETH**

**NOW THEREFORE**, in consideration of the mutual promises and covenants, herein contained, the parties hereby agree as follows, to wit:

\_\_\_\_\_  
President of the City Council of the  
City of Huntsville, Alabama  
Date: \_\_\_\_\_

1. **Scope of Work:** Matrix hereby agrees to provide the following services to the City of Huntsville:

Matrix will provide a JLUS, which is a community-driven, cooperative, strategic planning process, among Redstone Arsenal and the following surrounding communities: Madison, Morgan and Marshall Counties in Alabama, the City of Huntsville, Alabama, the City of Madison, Alabama, the Town of Triana, Alabama and the State of Alabama in order to 1) promote community development that is compatible with the military training, testing and operational missions of Redstone Arsenal and 2) seek ways to reduce operational impacts on adjacent lands.

The goal of the JLUS is to encourage local governments, together with the State, to work closely with the military installation to implement measures that prevent the introduction of incompatible civilian development that may impair the continued operational utility of the military installation, and to preserve and protect the public health, safety, and welfare of those living near an active military installation, and associated ranges, Military Training Routes, Special Use Airspace, Military Operating Areas, and adjacent waterways.

The JLUS planning process, including data collection and analysis, shall consider, but not be limited to, the following military mission compatible use factors, as applicable:

- Airspace and land restrictions
- Operational noise
- Urban growth
- Spectrum encroachment
- Endangered species and critical habitat
- Air
- Water
- Cultural resources
- Unexploded ordnance and munitions
- Marine resources
- Energy compatibility and availability
- Security
- Transportation
- Natural factors
- Alternative Energy Development

The Scope of Work for the JLUS shall be as set forth in Appendix A of City of Huntsville Request for Proposals # 60-2016-63-3 and the proposal submitted by Matrix on July 21, 2016 in response to the said RFP. In the case of conflict between the documents, the terms of Proposal # 60-2016-63-3 shall control.

2. **Period of Performance and Schedule:** Matrix shall commence performance of the Work within fourteen (14) days of the approval of this Agreement by the Huntsville City Council and shall complete according to the following **notional** schedule:

TASK	START DATE	COMPLETION DATE
1) Overall Project Initiation and Administration	1 November 2016	30 April 2018
2) Community Organization	15 November 2016	15 January 2017
3) Stakeholder and Public Involvement	1 November 2016	30 April 2018
4) Data Collection, Inventory, and Mapping	1 November 2017	30 March 2017
5) Survey/Interview Key Stakeholders	1 February 2017	15 March 2017
6) Conflict/Compatibility Analysis	1 January 2017	31 July 2017
7) Conflict Resolution Strategies	1 May 2017	30 October 2017
8) Prepare Study Report		
Stakeholder Meetings/ Public Involvement	Stakeholder Meetings: Nov 16, Feb 17, May 17, Sept 17, Jan 18, May 18	Public Meetings: Apr 17, Sept 17, Feb 18

3. **Contract Price:** In consideration of the services rendered hereunder, the City shall pay to Matrix for the work performed pursuant to the Scope of Work the total amount of Four Hundred Thirty-eight Thousand Seven Hundred and Two Dollars (\$438,702.00). Matrix shall invoice the City on a monthly basis for the services provided that month. The City shall pay Matrix within thirty (30) days from the date of receipt of the monthly invoice from Consultant.

4. **Matrix Performing as an Independent Contractor:** In the performance of this work it is understood between the parties that Matrix and its employees, agents, subcontractors and consultants, if any, shall be acting as independent contractors and not as an employee of the City of Huntsville. Matrix shall have no authority to obligate the City to any indebtedness or other obligation.

5. **Disclaimer to Be Included in Final Report:** Matrix shall include the following disclaimer on the title page of the final report:

This study was prepared under contract with the City of Huntsville, Alabama, with financial support from the Office of Economic Adjustment,

6. **Compliance with Grant Agreement:** Matrix acknowledges and agrees that the Work of this Agreement is funded through a grant from the Office of Economic Adjustment, Department of Defense and further agrees to be bound by the requirements of the Grant Agreement between the City of Huntsville, Alabama and the Office of Economic Development, Department of Defense, which is attached hereto and incorporated herein by reference as Exhibit "C".

7. **Notices:** All notices (a) shall be in writing, (b) shall be deemed served on the date on which they are actually received, and (c) shall be served by (i) personal delivery, or (ii) United States First Class Certified or Registered Mail, Return Receipt Requested, properly addressed with postage prepaid or (iii) a nationally recognized overnight courier/delivery service (i.e. Federal Express, United Parcel Service, etc.) or (iv) electronic transmission ("E-mail") or telephonic facsimile transmission ("Fax") in conjunction with one of the other methods of delivery set forth in subparagraphs (i), (ii) or (iii), each addressed as follows:

City Of Huntsville  
Attention: Michelle Jordan  
P.O. Box 308  
Huntsville, Alabama 35804

Matrix Design Group, Inc.  
Attention:

8. **Entire Agreement:** The contract between the City and Matrix consists of this written Agreement and any documents, drawings or attachments furnished by the City and referenced herein. This written Agreement constitutes the entire agreement between the City and Matrix with reference to the Scope of Work delineated within. Except to the extent specifically excluded herein, this Contract supersedes any bid or proposals documents and all prior written or oral communication, representation and negotiations, if any, between the City and the Matrix.

9. **Order of Preference of Contract Documents.** In the event any conflict, discrepancy, or inconsistency among any of the documents which make up this contract, the following shall control. Interpretations shall be based upon the following order of precedence: 1) this Agreement; 2) City of Huntsville Request for Proposals No. 60-2016-63-3; and 3) the Matrix's response to the said Request for Proposals.

10. **No Privity of Contract with Third Parties:** Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and person or entity other than Matrix.

11. **No Waiver Clause:** The failure of the City to insist in one or more instances upon the performance of any term of this Contract is not a waiver of the City's right to future performance of such terms, and Matrix's obligations for future performance of such shall continue in effect.

11. **No Waiver Clause:** The failure of the City to insist in one or more instances upon the performance of any term of this Contract is not a waiver of the City's right to future performance of such terms, and Matrix's obligations for future performance of such shall continue in effect.

12. **EQUAL PARTICIPATION OF PARTIES.** Both parties to this Agreement have participated fully and equally in its negotiation and preparation. Therefore, this Agreement shall not be more strictly construed or any ambiguities within this Agreement resolved against either party hereto.

13. **Insurance and Indemnification Requirements:** Matrix shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. Matrix shall procure and maintain for the duration of the job until final acceptance by the City, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Matrix, its agents, representatives, employees or subcontractors.

**A. MINIMUM SCOPE OF INSURANCE:**

**1. General Liability:**

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval.

**Commercial General Liability**

Products and Completed Operations  
Contractual  
Personal Injury  
Broad Form Property Damage

**2. Professional Liability:**

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage will be maintained for three years after completion of the professional services and Certificates of Insurance will be submitted to the City within reasonable economic terms. For purposes of this provision, reasonable economic terms shall mean that such coverage is carried by at least 25% of the firms within the discipline of concern in the United States. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject project. The professional liability insurance shall contain contractual liability coverage.

**3. Automobile Liability:**

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

**4. Workers' Compensation Insurance:**

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. Waivers of subrogation in favor of the City shall be endorsed to Worker's Compensation coverage.

**5. Employers Liability Insurance:**

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

**B. MINIMUM LIMITS OF INSURANCE:**

**1. General Liability:**

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 3,000,000 General Aggregate Limit  
\$ 1,000,000 Products - Completed Operations Aggregate  
\$ 1,000,000 Personal & Advertising Injury  
\$ 1,000,000 Each Occurrence

**2. Professional Liability:**

Insurance may be made on a "claims-made" basis:

\$ 100,000 Per Claim - Land Surveyors  
\$ 250,000 Per Claim - Other Professionals

**3. Automobile Liability:**

\$ 500,000 Combined Single Limit per accident for bodily injury and property damage.

**4. Workers' Compensation:**

As Required by the State of Alabama Statute

**5. Employers Liability:**

\$ 100,000 Bodily Injury by Accident or Disease

\$ 500,000 Policy Limit by Disease

**C. OTHER INSURANCE PROVISIONS:**

The City is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the City's best interest. If the insurance requirements are not adjusted by the City prior to the City's release of specifications with regard to the project in question, then the minimum limits shall apply.

The policies are to contain, or be endorsed to contain, the following provisions:

**1. General Liability and Automobile Liability Coverage's Only:**

a. The City, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of Matrix for products used by and completed operations of Matrix; or automobiles owned, leased, hired or borrowed by Matrix. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide the coverage required by this Agreement.

b. Matrix's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, agents and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of Matrix's insurance and shall not contribute to it.

c. Matrix's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**2. All Coverages:**

a. Matrix is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

**D. ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers with an A. M. Best's rating of no less than **B+ V**.

**E. VERIFICATION OF COVERAGE:**

The City shall be indicated as a Certificate Holder, and Matrix shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**F. CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR MATRIX:**

Matrix shall include all subcontractors and/or consultants as insureds under its policies or shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant.

**G. HOLD HARMLESS AGREEMENT:**

**1. Other Than Professional Liability Exposures:**

Matrix, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of Matrix or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

**2. Professional Liability:**

Matrix agrees that as respects negligent acts, errors or omissions in the performance of professional services, to indemnify and hold harmless the City, its officers, agents, employees, and specified volunteers from and against any and all claims, demands, losses and expenses including, but not limited to attorney's fees, liability, or consequential damages of any kind or nature resulting from any negligent acts, errors, or omissions of

Matrix or any subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Nothing contained in this agreement shall make Matrix responsible to the City for any claims, suits or expenses arising out of the negligent, intentional, reckless, or wrongful acts of the City or its agents.

**H. Intellectual Property Rights:**

Matrix agrees to indemnify, hold harmless and defend City from and against any and all liability, losses, judgments, damages, and expenses arising from third party claims that the Products delivered by and/or Services performed by Matrix pursuant to this Agreement infringe on or violate any patents, copyrights, or trade secrets of such third parties. This indemnification is contingent upon City providing prompt written notice of such a claim to Matrix, and granting Matrix the sole right to defend such claim. In the event of any infringement or claimed infringement, Matrix shall: (i) modify the infringing Services to be non-infringing as long as there is no loss of functionality by such modification; (ii) obtain a license for City to use the infringing Services; or (iii) terminate the City's right to use the infringing Services and refund to City all amounts paid for such infringing Services, amortized over a period of (5) years from the acceptance of Services.

14. **Governing Law and Venue.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Alabama. For any action concerning this Agreement, (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

15. **Termination Due to Unavailability of Grant Funds.** The parties acknowledge that the Work set forth in this Agreement is funded through a grant from the Office of Economic Adjustment, Department of Defense, and OEA Award No. EN1509-15-01 and that the City may terminate this Agreement for convenience if the said grant funds are or become unavailable.

16. **Assignment by Matrix.** Matrix shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the City. Subject to the provisions of the immediately preceding sentence, the City and Matrix, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

17. **No Third Party Beneficiaries.** Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

18. **Use of Subcontractors.** Matrix shall obtain the City's written consent before placing any subcontract for furnishing any of the work called for in this contract. Consent by the City to any subcontract shall not constitute approval of the acceptability

of any subcontract terms or conditions, acceptability of any subcontract price or of any amount paid under any subcontract, nor relieve Matrix of any responsibility for performing this contract.

19. **Non-Discrimination.** In consideration of the signing of this Agreement, the parties hereto for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner on the basis of race, color, creed, age, sex, disability or national origin with reference to the subject matter of this contract, no matter how remote. This nondiscrimination provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Agreement.

20. **Miscellaneous Provisions.**

A. This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

B. When a word, term or phrase is used in this Contract, it shall be interpreted or construed. First, as defined herein; second, if not defined, according to its generally accepted meaning within the Contractual industry; and third, if there is no generally accepted meaning in the Contractual industry, according to its common and customary usage.

C. The words "include," "includes," or "including," as used in this Contract, shall be deemed to be followed by the phrase, "without limitation."

D. The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

E. Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

F. Time limitations contained herein, or provided for hereby, are of the essence of this Agreement.

G. The Services will comply with any and all applicable federal, state, and local laws as the same exist and may be amended from time to time.

**IN WITNESS WHEREOF**, the parties have executed this agreement on the day and year first above written.

**MATRIX DESIGN GROUP, INC.**

Attest:

\_\_\_\_\_

By : \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY OF HUNTSVILLE**  
a municipal corporation  
in the State of Alabama

Attest:

\_\_\_\_\_  
Kenneth Benion  
Its: Clerk-Treasurer

By: \_\_\_\_\_  
Tommy Battle  
Its: Mayor