

**Vestavia Hills
City Council Agenda
September 9, 2013
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Ron Hige, Birmingham International Church
4. Pledge of Allegiance
5. Announcements, Candidate and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Presentation – Parks and Recreation Foundation
9. Approval Of Minutes –August 26, 2013 (Regular Meeting)

Old Business

10. Resolution Number 4491 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement For Renewal Of The Contract For Collection Of Garage And Trash For The City Of Vestavia Hills (*public hearing*)
11. Resolution Number 4492 – A Resolution Authorizing The City Manager To Purchase Technology Equipment For The Vestavia Hills Library In The Forest With A Portion Of A \$300,000 Grant From The Public School And College Authority (PSCA) (*public hearing*)
12. Resolution Number 4493 – A Resolution Accepting A Bid For Janitorial Services For The Civic Center And Authorizing The Mayor And City Manager To Execute And Deliver A 3-Year Agreement For Said Services (*public hearing*)
13. Resolution Number 4494 – A Resolution Ordering The Demolition Of A Building Or Structure Located At 3128 Autumn Court, Vestavia Hills, Alabama, Parcel Id# 28-15-4-016-009.000, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53b-1 Through 11-53b-16, Inclusive, Of The *Code Of Alabama*, And In Compliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For The City Of Vestavia Hills To Cause Said Demolition To Be Performed And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal

- Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners (*public hearing*)
14. Resolution Number 4495 – A Resolution Ordering The Demolition Of A Building Or Structure Located At 1939 Old Creek Trail, Vestavia Hills, Alabama, Parcel Id# 28-30-2-014-001.000, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53b-1 Through 11-53b-16, Inclusive, Of The *Code Of Alabama*, And In Compliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For The City Of Vestavia Hills To Cause Said Demolition To Be Performed And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners (*public hearing*)
 15. Resolution Number 4496 – A Resolution Approving And Adopting The General Fund Budget, A Special Revenue Fund Budget And A Capital Project Fund Budget For The City Of Vestavia Hills For The Period Beginning October 1, 2013 Until September 30, 2014 (*public hearing*)
 16. Resolution Number 4497 – A Resolution Approving A Two-Percent (2%) COLA For Employees Effective October 1, 2013
 17. Resolution Number 4498 – A Resolution Authorizing The City Manager To Remit Payment Of The Balance For The Republication Of The City’s Municipal Code From The Fiscal Year 2012-2013 General Fund (*public hearing*)

New Business

18. Resolution Number 4500 – A Resolution Approving An Alcohol License For Sonu Enterprises, Inc., D/B/A Cahaba Heights Texaco; Farida Ali, Executive
19. Resolution Number 4501 – A Resolution Accepting A Bid for Computer Equipment Storage Area Network (SAN)
20. Resolution Number 4502 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With ESO Solutions LLC For Purchase Of Patient Care Reporting Software

New Business (Unanimous Consent Requested)

21. Resolution Number 4503 – A Resolution Authorizing The City Manager To Repair A Damaged Vehicle For The Vestavia Hills Police Department (*public hearing*)

22. Resolution Number 4504 – A Resolution Authorizing The Application For A Flood Hazard Mitigation Assistance Grant From The Acquisition Of At Risk Flood Plain Properties Within The Meadowlawn Estates Subdivision (*public hearing*)
23. Resolution Number 4506 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With LEHE Planning, LLC For Professional Services And To Provide Additional Funding For Needed Surveys In Order To Make Application For A Flood Mitigation Grant (*public hearing*)

First Reading (No Action Taken At This Meeting)

24. Resolution Number 4505 – A Resolution Accepting Bids For Non-Athletic Grounds Maintenance For Parks And Recreation And Vestavia Hills Library In The Forest
25. Resolution Number 4507 – A Resolution Authorizing The City Manager To Remit Payment On An Invoice For Additional Sewer Capacity Adjustments To Enviro Services LLC For Sewer Services To The Liberty Park Sports Complex (*public hearing*)
26. Ordinance Number 2464 – An Ordinance Amending Ordinance Number 2427 Regarding Traffic Education (*public hearing*)
27. Ordinance Number 2465 – An Ordinance Establishing And Creating The Collision Avoidance Training Program For The City Of Vestavia Hills (*public hearing*)
28. Citizens Comments
29. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

AUGUST 26, 2013

The City Council of Vestavia Hills met in regular session on this date at 5:00 PM. Mr. Ammons, Mayor Pro-Tem, called the meeting to order and the City Clerk called the roll with the following:

MEMBERS PRESENT:

Steve Ammons, Mayor Pro-Tem
George Pierce
John Henley
Jim Sharp

MEMBERS ABSENT:

Mayor Alberto C. Zaragoza, Jr.

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick Boone, City Attorney
Rebecca Leavings, City Clerk
Conrad Garrison, City Planner
Christopher Brady, City Engineer
Melvin Turner III, Finance Director
George Sawaya, Dep. Finance Director
Danny Rary, Police Chief
Tim Holcomb, Deputy Police Chief
Fred Baughman, Economic Dev. Director
Jim St. John, Fire Chief
Greg Gilchrist, Fire Marshal

Invocation was given by Ron Higeey, Birmingham International Church, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION

- Mr. Pierce announced that the final I Love America Day festivity was a complete success. He thanked all the committee members, volunteers and the Chamber for making the event so great.
- Mr. Henley announced that Rachel's Challenge will be held on September 16 and 17 with proceeds going to help challenged students. He invited everyone to attend and participate in the event.

- Mr. Ammons announced that the Mayor had a death in the family and asked everyone to pray for the family.
- Mr. Ammons welcomed Mr. Andrew Edwards to the meeting. Mr. Edwards serves as the Vestavia Hills representative on the MAX Board.
- Davis Edwards, Boy Scout from Troop 4, was also welcomed to the meeting.

CITY MANAGER REPORT

- Mr. Downes announced that City offices would be closed on September 2, 2013 for the Labor Day holiday.
- Paving has been delayed because of larger project demands of the contractor in other areas of the state. However, it should begin soon.
- The City has been notified of two funding sources to allow for purchasing portions of the Meadowlawn Community.
 - Mr. Brady gave an update regarding newer funding sources for the proposed buyout of properties in Meadowlawn and indicated they are close to filing applications.
- Mr. Downes updated the Council on ideas for development opportunities in the Cahaba Heights area which has met with some interests from developers. He indicated that he is beginning discussions with select property owners in an area in order to obtain the prospects of some public/private projects to stimulate some changes and development in the Cahaba Heights area. He indicated that the City should start with a good plan and build on it, promoting concepts such as shared parking and the City taking an active interest in proceeding with the development. Discussion ensued as to whether or not the Council should take a short day trip to see Mr. Downes' past accomplishments in Montgomery.

COUNCILOR REPORTS

- None.

FINANCIAL REPORTS

Mr. Turner presented the financial reports for month ending July 2013. He read and explained the balances.

APPROVAL OF MINUTES

The minutes of the August 12, 2013 (Regular Meeting), August 15, 2013 (Meeting With the Mayor) and August 20, 2013 (Work Session) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the August 12, 2013 (Regular Meeting), August 15, 2013 (Meeting With Mr. Ammons) and August 20, 2013 (Work Session) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll Call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mr. Sharp – yes

Motion carried.

OLD BUSINESS

RESOLUTION NUMBER 4485

Resolution Number 4485 – A Resolution Amending Resolution Number 4425 To Allow Validation Of Additional Incentives For The City Of Vestavia Hills, Alabama (public hearing)

MOTION Motion to approve Resolution Number 4485 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes explained that this Resolution would give global approval to an incentive program with a ceiling of \$15,000 which would be validated as one project and would keep the City from having to validate each request. This has been discussed previously at various work sessions and meetings.

Heyward Hosch was present in regard to this request and gave the Council a history on the request as well as what the approval would entail.

Mr. Ammons opened the floor for a public hearing. There being no one present to speak to this request, Mr. Ammons closed the public hearing and called for the question.

MOTION Question called on a roll call vote:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mr. Sharp – yes

Motion carried.

RESOLUTION NUMBER 4486

Resolution Number 4486 – A Resolution Directing The City Manager And Mayor To Take All Actions Necessary To Deliver And Request Validation Of An Incentive Package Submitted By Hollywood Imports (public hearing)

MOTION Motion to approve Resolution Number 4486 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes explained that this Resolution approves a request made by Hollywood Imports to make selected improvements to the business in return for a rebate of some of the sales taxes.

Mr. Baughman explained the improvements planned by the owner of the property and the estimated rebate of a certain amount of sales taxes in excess of what's currently being submitted to the City.

Heyward Hosch was present in regard to this request and gave the Council a history of the request as well as what the approval would entail.

Mr. Ammons opened the floor for a public hearing. There being no one present to speak to this request, Mr. Ammons closed the public hearing and called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Ammons – yes Mr. Sharp – yes
Motion carried.

ORDINANCE NUMBER 2462

Ordinance Number 2462 – An Ordinance Rescinding Ordinance Number 1687 – Establishing The Speed Limit For Liberty Parkway, Vestlake Communities And All Areas Of Liberty Parkway (public hearing)

MOTION Motion to approve Ordinance Number 2462 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes explained that this Ordinance repeals the speed limit in Liberty Park which is unenforceable because the roads are private in the area. He stated that this old ordinance was discovered to still be on the books during the City's republication of the Code and this Ordinance simply cleans that up.

Mr. Ammons opened the floor for a public hearing. There being no one to speak to this request, Mr. Ammons closed the public hearing and called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Ammons – yes Mr. Sharp – yes
Motion carried.

ORDINANCE NUMBER 2463

Ordinance Number 2463 – An Ordinance To Repeal Ordinance Number 2099 And Ordinance Number 2411, To Reaffirm Ordinance Number 2209 And Adopt In Full Ordinance Number 2463 Titled The “City Of Vestavia Hills Smoke-Free Ordinance Of 2012” (public hearing)

MOTION Motion to approve Ordinance Number 2463 was by Mr. Sharp and second was by Mr. Pierce.

Mr. Downes explained that a non-smoking ordinance was enacted about a year ago and during the republication of the Code, it was discovered that a typographical error repealed an ordinance different than what should have been repealed. This Ordinance repeals the correct Ordinance and reaffirms the Ordinance actually repealed. This request is again, a clean-up of the Code as it is being republished.

Mr. Ammons opened the floor for a public hearing. There being no one to speak to this request, Mr. Ammons closed the public hearing and called for the question.

MOTION Question called on a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Ammons – yes

Mr. Sharp – yes

Motion carried.

NEW BUSINESS

RESOLUTION NUMBER 4487

Resolution Number 4487 – A Resolution Declaring Personal Property As Surplus And Directing The Sale/Disposal Of Said Surplus Item

MOTION Motion to adopt Resolution Number 4487 was by Mr. Henley and second was by Mr. Pierce.

Mr. Downes explained that this declares a Jeep Cherokee with more than 200,000 miles as surplus and allows the sale of said item. He stated that the vehicle was acquired through a property drug seizure and the moneys will be returned to the special funds account to be utilized for law enforcement purposes.

MOTION Question called on a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Ammons – yes

Mr. Sharp – yes

Motion carried.

RESOLUTION NUMBER 4488

Resolution Number 4488 – A Resolution Authorizing The City Manager To Accept A Proposal From SunTrust Bank Regarding Leasing Of Certain Vehicles And/Or Heavy Equipment

MOTION Motion to adopt Resolution Number 4488 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that this Resolution locks in an interest rate on certain vehicles and equipment that the City wants to lease.

Mr. Sharp commended Mr. Turner and indicated that more than 16 banks had the option to quote on this.

Mr. Boone stated that the City has financed several times through SunTrust and he recommends approval of this and the next Resolution. He offered an amendment to the next Resolution to amend all areas that say “Section 05” to say “Section 05 and 06.”

Discussion ensued concerning the vehicles to be leased and the terms of both Resolution Numbers 4488 and 4499.

Mr. Ammons opened the floor for a public hearing. There being no one to speak to this request, Mr. Ammons closed the public hearing and called for the question.

MOTION Question called on a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Ammons – yes

Mr. Sharp – yes

Motion carried.

RESOLUTION NUMBER 4499

Resolution Number 4499 – A Resolution Authorizing The Leasing And Subsequent Reimbursement Of Certain Vehicles And/Or Equipment

MOTION Motion to adopt Resolution Number 4499 was by Mr. Henley and second was by Mr. Pierce.

Mr. Downes indicated that this Resolution was discussed at length with the previous Resolution.

Mr. Ammons opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, Mr. Ammons closed the public hearing and called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Ammons – yes Mr. Sharp – yes
Motion carried.

RESOLUTION NUMBER 4489

Resolution Number 4489 – A Resolution Accepting The Final 10% Of The City Of Vestavia Hills Budget For Fiscal Year 2012-2013

MOTION Motion to adopt Resolution Number 4489 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes explained that this adopts the final 10% of the City’s current fiscal year budget pursuant to Alabama law.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Ammons – yes Mr. Sharp – yes
Motion carried.

RESOLUTION NUMBER 4490

Resolution Number 4490 – Alcohol License – Five Star Mart LLC D/B/A Dolly Creek Shell; 050 Retail Beer And 070 Retail Table Wine (Off Premise); Robert Lee Cayse, Jr., Executive (*public hearing*)

MOTION Motion to adopt Resolution Number 4490 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes explained that this business has undergone a change in ownership and this Resolution requests a beer/wine license for the new owner.

Chief Rary stated that his review shows no problems with the request.

Mr. Ammons opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, Mr. Ammons closed the public hearing and called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Ammons – yes Mr. Sharp – yes
Motion carried.

FIRST READING (NO ACTION TO BE TAKEN AT THIS MEETING)

Mr. Ammons stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting of September 9, 2013 at 5 PM.

- Resolution Number 4491 – A Resolution Authorizing Mr. Ammons And City Manager To Execute And Deliver An Agreement For Renewal Of The Contract For Collection Of Garage And Trash For The City Of Vestavia Hills (*public hearing*)
- Resolution Number 4492 – A Resolution Authorizing The City Manager To Purchase Technology Equipment For The Vestavia Hills Library In The Forest With A Portion Of A \$300,000 Grant From The Public School And College Authority (PSCA)
- Resolution Number 4493 – A Resolution Accepting A Bid For Janitorial Services For The Civic Center And Authorizing Mr. Ammons And City Manager To Execute And Deliver A 3-Year Agreement For Said Services (*public hearing*)
- Resolution Number 4494 – A Resolution Ordering The Demolition Of A Building Or Structure Located At 3128 Autumn Court, Vestavia Hills, Alabama, Parcel Id# 28-15-4-016-009.000, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53b-1 Through 11-53b-16, Inclusive, Of The *Code Of Alabama*, And In Compliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For The City Of Vestavia Hills To Cause Said Demolition To Be Performed And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners (*public hearing*)
- Resolution Number 4495 – A Resolution Ordering The Demolition Of A Building Or Structure Located At 1939 Old Creek Trail, Vestavia Hills, Alabama, Parcel Id# 28-30-2-014-001.000, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53b-1 Through 11-53b-16, Inclusive, Of The *Code Of Alabama*, And In Compliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For The City Of Vestavia Hills To Cause Said Demolition To Be Performed And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners (*public hearing*)
- Resolution Number 4496 – A Resolution Approving And Adopting The General Fund Budget, A Special Revenue Fund Budget And A Capital Project Fund Budget For The City Of Vestavia Hills For The Period Beginning October 1, 2013 Until September 30, 2014 (*public hearing*)
- Resolution Number 4497 – A Resolution Approving A Two-Percent (2%) COLA For Employees Effective October 1, 2013

- Resolution Number 4498 – A Resolution Authorizing The City Manager To Remit Payment Of The Balance For The Republication Of The City’s Municipal Code From The Fiscal Year 2012-2013 General Fund (*public hearing*)

CITIZENS COMMENTS

David Harwell, 1803 Catala Road, expressed concern over the City’s commitment to keeping sign litter off of City rights-of-way. He indicated the collection of signs is beginning to look bad.

Donald Harwell, 1357 Willoughby Road, stated that he is concerned over the water/sewer rates he has to pay.

EXECUTIVE SESSION

Mr. Ammons stated that the Council needed to enter into Executive Session for an estimated 20 minutes to discuss the good name and character of an individual. Mr. Boone concurred that was a legal reason to enter into the Session. Mr. Ammons opened the floor for a motion:

MOTION Motion to move into Executive Session for an estimated 20 minutes for the discussion of the good name and character of an individual was by Mr. Sharp and second was by Mr. Pierce. Roll call vote as follows:
Mr. Pierce – yes Mr. Henley – yes
Mr. Ammons – yes Mr. Sharp – yes
Motion carried.

The Council exited the Chamber and entered into Executive Session at 6:00 PM. At 6:35 PM, the Council re-entered the Chamber and Mr. Ammons called the meeting back to order.

MOTION Motion to adjourn was by Mr. Henley. Meeting adjourned at 6:35 PM.

Steve Ammons
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4491

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER
TO EXECUTE AN AGREEMENT TO RENEW A CONTRACT FOR
COLLECTION OF GARBAGE AND TRASH**

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The Mayor and City Manager are hereby authorized to execute and deliver an agreement with Republic Services of Birmingham to renew the contract for collection of garbage and trash; a copy of said First Amendment to Agreement for Renewal of Contract for Collection of Garbage and Trash is attached to and incorporated into this Resolution Number 4491 and though written fully therein; and
2. This Resolution Number 4491 shall become effective immediately upon adoption and approval.

DONE and APPROVED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

**FIRST AMENDMENT TO
AGREEMENT FOR RENEWAL OF CONTRACT
FOR COLLECTION OF GARBAGE AND TRASH**

This First Amendment to Agreement for Renewal of Contract for Collection of Garbage and Trash (this "Amendment") is dated effective the ___ day of _____, 2013 (the "Effective Date"), between the City of Vestavia Hills, Alabama, a municipal corporation of the State of Alabama (the "City"), and BFI Waste Services, LLC, a Delaware limited liability company d/b/a Allied Waste Services of Birmingham // Republic Services of Birmingham ("Contractor"), as successor-in-interest to Advanced Disposal Services Birmingham, Inc. ("ADS").

Recitals

A. The City and the predecessor-in-interest to ADS entered into that certain Contract, dated October 1, 2004, as amended by that certain Addendum to Contract, dated September 30, 2009, and that certain Agreement for Renewal of Contract for Collection of Garbage and Trash, dated September 30, 2010 (collectively, the "Contract"), pursuant to which Contractor and/or its predecessor-in-interest agreed to provide certain solid waste collection and disposal services.

B. The City and the Contractor now desire to amend certain provisions of the Contract.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree to the following terms and conditions:

1. Capitalized Terms. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings assigned to them in the Contract.

2. Extension. Pursuant to Section 3(C) of the General Specifications portion of the Contract, the Contract is hereby extended for an additional three (3) year term (the "Extended Term"), commencing October 1, 2013 and ending September 30, 2016.

3. Carts. Commencing as of October 1, 2013, residents utilizing 32 gallon recycling carts under the terms of the Contract shall be entitled to trade in such carts for a 95 gallon recycling cart at no additional cost. Any residents desiring to obtain a 95 gallon recycling cart pursuant to this Section shall contact Contractor directly to arrange delivery.

4. CPI Adjustments. Rates during the second year of the Extended Term may be adjusted to account for changes in the Consumer Price Index in accordance with Section 10.B. of the General Specifications of the Contract; provided, however, that any such adjustment shall not exceed 2.5%. No rate adjustments under Section 10.B. of the General Specifications shall be made for the first or third years of the Extended Term.

5. Title to Waste. The items excepted from the definition of "Garbage" in Section 1

of the General Specifications portion of the Contract shall be referred to as "Excluded Waste." For purposes of clarifying the intent of the parties in the Contract, the parties hereby expressly agree that title to and liability for any Excluded Waste provided to Contractor under the Contract shall at no time pass to Contractor.

6. Indemnification. Section 7.A. of the General Specifications of the Contract is hereby amended to change the words "negligent or willful act" to "negligent act or willful misconduct." Similarly, the words "negligent or willful performance" in that same section are hereby deleted and replaced with the words "negligent performance or willful misconduct."

7. Successor. The City hereby acknowledges and agrees that Contractor is the lawful successor-in-interest to ADS' rights under the Contract and hereby expressly consents to such change in parties.

8. Continuing Effect. Except as expressly modified or amended by this Amendment, all terms and provisions of the Contract shall remain in full force and effect. In the case of a conflict in meaning between the Contract and this Amendment, this Amendment shall prevail.

9. Execution in Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have entered into this Amendment to be effective as of the Effective Date.

CONTRACTOR:

CITY:

BFI WASTE SERVICES, LLC,
a Delaware limited liability company

CITY OF VESTAVIA HILLS,
a municipal corporation of the
State of Alabama

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

RESOLUTION NUMBER 4492

A RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE CERTAIN TECHNOLOGY EQUIPMENT FOR THE VESTAVIA HILLS LIBRARY IN THE FOREST FROM A PORTION OF A GRANT OF \$300,000 FROM THE PUBLIC SCHOOL AND COLLEGE AUTHORITY (PSCA)

WHEREAS, in January 2009, the Vestavia Hills Library in the Forest was awarded a \$300,000 grant from the Public School and College Authority (“PSCA”) and notified in October of 2012; and

WHEREAS, the Library Board has carefully considered the best use for said funds and has allocated an amount not to exceed \$121,000 of said funds for projects detailed in information marked “Exhibit A” and attached and incorporated into this Resolution Number 4492 as though written fully therein; and

WHEREAS, the Mayor and City Council have reviewed the described projects and feel it is in the best interest to authorize the City Manager to purchase said projects as described in the attached exhibit.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City Manager is hereby authorized to purchase projects as described in the attached exhibit for an amount not to exceed \$121,000; and
2. Invoices for said purchases shall be submitted directly to the Alabama Building Commission (“ABC”) for payment pursuant to the terms and conditions of the grant; and
3. This Resolution Number 4492 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



CITY OF VESTAVIA HILLS

VESTAVIA HILLS LIBRARY IN THE FOREST

ALBERTO "BUTCH" ZARAGOZA
MAYOR

TANEISHA YOUNG TUCKER
DIRECTOR

August 20, 2013

TO: Mayor Alberto C. Zaragoza, Jr.
Mayor Pro-tem Steve Ammons
Councilman Jim Sharp
Councilman George Pierce
Councilman John Henley
Mr. Jeff Downes, City Manager

FROM: Taneisha Tucker
Library Director

RE: Request for City Council Approval

The Vestavia Hills Library in the Forest has been awarded a \$300,000 grant from the Public School and College Authority (PSCA). The allocation was made on January 30, 2009 but the library was not notified until October 2012.

The funds from the grant are to be used for capital expenditures (construction) and the purchase of technology (computers, smart-boards, etc.) The Library in the Forest has created an ad hoc technology committee that has worked together to compile and submit the first of two lists to the Alabama Building Commission for approval. The first list totaling just under \$121,000 has been approved and we are prepared to begin making purchases immediately.

Per the grant's specifications (see enclosed documents), the Alabama Building Commission requires that original invoices be submitted directly to them for payment. The Library would also submit the required Certification of Compliance Title 41: Public Contracts and Material Receipts forms. The City of Vestavia Hills would not be responsible

for purchasing items and waiting for reimbursement from the ABC. Based on their policies, ABC will pay the vendors directly within ten business days of receiving original invoices.

Attached is a list of the items approved by the PSCA and Library's technology committee for purchase utilizing this grant. Since the attached items are below the purchase price required by the Competitive Bid Law, all that is required of Council is approval to purchase.

Thank you.

**Vestavia Hills Library in the Forest
 Revised Technology and Capital Improvements Submissions / Quotes
 1221 Montgomery Highway
 Vestavia Hills, AL 35216**

PHASE 1

TECHNOLOGY SUBMISSION

1. Print Management Upgrades

Hardware/Software for 1st Floor Print Station
 Print Station, Software, Card Terminal, Cards \$14,684
 Mobile printing Upgrade
 Allows patrons to print wirelessly, iPads, iPhones, etc.
 Scannx Book ScanCenter Upgrade

Xerox 6700D Color LaserJet Printer \$2,491
 (Yearly Maintenance Contract \$.13 Color, \$.019 B&W)
 Cabinet for Printer/Computer \$3000

2. Two Windows laptops/software for PowerPoint/Training/Proctoring \$3,333.68

3. Three MacBook Pro laptops for IT and for Publicity/Web development \$8,109.84

4. Upgrade to Patron Wireless Network \$3,161.69
 Barracuda Link Balancer 330 Installation

5. Five Standing tables for Email computers \$3,174.75

6. Mount TV Panels/Mounting Hardware/Run Cables \$6,900
 Purchase 60" panel to mount in Lobby for Digital Signage
 Purchase DTV box to attach to TV to receive programming
 Pull electricity/data cables

7. Children's Media Room Audio/Video System \$11,505.99
 In Ceiling Speakers, Amplifier, Blue Ray DVD, Apple TV, Logitech Remote,
 Mixer (CD/DVD Input, Computer/laptop Inputs)
 PA System
 2 Corded Mics, 1 Wireless Mic
 Centralized Cabling
 Cabinet construction installation for fixed installation/operation/security
 HD Projector, Projector Mounting, 120" Screen (manual)
 Installation/Integration

8. Security System Enhancements	\$21,115.10
Addition of 4 fisheye/high quality cameras to oversee adult Public Computer area	
Addition of outdoor fisheye camera for view of book drop and rear of cars leaving the parking lot (for car tags).	
New Recording Server for additional cameras and much needed storage (now we are limited to storing video for about a week)	
Wiring (long challenging runs/installation)	
Server Setup/Programming/Integration/Install cameras	
9. 12 iPads	\$6,256.80
10. Dragon Dictate for Mac 3.0, with Digital Voice Recorder	\$259.99
11. LinkRunner - LinkRunner Pro was designed to provide desktop support and network technicians with a simple, dedicated tool for resolving the most common PC user and device connectivity issues.	\$995.00
12. Promethean Board with software/training/installation	\$7,424.00
13. Computer/Desk chair	\$687.44

Total = \$93,099.28

CAPITAL IMPROVEMENTS SUBMISSION

1. Handicap Accessible sidewalk
Furnish and install 126' of sidewalks with handicap landings and formed retaining/head walls. (3000 PSI with 6x6x6 wwm). The sidewalk will be installed on a slope that will not exceed local building codes. All material, labor, pump trucks, excavation and wall construction is included in price.
\$23,890
2. Cement saw cut
Furnish all material and labor to saw cut a 60" walk thru in bottom retaining wall. Remove all debris. Install all masonry veneer to complete a finish walk thru opening.
\$3,952

Total = \$27842.00

ESTIMATED GRAND TOTAL: \$120,941.28

VENDORS

Apple

Viperline Solutions

Office Environments

AV Unlimited

Dell

TRACSYSTEMS, Inc

GT Key

Berney Office Solutions

Amazon

Core Education

OFFICE OF THE GOVERNOR



JAMES ALLEN MAIN
DIRECTOR OF FINANCE

BOB RILEY
GOVERNOR

(334) 242-7160
FAX: (334) 353-3300

STATE OF ALABAMA
STATE CAPITOL
MONTGOMERY, ALABAMA 36130
January 30, 2009

The Honorable Bob Riley
Governor and President of the Alabama Public School and College Authority
600 Dexter Avenue, State Capitol, Suite N-104
Montgomery, AL 36130

The Honorable Joseph B. Morton
Superintendent of Education and
Vice President of the Alabama Public School and College Authority
50 North Ripley Street
Montgomery, AL 36130

The Honorable James Allen Main
Director of Finance and
Secretary of the Alabama Public School and College Authority
600 Dexter Avenue, State Capitol, Suite N-105
Montgomery, AL 36130

Dear Members:

I, Governor Bob Riley respectfully request your approval of the following allocation from the Alabama Public School and College Authority Series 2007 Bond Interest. Should you approve the allocation, it will be ratified at the next meeting of the Alabama Public School and College Authority:

Attached List for public schools and libraries totaling \$1,028,708.92; these funds will be used for various capital projects.

Please sign for approval of this allocation. Thank you for your consideration.

Approved

Approved

Approved

Disapproved

Superintendent
Joseph B. Morton

Disapproved

Governor Bob Riley

Disapproved

Director of Finance
James Allen Main

**Alabama Public School & College Authority
January 30, 2009**

Auburn University Montgomery	\$ 59,069.00
Blount County Board of Education	\$ 22,533.44
City of Vestavia Hills	\$ 300,000.00
Elmore County Board of Education	\$ 379,639.92
Jefferson County Board of Education	\$ 42,636.98
Mobile County Board of Education	\$ 150,000.00
Montgomery County Board of Education	\$ 40,000.00
Oneonta City Board of Education	\$ 5,259.15
St. Clair County Board of Education	\$ 23,405.93
Tarrant City Board of Education	\$ 6,164.50
Total	\$1,028,708.92



ALABAMA STATE SENATE
ALABAMA STATE HOUSE
11 SOUTH UNION STREET, 7TH FLOOR
MONTGOMERY, ALABAMA 36130-4600

J.T. "JABO" WAGGONER
SENATE MINORITY LEADER
P.O. BOX 680608
VESTAVIA HILLS, AL 35286-0609

HOME: 205-822-7443
CAPITOL: 334-242-7892

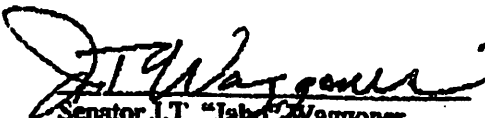
February 1, 2008

Governor Bob Riley
Alabama State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

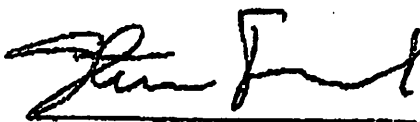
Dear Governor Riley:

The state legislative delegation representing the City of Vestavia Hills requests your positive consideration of our appeal for funding for the new Leadership in Energy and Environmental Design (LEED) certified Vestavia Hills Library in the Forest. We know you are familiar with the project, as evidenced by your early, valuable support and endorsement of it. Attached you will find a detailed project description with an update on activities that have occurred since your earlier briefing. With approximately \$3 million raised to date, tremendous progress has been made toward relieving the \$4 million challenge issued by the Vestavia Hills City Council. We are requesting ~~\$500,000~~ 250K from your discretionary funds for this endeavor. The award of your funds along with other pending grant requests will guarantee that the Vestavia Hills Library in the Forest, an essential resource for education and life long learning, will become a reality for our city, our region and our state.


Sincerely,

 250K

Senator J.T. "Jabo" Waggoner
Senate Minority Leader

 250K

Senator Steve French
District 15



Representative Greg Earfield
District 48



Representative Jack Williams
District 47



Representative Paul DeMarco
District 46

PSCA INTEREST REQUESTS

EDUC. ENTITY	PROJECT	AMOUNT	
Bloom Co BOE	Capital Improvements, Technology & Athletic equip.	\$22,533.44	7667
Oneonta City BOE	Capital Improvements, Technology & Athletic equip.	\$5,259.15	7668
St. Clair County BOE	Capital Improvements, Technology & Athletic equip.	\$23,405.93	7669
Tarrant City BOE	Capital Improvements, Technology & Athletic equip.	\$6,164.50	7670
Jefferson Co. BOE	Capital Improvements, Technology & Athletic equip.		
Bregg Middle School		\$2,793.46	7671
Bryan Elementary School		\$2,678.05	7672
Corner High School		\$4,338.19	7673
Fultondale Elementary School		\$2,604.19	7674
Fultondale High School		\$2,107.93	7675
Gardendale Elementary School		\$2,714.98	7676
Gardendale High School		\$3,245.86	7677
Kemml Johnson Elementary School		\$2,906.56	7678
Mortimer Jordan High School		\$2,724.21	7679
Mt. Olive Elementary School		\$1,957.90	7680
North Jefferson Middle School		\$2,380.29	7681
Pinson Elementary School		\$2,733.44	7682
Pinson Valley High School		\$3,368.19	7683
Rudd Middle School		\$2,895.02	7684
Snow Rogers Elementary School		\$1,519.34	7685
Warrior Elementary School		\$1,669.37	7686
SUB-TOTAL		\$42,636.98	
Theodore High School - Mobile County	Construction of performing arts building	\$150,000.00	7687
Auburn Montgomery	Purchase Gas Chromatograph-Mass Spectrometer	\$59,069.00	7688
Elmore Co. BOE	Technology equipment	\$54,639.92	7689
Elmore Co BOE	Library and technology upgrades		
Coosada Elementary School		\$25,000.00	7690
Elmore County Technical Center		\$25,000.00	7691
Holtville Elementary School		\$25,000.00	7692
Holtville Middle School		\$25,000.00	7693
Holtville High School		\$25,000.00	7694
Millbrook Middle School		\$25,000.00	7695
Redland Road Elementary School		\$25,000.00	7696
Robinson Springs Elementary School		\$25,000.00	7697
Stanhope Elmore High School		\$25,000.00	7698
Wetumpka Elementary School		\$25,000.00	7699
Wetumpka High School		\$25,000.00	8601
Wetumpka Intermediate School		\$25,000.00	8602
Wetumpka Jr. High School		\$25,000.00	8603
SUB-TOTAL		\$325,000.00	
LAMP Program - Montgomery County BOE	Construction of athletic training building	\$40,000.00	8604
City of Vestavia Hills	Vestavia Hills Library in the Forest project	\$150,000.00	8605
City of Vestavia Hills	Vestavia Hills Library in the Forest project	\$150,000.00	
TOTAL		\$1,028,708.92	

**REQUEST FOR DISCRETIONARY FUNDS
FOR THE
VESTAVIA HILLS PUBLIC LIBRARY**

February 1, 2008

The citizens and municipal government of Vestavia Hills, Alabama have joined together in an unprecedented public-private partnership to build a much needed new public library for the entire community, and one that will uniquely complement and support Vestavia's excellent school system. The new Vestavia Hills Public Library will be an exceptional, one-of-a-kind facility. The new library will be a "green" facility and Alabama's first LEED – Leadership in Energy and Environmental Design – certified library, reflecting the values and priorities of the community, the State of Alabama, and our nation by preserving natural resources in a realistic and cost-effective manner. The result will be not only a new library, but an environmental showcase and classroom nestled on 9.4 acres of lush Alabama forest surrounded by trees, walking trails, and natural streams. The new 35,000 square foot library will be one of the best examples of environmental stewardship in the State, will serve the entire population of Vestavia Hills as well as Jefferson County, will accommodate the City's 20-year projection in population growth, will address all deficiencies in the current library facility, and will be a destination for visitors and library patrons from neighboring cities and states. The Library Foundation is in the midst of a community-wide fundraising campaign, and the attached campaign DVD and brochure showcase the magnificent site and provide details about the project and the anticipated design. The citizens and the City of Vestavia Hills have demonstrated and continue to demonstrate their support for the project, which is well underway, both in terms of design and fundraising. Given these exceptional circumstances, we request an allocation of \$500,000 from your discretionary funds to ensure the timely completion of the new library.

**STATE OF ALABAMA
BUILDING COMMISSION**
770 Washington Avenue, Suite 444
Montgomery, Alabama 36130
(334) 242-4082 FAX (334) 242-4182

INVOICE CHECKLIST

For Materials and Equipment to be Purchased with Funds of the ALABAMA PUBLIC SCHOOL AND COLLEGE AUTHORITY

This checklist contains the prerequisites for Alabama Building Commission approval of the use of ALABAMA PUBLIC SCHOOL AND COLLEGE AUTHORITY (PSCA) bond issue funds for the purchase of materials and equipment. The prerequisites assure conformance with PSCA requirements, competitive bid laws, ABC recording methods, and distribution requirements. The authority submitting invoices for payment with PSCA funds should utilize this checklist when preparing invoices for submittal to assure prompt approval and processing.

1.	Materials and/or equipment are to be for capital improvements only (not maintenance, etc.).
2.	The original and a minimum of three (3) <u>legible</u> copies of the invoice are to be submitted. Carbon and FAXED copies of invoices are not acceptable.
3.	The original and each copy of the invoice must be certified by the vendor as being "True, correct, and unpaid." The vendor's signature is to be <u>Notarized</u>.
4.	The original and two (2) of the three (3) copies of the invoice must bear original signatures.
5.	Attached to each copy of the invoice there must be a completed, signed, and dated "State of Alabama Material Receipt" confirming the receipt and condition of all items covered by the invoice.
6.	The "Material Receipt" must be signed by the proper authority of the school or institution and at least three (3) copies of the "Material Receipt" must bear an original signature.
7.	A "Certificate of Compliance" with Competitive Bid Law must be attached to each copy of the invoice. ABC Form 9-H, Certificate of Compliance, Title 41: Public Contracts, is to be used for this purpose.
8.	Each "Certificate of Compliance" must bear the original signature of the president, director, or superintendent of the school or institution. This signature is to be <u>Notarized</u>.
9.	The Federal Employee Identification Number (FEIN) should be included for each vendor. If the vendor does not have a FEIN, his social security number will be sufficient.

CERTIFICATION OF COMPLIANCE TITLE 41: PUBLIC CONTRACTS

I hereby certify that the contract for the Equipment or Materials covered by the attached invoice was awarded in accordance with Competitive Bid Law applying to the School Board or Institution noted below.

BC# _____
City - County - Institution

PSCA# _____ By _____
Officer - Title

Sworn to and subscribed before me
this _____ day of _____, 20_____.

Notary Public

INSTRUCTIONS: This certification must be signed by the president, director, or superintendent of the school or institution, notarized, and attached to each copy of each invoice for equipment or materials being submitted to the Alabama Building Commission for approval to pay the invoice from funds of the ALABAMA PUBLIC SCHOOL AND COLLEGE AUTHORITY. The certificate attached to each copy of an invoice must bear original signatures.

MATERIAL RECEIPT

Date _____

PSCA No: _____

BC No: _____

County/City/Institution/Agency _____

Received from _____
Vendor

FEIN _____

Received at _____
Location

Date Received _____

Quantity	Unit	ARTICLE Make Full Report of any Shortage or Damage	Condition

I hereby certify that I have received and checked the articles listed above and that they are of the kind, quantity and condition noted.

Checked by _____
Signed

Received by _____
Signed

RESOLUTION NUMBER 4493

A RESOLUTION ACCEPTING A BID FOR JANITORIAL SERVICES FOR THE VESTAVIA HILLS CIVIC CENTER FOR A PERIOD OF 3 YEARS

WHEREAS, the City of Vestavia Hills invited bids for janitorial services for the Vestavia Hills Civic Center; and

WHEREAS, bids were received on August 1, 2013 and read aloud publicly with the results tabulated and detailed in a memorandum to the City Manager from the Public Services Director dated August 16, 2013, a copy of which is marked as “Exhibit A” attached and incorporated into this Resolution Number 4493; and

WHEREAS, the above-described memorandum recommends the acceptance of Custom Cleaning Solutions bid for a 3-year agreement; a copy of which is marked as “Exhibit B,” attached and incorporated into this Resolution Number 4493 ; and

WHEREAS, the Mayor and City Council agree it is in the best public interest to accept said bid and authorize the Mayor and City Manager to execute and deliver said 3-year agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The bid package submitted by Custom Cleaning Services is hereby accepted; and
2. The Mayor and City Manager are hereby authorized to execute and deliver said Agreement for cleaning services as described above; and
3. This Resolution Number 4493 shall become effective upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

City of Vestavia Hills Public Services
513 Montgomery Highway
Vestavia Hills, AL 35216
205.978.0150

Interoffice Memo

August 16, 2013

TO: Jeff Downes
City Manager

FROM: Brian C. Davis *bed*
Public Services Director

RE: Janitorial Services for the Civic Center

Bids were received for Janitorial Services to clean the Civic Center on August 1, 2013. There were a total of six bids received.

1. Custom Cleaning Solutions	\$24,500.04
2. Eagle Cleaning Service, Inc	\$25,500.00
3. Professional Mgt. of Alabama	\$28,560.00
4. Trust Building Services	\$29,180.00
5. Alabama Custodial Systems	\$37,020.00
6. RiteWay Service, Inc.	\$56,683.08

Jason Burnett has met with Custom Cleaning Solutions and contacted their references. We would like to accept the annual bid of Custom Cleaning Solutions. This was a requested in the upcoming fiscal year budget. It will be a 3 year contract if it is accepted.

We would like this included on the next agenda of the City Council if you concur. Thank you in advance.

CC: Jason Burnett
Parks and Recreation Superintendent

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

June 28, 2013

Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

Attention: Melissa Hipp

In Re: Civic Center Janitorial Services Bid Packet

Dear Mrs. Hipp:

On June 28, 2013, you furnished me with a copy of the Civic Center Janitorial Services Bid Packet, which includes the following documents:

- A. Invitation to Bid.
- B. Bid Requirements.
- C. Specifications and Agreement.

You requested that I review the above documents and provide you with my written legal opinion regarding additions, deletions, changes and/or corrections to the above documents. The purpose of this letter is to comply with your request.

In my opinion, the Invitation to Bid and the Bid Requirements meet the requirements of Alabama law. I have no recommendations for modifications to these two documents.

I do recommend modifications to the Specifications and Agreement.

I. DELETIONS

A. I recommend that the first sentence of Section 12 on page 7 reading "This contract will be under the direct supervision of the City" be deleted.

II. CHANGES

A. I recommend that the first sentence of Section 15 on page 7 be modified so as to read as follows: "The City shall have the right at any time to cancel this contract for any reason or no reason upon seven (7) days advance written notice to the Contractor."

III. ADDITIONS

I recommend that Sections 18, 19, 20 and 21 be added the Agreement as follows:

18. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor for purposes of this Agreement. Nothing contained in the Agreement shall be construed to mean that said Contractor is the servant, agent or employee of the City of Vestavia Hills, Alabama.

19. **INDEMNITY:** Contractor shall indemnify and save harmless the City of Vestavia Hills, Alabama, its Mayor, City Manager, individual members of the City Council, servants, agents, employees or representatives from any and all claims, demands, controversies, actions, causes of action, liabilities of action, lawsuits, liabilities and damages arising out of or resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result for work performed by the Contractor under this Agreement.

20. **BID:** The Bid submitted by Contractor is attached hereto, marked as Exhibit 1 and is incorporated into this Agreement by reference as though set out fully herein.

21. **SEVERABILITY:** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof."

Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: Interim City Manager James R. St. John
Mayor Alberto C. Zaragoza, Jr.



JANITORIAL SERVICES AT THE VESTAVIA HILLS CIVIC CENTER BID 2013-09

SPECIFICATIONS AND AGREEMENT

Sealed bids for janitorial services at the Vestavia Hills Civic Center will be accepted by the Purchasing Agent, Finance Department, at the Vestavia Hills Municipal Center, 513 Montgomery Highway, Vestavia Hills, AL 35216 until 2:00 p.m. CDT, Thursday, August 1, 2013, at which time they will be publicly opened and read in the Council Chamber at the same address. A mandatory pre-bid meeting will be held at the Civic Center as detailed below.

Bidders can download the complete bid package including specifications and bid form via the internet at www.vestaviiahills.net (to link under "Public Notices" titled "Civic Center Janitorial Services"); by visiting the Finance Office at the address shown in paragraph above; or by calling (205) 978-0152 and requesting a copy be mailed. Any addenda will be available on the internet and mailed to only those vendors who were provided a copy of the original invitation in person or by mail. All bidders are responsible for checking the website for addenda until bid opening date.

A mandatory pre-bid meeting will be held Tuesday, July 23, 2013, at 10 a.m. CDT in the VESTAVIA HILLS CIVIC CENTER, located at 1973 Merryvale Road, Vestavia Hills, AL 35216. The bidder declares that the bidder fully understands that the City of Vestavia Hills (the "City") has put forth a good-faith effort of estimating the approximate maintenance required. The bidder acknowledges and agrees that the maintenance operations may vary.

The successful bidder will be awarded a 3-year agreement. Bidder agrees to commence work with an adequate force and sufficient equipment to complete the work within the allotted time, at the prices hereinafter named. The terms, provisions, limitations, and conditions set forth in this agreement between the City of Vestavia Hills (hereafter, "City") and the bidder (hereafter, "Contractor") are incorporated in this Invitation to Bid by reference as though set out fully herein.

1. Scope of Services

To provide all supervision, labor, equipment, cleaning supplies (except items furnished by the City, as listed below*), and services required to perform all janitorial services for the Vestavia Hills Civic Center for Vestavia Hills Parks and Recreation as specified herein from October 1, 2013 to September 30, 2016.

*Supplies furnished by the City include the following:

- Toilet paper
- Paper towels
- Handsoap
- Urinal screens
- Trash bags

The City will provide suitable storage space for equipment and materials provided by the Contractor.

2. Qualification of Bidders

- a) Bidding on this agreement shall be limited to individuals, partnerships, and corporations actively engaged in the field of janitorial services. Bidders shall demonstrate competence, experience, and financial capability to carry out the terms of this agreement. The City of Vestavia Hills, the contracting agency, may require proof of these qualifications.
- b) All bidders must have in their possession or available to them by formal agreement at the time of bidding, vehicles, devices, hand tools, and other equipment necessary to perform the work as outlined in these specifications.
- c) Contractors must attend the mandatory pre-bid meeting.
- d) Contractors must include a copy of their company's E-Verify Memorandum of Understanding with the bid submission.

3. General Conditions

In addition to other requirements listed in this bid invitation packet, the Contractor must meet the following general conditions:

- a) All documents required by the City must be furnished to the Purchasing Agent within fifteen days after the award, with the exception of those documents required as part of the bid submission. Should the successful bidder fail to furnish the required documentation, the City shall make award to the next lowest responsible bidder
- b) Upon satisfaction of all requirements and final execution of the agreement, a proceed order shall be issued by the City within fifteen days. Contractor may not begin work before a notice to proceed is issued.
- c) Award will be made to the lowest responsible bidder as determined by the Vestavia Hills Public Services Department. The City shall have the right to reject any and all bids submitted on the proposed work, to waive technicalities and informalities, and to increase or decrease quantities. **NOTE: Price adjustments will be made for increases or decreases in quantities/service.**

4. Safety Standards

- a) All equipment to be used and all work to be performed must be in full compliance with the most current safety requirements for performing this type of work.
- b) The contractor shall be solely responsible for pedestrian and vehicular safety and control on the worksite and shall provide the necessary warning devices, barricades and ground personnel needed to give safety, protection, and warning to persons and vehicular traffic within the area.

5. Discontinuance of Work

Any practice obviously hazardous as determined by the contracting agency shall be immediately discontinued by the contractor upon receipt of either written or oral notice to discontinue such practice.

6. Observance of Laws, Ordinances and Regulations

Contractor at all times during the term of this agreement shall observe and abide by all Federal, State, and Local laws and regulations which in any way effect the conduct of the work and shall comply with all decrees and orders of courts of competent jurisdiction. Contractor shall comply fully and completely with any and all applicable Federal and State statutes, rules, and regulations as they relate to hiring, wages and any other applicable conditions of employment. Contractor shall upon award provide documents required by the City of its vendors and businesses operating within the City.

7. Addition or Deletion of Areas

The City reserves the right to change, add or delete areas for janitorial service. This is conditional upon the total amount of funds available. Unless otherwise authorized by the contracting agency, failure of the Contractor to comply with the approved janitorial service schedule shall be sufficient cause to give notice that the contractor is in default of the agreement.**NOTE: Price adjustments will be made for work added/deleted.**

8. Work Schedule

All work to be done after operational hours every night for the months of November through February; Sunday night through Thursday night during the months of March through October. The following dates are exceptions to the rule (2014 schedule is TBD and will be supplied when available):

VESTAVIA HILLS PARKS & RECREATION
CIVIC CENTER CLOSINGS 2013

JANUARY 1	TUESDAY	NEW YEAR'S DAY
JANUARY 21	MONDAY	MARTIN L. KING, JR. DAY
MARCH 29-31	FRI-SUN	GOOD FRIDAY-EASTER
MAY 27	MONDAY	MEMORIAL DAY
JULY 4	THURSDAY	INDEPENDENCE DAY
SEPTEMBER 2	MONDAY	LABOR DAY
NOVEMBER 11	MONDAY	VETERANS DAY
<u>*NOVEMBER 27</u>	<u>WEDNESDAY</u>	<u>*CLOSE AT 5PM</u>
NOV 28-DEC 1	THUR-SUN	THANKSGIVING
DECEMBER 24-25	TUES-WED	CHRISTMAS
DECEMBER 31	TUESDAY	NEW YEAR'S EVE
<u>WE WILL BE CLOSED JANUARY 1 FOR NEW YEAR'S 2014.</u>		

9. Licenses and Permits

Contractor shall, at his expense, procure all necessary licenses and permits needed to contract. Responsible bidders shall include a commercial cleaning service/ janitorial bond **in the amount of \$10,000** with the bid.

10. Subagreements

The contractor will not be allowed to create a subagreement for work under this agreement unless written approval is granted by the contracting agency. The subcontractor, as approved, shall be bound by the contractor. All directions given to the subcontractor in the field shall bind the contractor as if the notice has been given directly to the contractor.

11. Execution of the Agreement

The successful bidder shall, upon notification of selection as the successful bidder, enter into agreement with the contracting agency and shall simultaneously provide the appropriate bonds, indemnities and insurance required hereunder.

This agreement, when executed, shall be deemed to include the entire agreement between the parties. The contractor shall not base any claim for modification of the agreement upon any prior presentation or promise made by representatives of the contracting agency. Contractor must include any additional requested terms in the bid response; the City reserves the right to reject any portion of those terms.

12. Supervision

Any alterations or modifications of the work performed under this agreement shall be made only by written agreement between the Contractor and City and shall be made prior to commencement of the altered or modified work. No claims for any extra work or materials shall be allowed unless covered by written agreement.

13. Work Crew Supervision

Contractor shall provide qualified supervision of each crew at all times while working under this contract. Each supervisor shall be authorized by the contractor to accept and act upon all directives issued by the contracting agency, provided the directives are within the scope of work described in this agreement. Failure of the supervisor to act on said directives will be sufficient cause to give notice that the Contractor is in default of the agreement, unless such directives would create potential injury or safety hazard.

14. Payments

Payments will be made on a monthly basis in accordance with the City's billing and payment policy.

15. Agreement Termination

The City shall have the right at any time to cancel this agreement for any reason or no reason upon seven (7) days advance written notice to the Contractor. In such cases the contractor will be paid for all work actually performed the date of termination, but will not be paid for any work not performed or for any anticipated profits on work not actually performed by the termination date.

16. Insurance

The contractor agrees to obtain and maintain in force during the terms of this agreement insurance of the type, with the coverage and in the amounts specified below:

- a) For personal injuries, including death, in an amount of not less than:
 - i) \$500,000 for any one person occurrence
 - ii) \$1,000,000 for any one occurrence
- b) For damage to property not belonging to the contractor or his subcontractors in an amount not less than:
 - i) \$500,000 for any one accident
 - ii) \$1,000,000 aggregate amount
- c) For personal injuries including death and/or for damages to property not belonging to the contractor or his subcontractors caused by automotive equipment or used by the contractor or his subcontractors in an amount not less than:
 - i) \$500,000 personal injury per person per occurrence
 - ii) \$1,000,000 personal injury per occurrence
 - iii) \$500,000 property damage per accident
- d) Workmen's Compensation, State and Federal Statutory requirements plus:
 - i) \$500,000 employer's liability per person
 - Such insurance shall be placed with an insurer acceptable to the contracting agency and the policies shall provide notice by the insurer to the contracting agency of cancellation, non-renewal or material change in any such policy and shall contain an endorsement naming the City of Vestavia Hills as an additional insured there under.

17. Crew Information

- a) Crews will be dressed neatly. Shirts shall be worn at all times.
- b) Courtesy to persons utilizing City facilities is required at all times.
- c) Breaks will be taken individually.
- d) No "horseplay" will be tolerated on the job.
- e) All refuse from lunches and breaks will be disposed of immediately.

18. Independent Contractor

Contractor is an independent contractor for purposes of this Agreement. Nothing contained in the Agreement shall be construed to mean that said Contractor is the servant, agent, or employee of the City of Vestavia Hills, Alabama.

19. Indemnity

Contractor shall indemnify and save harmless the City of Vestavia Hills, Alabama, its Mayor, City Manager, individuals members of the City Council, servants, agents, employees, or representatives from any and all claims, demands, controversies, actions, causes of action, liabilities of action, lawsuits, liabilities and damages arising out of or resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result for work performed by the Contractor under this Agreement.

20. Bid

The Bid submitted by Contractor is attached hereto, marked as Exhibit 1 and is incorporated into this Agreement by reference as though set out fully herein.

21. Severability

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

I. CLEANING SUPPLIES REQUIREMENTS

- Floor finish will be non-staining and shall provide a high degree of slip protection. Neutral type cleaning shall not be harmful to the surfaces to which they are applied. Dust mop treatment materials which leave an oily residue shall not be used.
- Upon request, Contractor shall submit a list of materials to be used in providing the cleaning service. The building superintendent may approve or disapprove any product.

II. OFFICE AREAS / LOBBIES / HALLWAYS

- Wastepaper containers and other waste receptacles will be emptied and returned to original locations. All waste will be collected and removed to a central waste disposal area. Plastic liners will be taken from the customer's stock. This is to be done nightly.
- Desk, chairs, and cabinets will be thoroughly dusted on all horizontal surfaces using treated dusting tools. Bottle and cup rings and/or other spills are to be cleaned as needed. Desks that are laden with papers will not be cleaned so that work in progress is not disturbed. Chairs will be dusted on all horizontal surfaces. All chairs are to be replaced in original positions to maintain an overall neat and orderly appearance. This is to be done nightly.
- The following open surfaces will be dusted using a treated dusting tool or a damp cloth when needed: miscellaneous cabinets, window sills, coat racks, ledges and shelves under six feet high. NOTE: Due to the fragile nature of computer equipment, telephones, and other desktop accouterments, these items are not to be cleaned unless otherwise stated in this agreement. Handling of personal effects, such as pictures, vases, and other personal decorations, will be held to a minimum.
- Carpets will be vacuumed in traffic lanes. All carpeted floor areas are to be thoroughly vacuumed weekly.
- Wall surfaces around light switches and doorknobs are to be spot cleaned as needed.
- All tile floor areas are to be dust mopped with chemically treated dust mops. Spills and stains are to be spot mopped on a daily basis. All tile floor areas are to be mopped thoroughly weekly.
- Interior office glass panels and doors are to be spot cleaned to remove fingerprints and smudges nightly.
- Recyclables should not be disposed with trash.

III. RESTROOMS / LOCKER ROOMS

- Refill paper towel, toilet paper, and hand soap dispensers nightly.
- Mop floors with a disinfecting solution nightly.
- Clean all restroom fixtures including toilets, sinks, urinals and showers nightly.
- Clean partitions on both sides weekly.
- Dust and clean all return air vents under 10 feet high as needed.
- Clean all counter tops and mirrors nightly.

IV. AEROBICS / BASKETBALL GYM

- Wooden floors will be swept nightly spills will be damp mopped.
- Mirrors will be cleaned as needed.
- Every Monday, use our Streak Free gym floor cleaner system on the entire gym floor.

V. KITCHENS AND BREAKROOMS

- **COUNTERTOPS:** All countertops will be wiped with an approved cleaner to remove spots and stains nightly.
- **APPLIANCES:** The exterior of all appliances such as refrigerators and microwaves will be wiped clean to remove smudges or food particles nightly.
- **SINKS:** The sink will be thoroughly cleaned if left free of dishes and cups nightly.
- **FLOORS:** The floors will be vacuumed or swept and mopped nightly.
- **WALLS:** The walls will be spot cleaned with particular attention given to the area around the trashcan nightly.
- **TABLES AND CHAIRS:** Tables and chairs will be wiped with an approved cleaner and replaced in their original positions to maintain an overall neat and orderly appearance nightly.

VI. MISCELLANEOUS

- VCT floors will be buffed monthly.
- Ceramic floors in restrooms will be scrubbed monthly.

VII. OTHER SERVICES

- Doors will be locked upon entering the area and checked upon completion of duties.
- Any building maintenance or repair problems that the Contractor’s workers note will be reported on a daily basis to the City’s designated representative.
- Workers’ closets will be neat and orderly reflecting a professional approach to business.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

Contractor Name

City of Vestavia Hills

By: _____
Authorized Signature

By: _____
Alberto C. Zaragoza, Jr., Mayor

Print Name

Jeffrey Downes, City Manager

Its: _____
Title

RESOLUTION NUMBER 4494

A RESOLUTION ORDERING THE DEMOLITION OF A BUILDING OR STRUCTURE LOCATED AT 3128 AUTUMN COURT, VESTAVIA HILLS, ALABAMA, PARCEL ID# 28-15-4-016-009.000, IN COMPLIANCE WITH SECTIONS 11-40-30 THROUGH 11-40-36, SECTIONS 11-53B-1 THROUGH 11-53B-16, INCLUSIVE, OF THE *CODE OF ALABAMA*, AND IN COMPLIANCE WITH ORDINANCE NUMBER 2382 OF THE CITY OF VESTAVIA HILLS, ALABAMA; AND CALLING FOR THE CITY OF VESTAVIA HILLS TO CAUSE SAID DEMOLITION TO BE PERFORMED AND DIRECTING THE CITY ATTORNEY AND THE CITY CLERK TO CAUSE THE COST OF SUCH DEMOLITION TO BE CHARGED AGAINST THE LAND ON WHICH THE BUILDING OR STRUCTURE EXISTS AS A MUNICIPAL LIEN OR CAUSE SUCH COST TO BE RECOVERED IN A SUIT AT LAW AGAINST THE OWNER OR OWNERS

WHEREAS, the appropriate Municipal Officials determined that the condition of the building or structure located at 3128 Autumn Court, Vestavia Hills, Alabama, Parcel I.D. Number 28-15-4-016-009.000 is in such a condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

WHEREAS, contemporaneously with the filing of “Finding of Public Nuisance, Notice and Order to Remedy and Notice of Lis Pendens” on July 16, 2013, a copy of same was sent via certified mail, properly addressed and postage prepaid to:

A. All person or persons, firm, association, or corporation last assessing the subject property for state taxes to the address on file in the Jefferson County Tax Collector’s Office;

B. The record property owner or owners (including any owner or owners of an interest in the subject property) as shown from a search of records of the Office of the Judge of Probate of Jefferson County, Alabama, at the owner or owners’ last known address and at the address of the subject property;

C. All mortgagees of record as shown from a search of the records of the Office of the Judge of Probate of Jefferson County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the appropriate Municipal Officials;

D. All lien holders of record as shown from a search of the records of the Office of the Judge of Probate of Jefferson County, Alabama to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of

lien, to the address determined to be the correct address by the appropriate Municipal Officials; and

E. Such other persons who are otherwise known to the City Clerk or to the appropriate Municipal Officials who could have an interest in the subject property;

WHEREAS, contemporaneously with the filing of the “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of Lis Pendens”, a copy of the same was posted at or within three feet of an entrance to the building on the subject property and posted in three public places located within the City of Vestavia Hills: 1) Vestavia Hills Municipal Center, 2) Vestavia Hills Library in the Forest, and 3) Vestavia Hills Civic Center.

WHEREAS, notice that the appropriate Municipal Officials have made a finding that the subject property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing would be held on a certain date was also given to all interested parties and to the public at large by publication in the *Alabama Messenger*.

BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama while in regular session on Monday, September 9, 2013 at 5:00 p.m. as follows:

Section 1. A Public Hearing was held on September 9, 2013 at 5:00 p.m. and after due deliberation the City Council of the City of Vestavia Hills, Alabama finds that the structure standing at 3128 Autumn Court, Vestavia Hills, AL 35243, Parcel ID# 28-15-4-016-009.000 is unsafe to the extent of becoming a public nuisance to the citizens of the City of Vestavia Hills, Alabama and is due to be condemned and demolished in compliance with Sections 11-40-30 through 11-40-36 and Sections 11-53B-1 through 11-53B-16, inclusive, of the Code of Alabama (1975), and Ordinance Number 2382 of the City of Vestavia Hills, Alabama, subject;

Section 2. That the City of Vestavia Hills shall cause said demolition to be performed by its own employees and/or by contractor(s); and

Section 3. That the City Attorney and the City Clerk are hereby directed to cause the cost of such demolition to be charged against the land on which the building or structure is located and shall constitute a lien on the property for the amount of the assessment or cause such cost to be recovered in a suit at law against the owner or owners.

ADOPTED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 9th day of September, 2013 while in regular session on Monday, September 9, 2013, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this _____, 20__.

Rebecca Leavings, City Clerk

IN THE PROBATE COURT OF JEFFERSON COUNTY, ALABAMA

CITY OF VESTAVIA HILLS, ALABAMA)
v.)
ESTATE OF ROSALIE NOLAND)
GAMBRILL;)
ROSALIE GAMBRILL HOLMAN;)
JEFFERSON COUNTY SEWER SERVICE)
OFFICE;)
BIRMINGHAM WATER WORKS)
Lots 5, 6 and 7, according to the Survey of J. S.)
Jones Addition to New Merkel, as recorded in)
Map Book 23, page 60, in the Probate Office of)
Jefferson County, Alabama)

Barcode
20130716000763780 1/10
Bk: LR201316 Pg:3165
Jefferson County, Alabama
I certify this instrument filed on:
07/16/2013 09:24:18 AM LN
Judge of Probate- Alan L. King

FINDING OF PUBLIC NUISANCE, NOTICE AND ORDER TO REMEDY, AND NOTICE OF LIS PENDENS

TAKE NOTICE that:

COMES NOW, the City of Vestavia Hills, Alabama ("the City"), by and through its Appropriate Municipal Officials, its City Clerk, and its Attorney to provide notice pursuant to Ordinance No. 2382 of the City that the Appropriate Municipal Officials have made a finding that a building located within the City is a dangerous building because it is unsafe to the extent that it is a public nuisance and subject to demolition. The building is located on the following described property, to wit, which will be described hereafter as "the Subject Property":

STREET ADDRESS:

3128 Autumn Court, Vestavia Hills, AL 35243

LEGAL DESCRIPTION:

Lots 5, 6 and 7, according to the Survey of J. S. Jones Addition to New Merkel, as recorded in Map Book 23, page 60, in the Probate Office of Jefferson County, Alabama

PARCEL IDENTIFICATION NUMBER:

28-15-4-016-009.000

The City provides further notice as follows:

1. In *Ellis v. City of Montgomery*, the United States District Court for the Middle District of Alabama stated that, in cases such as this where a municipality seeks the demolition of building by use of its police powers, “A simple *lis pendens* filing after sending notice to the current owner of a property would place subsequent purchasers on record notice that demolition could occur.” *Ellis v. City of Montgomery*, 460 F.Supp.2d 1301, 1307 (M.D. Ala. 2006). Here, the City is invoking the procedure recommended by the District Court.

2. By the filing of this Notice, the City is not claiming any right, title, or interest in the subject property. Rather, the purpose of this Notice is to put all interested parties on notice of the City’s intent to exercise its authority provided by law and specifically by the City’s ordinances.

3. Ordinance No. 2382 of the City is “An Ordinance to Amend the Official Policies and Procedures of the City of Vestavia Hills, Alabama, Regarding Unsafe Structures and Dangerous Buildings.” The below-signed Appropriate Municipal Officials are the persons designated to exercise the authority and perform the duties delegated by Ordinance No. 2382.

4. The Appropriate Municipal Officials find that the building located on the Subject Property is a “dangerous building” within the meaning of Ordinance No. 2382 because of the following defects:

- (1) Exclusive of the foundation, the building shows thirty-three (33) percent, or more, of damage or deterioration of one (1) or more supporting members, or fifty (50) percent of damage or deterioration of the non-supporting enclosing or outside walls or covering;
- (2) The building has improperly distributed loads upon the floors or roofs, or in which the same are overloaded, or has insufficient strength to be reasonably safe for the purpose used;
- (3) The building has been damaged by fire, wind, earthquake, flood, sinkhole, deterioration, neglect, abandonment, vandalism, or any other cause so as to have become

dangerous to life, health, property, morals, safety, or general welfare of the public or the occupants;

- (4) The building has become or is so damaged, dilapidated, decayed, unsafe, unsanitary, lacking in maintenance, vermin or rat infested, containing filth or contamination, lacking proper ventilation, lacking sufficient illumination, or so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease, so as to work injury to the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (5) The building has light, air, heating, cooling, and sanitation facilities which are inadequate to protect the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (6) The building has inadequate facilities for egress in case of fire or panic, or has insufficient stairways, elevators, fire escapes, or other means of ingress and egress to and from said building;
- (7) The building does not provide minimum safeguards to protect or warn occupants in the event of fire;
- (8) The building is so damaged, decayed, dilapidated, structurally unsafe, or of such fault construction or unstable foundation that partial or complete collapse is possible;
- (9) The building, or any portion thereof, is clearly unsafe for its use or occupancy;
- (10) The building is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in or on the building, structure, part of building or structure, party wall, or foundation to their danger, has become a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building, structure, part of building or structure, party wall, or foundation for committing a nuisance or an unlawful act;
- (11) The building is, because of its condition, unsafe, unsanitary, or dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

5. The Appropriate Municipal Officials find that the building on the Subject Property is substantially damaged or decayed, or deteriorated from its original value or structure (not including the value of the land).

6. The Appropriate Municipal Officials find that the building on the Subject Property cannot be reasonably repaired so that it will no longer exist in violation of the terms of Ordinance No. 2382.

7. The Appropriate Municipal Officials find that the building on the Subject Property is a fire hazard existing in violation of the terms of Ordinance No. 2382.

8. Notice is hereby given to remedy the unsafe or dangerous condition by demolition of the building on the Subject Property within forty-five (45) days of the date of this Notice to the Appropriate Municipal Officials' satisfaction. In the event the owner does not comply within the time specified herein to the Appropriate Municipal Officials' satisfaction, the demolition shall be accomplished by the City and the cost thereof assessed against the Subject Property and such cost shall constitute a lien against the Subject Property.

9. The Appropriate Municipal Officials find that the building on the Subject Property is in such condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants. Therefore, the Appropriate Municipal Officials order that the building on the Subject Property be and remain vacated until demolished.

10. A public hearing as provided for by Section 5-146(a) set forth in Ordinance No. 2382 shall be held on the finding of the Appropriate Municipal Officials in the Council Chambers at the Vestavia Hills Municipal Center, 513 Montgomery Highway, Vestavia Hills, AL 35216, on the 9th day of September, 2013, at 5:00 p.m. At that time, the City Council shall hold a public hearing to receive any objections to the finding by the Appropriate Municipal Officials that the building or structure is unsafe to the extent of becoming a public nuisance. A written request for a public hearing is not necessary. At the public hearing, the City Council shall also receive any written objections to the

finding by the Appropriate Municipal Officials. Any such written objection must be submitted to the City Clerk prior to the start of the City Council meeting at which the public hearing is held. No action shall be taken on the finding of the Appropriate Municipal Officials until determination thereon is made by the City Council. Upon holding the hearing, the City Council shall determine whether or not the building or structure is unsafe to the extent that it is a public nuisance. If it is determined by the City Council that the building or structure is unsafe to the extent that it is a public nuisance, the City Council shall order demolition of the building at the expense of the City and assess the expenses of the move or demolition on the land on which the building stands or to which it is attached. Any person aggrieved by the decision of the City Council at the hearing may, within ten (10) days thereafter, appeal to the Circuit Court of Jefferson County, Alabama, Birmingham Division, upon filing with the Clerk of the Circuit Court of Jefferson County, Alabama, Birmingham Division, notice of the appeal and bond for security of costs in the form and amount to be approved by the Circuit Clerk. For further particulars, see Ordinance No. 2382.

11. A failure by the Vestavia Hills City Council to act on the findings of the Appropriate Municipal Officials within ninety (90) days from the date of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" shall constitute an abdication of the Appropriate Municipal Officials' findings. However, this shall in no way prevent the City from reinitiating the proceedings authorized by Ordinance No. 2382 at any time so long as all the requirements of Ordinance No. 2382 are satisfied anew. Furthermore, this does not require that the ordered demolition take place within ninety (90) days from the date of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*." A failure by the City to accomplish the demolition of the building within one hundred eighty (180) days of the passage of the resolution by the City Council ordering the same shall constitute an abdication of the City Council's order unless certain conditions further explained in Ordinance No. 2382 are satisfied. For further particulars, see Ordinance No. 2382.

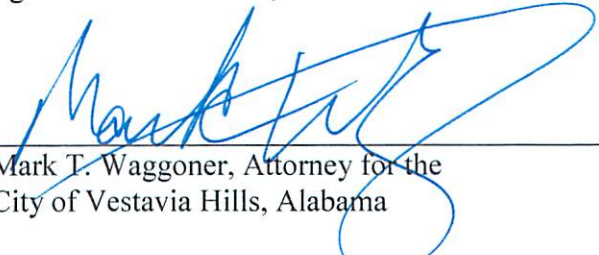
Anyone interested in the status of these proceedings should inquire with the Vestavia Hills City Clerk at (205) 978-0184 or at 513 Montgomery Highway, Vestavia Hills, AL 35216.

12. It is unlawful for any person, or for any agent, servant or employee of such person, to obstruct or interfere with the Appropriate Municipal Officials in carrying out the purposes of Ordinance No. 2382.

13. It is unlawful for any person, or for any agent, servant or employee of such person, to mutilate, destroy, tamper with this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*."

14. It is unlawful for any person to enter, access, or be upon the building that the Appropriate Municipal Officials have ordered to be vacated pursuant to this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" except for the purposes of demolishing the same.

15. It is unlawful for any person who has received this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" to sell, transfer, mortgage, lease, encumber, or otherwise dispose of the building that is the subject of the same to another until such person shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" and shall furnish to the Appropriate Municipal Officials a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" and fully accepting the responsibility without condition for making the corrections or repairs required by this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*."



Mark T. Waggoner, Attorney for the
City of Vestavia Hills, Alabama

OF COUNSEL:
Hand Arendall LLC

2001 Park Place North, Suite 1200
Birmingham, AL 35203
E-mail: mwaggoner@handarendall.com
Phone: (205) 324-4400 Fax: (205) 322-1163

VERIFICATION OF THE APPROPRIATE MUNICIPAL OFFICIALS

We, the undersigned, Keith Blanton and Greg Gilchrist state as follows: We are the Building Official and Fire Marshal, respectively, for the City of Vestavia Hills, Alabama, and for purposes of administering Ordinance No. 2382, we are the "Appropriate Municipal Officials." We hereby offer the findings made in this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," make such orders as are offered herein, and provide such notice as is specified herein.

DONE this the 16th day of July, 2013.



Keith Blanton, Building Official and
Appropriate Municipal Official
City of Vestavia Hills, Alabama



Greg Gilchrist, Fire Marshal and
Appropriate Municipal Official
City of Vestavia Hills, Alabama

This Instrument Prepared By:

Mark T. Waggoner
Hand Arendall LLC
2001 Park Place North, Suite 1200
Birmingham, AL 35203
E-mail: mwaggoner@handarendall.com
Phone: (205) 324-4400
Fax: (205) 322-1163

CERTIFICATE OF SERVICE

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been sent via certified mail, properly addressed and postage prepaid, to all of the following persons on this the 16th day of July, 2013:

A. The person or persons, firm, association, or corporation last assessing the Subject Property for state taxes to the address on file in the Jefferson County Tax Collector's Office:

Rosalie Noland Gambrill
2800 Pump House Road
Vestavia, AL 35243

B. The record property owner or owners (including any owner or owners of an interest in the Subject Property) as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama, at the owner or owners' last known address and at the address of the Subject Property:

The Estate of Rosalie Noland Gambrill
c/o Rosalie Gambrill Holman and Henry S. Lynn, Jr., as Executors
3128 Autumn Court
Vestavia Hills, AL 35243

The Estate of Rosalie Noland Gambrill
c/o Rosalie Gambrill Holman and Henry S. Lynn, Jr., as Executors
2800 Pumphouse Road
Birmingham, AL 35243

The Estate of Rosalie Noland Gambrill
c/o Rosalie Gambrill Holman and Henry S. Lynn, Jr., as Executors
2878 Shook Hill Road
Birmingham, AL 35223

C. All mortgagees of record as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the Appropriate Municipal Official:

There are no mortgagees of record.

D. All lien holders of record as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the Appropriate Municipal Official:

There are no lien holders of record.

E. Such other persons who are otherwise known to the City Clerk or to the Appropriate Municipal Official who could have an interest in the Subject Property:

Jefferson County Sewer Service Office
Room 800
Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. North
Birmingham, AL 35203
Attention: Alicia

Birmingham Water Works
Room 800
Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. North
Birmingham, AL 35203
Attention: Monike Johnson

No other person is otherwise known to the City Clerk or to the Appropriate Municipal Official to have an interest in the Subject Property.

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been posted at or within three feet of an entrance to the building on the Subject Property.

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been posted in three public places located within the City: 1.) at Vestavia Hills Municipal Center, 2.) at the Vestavia Hills Library in the Forest, and 3.) at the Vestavia Hills Civic Center.

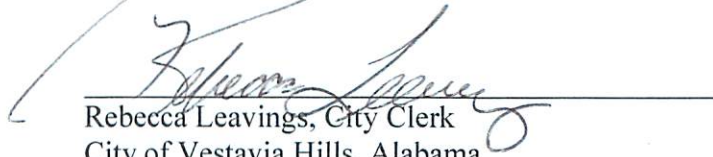
Notice that the Appropriate Municipal Official has made a finding that the Subject Property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing will be held on the date assigned herein will also be given to all interested parties and to the public at large by publication in the *Alabama Messenger*.



Keith Blanton, City of Vestavia Hills, Alabama Building
Official and Appropriate Municipal Official for Purposes
of Administering Ordinance No. 2382



Greg Gilchrist, Fire Marshal for City of Vestavia Hills,
Alabama and Appropriate Municipal Official for Purposes
of Administering Ordinance No. 2382



Rebecca Leavings, City Clerk
City of Vestavia Hills, Alabama

20130716000763780 10/10
Bk: LR201316 Pg: 3165
Jefferson County, Alabama
07/16/2013 09:24:18 AM LN
Fee - \$43.00

Total of Fees and Taxes-\$43.00
LYNN

RESOLUTION NUMBER 4495

A RESOLUTION ORDERING THE DEMOLITION OF A BUILDING OR STRUCTURE LOCATED AT 1939 OLD CREEK TRAIL, VESTAVIA HILLS, ALABAMA, PARCEL ID# 28-30-2-014-001.000, IN COMPLIANCE WITH SECTIONS 11-40-30 THROUGH 11-40-36, SECTIONS 11-53B-1 THROUGH 11-53B-16, INCLUSIVE, OF THE *CODE OF ALABAMA*, AND IN COMPLIANCE WITH ORDINANCE NUMBER 2382 OF THE CITY OF VESTAVIA HILLS, ALABAMA; AND CALLING FOR THE CITY OF VESTAVIA HILLS TO CAUSE SAID DEMOLITION TO BE PERFORMED AND DIRECTING THE CITY ATTORNEY AND THE CITY CLERK TO CAUSE THE COST OF SUCH DEMOLITION TO BE CHARGED AGAINST THE LAND ON WHICH THE BUILDING OR STRUCTURE EXISTS AS A MUNICIPAL LIEN OR CAUSE SUCH COST TO BE RECOVERED IN A SUIT AT LAW AGAINST THE OWNER OR OWNERS

WHEREAS, the appropriate Municipal Officials determined that the condition of the building or structure located at 1939 Old Creek Trail, Vestavia Hills, Alabama, Parcel I.D. Number 28-30-2-014-001.000 is in such a condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

WHEREAS, contemporaneously with the filing of “Finding of Public Nuisance, Notice and Order to Remedy and Notice of Lis Pendens” on July 16, 2013, a copy of same was sent via certified mail, properly addressed and postage prepaid to:

A. All person or persons, firm, association, or corporation last assessing the subject property for state taxes to the address on file in the Jefferson County Tax Collector’s Office;

B. The record property owner or owners (including any owner or owners of an interest in the subject property) as shown from a search of records of the Office of the Judge of Probate of Jefferson County, Alabama, at the owner or owners’ last known address and at the address of the subject property;

C. All mortgagees of record as shown from a search of the records of the Office of the Judge of Probate of Jefferson County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the appropriate Municipal Officials;

D. All lien holders of record as shown from a search of the records of the Office of the Judge of Probate of Jefferson County, Alabama to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the appropriate Municipal Officials; and

E. Such other persons who are otherwise known to the City Clerk or to the appropriate Municipal Officials who could have an interest in the subject property;

WHEREAS, contemporaneously with the filing of the “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of Lis Pendens”, a copy of the same was posted at or within three feet of an entrance to the building on the subject property and posted in three public places located within the City of Vestavia Hills: 1) Vestavia Hills Municipal Center, 2) Vestavia Hills Library in the Forest, and 3) Vestavia Hills Civic Center.

WHEREAS, notice that the appropriate Municipal Officials have made a finding that the subject property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing would be held on a certain date was also given to all interested parties and to the public at large by publication in the *Alabama Messenger*.

BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama while in regular session on Monday, September 9, 2013 at 5:00 p.m. as follows:

Section 1. A Public Hearing was held on September 9, 2013 at 5:00 p.m. and after due deliberation the City Council of the City of Vestavia Hills, Alabama finds that the structure standing at 1939 Old Creek Trail, Vestavia Hills, AL 35243, Parcel ID# 28-30-2-014-001.000 is unsafe to the extent of becoming a public nuisance to the citizens of the City of Vestavia Hills, Alabama and is due to be condemned and demolished in compliance with Sections 11-40-30 through 11-40-36 and Sections 11-53B-1 through 11-53B-16, inclusive, of the Code of Alabama (1975), and Ordinance Number 2382 of the City of Vestavia Hills, Alabama;

Section 2. That the City of Vestavia Hills shall cause said demolition to be performed by its own employees and/or by contractor(s); and

Section 3. That the City Attorney and the City Clerk are hereby directed to cause the cost of such demolition to be charged against the land on which the building or structure is located and shall constitute a lien on the property for the amount of the assessment or cause such cost to be recovered in a suit at law against the owner or owners.

ADOPTED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 9th day of September, 2013 while in regular session on Monday, September 9, 2013, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this _____, 20__.

Rebecca Leavings, City Clerk

IN THE PROBATE COURT OF JEFFERSON COUNTY, ALABAMA

CITY OF VESTAVIA HILLS, ALABAMA

v.

RICHARD HOPKINS;
DENISE HOPKINS;
THE NEXT OF KIN OF RICHARD HOPKINS;
PAMELA TILL CHANCEY;
CYNTHIA CHANCEY TYUS;
ESTATE OF CHARLES TILDEN
CHANCEY;
MERS;
HAMILTON MORTGAGE CORPORATION;
CREDIGY RECEIVABLES INC.;
UNIFUND CCR PARTNERS;
HARWELL RENOVATION &
RESTORATION LLC;
STATE FARM;
STATE OF ALABAMA;
JEFFERSON COUNTY SEWER SERVICE
OFFICE;
BIRMINGHAM WATER WORKS
Lot 1, Block 1, according to the Survey of Ninth
Addition to Southridge Addition to Vestavia
Hills, as recorded in Map Book 49, page 49, in
the Probate Office of Jefferson County, Alabama



20130716000763730 1/11
Bk: LR201316 Pg:3150
Jefferson County, Alabama
I certify this instrument filed on:
07/16/2013 09:20:40 AM LN
Judge of Probate- Alan L. King

FINDING OF PUBLIC NUISANCE, NOTICE AND ORDER TO REMEDY,
AND NOTICE OF LIS PENDENS

TAKE NOTICE that:

COMES NOW, the City of Vestavia Hills, Alabama ("the City"), by and through its
Appropriate Municipal Officials, its City Clerk, and its Attorney to provide notice pursuant to
Ordinance No. 2382 of the City that the Appropriate Municipal Officials have made a finding that a
building located within the City is a dangerous building because it is unsafe to the extent that it is a
public nuisance and subject to demolition. The building is located on the following described
property, to wit, which will be described hereafter as "the Subject Property":

STREET ADDRESS:

1939 Old Creek Trail, Vestavia Hills, AL 35216

LEGAL DESCRIPTION:

Lot 1, Block 1, according to the Survey of Ninth Addition to Southridge Addition to Vestavia Hills, as recorded in Map Book 49, page 49, in the Probate Office of Jefferson County, Alabama

PARCEL IDENTIFICATION NUMBER:

28-30-2-014-001.000

The City provides further notice as follows:

1. In *Ellis v. City of Montgomery*, the United States District Court for the Middle District of Alabama stated that, in cases such as this where a municipality seeks the demolition of building by use of its police powers, “A simple *lis pendens* filing after sending notice to the current owner of a property would place subsequent purchasers on record notice that demolition could occur.” *Ellis v. City of Montgomery*, 460 F.Supp.2d 1301, 1307 (M.D. Ala. 2006). Here, the City is invoking the procedure recommended by the District Court.

2. By the filing of this Notice, the City is not claiming any right, title, or interest in the subject property. Rather, the purpose of this Notice is to put all interested parties on notice of the City’s intent to exercise its authority provided by law and specifically by the City’s ordinances.

3. Ordinance No. 2382 of the City is “An Ordinance to Amend the Official Policies and Procedures of the City of Vestavia Hills, Alabama, Regarding Unsafe Structures and Dangerous Buildings.” The below-signed Appropriate Municipal Officials are the persons designated to exercise the authority and perform the duties delegated by Ordinance No. 2382.

4. The Appropriate Municipal Officials find that the building located on the Subject Property is a “dangerous building” within the meaning of Ordinance No. 2382 because of the following defects:

- (1) The interior walls or other vertical structure members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base;
- (2) The building has been damaged by fire, wind, earthquake, flood, sinkhole, deterioration, neglect, abandonment, vandalism, or any other cause so as to have become dangerous to life, health, property, morals, safety, or general welfare of the public or the occupants;
- (3) The building has become or is so damaged, dilapidated, decayed, unsafe, unsanitary, lacking in maintenance, vermin or rat infested, containing filth or contamination, lacking proper ventilation, lacking sufficient illumination, or so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease, so as to work injury to the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (4) The building is so damaged, decayed, dilapidated, structurally unsafe, or of such fault construction or unstable foundation that partial or complete collapse is possible;
- (5) The building has parts thereof which are so attached that they may fall and damage property or injure the public or the occupants;
- (6) The building, or any portion thereof, is clearly unsafe for its use or occupancy; and
- (7) The building is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in or on the building, structure, part of building or structure, party wall, or foundation to their danger, has become a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building, structure, part of building or structure, party wall, or foundation for committing a nuisance or an unlawful act.

5. The Appropriate Municipal Officials find that the building on the Subject Property is substantially damaged or decayed, or deteriorated from its original value or structure (not including the value of the land).

6. The Appropriate Municipal Officials find that the building on the Subject Property cannot be reasonably repaired so that it will no longer exist in violation of the terms of Ordinance No. 2382.

7. The Appropriate Municipal Officials find that the building on the Subject Property is a fire hazard existing in violation of the terms of Ordinance No. 2382.

8. Notice is hereby given to remedy the unsafe or dangerous condition by demolition of the building on the Subject Property within forty-five (45) days of the date of this Notice to the Appropriate Municipal Officials' satisfaction. In the event the owner does not comply within the time specified herein to the Appropriate Municipal Officials' satisfaction, the demolition shall be accomplished by the City and the cost thereof assessed against the Subject Property and such cost shall constitute a lien against the Subject Property.

9. The Appropriate Municipal Officials find that the building on the Subject Property is in such condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants. Therefore, the Appropriate Municipal Officials order that the building on the Subject Property be and remain vacated until demolished.

10. A public hearing as provided for by Section 5-146(a) set forth in Ordinance No. 2382 shall be held on the finding of the Appropriate Municipal Officials in the Council Chambers at the Vestavia Hills Municipal Center, 513 Montgomery Highway, Vestavia Hills, AL 35216, on the 9th day of September, 2013, at 5:00 p.m. At that time, the City Council shall hold a public hearing to receive any objections to the finding by the Appropriate Municipal Officials that the building or structure is unsafe to the extent of becoming a public nuisance. A written request for a public hearing is not necessary. At the public hearing, the City Council shall also receive any written objections to the finding by the Appropriate Municipal Officials. Any such written objection must be submitted to the City Clerk prior to the start of the City Council meeting at which the public hearing is held. No action shall be taken on the finding of the Appropriate Municipal Officials until determination thereon is

made by the City Council. Upon holding the hearing, the City Council shall determine whether or not the building or structure is unsafe to the extent that it is a public nuisance. If it is determined by the City Council that the building or structure is unsafe to the extent that it is a public nuisance, the City Council shall order demolition of the building at the expense of the City and assess the expenses of the move or demolition on the land on which the building stands or to which it is attached. Any person aggrieved by the decision of the City Council at the hearing may, within ten (10) days thereafter, appeal to the Circuit Court of Jefferson County, Alabama, Birmingham Division, upon filing with the Clerk of the Circuit Court of Jefferson County, Alabama, Birmingham Division, notice of the appeal and bond for security of costs in the form and amount to be approved by the Circuit Clerk. For further particulars, see Ordinance No. 2382.

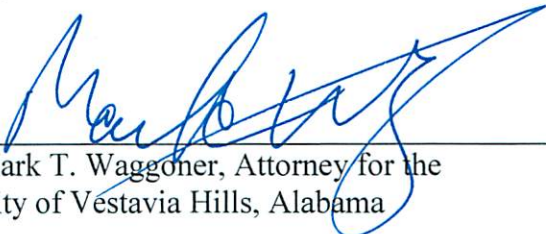
11. A failure by the Vestavia Hills City Council to act on the findings of the Appropriate Municipal Officials within ninety (90) days from the date of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” shall constitute an abdication of the Appropriate Municipal Officials’ findings. However, this shall in no way prevent the City from reinitiating the proceedings authorized by Ordinance No. 2382 at any time so long as all the requirements of Ordinance No. 2382 are satisfied anew. Furthermore, this does not require that the ordered demolition take place within ninety (90) days from the date of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*.” A failure by the City to accomplish the demolition of the building within one hundred eighty (180) days of the passage of the resolution by the City Council ordering the same shall constitute an abdication of the City Council’s order unless certain conditions further explained in Ordinance No. 2382 are satisfied. For further particulars, see Ordinance No. 2382. Anyone interested in the status of these proceedings should inquire with the Vestavia Hills City Clerk at (205) 978-0184 or at 513 Montgomery Highway, Vestavia Hills, AL 35216.

12. It is unlawful for any person, or for any agent, servant or employee of such person, to obstruct or interfere with the Appropriate Municipal Officials in carrying out the purposes of Ordinance No. 2382.

13. It is unlawful for any person, or for any agent, servant or employee of such person, to mutilate, destroy, tamper with this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*.”

14. It is unlawful for any person to enter, access, or be upon the building that the Appropriate Municipal Officials have ordered to be vacated pursuant to this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” except for the purposes of demolishing the same.

15. It is unlawful for any person who has received this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” to sell, transfer, mortgage, lease, encumber, or otherwise dispose of the building that is the subject of the same to another until such person shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” and shall furnish to the Appropriate Municipal Officials a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” and fully accepting the responsibility without condition for making the corrections or repairs required by this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*.”



Mark T. Waggoner, Attorney for the
City of Vestavia Hills, Alabama

OF COUNSEL:

Hand Arendall LLC
2001 Park Place North, Suite 1200
Birmingham, AL 35203
E-mail: mwaggoner@handarendall.com
Phone: (205) 324-4400 Fax: (205) 322-1163

VERIFICATION OF THE APPROPRIATE MUNICIPAL OFFICIALS

We, the undersigned, Keith Blanton and Greg Gilchrist state as follows: We are the Building Official and Fire Marshal, respectively, for the City of Vestavia Hills, Alabama, and for purposes of administering Ordinance No. 2382, we are the "Appropriate Municipal Officials." We hereby offer the findings made in this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," make such orders as are offered herein, and provide such notice as is specified herein.

DONE this the 16th day of July, 2013.



Keith Blanton, Building Official and
Appropriate Municipal Official
City of Vestavia Hills, Alabama



Greg Gilchrist, Fire Marshal and
Appropriate Municipal Official
City of Vestavia Hills, Alabama

This Instrument Prepared By:

Mark T. Waggoner
Hand Arendall LLC
2001 Park Place North, Suite 1200
Birmingham, AL 35203
E-mail: mwaggoner@handarendall.com
Phone: (205) 324-4400
Fax: (205) 322-1163

8

CERTIFICATE OF SERVICE

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been sent via certified mail, properly addressed and postage prepaid, to all of the following persons on this the 16th day of July, 2013:

A. The person or persons, firm, association, or corporation last assessing the Subject Property for state taxes to the address on file in the Jefferson County Tax Collector's Office:

Richard and Denise Hopkins
1939 Old Creek Trail
Vestavia Hills, AL 35216

B. The record property owner or owners (including any owner or owners of an interest in the Subject Property) as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama, at the owner or owners' last known address and at the address of the Subject Property:

Richard and Denise Hopkins
The Next of Kin of Richard Hopkins
1939 Old Creek Trail
Vestavia Hills, AL 35216

Richard and Denise Hopkins
The Next of Kin of Richard Hopkins
c/o H. Arthur Edge, III
H. Arthur Edge, P.C.
2021 Morris Avenue, Suite 300
Birmingham, AL 35203

C. All mortgagees of record as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the Appropriate Municipal Official:

Pamela Till Chancey and Cynthia Chancey Tyus, as the Personal
Representatives of the Estate of Charles Tilden Chancey
321 West 44th Street, Suite 507

New York, NY 10036

Pamela Till Chancey and Cynthia Chancey Tyus, as the Personal
Representatives of the Estate of Charles Tilden Chancey
2648 Vesclub Circle
Vestavia Hills, AL 35216

Pamela Till Chancey and Cynthia Chancey Tyus, as the Personal
Representatives of the Estate of Charles Tilden Chancey
c/o Jeffrey E. Rowell
1572 Montgomery Highway Suite 210
Birmingham, AL 35216

MERS
P. O. Box 2026
Flint, MI 48501-2026

Hamilton Mortgage Corporation
#1 Independence Plaza, Suite 416
Birmingham, AL 35209

D. All lien holders of record as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the Appropriate Municipal Official:

Credigy Receivables Inc.
c/o Justin Matthew Parnell
P.O. Box 2189
Montgomery AL 36102

Unifund CCR Partners
c/o Wendy Z. Johnston
P. O. Box 11366
Birmingham, AL 35202

Harwell Renovation & Restoration LLC
3732 Dunbarton Drive
Birmingham AL 35223

E. Such other persons who are otherwise known to the City Clerk or to the Appropriate Municipal Official who could have an interest in the Subject Property:

Mark Simpson
State Farm

Claim No. 01-056R-096
P. O. Box 106146
Atlanta GA 30348-6146

State of Alabama
c/o J. T. Smallwood, Jefferson County Tax Collector
Land Redemptions
Room 160, Courthouse
716 Richard Arrington Jr. Blvd.
Birmingham, AL 35203

Jefferson County Sewer Service Office
Room 800
Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. North
Birmingham, AL 35203
Attention: Alicia

Birmingham Water Works
Room 800
Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. North
Birmingham, AL 35203
Attention: Monike Johnson

No other person is otherwise known to the City Clerk or to the Appropriate Municipal Official to have an interest in the Subject Property.

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been posted at or within three feet of an entrance to the building on the Subject Property.

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been posted in three public places located within the City: 1.) at Vestavia Hills Municipal Center, 2.) at the Vestavia Hills Library in the Forest, and 3.) at the Vestavia Hills Civic Center.

Notice that the Appropriate Municipal Official has made a finding that the Subject Property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to

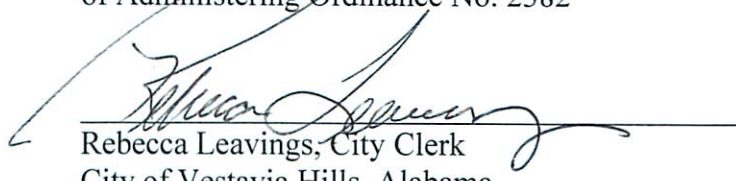
demolition and that a public hearing will be held on the date assigned herein will also be given to all interested parties and to the public at large by publication in the *Alabama Messenger*.



Keith Blanton, City of Vestavia Hills, Alabama Building
Official and Appropriate Municipal Official for Purposes
of Administering Ordinance No. 2382



Greg Gilchrist, Fire Marshal for City of Vestavia Hills,
Alabama and Appropriate Municipal Official for Purposes
of Administering Ordinance No. 2382



Rebecca Leavings, City Clerk
City of Vestavia Hills, Alabama

20130716000763730 11/11
Bk: LR201316 Pg: 3150
Jefferson County, Alabama
07/16/2013 09:20:40 AM LN
Fee - \$46.00

Total of Fees and Taxes-\$46.00
LYNN

RESOLUTION NUMBER 4496

**A RESOLUTION APPROVING AND ADOPTING
THE GENERAL FUND BUDGET, A SPECIAL
REVENUE FUND BUDGET AND A CAPITAL
PROJECT FUND BUDGET FOR THE CITY OF
VESTAVIA HILLS FOR THE PERIOD BEGINNING
OCTOBER 1, 2013 UNTIL SEPTEMBER 30, 2014.**

WHEREAS, the City Manager has prepared and presented a “general fund budget” which has been reviewed and amended by the City Council for said period reflecting anticipated expenditures in the amount of \$33,046,147 including transfers out, to be effective for the period beginning October 1, 2013, through September 30, 2014; and

WHEREAS, the City Manager has prepared a “special fund budget” for said period reflecting anticipated expenditures in the amount of \$2,434,495 including transfers from the General Fund, to be effective for the period beginning October 1, 2013, through September 30, 2014; and

WHEREAS, the City Manager has prepared a “capital projects fund budget” for said period reflecting expenditures in the amount of \$933,417 to be effective for the period beginning October 1, 2013, through September 30, 2014.

WHEREAS, Title 11-43-57, Code of Alabama, 1975, provides as follows:

Annual appropriation of funds for expenditures of all departments and interest on indebtedness: In all cities, the Council shall appropriate the sums necessary for the expenditures of the several City departments and for the interest on its bonded and other indebtedness, not exceeding in the aggregate within ten (10) percent of its estimated expenses, and such City Council shall not appropriate in the aggregate an amount in excess of its annual legally authorized revenue. But, nothing in this section shall prevent such cities from anticipating their revenues for the year for which such appropriation was made, or from contracting for temporary loans as provided in the applicable provision of this title, or from bonding or

refunding their outstanding indebtedness or from appropriating anticipated revenue at any time for the current expenses of the City and interest on the bonded and other indebtedness of the City; and

WHEREAS, the City Council agrees to approve and adopt ninety (90) percent, or \$29,741,532, of the municipal “general fund budget” for the City of Vestavia Hills for fiscal year 2013-2014 upon the terms conditions and provisions set forth below; and

WHEREAS, the City Council agrees to approve and adopt ninety (90) percent, or \$2,191,046, of the municipal “special revenue fund budget” for the City of Vestavia Hills for fiscal year 2013-2014 upon the terms, conditions and provisions set forth below; and

WHEREAS, the City Council agrees to approve and adopt ninety (90) percent, or \$840,075, of the “capital project fund budget” for the City of Vestavia Hills for fiscal year 2013-2014 upon the terms, conditions and provisions set forth below.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama, as follows:

1. The municipal “general fund budget” for the City of Vestavia Hills, Alabama, prepared by the City Manager and submitted to the City Council is hereby approved and adopted to the extent of expenditures of \$29,741,532, which said amount is not exceeding the aggregate within ten (10) percent of the estimated expenses:

\$33,046,147 multiplied by 90% equals
\$29,741,532; and

2. The municipal “special revenue fund budget” for the City of Vestavia Hills, Alabama, prepared by the City Manager and submitted to the City Council is hereby approved and adopted to the extent of expenditures of \$2,191,046 which said amount is not exceeding the aggregate within ten (10) percent of the estimated expenses:

\$2,434,495 multiplied by 90% equals
\$2,191,046; and

3. The “capital projects fund budget” for the City of Vestavia Hills, Alabama, prepared by the City Manager and submitted to the City Council is hereby approved and adopted to the extent of expenditures of \$840,075 which said amount is not exceeding the aggregate within ten (10) percent of the estimated expenses:

\$933,417 multiplied by 90% equals
\$840,075; and

3. The City Manager is hereby authorized to expend the sum of \$29,741,532 from the General Fund, \$2,191,046 from the Special Revenue Fund and \$840,075 from the Capital Projects Fund for municipal expenses for the period beginning October 1, 2013, and ending September 30, 2014.

4. A copy of the budgets is attached hereto, marked as Exhibit “A” and incorporated into this Resolution by reference as though set out fully herein.

5. This Resolution shall become effective immediately upon its approval and adoption.

APPROVED and ADOPTED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4497

**AUTHORIZING AND APPROVING AN INCREASE
IN SALARY AND WAGES FOR EMPLOYEES**

**THIS RESOLUTION WAS ADOPTED AND APPROVED BY THE CITY
COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA ON SEPTEMBER
9, 2013.**

WITNESSETH THESE RECITALS

WHEREAS, the City Manager has prepared portions of the above-referenced budgets for the said fiscal year 2013-2014 for a two percent (2%) increase of wages and salaries for all employees; and

WHEREAS, the Council, at its regularly scheduled meeting of September 9, 2013, voted to accept the recommendation of the City Manager to approve a two percent (2%) increase in wages and salaries for all employees.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The City Council hereby approves a two percent (2%) increase in wages and salaries for all employees; and
2. Said increase is effective beginning October 1, 2013.

APPROVED and ADOPTED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4498

A RESOLUTION AUTHORIZING THE CITY MANAGER TO REMIT THE BALANCE OF REPLICATION OF THE CITY'S MUNICIPAL CODE FROM THE 2012-2013 FISCAL YEAR GENERAL FUND

WHEREAS, on May 29, 2013, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Resolution Number 4454 to authorize the republication of the City's Municipal Code with MUNICODE; and

WHEREAS, the payment terms approved in Resolution Number 4454 allowed a \$9,000 down payment from the current year and payment of the remaining balance in the budget for the 2013-2014 fiscal year; and

WHEREAS, the City Manager has recommended that the balance of the republication of the Municipal Code be paid from the fiscal year 2012-2013 funds in an amount not to exceed \$6,500; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the City Manager's recommendation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City Manager is hereby authorized to remit the balance of the republication of the City's Municipal Code in an amount not to exceed \$6,500 with funding from the current fiscal year; and
2. This Resolution Number 4498 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 9th day of September, 2013

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4500

**A RESOLUTION APPROVING ALCOHOL LICENSE
FOR SONU ENTERPRISES, INC., D/B/A CAHABA
HEIGHTS TEXACO; FARIDA ALI, EXECUTIVE**

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for Sonu Enterprises, Inc., d/b/a Cahaba Heights Texaco, located at 3101 Cahaba Heights Road, Vestavia Hills, Alabama, for the off-premise sale of 050-Retail Beer and 070-Retail Wine; Farida Ali, executive.

APPROVED and ADOPTED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

INTEROFFICE MEMORANDUM

DATE: September 3, 2013
TO: Dan Rary, Acting Police Chief
FROM: Rebecca Leavings, City Clerk

RE: Alcohol License Request – 050- Retail Beer and 070-Retail Wine

Please find attached information submitted by Farida Ali who request an alcohol license to sell 050- Retail Beer and 070-Retail Wine at the Sonu Enterprises, Inc., d/b/a Cahaba Heights Texaco, 3101 Cahaba Heights Road, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 8th day of September, 2013 at 5:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

<input checked="" type="checkbox"/>	<i>Application cleared by P.D. This indicates that there are NO convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>
<input type="checkbox"/>	<i>Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
<input type="checkbox"/>	<i>Does not recommend. This indicates that the Police Chief has found records of convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>

Reviewed





STATE OF ALABAMA

ALCOHOLIC BEVERAGE CONTROL BOARD

ALCOHOL LICENSE APPLICATION



Confirmation Number: 20130715152807252

Type License: 050 - RETAIL BEER (OFF PREMISES ONLY) State: County:

Type License: 070 - RETAIL TABLE WINE (OFF PREMISES ONLY) State: County:

Trade Name: **CAHABA HEIGHTS TEXACO** Filing Fee:

Applicant: **SONU ENTERPRISES INC** Transfer Fee: \$100.00

Location Address: 3101 CAHABA HEIGHTS ROAD VESTAVIA HILLS, AL 35243

Mailing Address: 3101 CAHABA HEIGHTS ROAD VESTAVIA HILLS, AL 35243

County: JEFFERSON Tobacco sales: YES Tobacco Vending Machines: 0

Sale of Products Containing Ephedrine: NO Type Ownership: CORPORATION

Book, Page, or Document info: LR201312, 24094 Do you sell Draft Beer: N

Date Incorporated: 04/08/2013 State incorporated: AL County Incorporated: JEFFERSON

Date of Authority: 04/08/2013 Alabama State Sales Tax ID: R008460913

Name: **Title:** **Date and Place of Birth:** **Residence Address:**

Name:	Title:	Date and Place of Birth:	Residence Address:
FARIDA ALI 7940426 - AL	PRESIDENT	7/19/1957 PAKISTAN	3911 CROSSHAVEN PL VESTAVIA, AL 35243

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES

Does ABC have any actions pending against the current licensee? NO

Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO

Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO

Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES

Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of cooperation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO

Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO

Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

Contact Person: FARIDA ALI

Business Phone: 205-262-2005

Fax:

Home Phone: 334-492-1387

Cell Phone: 334-492-1387

E-mail: joyceams@hotmail.com

PREVIOUS LICENSE INFORMATION:

Trade Name: CAHABA HEIGHTS TEXACO

Applicant: CAHABA TEXACO LLC

Previous License Number(s)

License 1: 002052837

License 2: 002052837



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20130715152807252

If applicant is leasing the property, is a copy of the lease agreement attached? **YES**
 Name of Property owner/lessor and phone number: **RJ MOORE JR LLC 205-853-1533**
 What is lessors primary business? **GAS STATIONS**
 Is lessor involved in any way with the alcoholic beverage business? **NO**
 Is there any further interest, or connection with, the licensee's business by the lessor? **NO**

Does the premise have a fully equipped kitchen? **NO**
 Is the business used to habitually and principally provide food to the public? **NO**
 Does the establishment have restroom facilities? **YES**
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? **NO**

Will the business be operated primarily as a package store? **NO**
 Building Dimensions Square Footage: **1100** Display Square Footage:
 Building seating capacity: **00** Does Licensed premises include a patio area? **NO**
 License Structure: **ONE STORY** License covers: **ENTIRE STRUCTURE**
 Number of licenses in the vicinity: **6** Nearest: **.1**
 Nearest school: **3 blocks** Nearest church: **2 miles** Nearest residence: **3 blocks**
 Location is within: **CITY LIMITS** Police protection: **CITY**

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20130715152807252

Initial each

Signature page

- F.A. In reference to law violations, I attest to the truthfulness of the responses given within the application.
- F.A. In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within the application.
- F.A. In reference to ACT No. 80-529, I understand that if my application is denied or discontinued, I will not be refunded the filing fee required by this application.
- In reference to Special Retail or Special Events retail license, I agree to comply with all applicable laws and regulations concerning this class of license, and to observe the special terms and conditions as indicated within the application.
- In reference to the Club Application information, I attest to the truthfulness of the responses given within the application.
- F.A. In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.
- F.A. In accordance with Alabama Rules & Regulations 20-X-5-.01(4), any social security number disclosed under this regulation shall be used for the purpose of investigation or verification by the ABC Board and shall not be a matter of public record.
- F.A. The undersigned agree, if a license is issued as herein applied for, to comply at all times with and to fully observe all the provisions of the Alabama Alcoholic Beverage Control Act, as appears in Code of Alabama, Title 28, and all laws of the State of Alabama relative to the handling of alcoholic beverages. The undersigned, if issued a license as herein requested, further agrees to obey all rules and regulations promulgated by the board relative to all alcoholic beverages received in this State. The undersigned, if issued a license as herein requested, also agrees to allow and hereby invites duly authorized agents of the Alabama Alcoholic Beverage Control Board and any duly commissioned law enforcement officer of the State, County or Municipality in which the license premises are located to enter and search without a warrant the licensed premises or any building owned or occupied by him or her in connection with said licensed premises. The undersigned hereby understands that he or she violate any provisions of the aforementioned laws his or her license shall be subject to revocation and no license can be again issued to said licensee for a period of one year. The undersigned further understands and agrees that no changes in the manner of operation and no deletion or discontinuance of any services or facilities as described in this application will be allowed without written approval of the proper governing body and the Alabama Alcoholic Beverage Control Board.
- F.A. I hereby swear and affirm that I have read the application and all statements therein and facts set forth are true and correct, and that the applicant is the only person interested in the business for which the license is required.

Applicant Name (print): FARIDA ALI

Signature of Applicant: *Farida*

Notary Name (print): Ashley Pruitt

Notary Signature: *Ashley Pruitt*

Commission expires: *Jan 29, 2017*

Application Taken: 7/15/13 App. Inv. Completed:
 Submitted to Local Government: 7/15/13
 Received in District Office: 7/15/13 Reviewed by Supervisor:

Forwarded to District Office: 7/15/13
 Received from Local Government: 7/15/13
 Forwarded to Central Office:



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
 Confirmation Number: 20130715152807252



NOTICE OF TRANSFER OF ABC LICENSED BUSINESS

NOTE: A Copy of Operating Agreement Must be Attached To Application

CURRENT LICENSEE:
 CAHABA TEXACO LLC
 Address: 3101 CAHABA HEIGHTS ROAD
 VESTAVIA HILLS, AL 35243
 Telephone: 205-262-2005

NEW APPLICANT:
 SONU ENTERPRISES INC
 Address: 3101 CAHABA HEIGHTS ROAD
 VESTAVIA HILLS, AL 35243
 Telephone: 205-262-2005

Current License No: 002052837
 002052837

LICENSED PREMISES ADDRESS: 3101 CAHABA HEIGHTS ROAD VESTAVIA HILLS, AL 35243

THE AFORENAMED HEREBY SERVE NOTICE TO THE ABC BOARD OF THE ATTACHED CONTRACTUAL AGREEMENT GOVERNING THE CONTINUATION OF SALES OF ALCOHOLIC BEVERAGES ON THE LICENSED PREMISES.

The Parties to this agreement hereby acknowledge and affirm that the New (Applicant) Licensee will, at all times, act as the AGENT for the Current (Named) Licensee, and the Current Licensee shall act as PRINCIPAL for the purposes of the attached Agreement. The Principal shall be bound by all acts and/or omissions of the Agent in the operation of the licensed premises.

The Current Licensee is now and shall remain liable for any violations of ABC Rules and Regulations or other Alabama Law for the duration of the attached Agreement; and, further, that the Current Licensee has the right and authority, under Alabama Law, to surrender the ABC License to the ABC Board at any time.

The parties acknowledge that the operation of the licensed premises shall remain subject to inspection by ABC Enforcement, and must comply with all State and Local regulations and Laws, and that the local ABC Enforcement District Office must be immediately notified of any change in the attached Agreement.

THE CURRENT LICENSE WILL NOT BE RENEWED.

WITNESS our hands and seals on this the 15th day of July, 2013.

CURRENT LICENSEE (NAMED ON LICENSE)

NEW LICENSEE (APPLICANT)

SAJID NILGIRIWALA
 Print Name: SAJID NILGIRIWALA
 Title: OWNER

FARIDA Ali
 Print Name: FARIDA Ali
 Title: owner

WITNESS: (By ABC Enforcement)
 Revised 9/08

Ashley Pruitt

RESOLUTION NUMBER 4501

A RESOLUTION ACCEPTING A BID FOR COMPUTER EQUIPMENT STORAGE AREA NETWORK (SAN)

WHEREAS, the City of Vestavia Hills invited bids for computer equipment storage area network (SAN) for the Vestavia Hills IT Department; and

WHEREAS, bids were received on August 27, 2013 and read aloud publicly with the results tabulated and detailed in a memorandum to the City Manager from the IT Director dated August 28, 2013, a copy of which is marked as “Exhibit A” attached and incorporated into this Resolution Number 4501; and

WHEREAS, the above-described memorandum recommends the acceptance of the bid submitted by MicroPulse Technologies in an amount not to exceed \$29,582.21; and

WHEREAS, the Mayor and City Council agree it is in the best public interest to accept said bid.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The bid package submitted by MicroPulse Technologies is hereby accepted; and
2. This Resolution Number 4501 shall become effective upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

**VESTAVIA HILLS INFORMATION SYSTEMS DEPARTMENT
513 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216
(205) 978-0215**

**DARRIN ESTES
NETWORK SYSTEMS ADMINISTRATOR**

MEMORANDUM

TO: Jeff Downes, City Manager
FROM: Darrin Estes
DATE: August 28, 2013
RE: Computer Equipment Storage area network (SAN)

Two bids were received and opened 8/27/2013 at 10am for the Storage area network (SAN). Both bids meet all of the required hardware specifications. CDW Government LLC bid \$126,862.00. MicroPulse Technologies bid \$29,582.21. MicroPulse Technologies bid is less than what was budgeted for this equipment in account 20-49-8600 -000-712.

I recommend that the bid from MicroPulse Technologies \$29,582.21 be accepted.

BID SUMMARY

BID-2013-12

BID: iSCSI SAN ARRAY

BID OPENED: AUGUST 27, 2013
10:00 A.M.

PEOPLE PRESENT FOR BID OPENING

1. Darrin Estes, IT Director
2. Melissa Hipp, Accounting Assistant II

BIDDERS:

- | | | |
|----|-------------------------|--------------|
| 1. | MicroPulse Technologies | \$ 29,582.21 |
| 2. | CDW Government, LLC | \$126,862.00 |

RESOLUTION NUMBER 4502

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH ESO SOLUTIONS FOR PATIENT CARE REPORTING SOFTWARE

WHEREAS, the Fire Chief, in a memorandum to the City Manager dated September 9, 2013, recommended the purchase of patient care reporting software for the Vestavia Hills Fire Department from ESO Solutions; and

WHEREAS, the cost of the software was reflected in the City's current fiscal year's budget but requires the execution and delivery of an agreement to complete the purchase; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to authorize the Mayor and City Manager to execute and deliver the agreement for purchase of said software; and

WHEREAS, a copy of said agreement is marked as "Exhibit A," attached to and incorporated into this Resolution Number 4502 as if written fully therein.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The Mayor and City Manager are hereby authorized to execute and deliver the attached agreement for purchase of detailed software from ESO Solutions; and
2. This Resolution Number 4502 is effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

To: Becky
Approval for
your action
JS/9-3-13

VESTAVIA HILLS FIRE DEPARTMENT
513 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216
(205) 978-0225
(205) 978-0205 (FAX)

JAMES R. ST. JOHN
FIRE CHIEF

MEMORANDUM

TO: Jeff Downes, City Manager
FROM: Jim St. John, Fire Chief JS
DATE: August 30, 2013
RE: Agenda item


I request that a resolution be included in the City Council's meeting agenda for September 9, 2013 to approve the attached contract with ESO Solutions. The product is necessary to reduce paperwork in recording patient information on calls for emergency medical service, to collect and process billing information and to meet reporting requirements of the State.

There is adequate funding in the fire department budget to cover the purchase and the City Attorney has reviewed the contract and approved it from a legal standpoint. It would be helpful if the matter was approved on September 9th subject to unanimous consent so that the contract can be signed and the work may be completed in the present fiscal year.

**VESTAVIA HILLS FIRE DEPARTMENT
513 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216
(205) 978-0225
(205) 978-0205 (FAX)**

**JAMES R. ST. JOHN
FIRE CHIEF**

MEMORANDUM

TO: Chief James St.John
FROM: Battalion Chief Terry Ray 
DATE: August 29, 2013
RE: ESO Software Contract

I recommend the expedited purchase of the ESO Solutions software for Patient Care Reporting. This software is being used by several of the neighboring department with great success. The fourteen month contract amount is \$11,373.50 and is part of the "Purchase Office & Computer Equipment" budget line item. The contract has been reviewed by the City Attorney and no objections were noted.

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720
—
TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

August 28, 2013

By Hand Delivery

Chief James R. St. John
Vestavia Hills Fire Department
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Subscription Agreement By and Between ESO Solutions, Inc. (“ESO”) and Vestavia Hills Fire/EMS (“Customer”)

Dear Chief St. John:

On August 26, 2013, you furnished me with a copy of a proposed Subscription Agreement by and between the ESO Solutions, Inc. (“ESO”) and Vestavia Hills Fire/EMS (“Customer”) with a request that I review the same and provide you with my written legal opinion. The purpose of this letter is to respond to your request.

MY COMMENTS

1. **COMPETITIVE BID LAW:** The Subscription Agreement does not violate the Alabama Competitive Bid Law because:
 - A. The contract price does not amount to \$15,000.00 or more (Title 41-16-50(a)), *Code of Alabama, 1985*).
 - B. The purchase of custom software is exempt from the Alabama Competitive Bid Law (Title 41-16-51(a)(11), *Code of Alabama, 1975*).
 - C. The term of the contract is for a period of fourteen (14) months. Title 41-16-57(f), *Code of Alabama, 1975*, allows a contract period of up to three (3) years.

2. **TAXES (Section k on page 5):** Municipalities in Alabama are not required to pay the following taxes:

A. **Ad Valorem Taxes:**

- (1) Article IV, Section 91, *Constitution of Alabama*.
- (2) Amendment No. 373 to the *Constitution of Alabama*.
- (3) Title 40-9-1, *Code of Alabama, 1975*.
- (4) Supreme Court of Alabama, *Dichiari v. Jefferson County, et al*, 570 So.2d 667 (1990).

B. **Sales Taxes:** Title 40-23-4(a), *Code of Alabama, 1975*.

C. **Use Taxes:** Title 40-12-222, *Code of Alabama, 1975*.

However, cities can be required to pay use taxes if the taxes are built into the bid price submitted by the vendor. Schedule A attached to the Subscription Agreement does not appear to me to include any use taxes.

3. **INDEMNITY:** Ordinarily, I will never write a legal opinion approving language whereby the City indemnifies the other contracting party for two reasons:

A. The *Alabama Constitution* prohibits municipalities from spending public monies for private parties (Section 94 of the *Constitution of the State of Alabama 1901*, as amended by Amendment Numbers 112 and 558).

B. By indemnifying parties, the City might lose the defense of discretionary function immunity (*Woods v. Wilson*, 539 So.2d 224 and *Hilliard v. Huntsville*, 585 So.2d 889).

However, the indemnity language in this Subscription Agreement in section 12 simply indemnifies ESO from the wrongful acts of the City in dealing with third parties. The City can be liable to those third parties for those acts pursuant to Title 11-47-190(a), *Code of Alabama, 1975*. In my opinion, the City is properly insured.

4. **CONFIDENTIALITY:** Alabama law requires that all City business be conducted in public:

1. Alabama Open Meetings Act, Title 36-25A-1, *Code of Alabama, 1975*.
2. The Alabama Open Records Act provides citizens with the right to inspect and make copies of public documents (Title 36-12-40, *Code of Alabama, 1975*).

August 28, 2013

Page 3

In my judgment, the language of the Subscription Agreement allows the City to approve the contract at a public meeting and to divulge information if requested by a citizen.

5. **CONTRACTING PARTY:** The contract shall be between ESO and the City of Vestavia Hills, Alabama, a municipal corporation.

6. **EXECUTION AND DELIVERY OF CONTRACT:**

1. **Approval:** All contracts must be approved by a resolution or ordinance enacted by the City Council (*Van Antwerp, et al v. Board of Commissioners of City of Mobile, et al*, 217 AL 201, 115 So. 239 (1928); *Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3d 1166 (2011)).

2. **Signature:**

(a) By the Mayor (Title 11-43-83, *Code of Alabama, 1975*).

(b) City Manager (Title 11-43-21(7), *Code of Alabama, 1975*).

In conclusion, I approve the ESO Subscription Agreement from a legal standpoint. Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeffrey D. Downes (by hand)
Mayor Alberto C. Zaragoza, Jr. (by hand)
City Clerk Rebecca Leavings (by hand)

SUBSCRIPTION AGREEMENT

This Subscription Agreement (the "Agreement") is made as of the first date written below (the "Effective Date") by and between ESO SOLUTIONS, INC., a Texas corporation with its principal place of business at 9020 N Capital of Texas Hwy, Building II-300, Austin, Texas 78759 ("ESO"), and Vestavia Hills Fire / EMS, with its principal place of business at 513 Montgomery Highway Birmingham Alabama 35216 ("Customer").

RECITALS:

WHEREAS, ESO is in the business of providing software services (the "Services") to businesses and municipalities; and

WHEREAS, Customer desires to obtain these Services from ESO, all upon the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by Customer, the parties mutually agree to the following:

1. **Services.** ESO agrees to provide Customer the Services selected by Customer on Exhibit A attached hereto and incorporated by reference hereof. Customer agrees that Services purchased hereunder are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written public comments made by ESO regarding future functionality or features.
2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate 14 months after the Effective Date. The Agreement shall automatically renew for successive renewal terms of one year, unless one party gives the other party written notice that the Agreement will not renew, at least thirty (30) days prior to the end of the current Term.
3. **Subscription Fees, Invoices and Payment Terms.**
 - a. **Subscription Fees.** Customer shall pay to ESO the Subscription Fees for the Services as indicated in Exhibit A. The Subscription Fees are invoiced annually in advance. ESO may evaluate Customer's usage and adjust Customer's invoice based on changes in Customer usage as indicated in Exhibit A.
 - b. **Payment of Invoices.** Customer shall pay the full amount of invoices within thirty (30) days of receipt (the "Due Date"). Customer is responsible for providing complete and accurate billing and contact information to ESO and to notify ESO of any changes to such information.
 - c. **Disputed Invoices.** If Customer in good faith disputes a portion of an invoice, Customer shall remit to ESO, by the Due Date, full payment of the undisputed portion of the invoice. In addition, Customer must submit written documentation: (i) identifying the disputed amount, (ii) an explanation as to why the Customer believes this amount is incorrect, (iii) what the correct amount should be, and (iv) written evidence supporting Customer's claim. If Customer does not notify ESO of a disputed invoice by the Due Date, Customer shall have waived its right to dispute that invoice. Any disputed amounts determined by ESO to be payable shall be due within ten (10) days of such determination.
4. **Termination.**
 - a. **Termination by Customer for Cause.** If ESO fails to perform a material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from Customer ("ESO Default"), Customer may terminate this Agreement without incurring further liability, except for the payment of all accrued but unpaid Subscription Fees. If ESO is unable to provide Service(s) for ninety (90) consecutive days due to a Force Majeure event as defined in Section 16a, *Force Majeure*, Customer may terminate the affected Service(s) without liability to ESO.

- b. **Termination by ESO for Customer Default.** ESO may terminate this Agreement with no further liability if (i) Customer fails to pay for Services as required by this Agreement and such failure remains uncorrected for five (5) days following written notice from ESO, or (ii) Customer fails to perform any other material obligation under this Agreement and does not remedy such failure within fifteen (15) days following written notice from ESO (collectively referred to as “Customer Default”). In the event of a Customer Default, ESO shall have the right to (i) terminate this Agreement; (ii) suspend all Services being provided to Customer; (iii) terminate the right to use the Software on the web and/or mobile devices; (iv) apply interest to the amount past due, at the rate of one and one-half percent (1½%) (or the maximum legal rate, if less) of the unpaid amount per month; (v) offset any amounts that are owed to Customer by ESO against the past due amount then owed to ESO; and/or (vi) take any action in connection with any other right or remedy ESO may have under this Agreement, at law or in equity. If ESO terminates this Agreement due to a Customer Default, Customer shall remain liable for all accrued Subscription Fees and other charges. In addition, Customer agrees to pay ESO’s reasonable expenses (including attorney and collection fees) incurred in enforcing ESO’s rights in the event of a Customer Default.
5. **Delivery of Data upon Expiration or Termination of Agreement.** If Customer requests its data within thirty (30) days of expiration of this Agreement, or the termination of this Agreement pursuant to Section 4a above, ESO shall deliver to Customer its data, in machine readable format, on DVD or CD, at Customer’s option. Customer shall reimburse ESO for the cost of the media on which Customer’s data is delivered to Customer. If Customer wants the data to be delivered in a medium other than DVD or CD, ESO shall make reasonable and good faith efforts to accommodate Customer, provided that Customer supplies the medium on which the data is to be provided and shall pay for any additional cost incurred by ESO in accommodating this request.
6. **System Maintenance.** In the event ESO determines that it is necessary to interrupt the Services or that there is a potential for Services to be interrupted for the performance of system maintenance, ESO will use good-faith efforts to notify Customer prior to the performance of such maintenance and will schedule such maintenance during non-peak hours (midnight to 6 a.m. Central Standard Time). In no event shall interruption of Services for system maintenance constitute a failure of performance by ESO.
7. **Access to Internet.** Customer has sole responsibility for obtaining, maintaining, and securing its connections to the Internet, and ESO makes no representations to Customer regarding the reliability, performance or security of any particular network or provider.
8. **Mobile Software.** If Customer elects to use ESO’s mobile Software (the “Software”), the provisions of this Section shall apply.
- a. **Use of Software.** Subject to the terms, conditions and restrictions in this Agreement and in exchange for the Mobile Software Interface Fees and/or Subscription Fees, ESO hereby grants to Customer non-exclusive, world-wide, non-transferable rights, for the Term of this Agreement, to use and copy (for installation and backup purposes only) the Software to the units for which the Mobile Software Interface has been purchased.
- b. **Ownership and Restrictions.** This Agreement does not convey any rights of ownership in or title to the Software or any copies thereof. All right, title and interest in the Software and any copies or derivative works thereof shall remain the property of ESO. Customer will not: (i) disassemble, reverse engineer or modify the Software; (ii) allow any third party to use the Software; (iii) use the Software as a component in any product or service provided by Customer to a third party; (iv) transfer, sell, assign, or otherwise convey the Software; (v) remove any proprietary notices placed on or contained within the Software; or (vi) copy the Software except for backup purposes. Customer agrees to keep the Software free and clear of all claims, liens, and encumbrances.
- c. **Mobile Software Interface Fee.** The Mobile Software Interface Fee is non-refundable. The Software shall be deemed accepted upon delivery to Customer.

9. **Support and Updates.** During the term of this Agreement, ESO shall provide to Customer the support services and will meet the service levels as set forth in Exhibit B attached hereto and incorporated hereof. ESO will also provide Updates to Customer, in accordance with Exhibit B.
10. **Other Services.** Upon request by Customer, ESO may provide services related to the Software other than the standard support described above at ESO's then-current labor rates. This may include on-site consultation, customization, and initial technical assistance and training for the purpose of installing the Software and training selected personnel on the use and support of the Software. ESO shall undertake reasonable efforts to accommodate any written request by Customer for such professional services.
11. **Title.** ESO hereby represents and warrants to Customer that ESO is the owner of the Software or otherwise has the right to grant to Customer the rights set forth in this Agreement. In the event of a breach or threatened breach of the foregoing representation and warranty, Customer's sole remedy shall be to require ESO to either: (i) procure, at ESO's expense, the right to use the Software, or (ii) replace the Software or any part thereof that is in breach and replace it with Software of comparable functionality that does not cause any breach.
12. **Indemnification by Customer.** Customer will defend and indemnify ESO from any and all claims brought against ESO by third parties and will hold ESO harmless from all corresponding losses incurred by ESO arising out of or related to (i) Customer's misuse of the Services and/or Software, (ii) any services provided by Customer to third parties, or (iii) Customer's negligence, inaction or omission in connection with the services it provides to third parties.
13. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT. ADDITIONALLY, ESO SHALL NOT BE LIABLE TO CUSTOMER FOR ANY ACTUAL DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT THAT ESO HAS, PRIOR TO SUCH TIME, COLLECTED FROM CUSTOMER WITH RESPECT TO SERVICES DELIVERED HEREUNDER. FURTHERMORE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, EITHER IN CONTRACT OR IN TORT, FOR PROTECTION FROM UNAUTHORIZED ACCESS OF CUSTOMER DATA OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER DATA FILES, PROGRAMS, PROCEDURE OR INFORMATION NOT CONTROLLED BY ESO, THROUGH ACCIDENT OR FRAUDULENT MEANS OR DEVICES.
14. **Acknowledgements and Disclaimer of Warranties.** Customer acknowledges that ESO cannot guarantee that there will never be any outages in ESO's network and that no credits shall be given in the event Customer's access to ESO's network is interrupted. UNLESS OTHERWISE SPECIFIED HEREIN, ESO MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR A PARTICULAR PURPOSE, OF ANY SERVICE OR SOFTWARE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER (INCLUDING WITHOUT LIMITATION THAT THERE WILL BE NO IMPAIRMENT OF DATA), ALL OF WHICH WARRANTIES BY ESO ARE HEREBY EXCLUDED AND DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
15. **Confidential Information.** "Confidential Information" shall mean all information disclosed in writing by one party to the other party that is clearly marked "CONFIDENTIAL" or "PROPRIETARY" by the disclosing party at the time of disclosure or which reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include any information that (i) was already known by the receiving party free of any obligation to keep it confidential at the time of its disclosure; (ii) becomes publicly known through no wrongful act of the receiving party; (iii) is

rightfully received from a third person without knowledge of any confidential obligation; (iv) is independently acquired or developed without violating any of the obligations under this Agreement; or (v) is approved for release by written authorization of the disclosing party.

A recipient of Confidential Information shall not disclose the information to any person or entity except for the recipients and/or its employees, contractors and consultants who have a need to know such Confidential Information. The recipient may disclose Confidential Information pursuant to a judicial or governmental request, requirement or order; provided that the recipient shall take all reasonable steps to give prior notice to the disclosing party.

Confidential Information shall not be disclosed to any third party without the prior written consent of the owner of the Confidential Information. The recipient shall use Confidential Information only for purposes of this Agreement and shall protect Confidential Information from disclosure using the same degree of care used to protect its own Confidential Information, but in no event less than a reasonable degree of care. Confidential Information shall remain the property of the disclosing party and shall be returned to the disclosing party or destroyed upon request of the disclosing party. Because monetary damages may be insufficient in the event of a breach or threatened breach of the foregoing provisions, the affected party may be entitled to seek an injunction or restraining order in addition to such other rights or remedies as may be available under this Agreement, at law or in equity, including but not limited to monetary damages.

16. General Provisions.

- a. **Force Majeure.** Neither party shall be liable to the other, nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is delayed or prevented by reason of Force Majeure, which is defined to mean an event that is beyond the reasonable control of the affected party and occurs without such party's fault or negligence.
- b. **Entire Agreement.** This Agreement, including all exhibits, addenda and any Business Associate Agreement (as that term is used in the Health Insurance Portability and Accountability Act and related regulations) hereto, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is asserted.
- c. **Governing Law.** This Agreement shall be governed by the laws of the State of Texas without regard to choice or conflict of law rules.
- d. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or a breach of this Agreement, shall be finally settled by arbitration in Austin, Texas, and shall be resolved under the laws of the State of Texas. The arbitration shall be conducted before a single arbitrator, who may be a private arbitrator, in accordance with the commercial rules and practices of the American Arbitration Association then in effect. Any award, order or judgment pursuant to such arbitration shall be deemed final and binding and may be enforced in any court of competent jurisdiction. The arbitrator may, as part of the arbitration award, permit the substantially prevailing party to recover all or part of its attorney's fees and other out-of-pocket costs incurred in connection with such arbitration. All arbitration proceedings shall be conducted on a confidential basis.
- e. **No Press Releases without Consent.** Neither party may use the other party's name or trademarks, nor issue any publicity or public statements concerning the other party or the existence or content of this Agreement, without the other party's prior written consent. Notwithstanding, Customer agrees that ESO may use Customer's name and logo in ESO sales presentations, without Customer's prior written consent, during the Term of this Agreement, but only for the purposes of identifying the Customer as a customer of ESO. Likewise, Customer may use ESO's name and logo to identify ESO as a vendor or provider for Customer.

- f. **Aggregate Data Reporting.** Customer hereby grants ESO the right to collect data for aggregate reporting purposes, but in no event shall ESO disclose Protected Health Information (“PHI”) unless permitted by law. Moreover, ESO will not identify Customer without Customer’s consent.
- g. **Compliance with Laws.** Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of this Agreement.
- h. **Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.
- i. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- j. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given as of the date of delivery or confirmed facsimile or email transmission. Notices must be delivered or sent to the parties’ respective addresses set forth above.
- k. **Taxes.** Unless otherwise required by law, Customer is responsible for and will remit (or will reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO’s income) assessed in connection with the Services and/or Software provided to Customer under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first written below.

ESO SOLUTIONS, INC.

CUSTOMER

By: _____

By: _____

Name: **Chris Dillie**

Name: _____

Title: **President/CEO**

Title: _____

Date: _____

Date: _____

Telephone: **866.766.9471 x 1022**
Email: **chris.dillie@esosolutions.com**

Telephone: _____
Email: _____

CUSTOMER

By: _____

Name: _____

Title: _____

Date: _____

Telephone: _____
Email: _____

EXHIBIT A
SOFTWARE FEE SCHEDULE

Customer hereby selected the following ESO Services, at the fees indicated:

Product	Quantity	List Price	Discounts	Total Price	Line Item Description
ePCR Suite w/Quality Management 1,250 - 2,500 Incidents	1.00	\$5,795.00	\$595.00	\$5,200.00	
Price Adjustment	1.00	\$0.00	(\$866.00)	\$866.00	2 months subscription pro-rate
ePCR Mobile	3.00	\$695.00	\$520.50	\$1,564.50	
Interface - Monitor	1.00	\$3,995.00	\$1,997.00	\$1,998.00	
Services - Training	1.00	\$995.00	\$0.00	\$995.00	
Services - Training Travel Costs	1.00	\$750.00	\$0.00	\$750.00	

Full Price	\$13,620.00
Sum of Discounts	\$2,246.50
Grand Total	\$11,373.50

PAYMENT TERMS AND PAYMENT MILESTONES

The subscription year for Services shall begin upon execution of the Subscription Agreement or upon the commencement of active work on software implementation, whichever date comes later. Customer shall be invoiced for full payment of goods and services upon execution of this Subscription Agreement.

EXHIBIT B

SUPPORT SERVICES AND SERVICE LEVELS

This Exhibit describes the software support services (“Support Services”) that ESO will provide and the service levels that ESO will meet.

1. Definitions.

Unless defined otherwise herein, capitalized terms used in this Exhibit shall have the same meaning as set forth in the Agreement.

- (a) “Customer Service Representative” shall be the person at ESO designated by ESO to receive notices of Errors encountered by Customer that Customer’s Administrator has been unable to resolve.
- (b) “Error” means any failure of the Software to conform in any material respect with its published specifications.
- (c) “Error Correction” means a bug fix, patch, or other modification or addition that brings the Software into material conformity with its published performance specifications.
- (d) “Priority A Error” means an Error that renders the Software inoperable or causes a complete failure of the Software.
- (e) “Priority B Error” means an Error that substantially degrades the performance of the Software or materially restricts Customer’s use of the Software.
- (f) “Priority C Error” means an Error that causes only a minor impact on Customer’s use of the Software.
- (g) “Update” means any new commercially available or deployable version of the Software, which may include Error Corrections, enhancements or other modifications, issued by ESO from time to time to its Customers.
- (h) “Normal Business Hours” means 8:00 am to 5:00 pm Monday through Friday, Central Time Zone.

2. Customer Obligations.

Customer will provide at least one administrative employee (the “Administrator” or “Administrators”) who will handle all requests for first-level support from Customer’s employees with respect to the Software. Such support is intended to be the “front line” for support and information about the Software to Customer’s employees. ESO will provide training, documentation, and materials to the Administrators to enable the Administrators to provide technical support to Customer’s employees. The Administrators will refer any Errors to ESO’s Customer Service Representative that the Administrators cannot resolve, pursuant to Section 3 below; and the Administrators will assist ESO in gathering information to enable ESO to identify problems with respect to reported Errors.

3. Support Services.

- (a) *Scope.* As further described herein, the Support Services consist of: (i) Error Corrections that the Administrator is unable to resolve and (ii) periodic delivery of Error Corrections and Updates. The Support Services will be available to Customer during normal business hours, to the extent practicable. Priority A Errors encountered outside normal business hours may be communicated to the Customer Service Representative via telephone or email. Priority B and C Errors encountered outside normal business hours shall be communicated via email.
- (b) *Procedure.*
 - (i) *Report of Error.* In reporting any Error, the Customer’s Administrator will describe to ESO’s Customer Service Representative the Error in reasonable detail and the circumstances under which the Error occurred or is occurring; the Administrator will initially classify the Error as a Priority A, B or C Error. ESO reserves the right to reclassify the Priority of the Error.
 - (ii) *Efforts Required.* ESO shall exercise commercially reasonable efforts to correct any Error reported by the Administrator in accordance with the priority level assigned to such Error by the Administrator. Errors shall be communicated to ESO’s Customer Service Representative after hours as indicated below, depending on the priority level of the Error. In the event of an Error, ESO will within the time periods set forth below, depending upon the priority level of the Error, commence verification of the Error; and, upon verification, will commence Error Correction. ESO will work diligently to verify the Error and, once an Error has been verified, and until an Error Correction has been provided to the Administrator, shall use

commercially reasonable, diligent efforts to provide a workaround for the Error as soon as reasonably practicable. ESO will provide the Administrator with periodic reports on the status of the Error Correction on the frequency as indicated below.

Priority of Error	Communicating Error to ESO outside Normal Business Hours	Time in Which ESO Will Commence Verification	Frequency of Periodic Status Reports
Priority A	Telephone or email	Within 8 hours of notification	Every 4 hours until resolved
Priority B	Email	Within 1 business day of notification	Every 6 hours until resolved
Priority C	Email	Within two calendar weeks of notification	Every week until resolved

4. ESO Server Administration.

ESO is responsible for maintenance of Server hardware. Server administration includes:

- (a) Monitoring and Response
- (b) Service Availability Monitoring
- (c) Backups
- (d) Maintenance
 - (i) Microsoft Patch Management
 - (ii) Security patches to supported applications and related components
 - (iii) Event Log Monitoring
 - (iv) Log File Maintenance
 - (v) Drive Space Monitoring
- (e) Security
- (f) Virus Definition & Prevention
- (g) Firewall

EXHIBIT C
BUSINESS ASSOCIATES AGREEMENT

This Agreement (this "Agreement") is made and entered into as of the contract execution date by and between **ESO Solutions Inc.**, ("Business Associate") a State of Texas corporation, and Vestavia Hills Fire / EMS ("Covered Entity").

WHEREAS, Business Associate acknowledges that Covered Entity has in its possession data that contains individual identifiable health information as defined by Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA") and the regulations promulgated thereunder; and

WHEREAS, Business Associate and Covered Entity are parties to an agreement (the "Service Agreement"), pursuant to which the fulfillment of the Parties' obligations thereunder necessitates the exchange of, or access to, data including individual identifiable health information,

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the meanings set forth below.

- 1.1 "HHS Transaction Standard Regulation" means the Code of Federal Regulations ("CFR") at Title 45, Sections 160 and 162.
- 1.2 "Individual" means the subject of PHI or, if deceased, his or her personal representative.
- 1.3 "Parties" shall mean the Covered Entity and Business Associate. (Covered Entity and Business Associate, individually, may be referred to as a "Party.")
- 1.4 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.5 "PHI" shall have the same meaning as the term "protected health information in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.
- 1.6 "Required By Law" shall have the same meaning as "required by law" in 45 CFR §164.501.
- 1.7 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

ARTICLE 2
CONFIDENTIALITY

- 2.1 Obligations and Activities of Business Associate. Business Associate agrees as follows:
 - (a) not to use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law;
 - (b) to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted herein;
 - (c) to report to Covered Entity any use, access or disclosure of the PHI not provided for by this Agreement, or any misuse of the PHI, including but not limited to systems compromises of which

- it becomes aware, and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate as a result thereof;
- (d) to enforce and maintain appropriate policies, procedures, and access control mechanisms to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. The access and privileges granted to any such agent shall be the minimum necessary to perform the assigned functions;
 - (e) to provide access, at the request of Covered Entity, and in the time and manner reasonable designated by Covered Entity, to PHI in a Designated Record Set (as defined in the Privacy Rule), to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524;
 - (f) to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity;
 - (g) to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner reasonably requested by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule;
 - (h) to document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - (i) to provide to Covered Entity or an Individual, in a time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.1(i) above to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - (j) to promptly notify Covered Entity of all actual or suspected instances of deliberate unauthorized attempts (both successful and unsuccessful) to access PHI;
 - (k) to maintain and enforce policies, procedures and processes to protect physical access to hardware, software and/or media containing PHI (e.g., hardcopy, tapes, removable media, etc.) against unauthorized physical access during use, storage, transportation, disposition and /or destruction;
 - (l) to ensure that access controls in place to protect PHI and processing resources from unauthorized access are controlled by two-factor identification and authentication: a user ID and a Token, Password or Biometrics.

2.2 Disclosures Required By Law.

In the event that Business Associate is required by law to disclose PHI, Business Associate will immediately provide Covered Entity with written notice and provide Covered Entity an opportunity to oppose any request for such PHI or to take whatever action Covered Entity deems appropriate.

2.3 Specific Use and Disclosure Provisions.

- (a) Except as otherwise limited in this Agreement, Business Associate may use PHI only to carry out the legal responsibilities of the Business Associate under the Service Agreement.
- (b) Except as otherwise limited in this Agreement, Business Associate may only disclose PHI (i) as Required By Law, or (ii) in the fulfillment of its obligations under the Service Agreement and provided that Business Associate has first obtained (A) the consent of Covered Entity for such disclosure, (B) reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (C) reasonable assurances from the person to

whom the information is disclosed that such person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 Obligations of Covered Entity.

- (a) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosures of PHI.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) For any PHI received by Covered Entity from Business Associate on behalf of a third party or another covered entity, Covered Entity agrees to be bound to the obligations and activities of Business Associate enumerated in Section 2.1 as if, and to the same extent, Covered Entity was the named Business Associate hereunder.

2.5 Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

2.6 Policy and Procedure Review.

Upon request, Business Associate shall make available to Covered Entity any and all documentation relevant to the safeguarding of PHI including but not limited to current policies and procedures, operational manuals and/or instructions, and/or employment and/or third party agreements.

**ARTICLE 3
SECURITY**

3.1 Government Healthcare Program Representations.

Business Associate hereby represents and warrants to Covered Entity, its shareholders, members, directors, officers, agents, or employees that Business Associate has not been excluded or has not been served a notice of exclusion or has not been served with a notice of proposed exclusion, or has not committed any acts which are cause for exclusion from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including, but not limited to, Medicare or Medicaid, and has not been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription, or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Business Associate

further agrees to notify Covered Entity immediately after Business Associate becomes aware that the foregoing representation and warranty may be inaccurate or may be incorrect.

3.2 Security Procedures.

Each Party shall employ security procedures that comply with HIPAA and all other applicable state and federal laws and regulations (collectively, the "Law") and that are commercially reasonable, to ensure that transactions, notices, and other information that are electronically created, communicated, processed, stored, retained or retrieved are authentic, accurate, reliable, complete and confidential. Moreover, each Party shall, and shall require any agent or subcontractor involved in the electronic exchange of data to:

- (a) require its agents and subcontractors to provide security for all data that is electronically exchanged between Covered Entity and Business Associate;
- (b) provide, utilize, and maintain equipment, software, services and testing necessary to assure the secure and reliable transmission and receipt of data containing PHI;
- (c) maintain and enforce security management policies and procedures and utilize mechanisms and processes to prevent, detect, record, analyze, contain and resolve unauthorized access attempts to PHI or processing resources;
- (d) maintain and enforce policies and guidelines for workstation use that delineate appropriate use of workstations to maximize the security of data containing PHI;
- (e) maintain and enforce policies, procedures and a formal program for periodically reviewing its processing infrastructure for potential security vulnerabilities;
- (f) implement and maintain, and require its agents and subcontractors to implement and maintain, appropriate and effective administrative, technical and physical safeguards to protect the security, integrity and confidentiality of data electronically exchanged between Business Associate and Covered Entity, including access to data as provided herein. Each Party and its agents and subcontractors shall keep all security measures current and shall document its security measures implemented in written policies, procedures or guidelines, which it will provide to the other Party upon the other Party's request.

ARTICLE 4 EXCHANGE OF STANDARD TRANSMISSIONS

4.1 Obligations of the Parties. Each of the Parties agrees that for the PHI,

- (a) it will not change any definition, data condition or use of a data element or segment as proscribed in the HHS Transaction Standard Regulation.
- (b) it will not add any data elements or segments to the maximum denied data set as proscribed in the HHS Transaction Standard Regulation.
- (c) it will not use any code or data elements that are either marked "not used" in the HHS Standard's implementation specifications or are not in the HHS Transaction Standard's implementation specifications.
- (d) it will not change the meaning or intent of any of the HHS Transaction Standard's implementation specifications.

4.2 Incorporation of Modifications to HHS Transaction Standards.

Each of the Parties agrees and understands that from time-to-time, HHS may modify and set compliance dates for the HHS Transaction Standards. Each of the Parties agrees to incorporate by reference into this Agreement any such modifications or changes.

4.3 Business Associate Obligations.

- (a) Business Associate shall not submit duplicate transmissions unless so requested by Covered Entity.
- (b) Business Associate shall only perform those transactions that are authorized by Covered Entity. Furthermore, Business Associate assumes all liability for any damage, whether direct or indirect, to the electronic data or to Covered Entity's systems caused by Business Associate's unauthorized use of such transactions.
- (c) Business Associate shall hold Covered Entity harmless from any claim, loss or damage of any kind, whether direct or indirect, whether to person or property, arising out of or related to (1) Business Associate's use or unauthorized disclosure of the electronic data; or (2) Business Associate's submission of data, including but not limited to the submission of incorrect, misleading, incomplete or fraudulent data.
- (d) Business Associate agrees to maintain adequate back-up files to recreate transmissions in the event that such recreations become necessary. Back-up tapes shall be subject to this Agreement to the same extent as original data.
- (e) Business Associate agrees to trace lost or indecipherable transmissions and make reasonable efforts to locate and translate the same. Business Associate shall bear all costs associated with the recreation of incomplete, lost or indecipherable transmissions if such loss is the result of an act or omission of Business Associate.
- (f) Business Associate shall maintain, for seven (7) years, true copies of any source documents from which it produces electronic data.
- (g) Except encounter data furnished by Business Associate to Covered Entity, Business Associate shall not (other than to correct errors) modify any data to which it is granted access under this Agreement or derive new data from such existing data. Any modification of data is to be recorded, and a record of such modification is to be retained by Business Associate for a period of seven (7) years.
- (h) Business Associate shall not disclose security access codes to any third party in any manner without the express written consent of Covered Entity. Business Associate furthermore acknowledges that Covered Entity may change such codes at any time without notice. Business Associate shall assume responsibility for any damages arising from its disclosure of the security access codes or its failure to prevent any third party use of the system without the express written consent of Covered Entity.
- (i) Business Associate shall maintain general liability coverage, including coverage for general commercial liability, for a limit of not less than one million dollars, as well as other coverage as Covered Entity may require, to compensate any parties damaged by Business Associate's negligence. Business Associate shall provide evidence of such coverage in the form of a certificate of insurance and agrees to notify Covered Entity and/or HOI immediately of any reduction or cancellation of such coverage.

- (j) **Business Associate agrees to conduct testing with Covered Entity to ensure delivery of files that are HIPAA-AS Compliant and to accommodate Covered Entity's specific business requirements.**

4.4 Confidential and Proprietary Information

- (a) **Proprietary Information**

Business Associate acknowledges that it will have access to certain proprietary information used in Covered Entity's business. Covered Entity's proprietary information derives its commercial value from the fact that it is not available to competitors or any third parties, and the disclosure of this information would or could impair Covered Entity's competitive position or otherwise prejudice its ongoing business. Business Associate agrees to treat as confidential, and shall not use for its own commercial purpose or any other purpose, Covered Entity's proprietary information. Business Associate shall safeguard Covered Entity's proprietary information against disclosure except as may be expressly permitted herein. Such proprietary information includes, but is not limited to, confidential information concerning the business operations or practices of Covered Entity, including specific technology processes or capabilities.

ARTICLE 5 MISCELLANEOUS

5.1 Indemnification.

Each Party agrees to indemnify the other for any damages, costs, expenses or liabilities, including legal fees and costs, arising from or related to a breach of such Party's obligations hereunder.

5.2 Term and Termination.

- (a) **Term.** The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) **Termination for Cause.** Upon a material breach by Business Associate of its obligation hereunder, Covered Entity may (i) terminate this Agreement and the Service Agreement; and (ii) report the violation to the Secretary.
- (c) **Effect of Termination.**
 - (i) Except as provided in paragraph 5.2(c)(ii), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (ii) In the event that Business Associate determines that returning the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and

disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

5.3 Disputes.

Any controversy or claim arising out of or relating to the Agreement will be finally settled by compulsory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), except for injunctive relief as described below.

5.4 Injunctive Relief.

Notwithstanding any rights or remedies provided for in Section 5.3, Covered Entity retains all rights to seek injunctive relief to prevent the unauthorized use of disclosure of PHI by Business Associate or any agent, contractor or third party that received PHI from Business Associate.

5.5 Regulatory References.

A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

5.6 Amendment.

The Parties agree to take such action as is necessary to amend this Agreement from time to time to the extent necessary for Covered Entity to comply with the requirements of HIPAA and its regulations. All amendments to this agreement shall be in writing and signed by both parties.

5.7 Survival.

The respective rights and obligations of Business Associate and Covered Entity under Sections 4.4, 5.1 and 5.2(c) of this Agreement shall survive the termination of this Agreement.

5.8 Limitation of Damages.

Other than liabilities under Section 5.1, neither party shall be liable to the other for any special, incidental, exemplary, punitive or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any information pursuant to this Agreement, even if the other Party has been advised of the possibility of such damages.

5.9 Interpretation.

Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

RESOLUTION NUMBER 4503

A RESOLUTION AUTHORIZING THE CITY MANAGER TO REPAIR A DAMAGED CHEVROLET TAHOE FOR THE VESTAVIA HILLS POLICE DEPARTMENT

WHEREAS, on August 14, 2013 a City Police Vehicle (Chevrolet Tahoe VIN 1GNLC2E00CR191337) was involved in a collision; and

WHEREAS, Professional Estimating Service, Inc., listed the estimate to repair at \$21,180.12 and the City's insurance company, One Beacon, deemed the vehicle a total loss determined by the estimated cost of repairs as detailed by Professional Estimating, the estimated salvage value and the City's deductible; and

WHEREAS, the Chief of Police has received local offers to repair said vehicle at a cost estimated at \$17,000 and has recommended that the vehicle be repaired; and

WHEREAS, the City Manager has reviewed the estimates given by the insurance company as well as the local estimate to repair and has also recommended repair of the vehicle pursuant to the estimate submitted by Anthony Paint and Body Shop, LLC, a copy of which is marked as "Exhibit A", attached to and incorporated into this Resolution Number 4593 as though written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to repair said vehicle.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City Manager is hereby authorized to take all actions necessary to repair the above-described vehicle pursuant to local estimates given by Anthony Paint and Body Shop, LLC; and
2. This Resolution Number 4503 is effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Rebecca Leavings

From: Wood, Melissa A. <MWood@OneBeacon.com>
Sent: Monday, August 26, 2013 4:02 AM
To: Melissa Hipp
Subject: 0AB050253 2012 Chevy Tahoe VIN: 1GNLC2E00CR191337
Attachments: VVS.pdf; Appraisal.pdf; Salvage.pdf

Good Morning Melissa,

Your vehicle has been deemed a total loss. I have attached the following:

- Salvage Quote
- Appraisal
- **VVS** - market evaluation report

Please review these documents for accuracy. Here are the figures based on your decision about the salvage.

<u>ONEBEACON RETAINS</u>		<u>CITY RETAINS</u>	
VVS	31,251	VVS	31,251
Deductible	-25,000	Salvage	-13,768.76
		Deductible	-25,000.00
TOTAL	6,251	TOTAL	-7,518 Under Deductible

If the vehicle is not at your own facility, we will pay storages charges through Wednesday, August 28 2013.

If there is lien holder on this vehicle, we would need to contact them and obtain a buy out figure and that amount would be deducted from the settlement. **Please scan or fax a copy of your title as soon as possible, so we can confirm this information.**

Upon review and agreement with these figures, I will discuss the process and necessary required documents for either option you choose.

Please call or email with any questions. I look forward to hearing from you.

Police equipment: If equipment is not damaged we would pay for the transfer cost to the new vehicle, however **whatever** is taken would be adjusted out of the options if the VVS was valued with them (this may not make a big difference in the vehicle figure)

Melissa Wood

Mwood@onebeacon.com

OneBeacon Insurance Group

188 Inverness Drive West Suite 600

Englewood, CO 80112

Phone: 1-800-321-2721 x3868

Fax : 800-590-3666

Attn Bob

ANTHONY PAINT & BODY SHOP LLC

2205 HIGHWAY 31 S, PELHAM, AL 35124

Phone: (205) 987-1482

FAX: (205) 987-1490

Exhibit A

Workfile ID:

9ecb29c6

Federal ID:

45-3140618

Preliminary Estimate

Customer: Vestavia Hills P.D

Job Number:

Insured: Vestavia Hills P.D

Policy #:

Claim #:

Type of Loss:

Date of Loss:

Days to Repair: 0

Point of Impact:

Owner:

Vestavia Hills P.D

Inspection Location:

ANTHONY PAINT & BODY SHOP LLC

2205 HIGHWAY 31 S

PELHAM, AL 35124

Repair Facility

(205) 987-1482 Business

Insurance Company:

VEHICLE

Year: 2012

Body Style: 4D UTV

VIN: 1GNLC2E00CR191337

Mileage In: 22,266

Make: CHEV

Engine: 8-5.3L-FI

License:

Mileage Out:

Model: TAHOE 4X2 POLICE

Production Date:

State:

Vehicle Out:

Color: black Int:

Condition:

Job #:

TRANSMISSION

Automatic Transmission

Overdrive

POWER

Power Steering

Power Brakes

Power Windows

Power Locks

Power Mirrors

Heated Mirrors

Power Driver Seat

DECOR

Dual Mirrors

Privacy Glass

CONVENIENCE

Air Conditioning

Tilt Wheel

Cruise Control

Rear Defogger

Alarm

Rear Window Wiper

Climate Control

Dual Air Condition

RADIO

AM Radio

FM Radio

Stereo

CD Player

Auxiliary Audio Connection

SAFETY

Drivers Side Air Bag

Passenger Air Bag

Anti-Lock Brakes (4)

4 Wheel Disc Brakes

Traction Control

Stability Control

Front Side Impact Air Bags

Communications System

SEATS

Reclining/Lounge Seats

3rd Row Seat

WHEELS

Styled Steel Wheels

PAINT

Clear Coat Paint

TRUCK

Trailer Package

Running Boards/Side Steps

Probably need ok up to \$17K to repair
to cover unseen additional

Thanks

JEFF

Preliminary Estimate

Customer: Vestavia Hills P.D

Job Number:

Vehicle: 2012 CHEV TAHOE 4X2 POLICE 4D UTV 8-5.3L-FI black

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
1		RESTRAINT SYSTEMS					
2	Repl	Driver air bag Tahoe ebony	20928235	1	750.00 m	Incl. M	
3	Repl	Diagnostic unit all	13579116	1	416.67 m	0.4	
4		System diagnosis			m	0.5	
5	Repl	Clockspring w/o heated steering wheel	25966963	1	87.43 m	1.0	
6	Repl	RT Ft impact sensor	13502744	1	166.67 m	0.3	
7	Repl	RT Belt & retractor ebony	19260182	1	103.32	0.4	
8	Repl	LT Belt & retractor ebony	19260205	1	101.93	0.4	
9		PILLARS, ROCKER & FLOOR					
10	R&I	LT Lwr ctr plr trim ebony				0.5	
11	R&I	RT Lwr ctr plr trim ebony				0.5	
12		SEATS & TRACKS					
13	R&I	LT R&I front seat bucket seat				0.4	
14		FRONT BUMPER					
15		O/H front bumper				2.5	
16	**	Repl A/M CAPA Bumper cover	25814570	1	433.00	Incl.	3.0
17		Add for Clear Coat					1.2
18	Repl	RT Bumper cover side bracket	15923613	1	23.20	Incl.	
19	Repl	LT Bumper cover side bracket	15923612	1	25.23	Incl.	
20	Repl	RT Mount bracket repair kit	15791866	1	98.85	0.4	
21		Add for weld removal				1.1	
22	Repl	LT Mount bracket repair kit	15791866	1	98.85	0.4	
23		Add for weld removal				1.1	
24	**	Repl A/M Impact bar 2nd design	25947497	1	309.00	Incl.	
25	Repl	Center bracket	22742861	1	44.15	Incl.	
26	Repl	Center support	15882454	1	48.90	Incl.	
27		GRILLE					
28	**	Repl A/M Upper grille bright chrome	22830012	1	166.00	Incl.	
29		FRONT LAMPS					
30	**	Repl A/M RT Headlamp assy	20760579	1	199.00	Incl.	
31		HOOD					
32	**	Repl A/M CAPA Hood	15939876	1	486.00	1.0	3.0
33		Add for Clear Coat					1.2
34		Add for Underside(Complete)					1.5
35		RADIATOR SUPPORT					
36	Repl	Radiator support	20927279	1	685.25	6.0	
37		Evacuate & recharge			m	1.4	
38		Add for trans cooler			m	0.3	
39		Aim headlamps				0.5	
40		COOLING					
41	**	Repl A/M Radiator 5.3 liter w/HD cooling	20935856	1	239.00 m	Incl.	

Preliminary Estimate

Customer: Vestavia Hills P.D

Job Number:

Vehicle: 2012 CHEV TAHOE 4X2 POLICE 4D UTV 8-5.3L-FI black

42		Repl	Shroud w/HD cooling	15780789	1	268.07	m	Incl.	
43	ENGINE								
44		Repl	Air cleaner assy	22844819	1	102.70	m	0.3	
45	FENDER								
46	**	Repl	A/M CAPA LT Fender Tahoe	25992404	1	268.00		2.6	2.0
47			Overlap Major Adj. Panel						-0.4
48			Add for Clear Coat						0.3
49			Add for Edging						0.5
50			Add for Inside						1.0
51	FRONT DOOR								
52	*	Rpr	RT Door shell Tahoe & Yukon					<u>10.0</u>	2.4
53			Overlap Major Adj. Panel						-0.4
54			Add for Clear Coat						0.4
55		Repl	RT Belt w/strip	20921215	1	75.52		0.3	
56	*	Repl	RT Mirror assy w/o power folding black	20809948	1	140.08		0.4	<u>0.0</u>
57		Repl	RT Door glass NAGS	DD11999GTN	1	207.15		0.5	
58	*	Repl	RT Handle, outside black	20954796	1	31.53		0.4	<u>0.0</u>
59		R&I	RT R&I trim panel					0.4	
60	REAR DOOR								
61		Repl	RT Door shell Tahoe & Yukon	22892598	1	765.37		4.6	3.3
62			Overlap Major Adj. Panel						-0.4
63			Add for Clear Coat						0.6
64		Repl	RT Door glass NAGS, Tahoe & Yukon w/dark tint	DD11165YPN	1	190.90		Incl.	
65		Repl	RT Handle, outside black	20954816	1	31.33		Incl.	0.5
66			Overlap Minor Panel						-0.2
67	*		Add for Clear Coat						0.1
68	QUARTER PANEL								
69		Repl	RT Quarter panel	25822462	1	983.33		18.0	2.7
70			Overlap Major Adj. Panel						-0.4
71	*		Add for Clear Coat						0.5
72		Repl	RT Qtr glass NAGS w/dark tint	DQ11167YPN	1	242.20		Incl.	
73	REAR LAMPS								
74	**	Repl	A/M RT Combo lamp assy Tahoe	22837924	1	115.00		Incl.	
75	REAR BUMPER								
76	**	Repl	A/M CAPA Bumper cover w/o reverse sensing system	20951794	1	452.00		1.4	3.4
77			Add for Clear Coat						1.4
78			Deduct for Rear Bumper R&I					-1.0	
79	WINDSHIELD								
80		Repl	Windshield NAGS w/o acoustic layer	DW01658GTY	1	223.70		2.0	
81	#		Corrosion Protect		1				0.3
82	#		Feather / Prime / Block Welded Seams		1				0.5

Preliminary Estimate

Customer: Vestavia Hills P.D
Job Number:

Vehicle: 2012 CHEV TAHOE 4X2 POLICE 4D UTV 8-5.3L-FI black

83	#	Refn	Feather, Prime, Block						1.0
84	#	Subl	Flex Add	1		7.00	X		
85	#	Subl	Car Cover	1		10.00	X		
86	#	Subl	EPA/Waste	1		5.00	X		
SUBTOTALS						8,601.33		59.0	29.0

ESTIMATE TOTALS

Category	Basis	Rate	Cost \$
Parts			8,579.33
Body Labor	59.0 hrs @	\$ 55.00 /hr	3,245.00
Paint Labor	29.0 hrs @	\$ 55.00 /hr	1,595.00
Paint Supplies	29.0 hrs @	\$ 36.00 /hr	1,044.00
Miscellaneous			22.00
Subtotal			14,485.33
Sales Tax	\$ 9,623.33 @	8.0000 %	769.87
Grand Total			15,255.20

***** LIMITED LIFETIME WARRANTY *****

WE WARRANTY THE REPAIRS TO YOUR VEHICLE INCLUDING REFINISHING FOR AS LONG AS YOU OWN THE VEHICLE. WARRANTY APPLIES TO WRECK RELATED REPAIRS ONLY. WARRANTY SHALL BE NULL AND VOID IF THE REPAIR IS ALTERED, ADJUSTED OR TAMPERED WITH BY ANY PERSON NOT AUTHORIZED BY THE REPAIR FACILITY. WARRANTY IS NOT TRANSFERRABLE.

THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AFTERMARKET CRASH PARTS SUPPLIED BY A SOURCE OTHER THAN THE MANUFACTURER OF YOUR MOTOR VEHICLE. THE AFTERMARKET CRASH PARTS USED IN THE PREPARATION OF THIS ESTIMATE ARE WARRANTED BY THE MANUFACTURER OR DISTRIBUTOR OF SUCH PARTS RATHER THAN THE MANUFACTURER OF YOUR VEHICLE.

RESOLUTION NUMBER 4504

A RESOLUTION AUTHORIZING THE APPLICATION FOR A FLOOD HAZARD MITIGATION ASSISTANCE GRANT FOR THE ACQUISITION OF AT-RISK FLOOD PLAIN PROPERTIES WITHIN THE MEADOWLAWN ESTATES SUBDIVISION

WHEREAS, the Federal Emergency Management Agency (FEMA) Flood Mitigation Assistance (FMA) grant program has been established to assist local governments with taking critical mitigation measures to protect life and property from future flood damage to properties insured under the National Flood Insurance Program (NFIP); and

WHEREAS, the City of Vestavia Hills, Alabama, (City) acting by and through its Mayor and City Council proposes to apply for FMA grant funds to for the acquisition of select eligible properties located within the 100-year flood plain; and

WHEREAS, the City, as a recipient of these funds as the subgrantee, is required to provide and make available funds for the local non-federal share for the above-stated mitigation activities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. That Alberto C. Zaragoza, Jr., Mayor, and Jeffrey Downes, City Manager, are hereby authorized to execute and submit an application with appropriate assurances to the State of Alabama Emergency Management Agency and the Federal Emergency Management Agency, requesting FMA grant funds for the acquisition of select eligible properties that are at high risk of flood damage; and
2. That the City hereby obligates itself to meet the required local match in cash and in-kind services in order to complete the proposed Meadowlawn Estates Flood Plain Acquisition Project; and
3. This Resolution Number 4504 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4506

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH LEHE PLANNING, LLC FOR PROFESSIONAL SERVICES TO ASSIST IN THE FILING OF AN APPLICATION FOR A FLOOD MITIGATION GRANT AND TO PROVIDE FUNDING FOR CERTAIN ADDITIONAL NEEDED SURVEYS FOR SAID APPLICATION

WHEREAS, the City Council adopted and approved Resolution Number 4504 to make application for Phase I of a mitigation planning effort for the Meadowlawn Community; and

WHEREAS, LEHE Planning Inc., (“Consultant”) has submitted an agreement to provide professional services to assist with submission of an application for a flood mitigation grant in an amount not to exceed \$7,500; and

WHEREAS, the City Attorney has reviewed said agreement and has provided for an addendum to the agreement; and

WHEREAS, the City Manager has indicated additional surveys needed to complete said application in an amount not to exceed \$2,000 as specified by the City Engineer; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the recommendations of the City Manager as described above.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City Manager is hereby authorized and directed to execute and deliver that certain Agreement for Professional Services by and between the City of Vestavia Hills, Alabama (“City”) and LEHE Planning, LLC (“Consultant”) as amended by the Addendum. Copies of the Agreement for Professional Services and the Addendum to the Agreement for Professional Services are attached hereto, marked as Exhibits A & B, respectively, and are incorporated into this Resolution Number 4506 as though set out fully herein; and
2. The City Manager is also authorized to expend an amount not to exceed \$2,000 for additional surveys needed in order to complete said application; and
3. This Resolution Number 4506 is effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

STATE OF ALABAMA)
JEFFERSON COUNTY)

Agreement for Professional Services

THIS AGREEMENT made this ____ day of _____, 2013, by and between the CITY OF VESTAVIA HILLS ("City"), located at 513 Montgomery Highway, Vestavia Hills, AL 35216, and LEHE PLANNING, LLC, ("Consultant"), located at 300 Century Park South, Suite 216, Birmingham, AL 35226.

WITNESSETH:

WHEREAS, the City has experienced repetitive flooding which poses a threat to as many as 31 homes in the Meadowlawn Estates subdivision ("Meadowlawn"); and

WHEREAS, the City supports mitigation measures to reduce the threats of flooding including mitigation measures which seek to voluntarily acquire properties located in flood hazard areas; and

WHEREAS, the Consultant's economic feasibility study, completed as Phase I of the City's mitigation planning efforts for Meadowlawn, has determined in its that the acquisition of high risk flood areas of (the "Acquisition Project") is eligible for funding under Flood Mitigation Assistance ("FMA") grant programs administered by FEMA; and

WHEREAS, FEMA has announced that \$121 million is now available for funding of eligible projects under the FMA grant program; and

WHEREAS, the Consultant is capable of providing professional planning services required for developing the project for submission for funding under the FMA grant program; and

WHEREAS, the City is in need of the services provided by the Consultant; and

WHEREAS, the City and the Consultant desire to enter into this Agreement under which the Consultant shall provide such services for the City as are set forth herein.

NOW THEREFORE, the parties hereby agree as follows:

1. DESCRIPTION OF SERVICES. The Consultant will perform the following tasks, under the direction of the City Engineer for the City:

1. Refine project cost estimates and update the Benefit Cost Analysis by completing the following tasks:

- a. Perform a study to obtain a multiplier of tax values to predict market values and substitute the new values in the project cost estimate.
 - b. Update the demolition costs and obtain the cost of asbestos removal, if required, by the City retaining the services of an asbestos inspection and removal company to examine one or more home. The City will pay for this inspection report.
 - c. Update all other costs for acquisition (e.g., appraisal fees, attorney fees and closing costs, etc.)
2. Facilitate owner and neighborhood participation.
 - a. Reactivate and update project website.
 - b. Obtain written willingness to sell from participating property owners, using FEMA forms.
 3. Complete an application for FMA grant funding through FEMA's e-grant portal, including complete forms, maps, photos, drawings, and other information required for the application.
 4. Respond to FEMA requests for information (RFIs) as the application undergoes FEMA review and approval processes.

2. USE OF AGENTS OR ASSISTANTS. To the extent reasonably necessary to enable the Consultant to perform the duties under this Agreement, the Consultant is authorized to engage the services of any agents or assistants that the Consultant may deem proper and further to employ, engage, or retain the services of such other persons, businesses, or corporations to aid or assist the Consultant in the proper performance of the duties, as approved by the City. The services of Alex Cotton, SRA, Real Estate Appraiser, will be required to complete the tax valuation study. The provisions of this Agreement shall also bind such agents and assistants who perform services for the City under this Agreement.

3. TIME FOR PERFORMANCE. Consultant will complete the application by the 9/27/2013 deadline established by the Alabama EMA, unless an extension is approved by the Alabama EMA. Completion of all services shall continue until the City has received a written notice of approval or denial of its grant application by the Alabama EMA and FEMA.

4. PAYMENT AND EXPENSES. As compensation for the above-described services, the City will pay Lehe Planning, LLC, a fixed fee of \$7,500, including reimbursable expenses, such as travel, printing, and postage, unless a higher amount is approved by amendment to this Agreement.

Included in the \$7,500 total fee to be paid to the Consultant is a fixed fee of \$1,500 for the services to be provided by Alex Cotton, SRA, Real Estate Appraiser. This fee is for real estate data services required for establishing a statistically valid ratio of market value to tax value. This study, to be prepared jointly by Lehe Planning and Alex Cotten, will be used to predict the purchase amounts of properties for the FMA application budget.

The total fee will be paid within 30 days following completion of the FMA application.

5. TERM/TERMINATION. This Agreement shall terminate automatically upon completion by the Consultant of the services required by this Agreement. Either party may terminate this Agreement by giving at least 72 hours notice. The Consultant will be paid for services and expenses incurred up to the termination date.

6. RELATIONSHIP OF PARTIES. It is understood by the parties that the Consultant is an independent contractor with respect to the City, and not an employee of the City. The City will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the Consultant.

7. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

8. AMENDMENT. This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

9. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

10. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

11. EFFECTIVE DATE. This Agreement shall become effective upon its execution.

12. APPLICABLE LAW. The laws of the State of Alabama shall govern this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first set forth above.

CITY OF VESTAVIA HILLS

BY: _____
Alberto (Butch) Zaragoza
ITS: Mayor

BY: _____
Jeffrey Downes
ITS: City Manager

ATTEST: _____
Rebecca Leavings
ITS: City Clerk

LEHE PLANNING, LLC

BY: _____
James E. Lehe
ITS: Manager

CITY OF VESTAVIA HILLS
DEPARTMENT OF PUBLIC SERVICES
OFFICE OF CITY ENGINEER
INTER-DEPARTMENT MEMO

Sept 4, 2013

To: Jeff Downes, City Manager

CC: Brian Davis, Director of Public Services
Rebecca Leavings, City Clerk
Patrick Boone, City Attorney

From: Christopher Brady, City Engineer

RE: Meadowlawn Estates Floodplain Acquisition
FEMA Flood Mitigation Assistance (FMA) program
Lehe Planning, professional services, and other project costs

We have been made aware of potential funding available to assist with the Meadowlawn Estates Floodplain Acquisition project. FEMA has announced \$121 million available nationally to the Flood Mitigation Assistance (FMA) program. We anticipate Alabama EMA to give a favorable recommendation to utilize this funding for buyout of homes subject to frequent flooding damages. Alabama EMA has a deadline of September 27, 2013, to submit application for this funding.

We have identified the nine homes most susceptible to flooding damages. I am attaching a project map and list of approximate project costs associated with these properties.

We anticipate project costs to total approximately \$2.8million. Federal funding is anticipated to supply \$2.4 million, with City match at approximately \$400,000.

Attached is proposal from Lehe Planning to provide professional services to assist in grant application process, correspondence with FEMA and other services. Items remaining to finalize project cost estimates and to include with application submittal include determination of fair market value of the properties to be acquired; determination of demolition costs, including asbestos removal; owner and neighborhood participation confirmation; as well as updating previous documentation obtained in previous feasibility study. Total estimated fee for these services is not-to-exceed \$9,500.

FMA application process – anticipated costs

Lehe Planning -- \$7500 (application, FEMA RFIs, Appraiser) – agreement attached

Asbestos surveys -- \$2000 (anticipated costs to complete asbestos determination in homes)

TOTAL -- \$9500 not to exceed

Also attached is a proposed professional service agreement for the services of Lehe Planning.

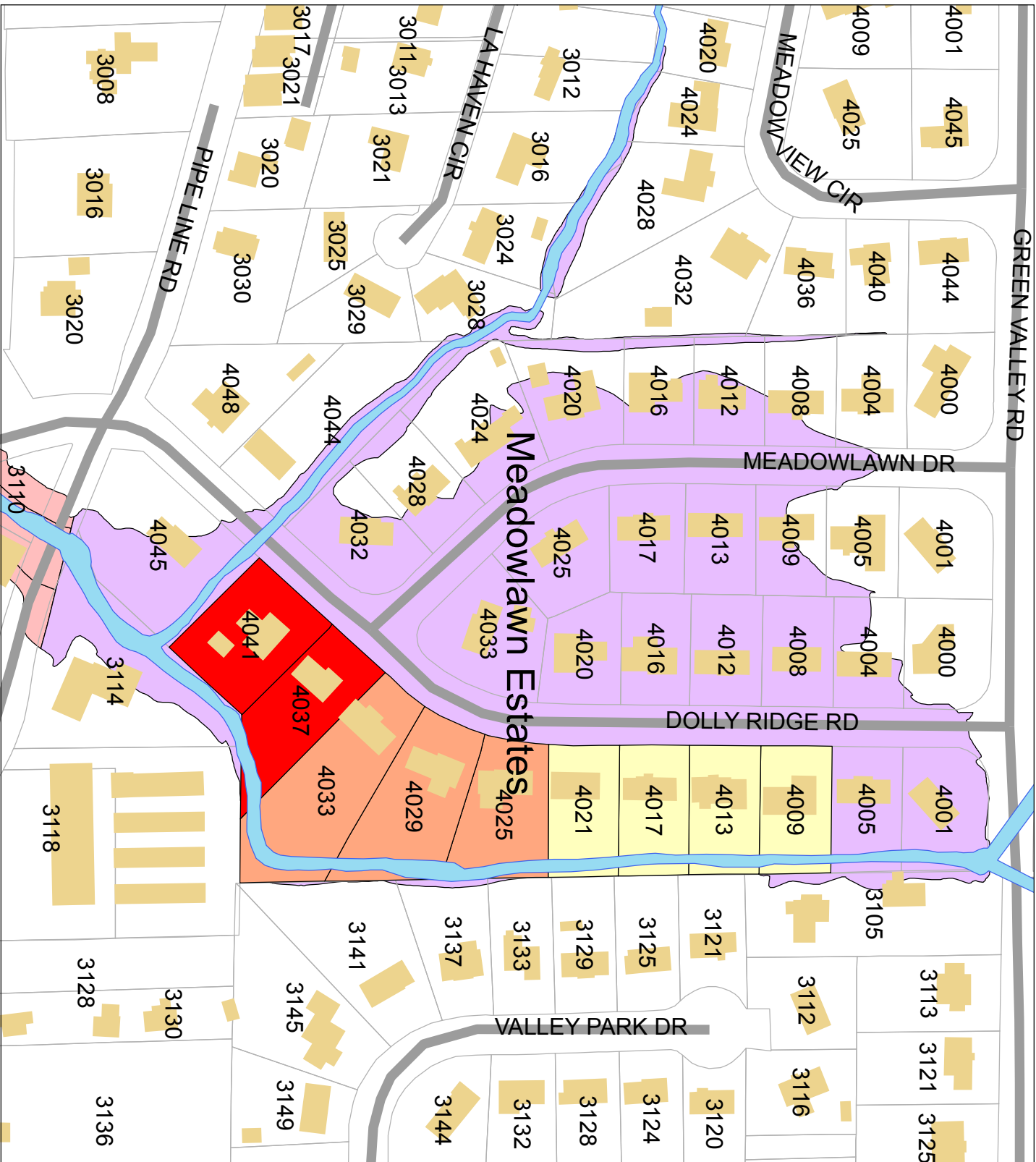
As this is an unbudgeted item, I would recommend seeking Council approval to use general funds to initiate this work.


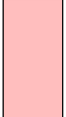





Please let me know if any questions, -Christopher

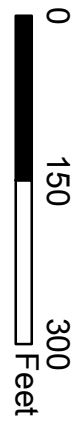


Flood Hazard Mitigation

City of Vestavia Hills, Alabama



Flood Zone	
	A
	AE
	Buildings
	Stream
	75% Funding
	90% Funding
	100% Funding



Wendy Appling
September 4, 2013

**Meadowlawn Floodplain Acquisition
City of Vestavia Hills**

**Benefit Cost Analysis: Summary
Estimated -- 09/03/2013**

sort	display	Property ID	Address	Benefits	Cost	BCR	PHASE ONE			Funding Share		
							cmity Cost	avg BCR	PH I	Fed	local	
1	31	VH35	4041 Dolly Ridge Road	\$3,148,085	\$338,197	9.31	\$338,197	9.31	X	100%	\$338,197	\$0
2	30	VH34	4037 Dolly Ridge Road	\$1,746,653	\$304,475	5.74	\$642,672	7.53	X	100%	\$304,475	\$0
3	29	VH33	4033 Dolly Ridge Road	\$2,007,244	\$353,332	5.68	\$996,004	6.91	X	90%	\$317,999	\$35,333
4	28	VH32	4029 Dolly Ridge Road	\$867,554	\$332,222	2.61	\$1,328,226	5.84	X	90%	\$299,000	\$33,222
5	27	VH31	4025 Dolly Ridge Road	\$969,594	\$308,326	3.14	\$1,636,552	5.30	X	90%	\$277,493	\$30,833
6	26	VH30	4021 Dolly Ridge Road	\$649,310	\$268,628	2.42	\$1,905,180	4.82	X	75%	\$201,471	\$67,157
7	25	VH29	4017 Dolly Ridge Road	\$700,398	\$277,789	2.52	\$2,182,969	4.49	X	75%	\$208,342	\$69,447
8	24	VH28	4013 Dolly Ridge Road	\$749,555	\$279,249	2.68	\$2,462,218	4.26	X	75%	\$209,437	\$69,812
9	23	VH27	4009 Dolly Ridge Road	\$768,983	\$302,350	2.54	\$2,764,568	4.07	X	75%	\$226,763	\$75,588
							\$2,383,176				\$381,392	

Completed by: Lehe Planning, LLC

- 100% severe repetitive loss
- 90% repetitive loss
- 75% insured property/non-repetitive loss

September 3, 2013

Christopher Brady, P.E.
City Engineer
City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills, AL 35216

RE: Proposed Professional Services for the Meadowlawn Estates Flood Plain
Acquisition Project

Dear Christopher:

This proposal responds to your request for my firm to follow up on the feasibility phase for obtaining funding under FEMA Flood Mitigation Assistance (FMA) program for the acquisition of up to eligible homes within the flood plain of the Meadowlawn Estates subdivision. That first phase concluded that a buyout is feasible and eligible for FEMA funding. Funding may now be available, and we would prepare a complete application for the City.

Lehe Planning, LLC, proposes that the following scope of work be provided to the City, under your direction as City Engineer. Professional services would be provided to define the final project scope and complete all information required for the FEMA FMA grant application, as described below:

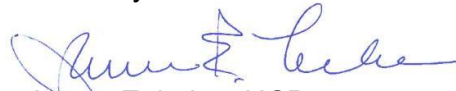
1. Refine project cost estimates and update the Benefit Cost Analysis by completing the following tasks:
 - a. Perform a study to obtain a multiplier of tax values to predict market values and substitute the new values in the project cost estimate.
 - b. Update the demolition costs and obtain the cost of asbestos removal, if required, by the City retaining the services of an asbestos inspection and removal company to examine one or more home. The City will pay for this inspection report.
 - c. Update all other costs for acquisition (e.g., appraisal fees, attorney fees and closing costs, etc.)
2. Facilitate owner and neighborhood participation.
 - a. Reactivate and update project website.
 - b. Obtain written willingness to sell from participating property owners, using FEMA forms.

3. Complete an application for FMA grant funding through FEMA's e-grant portal, including complete forms, maps, photos, drawings, and other information required for the application.
4. Respond to FEMA requests for information (RFIs) as the application undergoes FEMA review and approval processes.

As compensation for the above-described services, the City will pay Lehe Planning, LLC, a fixed fee of \$7,500, including reimbursable expenses, such as travel, printing, and postage, unless a higher amount is approved by amendment to this Agreement. Included in the \$7,500 is a fixed fee of \$1,500 for the services to be provided by Alex Cotton, SRA, Real Estate Appraiser. This fee is for real estate data services required for establishing a statistically valid ratio of market value to tax value. This study, to be prepared jointly by Lehe Planning and Alex Cotten, will be used to predict the purchase amounts of properties for the FMA application budget.

I am hopeful of the City's final approval of this proposal to take advantage of this newly-announced funding opportunity.

Sincerely,

A handwritten signature in blue ink, appearing to read "James E. Lehe". The signature is fluid and cursive, with a large initial "J" and "L".

James E. Lehe, AICP
Manager

STATE OF ALABAMA

JEFFERSON COUNTY

**ADDENDUM TO
AGREEMENT FOR PROFESSIONAL SERVICES**

WITNESSETH THIS ADDENDUM TO AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”), made and entered into on this the 9th day of September, 2013, by and between the City of Vestavia Hills, Alabama, a municipal corporation (“CITY”), and LEHE Planning, LLC, an Alabama limited liability company (“CONSULTANT”).

WITNESSETH THESE RECITALS:

WHEREAS, the City Council of the City of Vestavia Hills, Alabama approved and adopted Resolution Number 4504 on September 9, 2013 authorizing the Mayor and City Manager to execute and deliver an Agreement for Professional Services (“Agreement”) by and between the City of Vestavia Hills, Alabama (“CITY”) and LEHE Planning, LLC (“CONSULTANT”); and

WHEREAS, both the CITY and CONSULTANT executed and delivered the Agreement on September 9, 2013; and

WHEREAS, the CITY and CONSULTANT wish to amend the Agreement by the execution and delivery of this Addendum.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the CITY and CONSULTANT hereby mutually and expressly amend the Agreement as set forth below.

This Addendum is a part of the principal Agreement for Professional Services referred to above, but supersedes and controls any conflicting or inconsistent terms or provisions in the principal Agreement, particularly to the extent the conflicting or inconsistent terms or provisions purport either to (a) confer greater rights or remedies on CONSULTANT than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the CITY under otherwise applicable law. The Addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal Agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the CITY is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without express approval of the Vestavia Hills City Council.

Notwithstanding anything contained in the Agreement to the contrary, the CITY and CONSULTANT agree to add the following terms, provisions and conditions to the said Agreement:

Addendum to Agreement
page 2

13. **IMMIGRATION:** By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

14. **LIABILITY INSURANCE:** CONSULTANT shall carry Public Liability Insurance with limits of Three Hundred Thousand Dollars (\$300,000.00), per person, and One Million Dollars (\$1,000,000.00), per occurrence, to cover and protect the CITY and CONSULTANT and its subcontractors against claims or injury to or death of one or more than one person because of accidents which may occur or result from operations under the Agreement as amended. The City of Vestavia Hills, Alabama shall be added as “an additional insured” to the general comprehensive liability insurance policy of CONSULTANT.

15. **COMPLIANCE WITH APPLICABLE LAWS:** CONSULTANT shall comply with the provisions of the labor law and all state, federal and local laws, statutes, codes, rules, regulations and ordinances that are applicable to the performance of this Agreement between CITY and CONSULTANT.

16. **ARBITRATION; MEDIATION; ALTERNATE DISPUTE RESOLUTION:** The CITY agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (a) the rights and remedies available under such arbitration rules or processes do not afford CONSULTANT greater relief (e.g., attorney’s fees, damages, etc.) than would be available under otherwise applicable law, (b) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (c) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.

17. **SEVERABILITY:** In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

18. **INDEMNITY:** CONSULTANT shall indemnify and hold and save harmless the City of Vestavia Hills, Alabama, its Mayor, City Manager, elected officials and any and all other servants, agents or employees (CITY) from any and all claims, demands, controversies, actions, causes of action, cost, expenses, lawsuits, damages and liabilities, including reasonable attorney’s fees, resulting from death or bodily injury or damage to property of the CITY or another party to the extent arising out of or resulting from the negligence or other conduct of CONSULTANT or its employees or other authorized agents suffered by any person as a result of the work performed by CONSULTANT and its servants, agents and employees under this Agreement. CONSULTANT shall not be required to indemnify the CITY against actions, costs, expenses, damages and liabilities to the extent attributable to the acts or omissions of the CITY or its employees.

19. **INDEPENDENT CONTRACTOR:** LEHE Planning, LLC is an independent contractor for purposes of this Agreement as amended. Nothing contained in this Agreement as hereby amended shall be construed to mean that said LEHE Planning, LLC is the servant, agent or employee of the City of Vestavia Hills, Alabama. Therefore, the words “under the direction of the City Engineer for the CITY” in Section 1 on page one of the Agreement shall be deleted.

20. **MISCELLANEOUS:**

(a) **Non Waiver:** The failure of the CITY to insist, in any one or more instances, upon a strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect.

(b) **Waiver of Modification:** Any waiver, alteration or modification of any of the provisions of this Agreement or cancellation or replacement of this Agreement shall not be valid unless in writing and signed by the parties hereto. This Agreement may be amended at any time by written agreement of the parties signatory hereto.

(c) **Notices:** Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing and sent by Registered Mail to the parties' last known address.

(d) **Governing Law:** This Agreement shall be interpreted, construed and governed to the laws of the State of Alabama.

(e) **Article and Section Headings:** The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

(f) **Construction of Terms:** The CITY and CONSULTANT negotiated the terms, provisions and conditions of this Agreement and both parties had the equal opportunity for input for the drafting of this Agreement. Therefore, any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

(g) **Execution in Counterparts:** The Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(h) **Binding Effect:** The Agreement shall inure to the benefit of, and shall be binding upon CITY and CONSULTANT and their heirs, successors and assigns.

Addendum to Agreement
page 4

(i) **Entire Agreement:** This written Agreement contains the entire agreement between the CITY and the CONSULTANT.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama and LEHE Planning, LLC have hereunto set their hands and seals all being done in duplicate originals with one (1) original being delivered to each party on this the 9th day of September, 2013.

CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Alberto C. Zaragoza, Jr.
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

LEHE PLANNING, LLC

By _____
Its _____

ATTESTED:

By _____

Addendum to Agreement
page 5

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Alberto C. Zaragoza, Jr., whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Addendum to Agreement for Professional Services, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the 9th day of September, 2013.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Addendum to Agreement for Professional Services and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the 9th day of September, 2013.

Notary Public

My Commission Expires:

SEAL

Addendum to Agreement
page 6

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that _____ whose name as _____ of LEHE Planning, LLC, an Alabama limited liability company, is signed to the foregoing Addendum to Agreement for Professional Services and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said LEHE Planning, LLC.

Given under my hand and official seal, this the _____ day of _____, 2013.

Notary Public

My Commission Expires:

SEAL

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

September 5, 2013

By Hand Delivery
and Facsimile Transmission

City Clerk Rebecca Leavings
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Resolution Number 4504
Application for Grant from Federal Emergency Management Agency (FEMA)
Meadowlawn Estates
Agreement Between City and LEHE Planning, LLC

Dear Mrs. Leavings:

This morning, you furnished me with a copy of Resolution Number 4504, together with a proposed Agreement for Professional Services by and between the City of Vestavia Hills, Alabama ("City") and LEHE Planning, LLC ("Consultant") with a request that I review the same and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

It is my understanding that the City Council will consider approval of Resolution Number 4504 and Agreement for Professional Services at its regularly scheduled meeting on September 9, 2013. Since the deadline for filing the application with FEMA is September 27, 2013, it is my understanding that the City Council will consider unanimous consent for immediate consideration of both items next Monday night. My recommendations are set forth below.

RESOLUTION NUMBER 4504

I recommend that Resolution Number 4504 be amended so as to read in words and figures as follows:

"3. The Mayor and City Manager are hereby authorized and directed to execute and deliver that certain Agreement for Professional Services by and between the City of Vestavia Hills, Alabama ("CITY") and LEHE Planning, LLC ("CONSULTANT") as amended by the Addendum. Copies of the Agreement for

September 5, 2013
page 2

Professional Services and the Addendum to the Agreement for Professional Services are attached hereto, marked as Exhibits A and B, respectively, and are incorporated into this Resolution Number 4504 by reference as though set out fully herein.”

4. This Resolution Number 4504 shall become effective immediately upon adoption and approval as required by Alabama law.”

AGREEMENT FOR PROFESSIONAL SERVICES

The language of the Agreement for Professional Services (except for one phrase regarding the issue of the Consultant being an independent contractor, which I addressed in section 19 of the Addendum) meets the requirements of Alabama law and I recommend approval of the document from a legal standpoint.

ADDENDUM TO AGREEMENT FOR PROFESSIONAL SERVICES

I recommend that the Agreement for Professional Services be amended by the Addendum to Agreement for Professional Services. A copy of the Addendum is enclosed.

I want to make certain that the Consultant is an independent contractor. Alabama law provides that an independent contractor is one who undertakes to do work for another according to (his) (its) own methods and means, not being subject to the control of such other person except as to the result to be accomplished.

An independent contractor is one who has contracted to do or perform work for another and reserves the exclusive right of control over the means and agencies and all of the details by which the work is to be done.

It is the reserved right of control rather than the actual exercise of control that furnishes the test of whether one is an independent contractor.

On the other hand, an (agent) (servant) (employee) is one who by agreement with another called the principal, acts for the principal and is subject to his control.

Therefore, I have, in the Addendum, deleted the phrase “under the direction of the City Engineer for the City” in section 1 on page one of the Agreement.

Sections 13, 14, 15, 16, 17, 18 and 20 are contractual provisions that I include in every contract that the City is a party to.

September 5, 2013
page 3

Please call me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Patrick H. Boone". The signature is written in a cursive style with a large initial "P" and "B".

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

Enclosure

cc: City Manager Jeffrey D. Downes (by hand)
Mayor Alberto C. Zaragoza, Jr. (by hand)
City Engineer Christopher Brady (by hand)

RESOLUTION NUMBER 4505

A RESOLUTION ACCEPTING A BID FOR NON-ATHLETIC GROUNDS MAINTENANCE

WHEREAS, the City of Vestavia Hills invited bids for non-athletic grounds maintenance for the Parks and Recreation Department and Vestavia Hills Library in the Forest consisting of a base bid and eight (8) alternates; and

WHEREAS, bids were received on August 27, 2013 and read aloud publicly with the results tabulated and detailed in a memorandum to the City Manager from the Public Services Director dated September 4, 2013, a copy of which is marked as “Exhibit A” attached and incorporated into this Resolution Number 4505; and

WHEREAS, the above-described memorandum recommends the acceptance of the bids and alternates as follows: (1) award the base bid to Tru Green for an amount not to exceed \$35,712.38; and (2) eliminate Alternate 3 and award Alternates 1, 2, 4, 5, 6, and 8 to Natural Effect totaling \$16,890; and

WHEREAS, in a memorandum dated September 4, 2013 to the City Manager from the Library Director, recommendation was made to award Alternate 7 to Natural Effect in an amount not to exceed \$10,500; and

WHEREAS, the Mayor and City Council agree it is in the best public interest to accept said bid as recommended by each Department Head.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The bid package submitted by Tru Green is hereby accepted for the base bid only; and
2. The bid package submitted by Natural Effect is hereby accepted for Alternates 1, 2, 4, 5, 6, 7 and 8 as described above; and

3. The Mayor and City Manager are hereby authorized and directed to execute and deliver said 3-year agreement to both companies for non-athletic maintenance for a period of thirty-six (36) months; and
4. This Resolution Number 4501 shall become effective upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 9th day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

OK *gds*
9-4-13

City of Vestavia Hills Public Services
513 Montgomery Highway
Vestavia Hills, AL 35216
205.978.0150

Interoffice Memo

September 4, 2013

TO: Jeff Downes
City Manager

FROM: Brian C. Davis *bed*
Public Services Director

RE: Non-Athletic Grounds Maintenance

Invitations to bid were sent to numerous companies throughout the Birmingham Metro area for the outsourcing of non-athletic ground maintenance for many areas throughout Vestavia Hills. A mandatory pre-bid meeting was held on August 13, and seven companies attended. Sealed bids were opened on August 27, and a total of five companies submitted bids. There were areas that were part of a base bid, and 8 alternate areas. Please see attached for the submitted bids.

One of the alternates (alternate 7) was for the grounds at the library, and Taneisha Tucker budgeted \$11,000 for that. Public Services budgeted \$39,000 for the outsourcing. I would like to request that we accept the base bid from Tru Green for \$35,712.38. I would like to eliminate Alternate 3 from the alternate bids and accept Alternates 1, 2, 4, 5, 6, and 8 from Natural Effect totaling \$16,890. Both the base bid and alternates total \$52,602.38, which is \$13,602.38 over what we requested in the budget.

I feel we can find the overage within our budget this year, and it should help us with keeping up with other areas around the city. One part time employee would cost about \$13,000, and there is no way that one part time employee could accomplish all of the alternate areas, not to mention the equipment and fuel. These contracts should benefit our workforce and allow for increased attention on our current duties, while expanding our capabilities on difficult projects.

I would like to include acceptance of these two bids on the next council agenda for a first read on September 9, and action on September 23. I have checked references for both companies and there were no negative discussions. Please let me know if you have any questions or concerns with any of this.

Company	Alternate 1 Morgan Drive ROW	Alternate 2 Old Overton ROW	Alternate 3 Cahaba Heights Road & Blue Lake ROW	Alternate 4 Shades Crest Triangles Smyer/Big Springs	Alternate 5 Hwy 31 at the Temple ROW	Alternate 6 Caldwell Mill Road Old Looney ROW	Alternate 7 Library in the Forrest	Alternate 8 Sicard Hollow ROW	Total Alternates
	Base Bid								
MB Southern Contractors	\$ 118,985.00	\$ 14,600.00	\$ 11,870.00	\$ 10,985.00	\$ 15,960.00	\$ 16,000.00	\$ 29,396.00	\$ 14,790.00	\$ 125,001.00
Tru Green	\$ 35,712.38	\$ 3,474.68	\$ 10,244.01	\$ 2,823.03	\$ 5,076.88	\$ 2,642.54	\$ 13,590.00	\$ 4,572.28	\$ 47,484.10
Natural Effect	\$ 39,460.00	\$ 1,670.00	\$ 3,290.00	\$ 2,780.00	\$ 2,480.00	\$ 4,100.00	\$ 10,105.00	\$ 2,570.00	\$ 35,145.00
Landscape Workshop	\$ 43,464.00	\$ 4,728.00	\$ 11,940.00	\$ 4,032.00	\$ 4,572.00	\$ 5,988.00	\$ 8,688.00	\$ 4,332.00	\$ 51,144.00
Gibson Landscape	\$ 59,652.00	\$ 2,946.00	\$ 31,690.00	\$ 6,078.00	\$ 4,688.00	\$ 8,957.00	\$ 14,781.00	\$ 16,156.00	\$ 93,708.00

Base Bid	
Plus Alternates	
Less Library	\$ 214,590.00
	\$ 69,606.48
	\$ 64,500.00
	\$ 85,920.00
	\$ 138,579.00

Total Alternates	Total Alternates
Less Library	Less Alt 3
\$ 95,605.00	\$ 83,735.00
\$ 33,894.10	\$ 23,650.09
\$ 25,040.00	\$ 16,890.00
\$ 42,456.00	\$ 30,516.00
\$ 78,927.00	\$ 47,237.00

Total requested funding for Public Services	
Tru Green	\$ 35,712.38
Natural Effect	\$ 16,890.00
Total	\$ 52,602.38



CITY OF VESTAVIA HILLS

VESTAVIA HILLS LIBRARY IN THE FOREST

ALBERTO "BUTCH" ZARAGOZA
MAYOR

TANEISHA YOUNG TUCKER
DIRECTOR

September 04, 2013

TO: Mr. Jeff Downes, City Manager

CC: Brian Davis, Public Services Director
Rebecca Leavings, City Clerk

FROM: Taneisha Tucker
Library Director

RE: Library Grounds Maintenance

On August 27, 2013 five landscaping companies submitted bids for Vestavia Hills' non-athletic grounds maintenance in which the Vestavia Hills Library in the Forest was included as Alternate #7.

After reviewing the bid documents and consulting with Brian Davis, the Public Services Director, I request that we accept the bid from Natural Effect totaling \$10,500 for the library. In the upcoming budget, \$11,508 has been allocated for landscaping. While Natural Effect did not provide the lowest bid for the library, I feel that consistency is vital as Natural Effect has been selected to maintain all alternates presented by the Public Services Director for consideration.

Currently, the library has a contract with Owens Landscaping that will end in December 2013. If approved, Natural Effect would begin work at the library on January 2014.

I request to include acceptance of Natural Effect on the next council agenda for a first read on September 09, 2013 and action on September 23, 2013. Please contact me if you have any questions.

Thank you.

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

July 19, 2013

By Hand Delivery

Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

Attention: Melissa Hipp

In Re: Non-Athletic Grounds Maintenance Bid Packet

Dear Mrs. Hipp:

Recently, you furnished me with a copy of the Non-Athletic Grounds Maintenance Bid Packet, which includes the following documents:

- A. Invitation to Bid.
- B. Non-Athletic Grounds Maintenance Bid Requirements.
- C. Non-Athletic Grounds Maintenance Specifications and Agreement.

You requested that I review the above documents and provide you with my written legal opinion regarding additions, deletions, changes and/or corrections to the above documents. The purpose of this letter is to comply with your request.

In my opinion, the Invitation to Bid and the Bid Requirements meet the requirements of Alabama law. I have no recommendations for modifications to those two documents.

However, I do recommend modifications to the Specifications and Agreement.

I. DELETIONS

A. I recommend that Section 14 "Work Crew Supervision" on page 6 be deleted in its entirety.

July 19, 2013

Page 2

B. I recommend that the last sentence of Section 11 on page 6 "Subcontracts" reading "All directions given to the subcontractor in the field shall bind the contractor as if the notice has been given directly to the contractor." be deleted.

II. ADDITIONS

A. I recommend that Section 26 be added to read as follows:

"26. Contract: The bid will be awarded to the Contractor with the lowest, best and most responsible bid. A contract will be signed by and between the City and that Contractor. A copy of said Contract is attached hereto, marked as Exhibit 2 and is incorporated herein by reference as though set out fully herein."

Enclosed is the Contract to be attached as Exhibit 2.

Upon receipt of the bids, the City will determine whether or not to accept the base bid or any alternates. Section II of the contract describing the Statement of the Work will be completed after the City has made the award.

Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

Enclosure

cc: City Manager Jeffrey D. Downes
Mayor Alberto C. Zaragoza, Jr.
City Clerk Rebecca Leavings

STATE OF ALABAMA

JEFFERSON COUNTY

CONTRACT

WITNESSETH THIS CONTRACT, made and entered into on this the _____ day of _____, 2013, by and between The City of Vestavia Hills, Alabama, a municipal corporation, located at 513 Montgomery Highway, Vestavia Hills, Alabama 35216 (hereinafter referred to as "City"), and _____ (hereinafter referred to as "Contractor").

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama ("City") invited competitive bids for Non-Athletic Grounds Maintenance (hereinafter referred to as "the work", which is more particularly described in Exhibit A to Section II of this Contract; and

WHEREAS, the Contractor, _____, submitted a bid for the completion of work described in the Invitation to Bid, which the City has determined to be the lowest, best and most responsible proposal received; and

WHEREAS, the City and the Contractor have agreed to the terms, provisions and conditions of this Contract and have further agreed that it is in the best interests of the parties that this Contract be reduced to writing.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in consideration of the mutual covenants, promises and premises contained herein and other good valuable consideration, the receipt and sufficiency whereof is hereby acknowledged by each of the parties hereto, the City and Contractor mutually and expressly agree as follows:

I. CONTRACTOR

Contractor, _____ represents, covenants and warrants that it is duly licensed and qualified to furnish the materials and supplies and perform the work described herein.

II. GENERAL STATEMENT OF WORK

The Contractor shall furnish all labor, materials, equipment, machinery, supplies, tools, power, utilities, transportation, fuel and services, and perform all labor necessary for the work described on Exhibit A, which is attached hereto and incorporated into this contract by reference as though set out fully herein.

III. CONTRACT PRICE

As consideration of this contract, the City agrees to pay to Contractor for the faithful performance of this contract, the sum of _____ Dollars (\$_____).

IV. PAYMENT OF CONTRACT PRICE

The City shall pay the contract price in thirty-six (36) equal and consecutive monthly installments each in the amount of _____ Dollars (\$_____) beginning on the thirty-first (31st) day of October, 2013 all in accordance with the City's billing and payment policies.

V. TERM OF CONTRACT

The term of the contract shall be for a period of three (3) years beginning October 1, 2013 and ending September 30, 2016.

VI. TERMINATION OF CONTRACT

The City shall have the right at any time to cancel and terminate this contract for any reason or no reason upon seven (7) days advance written notice to the Contractor. In such cases, Contractor will be paid for all work actually performed prior to the date of termination, but will not be paid for any work not performed or for any anticipated profits on work not actually performed by the termination date.

VII. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall comply with the provisions of any and all state, federal and local laws, statutes, codes, rules, regulations and ordinances that are applicable to the performance of this contract between the City and Contractor.

VIII. LICENSE

The Contractor shall be properly licensed prior to commencement of the work.

IX. QUALITY OF WORK

All labor, materials and supplies applied/installed by the Contractor in the performance of this agreement shall be done in a professional, proficient and workmanlike manner.

X. CREW INFORMATION

- A. Crews will be dressed neat. Shirts shall be worn at all times.
- B. Courtesy to persons utilizing City facilities is required at all times.
- C. Breaks will be taken individually.
- D. No "horseplay" will be tolerated on the job.
- E. All refuse from lunches and breaks will be disposed of immediately.
- F. No items of trash will be run over with mowers or weed eaters. Trash pick-up is the responsibility of the City and efforts must be made to schedule lawn maintenance accordingly.

XI. EQUIPMENT

- A. Equipment will be mechanically sound. Inoperable equipment in the field will not be charged to the City. The City reserves the option to demand replacement of any equipment, which in its opinion has a poor operational record.
- B. Equipment will not be stored on City property.
- C. All equipment, which is to be used on the work, shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work.
- D. Equipment used on any portion of the project shall be such that no injury to plant materials, curbs, drives, walks, roadways, buildings or adjacent property will result from its use.
- E. Sharpen blades on cutting tools periodically to insure clean, smooth cuts and to prevent damage to plant materials.

XII. SAFETY STANDARDS

- A. All equipment to be used and all work to be performed must be in full compliance with the most current safety requirements for performing this type of work.
- B. Contractor shall be solely responsible for pedestrian and vehicular safety and control on the worksite and shall provide the necessary warning devices, barricades and ground personnel needed to give safety, protection and warning to persons and vehicular traffic within the area.

XIII. PROTECTION OF UNDERGROUND UTILITIES

Contractor shall be responsible for contacting the appropriate utility company for location of any underground services which are in the work area and could be damaged in the course of operations and performance of the work.

XIV. DISCONTINUANCE OF WORK

Any practice obviously hazardous as determined by the City shall be immediately discontinued by the contractor upon receipt of written notice to discontinue such practice.

XV. INDEPENDENT CONTRACTOR

The Contractor, _____,
is an independent contractor for purposes of this agreement. Nothing contained herein shall be construed to mean that said Contractor is the servant, agent or employee of the City of Vestavia Hills, Alabama.

XVI. IMMIGRATION

By signing this contract, the contracting parties affirm, for the duration of the contract, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the contract and shall be responsible for all damages resulting therefrom.

XVII. INDEMNITY

Contractor shall indemnify and save harmless the City of Vestavia Hills, Alabama, its Mayor, City Manager, individual members of the City Council, servants, agents, employees or representatives from any and all claims, demands, controversies, actions, causes of action, liabilities of action, lawsuits, liabilities and damages arising out of or resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result for work performed by the Contractor under this Contract.

XVIII. INSURANCE

Contractor agrees to obtain and maintain in force during the terms of this agreement insurance of the type, with the coverage and in the amounts specified below:

- a) For personal injuries, including death, in an amount of not less than:
 - (i) \$500,000 for any one person occurrence
 - (ii) \$1,000,000 for any one occurrence

- b) For damage to property not belonging to Contractor (or his subcontractors) in an amount not less than:
 - (i) \$500,000 for any one accident
 - (ii) \$1,000,000 aggregate amount
- c) For personal injuries including death and/or for damages to property not belonging to Contractor (or his subcontractors) caused by automotive equipment used by Contractor (or his subcontractors) in an amount not less than:
 - (i) \$500,000 personal injury per person per occurrence
 - (ii) \$500,000 property damage per accident
 - (iii) \$1,000,000 personal injury per occurrence
- d) Workmen's Compensation, State, and Federal Statutory requirements plus:
 - (i) \$500,000 employer's liability per person

The above described insurance shall be placed with an insurer acceptable to the City of Vestavia Hills and the policies shall provide notice by the insurer to the City of Vestavia Hills of cancellation, non-renewal or material change in any such policy and shall contain an endorsement naming the City of Vestavia Hills as an additional insured there under.

XIX. MISCELLANEOUS

A. NON WAIVER: The failure of the City to insist, in any one or more instances, upon a strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect.

B. WAIVER OF MODIFICATION: Any waiver, alteration or modification of any of the provisions of this agreement or cancellation or replacement of this agreement shall not be valid unless in writing and signed by the City and Contractor. This agreement may be amended at any time by written agreement of the parties signatory hereto. No claims for any extra work or materials shall be allowed unless covered by written agreement of both parties.

C. NOTICES: Any and all notices required or permitted to be given under this agreement will be sufficient if furnished in writing and sent by Registered Mail to the parties' last known address.

D. CONSTRUCTION OF TERMS OF CONTRACT: Any ambiguities of this contract shall be construed fairly and equitably regardless of the participation of either party in drafting this agreement. The reference in terms to gender and number shall be modified as may be appropriate.

E. GOVERNING LAW: This agreement shall be interpreted, construed and governed to the laws of the State of Alabama.

F. **ARTICLE AND SECTION HEADINGS:** The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

G. **EXECUTION IN COUNTERPARTS:** The contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

H. **BINDING EFFECT:** The contract shall inure to the benefit of, and shall be binding upon City and Contractor and their heirs, successors and assigns.

I. **SEVERABILITY:** In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

J. **ENTIRE AGREEMENT:** This written contract contains the entire agreement between the City and the Contractor.

IN WITNESS WHEREOF, The City of Vestavia Hills, Alabama, a municipal corporation, and _____, as "Contractor," have caused this Contract to be executed by their duly authorized officers and their respective seals to be affixed hereto on the date hereinabove written.

CITY:
CITY OF VESTAVIA HILLS, ALABAMA
a Municipal Corporation

By _____
Alberto C. Zaragoza, Jr.
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

CONTRACTOR:

By _____
Its _____

ATTESTED:

By _____

STATE OF ALABAMA

JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Alberto C. Zaragoza, Jr. whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Contract and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2013.

Notary Public

My Commission Expires:

SEAL

STATE OF ALABAMA

JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Contract and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2013.

Notary Public

My Commission Expires:

SEAL

STATE OF ALABAMA

JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that _____, whose name as _____ of the _____, is signed to the foregoing Contract and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said _____.

Given under my hand and official seal, this the _____ day of _____, 2013.

Notary Public

My Commission Expires:

SEAL

EXHIBIT A

GENERAL STATEMENT OF WORK

WORK SCHEDULE

Contractor will schedule the work during typical work hours for related services, unless authorized by the City of Vestavia Hills. Serviced areas shall be completed on Tuesday-Friday, weekly, unless changed by City of Vestavia Hills.

REQUIRED WORK

(a) Unless otherwise noted below, all work to be done once a week during the months of March through September, on Tuesday-Friday unless changed by inclement weather or by the direction of the Public Service Director or his designee. Work to be done twice per month from October through February.

(b) Mow, trim hedges and weed eat/trim entire park common areas at McCallum Park, Byrd Park, and Shallowford Park. This will include weed control of the entire field at McCallum Park and Byrd Park both pre and post emergence. Edge curbing in all areas where curbing exists.

(c) Mow, trim hedges and weed eat/trim the parking lot and all grass areas inside the fence at Sicard Hollow Athletic Complex (SHAC), well as the entry way to the parking lot and area along Sicard Hollow Road in front of the parking lot. Edge curbing in all areas where curbing exists.

(d) Mow, trim hedges and weed eat/trim the intersection of Cahaba River Road and Healthy Way (Lifetime Fitness Entrance).

(e) On the first and third week of the months of April through September and once per month no later than the 14th of the month from October through March, Mow; trim hedges and weed eat/trim the grass bank from Andy's Nursery along the sidewalk to the end of the sidewalk behind Town Village. On the side away from the creek to the home owners' property line, and on the side toward the creek 8 to 10 feet.

(f) Edge curbing in all areas where curbing exists.

(g) Keep leaves swept up during fall in the areas.

(h) All work must be of high quality and must meet general grooming standards of a public facility as set by the Public Service Director or his designee.

(i) When work is complete all sidewalks, roads, etc. must be free of clippings.

(j) If work is unsatisfactory, Contractor will be notified by the Public Service Director or his designee and will be given a specific deadline to make corrections. If this is not done to the satisfaction of the Public Service Director or his designee, there will be a 25% penalty for that month's payment.

(k) Any damages caused to City facilities shall be repaired or replaced immediately by the Contractor.

The following will be considered at the time of the agreement as alternates:

1. Alternates: Potential alternates to the agreement (please price separately):

(a) Alternate 1: Mow; trim hedges and weed eat/trim the right of way on both sides of the sidewalk on Morgan Drive from the intersection of Lime Rock Road and Morgan Drive (across from Fire Station #3) to the first business on the left.

(b) Alternate 3: Mow and weed eat/trim a portion of Riverview Drive Rights of Way.

(c) Alternate 4: Mow and weed eat/trim a portion of Cahaba Heights Road and Blue Lake Drive Rights of Way.

(d) Alternate 5: Mow; weed eat/trim traffic triangles at Smyer Road/Shades Crest Road and Big Springs Road/Shades Crest Road.

(e) Alternate 6: Mow; weed eat/trim the right of way at the intersection of Highway 31 and Columbiana Road (the ditch line to Montreat Drive and area around the entrance monument).

(f) Alternate 7: Mow and weed eat/trim a portion of Caldwell Mill Road and Old Looney Mill Road rights-of-way.

MAINTENANCE OPERATIONS

LAWNS:

Mowing:

(1) Mow lawns a minimum of one (1) time per week during the growing season and as otherwise needed to maintain a neat appearance.

(2) Lawn height shall not exceed one-half again the specified mowing height before mowing. Mow Bermuda lawn at a cutting height of one and one-half inches (1 1/2").

(3) Bag clippings during mowing or remove immediately after mowing is performed. Dispose of clippings off site.

(4) Immediately remove debris resulting from mowing operations from curbs, walks, drives and other surfaces.

Edging:

(1) Edge curbs, drives, walks and areas bordering lawn a minimum of one (1) time per month during the growing season and as otherwise needed to maintain a neat appearance. At minimum, edge all areas eight (8) times per year.

(2) Remove and dispose of off-site, all debris the same day as the areas are edged.

(3) Edge around trees, posts, utilities, etc. at frequency stated above. Do not use a weed-eater around trees and shrubs.

(4) Maintain all shapes and configurations of plant beds as originally installed. Provide a clean trenched line between all lawn and mulched areas.

Weed Control (McCallum Park, Byrd Park and SHAC Lawn Areas:

(1) Employ mechanical or chemical measures to insure that weeds or undesirable grasses do not encroach upon or establish in lawn areas.

(2) Apply contact herbicides on winter weeds in January. Spray on dormant Bermuda grass for wild onions and other winter weeds.

(3) Apply pre-emergent herbicides to lawn areas to prevent crabgrass (February and September if not over seeding with winter rye).

(4) Apply post-emergent herbicides to lawn areas as required after the emergence and identification of the weed problem.

Debris Removal: Remove and dispose of off-site, any debris such as paper, broken limbs, bottles, cans, extraneous leaves, weeds, etc. as necessary to maintain a manicured, neat and clean appearance.

TREES, SHRUB PLANTINGS AND BED AREAS:

Pruning:

- (1) Prune all ornamental plantings in accordance with standard horticultural practice to adequately maintain an attractive shape and fullness with respect to the intended character of the plant. Pruning shall be done with clean, sharp tools.
- (2) Remove all sucker growth (shoots that sprout out around base of tree trunk) as required.
- (3) Prune to remove dead and/or diseased wood as it occurs throughout the year.
- (4) Prune or thin shrubs a minimum of two (2) times per year, once in late spring/summer and once during the winter. Problem growth will be pruned as required. Time pruning to maintain proper flowering of flowering shrubs.
- (5) Remove and dispose of off-site, all debris the same day it is accumulated.

Mulching:

- (1) Rake bed surface areas one (1) time per month minimum to maintain a fresh appearance and to remove foreign material.
- (2) Replenish mulch two (2) times a year minimum, once in the spring and once in the fall. Replenish to the original specified depth of 2" after settlement.

Weed Control:

- (1) Contractor shall employ mechanical or chemical measures to ensure that weeds or undesirable plants or grasses do not encroach upon or establish in shrub areas.
- (2) Apply pre-emergent herbicides to shrub and bed areas to prevent summer annual broadleaf and grass-type weeds.
- (3) Apply contact herbicides for control or perennial broadleaf and grass-type weeds.

Debris Removal: Remove and dispose of off-site, any debris such as paper, broken limbs, bottles, cans, extraneous leaves, weeds, etc., from shrub plantings and bed areas as necessary to maintain a manicured and clean appearance.

RESOLUTION NUMBER 4507

A RESOLUTION AUTHORIZING THE CITY MANAGER TO REMIT PAYMENT FOR ADDITIONAL SEWER CAPACITY ADJUSTMENTS TO ENVIRO SERVICES LLC FOR SEWER SERVICES TO THE LIBERTY PARK SPORTS COMPLEX

WHEREAS, the City of Vestavia Hills (“City”) constructed and currently operates the Liberty Park Sports Park facilities located adjacent to Liberty Park; and

WHEREAS, the sports complex opened in 1998 and was provided sewer services by Enviro Services, LLC (“Enviro”), a privately owned sewer treatment facility owned and operated by the Liberty Park Joint Venture (“LPJV”) pursuant to an agreement for an estimated amount of waste water from the park; and

WHEREAS, for a period of approximately 14 years, the usage went unchecked until LPJV discovered that the allotment originally estimated wasn’t sufficient to cover the actual usage; and

WHEREAS, in a memorandum dated August 29, 2013, from the Public Services Director to the Finance Director, an explanation of an invoice from Enviro which was submitted for payment and gave a full explanation of the background of waste water generated from operation of the park along with the efforts both by the City and LPJV to determine any possible leaks or separate meters that might have skewed the calculated usage; and

WHEREAS, all research has shown that the invoice, a copy of which is attached and marked as Exhibit B and attached to this Resolution Number 4507, is due and payable in the amount of \$52,576; and

WHEREAS, the City Manager has reviewed the information and recommended approval of said remittance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City Manager is hereby authorized to remit payment to Enviro Services LLC payment for invoice number AUG-082013 in the amount of \$52,576; and
2. This Resolution Number 4507 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 23rd day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

**City of Vestavia Hills Public Services
513 Montgomery Highway
Vestavia Hills, AL 35216
205.978.0150**

Interoffice Memo

August 29, 2013

TO: Melvin Turner
Finance Director

FROM: Brian C. Davis *bed*
Public Services Director

RE: Enviro Services, LLC

Please see attached invoice from Enviro Services, LLC, which is the company that services the Liberty Park neighborhood and includes Liberty Park Sports Complex sewer services.

This invoice covers a period of approximately 14 years. When the sports complex opened in 1998, the allotment was estimated for the use of sewer service. It went unchecked for almost 13 years, but the Liberty Park Joint Venture discovered that the allotment that had been estimated was not covering the cost of waste water from the park.

Both the City of Vestavia Hills and the Joint Venture researched the amount of water and sewer usage to make sure there were no leaks in the system or any alternatives (i.e. private meters) that would have skewed the amount of usage. After extensive research and calculations, it has been determined that the usage is correct.

Mayor Zaragoza has been involved from the beginning. After speaking with the mayor this morning, he concurs that the invoice should be paid. The allotment for the complex has been updated to reflect actual costs, therefore there should not be any additional costs associated with the waste water (unless there are any assessments in the future, which would be system wide).

Please let me know if you have any questions.

CC: Butch Zaragoza, Mayor
Jeff Downes, City Manager

Enviro Services, L.L.C.

INVOICE

8000 Liberty Parkway, Suite 114
 Vestavia Hills, Alabama 35242
 Phone: (205)945-6430 Fax: (205)945-6455

DATE: 8/15/2013

ID: Sports Park

Bill To:
 City of Vestavia
 Post Office Box 660854
 Vestavia Hills, Alabama 35242

INVOICE #
 AUG-082013

TERMS
 Payable in full upon receipt. A delinquent charge of 1.5% per month will be charged for all past due balances.

DESCRIPTION	AMOUNT
<p>Additional Sewer Capacity per Sewer Agreement 3,392 gpd.</p> <p>Current Tap Fees = \$15.50 per gallon of Allotment</p> <p>3,392 * \$15.50 = \$52,576</p> <p style="text-align: right;">ACCOUNTING TRACE STAMP</p> <p>ACCTG PERIOD _____</p> <p>VENDOR # _____</p> <p>ACCT # _____</p> <p>PURCHASE ORDER # _____</p> <p>DUE DATE _____</p> <p>AMOUNT _____</p> <p>APPROVAL <i>[Signature]</i> _____</p>	<p>\$ 52,576.00</p>
BALANCE DUE	\$ 52,576.00

REMITTANCE ADDRESS:
 8000 Liberty Parkway, Suite 114
 Vestavia Hills, Alabama 35242

ORDINANCE NUMBER 2464

AN ORDINANCE AMENDING SECTIONS 4 AND 5 OF ORDINANCE NUMBER 2427 – AN ORDINANCE ESTABLISHING AND CREATING THE ALCOHOL ABUSE EDUCATION PROGRAM AND THE TRAFFIC SAFETY EDUCATION PROGRAM FOR THE MUNICIPAL COURT OF THE CITY OF VESTAVIA HILLS, ALABAMA.

THIS ORDINANCE NUMBER 2464 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 23rd day of September, 2013.

WITNESSETH THESE RECITALS:

WHEREAS, on December 26, 2012, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 2427 to establish and create the Alcohol Abuse Education Program and the Traffic Safety Education Program for the Municipal Court of the City of Vestavia Hills, Alabama; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to amend Sections 4 and 5 of said Ordinance Number 2427 to add a fee for rescheduling and to reallocate the distribution of funds derived from said program.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, SECTIONS 4 AND 5 OF ORDINANCE NUMBER 2427 ARE AMENDED IN ITS ENTIRETY AS FOLLOWS:

“4. The Clerk of the Municipal Court shall be responsible for scheduling of classes, instructors and facilitators and setting reasonable fees for the payment of the instructors and facilitators. The Clerk of Municipal Court shall adopt rules and regulations for the operation of the established educational programs, criteria for acceptance and completion and established fees for the appropriate program. These rules and regulations, policy and procedures, and fee list shall be readily available for public inspection. If, for any reason, a class needs to be rescheduled or cancelled, a penalty of \$25.00 shall be charged from fees already collected.

5. All monies collected as a result of the operation of the Alcohol Abuse Education Program and the Traffic Safety Education Program in the form of registration fees, evaluation fees and/or tuition fees shall be maintained in a separate account with the City Finance Department to be distributed as follows:

(a) to fully cover the cost of services provided by the previously mentioned education programs;

(b) an amount equivalent to Forty Dollars and Fifty Cents (\$40.50) per individual participant to the City's "Court and Correction Fund"; and

(c) an amount equivalent to Ten Dollars (\$10.00) per applicant to the "Municipal Court Judicial Administrative Fund"; and

(d) an amount equivalent to Thirty Seven Dollars (\$37.00) per applicant along with all rescheduling fees shall be applied to the City's "General Fund"; and

(e) all remaining monies to be used for the purpose of providing various other traffic safety education and awareness programs to the Vestavia Hills community through the Traffic Safety Office of the Vestavia Hills Police Department or any other police activities including training of officers. The collection and use of these monies shall be under the supervision of the Police Chief and Finance Director."

Effective Date: This ordinance shall become effective upon its approval, adoption, enactment and publication by posting as set forth in Title 11-45-8(b), *Code of Alabama, 1975*.

Severability: If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance which shall continue in full force and effect notwithstanding such holding.

DONE, ORDERED, ADOPTED and APPROVED this the 23rd day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2464 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 23rd day of September, 2013 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2013.

Rebecca Leavings
City Clerk

INTEROFFICE MEMORANDUM

DATE: August 23, 2013
TO: Jeff Downes, City Manager
FROM: Rebecca Leavings, City Clerk



RE: Proposed Amendments to Ordinance Number 2427, Traffic Education

On December 26, 2012 the City Council voted to adopt and approve Ordinance 2427 to establish a traffic education program for the City. The charge for said program would be \$150 per applicant and the proceeds would be distributed as follows: (1) the first \$10 would be deposited to the "Municipal Court Judicial Administrative Fund"; (2) an amount equivalent to \$55 would be deposited to the City's "Court and Correct Fund; (3) all remaining monies would be utilized to defer the expenses/payroll of the program and for the purpose of providing various other traffic safety education and awareness programs and other Police activities.

The program has been a success since its inception. During the budget review, the Mayor questioned the amount of the proceeds into each program and it was later determined that some of the proceeds should have been diverted into the City's general fund but was left out of the Ordinance. Also, the Police Chief has determined that additional funding from this program could be better utilized for training of Police personnel. Therefore, both myself and Chief Rary felt a re-write of the Ordinance was needed.

Attached you will find a proposed re-write of the original ordinance that allocates the proceeds per applicant as follows: (1) an amount equivalent to \$10.00 will go to the "Municipal Court Judicial Administrative Fund;" (2) an amount equivalent to \$40.50 will go to the City's "Court and Correction Fund;" (3) an amount equivalent to \$37.00 will go to the City's General Fund; and (4) the remaining monies will be used for the purpose of providing various traffic safety education and awareness programs, other police activities including training of officers.

Also attached you will find an expected income distribution for the next fiscal year based upon enrollment of the program over the past 3 months. If classes are held as they have the past 3 months, the distribution of the monies is anticipated [in yellow] to be as follows: Judicial Administrative Fund - \$6,240; Court and Corrections - \$25,272; General Fund - \$23,088; Police Education - 39,000 (netted to \$23,400 following defray of expenses). It should be noted in this reallocation that the amounts delegated to the first three funds would be the same from court costs if a ticket is paid. The only new funding generated goes to the Police Education/Training fund. Also, the defendant gets a \$30 break in his ticket cost and no points on his license.

This draft also institutes a penalty for a rescheduling or "no show" of the class.

Please review the attached and advise.

Cc: Alberto C. Zaragoza, Mayor
Dan Rary, Police Chief

	Traffic School Attendance	
Absent		
1	7-May-13	26
0	23-May-13	26
4	4-Jun-13	24
1	20-Jun-13	27
5	16-Jul-13	27
0	25-Jul-13	26
Total Enrollment		156
Total Revenue		\$23,400.00
Average Enrollment		52
Average Monthly		\$7,800.00
Estimated Annual Total revenues		\$93,600.00

	Traffic School	Paid Ticket	
Judicial Admin Fund	\$6,240.00	\$6,240.00	Judicial Admin Fund
Court and Corrections	\$34,320.00	\$25,272.00	Court and Corrections
Police Education	\$53,040.00	\$23,088.00	General Fund
Police Net	\$37,440.00	-\$15,600.00	Police Education
	\$93,600.00	\$54,600.00	

Reallocate:	Annual as Proposed	Proposed	Current
Judicial Admin Fund	\$6,240.00	\$10.00	\$10.00
Court and Corrections	\$25,272.00	\$40.50	\$55.00
General Fund	\$23,088.00	\$37.00	\$0.00
Police Education/Training	\$39,000.00	\$62.50	\$85.00
Police Net/Expenses	\$23,400.00	\$1300 per month	\$1300 per month
	\$93,600.00	\$150.00	\$150.00

ORDINANCE NUMBER 2465

AN ORDINANCE ESTABLISHING AND CREATING THE COLLISION AVOIDANCE TRAINING PROGRAM FOR CITY OF VESTAVIA HILLS, ALABAMA.

THIS ORDINANCE NUMBER 2465 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 23rd day of September, 2013.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills recognizes that automobile crashes are the leading cause of unintentional injury in Alabama and that automobile crashes continue to be the leading cause of death and injury to teens in our country/ and

WHEREAS, the City of Vestavia Hills recognizes the depth of this problem and the impact it has on the quality of life for our citizens; and

WHEREAS, the establishment of a preventative advanced car control training and defensive driving course geared for new or teen drivers is a proactive step in reducing said impact; and

WHEREAS, the City of Vestavia Hills, more specifically, the Vestavia Hills Police Department and the National Traffic Safety Academy, Inc. has a Grant of Lease Agreement; and

WHEREAS, the Grant of Lease Agreement affords the Vestavia Hills Police Department a nontransferable, nonexclusive right, privilege and authorization to teach the NTSA Collision Avoidance Training Program (the NTSA CAT Program); and

WHEREAS, the City, more specifically the Vestavia Hills Police Department, wishes to create and establish Collision Avoidance Training and defensive driving school for teen drivers as described; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to establish a Collision Avoidance Training and defensive driving school as described in the sections above.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. There is hereby established a Collision Avoidance Training and defensive driving program for teen drivers to be known as “CAT”, which shall be under the supervision of the Chief of Police or his/her designee. Each person attending the course shall be charged no more than one hundred and twenty five dollars (\$125.00) for evaluation, registration, supplies and instructor(s) fees.
2. The Chief of Police or his/her designee shall be responsible for scheduling of classes, instructors and facilitators. The Chief of Police or his/her designee shall adopt rules and regulations for the operation of the established educational program, criteria for acceptance and completion and established fees for the appropriate program. These rules and regulations, policy and procedures, and fee list shall be readily available for public inspection.
3. All monies collected as a result of the operation of the Collision Avoidance Training Program in the form of registration fees, evaluation fees and/or tuition fees shall be maintained in a separate account with the City Finance Department to be distributed as follows:
 - a. to fully cover the cost of services provided by the previously mentioned education programs; and
 - b. all remaining monies to be used for the purpose of providing various other traffic safety education and awareness programs to the Vestavia Hills community through the Traffic Safety Office of the Vestavia Hills Police Department or any other police activities. The collection and use of these monies shall be under the supervision of the Police Chief and Finance Director.
4. This ordinance shall become effective upon its approval, adoption, enactment and publication by posting as set forth in Title 11-45-8(b), *Code of Alabama, 1975*.
5. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be

construed to invalidate or impair the remainder of this ordinance which shall continue in full force and effect notwithstanding such holding.

DONE, ORDERED, ADOPTED and APPROVED this the 23rd day of September, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2465 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 23rd day of September, 2013 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2013.

Rebecca Leavings
City Clerk

Rebecca Leavings

From: Danny Rary
Sent: Wednesday, September 04, 2013 2:27 PM
To: Rebecca Leavings
Subject: CAT ord

Pat Boone approved the CAT ord and said it was logical to do it the same as the ticket classes.



Danny P. Rary
Chief of Police
Vestavia Hills Police Department
513 Montgomery Highway
Vestavia Hills, Alabama 35216
205-978-0109 Office
205-978-01232 FAX
drary@ci.vestaviahills.al.us

