

**Vestavia Hills**  
**City Council Agenda**  
**September 9, 2013**  
**5:00 PM**  
***(reconvened September 23, 2013)***

1. Call to Order
2. Presentation – Parks and Recreation Foundation

**Old Business**

3. 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)*
4. 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)*
5. Motion For Adjournment

**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. (continued to September 23, 2013) as follows:

**Section 1.** A Public Hearing was held on September 9, 2013 at 5:00 p.m. (continued to September 30, 2013) 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 23<sup>rd</sup> 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 23<sup>rd</sup> day of September, 2013 while in regular session on Monday, September 9, 2013 (continued to September 23, 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 9<sup>th</sup> 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.

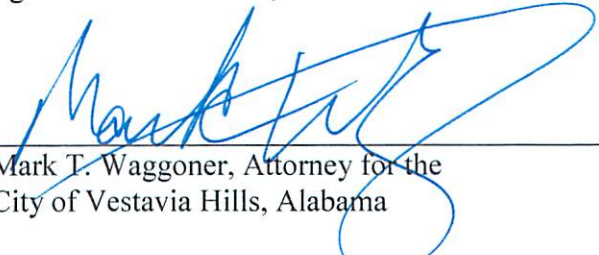
Anyone interested in the status of these proceedings should inquire with the Vestavia Hills City Clerk at (205) 978-0184 or at 513 Montgomery Highway, Vestavia Hills, AL 35216.

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*."



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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](mailto: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 16<sup>th</sup> 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](mailto: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 16<sup>th</sup> 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.

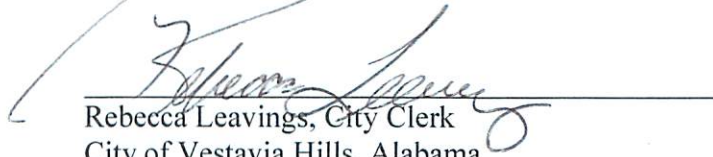
Notice that the Appropriate Municipal Official has made a finding that the Subject Property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing will be held on the date assigned herein will also be given to all 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. (continued to September 23, 2013), as follows:

**Section 1.** A Public Hearing was held on September 9, 2013 at 5:00 p.m. (continued to September 23, 2013) 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 23<sup>rd</sup> 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 23<sup>rd</sup> day of September, 2013 while in regular session on Monday, September 9, 2013 (continued to September 23, 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 9<sup>th</sup> 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.

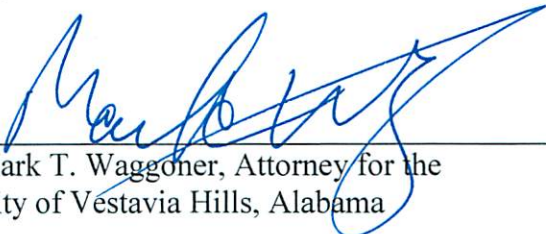
11. A failure by the Vestavia Hills City Council to act on the findings of the Appropriate Municipal Officials within ninety (90) days from the date of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” shall constitute an abdication of the Appropriate Municipal 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*.”



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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](mailto: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 16<sup>th</sup> 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](mailto: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 16<sup>th</sup> 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 44<sup>th</sup> 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



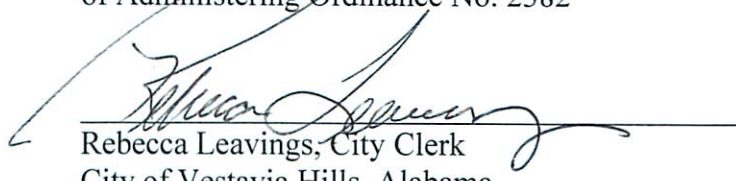
demolition and that a public hearing will be held on the date assigned herein will also be given to all interested parties and to the public at large by publication in the *Alabama Messenger*.



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



**Vestavia Hills  
City Council Agenda  
September 23, 2013  
5:00 PM**

6. Call to Order
7. Roll Call
8. Invocation – Steve Ammons
9. Pledge of Allegiance
10. Announcements, Candidate and Guest Recognition
11. City Manager’s Report
12. Councilors’ Reports
13. Proclamation – Fire Prevention Week – October 6-12, 2013
14. Financial Reports – Melvin Turner, III, Finance Director

**Old Business**

15. Resolution Number 4505 – A Resolution Accepting Bids For Non-Athletic Grounds Maintenance For Parks And Recreation And Vestavia Hills Library In The Forest
16. 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*)
17. Ordinance Number 2464 – An Ordinance Amending Ordinance Number 2427 Regarding Traffic Education (*public hearing*)
18. Ordinance Number 2465 – An Ordinance Establishing And Creating The Collision Avoidance Training Program For The City Of Vestavia Hills (*public hearing*)

**New Business**

19. Resolution Number 4508 – A Resolution Approving An Alcohol License For T Waynes BBQ Smokehouse LLC d/b/a T Waynes BBQ Smokehouse; Timothy Bridges, Executive
20. Resolution Number 4509 - A Resolution Approving An Alcohol License For WCS Ventures, LLC D/B/A Candy’s Wine Experience, 640 Olde Towne Road; Candace Layne West, Executive
21. Resolution Number 4510 – A Resolution Declaring Personal Property As Surplus And Directing The Sale/Disposal Of Said Property

22. Resolution Number 4511 - A Resolution Authorizing The Mayor And City Manager To Execute And Deliver And Agreement With Retail Strategies For Economic Development Consulting Services
23. Resolution Number 4512 – A Resolution authorizing the City Manager to execute and deliver a Memorandum of Understanding (MOU) with the Vestavia Hills Chamber of Commerce for Economic Development Services
24. Resolution Number 4513 - A Resolution Authorizing The City Manager To Execute And Deliver An Authorization to Bind Insurance Coverage With J. Smith Lanier And Company For Excess Liability Insurance Coverage And Automobile Physical Damage Coverage
25. Resolution Number 4514 - A Resolution Changing The Date Of The First City Council Meeting In November From November 11, 2013 To November 13, 2013

**First Reading (No Action Taken At This Meeting)**

26. Ordinance Number 2466 – An Ordinance Finding And Determining That Real Property Owned By The City Of Vestavia Hills, Alabama Being Approximately 1.66 +/- Acres Of The Property Located At 1112 Montgomery Highway And An Approximately 22, 000 Square Foot Building Located On The Property Is Not Needed For Public Or Municipal Purposes; To Accept An Offer By Commercial Reality Partners, LLC
27. Citizens Comments
28. Executive Session
29. Motion For Adjournment

**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 4505 shall become effective upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 23<sup>rd</sup> 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
MB Southern Contractors	\$ 69,606.48
Tru Green	\$ 64,500.00
Natural Effect	\$ 85,920.00
Landscape Workshop	\$ 138,579.00
Gibson Landscape	

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 (31<sup>st</sup>) 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 14<sup>th</sup> 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 23<sup>rd</sup> 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><b>Additional Sewer Capacity per Sewer Agreement 3,392 gpd.</b></p> <p>Current Tap Fees = \$15.50 per gallon of Allotment</p> <p>3,392 * \$15.50 = \$52,576</p> <p style="text-align: center;"><b>ACCOUNTING TRACE STAMP</b></p> <p>ACCTG PERIOD _____</p> <p>VENDOR # _____</p> <p>ACCT # _____</p> <p>PURCHASE ORDER # _____</p> <p>DUE DATE _____</p> <p>AMOUNT _____</p> <p>APPROVAL <u><i>[Signature]</i></u></p>	<p>\$ 52,576.00</p>
<b>BALANCE DUE</b>	<b>\$ 52,576.00</b>

REMITTANCE ADDRESS:  
 8000 Liberty Parkway, Suite 114  
 Vestavia Hills, Alabama 35242

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 17, 2012

By Hand Delivery

Confidential and Privileged  
Communication Between Attorney and Client  
Not Intended for Publication or Distribution

Mayor Alberto C. Zaragoza, Jr.  
Vestavia Hills Municipal Center  
P. O. Box 660854  
Vestavia Hills, Alabama 35266-0854

In Re: Proposed Sewer Service Agreement Between  
Enviro Services, LLC and the City of Vestavia Hills

Dear Mayor Zaragoza:

Recently, you hand delivered to me the following documents with a request that I review the same and provide you with my written legal opinion:

1. Letter, dated July 3, 2012, from Sam G. Lowery, III as Vice President of Enviro Services, LLC to you.
2. Copy of Enviro Services, LLC Application for Sewer Services signed by former Vestavia Hills Mayor C. Pat Reynolds on July 28, 1997.
3. Letter, dated June 12, 2012, from Walter Schoel, III to Enviro Services, LLC.
4. Enviro Services, LLC Commercial Sewer Service Agreement and Covenants and Right of Lien for Sewer Assessments by and between Enviro and the City.
5. Invoice from Enviro to the City in the amount of \$56,993.50.

The purpose of this letter is to provide you with my written legal opinion and some recommendations.

## I. FACTS

A. **PLANNING FOR A SPORTS COMPLEX:** On February 21, 1994, the City Council of the City of Vestavia Hills, Alabama approved and adopted Resolution Number 2548 authorizing the negotiation of the purchase of approximately 70 acres of land adjacent to Liberty Park to be used by the City as a park and recreational site.

B. **CITY PURCHASED PROPERTY FOR A PARK:**

1. **Deed:** On May 9, 1995, the City of Vestavia Hills, Alabama ("City") for and in consideration of the payment of \$1,039,592.04 purchased 69.749 acres from Liberty Park Joint Venture ("LPJV") to be used a sports facility complex. The deed from LPJV to the City was dated May 9, 1995, filed in the office of the Judge of Probate of Jefferson County, Alabama on that date and recorded at Instrument 9505/5368.

2. **Restrictive Covenant:** The property is subject to a Restrictive Covenant limiting its use to a park. The Restrictive Covenant was filed in the office of the Judge of Probate of Jefferson County, Alabama on May 9, 1995 and recorded at Instrument 9505/5367.

3. **Zoning:**

(a) **By Jefferson County:** The Jefferson County Commission rezoned the land on April 19, 1995 in zoning case number Z-95-30 from A-1 (agricultural) to C-2 (outdoor amusement) so that the City could use the property as a sports facility complex.

(b) **By City of Vestavia Hills:** The City and LPJV filed an application to rezone the property to a Vestavia Hills PUD zoning classification. The public hearing was held on January 11, 2001 and the City Council ultimately adopted an ordinance rezoning the property to a PUD zoning classification.

C. **FINANCING:** On December 4, 1996, the City Council for the City of Vestavia Hills, Alabama approved Resolution Number 2756 authorizing the Mayor to borrow up to \$3,000,000.00 for the completion of the construction and improvement of the new sports facility complex at Liberty Park.

D. **ARCHITECT:** Alan Blalock prepared the plans and specifications for the construction of the Vestavia Hills Sports Complex at Liberty Park.

E. **ENVIRO SERVICES, LLC:** Enviro is the owner of that certain sewer system within, adjacent or approximate to the Liberty Park development (i) which includes, without limitation, a waste water treatment plant system, raw sewage and effluent pump stations, effluent spray absorption field irrigation system, the Low Pressure Sewer System (as hereinafter defined), and any and all other sewage collections systems, all machinery, equipment, mains, pipes, fixtures, fittings, valves, gravity sewer mains, manholes, force mains, sewer lateral and appurtenances (ii) which is supplying, or may in the future supply, Sewer Service (as defined

herein) to lots, dwellings, buildings, recreational facilities or other structures located in any residential or commercial subdivisions within, adjacent or approximate to the Liberty Park development (collectively, the "Utility System").

**F. EVENTS OF 1996:**

1. **Estimation of Sewer Charges:** On July 25, 1996, Walter Schoel Engineering Company, Inc. reviewed the Vestavia Hills Sports Park plans prepared by Blalock Pate Associates, dated May 31, 1996, in order to estimate sewerage flows. It concluded that the average daily flow from the facility would be 1,250 gallons per day.

2. **Offer by Enviro:** On September 15, 1996, Enviro by and through Ronald O. Durham offered to sell sewer services to the City based on an estimated flow of 1,250 gallons per day.

3. **Request for Contract:** On December 12, 1996, Enviro by and through Ronald O'Neal Durham requested Mayor Reynolds to sign the Sewer Application and Commercial Sewer Agreement.

**G. EVENTS OF 1997:**

1. **Application by City:** On July 28, 1997, Mayor Reynolds applied to Enviro for sewer services based on an estimated flow of 1,250 gallons per day.

**H. EVENTS OF 1999:**

1. **Request for Contracts:** On July 13, 1999, Robert C. McLean of Torchmark Development requested City Clerk Sonny Jones to sign the following two documents:

(a) Sewer Capacity Restriction and Agreement based on 1,250 gallons per day; and

(b) Commercial Sewer Service Agreement based on 1,250 gallons per day.

**I. EVENTS OF 2012:**

1. **Estimate:** On June 12, 2012, Walter Schoel, III estimated that the current average metered sanitary flow (taken from water meter readings) is approximately 4,927 gallons per day.

2. **Request for Contract:** On July 3, 2012, Enviro by and through Sam G. Lowery, III as Vice President requested the City to:

(a) Sign a Commercial Sewer Service Agreement and Covenant in Right of Lien for Sewer Assessment; and

(b) Pay an invoice in the amount of \$56,993.50.

## **II. DULY EXECUTED DOCUMENT**

I do not have copies of any of the alleged duly executed documents signed by both Enviro and the City:

- A. Application.
- B. Commercial Sewer Service Agreement.
- C. Sewer Capacity Restriction Agreement.

I requested City Clerk Rebecca Leavings to see if the City actually has any of the duly executed documents and furnish copies to me. To date, she has been unable to find them. I have no personal knowledge as to whether or not the above documents were ever signed by both the City and Enviro. Presumably, they were not executed because Becky does not have the documents.

## **III. ALABAMA LAW ON LIEN AGAINST PUBLIC PROPERTY**

It is a well-established rule of law that a materialmen's lien will not attach to the public property owned by the state, county or a municipal corporation. *Scruggs and Echols v. Decatur*, 155 Ala. 616 (1908), and *Nunnally v. Dorand*, 110 Ala. 539.

## **IV. SOME INTERESTING TERMS AND PROVISIONS OF THE PROPOSED COMMERCIAL SEWER SERVICE AGREEMENT**

A. To my knowledge, Enviro is the "only game in town." It is my understanding that the sanitary sewer service operated by Jefferson County is not available in the Liberty Park community.

B. The bad news is that Enviro can terminate the agreement upon 15-days prior written notice as set forth in Section 2.

C. The good news is that Enviro, pursuant to Section 3-F, will charge the City consistent with other customers whose land use and operations are similar to those of the City.

V. MY RECOMMENDATIONS

Enviro seems to be the only available option to the City for sanitary sewer services. Therefore, I recommend that you sign the agreement. Perhaps, the City should monitor the monthly water use and seek ways to reduce the daily flows.

I am available to discuss this matter at your convenience.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Randy Robertson (by hand)

P.S. I am returning the following documents to you:

- (a) Letter, dated July 3, 2012, from Sam G. Lowery, III as Vice President of Enviro Services, LLC to you.
- (b) Copy of Enviro Services, LLC Application for Sewer Services signed by former Vestavia Hills Mayor C. Pat Reynolds on July 28, 1997.
- (c) Letter, dated June 12, 2012, from Walter Schoel, III to Enviro Services, LLC.
- (d) Enviro Services, LLC Commercial Sewer Service Agreement and Covenants and Right of Lien for Sewer Assessments by and between Enviro and the City.
- (e) Invoice from Enviro to the City in the amount of \$56,993.50.

**ENVIRO SERVICES, LLC**

8000 Liberty Parkway, Suite 114  
Vestavia Hills, AL 35242  
205/945-6430

July 3, 2012

Mayor Butch Zaragoza  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

Re: Sewer Service Allocation  
Vestavia Hills Sports Park

Dear Mayor Zaragoza:

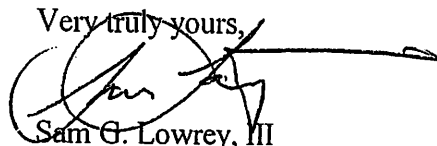
As stated in the attached Application for Sewer Service dated July 28, 1997, the total volume of water, sewage or other effluent entering Enviro's sewer system from the Vestavia Hills Sports Park is limited to a total of 1,250 gallons per day. The City has previously paid sewer tap fees to Enviro based on that allocation.

I enclose a letter dated June 12, 2012, from Walter Schoel Engineering stating that Sports Park's sewer service usage currently averages approximately 4,927 gallons per day which exceeds the limitation by approximately 3,677 gallons per day. These circumstances will require an increase in the Sports Park's sewer service allocation from 1,250 gallons per day to 4,927 gallons per day to accommodate the Sports Park's actual flow into the sewer system.

On that basis, please execute and return to me the enclosed Commercial Sewer Service Agreement which increases the Sports Park's sewer allocation to 4,927 gallons per day. The additional sewer tap fee for the increase in the sewer allocation totals \$56,993.50 (3,677 x \$15.50 per additional gallon per day), per the enclosed invoice. Please include a check in that amount, payable to Enviro Services, when returning the executed Commercial Sewer Service Agreement.

Let me know of any questions regarding the enclosed. My direct dial number is 205/945-6472. Thank you for your attention in this matter.

Very truly yours,



Sam G. Lowrey, III  
Vice President

SGL:ac1  
Enclosures

**ENVIRO SERVICES, L.L.C. APPLICATION FOR SEWER SERVICE**

1. Name of Applicant(s): City of Vestavia, Ala, Alabama, an Alabama municipal corporation
2. Applicant(s) Status:  Owner  Builder  Other (Describe) \_\_\_\_\_
3. Type of Occupancy:
 

<input type="checkbox"/> Single Family Residential	(see Exhibit A for categories)
<input type="checkbox"/> Single Family - Garden Homes	<input type="checkbox"/> Commercial, Category One
<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> New Building
<input type="checkbox"/> Multi-Family One or Two Bedroom	<input type="checkbox"/> Building Addition
<input type="checkbox"/> Multi-Family Three Bedroom	<input type="checkbox"/> Remodel
	<input checked="" type="checkbox"/> Commercial, Category Two
	<input type="checkbox"/> Commercial, Category Three
4. Address of Lot (the "Property"): 4700 Sicard Hollow Road, Birmingham, Alabama 35242
5. Legal Description of Lot: Lot 1, Vestavia Sports Park Survey, Map Book 181, Page 54, Jefferson County, Alabama
6. Type of Service:  Gravity  
 Low Pressure  
 Other (Describe): \_\_\_\_\_
7. Number of each Fixture to be installed:

	TOTAL FIXTURES		TOTAL FIXTURES
Water Closets		Dish Washers	
Bathtubs		Garbage Grinders	
Shower Baths		Washing Machines	
Lavatories		Floor Drains	
Sinks		Drinking Fountain	
Urinals		Sump --- Pumps --- Ejectors	
<b>TOTAL FIXTURES</b>		See Exhibit "D" for memorandum regarding sewer allocation	N/A

8. The undersigned applicant(s) warrants and represents that in connection with preparing the Property for sewer service, the applicant(s) will engage a licensed plumber and that such plumber will install all sewer systems in accordance with all applicable laws. The undersigned applicant(s) agrees to indemnify and hold harmless Enviro Services, L.L.C. from all damages, costs, claims, and expenses (including reasonable attorneys', experts', and consultants' fees), in law or in equity, that may at any time arise or result from damages to property and personal injury, as well as all environmental liability, received or incurred by reason of or in the course of performing any work in connection with this application.
9. The undersigned applicant(s) understands and acknowledges that in exchange for Enviro Services, L.L.C. furnishing sewer service to the applicant(s), the applicant(s) shall be subject to a monthly use fee. The applicant(s) also may be required to pay a tap fee. The applicable tap fees and use fees are set forth in Exhibit A, attached hereto and incorporated herein. Enviro Services, L.L.C. will determine the applicable category of commercial establishments on a case by case basis. Enviro Services, L.L.C. reserves the right to change such tap fees and use fees without notice.
10. In the event the applicant(s) requires low pressure sewer service in connection with the standard service provided by Enviro Services, L.L.C., the applicant(s) shall be required to install a grinder pump and other applicable equipment and appurtenances



June 12, 2012

ENVIRO Services, LLC  
8000 Liberty Parkway, Suite 114  
Vestavia Hills, Alabama 35242

Attention: Kenneth Hager

Reference: ENVIRO allotment - Vestavia Hills Sports Park

Dear Mr. Hager:

The Vestavia Hills Sports Park at Liberty Park, which is tied to the ENVIRO Services sanitary sewer system has been consistently exceeding its sanitary flow allotment from ENVIRO Services. The park is currently allocated 1,250 gpd of flow. The current average metered sanitary flow (taken from water meter readings) is approximately 4,927 gpd. This is an overage of 3,677 gpd. The allocation for the Sports Park should be increased to 4,927 gpd and an impact fee of \$56,993.50 (\$15.50 per gpd) assessed for the additional 3,677 gpd, in accordance with the terms and conditions of service of ENVIRO Services.

Please contact me if you have any questions.

Yours very truly,

WALTER SCHOEL ENGINEERING CO., INC.



Walter Schoel, III, Ph.D., P.E.  
Ala. Reg. No. 16519  
President

**ENVIRO SERVICES, L.L.C.  
COMMERCIAL SEWER SERVICE AGREEMENT AND COVENANTS  
AND RIGHT OF LIEN FOR SEWER ASSESSMENTS**

**THIS COMMERCIAL SEWER SERVICE AGREEMENT AND COVENANTS AND RIGHT OF LIEN FOR SEWER ASSESSMENTS** ("this Agreement") is made and entered into as of \_\_\_\_\_, 2012, by and between **ENVIRO SERVICES, LLC**, an Alabama limited liability company with its principal office located at 8000 Liberty Parkway, Suite 114, Vestavia Hills, Alabama 35242 ("Enviro"), and **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation, having a principal place of business located 513 Montgomery Highway, Vestavia Hills, Alabama 35216 ("Customer").

**RECITALS**

A. Enviro is the owner of that certain sewer system within, adjacent or approximate to the Liberty Park development (i) which includes, without limitation, a waste water treatment plant system, raw sewage and effluent pump stations, effluent spray absorption field irrigation system, the Low Pressure Sewer System (as hereinafter defined), and any and all other sewage collection systems, all machinery, equipment, mains, pipes, fixtures, fittings, valves, gravity sewer mains, manholes, force mains, sewer laterals and appurtenances (ii) which is supplying, or may in the future supply, Sewer Service (as defined herein) to lots, dwellings, buildings, recreational facilities or other structures located in any residential or commercial subdivisions within, adjacent or approximate to the Liberty Park development (collectively, the "Utility System").

B. For purposes of this Agreement, the term "Low Pressure Sewer System" shall mean and refer to that certain system of small diameter pressure sewer mains in, on, under or through the Liberty Park development and properties proximate or adjacent thereto, which is owned by Enviro and/or for which Enviro has the duty to maintain, repair and replace by contract, assignment, agreement or otherwise, and which is generally comprised of pipes, fittings, and valves constituting a "Low Pressure Sewer Main". The Low Pressure Sewer System begins at the point at which any Low Pressure Sewer Main discharges into a gravity sewer main of the Utility System, and ends at the point at which any low pressure sewer lateral serving any property within the Liberty Park development connects with any Low Pressure Sewer Main (typically adjacent to the front property line of the applicable property).

C. For the purposes of this Agreement, the term "Low Pressure Customer System" shall mean and refer to the low pressure sewer lateral(s) and grinder pump or similar appliance

related thereto, if any, that are owned by Customer, and for which the Customer has the duty to maintain, repair and replace, located in, under or upon the Premises (as hereinafter defined), subject to Section 6.B below. The Low Pressure Customer System located in, under or upon the Premises, if any, begins at the point at which the low pressure sewer lateral installed at, on, in or under the Premises connects with the Low Pressure Sewer Main, and ends at (and includes) the related grinder pump or similar appliance installed at, on, in or under the Premises, if any.

D. Customer desires to obtain, and Enviro desires to deliver, Sewer Service upon the terms and conditions contained herein.

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

**Section 1. Agreement to Sell and Purchase.** Enviro shall sell and deliver to Customer, and Customer shall purchase from Enviro, during the term of this Agreement, all Sewer Service (as defined herein) which Customer shall require on Customer's premises or any part thereof for lawfully generated sewage located at 4700 Sicard Hollow Road, Vestavia Hills, AL 35242, described as Lot 1, Vestavia Sports Park Survey, as recorded in Map Book 181, page 54, in the Probate Office of Jefferson County, Alabama (the "Premises"), in accordance with all applicable federal, state and local laws, regulations, rules, and ordinances, including, without limitation, the rules duly and regularly established from time to time and on file with the Alabama State Department of Health and/or the Jefferson County Department of Health.

**Section 2. Term of Sewer Service.** Sewer Service under this Agreement shall begin on the date hereof, and continue until terminated by either party to this Agreement upon giving the other party fifteen (15) days' prior written notice of such termination, unless earlier terminated in accordance with Section 11 of this Agreement. In the event Customer fails to give Enviro notice of the termination of this Agreement due to a sale of the Premises, Customer shall remain obligated under this Agreement and liable for all fees, charges and assessments due hereunder until such time as the new owner of the Premises has entered into a agreement with Enviro for Sewer Service to the Premises. It is specifically agreed that upon the full execution and recordation of this Agreement, the Commercial Sewer Service Agreement with respect to the Premises, dated September 15, 1996, by and between Enviro and Customer, shall be terminated and shall be of no further force or effect.

**Section 3. Sewer Service Fees; Payment Thereof.** Customer hereby acknowledges and agrees that the following fees and any other amounts due hereunder are in addition to, and not in lieu of, any sums paid to any commercial owners' associations (or any other person or entity) for costs or other expenses relating to the Utility System:

A. **Tap Fees.** For all existing, newly constructed and/or remodeled or renovated buildings and other structures or improvements on the Premises, Customer shall pay to Enviro,

at Enviro's principal office, the sewer tap fees applicable to the Premises or such other fees as determined by Enviro on a case by case basis, in its sole discretion ("Sewer Tap Fees"), unless all applicable Sewer Tap Fees have been previously paid in full. Enviro may, in Enviro's sole discretion, amend, modify or change the Sewer Tap Fees relating to future obligations between Enviro and the Customer at any time and from time to time. All said amendments, modifications or changes to the Sewer Tap Fees shall become effective on the date designated by Enviro.

B. Monthly Sewer Fees. Customer shall pay to Enviro, at Enviro's principal office, the monthly sewer use fees applicable to Sewer Service delivered to the Premises or such other fees as determined by Enviro on a case by case basis, and amended, modified or changed by Enviro at any time and from time to time, all in Enviro's sole discretion (the "Monthly Sewer Fees"), commencing on the date of this Agreement, and continuing on the first day of each successive month thereafter during the term of this Agreement. In the event this Agreement is dated other than the first day of the month, the applicable Monthly Sewer Fee shall be prorated from the date of this Agreement to the first day of the following month. All said amendments, modifications or changes to the Monthly Sewer Fees shall become effective on the date Enviro notifies Customer thereof or at such later time as designated by Enviro. Monthly bills shall be rendered to Customer, in arrears, for the Monthly Sewer Fees and mailed to the address of the Premises set forth herein. The Monthly Sewer Fees shall be due and payable to Enviro at its principal office upon receipt by Customer of the monthly bill therefor and shall become delinquent if not paid by Customer within fifteen (15) days of the date of mailing.

C. Interest on Delinquent Monthly Sewer Fees; Sewer Assessments. Any Monthly Sewer Fees received by Enviro more than fifteen (15) days after the date of mailing of the monthly bill therefor shall be delinquent and shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to Customer by law, from and after the fifteenth (15) day past the due date of any such Monthly Sewer Fees until the same is paid in full. Any delinquent Monthly Sewer Fees, together with such accrued interest, are herein collectively referred to as a "Sewer Assessment".

D. Special Sewer Assessments. Customer further agrees to pay to Enviro any and all extraordinary costs incurred by Enviro in the delivery of Sewer Service to the Premises and/or any repairs or replacement of parts, components, equipment or material required due to damage to the Utility System caused by Customer, as set forth in a written notice from Enviro to Customer, including, without limitation, any costs incurred by Enviro due to Customer's violation or breach of the provisions of Section 13 below. Any payment of such costs received by Enviro more than fifteen (15) days after the date of the mailing of such notice shall be delinquent and shall accrue simple interest at the same rate as stated above in Section 3.C. until paid in full. Such delinquent payment, together with such accrued interest, is herein collectively referred to as a "Special Sewer Assessment".

E. Costs of Enforcement. In the event Enviro employs an attorney or otherwise takes any legal action in attempting to collect any payments due hereunder or otherwise enforce this Agreement, Customer shall pay all attorneys' fees, court costs and all other expenses paid or incurred by Enviro in such efforts.

F. Consistency of Charges. All fees and charges payable pursuant to this Section 3 shall be generally consistent with such fees and charges being charged by Enviro to other of its sewer customers whose land use and operations are similar to those of the Customer on the Premises.

**Section 4. Use and Type of Sewer Service.** All Sewer Service delivered under this Agreement shall be used only for the following purposes and only at the Premises. The term "Sewer Service", as used in this Agreement, shall mean and refer to the collection, treatment and disposal from the Premises of domestic wastes only, such as water-carried human, animal or vegetable wastes, generated solely in connection with human consumption and emanating solely from the Premises, subject to all applicable federal, state and local laws, regulations, rules and ordinances and subject to any reasonable policies as set forth from time to time by Enviro. Customer shall not use the Sewer Service delivered hereunder for disposing of storm water, air conditioner condensate, ground water, roof drains and/or large quantities of water such as may occur from swimming pools, or for any other unauthorized disposal purposes as reasonably determined by Enviro.

**Section 5. Installation of Equipment by Customer.** Customer, at Customer's expense, shall furnish, install and own all machinery, equipment, appliances and appurtenances thereto in, under, through or upon the Premises that may be reasonably required by Enviro or any qualified building contractor at any time and from time to time for the delivery of Sewer Service to the Premises (excluding any gravity or force mains located in easements which are the property of Enviro) as depicted in Exhibit "A", attached hereto and incorporated herein by reference. Such machinery, equipment, appliances and appurtenances thereto shall be installed by Customer in conformity with the requirements of Enviro and all applicable federal, state and local laws, regulations, rules and ordinances. As a pre-requisite to Enviro's obligation to deliver Sewer Service to the Premises, Enviro shall have the right to review and approve the plans and specifications for all improvements on the Premises for Sewer Service purposes. In the event Enviro, in its sole discretion, determines that the operation of the facilities on the Premises may produce grease, tallow, fats, oils or other substances in such amounts as to create the likelihood of damage or obstruction to the Utility System, Enviro may, in its sole discretion, require Customer to install, own, inspect and maintain in good working order, in accordance with Enviro's requirements, specific types of systems for the pre-treatment of such substances, including, without limitation, grease traps, grease interceptors, septic tanks, and/or chemical treatment systems (collectively, "Pre-Treatment Customer System"), as applicable.

**Section 6. Maintenance Duties of Customer; Right of Inspection.**

A. **Customer Maintenance.** Customer, at Customer's expense, shall maintain and keep in good and safe condition in accordance with the requirements of Enviro and all applicable federal, state and local laws, regulations, rules and ordinances, all plumbing systems (including any Low Pressure Customer System, as applicable), located in, under, through or upon the Premises (excluding any gravity or force mains located in easements which are the property of Enviro and that portion of the Low Pressure Sewer System located in, under, through or upon the Premises, if any). Notwithstanding the foregoing, Customer hereby agrees to promptly notify Enviro of any necessary or appropriate repairs, of which Customer becomes aware, to the portions of the Utility System, located in, under, through or upon the Premises, including the Low Pressure Sewer System, if any.

B. **Low Pressure Customer System Maintenance.** Customer acknowledges that Customer shall be fully responsible for inspection, maintenance, repair and replacement of the Low Pressure Customer System owned by Customer and serving the Premises, if any.

C. **Pre-Treatment Customer System.** Customer further acknowledges that Customer shall be fully responsible for the inspection, maintenance, repair and replacement of any Pre-Treatment Customer System, as may be required by Enviro pursuant to Section 5 above. Customer shall also maintain accurate records of the inspection, maintenance, repair and replacement of any such Pre-Treatment Customer System, which records shall be subject to Enviro's inspection at all reasonable times.

D. **Right of Inspection.** Enviro shall have the right, but not the obligation, to inspect all machinery, equipment, appliances and appurtenances on the Premises that are associated with Enviro's delivery of Sewer Service as set forth in this Agreement, including, without limitation, any Low Pressure Customer System and any Pre-Treatment Customer System, as applicable.

**Section 7. Access to Premises.** Customer, for itself, its heirs, successors, and permitted assigns, hereby grants to Enviro, its managers, employees, agents, independent contractors and assigns, an irrevocable and transferable license to enter upon the Premises, at all normal business hours and otherwise in the event of emergencies, for any purpose relating to the delivery of Sewer Service under this Agreement or the exercise of any rights secured to, or the performance of any obligations imposed upon Enviro by this Agreement.

**Section 8. Measurement of Sewer Service.** If the quantity of Sewer Service is determined by water usage measured by meters installed by the applicable water utility on the Premises, subject to Section 9 below, the quantity of Sewer Service determined by said meter shall be final and conclusive, except when the meters fail to register, or if an error in meter reading occurs. In such cases, the quantity delivered during the period in question shall be estimated after due consideration of previous or subsequent properly measured Sewer Service.

Customer hereby agrees that Enviro shall have no duty to test the meters installed by the applicable water utility and shall have no liability with respect to the accuracy thereof.

**Section 9. Default in Volume of Sewer Service Being Treated.**

A. Customer shall not cause or permit water, sewage or any other effluent of any character to enter into the Utility System, pursuant to this Agreement, in excess of a consecutive thirty-day (30-day) average of four thousand nine hundred twenty-seven (4,927) gallons per day (the "Average 30-Day Flow Limitation"), as determined in accordance with the terms of this Agreement.

B. If Customer's actual flow exceeds the Average 30-Day Flow Limitation for three (3) consecutive thirty-day (30-day) periods, Enviro shall have the right, on thirty (30) days' written notice to Customer, to shut off or disconnect the Customer's Sewer Service and discontinue any sewage treatment service to Customer until such time as Enviro is satisfied that Customer can comply with the Average 30-Day Flow Limitation. Notwithstanding such right by Enviro, in the event prior to the expiration of such thirty-day (30-day) period, (i) upon Customer's written request, Enviro determines, in its sole and absolute discretion, that there is sufficient additional Unreserved Capacity (as herein defined) in the Utility System and (ii) Customer enters into an amendment to this Agreement, on the same terms and conditions set forth herein (except as to rates and fees, which shall not be more than then being charged to new subscribers), for an amount of additional capacity sufficient to accommodate Customer's actual flow ("Additional Capacity"), then Enviro will continue to provide the Sewer Services anticipated by this Agreement, as amended. In no event, however, shall Customer's existing capacity, together with such Additional Capacity, exceed one hundred twenty percent (120%) of the Average 30-Day Flow Limitation. For purposes of this Agreement, the term "Unreserved Capacity" shall mean and refer to, at any point in time, the maximum gallonage of sewage the then existing Utility System can treat per day, pursuant to all applicable permit limitations and requirements and all other applicable governmental laws, regulations, rules and ordinances, in excess of the then existing, reserved and contemplated daily gallonage requirements of the Development.

C. If Enviro determines, in its sole and absolute discretion, that there is not sufficient additional Unreserved Capacity in the Utility System to provide Customer with any Additional Capacity, as set forth in Section 9.B. above, Enviro will use reasonable good faith efforts to expand the Utility System (the "Expansion") to provide the Additional Capacity to Customer, subject to all applicable federal, state and local laws, rules and regulations, and provided Customer pays its pro rata share of the capital costs of the Expansion attributable to the Additional Capacity, including related infrastructure and effluent disposal spray field systems. Customer's pro rata share of the Expansion will be determined by dividing the Additional Capacity by the overall daily gallonage capacity provided by the Expansion. For example, if the Utility System is expanded by 10,000 gallons per day, pursuant to this Section 9.C., and the Additional Capacity is 2,000 gallons per day, Customer will pay twenty percent (20%) of the capital costs of the Expansion. In this event, Enviro and Customer will amend

this Agreement to provide for the Additional Capacity on the same terms and conditions set forth herein, except Enviro will waive any tap fees associated with the Additional Capacity. Customer will thereafter pay monthly use fees on its existing capacity and the Additional Capacity at the then applicable rates, as such rates may be modified or revised by Enviro from time to time.

D. If Enviro is unable for any reason, notwithstanding its reasonable good faith efforts, to expand the Utility System to provide Customer the Additional Capacity, then, within thirty (30) days after written notice to Customer of such determinations, Customer shall submit to Enviro evidence satisfactory to Enviro, in its reasonable discretion, that Customer can comply with the Average 30-Day Flow Limitation. If Customer fails to provide such evidence to Enviro within such thirty-day (30-day) period, then Enviro, in its sole and absolute discretion, may either (i) shut off or disconnect Customer's Sewer Service and discontinue any sewage treatment service to Customer, or (ii) subject Customer's monthly use fees for Sewer Service to a monthly surcharge equal to the sum of (x) Customer's average monthly use fees over the most recent 12-month period multiplied times (y) a factor of ten (10), until Customer satisfies Enviro that Customer can comply with the Average 30-Day Flow Limitation.

**Section 10. Interruptions or Delays in Sewer Service.** Enviro shall use all reasonable care in providing constant and uninterrupted Sewer Service to Customer. Notwithstanding the foregoing, Enviro hereby reserves the right to interrupt or reduce Sewer Service at any time and from time to time in the event of emergencies, to perform inspections, to maintain, repair or upgrade the Utility System, or to perform any other obligation or exercise any other right of Enviro under this Agreement. Enviro hereby agrees that, whenever practicable, Enviro will give Customer advance notice of any such planned interruption or reduction, stating the reason therefor, and the probable duration thereof.

**Section 11. Remedies for Default.** Enviro may, in its sole discretion, terminate this Agreement and discontinue Sewer Service hereunder within fifteen (15) days after the date of mailing written notice to Customer of Customer's failure to comply with any provision of this Agreement. In the event of termination of this Agreement, Enviro shall have the right to enter upon and remove from the Premises, at Customer's sole expense, any meter, equipment or other property of Enviro relating to Sewer Service. If any payment required hereunder, including without limitation, any Monthly Sewer Fee, Sewer Assessment or Special Sewer Assessment, is not paid within thirty (30) days of the due date thereof, Enviro may, in its sole and absolute discretion, make written demand on Customer for any such delinquent payment or payments. If any such delinquent payment or payments is/are not paid in full within fifteen (15) days after the making of such demand, Enviro may, in its sole and absolute discretion, file for record in the Probate Office of Jefferson County, Alabama, a claim of lien against the Premises in the amount of such delinquent payment or payments hereunder, plus applicable interest and attorneys' fees, court costs and all other expenses paid or incurred by Enviro in its attempts to collect such delinquent payment or payments due hereunder. Such claim of lien may, in Enviro's sole and absolute discretion, be foreclosed in the same manner as a foreclosure of a mortgage on real property, with power of sale, under the laws of the State of



Alabama, and Enviro shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell the Premises.

**Section 12. Indemnity and Release.** Customer, for itself, its heirs, successors, lessees and assigns hereby releases and forever discharges, and further agrees to indemnify, defend and hold harmless, Enviro, its members, managers, employees, independent contractors, successors and assigns, from all loss, claim, damage and expense of every nature (including attorneys' fees) to which Enviro, or any of them, may be subject arising out of, or connected with the performance of this Agreement, including but not limited to, any loss, claim, damage or expense arising out of the negligence of Customer or Customer's agents, invitees or licensees or arising out of a breach by Customer of any term or condition of this Agreement, unless such loss, claim, damage, or expense is caused by the sole negligence or willful misconduct of Enviro or Enviro's agents or employees.

**Section 13. Contamination or Damage by Customer to Utility System.** Customer hereby agrees Customer shall not place or deposit, or permit to be placed or deposited, in any portion of the Utility System any material other than domestic waste, including, without limitation, hazardous, toxic or radioactive wastes or substances, as such terms may be defined from time to time by any applicable federal, state or local laws, regulations, rules or ordinances. Customer further agrees to use all reasonable care to prevent any damage or obstruction of any portion of the Utility System. In the event Customer violates or breaches the provisions of this Section 13, the provisions of Section 3.D. above shall become applicable.

**Section 14. Modification of Agreement by Parties.** Except as otherwise provided in this Section and Section 15 of this Agreement, this Agreement may not be modified, amended, supplemented, changed or waived, unless such waiver or modification is in writing and signed by the parties hereto and then said waiver or modification shall be effective only in the specific instance and for the purpose for which given. No failure or delay on the part of Enviro in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof provide any other or further privilege or the exercise of any other right, power or privilege.

**Section 15. Modification of Agreement by Governmental Authorities.** This Agreement shall at all times be subject to such changes or modifications as any applicable governing authority may, from time to time, direct in the exercise of its authority.

**Section 16. Assignment.** Customer shall not assign this Agreement, or any rights under this Agreement. Customer expressly agrees Enviro may assign this Agreement and any rights or obligations under this Agreement to any person, firm, corporation, partnership or other entity.

**Section 17. Governing Law; Entire Agreement.** This Agreement shall be construed in accordance with, governed by, and enforced under the laws of the State of Alabama. This Agreement constitutes the entire agreement between the parties hereto and any prior oral or written agreement, understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

**Section 18. Notices.** Unless other expressly provided herein, all notices and other communications under this Agreement shall be in writing and shall be deemed given to the party to whom notice is to be given three (3) business days after any notice or other communication hereunder has been deposited in the United States mail, postage prepaid or receipt through personal hand delivery. All notices and other communications hereunder shall be addressed to the parties at the addresses first set forth above (or at such other address as such party may designate by notice given to the other party pursuant hereto).

**Section 19. Binding Arbitration; Limitation of Rights to Bring Court Action.** Enviro and Customer agree that all claims, disputes and controversies arising out of or relating in any way to the transactions contemplated by this Agreement, including claims for equitable relief or claims based on contract, tort, statute, or any alleged breach, default, negligence, wantonness, fraud, misrepresentation, suppression of fact, or inducement, will to the fullest extent permitted by state and federal law be resolved by binding arbitration, administered by the American Arbitration Association (the "AAA"), under its Commercial Arbitration Rules currently in effect, unless Enviro and Customer expressly agree otherwise. Enviro and Customer expressly acknowledge and stipulate that this Agreement involves interstate commerce, as such term is defined in connection with the Federal Arbitration Act.

Any challenges to the validity or enforceability of this Section 19 shall be determined by the arbitrator(s) in accordance with the provisions of the Federal Arbitration Act and the rules of the AAA. Enviro and Customer hereby elect to resolve all claims, disputes and controversies by arbitration rather than judicial process. It is understood that the parties voluntarily have chosen to arbitrate any disputes in lieu of resolving disputes by a jury trial or a trial in court. Enviro and Customer understand that the rules applicable to arbitrations and the rights of parties in arbitrations differ from the rules and rights applicable in court. Any award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

**Section 20. Covenants Running with the Land; Binding Effect.** Customer agrees that the Premises shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the superior rights, terms and conditions of this Agreement, which terms and conditions shall constitute covenants that run with the land and with the title to the Premises. The terms and conditions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

**Section 21. Recording of Agreement; Third Party Beneficiaries.** This Agreement shall be recorded in the Probate Office of Jefferson County, Alabama. By such recording or otherwise, no third party shall have any right, title or interest whatsoever in the enforcement of any of the provisions of this Agreement or the right to consent to or approve any amendment or modification hereof.

**NOTICE TO CUSTOMER:** This is a legally binding contract that provides, among other things, that Enviro has a right to file a lien against your property as provided in Section 11 above. If you do not understand the legal effect of any part of this Agreement, seek legal advice before signing.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement, or have caused this Agreement to be executed by its duly authorized representatives, under seal on the date and year first written above.

**ENVIRO:**

**ENVIRO SERVICES, LLC**, an Alabama limited liability company

By: \_\_\_\_\_ (Seal)  
Samuel G. Lowrey, III  
Its Vice President

**CUSTOMER:**

**CITY OF VESTAVIA HILLS, ALABAMA**

By: \_\_\_\_\_ (Seal)  
Alberto Zaragoza  
Its Mayor

**ATTEST:**

Its \_\_\_\_\_  
\_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Samuel G. Lowrey, III, whose name as Vice President of Enviro Services, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me 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 limited liability company.

Given under my hand and official seal on this the \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

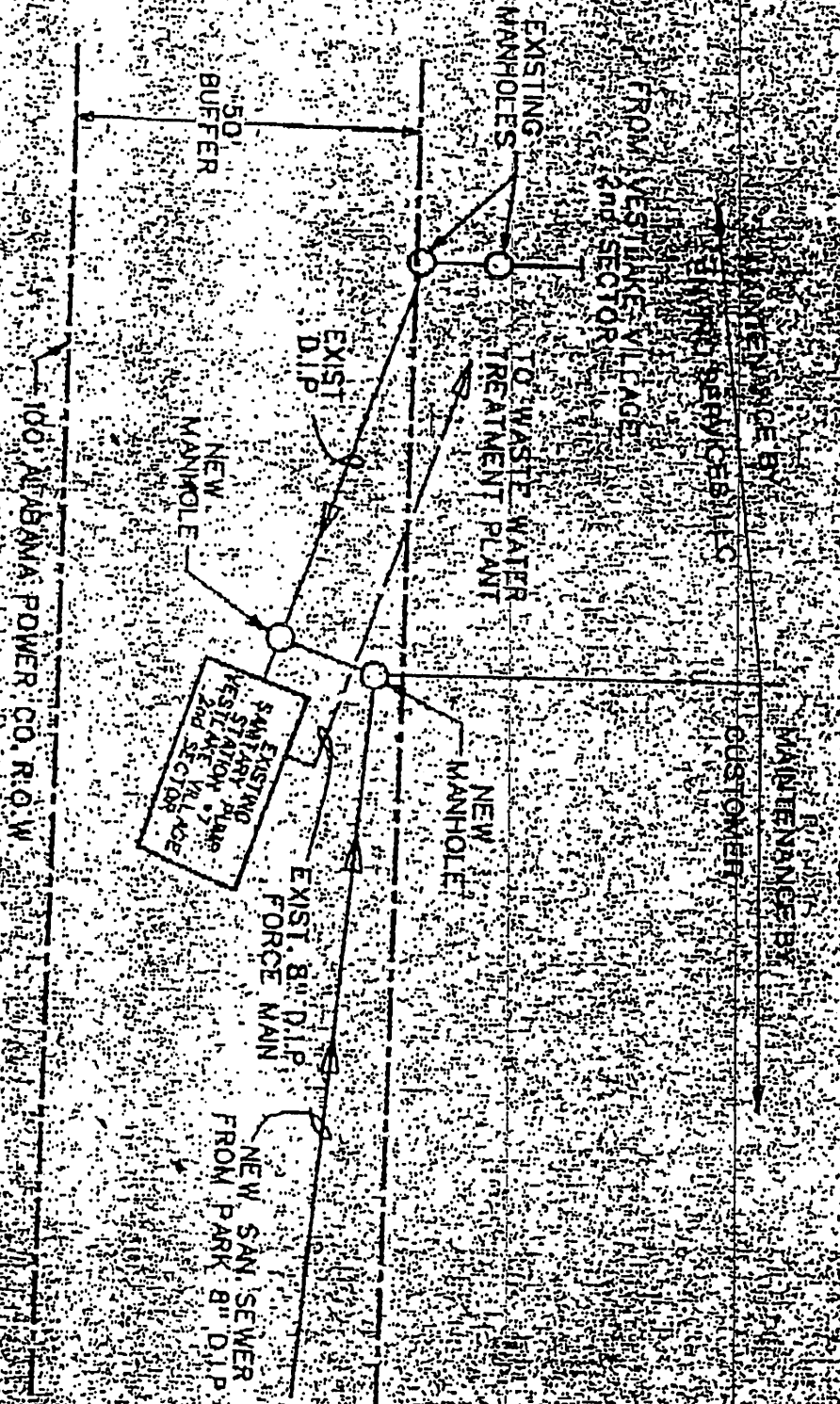
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Alberto Zaragoza, whose name as Mayor of City of Vestavia Hills, Alabama, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed 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 corporation.

Given under my hand and official seal on this the \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**

**DEPICTION**



**CONNECTION TO PUMPSTATION NO. 7**

NOT TO SCALE

# Enviro Services, L.L.C.

8000 Liberty Parkway, Suite 114  
Vestavia Hills, Alabama 35242  
Phone: (205)945-6430 Fax: (205)945-6455

# INVOICE

DATE: 6/12/2012

ID: Sports Park

**Bill To:**

City of Vestavia  
Post Office Box 660854  
Vestavia Hills, Alabama 35242

INVOICE #

SP-061212


TERMS

Payable in full upon receipt. A delinquent charge of 1.5% per month will be charged for all past due balances.

DESCRIPTION	AMOUNT
Additional Sewer Capacity per Sewer Agreement 3,677 gpd.	
Current Tap Fees = \$15.50 per gallon of Allotment	
3,677 * \$15.50 = \$56,993.50	
	\$ 56,993.50
<b>BALANCE DUE</b>	<b>\$ 56,993.50</b>

REMITTANCE ADDRESS:  
8000 Liberty Parkway, Suite 114  
Vestavia Hills, Alabama 35242

STATE OF ALABAMA  
JEFFERSON COUNTY

  
20110602000548280 1/15  
Bk: LR201104 Pg:21377  
Jefferson County, Alabama  
I certify this instrument filed on  
06/02/2011 02:53:27 PM AGREE  
Judge of Probate- Alan L. King

[FORM REVISION DATE 01/01/05 - 2<sup>nd</sup> Edition]

**ENVIRO SERVICES, L.L.C.  
COMMERCIAL SEWER SERVICE AGREEMENT AND COVENANTS  
AND RIGHT OF LIEN FOR SEWER ASSESSMENTS**

**THIS COMMERCIAL SEWER SERVICE AGREEMENT AND COVENANTS AND RIGHT OF LIEN FOR SEWER ASSESSMENTS ("this Agreement")** is made and entered into as of May 4<sup>th</sup>, 2011, by and between ENVIRO SERVICES, LLC, an Alabama limited liability company with its principal office located at 8000 Liberty Parkway, Suite 114, Vestavia Hills, Alabama 35242 ("Enviro"), and CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation, having principal offices located at 513 Montgomery Highway, Vestavia Hills, Alabama 35216 ("Customer").

**RECITALS**

A. Enviro is the owner of that certain sewer system within, adjacent or approximate to the Liberty Park development (i) which includes, without limitation, a waste water treatment plant system, raw sewage and effluent pump stations, effluent spray absorption field irrigation system, the Low Pressure Sewer System (as hereinafter defined), and any and all other sewage collection systems, all machinery, equipment, mains, pipes, fixtures, fittings, valves, gravity sewer mains, manholes, force mains, sewer laterals and appurtenances (ii) which is supplying, or may in the future supply, Sewer Service (as defined herein) to lots, dwellings, buildings, recreational facilities or other structures located in any residential or commercial subdivisions within, adjacent or approximate to the Liberty Park development (collectively, the "Utility System").

B. For purposes of this Agreement, the term "Low Pressure Sewer System" shall mean and refer to that certain system of small diameter pressure sewer mains in, on, under or through the Liberty Park development and properties proximate or adjacent thereto, which is owned by Enviro and/or for which Enviro has the duty to maintain, repair and replace by contract, assignment, agreement or otherwise, and which is generally comprised of pipes, fittings, and valves constituting a "Low Pressure Sewer Main". The Low Pressure Sewer System begins at the point at which any Low Pressure Sewer Main discharges into a gravity sewer main of the Utility System, and ends at the point at which any low pressure sewer lateral serving any property within the Liberty Park development connects with any Low Pressure Sewer Main (typically adjacent to the front property line of the applicable property).

C. For the purposes of this Agreement, the term "Low Pressure Customer System" shall mean and refer to the low pressure sewer lateral(s) and grinder pump or similar appliance related thereto, if any, that are owned by Customer, and for which the Customer has the duty to maintain, repair and replace, located in, under or upon the Premises (as hereinafter defined),



subject to Section 6.B below. The Low Pressure Customer System located in, under or upon the Premises, if any, begins at the point at which the low pressure sewer lateral installed at, on, in or under the Premises connects with the Low Pressure Sewer Main, and ends at (and includes) the related grinder pump or similar appliance installed at, on, in or under the Premises, if any.

D. Customer desires to obtain, and Enviro desires to deliver, Sewer Service upon the terms and conditions contained herein.

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

**Section 1. Agreement to Sell and Purchase.** Enviro shall sell and deliver to Customer, and Customer shall purchase from Enviro, during the term of this Agreement, all Sewer Service (as defined herein) which Customer shall require on Customer's premises or any part thereof for lawfully generated sewage located at 4851 Sicard Hollow Road 35242, described as follows:

Lot 1, Vestavia Sports Park Survey, 2<sup>nd</sup> Sector, as recorded in Map Book 231, page 66, in the Probate Office of Jefferson County, Alabama.

the ("Premises"), in accordance with all applicable federal, state and local laws, regulations, rules, and ordinances, including, without limitation, the rules duly and regularly established from time to time and on file with the Alabama State Department of Health and/or the Jefferson County Department of Health.

It is specifically understood and agreed by the parties that Enviro's delivery of Sewer Service to the Premises is subject to and conditioned upon the execution, delivery and recordation of an easement from Glenwood, Inc., in form satisfactory to Enviro, in Enviro's sole discretion, in favor of Enviro and Customer, pursuant to the letter attached hereto as Exhibit "A".

**Section 2. Term of Sewer Service.** Sewer Service under this Agreement shall begin on the date hereof, and continue until terminated by either party to this Agreement upon giving the other party fifteen (15) days' prior written notice of such termination, unless earlier terminated in accordance with Section 11 of this Agreement. In the event Customer fails to give Enviro notice of the termination of this Agreement due to a sale of the Premises, Customer shall remain obligated under this Agreement and liable for all fees, charges and assessments due hereunder until such time as the new owner of the Premises has entered into a agreement with Enviro for Sewer Service to the Premises.

**Section 3. Sewer Service Fees; Payment Thereof.** Customer hereby acknowledges and agrees that the following fees and any other amounts due hereunder are in addition to, and not in lieu of, any sums paid to any commercial owners' associations (or any other person or entity) for costs or other expenses relating to the Utility System:

A. **Tap Fees.** For all existing, newly constructed and/or remodeled or renovated buildings and other structures on the Premises, Customer shall pay to Enviro, at Enviro's

principal office, the sewer tap fees applicable to the Premises or such other fees as determined by Enviro on a case by case basis, in its sole discretion ("Sewer Tap Fees") on or before the acceptance by Enviro of that certain Application for Sewer Service entered into between Enviro and Customer, if applicable (the "Application"), unless all applicable Sewer Tap Fees have been paid in full by a builder, contractor or previous owner of the Premises. Enviro may, in Enviro's sole discretion, amend, modify or change the Sewer Tap Fees relating to future obligations between Enviro and the Customer at any time and from time to time. All said amendments, modifications or changes to the Sewer Tap Fees shall become effective on the date designated by Enviro.

B. Monthly Sewer Fees. Customer shall pay to Enviro, at Enviro's principal office, the monthly sewer use fees applicable to Sewer Service delivered to the Premises or such other fees as determined by Enviro on a case by case basis, and amended, modified or changed by Enviro at any time and from time to time, all in Enviro's sole discretion (the "Monthly Sewer Fees"), commencing on the date of this Agreement, and continuing on the first day of each successive month thereafter during the term of this Agreement. In the event this Agreement is dated other than the first day of the month, the applicable Monthly Sewer Fee shall be prorated from the date of this Agreement to the first day of the following month. All said amendments, modifications or changes to the Monthly Sewer Fees shall become effective on the date Enviro notifies Customer thereof or at such later time as designated by Enviro. Monthly bills shall be rendered to Customer, in arrears, for the Monthly Sewer Fees and mailed to the address of the Premises set forth herein. The Monthly Sewer Fees shall be due and payable to Enviro at its principal office upon receipt by Customer of the monthly bill therefor and shall become delinquent if not paid by Customer within fifteen (15) days of the date of mailing.

C. Interest on Delinquent Monthly Sewer Fees; Sewer Assessments. Any Monthly Sewer Fees received by Enviro more than fifteen (15) days after the date of mailing of the monthly bill therefor shall be delinquent and shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to Customer by law, from and after the fifteenth (15) day past the due date of any such Monthly Sewer Fees until the same is paid in full. Any delinquent Monthly Sewer Fees, together with such accrued interest, are herein collectively referred to as a "Sewer Assessment".

D. Special Sewer Assessments. Customer further agrees to pay to Enviro any and all extraordinary costs incurred by Enviro in the delivery of Sewer Service to the Premises and/or any repairs or replacement of parts, components, equipment or material required due to damage to the Utility System caused by Customer, as set forth in a written notice from Enviro to Customer, including, without limitation, any costs incurred by Enviro due to Customer's violation or breach of the provisions of Section 13 below. Any payment of such costs received by Enviro more than fifteen (15) days after the date of the mailing of such notice shall be delinquent and shall accrue simple interest at the same rate as stated above in Section 3.C. until paid in full. Such delinquent payment, together with such accrued interest, is herein collectively referred to as a "Special Sewer Assessment".

E. Costs of Enforcement. In the event Enviro employs an attorney or otherwise takes any legal action in attempting to collect any payments due hereunder or otherwise enforce this

Agreement, Customer shall pay all attorneys' fees, court costs and all other expenses paid or incurred by Enviro in such efforts.

F. Consistency of Charges. All fees and charges payable pursuant to this Section 3 shall be generally consistent with such fees and charges being charged by Enviro to other of its sewer customers whose land use and operations are similar to those of the Customer on the Premises.

Section 4. Use and Type of Sewer Service. All Sewer Service delivered under this Agreement shall be used only for the following purposes and only at the Premises. The term "Sewer Service", as used in this Agreement, shall mean and refer to the collection, treatment and disposal from the Premises of domestic wastes only, such as water-carried human, animal or vegetable wastes, generated solely in connection with human consumption and emanating solely from the Premises, subject to all applicable federal, state and local laws, regulations, rules and ordinances and subject to any reasonable policies as set forth from time to time by Enviro. Customer shall not use the Sewer Service delivered hereunder for disposing of storm water, air conditioner condensate, ground water, roof drains and/or large quantities of water such as may occur from swimming pools, or for any other unauthorized disposal purposes as reasonably determined by Enviro.

Section 5. Installation of Equipment by Customer. Customer, at Customer's expense, shall furnish, install and own all machinery, equipment, appliances and appurtenances thereto in, under, through or upon the Premises that may be reasonably required by Enviro or any qualified building contractor at any time and from time to time for the delivery of Sewer Service to the Premises (excluding any gravity or force mains located in easements which are the property of Enviro) as depicted in Exhibit "B", attached hereto and incorporated herein by reference. Such machinery, equipment, appliances and appurtenances thereto shall be installed by Customer in conformity with the requirements of Enviro and all applicable federal, state and local laws, regulations, rules and ordinances. As a pre-requisite to Enviro's obligation to deliver Sewer Service to the Premises, Enviro shall have the right to review and approve the plans and specifications for all improvements on the Premises for Sewer Service purposes. In the event Enviro, in its sole discretion, determines that the operation of the facilities on the Premises may produce grease, tallow, fats, oils or other substances in such amounts as to create the likelihood of damage or obstruction to the Utility System, Enviro may, in its sole discretion, require Customer to install, own, inspect and maintain in good working order, in accordance with Enviro's requirements, specific types of systems for the pre-treatment of such substances, including, without limitation, grease traps, grease interceptors, septic tanks, and/or chemical treatment systems (collectively, "Pre-Treatment Customer System"), as applicable.

Section 6. Maintenance Duties of Customer; Right of Inspection.

A. Customer Maintenance. Customer, at Customer's expense, shall maintain and keep in good and safe condition in accordance with the requirements of Enviro and all applicable federal, state and local laws, regulations, rules and ordinances, all plumbing systems (including any Low Pressure Customer System, as applicable), located in, under, through or upon the Premises (excluding any gravity or force mains located in easements which are the property of

Enviro and that portion of the Low Pressure Sewer System located in, under, through or upon the Premises, if any). Notwithstanding the foregoing, Customer hereby agrees to promptly notify Enviro of any necessary or appropriate repairs, of which Customer becomes aware, to the portions of the Utility System, located in, under, through or upon the Premises, including the Low Pressure Sewer System, if any.

B. Low Pressure Customer System Maintenance. Customer acknowledges that Customer shall be fully responsible for inspection, maintenance, repair and replacement of the Low Pressure Customer System owned by Customer and serving the Premises, if any.

C. Pre-Treatment Customer System. Customer further acknowledges that Customer shall be fully responsible for the inspection, maintenance, repair and replacement of any Pre-Treatment Customer System, as may be required by Enviro pursuant to Section 5 above. Customer shall also maintain accurate records of the inspection, maintenance, repair and replacement of any such Pre-Treatment Customer System, which records shall be subject to Enviro's inspection at all reasonable times.

D. Right of Inspection. Enviro shall have the right, but not the obligation, to inspect all machinery, equipment, appliances and appurtenances on the Premises that are associated with Enviro's delivery of Sewer Service as set forth in this Agreement, including, without limitation, any Low Pressure Customer System and any Pre-Treatment Customer System, as applicable.

Section 7. Access to Premises. Customer, for itself, its heirs, successors, and permitted assigns, hereby grants to Enviro, its managers, employees, agents, independent contractors and assigns, an irrevocable and transferable license to enter upon the Premises, at all normal business hours and otherwise in the event of emergencies, for any purpose relating to the delivery of Sewer Service under this Agreement or the exercise of any rights secured to, or the performance of any obligations imposed upon Enviro by this Agreement.

Section 8. Measurement of Sewer Service. If the quantity of Sewer Service is determined by water usage measured by meters installed by the applicable water utility on the Premises, subject to Section 9 below, the quantity of Sewer Service determined by said meter shall be final and conclusive, except when the meters fail to register, or if an error in meter reading occurs. In such cases, the quantity delivered during the period in question shall be estimated after due consideration of previous or subsequent properly measured Sewer Service. Customer hereby agrees that Enviro shall have no duty to test the meters installed by the applicable water utility and shall have no liability with respect to the accuracy thereof.

Section 9. Default in Volume of Sewer Service Being Treated.

A. Customer shall not cause or permit water, sewage or any other effluent of any character to enter into the Utility System, pursuant to this Agreement, in excess of a consecutive thirty-day (30-day) average of One Thousand Six Hundred Fifty (1,650) gallons per day (the "Average 30-Day Flow Limitation"), as determined in accordance with the terms of this Agreement.

B. If Customer's actual flow exceeds the Average 30-Day Flow Limitation for three (3) consecutive thirty-day (30-day) periods, Enviro shall have the right, on thirty (30) days' written notice to Customer, to shut off or disconnect the Customer's Sewer Service and discontinue any sewage treatment service to Customer until such time as Enviro is satisfied that Customer can comply with the Average 30-Day Flow Limitation. Notwithstanding such right by Enviro, in the event prior to the expiration of such thirty-day (30-day) period, (i) upon Customer's written request, Enviro determines, in its sole and absolute discretion, that there is sufficient additional Unreserved Capacity (as herein defined) in the Utility System and (ii) Customer enters into an amendment to this Agreement, on the same terms and conditions set forth herein (except as to rates and fees, which shall not be more than then being charged to new subscribers), for an amount of additional capacity sufficient to accommodate Customer's actual flow ("Additional Capacity"), then Enviro will continue to provide the Sewer Services anticipated by this Agreement, as amended. In no event, however, shall Customer's existing capacity, together with such Additional Capacity, exceed one hundred twenty percent (120%) of the Average 30-Day Flow Limitation. For purposes of this Agreement, the term "Unreserved Capacity" shall mean and refer to, at any point in time, the maximum gallonage of sewage the then existing Utility System can treat per day, pursuant to all applicable permit limitations and requirements and all other applicable governmental laws, regulations, rules and ordinances, in excess of the then existing, reserved and contemplated daily gallonage requirements of the Development.

C. If Enviro determines, in its sole and absolute discretion, that there is not sufficient additional Unreserved Capacity in the Utility System to provide Customer with any Additional Capacity, as set forth in Section 9.B. above, Enviro will use reasonable good faith efforts to expand the Utility System (the "Expansion") to provide the Additional Capacity to Customer, subject to all applicable federal, state and local laws, rules and regulations, and provided Customer pays its pro rata share of the capital costs of the Expansion attributable to the Additional Capacity, including related infrastructure and effluent disposal spray field systems. Customer's pro rata share of the Expansion will be determined by dividing the Additional Capacity by the overall daily gallonage capacity provided by the Expansion. For example, if the Utility System is expanded by 10,000 gallons per day, pursuant to this Section 9.C., and the Additional Capacity is 2,000 gallons per day, Customer will pay twenty percent (20%) of the capital costs of the Expansion. In this event, Enviro and Customer will amend this Agreement to provide for the Additional Capacity on the same terms and conditions set forth herein, except Enviro will waive any tap fees associated with the Additional Capacity. Customer will thereafter pay monthly use fees on its existing capacity and the Additional Capacity at the then applicable rates, as such rates may be modified or revised by Enviro from time to time.

D. If Enviro is unable for any reason, notwithstanding its reasonable good faith efforts, to expand the Utility System to provide Customer the Additional Capacity, then, within thirty (30) days after written notice to Customer of such determinations, Customer shall submit to Enviro evidence satisfactory to Enviro, in its reasonable discretion, that Customer can comply with the Average 30-Day Flow Limitation. If Customer fails to provide such evidence to Enviro within such thirty-day (30-day) period, then Enviro, in its sole and absolute discretion, may either (i) shut off or disconnect Customer's Sewer Service and discontinue any sewage treatment

service to Customer, or (ii) subject Customer's monthly use fees for Sewer Service to a monthly surcharge equal to the sum of (x) Customer's average monthly use fees over the most recent 12-month period multiplied times (y) a factor of ten (10), until Customer satisfies Enviro that Customer can comply with the Average 30-Day Flow Limitation.

**Section 10. Interruptions or Delays in Sewer Service.** Enviro shall use all reasonable care in providing constant and uninterrupted Sewer Service to Customer. Notwithstanding the foregoing, Enviro hereby reserves the right to interrupt or reduce Sewer Service at any time and from time to time in the event of emergencies, to perform inspections, to maintain, repair or upgrade the Utility System, or to perform any other obligation or exercise any other right of Enviro under this Agreement. Enviro hereby agrees that, whenever practicable, Enviro will give Customer advance notice of any such planned interruption or reduction, stating the reason therefor, and the probable duration thereof.

**Section 11. Remedies for Default.** Enviro may, in its sole discretion, terminate this Agreement and discontinue Sewer Service hereunder within fifteen (15) days after the date of mailing written notice to Customer of Customer's failure to comply with any provision of this Agreement. In the event of termination of this Agreement, Enviro shall have the right to enter upon and remove from the Premises, at Customer's sole expense, any meter, equipment or other property of Enviro relating to Sewer Service. If any payment required hereunder, including without limitation, any Monthly Sewer Fee, Sewer Assessment or Special Sewer Assessment, is not paid within thirty (30) days of the due date thereof, Enviro may, in its sole and absolute discretion, make written demand on Customer for any such delinquent payment or payments. If any such delinquent payment or payments is/are not paid in full within fifteen (15) days after the making of such demand, Enviro may, in its sole and absolute discretion, file for record in the Probate Office of Jefferson County, Alabama, a claim of lien against the Premises in the amount of such delinquent payment or payments hereunder, plus applicable interest and attorneys' fees, court costs and all other expenses paid or incurred by Enviro in its attempts to collect such delinquent payment or payments due hereunder. Such claim of lien may, in Enviro's sole and absolute discretion, be foreclosed in the same manner as a foreclosure of a mortgage on real property, with power of sale, under the laws of the State of Alabama, and Enviro shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell the Premises.

**Section 12. Indemnity and Release.** Customer, for itself, its heirs, successors, lessees and assigns hereby releases and forever discharges, and further agrees to indemnify, defend and hold harmless, Enviro, its members, managers, employees, independent contractors, successors and assigns, from all loss, claim, damage and expense of every nature (including attorneys' fees) to which Enviro, or any of them, may be subject arising out of, or connected with the performance of this Agreement, including but not limited to, any loss, claim, damage or expense arising out of the negligence of Customer or Customer's agents, invitees or licensees or arising out of a breach by Customer of any term or condition of this Agreement, unless such loss, claim, damage, or expense is caused by the sole negligence or willful misconduct of Enviro or Enviro's agents or employees.

**Section 13. Contamination or Damage by Customer to Utility System.** Customer hereby agrees Customer shall not place or deposit, or permit to be placed or deposited, in any portion of the Utility System any material other than domestic waste, including, without limitation, hazardous, toxic or radioactive wastes or substances, as such terms may be defined from time to time by any applicable federal, state or local laws, regulations, rules or ordinances. Customer further agrees to use all reasonable care to prevent any damage or obstruction of any portion of the Utility System. In the event Customer violates or breaches the provisions of this Section 13, the provisions of Section 3.D. above shall become applicable.

**Section 14. Modification of Agreement by Parties.** Except as otherwise provided in this Section and Section 15 of this Agreement, this Agreement may not be modified, amended, supplemented, changed or waived, unless such waiver or modification is in writing and signed by the parties hereto and then said waiver or modification shall be effective only in the specific instance and for the purpose for which given. No failure or delay on the part of Enviro in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof provide any other or further privilege or the exercise of any other right, power or privilege.

**Section 15. Modification of Agreement by Governmental Authorities.** This Agreement shall at all times be subject to such changes or modifications as any applicable governing authority may, from time to time, direct in the exercise of its authority.

**Section 16. Assignment.** Customer shall not assign this Agreement, or any rights under this Agreement. Customer expressly agrees Enviro may assign this Agreement and any rights or obligations under this Agreement to any person, firm, corporation, partnership or other entity.

**Section 17. Governing Law; Entire Agreement.** This Agreement and the Application shall be construed in accordance with, governed by, and enforced under the laws of the State of Alabama. This Agreement and the Application constitutes the entire agreement between the parties hereto and any prior oral or written agreement, understanding or representation of any kind preceding the dates of this Agreement and the Application shall not be binding on either party except to the extent incorporated in this Agreement. In the event of a conflict between the terms of the Application and this Agreement, this Agreement shall govern.

**Section 18. Notices.** Unless other expressly provided herein, all notices and other communications under this Agreement shall be in writing and shall be deemed given to the party to whom notice is to be given three (3) business days after any notice or other communication hereunder has been deposited in the United States mail, postage prepaid or receipt through personal hand delivery. All notices and other communications hereunder shall be addressed to the parties at the addresses first set forth above (or at such other address as such party may designate by notice given to the other party pursuant hereto).

**Section 19. Binding Arbitration; Limitation of Rights to Bring Court Action.** Enviro and Customer agree that all claims, disputes and controversies arising out of or relating in any way to the transactions contemplated by this Agreement, including claims for equitable relief or claims based on contract, tort, statute, or any alleged breach, default, negligence, wantonness,

fraud, misrepresentation, suppression of fact, or inducement, will to the fullest extent permitted by state and federal law be resolved by binding arbitration, administered by the American Arbitration Association (the "AAA"), under its Commercial Arbitration Rules currently in effect, unless Enviro and Customer expressly agree otherwise. Enviro and Customer expressly acknowledge and stipulate that this Agreement involves interstate commerce, as such term is defined in connection with the Federal Arbitration Act.

Any challenges to the validity or enforceability of this Section 19 shall be determined by the arbitrator(s) in accordance with the provisions of the Federal Arbitration Act and the rules of the AAA. Enviro and Customer hereby elect to resolve all claims, disputes and controversies by arbitration rather than judicial process. It is understood that the parties voluntarily have chosen to arbitrate any disputes in lieu of resolving disputes by a jury trial or a trial in court. Enviro and Customer understand that the rules applicable to arbitrations and the rights of parties in arbitrations differ from the rules and rights applicable in court. Any award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

**Section 20. Covenants Running with the Land; Binding Effect.** Customer agrees that the Premises shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the superior rights, terms and conditions of this Agreement, which terms and conditions shall constitute covenants that run with the land and with the title to the Premises. The terms and conditions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

**Section 21. Recording of Agreement; Third Party Beneficiaries.** This Agreement shall be recorded in the Probate Office of Jefferson County, Alabama. By such recording or otherwise, no third party shall have any right, title or interest whatsoever in the enforcement of any of the provisions of this Agreement or the right to consent to or approve any amendment or modification hereof.

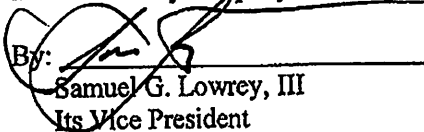
**NOTICE TO CUSTOMER: This is a legally binding contract that provides, among other things, that Enviro has a right to file a lien against your property as provided in Section 11 above. If you do not understand the legal effect of any part of this Agreement, seek legal advice before signing.**



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or have caused this Agreement to be executed by its duly authorized representatives, under seal on the date and year first written above.

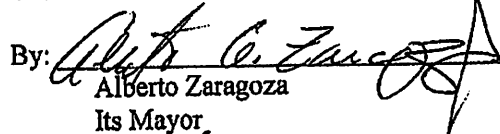
**ENVIRO:**

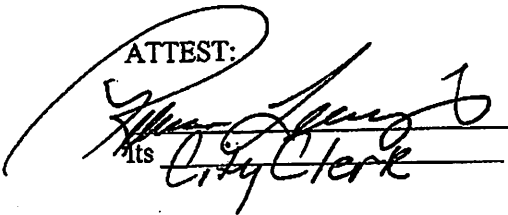
**ENVIRO SERVICES, LLC, an Alabama  
limited liability company**

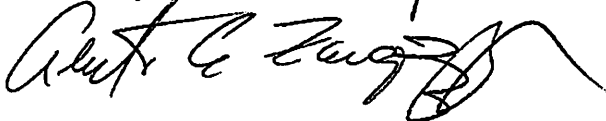
By:  (Seal)  
Samuel G. Lowrey, III  
Its Vice President

**CUSTOMER:**

**CITY OF VESTAVIA HILLS, ALABAMA**

By:  (Seal)  
Alberto Zaragoza  
Its Mayor


ATTEST:  
  
its City Clerk



STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Samuel G. Lowrey, III, whose name as Vice President of Enviro Services, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me 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 limited liability company.

Given under my hand and official seal on this the 3<sup>rd</sup> day of May,  
2011.

  
Notary Public  
My Commission Expires: 5-14-12

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Alberto Zaragoza, whose name as Mayor of the City of Vestavia Hills, Alabama, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me 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 municipal corporation.

Given under my hand and official seal on this the 4<sup>th</sup> day of May, 2011.

Melissa N. Hogg

Notary Public

My Commission Expires: 9/29/2013

**EXHIBIT "A"**  
**LETTER FROM GLENWOOD, INC.**



*The Autism and Behavioral Health Center of Alabama*

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150 Glenwood Lane • Birmingham, AL 35242-5700 • Phone: (205) 969-2880 • FAX: (205) 967-1323 • [www.glenwood.org](http://www.glenwood.org)

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January 31, 2011

Enviro Services LLC.  
8000 Liberty Parkway  
Suite 110  
Birmingham, AL 35242

Attention: Mr. Kenneth Hager

Reference: Liberty Park Sports Park Connection to Glenwood, Inc. Force Main

Dear Mr. Hager:

It has come to our attention that the New Liberty Park Sports Park desires to connect to the existing Glenwood low pressure sewer force main (4") near the crossing of Sicard Hollow Road. At this time, we do not take any exceptions with Sports Park's connection, as long as a check valve is installed on the Glenwood force main to prevent effluent from backing into the Glenwood system and that the Sports Park will assume liability for any damages to the existing Glenwood low pressure sewer system which result from the new connection.

Once the work is complete, we will coordinate with Walter Schoel Engineering Co., Inc. to prepare a formal easement and legal description for service/maintenance of the Sports Park's force main extension across the Glenwood property.

Sincerely,

Glenwood, Inc.

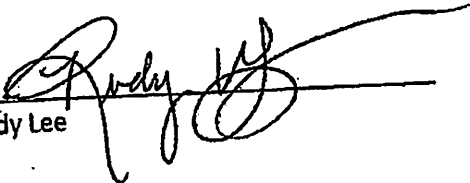
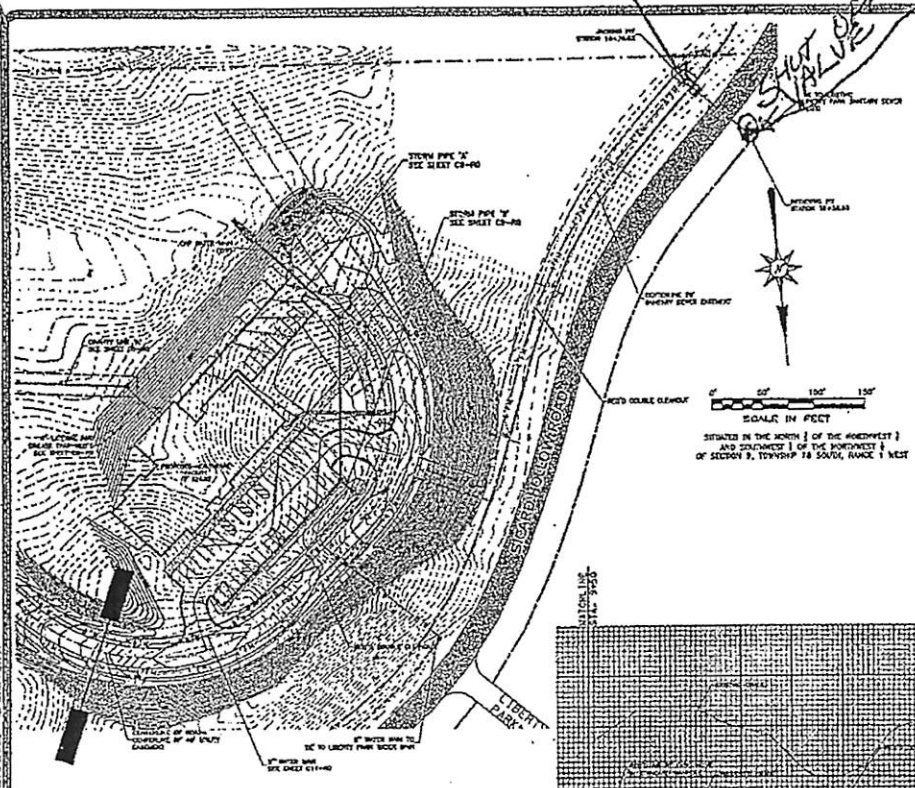
  
Rudy Lee

EXHIBIT "B"

DEPICTION

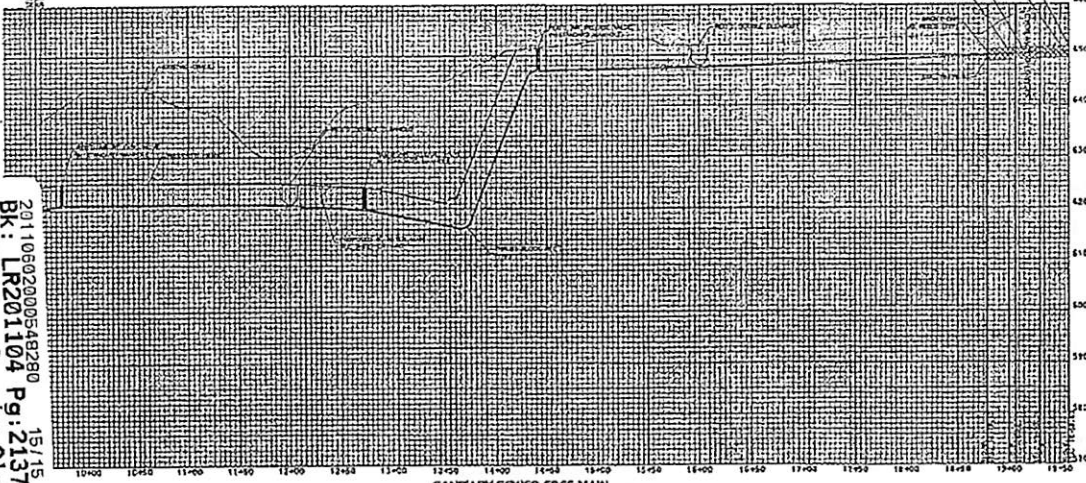


Force MAIN FROM  
New Soccer Park  
BEGIN ENVIED MAINTENANCE  
AT VALVE



- ALL SANITARY SEWER CONTRACTOR SHALL COMPLY WITH BUT NOT BE LIMITED TO THE FOLLOWING:
1. All construction shall be in accordance with the standards and specifications of Jefferson County, the most current City and/or the State Highway Department, and applicable OSHA regulations, as applicable.
  2. The Contractor shall notify the Jefferson County Environmental Services Department at 225-3377 at least 24 hours prior to beginning construction. There will be no charges in plans without written approval by the Jefferson County Environmental Services Department.
  3. Ductile Iron pipe shall be Class 22 or better.
  4. PVC pipe shall be ASTM C900, Class 150 (20' standard elevation). Dimension ratio (DR) 18. Pressure class (PC) 150 psi or better.
  5. In each trench, four inches of crushed stone shall be placed under every foot of 12 inches in diameter or larger of all lines of crushed stone shall be placed under every foot larger than 12 inches in diameter. The crushed stone shall be specified with crushed stone to a depth of 12 inches above the top of the pipe, then crushed stone to the bottom. The total bedding shall be crushed stone and properly graded.
  6. At the location of the DIO manholes, a connection of sanitary sewer pipe (8 inches through 18 inches) of diameter size or for repair of sanitary sewer pipe of smaller diameter may be made by means of an approved mechanical coupling. The coupling shall be of the same material to be installed. Couplings shall be manufactured of an approved mechanical coupling material specified for connections of the pipe materials to be installed. Couplings of the mechanical and type shall have not and shall conform to the standards of the American National Standards Institute (ANSI) and shall be stamped with the manufacturer's name and product markings. Each coupling shall have the manufacturer's name and product markings.
  7. Manholes shall meet ASTM specifications C-776. Above the finished surface shall be casted concrete and proper type, surface with 1/2" steel reinforcement grid on manufacturer by HORIZON K&L meeting the requirements of ASTM C422. Each joint shall also be surfaced with Corusel C2-231 sanitary grout as manufactured by Concrete Products, or grout as recommended by the manufacturer. Manholes shall have a minimum diameter of 48 inches and a maximum width of 6 inches. All manhole access shall be of the appropriate type. Manholes may be casted to grade with brick and mortar. The casted joint shall not exceed 18 inches.
  8. Elevation for sanitary sewer service line shall be on or near the property L&E area. On the "inside" side the "back" shall be the local service line and a minimum 1 foot to grade that will maintain a minimum depth of 12 feet. The 12 feet shall be for building or lower levels, shall be done by the pipe along 22' or better (minimum 8 feet). Any building service line not outside of basement or A.D.M. must be located by a meter/pillar and have a sewer connection permit for each lot.
  9. If the contractor is building service lines on the same lots on which the Jefferson County 22' manholes the service line shall be located in accordance with and inspected/installed by the Department of Public Works and Jefferson County Inspector before it is installed.
  10. All service line materials installed in road ROW or under easement shall be per Standard Specifications for Sanitary Sewer Service Lines and Connections, Section 4.
  11. Construction shall be well visible and subject to public needs, highways, and other shall be in accordance with ADOE Standards.
  12. Contractor shall be responsible for the enclosure and proper operation of all existing utilities located on or adjacent to the project site and with the construction limits of the project.
  13. All embankment or ditches shall be graded and compacted prior to installation of sewer line trenches.
  14. Contractor will be responsible for the construction and maintenance of erosion and sedimentation controls and for protection of all permits during construction to prevent their erosion and soil from adjacent properties, public roads and/or ditches (erecting silt fences).
  15. Upon completion of all or any part of a sanitary sewer line, the Contractor will be required to test and sewer for availability. County permits will be returned with this info. (Test made aware) to be prepared to test with water. Manholes will be vented. All tests will be conducted in the presence of the County Sewer Construction Inspector in accordance with section 3.09 Standards for Commercial and Residential Construction of Sanitary Sewer Systems. County Sanitary Sewer will be balanced (checked) following air testing with the final pipe size and lay followed by the County for record submission.

NOTE:  
CONTRACTOR TO CONTACT MISSALL TO LOCATE AND  
AVOID ALL UTILITES ON BOTH SIDES OF SICARD  
HOLLOW ROAD (205-252-4444). SURVEYOR AND  
ENGINEER ARE NOT RESPONSIBLE FOR DAMAGED  
UTILITIES.



SANITARY SEWER FORCE MAIN  
HORIZONTAL SCALE 1"=50'  
VERTICAL SCALE 1"=10'

CONTRACTOR:  
DAVID A. SIMON, P.E., P.S.  
ALABAMA REGISTRATION NO. 18244  
GONZALEZ STRENGTH & ASSOCIATES, INC.  
2176 PARKWAY LAKE DRIVE  
MOBILE, ALABAMA 36684  
205-441-2418

ENGINEER:  
MICHAEL R. BRIDGES  
ALABAMA REG. NO. 24850  
GONZALEZ STRENGTH & ASSOCIATES, INC.  
2176 PARKWAY LAKE DRIVE  
MOBILE, ALABAMA 36684  
205-441-2418

CHECKED:  
KELVIN M. SCOTT  
DIRECTOR OF REGULATORY SERVICES  
150 GLENWOOD DRIVE  
BIRMINGHAM, AL 35212  
205-669-1000

20110502000548280 15/15  
Bk: LR201104 Pg: 21377  
Jefferson County, Alabama  
06/02/2011 02:53:27 PM AGREE  
Fee - \$47.00  
Total of Fees and Taxes-\$47.00  
SCOTT, K

PROJECT TITLE		DATE	
PROJECT NO.		SCALE	
PROJECT LOCATION		SHEET NO.	
PROJECT CLIENT		SHEET TOTAL	
PROJECT ENGINEER		SHEET TOTAL	
PROJECT CHECKER		SHEET TOTAL	
PROJECT APPROVER		SHEET TOTAL	
<p>ALABAMA</p> <p>REGISTERED PROFESSIONAL ENGINEER</p> <p>NO. 15000</p> <p>DAVID A. SIMON</p>			
<p>STRENGTH &amp; ASSOCIATES, INC.</p> <p>2176 PARKWAY LAKE DRIVE</p> <p>MOBILE, ALABAMA 36684</p> <p>PHONE: 205-441-2418</p> <p>FAX: 205-441-2419</p> <p>WWW.GSA-AL.COM</p>			

# Senior Drivers Cash Log Sheet

**Date:** \_\_\_\_\_

**Amount Counted:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Amount Received:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**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 23<sup>rd</sup> 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 23<sup>rd</sup> 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
<b>Police Net</b>	<b>\$37,440.00</b>	<b>-\$15,600.00</b>	<b>Police Education</b>
	\$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
<b>Police Net/Expenses</b>	<b>\$23,400.00</b>	<b>\$1300 per month</b>	<b>\$1300 per month</b>
	\$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 23<sup>rd</sup> 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 23<sup>rd</sup> 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 23<sup>rd</sup> 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](mailto:drary@ci.vestaviahills.al.us)





**RESOLUTION NUMBER 4508**

**A RESOLUTION APPROVING ALCOHOL LICENSE  
FOR T WAYNES BBQ SMOKEHOUSE LLC D/B/A T  
WAYNES BBQ SMOKEHOUSE; TIMOTHY  
BRIDGES, EXECUTIVE**

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for T Waynes BBQ Smokehouse LLC d/b/a T Waynes BBQ Smokehouse, located at 2409 Acton Road, Suite 153, Vestavia Hills, Alabama, for the on-premise sale of 020 - Restaurant Retail Liquor; Timothy Bridges, executive.

**APPROVED and ADOPTED** this the 23rd day of September, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

# INTEROFFICE MEMORANDUM

**DATE:** September 17, 2013  
**TO:** Dan Rary, Acting Police Chief  
**FROM:** Rebecca Leavings, City Clerk  
**RE:** Alcohol License Request – 020 - Restaurant Retail Liquor


Please find attached information submitted by Timothy Bridges who request an alcohol license to sell 020 - Restaurant Retail Liquor at the T Waynes BBQ Smokehouse LLC d/b/a T Waynes BBQ Smokehouse, 2409 Acton Road, Suite 153, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 23rd 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:

	<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>
	<i>Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
	<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: 20130807100704516**

**Type License:** 020 - **State:** \$0.00 **County:** \$0.00  
**Type License:** **State:** **County:**  
**Trade Name:** T WAYNES BBQ SMOKEHOUSE **Filing Fee:** \$50.00  
**Applicant:** T WAYNES BBQ SMOKEHOUSE LLC **Transfer Fee:**  
**Location Address:** 2409 ACTON ROAD; STE 153 VESTAVIA HILLS, AL 35243  
**Mailing Address:** 2409 ACTON ROAD; STE 153 VESTAVIA HILLS, AL 35243  
**County:** JEFFERSON **Tobacco sales:** NO **Tobacco Vending Machines:**  
**Sale of Products Containing Ephedrine:** NO **Type Ownership:** LLC  
**Book, Page, or Document info:** LR201310, 10213 **Do you sell Draft Beer:** N  
**Date Incorporated:** 01/14/2013 **State incorporated:** AL **County Incorporated:** JEFFERSON  
**Date of Authority:** 01/14/2013 **Alabama State Sales Tax ID:** R008751395

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

Name:	Title:	Date and Place of Birth:	Residence Address:
TIMOTHY BRIDGES 3451726 - AL	MEMBER	7/21/1956 BIRMINGHAM	3216 MOCKINGBIRD LANE HOOVER, AL 35226

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:** TIMOTHY BRIDGES  
**Business Phone:** 205-470-9007  
**Fax:** 205-979-1534

**Home Phone:** 205-470-9007  
**Cell Phone:** 205-470-9007  
**E-mail:** T.WAYNE.BRIDGES@ICLOUD.COM

**PREVIOUS LICENSE INFORMATION:**  
**Trade Name:**  
**Applicant:**

**Previous License Number(s)**  
**License 1:**  
**License 2:**



**STATE OF ALABAMA**  
**ALCOHOLIC BEVERAGE CONTROL BOARD**  
**ALCOHOL LICENSE APPLICATION**



**Confirmation Number: 20130807100704516**

If applicant is leasing the property, is a copy of the lease agreement attached? **YES**  
 Name of Property owner/lessor and phone number: **BARBER REALTY COMPANY 205-795-4730**  
 What is lessors primary business? **REAL ESTATE**  
 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? **YES**  
 Is the business used to habitually and principally provide food to the public? **YES**  
 Does the establishment have restroom facilities? **YES**  
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? **YES**

Will the business be operated primarily as a package store? **NO**  
 Building Dimensions Square Footage: **4200** Display Square Footage:  
 Building seating capacity: **99** Does Licensed premises include a patio area? **NO**  
 License Structure: **SHOPPING CENTER** License covers: **PORTION OF**  
 Number of licenses in the vicinity: **2** Nearest: **.1**  
 Nearest school: **1 blocks** Nearest church: **1 blocks** Nearest residence: **1 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:**

Name:	Violation & Date:	Arresting Agency:	Disposition:





**STATE OF ALABAMA**  
**ALCOHOLIC BEVERAGE CONTROL BOARD**  
**ALCOHOL LICENSE APPLICATION**



**Confirmation Number: 20130807100704516**

**Initial each**

**Signature page**

TWB  
TWB

In reference to law violations, I attest to the truthfulness of the responses given within the application.

TWB

In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within the application.

TWB

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.

mm

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.

mm

In reference to the Club Application information, I attest to the truthfulness of the responses given within the application.

mm

In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.

TWB

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.

TWB

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.

TWB

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): *Timothy Wayne Bridges*

Signature of Applicant: *Timothy Wayne Bridges*

Notary Name (print): *Ashley Pruitt*

Notary Signature: *Ashley Pruitt*

Commission expires: *Jan 29, 2017*

Application Taken: *8/7/13* App. Inv. Completed:

Submitted to Local Government: *8/7/13*

Received in District Office: *8/7/13* Reviewed by Supervisor:

Forwarded to District Office: *8/7/13*

Received from Local Government:

Forwarded to Central Office:

A NEW PROJECT FOR:  
**T. WAYNES BROS. SMOKEHOUSE**  
 VESTALVA, ALABAMA

A DESIGN BUILD  
 PROJECT FOR:  
**DMC, INC.**

**ARCHITECT**  
 R.L. MOSSEY  
 2050 PALM BLVD., SUITE 100  
 LEEDS, ALABAMA 36048  
 T: (205) 842-1158

**STRUCTURAL ENGINEER**  
 TRS Engineering, Inc.  
 1000 W. GARDNER AVE., SUITE 100  
 CONYERS, GA. 30613

**MECHANICAL ENGINEER**  
 R. L. MOSSEY ARCHITECT  
 2050 PALM BLVD., SUITE 100  
 LEEDS, ALABAMA 36048  
 T: (205) 842-1158

**REVISIONS:**

NO.	DESCRIPTION

**PERMIT DWG**  
**FLOOR PLAN**  
**NEW RESTAURANT**

**PROJECT:**  
 NEW RESTAURANT

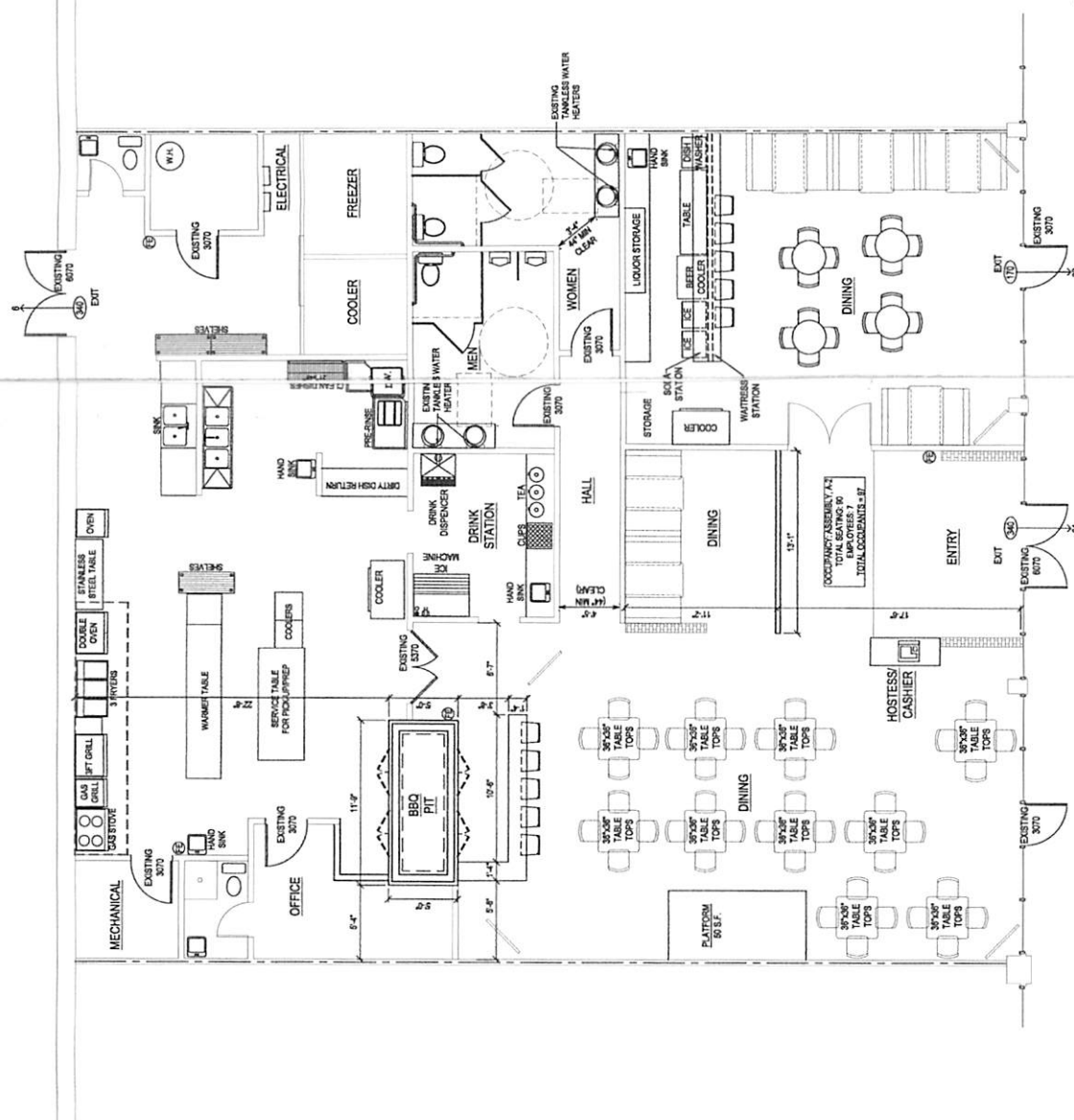
**LOCATION:**  
 VESTALVA, ALABAMA

**DATE:** 8/7/13  
**SCALE:** SEE DWG

**DESIGN BY:** JMS  
**CHECKED BY:** JMS  
**PROJECT NO.:** 634-13-001

**PROJECT NO.:** 634-13-001  
**DATE:** 8/7/13  
**SCALE:** SEE DWG  
**DESIGN BY:** JMS  
**CHECKED BY:** JMS  
**PROJECT NO.:** 634-13-001

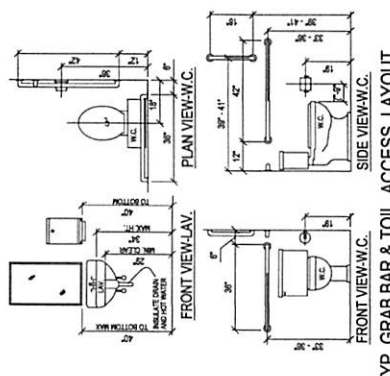
**ARCHITECT**  
 R.L. MOSSEY  
 2050 PALM BLVD., SUITE 100  
 LEEDS, ALABAMA 36048  
 T: (205) 842-1158



**FLOOR PLAN**  
 SCALE: 1/4"=1'-0"

**PLAN LEGEND**

SYMBOL	DESCRIPTION
FE	108 (M-40 BCI) FIRE EXTINGUISHER
(TR)	EXIT CAPACITY OF OPENING
→ 34	ACTUAL EXIT OCCUPANT LOAD



**TYP. GRAB BAR & TOILET ACCESS LAYOUT**

- MOUNTING HEIGHTS**
- WATER CLOSET: FINISH FLOOR TO TOP OF SEAT 17" TO 19".
  - URINALS: SHALL HAVE ELONGATED RIM WITH H.T. @ 17" A.F.F. MAX.
  - FLUSH CONTROLS: HAND OPERATED OR AUTOMATIC @ 41" A.F.F. MAX.
  - LAVATORIES: MOUNTED WITH RIM NO HIGHER THAN 37" A.F.F. AND WITH A MIN. CLEARANCE OF 29" A.F.F. TO BOTTOM OF RIM.
  - FALCETS: LEVEL OPERATED PUSH-TYPE OF ELECTRONICALLY CONTROLLED MECHANISMS.
  - MIRRORS: MOUNTED @ 47" A.F.F. MAX. BOTTOM EDGE OF REFLECTING SURFACE.
  - GRAB BARS: MOUNTED @ 33" TO 38" A.F.F. TO CENTER OF BAR. NOTE: INSTALL CERAMIC TILE OR EQUIVALENT UP TO 4'-0" ABOVE FINISH FLOOR.

**RESOLUTION NUMBER 4509**

**A RESOLUTION APPROVING ALCOHOL LICENSE  
FOR WCS VENTURES, LLC D/B/A CANDY'S WINE  
EXPERIENCE; CANDACE LAYNE WEST,  
EXECUTIVE**

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for WCS Ventures, LLC d/b/a Candy's Wine Experience, located at 640 Olde Towne Road, Vestavia Hills, Alabama, for the sale of 060 - Retail Table Wine (On or Off Premises); Candace Layne West, executive.

**APPROVED and ADOPTED** this the 23rd day of September, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

# INTEROFFICE MEMORANDUM

**DATE:** September 11, 2013

**TO:** Dan Rary, Acting Police Chief

**FROM:** Rebecca Leavings, City Clerk

**RE:** Alcohol License Request – 060 - Retail Table Wine (On or Off Premises)

Please find attached information submitted by Candace Layne West who request an alcohol license to sell 060 - Retail Table Wine (On or Off Premises) at the WCS Ventures, LLC d/b/a Candy's Wine Experience, 640 Olde Towne Road, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 23rd 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:

	<i>Application cleared by P.D. This indicates that there are <b>NO</b> 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>
✓	<i>Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
	<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: 20130830100510165**

**Type License:** 060 - RETAIL TABLE WINE (ON OR OFF PREMISES) **State:** \$150.00 **County:** \$75.00

**Type License:** **State:** **County:**

**Trade Name:** CANDYS WINE EXPERIENCE **Filing Fee:** \$50.00

**Applicant:** WCS VENTURES LLC **Transfer Fee:**

**Location Address:** 640 OLDE TOWNE RD VESTAVIA HILLS, AL 35216

**Mailing Address:** 1131 SHADESMONT RD BIRMINGHAM, AL 35226

**County:** JEFFERSON **Tobacco sales:** NO **Tobacco Vending Machines:**

**Sale of Products Containing Ephedrine:** NO **Type Ownership:** LLC

**Book, Page, or Document info:** LR201313 24370 **Do you sell Draft Beer:** N

**Date Incorporated:** 05/08/2013 **State incorporated:** AL **County Incorporated:** JEFFERSON

**Date of Authority:** 05/08/2013 **Alabama State Sales Tax ID:** R008544784

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

CANDACE LAYNE WEST 5614637 - AL	MEMBER	12/18/1971 BIRMINGHAM, AL	1131 SHADESMONT RD BIRMINGHAM, AL 35226

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:** CANDY WEST

**Business Phone:** 205-612-4327

**Fax:**

**Home Phone:** 205-942-3462

**Cell Phone:** 205-612-4327

**E-mail:** BZCANDY@HOTMAIL.COM

**PREVIOUS LICENSE INFORMATION:**

**Trade Name:**

**Applicant:**

**Previous License Number(s)**

**License 1:**

**License 2:**



**STATE OF ALABAMA**  
**ALCOHOLIC BEVERAGE CONTROL BOARD**  
**ALCOHOL LICENSE APPLICATION**



**Confirmation Number: 20130830100510165**

If applicant is leasing the property, is a copy of the lease agreement attached? **YES**  
 Name of Property owner/lessor and phone number: **OT PROPERTY CORP 205-908-2555**  
 What is lessors primary business? **COMMERCIAL REAL ESTATE**  
 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? **YES**

Will the business be operated primarily as a package store? **NO**  
 Building Dimensions Square Footage: **1296** Display Square Footage:  
 Building seating capacity: **20** Does Licensed premises include a patio area? **NO**  
 License Structure: **ONE STORY** License covers: **ENTIRE STRUCTURE**  
 Number of licenses in the vicinity: **6** Nearest: **.25**  
 Nearest school: **1 miles** Nearest church: **2 miles** Nearest residence: **1 miles**  
 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)?

<b>Name:</b>	<b>Violation &amp; Date:</b>	<b>Arresting Agency:</b>	<b>Disposition:</b>
CANDACE WEST	DUI 08/2013	HOMEWOOD PD	PENDING
CANDACE WEST	PUBLIC INTOXICATION 09/2012	VESTAVIA HILLS PD	PAID FINE
CANDACE WEST	DUI 02/1995	BIRMINGHAM PD	PAID FINE





**STATE OF ALABAMA**  
**ALCOHOLIC BEVERAGE CONTROL BOARD**  
**ALCOHOL LICENSE APPLICATION**



**Confirmation Number: 20130830100510165**

**Initial each**

**Signature page**

*ckw*

In reference to law violations, I attest to the truthfulness of the responses given within the application.

*ckw*

In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within the application.

*ckw*

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.

In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.

*ckw*

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.

*ckw*

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.

*ckw*

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): *CANDACE LAYNE WEST*

Signature of Applicant: *[Handwritten Signature]*

Notary Name (print): *Vivencio Johnson*

Notary Signature: *[Handwritten Signature]*

Commission expires: *1-4-14*

Application Taken: *8-30-13* App. Inv. Completed:

Submitted to Local Government:

Forwarded to District Office:

Received in District Office:

Reviewed by Supervisor:

Received from Local Government:

Forwarded to Central Office:

**RESOLUTION NUMBER 4510**

**A RESOLUTION DETERMINING THAT CERTAIN  
PERSONAL PROPERTY IS NOT NEEDED FOR  
PUBLIC OR MUNICIPAL PURPOSES AND  
DIRECTING THE SALE/DISPOSAL OF SAID  
SURPLUS PROPERTY**

**WITNESSETH THESE RECITALS**

**WHEREAS**, the City of Vestavia Hills, Alabama, is the owner of personal property detailed in the attached "Exhibit A"; and

**WHEREAS**, the City has determined that it would be in the best public interest to sell said property.

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

1. The City Manager is hereby authorized to sell and/or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 4510 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, APPROVED and ADOPTED** on this the 23<sup>rd</sup> day of September, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## Rebecca Leavings

---

**From:** Brian Davis  
**Sent:** Tuesday, September 17, 2013 1:33 PM  
**To:** Rebecca Leavings  
**Subject:** Surplus equipment/property

The Department of Public Service would like to have the list of equipment declared surplus property on the next agenda for the City Council. If the council so desires to declare said equipment surplus, it can be placed on govdeals.com and sold to the highest bidder. This equipment is no longer in service and of no use to the City of Vestavia Hills.

Thank you for your attention to this matter.

***“Quality is never an accident. It is always the result of intelligent effort.”***

**John Ruskin**

\*\*\*\*\*

Brian C. Davis, Director  
Public Service Department  
513 Montgomery Highway  
Vestavia Hills, AL 35216  
205.978.0150 office  
205.276.9095 cell

\*\*\*\*\*

**Two portable London fog mosquito sprayers**

**One ford 3000 tractor**

**One 5' x 8' utility trailer**

**One 6'4" x 16' dual axel equipment trailer**

**One tarco sand spreader that mounts to the back of a dump truck**

**One portable oldman herbicide sprayer**

**One buffalo turbine blower**

**One set of tires for a 1840 case skid steer**

**One set of metal tracks for a 1840 case skid steer**

**One fork attachment for a 1840 case skid steer**

**One backhoe attachment for a 1840 skid steer**

## General Information

**81-0404 - 1998 Grasshopper 721D**

Year: 1998  
Make: Grasshopper  
Model: 721D  
Hours: 1,438  
Unit #: 81-0404  
VIN #: 500404  
Type: Mower  
Color: C.H.  
Driver: ,  
Notes:

(click to define)  
(click to define)  
(click to define)  
(click to define)

**Fleet Information**

Category: Park & Recreation  
Location: City of Vestavia Hills  
Status: Out of service  
Schedule: Park Rec. Mowers

*Does not run.*

## General Information

**81-0579 - 1994 Case 1840**

Year: 1994  
Make: Case  
Model: 1840  
Hours: 2,939  
Unit #: 81-0579  
VIN #: 0579  
Type: Skidsteer  
Color:  
Driver:  
Notes:

(click to define)  
(click to define)  
(click to define)  
(click to define)

**Fleet Information**

Category: Park & Recreation  
Location: City of Vestavia Hills  
Status: Out of service  
Schedule: Tractors

Does not steer,  
needs work to run.



## General Information

**61-416B - 1994 Caterpillar 416B**

Year: 1994  
Make: Caterpillar  
Model: 416B  
Hours: 4,100  
Unit #: 61-416B  
VIN #: 8ZK07529  
Type: Backhoe  
Color:  
Driver:  
Notes:

(click to define)  
(click to define)  
(click to define)  
(click to define)

**Fleet Information**

Category: Public Works  
Location: City of Vestavia Hills  
Status: Active  
Schedule: Tractors

we ARE REPLACING this Backhoe

## General Information

### 81-2014 - 1998 Ford Crown Victoria

**Year:** 1998  
**Make:** Ford  
**Model:** Crown Victoria  
**Mileage:** 193,190  
**Unit #:** 81-2014  
**VIN #:** 2FAFP71W4WX142014  
**Type:** Vehicle  
**Color:** W.P.  
**Driver:** ,  
**Notes:**

(click to define)  
(click to define)  
(click to define)  
(click to define)

### Fleet Information

**Category:** Park & Recreation  
**Location:** City of Vestavia Hills  
**Status:** Out of service  
**Schedule:** Park Rec. Vehicles

## General Information

### 81-8563 - 2000 Ford Taurus

**Year:** 2000  
**Make:** Ford  
**Model:** Taurus  
**Mileage:** 85,357  
**Unit #:** 81-8563  
**VIN #:** 1FAFP53U6YA128563  
**Type:** Seniors (white)  
**Color:**  
**Driver:** ,  
**Notes:**

(click to define)  
(click to define)  
(click to define)  
(click to define)

### Fleet Information

**Category:** Park & Recreation  
**Location:** City of Vestavia Hills  
**Status:** Out of service  
**Schedule:** Park Rec. Vehicles

**RESOLUTION NUMBER 4511**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH RETAIL STRATEGIES FOR ECONOMIC DEVELOPMENT CONSULTING SERVICES**

**WHEREAS**, the City Manager of the City of Vestavia Hills has recommended the building of a “team” for economic development for the City of Vestavia Hills, Alabama; and

**WHEREAS**, the City Manager has recommended approval of an agreement from Retail Strategies for professional consulting and related services for economic development of the City; a copy of said agreement is marked as “Exhibit A,” attached to and incorporated into this Resolution Number 4511 as though written fully therein; and

**WHEREAS**, the Mayor and Council feel it is in the best public interest to approve said recommendation.

**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 said agreement with Retail Strategies; and
2. This Resolution Number 4511 shall become effective immediately upon adoption with funding from fiscal year 2014.

**DONE, ORDERED, ADOPTED and APPROVED** this the 23<sup>rd</sup> day of September, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**AGREEMENT TO PROVIDE  
PROFESSIONAL CONSULTING AND RELATED SERVICES**

**THIS AGREEMENT** is entered into by and between Retail Strategies, LLC, an Alabama limited liability company (hereinafter referred to as “Consultant”) and the City of Vestavia Hills, Alabama (hereinafter referred to as “Client”) on this the \_\_\_ day of \_\_\_\_\_, 2013, as follows:

**WHEREAS**, the Client desires to have performed those services identified on Exhibit A attached hereto (the “Project”), which it believes will promote the efficient operation of the Client; and,

**WHEREAS**, Consultant has made a proposal to the Client to provide consulting services related to the Project to Client as further set forth below.

**W-I-T-N-E-S-S-E-T-H:**

**NOW, THEREFORE**, this agreement is made and entered into on the date first above written by and between the Client and Consultant, by which Consultant will provide professional consulting and related services to the Client as hereinafter specified, through individuals possessing a high degree of professional skill where the personality of the individual will play a decisive role as follows:

**1. SCOPE OF SERVICES**

Consultant agrees, for the consideration as stated herein, to provide professional consulting and related services to the Client for the Project as set out in Exhibit A.

**2. TIME OF PERFORMANCE**

Consultant shall provide services pursuant to this agreement and expeditiously and in good faith conduct its work in such a manner as to complete its commitments for Client within three (3) calendar years which shall be calculated as **October 1, 2013 to September 30, 2016**.

Consultant shall commence, carry on and complete the Project with all practicable dispatch, in a sound, economical and efficient manner, in accordance with the provisions hereof and applicable laws. In accomplishing the Project, Consultant shall take such steps as are appropriate to insure that the work involved is properly coordinated with related work and policies being carried on by the Client.

**3. COMPENSATION**

The Client agrees to pay Consultant for the services as set forth herein, the sum of **\$40,000** per year. Payment is to be made upon execution of this agreement and receipt of the invoice from Retail Strategies, LLC. Client will remit payment to Consultant upon receipt of invoice but no later than within thirty (30) days from receipt of invoice. The compensation for years two and three shall be **\$40,000** per year payable in the same manner as set forth above. The Client shall have the right to renew the contract for additional years, starting in year four, at the rate of **\$40,000** per year and thereafter, as mutually agreed between Client and Consultant. Client acknowledges that affiliates of Consultant act in the capacity of a real estate brokerage service business and may earn fees for services including brokerage, development, leasing and management fees in the performance of such affiliates services as part of the scope of the Project.

**4. CLIENT RESPONSIBILITIES**

In addition to paying Consultant for services according to the preceding paragraph, the Client shall also provide for Consultant: access to its relevant personnel, facilities, and materials including, but not necessarily limited to, those items specified in Consultant's proposal to Client, and such records, reports, and information as reasonably requested by Consultant and in Client's possession.

**5. LEVEL OF COMPETENCE**

Consultant represents and warrants to the Client that it and all of its employees that will be working on the project for the Client are qualified and competent to perform the services required. Such personnel shall not be employees of or have any pre-existing contractual relationship with the Client. All of the services required hereunder will be performed by Consultant or under its supervision.

The Project Directors for the performance of services by Consultant pursuant to the terms and conditions of this agreement shall be Chuck Branch, Robert Jolly, Brad Siegal, Bill Clements and Charles Branch, or other employees as deemed necessary by Consultant. Consultant may also use additional employees to assist with the performance of this Agreement as Consultant deems appropriate in Consultant's discretion.

**6. MATERIALS/CONFIDENTIALITY**

The Client agrees to cooperate with and provide Consultant with access to facilities and information within its reasonable possession and control, requested by Consultant for its review and use in performing the services herein. Provided, however, all such documents, information, results, memoranda and all other written information ("information") shall be held confidential by Consultant and any of its sub-contractors and shall not, without the prior written consent of the Client, be used for any purpose other than the performance of this agreement nor be disclosed to any other entity not connected with performance of this agreement. Upon completion of services, Consultant shall return all such information to the Client. The Client shall retain ownership of all such information provided by Client.

**7. INTELLECTUAL PROPERTY**

The Client and Consultant, jointly and separately, acknowledge and agree that the intellectual property of both parties shall remain owned by the respective party. With the exception of Consultant's periodic and final reports generated for performance of this agreement to or for the Client, reports, memorandums, electronic mail, facsimile transmissions and other written and prepared documents shall be owned by the party who authored, generated or who originally possessed the same and nothing in this agreement shall contravene said rights.

**8. INFORMATION AND REPORTS**

Consultant shall furnish an electronic version of a final written report and such periodic reports concerning the status of the project as may be requested by the Client's representative

pursuant to the schedule to be provided by Consultant. Consultant shall furnish the Client, upon request, with electronic copies of all documents and other material prepared or developed in relation with or as part of the project. Such requests shall be reasonable and within normal business practices for such work.

**9. COPYRIGHT INFORMATION**

The Client acknowledges that all intellectual property developed during the course of this agreement by Consultant shall belong exclusively to Consultant. However, the Client may utilize any of the foregoing for and on behalf of its internal operations, but will take steps reasonably necessary with its employees with respect to the use, copying, protection and security of the foregoing.

**10. APPLICABLE LAWS**

Consultant shall register and comply with all State or Federal laws and/or regulations as they may relate to the services or activities of the Consultant to the Client.

**11. 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.

**12. INSURANCE**

Consultant carries General Liability Insurance, Automobile Liability Insurance, Umbrella Coverage, Worker's Compensation Insurance, Errors and Omissions Liability Coverage and Employee Dishonesty Insurance with Cincinnati Insurance Company, Alabama Retail Comp, CNA and Traveler's Insurance.

**13. TERMINATION**

The Client reserves the right with or without cause, to terminate this agreement after the initial three year term by giving written notice to Consultant of such termination at least fifteen (15) days before the start date of the next renewing term. In the event of termination pursuant to



this paragraph, Consultant shall cease performing any work pursuant to this agreement and be entitled to compensation for services rendered through the effective date of termination. All fees paid for any term shall be deemed fully earned when paid and are not subject to refund following any termination hereunder.

**14. CONFLICT OF INTEREST**

The Consultant represents and warrants to the Client, to the best of its knowledge, that neither it nor its Project Directors are aware of any conflict of interest which exists by means of its provision of services to the Client pursuant to the terms and conditions of this agreement.

**15. NOTICES/PARTIES REPRESENTATIVES**

The representative of the Client for this agreement shall be Jeff Downes, City Manager.

All notices, bills, invoices and reports required by this agreement shall be sufficient if sent by the parties hereto in the United States Mail, postage prepaid thereon to the addresses noted below:

Client: City of Vestavia Hills  
513 Montgomery Hwy  
Vestavia Hills, AL 35216  
Attn: Jeff Downes

Consultant: Retail Strategies, LLC  
120 18<sup>th</sup> Street South  
Suite 201  
Birmingham, AL 35233  
Attention: Chuck Branch

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**16. REPRESENTATIVE CAPACITY**

While Consultant's role will be that of consultant to the Client, Consultant shall be and remain an independent contractor and not act in the role of an agent or legal representative on behalf of the Client. Consultant shall not have the authority to bind or obligate the Client, its officers, agents or employees.

**17. MISCELLANEOUS**

**Capacity:** Each party to this agreement represents and warrants to the other as follows:

A. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.

B. That each has full power and capacity to enter into this agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.

C. That to the extent required, each party has obtained the necessary approval of its governing body, board, council or other appropriate governing body and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the party.

D. That each party has duly authorized and empowered a representative to execute this agreement on their respective behalf and the execution of this agreement by such representative fully and completely binds the party to the terms and conditions hereof.

E. That absent fraud, the execution of this agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same. To the extent a party is a partnership, limited liability company or joint venture, the execution of this agreement by any member thereof shall bind the party and to the extent that the execution of agreement is limited to a manager, managing partner or specific member then the person so executing this agreement is duly authorized to act in such capacity for the party.

F. That each party represents and warrants to the other that, to the best of its knowledge, there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this agreement.

G. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this agreement.

**Third Party Beneficiaries:** It is the intent of the parties hereto that there shall be no third party beneficiaries to this agreement.

**Final Integration:** This agreement, together with any exhibits or amendments hereto, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this agreement or expressly referred to herein have been relied on by any party in entering into this agreement.

**Force Majeure:** Neither party to this agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

**Amendment in Writing:** This agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

**Binding Effect:** This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatee, distributees, successors, and assigns. If any provision in this agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Captions:** The captions of this agreement are for convenience and reference only, are not a part of this agreement, and in no way define, describe, extend, or limit the scope or intent of this agreement.

**Construction:** This agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

**Mandatory and Permissive:** “Shall”, “will”, and “agrees” are mandatory; “may” is permissive.

**Governing Law:** The laws of the State of Alabama, but without regard to conflict of laws principles, shall govern the validity of this agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this agreement.

**Prohibition on Assignment and Delegation:** No party to this agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

**Waiver:** Non-enforcement of any provision of this agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the agreement.

**Agreement Date/Counterparts:** The date of this agreement is intended as and for a date for the convenient identification of this agreement and is not intended to indicate that this agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

**Arbitration:** Should any dispute between Consultant and Client arise at any time out of any aspect of this Agreement or the relationship hereunder, or against any employee, officer, agent, director, member, affiliate, subsidiary or parent, the parties hereto agree to

have any such dispute resolved by final and binding arbitration in accordance with the rules of the American Arbitration Association.

CLIENT:

City of Vestavia Hills, Alabama

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

CONSULTANT:  
RETAIL STRATEGIES, LLC

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## EXHIBIT A

### **PROJECT MISSION**

In a partnership with The City of Vestavia Hills, the goal of Retail Strategies is to successfully recruit new retail, restaurant, entertainment, and hospitality concepts to the primary trade areas within The City of Vestavia Hills:

- The Highway 31 Corridor
- Rocky Ridge Road at or near the intersection of Rocky Ridge and Morgan Drive
- Cahaba Heights
- Liberty Park
- Patchwork Farms

The principal missions behind our goal are to increase the city sales tax revenue, enhance the quality of life, and expand the base of convenient and desirable goods, services, dining, entertainment and hospitality venues for the citizens and visitors of Vestavia Hills's regional trade area. It is our commitment to work closely with The City of Vestavia Hills, city officials, citizens, property owners, developers, brokers, and retail tenants in any way necessary to accomplish our goal and mission.

Our team will create Objectives and Action Plans that will be updated and presented to The City of Vestavia Hills every six (6) months. Additionally, we will establish a client login through Basecamp Project Management Software that is accessible on our company website ([www.retailstrategies.com](http://www.retailstrategies.com)), where all files, marketing materials, and prospect reporting is stored and updated. Finally, a member of our team will be in Vestavia Hills as often as necessary to provide direct interaction with City officials, conduct "boots on the ground" research, engage with local property owners, developers and brokers, and to host new retail prospects visiting the market.

### **SUMMARY OF RETAIL ANALYSIS AND SERVICES:**

- Custom Demographic Research – Historical, Current, and Projected Demographics – to include market trade areas by radius/drive-time, and custom trade areas associated with the City of Vestavia Hills
- Mosaic Lifestyles – Market Segmentation Analysis
- Retail Gap Analysis
- Retail Peer Analysis
- Thematic Mapping and Aerial Imagery by trade area
- Retail Competitor Mapping/Analysis
- Market Maximization Summary and Strategic Recruitment Plan
- Identification of Retail Prospects
- Active Retailer Recruitment and execution of the Retail Strategic Plan

- Representation at local, regional and national retail conferences and conventions
- Participation in 2 all day workshops/charrettes per year

### **STRATEGIC RETAIL RECRUITMENT PLAN**

Upon completion of the research, the Retail Strategies team will provide electronic versions of all deliverables to the City of Vestavia Hills through the Retail Strategies BaseCamp platform that will serve as a working resource continuously updated with current data, research and prospect information. All of the detailed demographic materials as summarized above will be included and conveniently labeled for easy review by the City of Vestavia.

Also included in the deliverable package will be the Strategic Retail Recruitment Plan to be prepared and executed by Retail Strategies, LLC and its partners. Included in this portion of the package are the following:

1. Retailer Overview and Recruitment Plan- Summary of the primary retail gaps inclusive of the key retailers to be pursued with a prototypical overview of each retailer relative to size, economics, etc.
2. Local Property Catalog- Retail Strategies LLC and its partners will work with the City of Vestavia Hills to catalog all local commercial properties that may be suitable sites to present to prospective new retailers. This will include maps, marked aerials and all pertinent contact and site specific information relative to each site.
3. Call List and Recruitment Update- an ongoing tracking form to keep city contacts updated relative to recruitment efforts and specific interaction with prospective retailers.
4. Retail Strategies LLC will work with the local property owners, commercial real estate brokers and developers as needed to assist their respective retail recruitment efforts.

### **Project Team**

**Chuck Branch** is CEO of Decision Data Resources and co-founded Retail Strategies in 2011. Chuck has spent much of his career managing the development and implementation of large database and GIS projects and solutions for municipalities and workforce development related agencies and organizations across the United States.

**Robert Jolly** is the President of Birmingham based Retail Specialists, Inc. and co-founded Retail Strategies in 2011. He oversees all financial, development and management aspects of both companies. During his time at Retail Specialists, Inc., he has overseen the leasing and management of more than 5,000,000 sf of retail space and has assisted some of the most well-known tenants in the United States with their expansion into new markets in the Southeast.

**Brad G. Siegal** joined Retail Strategies in 2012 and serves as General Counsel providing legal assistance and oversight as the firm provides research, strategic planning, and retail recruitment services to its growing list of municipal clients throughout the Southeast. Brad also works with the firm's retail real estate company, Retail Specialists, Inc., focusing on the legal and investment matters of the company and providing legal assistance and resources in the development, acquisition, disposition, leasing and business development efforts of the firm and its clients. Brad has been a practicing attorney for more than 22 years. He has represented major real estate clients, including investment funds and REIT's in their acquisitions, dispositions, and other commercial activities throughout the United States. Brad is an AV- Peer reviewed lawyer, a member of several "Best Of" listings, and involved in many real estate specific organizations such as the Attorneys and Executives in Commercial Real Estate (AECRE).

**Bill Clements** provides retail recruitment oversight to many of Retail Strategies engaged cities and has successfully connected many cities and their local property owners and developers with unique regional and national retailers. Bills areas of expertise include Leasing, Brokerage, Disposition, Tenant Representation, and Consulting. Bill has worked as a third-party representative for retail Lifestyle Centers, Power Centers, Neighborhood Centers, unanchored strip centers, outparcels, and retail land. Bill earned the coveted Certified Commercial Investment Member (CCIM) designation from the CCIM Institute. He is a member of the International Council of Shopping Centers (ICSC), the Alabama CCIM Chapter and the Birmingham Commercial Real Estate Club.

**Charles Branch** is a Client Manager with Retail Strategies and will serve as the primary contact for managing research request from the city, property owners, brokers and developers, updating the Strategic Prospect List, and assistance with Basecamp. Charles has played a key role in Retail Strategies from its inception, assisting in the research and retail recruitment efforts for multiple municipal clients throughout the Southeast. Charles also provides assistance in the execution of the strategic retail recruitment plan, focusing on the identification of companies to fill the product and service gaps within each city's trade area(s).



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 16, 2013

By Hand Delivery

City Manager Jeffrey D. Downes  
Vestavia Hills Municipal Center  
P. O. Box 660854  
Vestavia Hills, Alabama 35266-0854

In Re: Proposed Agreement by and between Retail Strategies, LLC  
and the City of Vestavia Hills

Dear Mr. Downes:

On September 10, 2013, you furnished me via electronic mail with a copy of a proposed Agreement to Provide Professional Consulting and Related Services by and between Retail Strategies, LLC, an Alabama limited liability company (“Consultant”) and the City of Vestavia Hills, Alabama (“Client”), hereinafter referred to as “Agreement,” with a request that I review the Agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

**COMMENTS**

A. **ALABAMA COMPETITIVE BID LAW:** The Agreement is exempt from the Alabama Competitive Bid Law by virtue of Title 41-16-51(a)(3), *Code of Alabama, 1975*, because it provides for the services of consultants.

B. **ALABAMA COMPETITIVE BID LAW—TERM:** The Agreement does not violate the Alabama Competitive Bid Law at Title 41-16-57(f), *Code of Alabama, 1975*, because it does not extend beyond a period of three (3) years.

## RECOMMENDATIONS

1. **IMMIGRATION:** Title 31-13-9(a) and (b), *Code of Alabama, 1975*, requires that as a condition for the award of any contract, grant or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees within the State of Alabama, the business entity or employer shall:

(a) Not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

(b) Provide documentation establishing that the business entity or employer is enrolled in the E-Verify Program.

(c) Participate in the E-Verify Program during the performance of the contract, and shall verify every employee that is required to be verified according to the applicable federal rules and regulations.

Therefore, I recommend that the following language be added to the Agreement:

**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.

2. I recommend that Section 12 of the proposed Agreement be amended so as to include the types of insurance coverages and the minimum limits of liability.

3. I recommend that the language of Section 11 requiring the Client to indemnify the Consultant be deleted. My recommendation is based upon the following authorities:

(a) **Constitution of Alabama of 1901:** Section 94, as amended by Amendments 112 and 558, of the *Constitution of Alabama* provides as follows:

“The Legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever.”

In my opinion, it would be a violation of Article IV, Section 94(a) of the *Constitution of Alabama* for the City to indemnify the Consultant for actions, costs, expenses, damages and liabilities.

(b) **Limits of Liability of Municipalities:** Section 11-93-2, *Code of Alabama, 1975*, establishes the maximum amount of damages recoverable against governmental entities. The recovery of damages under any judgment against a city shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence and to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. This statute also provides in pertinent part that recovery of damages under any judgment against a city shall be limited to \$100,000 for damage for loss of property arising out of any single occurrence. It is my opinion that if a city agreed to indemnify third parties, then in such event it would waive these limits of liability.

(c) **Public Officials Are Entitled To Discretionary Function Immunity:** Public officials who act within the scope of their authority in performing functions involving discretion are entitled to discretionary function immunity. *Woods v. Wilson*, 539 So.2d 224 and *Hilliard v. Huntsville*, 585 So.2d 889.

It is my opinion that if the City agreed to indemnify a third party, then in such event such indemnity agreement could waive the discretionary function immunity for its public employees.

(d) **Wantonness:** There is no cause of action against a municipality for wantonness. *Hilliard v. City of Huntsville*, 585 So.2d 889 (Ala.1991) and Title 11-47-190, *Code of Alabama, 1975*. If the City agreed to indemnify another party and that indemnitee was guilty of wanton conduct, then in such events the City would effectively waive its right under the Hilliard case.

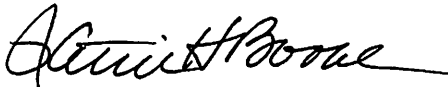
(e) **Intentional Torts:** Likewise, there is no action against a municipality for intentional torts. *Altmayer v. City of Daphne*, 613 So.2d 366 (Ala.1993). If the indemnitee committed an intentional tort, then in such event the City would waive its rights under the *Altmayer* case.

(f) **Punitive Damages:** In Alabama, municipalities are not liable for punitive damages (Article I, §§ 1, 5, 6, 7, 9, 11, 13 and 22 of *Alabama Constitution*). Under an indemnity agreement, the City would be required to pay punitive damages if punitive damages were awarded against an indemnitee.

(g) **General Comprehensive Liability Insurance:** The City has general comprehensive liability insurance coverage pursuant to an insurance policy issued by One Beacon Insurance Company and written by its agent, J. Smith Lanier & Co. In very general terms, that policy states in substance that One Beacon will pay damages to others for which the law holds the named insureds responsible. Therefore, if a City employee is guilty of negligence that results in a judgment against the City, then in such event One Beacon will pay that judgment in accordance with the terms, provisions and conditions. In my judgment, the insurance limits are more than sufficient to protect against the negligent acts of City employees.

Please call me if you have any questions regarding any of the matters set forth in this legal opinion.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: Mayor Alberto C. Zaragoza, Jr.  
City Clerk Rebecca Leavings

## **RESOLUTION NUMBER 4512**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH THE VESTAVIA HILLS CHAMBER OF COMMERCE FOR ECONOMIC DEVELOPMENT SERVICES**

**WHEREAS**, the City Manager of the City of Vestavia Hills has recommended a “team” approach to economic development of the City of Vestavia Hills (“City”); and

**WHEREAS**, the City Manager has worked with the Vestavia Hills Chamber of Commerce (“Chamber”) to become a part of the team approach lending its professional expertise to the economic development of the City; and

**WHEREAS**, the City Manager and the Chamber have worked together to draft a Memorandum of Understanding (“MOU”); a copy of which is marked as “Exhibit A,” attached to and incorporated into this Resolution Number 4512 as though written fully therein; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept the recommendation of the City Manager in building his team to include the Chamber.

**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 execute and deliver said agreement with the Chamber pursuant to the provisions detailed in the attached Exhibit A; and
2. This Resolution Number 4512 shall become effective immediately upon approval with funding from fiscal year 2014.

**DONE, ORDERED, ADOPTED and APPROVED** this the 23<sup>rd</sup> day of September, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## Memorandum of Understanding

To: Karen Odle, President/CEO  
Vestavia Hills Chamber of Commerce

From: Jeff Downes, City Manager  
City of Vestavia Hills

Date: September 5, 2013

Re: Economic Development Strategic Plan

As a part of the new proposed economic development strategy of the City of Vestavia Hills and in keeping with the Market Street Implementation Plan of 2012, the City of Vestavia Hills shall provide, subject to City Council approval, a supplemental appropriation to the Vestavia Hills Chamber of Commerce, within its FY 2014 budget, of \$30,000. This amount shall be payable in October of 2013 and January of 2014 in two equal payments of \$15,000. In return for this payment, the Chamber shall have the general responsibility of serving as the marketing lead for the City's economic development plan and coordinator of brand development for the City. This general goal shall be accomplished, at a minimum, through the following tasks:

1. Continue Brand Development of the City Council Adopted branding concept through the following actions:
  - a. Recruiting and selecting a new advertising and marketing agency that will enhance and further develop the existing brand. This shall be accomplished in a collaborative manner to include City and Chamber Officials. (Complete by November 1, 2013)
  - b. Determine, within budget constraints and at the recommendation of the advertising agency, the most effective means to market the existing City of Vestavia Hills businesses while being conscious of brand loyalty. (Make Recommendations to the Market Street Implementation Committee by January 2014)
2. Develop Two Programmatic Activities for business enhancement in targeted business corridors. These programmatic activities will involve the engagement and organization of the merchants of those areas but utilize resources in the appropriation for brand conscious advertising or program supplies to support public involvement with the selected programs. (These programs might involve themed events surrounding Valentine's Day, St Patrick's Day, Halloween, or some other notable date)
  - a. The Chamber shall organize a working group of its members to envision, plan and implement the two activities. (Dates to be determined. Programs to occur during FY 14)
  - b. The activities will serve as an opportunity to show how collective programs can improve the business climate for an area.

- c. The Chamber shall coordinate advertising through the selected advertising agency.
- 3. The Chamber shall keep the City of Vestavia Hills apprised of projects to support the existing businesses of Vestavia Hills and serve as the primary communicator to that existing business base.
- 4. The supplemental appropriation may be used to offset the administrative and personnel costs of the Chamber in accomplishing these tasks.
- 5. Chamber shall work with the City to explore the creation of entertainment districts for select locations.

Chamber of Commerce Approvals

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City of Vestavia Hills Approval

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**RESOLUTION NUMBER 4513**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN “AUTHORIZATION TO BIND INSURANCE COVERAGE” WITH J. SMITH LANIER AND COMPANY, FOR EXCESS LIABILITY INSURANCE COVERAGE AND AUTOMOBILE PHYSICAL DAMAGE COVERAGE**

**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 execute and deliver an authorization to bind insurance coverage with J. Smith Lanier and Company for excess liability insurance coverage and automobile physical damage coverage for the City of Vestavia Hills; and
2. A copy of said proposal and authorization to bind is marked as “Exhibit A,” attached to and incorporated into this Resolution Number 4513 as though written fully therein; and
3. This Resolution Number 4513 shall become effective October 1, 2013.

**ADOPTED and APPROVED** this the 23<sup>rd</sup> day of September, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



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## AUTHORIZATION TO BIND

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Named Insured:      **City of Vestavia Hills, Alabama**

**Choose the appropriate option:**

I hereby authorize J. Smith Lanier & Co. to bind my coverage per the terms and conditions outlined in this Proposal.

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Date*

I hereby authorize J. Smith Lanier & Co to bind my coverage with changes as stated below. I understand these changes may result in possible additional underwriting requirements or more/less premium.

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\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Date*

# 2013-2014 Proposal

PREPARED FOR:

City of Vestavia Hills, Alabama

10/01/2013-10/01/2014

PRESENTED BY:

Matt Rainer



*J. Smith Lanier & Co.*  
*Insuring People and Business Since 1868*

Property & Casualty • Personal Insurance • Risk Management • Loss Control  
Trusts • Bonds • Employee Benefits • Wealth Accumulation • Endowments  
Financial Planning • Alternative Risk Financing • Executive Liability

## COMMERCIAL GENERAL LIABILITY

Named Insured: **City of Vestavia Hills, Alabama**  
 Carrier Name: **One Beacon/Atlantic Specialty Insurance Company**  
 A.M. Best Rating **A**

### Coverage Form

- Occurrence Form  
 Claims Made Form  
 Retroactive Date: \_\_\_\_\_

Coverage	Limit
General Aggregate	\$4,000,000
Products-Completed Operations Aggregate	\$4,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Damage to Rented Premises (Each Occurrence)	\$1,000,000
Medical Expense (Any One Person)	Not Covered

Deductible: \$50,000  
 Per Claim  
 Per Occurrence

Deductible Basis:  Bodily Injury  
 Property Damage  
 Both Bodily Injury and Property Damage  
 Both Bodily Injury, Property Damage and Personal Advertising Injury

### Coverage Summary

This coverage protects your business from claims arising from alleged bodily injury, personal injury or property damage liability. It includes protection for services you render or products you sell. Coverage payments can include judgments, attorney fees, court costs, or other related expenses.

### Occurrence Basis

Covers a loss caused by an occurrence that happened during the policy period, although the claim may be made after the policy expires.

### Claims Made Basis

Covers a claim made during the policy period for a loss that happened after the retroactive date.

### Endorsements

*(See policy for a complete list of coverage limitations and exclusions.)*

### Additional Coverages:

- Coverage C Health Care and Social Services
  - Each Wrongful Act \$1,000,000
  - Deductible \$ 50,000
- Sexual Abuse
  - Each Occurrence \$1,000,000

## PROFESSIONAL LIABILITY

Named Insured: **City of Vestavia Hills, Alabama**  
 Carrier Name: **One Beacon/Atlantic Specialty Insurance Company**

A.M. Best Rating: **A**

### Coverage Form

- Occurrence Form  
 Claims Made Form  
 Retro Date: 10/01/2008

### Public Officials Errors & Omissions

Coverage:	Limit
Each Wrongful Act	\$1,000,000
Aggregate	\$4,000,000
Deductible	\$ 50,000

### Public Officials Employment Practices

Coverage:	Limit
Each Offense	\$1,000,000
Aggregate	\$4,000,000
Deductible	\$ 50,000

### Public Officials Employee Benefits Administration

Coverage:	Limit
Each Offense	\$1,000,000
Aggregate	\$4,000,000
Deductible	\$ 50,000

### Law Enforcement Liability

Coverage:	Limit
Each Offense	\$1,000,000
Aggregate	\$4,000,000
Deductible	\$ 50,000

#### Coverage Summary

This coverage is used to insure against claims arising out of negligent acts, errors or omissions in the rendering or failing to render professional services as defined in the policy.

#### Occurrence Basis

Covers a loss caused by an occurrence that happened during the policy period, although the claim may be made after the policy expires.

#### Claims Made Basis

Covers a claim made during the policy period for a loss that happened after the retroactive date.

#### Endorsements

(See policy for a complete list of coverage limitations and exclusions.)

## COMMERCIAL AUTOMOBILE

Named Insured: City of Vestavia Hills, Alabama  
 Carrier Name: One Beacon/Atlantic Specialty Insurance Company  
 AM Best Rating: A

Symbol	Coverage	Limit
1	Liability (Bodily Injury and Property Damage)	\$1,000,000
2	Uninsured Motorists	\$50,000
7	Physical Damage Coverage (See Attached Automobile Schedule)	

**Includes:** *(Applies Only if Marked)*

- Liability Deductible - \$50,000
- Towing For Autos Listed (On Attached Sheet)
- Non-Owned Auto Liability
- Hired Auto Liability
- Hired Auto Physical Damage  
 Limit: \$50,000  
 Comprehensive Deductible:  
 Collision Deductible:

### Coverage Summary

This policy can provide a combination of liability protection and physical damage coverage for loss due to damage to vehicles owned, maintained, or used by you. Additional coverages such as medical payments and uninsured motorist protection can be purchased to "customize" the policy to fit your business.

### Symbols

- |                                       |  |
|---------------------------------------|--|
| 1 - Any auto                          | 6 - Owned autos subject to compulsory UM |
| 2 - Owned autos only                  | 7 - Specific described autos             |
| 3 - Owned PPT only                    | 8 - Hired autos only                     |
| 4 - Owned autos other than PPT        | 9 - Non-owned only                       |
| 5 - Owned autos subject to "No Fault" |  |

### Endorsements

*(See policy for a complete list of coverage limitations and exclusions.)*

### Additional Conditions/ Endorsements / Exclusions:

- Broadened Endorsement
- Only Fire and Ambulance are eligible for agreed value physical damage
  - 1990 Pierce Aerial #00353
  - 1993 Emergency Cyclone #02759
  - 2001 Emergency Cyclone #03108
  - 2008 Pierce Velocity #08281
  - 1995 Pierce 6V92TA #00452
  - 1996 E-One H230 #05854
  - 1996 E-One H230 #05853
  - 2013 Pierce Custo Saber #13789
  - 2013 Pierce Custo Saber #13790
  - 2013 F450 Type 1 Gol AMB #94298

## INLAND MARINE

Named Insured:     **City of Vestavia Hills, Alabama**

Carrier Name:       **One Beacon/Atlantic Specialty Insurance Company**

A.M. Best Rating:   **A**

### Data Breach

Coverage	Limit
Any One Occurrence	\$25,000
Annual Aggregate	\$25,000
Deductible	\$1,000

#### Coverage Summary

Equipment Floater Coverage provides coverage for direct property loss to your equipment and tools may extend to similar property of others in your care, custody or control.

#### Endorsements

(See policy for a complete list of coverage limitations and exclusions.)

### Annual Aggregate Sub-limits:

- Legal Services             \$25,000
- Public Relations         \$25,000
- Third Party Data Breach   \$25,000
- Data Extortion Ransom   \$25,000
- Data Extortion Reward    \$25,000

## UMBRELLA COVERAGE

Named Insured: **City of Vestavia Hills, Alabama**  
 Carrier Name: **One Beacon/Atlantic Specialty Insurance Company**  
 A.M. Best Rating: **A**

Coverage	Limit
Each Occurrence	\$4,000,000
Annual Aggregate	\$4,000,000

**Coverage Summary**  
 This policy provides protection against catastrophic liability claims. The policy acts as an excess coverage over your primary liability policies. Its limits apply in addition to that provided by the underlying coverage.

**Endorsements**  
 (See policy for a complete list of coverage limitations and exclusions.)

**Schedule of Underlying Coverage:** *(Applies Only if Marked)*

- General Liability**
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Personal Injury/Advertising
  - \$4,000,000 General Aggregate
  - \$4,000,000 Products/Completed Operations Aggregate
  
- Automobile Liability**
  - \$1,000,000 Liability Limit
  
- Professional Liability**
  - \$1,000,000 Each Occurrence
  - \$4,000,000 Aggregate

## ESTIMATED PREMIUM SUMMARY

DESCRIPTION OF COVERAGE	Last Year	One Beacon	States
Property	\$ 38,949	\$41,934	\$41,934
Auto Physical Damage Only			\$12,823
States			\$111,372
Commercial General Liability	\$ 34,774	\$32,131	Included
Professional Liability	\$ 75,928	\$71,752	Included
Commercial Automobile	\$ 23,796	\$21,986	Included
Umbrella	\$ 18,440	\$17,039	Included
Fee		\$18,500	\$16,600
<b>Total Estimated Premium</b>	<b>\$191,887</b>	<b>\$203,342</b>	<b>\$182,729</b>

Terrorism Coverage is not included in the above figures. In order to add terrorism coverage the premiums below will be added:

- Property Terrorism:           \$6,604
- Auto Physical Damage       \$385
- States Terrorism               \$3,341



## A.M. BEST RATING

### *Atlantic Specialty Insurance Company*

A.M. Best #: 012666 NAIC #: 27154 FEIN #: 133362309

Address: 601 Carlson Parkway Suite 600  
 Minnetonka, MN 55305  
 United States

Web: [www.OneBeacon.com](http://www.OneBeacon.com)

Phone: 781-332-7000

Fax: 781-332-7969



Based on A.M. Best's analysis, 058167 - White Mountains Insurance Group Ltd is the **AMB Ultimate Parent** and identifies the topmost entity of the corporate structure. View a list of operating insurance entities in this structure.

#### Best's Credit Ratings

View all of the companies assigned this rating as a part of an **AMB Rating Unit**.

[Financial Strength Rating](#) [View Definition](#)

**Rating:** A (Excellent)  
**Financial Size Category:** XII (\$1 Billion to \$1.25 Billion)  
**Outlook:** Stable  
**Action:** Affirmed  
**Effective Date:** October 07, 2011

u Denotes Under Review Best's Rating

[Issuer Credit Rating](#) [View Definition](#)

**Long-Term:** a  
**Outlook:** Stable  
**Action:** Affirmed  
**Date:** October 07, 2011

#### Best's Credit Rating Analyst

**Office:** A.M. Best Company

**Senior Financial Analyst:** Brian O'Larte

**Managing Senior Financial Analyst:** Jennifer Marshall, CPCU, ARM

# OneBeacon Insurance Company

A.M. Best #: 002196 NAIC #: 21970 FEIN #: 231502700

Address: 601 Carlson Parkway Suite 600

Minnetonka, MN 55305

United States

Web: [www.onebeacon.com](http://www.onebeacon.com)

Phone: 781-332-7000

Fax: 781-332-7904



Based on A.M. Best's analysis, [058167 - White Mountains Insurance Group Ltd](#) is the **AMB Ultimate Parent** and identifies the topmost entity of the corporate structure. View a list of [operating insurance entities](#) in this structure.

## Best's Credit Ratings

View all of the [companies](#) assigned this rating as a part of an [AMB Rating Unit](#).

[Financial Strength Rating](#) [View Definition](#)

**Rating:** A (Excellent)  
**Financial Size Category:** XII (\$1 Billion to \$1.25 Billion)  
**Outlook:** Stable  
**Action:** Affirmed  
**Effective Date:** October 07, 2011

u Denotes [Under Review Best's Rating](#)

[Issuer Credit Rating](#) [View Definition](#)

**Long-Term:** a  
**Outlook:** Stable  
**Action:** Affirmed  
**Date:** October 07, 2011

## Best's Credit Rating Analyst

Office: A.M. Best Company

Senior Financial Analyst: Brian O'Larte

Managing Senior Financial Analyst: Jennifer Marshall, CPCU, ARM

## Federal Insurance Company

A.M. Best #: 002084 NAIC #: 20281 FEIN #: 131963496

Address: 15 Mountain View Road

Warren, NJ 07059

United States

Web: [www.chubb.com](http://www.chubb.com)

Phone: 908-903-2525

Fax: 908-903-3805



Based on A.M. Best's analysis, [058342 - The Chubb Corporation](#) is the AMB Ultimate Parent and identifies the topmost entity of the corporate structure. View a list of [operating insurance entities](#) in this structure.

### Best's Credit Ratings

View all of the [companies](#) assigned this rating as a part of an AMB Rating Unit.

Financial Strength Rating [View Definition](#)

Rating: A++ (Superior)  
 Financial Size Category: XV (\$2 Billion or greater)  
 Outlook: Stable  
 Action: Affirmed  
 Effective Date: April 18, 2012

u Denotes [Under Review Best's Rating](#)

Issuer Credit Rating [View Definition](#)

Long-Term: aa+  
 Outlook: Stable  
 Action: Affirmed  
 Date: April 18, 2012

### Best's Credit Rating Analyst

Office: A.M. Best Company

Senior Financial Analyst: Brian O'Larte

Managing Senior Financial Analyst: Jennifer Marshall, CPCU, ARM

## A.M. BEST RATING SCALE

### GUIDE TO BEST'S FINANCIAL STRENGTH RATINGS

A Best's Financial Strength Rating is an independent opinion of an insurer's financial strength and ability to meet its ongoing insurance policy and contract obligations. The rating is based on a comprehensive quantitative and qualitative evaluation of a company's balance sheet strength, operating performance and business profile.

#### Financial Strength Ratings

	Rating	Descriptor	Definition
Secure	A++, A+	Superior	Assigned to companies that have, in our opinion, a superior ability to meet their ongoing insurance obligations.
	A, A-	Excellent	Assigned to companies that have, in our opinion, an excellent ability to meet their ongoing insurance obligations.
	B++, B+	Good	Assigned to companies that have, in our opinion, a good ability to meet their ongoing insurance obligations.
Vulnerable	B, B-	Fair	Assigned to companies that have, in our opinion, a fair ability to meet their ongoing insurance obligations. Financial strength is vulnerable to adverse changes in underwriting and economic conditions.
	C++, C+	Marginal	Assigned to companies that have, in our opinion, a marginal ability to meet their ongoing insurance obligations. Financial strength is vulnerable to adverse changes in underwriting and economic conditions.
	C, C-	Weak	Assigned to companies that have, in our opinion, a weak ability to meet their ongoing insurance obligations. Financial strength is very vulnerable to adverse changes in underwriting and economic conditions.
	D	Poor	Assigned to companies that have, in our opinion, a poor ability to meet their ongoing insurance obligations. Financial strength is extremely vulnerable to adverse changes in underwriting and economic conditions.
	E	Under Regulatory Supervision	Assigned to companies (and possibly their subsidiaries/affiliates) placed under a significant form of regulatory supervision, control or restraint - including cease and desist orders, conservatorship or rehabilitation, but not liquidation - that prevents conduct of normal, ongoing insurance operations.
	F	In Liquidation	Assigned to companies placed in liquidation by a court of law or by a forced liquidation.
	S	Suspended	Assigned to rated companies when sudden and significant events affect their balance sheet strength or operating performance and rating implications cannot be evaluated due to a lack of timely or adequate information.

#### Rating Modifiers

Modifier	Descriptor	Definition
u	Under Review	Indicates the rating may change in the near term, typically within six months. Generally is event driven, with positive, negative or developing implications.
pd	Public Data	Indicates rating assigned to insurer that chose not to participate in A.M. Best's interactive rating process. (Discontinued in 2010)
s	Syndicate	Indicates rating assigned to a Lloyd's syndicate.

#### Outlooks

Indicates potential direction of a Financial Strength Rating over an intermediate term, generally defined as 12 to 36 months.

Positive	Indicates possible rating upgrade due to favorable financial/market trends relative to the current rating level.
Negative	Indicates possible rating downgrade due to unfavorable financial/market trends relative to the current rating level.
Stable	Indicates low likelihood of a rating change due to stable financial/market trends.

#### Affiliation Codes

Indicates rating is based on a type of affiliation with other insurers.

g	Group	p	Pooled	r	Reinsured
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#### Not Rated Designation

NR: Assigned to companies that are not rated by A.M. Best.

#### Rating Disclosure

A Best's Financial Strength Rating opinion addresses the relative ability of an insurer to meet its ongoing insurance obligations. The ratings are not assigned to specific insurance policies or contracts and do not address any other risk, including, but not limited to, an insurer's claims-payment policies or procedures; the ability of the insurer to dispute or deny claims payment on grounds of misrepresentation or fraud; or any specific liability contractually borne by the policy or contract holder. A Best's Financial Strength Rating is not a recommendation to purchase, hold or terminate any insurance policy, contract or any other financial obligation issued by an insurer, nor does it address the suitability of any particular policy or contract for a specific purpose or purchaser. In arriving at a rating decision, A.M. Best relies on third-party audited financial data and/or other information provided to it. While this information is believed to be reliable, A.M. Best does not independently verify the accuracy or reliability of the information. For additional details, see A.M. Best's *Terms of Use* at [www.ambest.com](http://www.ambest.com).

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Version 062211

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## DISCLAIMER

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### *Proposal*

J. Smith Lanier & Co. thanks you for the opportunity to discuss your insurance and risk management program. This summary is a brief overview of that program and is based on the exposure information you provided. Please refer to the policies for complete terms, conditions, limitations, definitions, and exclusions.

We have evaluated your exposures to loss and developed this proposal based upon the information that you have provided to us. If you are aware of other areas of potential exposure that need to be evaluated or of additional information of which we should be aware prior to binding of coverage, please bring the other areas or additional information to our attention as soon as possible. Should any of your exposures change after coverage is bound, please notify us immediately.

### *Client Contracts*

In the event that you enter into a contract that has specific insurance requirements, J. Smith Lanier & Co. will review your contract, but only in regards to the insurance requirements of the contract. The scope of our review will be to determine if the current insurance program which you have placed through our agency addresses the types and amounts of insurance coverage referenced by the contract. We will identify the significant insurance obligations and will provide a summary of the changes required in your current insurance program to meet the requirements of the contract. Upon your authorization, we will make the necessary changes in your insurance program. We will also be available to discuss any insurance requirements of the contract with your attorney, if desired.

In performing a contract review, J. Smith Lanier & Co. is not providing legal advice or a legal opinion concerning any portion of the contract. In addition, J. Smith Lanier & Co. is not undertaking to identify all potential liabilities that may arise under any such contracts. A contract review is provided solely for your information and should not be relied upon by third parties. Any descriptions of the insurance coverages are subject to the terms, conditions, exclusions, and other provisions of the contract and of the insurance policies and applicable regulations, rating rules or plans.

### *Fee Disclosure*

J. Smith Lanier & Co. is an insurance producer domiciled in the State of Georgia and licensed to sell insurance in additional states (including New York). Our licensed insurance producers are authorized by law to confer with you regarding the benefits, terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. Our role in any particular insurance transaction typically involves one or more of these activities.

In consideration of the services to be provided, J. Smith Lanier & Co. is charging a total annual fee in the amount of \$        which represents our involvement in the placement of the following lines of coverage:        . If J. Smith Lanier & Co. receives excess commissions from insurance companies for the placement of insurance or ancillary services in regards to the specified lines, J. Smith Lanier & Co. will, to the extent permitted by applicable law, reduce the annual fee shown above by the amount of excess commissions received by J. Smith Lanier & Co. from such insurers. Should J. Smith Lanier & Co. repay commission to insurance companies for the same aforementioned insurance or ancillary services, J. Smith Lanier & Co. may increase the fee to obtain the annual fee amount stated above. The total annual compensation paid to J. Smith Lanier & Co. on the insurance and related services outlines herein shall not exceed \$        .

*Compensation Disclosure (Including New York Regulation 194 Disclosure)*

In addition to the specific fee agreement described above, we may also receive compensation from insurers for our professional services in the form of a commission, which normally consists of a percentage of the premium collected by the insurers, for other lines of coverage we place on your behalf or services not described above. J. Smith Lanier & Co. may also receive additional compensation, under agreements with one or more insurers and/or insurance intermediaries, in the form of commission overrides or based on some combination of volume, profitability or other factors. We will receive compensation in connection with the sale of insurance products based upon the type of insurance contract that we sell and our arrangement with the insurer. Depending on the insurer and insurance contract that you select, compensation may be paid to J. Smith Lanier & Co. by the insurer selling the insurance contract or by another third party. Such compensation may vary depending on a number of factors, including the insurance contract and the insurer the purchaser selects. In some cases, other factors such as the volume of business a producer provides to an insurer or the profitability of insurance contracts a producer provides to an insurer also may affect compensation.

At your request, we will be pleased to provide you with information about compensation expected to be received by J. Smith Lanier & Co. based in whole or in part on the sale of insurance to you and (if applicable) compensation expected to be received by us based in whole or in part on any alternative quotes presented to you by J. Smith Lanier & Co.

*Collection Disclosure*

If this proposal results in your commitment to purchase one or more of the insurance products described in this proposal, J. Smith Lanier & Co. will submit to you, or caused to be submitted to you, an invoice for the insurance premiums associated with such insurance products. You are responsible for payment in full of the premium amounts set forth on our invoices within the payment terms set forth on the invoices. In the event that J. Smith Lanier & Co. or its designee commences legal action to collect amounts due under outstanding invoices or to enforce its rights under any insurance contracts, you will be responsible for payment of all reasonable attorneys' fees, court costs and expenses incurred by J. Smith Lanier & Co. in collecting past due amounts pursuant to such invoices or otherwise enforcing its legal rights under such contracts.

**RESOLUTION NUMBER 4514**

**A RESOLUTION CHANGING THE DATE OF A REGULAR CITY COUNCIL MEETING FROM NOVEMBER 11, 2013 TO NOVEMBER 13, 2013**

**WHEREAS**, the Vestavia Hills City Council regularly meets the 2<sup>nd</sup> and 4<sup>th</sup> Monday of each month; and

**WHEREAS**, November 11, 2013 is the 2<sup>nd</sup> Monday of the month of November; however, the Vestavia Hills Municipal Center is closed in honor of Veterans Day; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to reschedule said meeting to Wednesday, November 13, 2013 beginning at 5 PM.

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

1. The first regular meeting of the Vestavia Hills City Council scheduled for Monday, November 11, 2013 has been rescheduled to Wednesday, November 13, 2013 beginning at 5 PM; and
2. This Resolution Number 4514 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 23<sup>rd</sup> day of September, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**ORDINANCE NUMBER 2466**

**AN ORDINANCE FINDING AND DETERMINING THAT REAL PROPERTY OWNED BY THE CITY OF VESTAVIA HILLS, ALABAMA BEING APPROXIMATELY 1.66± ACRES OF THE PROPERTY LOCATED AT 1112 MONTGOMERY HIGHWAY AND AN APPROXIMATE 22,000 SQUARE FOOT BUILDING LOCATED ON THE PROPERTY (“PROPERTY”) IS NOT NEEDED FOR PUBLIC OR MUNICIPAL PURPOSES; TO ACCEPT AN OFFER BY COMMERCIAL REALTY PARTNERS, LLC AND/OR ASSIGNS, AN ALABAMA LIMITED LIABILITY COMPANY OR ITS ASSIGNS (“THE PURCHASER”) TO PURCHASE THE PROPERTY FOR SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00) AND TO AUTHORIZE AND DIRECT THE MAYOR AND CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO COMPLETE THE SALE**

**THIS ORDINANCE NUMBER 2466** is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 14<sup>th</sup> day of October, 2013.

**WITNESSETH THESE RECITALS:**

**WHEREAS**, the City of Vestavia Hills, Alabama (“City”) is the owner of a parcel of land situated in the City of Vestavia Hills, Jefferson County, Alabama commonly referred to as the former Library property; and

**WHEREAS**, Commercial Realty Partners, LLC and/or Assigns, an Alabama Limited Liability Company or its Assigns (“Purchasers”) has offered to purchase from the City the property consisting of approximately 1.66 +/- acres with all improvements located on the property for a price of Seven Hundred and Fifty Dollars (\$750,000.00) (“offer”) in an Purchase and Sale Agreement (“Agreement”) a copy of which is marked as “Exhibit A,” attached to and incorporated into this Ordinance Number 2466 as though written fully therein; and

**WHEREAS**, the City finds and determines that it is willing to accept the offer by the Purchasers; and

**WHEREAS**, Title 11-47-20, *Code of Alabama, 1975*, reads as follows:

“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality,” and



**WHEREAS**, Title 11-47-5, *Code of Alabama, 1975*, reads as follows:

“Contracts entered into by a municipality shall be in writing, signed and executed in the name of the city or town by the officers authorized to make the same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk. This section shall not be construed to cover purchases for the ordinary needs of the municipality;” and

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama finds and determines that the Property is not needed for municipal or public purposes; and

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

1. The Property, more particularly described in Section 3 below, is hereby found and determined not to be needed for public or municipal purposes by the City of Vestavia Hills, Alabama and is hereby declared as surplus property all in accordance with the requirements of Title 11-47-20, *Code of Alabama, 1975*.

2. The Mayor and City Manager are hereby authorized to sell the Property described in paragraph 3 below for and in consideration of the sum of Seven Hundred and Fifty Thousand Dollars (\$750,000.00).

3. The exact legal description of the Property (approximately 1.66± acres) is described as follows:

A parcel of land situated in the NE ¼ of the SW ¼ of Section 30, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

From the SW corner of said 1/4-1/4 Section run thence in an Easterly direction along the South line of same for a distance of 589.77 feet to the point of beginning of the parcel herein described; thence turn an angle to the left of 103 degrees 33 minutes 57 seconds and run in a Northwesterly direction for a distance of 206.63 feet; thence turn an angle to the right of 101 degrees 35 minutes 18 seconds and run in an easterly direction for a distance of 359.60 feet to a point on the westerly right-of-way of US Highway 31 said point being in a curve to the right having a radius of 3173.97 feet and a central angle of 3 degrees 54 minutes 57 seconds and being concave to the west with a chord which forms an interior angle of 98 degrees 29 minutes 45 seconds with the previous call; thence run along the arc of said curve in a right of way line in a southerly direction for a distance of 216.93 feet to the South line of said 1/4-1/4 section, the chord of said curve forming an interior angle of 79 degrees 31 minutes 36 seconds with said

South line of Said 1/4-1/4 section; thence run in a Westerly direction along said South line for a distance of 350.34 feet to the point of beginning.

5. Upon approval, adoption and enactment of this Ordinance Number 2466, the Mayor and City Manager are hereby authorized and directed to execute any and all documents necessary to close the sale of the Property to the Purchasers pursuant to the authority of Title 11-47-5, *Code of Alabama, 1975*.

6. This Ordinance shall become effective immediately upon its approval, adoption and enactment.

7. 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, APPROVED and ADOPTED**, on this the 14<sup>th</sup> day of October, 2013.

---

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

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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 # 2466 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 14<sup>th</sup> day of October, 2013 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Library in the Forest this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Rebecca Leavings  
City Clerk

## PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT (this "Agreement" is entered into on or before as of this \_\_\_\_ day of September, 2013, by and between The City of Vestavia Hills, Alabama (the "Seller"), and Commercial Realty Partners, LLC and/or assigns, an Alabama limited liability company or its assigns (the "Purchaser").

### Recitals

A. Seller is the owner of that certain parcel of improved real property, being known as the old Vestavia Hills library property comprised of +/- 1.66 acres and an approximate 22,000 square foot building, located at 1112 Montgomery Highway in Vestavia Hills, Alabama, as depicted on the attached Exhibit A and made a part hereof (the "Property").

B. Purchaser desires to purchase the Property, and Seller desires to sell the Property, pursuant to the terms and conditions of this Agreement.

### Agreement

NOW, THEREFORE, in consideration of the above Recitals and other good and valuable consideration, including the mutual covenants and promises herein contained, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Purchase Price; Closing Date. The purchase price for the Property shall be \$750,000.00 (the "Purchase Price"), to be paid as hereinafter provided. The closing of the sale and purchase of the Property (the "Closing") shall occur on the Closing Date, as defined in paragraph 5.

2. Earnest Money; Inspection Period. No later than three (3) business days after the Effective Date (defined in Section 24 hereof), Purchaser shall pay to Seller immediately available funds in the amount of \$1,000.00 (the "Earnest Money"), to be held and disbursed by the Seller in accordance with the terms of this Agreement. Commencing on the Effective Date, Purchaser shall have 90 days (the "Inspection Period") to perform such inspections as Purchaser deems necessary to evaluate the Property, at Purchaser's sole expense. Purchaser shall indemnify and hold Seller harmless from any and all claims, damages and losses, including attorney fees, arising from such inspections. If Purchaser deems any inspection unsatisfactory, for any reason or no reason, Purchaser shall have the right to terminate this Agreement prior to the end of the Inspection Period, by written notice to Seller received prior to the end of the Inspection Period, and receive a full refund of the Earnest Money. If Purchaser does not terminate this Agreement prior to the end of the Inspection Period, all inspections shall be deemed satisfactory, and the parties shall proceed to Closing.

3. Application of Earnest Money. Unless this Agreement is terminated prior to the end of the Inspection Period, the Earnest Money shall become non-refundable and shall be applied to the Purchase Price to be paid by Purchaser at Closing.

4. Possession. Seller shall deliver possession of the Property to Purchaser on the Closing Date.

5. Place and Date of Closing. The Closing shall be on or before the date which is 30 days following the end of the Inspection Period. The actual date of Closing is referred to herein as the "Closing Date". Time shall be of the essence with respect to the Closing Date.

6. Conveyance. Seller shall convey to Purchaser good and marketable fee simple title to the Property by general warranty deed.

7. Costs and Fees. Purchaser shall pay all other costs and fees related to closing including any updated survey, appraisal, environmental audits, title, mortgage tax, recording fees, etc. Seller and Purchaser shall pay the fees of their own attorneys for services related to the preparation and negotiation of this Agreement and the sale and purchase of the Property. All taxes will be prorated as of the day of closing.

Seller agrees to provide its most recent survey of the Property to Seller, together with other readily accessible reports, easements and other agreements relating to the Property now in Seller's possession, all within five (5) business days from the Effective Date.

8. Option to Extend Inspection Period. The Purchaser may, at their sole discretion, extend the original ninety (90) day Inspection Period by an additional ninety (90) days by notifying the Seller, in writing, at least fourteen days prior to end of existing Inspection Period and paying the Seller the amount of \$9,000.00 for the ninety (90) day extension. This extension payment is a fee which does not apply to the purchase and are non-refundable.

9. Representations and Warranties of Seller. To induce Purchaser to enter into this Agreement, Seller makes the following representations and warranties, all of which are true as of the date hereof (unless otherwise specified) and shall also be true as of the Closing Date:

(a) Seller has full power and authority to enter into this Agreement and to perform all of its obligations hereunder.

(b) The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder have been duly authorized by all requisite action, except for the approval by the Seller of the Company (as defined in Section 25, Closing Condition One) submitted by the Purchaser.

(c) That unless excepted herein, Seller has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacement, or alterations to the Property that have not been satisfactorily made. Seller warrants it is the fee owner of the Property or is authorized to execute this document for the fee owner.

(d) Seller has no actual knowledge that the Property has in the past been used or is presently used for the handling, storage, manufacturing, refining, transportation or disposal

of “toxic material”, “hazardous substances” or “hazardous waste”. The terms “hazardous wastes”, “hazardous substances”, and “toxic material” include, without limitation, any flammable explosives, radioactive materials, hazard materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42USC§1801 et seq), the Resource Conservation and Recovery Act, as amended (42USC§9601 et seq), the regulations adopted and publications promulgated pursuant to the foregoing and any other federal, state or local environmental law, ordinance, rule or regulation. Furthermore, Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority as to any of the above environmental concerns.

(e) Seller shall neither market the Property for sale nor enter into a “back-up” contract with any other party for said Property throughout the term of this Agreement.

At Closing, Seller shall be deemed to have represented and warranted to Purchaser that Seller’s representations and warranties as stated herein are true and correct as of the Closing. Purchaser shall have the right, at its expense, to have a Phase 1 ESA performed on the Property.

THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED.

#### 10. Documents for Closing.

(a) Seller, at Seller’s sole cost and expense, shall deliver or cause to be delivered to Purchaser the following documents (the “Closing Documents”):

- (i) The Deed;
- (ii) A certificate of non-foreign status to insure Seller’s compliance with Foreign Investment in Real Property Tax Act (“FIRPTA”) (Section 1445 of the Internal Revenue Code of 1986, as amended) in the form attached hereto as Exhibit B;
- (iii) Such additional documents and instruments as the title company may reasonably require to transfer Seller’s interest in the Property pursuant to the terms of this Agreement, each of which shall be in form and substance reasonably satisfactory to Seller.

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller in accordance with the terms of this Agreement, the Purchase Price less the Earnest Money and prorations.

11. Default: Remedies. If Purchaser fails to perform its obligations under this Agreement within the time specified, Seller shall have the right to retain the Earnest Money as liquidated damages as its sole and exclusive remedy. If Seller fails to perform any of the covenants of this Agreement, then the Earnest Money paid by Purchaser shall be returned to Purchaser and



15. Number and Gender. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include a corporation, firm, partnership, joint venture, trust, or estate.

16. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Alabama.

17. Assignment. Purchaser may transfer, assign or encumber its rights and/or obligations under this Agreement without prior written consent of Seller, which approval may be withheld in Seller's sole and absolute discretion; provided, however, that Purchaser shall have the right to transfer and assign this Agreement to any entity which is controlled by Purchaser.

18. Survival. The representations, warranties and indemnities contained herein shall be deemed to have been made again by the parties as of the Closing Date, and shall survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property, and shall not be affected by any investigation by or on behalf of Purchaser, or by any information which Purchaser may have obtained with respect thereto.

19. Severability. In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or conditions herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breath permitted by law.

20. Waiver. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

21. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against either party because that party or such party's legal representative drafted such provision.

22. Broker. Seller and Purchaser shall indemnify each other against any and all claims for broker's fees, costs or commissions which might arise in connection with the purchase and sale of the Property as a result of either's action. The provisions of this Paragraph shall survive closing. Each party hereby represents to the other that it has not utilized the services of any real estate agent or broker in connection with this Agreement.



23. Patriot Act Representations. Seller and Purchaser each represent and warrant to the other that they are not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specifically Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly in behalf of any such person, group, entity, or nation.

24. Effective Date. The Effective Date of this Agreement is the date which is the sixth (6<sup>th</sup>) day following the posting of the ordinance approved and enacted by the City Council authorizing the directing the City Manager and the Mayor to sign the Agreement for and on behalf of the Seller.

25. Contingencies and Conditions for Closing. Anything contained in this Agreement to the contrary notwithstanding, this Agreement is subject to and contingent upon the completion and satisfaction of the following on or before the Seller is required to close this sale, thereafter referred to collectively as “Closing Conditions”:

(a) Closing Condition One: Title 11-47-20, Code of Alabama, 1975, reads as follows:

“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality.”

In order for the seller to be required to close this sale pursuant to this Agreement, the City Council shall first make a determination, on or before the Effective Date set forth in Paragraph 24 hereof, that the Property is no longer needed for public or municipal purposes. If the City Council fails or refuses to make a determination that the Property is no longer needed for public or municipal purposes as aforesaid, then in such event the Seller shall not be required to close this sale and this Agreement shall be automatically terminated, be null and void and of no legal force and effect.

(b) Closing Condition Two: The Purchaser shall, on or before ninety (90) days from the Effective Date, produce to Seller a tenant or company (the “Company” or the “Tenant”) that will, prior to the end of said ninety (90) day period provide written confirmation to the Seller stating that it, the Company, pending and in accordance with a fully executed commercial lease with Purchaser, and provided this Agreement closes and the Company actually opens for business:

- (i) Will locate within the corporate boundaries of the City of Vestavia Hills and open and operate a commercial retail sales business on the Property; and
- (ii) Will purchase from Seller a business license the cost of which shall be based upon a fee and percentage of gross retail sales; and
- (iii) Will be engaged in the commercial business of retail sales, more specifically a sit-down restaurant; and

- (iv) Expects to generate annual retail sales in an amount necessary to collect and pay over to the City annually municipal sales tax revenue, (which is presently calculated at three percent (3%) of gross retail sales) sufficient to justify, in the sole opinion of Seller, selling the Property at less than the 2013 appraised value.

In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first accept, agree and approve the Company to locate and operate in the City of Vestavia Hills as completion and satisfaction of this Closing Condition Two. The acceptance by the Seller shall be in writing and approved by the enactment of a resolution at a public hearing, all within fourteen (14) days from Purchaser's submission of a Company to Seller for its approval or disapproval. In addition, Purchaser will use best effort to provide Seller will all market data collected and obtained during the ninety (90) day Inspection Period.

Purchaser and Seller agree that the Seller shall have the sole, unfettered and absolute discretion to approve or disapprove the Company offered by Purchaser in an effort to complete and satisfy this Closing Condition Two. If the City Council fails or refuses to accept the Company as completion and satisfaction of this Closing Condition Two, then in such event the Seller shall have no legal obligation to close this sale and this Agreement shall be automatically terminated, be null and void and of no legal force and effect and the Earnest Money shall be immediately returned to Purchaser.

Anything to the contrary in this Closing Condition Two notwithstanding, Purchaser shall have ninety (90) days from the Effective Date to continue to submit prospective tenants to Seller for Seller's approval or disapproval. If after said ninety (90) day period Seller has not approved of a Company, then and only then shall the Seller have the right but not the obligation to terminate the Agreement by immediately refunding the Earnest Money to Purchaser.

- (c) Closing Condition Three: Seller shall have no legal obligation to close this sale unless and until the Property is rezoned by the City of Vestavia Hills so as to permit the contemplated use by the Purchaser or Company referred to in Closing Condition Two. If the property is not rezoned as aforesaid, then in such event the Seller shall have no obligation to close the sale of the Property and this Agreement shall be automatically terminated, be null and void and of no force and effect and the Earnest Money shall be immediately returned to Purchaser.
- (d) Closing Condition Four: If the sale of the Property is not closed on or before the closing Date, then in such event this Agreement shall automatically be terminated, cancelled, null and void and of no legal force or effect.

The Seller shall have no legal obligation to close this sale unless and until all four Closing Conditions have been completed and satisfied, then in such event this Agreement shall be

automatically terminated and of no legal force and effect and the Earnest Money shall be immediately refunded to Purchaser.

26. Condition of the Property. The Property is sold in “as is condition with any and all faults”. Purchaser expressly acknowledges and agrees that Seller makes no representations or warranties regarding the condition of the Property, except to the extent expressly and specifically set forth herein.

27. Construction of Terms: Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. 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.

**IN WITNESS WHEREOF**, Seller and Purchaser have caused this Agreement to be executed as of the date first above written.

**SELLER:**

THE CITY OF VESTAVIA HILLS, ALABAMA

BY: \_\_\_\_\_  
Jeff Downes, City Manager

BY: \_\_\_\_\_  
Alberto C. Zaragoza, Jr., Mayor

WITNESS: \_\_\_\_\_

**PURCHASER:**

COMMERCIAL REALTY PARTNERS, LLC

BY: Tammy G. Johnson  
Tammy G. Johnson, President

WITNESS: C. W. [Signature]

EXHIBIT A  
TO  
PURCHASE AND SALE AGREEMENT

A parcel of land situated in the Northeast Quarter of the Southwest Quarter of Section 30, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

Form the Southwest corner of said quarter-quarter section run thence in an Easterly direction along the South line of same for a distance of 589.77 feet to the point of beginning of the parcel herein described; thence turn an angle to the left of 103 degrees 33 minutes 57 seconds and run in a Northwesterly direction for a distance of 206.63 feet; thence turn an angle to the right of 101 degrees 35 minutes 18 seconds and run in an Easterly direction for a distance of 359.60 feet to a point on the Westerly right-of-way of U.S. Highway 31, said point being in a curve to the right having a radius of 3173.97 feet and a central angle of 3 degrees 54 minutes 57 seconds and being concave to the West with a chord which forms an interior angle of 98 degrees 29 minutes 45 seconds with the previous call; thence run along the arc of said curve in said right-of-way line in a southerly direction for a distance of 216.93 feet to the South line of said quarter-quarter section, the chord of said curve forming an interior angle of 79 degrees 31 minutes 36 seconds with said South line of said quarter-quarter section; thence run in a Westerly direction along said South line for a distance of 350.34 feet to the point of beginning.

**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 19, 2013

**By Hand Delivery**

City Manager Jeffrey D. Downes  
Vestavia Hills Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

Re: Contract for the Sale of the Old Library Property

Mr. Downes:

On September 13, 2013, you furnished me with a copy of a Purchase and Sale Agreement by and between the City of Vestavia Hills, Alabama ("Seller") and Commercial Realty Partners, LLC and/or assigns, an Alabama limited liability company ("Purchaser") with a request that I review the agreement ("Agreement") and provide you with my written legal opinion. The purpose of this letter is to respond to your request.

**I. FACTS**

**A. THE PROPERTY:**

1. **Street Address:** 1112 Montgomery Highway, Vestavia Hills, Alabama.

2. **Legal Description:** A parcel of land situated in the Northeast Quarter of the Southwest Quarter of Section 30, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows: From the Southwest corner of said quarter-quarter section run thence in an Easterly direction along the South line of same for a distance of 589.77 feet to the point of beginning of the parcel herein described; thence turn an angle to the left of 103 degrees 33 minutes 57 seconds and run in a Northwesterly direction for a distance of 206.63 feet; thence turn an angle to the right of 101 degrees 35 minutes 18 seconds and run in an Easterly direction for a distance of 359.60 feet to a point on the Westerly right-of-way of U.S. Highway 31, said point being in a curve to the right having a radius of 3173.97 feet and a central angle of 3 degrees 54 minutes 57 seconds and being concave to the West with a chord which forms an interior angle of 98 degrees 29 minutes 45 seconds with the previous call; thence run along the arc of said curve in said right-of-way line in a southerly direction for a distance of 216.93 feet to the South line of said quarter-quarter section, the chord of said curve forming an

interior angle of 79 degrees 31 minutes 36 seconds with said South line of said quarter-quarter section; thence run in a Westerly direction along said South line for a distance of 350.34 feet to the point of beginning.

3. **Owner of Property Prior to August 19, 2005:** HealthSouth Medical Center, Inc. ("HMC") owned the property prior to August 19, 2005.

4. **Ground Lease Agreement:** On February 10, 1994, HealthSouth Medical Center, Inc., as Lessor, and the City of Vestavia Hills, Alabama ("City"), as Lessee, entered into a Ground Lease Agreement whereby HMC leased the property to the City for a period of thirty years for a total annual rental of \$10.00 per year provided that the property be used for a public library and not for any purposes other than a public library.

5. **Amended and Restated Ground Lease Agreement:** On January 1, 1998, HMC, as Lessor, and the City, as Lessee, entered into an Amended and Restated Ground Lease Agreement whereby the City leased the property for a period of thirty years with an annual rental of \$10.00 per year and an option to purchase the property at the end of the term for \$110.00.

6. **Termination of Ground Lease as Amended and Restated** On August 2, 2005, HMC and the City entered into an Agreement to Terminate the Ground Lease Agreement as Amended and Restated, which said Agreement was filed in the office of the Judge of Probate of Jefferson County, Alabama and recorded at Instrument 200511/9611. The Agreement provided, among other things, as follows:

“(a) The Ground Lease Agreement, dated February 10, 1994, is hereby terminated, cancelled and shall have no force and effect.

“(b) The Amended and Restated Ground Lease Agreement, dated April 21, 1998, is hereby terminated, cancelled and shall have no force and effect.”

7. **Conveyance of Property to City:** On August 19, 2005, HMC conveyed the property to the City for and in consideration of \$710.00 by virtue of that certain Corporation Quitclaim Deed, dated August 19, 2005, which said Deed was filed in the office of the Judge of Probate of Jefferson County, Alabama on August 24, 2005 and recorded at Instrument 200511/9612.

8. **Appraisal:** On June 23, 2009, Wm. Scruggs & Associates appraised the property and established the market value at \$1,500,000.00.

9. **Zoning:** According to City Clerk Rebecca Leavings, the property presently has a B-1 commercial zoning classification.

**B. USE OF PROPERTY BY THE CITY:** The City used the property for public library purposes until December 12, 2010 when the new Vestavia Hills Library was completed.

**C. THE PROPERTY IS FOR SALE:** The City has vacated the property and it is now for sale. Three offers to purchase the property have been made and are discussed in Sections D, E and F below.

**D. OFFER BY M&P PROPERTIES, LLC TO PURCHASE THE PROPERTY:** On November 17, 2011, M&P Properties, LLC (M&P) offered to purchase the property for a total consideration of \$800,000.00. The offer was subject to and contingent upon M&P securing and the City approving a nationally recognized tenant or owner of the property (or another location) to operate a commercial retail sales business in the City that would generate municipal sales tax revenue in the range of \$70,000.00 to \$100,000.00 annually.

The City utilized the process set forth in Amendment 772 to *The Constitution of Alabama of 1901* (Article IV, §94.01) in its attempt to close the sale of the property to M&P. The reason that Amendment 772 was used was because the City had agreed to sell the property with an appraised value of \$1,500,000.00 to M&P for \$800,000.00.

M&P was not successful in providing a suitable tenant for the property and the sale was not closed. The contract was terminated.

**E. OFFER BY HES INVESTMENTS, LLC TO PURCHASE THE PROPERTY:** On September 17, 2012, HES Investments, LLC ("HES") offered to purchase the property for a total consideration of \$750,000.00. The offer was subject to and contingent upon HES securing and the City approving a nationally recognized tenant or owner of the property to operate a commercial retail sales business in the City that would generate sales tax revenue in the range of \$70,000.00 to \$100,000.00 annually.

The City utilized the process set forth in Amendment 772 to *The Constitution of Alabama of 1901* (Article IV, §94.01) in its attempt to close the sale of the property to HES. The reason that Amendment 772 was used was because the City had agreed to sell the property with an appraised value of \$1,500,000.00 to HES for \$750,000.00.

HES was not successful in providing a suitable tenant for the property and the sale was not closed. The contract was terminated.

**F. SECOND APPRAISAL:** Recently, Wm. Scruggs & Associates appraised the property and established the market value at \$825,000.00.

**G. OFFER BY COMMERCIAL REALTY PARTNERS, LLC:** Commercial Realty Partners, LLC ("CRP") offered to purchase the property for a total consideration of \$750,000.00 and submitted a Purchase and Sale Agreement ("Agreement").

## II. LEGAL ISSUE ONE

May the City of Vestavia Hills legally sell the property for \$750,000.00 even though it has an appraised value of \$825,000.00?

A. ANSWER TO LEGAL ISSUE ONE: It is my legal opinion that the answer to Legal Question One is in the affirmative.

B. BASIS FOR LEGAL OPINION TO LEGAL ISSUE ONE:

(1) Market Value: The test of “market value” of property condemned is what it would reasonably have sold for in the market at the time and place under like conditions, and is the price the property will bring when offered for sale by a willing seller who is not forced to sell and is sought by willing buyer not required to buy after due consideration of all elements affecting value. *Popwell v. Shelby County*, 130 So.2d 170, 272 Ala. 287, 87 A.L.R.2d 1148. *Em Dom 131*.

(2) The Property Has Not Sold in Three Years: The property has been for sale for approximately three years and no prospective purchaser has been willing to close the sale during that period at a sales price of \$750,000.00.

(3) The City Council May Determine the Market Value: The City Council owns the property. In Alabama, an owner of property may give his opinion as to the fair market value of the property. *Wilson v. Hudson*, 429 So.2d 1090 (1983). The law further provides that there is no requirement that a witness be an expert in order to testify as to value. *Federal Mogul Corporation v. Universal Construction Company, et al*, 326 So.2d 716 (1979). Title 12-21-114, *Code of Alabama, 1975*, provides as follows:

“Direct testimony as to the market value is in the nature of opinion evidence; one need not be an expert or dealer in the article, but may testify as to value if he has had an opportunity for forming a correct opinion.”

Since the City Council owns the property, it can determine the value thereof.

(4) Supreme Court of Alabama: The Supreme Court of Alabama has decided three cases that have upheld leases and conveyances of real property by municipalities without requiring the municipality to prove that it has received a fair market value of the property (*O’Grady v. City of Hoover*, 519 So.2d 1292 (Ala.1987); *Williams v. Water Works and Sanitary Sewer Board of Montgomery*, 261 Ala. 460, 74 So.2d 814 (1954); and *Dothan Area Chamber of Commerce, Inc. v. Shely*, 561 So.2d 515 (Ala.1990). The rationale of those cases is that the Court is hesitant to examine the adequacy of the consideration received by the city, leaving that determination to the judgment of the city’s duly elected officials acting in good faith.



### III. LEGAL ISSUE TWO

Is the City of Vestavia Hills required to utilize the procedure set forth in Amendment 772 of the *Constitution of Alabama of 1901* being Article IV, §94.01 in order to close the sale of this property?

A. ANSWER TO LEGAL ISSUE TWO: It is my legal opinion that the answer to Legal Question Two is in the negative.

B. BASIS FOR LEGAL OPINION TO LEGAL ISSUE TWO: The average of the three offers (\$800,000.00--\$750,000.00--\$750,000.00) is approximately \$766,666.00. In my opinion, that figure is closer to the market value than the estimated appraised value of \$825,000.00. Based on the fact that the property has been vacant for three years and nobody has rushed to buy it, it is my legal opinion that the City would not be granting Commercial Realty Partners a “thing of value” if the property sold and closed at a price of \$750,000.00.

Because no “thing of value” is being given to CRP, as Purchaser, it is my legal opinion that Amendment 772 to the *Constitution of Alabama of 1901* being Article IV, §94.01, is not required to be used in this sale.

### IV. LEGAL ISSUE THREE

Does the proposed Real Estate Sales Contract meet the requirements of Alabama law?

A. ANSWER TO LEGAL ISSUE THREE: It is my legal opinion that the answer to Legal Question Three is in the affirmative.

B. BASIS FOR LEGAL OPINION TO LEGAL ISSUE THREE: I base my legal opinion upon the fact that none of the provisions of the proposed agreement violate Alabama law. Furthermore, the provisions and conditions of the agreement are reasonable and are basically consistent with the first two contracts that we had with M&P and HES.

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

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

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