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

1. Call to Order
2. Roll Call
3. Invocation – Roger Salter, St. Matthew's Episcopal Church
4. Pledge of Allegiance
5. Announcements, Candidate and Guest Recognition
6. City Manager's Report
7. Councilors' Reports
8. Approval Of Minutes – November 13, 2013 (Regular Meeting), November 14 & 15, 2013 (Work Session/Retreat), November 21, 2013 (Meeting With The Mayor), And November 25, 2013 (Regular Meeting)

Old Business

9. Resolution Number 4522 – A Resolution Ordering The Demolition Of A Building Or Structure Located At 4321 Dolly Ridge Road, Vestavia Hills, Alabama, Parcel ID# 28-22-2-010-011.000, 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 Incompliance 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)*
10. Resolution Number 4529 – A Resolution Authorizing The City Manager To Take All Actions Necessary To Secure A Separate Meter And Breaker Box For Sicard Hollow Park *(Public Hearing)*
11. Resolution Number 4530 – Vacation – 10' Sanitary Sewer Easement On Lot 1, Vestavia Office Park; Taralane Properties; Randy Phillips, Representing *(Public Hearing)*
12. Resolution Number 4531 - A Resolution Authorizing The City Manager To Execute And Deliver An Agreement To Conduct An Asbestos Survey And An Environmental Inspection Determining The Presence Of Polycholrinated Biphenyls (PCB), Mercury And

Chlorofluorocarbons (CFC) At The Old Motor Lodge Motel, 1459 Montgomery Highway, Vestavia Hills, Alabama

New Business

13. Resolution Number 4532 - A Resolution Appointing A Member And To Re-Appoint A Member To The Vestavia Hills Library Board
14. Resolution Number 4533 - A Resolution Appointing A Member To The Vestavia Hills Park And Recreation Board
15. Resolution Number 4534 – A Resolution Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property

New Business (Requesting Unanimous Consent)

First Reading (No Action Taken At This Meeting)

16. Resolution Number 4535 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver A Document Entitled "Vacation, Termination And Release Of Parking Easement"
17. Resolution Number 4536 – A Resolution Accepting Dedication Of A Street And Public Improvements In The Castlehill Subdivision
18. Ordinance Number 2475 – An Ordinance Calling For A Special Election To Be Held On March 11, 2014 For Renewal Of A Special Municipal School Tax
19. Ordinance Number 2476 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With AT&T Alabama, A Georgia Corporation For Programming Services
20. Citizens Comments
21. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

NOVEMBER 13, 2013

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

MEMBERS PRESENT:	Mayor Alberto C. Zaragoza, Jr. Steve Ammons, Mayor Pro-Tem George Pierce John Henley Jim Sharp
OTHER OFFICIALS PRESENT:	Jeff Downes, City Manager Patrick H. Boone, City Attorney Rebecca Leavings, City Clerk George Sawaya, Dep. Finance Director Danny Rary, Police Chief Tim Holcomb, Deputy Police Chief Jim St. John, Fire Chief

Mr. Pierce asked that the invocation be given by a veteran in honor of Veterans Day. Invocation was given by Chief Jim St. John, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION

- David Wheeler, 2532 Crossgate Place, introduced himself and declared that he is a candidate for State House District 47.
- Mr. Ammons announced that the City Council will begin accepting applications for an upcoming vacancy on the Vestavia Hills Park and Recreation Board. He explained that the vacancy was a 5-year appointment and reminded everyone that youth sports were just a portion of the entire department. He encouraged anyone who has an interest and can become "engaged" to apply. Applications will be accepted until close of business on Friday, November 15, 2013 and can be found on the City's website.
- Mayor Zaragoza announced that the City Council will begin accepting applications for an upcoming vacancy on the Vestavia Hills Library Board. He explained that the application gave a detail of the desired qualifications of applicants and encouraged anyone who has an interest to apply and indicated that

it was a 4-year appointment. Applications will be accepted until close of business on Friday, November 15, 2013 and can be found on the City's website.

CITY MANAGER REPORT

- Mr. Downes asked Chief Rary to give an update on police activities.
  - Chief Rary briefed the City Council on a raid that was done in coordination with FBI at a residence in the City along with other police activity in the City.
- Mr. Downes asked Chief St. John to give the Council an update on the CERT program.
  - Chief St. John explained the purpose and make-up of the CERT Program (Community Emergency Response Team) which is basically "neighbors helping neighbors." He stated that within the first seven years, their ninth class graduated last Saturday at Station 3. He gave special recognition to Battalion Chief Tommy Hale who has headed up the program from its inception. He also recognized Ms. Nicole Zabriskie who heads the communications part of the program to mobile CERT team members whenever a need arises.

COUNCILOR REPORTS

- Mr. Pierce stated that Viva Vestavia Hills was held last Thursday at Hollywood Pool and Spa. He acknowledged Ms. Martha Cook who chaired the committee for the event and stated that it was a complete success.
- Mr. Pierce stated that the Holiday in the Hills events will kick off soon and encouraged everyone to watch for the events.
- Mr. Ammons thanked Pizitz Middle School and Principal David Miles, who celebrated veterans for "Living History Day" in support of veterans around the City. It's a wonderful program which was originally begun by Mr. Sharp's wife Jane.
- Mr. Henley commended the Mayor on his State of the City address.

APPROVAL OF MINUTES

The minutes of the October 22, 2013 (Work Session) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the meeting of October 22, 2013 (Work Session) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll Call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – abstained	Mr. Sharp – yes
Mayor Zaragoza – yes	Motion carried.

The minutes of the October 23, 2013 (Work Session) and October 28, 2013 (regular meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the meetings of October 23, 2013 (Work Session) and October 28, 2013 (regular meeting) and approve them as presented was by Mr. Henley and second by Mr. Sharp. Roll Call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mr. Sharp – yes
Mayor Zaragoza – yes	Motion carried.

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

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting on November 25, 2013 at 5 PM.

- Resolution Number 4519 – A Resolution Accepting An RFP And Authorizing The Mayor And City Manager To Execute And Deliver An Agreement For Construction Management Services For The New Proposed City Hall Facility
- Resolution Number 4520 – A Resolution Authorizing The City Manager To Execute And Deliver A Contract For Services Related To A Citizens Survey
- Resolution Number 4521 – A Resolution Authorizing The City Manager To Take Actions Necessary To Repair And/Or Resurface A Street

CITIZENS COMMENTS

None.

EXECUTIVE SESSION

The Mayor stated that the Council needed to enter into Executive Session for an estimated 45 minutes to discuss pending litigation and the sale/purchase of real estate. The Mayor opened the floor for a motion:

MOTION Motion to move into Executive Session for an estimated 45 minutes to discuss pending litigation and the sale/purchase was by Mr. Ammons and second was by Mr. Pierce. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mr. Sharp – yes
Mayor Zaragoza – yes	Motion carried.

The Council exited the Chamber and entered into Executive Session at 5:20 PM. At 6:20 PM, the Council re-entered the Chamber and the Mayor called the meeting back to order.

MOTION Motion to adjourn was by Mr. Ammons and second was by Mr. Henley. Meeting adjourned at 6:21 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL RETREAT WORK SESSION

MINUTES

NOVEMBER 14 & 15, 2013

The City Council of Vestavia Hills met in a special called Retreat Work Session on this date at 9:30 PM following posting/publication pursuant to Alabama law. The Mayor called the Retreat Work Session to order and the roll was checked with the following:

MEMBERS PRESENT:
Alberto Zaragoza, Mayor
Steve Ammons, Mayor Pro-Tem
George Pierce
John Henley
Jim Sharp

OTHER OFFICIALS PRESENT:
Jeff Downes, City Manager
Rebecca Leavings, City Clerk
Jim St. John, Fire Chief
Dan Rary, Police Chief
Darrin Estes, IT Director
Taneisha Tucker, Library Director
Mark Salter, Fleet Management
Brian Davis, Public Services Director
Christopher Brady, City Engineer
Melvin Turner, Finance Director

The Mayor opened the retreat to explain the purpose of the Work Session to brainstorm, strategize and prioritize upcoming projects, developments and directions for the City. He introduced Bob Ashurst, a facilitator from Auburn School for Government and Public Affairs, and his assistant Lindsay Mann.

Mr. Ashurst led the team through a series of exercises and discussions followed by multiple votes and more discussions. The meeting adjourned at 4:30 PM and reconvened Friday morning at 8:00 AM.

Mr. Ashurst helped City Officials to narrow the scope of the prioritization on strategies. Discussions and voting resumed.

The results were printed and offered to the group with follow-up to be sent to the City Manager.

There being no further business, meeting adjourned at 2:00 PM.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL WORK SESSION

MINUTES

NOVEMBER 21, 2013

The City Council of Vestavia Hills met in a special called Work Session on this date at 4:00 PM following posting/publication pursuant to Alabama law. The Mayor called the work session to order and the roll was checked with the following:

MEMBERS PRESENT:	Alberto C. Zaragoza Jr., Mayor Steve Ammons, Mayor Pro-Tem George Pierce John Henley Jim Sharp
OTHER OFFICIALS PRESENT:	Jeff Downes, City Manager Conrad Garrison, City Planner, Acting Clerk Jim St. John, Fire Chief Dan Rary, Police Chief

The Mayor opened the Work Session and welcomed the persons in attendance including Stephen Allen, Williams Blackstock, architects for the proposed City Hall and Dan Price from BL Harbert. The Mayor indicated that this Work Session was to review proposed architectural plans for the new city hall facility.

Mr. Allen presented the architectural plans which have been prepared to date and answered questions from the Council. Discussion ensued relative to the facility, property, soils, proposed construction, parking, etc.

Mr. Downes indicated that the City just closed on the properties and their goal will be to present a preliminary design and work with BL Harbert on scheduling.

Discussion ensued relative to the construction manager's estimated cost of construction for the new facility which ranged from $18.5 to $22 million. Discussion then turned to financing of the project as well as the City's debt service.

*The Mayor left the meeting at 5:00 PM, passing the gavel to Mr. Ammons.

There being no further business, the meeting adjourned at 6:30 PM.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Conrad Garrison
City Planner/Acting Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

NOVEMBER 25, 2013

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

MEMBERS PRESENT:	Mayor Alberto C. Zaragoza, Jr. George Pierce John Henley Jim Sharp
MEMBERS ABSENT:	Steve Ammons, Mayor Pro-Tem
OTHER OFFICIALS PRESENT:	Jeff Downes, City Manager Patrick H. Boone, City Attorney Rebecca Leavings, City Clerk Melvin Turner, Finance Director Danny Rary, Police Chief Tim Holcomb, Police Chief Christopher Brady, City Engineer Jim St. John, Fire Chief

Invocation was given by Jim Sharp, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION

- David Wheeler, 2532 Crossgate Place, introduced himself and declared that he is a candidate for State House District 47.
- Mayor Zaragoza announced that interviews for upcoming vacancies of the Vestavia Hills Library Board as well as the Park and Recreation Board will be held on December 2, 2013 beginning at 12:30 PM.

CITY MANAGER REPORT

- Mr. Downs asked Chief St. John to give the Council an update on a reward recently acquired by the City's emergency services departments.

- Chief St. John explained the recently acquired Innovative Government Award which was given to the City in recognition of the transition of public communications to Shelby County. He acknowledged some problems along the way but stated that with the assistance of several key employees, the City managed the transition. This was recognized in this Innovative Award which will be displayed within the City Hall.

- Mr. Downes stated that the City will be hosting a planning charrette at the Hilton Perimeter Park South Hotel for planning and design recommendations for the undeveloped portions of Patchwork Farms. He stated that invitations will be forthcoming.
- Mr. Downes stated that City Hall will be closed November 28 & 29 for Thanksgiving holidays.

COUNCILOR REPORTS

- Mr. Pierce stated that a tree lighting ceremony will be held on December 3 and a Breakfast with Santa on December 7 along with a Christmas Parade at Liberty Park on December 8.
- Mr. Henley invited everyone out to the upcoming Pancake Breakfast.

*Mayor Zaragoza indicated that Item number 16 will be removed from the agenda.

OLD BUSINESS

RESOLUTION NUMBER 4519

Resolution Number 4519 – A Resolution Accepting An RFP And Authorizing The Mayor And City Manager To Execute And Deliver An Agreement For Construction Management Services For The New Proposed City Hall Facility ***(public hearing)***

MOTION Motion to approve Resolution Number 4519 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that this request is for approval of an agreement with BL Harbert to act as the construction manager for the new proposed city hall complex. He indicated that several qualified applicants presented RFP's for the project and the Council recommended BL Harbert. He indicated that representatives from BL Harbert were present to answer any questions. He indicated that the agreement calls for an amount not to exceed $675,000.

Mr. Boone stated that he has reviewed the agreement and worked with them to come to an agreement that he approves. He commended the agreement and working with Harbert to reach a good conclusion.

The Mayor indicated that an amendment was needed to amend the agreement pursuant to Mr. Boone's revisions. Mr. Boone briefly described his recommended revisions.

Dan Price, BL Harbert, stated that they concur with Mr. Boone's suggested revisions.

The Mayor opened the floor for a public hearing. There being no one present to address the Council regarding this matter, the Mayor closed the public hearing and opened the floor for a motion on the amendment.

MOTION Motion to amend Resolution Number 4519 to amend the agreement pursuant to Mr. Boone recommended revisions was by Mr. Henley and second was by Mr. Sharp. Roll call vote as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mayor Zaragoza – yes
motion carried.

There being no further discussion, the Mayor called for the question. Roll call vote, as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mayor Zaragoza – yes
motion carried.

RESOLUTION NUMBER 4520

Resolution Number 4520 – A Resolution Authorizing The City Manager To Execute And Deliver A Contract For Services Related To A Citizens Survey *(public hearing)*

MOTION Motion to approve Resolution Number 4520 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that this survey is similar to the one that was done a couple of years ago. He explained that $5,000 was budgeted this year for another one but the final cost ended up at about $14,200 so this request is for additional funding.

Discussion ensued as to the price difference because the budgeted amount was less than the actual cost of the survey previously, if the questions would be amended, etc.

The Mayor opened the floor for a public hearing. There being no one present to address the Council regarding this matter, the Mayor closed the public hearing and opened the floor for a motion on the amendment.

There being no further discussion, the Mayor called for the question. Roll call vote, as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mayor Zaragoza – yes
motion carried.

RESOLUTION NUMBER 4521

Resolution Number 4521 – A Resolution Authorizing The City Manager To Take Actions Necessary To Repair And/Or Resurface A Street *(public hearing)*

MOTION Motion to approve Resolution Number 4521 was by Mr. Sharp and second was by Mr. Pierce.

Mr. Downes stated that this request is to finish a street located in the Castlehill Subdivision. He explained that the Subdivision took several years to build out and all but one lot has been fully constructed. He stated that he understands the last lot is unbuildable and was purchased by a church. He indicated that he has discussed this with the City staff and requested amendments to be made to the surety policy and will follow up on that. However, the street is in bad shape. Approximately $23,000 has been escrowed to be used to finish the street, but the estimate with concrete work to the gutters and storm system will require another $45,000.

Discussion ensued among the Councilors concerning the deterioration of the street and whether or not there was any other recourse the City could take regarding the developer, usage of 07 monies to cover the expense, etc.

Mr. Boone stated that the City has exhausted all efforts to recoup the money.

The Mayor opened the floor for a public hearing.

Several residents of the Castlehill Subdivision spoke to the issue stating that the road is a public hazard and requested assistance from the Council.

David Harwell, 1803 Catala Road, asked about the owner of the last lot and what he will do with it.

Neil Parekh, resident of Castlehill Drive and spokesman for the group of residents, stated it was purchased by an out-of-town church and there are no known uses for it.

Discussion ensued relative to the City repairing and accepting the street, repairs on private property, etc.

There being no further discussion, the Mayor closed the public hearing and called for the question. Roll call vote, as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mayor Zaragoza – yes
motion carried.

RESOLUTION NUMBER 4523

Resolution Number 4523 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With WEBQA, Inc., For A Citizen Reporting Management System

MOTION Motion to approve Resolution Number 4523 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that this request is to secure an agreement with WEBQA for a citizen reporting management software to streamline complaints within the City and to allow for better monitoring, follow-up and statistical analysis. He stated that funds were available for a different software and the City has opted to go this direction instead.

There being no further discussion, the Mayor called for the question. Roll call vote, as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mayor Zaragoza – yes
motion carried.

RESOLUTION NUMBER 4524

Resolution Number 4524 – A Resolution Authorizing The City Manager To Enter Into An Agreement With Environmental Design Studio For Planning And Design Services Of Proposed Gateway Signage For The Rocky Ridge Road Area

MOTION Motion to approve Resolution Number 4524 was by Mr. Sharp and second was by Mr. Pierce.

Mr. Downes stated that this request is to secure an agreement with a firm to handle the design, placement and engineering for new Rocky Ridge signage. He explained that this is part of the City's efforts to "brand" various commercial areas. The funds are budgeted and everything is ready to go with this agreement.

There being no further discussion, the Mayor called for the question. Roll call vote, as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mayor Zaragoza – yes
motion carried.

RESOLUTION NUMBER 4525

Resolution Number 4525 – A Resolution Authorizing The City Manager To Enter Into An Agreement With Walter Schoel Engineering Company, Inc., For Preliminary Development Services For A Planned Development Adjacent To Little Shades Creek

MOTION Motion to approve Resolution Number 4525 was by Mr. Sharp and second was by Mr. Pierce.

Mr. Downes stated that this request is to secure an agreement with Schoel Engineering for information concerning proposed development at the intersection of Dolly Ridge and Cahaba Heights Road along Little Shades Creek. The information is needed to determine if a public/private development can be done in that location. The funds are budgeted and he recommended approval.

The Mayor opened the floor for an amendment to incorporate Mr. Boone's recommendations regarding indemnity to the revisions of the agreement.

MOTION Motion to delete section 2 of the proposed agreement regarding indemnity was by Mr. Pierce and second was by Mr. Henley. Roll call vote as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mayor Zaragoza – yes
motion carried.

There being no further discussion, the Mayor called for the question. Roll call vote, as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mayor Zaragoza – yes
motion carried.

RESOLUTION NUMBER 4526

Resolution Number 4526 – A Resolution Authorizing Certain Action With Respect To General Obligation Warrants, Series 2013-A/2014, Of The City Of Vestavia Hills, Alabama

MOTION Motion to approve Resolution Number 4526 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes stated that this request is to begin to secure the funding for the City's new proposed city hall complex. He indicated that this is a non-binding agreement to allow Maynard Cooper and Gale to set the parameters in the market for the financing. He indicated that Chris Williams, Maynard Cooper and Gale, was present to answer any questions.

Discussion ensued as to the new proposed facility. Mr. Downes stated that the City has closed on the properties and will proceed accordingly.

There being no further discussion, the Mayor called for the question. Roll call vote, as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mayor Zaragoza – yes
motion carried.

RESOLUTION NUMBER 4527

Resolution Number 4527 – A Resolution Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property

MOTION Motion to approve Resolution Number 4527 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that this request is to declare certain police vehicles as surplus and allow the sale of said items.

Chief Rary stated that this will leave only one Crown Victoria in the fleet. The newer vehicles are utilized by patrol and the older by SRO's.

There being no further discussion, the Mayor called for the question. Roll call vote, as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mayor Zaragoza – yes
motion carried.

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

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting on December 9, 2013 at 5 PM.

- Resolution Number 4522 – A Resolution Ordering The Demolition Of A Building Or Structure Located At 4321 Dolly Ridge Road, Vestavia Hills, Alabama, Parcel ID# 28-22-2-010-011.000, 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 Incompliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For The City Of Vestavia Hills To Cause Said Demolition To Be Performed And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners *(public hearing)*
- Resolution Number 4529 – A Resolution Authorizing The City Manager To Take All Actions Necessary To Secure A Separate Meter And Breaker Box For Sicard Hollow Park *(Public Hearing)*
- Resolution Number 4530 – Vacation – 10' Sanitary Sewer Easement On Lot 1, Vestavia Office Park; Taralane Properties; Randy Phillips, Representing *(Public Hearing)*
- Resolution Number 4531 - A Resolution Authorizing The City Manager To Execute And Deliver An Agreement To Conduct An Asbestos Survey And An Environmental Inspection Determining The Presence Of Polycholrinated Biphenyls (PCB), Mercury And Chlorofluorocarbons (CFC) At The Old Motor Lodge Motel, 1459 Montgomery Highway, Vestavia Hills, Alabama

CITIZENS COMMENTS

Neil Parekh thanked the Council for the assistance with the street in Castlehill and commended the City Manager and his staff.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Henley. Meeting adjourned at 6:21 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4522

A RESOLUTION ORDERING THE DEMOLITION OF A BUILDING OR STRUCTURE LOCATED AT 4321 DOLLY RIDGE ROAD, VESTAVIA HILLS, ALABAMA, PARCEL ID# 28-22-2-010-011.000, 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 4321 Dolly Ridge Road, Vestavia Hills, Alabama, Parcel I.D. Number 28-22-2-010-011.000 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 October 18, 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, December 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. and after due deliberation the City Council of the City of Vestavia Hills, Alabama finds that the structure standing at 4321 Dolly Ridge Road, Vestavia Hills, AL 35243, Parcel ID# 28-22-2-010-011.000 is unsafe to the extent of becoming a public nuisance to the citizens of the City of Vestavia Hills, Alabama and is due to be condemned and demolished in compliance with Sections 11-40-30 through 11-40-36 and Sections 11-53B-1 through 11-53B-16, inclusive, of the Code of Alabama (1975), and Ordinance Number 2382 of the City of Vestavia Hills, Alabama;

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

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

ADOPTED this the 9th day of December, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)

JEFFERSON COUNTY)

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

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

_____
Rebecca Leavings, City Clerk

HAND ARENDALL LLC ▪ LAWYERS

Kelly Thrasher Fox
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1200 PARK PLACE TOWER ▪ 2001 PARK PLACE NORTH ▪ BIRMINGHAM, ALABAMA 35203
(205) 324-4400 ▪ Facsimile: (205) 322-1163

October 18, 2013

VIA HAND DELIVERY

Ms. Becky Leavings
City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills AL 35216

RE: Lis Pendens

Dear Becky:

Please find enclosed five copies of the filed-stamped Lis Pendens notice for the demolition of real property located at 4321 Dolly Ridge Road. One copy of this notice is for your file. The other four copies need to be posted in the following locations within three days of today:

1. 4321 Dolly Ridge Road.
2. Vestavia Hills Municipal Center.
3. Vestavia Hills Library in the Forest.
4. Vestavia Hills Civic Center.

Should you have any questions or need any additional information, please let me know.

Very truly yours,

Kelly

Kelly Thrasher Fox

Enclosures
cc: Mark T. Waggoner, Esq.
Benjamin S. Goldman, Esq.

567036

IN THE PROBATE COURT OF JEFFERSON COUNTY, ALABAMA

CITY OF VESTAVIA HILLS, ALABAMA	)
	)
v.	)
	)
ROBERT M. BOYER;	)
APCO EMPLOYEES CREDIT UNION;	)
JEFFERSON COUNTY SEWER SERVICE OFFICE;	)
BIRMINGHAM WATER WORKS	)
	)
See below for legal description.	)

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:

4321 Dolly Ridge Road, Vestavia Hills, AL 35243

LEGAL DESCRIPTION:

Part of the Southeast Quarter of the Northwest Quarter of Section 22, Township 18 South, Range 2 West, more particularly described as follows:

Commence at the Southeast corner of said 1/4-1/4 section and run thence Westwardly along the South line thereof for a distance of 535.1 feet to the Southwest corner of Lot 24, in Block B-2, according to the Survey of New Markle Heights, as recorded in Map Book 16, Page 20, in the Office of the Judge of Probate of Jefferson County, Alabama; run thence Northwardly along the West line of said Lot 24 for a distance of 95.50 feet to the point of beginning of the tract herein described; from the point of beginning thus

obtained continue Northwardly along the West line of said Lot 24 for a distance of 115.0 feet to the Southeast corner of Lot 23, in Block B-2, in said survey; run thence Westwardly along the South line of said Lot 23, and along the South line of Lot 1, in Block B-2, in said survey, for a distance of 326.55 feet to the Easterly line of Dolly Ridge Road (formerly Caldwell Mill Road) as now located and constructed with a 50 foot right-of-way as granted to Jefferson County, Alabama, by deed recorded in Volume 2555, Page 259; run thence Southwestwardly along the Easterly line of said road for a distance of 133.18 feet; run thence Eastwardly and parallel to the South line of said 1/4-1/4 section for a distance of 397.62 feet to the Point of Beginning. Property located in Jefferson County, Alabama, Birmingham Division.

PARCEL IDENTIFICATION NUMBER:

28-22-2-010-011.000

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 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 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; and

(5) The building has a portion remaining on a site after the demolition or destruction of the same or is abandoned so as to constitute such building, structure, part of building or structure, party wall, or foundation as an attractive nuisance or hazard to the public.

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. 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.

8. 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.

9. A public hearing as provided for by Section 5-146(a) set forth in Ordinance No. 2382 shall be held on the finding of the Appropriate Municipal Officials in the Council Chambers at the Vestavia Hills Municipal Center, 513 Montgomery Highway, Vestavia Hills, AL 35216, on the 9th day of December, 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.

10. 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.

11. 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.

12. 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.*"

13. 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.

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

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

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

VERIFICATION OF THE APPROPRIATE MUNICIPAL OFFICIALS

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

DONE this the 18th day of October, 2013.

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

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

This Instrument Prepared By:

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

CERTIFICATE OF SERVICE

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been sent via certified mail, properly addressed and postage prepaid, to all of the following persons on this the 18th day of October, 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:

Robert M. Boyer
4321 Dolly Ridge Road
Vestavia Hills, 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:

Robert M. Boyer
4321 Dolly Ridge Road
Vestavia Hills, AL 35243

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:

APCO Employees Credit Union
1608 7th Avenue North
Birmingham, AL 35203

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

20131018001145890 10/10
Bk: LR201319 Pg:1997
Jefferson County,Alabama
10/18/2013 08:37:11 AM NOTICE
Fee - $45.00

Total of Fees and Taxes-$45.00
NICOLE

556825

RESOLUTION NUMBER 4529

A RESOLUTION AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO SECURE A SEPARATE ELECTRICAL METER AND BREAKER BOX AT THE SICARD HOLLOW ATHLETIC FACILITY

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

1. The City Manager is hereby authorized to take all actions necessary to secure a separate electric meter and breaker box for the athletic facility complex located on Sicard Hollow Road at a cost not to exceed $8,000; and
2. This Resolution Number 4529 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 9th day of December, 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

November 19, 2013

TO: Jeff Downes
City Manager

FROM: Brian C. Davis bcd
Public Services Director

RE: Power Meter at Sicard Hollow

We have been working with Alabama Power and Astro Electric to separate the athletic field lighting from the concession/restroom building in order to save money. Inginuity, our consultants that help us lower our utility bills; have suggested we add a separate meter to save on our power bills.

Astro Electric has given a proposal to add a separate meter, which also requires adding an additional breaker box and pulling wires for the second meter. The estimated cost is $7,987.00. This is an unbudgeted item; therefore we need to take it to the council for their approval.

According to estimates, we can expect to break even in no more than 6 months. This should lower the costs for the athletic field lights, and it should also lower the costs to operate the concession stand.

I would like to place this on the council agenda for a first read at the next meeting, with action on the December 9, meeting.

Please let me know if you have any questions.

RESOLUTION NUMBER 4530

A RESOLUTION APPROVING AND ASSENTING TO A DECLARATION OF VACATION

WITNESSETH THESE RECITALS

WHEREAS, a Declaration signed by the owners of all the lands abutting the following described sanitary sewer easement situated in the City of Vestavia Hills, Jefferson County, Alabama, vacating said sanitary sewer easement, has been duly presented to the City Council of the City of Vestavia Hills, Alabama, for assent and approval of said governing body; and

WHEREAS, a copy of said Declaration with map attached is marked as "Exhibit A", attached hereto and incorporated into this Resolution by reference as though set out fully herein; and

WHEREAS, the above-referenced sanitary sewer easement is commonly referred to as "a sanitary sewer easement" and is more particularly described as follows:

> Commence at the NW corner of Lot 1 as recorded in Map Book 141, Page 28 in the Office of the Judge of Probate, Jefferson County, Alabama and run S89.37 29W for 100.69 feet, thence N77.05 45W for 108.26 feet, thence N71.43 28W for 43.31 feet to the centerline of point of beginning of a 10 foot wide easement, thence N02.12 26E for 90.15 feet to the centerline point of ending of said easement. Contains 901.50 square feet.

WHEREAS, it appears to the City Council of the City of Vestavia Hills, Alabama, that said vacated easement shall be relocated to allow for a sanitary sewer easement and for convenient and reasonable means of access as well as sewer access to be afforded to all utilities running through the tract of land or eventually located in said tract of land; and

WHEREAS, an instrument detailing said tract of land and dedicating the use of said property as a sanitary sewer easement for the location of utilities and sewer facilities shall be filed in the Office of the Judge of Probate and a copy shall be attached to this

Resolution Number 4530 prior to recordation of the vacation of this portion of right-of-way.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, that the vacation of the hereinabove described sanitary sewer easement is assented to and approved and the same is hereby vacated pursuant to the provision of Section 23-4-20 of the Code of Alabama, 1975.

BE IT FURTHER RESOLVED AS FOLLOWS:

This vacation shall not become effective or filed for record in the Office of the Judge of Probate, of Jefferson County, Alabama unless and until the occurrence and completion of all of the following conditions:

1. That the owners of all of the lands abutting the above-described property (that sanitary sewer easement sought to be vacated) shall have executed and delivered a perpetual, permanent and public easement (the "easement") over, along and under the herein-described property granting to the general public and utility companies the right to install sewer facilities, cable television facilities and utility facilities for power, gas, telephone or other public services; and
2. That said easement shall be approved by the City Engineer of the City of Vestavia Hills, Alabama; and
3. That the easement shall be filed for record in the Office of the Judge of Probate of Jefferson County, Alabama; and

RESOLVED, DONE AND ORDERED, on this the 9th day of December, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

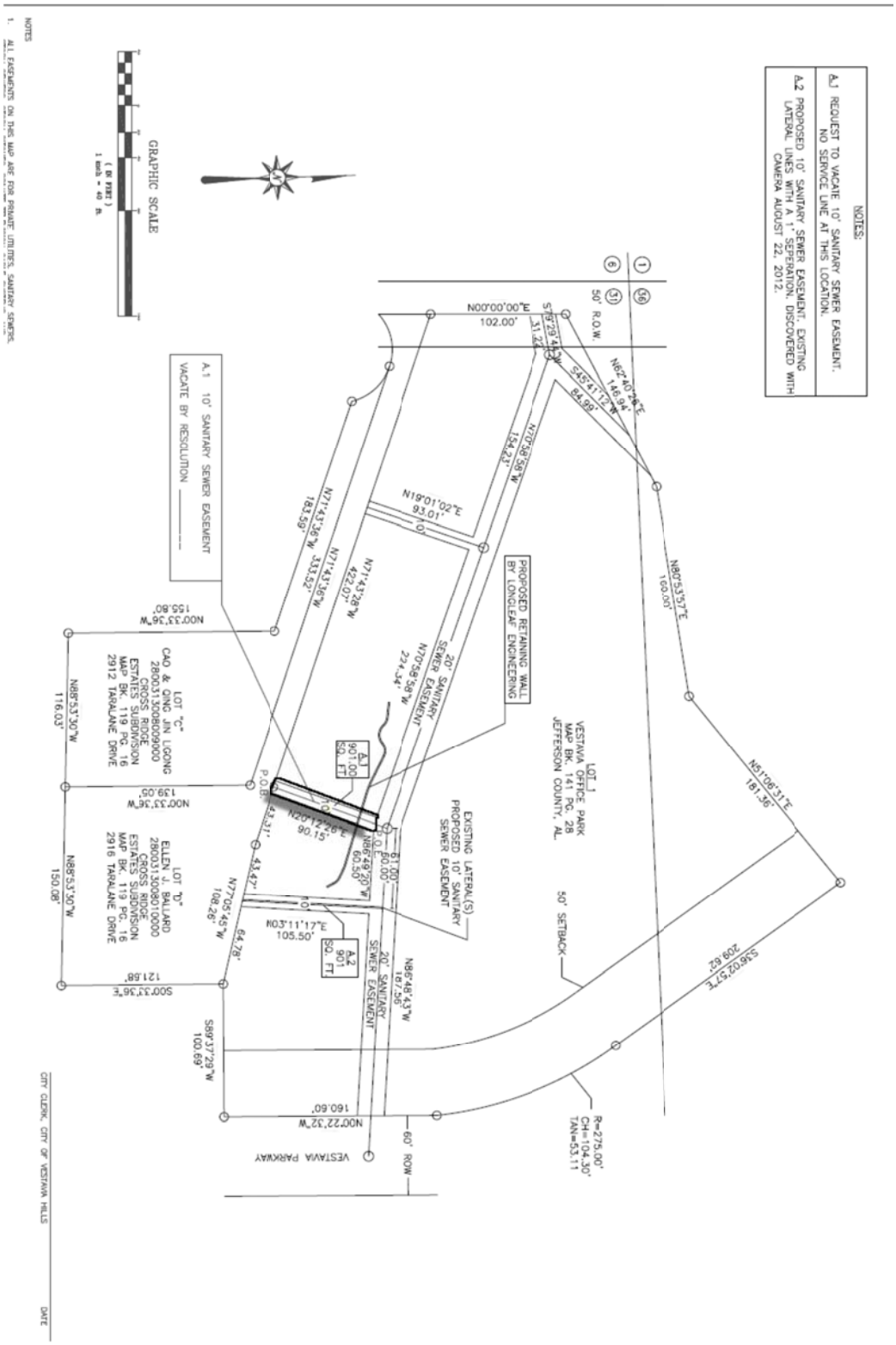
Rebecca Leavings
City Clerk

CERTIFICATION

I, the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 9th day of December, 2013, and that such Resolution is of record in the Minute Book of the City at page _____ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the _____ day of _____, 2013.

Rebecca Leavings
City Clerk


NOTES:
A.1 REQUEST TO VACATE 10' SANITARY SEWER EASEMENT. NO SERVICE LINE AT THIS LOCATION.
A.2 PROPOSED 10' SANITARY SEWER EASEMENT. EXISTING LATERAL LINES WITH A 1' SEPERATION. DISCOVERED WITH CAMERA AUGUST 22, 2012.
GRAPHIC SCALE
(IN FEET)
1 inch = 40 ft.
50' R.O.W.
N00°00'00"E
102.00'
S79°29'45"W
31.24'
N62°40'24"E
146.94'
S45°41'12"W
84.99'
N77°58'58"W
154.21'
N19°01'02"E
93.01'
N80°53'57"E
160.00'
N51°06'31"E
181.36'
S36°02'57"E
209.62'
R=275.00'
CH=104.30'
TAN=53.11
VESTAVIA PARKWAY
60' ROW
50' SETBACK
LOT 1
VESTAVIA OFFICE PARK
MAP BK. 141 PG. 28
JEFFERSON COUNTY, AL.
PROPOSED RETAINING WALL
BY LONGLEAF ENGINEERING
20' SANITARY
SEWER EASEMENT
N70°56'59"W
274.34'
N71°43'28"W
422.07'
N71°43'36"W
181.59'
N71°43'36"W
333.52'
A.1 10' SANITARY SEWER EASEMENT
VACATE BY RESOLUTION _____
N00°33'36"W
155.80'
LOT "C"
CAO & CINDY LIGONG
28003130080000000
CROSS RIDGE
ESTATES SUBDIVISION
MAP BK. 119 PG. 16
2912 TARALANE DRIVE
N88°53'30"W
116.03'
N00°33'36"W
139.05'
A.1
901.00
SQ. FT.
P.O.B.
N20°12'26"E
90.15'
43.31'
43.47'
N77°06'45"W
108.26'
64.78'
N03°11'17"E
105.50'
A.2
901
SQ. FT.
N86°49'20"W
60.50'
P.O.E.
61.00'
60.00'
EXISTING LATERAL(S)
PROPOSED 10' SANITARY
SEWER EASEMENT
20' SANITARY
SEWER EASEMENT
N86°48'43"W
187.96'
LOT "D"
ELLEN J. BALLARD
28003130090000000
CROSS RIDGE
ESTATES SUBDIVISION
MAP BK. 119 PG. 16
2916 TARALANE DRIVE
N88°53'30"W
150.08'
S00°33'36"E
121.68'
S89°37'29"W
100.69'
N00°22'32"W
160.60'
NOTES
1. ALL EASEMENTS ON THIS MAP ARE FOR PRIVATE UTILITIES, SANITARY SEWERS.
CITY CLERK, CITY OF VESTAVIA HILLS
DATE

Rebecca Leavings

Subject: FW: .pdf

Ms. Rebecca Leavings
City of Vestavia Hills

Date: November 18, 2013

Re: Vestavia Office Park Easement Vacation
10' sewer easements (A.1, to be vacated / A.2, proposed to replace A.1)

Ms. Leavings:
This responds to previous communications regarding the above referenced easements. It appears that the above referenced easements, existing and proposed (A.1 and A.2, respectively) were intended to address "private sanitary sewer service lines" only between two separate property owners. Jefferson County is not a party to said easements and as such Jefferson County does not have any ownership interest whatsoever in said easements. For a note of record, Jefferson County does have existing 20' sanitary sewer easements crossing subject property in several locations as noted and shown on the "Easement Vacation" drawing provided by you. If you should have any questions regarding the aforementioned, you may contact me.
Sincerely,
Richard Mixon
Plans Examiner
Jefferson County Environmental Services Department

STATE OF ALABAMA
JEFFERSON COUNTY

DECLARATION OF VACATION

We, the undersigned, constituting all of the owners of all property abutting Vestavia Office Park as same appears on the Plat of Cahaba Ridge Estates which Plat is recorded in Plat Book 141, at Page 28, in the Probate Office of Jefferson County, Alabama, do hereby declare that each of said Plats embraced within the boundaries of said Vestavia Office Park as the same appears of record on the Plat to be vacated, and said Sanitary Easement (A.1) is hereby declared vacated. The undersigned do hereby respectfully represent and warrant as follows:

1. This Declaration of Vacation of Sanitary Easement A.1 is prepared, executed, delivered and recorded to and in accordance with the provisions of Section 23-4-20 and Section 35-2-54, Code of Alabama, 1975.

2. It is in the best public interest that Sanitary Easement A.1 be closed and vacated.

3. Such vacation will not deprive other property owners of a convenient and reasonable means of ingress and egress to their property.

4. Sanitary Easement A.1 is situated in the City of Vestavia Hills, Jefferson County, Alabama, and appears at A.1 to be vacated was intended for sanitary lateral serving 2912 and 2916 Taralane Drive, camera discovered the actual laterals 60.50 feet east of existing 10 foot easement to be vacated, Detail A.1 attached. . A copy of the map reflecting the location of said easement is attached hereto and incorporated into this Declaration of Vacation as a part hereof.

5. The street address and legal descriptions of all property abutting owners and the names and addresses of the owner of said abutting properties are as follows:

A. Street Address: 2916 Taralane Drive, Vestavia Hills, AL.

Legal Description: Map Book 119 Page 16

Owners' Name(s): ELLEN J. BALLARD

B. Street Address: 100 Vestavia Pkwy, Vestavia Hills, AL.

Legal Description: Lot 1, Vestavia Office Park as recorded in Map Book 141, Page 28

Owners' Name(s): Taralane Properties

C. Street Address:

Legal Description:

Owners' Name(s):

D. Street Address:

Legal Description:

Owners' Name(s):

E. Street Address:

Legal Description:

Owners' Name(s):

F. Street Address:

Legal Description:

Owners' Name(s):

6. All of the undersigned do hereby declare Sanitary Easement A.1 to be vacated and respectfully request the assent of the City Council of the City of Vestavia Hills, Alabama, to said vacation of Sanitary Easement A.1

and its approval of the same.

IN WITNESS THEREOF, the undersigned have hereunto set our hands and seals on this the _____ day of October, 20 13.

SIGNATURES OF ABUTTING PROPERTY OWNERS:

(notary on following pages)

sign here X→ Ellen J. Ballard Ellen Jo Ballard
October 25, 2013

Thom Sprull Thornton III

STATE OF ALABAMA

GENERAL ACKNOWLEDGMENT

JEFFERSON COUNTY

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Thomas S Thacton and _____, whose names are signed to the foregoing Declaration of Vacation, and who are known to me, acknowledged before me on this day that being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 16th day of October, 20 13.

Theresa Ann Curtis

Notary Public

THERESA ANN CURTIS
Notary Public - State of Alabama
My Commission Expires
August 2, 2017

STATE OF ALABAMA

GENERAL ACKNOWLEDGMENT

JEFFERSON COUNTY

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that _____ and _____, whose names are signed to the foregoing Declaration of Vacation, and who are known to me, acknowledged before me on this day that being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the _____ day of _____, 20_____.

_____

Notary Public

THERESA ANN CURTIS
Notary Public - State of Alabama
My Commission Expires
August 2, 2017

STATE OF ALABAMA

GENERAL ACKNOWLEDGMENT

JEFFERSON COUNTY

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Ellen J. Bailard ~~and~~ _____, whose names are signed to the foregoing Declaration of Vacation, and who are known to me, acknowledged before me on this day that being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 25th day of October, 20 13.

Rhonda Stone
Notary Public State of Alabama
Cullman County

Rhonda Stone
My Commission Expires 05/08/2017

STATE OF ALABAMA

GENERAL ACKNOWLEDGMENT

JEFFERSON COUNTY

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that _____ and _____, whose names are signed to the foregoing Declaration of Vacation, and who are known to me, acknowledged before me on this day that being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the _____ day of _____, 20_____.

_____
Notary Public

RESOLUTION NUMBER 4531

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT TO CONDUCT AN ASBESTOS SURVEY AND AN ENVIRONMENTAL INSPECTION DETERMINING THE PRESENCE OF POLYCHOLRINATED BIPHENYLS (PCB), MERCURY AND CHLOROFLUOROCARBONS (CFC) AT THE OLD MOTOR LODGE MOTEL, 1459 MONTGOMERY HIGHWAY, VESTAVIA HILLS, ALABAMA

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 agreement with ERG Environmental, Inc. to conduct an asbestos survey and an environmental inspection determining the presence of polychlorinated biphenyls (PCB), mercury and chlorofluorocarbons (CFC) at the old Motor Lodge Motel, 1459 Montgomery Highway, Vestavia Hills, Alabama; and
2. A copy of said agreement is marked as "Exhibit A," attached and incorporated into this Resolution Number 4531 as though written fully therein; and
3. This Resolution shall be effective immediately upon adoption and approval.

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

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

ERG Environmental, Inc.
262 Yeager Parkway, Suite D
Pelham, Alabama 35124
205-664-2535 * Fax - 205-664-0648

January 8, 2013 - Revised October 31, 2013

City Of Vestavia Hills
Department Of Building Safety
513 Montgomery Highway
Vestavia Hills, Alabama 35216

ATTN: Mr. Jeff Downes, City Manager

SUBJECT: Proposal To Conduct An Asbestos Survey And To Conduct An Environmental Inspection Determining The Presence Of Polycholrinated Biphenyls (PCB's), Mercury & Chlorofluorocarbons (CFC) At The Old Motor Lodge Motel, 1459 Montgomery Highway, Vestavia Hills, Alabama -
ERGE PROPOSAL NO. 3682

Dear Mr. Downes:

ERG Environmental, Inc. (ERGE) is pleased to submit this proposal to you for consideration in conducting a survey for asbestos-containing materials and conducting an environmental inspection determining the presence of Polycholrinated Biphenyls (PCB's), Mercury & Chlorofluorocarbons (CFC) at the above reference facility. This proposal also covers our fees associated with this work.

QUALIFICATIONS

ERGE is a diverse environmental consulting firm specializing in industrial hygiene, asbestos and lead-based paint program management, and other areas associated with occupational safety and health. ERG Environmental, Inc. employs professionals with various environmental disciplines including professional engineers, industrial hygienists, and building science specialists who are familiar with the particular concerns related to the handling of hazardous materials. The firm is approved by the United States Environmental Protection Agency, the Alabama Department Of Environmental Management and the Jefferson County Department Of Health to perform this type of work.

SCOPE OF SERVICE

ERG Environmental will provide the necessary equipment and State of Alabama accredited asbestos personnel to conduct an asbestos survey of the building. All asbestos samples will be collected in accordance with EPA's NESHAP regulations and analyzed using Polarized Light Microscopy (PLM) at a laboratory which holds current accreditation. An engineering report will be prepared based on all survey results.

ERGE will also conduct a visual environmental inspection for the presence of Polychlorinated Biphenyls (PCB), mercury vapor-containing equipment and Chlorofluorocarbons (CFC).

PCB's such as fluorescent light ballasts, hydraulic elevators and lifts, electrical transformers, etc. will be visually inspected. A limited number of light ballast will be inspected for labels noting PCB content. Mercury vapor-containing equipment (such as fluorescent lights, mercury vapor bulbs, high intensity discharge lights, other lamps as well as liquid mercury-containing equipment such as switches, thermostats and other temperature control devices, etc.) will also be visually inspected. Chlorofluorocarbons (CFC's such as refrigerators, air conditioning units, walk-in coolers, freezers, etc.) will also be noted during the inspection.

No bulk sampling or analytical testing will be conducted as part of the visual inspection. ERGE will include in our report the inspection results for the presence of visually noted suspect PCB's, CFC's and Mercury containing equipment and will include the approximate number of each component.

COST OF SERVICE

ERG Environmental will conduct the above work for the following fees:

CONDUCTING AN ASBESTOS SURVEY AND CONDUCTING AN ENVIRONMENTAL INSPECTION FOR THE PRESENCE OF SUSPECT PCB, CFC AND MERCURY, ALL SAMPLE ANALYSIS & REPORT PREPARATION LUMP SUM	**$3,762.00**

INVOICING

ERGE will invoice the City Of Vestavia Hills on a monthly basis during the course of the project. ERGE's payment terms are net 30 days. Attached, please find ERGE's *General Terms & Conditions*.

ERG Environmental will be pleased to work with your firm during this project. Should you find this proposal acceptable, please sign and return one copy to this office. If you have any questions or if we can be of further service, please contact this office at your convenience.

Sincerely,
Lamar Gilliland
Vice President

ACCEPTED:

_____
SIGNATURE

_____
TITLE

_____
DATE

1. It is understood that this Proposal is valid for a period of ninety (90) days. Upon the expiration of that period of time or the delay or suspension of the services, **ERGE** reserves the right to review the proposed basis of payment and fees, to allow for changing costs, as well as to adjust the period of performance to conform to work loads. References herein to "**ERGE**" are deemed to refer to ERG Environmental, Inc. and to its affiliates, subsidiaries and officers, employees and representatives of such companies.

2. Invoices will be submitted periodically (customarily on a monthly basis), and terms are net cash in U.S. dollars, due and payable upon receipt of invoice. Unpaid balances shall be subject to an additional charge at the rate of one (1.0) percent per month from the date of invoice. In addition, **ERGE** may, after giving seven (7) days written notice to **CLIENT**, suspend services without liability until the **CLIENT** has paid in full all amounts due **ERGE** on account for services rendered and expenses incurred, including interest on past-due invoices. Payment of invoices is not subject to discounting by **CLIENT**. Time is of the essence in payment of invoices, and timely payment is a material part of the consideration of any Agreement between **ERGE** and **CLIENT**. The **CLIENT** agrees to pay reasonable attorney's fees and court costs, should it become necessary for collection.

3. Unless the Proposal provides otherwise, the proposed fees constitute **ERGE**'s estimate of the effort and charges required to complete the Project as we understand it to be defined. For those projects involving conceptual or process development work, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in direction, additional effort or suspension in effort, which may alter the scope. **ERGE** will inform the **CLIENT** of such situations so that negotiation of change in scope and adjustment to the time of performance can be accomplished as required. If such change, additional effort or suspension of effort, results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, an equitable adjustment shall be made and the Agreement modified accordingly.

   Costs and schedule commitments shall be subject to re-negotiation for unreasonable delays caused by the **CLIENT**'s failure to provide specified facilities or information, or for delays caused by unpredictable occurrences or force of nature, such as fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdown, acts of God or of the public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above will result in additional cost (reflecting a change in scope) beyond that outlined in this proposal.

4. Where the method of contract payment is based on a cost reimbursement (i.e. hourly rates or time-and-material) basis, the following provisions shall apply:

   a. The minimum time segment for charging of field work is four (4) hours. The minimum time segment for charging the work done at any of **ERGE**'s offices is one-half hour. Where applicable, rental charges will be applied to the Project to cover the cost of pilot-scale facilities or equipment, apparatus, instrumentation, or other technical machinery. When such charges are applicable, the **CLIENT** will be advised at the start of an assignment, task, or phase. Analysis performed in **ERGE**'s laboratories will be billed on a unit-cost-per-analysis basis unless specified otherwise in the proposal.

   b. Expenses properly chargeable to the work, which are reimbursable at cost shall include travel and subsistence expenses of personnel when away from their office on business directly or indirectly connected with the Project, identifiable communication, shipping, printing, and reproduction costs; professional and technical subcontractors; identifiable drafting and stenographic supplies; computer time and software; and expendable materials and supplies purchased specifically for the Project. A ten (10) percent handling and administrative charge will be added to those foregoing items which are purchased from outside sources. When **ERGE**, subsequent to initiation of services, finds that specialized equipment is needed to perform the services, it will purchase the equipment as a reimbursable expense.

   c. Invoices for effort on a cost-reimbursement basis will be submitted showing labor (hours worked) and total expenses, but not actual documentation. If requested by **CLIENT**,

4c. documentation will be provided at the cost of providing such documentation, including labor and copying costs.

5. No termination of this Project by the **CLIENT** shall be effective unless seven days written notice of intent to terminate, together with the reasons and details therefor, has been received by a principal or officer of **ERGE** and

an opportunity for consultation been given. A final invoice will be calculated on the first or fifteenth of the month (whichever comes first) following receipt of such termination notice and the elapse of the seven day period (the effective date of termination).

Either **ERGE** or the **CLIENT** may terminate any Agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where method of contract payment is "*lump sum*", the final invoice will include all services and expenses associated with the Project up to the effective date of termination. Where method of contract payment is based on cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. In any event, an equitable adjustment shall be made to provide for termination settlement costs **ERGE** incurs relating to commitments which had become firm before termination, and for a reasonable profit for services performed.

6. **ERGE** will serve as the professional representative of **CLIENT** as defined by this Proposal or under any Agreement and will provide advice, consultation and services to the **CLIENT** in accordance with generally accepted professional practice. Therefore, estimates of cost, approvals, recommendations, opinions, and decisions by **ERGE** are made on the basis of **ERGE**'s experience, qualifications, and professional judgment. **ERGE** makes no warranty or guarantee, expressed or implied, regarding the services or work to be provided under this Proposal or any related Agreement. Notwithstanding any other provision of these General Terms and Conditions, and unless otherwise subject to a greater limitation, **ERGE**'s liability to the **CLIENT** for any loss or damage, including, but not limited to, special and consequential damages, arising out of or in connection with the Proposal or any related Agreement from any cause, with the Proposal or any related Agreement from any cause, including **ERGE**'s professional negligence, errors or omissions shall not exceed the greater of $50,000.00 or the total compensation received by **ERGE** hereunder, and **CLIENT** hereby releases **ERGE** from any liability above such amount.

7. **ERGE** agrees to purchase at its own expense, Worker's Compensation insurance, Comprehensive General Liability insurance, and Engineer's Professional Liability insurance and will, upon request, furnish insurance certificates to **CLIENT**. **ERGE** agrees to indemnify **CLIENT** for the hazards covered by **ERGE**'s insurance subject to the limitation of liability contained in Section 6. **ERGE** agrees to purchase whatever additional insurance is requested by **CLIENT** (presuming such insurance is available, from carriers acceptable to **ERGE**) provided the premiums for additional insurance are reimbursed by **CLIENT**.

8. It is understood and agreed that, in seeking the professional services of **ERGE** under this Agreement, **CLIENT** may be requesting **ERGE** to undertake uninsurable obligations for **CLIENT**'s benefits involving the presence or potential presence of hazardous substances. Therefore, except for activities relating to hazardous waste disposal, cleanup or environmental liability including specification of a product, material or process containing asbestos; and also except for activities resulting in the actual, alleged or threatened discharge, dispersal, release or escape of pollutants ("*pollutants*" meaning any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste and waste materials to be recycled, reconditioned or reclaimed) (which exposure is excluded from **ERGE**'s insurance coverage) **ERGE** shall indemnify the **CLIENT** for any loss or damage solely caused by the professional negligence, errors or omissions of **ERGE** in performance of the services under this Proposal or any related Agreement, subject to the limitation of liability contained in Section 6.

9. With respect to claims, damages, losses and expenses which are related to hazardous waste disposal or cleanup or environmental liability , as described in Section 8 and to the extent the same are not covered by the insurance maintained by **ERGE** described in Section 7, the **CLIENT** shall, to the extent permitted by law, defend, indemnify and hold harmless **ERGE** and its employees, independent professional associates, consultants and subcontractors from and against all such claims, damages, losses and expenses arising out of or resulting from the performance of the **ERGE**
services under this Agreement including, but no limited to **ERGE**'s professional negligence, errors or omissions. **CLIENT** agrees to name **ERGE** and **ERGE**'s independent professional associates, consultants and subcontractors as additional insures under all insurance policies and bonds carried by **CLIENT** with respect to the Project.

10. **CLIENT** shall not offer to employ or employ any **ERGE** employee assigned to the Project during the term of this Proposal or any Agreement or for a period of six months after completion of the services or Project under this Proposal or any Agreement.

11. **ERGE** shall maintain as confidential and not disclose to

others without **CLIENT**'s prior written consent, all information obtained from **CLIENT**, not otherwise previously known to **ERGE** or in the public domain, as **CLIENT** expressly designates in writing to be "**CONFIDENTIAL**". The provisions of this paragraph shall not apply to information in whatever form which (1) is published or comes into the public domain through no fault of **ERGE** (2) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (3) is required to be disclosed by law on order of a court, administrative agency or other authority with proper jurisdiction.

CLIENT agrees that **ERGE** may use and publish **CLIENT**'s name and a general description of **ERGE**'s services with respect to the Project in describing **ERGE**'s experience and qualifications to other **CLIENT**'s or potential **CLIENT**'s.

12. All documents, including drawings and specifications prepared or furnished by **ERGE** (and **ERGE**'s independent professional associates, consultants and subcontractors) pursuant to this Agreement are instruments of service in respect to the Project and **ERGE** shall retain an ownership and property interest therein whether or not the Project is completed. **CLIENT** may make and retain copies for information and reference in connection with the Project however, such documents are not intended or represented to be suitable for reuse by **CLIENT** or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by **ERGE** for the specific purpose intended will be at **CLIENT**'s sole risk and without liability or legal exposure to **ERGE**, or to **ERGE**'s independent professional associates, consultants or sub-contractors, and **CLIENT** shall indemnify and hold harmless **ERGE** and **ERGE**'s independent professional associates, consultants and subcontractors from any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting therefrom. Any such verification or adaptation will entitle **ERGE** to further compensation at rates to be agreed upon by **CLIENT** and **ERGE**.

13. To the extent they are inconsistent or contradictory, expressed terms of the Proposal take precedence over these General Terms and Conditions. It is understood and agreed that the services or work performed under this Proposal or any Agreement are not subject to any provision of any Uniform Commercial Code. Any terms and conditions set forth in **CLIENT**'s purchase order, requisition, or other notice or authorization to proceed are inapplicable to the services under this Proposal or any related agreement, except when specifically provided for in full on the face of such purchase order, requisition, or notice or authorization or **ERGE**'s performance of work subsequent to receipt thereof does not constitute acceptance of any terms or conditions other than those set forth herein.

14. The technical and pricing information contained in this proposal or Agreement is to be considered Confidential and Proprietary and is not to be disclosed or otherwise made available to third parties without the express written consent of **ERGE**.

15. This Agreement is to be governed by and construed in accordance with the law of the principal place of business of **ERGE**.

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

November 21, 2013

By Hand Delivery

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

In Re: Proposed Agreement By and Between ERG Environmental, Inc.
and the City of Vestavia Hills, Alabama

Dear Mr. Downes:

On November 20, 2013, Melissa Hipp provided me with a copy of a Proposal submitted by ERG Environmental, Inc. ("ERGE") to the City of Vestavia Hills, Alabama ("City") wherein ERGE offers to conduct an asbestos survey and an environmental inspection of the old Motor Lodge Motel situated at 1459 Montgomery Highway in the City of Vestavia Hills, Alabama for and in consideration of $3,762.00. You have requested that I review the agreement and furnish you with my written legal opinion. The purpose of this letter is to comply with your request.

I. FACTS

The general terms and conditions of the agreement provide, among other things, in substance as follows:

A. Section 6 limits the liability of ERGE to an amount not to exceed the greater of $50,000.00 or the total compensation received by ERGE.

B. Section 9 requires the City to defend, indemnify and hold harmless ERGE.

C. Section 9 requires the City to name ERGE and its associates, consultants and subcontractors as additional insureds under all insurance policies and bonds carried by the City with respect to the project.

II. LEGAL ISSUE ONE

Can the City legally enter into a written agreement limiting the liability of ERGE and agreeing to defend, indemnify and hold harmless ERGE?

III. ANSWER TO LEGAL ISSUE ONE

It is my legal opinion that the answer to the Legal Issue One is in the negative.

IV. BASIS FOR LEGAL OPINION

I am aware that the Supreme Court of Alabama has decided the following cases holding that a limitation of liability clause in a contract is enforceable.

(1) *Saia Food Distributors and Club, Inc. v. Security Link From Ameritech, Inc. and ADT Security,* 902 So.2nd 46 (2004).

(2) *Fox Alarm Company, Inc. v. Claude Wadsworth,* 913 So.2d 1070 (2005).

(3) *Harris Moran Seed Company, Inc. v. Phillips,* 949 So.2d 916 (2006).

Private parties dealing by and between themselves have far more latitude and flexibility than municipalities have. A city has only the authority delegated to it by the Legislature and *The Constitution of Alabama of 1901* limits the expenditure of public funds for public purposes. I readily admit that private parties may enter into agreements limiting liability, but it is my opinion that municipalities cannot do so.

I base my legal opinion upon the following reasons:

A. MUNICIPALITIES CANNOT SPEND PUBLIC FUNDS TO INDEMNIFY THIRD PARTIES: It is my legal opinion that municipalities in Alabama cannot spend public funds to indemnify third parties. I base my legal opinions upon the following legal 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. **JOINT LIABILITY:** Title 11-47-191(b), *Code of Alabama, 1975,* provides as follows:

> "(b) When a judgment shall be obtained against a municipality and the other party liable as provided in subsection (a) of this section, execution shall issue against the other defendant or defendants in the ordinary form and shall not be demandable of the city or town unless the other defendants are insolvent and the same cannot be made out of their property, and the city or town shall pay only so much of the said judgment as cannot be collected from the other defendants."

E. **PREJUDICE THE RIGHTS OF THE CITY GENERAL COMPREHENSIVE LIABILITY INSURANCE CARRIER AND JEOPARDIZE COVERAGE:** Based upon Title 11-47-191(b), *Code of Alabama, 1975,* it is my legal opinion that if the City agreed to Section 6 of the General Terms and Conditions by limiting liability that it would prejudice the rights of the City general comprehensive liability insurance carrier and jeopardize coverage under the policy.

V. LEGAL ISSUE TWO

Can the City legally name ERGE as an additional insured on its general comprehensive liability insurance policies?

VI. ANSWER TO LEGAL ISSUE TWO

It is my legal opinion that the answer to the Legal Issue Two is in the affirmative; provided, however:

A. The general comprehensive liability insurance carrier for the City agrees to naming ERGE as an additional insured; and

B. That ERGE names the City and its servants, agents and employees as additional insureds under its general comprehensive liability insurance policies.

VII. MY RECOMMENDATIONS

I recommend the following amendments to the agreement:

A. Delete the limitation of liability of ERGE.

B. Delete the requirement of the City to defend, indemnify and hold harmless ERGE.

C. Ask our general comprehensive liability insurance carrier about the naming of ERGE as an additional insured under the City policy.

D. Request ERGE to name the City and its servants, agents and employees as additional insureds under its general comprehensive liability insurance policies.

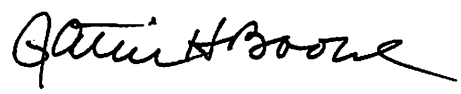
It is my legal opinion that the agreement will meet the requirements of Alabama law after the two deletions to the agreement are made.

VIII. ADDITIONAL COMMENTS

In 2007, the Vestavia Hills Board of Education razed two buildings on the campus of Vestavia Hills Elementary School Cahaba Heights. ERGE was involved in that project. ERGE did an excellent job and their people were good to work with. The project was a positive experience.

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)

RESOLUTION NUMBER 4532

APPOINTING A MEMBER AND RE-APPOINTING A MEMBER TO THE VESTAVIA HILLS LIBRARY BOARD

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

WHEREBY, Rebecca Walden is hereby appointed as a member of the City of Vestavia Hills Library Board; and

WHEREBY, Jason Gardner is hereby re-appointed as a member of the City of Vestavia Hills Library Board; and

WHEREAS, the said appointment of Rebecca Walden and re-appointment of Jason Gardner shall be effective January 1, 2014 and shall expire December 31, 2017.

APPROVED AND ADOPTED this the 9th day of December, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4533

APPOINTING A MEMBER TO THE VESTAVIA HILLS PARK AND RECREATION BOARD

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

WHEREBY, Anne Smyth is hereby appointed as a member of the City of Vestavia Hills Park and Recreation Board; and

WHEREAS, the appointment of Anne Smyth shall be effective January 1, 2014, and shall expire December 31, 2018.

APPROVED AND ADOPTED this the 9th day of December, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4534

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 4534 shall become effective immediately upon adoption and approval.

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

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

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

JAMES R. ST. JOHN
FIRE CHIEF

MEMORANDUM

TO: Jeff Downes, City Manager

FROM: Jim St. John, Fire Chief

DATE: November 21, 2013

RE: Surplus vehicle

The Fire Department has a 2000 Ford Taurus VIN 1FAFP53U1YA128566 with City of Vestavia Hills property tag # 16001 that is unneeded and inoperable. I recommend that it be sold as surplus. Mark Salter has agreed to handle the sale along with several other surplus sedans.

RESOLUTION NUMBER 4535

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A DOCUMENT ENTITLED "VACATION, TERMINATION AND RELEASE OF PARKING EASEMENT"

THIS RESOLUTION NUMBER 4535 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 23rd day of December, 2013.

WITNESSETH THESE RECITALS:

WHEREAS, BAC Vestavia Realty, LLC, an Alabama limited liability company ("BAC"), and the City of Vestavia Hills, Alabama, an Alabama municipal corporation ("City"), entered into a Conveyance and Parking Easement Agreement on May 15, 2006; and

WHEREAS, the Conveyance and Parking Easement Agreement was filed in the office of the Judge of Probate of Jefferson County, Alabama on June 12, 2006 and recorded at Bk: LR200609 Pg: 2716; and

WHEREAS, the Conveyance and Parking Easement Agreement is incorporated into this Vacation, Termination and Release of Parking Easement by reference as though set out fully herein; and

WHEREAS, the Conveyance and Parking Easement Agreement provides in paragraph 5 as follows:

> "**5.** **Duration, Binding Effect.** The Parking Easement, and rights and obligations relating thereto under this Agreement, shall run with the BAC Tract and shall be binding upon and inure to the benefit of the owner(s) of the BAC Tract and the City only as long as the City operates the Library on the Library Tract. If for any reason the Library shall cease to operate on the Library Tract, the Parking Easement granted herein shall immediately terminate and all rights and responsibilities thereunder shall cease."; and

WHEREAS, the City utilized the property situated at 1112 Montgomery Highway in the City of Vestavia Hills, Alabama, which is more particularly described as the "Library Tract" in Exhibit B attached to the Conveyance and Parking Easement Agreement as a public library for the period beginning February 10, 1994 and ending December 12, 2010; and

WHEREAS, the City no longer utilizes the property designated as the Library Tract (Exhibit B to Conveyance and Parking Easement Agreement) as a public library; and

WHEREAS, BAC has requested that the City acknowledge and agree that the parking easement described in the Conveyance and Parking Easement Agreement is vacated, terminated and released.

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

1. The Mayor and City Manager are authorized and directed to execute and deliver the document entitled "Vacation, Termination and Release of Parking Easement," a copy of which is attached hereto and incorporated into this Resolution Number 4535 by reference as though set out fully herein.

2. The duly executed Vacation, Termination and Release of Parking Easement shall be filed for record in the office of the Judge of Probate of Jefferson County, Alabama.

3. If any part, section or subdivision of this Resolution shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Resolution, which shall continue in full force and effect notwithstanding such holding.

RESOLVED, APPROVED, ADOPTED, DONE and ORDERED, on this the 23rd day of December, 2013.

_____
Alberto C. Zaragoza, Jr.
Mayor and Council President

ATTESTED BY:

_____
Rebecca Leavings
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

VACATION, TERMINATION AND
RELEASE OF PARKING EASEMENT

WITNESSETH THIS VACATION, TERMINATION AND RELEASE OF PARKING EASEMENT, executed and delivered by the City of Vestavia Hills, Alabama on this the 9th day of December, 2013.

WITNESSETH THESE RECITALS:

WHEREAS, BAC Vestavia Realty, LLC, an Alabama limited liability company ("BAC"), and the City of Vestavia Hills, Alabama, an Alabama municipal corporation ("City"), entered into a Conveyance and Parking Easement Agreement on May 15, 2006; and

WHEREAS, the Conveyance and Parking Easement Agreement was filed in the office of the Judge of Probate of Jefferson County, Alabama on June 12, 2006 and recorded at Bk: LR200609 Pg: 2716; and

WHEREAS, the Conveyance and Parking Easement Agreement is incorporated into this Vacation, Termination and Release of Parking Easement by reference as though set out fully herein; and

WHEREAS, the Conveyance and Parking Easement Agreement provides in paragraph 5 as follows:

> "5. **Duration, Binding Effect.** The Parking Easement, and rights and obligations relating thereto under this Agreement, shall run with the BAC Tract and shall be binding upon and inure to the benefit of the owner(s) of the BAC Tract and the City only as long as the City operates the Library on the Library Tract. If for any reason the Library shall cease to operate on the Library Tract, the Parking Easement granted herein shall immediately terminate and all rights and responsibilities thereunder shall cease."; and

WHEREAS, the City utilized the property situated at 1112 Montgomery Highway in the City of Vestavia Hills, Alabama, which is more particularly described as the "Library Tract" in Exhibit B attached to the Conveyance and Parking Easement Agreement as a public library for the period beginning February 10, 1994 and ending December 12, 2010; and

WHEREAS, the City no longer utilizes the property designated as the Library Tract (Exhibit B to Conveyance and Parking Easement Agreement) as a public library; and

WHEREAS, BAC has requested that the City acknowledge and agree that the parking easement described in the Conveyance and Parking Easement Agreement is vacated, terminated and released.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration the terms, provisions and conditions of the Conveyance and Parking Easement Agreement, dated May 15, 2006, as follows:

1. The parking easement set forth in Section 5 of the Conveyance and Parking Easement Agreement is hereby vacated, terminated, released and of no legal force and effect.

IN WITNESS WHEREOF, the undersigned, City of Vestavia Hills, Alabama, a municipal corporation, has hereunto set its hand and seal on this the 9th day of December, 2013.

CITY OF VESTAVIA HILLS, ALABAMA
a Municipal Corporation

By_____
Alberto C. Zaragoza, Jr.
Its Mayor

By_____
Jeffrey D. Downes
Its City Manager

ATTESTED

By_____

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 Vacation, Termination and Release of Parking Easement 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 9th day of December, 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 Vacation, Termination and Release of Parking Easement 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 9th day of December, 2013.

_____
Notary Public

My Commission expires:

_____
SEAL

This instrument prepared by:
L.E. "Buddy" Goodwin
Stoll Keenon Ogden, PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801

20060612000633030 1/11
Bk: LR200609 Pg:27216
Jefferson County,Alabama
I certify this instrument filed on:
06/12/2006 11:17:44 AM D
Judge of Probate- Mark Gaines

STATE OF ALABAMA

JEFFERSON COUNTY

CONVEYANCE AND PARKING EASEMENT AGREEMENT

THIS CONVEYANCE AND PARKING EASEMENT AGREEMENT (the "Agreement") is made and entered into effective as of the 15th day of May, 2006, by and between BAC VESTAVIA REALTY, LLC, an Alabama limited liability company, whose address is 239 South Limestone, Suite 100, Lexington, Kentucky 40508 ("BAC"), and THE CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation, whose address is 513 Montgomery Highway, Vestavia Hills, Alabama 35216 (the "City").

WITNESSETH:

WHEREAS, the City is the owner of that certain real property known as Lot 3, Survey of CVS Vestavia and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference ("Lot 3").

WHEREAS, the City is also the owner and operator of a library located at 1112 Montgomery Highway, Vestavia Hills, Alabama 35216, immediately adjacent to Lot 3 (the "Library"), which located upon the real property described on Exhibit "B" attached hereto and incorporated herein by reference ("Library Tract");.

WHEREAS, BAC is the owner of that certain real property known as Lot 2, Survey of CVS Vestavia, and more particularly described on Exhibit "C" attached hereto and incorporated herein by reference ("Lot 2").

WHEREAS, BAC is currently in the process of building a Gold's Gym facility and parking lot on Lot 2 and desires to extend the parking lot and drainage system onto portions of Lot 3.

WHEREAS, the City desires to convey ownership of Lot 3 to BAC in exchange for BAC's granting to the City of a parking easement on Lot 3 and Lot 2 (hereinafter collectively referred to as the "BAC Tract") to allow patrons of the Library the limited use of up to fifty (50) parking spaces in the parking areas on the BAC Tract (the "Parking Lot"), and ingress and egress thereto using the driveways as might exist on the BAC Tract, under the terms and conditions set forth herein (the "Parking Easement").

WHEREAS, BAC and the City desire to more fully set forth the mutual rights, obligations and responsibilities of the parties hereto, with regard to the conveyance of Lot 3 to BAC, use of the Parking Easement, and maintenance of the area covered thereby.

NOW, THEREFORE, in consideration of the agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BAC and the City hereby agree as follows:

1. **Conveyance of Lot 3**. The City shall convey to BAC title to Lot 3 within fifteen (15) days of the execution of this Agreement, together with all easements and appurtenances thereto, by Statutory Warranty Deed (the "Deed") in the form attached hereto as Exhibit "D", in accordance with the laws of the State of Alabama, conveying a fee simple marketable title to BAC, free and clear of all liens, encumbrances and other matters affecting title except matters affecting title as may be approved in writing by BAC prior to the time of execution of this Agreement.

2. **Effective Date**. This Agreement and all of the parties' obligations hereunder, with the exception of the Parking Easement and all rights and obligations thereto, shall commence on the date of execution of this Agreement by all of the parties hereto. The Parking Easement described herein, and all obligations and rights thereto, shall be granted and become effective upon satisfaction of the last to occur of the following conditions: (i) the receipt by BAC of the properly executed and recorded Deed conveying Lot 3 to BAC in accordance with the terms of Section 1 above, and (ii) the completion of the construction of the parking lot and access thereto by BAC.

3. **Parking Easement**. Upon the satisfaction of the conditions precedent in Section 2 above, BAC hereby grants and conveys to the City the Parking Easement as more particularly described herein and declares that the Parking Easement shall hereafter exist, unless terminated under the terms of this Agreement, as a parking easement for the limited use by Library patrons of up to fifty (50) parking spaces, as available, in the Parking Lot on Special Event Days, and for occasional Library patron overflow parking when the Library's own parking lot is full. The Parking Easement granted herein shall not be assigned in any way by the City, is only for the use of Library patrons when visiting the Library, and Library patrons shall use the Parking Lot in common with BAC's tenants. Provided, the number of persons permitted to use the Parking Lot, including Library patrons, shall at no time exceed the number of parking spaces in the Parking Lot. For the purposes of this Agreement, "Special Event Days" shall mean days upon which the Library customarily and traditionally has held special events, such as the Imagination Book Fair Day.

4. **Restrictions.** No parking shall be permitted in the Parking Easement, except in specifically designated parking spaces, nor shall the City cause any building, structure or other obstruction be built, maintained or permitted to exist in the Parking Easement. Use of the Parking Lot under the Parking Easement, and any stairs, steps or paths servicing the Parking Lot, is reserved for Library patron use only; neither Library employees nor any other party may make use of the Parking Easement. The owner(s) of the BAC Tract shall have the right to modify the Parking Lot, including the modification of vehicular traffic circulation, landscaping, parking areas, and buildings and structures thereon, so long as the total number of available parking spaces is not materially

reduced.

5. **Duration, Binding Effect**. The Parking Easement, and rights and obligations relating thereto under this Agreement, shall run with the BAC Tract and shall be binding upon and inure to the benefit of the owner(s) of the BAC Tract and the City only as long as the City operates the Library on the Library Tract. If for any reason the Library shall cease to operate on the Library Tract, the Parking Easement granted herein shall immediately terminate and all rights and responsibilities thereunder shall cease.

6. **Maintenance.** The owner(s) of the BAC Tract shall be responsible for the following: (a) the maintenance, management and repair of the Parking Lot including, but not limited to, resurfacing, repaving, re-striping, and mowing and maintenance of the landscaping in the areas immediately adjacent thereto. The owner(s) of the BAC Tract shall have the right to restrict access to the Parking Lot or parts thereof from time to time for the purposes of making necessary repairs and improvements. In the event any damage to the improvements in the Parking Lot is caused by or attributable to any party to this Agreement or beneficiary of the Parking Easement, such party shall be solely responsible for the cost of repair thereof.

7. **Insurance**. City, at its sole cost and expense, shall maintain comprehensive public liability insurance in a combined single limit amount of not less than One Million Dollars ($1,000,000) insuring against damage to property and injury or death to any person or persons using the Parking Lot under the Parking Easement. Such liability insurance shall specifically insure the performance of the City of the indemnity agreement as contained herein and shall name the owner(s) of the BAC Tract as an additional insured(s).

8. **No Dedication**. Nothing herein shall create a gift or dedication of any portion of the BAC Tract or the Parking Lot, including the Parking Easement, to the general public. Notwithstanding any other provision hereof to the contrary, the owner(s) of the BAC Tract may periodically restrict access over the Parking Easement in order to prevent a prescriptive easement from arising by continued public use of the Parking Easement. Any restriction on access shall (i) be limited to the minimum time period necessary to prevent creation of a prescriptive easement, and (ii) occur at such times as to have minimum affect on the operations of the Library.

9. **Default/Remedies**. In the event of a default by any party(s) to this Agreement, the non-defaulting party(s) shall be reimbursed for all costs and expenses arising out of such default, including, but not limited to, reasonable accounting fees, attorney fees, engineering and/or survey fees, the costs of recording documents and court costs. City shall indemnify and hold the owner(s) of the BAC Tract harmless from all loss, damage, liability or expense resulting from any injury to or death of any person, or any loss of or damage to any property, caused by or resulting from any act or omission of City or any officer, agent, employee, patient, guest, invitee or visitor of City in or about the Parking Lot, but the foregoing provision shall not be construed to make City responsible for injuries to third parties caused by the negligence of the owner(s) of the BAC Tract or any agent or employee of the owner(s) of the BAC Tract.

10. **Modification**. No part of this Agreement or the Parking Easement created herein may be amended, modified or terminated without the prior mutual, written consent of the owner(s) of the BAC Tract and the City, except as otherwise specifically provided for herein.

11. **No Association, Etc**. This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship among the owner(s) of the BAC Tract or the City, or any occupant thereof, or any tenants, or licensee of the owner(s) of the BAC Tract.

12. **Waiver**. No waiver of any provision hereof shall be deemed to imply or constitute a further waiver hereof or of any other provision set forth herein.

13. **Severability**. Should any provision hereof be declared invalid by a legislative, administrative or judicial body, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

14. **Good Faith Effort**. The owner(s) of the BAC Tract and the City shall make a good faith effort to cooperate in all matters involving the placement, use, maintenance and granting of all easement rights referred to herein and both the owner(s) of the BAC Tract and the City agree to execute, acknowledge and record any and all further instruments, easements, agreements, declarations or other documents which are reasonably necessary to fulfill the terms and intentions of this Agreement.

15. **Authority**. Each person executing this Agreement represents and warrants that: (i) he or she has been authorized to execute and deliver this Agreement by the entity for which he or she is signing; and (ii) this Agreement is the valid and binding agreement of such entity, enforceable in accordance with its terms.

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

IN WITNESS WHEREOF, BAC and the City have executed this Agreement as of the day and year first above written.

"BAC"

BAC Vestavia Realty, LLC,
an Alabama limited liability company

By: _____
Stephen D. Dawahare
Its Sole Member

"CITY"

THE CITY OF VESTAVIA HILS, ALABAMA
an Alabama municipality

By: _____
Charles A. McCallum
Mayor

STATE OF ~~ALABAMA~~ Kentucky
COUNTY OF JEFFERSON Fayette Co

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that STEPHEN D. DAWAHARE, whose name as sole member of BAC Vestavia Realty, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, in his capacity as member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the same that bears date.

Given my hand and official seal this the 2 day of June, 2006.

[NOTARY SEAL]

Notary Public - Lisa Lawson (Martin)
My Commission Expires: 8-23-06

STATE OF ALABAMA
COUNTY OF JEFFERSON

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Charles A. McCallum, 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 on this day that, being informed of the contents of said instrument, he, in his capacity as Mayor and with full authority, executed the same voluntarily for and as the act of said municipality on the same that bears date.

Given my hand and official seal this the 15th day of May, 2006.

[NOTARY SEAL]

Notary Public - Kitty Judy Robinson
My Commission Expires: March 20, 2007

EXHIBIT "A"

Lot 3, according to the Survey of CVS Vestavia, as recorded in Map Book 213, Page 31, in the Probate Office of Jefferson County, Alabama.

EXHIBIT B

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

EXHIBIT C

Lot 2, according to the Survey of CVS Vestavia, as recorded in Map Book 213, Page 31, in the Probate Office of Jefferson County, Alabama.

EXHIBIT D

[Deed begins on following page]

SEND TAX NOTICE TO:
BAC Vestavia Realty, LLC
239 South Limestone, Suite 100
Lexington, Kentucky 40508

This instrument was prepared by:
Patrick H. Boone, Attorney at Law
705 New South Federal Savings Building
215 Richard Arrington, Jr. Boulevard North
Birmingham, Alabama 35203-3720

STATE OF ALABAMA
JEFFERSON COUNTY

STATUTORY WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That in consideration of Ten Dollars ($10.00), the execution and delivery of a Parking Easement Agreement and other valuable consideration to the undersigned Grantor in hand paid by the Grantee herein, the receipt whereof is acknowledged, the said Grantor, The City of Vestavia Hills, Alabama, a municipal corporation (herein referred to as "Grantor"), does grant, bargain, sell and convey unto BAC Vestavia Realty, LLC (herein referred to as "Grantee"), the following described real estate situated in Jefferson County, Alabama, to-wit:

Lot 3, according to the Survey of CVS Vestavia, as recorded in Map Book 213, Page 31, in the Probate Office of Jefferson County, Alabama.

This conveyance is made subject to taxes due October 1, 2006, and further subject to easements, restrictions and right-of-ways of record, if any, and any matters that would be disclosed by an inspection or a survey of the property.

It is the intent of the Grantor to convey to Grantee any and all of its right, title and interest in and to the real property more particularly described in that certain Statutory Warranty Deed, dated May 1, 2006, from Sidney Aultman, a married man; Hunter Williams, a married man; and Brady Development and Investments, Inc., an Alabama corporation, to The City of Vestavia Hills, Alabama, a municipal corporation, which was filed in the office of the Judge of Probate of Jefferson County, Alabama on May 10, 2006 and recorded at Instrument 20060510000454260 (Bk:LR200608 Pg:6432). This deed is prepared using information furnished by the Grantee. No examination of title was made. No title opinion was rendered.

TO HAVE AND TO HOLD to the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor, The City of Vestavia Hills, Alabama, a municipal corporation, by Charles A. McCallum, as Mayor, who is authorized to execute this conveyance, hereto set its signature and seal, on this the 15th day of May, 2006.

THE CITY OF VESTAVIA HILLS, ALABAMA
a Municipal Corporation

By_____
Charles A. McCallum
Its Mayor

ATTEST:

By_____
Rebecca Leavings
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

CORPORATE ACKNOWLEDGMENT

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

Given under my hand and official seal, this the 15th day of May, 2006.

_____
Notary Public

20060612000333930 11/11
Bk: LR200609 Pg:27216
Jefferson County,Alabama
06/12/2006 11:17:44 AM D
Fee - $30.50

Total of Fees and Taxes-$30.50
WILSONN

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

November 18, 2013

By Hand Delivery

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

Re: Conveyance and Parking Easement Agreement, Dated May 15, 2006, By and Between BAC Vestavia Realty, LLC ("BAC") and the City of Vestavia Hills, Alabama ("City")

Dear Mr. Downes:

As you know, the *Southminister* case recently settled. During the course of concluding the Settlement Agreement, Bent Owens learned that BAC is selling its property. BAC has requested that I certify that the Conveyance and Parking Easement Agreement ("Agreement") is terminated and no longer in force and effect.

FACTS

On February 10, 1994, HealthSouth Medical Center, Inc., as Lessor ("HMC"), and the City, as Lessee, entered into a Ground Lease Agreement whereby HMC leased the property situated at 1112 Montgomery Highway in the City of Vestavia Hills, Alabama (the "property") to the City for a period of thirty (30) years for a total annual rent of Ten Dollars ($10.00) per year provided that the property be used for a public library and not for any purposes other than a public library.

On January 1, 1998, HMC and the City amended the Ground Lease Agreement whereby the City leased the property for a period of thirty (30) years with annual rent of Ten Dollars ($10.00) with an option to purchase the property at the end of the term for One Hundred Ten Dollars ($110.00).

On August 2, 2005, HMC and the City terminated the Ground Lease Agreement. This eliminated the requirement that the property be used for a public library and for no other purpose.

On August 19, 2005, HMC conveyed the property to the City for and in consideration of Seven Hundred Ten Dollars ($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.

BAC Vestavia Realty, LLC, an Alabama limited liability company ("BAC"), and the City of Vestavia Hills, Alabama, an Alabama municipal corporation ("City"), entered into a Conveyance and Parking Easement Agreement on May 15, 2006 which was filed in the office of the Judge of Probate of Jefferson County, Alabama on June 12, 2006 and recorded at Bk: LR200609 Pg: 2716 and provides in paragraph 5 as follows:

> "5. **Duration, Binding Effect.** The Parking Easement, and rights and obligations relating thereto under this Agreement, shall run with the BAC Tract and shall be binding upon and inure to the benefit of the owner(s) of the BAC Tract and the City only as long as the City operates the Library on the Library Tract. If for any reason the Library shall cease to operate on the Library Tract, the Parking Easement granted herein shall immediately terminate and all rights and responsibilities thereunder shall cease."

The City used the property for public library purposes until December 12, 2010 when the new Vestavia Hills Library in the Forest was completed and opened to the public. Since then, the City Council has decided that the property (old Library property) is no longer needed for public purposes and has offered it for sale.

LEGAL OPINION

It is my legal opinion that the City Council must adopt a resolution authorizing you and the Mayor to sign a Vacation, Termination and Release of Parking Easement in order to comply with the request of BAC. Title 11-43-56, *Code of Alabama, 1975,* provides that the City Council shall have the management and control over all real property owned by the City. Therefore, as City Attorney, I cannot make the certification requested by BAC.

MY RECOMMENDATIONS

1. Schedule the enclosed resolution on the agenda for a first reading at the December 9, 2013 meeting of the City Council.

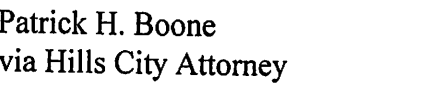
2. The Council should consider the resolution at the second meeting in December.

3. If the City Council enacts the resolution, then in such event the Mayor and you should sign the enclosed Vacation, Termination and Release of Parking Easement.

3. Once it is signed by the Mayor and you, the Vacation, Termination and Release of Parking Easement should be filed for record in the office of the Judge of Probate of Jefferson County, Alabama.

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

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

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

RESOLUTION NUMBER 4536

A RESOLUTION ACCEPTING THE DEDICATION OF THE STREET KNOWN AS CASTLEHILL DRIVE LOCATED IN CASTLEHILL SUBDIVISION

WHEREAS, Willow Trace Partners, LLC is the developer of Castlehill Subdivision in Vestavia Hills, Alabama. This dedication consists of the street named Castlehill Drive; such dedication to include the public portions of said subdivision; and

WHEREAS, the streets and improvements were partially constructed according to the City of Vestavia Hills' specifications and the development company failed to fulfill the subdivision agreement

prior to the completion of said subdivision; and

WHEREAS, the subdivision has been substantially completed according to the City Engineer with only one lot left vacant (Lot 22) and, in a memorandum dated December 3, 2013 to the City Manager, has recommended acceptance of dedication of the street and public improvements so that the City may use sureties to repair and/or resurface the public improvements and begin maintenance of the street; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept dedication of said public improvements within the Castlehill Subdivision.

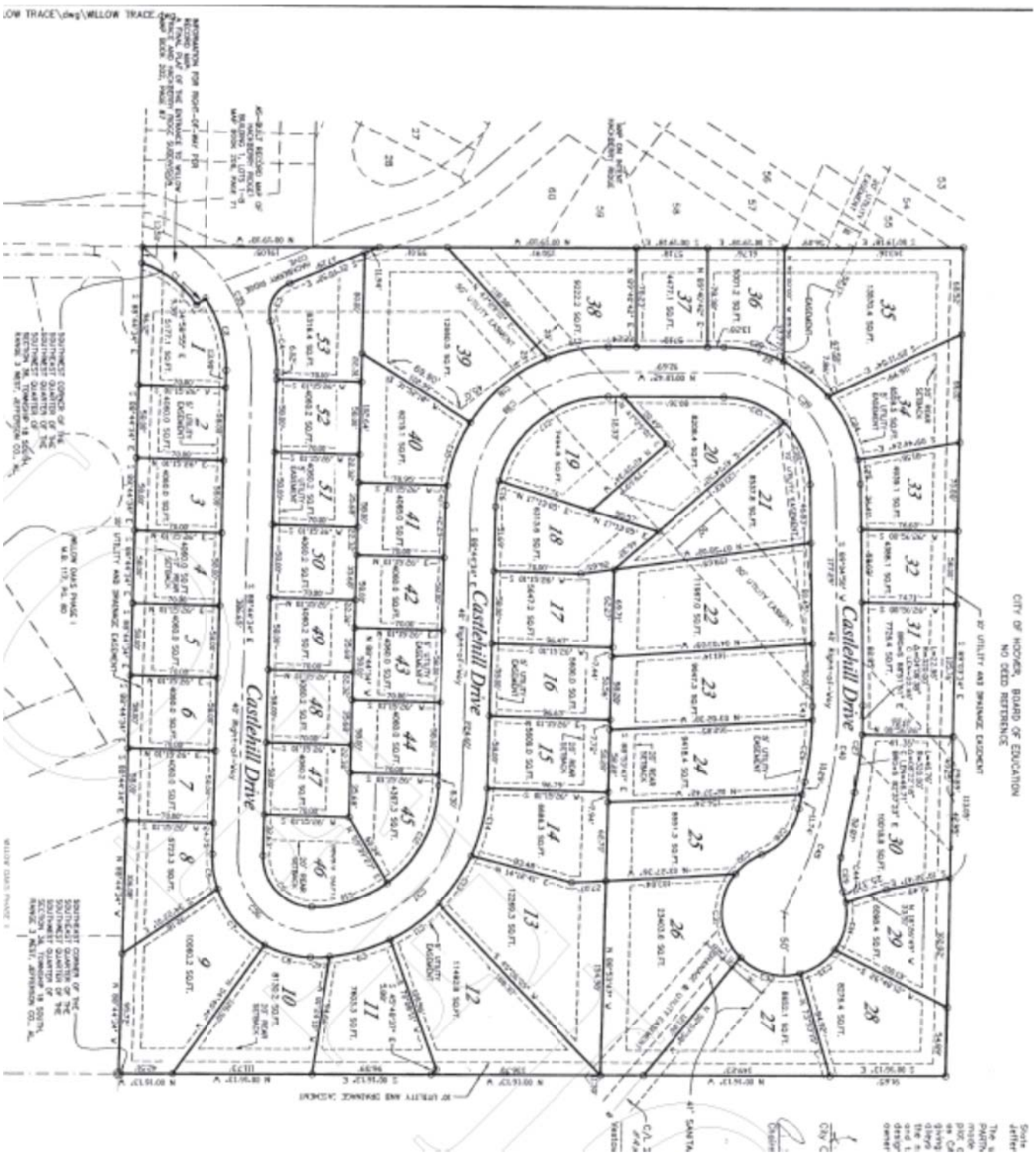
NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, that the City hereby accepts the dedication for the Castlehill Subdivision and said street shall be and is hereby a public street.

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

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk


Castlehill Drive
Castlehill Drive
Castlehill Drive
CITY OF HOOVER, BOARD OF EDUCATION
NO DEED REFERENCE

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

December 3, 2013

To: Jeff Downes, City Manager

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

From: Christopher Brady, City Engineer

RE: infrastructure repair and completion items for Castlehill Subdivision
Dedication of public right-of-way

Resolution 4521 adopted on Nov 25th, 2013, authorized expenditure to repair and complete "public" infrastructure items within the Castlehill Subdivision. Technically, since this has been a private development, "public" infrastructure does not currently exist. In review of documentation, the City needs to accept the roadway and other items as "public" infrastructure in order to proceed.

I recommend the City adopt recognition of the dedication and acceptance of the platted "public" infrastructure items pending the anticipated completion of the items identified in Resolution 4521. I anticipate working with Becky in wording of this resolution.

Please let me know if any questions,
-Christopher

ORDINANCE NO. 2475

AN ORDINANCE CALLING FOR A SPECIAL ELECTION TO BE HELD ON MARCH 11, 2014 FOR RENEWAL OF A SPECIAL MUNICIPAL SCHOOL TAX

BE IT ORDAINED BY THE CITY COUNCIL ("THE COUNCIL") OF THE CITY OF VESTAVIA HILLS ("THE CITY"), IN THE STATE OF ALABAMA, AS FOLLOWS:

Section 1. Findings of Fact. The Council, upon evidence duly submitted to and considered by it, does hereby find and declare that the following facts are true and correct:

(a) A special election was duly called and held in the City on May 8, 1990, pursuant to the laws and Constitution of Alabama of 1901, at which election a majority of the qualified electors of the City voting thereat did vote in favor of the levy and collection of the City's 15.1 mill annual ad valorem tax at an increased rate of 25.6 mills for the purpose of providing ad valorem tax revenue for public school purposes for each tax year of the City until and including the tax year for which taxes will be due and payable on October 1, 2018.

(b) At the request of the Vestavia Hills City Board of Education, the Council proposes, subject to approval at a referendum, to continue to levy the said tax annually, commencing with the tax year for which taxes will become due and payable on October 1, 2018, and for each consecutive tax year thereafter, without limit as to time.

Section 2. Call of Election. A special municipal election is hereby called to be held in the City on the 11th day of March, 2014, between the hours of 7:00 a.m. and 7:00 p.m. for the purpose of submitting the following question or proposition to the qualified electors of the City and determining by ballot their will with respect thereto:

Shall the 10.5 mill (or $1.05 on each $100 of the assessed value of taxable property) ad valorem tax presently being levied by the City of Vestavia Hills, Alabama, for use by the Vestavia Hills City Board of Education for public school purposes, pursuant to the general provisions of the Constitution and laws of the State of Alabama and an election held in the City on May 8, 1990, as part of an annual special municipal school tax now being levied at the rate of 25.6 mills on each dollar (or $2.56 on each $100) of the assessed value of taxable property in the City until and including the tax year for which municipal taxes will become due and payable on October 1, 2017, continue to be levied annually, commencing with the tax year for which taxes will become due and payable on October 1, 2018, and for each consecutive tax year thereafter, without limit as to time, in continuation of the tax increase approved at the election held in the City on May

8, 1990?

Section 3. Notice of Election. The City Clerk is hereby directed to give notice of the said election in the manner provided by law in substantially the following form by posting in three public places in the City (there being no newspaper published in the City), the first publication to be made not later than the second Tuesday in January, 2014, and not less than sixty days (60) days prior to the said election:

NOTICE OF SPECIAL MUNICIPAL ELECTION

Notice is hereby given that a special municipal election will be held in the City of Vestavia Hills in the State of Alabama on Tuesday, the 11th day of March, 2014, between the hours of 7:00 a.m. and 7:00 p.m., Central Time, at which there will be submitted to the qualified electors of the said City, for their determination by ballot, the following proposition:

> Shall the 10.5 mill (or $1.05 on each $100 of the assessed value of taxable property) ad valorem tax presently being levied by the City of Vestavia Hills, Alabama, for use by the Vestavia Hills City Board of Education for public school purposes, pursuant to the general provisions of the Constitution and laws of the State of Alabama and an election held in the City on May 8, 1990, as part of an annual special municipal school tax now being levied at the rate of 25.6 mills on each dollar (or $2.56 on each $100) of the assessed value of taxable property in the City until and including the tax year for which municipal taxes will become due and payable on October 1, 2017, continue to be levied annually, commencing with the tax year for which taxes will become due and payable on October 1, 2018, and for each consecutive tax year thereafter, without limit as to time, in continuation of the tax increase approved at the election held in the City on May 8, 1990?

Location of Voting Places

Vestavia Hills United Methodist Church
2061 Kentucky Avenue
Vestavia Hills, Alabama

Horizon Church
2345 Columbiana Road
Vestavia Hills, Alabama

Liberty Park Baptist Church
12001 Liberty Parkway
Vestavia Hills, Alabama

Mountaintop Community Church
225 Centerview Drive
Vestavia Hills, Alabama

Town Village Vestavia Hills
2385 Dolly Ridge Road
Vestavia Hills, Alabama

Cahaba Heights Community and
Senior Citizens Center
4401 Dolly Ridge Road
Vestavia Hills, Alabama

Absentee Balloting -
Vestavia Hills Municipal Center
513 Montgomery Highway
Vestavia Hills, Alabama

All registered and qualified electors of the state, who reside within the corporate limits of the City of Vestavia Hills, and have resided therein for thirty (30) days or more immediately preceding the date of the election, and who are qualified to vote in the county precinct which embraces and covers that part of the corporate limits of the City in which the elector resides, will be authorized to participate in the election.

By order of the City Council.

Alberto C. Zaragoza, Jr.
Mayor of the City of Vestavia Hills

(End of form of notice)

Section 4. Form of Ballot. The following is hereby adopted as the form of the official ballot to be used at the said election on the proposition referred to in the notice of election set out in Section 3 of this ordinance, which ballot shall be prepared under the direction of the City Clerk for use in the voting machines at the respective voting places:

OFFICIAL BALLOT

SPECIAL MUNICIPAL TAX ELECTION ON
THE RENEWAL AND CONTINUATION
OF CITY-LEVIED SCHOOL TAX
(Amendment No. 56)

City of Vestavia Hills, Alabama

March 11, 2014

INSTRUCTIONS TO VOTERS: [The appropriate instructions to voters shall be printed here.]

PROPOSITION

Shall the 10.5 mill (or $1.05 on each $100 of the assessed value of taxable property) ad valorem tax presently being levied by the City of Vestavia Hills, Alabama, for use by the Vestavia Hills City Board of Education for public school purposes, pursuant to the general provisions of the Constitution and laws of the State of Alabama and an election held in the City on May 8, 1990, as part of an annual special municipal school tax now being levied at the rate of 25.6 mills on each dollar (or $2.56 on each $100) of the assessed value of taxable property in the City until and including the tax year for which municipal taxes will become due and payable on October 1, 2017, continue to be levied annually, commencing with the tax year for which taxes will become due and payable on October 1, 2018, and for each consecutive tax year thereafter, without limit as to time, in continuation of the tax increase approved at the election held in the City on May 8, 1990?

[ ] FOR continued levy of said additional 10.5 mills of taxation (as part of the special 25.6 mill municipal tax now being levied for public school purposes) for each successive tax year of the City of Vestavia Hills commencing with the tax year for which municipal taxes will become due and payable on October 1, 2018, and for each consecutive tax year thereafter, the proceeds of which shall be used by the Vestavia Hills City Board of Education for public school purposes

[ ] AGAINST continued levy of said additional 10.5 mills of taxation (as part of the special 25.6 mill municipal tax now being levied for public school purposes) for each successive tax year of the City of Vestavia Hills commencing with the tax year for which municipal taxes will become due and payable on October 1, 2018, and for each consecutive tax year thereafter, the proceeds of which shall be used by the Vestavia Hills City Board of Education for public school purposes

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(End of form of ballot)

The form of the official absentee ballot to be used at the said election shall be the same as the foregoing form of the official ballot with the following exceptions:

In lieu of the words "Official Ballot" appearing at the head of the form thereof, there shall be inserted in the official absentee ballot the words "Official Absentee Ballot"; and there shall be added to the end of the official absentee ballot the forms of affidavit for absent voters substantially equivalent to the forms of affidavit prescribed therefor by law.

Section 5. Polling Places and Election Officials. The polling or voting places in the City for the holding of the said election are hereby designated and appointed as follows:

Location of Voting Places

Vestavia Hills United Methodist Church
2061 Kentucky Avenue
Vestavia Hills, Alabama

Horizon Church
2345 Columbiana Road
Vestavia Hills, Alabama

Liberty Park Baptist Church
12001 Liberty Parkway
Vestavia Hills, Alabama

Mountaintop Community Church
225 Centerview Drive
Vestavia Hills, Alabama

Town Village Vestavia Hills
2385 Dolly Ridge Road
Vestavia Hills, Alabama

Cahaba Heights Community and
Senior Citizens Center
4401 Dolly Ridge Road
Vestavia Hills, Alabama

Absentee Balloting -
Vestavia Hills Municipal Center
513 Montgomery Highway
Vestavia Hills, Alabama

The Council will by resolution hereinafter to be adopted appoint and designate the election officials to conduct the said election at the said voting places.

ADOPTED by the City Council of the City of Vestavia Hills, Alabama, this 23rd day of December, 2013.

_____
Mayor

ATTEST:

_____
City Clerk

ORDINANCE NUMBER 2476

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T ALABAMA, A GEORGIA CORPORATION TO PROVIDE IP ENABLED BROADBAND AND PROGRAMMING SERVICES TO THE CITY

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

1. The Mayor and City Manager are hereby authorized to execute and deliver an agreement with BellSouth Telecommunications, LLC d/b/a AT&T Alabama ("AT&T Alabama"), a Georgia corporation for IP broadband and programming services for the City of Vestavia Hills; and
2. A copy of said agreement is marked as Exhibit A is attached and incorporated into this Ordinance Number 2476 as though written fully therein; and
3. This Ordinance Number 2476 is effective upon adoption and approval, publication and/or posting as required by Alabama law.

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

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

AGREEMENT

THIS AGREEMENT ("Agreement") dated _____, 2013 ("Effective Date") is made by and between BellSouth Telecommunications, LLC d/b/a AT&T Alabama ("AT&T Alabama"), a Georgia corporation, and the City of Vestavia Hills, Alabama, a municipal corporation ("City"). AT&T Alabama and City shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

RECITALS:

WHEREAS, AT&T Alabama is in the process of modifying its existing telecommunications network to provide an integrated Internet Protocol ("IP") enabled broadband platform of voice, data and video services ("IP Network"), the video component of which is a switched, two-way, point-to-point and interactive service ("IP-enabled Video Service"). The IP Network upgrade will involve the use of the public right-of-way in the City ("ROW"); and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama finds and determines that the execution and delivery of this Agreement will promote the public welfare and best interests of the citizens of the City of Vestavia Hills.

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, City and AT&T Alabama agree as follows:

1. **Term:** The term of this Agreement shall be from the Effective Date of this Agreement through December 31, 2018. The term may be extended upon mutual agreement of the Parties.

A. The parties agree to consult in the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of controlling jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either City or AT&T Alabama, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either Party, within thirty (30) days of receipt of the finding, provides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the Parties mutually may agree. Where the effect of a finding is a modification, the Parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the Parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either Party to terminate the Agreement on the provision of thirty (30) days' written notice.

B. In addition to the termination rights set forth in Section 1(A) above, AT&T Alabama shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days notice to the City, if (a) AT&T Alabama concludes in its reasonable business judgment that IP Video Service in the City is no longer technically, economically or financially consistent with AT&T Alabama's business objectives; (b) Title VI of the Communications Act of 1934, as amended obligations or any similar obligations are imposed on

AT&T Alabama; or (c) it becomes clear that AT&T Alabama must offer or provide IP Video Service pursuant to a franchise (cable or otherwise) and/or franchise-like requirements or other local authorization.

2. **Compensation to City.** During the term of this Agreement, AT&T Alabama shall pay to City a fee equal to five percent (5%) of the Gross Revenues from subscription fees collected from each subscriber to AT&T Alabama's IP Video Services product delivered over the IP Network in the City's ROW; such product to be defined by AT&T Alabama when it is offered to the public. The fee ("IP Video Services Provider Fee") will be identified and passed through on any subscriber bill by AT&T Alabama, and all such fees collected will be forwarded to City quarterly and shall be due forty-five (45) days after the end of each quarter. If during the term of this agreement, AT&T Alabama should pay to any other municipality in Alabama a fee greater than five percent (5%) of the gross revenues from subscription fees collected from each subscriber to AT&T Alabama's IP Video Services product delivered over the IP Network over that City's right-of-way, then in such event the compensation to the City of Vestavia Hills shall automatically be increased to that amount. Should, during the term of this agreement, AT&T Alabama pay to any other municipality in Alabama the compensation any sooner than forty-five (45) days after the end of each quarter, then in such event this agreement shall be automatically amended so that the City of Vestavia Hills, Alabama shall receive payments at the same time.

A. For purposes of this Agreement, Gross Revenues are limited to amounts billed to and collected from AT&T Alabama IP Video Services product subscribers for the following:

(a) recurring charges for IP Video Services;

(b) event-based charges for IP Video Services, including but not limited to pay-per-view and video-on-demand charges;

(c) rental of set top boxes and other IP Video Services equipment;

(d) service charges related to the provision of IP Video Services, including, but not limited to, activation, installation and repair; and

(e) administrative charges related to the provision of IP Video Services, including, but not limited to, service order and service termination charges.

B. For purposes of this Agreement, Gross Revenues do not include:

(a) uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected fees, less expenses of collection, shall be included in Gross Revenues in the period collected;

(b) discounts, refunds and other price adjustments that reduce the amount of compensation received by AT&T Alabama;

(c) late payment fees;

(d) maintenance charges;

(e) amounts billed to IP Video Services subscribers to recover taxes, fees or surcharges imposed upon IP Video Services subscribers in connection with the provision of IP Video Services, including the IP Video Services Provider Fee authorized by this section;

(f) revenue from the sale of capital assets or surplus equipment; or

(g) charges, other than those described in subparagraph A that are aggregated or bundled with amounts billed to IP Video Services subscribers including but not limited to any revenues received by AT&T Alabama or its affiliates for telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement and electronic publishing.

City shall have the right to inspect, upon reasonable notice, AT&T Alabama's books and records showing its gross revenues for any of the services provided herein from which the fee specified herein is computed. No acceptance of any such fee by City shall be construed as a release of or an accord or satisfaction of any claim City might have for further or additional sums payable under the terms of the Agreement.

3. **Public, Educational and Governmental Programming.** In recognition of the technical architecture of IP Video Services AT&T Alabama and the City shall reasonably cooperate to investigate a web-based methodology to make such PEG programming available with AT&T Alabama's IP Video Service network, at such time as AT&T Alabama achieves ten percent (10%) market share of the pay TV subscriber market within City or within one hundred eighty (180) days of AT&T Alabama's launch of IP Video Services and subject to reasonable economic and technical feasibility considerations.

Any operation of any PEG access channel by City shall be the responsibility of City, and AT&T Alabama's only obligation, if any, is the responsibility for the transmission of such channel. The City will be responsible to ensure that all transmissions, retransmissions, content or programming that may be requested to be transmitted over a channel or facility by AT&T Alabama in the future, if any, are provided or submitted to AT&T Alabama, at the AT&T Alabama's designated connection point, in a manner or form that is capable of being accepted and transmitted by AT&T Alabama, without requirement for additional alteration or change in the format or content by AT&T Alabama, over the network of the AT&T Alabama, and which is compatible with the technology or protocol utilized by AT&T Alabama to deliver IP Video Services.

4. **Emergency Message.** AT&T Alabama shall carry all Federal, State and Local alerts provided over the "Federal Emergency Alert System" through AT&T Alabama's IP-enabled Video Services in the event of a public safety emergency, which at a minimum will include the concurrent rebroadcast of local broadcast channels.

5. **Customer Service.** AT&T Alabama shall comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c).

6. **Obligations of City.** During the term of this Agreement, City will not subject, nor attempt to subject, the provision of AT&T Alabama's IP-enabled Video Services over the IP Network to regulation under any cable television franchise ordinance or similar ordinances. In addition, City agrees:

(a) To subject the construction and installation of the IP Network to the same process and review as it subjects the installation and construction of AT&T Alabama's existing telecommunications infrastructure.

(b) Not to unreasonably block, restrict or limit the construction and installation of the IP Network.

(c) To process any and all applicable permits for the installation, construction, maintenance, repair, removal and other activities associated with the IP Network in a timely and prompt manner.

7. **Indemnification:**

A. AT&T Alabama agrees to indemnify, defend and hold harmless City, its officers, agents and employees, from and against any liability for damages and for any liability or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by AT&T Alabama's negligent construction, operation or maintenance of its IP Network, provided that City shall give AT&T Alabama written notice of its obligation to indemnify City within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, AT&T Alabama shall not indemnify City for any damages, liability or claims resulting from the negligence or willful misconduct of City, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any person or entity other than AT&T Alabama in connection with PEG programming.

B. With respect to AT&T Alabama's indemnity obligations set forth above, AT&T Alabama shall provide the defense of any claims brought against City by selecting counsel of AT&T Alabama's choice to defend the claim, subject to the consent of City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent City from cooperating with AT&T Alabama and participating in the defense of any litigation by its own counsel at its own cost and expense; provided, however, that after consultation with City, AT&T Alabama shall have the right to defend, settle or compromise any claim or action arising hereunder, and AT&T Alabama shall have the authority to decide the appropriateness and the amount of any such settlement.

C. Anything contained herein to the contrary notwithstanding, City shall maintain no responsibility or liability for claims or damages resulting from tangible property damage or bodily injury (including accidental death) arising out of AT&T Alabama's construction, operation or maintenance of its IP Network or operations authorized hereby. AT&T Alabama shall maintain no responsibility or liability for any damages, liability or claims resulting from the negligence or willful misconduct of City, its officers, agents, employees, attorneys, consultants or independent contractors or third parties or for any activity or function

conducted by any person or entity other than AT&T Alabama in connection with PEG programming, or for other independent acts of City, its agents, employees or assigns.

8. **Breach of Agreement.** Should either party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other party shall cure such breach within sixty (60) days.

9. **Dispute Resolution.** Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties and use of a mediator when such discussions have failed.

10. **Force Majeure:** In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted or interfered with by a force majeure, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference.

11. **Non-Discrimination:** AT&T Alabama shall not deny access to its IP Video Services to any group of potential customers because of the income of the residents of the local area in which the group resides.

12. **Notices.** Any notice to be given under this Agreement shall be in writing and may be delivered to either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to City:

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

If to AT&T Alabama:

AT&T Alabama
General Counsel—Alabama
Suite 28A2
600 19th Street N
Birmingham, Alabama 35203.

13. **Modification.** This Agreement may be amended or modified only by a written instrument executed by both Parties.

14. **Assignment.** AT&T Alabama may not assign or transfer this Agreement or any interest therein without the prior consent of City except to any affiliate of AT&T Alabama.

15. Entire Agreement. This Agreement constitutes the entire agreement between City and AT&T Alabama with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements and/or representations of or between City and AT&T Alabama regarding the subject matter hereof.

16. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

17. Miscellaneous.

A. AT&T Alabama and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

B. The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

C. AT&T Alabama and City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

D. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

18. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present principals, managers, City Council members, officers, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

19. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

[signatures on page 7]

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of this the _____ day of _____, 2013.

AT&T ALABAMA

By: _____
Name: Fred McCallum, Jr.
Title: President-- AT&T Alabama

STATE OF ALABAMA
COUNTY OF JEFFERSON

SWORN TO and SUBSCRIBED before me this the _____day of _____, 2013.

_____ SEAL
Notary Public

My Commission Expires: _____

CITY OF VESTAVIA HILLS

By: _____
Name: Butch Zaragoza, Jr.
Title: Mayor

STATE OF ALABAMA
COUNTY OF JEFFERSON

SWORN TO and SUBSCRIBED before me this the ____ day of _____, 2013.

_____ SEAL
Notary Public

My Commission Expires: _____

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