

**Vestavia Hills
City Council Agenda
March 9, 2015
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Buddy Anderson, Vestavia Hills High School Football Coach
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
 - a. Board of Education Announcement
6. City Manager’s Report
7. Councilors’ Reports
8. Approval of Minutes – February 23, 2015 (Regular Meeting)

Old Business

9. Ordinance Number 2556 – Rezoning – 4300 Dolly Ridge Road; Rezone From Vestavia Hills R-4 (Residential) To VH B-1.2 (Neighborhood Mixed Use District); Troy W. And Barbara L. Peters, Owners; Bryan Pressnell, Representing
10. Ordinance Number 2557 – Rezoning – 4317 and 4321 Dolly Ridge Road; Rezone from Vestavia Hills R-4 (Residential) to VH B-1.2 (Neighborhood Mixed Use District); JFKE, LLC and B&J LLC, Owners
11. Resolution Number 4682 – A Resolution Authorizing The City Manager To Enter Into An Agreement To Lease/Purchase A Communications System
12. Resolution Number 4685 – A Resolution For The Purchase Of A Speed Awareness Monitor Trailer For The Purpose Of Monitoring Traffic And Maintaining Road Safety

New Business

New Business (Requesting Unanimous Consent)

First Reading (No Action Taken At This Meeting)

13. Resolution Number 4687 - A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Retail Specialists For Brokerage Services For The Marketing and/or Sale Of Municipal Property

14. Ordinance Number 2558 – An Ordinance Granting A Non-Exclusive Right-Of-Way Use Agreement To Southern Light, LLC, For The Purpose Of Constructing And Maintaining A Fiber-Optic Transmission Line Within Certain Public Rights-Of-Way Within The City Of Vestavia Hills, Alabama
15. Ordinance Number 2373-A – Amending Ordinance Number 2373 to grant an extension of conditional use approval for 1476 Montgomery Highway; Anthony and Margaret Serra, Owners; Alton Parker, Representing.
16. Citizens Comments
17. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

FEBRUARY 23, 2015

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
Melvin Turner, Finance Director
George Sawaya, Deputy Treasurer
Danny Rary, Police Chief
Jim St. John, Fire Chief
Terry Ray, Deputy Fire Chief
Darrin Estes, IT Director

Invocation was given by Rebecca Walden, Senior Editor, *Vestavia Voice*, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES

- None.

CITY MANAGER REPORT

- Mr. Downes warned everyone about the expected bad weather potential that is being predicted. He indicated that the City's emergency services are on alert to any potentially threatening conditions. The City's Public Works crews are on standby to sand and the Police Department is ready to provide needed information.

- Because of the projected inclement weather, the City's sanitation contractor has chosen to postpone recycling pickup for a week.
- Administrative employees have been assigned a phone number to contact in order to determine whether or not it is safe to come into work or not. This message will be updated as necessary.
- Mr. Downes commended the Vestavia Hills Soccer Club for their new program which allows special needs children up to age 19 to participate in soccer games. He indicated this is a wonderful activity for special needs children and as a parent of such a child, he appreciates their efforts in this endeavor.

COUNCILOR REPORTS

- None.

FINANCIAL REPORTS

Melvin Turner III, Finance Director, presented the financial reports for the month ending January, 2015. He read and explained the balances.

APPROVAL OF MINUTES

The minutes of February 9, 2015 (Regular Meeting), were presented for approval.

MOTION Motion to dispense with the reading of the minutes of February 9, 2015 (Regular Meeting) 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. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

OLD BUSINESS

ORDINANCE NUMBER 2555

Ordinance Number 2555 - An Ordinance Authorizing The City Manager To Enter Into A Purchase/Sale Agreement For Real Estate Located On Old Columbiana Road

MOTION Motion to approve Ordinance Number 2555 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes explained that this Ordinance allows a due diligence period to examine the potential purchase of some property on Old Columbiana Road. He gave a background on the City's use of this property in the past for recreation and the terms of the agreement.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

Roll call vote as follows:

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

NEW BUSINESS

RESOLUTION NUMBER 4680

Resolution Number 4680 – A Resolution Authorizing The City Manager To Refund A Portion Of Sales Taxes To Advance Alabama Media, LLC dba “Birmingham News”

MOTION Motion to approve Resolution Number 4680 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes gave a brief background on the circumstances leading up to the request for this refund. He stated that the request was thoroughly researched and was found to be due and payable.

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	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

RESOLUTION NUMBER 4681

Resolution Number 4681 – A Resolution Determining That Certain Personal Property Is Not Needed For Public Or Municipal Purposes And Directing The Sale/Disposal Of Said Surplus Property

MOTION Motion to approve Resolution Number 4681 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes stated that this property is an old confiscated Chevy Tahoe that's no longer needed by the Police Department. Once sold, the proceeds will be earmarked for law enforcement purposes.

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	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

RESOLUTION NUMBER 4683

Resolution Number 4683 – A Resolution Accepting A Bid For Managed Exchange Mailbox Services For The City Of Vestavia Hills

MOTION Motion to approve Resolution Number 4683 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes stated that invitations to bid were let to allow the City to begin using a secure-managed email service rather than this process being done in-house. He explained that this was decided with the budget and that IT is recommending Teklinks the best responsible bidder for the service. He indicated that one company did bid a lesser amount but wasn't able to provide the security needed and specified. Details of the bid were provided to the Council.

Mr. Henley indicated this will be much better for long-term management of the City's email system.

Mr. Ammons stated that this is a well-known company and is local.

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	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)

The Mayor opened the floor for unanimous consent for the immediate consideration and action on Resolution Number 4684.

MOTION Motion for unanimous consent for the immediate consideration and action on Resolution Number 4684 was by Mr. Sharp and second was by Mr. Pierce. Roll call vote as follows:

Mr. Pierce – yes
Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Henley – yes
Mr. Ammons – yes
motion carried.

RESOLUTION NUMBER 4684

Resolution Number 4684 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Sain Associates For Design Of A Roadway Adjacent To Vestavia Hills Elementary School – Cahaba Heights

MOTION Motion to approve Resolution Number 4684 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes gave the background of the new proposed roadway adjacent to the Cahaba Heights School that has become a joint project between the City, School and developers. He indicated that the decision was made to have the road connect directly to Oakview rather than just ending and this agreement will allow Sain to expand their designs to connect to Oakview.

The Council discussed the original plans versus connecting to Oakview and the fact that the City would need this information whether or not the nearby developer participated.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

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

Mr. Pierce – yes
Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Henley – yes
Mr. Ammons – 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 March 9, 2015 at 5 PM.

- Ordinance Number 2556 – Rezoning – 4300 Dolly Ridge Road; Rezone From Vestavia Hills R-4 (Residential) To VH B-1.2 (Neighborhood Mixed Use District); Troy W. And Barbara L. Peters, Owners; Bryan Pressnell, Representing

- Ordinance Number 2557 – Rezoning – 4317 and 4321 Dolly Ridge Road; Rezone from Vestavia Hills R-4 (Residential) to VH B-1.2 (Neighborhood Mixed Use District); JFKE, LLC and B&J LLC, Owners
- Resolution Number 4682 – A Resolution Authorizing The City Manager To Enter Into An Agreement To Lease/Purchase A Communications System
- Resolution Number 4685 – A Resolution For The Purchase Of A Speed Awareness Monitor Trailer For The Purpose Of Monitoring Traffic And Maintaining Road Safety

CITIZENS COMMENTS

There were no citizens comments.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Ammons. Meeting adjourned at 5:30 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2556

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-4 TO VESTAVIA HILLS B-1.2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 (residential) Vestavia Hills B 1.2 (neighborhood mixed use district):

4300 Dolly Ridge Road
Troy W. and Barbara L. Peters, owner(s)

More particularly described as follows:

Lot 6, Block 1, New Merkle Heights as recorded in Map Book 19, Page 92, Judge of Probate Jefferson County, Alabama, less and except the west 501 feet.

BE IT FURTHER ORDAINED that said rezoning be subject to the following conditions: (1) That the City reach a development agreement between the vested parties and that said agreement and conditions be recordable; (2) The use is limited to professional office; and (3) a two-story height limitation is imposed.

APPROVED and ADOPTED this the 9th day of March 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

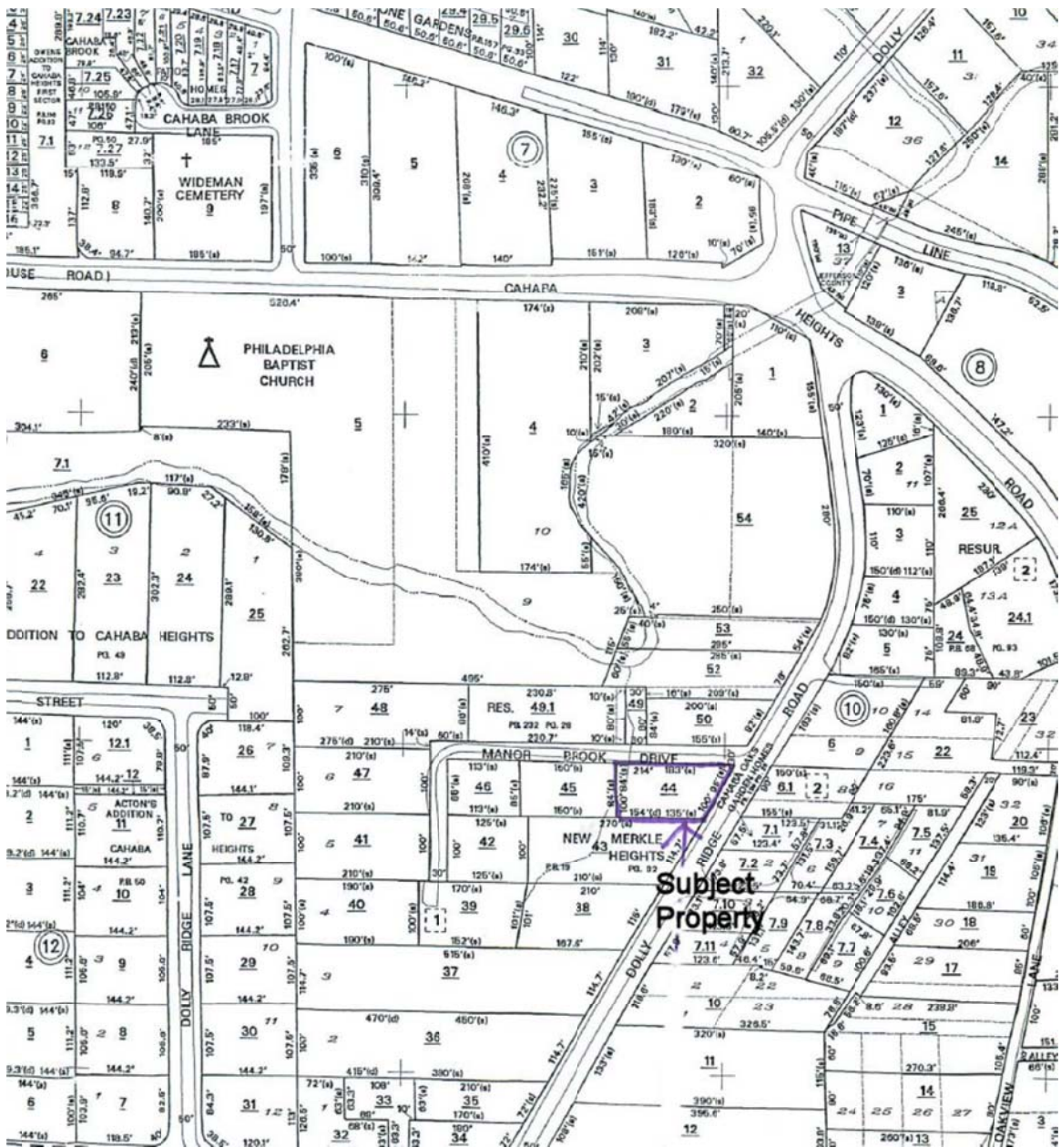
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2556 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 9th day of March 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2015.

Rebecca Leavings
City Clerk



CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **FEBRUARY 12, 2014**

- **CASE:** P-0115-02
- **REQUESTED ACTION:** Rezoning Vestavia Hills R-4 Vestavia Hills B-1.2
- **ADDRESS/LOCATION:** 4300 Dolly Ridge Rd.
- **APPLICANT/OWNER:** Troy W. Peters & Barbara L. Peters
- **REPRESENTING AGENT:** Bryan Pressnell
- **GENERAL DISCUSSION:** Property is on the corner of Dolly Ridge Rd. and Manor Brook Dr., adjacent to In the Making. Applicant is seeking rezoning to build a 2,400 sq. feet orthodontic office consistent with the development pattern established in the Cahaba Heights Village amendment. As illustrated by the plan, the applicant proposes 5 spots to be accessed off of Manor Brook Dr. The applicant will also construct the beginning of a shared parking facility with the neighboring parcel to the south. The parking proposed meets the minimum parking requirements for a medical office. The access proposed meets the requirements of the access management plan approved as part of the Cahaba Heights Village Amendments.
- **CAHABA HEIGHTS COMMUNITY PLAN:** The request is consistent with the Cahaba Heights Community Plan for mixed use and pedestrian oriented development.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** Development plan must be consistent with access management plan. Engineer will review drainage.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.

4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Wolfe made a motion to approve Rezoning of 4300 Dolly Ridge Rd. from Vestavia Hills R-4 to Vestavia Hills B-1.2 For The Purpose of Mixed Use Development with the following conditions:

1. The City reach a development agreement between vested parties and that agreement and conditions be recordable;
2. The use is limited to professional office;
3. A two (2) story height limitation is imposed.

Second was by Mr. Visintainer. Motion was carried on a roll call; vote as follows:

Mr. Brooks – yes	Mr. Wolfe – yes
Mr. Gilchrist – yes	Mr. Burrell – yes
Mr. Visintainer – yes	Mr. Sharp – yes
Mr. Goodwin – yes	Mr. House – yes
Mr. Larson – yes	Motion carried.

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered.** All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. ***No permits will be issued until all fees have been paid.*
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

II. APPLICANT INFORMATION: (owner of property)

NAME: Troy W Peters & Barbara L Peters

ADDRESS: PO Box 43466, Birmingham, AL 35243

MAILING ADDRESS *(if different from above)* _____

PHONE NUMBER: Home 205-967-7156 Office _____

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: _____

Bryan S. Pressnell, Engineer

2014 NOV 32 A 10:06

P0115-02//28-22-2-11-44
4300 Dolly Ridge Rd.
Rezone from VH R-4 to VH O-1
Troy & Barbara Peters
R-4

III. ACTION REQUESTED

Request that the above described property be zoned/rezoned

From: VH R-4

To: VH ~~O-1~~ B-1.2

For the intended purpose of: Dental Office

(Example: From "VH R-1" to "VH O-1" for office building)

if additional information is needed, please attached full description of request

IV. PROPERTY DESCRIPTION: (address, legal, etc.)

4300 Dolly Ridge Road, Vestavia Hills, AL 35243

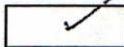
Lot 6 Blk 1, less and except the W 501 feet, New Merkle Heights MB 19/Pg 92

Property size: 100 feet X 156 feet. Acres: 0.36

V. INFORMATION ATTACHED:



Attached Checklist complete with all required information.



Application fees submitted.

VI. I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

Troy Peters 12-1-14

Barbara L. Peters 12-1-14
Owner Signature/Date

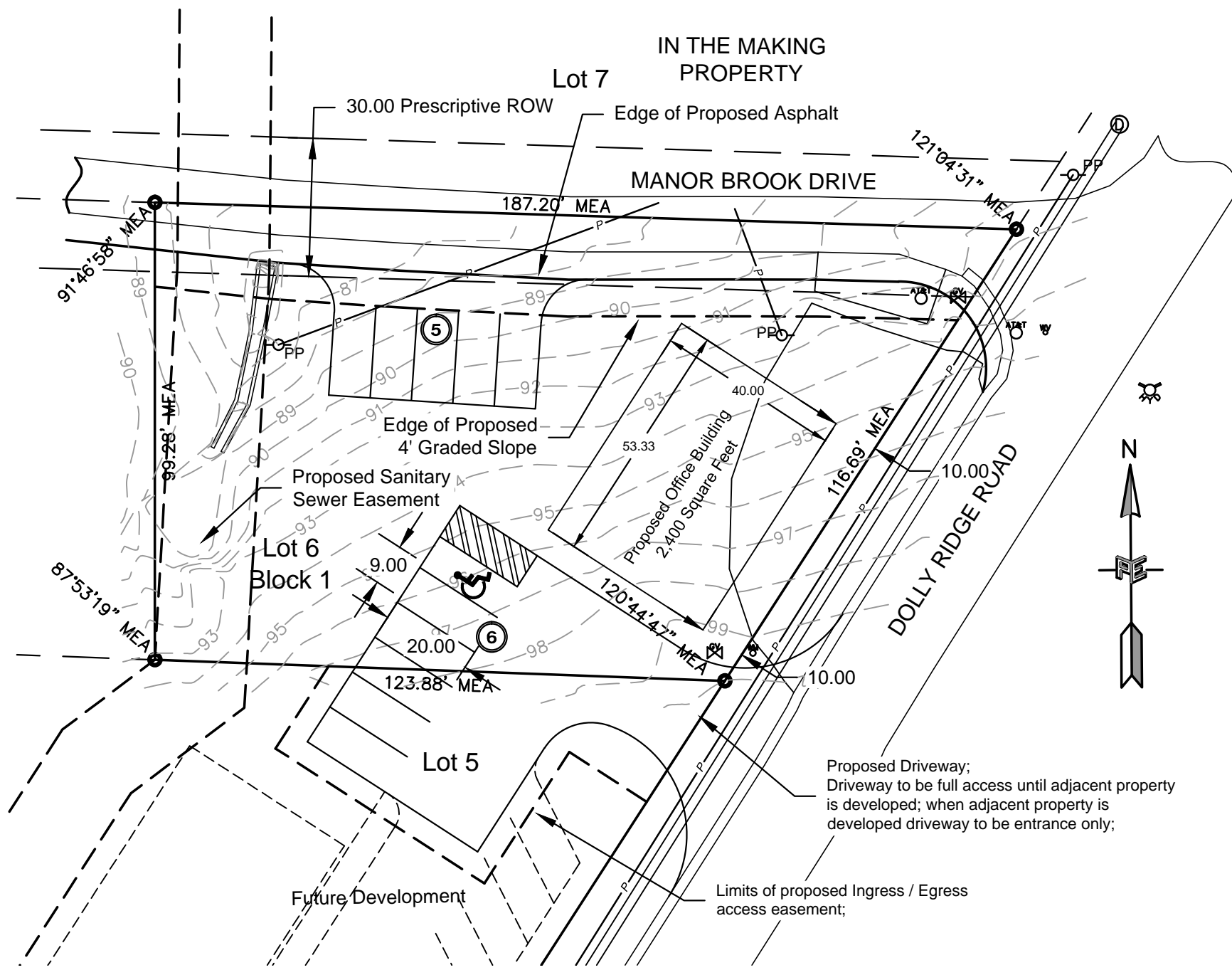
[Signature] 12/1/14
Representing Agent (if any)/date

Given under my hand and seal
this 1 day of December, 20 14.

[Signature]
Notary Public

My commission expires 12
day of December, 20 15.

Preliminary Layout for
**Dolly Ridge
 Road Dental**
 4300 Dolly Ridge Road



Site Information:

Current Zoning: R-4

Proposed Zoning: B-1.2

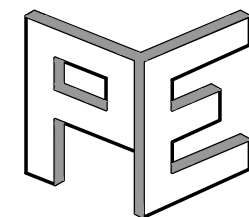
Legal Description: Lot 6 Block 1, less and except the west 501 feet of New Merkle Heights as recorded in Map Book 19, Page 92 in the office of the Judge of Probate, Jefferson County, Alabama.

Parking Requirement:

1 Space for each doctor plus 1 per employee.

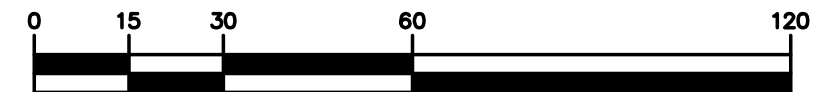
Building will have 1 doctor and 3 employees, therefore 7 parking spaces required.

Site contains 11 parking spaces.



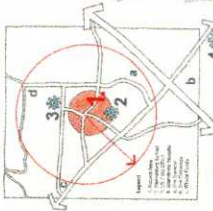
**Pressnell
 Engineering**

884 High Pointe Drive
 Hayden, AL 35079
 P: 205.876.4335
 F: 205.417.2507



SCALE: 1" = 30'

Subject
Rosedale



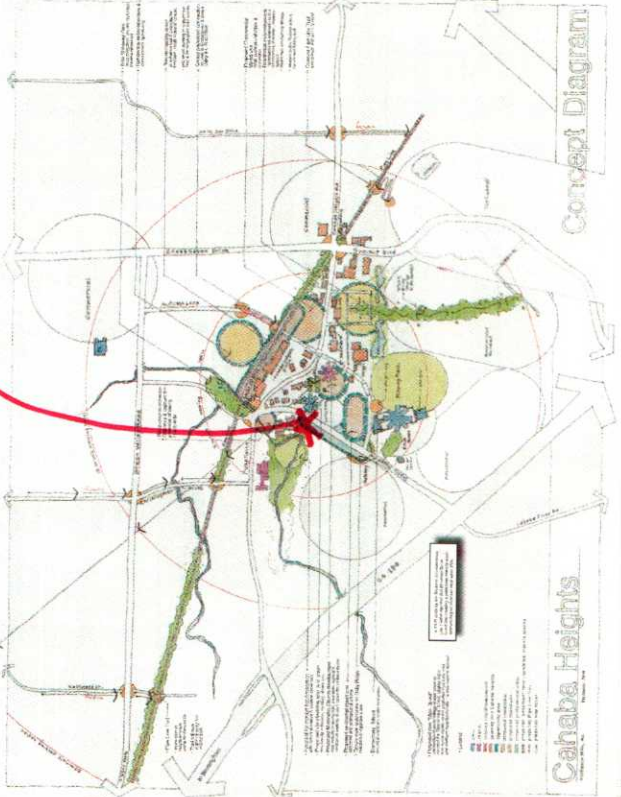
Location
Cahaba Heights is located in the heart of Birmingham, Alabama, just north of downtown. The site is bounded by the city limits to the north and east, and the city limits to the south and west. The site is situated on a major thoroughfare, which provides excellent access to downtown Birmingham and the surrounding area.

History of this project
Cahaba Heights was established in 1964 by the City of Birmingham. The project was originally conceived as a public housing development, but it has since evolved into a diverse residential community. The project has a rich history and a strong sense of community, which is reflected in its architecture and landscaping.

Goals | Principles
The primary goal of the project is to create a vibrant, walkable community that offers a high quality of life for its residents. The project is guided by several key principles, including sustainability, inclusivity, and community engagement. The project is designed to be a model of urban living, with a focus on creating a sense of place and a strong sense of community.

Assets | Opportunities
Cahaba Heights has a number of key assets and opportunities that make it an ideal location for a new development. The project is situated on a major thoroughfare, which provides excellent access to downtown Birmingham and the surrounding area. The project also has a rich history and a strong sense of community, which is reflected in its architecture and landscaping.

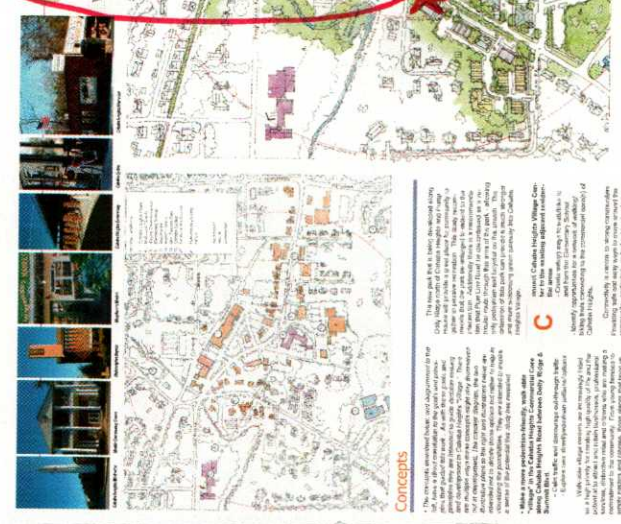
Concept Diagram
The concept diagram illustrates the overall layout and design of the project. It shows the location of the project within the city limits and the surrounding area. The diagram also shows the layout of the project, including the location of the main building, the parking lot, and the landscaping. The diagram is designed to provide a clear and concise overview of the project, making it easy for stakeholders to understand the project's goals and objectives.



Concept Diagram
The concept diagram illustrates the overall layout and design of the project. It shows the location of the project within the city limits and the surrounding area. The diagram also shows the layout of the project, including the location of the main building, the parking lot, and the landscaping. The diagram is designed to provide a clear and concise overview of the project, making it easy for stakeholders to understand the project's goals and objectives.

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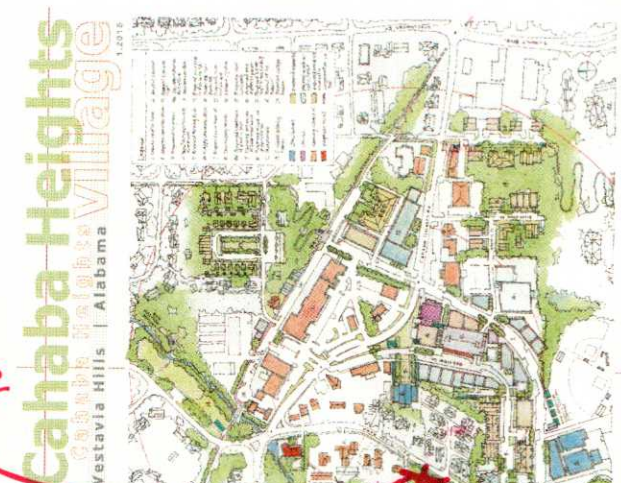
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Illustrative plan study one
This plan study illustrates the proposed development for the Cahaba Heights site. The plan shows the location of the main building, the parking lot, and the landscaping. The plan is designed to provide a clear and concise overview of the project, making it easy for stakeholders to understand the project's goals and objectives.

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Illustrative plan study two
This plan study illustrates the proposed development for the Cahaba Heights site. The plan shows the location of the main building, the parking lot, and the landscaping. The plan is designed to provide a clear and concise overview of the project, making it easy for stakeholders to understand the project's goals and objectives.

Illustrative plan study two
This plan study illustrates the proposed development for the Cahaba Heights site. The plan shows the location of the main building, the parking lot, and the landscaping. The plan is designed to provide a clear and concise overview of the project, making it easy for stakeholders to understand the project's goals and objectives.

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Cahaba Heights
Vestavia Hills | Alabama
Village

Concepts
The project is designed to be a model of urban living, with a focus on creating a sense of place and a strong sense of community. The project is guided by several key principles, including sustainability, inclusivity, and community engagement. The project is designed to be a vibrant, walkable community that offers a high quality of life for its residents.

Goals | Principles
The primary goal of the project is to create a vibrant, walkable community that offers a high quality of life for its residents. The project is guided by several key principles, including sustainability, inclusivity, and community engagement. The project is designed to be a model of urban living, with a focus on creating a sense of place and a strong sense of community.

Assets | Opportunities
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ORDINANCE NUMBER 2557

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-4 AND R-6 TO VESTAVIA HILLS B-1.2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 (residential) Vestavia Hills B 1.2 (neighborhood mixed use district):

4317 AND 4321 Dolly Ridge Road
JFKE, LLC and B&J, LLC, owner(s)

More particularly described as follows:

Parcel 1. 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 ¼-¼ 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 Merkle Heights, as recorded in Map Book 16, Page 20, in the Office of the Judge of Probate 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 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 ¼-¼ section for a distance of 397.62 feet to the Point of Beginning. Property located in Jefferson County, Alabama.

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

Lots 1, 2, 22 and 23, Block 2, according to the survey of New Merkle Heights as recorded in Map Book 19, Page 92, in the Office of the Judge of Probate of Jefferson County, Alabama, except that part of Lots 1 and 2 previously conveyed to Jefferson County, Alabama, for right of way purposes as recorded in Volume 2555, Page 251, in said Probate Office, and also except that part of Lot 22 described as follows: Commence at the Northeast corner of Lot 22; thence run Westerly along the Northerly line of said Lot 22 a distance of 150 feet; thence left and proceed in a generally Southwesterly direction parallel to the West line of said Lot 22 a distance of 10 feet; thence left and proceed in a generally Southeasterly direction to a point on the East line of said Lot 22 which is 18.3 feet North of the Southeast corner of said Lot 22; thence left and in a generally Northeasterly direction along the East line of Lot 22 to point of beginning.

BE IT FURTHER ORDAINED that said rezoning be subject to the following conditions: (1) That the City reach a development agreement between the vested parties and that said agreement and conditions be recordable; (2) That the parcels be re-platted; and (3) any changes to the Bilano Dermatology Project Be brought back to the Commission; and/or (4) that a rear access agreement is recorded between the applicant and neighboring parcels (should Option B be desired).

APPROVED and ADOPTED this the 9th day of March 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

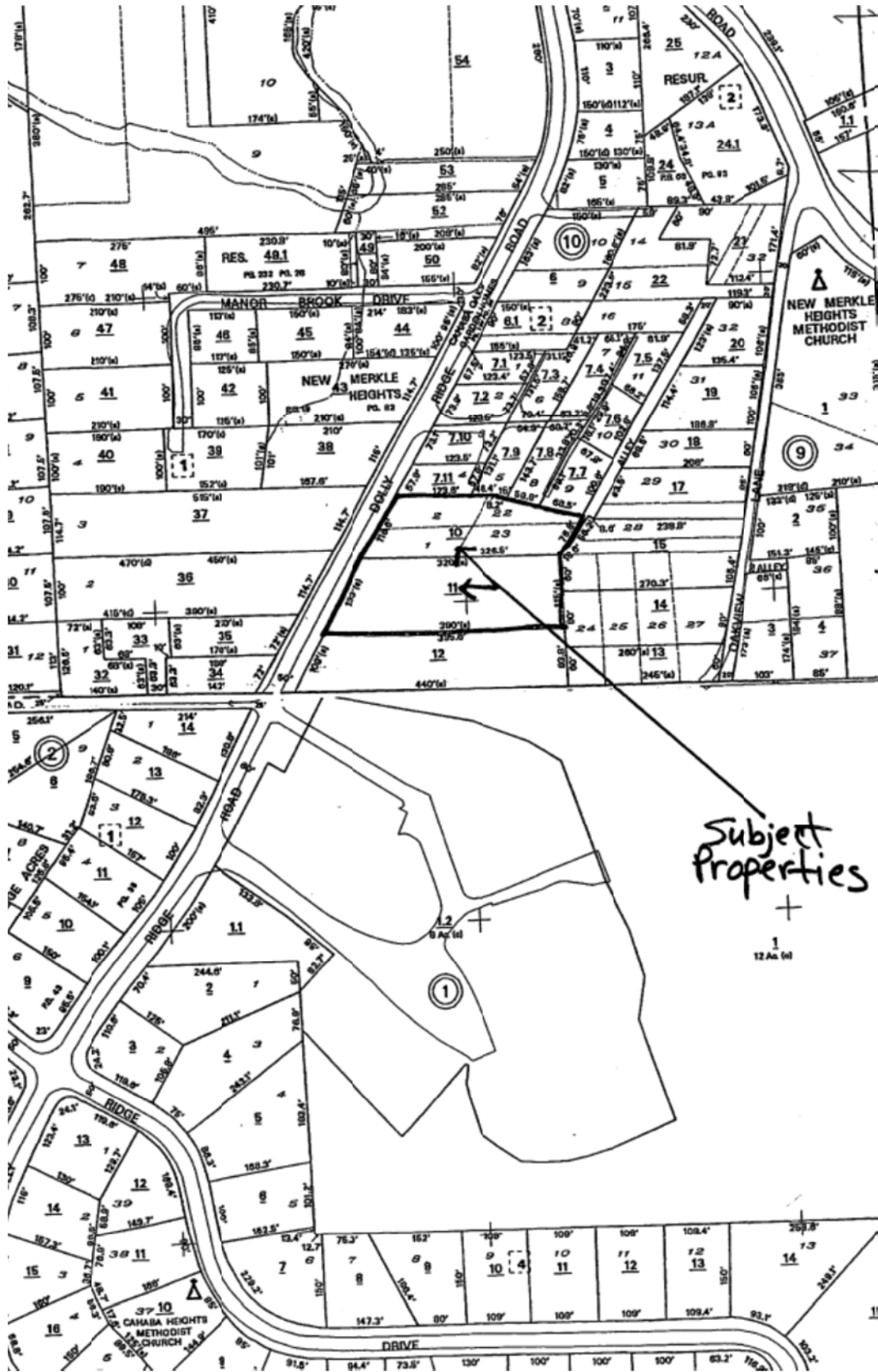
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2557 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 9th day of March 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2015.

Rebecca Leavings
City Clerk



CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **FEBRUARY 12, 2014**

- **CASE: P-0215-10**
- **REQUESTED ACTION:** Rezoning Vestavia Hills R-4 & R-6 to Vestavia Hills B-1.2
- **ADDRESS/LOCATION:** 4317 & 4321 Dolly Ridge Rd.
- **APPLICANT/OWNER:** JFKE, LLC & B&J, LLC
- **REPRESENTING AGENT:** Thorton Hydinger & Sorrell Chew
- **GENERAL DISCUSSION:** Property directly adjacent to Cahaba Heights Elementary. Applicant is seeking rezoning to continue the dense development pattern established in the Cahaba Heights Village amendment. The applicants have submitted two development plans. The preferred plan builds on the previously approved design to the building to the south. The previously approved building would share a parking lot with a new building to the north. The second plan shows a distinct break to the building to the south with slip parking in the front.
- **CAHABA HEIGHTS COMMUNITY PLAN:** The request is consistent with the Cahaba Heights Community Plan for mixed use and pedestrian oriented development.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** Development plan must be constraint with access management plan. Engineer will review drainage.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Wolfe made a motion to approve Rezoning of 4300 Dolly Ridge Rd. from Vestavia Hills R-4 to Vestavia Hills B-1.2 For The Purpose of Mixed Use Development with the following conditions:

For Option A

1. The City reach a development agreement between vested parties and that agreement and conditions be recordable;
2. The parcels be re-platted;
3. Any changes to the Bilano Dermatology project be brought back before the Commission.

For Option B

1. A rear access agreement is recorded between the applicant and neighboring parcels.

Second was by Mr. Visintainer. Motion was carried on a roll call; vote as follows:

Mr. Brooks – yes	Mr. Wolfe – yes
Mr. Gilchrist – yes	Mr. Burrell – yes
Mr. Visintainer – yes	Mr. Sharp – yes
Mr. Goodwin – yes	Mr. House – yes
Mr. Larson – yes	Motion carried.

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered**. All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. ****No permits will be issued until all fees have been paid.**
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

II. APPLICANT INFORMATION: (owner of property)

NAME: JFKE, LLC and B&J, LLC

ADDRESS: 4317 Dolly Ridge Rd and 4321 Dolly Ridge Rd

MAILING ADDRESS (if different from above) 2801 Highway 280 South, Suite 500
Birmingham, AL 35223

PHONE NUMBER: Home 540-1196 Office 380-3330

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: Hydinger Stewart and Chew
Commercial Properties, LLC

2015 JAN - 8 PM 12:40

P0215-10//28-22-2-10-10 & 11
4317 & 4321 Dolly Ridge Rd.
Rezone from VH R1,R6 to VH B1.2
JFKE,LLC & B&J, LLC
VH R1 & VH R6

III. ACTION REQUESTED

Request that the above described property be zoned/rezoned

From: VH R-1 and VH R-6

To: VH B1.2

For the intended purpose of: Mixed used commercial development

(Example: From "VH R-1" to "VH O-1" for office building)

if additional information is needed, please attached full description of request

IV. PROPERTY DESCRIPTION: (address, legal, etc.)

4317 Dolly Ridge Road Vestavia Hills, AL 35243 4321 Dolly Ridge Road Vestavia Hills, AL 35243

Tax ID# 28-00-22-2-010-010.000

Tax ID# 28-00-22-2-010-011.000

Property size: _____ feet X _____ feet. Acres: ± 1.6

V. INFORMATION ATTACHED:

Attached Checklist complete with all required information.

Application fees submitted.


VI. I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.


1/8/15

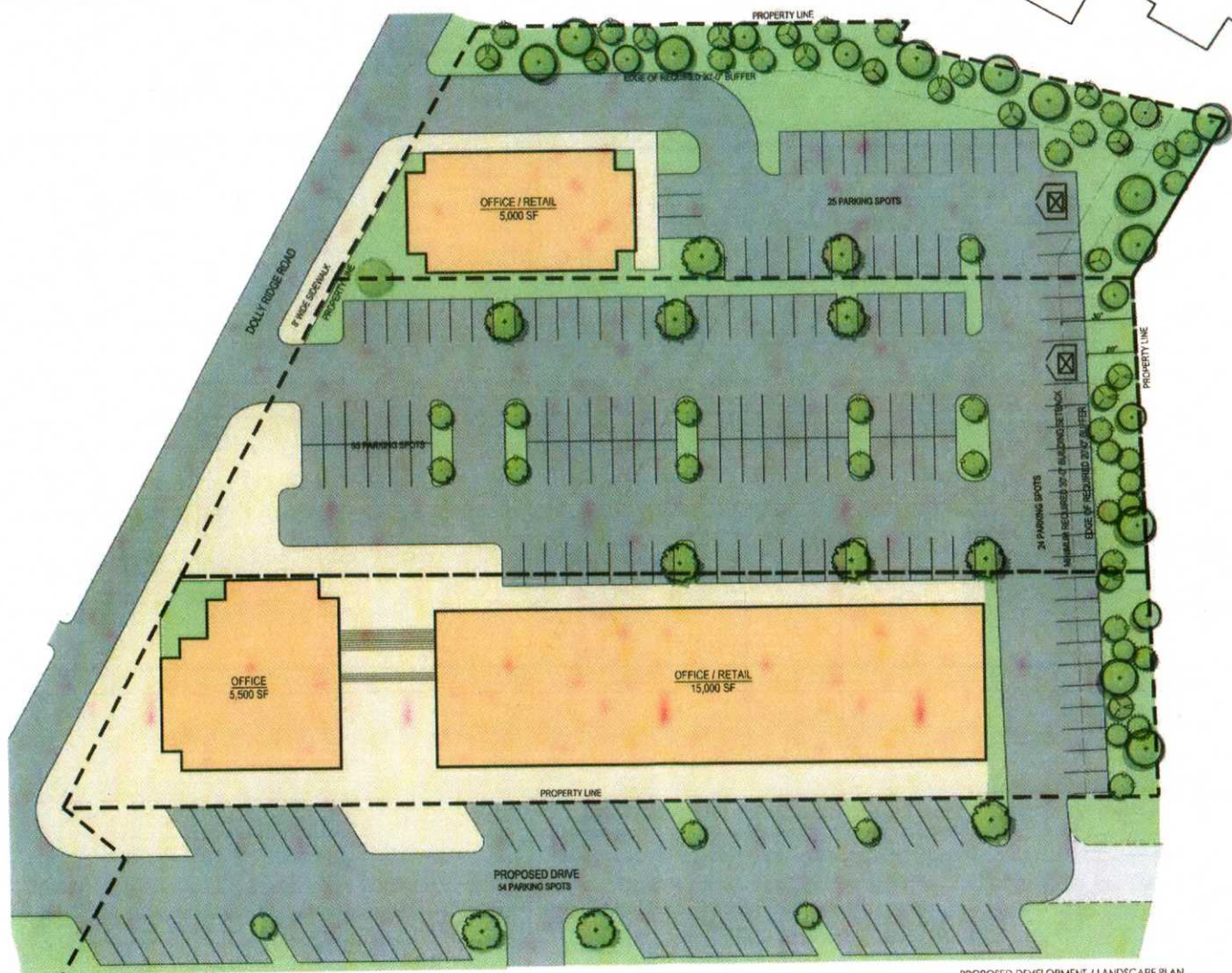
1/8/15
Owner Signature/Date


1/8/15
Representing Agent (if any)/date

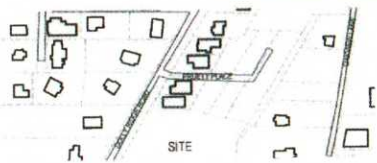
Given under my hand and seal
this 8 day of Jan, 2015.


Notary Public
My commission expires 27
day of June, 2015.





PROPOSED DEVELOPMENT / LANDSCAPE PLAN
SCALE: 1" = 30'-0"





PROPOSED DEVELOPMENT / LANDSCAPE PLAN
SCALE: 1" = 30'-0"



VICINITY PLAN
SCALE: 1" = 250'-0"

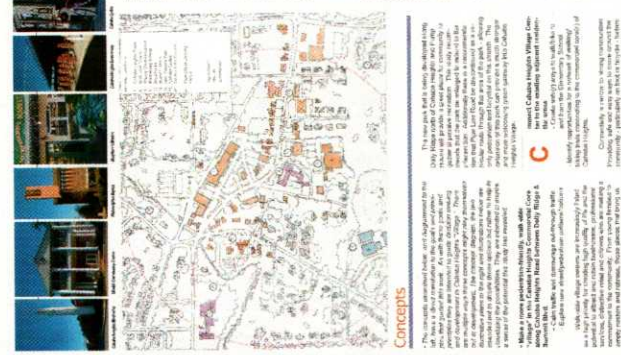
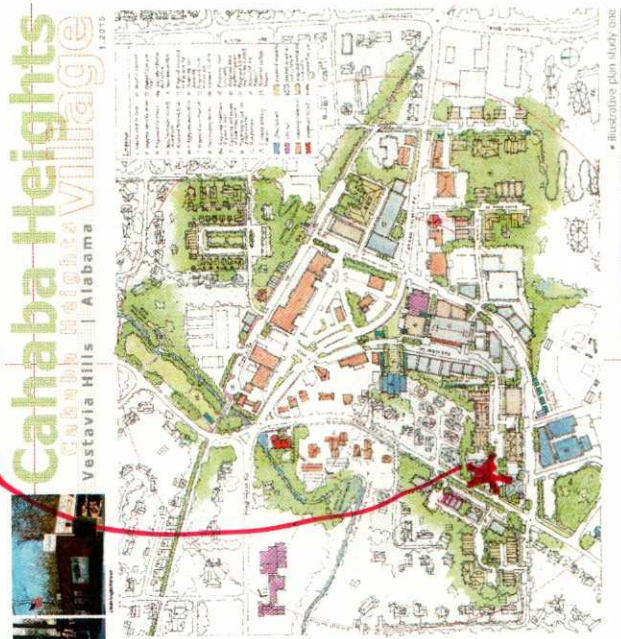
P0215-10//28-22-2-10-10 & 11
4317 & 4321 Dolly Ridge Rd.
 Rezone from VH R1,R6 to VH B1.2
 JFKE,LLC & B&J, LLC
 VH R1 & VH R6

PROPOSED VESTAVIA HILLS DEVELOPMENT
 VESTAVIA HILLS, ALABAMA

WILLIAMS BLACKSTOCK ARCHITECTS

Subject Parcel

Subject Parcel

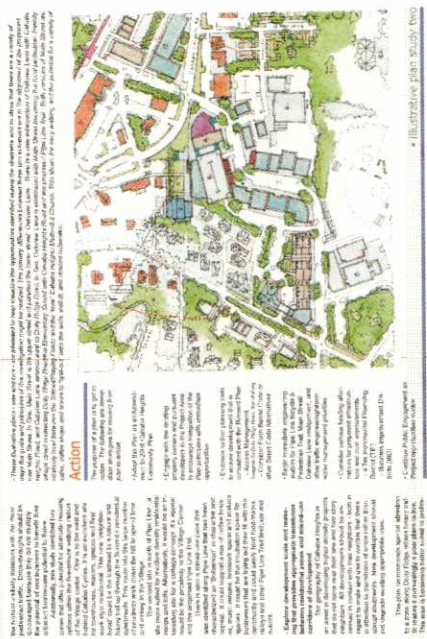


Location

Cahaba Heights is a new development in the heart of Vestavia Hills, Alabama, just north of the city center. The site is bounded by the Cahaba River to the west and the city limits to the east. It is a prime location for a new residential and commercial development.

History of this project

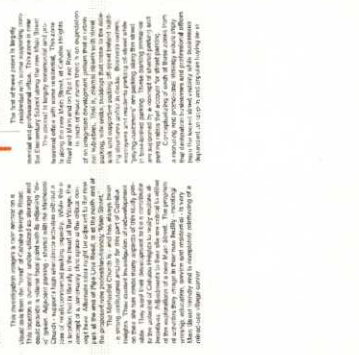
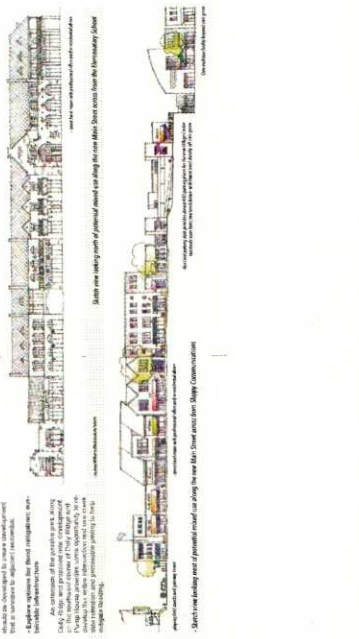
The site has a rich history, having been part of the original Vestavia Hills community. The area was developed in the early 20th century and has since become a desirable location for a new development.



Goals | Principles

The development should be designed to create a vibrant, walkable community that respects the area's history and natural resources. The goals and principles are as follows:

- Create a sense of place and identity.
- Promote walkability and connectivity.
- Preserve and enhance natural resources.
- Create a mix of housing and commercial uses.
- Enhance the quality of life for residents.



Assets & Opportunities

The site offers several key assets and opportunities for a successful development:

- Proximity to the Cahaba River and city center.
- Access to public transportation and major roads.
- A mix of housing and commercial uses.
- A strong sense of community and history.

RESOLUTION NUMBER 4682

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO LEASE/PURCHASE A COMMUNICATIONS SYSTEM

WHEREAS, the Fire Department has identified a need to lease/purchase a communications system in the total amount of \$448,305.00 to be payable in increments on a yearly basis for the next 5 years as requested from the Fire Chief to the City Manager; and

WHEREAS, a copy of said agreement and supporting documents are marked as "Exhibit A," and attached to and incorporated into this Resolution Number 4682 as though written fully therein; and

WHEREAS, the Fire Department has requested that the expense be charged to the E-911 Special Funds account; and

WHEREAS, the City Manager has reviewed the request and has recommended acceptance of said lease/purchase; and

WHEREAS, the Mayor and the City Council feel it is in the best public interest to accept the request as presented and recommended by the City Manager.

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

1. The City Manager is hereby authorized to enter into an agreement to lease/purchase a communications system in the amount of \$448,305.00 to be expensed to the E-911 Special Funds account; and
2. This Resolution Number 4682 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 9th day of March, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

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

February 17, 2015

By Hand Delivery

Fire Chief Jim St. John
Vestavia Hills Fire Department
Vestavia Hills Municipal Center
513 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Communications System Agreement Between Motorola Solutions, Inc.
("Motorola") and City of Vestavia Hills, Alabama ("Customer")

Dear Chief St. John:

On January 21, 2015, you sent to me via electronic mail a copy of proposed Equipment Lease-Purchase Agreement by and between Motorola Solutions, Inc. ("Lessor") and the City of Vestavia Hills, Alabama ("Lessee") with a request that I review the document and provide you with my written legal opinion. I furnished you with my written legal opinion, dated January 28, 2015, via hand delivery on that date.

I was out of the state from February 3, 2015 until February 9, 2015. When I returned to my office on February 10, 2015, I learned that you had provided me with a copy of Communications System Agreement by and between Motorola Solutions, Inc. ("Motorola") and the City of Vestavia Hills, Alabama ("Customer"). You have requested that I furnish you with my written legal opinion regarding the Communications System Agreement. The purpose of this letter is to comply with your request.

After reading the Communications System Agreement, I find the same to meet the requirements of Alabama law and do not have any suggested additions, deletions, changes and/or corrections.

February 17, 2015

Page 2

When you and I discussed the Equipment Lease Purchase Agreement and the Communications System Agreement this morning on the telephone, you informed me that attorney, Bill Stancik, wishes to discuss the Equipment Lease Purchase Agreement with me and that attorney, Judy Jean-Pierre, wants to talk to me about the Communications System Agreement. I will be happy to participate in conference calls with both of them and you at mutually agreeable times.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Boone". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeffrey D. Downes

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

January 28, 2015

By Hand Delivery

Fire Chief Jim St. John
Vestavia Hills Fire Department
Vestavia Hills Municipal Center
513 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Equipment Lease Purchase Agreement Between Motorola Solutions, Inc. ("Lessor")
and City of Vestavia Hills ("Lessee")

Dear Chief St. John:

On January 21, 2015, you sent to me via electronic mail a copy of proposed Equipment Lease-Purchase Agreement by and between Motorola Solutions, Inc. ("Lessor") and the City of Vestavia Hills, Alabama ("Lessee") with a request that I review the document and provide you with my written legal opinion. This letter legal opinion complies with your request.

I. OPINION OF COUNSEL

The Equipment Lease-Purchase Agreement ("agreement") requires me as City Attorney to sign the Opinion of Counsel contained in the Lease on page 6, which reads in pertinent part as follows:

"iii. The Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms;"

II. INDEMNITY

Section 14 of the agreement requires the City, as Lessee, to indemnify the Lessor and reads as follows:

"14. **INDEMNIFICATION.** Lessee shall, to the extent permitted by law, indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages or liabilities, including attorneys' fees and court costs, arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, licensing, possession, use, operation, rejection, or return and the recovery of claims under insurance policies thereon."

It is my legal opinion that municipalities in Alabama cannot spend public funds to indemnify and hold harmless third parties. I base my legal opinion upon the following legal authorities:

A. **MUNICIPALITIES CANNOT SPEND PUBLIC FUNDS TO INDEMNIFY THIRD PARTIES:**

(1) **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 a third party for actions, costs, expenses, damages and liabilities.

(2) **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 \$100,000.00 for damage or loss of property arising out of any single occurrence.

It is my opinion that if the City agreed to indemnify a third party, then in such event said indemnity agreement could waive the statutory maximum limits of liability set forth in Title 11-93-2, *Code of Alabama, 1975*.

(3) **Public Officers Are Entitled to Discretionary Function Immunity:** Public officials and employees 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 *Hillard 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.

(4) **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.”

If the City indemnified a third party, then in such event it would violate the above statute.

(5) Municipalities in Alabama May Spend Public Funds Only for Public Purposes: Municipalities in Alabama may spend public funds only for public purposes. The Supreme Court of Alabama has interpreted the language of Sections 93 and 94 of the *Constitution of Alabama* to allow appropriations of public funds when the appropriation is used for public purposes. *Alabama Constitution* amend. 93; *Alabama Constitution* amend. 94; *Slawson v. Alabama Forestry Comm 'n*, 631 So.2d 953 (Ala.1994). *Opinion of the Justices No. 269*, 384 So.2d 1051 (1980); *Stone v. State*, 251 Ala. 240 (1948).

B. MUNICIPALITIES MAY BE LIABLE FOR THE NEGLIGENT ACTS OF ITS EMPLOYEES ACTING IN THE LINE AND SCOPE OF THEIR EMPLOYMENT:

(1) Title 11-47-190, *Code of Alabama, 1975*, reads as follows:

“No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless such injury or wrong was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in work therefor and while acting in the line of his or her duty, or unless the said injury or wrong was done or suffered through the neglect or carelessness or failure to remedy some defect in the streets, alleys, public ways or buildings after the same had been called to the attention of the council or other governing body or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council or other governing body and whenever the city or town shall be made liable for damages by reason of the unauthorized or wrongful acts or negligence, carelessness or unskillfulness of any person or corporation, then such person or corporation shall be liable to an action on the same account by the party so injured. However, no recovery may be had under any judgment or combination of judgments, whether direct or by way of indemnity under Section 11-47-24, or otherwise, arising out of a single occurrence, against a municipality, and/or any officer

or officers, or employee or employees, or agents thereof, in excess of a total of \$100,000 per injured person up to a maximum of \$300,000 per single occurrence, the limits set out in the provisions of Section 11-93-2 notwithstanding.”

(2) **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.”

(3) **Defense of Municipal Employees Sued for Damages:** Title 11-47-24(a), *Code of Alabama, 1975*, provides as follows:

“(a) Whenever any employee of a municipal corporation of the State of Alabama shall be sued for damages arising out of the performance of his official duties, and while operating a motor vehicle or equipment engaged in the course of his employment, such government agency shall be authorized and required to provide defense counsel for such employees in such suit and to indemnify him from any judgment rendered against him in such suit. In no event shall a municipal corporation of the state be required to provide defense and indemnity for employees who may be sued for damages arising out of actions which were either intentional or willful or wanton.”

(4) **Liability Insurance:** Title 11-47-24(b), *Code of Alabama, 1975*, provides as follows:

“(b) All municipal corporations of the State of Alabama are hereby authorized to contract at governmental expense for policies of liability insurance to protect employees in the course of their employment.”

(5) **The City has Liability Insurance Coverage for Employees:** At the present time, the City has general comprehensive liability insurance issued by States Self-Insurers Risk Retention Group written by Berkly Risk Administrators Company, LLC.

(6) **Prejudice the Rights of the City General Comprehensive 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 the indemnity language, that it would prejudice the rights of the City general comprehensive liability insurance carrier and jeopardize coverage under the policy.

Section 23 of the agreement on page 5 reads in pertinent part as follows:

“Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.”

In my legal opinion, the City of Vestavia Hills cannot agree to the language of Section 14 regarding indemnification.

III. MY RECOMMENDATIONS

A. I recommend that Section 14 of the agreement be deleted in its entirety. It is my legal opinion that with that modification, the agreement will meet the requirements of Alabama law.

B. I further recommend that our insurance carrier properly insure the equipment or in the alternative that the City be self-insured with the written consent of Lessor as provided for in Section 13 of the agreement.

IV. WARRANTIES BY CITY

The Equipment Lease-Purchase Agreement requires the City to make certain warranties to the Lessor. Some of those warranties are discussed below.

A. **SECTION 6(i). THE CITY IS A POLITICAL SUBDIVISION OR AGENCY OR DEPARTMENT OF A STATE.** The City of Vestavia Hills, Alabama is a municipal corporation incorporated under the *Constitution* and laws of the State of Alabama. The City was incorporated as a municipality on November 8, 1950 pursuant to the authority of Chapter 2, Article 1, Title 37 of the 1940 *Code of Alabama* by virtue of Order of Incorporation rendered on November 8, 1950 by Jefferson County Probate Judge Tom Garner in Jefferson County Probate Court case number 25507. The Order of Incorporation is filed for recorded in the office of the Judge of Probate of Jefferson County, Alabama in Probate Minute Book 49 on page 183.

Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such government powers of state as may be entrusted to them. *City of Birmingham v. Norton*, 255 Ala. 262.

B. SECTION 2(d). THE INTEREST PORTION OF THE LEASE PAYMENTS SHALL BE EXCLUDED FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES: Section 103 of the *Internal Revenue Code* (26 USC §103(a) and (c)), read as follows:

“§103. Interest on State and Local Bonds

(a) Exclusion.—Except as provided in subsection (b), gross income does not include interest on any State or local bond.

(c) Definitions.—For purposes of this section and part IV—

(1) State or local bond.—The term “State or local bond” means an obligation of a State or political subdivision thereof.”

C. SECTION 6(iii). THE CITY HAS COMPLIED WITH ALL BIDDING REQUIREMENTS: The Alabama Competitive Bid Law applicable to municipalities is set forth at Title 41-16-50 (a), *Code of Alabama, 1975*, provides in pertinent parts as follows:

“(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars (\$15,000) or more, by or on behalf of any...governing bodies of the municipalities of the state ...shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.”

The City invited competitive bids as required by the above statute.

D. SECTION 6(iii). THE ENTERING INTO AND PERFORMANCE OF THIS LEASE ARE AUTHORIZED UNDER THE LAWS AND CONSTITUTION OF YOUR STATE. Municipalities in Alabama, by virtue of Title 11-40-1, *Code of Alabama, 1975*, may contract and be contracted with. The Supreme Court of Alabama has held that the City Council is authorized to enter into contracts for the City (*City of Prichard v. Moulton*, 277 Ala. 231 (1964)). The City Council must approve the contract (*Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3rd 1166 (2011)) by ordinance or resolution (*Van Antwerp, et al v. Board of Commissioners of the City of Mobile, et al*, 115 So. 239 (1928)). The contract must be in writing (Title 11-47-5, *Code of Alabama, 1975*) and signed by the Mayor (Title 11-43-83, *Code of Alabama, 1975*) and the City Manager (Title 11-43-21(7) and Title 11-43-A-48, *Code of Alabama, 1975*).

E. **SECTION 6(iv).** **THIS LEASE IS A LEGAL, VALID AND BINDING OBLIGATION ENFORCEABLE WITH ITS TERMS.** Municipalities in Alabama, by virtue of Title 11-40-1, *Code of Alabama, 1975*, may sue and be sued.

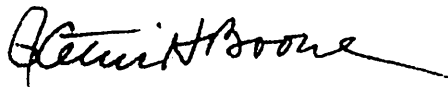
F. **SECTION 18 AND EXHIBIT.** **MUNICIPALITIES IN ALABAMA MAY ENTER INTO A LEASE-PURCHASE AGREEMENT FOR A TERM OF FIVE (5) YEARS:** Title 41-16-57(f), *Code of Alabama, 1975*, provides as follows:

“(f) Contracts for the purchase of personal property or contractual services shall be let for periods not greater than three years. Contracts for the leasing of motor vehicles by local governing bodies shall be let for periods not greater than five years. Lease-purchase contracts for capital improvements and repairs to real property shall be let for periods not greater than 10 years and all other lease-purchase contracts shall be let for periods not greater than 10 years.”

G. **ATTACHMENT BANK QUALIFIED TAX EXEMPT OBLIGATION:** The City warrants and represents that, “Lessee, City of Vestavia Hills, certifies that it has designated this lease No. 23668 as a qualified tax-exempt obligation in accordance with Section 265(B)(3) of the Code and if the Lessee has designated this lease as a qualified tax-exempt obligation, it has not designated more than \$10,000,000 of its obligations as qualified tax-exempt obligations in accordance with such section for the current calendar year and that it reasonably anticipates that the total amount of tax-exempt obligations to be issued by Lessee during the current calendar year will not exceed \$10,000,000.”

I am prepared to sign the “Opinion of Counsel” in the agreement provided the indemnity language (Section 14) is deleted in its entirety. In the meantime, please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeffrey D. Downes

EXHIBIT A

Communications System Agreement Lease Purchase

Motorola Solutions, Inc. ("Motorola") and the City of Vestavia Hills, AL ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

Section 1 EXHIBITS

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between Exhibits A through D will be resolved in their listed order.

Exhibit A	Software License Agreement
Exhibit B	Motorola's Proposal dated _____, 2014
Exhibit C	Service Terms and Conditions, if applicable
Exhibit D	System Acceptance Certificate

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

- 2.1. "Acceptance Tests" means those tests described in the Acceptance Test Plan.
- 2.2. "Beneficial Use" means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).
- 2.3. "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; is explicitly approved for release by written authorization of the disclosing Party; or is released pursuant to law.
- 2.4. "Contract Price" means the price for the System, excluding applicable sales or similar taxes and freight charges.
- 2.5. "Effective Date" means that date upon which the last Party executes this Agreement.
- 2.6. "Equipment" means the equipment that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.
- 2.7. "Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).
- 2.8. "Infringement Claim" means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software infringes upon the third party's United States patent or copyright.
- 2.9. "Motorola Software" means Software that Motorola or its affiliated company owns.

- 2.10. "Non-Motorola Software" means Software that another party owns.
- 2.11. "Open Source Software" (also called "freeware" or "shareware") means software that has its underlying source code freely available to evaluate, copy, and modify.
- 2.12. "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.
- 2.13. "Software" means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment.
- 2.14. "Specifications" means the functionality and performance requirements that are described in Exhibit B.
- 2.15. "Subsystem" means a major part of the System that performs specific functions or operations. Subsystems are described in Exhibit B.
- 2.16. "System" means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in Exhibit B.
- 2.17. "System Acceptance" means the Acceptance Tests have been successfully completed.
- 2.18. "Warranty Period" means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first.

Section 3 SCOPE OF AGREEMENT AND TERM

- 3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.
- 3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a change order. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.
- 3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, whichever occurs last.
- 3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For three (3) years after the Effective Date, Customer may order additional Equipment or Software if it is then available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within thirty (30) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the "Underlying Agreement" for those MOL transactions rather than

the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <http://www.motorola.com/businessandgovernment/> and the MOL telephone number is (800) 814-0601.

3.5. **MAINTENANCE SERVICE.** During the Warranty Period, Motorola will provide maintenance services for the Equipment and support for the Motorola Software pursuant to this Agreement. Those services and support are included in the Contract Price. If Customer wishes to purchase additional maintenance and support services for the Equipment during the Warranty Period, or any maintenance and support services for the Equipment after the Warranty Period, the description of and pricing for the services will be set forth in a separate document. If Customer wishes to purchase extended support for the Motorola Software after the Warranty Period, it may do so by ordering software subscription services. Unless otherwise agreed by the parties in writing, the terms and conditions applicable to the maintenance, support or software subscription services will be Motorola's standard Service Terms and Conditions, together with the appropriate statements of work.

3.6. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by Customer, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where that license may be found); and provide to Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. **SUBSTITUTIONS.** At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.

3.9. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

Section 4 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with this Agreement. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

Section 5 CONTRACT PRICE, PAYMENT AND INVOICING

5.1. **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$_____. The Contract Price will be paid via the disbursement of the financing proceeds pursuant to the Equipment Lease-Purchase Agreement executed between the parties. For Customer's reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800. Motorola will pre-pay and add all freight charges to the invoices.

5.2. **TITLE, AND RISK OF LOSS; INVOICING AND SHIPPING.** Motorola will pre-pay and add all freight charges to the invoices. Unless otherwise stated in Equipment Lease-Purchase Agreement, title and risk of loss to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

5.3. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address: _____.
The Equipment will be shipped to the Customer at the following address (insert if this information is known): _____. If different, the address for the ultimate destination where the Equipment will be delivered to Customer is _____.
Customer may change this information by giving written notice to Motorola.

Section 6 SITES AND SITE CONDITIONS

6.1. **ACCESS TO SITES.** In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites; and access to the work sites as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist Customer in the local building permit process.

6.2. **SITE CONDITIONS.** Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; electrical power outlets, distribution and equipment; and telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola will inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

6.3. **SITE ISSUES.** If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

Section 7 TRAINING

Any training to be provided by Motorola to Customer will be described in the Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs.

Section 8 SYSTEM ACCEPTANCE

8.1. **COMMENCEMENT OF ACCEPTANCE TESTING.** Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

8.2. **SYSTEM ACCEPTANCE.** System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

8.3. **BENEFICIAL USE.** Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

8.4 **FINAL PROJECT ACCEPTANCE.** Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

Section 9 REPRESENTATIONS AND WARRANTIES

9.1. **SYSTEM FUNCTIONALITY.** Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

9.2. **EQUIPMENT WARRANTY.** During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.

9.3. **MOTOROLA SOFTWARE WARRANTY.** Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the Motorola Software.

9.4. **EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES.** These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

9.5. **WARRANTY CLAIMS.** To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

9.6. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Motorola to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

9.7. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. TO THE EXTENT ALLOWED BY LAW, MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DELAYS

10.1. **FORCE MAJEURE.** Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

10.2. **PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER.** If Customer (including its other contractors) delays the Performance Schedule, the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

Section 11 DISPUTES

11.1. **SETTLEMENT PREFERRED.** The Parties, by their project managers, will attempt to settle any dispute arising from this Agreement (except for a claim relating to intellectual property or breach of confidentiality) through consultation and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the Parties, if necessary.

11.2. **LITIGATION.** A Party may submit to a court of competent jurisdiction in the State of Alabama any claim relating to intellectual property or a breach of confidentiality provisions. Each Party consents to jurisdiction over it by that court. Either Party may resort to the judicial proceedings described in this section if good faith efforts to resolve the dispute under these procedures have been unsuccessful; or interim relief from the court is necessary to prevent serious and irreparable injury to the Party.

Section 12 DEFAULT AND TERMINATION

12.1 **DEFAULT BY A PARTY.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan.

12.2. **FAILURE TO CURE.** If a defaulting Party fails to cure the default as provided above in Section 12.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges.

Section 13 INDEMNIFICATION

13.1. **GENERAL INDEMNITY BY MOTOROLA.** Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any the claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

13.2. PATENT AND COPYRIGHT INFRINGEMENT.

13.2.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on an Infringement Claim, and Motorola will indemnify Customer for those costs and damages finally awarded against Customer for an Infringement Claim. Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim.

13.2.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense procure for Customer the right to continue using the Equipment or Motorola Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant Customer a credit for the Equipment or Motorola Software as depreciated and accept its return. The depreciation amount will be calculated based upon generally accepted accounting standards for such Equipment and Motorola Software.

13.2. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or the Customer's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the infringing Motorola Product.

13.4. This Section 13 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 13 are subject to and limited by the restrictions set forth in Section 14.

Section 14 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. An action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought within one year.

Section 15 CONFIDENTIALITY AND PROPRIETARY RIGHTS

15.1.1. Confidentiality Obligation. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this Agreement. During the term of this Agreement, for a period of three (3) years from the date of expiration or termination of this Agreement, and to the extent allowed by law, recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees, officers, officials, agents, volunteers or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this Agreement; (iii) not reverse engineer, de-compile or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify discloser upon discovery of any

unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (vi) only use the Confidential Information as needed to fulfill this Agreement.

15.1.2. Required Disclosure. If a recipient is required to disclose Confidential Information pursuant to applicable law, statute, or regulation, or court order, the recipient will give to the discloser prompt written notice of the request and a reasonable opportunity to object to such disclosure and seek a protective order or appropriate remedy. If, in the absence of a protective order, the recipient determines, upon the advice of counsel, that it is required to disclose such information, it may disclose only Confidential Information specifically required and only to the extent required to do so.

15.1.3. Confidential Exceptions. Recipient is not obligated to maintain as confidential, Confidential Information that recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this Agreement; (ii) is explicitly approved for release by written authorization of discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the recipient prior to such disclosure; or (v) is independently developed by recipient without the use of any discloser's Confidential Information or any breach of this Agreement.

15.1.4. Ownership and Retention. All Confidential Information remains the property of the discloser and will not be copied or reproduced without the express written permission of the discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of discloser's written request, recipient will return all Confidential Information to discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

15.2. PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS. Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

Section 16 GENERAL

16.1. TAXES. The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within forty-five (45) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

16.2. ASSIGNABILITY AND SUBCONTRACTING. Neither Party may assign this Agreement without the prior written consent of the other Party, except that Motorola may assign this Agreement to any of its

affiliates or its right to receive payment without the prior consent of Customer. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

16.3 WAIVER. Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

16.4. SEVERABILITY. If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

16.5. INDEPENDENT CONTRACTORS. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

16.6. HEADINGS AND SECTION REFERENCES. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

16.7. GOVERNING LAW. This Agreement and the rights and duties of the Parties will be governed by and interpreted in accordance with the laws of the State of Alabama.

16.8. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

16.9. NOTICES. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

Motorola Solutions, Inc.
Attn: Judy Jean-Pierre,
Legal, Government Affairs & Communications
1303 E. Algonquin Road, IL01-8th Floor
Schaumburg, IL 60196
Judy.Jean-Pierre@motorolasolutions.com

Customer

Attn:

16.10. COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

16.11. **AUTHORITY TO EXECUTE AGREEMENT.** Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

16.12. **SURVIVAL OF TERMS.** The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.6 (Motorola Software); Section 3.7 (Non-Motorola Software); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); Subsection 9.7 (Disclaimer of Implied Warranties); Section 11 (Disputes); Section 14 (Limitation of Liability); and Section 15 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 16.

The Parties hereby enter into this Agreement as of the Effective Date. This Agreement may be executed by each of the Parties hereto in separate counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Motorola Solutions, Inc.

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

SOFTWARE LICENSE AGREEMENT

This Exhibit A Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola") and the City of Vestavia Hills ("Licensee"). For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

- 1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.
- 1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).
- 1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.
- 1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.
- 1.5 "Primary Agreement" means the agreement to which this exhibit is attached.
- 1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.
- 1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the Software and Documentation.

Section 3 GRANT OF LICENSE

- 3.1 Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.
- 3.2 If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source

Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

Section 4 LIMITATIONS ON USE

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4. When using Motorola's Radio Service Software ("RSS"), Licensee must purchase a separate license for each location at which Licensee uses RSS. Licensee's use of RSS at a licensed location does not entitle Licensee to use or access RSS remotely. Licensee may make one copy of RSS for each licensed location. Licensee shall provide Motorola with a list of all locations at which Licensee uses or intends to use RSS upon Motorola's request.

4.5. Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor.

Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 OWNERSHIP AND TITLE

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1. The commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7 TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee

paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than RSS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

Section 8 TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

Section 9 UNITED STATES GOVERNMENT LICENSING PROVISIONS

This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication or disclosure of the Software and Documentation under Motorola's copyrights or trade secret rights is subject to the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restricted rights set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

Section 10 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11 LIMITATION OF LIABILITY

The Limitation of Liability provision is described in the Primary Agreement.

Section 12 NOTICES

Notices are described in the Primary Agreement.

Section 13 GENERAL

13.1. **COPYRIGHT NOTICES.** The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. **COMPLIANCE WITH LAWS.** Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3. **ASSIGNMENTS AND SUBCONTRACTING.** Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.4. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State of Alabama. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.5. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.6. **SURVIVAL.** Sections 4, 5, 6.3, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.7. **ORDER OF PRECEDENCE.** In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.8. **SECURITY.** Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

Exhibit B

Motorola's Proposal dated _____, 2014

Exhibit D
Service Terms and Conditions

Motorola Solutions, Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

Section 1 APPLICABILITY

These Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2 DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3 ACCEPTANCE

Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4 SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion and in conjunction with the Customer's Project Manager, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

Section 5 EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

Section 6 TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

Section 7 CUSTOMER Contact

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

Section 8 PAYMENT

Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

Section 9 WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DEFAULT/TERMINATION

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty

(30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

Section 11 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12 EXCLUSIVE TERMS AND CONDITIONS

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15 COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

Section 16 MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17 GENERAL TERMS

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be governed and interpreted in accordance with the laws of the State in which the Services are performed.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may assign its rights and obligations, and may subcontract any portion of its performance, under this Agreement.

17.6. THE MAXIMUM LIFE OF THIS AGREEMENT IS SEVEN (7) YEARS. Prior to the seventh anniversary of the start date, should Motorola wish to continue, it must submit a new proposal, to include a Communications System Agreement, to be negotiated with the Customer. Any new Agreement must be in place on the day following the seventh anniversary. Sixty (60) calendar days prior to the annual anniversary date, Motorola shall provide the Customer with an extension request which clearly states any changes to the original agreement. The Customer, should it desire to continue the Agreement, will submit a letter of concurrence to the Customer's Procurement Branch for approval. Should either party wish to discontinue the Agreement, it must notify the other party in writing not less than thirty (30) calendar days prior to the annual anniversary date.

17.7. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

Exhibit D
System Acceptance Certificate

Customer Name: _____

Project Name: _____

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Customer acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

Customer Representative:

Motorola Representative:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

FINAL PROJECT ACCEPTANCE:

Motorola has provided and Customer has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

Customer Representative:

Motorola Representative:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

LESSEE FACT SHEET

Please help Motorola Solutions, Inc. provide excellent billing service by providing the following information:

1. Complete **Billing Address** CITY OF VESTAVIA HILLS

Attention: _____

Phone: _____

2. Lessee County Location: _____

3. Federal Tax I.D. Number _____

4. Purchase Order Number to be referenced on invoice (if necessary) or other "descriptions" that may assist in determining the applicable cost center or department: _____

5. Equipment description that you would like to appear on your invoicing: _____

Appropriate Contact for Documentation / System Acceptance Follow-up:

6. Appropriate Contact & Mailing Address _____

Phone: _____

Fax: _____

7. Payment remit to address:

**Motorola Credit Corp.
P.O. Box 71132
Chicago IL 60694-1132**

Thank you

ELPAshort_f11.01.13

EQUIPMENT LEASE-PURCHASE AGREEMENT

Lease Number: 23668

LESSEE:

CITY OF VESTAVIA HILLS
513 Montgomery Highway
Vestavia Hills AL 35216

LESSOR:

Motorola Solutions, Inc.
1303 E. Algonquin Rd.
Schaumburg, IL 60196

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, the equipment and/or software described in any Schedule A attached hereto ("Equipment") in accordance with the following terms and conditions of this Equipment Lease-Purchase Agreement ("Lease").

1. TERM. This Lease will become effective upon the execution hereof by Lessor. The Term of this Lease will commence on date specified in Schedule A attached hereto and unless terminated according to terms hereof or the purchase option, provided in Section 18, is exercised this Lease will continue until the Expiration Date set forth in Schedule B attached hereto ("Lease Term").

2. RENT. Lessee agrees to pay to Lessor or its assignee the Lease Payments (herein so called), including the interest portion, in the amounts specified in Schedule B. The Lease Payments will be payable without notice or demand at the office of the Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first Lease Payment Date as set forth in Schedule B and thereafter on each of the Lease Payment Dates set forth in Schedule B. Any payments received later than ten (10) days from the due date will bear interest at the highest lawful rate from the due date. Except as specifically provided in Section 5 hereof, the Lease Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, or recoupment for any reason whatsoever. Lessee reasonably believes that funds can be obtained sufficient to make all Lease Payments during the Lease Term and hereby covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Lease Payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. It is Lessee's intent to make Lease Payments for the full Lease Term if funds are legally available therefor and in that regard Lessee represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to its proper, efficient and economic operation.

3. DELIVERY AND ACCEPTANCE. Lessor will cause the Equipment to be delivered to Lessee at the location specified in Schedule A ("Equipment Location"). Lessee will accept the Equipment as soon as it has been delivered and is operational. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor a Delivery and Acceptance Certificate in the form provided by Lessor.

Even if Lessee has not executed and delivered to Lessor a Delivery and Acceptance Certificate, if Lessor believes the Equipment has been delivered and is operational, Lessor may require Lessee to notify Lessor in writing (within five (5) days of Lessee's receipt of Lessor's request) whether or not Lessee deems the Equipment (i) to have been delivered and (ii) to be operational, and hence be accepted by Lessee. If Lessee fails to so respond in such five (5) day period, Lessee will be deemed to have accepted the Equipment and be deemed to have acknowledged that the Equipment was delivered and is operational as if Lessee had in fact executed and delivered to Lessor a Delivery and Acceptance Certificate.

4. REPRESENTATIONS AND WARRANTIES. Lessor acknowledges that the Equipment leased hereunder is being manufactured and installed by Motorola Solutions, Inc. pursuant to contract (the "Contract") covering the Equipment. Lessee acknowledges that on or prior to the date of acceptance of the Equipment, Lessor intends to sell and assign Lessor's right, title and interest in and to this Agreement and the Equipment to an assignee ("Assignee"). LESSEE FURTHER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND WHATSOEVER, AND AS BETWEEN LESSEE AND THE ASSIGNEE, THE PROPERTY SHALL BE ACCEPTED

BY LESSEE "AS IS" AND "WITH ALL FAULTS". LESSEE AGREES TO SETTLE ALL CLAIMS DIRECTLY WITH LESSOR AND WILL NOT ASSERT OR SEEK TO ENFORCE ANY SUCH CLAIMS AGAINST THE ASSIGNEE. NEITHER LESSOR NOR THE ASSIGNEE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER AS A RESULT OF THE LEASE OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, PROPERTY DAMAGE OR LOST PRODUCTION WHETHER SUFFERED BY LESSEE OR ANY THIRD PARTY.

Lessor is not responsible for, and shall not be liable to Lessee for damages relating to loss of value of the Equipment for any cause or situation (including, without limitation, governmental actions or regulations or actions of other third parties).

5. NON-APPROPRIATION OF FUNDS. Notwithstanding anything contained in this Lease to the contrary, in the event the funds appropriated by Lessee's governing body or otherwise available by any means whatsoever in any fiscal period of Lessee for Lease Payments or other amounts due under this Lease are insufficient therefor, this Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Lease Payments or other amounts herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available. The Lessee will immediately notify the Lessor or its Assignee of such occurrence. In the event of such termination, Lessee agrees to peaceably surrender possession of the Equipment to Lessor or its Assignee on the date of such termination, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States designated by Lessor. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment.

6. LESSEE CERTIFICATION. Lessee represents, covenants and warrants that: (i) Lessee is a state or a duly constituted political subdivision or agency of the state of the Equipment Location; (ii) the interest portion of the Lease Payments shall be excludable from Lessor's gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as it may be amended from time to time (the "Code"); (iii) the execution, delivery and performance by the Lessee of this Lease have been duly authorized by all necessary action on the part of the Lessee; (iv) this Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; (v) Lessee will comply with the information reporting requirements of Section 149(e) of the Code, and such compliance shall include but not be limited to the execution of information statements requested by Lessor; (vi) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the Lease to be an arbitrage bond within the meaning of Section 148(a) of the Code; (vii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, this Lease to be a private activity bond within the meaning of Section 141(a) of the Code; (viii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the interest portion of the Lease Payments to be or become includible in gross income for Federal income taxation purposes under the Code; and (ix) Lessee will be the only entity to own, use and operate the Equipment during the Lease Term.

Lessee represents, covenants and warrants that (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect, (ii) it has complied with all public bidding and Bond Commission requirements (as defined in the Code) where necessary and by due notification presented this Lease for approval and adoption as a valid obligation on its part, and (iii) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period.

If Lessee breaches the covenant contained in this Section, the interest component of Lease Payments may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, notwithstanding anything to the contrary contained in Section 11 of this Agreement, Lessee agrees to pay promptly after any such determination of taxability and on each Lease Payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludibility (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Section 6 shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that this Agreement does not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment for federal income tax purposes.

7. TITLE TO EQUIPMENT; SECURITY INTEREST. Upon shipment of the Equipment to Lessee hereunder, title to the Equipment will vest in Lessee subject to any applicable license; provided, however, that (i) in the event of termination of this Lease by Lessee pursuant to Section 5 hereof; (ii) upon the occurrence of an Event of Default hereunder, and as long as such Event of Default is continuing; or (iii) in the event that the purchase option has not been exercised prior to the Expiration Date, title will immediately vest in Lessor or its Assignee, and Lessee shall immediately discontinue use of the Equipment, remove the Equipment from Lessee's computers and other electronic devices and deliver the Equipment to Lessor or its Assignee. In order to secure all of its obligations hereunder, Lessee hereby (i) grants to Lessor a first and prior security interest in any and all right, title and interest of Lessee in the Equipment and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom; (ii) agrees that this Lease may be filed as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title and other instruments necessary or appropriate to evidence such security interest.

8. USE; REPAIRS. Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinances, insurance policies, the Contract, any licensing or other agreement, and regulations relating to, and will pay all costs, claims, damages, fees and charges arising out of the possession, use or maintenance of the Equipment. Lessee, at its expense will keep the Equipment in good repair and furnish and/or install all parts, mechanisms, updates, upgrades and devices required therefor.

9. ALTERATIONS. Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.

10. LOCATION; INSPECTION. The Equipment will not be removed from, [or if the Equipment consists of rolling stock, its permanent base will not be changed from] the Equipment Location without Lessor's prior written consent which will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

11. LIENS AND TAXES. Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, licensing, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes, Lessee shall reimburse Lessor therefor within ten days of written demand.

12. RISK OF LOSS: DAMAGE; DESTRUCTION. Lessee assumes all risk of loss or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Lease Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee at the option of Lessor will: either (a) replace the same with like equipment in good repair; or (b) on the next Lease Payment date, pay Lessor the sum of : (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease payment due on such date; and (ii) an amount equal to all remaining Lease Payments to be paid during the Lease Term as set forth in Schedule B.

In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the Balance Payment (as set forth in Schedule B) to be made by Lessee with respect to that part of the Equipment which has suffered the Event of Loss.

13. INSURANCE. Lessee will, at its expense, maintain at all times during the Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts, covering such risks, and with such insurers as shall be satisfactory to Lessor, or, with Lessor's prior written consent, Lessee may self-insure against any or all such risks. All insurance covering loss of or damage to the Equipment

shall be carried in an amount no less than the amount of the then applicable Balance Payment with respect to such Equipment. The initial amount of insurance required is set forth in Schedule B. Each insurance policy will name Lessee as an insured and Lessor or its Assigns as an additional insured, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or its Assigns as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee will furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto.

14. INDEMNIFICATION. Intentionally omitted.

15. ASSIGNMENT. Without Lessor's prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Lease or the Equipment or any interest in this Lease or the Equipment or; (ii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign its rights, title and interest in and to this Lease, the Equipment and any documents executed with respect to this Lease and/or grant or assign a security interest in this Lease and the Equipment, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Lessee covenants and agrees not to assert against the Assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which Lessee may have against Lessor. No assignment or reassignment of any Lessor's right, title or interest in this Lease or the Equipment shall be effective unless and until Lessee shall have received a notice of assignment, disclosing the name and address of each such assignee; provided, however, that if such assignment is made to a bank or trust company as paying or escrow agent for holders of certificates of participation in the Lease, it shall thereafter be sufficient that a copy of the agency agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency agreement is no longer in effect. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Code, and the regulations, proposed or existing, from time to time promulgated thereunder. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge such assignments in writing if so requested.

After notice of such assignment, Lessee shall name the Assignee as additional insured and loss payee in any insurance policies obtained or in force. Any Assignee of Lessor may reassign this Lease and its interest in the Equipment and the Lease Payments to any other person who, thereupon, shall be deemed to be Lessor's Assignee hereunder.

16. EVENT OF DEFAULT. The term "Event of Default", as used herein, means the occurrence of any one or more of the following events: (i) Lessee fails to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of the Lease, and any such failure continues for ten (10) days after the due date thereof; (ii) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder or the Contract and such failure is not cured within twenty (20) days after written notice thereof by Lessor; (iii) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Lease or in writing ever delivered by Lessee pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; (iv) proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within twenty (20) days after the institution or occurrence thereof; or (v) an attachment, levy or execution is threatened or levied upon or against the Equipment.

17. REMEDIES. Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor may, at its option, exercise any one or more of the following remedies: (i) by written notice to Lessee, declare all amounts then due under the Lease, and all remaining Lease Payments due during the Fiscal Year in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable; (ii) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly discontinue use of the Equipment, remove the Equipment from all of Lessee's computers and electronic devices, return the Equipment to Lessor in the manner set forth in Section 5 hereof, or

Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same; (iii) sell or lease the Equipment or sublease it for the account of Lessee, holding Lessee liable for all Lease Payments and other amounts due prior to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, Lessee or sublessee pursuant to such sale, lease or sublease and the amounts payable by Lessee hereunder; and (iv) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state of the Equipment Location or any other applicable law or proceed by appropriate court action to enforce the terms of the Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

18. PURCHASE OPTION. Upon thirty (30) days prior written notice from Lessee to Lessor, and provided that no Event of Default has occurred and is continuing, or no event, which with notice or lapse of time, or both could become an Event of Default, then exists, Lessee will have the right to purchase the Equipment on the Lease Payment dates set forth in Schedule B by paying to Lessor, on such date, the Lease Payment then due together with the Balance Payment amount set forth opposite such date. Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except that the Equipment is free and clear of any liens created by Lessor.

19. NOTICES. All notices to be given under this Lease shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to such mailing.

20. SECTION HEADINGS. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

21. GOVERNING LAW. This Lease shall be construed in accordance with, and governed by the laws of, the state of the Equipment Location.

22. DELIVERY OF RELATED DOCUMENTS. Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease.

23. ENTIRE AGREEMENT; WAIVER. This Lease, together with Schedule A Equipment Lease-Purchase Agreement, Schedule B, Evidence of Insurance, Statement of Essential Use/Source of Funds Certificate of Incumbency, Lessee Resolution, Bank Qualified Statement, Information Return for Tax-Exempt Governmental Obligations and the Delivery and Acceptance Certificate and other attachments hereto, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitutes the entire agreement between the parties with respect to the Lease of the Equipment, and this Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of the Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

24. EXECUTION IN COUNTERPARTS. This Lease may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day of January, 2015.

LESSEE:

LESSOR:

CITY OF VESTAVIA HILLS

MOTOROLA SOLUTIONS, INC.

By: _____

By: _____

Printed Name: _____

Title: _____

Title: _____

CERTIFICATE OF INCUMBENCY

I, _____ do hereby certify that I am the duly elected or
(Printed Name of Secretary/Clerk)
appointed and acting Secretary or Clerk of City of Vestavia Hills , an entity duly organized and existing under the laws of the **State of Alabama** that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) executing this agreement is/are the duly elected or appointed officer(s) of such entity holding the office(s) below his/her/their respective name(s). I further certify that (i) the signature(s) set forth above his/her/their respective name(s) and title(s) is/are his/her/their true and authentic signature(s) and (ii) such officer(s) have the authority on behalf of such entity to enter into that certain Equipment Lease Purchase Agreement number **23668**, between City of Vestavia Hills and Motorola Solutions, Inc..

IN WITNESS WHEREOF, I have executed this certificate and affixed the seal of **CITY OF VESTAVIA HILLS** , hereto this _____ day of January, 2015.

By: _____

SEAL

(Signature of Secretary/Clerk)

OPINION OF COUNSEL

With respect to that certain Equipment Lease-Purchase Agreement # 23668 by and between Motorola Solutions, Inc. (Lessor) and the Lessee, I am of the opinion that: (i) the Lessee is, within the meaning of Section 103 of the Internal Revenue Code of 1986, a state or a fully constituted political subdivision or agency of the State of the Equipment Location described in Schedule A hereto; (ii) the execution, delivery and performance by the Lessee of the Lease have been duly authorized by all necessary action on the part of the Lessee, (iii) the Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; and (iv) Lessee has sufficient monies available to make all payments required to be paid under the Lease during the current fiscal year of the Lease, and such monies have been properly budgeted and appropriated for this purpose in accordance with State law. This opinion may be relied upon by the Lessor and any assignee of the Lessor's rights under the Lease.

Attorney for **CITY OF VESTAVIA HILLS**

**SCHEDULE A
EQUIPMENT LEASE-PURCHASE AGREEMENT**

Schedule A 23668
Lease Number:

This Equipment Schedule is hereby attached to and made a part of that certain Equipment Lease-Purchase Agreement Number **23668** ("Lease"), between Motorola Solutions, Inc. ("Lessor") and City of Vestavia Hills ("Lessee").

Lessor hereby leases to Lessee under and pursuant to the Lease, and Lessee hereby accepts and leases from Lessor under and pursuant to the Lease, subject to and upon the terms and conditions set forth in the Lease and upon the terms set forth below, the following items of Equipment

QUANTITY	DESCRIPTION (Manufacturer, Model, and Serial Nos.)
	Refer to attached Equipment List.
Equipment Location:	

Initial Term: 60 Months

Commencement Date: 2/1/2015

First Payment Due Date: 2/1/2016

5 Annual Payments of \$98,029.24 as outlined in the attached Schedule B, plus Sales/Use Tax of \$0.00, payable on the Lease Payment Dates set forth in Schedule B.

QTY	NOMENCLATURE	DESCRIPTION
1	SQM01SUM0239	MASTER SITE CONFIG UPGRADE
1	CA01403AA	SMARTX 3600 SYSTEM LICENSE
1	CA01404AA	SMARTX 3600 SITE LICENSE
1	SQM01SUM7054	GTR 8000 EXPANDABLE SITE SUBSYST
1	CA00855AA	ADD: 700/800 MHZ
1	X306AC	ADD: QTY (6) GTR 8000 BASE RADIOS
6	CA02209AA	ADD:3600 INTELLIREPEATER SOFTWARE
2	CA01536AA	GPB 8000 REFERENCE DISTRIBUTION M
1	CA01537AA	ADD: REFERENCE DISTRIBUTION SOFT
1	CA00877AA	ADD: CABINET RMC FOR EXPANSION R
1	CA00880AA	ADD: EXPANSION 6 PORT CAVITY COMI
1	X882AH	ADD: 7.5 FT OPEN RACK, 48RU
1	CA02684AA	ADD: AC ONLY POWER DISTRIBUTION
6	3082933N20	LINECORD PLUG & RECP 3.7 MTRS
1	DSTSJ100BT	SPD, RJ-48 8 PIN, 10/100 BASE T TSJ PF
1	DSTSJADP	RACK MOUNT GROUND BAR, 19 IN FOR
1	SQM01SUM0205	GGM 8000 GATEWAY
1	CA01616AA	ADD: AC POWER
2	DS4881220000	4 T1 PORTS,UTP ETH PORT,UTP FOR 10
1	DSPREM891830	UNIVERSAL ENCLOSURE TENSER 800
2	DSPREM880370	CPU CARD, XCON CROSS-CONNECT, U
1	DSPREM892360	8T1 E1 IF CARD 128K WITH MODEM
2	DSPREM8901	AC POWER SUPPLY 110/220VAC
2	DSPREM822560	10 PORT LD-SRU CARD
2	DSPREM811960	8 PORT 4W E M TO EXT RANGE CRD
2	DSPREM801470	WAN CARD, DUAL T1/E1 WAN CARD WI
2	0182643X12	DS1 INTERFACE PANEL
1	DSPREM1239	Y ADAPTER 1:1 WAN REDUNDANCY
1	T7599	SMARTX SITE CONVERTER
1	CA01401AA	ADD: SMARTX SITE CONVERTER SOFTV
1	CA00140AA	ADD: AC LINE CORD, NORTH AMERICAN
1	CVN1230	SMARTX SOFTWARE
1	BLN1297	VPM POWER SUPPLY MOUNTING KIT

City of Vestavia Hills (Schedule B)

Compound Period: Annual

Nominal Annual Rate: 3.050%

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	2/1/2015	\$ 448,305.00	1		
2 Payment	2/1/2016	\$ 98,029.24	5	Annual	2/1/2020

AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

Date	Payment	Interest	Principal	Balance
Loan 2/1/2015				\$448,305.00
1 2/1/2016	\$ 98,029.24	\$ 13,673.30	\$ 84,355.94	\$363,949.06
2 2/1/2017	\$ 98,029.24	\$ 11,100.45	\$ 86,928.79	\$277,020.27
3 2/1/2018	\$ 98,029.24	\$ 8,449.12	\$ 89,580.12	\$187,440.15
4 2/1/2019	\$ 98,029.24	\$ 5,716.92	\$ 92,312.32	\$ 95,127.83
5 2/1/2020	\$ 98,029.24	\$ 2,901.41	\$ 95,127.83	\$ -
Grand Totals	\$490,146.20	\$ 41,841.20	\$448,305.00	

INITIAL INSURANCE REQUIREMENT: \$448,305.00

Except as specifically provided in Section five of the Lease hereof, Lessee agrees to pay to Lessor or its assignee the Lease Payments, including the interest portion, in the amounts and dates specified in the above payment schedule.

EVIDENCE OF INSURANCE

Fire, extended coverage, public liability and property damage insurance for all of the Equipment listed on Schedule A number 23668 to that Equipment Lease Purchase Agreement number 23668 will be maintained by the CITY OF VESTAVIA HILLS as stated in the Equipment Lease Purchase Agreement.

This insurance shall name MOTOROLA SOLUTIONS, INC. or its assignee as additional insured and loss payee for the term of the Schedule A number 23668. This insurance is provided by:

Name of insurance provider

Address of insurance provider

City, State and Zip Code

Phone number of insurance provider

In accordance with the Equipment Lease Purchase Agreement Number 23668, CITY OF VESTAVIA HILLS, hereby certifies that following coverage are or will be in full force and effect:

Type	Amount	Effective Date	Expiration Date	Policy Number
Fire and Extended Coverage	_____	_____	_____	_____
Property Damage	_____	_____	_____	_____
Public Liability	_____	_____	_____	_____

RESOLUTION NUMBER 4685

**A RESOLUTION AUTHORIZING THE PURCHASE
OF A SPEED AWARENESS MONITOR TRAILER
FOR THE PURPOSE OF MONITORING TRAFFIC
AND MAINTAINING ROAD SAFETY**

WHEREAS, the Vestavia Hills Police Department has analyzed the condition and limited capabilities of the current traffic trailer; and

WHEREAS, the Vestavia Hills Police Department has determined that there is a need for a Speed Awareness Monitor Trailer for the purpose of monitoring traffic and maintaining road safety by identifying problem areas and providing accurate statistical data in addition to serving as a deterrent to speeders with the speed indicator signal; and

WHEREAS, the Police Department has requested that the expense for the Speed Awareness Monitor Trailer of approximately \$7,500.00 be charged to the General Fund account; and

WHEREAS, the City Manager has reviewed the request and has recommended the acceptance of said purchase; and

WHEREAS, the Mayor and City Council have concurred with the City Manager and feel it is in the best public interest to accept the request as presented and recommended by the City Manager.

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

1. The City Manager is hereby authorized to purchase a Speed Awareness Monitor Trailer for the purpose of monitoring traffic and maintaining road safety in the amount not to exceed \$7,500.00 to be expensed to the General Funds account; and
2. This Resolution shall become effective immediately upon its approval and adoption.

APPROVED and ADOPTED this the 9th day of March, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Subject:

Traffic Data Analysis

In consideration of the current condition and limited capabilities of our traffic trailer, VHPD requests the allocation of funding for a new Data Capturing Traffic Trailer, through Stalker Applied Concepts, that would enable us to appropriately address traffic complaints throughout the city. The statistical data captured by the Stalker SAM Trailer will assist in identifying problem areas, provide accurate statistical data, in addition to serving as a deterrent to speeders with the speed indicator signal.

Stalker Applied Concepts has proven to be a reliable vendor for speed indicator equipment, in that we currently purchase all of our in car and hand-held radar equipment through them. The specific model trailer being requested has been researched and recommended by our neighbors at Hoover PD.



Lt. Brian Gilham
Community Oriented Policing Section
Vestavia Hills Police Department
513 Montgomery Hwy.
Vestavia Hills, AL 35216
205-978-0194



RESOLUTION NUMBER 4687

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH RETAIL SPECIALISTS FOR BROKERAGE SERVICES FOR THE PROPERTY LOCATED AT 1280 MONTGOMERY HIGHWAY

BE IT RESOLVED BY THE 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 Retail Specialist for brokerage services for the marketing and/or potential sale of real property located at 1280 Montgomery Highway; and
2. A copy of said agreement is marked as “Exhibit A” and is attached to and incorporated into this Resolution Number 4687 as though written fully therein; and
3. This Resolution Number 4687 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 23rd day of March, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Memorandum

To: Mayor and City Council

From: Jeff Downes 
City Manager

Date: March 5, 2015

Re: Real Estate Listing Agreement for the Public Works Facility

In follow up from our conversation at the last work session, I moved forward with exploring brokerage arrangements for the marketing of the City's Public Works Facility located on Montgomery Highway for sale purposes. As discussed, it is the City's intent to leverage real estate opportunities throughout the City to ensure the highest and best use of all available undeveloped or underutilized land. This particular property has an opportunity to be redeveloped as a retail site, and it is my intent to partner with retail focused brokerage firms to maximize this opportunity while remaining consistent to our evolving plan for this area of Highway 31.

I have sought responses from three retail focused firms to list the property- Southpace, Retail Specialists, and Corporate Realty. Based upon the responses from these firms, I am recommending use of Retail Specialists based upon the marketing plan and fee proposed by the firm. While all three would be viable partners, Retail Specialists offered the best deal. Please let me know if you would like to review the specifics. I will present this for a first read on the next Council agenda. Please let me know if you have any issues or concerns. Thanks for your support.

CC: Becky Leavings



EXCLUSIVE LISTING AGREEMENT

The Owner hereby engages RETAIL SPECIALISTS, LLC, an Alabama limited liability company (the "Agent") as Owner's exclusive agent, and Owner herein grants to Agent the sole and exclusive right to market for sale or lease the herein described Property for the terms set forth below. Likewise, the Owner agrees to refer all prospects for, or persons inquiring about, the sale or lease of said Property to Agent during the term hereof.

OWNER: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, AL 35216
Attention: Jeff Downes, City Manager

AGENT: Retail Specialists, LLC
120 18th Street South, Suite 201
Birmingham, Alabama 35233
Phone: (205) 313-3676 Fax: (205) 313-3677

PROPERTY:

LISTING PERIOD: Retail Specialists, LLC (RSI) will aggressively and creatively market the property for an initial listing period of one year. Upon the expiration of the initial one year term, this Agreement shall automatically renew on a month to month basis until terminated by either party. The agreement can be terminated by either party with thirty (30) days written notice. Upon terminations of this Agreement, Agent shall supply Owner with a list ("Prospect List") of tenants with whom negotiations regarding new leases or sales have been introduced by Agent. For leases, Owner shall pay Agent pursuant to the Leasing Agreement section below for any tenant on the Prospect List who executes a lease within twelve (12) months of termination of this Agreement. For sales, Owner shall pay Agent pursuant to the Sales Agreement section below on any sale to anyone on the Prospect List with whom a sale closes within twelve (12) months of termination. In addition, upon termination of the Agreement, Agent shall also continue to negotiate and represent Owner on those active deals which shall be supplied by Agent to Owner on a list of tenants or sales prospects ("Active List") with whom active negotiations have commenced. Agent shall continue to act as agent/broker of record on these deals through completion, and be paid the fees set forth in the sections on Sale Agreement and Leasing Agreement below.

SIGNS: Agent is authorized to place its signs on the Property during the term of the Listing Period.

SALE AGREEMENT: Owner hereby agrees to pay Agent the following fees for Agent's services in the event of the sale of the property:

In the event of the sale of the site, we agree to compensate RSI with a sales fee equal to 6% of the purchase price. Any sales fees that are earned by RSI will be paid at closing.

~~LEASING AGREEMENT: Owner shall pay Agent commissions equal to four percent (4%) of total rent or three percent (3%) if co-op with another Broker. Landlord should expect to pay procuring~~

Deleted
[Signature]

~~Brokers an additional fee to be negotiated prior to lease execution, provided the leases are executed during the Term of this Agreement ("New Leases"). Said fees shall be paid half at lease execution and half at rent commencement. When a procuring broker representing the Tenant is involved, in no event shall Agent be paid less than 3% of the lease value. Agent shall be entitled to all rights under Alabama Code Section 35-11-451, as amended and updated.~~

AGENCY AGREEMENT:

The Agent is the Exclusive Agent of the Owner and will represent the Owner in any transaction involving the Property unless otherwise approved in writing by the Owner. However, it is hereby stipulated that if a potential person or entity with whom the Agent has a current agency relationship, the Agent may become a limited Consensual Dual Agent without further notifying the Owner. The Owner also acknowledges that it has read and understands the types of representation available under Alabama State Law.

DUTIES OF AGENT:

(a) Agent shall use reasonable efforts to obtain offers to Lease the Property from prospective tenants for submission to Owner for Owner's approval and acceptance of the terms and conditions thereof.

(b) Upon obtaining offers from a prospective tenant and upon acceptance of the terms and conditions of said offer by Owner, Agent shall submit to such prospective tenant a Lease Agreement in the form prepared by Owner and containing the terms of said offer approved by Owner. Agent shall negotiate certain business terms in the Lease, provided, however, that Agent shall not, for any reason, have the power or authority to execute any Lease Agreements on behalf of Owner, or otherwise bind Owner or contract on Owner's behalf.

(c) Agent shall use diligent efforts to promote and market the Property through all means it deems appropriate and shall coordinate with Owner the preparation of all marketing material, including without limitation ads, brochures and signs. ~~All such promotion and advertising shall be subject to the prior approval of Owner, and Owner shall reimburse Agent for all promotion or marketing costs, upon receipt of an invoice from Agent.~~

Delete
JK

(d) Agent shall actively seek the cooperation and participation of other brokers, both on a local and national basis, in promoting the leasing of the Property.

(e) Agent shall use diligent efforts to do all things reasonable to accomplish the leasing of available Tenant Space in the Property.

DUTIES AND REPRESENTATIONS OF OWNER:

(a) Owner shall provide Agent with all required Property information in a form reasonably adequate for Agent's intended use thereof in the leasing of the Property. To Owners best knowledge and actual belief that the information provided is accurate and complete.

(b) Owner shall cause to be prepared in consultation with Agent, necessary and appropriate Property signage, marketing brochures and advertisement each of which may note Agent's exclusive agency. Owner acknowledges that the sign is the property of the Agent.

(c) Owner shall prepare the form of the Lease Agreement to be used for the Property to be prepared.

(d) Owner reserves the right to deal directly with prospective Tenants to procure executed Lease Agreements; provided, however, the exercise by Owner of such right shall not relieve Owner of the obligation to pay Agent the compensation hereinafter provided for herein.

(e) Owner shall fully respond to all requests from Agent within seven (7) days of Owner's receipt of such request.

**PROFESSIONAL
ADVISE:**

Owner will obtain legal, tax, financial or other professional advice with respect to a transaction relating to the Property, as well as the condition of the Property. Agent cannot provide any such advice to Owner and Owner will not expect or rely upon any such advice from Agent. In determining the financial soundness of any prospect, Owner will rely solely upon Owner's own investigation and evaluation notwithstanding Agent's assistance in gathering any financial information.

ENFORCEMENT:

With the exception of where it is a violation of federal or state law, or is otherwise approved in writing in this or collateral agreements, the Parties agree to accept arbitration by a mutually agreed upon arbitrator as the final determination of any interpretation necessary between the Parties.

The undersigned represent under the penalty of fraud that the individually and/or corporately have the authority to enter into this Listing Agreement and to execute any document(s) relating to the completion of the marketing efforts of the Agent without any further approval or other required signatures.

AGREED: RETAIL SPECIALISTS, LLC, AGENT

By: _____

Its: _____

Date: _____, 2015

AGREED: CITY OF VESTAVIA HILLS, ALABAMA, OWNER

By: _____

Its: _____

Date: _____, 2015

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

February 17, 2015

By Electronic Mail

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

In Re: Exclusive Listing Agreement With Retail Specialists, LLC for
Sale of Public Works Property on Highway 31 South

Dear Mr. Downes:

This letter confirms and supplements our meeting in your office this morning regarding the sale of the public works property on Highway 31 South. During our meeting, you hand delivered to me a copy of a proposed Exclusive Listing Agreement between the City of Vestavia Hills, Alabama (“Owner”) and Retail Specialists, LLC (“Agent”) with a request that I review the same and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. MY RECOMMENDATIONS

A. I recommend that any and all language regarding the lease of the City property be deleted in its entirety from the Exclusive Listing Agreement. It is my understanding that the City is interested in selling the property, but not leasing the property.

B. I recommend that the language requiring the City to reimburse the Agent for all promotional or marketing cost set forth in DUTIES OF AGENT section (c) be deleted.

C. I do not think it is necessary to have the lien language (Title 35-11-451, *Code of Alabama, 1975*) in the Exclusive Listing Agreement.

February 17, 2015

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II. OTHER INFORMATION

The City previously listed this property with Taylor Glaze with Chase Commercial Realty, Inc. for a period of one (1) year beginning April 1, 2013 and ending March 31, 2014. There was no language relative to leasing the property. The sales commission was five percent (5%). The Listing Agreement provided that the Agent would pay the cost of advertising and promotion of the sale of the property.

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

Sincerely,

A handwritten signature in black ink that reads "Patrick H. Boone". The signature is written in a cursive style with a long horizontal flourish at the end.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

ORDINANCE NUMBER 2558

AN ORDINANCE GRANTING A NON-EXCLUSIVE RIGHT-OF-WAY USE AGREEMENT TO SOUTHERN LIGHT, LLC, FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING A FIBER-OPTIC TRANSMISSION LINE WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF VESTAVIA HILLS, ALABAMA

WHEREAS, SOUTHERN LIGHT, LLC (hereinafter referred to as the “the Company”) desires to construct a fiber-optic transmission line within certain public rights-of-way within the City of Vestavia Hills, Alabama; and

WHEREAS, the Company agrees and recognizes that it is required to obtain consent in the form of a right-of-way use agreement from the City of Vestavia Hills in order to construct the proposed fiber-optic transmission line within the corporate limits of the City of Vestavia Hills; and

WHEREAS, the City Council wishes to accommodate the Company’s request and grant a right-of-way use agreement for the construction of the proposed fiber-optic transmission line in accordance with the terms and conditions contained herein.

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

The City Council of the City of Vestavia Hills does hereby grant to SOUTHERN LIGHT, LLC a non-exclusive right-of-way use agreement granting the limited authority to construct a fiber-optic transmission line in the City of Vestavia Hills in and along certain rights-of-way outlined in Exhibit A below, subject to the terms and conditions set forth in the following agreement:

AGREEMENT

This Agreement is entered into on this the 23rd day of March, 2015, by and between the City of Vestavia Hills, Alabama (hereinafter referred to as the “City”), and SOUTHERN LIGHT, LLC, (hereinafter referred to as the “The Company”).

W I T N E S S E T H :

The City and The Company do hereby mutually covenant and agree as follows:

SECTION 1. Defined Terms. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

1.1 “City” means the City of Vestavia Hills, Alabama.

1.2 “Governing Body” or “City Council” means the City Council of the City of Vestavia Hills, Alabama.

1.3 “Gross Receipts” means Gross Receipts on recurring Telecommunications Services that originate or terminate within the corporate limits of the City. Gross Receipts shall not include revenues or receipts arising from or relating to Telecommunication Services that both originate and terminate outside the corporate limits of the City.

1.4 “Local Telecommunications Service Revenues” are defined as all revenues received by the Provider from its customer for providing the transport of voice, data and/or video signals within the municipal limits of the City.

1.5 “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

1.6 “Rights-of-way” means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights-of-way, including, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses held by the City or location within the City which shall entitle the City and the Company to use the same for the purpose of installing, operating, repairing and maintaining the System.

1.7 “System” shall mean a system of pipes, transmission lines, meters, equipment and all other facilities associated with the operation of a fiber-optic transmission line by the Company in accordance with the terms and conditions contained in this Agreement.

1.8 “Telecommunications” means the transmission, between or among points specified by the user, or information of the user’s choosing (e.g., data, video, and voice), without change in the form or content of the information as sent and received.

1.9 “Telecommunication Service(s)” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

2.0 “Telecommunication System” means the cables, wire, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment or facilities designated and constructed for the purpose of producing, receiving, amplifying or distributing Telecommunications to or from locations within the City.

2.1 “Use Fee” means the fee paid by a Provider to the City for locating and maintaining facilities in the rights-of-way.

SECTION 2. Grant of Authority. The City hereby grants to the Company the non-exclusive and limited authority to construct, install and maintain a fiber-optic transmission line in

and along the rights-of-way in the City of Vestavia Hills as described and depicted in Exhibit A which is attached hereto and incorporated by reference (hereinafter referred to as the “System”). The Company shall not expand or extend the System installed or constructed within the City pursuant to this Agreement without approval from the City Council, in its sole discretion.

SECTION 3. Compensation. Five percent (5%) of its quarterly Gross Receipts on recurring facilities-based Local Telecommunications Services revenues for services originating or terminating within the City’s corporate limits.

SECTION 4. Duration and Term. The right-of-way use agreement granted hereunder shall be for an initial term of twenty (20) years (the “Initial Term”) commencing on the effective date of this Ordinance and Agreement, unless otherwise lawfully renewed, revoked or terminated as herein provided. Upon the expiration of the Initial Term, the Company or the City shall have the option to renew this Agreement for one additional term of twenty (20) years, subject to the terms and conditions contained herein, by giving written notice, sixty (60) days before the expiration of the Initial Term, to the other party of that party’s intent to renew this Agreement for the additional term.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods set forth in this Agreement, except as provided herein. The City does not warrant any of the rights granted by this Agreement.

SECTION 6. Reservation of Regulatory and Police Powers. The City, by the granting of this right-of-way use agreement and approving this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its rights-of-way by the Company or any person or to charge reasonable compensation for such use, and the Company, by its acceptance of this right-of-way use agreement and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City’s police powers shall be resolved in favor of the latter.

SECTION 7. Standards of Service.

7.1. Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Company pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the rights-of-way and with the rights and

reasonable convenience of property owners who own property that adjoins any of such rights-of-way.

7.2 Restoration of Rights-of-way. If during the course of the Company's construction, operation or maintenance of the System there occurs a disturbance of any rights-of-way by the Company, it shall, at its expense, replace and restore such rights-of-way to a condition comparable to the condition of the rights-of-way existing immediately prior to such disturbance to the satisfaction of the City. The work to be done under this Agreement, and the restoration of rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Company shall perform the work according to the standards and with the materials specified or approved by the City Engineer.

7.3 Relocation at Request of the City. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Company shall, at its own expense, protect, support, temporarily disconnect, relocate in the rights-of-way, or remove from the rights-of-way, any property of the Company when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the City. Should the Company refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Company.

7.4 Trimming of Trees and Shrubbery. The Company shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Company to the satisfaction of the City.

7.5. Safety and Permit Requirements. Construction, installation, repair and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area.

7.6. Minimum Standards. All of the construction by the Company shall conform, at a minimum, to the minimum standards of the Company. In the event there is a conflict between the standards adopted by the Company and any applicable federal, state or local standards, including ordinances adopted by the City, the stricter standard shall apply.

7.7. Obstructions of Rights-of-Way. Except in the case of an emergency, or with the approval of the City Engineer, no rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

The Company shall not so obstruct the rights-of-way so as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways.

7.8. Safety Requirements.

A. The Company shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. The Company shall install and maintain the System in accordance with the requirements of all applicable regulations of the City, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of the City or of a public utility serving the City.

C. All structures and all lines, equipment and connections in, over, under and upon the rights-of-way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

D. The Company shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service for the System.

7.9. Least Disruptive Technology. The Company is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-ways. However, underground installation shall be a last resort and only upon consent of the City. The Company will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the City Council. The City Engineer may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Company may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies.

SECTION 8. Enforcement and Termination of Agreement.

8.1. Notice of Violation. In the event the Company has not complied with the terms of this Agreement, the City shall notify the Company in writing of the nature of the alleged noncompliance.

8.2. Right to Cure or Respond. The Company shall have 30 days from receipt of the notice described in Section 8.1: (a) to respond to the City by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Company, be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

8.3. Public Hearing. In the event the Company fails to respond to the notice described in Section 8.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 8.2, or in the event the alleged default is not remedied within 30 days or by the date projected pursuant to 8.2(c) above, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City which is scheduled at a time not less than five business days therefrom. The City shall notify the Company in writing of the time and place of such meeting and provide the Company with an opportunity to be heard.

8.4. Enforcement. In the event the City, after such meeting, determines that the Company is in default of any provision of this Agreement, the City may pursue any or all of the following remedies:

- A. Seek specific performance of any provision which reasonably lends itself to such a remedy;
- B. Make a claim against any surety or performance bond which may be required to be posted;
- C. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement;
- D. Seek any other available remedy permitted by law or in equity;
- E. In the case of a material default of this Agreement, declare the Agreement to be revoked in accordance with the following:

(1) The City shall give written notice to the Company of its intent to revoke the Right-of-Way Use Agreement on the basis of noncompliance by the Company. The notice shall set forth the exact nature of the noncompliance. The Company shall have 30 days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Company, it may then seek termination of this Agreement at a public meeting. The City shall cause to be served upon the Company, at least 10 days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to seek such termination.

(2) At the designated meeting, the City shall give the Company an opportunity to state its position on the matter, after which it shall determine whether or not this Agreement shall be terminated. The Company may appeal such determination to the Circuit Court of Jefferson County, which shall have the power to review the decision of the City and to modify or reverse such decision as justice may require. Such

appeal must be taken within 30 days of the issuance of the determination by the City.

(3) The City may, in its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under this Agreement in lieu of revocation of the Agreement.

8.5. Impossibility of Performance. The Company shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

SECTION 9. Public Use Pathways. The Company hereby agrees to unrestricted use by the City for non-commercial public purposes only, at no cost to the City, of two (2) fiber strands along the backbone of its fiber optic system within the City, both underground and aerial (hereinafter called the "Public Use Pathway"). The Public Use Pathway, when determined to be installed in a manner which will permit unrestricted use by the City, shall be accepted by the City. The City shall be allowed use of the Public Use Pathway, at no cost to the City, for non-commercial, public purposes only, except that the City shall be responsible for the cost and expense of any damages or liabilities caused by the willful or wanton acts of the City, its employees, or any other person under the direction and/or control of the City resulting from the City's use of or access to the Public Use Pathway.

The Company shall connect up the following municipal facilities:

- a. The new Municipal Center, [1032 Montgomery Highway]
- b. Library in the Forest, [1221 Montgomery Highway]
- c. Parks and Recreation, [1973 Merryvale Highway, Wald Park]
- d. City Shop, [1280 Montgomery Highway] and
- e. The Civic Center [1973 Merryvale Road].

Provided this Agreement is executed by March 10, 2015, the Company shall use its best efforts to connect the aforementioned municipal facilities on or before September 30, 2015. As the Company's network builds out over time, the Company will provide the backbone fibers to connect up the City's remaining facilities that are in existence as of the date of this Agreement. At the time of installation, the Company will provide the necessary engineering, filters and lasers to help the City efficiently consolidate all of its traffic onto the contractually-provided fibers. This assumes that all traffic will come directly back to the Municipal Center. The City will provide an empty conduit or other pathway (clean pole line, etc.) to the point in each building where it wants the fiber to terminate. The Company will provide the patch panels for each facility, and provide the cable from end to end.

SECTION 10. Default. Each of the following shall constitute a material default by the Company:

- (1) Failure to make any payments to the City required to be made as set forth in this Agreement;
- (2) Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to the Company;
- (3) Failure to provide or furnish any information required under this Agreement to the City that is not cured within thirty (30) days following written notice to the Company;
- (4) Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;
- (5) The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Company;
- (6) The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or
- (7) If (a) the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such

proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company.

SECTION 11. Prior to any excavation within the rights-of-way, the Company shall obtain a permit from the City pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the rights-of-ways due to the Company's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City.

SECTION 12. Insurance. The Company shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$1,000,000.00 for bodily injury and property damage per person and \$3,000,000.00 as to each occurrence, satisfactory to the City. In addition, the Company shall obtain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be named as an additional insured on the policy, and the Company shall provide the City with a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City.

SECTION 13. Indemnity and Hold Harmless. The Company agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligence or willful misconduct, of the Company, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of Facilities except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the negligence, willful misconduct, or other fault of the City. The City does not and shall not waive any rights against the Company which it may have by reason of this indemnification, or because of the acceptance by, or the Company's deposit with the City of any of the insurance policies described in this Agreement. The indemnification by the Company shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

SECTION 14. Disclaimer of Warranties. The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Company. This Agreement shall not be construed to deprive the City of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

SECTION 15. Warranties and Representations. The Company hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules and regulations. Furthermore, the Company further agrees,

represents and warrants that this Agreement is legal, valid and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation or maintenance of the System.

SECTION 16. Other Obligations. Obtaining a right-of-way use agreement pursuant to this Agreement does not relieve the Company of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations, and the Company is responsible for all work done in the rights-of-way pursuant to this Agreement, regardless of who performs the work.

SECTION 17. Payment of Costs. The Company shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City.

SECTION 18. Priority of Use. This Agreement does not establish any priority for the use of the rights-of-way by the Company or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

SECTION 19. Notice. Every notice or response required by this Agreement to be served upon the City or the Company shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

City of Vestavia Hills,
ATTENTION: Jeff Downes
City Manager, City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills, AL 35216

With a copy to:

Patrick H. Boone, Esq.
City Attorney, Vestavia Hills
215 Richard Arrington Jr. Blvd.

Suite 705
Birmingham, AL 35203

The notices or responses to the Company shall be addressed as follows:

Southern Light, LLC
ATTENTION: Kelly A. McGriff, Esq.
General Counsel
107 St. Francis Street
Suite 1800
Mobile, AL 36602

SECTION 20. The City and The Company may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

SECTION 21. Application. The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the City and those areas annexed by the City after the passage and approval of this Ordinance and Agreement.

SECTION 22. Acceptance. The Company's acceptance of this Agreement shall be in writing in a form approved by the City Attorney and shall be accompanied by delivery of all payments, insurance certificates, applications, acceptance fees and performance of other requirements relating to commencement of construction as set forth in this Agreement.

SECTION 23. Assignment. The Company's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council. The City reserves the right to be reimbursed by the Company for costs incurred by it in reviewing the request for transfer of ownership.

SECTION 24. Miscellaneous. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

SECTION 25. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

SECTION 26. Governing Law. This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in

accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

SECTION 27. Severability Clause. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 28. Repealer Clause. Any Ordinance heretofore adopted by the City Council of the City of Vestavia Hills, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 29. Effective Date. This Ordinance shall become effective only upon receipt of a written unconditional acceptance by the Company of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance.

ADOPTED AND APPROVED this 23rd day of March, 2015.

CITY OF VESTAVIA HILLS, ALABAMA

BY: _____

Its: _____

ATTEST:

CITY CLERK

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2556 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 9th day of March 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2015.

Rebecca Leavings
City Clerk

STATE OF ALABAMA
COUNTY OF _____

I, _____, a Notary Public, in and for said County in said State, hereby certify that _____ and _____ whose names as Mayor and City Clerk of the City of Vestavia Hills, Alabama, a municipal corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and seal this _____ day of _____, 2015.

Notary Public,
_____ County, Alabama
My Commission Expires: _____

SOUTHERN LIGHT, LLC

BY: _____

Its: _____

STATE OF ALABAMA
COUNTY OF _____

I, _____, a Notary Public, in and for said County in said State, hereby certify that _____ whose name as _____ of SOUTHERN LIGHT, LLC, 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 the instrument, he/she, as such officers and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this _____ day of _____, 2015.

Notary Public,
_____ County, Alabama
My Commission Expires: _____

ORDINANCE NUMBER 2373-A

**AN ORDINANCE GRANTING CONDITIONAL USE APPROVAL
FOR AUTOMOTIVE SALES, AUTOMOTIVE SERVICES –
MAJOR AND MINOR, INCLUDING MECHANICAL AND
COLLISION REPAIR FOR 1476 MONTGOMERY HIGHWAY**

WHEREAS, on December 13, 2010, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 2331, also known as the City of Vestavia Hills Zoning Code; and

WHEREAS, Anthony F. and Margaret Serra are owners of the property located at 1476 Montgomery Highway zoned Vestavia Hills B-3 (business district); and

WHEREAS, Alton B. Parker Jr., Spain & Gillon, LLC, attorney for the Serras, presented an application for Conditional Use Approval for the purpose of automotive sales, automotive services – major and minor, including, but not limited to, mechanical and collision repair for the property located at 1476 Montgomery Highway pursuant to Table 6 of the Vestavia Hills Zoning Code; and

WHEREAS, Mr. and Mrs. Serra, owners of the property located at 1476 Montgomery Highway, were desirous of opening a new or used automotive dealership with complete automotive servicing and repair on said property; and

WHEREAS, on November 14, 2011, the City Council of the City of Vestavia Hills adopted and approved Ordinance Number 2373 to grant said conditional use for the property located at 1476 Montgomery Highway as requested; and

WHEREAS, on or about April 7, 2014, the dealership suffered severe flooding of Patton Creek which caused significant damage to the premises; and

WHEREAS, Section 13.3.3 of the Vestavia Hills Zoning Code provides that “When such use is abandoned or discontinued for a period of (1) year, it shall not be reestablished unless authorized by the Council;” and

WHEREAS, Alton Parker, Spain and Gillon, LLC, attorney for the owners, submitted a letter dated March 3, 2015 a copy of which is marked as “Exhibit A” attached to and incorporated into this Ordinance Number 2373-A as though written fully therein, requesting an 18-month extension to said conditional use beginning on April 15, 2015 and expiring on at midnight on October 16, 2016.

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

1. An extension of said Conditional Use approval is hereby granted for automotive sales, automotive services – major and minor, including, but not limited to, mechanical and collision repair for property located at 1476 Montgomery Highway for an 18-month period beginning April 15, 2015 and ending at midnight, October 16, 2016; and
2. This Ordinance Number 2373-A shall become effective immediately upon adoption, approval and publishing/posting pursuant to Alabama law; and

DONE, ORDERED, ADOPTED and APPROVED this the 23rd day of March, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

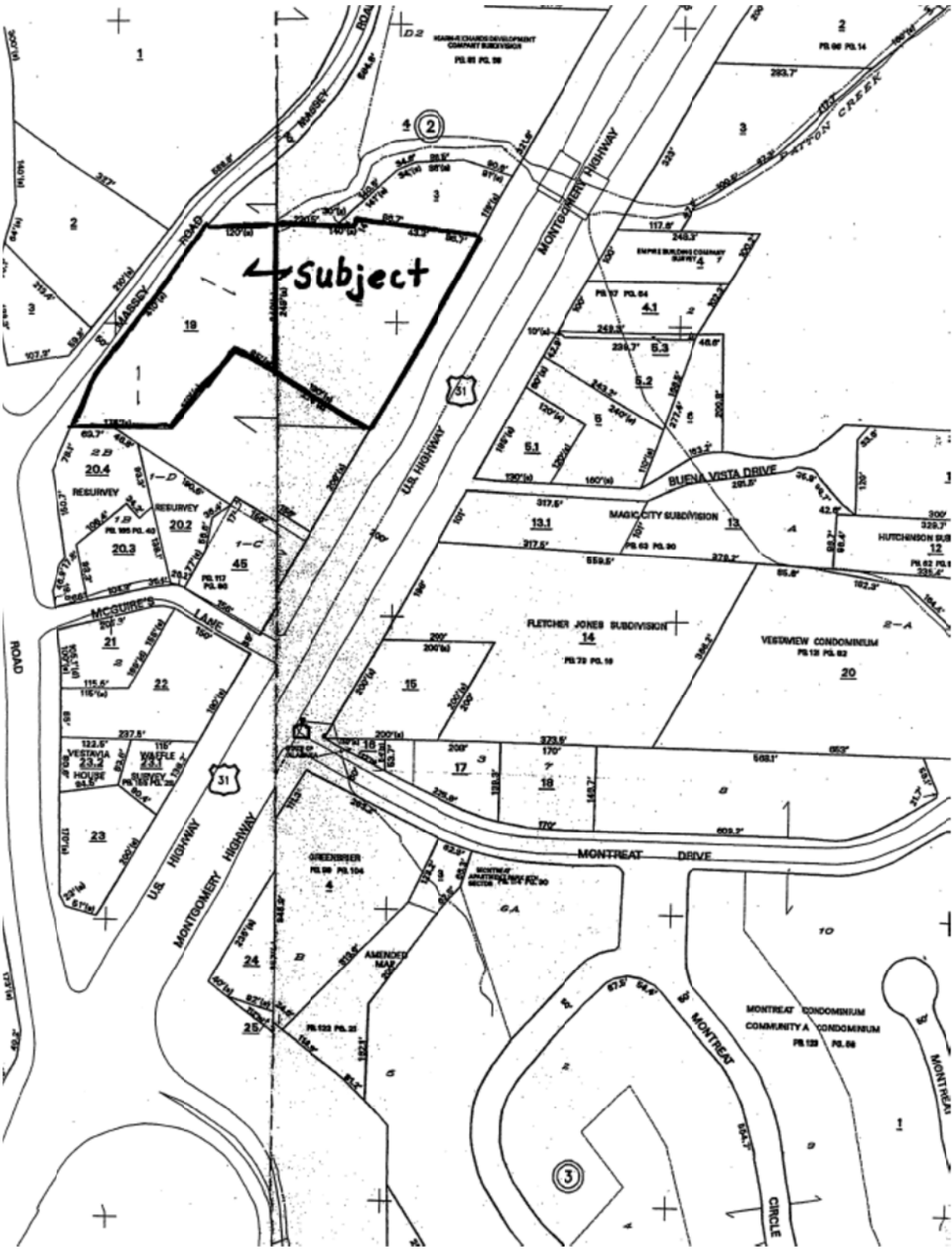
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2373-A is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 23rd day of March, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2015.

Rebecca Leavings
City Clerk



SPAIN & GILLON, LLC
THE ZINSZER BUILDING
2117 SECOND AVENUE NORTH
BIRMINGHAM, ALABAMA 35203

Telephone: (205) 328-4100

Facsimile: (205) 324-8866

Direct Dial (205) 581-6212

ALTON B. PARKER, JR.

E-MAIL: ABP@SPAIN-GILLON.COM

March 3, 2015

Rebecca Leavings, City Clerk, MMC
City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills AL 35216

Re: Extension of Conditional Use Approval for Automotive Sales, Automotive Services - Major and Minor, including Mechanical and Collision Repair for 1476 Montgomery Highway - Ordinance No. 2373

Dear Ms. Leavings:

This is to confirm our prior conversations regarding a requested extension of the conditional use approval previously granted by the Vestavia City Council to Anthony F. and Margaret Serra, owners of the property located at 1476 Montgomery Highway. Ordinance No. 2373 approving the conditional use for that location was granted on November 14, 2011. An agreement to conditional zoning was executed by the owners and submitted to the City as of the 12th day of December, 2011. Pursuant to the granting of the conditional use by the City, the Serra organization opened an automotive sales dealership at that location.

On or about April 7, 2014 the dealership suffered severe flooding of Patton Creek which caused significant damage to most of the vehicles parked at the dealership and to the dealership premises. As a result of the flood, the dealership became unusable for future automobile sales. The last day of automobile sales for the few undamaged vehicles at the dealership was April 15, 2014.

Section 13.3.3 of the City of Vestavia's Zoning Ordinance provides that "When such use is abandoned or discontinued for a period of (1) year, it shall not be reestablished unless authorized by the Council."

The purpose of this letter is to request an extension of the conditional use approval for a period of 18 months beginning on April 15, 2015. The Serra organization and the owners are in the process of designing improvements and modifications to the dealership building and site which will, to the maximum extent possible, prevent such flood damage in the future. They have

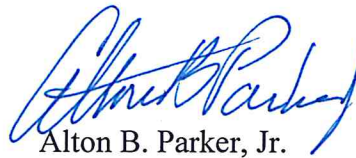
commissioned an architect to design modifications to the premises and a civil engineer to provide the “no rise study” required by Article 3 of the Vestavia Flood Damage Prevention Ordinance. Serra will comply with the City’s requirements once that study has been completed. It is anticipated that it will take a minimum of one year to finish that engineering and architectural work and to begin work on the renovations and modifications to the facility. Serra will comply with all of the regulations to begin construction and that construction should be completed within the eighteen month extension as requested.

The owners understand that this request to extend the conditional use will be put to the City Council in the form of a Resolution for approval. Thank you for your cooperation in this matter. If there is anything else that I or the owners need to do in order to pursue this request for extension, please let me know.

Sincerely,

SPAIN & GILLON, L.L.C.

By:

A handwritten signature in blue ink, appearing to read "Alton B. Parker, Jr.", is written over the printed name.

Alton B. Parker, Jr.

ABP, JR./mfe

cc: Anthony F. Serra and Mary Margaret Serra
Serra Automotive Group