

**Vestavia Hills  
City Council Agenda  
(AMENDED)  
June 22, 2015  
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Robin Morgan, Morgan Properties
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Financial Reports – Melvin Turner III, Finance Director
9. Approval of Minutes – May 23, 2015 (Work Session) and June 8, 2015 (Regular Meeting)

**Old Business**

10. Resolution Number 4723 – Annexation – 2308, 2312, and 2320 Rocky Ridge Road; Carl Schafer, Owner, Dan Sims, Taylor Burton, representing (*public hearing*)
11. Ordinance Number 2571 – Conditional Use approval for a home occupation at 4755 Liberty Park Lane; Timothy and Robin York, Owners (*public hearing*)
12. Ordinance Number 2572 – Conditional Use approval for an automobile dealership at 1475 Montgomery Highway; Michael Schefano, Hollywood Imports, owner (*public hearing*)

**New Business**

13. Resolution Number 4726 – A Resolution Declaring A Weed And Other Vegetation Nuisance Pursuant To Ordinance Number 2567 And Directing The City Manager To Abate Said Nuisance For The Property Located At 2130 Cedarbark Lane (*public hearing*)
14. Resolution Number 4729- A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With ALDOT For Jefferson County Project Number ACAA59595-ATRP(006); Resurfacing Various Eligible Roads/Streets In Jefferson County

**New Business (Requesting Unanimous Consent)**

15. Resolution Number 4728 – A Resolution Declaring An Emergency And Authorizing The City Manager To Execute And Deliver Agreements For Construction Cost, Professional Services And Utility Relocation For A Proposed Road Project Adjacent To The Vestavia Hills Cahaba Heights Elementary School (*public hearing*)

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

16. Resolution Number 4725 - A Resolution Authorizing The City Manager To Purchase Radio Equipment From E-911 Funds (*public hearing*)
17. Resolution Number 4727 – A Resolution Authorizing The City Manager To Purchase A Drying Cabinet and Workstation (*public hearing*)
18. Citizens Comments
19. Motion For Adjournment

**CITY OF VESTAVIA HILLS**  
**CITY COUNCIL**  
**WORK SESSION**  
**MINUTES**  
**MAY 23, 2015**

The City Council of Vestavia Hills met in a work session on this date at 7:00 AM following posting/publishing pursuant to Alabama law. The Mayor called the work session 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  
Rebecca Leavings City Clerk  
Jim St. John, Fire Chief  
Dan Rary, Police Chief

The Mayor called the work session to order and gave updates on the following:

- Legislation concerning warrant recall, the tag modification bill and the proposed entertainment districts.

Mr. Downes gave updates on all of the projects around the City, including:

- Additional parking at the Library;
- Patchwork developments;
- Altadena Valley Country Club due diligence; and
- Parks and Recreation programming study/survey.

There being no further business, the meeting adjourned at 9:15 AM.

Alberto C. Zaragoza, Jr.  
Mayor

Attested by:

Rebecca Leavings  
City Clerk



## CITY OF VESTAVIA HILLS

### CITY COUNCIL

### MINUTES

**JUNE 8, 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:**

Patrick H. Boone, City Attorney  
Jeff Downes, City Manager  
Rebecca Leavings, City Clerk  
Melvin Turner, Finance Director  
George Sawaya, Deputy Treasurer  
Danny Rary, Police Chief  
Jim St. John, Fire Chief  
Terry Ray, Asst. Fire Chief  
Brian Davis, Public Services Director  
Lori Beth Kearley, Asst. City Engineer  
*\*arrived at 6:35 PM*

Invocation was given by Dan Rary, Police Chief, followed by the Pledge of Allegiance.

### **ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES**

- Mr. Pierce welcomed Scott Perry and Michael Giardina, Vestavia Hills Chamber of Commerce, to the meeting.
- Mr. Henley welcomed Sheila Phillips, Superintendent of the Vestavia Hills Board of Education.
- The Mayor announced that Resolution Number 4718 has been withdrawn from the agenda and that two additional items were put onto the agenda under the "First Read."



Mr. Pierce gave a report from the Annexation Committee regarding this property. He stated that the location is along Acton Road and is located in both Jefferson and Shelby Counties. The Committee studied the request and found no adverse information.

Mr. Downes explained that this is a request to begin the 90-day annexation of this property. He indicated the request from the developers involves a residential subdivision, a small commercial area and the opportunity to donate some acreage to the City for use as parks and/or recreational fields. He explained the progress of the due diligence so far and indicated that both the City and the developer are in the midst of studying the property to see what the highest and best use will be and no plans are available yet concerning the property. He indicated that beginning tonight the annexation would allow for a Planning and Zoning hearing on August 13 where plans can be shown for a recommendation. If this remains on schedule, the zoning and annexation hearings should culminate on September 28, 2015 in anticipation of an October 1 closing.

Mr. Henley stated that if the zoning is not approved by the Council, the existing annexation contract is void.

Mr. Downes stated that is correct.

The Mayor reemphasized that plans are not finalized for any of the property yet. This is the beginning step of annexation and other public hearings will follow with the opportunity to view plans at that time.

Mr. Boone gave a detail of the annexation and rezoning procedure pursuant to Alabama law.

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

Roll call vote as follows:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Ammons – yes

Mayor Zaragoza – yes

motion carried.

**NEW BUSINESS**

**RESOLUTION NUMBER 4718**

**Resolution Number 4718 – Alcohol License – Turner Food Systems, LLC D/B/A Turner Food Systems, For A 150 – Special Events Retail License At 4700 Sicard Hollow Road; Donna And Trenton Turner, Executives**

This request was withdrawn by the applicant.

**RESOLUTION NUMBER 4719**

**Resolution Number 4719 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With ALDOT For Jefferson County Project Number STPBH-3715(242); Resurfacing Various Eligible Roads/Streets In Jefferson County**

**MOTION** Motion to approve Resolution Number 4719 was by Mr. Henley and second was by Mr. Ammons.

Mr. Downes stated that this is a maintenance agreement for an ALDOT project to resurface a portion of Columbiana Road from Gentilly Drive into Homewood to the bridge. He stated that there is no cost to the City, just the maintenance of the existing infrastructure.

Mr. Boone indicated he has reviewed the agreement and sees no problems with the approval.

Roll call vote as follows:

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

**RESOLUTION NUMBER 4720**

**Resolution Number 4720 – A Resolution Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property**

**MOTION** Motion to approve Resolution Number 4720 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes stated that this Resolution declares an older Crown Victoria and an old police speed trailer as surplus to allow for sale of said items.

Roll call vote as follows:

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

**RESOLUTION NUMBER 4724**

**Resolution Number 4724 – A Resolution Granting A Power Easement Adjacent To Vestavia Hills Elementary School-Cahaba Heights**

**MOTION** Motion to approve Resolution Number 4724 was by Mr. Henley and second was by Mr. Pierce.

Mr. Downes stated that this Resolution allows for relocation of some power poles in anticipation of the City building a road adjacent to the Vestavia Hills Elementary School - Cahaba Heights and some work the Board of Education will be doing adjacent to the New Merkle House.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mayor Zaragoza – yes

motion carried.

**NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)**

**UNANIMOUS CONSENT**

The Mayor opened the floor for unanimous consent for the immediate consideration and action on Ordinance Number 2570, Resolution Number 4721 and Resolution Number 4722.

**MOTION** Motion for Unanimous Consent for immediate consideration and action of Ordinance Number 2570, Resolution Number 4721 and Resolution Number 4722 was by Mr. Henley and second was by Mr. Ammons. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mayor Zaragoza – yes

motion carried.

**ORDINANCE NUMBER 2570**

**Ordinance Number 2570 - An Ordinance Finding And Determining That Real Property Being Vacant Property Situated At 2253 Great Rock Road, Is Not Needed For Public Or Municipal Purpose And To Authorize And Direct The City Manager To Execute And Deliver An Agreement For The Exclusive Listing To Sell Said Property (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2570 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes stated that this request will allow the City to sale some property located on Great Rock Road which was previously a residence that the City had to tear down due to an abatement order. This also allows him to list the property exclusively with a realtor in order to sell it.

The Mayor opened the floor for a public hearing.

David Harwell, 1803 Catala Road, asked about the proceeds from the sale of the property.

Mr. Downes explained that the proceeds would go toward already expended cost of razing the structure, legal fees involved and indicated any funding that might be left over would go into Capital Reserve.

There being no one to address the Council concerning this request, the Mayor closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mayor Zaragoza – yes

motion carried.

### **RESOLUTION NUMBER 4721**

**Resolution Number 4721 – A Resolution Authorizing The City Manager To Execute And Deliver First Amendment To Sales Contract For Property On Old Columbiana Road (*public hearing*)**

The Mayor asked that this item be tabled until after the executive session.

**MOTION** Motion to table Resolution Number 4721 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor called for the question. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mayor Zaragoza – yes

motion carried.

### **RESOLUTION NUMBER 4722**

**Resolution Number 4722 – A Resolution Authorizing The City Manager To Execute And Deliver A “Conditional Consent To Encroachment And Release Of Damages” With Jefferson County (*public hearing*)**

**MOTION** Motion to approve Resolution Number 4722 was by Mr. Henley and second was by Mr. Pierce.

Mr. Downes stated that this consent is required by Jefferson County Environmental Services in order to subdivide the City Hall/Vestavia Hills “Bill F. Towers” Fire Station No. 1 into separate lots. The fire station was apparently built close to a sewer pipe and the County is requiring this release in order to approve the map.

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

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mayor Zaragoza – yes

motion carried.

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

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council’s next regularly scheduled meeting on June 22, 2015 at 5 PM.

- Resolution Number 4723 – Annexation – 2308, 2312, and 2320 Rocky Ridge Road; Carl Schafer, Owner, Dan Sims, Taylor Burton, representing (*public hearing*)
- Ordinance Number 2571 – Conditional Use approval for a home occupation at 4755 Liberty Park Lane; Timothy and Robin York, Owners (*public hearing*)
- Ordinance Number 2572 – Conditional Use approval for an automobile dealership at 1475 Montgomery Highway; Michael Schefano, Hollywood Imports, owner (*public hearing*)

**CITIZENS COMMENTS**

None.

**EXECUTIVE SESSION**

The Mayor stated that the Council needed to move into executive session for an estimated 85 minutes for the sale/purchase of property and that Resolution Number 4721

would be considered immediately following the session. He opened the floor for a motion.

**MOTION** Motion to move into executive session for an estimated 85 minutes for the purchase/sale of real estate was by Mr. Pierce and second was by Mr. Henley. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Ammons – yes	Mayor Zaragoza – yes

motion carried.

The Council exited the Chamber at 6:30 PM and entered into executive session. Mr. Sharp arrived at 6:35 and joined the Council in Executive Session. At 6:45 PM, the Council adjourned from executive session and entered into the Chamber. The Mayor called the meeting back to order.

### **RESOLUTION NUMBER 4721**

**Resolution Number 4721 – A Resolution Authorizing The City Manager To Execute And Deliver First Amendment To Sales Contract For Property On Old Columbiana Road (public hearing)**

**MOTION** Motion to approve Resolution Number 4721 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes stated that this allows the City the option to continue a contract on some property located on Old Columbiana Road.

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

**MOTION** Motion to adjourn was by Mr. Henley and second was by Mr. Pierce. Meeting adjourned at 6:50 PM.

Alberto C. Zaragoza, Jr.  
Mayor



ATTESTED BY:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 4723**

**A RESOLUTION PROPOSING THE ANNEXATION  
OF CERTAIN TERRITORY TO THE CORPORATE  
LIMITS OF THE CITY OF VESTAVIA HILLS,  
ALABAMA.**

**WHEREAS**, there has been a petition filed with the City Clerk of the City of Vestavia Hills, Alabama, and herein presented to the City Council of the City of Vestavia Hills, Alabama, dated February 25, 2015, wherein all owners of certain property contiguous to the City Limits of the City of Vestavia Hills, Alabama, ask that their property be annexed to the City of Vestavia Hills, Alabama; and

**WHEREAS**, said Petition has been presented to the City Council of the City of Vestavia Hills, Alabama, on the 8th day of June, 2015; and

**WHEREAS**, it would be to the best interest of the City of Vestavia Hills, Alabama, and to the citizens thereof to consider annexation of said territory and bringing it within the corporate limits of this Municipality; and

**WHEREAS**, said petitioners must comply with Act #604, 1970 Alabama Legislature regarding Fire Districts (property owners are to be responsible for fire dues if they are within another Fire District at the time of the annexation petition).

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

1. That the said Petition shall be published one (1) time in *The Birmingham News*, a newspaper of general circulation in Vestavia Hills, Jefferson County, Alabama, on the 24th day of June, 2015.

2. That on the 28<sup>th</sup> day of September, 2015, in the Vestavia Hills Municipal Center, a public hearing will be held to determine the truths of the matter set forth in said

petition and to consider any protests or objections filed in writing with the City Clerk prior to such hearing, to determine whether it is in the public interest or not that said property be annexed to the City of Vestavia Hills, Alabama, and to consider adoption of an Ordinance annexing the territory described in said petition to this Municipality.

3. That this Resolution shall become known and referred to as Resolution Number 4723 by the City Council of the City of Vestavia Hills, Alabama, and as annexation of the following described property by the City Council of the City of Vestavia Hills, Alabama:

2308, 2312 & 2320 Rocky Ridge Road  
Wisteria II, LLC, Owner(s)

More particularly described as follows:

Parcel I. A parcel of land located in Jefferson County, Alabama part of the SE 1/4 of Section 6, Township 19 South, Range 2 West, said Jefferson County and being more particularly described as follows:

Begin at the SE corner of Lot 1-A, Block 8, of Hidden Valley 2nd Sector, as recorded in Map Book 63, Page 67, in the Office of the Judge of Probate of Jefferson County, Alabama; thence North along the East line of said Block 8, 661.40 feet; thence 92 degrees 28 minutes 02 seconds right, in an Easterly direction along the Southerly line of Block 2 in the Second Sector of Derby Downs East Sector, as recorded in Map Book 78, Page 42 in said Probate Office and the extension thereof, a distance of 658.67 feet; thence 87 degrees 34 minutes 09 seconds right in a Southerly direction, a distance of 125.02 feet; thence 81 degrees 51 minutes 09 seconds left, Southeasterly 235.87 feet to a point in the Northwesterly right of way line of Rocky Ridge Road; thence 94 degrees 41 minutes 06 seconds right, Southwesterly along said right of way line a distance of 524.24 feet to the intersection with the Northerly right of way line of Wisteria Drive; thence 79 degrees 50 minutes 18 seconds right, Westerly along said right of way line a distance of 775.56 feet to the Point of Beginning.

Parcel II. A parcel of land located in Jefferson County, Alabama and lying in the Northeast Quarter of the Southeast Quarter of Section 6, Township 19 South,

Range 2 West, said Jefferson County and being more particularly described as follows:

Beginning at a 3" capped pipe found marking the Southwest Corner of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of said Section 6; thence S 88°53'26" E for a distance of 267.95 feet to a 5/8" capped rebar set (SMW LS 19753); thence along the westerly right-of-way of Rocky Ridge Road with a curve to the left having an arc length of 33.41 feet, a radius of 985.31 feet, and a chord bearing and distance of S 12°30'03" W for 33.40 feet to a 5/8" capped rebar set (SMW LS 19753); thence S 11°31'47" W along said westerly right-of-way line for a distance of 117.67 feet to a capped iron pin found (CA-81-LS); thence leaving said westerly right-of-way line N 83°09'31" W for a distance of 235.97 feet to a 1/2" open top pipe found; thence N 01°18'45" W for a distance of 125.02 feet to the Point of Beginning. Said Described parcel of land contains 0.79 acres, more or less.

Parcel III. A parcel of land located in Jefferson County, Alabama and lying in the Northeast Quarter of the Southeast Quarter of Section 6, Township 19 South, Range 2 West, said Jefferson County and being more particularly described as follows:

Beginning at a 3" capped pipe found marking the Southwest Corner of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of said Section 6; thence N 01°23'01" W along the westerly line of said Quarter-Quarter-Quarter for a distance of 354.66 feet to a 5/8" capped rebar set (SMW LS 19753); thence leaving said westerly line and run along the southerly line of the lands of the City of Vestavia Hills as described and recorded in Deed Book 200509, Page 8409 the following courses and distances: S 48°10'26" E for a distance of 190.78 feet to a 5/8" capped rebar set (SMW LS 19753); along a curve to the left having an arc length of 45.90 feet, a radius of 28.00 feet, and a chord bearing and distance of N 84°52'00" E for 40.93 feet to a 5/8" capped rebar set (SMW LS 19753); N 37°54'26" E for a distance of 150.60 feet to a 5/8" capped rebar set (SMW LS 19753); along a curve to the right having an arc length of 266.97 feet, a radius of 260.70 feet, and a chord bearing and distance of N 67°14'39" E for 255.46 feet to a 5/8" capped rebar set (SMW LS 19753) on the northwesterly right-of-way line of Rocky Ridge Road; thence leaving said southerly line along said northwesterly right-of-way line with a curve to the left having an arc length of 142.77 feet, a radius of 995.31 feet, and a chord bearing and distance of S 39°15'06" W for 142.65 feet to a 5/8" capped rebar set (SMW LS 19753); thence along said northwesterly right-of-way line S 54°51'28" E for a distance of 10.00 feet to a 5/8"

capped rebar set (SMW LS 19753); thence along said northwesterly right-of-way line with a curve to the left having an arc length of 372.66 feet, a radius of 985.31 feet, and a chord bearing and distance of S 24°18'26" W for 370.44 feet to a 5/8" capped rebar set (SMW LS 19753); thence leaving said northwesterly right-of-way line N 88°53'26" W for a distance of 267.95 feet to the Point of Beginning. Said described parcel of land contains 2.62 acres, more or less.

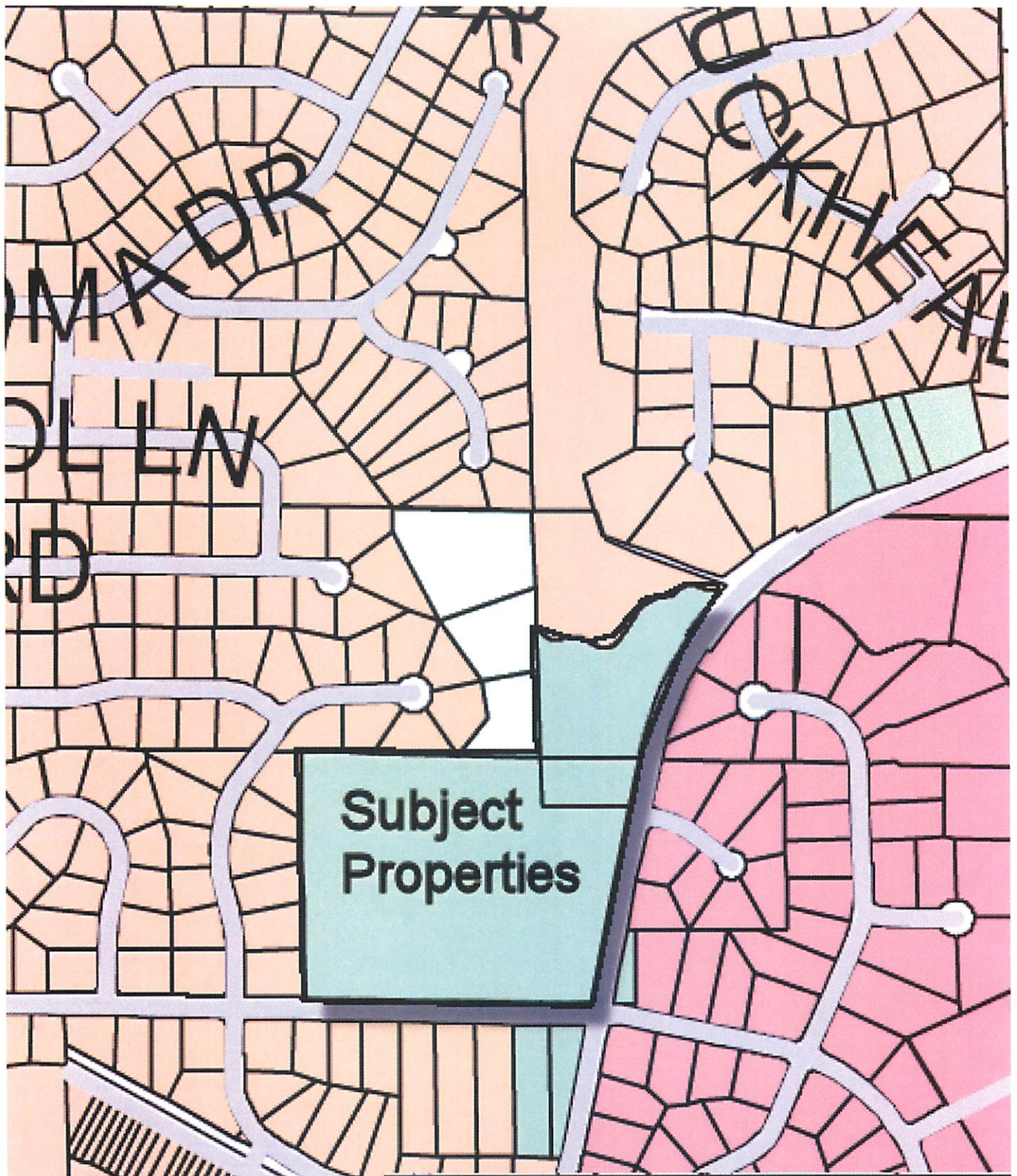
**APPROVED and ADOPTED** this the 22<sup>nd</sup> day of June, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

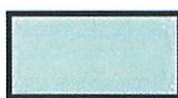
ATTESTED BY:

Rebecca Leavings  
City Clerk





**Vestavia Hills**



**Jefferson County**



**Mountain Brook**



**Jeffco & Bham**



Annexation Committee Petition Review

Property: 2308, 2312, 2320 Rocky Ridge Road

Owners: Carl Shaefer, Jr; Dan Sims representing

Date: 3-12-15

1. The property in question is contiguous to the city limits.  
Yes  No  Comments: \_\_\_\_\_  
\_\_\_\_\_
2. The land use of the petitioned property is compatible with land use in the area.  
Yes  No  Comments: \_\_\_\_\_  
\_\_\_\_\_
3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.  
Yes  No  Comments \_\_\_\_\_  
\_\_\_\_\_
4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.  
Yes  No  Comments \_\_\_\_\_  
\_\_\_\_\_
5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of \_\_\_\_\_ . Meets city criteria: Yes  No   
Comment: N/A
6. This street has fewer than 100% of the individual properties within the limits of the city  
Yes  No  undeveloped  
Number of total homes \_\_\_\_\_ Number in city N/A
7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.  
Agreed to by petitioner: Yes  No  Comment \_\_\_\_\_  
\_\_\_\_\_

Property: 2308, 2312, 2320 Rocky Ridge Rd


8. A non-refundable administrative fee of \$100 has been paid to the city. Furthermore, voluntary contributions, including an application fee, of \$ \_\_\_\_\_ will be paid to offset costs associated with the annexation. Yes \_\_\_\_\_ No \_\_\_\_\_ Comment \_\_\_\_\_

9. Property is free and clear of hazardous waste, debris and materials. Yes  No \_\_\_\_\_ Comment \_\_\_\_\_

10. Are there any concerns from city departments? Yes \_\_\_\_\_ No  Comments: \_\_\_\_\_

11. Information on children: Number in family \_\_\_\_\_; Plan to enroll in VH schools Yes \_\_\_\_\_ No \_\_\_\_\_ Comments: NA

Other Comments: Underdeveloped Land  
preliminary LGOT meets First  
stage approval.

  
George Pierce  
Chairman



**STATE OF ALABAMA**

**JEFFERSON COUNTY**

**PETITION FOR ANNEXATION TO THE  
CITY OF VESTAVIA HILLS, ALABAMA**

**Date of Petition:**

**February 25, 2015**

**To the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama:**

We, the undersigned owners of the properties set out in red outline in Exhibit "A" attached hereto, which properties are contiguous to the City limits of the City of Vestavia Hills, Alabama, under the authority of Act No. 32 of the Special Session of the Alabama Legislature of 1964, do hereby petition the City of Vestavia Hills, Alabama, that the properties set out in red outline in Exhibit "A" attached, situated in Jefferson County, Alabama, be annexed to the City of Vestavia Hills, Alabama. The metes and bounds description of the boundary of the property of the undersigned proposed to be annexed is also set out on said Exhibit "A" and a map showing in red the property proposed for annexation by this petition is also attached and made a part hereof.

The undersigned petitioners do further petition that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, set a date for the hearing of this petition and any objections in writing to the petition or protest, on a date certain and that no less than ninety (90) days before said date certain for said hearing on this petition, that a notice of said hearing along with this petition be published in a newspaper of general circulation in Jefferson County, Alabama.

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964. This petition for annexation to the City of Vestavia Hills, Alabama is made contingent upon the approval of residential zoning for the property, as requested by the applicant and the applicant's designated representatives, by Vestavia Hills.

EXHIBIT "A"

**LOT: (METES and BOUNDS)**

**BLOCK:** \_\_\_\_\_

**SURVEY:** \_\_\_\_\_

RECORDED IN MAP BOOK, \_\_\_\_\_ PAGE \_\_\_\_\_

PROBATE OFFICE OF  
JEFFERSON COUNTY,  
ALABAMA

COUNTY ZONING: Agricultural  
COMPATIBLE CITY ZONING: Agricultural  
LEGAL DESCRIPTION (METES AND BOUNDS):

SEE ATTACHED DESCRIPTION FOR PARCELS:

40-00-06-4-002-034.000

40-00-06-4-002-035.000

40-00-06-4-002-036.000

TOTAL OF 15.8 ACRES +/-

**ADDENDUM "A"**  
**LEGAL DESCRIPTIONS, METES & BOUNDS 15.8 acres +/-**  
**Petition for Annexation to the City of Vestavia Hills, Alabama**  
**Carl A. Schaefer, Jr.**

**Parcel 1**

**Part of the SE1/4 of Section 6, Township 19 South, Range 2 West, more particularly described as follows:**

**Begin at the SE corner of Lot 1-A, Block 8, of Hidden Valley 2nd Sector, as recorded in Map Book 63, Page 67, in the Office of the Judge of Probate of Jefferson County, Alabama; thence North along the East line of said Block 8, 661.40 feet; thence 92 degrees 28 minutes 02 seconds right, in an Easterly direction along the Southerly line of Block 2 in the Second Sector of Derby Downs East Sector, as recorded in Map Book 78, Page 42 in said Probate Office and the extension thereof, a distance of 658.67 feet; thence 87 degrees 34 minutes 09 seconds right in a Southerly direction, a distance of 125.02 feet; thence 81 degrees 51 minutes 09 seconds left, Southeasterly 235.87 feet to a point in the Northwesterly right of way line of Rocky Ridge Road; thence 94 degrees 41 minutes 06 seconds right, Southwesterly along said right of way line a distance of 524.24 feet to the intersection with the Northerly right of way line of Wisteria Drive; thence 79 degrees 50 minutes 16 seconds right, Westerly along said right of way line a distance of 775.56 feet to the Point of Beginning.**

**Parcel 2**

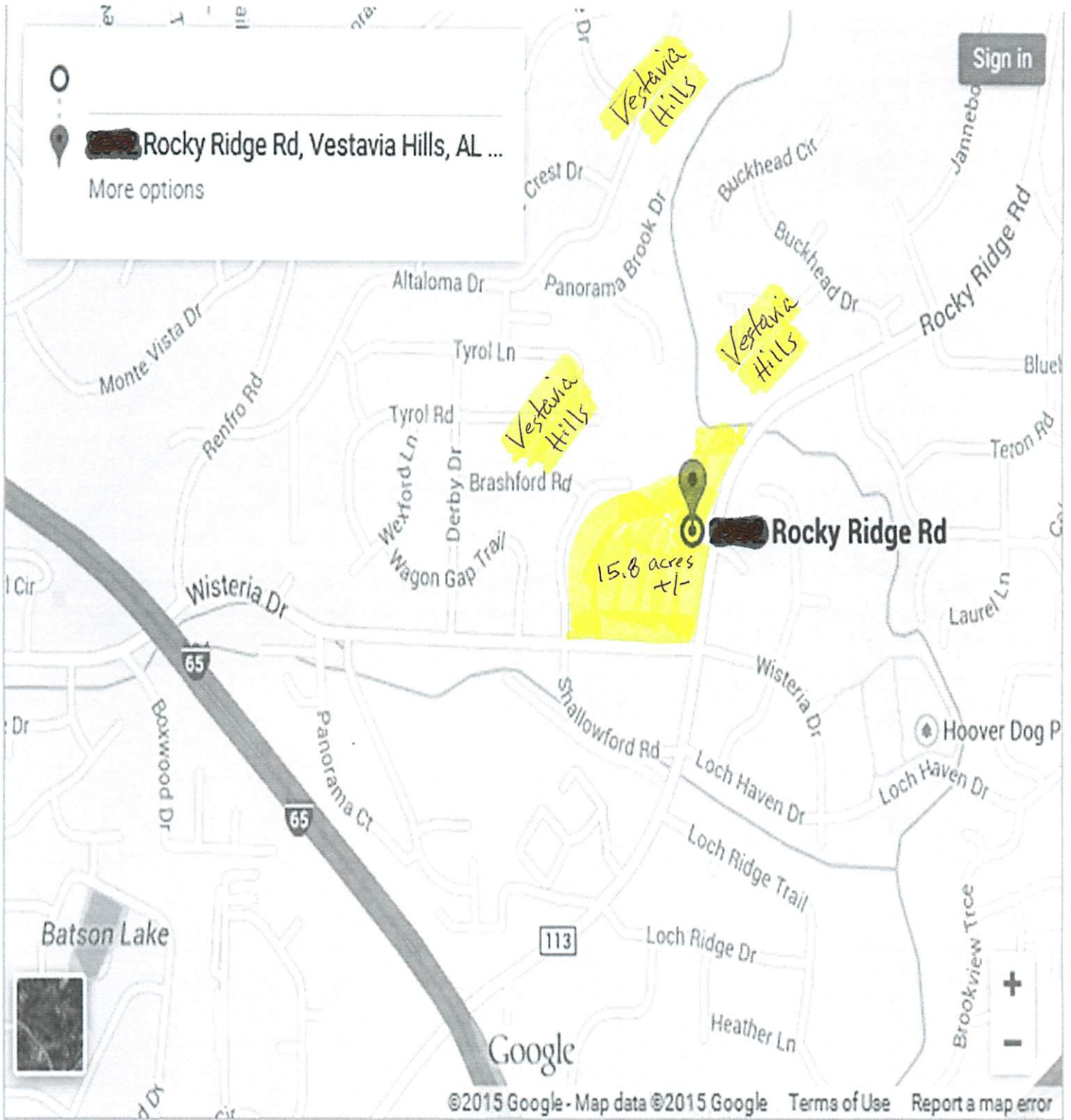
**Begin at the NW corner of the S 1/2 of the NE 1/4 of the SE 1/4 of Section 6, Township 19, Range 2 West, Jefferson County, Alabama; thence run East 302 feet, more or less, to center of paved highway; thence run Southwest along center of paved highway 150 feet; thence run West 268 feet, more or less, to the West line of said 1/4 1/4 Section; thence run North 125 feet to the point of beginning; being a part of the NE 1/4 of SE 1/4 of Section 6, Township 19 South, Range 2 West, Jefferson County, Alabama.**

**Less and except any portion of subject property lying within a road right of way.**

**Parcel 3**

**All that part of the North 1/2 of the Northwest 1/4 of the Southeast 1/4 of Section 6, Township 19 South, Range 2 West, situated in Jefferson County, Alabama, that lies North and West of Patton Chapel-Rocky Ridge Road and South of the center line of a creek.**

**Less and except any portion of subject property lying within a road right of way.**



IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, or caused these presents to be executed by their duly authorized representatives, with full authority.

<u>SIGNATURE(S)</u>	<u>DESCRIPTION OF PROPERTY</u>
<u>Leon A. DeLong</u>	Lot _____ Block _____ Survey <u>APPENDUM "A" SEE ATTACHED - METES + BOUNDS</u>
_____	Lot _____ Block _____ Survey _____
_____	Lot _____ Block _____ Survey _____

(Use reverse side hereof for additional signatures and property descriptions, if needed).

STATE OF ALABAMA

Shelby COUNTY

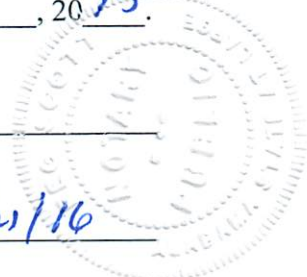
Carl A. Schaefer Jr being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

Leon A. DeLong  
Signature of Certifier

Subscribed and sworn before me this the 25<sup>th</sup> day of February, 2015.

[Signature]  
Notary Public

My commission expires: 12/21/16



**ADDENDUM "A"**  
**LEGAL DESCRIPTIONS, METES & BOUNDS 15.8 acres +/-**  
**Petition for Annexation to the City of Vestavia Hills, Alabama**  
**Carl A. Schaefer, Jr.**

**Parcel 1**

**Part of the SE1/4 of Section 6, Township 19 South, Range 2 West, more particularly described as follows:**

**Begin at the SE corner of Lot 1-A, Block 8, of Hidden Valley 2nd Sector, as recorded in Map Book 63, Page 67, in the Office of the Judge of Probate of Jefferson County, Alabama; thence North along the East line of said Block 8, 661.40 feet; thence 92 degrees 28 minutes 02 seconds right, in an Easterly direction along the Southerly line of Block 2 in the Second Sector of Derby Downs East Sector, as recorded in Map Book 78, Page 42 in said Probate Office and the extension thereof, a distance of 658.67 feet; thence 87 degrees 34 minutes 09 seconds right in a Southerly direction, a distance of 125.02 feet; thence 81 degrees 51 minutes 09 seconds left, Southeasterly 235.87 feet to a point in the Northwesterly right of way line of Rocky Ridge Road; thence 94 degrees 41 minutes 06 seconds right, Southwesterly along said right of way line a distance of 524.24 feet to the intersection with the Northerly right of way line of Wisteria Drive; thence 79 degrees 50 minutes 16 seconds right, Westerly along said right of way line a distance of 775.56 feet to the Point of Beginning.**

**Parcel 2**

**Begin at the NW corner of the S 1/2 of the NE 1/4 of the SE 1/4 of Section 6, Township 19, Range 2 West, Jefferson County, Alabama; thence run East 302 feet, more or less, to center of paved highway; thence run Southwest along center of paved highway 150 feet; thence run West 268 feet, more or less, to the West line of said 1/4 1/4 Section; thence run North 125 feet to the point of beginning; being a part of the NE 1/4 of SE 1/4 of Section 6, Township 19 South, Range 2 West, Jefferson County, Alabama.**

**Less and except any portion of subject property lying within a road right of way.**

**Parcel 3**

**All that part of the North 1/2 of the Northwest 1/4 of the Southeast 1/4 of Section 6, Township 19 South, Range 2 West, situated in Jefferson County, Alabama, that lies North and West of Patton Chapel-Rocky Ridge Road and South of the center line of a creek.**

**Less and except any portion of subject property lying within a road right of way.**

**EXHIBIT "B"**

**VESTAVIA HILLS BOARD OF EDUCATION**  
**1204 Montgomery Highway**  
**Vestavia Hills AL 35216**

*(To be completed by the City)*

Date of Annexation Petition \_\_\_\_\_ Action Taken: Grant \_\_\_\_\_  
Deny \_\_\_\_\_  
Resolution: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
Overnight Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_  
90 Day Final Ordinance: Date: \_\_\_\_\_ Number: \_\_\_\_\_

*(To be completed by Homeowner)*

Name(s) of Homeowner(s): Carl A. Schaefer, Jr.  
Address: 345 Industrial Lane  
City: Birmingham State: Alabama Zip: 35211

**Information on Children:**

**Plan to Enroll In  
Vestavia Hills School?**

	Name(s)	Age	School Grade	Yes	No
1.	NONE(This property is currently 15.8 acres +/- of vacant land)				
2.					
3.					
4.					
5.					
6.					



Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes". \_\_\_\_\_



HIDDEN VALLEY  
2ND SECTOR  
M.B. 65, PG. 83

DERBY DOWNS-EAST SECTOR  
2ND SECTOR  
M.B. 78, PG. 42



-  **ZONE 2** - ALL EROSION WILL BE MADE TO SAVE ALL TREES IN EXISTING LANDSCAPE. ALL TREES SHALL BE MAINTAINED AND COVERED OR SCREENED PORCHES, PATIOS, DECKS, PLAYSETS ETC. IF TREES ARE REMOVED IN THIS ZONE, A MINIMUM OF ONE 2" CALIPER TREE WILL BE ADDED PER YARD.
-  **ZONE 3** - GRADED CUT OR FILLED SLOPE. SLOPE TO BE VEGETATED WITH PINES AND/OR GROUNDCOVER/ORNAMENTAL PLANTINGS.
-  **ZONE 4** - ORNAMENTAL ZONE CONSISTING OF LAWN, GROUNDCOVER, MULCH OR FOUNDATION PLANTING. WALKS MAY OCCUR THROUGH THIS ZONE. PATIOS, DECKS, PLAYSETS, DECKS AND SCREEN PORCHES MAY OCCUR WITHIN REAR YARD IN THIS ZONE.
-  STREET TREES TO BE LOCATED OUTSIDE OF RIGHT OF WAY. SPACING, TYPE OF TREE, AND NUMBER OF TREES ON EACH LOT MAY VARY, BUT WILL AVERAGE ONE TREE PER LOT AT 2'-2 1/2" CALIPER MINIMUM.

FRONT SETBACKS - 15.0 FT. FROM BACK OF CURB  
SIDE SETBACKS - 0.0 FT. BETWEEN HOUSES  
REAR SETBACKS - VARIES (SEE TREE CONSERVATION PLAN)  
**ABBREVIATIONS:**  
B.O.C. - (BACK OF CURB)  
R.O.W. - (RIGHT OF WAY)  
TYP. - (TYPICAL)



**ORDINANCE NUMBER 2571**

**AN ORDINANCE GRANTING A CONDITIONAL USE APPROVAL FOR A HOME OCCUPATION**

**WHEREAS**, on October 16, 2000 the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 1838 creating and establishing a P.U.D. (planned unit development) classification; and

**WHEREAS**, on February 19, 2001 the City Council of the City of Vestavia Hills adopted and approved Ordinance Number 1864 to rezone 3,350 +/- acres from multiple Jefferson County and Vestavia Hills zoning classifications to Vestavia Hills P.U.D.; and

**WHEREAS**, Section 709.5.A.1.b of Ordinance Number 1838 classifies a “home occupation” permitted only as a “Conditional Use” and

**WHEREAS**, Timothy and Robin York have submitted application for conditional use approval for a home occupation to be operated in the residence located at 4755 Liberty Park Lane, Vestavia Hills, Alabama located in the Liberty Park P.U.D.; and

**WHEREAS**, Mr. and Ms. York have indicated in their application for conditional use approval that they will operate a consulting business out of their home pursuant to the specifications of a home occupation; and

**WHEREAS**, a copy of said application dated March 27, 2015 is attached and hereby incorporated into this Ordinance Number 2571.

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

1. Conditional Use Approval is hereby approved for Timothy and Robin York for a home occupation as described in the above-referenced application for their residence located at 4755 Liberty Park Lane, Vestavia Hills, Alabama located in Liberty Park P.U.D. subject to the provisions in Article 9 of the Vestavia Hills Zoning Code outlined as follows:
  - (1) “Home occupation is defined as any use customarily conducted entirely within a dwelling and carried on solely by the inhabitant thereof, and which use is clearly incidental, accessory, subordinate and secondary to the use of the dwelling for dwelling purposes, and does not change the

character of the dwelling itself or any part of parcel of property in the neighborhood surrounding said dwelling.

- (2) Home occupations shall be conducted only in the main dwelling building on the lot. No more than twenty-five percent (25%) of the said dwelling may be used for a home occupation.
  - (3) There shall be no public display of goods and absolutely no commodities sold on the premises; no customer, client or employee traffic to, at or near the residence that is generated, directly or indirectly, by said home occupation. There shall be no pickup or deliveries to the residences that are related to said home occupation whether directly or indirectly.
  - (4) No sign may be attached to the dwelling or any part of the real estate advertising any home occupation.
  - (5) No home occupation or profession shall be permitted if such occupation creates noise, odors, vibrations or traffic which interferes with the residential qualities of the neighborhood insofar as health, safety, morals, convenience and general welfare are concerned.
  - (6) In order to be a permitted home occupation or profession, the use must be one which is habitually, customarily and commonly established as a reasonable incidental, accessory, subordinate and secondary use.
  - (7) Operation of any and all other business of any nature in residential zones is expressly prohibited; and
  - (8) The activity carried on as home occupation shall be limited to the hours between 7:00 AM and 10:00 PM.”
2. Conditional Use Approval is further conditioned upon and subject to all applicable private and restrictive covenants attached to the property located at 4755 Liberty Park Lane, Vestavia Hills, Alabama located in the Liberty Park P.U.D.
  3. A City of Vestavia Hills Business License shall be issued upon application and payment by Mr. and Mrs. York working to the rules and regulations outlined in the Vestavia Hills Business License Code and shall be renewed

each year that the home occupation is operated from the location at 4755 Liberty Park Lane, Vestavia Hills, Alabama located in the Liberty Park P.U.D.

4. At any time should Mr. and Ms. York vacate the premises located at 4755 Liberty Park Lane, Vestavia Hills, Alabama, discontinue or relocate her business, this conditional use approval shall be nullified and said Ordinance Number 2571 shall be automatically repealed.

**ADOPTED and APPROVED** this the 22<sup>nd</sup> day of June, 2015.

Alberto C. Zaragoza  
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 # 2571 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 22<sup>nd</sup> day of June, 2015 as same appears in the official records of said City.

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

Rebecca Leavings  
City Clerk

## 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: Timothy + Robin York

ADDRESS: 4755 Liberty Park Lane  
Vestavia Hills, AL 35242

MAILING ADDRESS (if different from above) \_\_\_\_\_

PHONE NUMBER: Home 205-202-6607 Office \_\_\_\_\_

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: n/a

2015 MAR 27 P 12:03

**III. ACTION REQUESTED**

Request that the above described property be approved conditional use approval pursuant to Section \_\_\_\_\_ of the Vestavia Hills Zoning Code.

Current Zoning of Property: Residential

Requested Conditional use For the intended purpose of: \* See attached

description of request \*

(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.)**

Single family residence located on lot 878 -  
Heritage Hills

Property size: 16,106.59 feet ~~X~~            feet. Acres: .37

**V. INFORMATION ATTACHED:**

Attached Checklist complete with all required information.

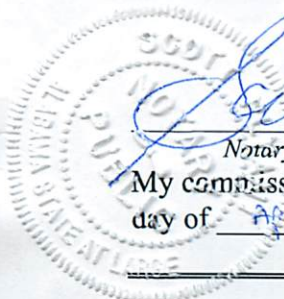
Application fees submitted.

**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.

Robin York 3-26-15  
Owner Signature/Date

\_\_\_\_\_  
Representing Agent (if any)/date

Given under my hand and seal  
this 26 day of March, 2015.



[Signature]  
Notary Public My Commission Expires 4/17/2017  
My commission expires 17  
day of Apr-1, 2017.

**P0515-21//27-9-2-14**  
**4755 Liberty Park Lane**  
Cond. Use for Home Office  
Robin York

March 2015

To Whom It May Concern:

Per the attached conditional use application, I am seeking a business license to conduct financial/account management duties for Crossbow Education Corp. Crossbow Education is a UK based company providing educational products, primarily reading rulers and colored overlays, for special needs children. The scope of the work will be handled online, fax or telephone. I will be working from our existing personal home office.

There will be no clients and/or customers coming to my house causing increased traffic on the street. I am in the process of securing a post office box for Crossbow correspondence. Any needed inventory will be housed off site in a storage facility. If deliveries are required, they will be directed to the storage facility address.

There will be no signage or any type of advertising displayed on the property. No one will have an idea that I am working from home.

Thank you for your time and consideration.

A handwritten signature in black ink that reads "Robin York". The signature is written in a cursive style with a large, stylized 'R' and 'Y'.

Robin York



March 10, 2015

Rebecca Leavings, City Clerk  
City of Vestavia Hills  
Vestavia Hills City Hall  
Vestavia Hills, Alabama 35216

Re: Robin York  
4755 Liberty Park Lane  
Vestavia Hills, AL 35242

Dear Ms. Leavings:

We are writing in connection with the above matter. We understand Mrs. Robin York is in the process of applying for a conditional use within the PR-1 (Planned Single-Family Residential) classification of the Liberty Park PUD to allow her to conduct a home occupation as a consultant in her residence.

We have no objection to the granting of the conditional use to allow a home occupation in this case, provided such use is made subject to the following restrictions:

1. There shall be no customer, client or employee traffic to, at or near the residence that is generated, directly or indirectly, by the home occupation;
2. There shall be no pick ups or deliveries to the residence that are related, directly or indirectly, to the home occupation, including without limitation, pick ups and deliveries by overnight courier services and pick ups and deliveries of inventory, samples or other goods and services related, directly or indirectly, to the home occupation;
3. There shall be no signage on the property related, directly or indirectly, to the home occupation; and
4. In all respects, there shall be no means, visual or otherwise, by which a casual observer would become aware that the residence is being used for any purpose other than strictly residential.

The foregoing restrictions are in keeping with the intent and spirit of the Liberty Park PUD and with the overall plan of development for Liberty Park as addressed in the Covenants, Conditions and Restrictions that are applicable to the subject property.

Rebecca Leavings  
March 10, 2015  
Page 2

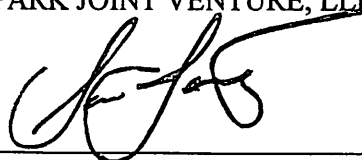
Therefore, we respectfully request that if the Planning and Zoning Commission votes to approve the conditional use applied for in the above referenced matter, such approval will be made subject to the above and foregoing restrictions.

If you have questions or comments regarding this matter, or if we can assist in any other way, please call me at 281-3542.

Very truly yours,

LIBERTY PARK JOINT VENTURE, LLP

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



Samuel G. Lowrey, III  
Project Manager  
and Authorized Representative

cc: Kathryn Carver, Esq.



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

Date: May 4, 2015

- **CASE:** P-0515-21
- **REQUESTED ACTION:** Conditional Use Approval for a home based business
- **ADDRESS/LOCATION:** 4755 Liberty Park Lane, Lot 878 Heritage Hills, Phase 1.
- **APPLICANT/OWNER:** Timothy and Robin York, 4755 Liberty Park Lane, Vestavia Hills, AL 35242
- **GENERAL DISCUSSION:** The applicant wishes to conduct a home based consulting business in Liberty Park. As required by the Liberty Park PUD a conditional use permit is required for a home based business. Applicant indicates that only paperwork be done at the residence. Liberty Park has submitted four requested conditions:
  1. There shall be no customers, client or employee traffic to, at or near the residence that is generated, directly or indirectly, by the home occupation;
  2. There shall be no pick-ups or deliveries to the residence that are related, directly or indirectly, to the home occupation, including without limitation, pick-ups and deliveries by overnight courier services and pick-ups and deliveries of inventory, samples or other goods and services related, directly or indirectly, to the home occupation;
  3. There shall be no signage on the property related, directly or indirectly, to the home occupation; and
  4. In all respects, there shall be no means, visual or otherwise, by which a casual observer would become aware that the residence is being used for any purpose other than strictly residential.

The property is zoned PR-1.

- **LIBERTY PARK MASTER PLAN:** This request is consistent with the procedures of the Liberty Park PUD.
- **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:** I recommend the Commission recommend approval with the conditions requested by Liberty Park.

2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
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. Burrell made a motion to recommend approval of Conditional Use Approval for a home office at 4755 Liberty Park Lane. with the following conditions:

1. There shall be no customers, client or employee traffic to, at or near the residence that is generated, directly or indirectly, by the home occupation;
2. There shall be no pick-ups or deliveries to the residence that are related, directly or indirectly, to the home occupation, including without limitation, pick-ups and deliveries by overnight courier services and pick-ups and deliveries of inventory, samples or other goods and services related, directly or indirectly, to the home occupation;
3. There shall be no signage on the property related, directly or indirectly, to the home occupation; and
4. In all respects, there shall be no means, visual or otherwise, by which a casual observer would become aware that the residence is being used for any purpose other than strictly residential.

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

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

**ORDINANCE NUMBER 2572**

**AN ORDINANCE GRANTING CONDITIONAL USE APPROVAL  
FOR AUTOMOTIVE SALES, FOR 1475 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**, Michael Schefano, Hollywood Imports is the owner of the property located at 1475 Montgomery Highway zoned Vestavia Hills B-3 (business district); and

**WHEREAS**, Michael Schefano, Hollywood Imports has presented an application for Conditional Use Approval for the purpose of automotive sales for the property located at 1475 Montgomery Highway pursuant to Table 6 of the Vestavia Hills Zoning Code; and

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

1. Conditional Use approval is hereby granted for automotive sales for property located at 1475 Montgomery Highway; and
2. Said conditional use shall continue in perpetuity pursuant to the Zoning Code until such time as use ceases to exist on said property for a period of one year; and
3. This Ordinance Number 2572 shall become effective immediately upon adoption, approval and publishing/posting pursuant to Alabama law; and

**DONE, ORDERED, ADOPTED and APPROVED** this the 22<sup>nd</sup> day of June, 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 # 2572 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 22<sup>nd</sup> day of June, 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

## 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: Michael Schefano

ADDRESS: 1472 Highway 31  
Vestavia Hills, AL 35216

MAILING ADDRESS *(if different from above)* \_\_\_\_\_

PHONE NUMBER: Home 205-281-7533 Office 205-979-5120

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: Parrish Holley  
205-249-6917

2015 APR - 8 P 3:10

**III. ACTION REQUESTED**

Request that the above described property be approved conditional use approval pursuant to Section 6.5.1 of the Vestavia Hills Zoning Code.

Current Zoning of Property: B-3

Requested Conditional use For the intended purpose of: Retain B-3 Zoning. Allow property to be used as an automotive dealership with vehicle showroom

*(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.)**

1475 Montgomery Highway Lot 3, Luncefords Addition to Vestavia (MB 219/PG 66);

Vestavia Hills, AL 35216

Property size: Irregular feet X \_\_\_\_\_ feet. Acres: 0.54

**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.

[Signature] 4-8-15  
Owner Signature/Date

[Signature] 4-8-15  
Representing Agent (if any)/date

Given under my hand and seal  
this 8<sup>th</sup> day of April, 2015.

[Signature]  
Notary Public  
My commission expires \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.







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

Date: May 4, 2015

- **CASE:** P-0515-23
- **REQUESTED ACTION:** Request of Conditional Use Approval for a vehicle dealership
- **ADDRESS/LOCATION:** 1475 Montgomery Highway, Vestavia Hills, Alabama
- **APPLICANT/OWNER:** Michael Schefano, Hollywood Imports
- **REPRESENTING AGENT:** Michael Schefano, Hollywood Imports
- **GENERAL DISCUSSION:** Property is located on Montgomery Highway adjacent to NAPA Auto Parts and Captain D's. Property has secured storage for vehicles in the rear of a small office and narrows to the front. Vehicles are parked so as to allow ingress/egress of a small amount of traffic. Customers are not shown vehicles on said lot, vehicles are taken to primary lot for viewing and/or financing. Planned use for the immediate future is to only store the surplus vehicle inventory on the lot, however, Hollywood Imports is in flooding area and this property would be ideal to move temporary operations to if flooding should occur of the dealership continues to grow.
- **CAHABA HEIGHTS COMMUNITY PLAN:** This property is located in Figure 18 of the Comprehensive Master Plan in an area designated as Commercial Core. This request is consistent with the comprehensive plan.
- **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 classification with the conditional use.

**City Planner Recommendation:** No Recommendation.
  2. **City Engineer Review:** I have reviewed the application find no problems.



3. **City Fire Marshal Review:** I have reviewed the application and found no problems as proposed.
4. **Building Safety Review:** I have reviewed the application and found no problems as proposed.

**MOTION** Mr. Visintainer made a motion to recommend approval of Conditional Use Approval Operation Of A Vehicle Dealership For The Property Located At 1475 Montgomery Highway with the following conditions:

1. The owner must receive a certificate of occupancy from the Building Safety Department;
2. Business must adhere to all ADA and building requirements; and
3. Business must obtain permits for sign and adhere to the sign ordinance.

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

Mr. Brooks – yes  
Mr. House – yes  
Mr. Visintainer – yes  
Mr. Sharp – yes  
Motion carried.

Mr. Wolfe – yes  
Mr. Burrell – yes  
Mr. Goodwin – yes  
Mr. Larson – yes



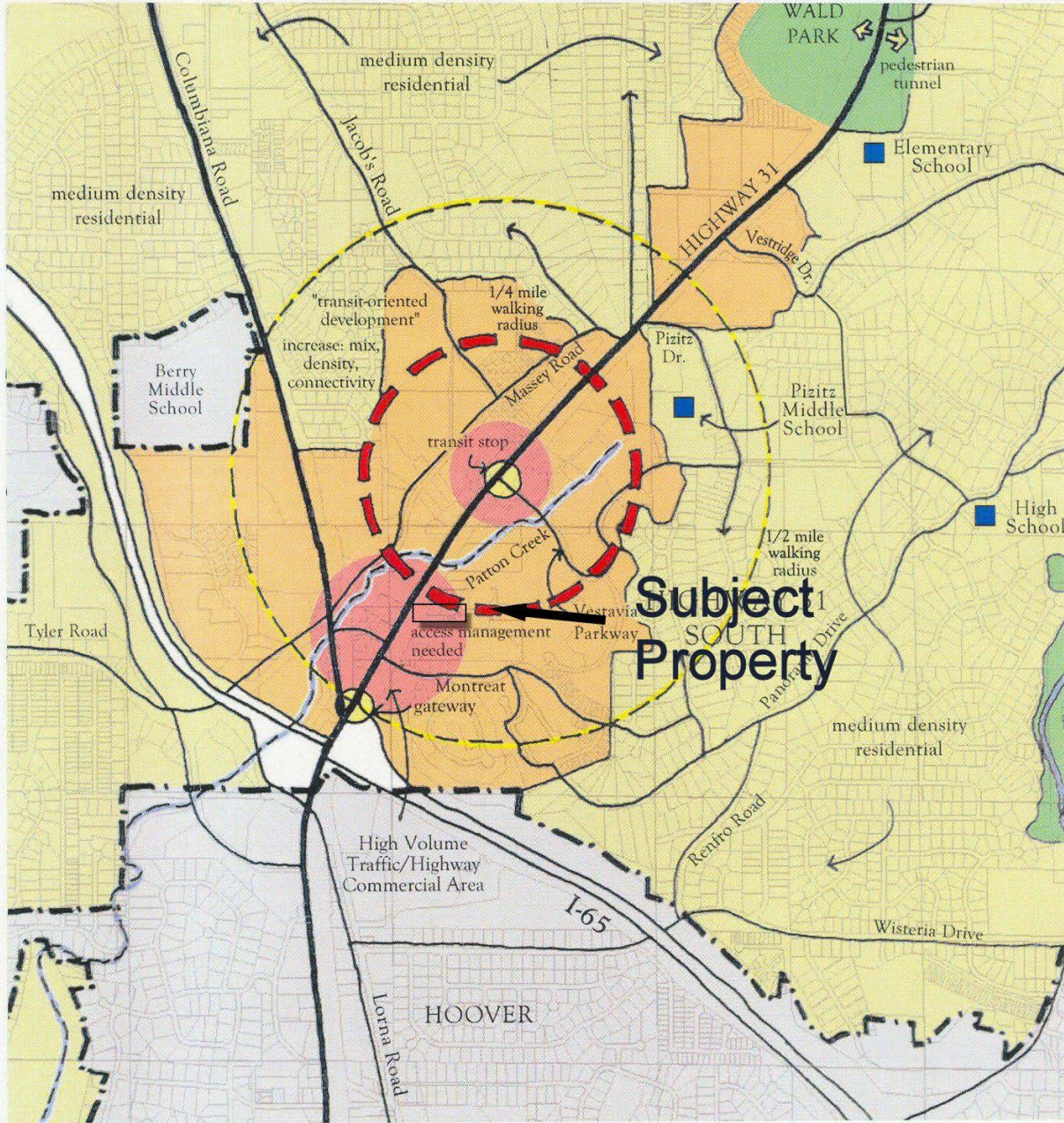


Figure 18: Highway 31 South  
Land Use Analysis

- Neighborhood - primarily low / medium density single-family residential areas with higher densities near village center(s). Other uses may include schools, places of worship, recreational areas, and open space.
- Village Center - mixed use centers with highest densities in core areas. Mix of uses should include retail and service businesses, professional offices, high density residential areas, institutions, recreation areas, and public spaces.
- Commercial Core - primarily high density, retail and service business areas with professional offices and multi-family residences on upper floors or on periphery. Other uses may include institutions and public space.
- Gateways and Nodes - Gateways are entryways into the community or village enhanced with consistent signage, landscaping, and other elements. Nodes are sites, such as transit stops, where public spaces, signage, and other public design elements should be considered.

- Professional Offices - primarily professional office uses. Density should vary according to surroundings. Other uses may include retail and services (supporting offices and employees), places of worship, public spaces, and open space.
- Recreation and Open Space - public and private recreation facilities and preserved natural spaces. Recreation facilities may be active, passive or combined. Open spaces are areas preserved in a natural state and may include passive recreational uses.
- Trailheads - Trailheads are public sites along a trail, where bike racks, seating, parking, and public amenities are provided for trail users.
- Schools - School facilities administered by the Vestavia Hills School System.





**RESOLUTION NUMBER 4726**

**A RESOLUTION DECLARING A WEED AND  
OTHER VEGETATION NUISANCE PURSUANT TO  
ORDINANCE NUMBER 2567 AND DIRECTING THE  
CITY MANAGER TO ABATE SAID NUISANCE**

**WHEREAS**, ON May 11, 2015, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 2567 to establish a procedure for the abatement of grass and weeds and for the prosecution and abatement of grass and weed violations; and

**WHEREAS**, the City's Compliance Officer has made a "First Demand" on the property located at 2130 Cedarbark Lane; a copy of which is marked as "Exhibit A," attached to and incorporated into this Resolution Number 4726 as if written fully therein; and

**WHEREAS**, a public hearing was conducted at the regularly scheduled City Council meeting of June 22, 2015 at 5:00 PM in which the facts of the matter were discussed; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to declare the property a nuisance and direct the City Manager to abate said nuisance pursuant to the provisions set forth in Ordinance Number 2567; and

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

1. The property located at 2130 Cedarbark Lane is hereby declared a nuisance pursuant to the provisions of Ordinance Number 2567 and the City Manager is hereby authorized to abate said nuisance pursuant to the terms and provisions of said ordinance.
2. This Resolution shall become effective immediately upon its approval and adoption.

**APPROVED and ADOPTED** this the 22<sup>nd</sup> day of June, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

"Exhibit A"

# Notice

This property is in Violation of the  
Vestavia Hills Weed Ordinance Number 2567

If the grass and bushes have not been cut within  
48 hours of this notice, remedial action will be  
taken in accordance with the provisions of  
Vestavia Hills Ordinance Number 2567.

Contact Officer Jimmy Coleman  
Vestavia Hills Police Department  
205-978-0113

te Posted: 6-12-15 Time Posted: 11:20 AM

1 ORI # <b>AL0010900</b>	2 Date of Report <b>06 17 15</b>	3 Time of Report <b>08:30</b>	4 Incident Type Report <input type="checkbox"/> AM <input type="checkbox"/> PM <input checked="" type="checkbox"/> MIL	5 Supplement Date	6 Agency Case Number <b>2015-00019110</b>
-----------------------------	-------------------------------------	----------------------------------	---	-------------------	--

8 Agency Name **Vestavia Hills Police Department** 9 Sector

10 Type of Incident or Offense <input type="checkbox"/> Felony <input checked="" type="checkbox"/> Misdemeanor <input type="checkbox"/> Attempted <input checked="" type="checkbox"/> Completed <b>Weeds</b>	11 Degree (Circle) 1 2 3	12 UCR Code	13 State Code/Local Ordinance <b>VHC 302.4</b>
14 Type of Incident or Offense <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Attempted <input type="checkbox"/> Completed	15 Degree (Circle) 1 2 3	16 UCR Code	17 State Code/Local Ordinance
18 Place of Occurrence <input type="checkbox"/> Check here if event occurred at victim's residence	Victim Demographics (Where victim is an individual)		
If offense occurred at victim's residence, then only the approximate location should be listed in this section. (For example, a block number should be entered.) If the offense occurred elsewhere, then the specific address should be listed here.	19 Sex <input type="checkbox"/> M <input type="checkbox"/> F	20 Race <input type="checkbox"/> W <input type="checkbox"/> B <input type="checkbox"/> A <input type="checkbox"/> I	21 Ethnicity <input type="checkbox"/> Hispanic <input type="checkbox"/> Other
	22 Multiple Victims <input type="checkbox"/> LE Officer	23 Age	24 Offender Suspected of Using <input type="checkbox"/> Alcohol <input type="checkbox"/> Computer Equipment <input checked="" type="checkbox"/> Drugs <input type="checkbox"/> N/A
25 Juvenile Gang <input type="checkbox"/> Adult Gang <input type="checkbox"/> None/Unknown <input type="checkbox"/>	26 Hate Bias <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	27 Bias Code	
29 Point of Entry <input type="checkbox"/> Door <input type="checkbox"/> Window <input type="checkbox"/> Roof <input type="checkbox"/> Other	30 Method of Entry <input type="checkbox"/> Forcible <input type="checkbox"/> Attempted Forcible <input type="checkbox"/> No Force	31 Local Use	32 Lighting <input checked="" type="radio"/> Natural 2 Moon 3 Artificial Exterior 4 Artificial Interior 5 Unknown
33 Weather <input checked="" type="radio"/> Clear 2 Cloudy 3 Rain 4 Fog 5 Snow 6 Hail 7 Unknown	34 Location Type (Circle) 01 Terminal 02 Bank 03 Bar 04 Church 05 Commercial 06 Construction 07 Conv Store 08 Dept Store	09 Drug Store 10 Field/Woods 11 Govt/Public Building 12 Supermarket 13 Highway/Street 14 Hotel/Motel 15 Jail/Prison 16 Lake/Waterway	17 Liquor Store 18 Parking Lot/Garage 19 Storage Facility <input checked="" type="radio"/> 20 Residence/Home 21 Restaurant 22 School/College 23 Service/Gas Station 24 Specialty Store 25 Other/Unknown
35 Occurred from MM/DD/YY <b>06 10 15</b>	36 Time of Event <input type="checkbox"/> AM <input type="checkbox"/> PM <input checked="" type="checkbox"/> MIL <b>10:00</b>	37 Day of Week <b>Wednesday</b>	38 Occurred to MM/DD/YY <b>06 12 15</b>
39 Time of Event <input type="checkbox"/> AM <input type="checkbox"/> PM <input checked="" type="checkbox"/> MIL <b>11:20</b>	40 Day of Week <b>Friday</b>	41 # Premises Entered (Burglary)	
42 Type Criminal Activity B Buying/Receiving D Distributing/Selling O Operating/Promoting T Transporting/Importing C Cultivating/Manu E Exploiting Children P Possessing/Concealing U Using/Consuming	43 Victim Type I Individual F Financial (Bank) R Religious Org B Business G Government S Society		

44 Loss Code	45 Property Code	46 Qty	47 Property Description Include Make, Model, Size Type, Serial #, Color, Drug Type, Drug Qty, Etc.	48 Dollar Value Stolen Damaged	49 Recovered Date Value

Loss Code (Enter letter in loss code column) S Stolen B Burned R Recovered F Forged/ D Damaged/ Counterfeited Destroyed N None C Confiscated/ Seized	Property Code (Enter # in property type column) 01 Aircraft 02 Alcohol 03 Autos 04 Bicycles 05 Buses 06 Clothes	07 Computer 08 Consumables 09 Credit Card 10 Drugs 11 Drug Equip 12 Farm Equip 13 Firearms 14 Gambling Equipment 15 Heavy Construction	16 Household Goods 17 Jewelry 18 Livestock 19 Merchandise 20 Money 21 Negotiable Instrument 22 Non-negotiable Instru 23 Office Equipment 24 Other Motor Vehicle	25 Purse/Wallet 26 Radios/TV/VCR 27 Recordings 28 RV's 29 Structure - Single Occupancy Dwelling 30 Structure - Other Dwelling 31 Structure - Other Commercial 32 Structure - Industrial/ Manufacturing 33 Structure - Public/Community	34 Structure - Storage 35 Structure - Other 36 Tools - Power/Hand 37 Trucks 38 Vehicle Parts/Accessories 39 Watercraft 77 Other
---	--	--	---	--	---

50 Stolen Vehicle Only <input type="checkbox"/> Business <input type="checkbox"/> Rural	Area Stolen <input type="checkbox"/> Residence <input type="checkbox"/> Rural	51 Ownership verified by: <input type="checkbox"/> Tag Receipt <input type="checkbox"/> Title <input type="checkbox"/> Bill of Sale <input type="checkbox"/> Other	52 Veh. Categories <input type="checkbox"/> Recovered <input type="checkbox"/> Victim's Vehicle <input type="checkbox"/> Abandoned <input type="checkbox"/> Stolen <input type="checkbox"/> Suspect's Vehicle <input type="checkbox"/> Unauthorized Use <input type="checkbox"/> Other
53 Vehicle Year	54 Vehicle Make	55 Vehicle Model	56 Number Veh Stolen
57 Vehicle Description	58 Vehicle Style	59 Vehicle Color Top Bottom	60 License
61 LST	62 LIY	63 Tag Color	
64 Vehicle VIN Number	65 Warrant Signed <input type="checkbox"/> Yes <input type="checkbox"/> No Warrant Number		
Motor Vehicle Recovery Only Required For 24XX UCR Code	66 Stolen in your jurisdiction? <input type="checkbox"/> Yes <input type="checkbox"/> No Where?		67 Recovered in your jurisdiction? <input type="checkbox"/> Yes <input type="checkbox"/> No Where?

68 Case #	69 SFX	70 Case #	71 SFX	72 Case #	73 SFX
74 Case Status 1 Pending 2 Inactive <input checked="" type="radio"/> 3 Closed	75 Multiple Cases Closed Listed Above <input type="checkbox"/> Multiple Cases Closed Listed On Supplement <input type="checkbox"/>		76 Exceptional Clearance (Circle One) A Suspect/Offender Dead B Prosecution Declined/ Other Prosecution C Extradition Denied D Victim Refused to Cooperate E Juvenile (No Custody) F Death of Victim		
76 Entered NCIC/ACJIC <input type="checkbox"/> Yes <input type="checkbox"/> No	77 Case Disposition 1 Cleared by Arrest (Juvenile) 2 Cleared by Arrest (Adult) 3 Unfounded 4 Exceptional Clearance 5 Administratively Cleared		79 Reporting Officer <b>Coleman, James</b> Officer ID Number		
Date (MM/DD/YY)			80 Assisting Officer Officer ID Number		
81 Supervisor Approval			Officer ID Number		
82 Watch Commander			Officer ID Number		



Vestavia Hills Police Department

Incident/Offense Report - Continued		83 Date of Report (MM/DD/YY) <b>06   17   15</b>		84 Time of Report <b>08:30</b>		85 Agency Case Number <b>2015-00019110</b>		87 <input type="checkbox"/> Offender <input type="checkbox"/> Check if Multiple <input checked="" type="checkbox"/> Suspect <input type="checkbox"/> Missing Person			
88 Reported By (Last, First, Middle Name) <input type="checkbox"/> Victim Or <b>Ofc. J. Coleman,</b>				89 Suffix		90 <input type="checkbox"/> Resident <input type="checkbox"/> Non-Resident		91 Home Phone		92 Work Phone <b>(205)978-0113</b>	
94 Victim #		95 Victim (Last, First, Middle Name) <b>City of Vestavia</b>			96 Suffix		97 Address (Street, City, State, Zip) <b>513 Montgomery Highway Vestavia Hills, AL 35216</b>			98 Home Phone	
99 Work Phone <b>(205)978-0140</b>		100 Other Phone		101 Employer/School		102 Occupation		103 Address (Street, City, State, Zip)		104 Work Phone	
105 Other Phone		106 Sex <input type="checkbox"/> M <input type="checkbox"/> F		107 Race <input type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> I		108 Language <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Other		109 HGT		110 WGT	
111 Date of Birth		112 Age		113 Victim SSN		114 Complainant SSN		115 Multiple Victims <input type="checkbox"/> LE Officer <input type="checkbox"/> Other		116 Ethnicity <input type="checkbox"/> Hispanic <input type="checkbox"/> Other	
117 Injury <input type="checkbox"/> Yes <input type="checkbox"/> No		118 Offender known to victim? <input type="checkbox"/> Yes <input type="checkbox"/> No		119 Victim was? (Explain Relationship.)		120 Relationship Code		121 Weapons Used <input type="checkbox"/> Firearm <input type="checkbox"/> Knife <input type="checkbox"/> Hands, Fist, Feet, Voice, etc. <input type="checkbox"/> Other Dangerous		122 Description of Weapons/Firearms/Tools Used in Offense Describe: <input type="checkbox"/> Handgun <input type="checkbox"/> Rifle <input type="checkbox"/> Shotgun <input type="checkbox"/> Unknown	
123 Place of Occurrence <b>2130 Cedar Bark Lane Vestavia Hills, AL 35216</b>		124 Type Injury <input type="checkbox"/> N None <input type="checkbox"/> B Broken Bones <input type="checkbox"/> I Internal Injury <input type="checkbox"/> L Severe Laceration <input type="checkbox"/> M Minor Injury <input type="checkbox"/> O Other Major Injury <input type="checkbox"/> T Loss of Teeth <input type="checkbox"/> U Unconscious		125 Sector		126 Circumstances: <b>Homicide &amp; Assault</b>		127 Location: <b>Rape</b>		128 Assault <input type="checkbox"/> Simple <input type="checkbox"/> Aggravated	
129 Treatment for Assault? <input type="checkbox"/> Yes <input type="checkbox"/> No		130 Verify for Rape Exam? <input type="checkbox"/> Yes <input type="checkbox"/> No		131 Treatment for Rape? <input type="checkbox"/> Yes <input type="checkbox"/> No		132 Off #		133 Name (Last, First, Middle) <b>Santoro, Joseph, A.</b>		134 SFX	
135 Alias		136 Social Security # <b>419-60-2343</b>		137 Race <input checked="" type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> I		138 Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F		139 Date of Birth <b>04   09   49</b>		140 Age <b>66</b>	
141 Address (Street, City, State, Zip) <b>2130 Cedar Bark Lane Vestavia Hills, AL 35216</b>		142 HGT <b>5'11</b>		143 WGT <b>195</b>		144 Ethnicity <input checked="" type="checkbox"/> Other <input type="checkbox"/> Hispanic <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Other		145 Language		146 Probable Destination	
147 Eye <b>HAZ</b>		148 Hair <b>BRO</b>		149 Complexion		150 Armed <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Weapon		151 Clothing		152 <input type="checkbox"/> Scars <input type="checkbox"/> Marks <input type="checkbox"/> Tattoos <input type="checkbox"/> Amputations	
153 <input type="checkbox"/> Arrested <input type="checkbox"/> Dual Arrest (Domestic Violence) <input type="checkbox"/> Wanted		154 Off #		155 Name (Last, First, Middle)		156 SFX		157 Alias		158 Social Security #	
159 Race <input type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> I		160 Sex <input type="checkbox"/> M <input type="checkbox"/> F		161 Date of Birth		162 Age		163 Address (Street, City, State, Zip)		164 HGT	
165 WGT		166 Ethnicity <input type="checkbox"/> Hispanic <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Other		167 Language		168 Probable Destination		169 Eye		170 Hair	
171 Complexion		172 Armed <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Weapon		173 Clothing		174 <input type="checkbox"/> Scars <input type="checkbox"/> Marks <input type="checkbox"/> Tattoos <input type="checkbox"/> Amputations		175 <input type="checkbox"/> Arrested <input type="checkbox"/> Dual Arrest (Domestic Violence) <input type="checkbox"/> Wanted		176 Name (Last, First, Middle)	
177 Sex <input type="checkbox"/> M <input type="checkbox"/> F		178 Race <input type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> I		179 Date of Birth		180 Address		181 Home		182 Work	
183 Other		184 Name (Last, First, Middle)		185 Sex <input type="checkbox"/> M <input type="checkbox"/> F		186 Race <input type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> I		187 Date of Birth		188 Address	
189 Home		190 Work		191 Other		192 Name (Last, First, Middle)		193 Sex <input type="checkbox"/> M <input type="checkbox"/> F		194 Race <input type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> I	
195 Date of Birth		196 Address		197 Home		198 Work		199 Other		200 Witness # 1 SSN	
201 Witness # 2 SSN		202 Witness # 3 SSN		203 <b>6-17-2015 414 Weed Ordinance Violation</b> <b>Officer received a telephone call from Mr. John Ellis about the property next door to him at 2130 Cedar Bark Lane. Mr. Ellis told the officer that the victim who lives at that address had passed away on 1-23-2015. No one has kept the property up and there's a swimming pool in the backyard unsecured. Mr. Ellis told the officer that there are a lot of children in the neighborhood and he is concerned that one of them might go in the backyard and drown. Officer Coleman went to the property after talking to Mr. Ellis. Officer observed that the property was in violation of the city's weed ordinance. The fence around the pool had deteriorated and large sections were missing. The pool it self was green and breeding mosquitoes. Mr. Ellis walked the property with the officer. Mr. Ellis stated that there were rodents on the property. Mr. Ellis told the officer that the victim has a son but the son wasn't interested in the property. Mr.</b>		204 Continued on Supplement <input type="checkbox"/> Yes <input type="checkbox"/> No		205 Assisting Agency ORI		206 Assisting Agency Case Number	
207 SFX		208 Warrant Signed <input type="checkbox"/> Yes <input type="checkbox"/> No		209 Add. Cases Close Narrative <input type="checkbox"/> Y <input type="checkbox"/> N		I hereby affirm that I have read this report and that all the information given by me is correct to the best of my knowledge. I will assume full responsibility for notifying the agency if any stolen property or missing person herein reported is returned.		210 <b>51</b>		211 Local Use	
212 State Use		Signature		ACI/C - 11-26							

**ADDITIONAL INCIDENT/OFFENSE  
NARRATIVE CONTINUED**

79 Date and Time of Report  
0 6 1 7 1 5  
82 Type Report:  1. Continuation  2. Follow-up

08:30

AV  
 PV  
 ML

80 Case #  
2 0 1 5 - 0 0 0 1 9 1 1 0

NARRATIVE

**6-17-2015 414 Weed Ordinance Violation**

Ellis give the officer the name of the son's Mother and that she worked at the V.A. Hospital. Officer got in contact with the Mother, Julie Smith. Mrs. Smith stated that she was divorced from the victim and that son had changed his name to the victim's but was never adopted by the victim. Mrs. Smith stated that she nor her son has any rights to the property. Mrs. Smith stated that she was going to hire attorney Elizabeth McElroy to try to get the property for her son through the probate courts. Officer contacted Mrs. McElroy about the property. She told the officer that she went to the property and observed what the officer observed and decided it wasn't worth representing the son. Mrs. McElroy stated it would be a waste of time and money. Mrs. McElroy told officer that the victim had two cousins but didn't know where they were and that they would be in line to inherit the property. Officer started searching for the cousins. Officer found Larry Santoro living in Vestavia Hills. Officer talked to Mr. Santoro about the property. He was unaware that the victim's son wasn't his biological son. Mr. Santoro stated he would get with his brother, sister and cousin to see what they wanted to do about the property. Mr. Santoro called the officer back and stated he had talked to a lawyer about the situation. His lawyer told him to stay off the property until he gets the right to be on the property. Mr. Santoro stated the lawyer stated it could be up to two months before all the paperwork could be filled out and presented in court. Mr. Santoro stated that the lawyer told him to let the city do what they needed to do about the property and after the estate was settled, the estate will repay the city. Officer believes that this property is very dangerous to the neighborhood and it will bring the property values down if it's not taken care of.

NARRATIVE

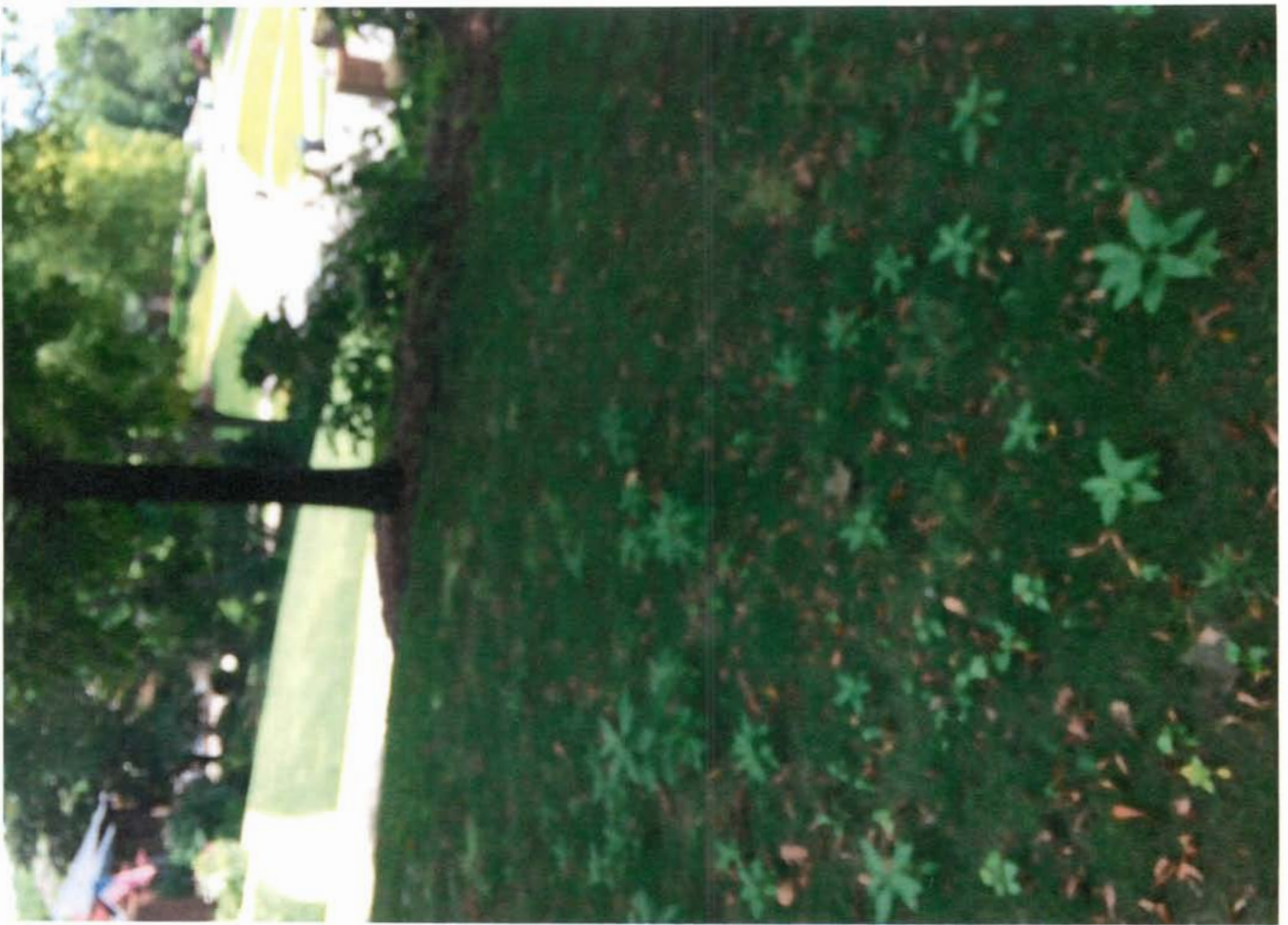
John Ellis  
205-979-5606  
Julie Smith  
205-747-8000  
Johnny Santoro  
205-283-7702

NARRATIVE





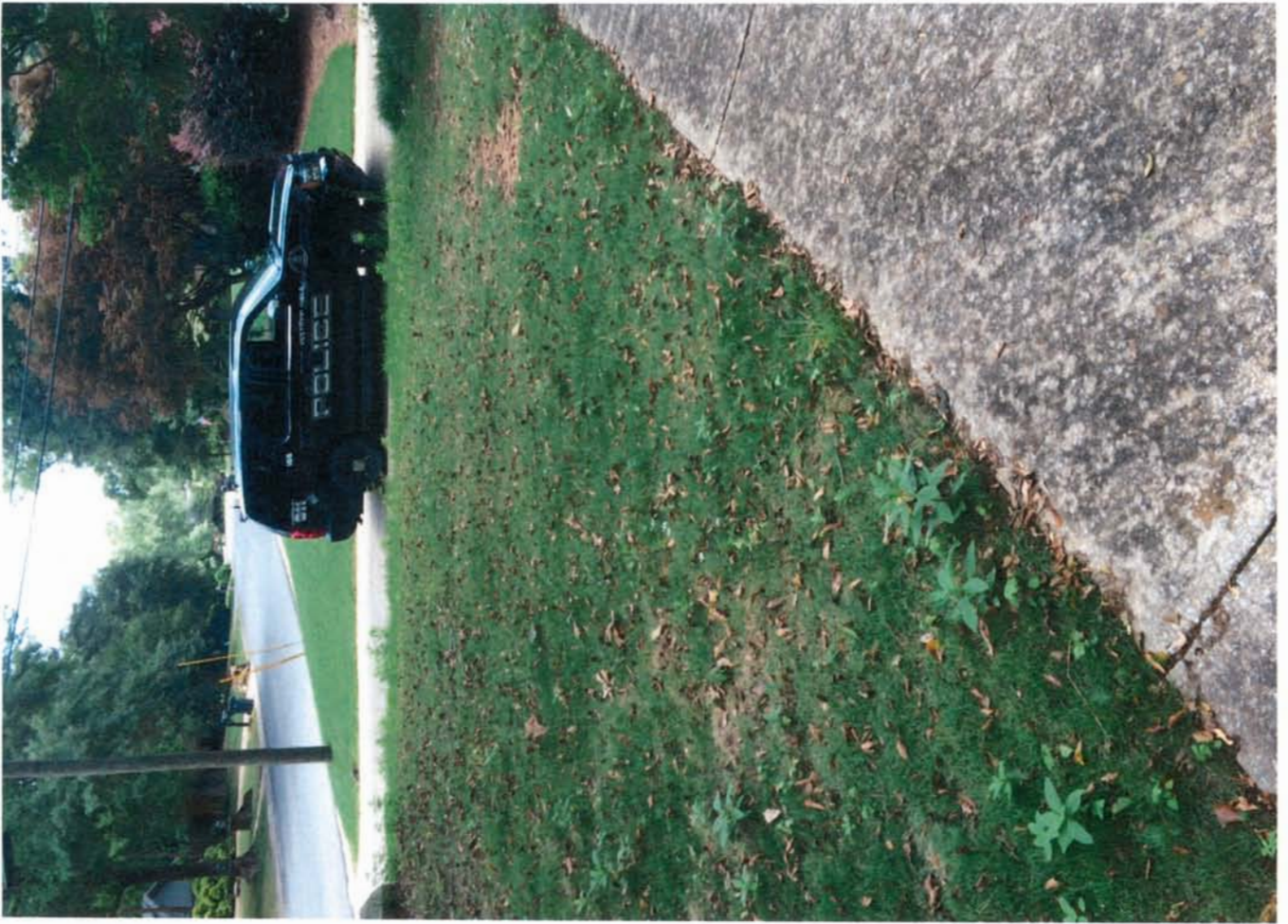












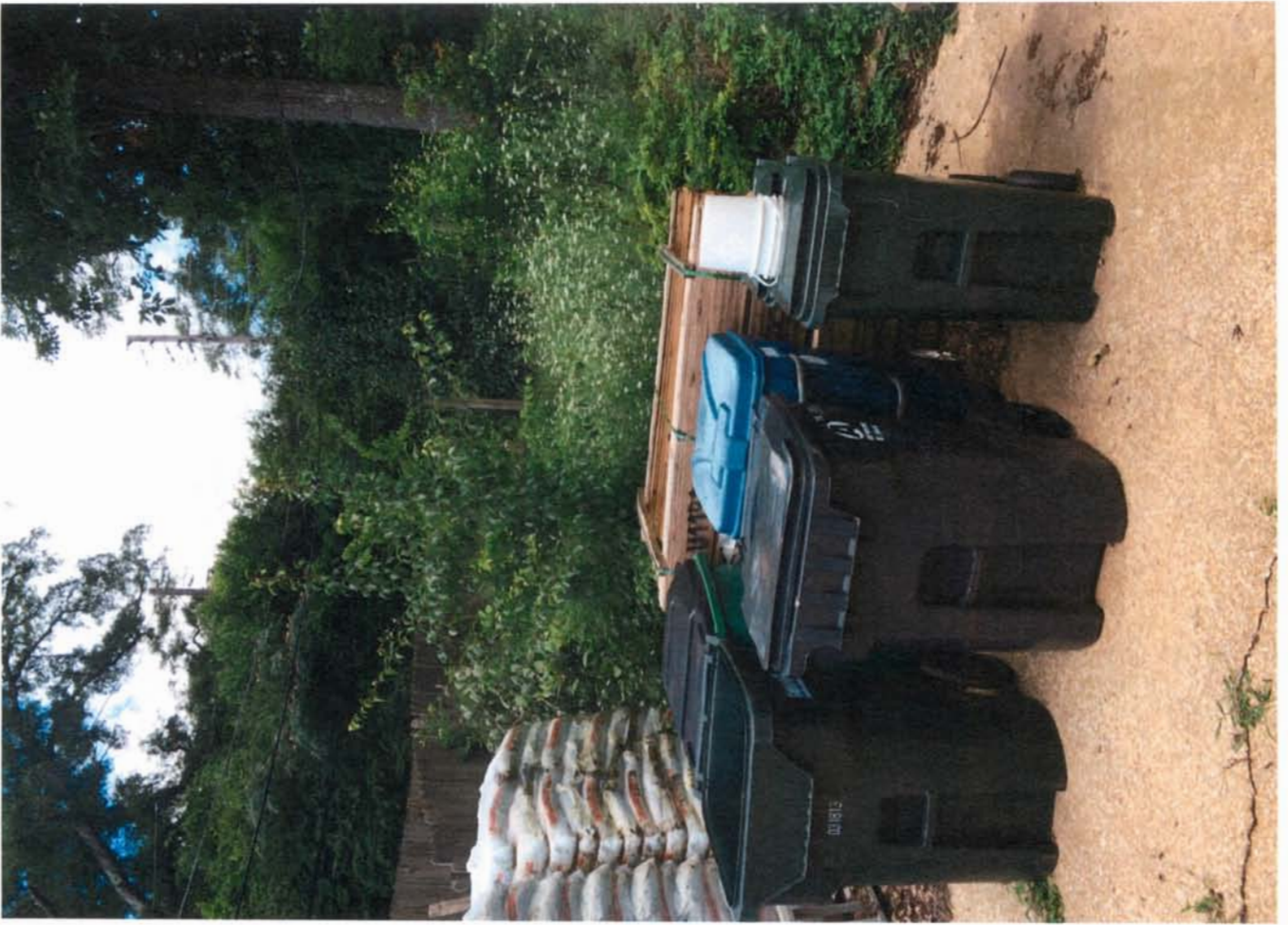














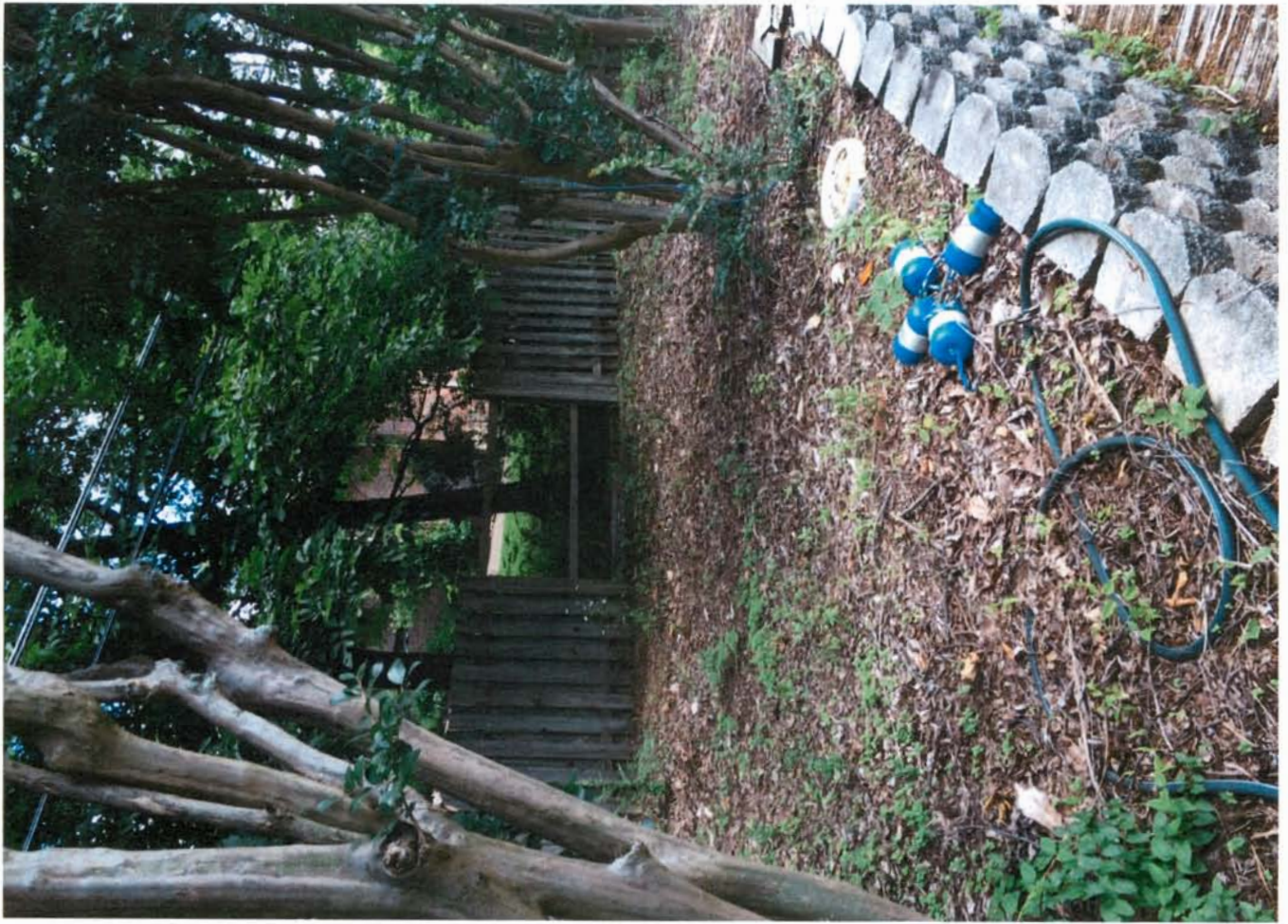






























**RESOLUTION NUMBER 4729**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH ALDOT FOR JEFFERSON COUNTY PROJECT NUMBER: ACAA59495-ATRP(006); RESURFACING VARIOUS ELIGIBLE ROADS/STREETS IN JEFFERSON COUNTY**

**WHEREAS**, the City of Vestavia Hills, Alabama (hereinafter at times referred to as City) is desirous of having certain improvements made within the City Limits of Vestavia Hills, in accordance with plans prepared by the Alabama Department of Transportation and designated as Project Number: Resurface CR-113 (Rocky Ridge Road) from Lorna Road to CR-97 (Shades Crest Road) – Plane, Resurface and Traffic Stripe Various Eligible Roads/Streets in Jefferson County.

**Resurface CR-113 (Rocky Ridge Road) from Lorna Road to CR-97 (Shades Crest Road)**

**WHEREAS**, The Alabama Department of Transportation is now or may later be desirous of receiving Federal Aid for improvement of said highway; and

**WHEREAS**, The Federal Highway Administration, an agency of the United States of America, will not participate in any funding for the construction of said project until and unless the City will agree to certain requirements of the Federal Highway Administration. The City for the purpose of complying with requirements of the Federal Highway Administration in regard to its funding of improvements of the type and kind in this agreement provided for, does hereby pass and adopt the following resolution:

**BE IT RESOLVED** by the City Council of Vestavia Hills that the plans of said project including alignment, profile, grades, typical sections and paving layouts as submitted to this City and which are now on file in the office of the City Clerk are hereby approved and that the location of said project as staked out by the Alabama Department of Transportation and as shown by said plans referred to are hereby approved and the Alabama Department of Transportation, in cooperation with the Federal Highway Administration, is hereby authorized to proceed with the grading, draining, paving, and otherwise improving and construction of said project in accordance with said plans. The City by and through its Council hereby grants to the Alabama Department of Transportation the full use of and access to the dedicated widths of any existing streets for the construction of said project and hereby agrees to permit and allow the Alabama Department of Transportation to close and barricade the said project and intersecting

streets for as long as necessary while the said project is being graded, drained, paved, and otherwise improved, and hereby agrees that the use of any street or highway for parking within an interchange area will not at any time be permitted. The City hereby further agrees to adopt or pass such legally effective ordinances and/or laws as will permanently barricade and/or relocate certain intersecting streets as required by the State and to permanently deny or limit access at certain locations as required by the State along said improvements, all of which are more specifically stated as follows:

N/A- This project does not require permanent barricade or relocation of any intersection streets.

Please refer to: Project Notes (Sheet 2E)

Please refer to: Traffic Control Plan Notes (Sheet 2F)

Please refer to: Traffic Signal Plan Notes (Sheet 2G)

Please refer to: Sequence of Construction and Traffic Control Plan (Sheets 11-14)

**BE IT FURTHER RESOLVED** by the City Council, that for and in consideration of the Alabama Department of Transportation in cooperation with the Federal Highway Administration, constructing said highway and routing traffic along the same through the City over said project, such City hereby agrees with the Alabama Department of Transportation and for the benefit of the Federal Highway Administration, that on the above-mentioned project the City will not in the future permit encroachments upon the right-of-way; nor will it pass any ordinances or laws fixing a speed limit contrary to those limits provided for in Title 32, Chapter 5, Code of Alabama 1975, as amended, and other laws of Alabama; nor will it permit other than parallel parking in areas where parking is permitted; nor will it allow the placing of any informational, regulatory, or warning signs, signals, median crossover, curb and pavement or other markings, and traffic signals without written approval of the Alabama Department of Transportation and the Federal Highway Administration, of the location, form and character of such installations. The traffic control devices and signs installed during construction, and those installed after completion of this project shall be in accordance with the latest edition of the national Manual on Uniform Traffic Control Devices and accepted standards adopted by the Alabama Department of Transportation of the State of Alabama and by the Federal Highway Administration. The City further agrees that subsequent traffic control devices deemed necessary by it in keeping with applicable statutes, rules and regulations to promote the safe and



efficient utilization of the highway under the authority of Title 32, Chapter 5, Code of Alabama 1975, and all other applicable laws of Alabama, shall be subject to and must have the approval of the Alabama Department of Transportation of the State of Alabama and of the Federal Highway Administration, prior to installation and the City further agrees that it will enforce traffic and control the same under the provisions of Title 32, Chapter 5, Code of Alabama 1975, and other applicable laws of Alabama.

**BE IT FURTHER RESOLVED** by this City Council:

1. That the City agrees to perform all maintenance on crossroads, service drives, or relocated roads that are not designated Federal or State highways that are in the jurisdiction of the City.
2. That the City agrees to perform all maintenance on any existing road which has been replaced by a new road; or, if the existing road is not used, the City has the option of vacating same.
3. That the City agrees to perform all maintenance on interchanges to the theoretical crossing of the denied access line.
4. That the City agrees to perform all maintenance on grade separations along the roadway to the end of the bridge, or the denied access fence, whichever the case.

It is understood and agreed that no changes in the Resolution or Agreement shall in the future be made without having obtained the prior approval of the Federal Highway Administration.

This Resolution **PASSED, ADOPTED and APPROVED** this the 22<sup>nd</sup> day of June, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

APPROVED BY:

Jeffrey D. Downes,  
City Manager

I, the undersigned, Clerk of the City of Vestavia Hills, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and lawfully adopted by the Council of the foregoing City, at its regular meeting held on the 22<sup>nd</sup> day of June, 2015 which resolution is on file in the Office of the City Clerk.

Given under my hand and official seal of such City of Vestavia Hills this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 4728**

**A RESOLUTION TO REJECT THE SOLE BID SUBMITTED FOR THE CAHABA HEIGHTS ELEMENTARY ROAD PROJECT (“CHERP”) ON THE BASIS THAT THE BID PRICE SUBMITTED FAR EXCEEDS THE MAXIMUM BUDGETED PRICE ESTABLISHED BY THE CITY WHEN IT PLANNED CHERP; TO DECLARE AN EMERGENCY PURSUANT TO THE AUTHORITY OF TITLE 39-2-2(e), CODE OF ALABAMA, 1975; TO DESCRIBE THE NATURE OF THE EMERGENCY; TO AUTHORIZE AND DIRECT THE CONSTRUCTION OF ONLY A PORTION OF A PUBLIC ROAD EXTENDING A LENGTH OF APPROXIMATELY THREE HUNDRED FEET (300’) AT A COST NOT TO EXCEED FOUR HUNDRED EIGHTY-NINE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$489,750.00) FOR CONSTRUCTION AND PROFESSIONAL FEES AND TO PAY SAID COST UTILIZING PUBLIC FUNDS PRESENTLY ON DEPOSIT IN THE CAPITAL PROJECT FUND; TO AUTHORIZE AND DIRECT THE NEGOTIATION OF A CONSTRUCTION CONTRACT; TO AUTHORIZE AND DIRECT EXECUTION AND DELIVERY OF A CONSTRUCTION CONTRACT; AND TO ADOPT TWO LEGAL OPINIONS AS PART OF THIS RESOLUTION.**

**THIS RESOLUTION NUMBER 4728** is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 22<sup>nd</sup> day of June, 2015.

**WITNESSETH THESE RECITALS:**

**WHEREAS**, municipalities in the State of Alabama are authorized to spend public funds for the purpose of constructing public streets and roads pursuant to the authority of Title 11-48-4, *Code of Alabama, 1975*; and

**WHEREAS**, the City of Vestavia Hills, Alabama (“City”) has decided that it would benefit and be in the best interests of the public to construct a public road in the Cahaba Heights neighborhood of the City of Vestavia Hills, Alabama with a portion of that public road being adjacent to Vestavia Hills Cahaba Heights Elementary School owned and operated by the Board of Education of the City of Vestavia Hills, Alabama; and

**WHEREAS**, the name of the project is “Cahaba Heights Elementary Road Project” (“CHERP”); and

**WHEREAS**, the City established a budget for CHERP estimated to be an amount between Five Hundred Thousand Dollars (\$500,000.00) and Seven Hundred Fifty Thousand Dollars (\$750,000.00); and

**WHEREAS**, the City advertised for and invited competitive bids for CHERP as required by the Alabama Public Works Competitive Bid Law at Title 39-2-2(a), *Code of Alabama, 1975*; and

**WHEREAS**, the City, based upon the fact that it expected to receive no more than one bid for the project, requested the City Attorney to provide a written legal opinion regarding legal options available to the City should the City receive no bids, only one bid or if the only bid received is at an unreasonable price; and

**WHEREAS**, a copy of the written legal opinion of the City Attorney, dated June 3, 2015, is attached hereto, marked as Exhibit 1 and is incorporated into this resolution by reference as though set out fully herein; and

**WHEREAS**, the Bid Opening was scheduled for and held at 10:00 a.m. on June 10, 2015 at Vestavia Hills Municipal Center; and

**WHEREAS**, Veterans Landscaping Company, Inc. was the sole bidder and submitted a base bid in the amount of Nine Hundred Sixty-seven Thousand Forty and 71/100 Dollars (\$967,040.71) with Bid Alternate No. 1 in the amount of Three Hundred Seventeen Thousand Two Hundred Eighty-eight and 51/100 Dollars (\$317,288.51) for a total of One Million Two Hundred Eighty-four Thousand Three Hundred Twenty-nine and 22/100 Dollars (\$1,284,329.22); and

**WHEREAS**, the bid price submitted by Veterans Landscaping Company, Inc. far exceeds the maximum budgeted amount established by the City when it planned CHERP; and

**WHEREAS**, the last day for Vestavia Hills students for the 2014/2015 school year was May 21, 2015; and

**WHEREAS**, the first day for Vestavia Hills school system teachers for the 2015/2016 school year is August 10, 2015; and

**WHEREAS**, the City Attorney was requested to write a second legal opinion as to whether or not the City may negotiate and award a contract for the construction of only a portion of a public road pursuant to the emergency provisions of Title 39-2-2(e), *Code of Alabama, 1975*, and/or the “only one bid” provisions of Title 39-2-6(b), *Code of Alabama, 1975*; and

**WHEREAS**, a copy of the second legal opinion written by the City Attorney, dated June 18, 2015, is attached hereto, marked as Exhibit 2 and is incorporated into this resolution by reference as though set out fully herein.

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

**1. WRITTEN LEGAL OPINION, DATED JUNE 3, 2015, BY CITY ATTORNEY:** A copy of the legal opinion, dated June 3, 2015, written by the City Attorney is attached hereto, marked as Exhibit 1 and is incorporated into this resolution by reference as though set out full herein.

**2. WRITTEN LEGAL OPINION, DATED JUNE 18, 2015, BY CITY ATTORNEY:** A copy of the legal opinion, dated June 18, 2015, written by the City Attorney is attached hereto, marked as Exhibit 2 and is incorporated into this resolution by reference as though set out full herein.

**3. THE BID PRICE IS UNREASONABLE:** On June 10, 2015, Veterans Landscaping Company, Inc. submitted the sole bid for CHERP, which included a base price in the amount of \$967,040.71 with a Bid Alternate No. 1 in the amount of \$317,288.51. The City finds and determines that said bid price is unreasonable (as authorized by Title 39-2-2(a), *Code of Alabama, 1975*) due to the fact that it far exceeds the maximum amount budgeted by the City when it planned CHERP.

**4. THE SOLE BID IS REJECTED:** The sole bid submitted to the City on June 10, 2015 by Veterans Landscaping Company, Inc. in the base price in the amount of \$967,040.71 along with a Bid Alternate No. 1 in the amount of \$317,288.51 for CHERP is hereby rejected.

**5. CONSTRUCTION OF PORTION OF PUBLIC STREET:** The Cahaba Heights Elementary Road Project provides for the construction of a public road that extends for approximately eight hundred fifty feet (850'). This resolution authorizes the construction of only a portion of that public road to extend approximately three hundred feet (300') ("the project").

**6. SCHOOL YEAR 2015/2016:** The 2015/2016 school year for the Vestavia Hills school system begins for teachers on August 10, 2015. The City Council finds and determines that the portion of the public road described in section 5 above must be completed prior to that date. Therefore, time is of the essence.

**7. EMERGENCY DECLARED:** The City Council finds, determines and declares that the situation involving the construction of a portion of the public road adjacent to a public elementary school is, in fact, an emergency situation based upon Title 39-2-2(e), *Code of Alabama, 1975*.



**8. NATURE OF THE EMERGENCY:** The advertisement seeking additional competitive bids pursuant to the Public Works Law Competitive Bid process set forth in Title 39-2-2(b), *Code of Alabama, 1975*, would delay this public road construction project. If the construction project were delayed, then in such event the construction project could not be completed prior to August 10, 2015 when school starts for teachers. The City Council finds and determines that the construction of a public road adjacent to a public elementary school when school is in session would present dangers to the public health, safety (possible property damages and/or personal injuries to members of the general public) or public convenience. The City Council further finds and determines that to delay said construction project would not promote the public health, safety and welfare of the students, parents, motorists and other members of the general public.

**9. PLANS AND SPECIFICATIONS FOR CONSTRUCTION OF A PORTION OF THE PUBLIC ROAD:** The City Engineer has prepared plans and specifications for the construction of a portion of the public road (“project”), which extends for a distance of approximately three hundred feet (300’). A copy of the drawing of that public road is attached hereto, marked as Exhibit 3 and is incorporated into this resolution by reference as though set out fully herein.

**10. COST OF THE CONSTRUCTION OF A PORTION OF THE PUBLIC ROAD:** The City Engineer has estimated that the cost for constructing the portion of the public road described in Exhibit 3 will not exceed the sum of Four Hundred Eighty-Nine Thousand Seven Hundred Fifty Dollars (\$489,750.00) consisting of the following costs:

<u>Construction Costs:</u>	\$326,100	<i>not to exceed</i>
<u>Professional Services</u>		
Construction engineering and inspection, Sain	60,000	<i>not to exceed</i>
Construction stakeout and engineering control, Sain	10,000	<i>not to exceed</i>
Construction material testing, tbd	29,400	<i>(estimated)</i>
Easement legal descriptions and survey plat, Sain	9,250	<i>not to exceed</i>
<u>Utility relocation</u>		
Alabama Power relocation agreement	55,000	<i>not to exceed</i>

**11. NEGOTIATION OF CONTRACT:** The City Manager is hereby authorized and directed to negotiate a contract for construction of a portion of a public road as described herein pursuant to the two legal opinions written by the City Attorney designated as Exhibits 1 and 2.

**12. PROPOSAL:** \_\_\_\_\_ has submitted a proposal offering to construct a portion of the public road designed by the City Engineer and shown on Exhibit 3 for and in consideration of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and is attached hereto, marked as Exhibit 4 and incorporated into this resolution by reference as though set out fully herein.

**13. EXECUTION AND DELIVERY OF CONTRACT:** The City Attorney has prepared and submitted a proposed Contract for this public road construction project. A copy of said Contract is attached hereto, marked as Exhibit 5 and is incorporated into this resolution by reference as though set out fully herein. The Mayor and City Manager are hereby authorized and directed to execute and deliver the Contract for and on behalf of the City of Vestavia Hills, Alabama.

**14. PAYMENT OF CONTRACT PRICE:** The City Manager is hereby authorized and directed to pay the contract price not to exceed the sum of Three Hundred Twenty-six Thousand One Hundred Dollars (\$326,100.00) upon completion of the work by using funds presently on deposit in the Capital Projects Fund of the City of Vestavia Hills, Alabama. In addition, the City Manager is authorized and directed to pay the professional fees and other costs outlined in section 10 above by utilizing funds in the Capital Projects Fund.

**15. RELIANCE UPON LEGAL ADVICE GIVEN BY CITY ATTORNEY:** The City Council hereby approves and adopts this resolution in reliance upon the legal advice that the City may award, execute and deliver the Contract for construction of a portion of a public road without advertising for competitive bids pursuant to the emergency provisions (Title 39-2-2(e), *Code of Alabama, 1975*, and “only one bid” provisions (Title 39-2-6-(b), *Code of Alabama, 1975*) of the Public Works Competitive Bid Law submitted to the City by the City Attorney in Exhibit 1 and Exhibit 2.

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

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

**18. EFFECTIVE DATE:** This Resolution Number 4728 shall become effective immediately upon adoption.

**ADOPTED and APPROVED** this the 22<sup>nd</sup> day of June, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY

Rebecca Leavings  
City Clerk

**CERTIFICATION OF CITY CLERK**

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 22<sup>nd</sup> day of June, 2015 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this \_\_\_\_\_ day of June, 2015.

\_\_\_\_\_  
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

June 3, 2015

By Hand Delivery

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

In Re: Cahaba Heights Elementary Roadway Project

Dear Mr. Downes:

This letter confirms and supplements our meeting in your office at 3:00 p.m. this afternoon regarding the above captioned matter. Present in person at that meeting were City Engineer Christopher Brady, you and me.

During the meeting, you requested that I furnish you with my written legal opinion regarding legal options available to the City should the City receive no bids, only one bid or if the only bid received is at an unreasonable price. The purpose of this legal opinion is to comply with your request.

**I. FACTS**

**A. SCHOOL:**

1. The last day for students for the 2014/2015 school year was May 21, 2015.
2. The first day for students for the 2015/2016 school year is August 13, 2015.
3. School is not in session for only 83 days during the summer of 2015.

**B. PUBLIC WORKS PROJECT:** The City project for the Cahaba Heights Elementary Roadway ("project") will include grading and storm drainage installation, underground utilities and construction of up to 850 feet of asphalt roadway with curb and gutters and paint striping. The project will also include demolition and reconstruction of a portion of the existing school driveway and asphalt parking area.

- C. **COST OF THE PROJECT:** The cost of the project is expected to exceed \$50,000.00.
- D. **ADVERTISEMENT FOR BIDS:** The City advertised for sealed bids as required by the Alabama Competitive Bid Law for public works projects.
- E. **PREQUALIFICATION OF BIDDERS:** The Advertisement for Bid included a requirement that all contractors bidding on the project must be prequalified. It further provided that all prequalification documents were to be received by the Engineer for the project by 10:00 a.m. on May 27, 2015. Only two bidders were prequalified.
- F. **MANDATORY PRE-BID MEETING OF ALL PREQUALIFIED BIDDERS:** The Advertisement for Bid also provided for a mandatory pre-bid meeting of all prequalified bidders to be held at the Vestavia Hills Municipal Center on June 3, 2015 at 10:00 a.m. Only one bidder attended that mandatory pre-bid meeting.
- G. **ONE QUALIFIED BIDDER:** Since only one prequalified bidder attended the mandatory pre-bid meeting, the City will receive only one bid.

## II. LEGAL ISSUE

What are the options for the City to consider if no bid is received or if only one bid is received and the bid price is determined to be unreasonable?

## III. ALABAMA STATUTE

Title 39-2-6(b), *Code of Alabama, 1975*, provides as follows:

“(b) If no bids or only one bid is received at the time stated in the advertisement for bids, the awarding authority may advertise for and seek other competitive bids, or the awarding authority may direct that the work shall be done by force account under its direction and control or, with the exception of the Department of Transportation, the awarding authority may negotiate for the work through the receipt of informal bids not subject to the requirements of this section. Where only one responsible and responsive bid has been received, any negotiation for the work shall be for a price lower than that bid.”

#### IV. LEGAL OPINION

Based upon the above statute, it is my legal opinion that the City has the following options:

- A. Reject the bid and advertise and seek other competitive bids.
- B. Direct that the work shall be done by "force account" under the direction and control of the City. Title 39-2-1(2), *Code of Alabama, 1975*, defines "force account work" as follows:

“(2) **FORCE ACCOUNT WORK.**—Work paid for by reimbursing for the actual costs for labor, materials, and equipment usage incurred in the performance of the work, as directed, including a percentage for overhead and profit, where appropriate.”

- C. Negotiate for the work through the receipt of informal bids.
- D. If there is only one responsible and responsive bid received, the City may negotiate for the work provided the negotiation results in a price lower than the bid submitted.

#### V. NEGOTIATION OR FORCE ACCOUNT

Title 39-2-6(d), *Code of Alabama, 1975*, provides as follows:

“(d) On any construction project on which the awarding authority has prepared plans and specifications, received bids, and has determined to do by force account or by negotiation, the awarding authority shall make available the plans and specifications, an itemized estimate of cost and any informal bids for review by the Department of Examiners of Public Accounts and, upon completion of the project by an awarding authority, the final total costs together with an itemized list of cost of any and all changes made in the original plans and specifications shall also be made available for review by the Department of Examiners of Public Accounts. Furthermore, the above described information shall be made public by the awarding authority upon request. Upon the approval of the awarding authority, its duly authorized officer or officers may, when proceeding upon the basis of force account, let any subdivision or unit of work by contract on informal bids.”

## VI. EMERGENCY OPTION

In my opinion, a public works construction contract may legally be let to the extent necessary to meet an emergency without public advertisement. In case of an emergency affecting public health, safety or convenience of the public, the City Council must declare in writing setting forth the nature of the emergency and the danger to the public health, safety or convenience which would result from the delay before awarding the contract. (*Union Springs Telephone Co. v. James H. Rowell, Acting Director of the State of Alabama Department of Finance*, 623 So.2d 732 (1993).

Title 39-2-2(e), *Code of Alabama, 1975*, provides as follows:

“(e) In case of an emergency affecting public health, safety, or convenience, as declared in writing by the awarding authority, setting forth the nature of the danger to the public health, safety, or convenience which would result from delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. The action and the reasons for the action taken shall immediately be made public by the awarding authority upon request.”

In my legal opinion, a major construction project adjacent to an elementary school would be an “emergency” situation because it would create traffic that would adversely affect the public health, safety or convenience of students, parents, faculty, staff, motorists and members of the general public.

## VII. MY RECOMMENDATIONS

Based upon the certain knowledge that the City will receive only one bid for the project and because school starts in only 69 days, I recommend, from a legal standpoint, that you consider the following:

A. Meet with the professional engineers that designed the project for the purpose of firming up the estimated contract price set forth in the City budget for this project (“budget estimated price”).

B. Open the bid on June 10, 2015 at 10:00 a.m. If the bid is responsive, meets the bid specifications and the price is less or in the neighborhood of the budget estimated price, then in such event recommend the acceptance of the bid.

C. If the bid contract sum submitted by the bidder is unreasonably high, then in such event attempt to negotiate with that sole bidder so that the contract sum will meet the City budget estimated price for the project.

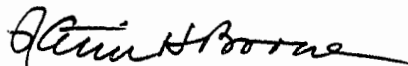


D. If neither B or C result in a duly executed construction contract, then in such event the City should direct that the work shall be done by force account under the direction and control of the City or negotiate for the work through the receipt of informal bids. I suggest that you start now in contacting other companies should solutions B or C above fail. Time is of the essence because school begins on August 13, 2015.

E. The City Council will meet in regular session on Monday, June 8, 2015, at 5:00 p.m. If the City Council enacts a resolution declaring this situation to be an emergency creating danger to the public health, safety or convenience of the public, then in such event the City can legally award the contract (without public advertisement) pursuant to the authority of Title 39-2-2(e), *Code of Alabama, 1975*.

I plan on being at the Vestavia Hills Municipal Center for a large portion of the day on June 10, 2015 to close four real estate sales/purchase agreements. I will be happy to attend the Bid Opening at 10:00 a.m. that morning if you think it necessary for me to do so. In the meantime, please call me if you have any questions regarding this very important matter.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

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

June 18, 2015

By Hand Delivery

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

In Re: Construction of a Portion of a Public Road as Part of the  
Cahaba Heights Elementary Roadway Project ("CHERP")

Dear Mr. Downes:

This letter confirms and supplements our meeting yesterday morning (June 17, 2015) regarding the Cahaba Heights Elementary Roadway Project ("CHERP"). Present in person at that meeting were Mayor Alberto C. Zaragoza, Jr., City Engineer Christopher Brady, you and me.

On June 10, 2015, the City received only one bid for the Cahaba Heights Elementary Roadway Project. Veterans Landscaping Company, Inc. was the sole bidder and submitted a base bid in the amount of \$967,040.71 and Bid Alternate No. 1 in the amount of \$317,288.51. That bid far exceeded the maximum budgeted amount established by the City when it planned CHERP.

During the meeting, you requested that I furnish you with my written legal opinion as to whether or not the City may negotiate and award a Construction Contract for building only a portion of the public road contemplated by CHERP pursuant to the emergency provisions of the Public Works Law set forth at Title 39-2-2(e), *Code of Alabama, 1975*, and the "only one bid" provisions of Title 39-2-6(b), *Code of Alabama, 1975*. The purpose of this legal opinion is to comply with your request.

**I. FACTS**

This legal opinion is written and based upon the facts set forth below.

A. **EXPENDITURE OF PUBLIC FUNDS FOR PUBLIC IMPROVEMENTS:** Title 11-48-4, *Code of Alabama, 1975*, provides, in substance, that all cities or towns in the State of Alabama may spend public funds for the construction of public improvements such as streets, highways, sewer systems, water and gas mains, sidewalk and other public improvements.

The Supreme Court of Alabama decided the case of *Hamrick v. Town of Albertville*, 228 Ala. 666 (1934), and held that the question of advisability or necessity for street improvements is for the proper municipal authorities. In 1985, the Supreme Court decided the case of *Martin v. Reed*, 480 So.2d 1180, and wrote:

“The legislature has clearly delegated to cities the power to construct sidewalks and other public improvements. Code 1975, §11-48-4. With this power goes the discretion to decide where and when such improvements are to be made. McQuillan, *Municipal Corporations*, §37.18, §37.25 (1971).”

**B. CAHABA HEIGHTS ELEMENTARY ROADWAY PROJECT:** The City decided to construct a public road in the Cahaba Heights neighborhood of the City of Vestavia Hills. A portion of the new road will be adjacent to Vestavia Hills Cahaba Heights Elementary School owned and operated by the Board of Education of the City of Vestavia Hills. The City Cahaba Heights Elementary Roadway Project (“CHERP”) will include grading and storm drainage installation, underground utilities and construction of up to 850 feet of asphalt roadway with curb and gutters and paint striping. The project will also include demolition and reconstruction of a portion of the existing school driveway and asphalt parking area.

**C. ESTIMATED BUDGET FOR THE PROJECT:** The City established a budget for CHERP estimated to be an amount between \$500,000.00 and \$750,000.00.

**D. PUBLIC WORKS LAW:**

**1. Public Works Project:** Title 39-2-1(6), *Code of Alabama, 1975*, defines a public works project as follows:

“(6) PUBLIC WORKS. The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired and public funds in the form of lease payments or otherwise.”

**2. Bid Requirements for Public Works Projects:** One of the primary requirements of Title 39 is that public works in excess of \$50,000.00 must be advertised for sealed bids. The *Alabama Code* also states that projects cannot be divided into parts smaller than \$50,000.00 for the purpose of evading the competitive bid requirements (Title 39-2-2(a), *Code of Alabama, 1975*).

An awarding authority (like the City of Vestavia Hills) may let contracts for public works involving Fifty Thousand Dollars (\$50,000.00) or less with or without advertising for sealed bids (Title 39-2-2(b), *Code of Alabama, 1975*).

The bidding requirements of the Public Works Law are set forth in Title 39-2-2, *Code of Alabama, 1975*. Simply stated, those laws provide as follows:

(a) Public works projects involving expenditures of \$50,000.00 or less do not have to be bid; and

(b) For public works contracts between \$50,000.00 and \$500,000.00, a city must publish notice of the request for bids at least once in a newspaper of general circulation published in the city; and

(c) For contracts involving expenditures of more than \$500,000.00 for public works, a city must also advertise for sealed bids at least once in three newspapers of general circulation throughout the State of Alabama.

**E. THE CITY ADVERTISED FOR COMPETITIVE BIDS:** The City advertised for competitive bids for CHERP as required by the Public Works Law set forth at Title 39-2-2(a), *Code of Alabama, 1975*.

(1) **Prequalification of Bidders:** The Advertisement for Bid included a requirement that all contractors bidding on the project must be prequalified. It further provided that all prequalification documents were to be received by the Engineer for the project by 10:00 a.m. on May 27, 2015. Only two bidders were prequalified.

(2) **Mandatory Pre-Bid Meeting of All Prequalified Bidders:** The Advertisement for Bid also provided for a mandatory pre-bid meeting of all prequalified bidders to be held at the Vestavia Hills Municipal Center on June 3, 2015 at 10:00 a.m. Only one bidder attended that mandatory pre-bid meeting.

(3) **One Qualified Bidder:** Since only one prequalified bidder attended the mandatory pre-bid meeting, the City expected to receive only one bid.

**F. LEGAL OPINION, DATED JUNE 3, 2015:** The City, based upon the fact that it expected to receive no more than one bid for the project, requested the City Attorney to provide a written legal opinion regarding legal options available to the City should the City receive no bids, only one bid or if the only bid received is at an unreasonable price. A copy of the legal opinion, dated June 3, 2015, is attached hereto and incorporated into this second legal opinion by reference as though set out fully herein.



**G. BID RECEIVED AND OPENED:** The bid opening was scheduled for and held at 10:00 a.m. on June 10, 2015 at Vestavia Hills Municipal Center. On that date, the only bid received was from Veterans Landscaping Company, Inc. in the following amounts:

Base Bid	\$ 967,040.71
Bid Alternate No. 1	<u>317,288.51</u>
Total	\$1,284,329.22

**H. SCHOOL CALENDAR:**

- (1) The last day for students for the 2014/2015 school year was May 21, 2015.
- (2) The first day for teachers for the 2015/2016 school year is August 10, 2015.
- (3) The first day for students for the 2015/2016 school year is August 13, 2015.
- (4) School is not in session for only 83 days during the summer of 2015.

**I. REVISED PLAN:** The City Manager and City Engineer feel that the bid price submitted by Veterans Landscaping Company, Inc. is too high because it far exceeds the maximum amount budgeted for CHERP. Therefore, they plan to recommend to the City Council that the scope of the work be reduced from constructing a public road approximately 850 feet in length to building only a portion of the public road only approximately 300 feet in length. This plan to construct only a portion of the public road will hereinafter be referred to simply as "the project." The City Engineer has estimated the cost of the project to be an amount not to exceed \$309,000.00.

**J. REQUEST FOR SECOND OPINION:** On June 17, 2015, the City Manager, after consultation with the City Engineer, requested the City Attorney to advise the City in writing as to whether or not the City may:

- (1) Reject the bid from Veterans Landscaping Company, Inc. as being too high and not in the best interests of the City; and
- (2) Declare the situation to be an emergency pursuant to Title 39-2-2(e), *Code of Alabama, 1975* since delay caused by advertising and bidding would affect public health, safety or convenience; and
- (3) Negotiate and let the contract for construction of the project without public advertisement pursuant to the Competitive Bid Law.

## II. LEGAL ISSUES

A. May the City spend an amount not to exceed Three Hundred Nine Thousand Dollars (\$309,000.00) to construct a portion of a public street ("project") without public advertisement inviting competitive bids under the Public Works Law in emergency situations that present danger to the public health, safety (possible property damages and/or personal injuries to members of the general public) or convenience if the construction were delayed?

B. Does this situation constitute an "emergency" as referred to in Title 39-2-2(e), *Code of Alabama, 1975*, which would exempt the construction work from the competitive bid process?

C. Since only one bid for the construction of a portion of the public road was received by the City, may the City negotiate for the construction work through the receipt of informal bids?

## III. LEGAL OPINION

It is my legal opinion that the answer to legal issues A, B and C is in the affirmative.

## IV. BASIS FOR LEGAL OPINION

I base my legal opinion upon the following legal authorities:

A. **LEGAL ISSUE A:** In my opinion, a public works construction contract may legally be let to the extent necessary to meet an emergency without public advertisement. In case of an emergency affecting public health, safety or convenience of the public, the City Council must declare in writing setting forth the nature of the emergency and the danger to the public health, safety or convenience which would result from the delay before awarding the contract. (*Union Springs Telephone Co. v. James H. Rowell, Acting Director of the State of Alabama Department of Finance*, 623 So.2d 732 (1993).

Title 39-2-2(e), *Code of Alabama, 1975*, provides as follows:

"(e) In case of an emergency affecting public health, safety, or convenience, as declared in writing by the awarding authority, setting forth the nature of the danger to the public health, safety, or convenience which would result from delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. The action and the reasons for the action taken shall immediately be made public by the awarding authority upon request."

B. **LEGAL ISSUE B:** In my legal opinion, a major construction of a public road project adjacent to an elementary school would be an "emergency" situation because it would create traffic that would adversely affect the public health, safety or convenience of students, parents, faculty, staff, motorists and other members of the general public.

(1) **Definition:** Generally, the term “emergency” signifies a situation which has suddenly and unexpectedly arisen which requires speedy action.

(2) **Opinion of Attorney General:** The Attorney General, in an Opinion dated February 14, 1974, said that a municipality need not submit bids on a garage truck if an emergency situation is declared and the provisions of Section 41-16-53 of the *Code of Alabama* are complied with.

(3) **Supreme Court of Alabama:** The Supreme Court of Alabama decided the case of *Union Springs Telephone Company, Inc. v. James H. Rowell, Acting Director of the State of Alabama Department of Finance*, 623 So.2d 732 in 1993 and held that a decision by a governmental body declaring an emergency situation under the Alabama Competitive Bid Law is clothed with the presumption of correctness and may not be overturned by a court unless it is shown to be unreasonable, arbitrary or capricious.

(4) **My Opinion:** This is an emergency situation within the meaning of Title 39-2-2(e), *Code of Alabama, 1975*, because a delay to advertise could cause danger to the health, safety and general welfare of the general public. Construction of a public street adjacent to an elementary school may cause personal injuries and/or property damages.

C. **LEGAL ISSUE C:** I base my legal opinion upon Title 39-2-6(b), *Code of Alabama, 1975*, provides as follows:

“(b) If no bids or only one bid is received at the time stated in the advertisement for bids, the awarding authority may advertise for and seek other competitive bids, or the awarding authority may direct that the work shall be done by force account under its direction and control or, with the exception of the Department of Transportation, the awarding authority may negotiate for the work through the receipt of informal bids not subject to the requirements of this section. Where only one responsible and responsive bid has been received, any negotiation for the work shall be for a price lower than that bid.”

## V. MY RECOMMENDATIONS

It is my understanding that the City Council will consider this matter at its regularly scheduled meeting on Monday, June 22, 2015, and that you will, based upon this legal opinion, recommend that the project be constructed without advertising for competitive bids pursuant to the process outlined in this legal opinion. If the City Council approves the construction of the project, then in such event I recommend as follows:

- A. That the City Council enact the enclosed Resolution; and
- B. That the enclosed Construction Contract be used for the construction of the project.

June 18, 2015

Page 7

I understand that City Clerk Becky Leavings is out of her office this week. Therefore, Gail B. Pickard has sent her the Resolution and Construction Contract in "Word" format.

Please call me if you have any questions regarding this legal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Boone", with a horizontal line extending to the right.

Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

Enclosures

cc: City Engineer Christopher Brady (by hand)  
City Clerk Rebecca Leavings (by hand/e-mail)



**DRAWING OF PROJECT**

**PROPOSAL BY CONTRACTOR**

**STATE OF ALABAMA  
JEFFERSON COUNTY**

**CONSTRUCTION CONTRACT**

**WITNESS THIS CONSTRUCTION CONTRACT**, made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between The City of Vestavia Hills, Alabama, a municipal corporation, located at 513 Montgomery Highway, Vestavia Hills, Alabama 35216 (hereinafter referred to as the “City”), and \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_, (hereinafter referred to as “Contractor”).

**WITNESSETH THESE RECITALS:**

**WHEREAS**, the City has decided to construct a public road in the Cahaba Heights neighborhood adjacent to Vestavia Hills Cahaba Heights Elementary School in the City of Vestavia Hills, Alabama; and

**WHEREAS**, the scope of the work constitutes a “public works project” within the meaning of Act Number 97-225 enacted by the Legislature, effective April 22, 1997 and now codified as Title 39-2-1(b)(1), et seq., *Code of Alabama, 1975*, and is more particularly described in the plans and specifications prepared by the City, a copy of which is attached hereto, marked as Exhibit A and incorporated into this contract by reference as though set out fully herein; and

**WHEREAS**, the Contractor submitted a proposal for the construction of said public road, a copy of which is attached hereto, marked as Exhibit B and incorporated into this contract by reference as though set out fully herein; and

**WHEREAS**, the City has negotiated the proposal of the Contractor; and

**WHEREAS**, the City and the Contractor have agreed that it is in the best interests of the parties that this Construction Contract be reduced to writing.

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

**I. CONTRACTOR**

\_\_\_\_\_ represents, covenants, and warrants that it is a Contractor within the meaning of Title 34-8-1, *Code of Alabama, 1975*. Said Contractor further represents that is duly licensed and qualified to furnish the materials and supplies and perform the work of the public works project.

**II. GENERAL STATEMENT OF WORK**

The Contractor shall furnish all labor, materials, taxes and insurance (worker's compensation and general liability) as follows:

The scope of the work is described in the plans and specifications prepared by the City, a copy of which is attached hereto, marked as Exhibit A and is incorporated into this Contract by reference as though set out fully herein.

**III. CONTRACT PRICE**

As consideration of this contract, the City agrees to pay to the Contractor for the faithful performance of this contract, the sum of

---

Dollars (\$\_\_\_\_\_).

**IV. PAYMENT OF CONTRACT PRICE**

The City shall pay the contract price in full upon completion of the work described in paragraph II hereof, which shall be no later than forty-two (42) days after both parties have signed this contract; provided, however, that the work shall be completed no later than August 7, 2015.

**V. ADDITIONAL SERVICES**

The Contractor will make additional improvements and will perform additional work as requested by the City; provided, however, that the cost of said additional improvements and work be negotiated by and between the City and the Contractor and mutually agreed upon by and between the parties in writing.

**VI. TERM OF CONTRACT**

Time is of the essence of the performance of this contract. The term of this contract shall be for a period of forty-two (42) days beginning on the date of the execution and delivery of this contract. The Contractor shall complete the work to be performed under this contract no later than the forty-second (42<sup>nd</sup>) day following the signing of this contract by both parties signatory hereto; provided, however, that the work shall be completed no later than August 7, 2015.

**VII. QUALITY OF WORK**

All labor, construction and installation of equipment, materials and supplies installed by Contractor in the performance of this contract shall be done in a workmanlike manner.

### **VIII. LIABILITY INSURANCE**

The Contractor shall carry Manufacturer's and Contractor's General Comprehensive Liability and Public Liability Insurance with limits of One Million Dollars (\$1,000,000.00), per person, and Two Million Dollars (\$2,000,000.00), per occurrence, to cover and protect the City, its Mayor, City Manager, individual City Council members, servants, agents, employees or representatives, the Contractor and its subcontractors against claims or injury to or death of one or more than one person because of accidents which may occur or result from operations under the contract; such insurance shall cover the use of any and all equipment, including but not limited to machinery, tractors, rollers, mixers, motor vehicles and other related equipment necessary to perform the work and installations and embraced in this contract.

The Contractor shall carry, during the life of this contract, property damage insurance in the amount of not less than Five Hundred Thousand Dollars (\$500,000.00) to protect it and its subcontractors from claims for property damage which might arise from the work performed under this contract.

Before commencing work, the Contractor shall submit evidence of the coverages required above to the City for review and approval. Such insurance shall be carried with financially responsible insurance companies, licensed in the state and approved by the City and shall be kept in full force and effect until the Contractor's work is accepted by the City. Contracts of insurance (covering all operations under this contract) which expire before the Contractor's work is accepted by the City shall be renewed and evidence of such renewal shall be submitted to the City for its approval.

### **IX. ADDITIONAL INSURED**

The Contractor shall cause all of the insurance policy coverages described in Section VIII of the Contract above (except for the Worker's Compensation coverages) to include:

A. The City of Vestavia Hills, Alabama, and its Mayor, City Manager, individual City Council members, servants, agents, employees or representatives as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and

B. The City of Vestavia Hills, Alabama, and its Mayor, City Manager, individual City Council members, servants, agents, employees or representatives as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations; and

C. The insurance policy coverages shall state that these coverages shall be primary insurance for the additional insureds; and

D. Contain no exclusions of the additional insureds relative to job accidents; and



E. The policies must be on an “occurrence” basis.

F. In addition, the Contractor shall include the Board of Education of the City of Vestavia Hills, Alabama, its Superintendent, individual members of the Board, servants, agents, representatives and employees as additional insureds on all of the insurance policies and to the extent provided in sections A, B, C, D and E hereof.

**X. WORKERS' COMPENSATION**

The Contractor shall carry Worker's Compensation insurance for all of its employees and those of its subcontractors engaged in the work at the site in accordance with the State of Alabama Worker's Compensation Law. This insurance coverage provided by the Contractor under the Worker's Compensation Act shall provide protection from any and all claims for bodily injury, death or property damage, which may arise from the performance of any servant, agent, employee or other representative of Contractor or its subcontractors under this contract. Certificates of insurance issued by competent insurance companies qualified and licensed to do business in the State of Alabama and approved by the City evidencing that all of said subcontractors of the Contractor are covered by said Worker's Compensation insurance coverage and furnished to the Contractor and the City by the individual subcontractors shall meet the requirements of this section.

**XI. INDEMNITY**

A. The Contractor shall indemnify and save harmless the City, its Mayor, City Manager, individual City Council members, servants, agents, employees and representatives from any and all claims, demands, controversies, actions, causes of action, liabilities of action, lawsuits, liabilities, damages and losses and expenses, including but not limited to attorney fees, arising out of or resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result for work performed under this contract by Contractor, a subcontractor and anyone directly or indirectly employed by them. This indemnification shall extend to all claims, damages, losses and expenses for injury or damage to adjacent or neighboring property, or persons injured thereon, that arise out of, relate to or result from performance of the Work.

B. The Contractor shall indemnify and save harmless the Board of Education of the City of Vestavia Hills, Alabama, its Superintendent, individual members of the Board, servants, agents, representatives and employees from any and all claims, demands, controversies, actions, causes of action, liabilities of action, lawsuits, liabilities, damages and losses and expenses, including but not limited to attorney fees, arising out of or resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result for work performed under this contract by Contractor, a subcontractor and anyone directly or indirectly employed by them. This indemnification shall extend to all claims, damages, losses and expenses for injury or damage to adjacent or neighboring property, or persons injured thereon, that arise out of, relate to or result from performance of the Work.

**XII. INDEPENDENT CONTRACTOR**

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

**XIII. ASSIGNMENT**

This contract shall not be assignable by the Contractor in any respect without having first obtained the written consent of the City of Vestavia Hills evidenced by a properly enacted resolution of the City Council.

**XIV. PERMITS, LAWS, CODES AND ORDINANCES**

The Contractor shall give all notices required by and comply with all applicable laws, ordinances and codes of the local, state and federal governments regarding the performance of the work described in this contract.

**XV. EXISTING UNDERGROUND UTILITIES**

Before any work is done in the vicinity of an existing underground utility line, the Contractor shall check with the owner of the utility lines to determine and verify its exact location. The Contractor shall be held liable for any damage to utilities in the execution of this Contract.

**XVI. BONDS**

In accordance with Title 39-1-1, *Code of Alabama, 1975*, the Contractor agrees to execute a performance bond with penalty equal to one hundred (100%) percent of the amount of the Contract price (\$\_\_\_\_\_), and in addition thereto, another bond with good and sufficient surety payable to the City in an amount not less than (50%) of the contract price (\$\_\_\_\_\_ ) with the obligation that such Contractor shall promptly make payments to all persons supplying it with the labor, materials, equipment or supplies for and in the prosecution of the work provided for in this Contract and for the payment of reasonable attorney's fees incurred by successful claimants or plaintiffs in civil actions on said bond.

A copy of the said performance bond shall be marked as Exhibit "C", attached hereto and incorporated and made a part of the contract as though set out fully herein. A copy of the labor and material bond shall be designed as Exhibit "D" attached hereto and incorporated and made a part of this contract as though set out fully herein.

## **XVII. ACCIDENT PREVENTION**

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to person or property, either on or off the site, which occur as a result of its prosecution of the work. The safety provisions of applicable laws and building and construction codes shall be observed. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "*Manual of Accident Prevention in Construction*" published by the Associated Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable local laws. If the Contractor performs work on school days during school hours, then in such event the work shall be done in such a way that it does not disrupt classes, school activities, endanger students or damage school property.

## **XVIII. SUBCONTRACTORS**

No proposed subcontractor shall be disapproved by the City, except for cause.

The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by said subcontractors, as it is for the acts and omissions of persons directly employed by it.

The Contractor shall cause appropriate provision to be inserted in all subcontracts relative to the work to require compliance by each subcontractor with the applicable provisions of the Contract for the improvements embraced in the project.

Nothing contained in the Contact shall create any contractual relations between any subcontractor and the City.

The Contractor shall pay all subcontractors for materials and supplies installed in this project by said subcontractors and all work and labor performed by said subcontractors on said project.

## **XIX. CHANGES IN WORK**

The City may make changes in the scope of the work required to be performed by the Contractor under the Contract by eliminating any portion of the work and the corresponding unit price charged therefore. Any change order for additional work shall be done by mutual agreement and in writing. Any change order for deletion of work shall be in writing given by City to the Contractor. No change order shall relieve or release the Contractor from any of its obligations under the contract or any guarantee given by it pursuant to the Contract provisions, and shall not affect the validity of the guarantee bonds.

**XX. INSPECTION**

All materials and workmanship shall be subject to inspection, examination or test by the City at any and all times during manufacture or construction and at any and all places where such manufacture or construction is carried on. The City shall have the right to reject defective materials and defective, incorrect or incomplete work and/or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the project area and be replaced with material of specified quality without charge therefore. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, the City may contract for or otherwise have the defects remedied or rejected materials removed from the project area and charge the cost of the same against any moneys which may be due the Contractor, without prejudice to any other rights or remedies of the City.

**XXI. TERMINATION**

The Contract, of which statement of work described in paragraph II hereof form a part, may be terminated by the City for any one of the following reasons:

- A. Substantial evidence that the progress made by the Contractor is insufficient to complete the work within the specified time.
- B. Deliberate failure on the part of the Contractor to observe the requirements of this Contract.
- C. Failure on the part of the Contractor to promptly make good any defects in materials or workmanship that may be indicated to it by the City.
- D. Any other breach of contract by the Contractor.

**XXII. GENERAL GUARANTY BY CONTRACTOR**

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements embraced in this Contract by the City or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express warranties of responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of twelve (12) months from the date of final acceptance of the work. The City will give notice of defective material and work with reasonable promptness. The Contractor shall deliver to the City any and all written warranties guaranteed by the manufacturers of any of the materials installed in said road at the completion of the work.

### **XXIII. REMOVAL OF DEBRIS AND CLEANING**

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way reasonable clear. Upon completion of the work, it shall remove all temporary construction facilities, debris and unused materials provided for the work, and put the whole site of the work and public rights of way in a neat and clean condition. Trash burning on the site of the work will be subject to the approval of the City and existing state and local regulations.

### **XXIV. IMMIGRATION LAW**

A. The Contractor represents and warrants that it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an “unauthorized alien,” as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., *Code of Alabama 1975*, as amended (the “Act”).

B. The Contractor represents and warrants that it will enroll in the E-Verify program prior to performing any work on the project in Alabama and shall provide documentation establishing that the Contractor is enrolled in the E-Verify program. During the performance of this contract, the Contractor shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations.

C. The Contractor agrees to comply with all applicable provisions of the Act with respect to its subcontractors by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work for the Contractor on the Project in Alabama, that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. The Contractor represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which the Contractor knows is not in compliance with the Act.

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



**XXV. MISCELLANEOUS**

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

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

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

**D. GOVERNING LAW:** This contract shall be interpreted, construed and governed to the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

**E. CONSTRUCTION OF TERMS:** The City and Contractor negotiated the terms, provisions and conditions of this contract and both parties had the equal opportunity for input for the drafting of this contract. Therefore, any ambiguities of this contract shall be construed fairly and equitably regardless of the participation of either party in drafting this contract. The reference in terms to gender and number shall be modified as may be appropriate.

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

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

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

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

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

**IN WITNESS WHEREOF**, the parties have executed this Construction Contract on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

THE CITY OF VESTAVIA HILLS, ALABAMA

By \_\_\_\_\_  
Alberto C. Zaragoza, Jr.  
Its Mayor

By \_\_\_\_\_  
Jeffrey D. Downes  
Its City Manager

ATTESTED:

By \_\_\_\_\_

\_\_\_\_\_  
Contractor

By \_\_\_\_\_  
Its President

ATTESTED:

By \_\_\_\_\_

**STATE OF ALABAMA  
JEFFERSON COUNTY**

**ACKNOWLEDGMENT**

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

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
SEAL

**STATE OF ALABAMA  
JEFFERSON COUNTY**

**ACKNOWLEDGMENT**

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

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
SEAL

**STATE OF ALABAMA  
JEFFERSON COUNTY**

**CORPORATE ACKNOWLEDGMENT**

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of \_\_\_\_\_, an \_\_\_\_\_ corporation/partnership/limited liability company, is signed to the foregoing Construction Contract, and who is known to me, acknowledged before me on this day that being informed of the contents of the contract, (s)he in his/her capacity as such and with full authority, executed the same voluntarily for and as the act of said \_\_\_\_\_ on the day the same bears date.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
SEAL

**EXHIBIT A**  
**PLANS AND SPECIFICATIONS**



**EXHIBIT B**

**PROPOSAL BY CONTRACTOR**

**EXHIBIT C**

**PERFORMANCE BOND**

**EXHIBIT D**

**LABOR AND MATERIAL BOND**

## **RESOLUTION NUMBER 4725**

### **A RESOLUTION AUTHORIZING THE PURCHASE OF RADIO EQUIPMENT BY UTILIZING E-911 FUNDS BY THE VESTAVIA HILLS CITY COUNCIL AS THE CITY'S EMERGENCY COMMUNICATIONS DISTRICT BOARD**

**WHEREAS**, the City of Vestavia Hills maintains a special fund account for the City's E-911 funds; and

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama, as the governing body services as the City's Emergency Communications District Board ("ECD Board");

**WHEREAS**, as stated in the State of Alabama Attorney General Opinion Numbers 94-00020 and 2010-019, the Alabama Attorney General has opined that the ECD Board may provide radio equipment for the purpose of transmitting and receiving dispatch calls purchased with E-911 funds; and

**WHEREAS**, the City Manager received a memorandum from the Fire Chief dated June 15, 2015, a copy of which is marked as Exhibit A," attached to and incorporated into this Resolution Number 4725 as though written fully therein which requests that the ECD Board take action to allow the purchasing of radio equipment as described above with E-911 funds; and

**WHEREAS**, the City Manager has reviewed the requested and corresponding documentation and has recommended that the ECD Board take action as requested by the Fire Chief.

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

1. The Mayor and City Council as the ECD Board of the City of Vestavia Hills, Alabama, hereby authorizes the City Manager to purchase radio equipment from special E-911 funds pursuant to Alabama Attorney General Opinion Numbers 94-00020 and 2010-019; and
2. All purchases of equipment shall be made pursuant to existing or future special fund budget approvals or special approvals of the governing body; and
3. This Resolution Number 4725 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 13<sup>th</sup> day of July, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



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

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

**MEMORANDUM**

TO: Jeff Downes, City Manager  
FROM: Jim St. John, Fire Chief  
DATE: June 15, 2015  
RE: Request to purchase radio equipment from E-911 funds

I request that the City Council, as the ECD board, approve the expenditure of \$12,008.00 from E-911 funds for the purchase of radio equipment. The purchase will include a radio and headset system for the new fire engine under construction and the relocation and installation of radio equipment to the new City Hall location.

While this expenditure is not in the FY 2015 budget, it will not cause a negative fund balance through the end of the fiscal year.

**RESOLUTION NUMBER 4727**

**A RESOLUTION AUTHORIZING THE PURCHASE  
OF A DRYING CABINET AND WORKSTATION**

**WHEREAS**, the Vestavia Hills Police Department has analyzed the need for a drying cabinet and workstation; and

**WHEREAS**, the Vestavia Hills Police Department has determined that there is a need for a drying cabinet and workstation designed to protect the technician and the environment from harmful bacteria, viruses, and odors associated with the drying and processing of evidence, as well as prevent cross contamination; and

**WHEREAS**, the Police Department has requested that the expense for the drying cabinet and workstation of approximately \$7,750.00 be charged to the Court 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 drying cabinet and workstation designed to protect the technician and the environment in the amount not to exceed \$7,750.00 to be expensed to the Court Fund account; and
2. This Resolution shall become effective immediately upon its approval and adoption.

**APPROVED and ADOPTED** this the 13<sup>th</sup> day of July, 2015.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## Wendy Appling

---

**From:** Jeff Downes  
**Sent:** Wednesday, June 17, 2015 9:57 AM  
**To:** Wendy Appling; Danny Rary  
**Cc:** Rebecca Leavings  
**Subject:** FW: Purchase of equipment for new PD building - Agenda item

Chief

I support your request and ask that you coordinate inclusion on the agenda for a first read.



**JEFF DOWNES**  
Vestavia Hills City Manager  
P 205 978 0195 | [vhal.org](http://vhal.org)  
Vestavia Hills

  [WWW.ALIFEABOVE.ORG](http://WWW.ALIFEABOVE.ORG)

---

**From:** Danny Rary  
**Sent:** Wednesday, June 17, 2015 9:52 AM  
**To:** Jeff Downes  
**Subject:** Purchase of equipment for new PD building - Agenda item

To: Jeff Downes  
From: Dan Rary  
Re: Agenda request

I am requesting to utilize funds from the court referral account to purchase a drying cabinet and workstation for the new Police Department building. These items are designed to protect the technician and the environment from harmful bacteria, viruses and odors associated with the drying and processing of evidence, as well as prevent cross contamination.

Cost: \$7,375.00 + \$350.00 shipping

I spoke with Mr. Sawaya to clarify the amount of Court Referral funds available to us. Specifically, we discussed the availability of funds from previous years.

The funds roll over each year to the general Court Fund. The spread sheet we were given shows the portion of the Court Fund that came from our Court Referral program as well as positive balance for each of the last three years. According to Mr. Sawaya, past years funds are still available for us to spend with Council approval. As of April 30<sup>th</sup>, 2015, the total amount available is \$85,000. This is the combined amount from 2013-present.