

**Vestavia Hills  
City Council Agenda  
April 11, 2016  
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Marvin Green, Assistant Fire Chief
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
6. Proclamation – Day of Prayer and Thanksgiving – April 11, 2016
7. City Manager’s Report
8. Councilors’ Reports
9. Approval of Minutes – March 28, 2016 (Regular Meeting)

**Old Business**

10. Resolution Number 4817 – A Resolution Appropriating An Additional \$24,000 To The Existing Turf Management Agreement For Mowing Of Park Properties

**New Business**

11. Resolution Number 4818 – A Resolution Accepting A Bid For Preventative And Total Maintenance Of HVAC Units In City-Owned Facilities And Authorizing The Mayor And City Manager To Execute An Agreement For Said Services
12. Resolution Number 4819 - A Resolution Declaring A Weed And Other Vegetation Nuisance Pursuant To Ordinance Number 2567 And Directing The City Manager To Abate Said Nuisance

**New Business (Requesting Unanimous Consent)**

13. Ordinance Number 2625 – An Ordinance Declaring As Surplus And Authorizing And Directing The Sale Of Real Estate, More Particularly Described As 1280 Montgomery Highway, Vestavia Hills, Alabama

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

14. Ordinance Number 2652 – An Ordinance Establishing Policy And Protocols To Manage Stray, Feral Or Abandoned Cats And Felines And To Prescribe Penalties For Violation Thereof
15. Citizens Comments
16. Motion For Adjournment

**PROCLAMATION**

- WHEREAS, prayer is our communication with the Heavenly Father; and
- WHEREAS, it enables mankind to give thanks for the life we sometimes take for granted; and
- WHEREAS, prayer seems to soften our sorrow and make our griefs and hardships bearable; and
- WHEREAS, through prayer we can be prepared to become the instruments of His peace; and
- WHEREAS, prayer is a candle that can rekindle the light that will repel the darkness in our midst; and
- WHEREAS, by our unity others may know that we are one with the Father and His peace; and
- WHEREAS, only as we are filled with the power of God can we do the things the Lord wants of us in any area of our lives; and
- WHEREAS, the annual Mayor's Prayer Breakfast will be held Tuesday, April 26 at Vestavia Country Club;

NOW, THEREFORE, I, Alberto C. Zaragoza, Jr., by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim April 26, 2016 as a special

**DAY OF PRAYER AND THANKSGIVING**

in Vestavia Hills and earnestly call upon all men of faith and goodwill to support this spiritual effort so that together we may offer prayer, praise and thanksgiving.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 11th day of April, 2016.

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Alberto C. Zaragoza, Jr.  
Mayor

## CITY OF VESTAVIA HILLS

### CITY COUNCIL

### MINUTES

**MARCH 28, 2016**

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 Clerk called the roll with the following:

**MEMBERS PRESENT:**

Mayor Alberto C. Zaragoza, Jr.  
Steve Ammons, Mayor Pro-Tem  
John Henley  
George Pierce  
Jim Sharp

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Wendy Dickerson, Deputy City Clerk  
Dan Rary, Police Chief  
Captain Kevin York, Police Department  
Captain Jason Hardin, Police Department  
Jim St. John, Fire Chief  
Terry Ray, Deputy Fire Chief  
Marvin Green, Deputy Fire Chief  
Lori Beth Kearley, City Engineer  
Melvin Turner, Treasurer  
George Sawaya, Deputy Treasurer  
Joy Moman, Court Magistrate Supervisor

**OTHER OFFICIALS PRESENT:**

Patrick H. Boone, City Attorney

Invocation was given by Joy Moman, Vestavia Hills Municipal Court Magistrate Supervisor.

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

- Mr. Pierce recognized Linda Parker with the Vestavia Hills Chamber of Commerce.
- Mr. Henley stated that the Board of Education applications were accepted in the Office of the City Clerk until 5 p.m. today and interviews will be held on April 20 beginning at 7:30 a.m.

## **PRESENTATION**

David Barber, Prescott House, thanked the Council for their support. It helped to ensure the doors are kept open and he wanted to personally come and tell the Council “thank you.” The Vestavia Hills Police Department has called on the Prescott House this year.

Mayor Zaragoza thanked Mr. Barber for the service provided by the Prescott House. Mr. Barber explained that 28 years ago, he realized that the criminal justice system did not have a service for children who had been physically and sexually abused. They were put through multiple interviews in an uncomfortable setting for them. These children are now interviewed and counseled in a comfortable setting.. It looks like a house so the kids can feel comfortable and at ease. They are traumatized and should not continue to be; that was why the Prescott House was founded.

## **CITY MANAGER’S REPORT**

- Mr. Downes announced that the Mayor and Council wanted the design of the new City Hall to be for community gatherings, a place to meet, and a place to have fun. The calendar over the next two months is extensive in meeting these goals:
  - April 9<sup>th</sup> – Art in the Hills
  - April 23<sup>rd</sup> – 1<sup>st</sup> Responders Picnic
  - May 30<sup>th</sup> – Alabama Winds Concert
  - June 4<sup>th</sup> – Wing Ding
  - Civic Group Meetings
  - Association Meetings
- He explained that public WIFI has been live at City Hall for the last couple of days. “VHALGuest” is the connection and there is no password needed. People coming to events will have access to WIFI. He announced that the IT Department is working with Southern Lite to expand WIFI to the parks in the future.
- Mr. Downes announced that the video and audio for Council meetings will be recorded and shown on the website; hopefully, within the next two meetings. Technical issues are being addressed and a test run is being held at this meeting. A policy will be addressed for the use of the recordings.
- Mr. Downes recognized Kevin York and Jason Hardin in the Police Department for their outstanding service and announced that both of them have been promoted to the rank of Captain.

### **COUNCILORS' REPORTS**

- Mr. Ammons congratulated both new Captains of the Police Department. He asked that Captain York make a presentation about a new accommodation for the police officers.
  - Captain York stated that Erin Mullins lived in Tennessee and they had Cop Stop. It was created to make a safe environment for law enforcement personnel within the community. After moving to Alabama, she wanted to do this in Vestavia Hills. They have volunteers and are always looking for more. They have made meals for the evening shift and last week provided a wonderful spread for the day shift. They are looking at having a breakfast for the night shift. It is a great way for the community and the police officers to come together for public relations.

### **FINANCIAL REPORTS**

Mr. Turner presented the financial reports for the month ending February 2016. He read and explained the balances.

### **APPROVAL OF MINUTES**

The minutes of March 14, 2016 (Regular Meeting) was presented for approval.

**MOTION** Motion to dispense with the reading of the minutes of March 14, 2016 (Regular Meeting) and approve as presented was by Mr. Pierce and second by Mr. Henley. Roll call vote as follows:

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

The minutes March 21, 2016 (Special Meeting) and March 21, 2016 (Work Session) were presented for approval.

**MOTION** Motion to dispense with the reading of the minutes of March 21, 2016 (Special Meeting) and March 21, 2016 (Work Session) and approve as presented was by Mr. Ammons and second by Mr. Henley. Roll call vote as follows:

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

**OLD BUSINESS**

**ORDINANCE NUMBER 2648**

**Ordinance Number 2648 – Conditional Use - 854 Vestlake Ridge Drive, Use For A Home Office For A Consulting Business; James Sumner, Jr., Owner (Public Hearing)**

**MOTION** Motion to approve Ordinance Number 2648 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that Mr. Sumner requested a conditional use for a home office. It went before Liberty Park and the Planning and Zoning Commission with stipulations that are standard for this type of request.

Mr. Sharp stated that it was approved unanimously by the Planning and Zoning Commission.

Mr. Sumner stated that there will not be employees or clients coming to his home. There will be no additional traffic.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

**ORDINANCE NUMBER 2649**

**Ordinance Number 2649 – Rezoning – 2834 and 2838 Acton Place; Rezone From Jefferson County A to Vestavia Hills A; Compatible Zoning; Gail Acton, Owner (Public Hearing)**

**MOTION** Motion to approve Ordinance Number 2649 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes stated that they are coming in for a compatible rezoning with the intent to construct a house. He stated that when it was annexed, it was not rezoned with the City zoning.

Mr. Acton stated that this is just a formality.

Mayor Zaragoza stated that it was annexed in 1992.

Mr. Acton stated that it was annexed then but wasn't rezoned to a Vestavia Hills zoning classification.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

### **RESOLUTION NUMBER 4810**

#### **Resolution Number 4810 – A Resolution Approving Funding And Purchasing For Two Vehicles For The Police Department (*Public Hearing*)**

**MOTION** Motion to approve Resolution Number 4810 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes stated that the Police Department would like to purchase two small vehicles for undercover work, utilizing funds that were accumulated from the defensive driving school.

Chief Rary explained that the two undercover vehicles have become well known. He would like to sell them and get two more vehicles.

Mr. Henley asked if this was from the General Fund.

Mr. Turner stated that it is from the Restricted Fund in Court.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

### **NEW BUSINESS**

### **RESOLUTION NUMBER 4812**

#### **Resolution Number 4812 – A Resolution Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property (*Public Hearing*)**



**MOTION** Motion to approve Resolution Number 4812 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes stated that the Fire Department has a surplus defibrillator and has negotiated to get a new one.

Chief St. John stated that you cannot repair or give away an old defibrillator. He has negotiated to get a reduced price for a new one and turning the old one back in.

Mr. Ammons asked if this is the last of the three old ones we have.

Chief St. John stated that we will be caught up on defibrillators for a couple of years.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

### **RESOLUTION NUMBER 4813**

**Resolution Number 4813 – A Resolution Accepting A Bid For SHAC, Phase II Trail And Authorizing The City Manager To Execute And Deliver A Contract For Said Construction (*Public Hearing*)**

**MOTION** Motion to approve Resolution Number 4813 was by Mr. Ammons and second was by Mr. Sharp.

Mr. Downes explained that this is for the trails and playground equipment. It was part of the effort to bid the work in segments. The bid package was a component for the trails. Three bids were received. CBA was the lowest bid with Veterans and Sprouts coming in much higher. The City and the Parks and Recreation Foundation asked Holcombe Norton Partners to review the invitation to bid and the bids received to ensure nothing was left out. They said there was not. Site work will be preceded by a donor.

Mr. Pierce asked why there was such a difference.

Mr. Sean Hufnagel, Holcome Norton Partners, stated that CBA is a fairly new company and may want to get started with bidding government jobs. It is a fairly easy project so it is a good one to start with.

Mr. Ammons stated that this will be the BCBS Walking Trail.

Mr. Sharp stated that he was blessed to be on the Council when the City bought the property. This has been an amazing project.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

### **RESOLUTION NUMBER 4814**

**Resolution Number 4814 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Jefferson County For Election Services (*Public Hearing*)**

**MOTION** Motion to approve Resolution Number 4814 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes stated that the election will be held on August 23<sup>rd</sup>. This will be an agreement with Jefferson County for election machines/services. The City has authorized this agreement in previous elections.

The Mayor announced that in the last election we had to use ES&S. We are pleased to work with the County once again for machines/services.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

### **RESOLUTION NUMBER 4815**

**Resolution Number 4815 – A Resolution Appointing An Election Manager For The 2016 City Of Vestavia Hills Municipal Elections**

**MOTION** Motion to approve Resolution Number 4815 was by Mr. Pierce and second was by Mr. Henley.

The Mayor stated that he is the election manager by law unless another one is appointed by the Council. He announced that he has plans to seek re-election and would like to authorize the City Clerk to be the Election Manager.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

**NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)**

The Mayor opened the floor for unanimous consent for the immediate consideration and action on Resolution Number 4816.

**MOTION** Motion for unanimous consent for the immediate consideration and action on Resolution Number 4816 was by Mr. Ammons and second was by Mr. Pierce. Roll call vote as follows:

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

**RESOLUTION NUMBER 4816**

**Resolution Number 4816 – A Resolution Authorizing The City Manager To Execute An Agreement With Birmingham Humane Society (*Public Hearing*)**

**MOTION** Motion to approve Resolution Number 4816 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Pierce explained that the resolution will help to control the feral cats.

Mr. Downes stated that this Resolution would allow immediate action by the City for public safety. He indicated that the City is working on a long-term ordinance to address the issue more in depth.

Mr. Pierce stated that this will help start this program.

Mr. Downes stated that this is a fee schedule that is being utilized by the Birmingham Humane Society and Jefferson County. This contract will piggyback off that contract.

The Mayor opened the floor for a public hearing.

Jim Diggle, White Oak Drive, said that there are numerous cats at the gas station at Overton Road and Crosshaven Drive.

Mr. Pierce stated that there are 3 colonies of feral cats and that is one of them. Each colony has 20 to 40 cats.

The Mayor stated that the Humane Society has been out and reviewed the area.

Mr. Pierce stated that they will put up signs and will be in process for catching feral cats for spray/neuter.

There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	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 April 11, 2016 at 5 PM.

- Resolution Number 4817 – A Resolution Appropriating An Additional \$24,000 To The Existing Turf Management Agreement For Mowing Of Park Properties

**CITIZEN COMMENTS**

No one addressed the Council.

**EXECUTIVE SESSION**

The Mayor stated that the Council will go into Executive Session for the discussion of the purchase/sale of property lasting for approximately one hour. No decision will be made following the session.

Mr. Ammons made a motion to move into Executive Session for the discussion of the purchase/sale of property lasting for approximately one hour, seconded by Mr. Henley at 5:55 p.m. Roll call vote as follows:

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

Mayor Zaragoza – yes

Motion carried.

At 7:10 p.m. the Council entered the Council Chambers. Mr. Pierce made a motion to adjourn; seconded by Mr. Henley. Meeting adjourned at 7:10 PM.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Wendy Dickerson  
Deputy City Clerk

**RESOLUTION NUMBER 4817**

**A RESOLUTION APPROVING AN ADDITIONAL \$24,000 FOR MOWING OF THE FORMER ALTADENA VALLEY COUNTRY CLUB**

**WHEREAS**, on March 23, 2015, the City Council adopted and approved Resolution Number 4688 to accept a bid for right-of-way mowing in the City of Vestavia Hills; and

**WHEREAS**, Turf Management was awarded said contract for a period of three (3) years; and

**WHEREAS**, Section 6 of the contract allows for the addition and/or deletion of certain areas for mowing; and

**WHEREAS**, the Public Services Director has determined a need for mowing services within the former Altadena Valley Country Club areas that were recently donated to the City; and

**WHEREAS**, the addition of this property would cost the City an estimated \$2,000 per month to maintain until the end of the fiscal year, September 2016, for a total not to exceed \$24,000; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept said request for maintenance by Turf Management of the former Altadena Valley Country Club.

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

1. The addition of the acreage known as the former Altadena Valley Country Club is hereby added to the Turf Management agreement pursuant to the bid submitted at a cost not to exceed \$2,000 per month through the end of September 2016 (total of \$24,000); and
2. This Resolution Number 4817 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of March, 2016,

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## Rebecca Leavings

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**From:** Brian Davis  
**Sent:** Tuesday, March 15, 2016 4:11 PM  
**To:** Rebecca Leavings  
**Subject:** First Read on next agenda  
**Attachments:** Scanned from a Xerox Multifunction Printer.pdf

Becky, we need to add cutting of AVCC 2 times per month starting in April and ending in September for \$24,000 total (\$2000 per cut). This will be on our contract with Turf Management, which allows us to add and subtract areas as needed. I have attached the contract.

Please add for a first read on the agenda at the next meeting with an approval at the first meeting in April.

Thank you in advance. Please let me know if you need anything else.

***"The pessimist sees difficulty in every opportunity. The optimist sees opportunity in every difficulty."  
Winston Churchill***



**Brian C. Davis, Director**  
Department of Public Services  
1032 Montgomery Highway  
Vestavia Hills, AL 35216  
P 205 978 0150 | [vhal.org](http://vhal.org)

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



**RESOLUTION NUMBER 4818**

**A RESOLUTION ACCEPTING A BID FOR PREVENTATIVE AND TOTAL MAINTENANCE OF HVAC FOR ALL CITY-OWNED FACILITIES IN THE CITY OF VESTAVIA HILLS**

**WHEREAS**, on March 30, 2016 at 10:00 a.m. the City of Vestavia Hills publicly read aloud bids submitted for preventative and total maintenance of HVAC units in all city-owned facilities; and

**WHEREAS**, the Public Services Director has reviewed the bids, detailed them in a spreadsheet and recommended acceptance of the bid submitted by H & M Mechanical, Inc. A copy of said spreadsheet and the bid response submitted by H & M Mechanical, Inc., is marked as Exhibit A attached to and incorporated into this Resolution Number 4818 as if written fully therein; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept the recommendation of the Public Services Director and accept said bid as detailed in Exhibit A.

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

1. The bid submitted by H&M Mechanical, Inc., as detailed in attached Exhibit A and recommended by the Public Services Director, is hereby accepted; and
2. The Mayor and City Manager are hereby authorized to execute and deliver any and all documents necessary to secure said agreement and/or for said purchase upon written approval of the City Attorney, a copy of which is marked as "Exhibit B" attached to and incorporated into this Resolution Number 4818 as though written fully therein; and
3. This Resolution Number 4818 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 11<sup>th</sup> day of April, 2016.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**Vestavia Hills Public Services  
1973 Merryvale Road  
Vestavia Hills, Al 35216**

**INTEROFFICE MEMO**

Date: April 7, 2016

TO: Jeff Downes  
City Manager

From: Brian Davis *bed*  
Public Services Director

RE: HVAC Maintenance Bid

Per our discussions, I would like to recommend the All-Inclusive Maintenance contract be awarded to H&M Mechanical. As you are aware, this falls within our current maintenance budgets across the departments for the current fiscal year, and I plan to submit the annual cost for the contract in the upcoming budget requests.

Please let me know if you have any questions.

CC: Rebecca Leavings  
Bobby McDaniel

Company	Preventive Maintenance			Total Cost for PM	Monthly	Total Maintenance			Total Cost for TM	Monthly Cost
	Group A	Group B	Group C			Group A	Group B	Group C		
CCSI	No Bid	No Bid	No Bid			No Bid	No Bid	No Bid		
Brown Heating and Air	No Bid	\$ 15,148.00	\$ 4,725.00	\$ 19,873.00	\$ 1,656.08	No Bid	No Bid	No Bid		
Vulcan Heating and Air	\$ 16,656.00	\$ 11,436.00	\$ 3,732.00	\$ 31,824.00	\$ 2,652.00	\$ 41,304.00	\$ 31,740.00	\$ 8,004.00	\$ 81,048.00	\$ 6,754.00
Climate Service Inc	\$ 17,100.00	\$ 12,800.00	\$ 4,500.00	\$ 34,400.00	\$ 2,866.67	\$ 64,350.00	\$ 38,500.00	\$ 12,000.00	\$ 114,850.00	\$ 9,570.83
Trane	\$ 56,660.00	No Bid	No Bid	\$ 56,660.00	\$ 4,721.67	\$ 90,922.00	No Bid	No Bid	\$ 90,922.00	\$ 7,576.83
H&M Mechanical	\$ 11,239.00	\$ 10,548.00	\$ 2,812.00	\$ 24,599.00	\$ 2,049.92	\$ 34,276.00	\$ 18,671.00	\$ 5,354.00	\$ 58,301.00	\$ 4,858.42
Johnson Controls	\$ 44,520.00	\$ 20,788.00	\$ 6,255.00	\$ 71,563.00	\$ 5,963.58	\$ 89,654.00	\$ 53,729.00	\$ 15,468.00	\$ 158,851.00	\$ 13,237.58

Group A - City Hall and Library in the Forest

Group B - All Parks and Recreation Facilities

Group C - All Fire Stations (PD substation)

**INVITATION TO BID**  
**CITY OF VESTAVIA HILLS**  
**513 MONTGOMERY HIGHWAY**  
**VESTAVIA HILLS AL 35216**

BIDS TO BE OPENED AT THE CITY OF  
VESTAVIA HILLS ON MARCH 30, 2015  
AT 10:00 AM. BIDS TO BE TURNED IN NO  
LATER THAN 10:00 AM ON THIS DATE.

DATE: February 25, 2016  
BID: HVAC Maintenance

Ladies and Gentlemen:

Sealed bids will be received by the City of Vestavia Hills, Alabama, in the Office of the City Clerk at the Municipal Center until the above time and date, and opened as soon thereafter as practical. Please return in a sealed envelope marked with the bid name as listed above. Bids must be returned by 10:00 AM by the date listed above. Bids received in the Office of the City Clerk either by hand delivery or mail after the specified date and hour will not be considered.

\*\*\*\*\*

NAME OF COMPANY: H + M Mechanical, Inc

BID PRICE: (See Attached Bid Sheet)

BIDS GOOD THROUGH\*\*: June 30, 2016

**\*\*All bids must be good for a minimum of 90 days.**

I hereby affirm that I have not been in any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid at a fixed price or to refrain from bidding or otherwise.

**This form must be notarized.**

FIRM H + M Mechanical, Inc

Sworn and Subscribed before me  
this the 30 day of March,  
2016.

BY [Signature]

ADDRESS 3100 Richard Arrington Jr Blvd N  
Birmingham, AL 35203

Donalise Smithson  
Notary Public

PHONE 205-664-0620

My Commission Expires March 23, 2020

DATE 3-30-16

ALL BIDDERS MUST USE OFFICIAL BID FORMS. COMPLETE IN INK OR TYPE. THE CITY RESERVES THE RIGHT TO REJECT OR WAIVE ANY AND ALL BIDS OR PORTIONS THEREOF. QUESTIONS SHOULD BE ADDRESSED TO THE OFFICE OF THE CITY CLERK, PHONE (205) 978-0131.

[Signature]  
Rebecca Leavings, Purchasing Agent

**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  

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

April 7, 2016

By Regular Mail and Electronic Mail

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

In Re: Proposed Agreement By and Between Comfort Systems, USA and the City of Vestavia Hills, Alabama

Dear Mr. Downes:

On April 4, 2016, you sent to me via electronic mail a proposed HVAC Service Agreement by and between Comfort Systems, USA (“Service Provider”) and the City of Vestavia Hills, Alabama (“Customer”) with a request that I review the agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

**FACTS**

The City of Vestavia Hills, Alabama (“Customer”) invited competitive bids for a Maintenance Agreement for Environmental Systems (“Agreement”). Comfort Systems, USA (“Service Provider”) was the low bidder.

The Comprehensive Maintenance Service Agreement provides that Service Provider shall provide maintenance services to the Customer for a period of one (1) year beginning May 1, 2016 for and in consideration of \$58,301.00 per year payable in twelve (12) equal and monthly installments of \$4,858.42.

Among other things, the Agreement provides as follows:

“14. Any legal action against the Service Provider relating to this Agreement, or the breach thereof, shall be commenced within one (1) year from the date of the work.”

“16. To the fullest extent permitted by law, Customer shall indemnify and hold Service Provider, its agents and employees from and against all claims, damages, losses and expenses (including but not limited to attorneys’ fees) arising out of or

resulting from the performance of work hereunder, provided that such claim, damage, loss or expense is caused in whole or in part by an active or passive act or omission of Customer, anyone directly or indirectly employed by Customer, or anyone for whose acts Customer may be liable, regardless of whether it is caused in part by the negligence of Service Provider. Further and notwithstanding the preceding sentence, Service Provider shall be held harmless and shall not be liable to Customer for any claims, liabilities, damages, losses and expenses related to mold or the creation of mold at Customer's location(s) and shall have no obligation to treat, identify or remove such mold."

## II. RECOMMENDATION ONE

A. RECOMMENDATION ONE: It is my recommendation that paragraph 16 set forth above be deleted from the Agreement.

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

(1) MUNICIPALITIES CANNOT SPEND PUBLIC FUNDS TO INDEMNIFY THIRD PARTIES:

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

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

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

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

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

(c) **Public Officers Are Entitled to Discretionary Function**

**Immunity:** Public officials and employees who act within the scope of their authority in performing functions involving discretion are entitled to discretionary function immunity. *Woods v. Wilson*, 539 So.2d 224 and *Hillard v. Huntsville*, 585 So.2d 889.

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

(d) **Joint Liability:** Title 11-47-191(b), *Code of Alabama, 1975*, provides as follows:

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

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

(e) **Municipalities in Alabama May Spend Public Funds Only for**

**Public Purposes:** Municipalities in Alabama may spend public funds only for public purposes. The Supreme Court of Alabama has interpreted the language of Sections 93 and 94 of the *Constitution of Alabama* to allow appropriations of public funds when the appropriation is used for public purposes. *Alabama Constitution* amend. 93; *Alabama Constitution* amend. 94; *Slawson v. Alabama Forestry Comm'n*, 631 So.2d 953 (Ala.1994). *Opinion of the Justices No. 269*, 384 So.2d 1051 (1980); *Stone v. State*, 251 Ala. 240 (1948). In my opinion, payments to indemnify a third party are not for public purposes.



(2) MUNICIPALITIES MAY BE LIABLE FOR THE NEGLIGENT ACTS OF ITS EMPLOYEES ACTING IN THE LINE AND SCOPE OF THEIR EMPLOYMENT:

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

“No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless such injury or wrong was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in work therefor and while acting in the line of his or her duty, or unless the said injury or wrong was done or suffered through the neglect or carelessness or failure to remedy some defect in the streets, alleys, public ways or buildings after the same had been called to the attention of the council or other governing body or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council or other governing body and whenever the city or town shall be made liable for damages by reason of the unauthorized or wrongful acts or negligence, carelessness or unskillfulness of any person or corporation, then such person or corporation shall be liable to an action on the same account by the party so injured. However, no recovery may be had under any judgment or combination of judgments, whether direct or by way of indemnity under Section 11-47-24, or otherwise, arising out of a single occurrence, against a municipality, and/or any officer or officers, or employee or employees, or agents thereof, in excess of a total of \$100,000 per injured person up to a maximum of \$300,000 per single occurrence, the limits set out in the provisions of Section 11-93-2 notwithstanding.”

(b) Joint Liability: Title 11-47-191(b), *Code of Alabama, 1975*, provides as follows:

“(b) When a judgment shall be obtained against a municipality and the other party liable as provided in subsection (a) of this section, execution shall issue against the other defendant or defendants in the ordinary form and shall not be demandable of

the city or town unless the other defendants are insolvent and the same cannot be made out of their property, and the city or town shall pay only so much of the said judgment as cannot be collected from the other defendants.”

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

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

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

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

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

(f) **Prejudice the Rights of the City General Comprehensive Insurance Carrier and Jeopardize Coverage:** Based upon Title 11-47-191(b), *Code of Alabama, 1975*, it is my legal opinion that if the City agreed to the indemnity language, that it would prejudice the rights of the City general comprehensive liability insurance carrier and jeopardize coverage under the policy.

### **III. MY RECOMMENDATION TWO**

A. **RECOMMENDATION TWO:** It is my recommendation that paragraph 14 set forth above be deleted from the Agreement.

B. **BASIS FOR LEGAL OPINION:** It is my legal opinion that municipalities in Alabama cannot agree to lessen the time prescribed by law for commencement of legal actions. I base my legal opinion upon the following legal authorities:

(1) **NEGLIGENCE:** Title 6-2-38, *Code of Alabama, 1975*, provides that an action to recover damages for negligence must be commenced within two (2) years.

(2) **BREACH OF CONTRACT:** Title 6-2-34, *Code of Alabama, 1975*, provides that a breach of contract action must be commenced within six (6) years.

(3) **AGREEMENTS, ETC. TO LIMIT TIME VOID:** Title 6-2-15, *Code of Alabama, 1975*, provides in words and figures as follows:

“§6-2-15. Agreements, etc. to limit time void. Except as may be otherwise provided by the Uniform Commercial Code, any agreement or stipulation, verbal or written, whereby the time for the commencement of any action is limited to a time less than that prescribed by law for the commencement of such action is void.”

### **IV. MY RECOMMENDATION THREE**

The Agreement contains automatic renewal language. I want to point out that Title 41-16-57(f), *Code of Alabama, 1975*, provides as follows:

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

April 7, 2016

Page 7

V. MY RECOMMENDATION FOUR

The Agreement reflects that the billing and address location for the Vestavia Hills Municipal Center is 513 Montgomery Highway. This should be changed to 1032 Montgomery Highway.

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

Sincerely,

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

Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

**INVITATION TO BID (CONTINUED)**

Group	Facility	Proposed Maintenance	Total Maintenance
<b>Group A</b>	City Hall	\$ 7,496	\$ 26,057
	Library in the Forest	\$ 3,743	\$ 8,219
<b>Total Group A:</b>			
<b>Exceptions, Group A:</b>		11,239	34,266
<b>Group B</b>	Gym Roof (Pk & Rec Bldg)		
	Pk & Rec Roof (Pk and Rec Bldg)	\$ 2,564	\$ 4,193
	Civic Center-Dogwood Roof (Pk and Rec Bldg)	\$ 2,135	\$ 3,241
	Chamber of Commerce Roof (Pk and Rec Bldg)	\$ 490	\$ 750
	Soccer Office Site (Pk and Rec Bldg)	\$ 212	\$ 397
	Parks and Rec. Lodge (Wald Park)	\$ 963	\$ 1,842
	Parks and Rec Maintenance Bldg (Wald Park)	\$ 212	\$ 397
	Parks and Rec. Field 4 (Wald Park)	\$ 688	\$ 1,378
	Park & Rec. Liberty Park Maintenance Bldg (4750 Sicard Hollow road)	NA	NA
	Youth Complex (Liberty Park)	\$ 496	\$ 952
	Adult Complex (Liberty Park)	\$ 1,032	\$ 2,141
	Soccer Complex (Liberty Park)	\$ 212	\$ 397
	SHAC (Sicard Hollow Road)	\$ 583	\$ 1,146
	New Merkle House (4405 Dolly Ridge Road)	\$ 749	\$ 1,440
	Cahaba Heights Sports Complex Concessions (4405 Dolly Ridge Road)	\$ 212	\$ 397
<b>Total Group B:</b>			

10548

\$ 18,671

Group	Facility	Proposed Unit Price	Quantity
<b><u>Exceptions, Group B:</u></b>			
		\$ 668	\$ 1,285
<b>Group C</b>	Vestavia Hills Bill F. Towers Fire Station Number 1	\$ 668	\$ 1,285
	Vestavia Hills Fire Station Number 2	\$ 550	\$ 1,052
	Vestavia Hills Fire Station Number 3	\$ 515	\$ 994
	Vestavia Hills Alberto C. Butch Zaragoza Fire Station Number 4	\$ 526	\$ 1,018
	Vestavia Hills James F. Wyatt Fire Station Number 5	\$ 553	\$ 1,005
<b>Total Group C:</b>			
<b><u>Exceptions Group C:</u></b>		2,812	5,354

\*If more exceptions are noted, please advise within the bid response.

# Credit Information

Exhibit A - Res. No. 4818

**Company Name:** H&M Mechanical, Inc.  
**Mailing Address:** PO Box 36397, Birmingham, AL 35236  
**Street Address:** 3100 Richard Arrington Jr Blvd N, Birmingham, AL 35203

**Phone Number:** (205) 664-0620  
**Fax Number:** (205) 663-1312

**Date of Corporation:** June 25, 1998  
**State of Corporation:** Delaware

**In Business Since:** 1963

**Parent Company:** Comfort Systems USA

**Other Information:** H & M Mechanical Contractors and H & M Plumbing Company merged in 1998 to form H & M Mechanical, Inc., a wholly owned subsidiary of Comfort Systems USA

**Officers:**

Coy T. Head	President
Tom D. Lampkin	Vice-President
Daniel R. Powell	Vice-President HVAC
Charles D. Smith	Vice-President Plumbing
Carl P. Hoffman III	Vice-President Controls
Michael L. Rutledge	Vice-President Service

**Bank Reference:**

Bank of Texas	Wells Fargo
1401 McKinney, Suite 1650	420 North 20 <sup>th</sup> Street
Houston, TX 77010	Birmingham, AL 35203
Rosalyn Ervin	Jason Dill
713-289-5835	205-254-4977
713-289-5825 fax	205-254-3911 fax

**Bonding Information:**

RFF & Associates, Inc.	Adreanne Scalera
67 Walnut Avenue	732-587-1953
Suite 406	
Clark, NJ 07066	

**Sales Tax Status:** Taxable  
**Purchase Orders:** Required

**Vendor References:**

Weathertech Dist. Co., Inc.	Conklin Metals	V & W Supply Company, Inc.
P.O. Box 100609	236 Moore Street, SE	P.O. Box 10562
Irondale, AL 35210	Atlanta, GA 30312	Birmingham, AL 35202
205-956-5400	205-324-4242	205-324-9521 205-324-
205-956-8023 fax	205-324-9292 fax	2943 fax
Danny Belk	Johnny Hines	Carlo Joseph

Wittichen Supply	Ferguson Enterprises	American Pipe & Supply
1600 3 <sup>rd</sup> Avenue South	2800 2 <sup>nd</sup> Avenue South	PO Box 11474
Birmingham, AL 35233	Birmingham, AL 35233	Birmingham, AL 35202
205-251-8203	205-254-3454	205-252-9460
205-251-9004 fax	205-254-3494 fax	205-252-9457 fax
Billy Stivender	Joe Davis	Michael Hays/Steve Bendall

STATE OF ALABAMA

BID LIMIT:	U	LICENSE NO.:	24598
AMOUNT:	UNLIMITED	TYPE:	RENEWAL



# State Licensing Board for General Contractors

THIS IS TO CERTIFY THAT

H & M MECHANICAL INC

BIRMINGHAM, AL 35203

is hereby licensed a General Contractor in the State of Alabama and is authorized to perform the following type(s) of work:

E: ELECTRICAL, M: MECHANICAL

until August 31, 2016 when this Certificate expires.

Witness our hands and seal of the Board, dated Montgomery, Ala.,

*Charles A. Gabe Jr.*

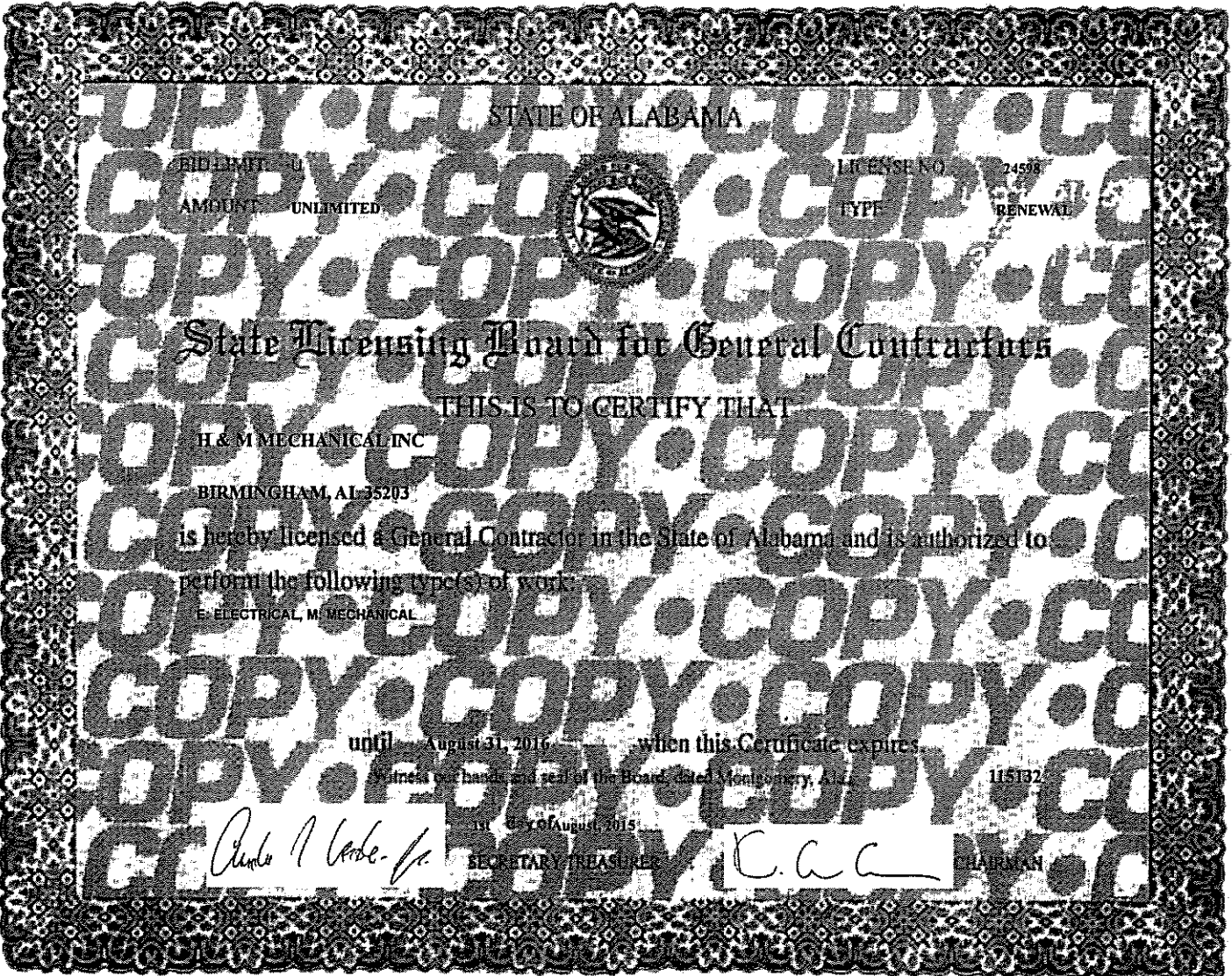
1st day of August, 2015  
SECRETARY-TREASURER

*C. Gabe*

CHAIRMAN

115132





STATE OF ALABAMA

BID LIMIT \$0  
AMOUNT UNLIMITED



LICENSE NO. 24596  
TYPE RENEWAL

State Licensing Board for General Contractors

THIS IS TO CERTIFY THAT

H & M MECHANICAL INC  
BIRMINGHAM, AL 35203

is hereby licensed a General Contractor in the State of Alabama and is authorized to perform the following type(s) of work:

E. ELECTRICAL, M. MECHANICAL

until August 31, 2016 when this Certificate expires

Business and Finance Dept. of the Board, dated Montgomery, Ala.

115132

*Charles A. Verbeke, Jr.*

1st day of August, 2015

SECRETARY/TREASURER

*K.A.C.*

CHAIRMAN



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/6/2015

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Alliant Insurance Services, Inc. 333 Earle Ovington Blvd., Suite 700 Uniondale NY 11553	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 516-414-8900      FAX (A/C, No): 877-308-1070 E-MAIL ADDRESS: cscerts@alliant.com														
<b>INSURED</b> H&M Mechanical, Inc. 3100 Richard Arrington Jr. Blvd North Birmingham,, AL 35203	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A :Travelers Property Casualty Co of A</td> <td style="text-align: center;">25674</td> </tr> <tr> <td>INSURER B :Phoenix Insurance Company</td> <td style="text-align: center;">25623</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A :Travelers Property Casualty Co of A	25674	INSURER B :Phoenix Insurance Company	25623	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

**COVERAGES      CERTIFICATE NUMBER: 21765120      REVISION NUMBER:**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	VTC2J-CO-828K6148-TIL-15	11/1/2015	11/1/2016	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMPIOP AGG \$4,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	Y	VTC2J-CAP-828K615A-TIL-15	11/1/2015	11/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	VTSMJ-CUP-828K674A-TIL-15	11/1/2015	11/1/2016	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
B A A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	1-VTC2NUB6A14334315 (AOS) 2-VTC2NUB6A14334315 (CA) VTRJ-UB-828K6161-15	11/1/2015 11/1/2015 11/1/2015	11/1/2016 11/1/2016 11/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

**RE: PROOF OF INSURANCE ONLY.** Certificate Holder is included as additional insured (except as respects all coverage afforded by the WC policy) and is granted a waiver of subrogation as required by written contract, but only for liability arising out of the operations of the Named Insured.

<b>CERTIFICATE HOLDER</b>  H & M Mechanical, Inc. A Comfort Systems USA, Inc. P.O. Box 36397 Birmingham, AL 35236	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
--	--

CONTROL NO:  
011515008439  
ACCOUNT NO:  
060684001

# STATE OF ALABAMA

JEFFERSON COUNTY

LICENSE NO.  
15008439

ISSUED TO:

H & M MECHANICAL INC  
P O BOX 36397  
BIRMINGHAM AL 35236

October 20, 2014

1410230047

10:26:04

LICENSE YEAR
2014-2015

**BUSINESS LOCATION**

H & M MECHANICAL INC  
3100 RICHARD ARRINGTON JR BLVD N  
BIRMINGHAM AL 35203

4

LICENSE TYPE	
STORE LICENSE	
CHAIN STORE LICENSE	
OCCUPATIONAL LICENSE	X

EXPIRES  
**SEPTEMBER 30,**  
**2015**

Birmingham

SCHEDULE NO.	CLASS OF LICENSE	LICENSE AMOUNT	FEE	PENALTY	CITATION	INTEREST	TOTAL
084	CONTRACTOR	375.00	1.25	0.00	0.00	0.00	376.25

<p><b>TRANSFER OF LICENSE</b></p> <p>Evidence having been adduced before me that a bona fide sale of the business licensed by this certificate has been made by licensee, this license is transferred to said purchaser.</p>		<p>Less EXEMPTION</p> <p>0.00</p>
<p>Name of Purchaser</p>		<p>TOTAL</p> <p>376.25</p>
<p>Issuing Authority</p>		<p>MAIL FEE</p> <p>0.25</p>
<p>Travis A. Hulsey, Director</p> <p>Issuing Authority</p>		<p>TOTAL WITH MAIL FEE</p> <p>376.50</p>

EACH LICENSEE SHALL DISPLAY THE LICENSE SO ISSUED IN A CONSPICUOUS PLACE IN THE STORE FOR WHICH SUCH LICENSE IS ISSUED

ALABAMA CODE 1975 40-12-313

RENEW LICENSE  
OCTOBER 1<sup>ST</sup> THROUGH OCTOBER 31<sup>ST</sup>

# CITY OF VESTAVIA HILLS

513 Montgomery Highway  
Vestavia Hills, AL 35216-1807



**LICENSE YEAR:** 2015

**LICENSE TYPE:** 238221 MECHANICAL CONTRACTOR

**LICENSE NUMBER:** 00735

**EXPIRATION DATE:** 12/31/2015

**FEES:** \$162.00

**ISSUED TO:** H & M MECHANICAL INC

Rebecca Leavings  
City Clerk

CITY OF VESTAVIA HILLS

H & M MECHANICAL INC  
3100 RICHARD ARRINGTON JR BLV  
BIRMINGHAM AL 35203

VALID THRU  
DECEMBER 31  
2016

STATE OF ALABAMA  
CERTIFIED  
MASTER PLUMBER/GAS FITTER  
Certificate of Competency

00905

CHARLES D SMITH  
120 HERITAGE PLACE  
SPRINGVILLE, AL 35146

2016 HEATING & AIR CONDITIONING  
CONTRACTORS CERTIFICATION CARD

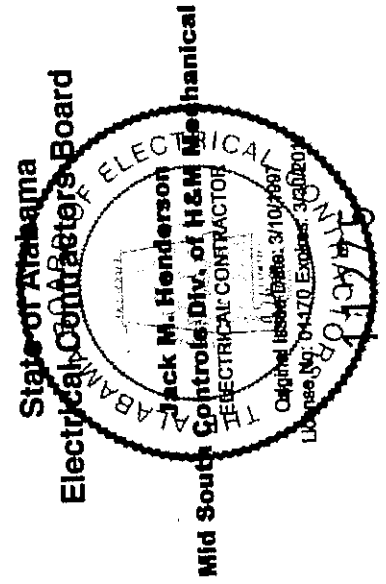
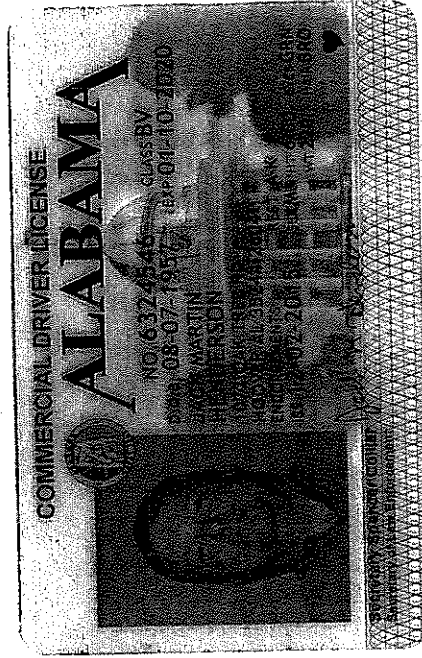
Charles D. Smith 87068  
H & M Mechanical Inc.  
P. O. BOX 36397  
BIRMINGHAM, AL 35236 1263

EFFECTIVE UNTIL DECEMBER 31, 2016

2016 ALABAMA REFRIGERATION  
CONTRACTORS CERTIFICATION CARD

Charles D. Smith 52277  
H & M Mechanical, Inc.  
P.O. Box 36397  
Birmingham, AL 35236 0520

EFFECTIVE UNTIL DECEMBER 31, 2016



## **H & M Mechanical, Inc. References**

- 1. Jefferson County Schools**
- 2. U.S. Treasury Building**
- 3. Trussville Gas & Water**
- 4. Golden Flake Snack Foods**
- 5. O'Neal Steel**

# Agreement Start-Up Process

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**Maintenance**

---

***With Comfort Systems USA you can expect:***

- Service from a locally owned company that is aware of the expectations of today's businesses.
- Expert operations and sales staff
- The highest standards and integrity in the industry
- Guaranteed performance
- Fast 24/7/365 emergency service
- Certified service professionals
- America's Best Service Experience
- Results oriented

## **Maintenance**

---

Comfort Systems USA's preventive maintenance program is the key to extending the life of your equipment. Our program provides the necessary labor, materials and test equipment to perform inspection, adjustment, calibration, and testing of the system's operation. By implementing a Comfort Systems USA Maintenance Program you can ensure your system operates at optimal efficiency.

### ***Benefits***

- Reduces energy consumption
- Extends equipment life
- Eliminates comfort problems
- Reduces costs
- Protects the value of your system
- Improves system performance
- Reduces down time

***Our Service Solution***

---

## **Maintenance Supplies**

This program includes all required maintenance supplies to effectively implement our Professional Maintenance Program.

***Our Service***

- Wire nuts, screws, connectors
- Oils and lubricants
- Towels, rags and maintenance absorbents
- Chemicals, etc.
- Cleaning supplies and paint
- Consumables

***Your Benefits***

- No additional charges
- Eliminates inventory costs
- Properly cleaned, painted equipment helps extend equipment life and prevent breakdowns
- Reduces administrative time and cost

***Our Service Solution***

---

## **Professional Preventive Maintenance**

This program includes the highest level of professional preventive maintenance. Preventive maintenance services will be determined based upon your business objectives, risk tolerance, manufacturer's recommendations and our industry experience. This level of professional preventive maintenance is designed to keep your mechanical assets operating at peak performance to maximize equipment life while reducing operating cost and energy consumption.

***Our Service***

- Results oriented level of preventive maintenance
- Refrigeration cycle peak efficiency calibration
- Cleaning, adjustment, lubrication and calibration of all equipment
- Temperature control service
- Operational analysis of the system
- Cleaning of equipment
- Predictive belt replacement

***Your Benefits***

- Extended system component life reduces operating costs
- Extended asset life reduces overall ownership costs
- Optimum energy consumption reduces operating and production costs
- Reduced system downtime increases productivity
- Maintaining equipment protects the value of your system
- Peace of mind

***Our Service Solution***

---

## **Maintenance Tasking System**

Preventive Maintenance Services may be scheduled using our proprietary Maintenance Tasking System. An important feature of this system is our customized service checklist, tailored to the specific systems at your facility and detailing the exact services and procedures we will perform to help keep your systems operating efficiently.

Maintenance frequency is determined by an analysis of your systems, which takes into account variables such as your equipment's operating hours, application, environment and manufacturer's recommendations. Based on this analysis, we will develop a maintenance frequency for your particular equipment. All completed service calls will be documented with a detailed customer service report, and this report will be reviewed with you or your representative after each service call.

### ***Our Service***

- Maintenance tasks based on your operating objectives
- Maintenance tasks based on your equipment needs and operating conditions
- Service frequency and timing by building requirements, type of equipment, and equipment run time
- Exactly the right maintenance, by the right service technician, at the right time

### ***Your Benefits***

- Service that meets your business objectives
- Reduces operating costs by optimum labor utilization
- Comprehensive plan for preventive maintenance minimizes breakdown costs and downtime
- Record of preformed proactive and reactive maintenance facilitates monitoring of the program to assure maximum asset utilization
- Reduced administration costs

***Our Service Solution***

---

## **Program Administration**

This program is professionally developed based upon your management objectives and the requirements of your mechanical equipment, design, age, use, components, and its effect on your business budgets, and personnel. The specific scope is based upon manufacturers' recommendations, and our industry experience.

The proactive and reactive service of this program will be professionally managed under the direction of our professional staff. Upon completion of the service, you will receive a detailed service report outlining performed and recommended services. You stay informed, without staying involved.

### ***Our Service***

- Program development
- Professional management and supervision
- Skilled administration and dispatching
- Monitoring program achievement and performance
- Ongoing recommendations and maintenance upgrades

### ***Your Benefits***

- Reduced administrative involvement means lower operating costs.
- Receiving regular maintenance reports assures you that your building's system is being properly maintained.



# **Comfort Systems USA**

## *Mechanical Investment Service Proposal*

**Date:**

3/29/2016

**Proposal Number:**

P00093

**Prepared for:**

**Prepared by:**

Greg Amacher

# MAINTENANCE AGREEMENT FOR ENVIRONMENTAL SYSTEMS

Agreement: Page 1 of 5

## Company

Comfort Systems USA  
3100 Richard Arrington Jr. Blvd.  
North  
Birmingham, AL 35203  
Ph:

Proposal Date: 3/29/2016

Proposal Number: P00093

Agreement Number: \_\_\_\_\_

## Bill To Identity

## Agreement Location

Comfort Systems USA will provide the services described in the maintenance program indicated below.

### **MAINTENANCE PROGRAM: PM**

#### Schedules Included:

(Only Items Checked Apply)

- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> Equipment Schedule | <input checked="" type="checkbox"/> Air Filter Service | <input type="checkbox"/> Water Treatment            |
| <input type="checkbox"/> Building Automation           | <input type="checkbox"/> Customized Service            | <input type="checkbox"/> Special Conditions Service |

Agreement coverage will commence on 3/29/2016.

The Agreement price is \$ 0.00 per year, payable in advanced installments of \$ 0.00 per Quarter beginning on the effective date of 3/30/2016.

This Agreement is the property of Comfort Systems USA and is provided for Customer's use only. Comfort Systems USA guarantees the price stated in this Agreement for thirty (30) days from proposal date above. This Agreement is for an initial term of 1 Year and shall renew for successive one year terms unless either party gives written notice to the other of intention not to renew thirty (30) days prior to any anniversary date. Upon execution as provided below, this Agreement, including the following pages attached hereto (collectively, the "Agreement"), shall become a binding and enforceable agreement against both parties hereto. Customer, by execution of this Agreement, acknowledges that it has reviewed and understands the attached terms and conditions and has the authority to enter into this Agreement.

## Company

## Customer

\_\_\_\_\_  
Signature (Sales Consultant)

\_\_\_\_\_  
Signature (Authorized Representative)

Accepted for Company By: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print/Type)

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Title

3/29/2016  
Date / Phone / Fax

\_\_\_\_\_  
Date



# Equipment Schedule

QTY	EQUIPMENT	MANUFACTURER	MODEL	SERIAL#	RATING	LOCATION

## Air Filter Service

CONTRACTOR WILL FURNISH AND INSTALL AIR FILTER MATERIAL(S) AS LISTED BELOW:

UNIT	QTY	CHANGES/YR.	SIZE	TYPE

This agreement provides the Customer with an ongoing, comprehensive preventive maintenance agreement. This agreement will be implemented, scheduled, administered, monitored, and kept current by the Service Provider. The service activities will be planned and scheduled, on a regular basis, by our comprehensive maintenance scheduling and tasking system based on manufacturers' recommendations, equipment location, application, type, run time, and Service Provider's expertise. The Customer will be kept informed of the agreement's status on a continuing basis utilizing a detailed Service Report, presented after each service visit for the Customer's review, approval signature and record.

**SERVICE PROVIDER WILL PROVIDE THE FOLLOWING PROFESSIONAL MAINTENANCE SERVICES FOR THE FACILITY MECHANICAL SYSTEM(S) COMPRISED OF THE EQUIPMENT LISTED ON SCHEDULE 1 (INVENTORY OF EQUIPMENT):**

**TEST AND INSPECT:** On-Site labor, travel labor and travel and living expenses required to visually **INSPECT** and **TEST** the equipment to determine its operating condition and efficiency. Typical activities include:

- **TESTING** for motor winding resistance; excessive vibration; fan rpm; refrigerant charge; refrigerant oil (acid); water condition; flue gas analysis; safety controls, crankcase heaters; combustion and draft; control system(s), etc.
- **INSPECTING** for worn, failed, or doubtful parts; mountings, drive couplings; oil level; rotation; soot; flame composition and shape; pilot and igniter; steam, water, oil and/or refrigerant leaks, etc.

**PREVENTIVE MAINTENANCE:** On-Site labor, travel labor and travel and living expenses required to clean, align, tighten, calibrate, adjust, lubricate and paint equipment. These activities are intended to extend equipment life and assure proper operating condition and efficiency. Typical activities include:

- **CLEANING** fan impellers & blades; coil surfaces; electrical contacts; burner orifices; passages and nozzles; pilot and igniter; cooling tower baffles, basin, sump and float; boiler, chiller and condenser tubes.
- **ALIGNING** belt drives; drive couplings; coil fins.
- **CALIBRATING** safety controls; temperature and pressure controls.
- **TIGHTENING** electrical connections; mounting bolts; pipe clamps; refrigerant piping fittings; damper sections.
- **ADJUSTING** belt tension; refrigerant charge; super heat; fan RPM; burner fuel/air ratios; gas pressure; control setpoints and limits; compressor cylinder unloaders; damper close-off; sump floats.
- **LUBRICATING** motors; fan and damper bearings; valve stems; damper linkages; fan vane linkages.
- **PAINTING**, for corrosion control, as directed by our scheduling and tasking system and on an as-needed basis.

**REPAIR AND REPLACE:** On-Site labor, travel labor, parts procurement labor (locating, ordering, expediting and transporting) and travel and living expenses required to **REPAIR** or **REMOVE AND REPLACE** broken, worn and/or doubtful components and/or parts.

**TROUBLE CALLS:** On-Site labor and travel labor, excluding overtime.

**COMPONENTS, PARTS AND SUPPLIES:** The cost of **COMPONENTS, PARTS AND SUPPLIES** required to keep the equipment operating properly and efficiently.

1. Customer shall permit Service Provider free and timely access to areas and equipment, and allow Service Provider to start and stop the equipment as necessary to perform required services. All planned work under this Agreement will be performed during the Service Provider's normal working hours.
2. In case of any failure to perform its obligations under this Agreement, Service Provider's liability is limited to repair or replacement at its option and such repair or replacement shall be Customer's sole remedy. This warranty is conditioned upon proper operation and maintenance by Customer and shall not apply if the failure is caused or contributed to by accident, alteration, abuse or misuse, and shall not extend beyond the term of this Agreement.
3. The annual Agreement price is conditioned upon the system(s) covered being in a maintainable condition. If the initial inspection or initial seasonal start-up indicates repairs are required, a firm quotation will be submitted for Customer's approval. Should Customer not authorize the repairs, Service Provider may either remove the unacceptable system(s) component(s) or part(s) from its scope of responsibility and adjust the annual Agreement price accordingly or cancel this Agreement.
4. The annual Agreement price is subject to adjustment on each commencement anniversary to reflect increases in labor, material and other costs.
5. Customer shall be responsible for all taxes applicable to the services and/or materials hereunder.
6. Customer will promptly pay invoices within ten (10) days of receipt. Should a payment become thirty (30) days or more delinquent, Service Provider may stop all work under this Agreement without notice and/or cancel this Agreement, and the entire Agreement amount shall become due and payable immediately upon demand.
7. This Agreement applies only to the maintainable portions of the system(s). Repair or replacement of non-maintainable parts such as duct work, boiler shell and tubes, cabinets, boiler refractory material, heat exchangers, main power service and electrical wiring, structural supports, piping, tube bundles, oil storage tanks and other similar items are excluded.
8. Any alteration to, or deviation from, this Agreement involving additional work, cost of materials or labor will become an additional charge (fixed price amount to be negotiated or on a time-and-material basis) over the sum stated in this Agreement.
9. Service Provider will not be required to move, replace or alter any part of the building structure in the performance of this Agreement.
10. This Agreement does not include responsibility for the design of the system, obsolescence, safety test, removal and installation of valve bodies and dampers, repair or replacement necessitated by freezing weather, electrical power failure, low voltage, burned-out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s), negligence of others (including Customer), failure of Customer to properly operate the system(s), requirements of governmental, regulatory or insurance agencies, or other causes beyond control of Service Provider.
11. If a trouble call is made at Customer's request and inspection indicates a condition which is not covered under this Agreement, Service Provider may charge Customer at the rate then in effect for such services.
12. Customer shall permit only Service Provider's personnel or agent to perform the work included in the scope of this Agreement. Should anyone other than Service Provider's personnel perform such work, Service Provider may, at its option, cancel this Agreement or eliminate the involved item of equipment from inclusion in this Agreement.
13. In the event Service Provider must commence legal action in order to recover any amount payable under this Agreement, Customer shall pay Service Provider all court costs and attorneys' fees incurred by Service Provider.
14. Any legal action against the Service Provider relating to this Agreement, or the breach thereof, shall be commenced within one (1) year from the date of the work.
15. Service Provider shall not be liable for any delay, loss, damage or detention caused by unavailability of machinery, equipment or materials, delay of carriers, strikes, including those by Service Provider's employees, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond its control.
16. To the fullest extent permitted by law, Customer shall indemnify and hold harmless Service Provider, its agent and employees from and against all claims, damages, losses and expenses (including but not limited to attorneys' fees) arising out of or resulting from the performance of work hereunder, provided that such claim, damage, loss or expense is caused in whole or in part by an active or passive act or omission of Customer, anyone directly or indirectly employed by Customer, or anyone for whose acts Customer may be liable, regardless of whether it is caused in part by the negligence of Service Provider. Further and notwithstanding the preceding sentence, Service Provider shall be held harmless and shall not be liable to Customer for any claims, liabilities, damages, losses and expenses related to mold or the creation of mold at Customer's location(s) and shall have no obligation to treat, identify or remove such mold.
17. Customer shall make available to Service Provider's personnel all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA'S Hazard Communication Standard Regulations.
18. Service Provider expressly disclaims any and all responsibility and liability for the indoor air quality of the customer's facility, including without limitation injury or illness to occupants of the facility or third parties, arising out of or in connection with the Service Provider's work under this agreement.
19. Service Provider's obligation under this proposal and any subsequent contract does not include the identification, abatement or removal of asbestos or any other toxic or hazardous substances, hazardous wastes or hazardous materials. In the event such substances, wastes and materials are encountered, Service Provider's sole obligation will be to notify the Owner of their existence. Service Provider shall have the right thereafter to suspend its work until such substances; wastes or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.
20. UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, WILL SERVICE PROVIDER BE RESPONSIBLE FOR LOSS OF USE, LOSS OF PROFIT, INCREASED OPERATING OR MAINTENANCE EXPENSES, CLAIMS OF CUSTOMER'S TENANTS OR CLIENTS, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

This agreement is designed to provide the Customer with an ongoing maintenance agreement. This agreement will be initiated, scheduled, administered, monitored and updated by the Service Provide. The service activities will be directed and scheduled, on a regular basis, by our comprehensive equipment maintenance scheduling system based on manufacturers' recommendations, equipment location, application, type, run time, and Service Provider's own experience. The Customer is informed of the agreement's progress and results on a continuing basis via a detailed Service Report, presented after each service call for Customer's review, approval signature and record.

SERVICE PROVIDE WILL PROVIDE THE FOLLOWING PROFESSIONAL MAINTENANCE SERVICES FOR THE BUILDING ENVIRONMENTAL MECHANICAL SYSTEM(S) COMPRISED OF THE EQUIPMENT LISTED ON SCHEDULE 1 (INVENTORY OF EQUIPMENT):

TEST AND INSPECT: On-Site labor, travel labor and travel and living expenses required to visually INSPECT and TEST equipment to determine its operating condition and efficiency. Typical activities include:

- TESTING for excessive vibration; motor winding resistance; refrigerant charge; fan RPM; refrigerant oil (acid); water condition; flue gas analysis; safety controls, combustion and draft; crankcase heaters, control system(s), etc.
- INSPECTING for worn, failed or doubtful parts; mountings, drive couplings; oil level; rotation soot; flame composition and shape; pilot and igniter; steam, water, oil and/or refrigerant leaks, etc.

PREVENTIVE MAINTENANCE: On-Site labor, travel labor and travel and living expenses required to clean, align, calibrate, tighten, adjust, lubricate and paint equipment. These activities are intended to extend equipment life and assure proper operating condition and efficiency. Typical activities include:

- CLEANING coil surfaces; fan Impellers and blades; electrical contacts; burner orifices; passages and nozzles; pilot and igniter; cooling tower baffles, basin, sump and float; chiller, condenser and boiler tubes, etc.
- ALIGNING belt drives; drive couplings; coil fins, etc.
- CALIBRATING safety controls; temperature and pressure controls, etc.
- TIGHTENING electrical connections; mounting bolts; pipe clamps; refrigerant piping fittings; damper sections, etc.
- ADJUSTING belt tension; refrigerant charge; super heat; fan RPM; water chemical feed and feed rate; burner fuel/air ratios; gas pressure; set point of controls and limits; compressor cylinder unloaders; damper close-off; sump floats, etc.
- LUBRICATING motors; fan and damper bearings; valve stems; damper linkages; fan vane linkages, etc.
- PAINTING, for corrosion control, as directed by our scheduling system and on an as-needed basis.

1. **Customer** shall permit Service Provider free and timely access to areas and equipment, and allow Service Provider to start and stop the equipment as necessary to perform required services. All planned work under this Agreement will be performed during the Service Provider's normal working hours.
2. In case of any failure to perform its obligations under this Agreement, Service Provider's liability is limited to repair or replacement at its option and such repair or replacement shall be **Customer** sole remedy. This warranty is conditioned upon proper operation and maintenance by **Customer** and shall not apply if the failure is caused or contributed to by accident, alteration, abuse or misuse, and shall not extend beyond the term of this Agreement.
3. The annual Agreement price is conditioned upon the system(s) covered being in a maintainable condition. If the initial inspection or initial seasonal start-up indicates repairs are required, a firm quotation will be submitted for **Customer** approval. Should **Customer** not authorize the repairs, Service Provider may either remove the unacceptable system(s), component(s) or part(s) from its scope of responsibility and adjust the annual agreement price accordingly or cancel this Agreement.
4. The annual Agreement price is subject to adjustment on each commencement anniversary to reflect increases in labor, material and other costs.
5. **Customer** shall be responsible for all taxes applicable to the services and/or materials hereunder.
6. **Customer** will promptly pay invoices within ten (10) days of receipt. Should a payment become thirty (30) days or more delinquent, Service Provider may stop all work under this Agreement without notice and/or cancel this Agreement, and the entire Agreement amount shall become due and payable immediately upon demand.
7. Any alteration to, or deviation from, this Agreement involving extra work, cost of materials or labor will become an extra charge (fixed price amount to be negotiated or on a time-and-material basis at Service Provider's rates then in effect) over the sum stated in this Agreement.
8. Service Provider will not be required to move, replace or alter any part of the building structure in the performance of this Agreement.
9. **Customer** shall permit only Service Provider's personnel or agent to perform the work included in the scope of this Agreement. Should anyone other than Service Provider's personnel perform such work, Service Provider may, at its option, cancel this Agreement or eliminate the involved item of equipment from inclusion in this Agreement.
10. In the event Service Provider must commence legal action in order to recover any amount payable under this Agreement, **Customer** shall pay Service Provider all court costs and attorneys' fees incurred by Service Provider.
11. Any legal action against the Service Provider relating to this Agreement, or the breach thereof, shall be commenced within one (1) year from the date of the work.
12. Service Provider shall not be liable for any delay, loss, damage or detention caused by unavailability of machinery, equipment or materials, delay of carriers, strikes, including those by Service Provider's employees, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond its control.
13. To the fullest extent permitted by law, **Customer** shall indemnify and hold harmless Service Provider, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of work hereunder, provided that such claim, damage, loss or expense is caused in whole or in part by an active or passive act or omission of **Customer**, anyone directly or indirectly employed by **Customer**, or anyone for whose acts **Customer** may be liable, regardless of whether it is caused in part by the negligence of Service Provider. Further and notwithstanding the preceding sentence, Service Provider shall be held harmless and shall not be liable to **Customer** for any claims, liabilities, damages, losses and expenses related to mold or the creation of mold at Customer's location(s) and shall have no obligation to treat, identify or remove such mold.
14. **Customer** shall make available to Service Provider's personnel all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA'S Hazard Communication Standard Regulations.
15. Service Provider expressly disclaims any and all responsibility and liability for the indoor air quality of the **Customer** facility, including without limitation injury or illness to occupants of the facility or third parties, arising out of or in connection with the Service Provider's work under this agreement.
16. Service Provider's obligation under this proposal and any subsequent contract does not include the identification, abatement or removal of asbestos or any other toxic or hazardous substances, hazardous wastes or hazardous materials. In the event such substances, wastes and materials are encountered, Service Provider's sole obligation will be to notify the Owner of their existence. Service Provider shall have the right thereafter to suspend its work until such substances, wastes or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.
17. UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, WILL SERVICE PROVIDER BE RESPONSIBLE FOR LOSS OF USE, LOSS OF PROFIT, INCREASED OPERATING OR MAINTENANCE EXPENSES, CLAIMS OF **Customer** TENANTS OR CLIENTS, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.
18. This Agreement does not include repairs to the system(s), the provisions or installation of components or parts, or service calls requested by **Customer**. These services will be charged for at Service Provider's rates then in effect.

# MAINTENANCE AGREEMENT FOR ENVIRONMENTAL SYSTEMS

**Agreement:** Page 1 of 5

**Company**

Comfort Systems USA  
 3100 Richard Arrington Jr. Blvd.  
 North  
 Birmingham, AL 35203  
 Ph:

**Proposal Date:** 4/1/2016

**Proposal Number:** P00095

**Agreement Number:** \_\_\_\_\_

**Bill To Identity**

City of Vestavia Hills  
 513 Montgomery Highway  
 Vestavia Hills, AL 35216  
 Attn: Brian C. Davis

**Agreement Location**

City of Vestavia Hills  
 513 Montgomery Highway  
 Vestavia Hills, AL 35216  
 Attn: Brian C. Davis

Comfort Systems USA will provide the services described in the maintenance program indicated below.

**MAINTENANCE PROGRAM: Full Coverage**

**Schedules Included:**

*(Only Items Checked Apply)*

- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> Equipment Schedule | <input checked="" type="checkbox"/> Air Filter Service | <input type="checkbox"/> Water Treatment            |
| <input type="checkbox"/> Building Automation           | <input type="checkbox"/> Customized Service            | <input type="checkbox"/> Special Conditions Service |

Agreement coverage will commence on 5/1/2016 .

The Agreement price is \$ 58,301.00 per year, payable in advanced installments of \$ 4,858.42 per Month beginning on the effective date of 5/1/2016 .

This Agreement is the property of Comfort Systems USA and is provided for Customer's use only. Comfort Systems USA guarantees the price stated in this Agreement for thirty (30) days from proposal date above. This Agreement is for an initial term of 1 Year and shall renew for successive one year terms unless either party gives written notice to the other of intention not to renew thirty (30) days prior to any anniversary date. Upon execution as provided below, this Agreement, including the following pages attached hereto (collectively, the "Agreement"), shall become a binding and enforceable agreement against both parties hereto. Customer, by execution of this Agreement, acknowledges that it has reviewed and understands the attached terms and conditions and has the authority to enter into this Agreement.

**Company**

**Customer**

\_\_\_\_\_  
 Signature (Sales Consultant)

\_\_\_\_\_  
 Signature (Authorized Representative)

Accepted for Company By: \_\_\_\_\_

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Name (Print/Type)

\_\_\_\_\_  
 Name & Title

\_\_\_\_\_  
 Title

4/1/2016  
 \_\_\_\_\_

Date / Phone / Fax

\_\_\_\_\_  
 Date

## Equipment Schedule

QTY	EQUIPMENT	MANUFACTURER	MODEL	SERIAL#	RATING	LOCATION



## Air Filter Service

CONTRACTOR WILL FURNISH AND INSTALL AIR FILTER MATERIAL(S) AS LISTED BELOW:

UNIT	QTY	CHANGES/YR.	SIZE	TYPE

**Full Coverage Program****Agreement:** Page 4 of 5

This agreement provides the Customer with an ongoing, comprehensive preventive maintenance agreement. This agreement will be implemented, scheduled, administered, monitored, and kept current by the Service Provider. The service activities will be planned and scheduled, on a regular basis, by our comprehensive maintenance scheduling and tasking system based on manufacturers' recommendations, equipment location, application, type, run time, and Service Provider's expertise. The Customer will be kept informed of the agreement's status on a continuing basis utilizing a detailed Service Report, presented after each service visit for the Customer's review, approval signature and record.

SERVICE PROVIDER WILL PROVIDE THE FOLLOWING PROFESSIONAL MAINTENANCE SERVICES FOR THE FACILITY MECHANICAL SYSTEM(S) COMPRISED OF THE EQUIPMENT LISTED ON SCHEDULE 1 (INVENTORY OF EQUIPMENT):

**TEST AND INSPECT:** On-Site labor, travel labor and travel and living expenses required to visually INSPECT and TEST the equipment to determine its operating condition and efficiency. Typical activities include:

- TESTING for motor winding resistance; excessive vibration; fan rpm; refrigerant charge; refrigerant oil (acid); water condition; flue gas analysis; safety controls, crankcase heaters; combustion and draft; control system(s), etc.
- INSPECTING for worn, failed, or doubtful parts; mountings, drive couplings; oil level; rotation; soot; flame composition and shape; pilot and igniter; steam, water, oil and/or refrigerant leaks, etc.

**PREVENTIVE MAINTENANCE:** On-Site labor, travel labor and travel and living expenses required to clean, align, tighten, calibrate, adjust, lubricate and paint equipment. These activities are intended to extend equipment life and assure proper operating condition and efficiency. Typical activities include:

- CLEANING fan impellers & blades; coil surfaces; electrical contacts; burner orifices; passages and nozzles; pilot and igniter; cooling tower baffles, basin, sump and float; boiler, chiller and condenser tubes.
- ALIGNING belt drives; drive couplings; coil fins.
- CALIBRATING safety controls; temperature and pressure controls.
- TIGHTENING electrical connections; mounting bolts; pipe clamps; refrigerant piping fittings; damper sections.
- ADJUSTING belt tension; refrigerant charge; super heat; fan RPM; burner fuel/air ratios; gas pressure; control setpoints and limits; compressor cylinder unloaders; damper close-off; sump floats.
- LUBRICATING motors; fan and damper bearings; valve stems; damper linkages; fan vane linkages.
- PAINTING, for corrosion control, as directed by our scheduling and tasking system and on an as-needed basis.

**REPAIR AND REPLACE:** On-Site labor, travel labor, parts procurement labor (locating, ordering, expediting and transporting) and travel and living expenses required to REPAIR or REMOVE AND REPLACE broken, worn and/or doubtful components and/or parts.

**TROUBLE CALLS:** On-Site labor and travel labor, excluding overtime.

**COMPONENTS, PARTS AND SUPPLIES:** The cost of COMPONENTS, PARTS AND SUPPLIES required to keep the equipment operating properly and efficiently.

**Full Coverage Terms and Conditions****Agreement: Page 5 of 5**

1. Customer shall permit Service Provider free and timely access to areas and equipment, and allow Service Provider to start and stop the equipment as necessary to perform required services. All planned work under this Agreement will be performed during the Service Provider's normal working hours.
2. In case of any failure to perform its obligations under this Agreement, Service Provider's liability is limited to repair or replacement at its option and such repair or replacement shall be Customer's sole remedy. This warranty is conditioned upon proper operation and maintenance by Customer and shall not apply if the failure is caused or contributed to by accident, alteration, abuse or misuse, and shall not extend beyond the term of this Agreement.
3. The annual Agreement price is conditioned upon the system(s) covered being in a maintainable condition. If the initial inspection or initial seasonal start-up indicates repairs are required, a firm quotation will be submitted for Customer's approval. Should Customer not authorize the repairs, Service Provider may either remove the unacceptable system(s) component(s) or part(s) from its scope of responsibility and adjust the annual Agreement price accordingly or cancel this Agreement.
4. The annual Agreement price is subject to adjustment on each commencement anniversary to reflect increases in labor, material and other costs.
5. Customer shall be responsible for all taxes applicable to the services and/or materials hereunder.
6. Customer will promptly pay invoices within ten (10) days of receipt. Should a payment become thirty (30) days or more delinquent, Service Provider may stop all work under this Agreement without notice and/or cancel this Agreement, and the entire Agreement amount shall become due and payable immediately upon demand.
7. This Agreement applies only to the maintainable portions of the system(s). Repair or replacement of non-maintainable parts such as duct work, boiler shell and tubes, cabinets, boiler refractory material, heat exchangers, main power service and electrical wiring, structural supports, piping, tube bundles, oil storage tanks and other similar items are excluded.
8. Any alteration to, or deviation from, this Agreement involving additional work, cost of materials or labor will become an additional charge (fixed price amount to be negotiated or on a time-and-material basis) over the sum stated in this Agreement.
9. Service Provider will not be required to move, replace or alter any part of the building structure in the performance of this Agreement.
10. This Agreement does not include responsibility for the design of the system, obsolescence, safety test, removal and reinstallation of valve bodies and dampers, repair or replacement necessitated by freezing weather, electrical power failure, low voltage, burned-out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s), negligence of others (including Customer), failure of Customer to properly operate the system(s), requirements of governmental, regulatory or insurance agencies, or other causes beyond control of Service Provider.
11. If a trouble call is made at Customer's request and inspection indicates a condition which is not covered under this Agreement, Service Provider may charge Customer at the rate then in effect for such services.
12. Customer shall permit only Service Provider's personnel or agent to perform the work included in the scope of this Agreement. Should anyone other than Service Provider's personnel perform such work, Service Provider may, at its option, cancel this Agreement or eliminate the involved item of equipment from inclusion in this Agreement.
13. In the event Service Provider must commence legal action in order to recover any amount payable under this Agreement, Customer shall pay Service Provider all court costs and attorneys' fees incurred by Service Provider.
14. Any legal action against the Service Provider relating to this Agreement, or the breach thereof, shall be commenced within one (1) year from the date of the work.
15. Service Provider shall not be liable for any delay, loss, damage or detention caused by unavailability of machinery, equipment or materials, delay of carriers, strikes, including those by Service Provider's employees, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond its control.
16. To the fullest extent permitted by law, Customer shall indemnify and hold harmless Service Provider, its agent and employees from and against all claims, damages, losses and expenses (including but not limited to attorneys' fees) arising out of or resulting from the performance of work hereunder, provided that such claim, damage, loss or expense is caused in whole or in part by an active or passive act or omission of Customer, anyone directly or indirectly employed by Customer, or anyone for whose acts Customer may be liable, regardless of whether it is caused in part by the negligence of Service Provider. Further and notwithstanding the preceding sentence, Service Provider shall be held harmless and shall not be liable to Customer for any claims, liabilities, damages, losses and expenses related to mold or the creation of mold at Customer's location(s) and shall have no obligation to treat, identify or remove such mold.
17. Customer shall make available to Service Provider's personnel all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA'S Hazard Communication Standard Regulations.
18. Service Provider expressly disclaims any and all responsibility and liability for the indoor air quality of the customer's facility, including without limitation injury or illness to occupants of the facility or third parties, arising out of or in connection with the Service Provider's work under this agreement.
19. Service Provider's obligation under this proposal and any subsequent contract does not include the identification, abatement or removal of asbestos or any other toxic or hazardous substances, hazardous wastes or hazardous materials. In the event such substances, wastes and materials are encountered, Service Provider's sole obligation will be to notify the Owner of their existence. Service Provider shall have the right thereafter to suspend its work until such substances; wastes or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.
20. UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, WILL SERVICE PROVIDER BE RESPONSIBLE FOR LOSS OF USE, LOSS OF PROFIT, INCREASED OPERATING OR MAINTENANCE EXPENSES, CLAIMS OF CUSTOMER'S TENANTS OR CLIENTS, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

**RESOLUTION NUMBER 4819**

**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 1600 Gentilly Drive; a copy of which is marked as "Exhibit A," attached to and incorporated into this Resolution Number 4819 as if written fully therein; and

**WHEREAS**, a public hearing was conducted at the regularly scheduled City Council meeting of April 11, 2016 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 1600 Gentilly Drive 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 11<sup>th</sup> day of April, 2016.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

1600 Gentilly Drive  
Vestavia Hills, Al 35226  
April 4, 2016

~~2016 MAR 35~~ A 2: 39  
April 4<sup>th</sup>

City Clerk  
City of Vestavia Hills  
1032 Montgomery Highway  
Vestavia Hills, Al 35216

To whom it may concern:

Objection is hereby registered to NOTICE TO DESTROY WEEDS, Bushes and other unsightly vegetation. I do NOT accept the notice as fact and do NOT waive rights to contest the removal of the weeds and any actions of the City Council to take matters into their own hands or issue order of abatement and / or removal of vegetation from my property at 1600 Gentilly Drive, Vestavia Hills, Al 35226.

Action is being taken to have certain vegetation removed and / or modified. Therefore I will notify the City Building Inspector when this action is completed, most likely this week. I also plan to appear at Council meeting on April 11, 2016 to further object to this NOTICETO DESTROY WEEDS, Bushes and other unsightly vegetation.

Sincerely,



Charles Fletcher

2016 APR - 4 A 2: 43

Vestavia Hills Police Department

Incident/Offense Report - Continued		83 Date of Report (MM/DD/YY) 03 22 16		84 Time of Report 14:00		85 Agency Case Number 2016-8730		87 <input type="checkbox"/> Offender <input checked="" type="checkbox"/> Suspect <input type="checkbox"/> Missing Person		<input type="checkbox"/> Check if Multiple	
88 Reported By (Last, First, Middle Name) Ofc. J. Coleman,						89 Suffix		90 <input type="checkbox"/> Resident <input type="checkbox"/> Non-Resident		91 Home Phone	
95 Victim (Last, First, Middle Name) City of Vestavia						96 Suffix		97 Address (Street, City, State, Zip) 1032 Montgomery Highway Vestavia Hills, AL 35216		98 Home Phone	
99 Work Phone (205)978-0113						93 Other Phone					
100 Other Phone						99 Work Phone (205)978-0140					
101 Employer/School						102 Occupation		103 Address (Street, City, State, Zip)		104 Work Phone	
105 Other Phone						104 Work 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		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: _____							
123 Place of Occurrence 1600 Gentilly Dr. Vestavia Hills, AL 35226				124 Type of Injury N None I Internal Injury M Minor Injury T Loss of Teeth B Broken Bones L Severe Laceration O Other Major Injury U Unconscious				125 Sector			
126 Circumstances: Homicide & Assault		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			
127 Location: Rape		132 Off #		133 Name (Last, First, Middle) Fletcher, Charles, Richards		134 SFX		135 Alias		136 Social Security # 223-66-2578	
141 Address (Street, City, State, Zip) 1600 Gentilly Dr. Vestavia Hills, AL 35226		142 HGT 6'0"		143 WGT 224		144 Ethnicity <input checked="" type="checkbox"/> Other		145 Language <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Other		146 Probable Destination	
147 Eye HAZ				148 Hair BRO		149 Complexion		150 Armed <input type="checkbox"/> Yes <input type="checkbox"/> No			
151 Clothing				152 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"/> Other		167 Language <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Other		168 Probable Destination		169 Eye		170 Hair		171 Complexion	
172 Armed <input type="checkbox"/> Yes <input type="checkbox"/> No				173 Clothing				174 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 3-22-2016 V414 Ordinance Violation											
<p><b>Officer has tried to work with the suspect for more than a year to get his property up to compliance with the City Ordinances. On this date, 3-22-2016, officer wrote the suspect a citation for the violation of the sanitation ordinance and a notice to appear before the city council for the violation of the weed ordinance. The exterior of the property has old broken lumber and other used, discarded and wore, unsightly articles all around the property. The front porch, both sides of the house and backyard is full of unsightly articles. The property's bushes haven't been cut and have been allowed to grow wild and in some places over the roof line of the house.</b></p>											
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 Closed 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 Signature	
										211 Local Use	
										212 State Use	

1 ORI # AL0010900	2 Date of Report 03 22 16	3 Time of Report 14:00	4 Incident Type Report <input type="checkbox"/> AM <input type="checkbox"/> PM <input checked="" type="checkbox"/> MIL	5 Supplement Date	6 Agency Case Number 2016-8730
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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>
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14 Type of Incident or Offense <input type="checkbox"/> Felony <input checked="" type="checkbox"/> Misdemeanor <input type="checkbox"/> Attempted <input checked="" type="checkbox"/> Completed <b>Sanitation</b>	15 Degree (Circle) 1 2 3	18 UCR Code	17 State Code/Local Ordinance <b>VHC 302.1</b>
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18 Place of Occurrence  Check here if event occurred at victim's residence

Victim Demographics (Where victim is an individual)

19 Sex <input type="checkbox"/> M <input type="checkbox"/> F	20 Race <input type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <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  
 Alcohol  Drugs  N/A  
 Computer Equipment

25  Juvenile Gang  Adult Gang  None/Unknown

26 Hate Bias  Yes  No

27 Bias Code

28 Domestic Violence  Yes  No

29 Point of Entry <input type="checkbox"/> Door <input type="checkbox"/> Roof <input type="checkbox"/> Window <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 09 Drug Store 02 Bank 10 Field/Woods 03 Bar 11 Govt/Public Building 04 Church 12 Supermarket 05 Commercial 13 Highway/Street 06 Construction 14 Hotel/Motel 07 Conv Store 15 Jail/Prison 08 Dept Store 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
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35 Occurred from MM/DD/YY: 01 01 16 36 Time of Event: 12:00  AM  PM  MIL 37 Day of Week: **Friday**

38 Occurred to MM/DD/YY: 03 21 16 39 Time of Event: 12:00  AM  PM  MIL 40 Day of Week: **Monday**

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		49 Recovered	
				Stolen	Damaged	Date	Value

Loss Code (Enter letter in loss code column): S Stolen B Burned R Recovered F Forged/Destroyed N None D Damaged/Counterfeit 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  Area Stolen  Residence  Business  Rural  51 Ownership verified by:  Tag Receipt  Title  Bill of Sale  Other

52 Veh. Categories  Recovered  Victim's Vehicle  Abandoned  Stolen  Suspect's Vehicle  Unauthorized Use  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

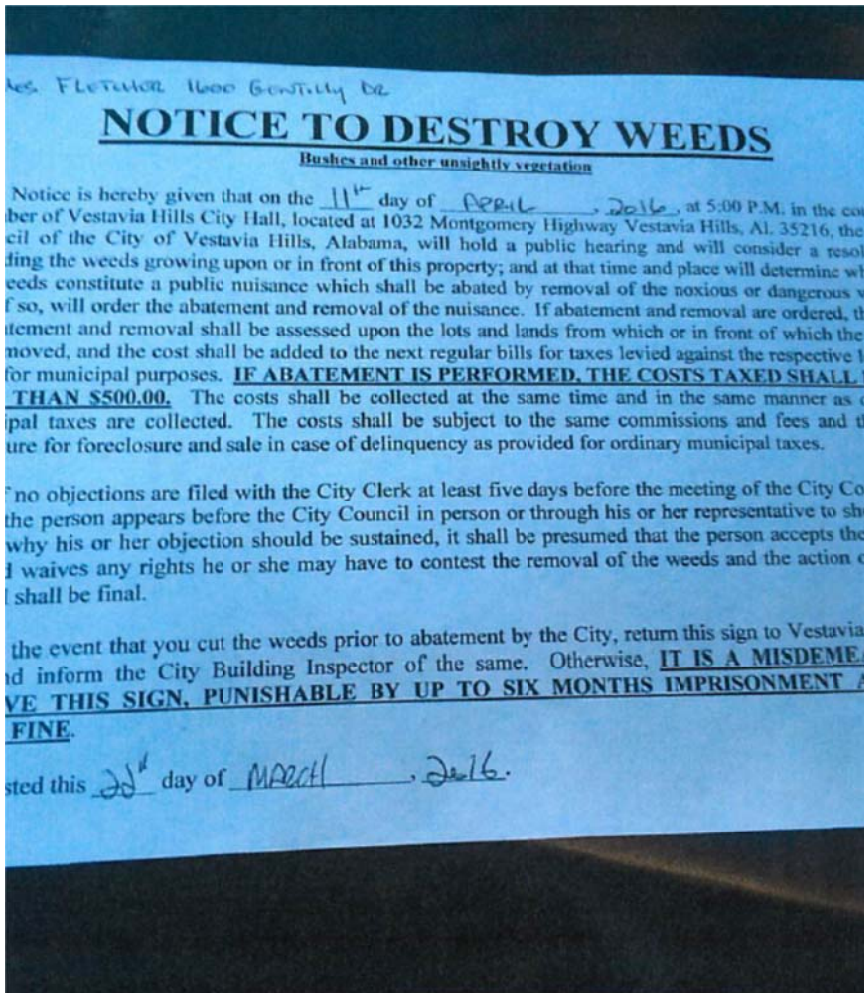
64 Vehicle VIN Number 65 Warrant Signed  Yes  No Warrant Number

Motor Vehicle Recovery Only Required For 24XX UCR Code:  Yes  No 66 Stolen in your jurisdiction?  Yes  No Where? 67 Recovered in your jurisdiction?  Yes  No Where?

68 Case # 69 SFX 70 Case # 71 SFX 72 Case # 73 SFX

74 Case Status <input checked="" type="radio"/> Pending 2 Inactive 3 Closed	75 Multiple Cases Closed Listed Above Multiple Cases Closed Listed On Supplement <input type="checkbox"/>	77 Case Disposition 1 Cleared by Arrest (Juvenile) 2 Cleared by Arrest (Adult) 3 Unfounded 4 Exceptional Clearance 5 Administratively Cleared	78 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	79 Reporting Officer <b>Coleman, James</b> Officer ID Number
76 Entered NCIC/ACJIC <input type="checkbox"/> Yes <input type="checkbox"/> No	79 Reporting Officer			80 Assisting Officer Officer ID Number
Date (MM/DD/YY)	79 Reporting Officer			81 Supervisor Approval Officer ID Number
NIC/AIN #:	79 Reporting Officer			82 Watch Commander Officer ID Number









**ORDINANCE NUMBER 2625**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE SALE  
OF REAL ESTATE, MORE PARTICULARLY DESCRIBED AS  
1280 MONTGOMERY HIGHWAY, VESTAVIA HILLS,  
ALABAMA**

**THIS ORDINANCE NUMBER 2625** is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 11<sup>th</sup> day of April, 2016.

**WITNESSETH THESE RECITALS:**

**WHEREAS**, Title 11-40-1, *Code of Alabama, 1975*, declares municipalities corporate and gives them the power to contract and be contracted with; and

**WHEREAS**, Title 11-43-56, *Code of Alabama, 1975*, provides that the City Council shall have the management and control of the finances and all of the property, real and personal, belonging to the City; and

**WHEREAS**, Title 11-47-20, *Code of Alabama, 1975*, provides that the City Council may, by ordinance to be entered in its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the Mayor to make title thereto, and a conveyance made by the Mayor in accordance with such ordinance invests the grantee with the title of the municipality; and

**WHEREAS**, Title 11-43A-28, *Code of Alabama, 1975*, provides that the City Manager shall be the head of the administrative branch of the government of the City of Vestavia Hills and shall be responsible to the City Council for the proper administration of all municipal affairs; and

**WHEREAS**, Title 11-43A-48, *Code of Alabama, 1975*, provides that all contracts for the City of Vestavia Hills shall be made and approved by ordinance and signed in the name of the City of Vestavia Hills by the mayor and countersigned by the city manager; and

**WHEREAS**, Title 11-45-8(b), *Code of Alabama, 1975*, provides that if an ordinance is published by posting, then in such event said ordinance shall take effect five days thereafter; and

**WHEREAS**, the City of Vestavia Hills, Alabama (“City”) is the owner of real property situated in the City of Vestavia Hills, Jefferson County, Alabama, which said

real estate shall hereinafter be referred to as the “subject property” and is more particularly described as follows:

Public Works/City Shop Facility located at 1280 Montgomery Highway;  
2.34 acres, more or less; and

**WHEREAS**, BAMA Custard, LLC, organized in the State of Kansas and qualified to do business in the State of Alabama (“Purchaser”), has requested that the City declare said property as surplus and offer for sale to the Purchaser; and

**WHEREAS**, the City finds and determines that it is willing to accept the offer by BAMA Custard, LLC; for an amount equivalent to One Million, Two-Hundred Thousand Dollars (\$1,200,000) pursuant to the terms and conditions detailed in an Agreement for Purchase and Sale of Real Estate (“Agreement”); a copy of which is marked as Exhibit A, attached to and incorporated into this Ordinance Number 2625 as though written fully therein; and

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

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

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

2. The Mayor and City Manager are hereby authorized and directed to execute and deliver all documents required to close said sale for and on behalf of the City of Vestavia Hills, Alabama pursuant to the terms and conditions as detailed in the attached Exhibit A; and

3. A copy of said real estate closing documents, along with said payment, will be submitted upon closing and kept on file in the office of the City Clerk of the City of Vestavia Hills, Alabama for inspection by members of the general public.

4. Upon approval, adoption and enactment of this Ordinance Number 2625 the Mayor and City Manager are hereby authorized and directed to take any and all legal

action necessary to close the sale of the subject property all in accordance with the terms, provisions and conditions previously described.

5. This Ordinance shall become effective upon its approval, adoption, enactment and publication by posting as set forth in Title 11-45-8(b), *Code of Alabama, 1975*.

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

**DONE, ORDERED, APPROVED and ADOPTED** this the 11<sup>th</sup> day of April, 2016.

CITY OF VESTAVIA HILLS, ALABAMA

By \_\_\_\_\_  
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 # 2625 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 11<sup>th</sup> day of April, 2016 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Rebecca Leavings  
City Clerk

**STATE OF ALABAMA**

**JEFFERSON COUNTY**

**AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**

**THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE** (“the Agreement”), is hereby made and entered into as of the \_\_\_ day of April, 2016 by and between the City of Vestavia Hills, Alabama, an Alabama municipal corporation (hereinafter referred to as “Seller”), and BAMA 3-RE, LLC, organized in the State of Kansas and qualified to do business in the State of Alabama (hereinafter referred to as “Purchaser”).

**WITNESS THESE RECITALS:**

**WHEREAS**, the Seller owns a tract of land consisting of approximately 2.34 acres, more or less, situated at 1280 Montgomery Highway in the City of Vestavia Hills, Jefferson County, Alabama, more particularly described in Section 2 below (hereinafter referred to as “Property”); and

**WHEREAS**, Purchaser has made an offer to purchase the Property for the purchase price set forth in Section 3 below; and

**WHEREAS**, Title 11-47-20, *Code of Alabama, 1975*, provides that the City Council may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the Mayor to make title thereto, and a conveyance made by the Mayor in accordance with such ordinance invests the grantee with the title of the municipality; and

**WHEREAS**, Title 11-43A-28, *Code of Alabama, 1975*, provides that the City Manager shall be the head of the administrative branch of the government of the City of Vestavia Hills and shall be responsible to the City Council for the proper administration of all municipal affairs; and

**WHEREAS**, Title 11-43A-48, *Code of Alabama, 1975*, provides that all contracts for the City of Vestavia Hills shall be made and approved by ordinance and signed in the name of the City of Vestavia Hills by the Mayor and countersigned by the City Manager; and

**WHEREAS**, Title 11-45-8(b), *Code of Alabama, 1975*, provides that if an ordinance is published by posting, then in such event said ordinance shall take effect five days thereafter; and

**WHEREAS**, on the \_\_\_ day of April, 2015, the City Council of the City of Vestavia Hills, Alabama enacted Ordinance Number \_\_\_\_\_ finding and determining that the Property is not needed for public or municipal purposes and that the Mayor and City Manager are authorized and directed to execute and deliver this Agreement for Purchase and Sale of Real Estate and any and all other legal documents necessary to close the sale pursuant to the terms, provisions and conditions of said Agreement.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are



Agreement for Purchase and Sale of Real Estate  
Page 2

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hereby acknowledged by the parties hereto, Seller and Purchaser hereby mutually covenant and agree as follows:

**1. PURCHASE AND SALE.** For and in consideration of One and No/100 Dollars (\$1.00) in hand paid by Purchaser to Seller and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller, Seller agrees to sell and Purchaser agrees to purchase all (and not less than all) of the Property for the Purchase Price (as defined below) and on the terms and conditions hereinafter set forth.

**2. PROPERTY.** The Property is situated at 1280 Montgomery Highway in the City of Vestavia Hills, Jefferson County, Alabama and consists of approximately 2.34 acres more or less. The Property is presently used by the Seller as a public works facility and is commonly referred to as the "City Shop" property. The legal description of the Property to be conveyed by Seller to Purchaser shall be determined by the survey as required by Section 7 of this Agreement.

**3. PURCHASE PRICE.** The purchase price for all of the Property shall be One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) (the "Purchase Price").

**4. PAYMENT OF PURCHASE PRICE.** The payment of the Purchase Price shall be paid by the Purchaser to the Seller as follows:

**A. EARNEST MONEY ("THE EARNEST MONEY"):** Earnest Money in the amount of Twenty Thousand Dollars (\$20,000.00) shall be paid by Purchaser concurrently with the execution and delivery of this Agreement. The Earnest Money shall be paid to Land Title Company of Alabama, Inc. ("title company"), 600 – 20<sup>th</sup> Street North in the City of Birmingham, Alabama 35203. The title company shall deposit said earnest money in an interest-bearing account and pay the same to the Seller at closing.

**B. CASH ON CLOSING THIS SALE:** The entire remaining balance of the Purchase Price shall be paid to Seller by Purchaser in cash or immediately available funds at closing.

**5. CLOSING AND CLOSING DATE.** Subject to the terms, provisions and conditions of this Agreement, the closing of the sale and purchase of the Property (the "Closing") shall occur on or before the date that is fifteen (15) days after the expiration of the Approval Period or earlier at Purchaser's election, as hereinafter defined (the "Closing Date"); *provided, however*, that to the extent the relocation of the Public Works and City Shop Facilities as described in Section 9.L has not occurred by the Closing Date, then the Closing Date shall be extended to the later of either (i) January 31, 2017 or (ii) the date on which the Public Works and City Shop Facility has been relocated pursuant to Section 9.L below; *provided, further, however*, that if by April 30, 2017, the Public Works and City Shop Facility have not been relocated, then the Closing shall occur on April 30, 2017 and Seller shall deliver possession of the Property to Purchaser on April 30, 2017 regardless of whether such relocation has occurred.

Agreement for Purchase and Sale of Real Estate  
Page 3

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6. **CONVEYANCE.** Seller agrees to convey the Property to Purchaser by statutory warranty deed (the “Deed”) at the Closing, subject to the Permitted Exceptions (as herein defined).

7. **SURVEY.** Within thirty (30) days after the Effective Date, Seller, at Seller’s expense, shall cause to be prepared by a surveyor selected by Seller (the “Surveyor”) a boundary survey of the Property (the “Survey”) and shall provide a copy of the Survey to Purchaser. The legal description as prepared by the Surveyor shall be the legal description of the Property used in the Deed described in paragraph 6 above and the Title Policy described in paragraph 8 hereof.

8. **TITLE INSURANCE.** Seller shall, within thirty (30) days after the Effective Date, secure a title commitment (the “Title Commitment”) naming Purchaser as the proposed insured on a Chicago Title Insurance Company Standard Form Owners Policy issued by Land Title Company of Alabama, Inc. as agent for Chicago Title Insurance Company (the “Title Agent”) for the Property described in Section 2 hereof in the amount of the Purchase Price (the “Title Policy”) subject to the following permitted exceptions (a) easements, covenants and other encumbrances of record, (b) mineral and mining rights not owned by Seller, (c) matters that would be disclosed by a current survey of the Property.

9. **SELLER’S RESPONSIBILITIES.**

A. **ZONING AND ZONING CLASSIFICATION:**

1. **Contract Zoning:** Contract zoning is prohibited in Alabama. In *Haas v. City of Mobile*, 265 So.2d 564 (Ala.1972), the Supreme Court adopted the definition of contract zoning from an article entitled “Zoning by Contract with Property Owner” by Ralph W. Crolley and C. McKim Norton, 133 New York Law Journal 4 (1955), as follows:

“The principal involved may be simply stated. A municipality has no power to make any agreement or deal which will in any way control or embarrass its legislative powers and duties. Neither the police power of the state itself nor that delegated by it to a municipality is subject to limitation by private contract; nor is the exercise of such power to be alienated, surrendered or limited by any agreement or choice. Zoning of property by a municipality being legislative in character cannot be bargained or sold. The rezoning of a parcel of property by a municipality based in any way upon an offer or agreement by an owner of property is inconsistent with, and disruptive of, a comprehensive zoning plan.”

Agreement for Purchase and Sale of Real Estate  
Page 4

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**B. PURCHASER'S INTENDED USE OF PROPERTY:** The Purchaser intends to use the Property for a 10,100 square foot  $\pm$  multi-tenant building, which will include a 3,700 square foot Freddy's Frozen Custard & Steakhurgers with drive-through, along with space for additional restaurant and other retail shops. Purchaser agrees that the deed delivered at Closing shall contain use restrictions prohibiting the use of the Property for any of the uses described as "Prohibited Uses" in Exhibit A attached hereto and incorporated herein by reference.

**C. PRESENT ZONING CLASSIFICATION:** The Property is presently zoned Institutional pursuant to the *City of Vestavia Hills Zoning Code*, which does not permit the Property to be used for restaurants and retail shops.

**D. B-2 GENERAL BUSINESS DISTRICT:** The City of Vestavia Hills Zoning Ordinance Number 2331 in Section 6.4.1 (Table 6) permits the operation of a restaurant and retail shops in a district zoned B-2 (General Business District).

**E. REZONING APPLICATION:** The Seller shall, within ten (10) days after the Effective Date of this Agreement, apply for a B-2 zoning classification, which will allow the Property to be used for a restaurant and retail shops.

**F. APPLICATION FOR GENERAL BUSINESS B-2 DISTRICT ZONING CLASSIFICATION:** Purchaser covenants and agrees, if requested by Seller, to join with Seller in the execution of a B-2 Zoning Application and Development Plan for the Property subjecting the same to a B-2 zoning classification so long as such zoning will allow the Property to be used for Purchaser's intended uses of a 3,700 square foot Freddy's Frozen Custard & Steakhurgers with drive-through along with space (approximately 6,400 square feet) for additional restaurant/retail shops.

**G. AUTOMATIC CANCELLATION AND TERMINATION:** If the City has not zoned or rezoned the Property so as to permit said Property to be used for a restaurant use within ninety (90) days of the effective date of this Agreement, then in such event this Agreement shall automatically be cancelled and terminated and the Earnest Money heretofore paid by Purchaser and accrued interest shall be refunded in full.

**H. NO CONTRACT ZONING:** Nothing contained herein shall be construed as contract zoning by and between the City of Vestavia Hills, Alabama, as Seller, and BAMA 3-RE, LLC, as Purchaser.

**I. RESURVEY AND FINAL PLAT MAP:** This sale is subject to and contingent upon the Vestavia Hills Planning and Zoning Commission approving a resurvey and final plat map of the Property prior to the expiration of the Inspection Period. The plat shall be designed by Purchaser. Both Seller and Purchaser expressly agree:

Agreement for Purchase and Sale of Real Estate  
 Page 5

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(i) that the Vestavia Hills Planning and Zoning Commission shall approve or disapprove the requested plat within thirty (30) days after submission and a public hearing on the matter as required by Title 11-52-32, *Code of Alabama, 1975*; and

(ii) that the Supreme Court of Alabama decided the case of *Smith v. City of Mobile*, 374 So.2d 305, in 1979 and held that a Planning and Zoning Commission must approve a plat if the plat meets all of the requirements of the City Subdivision Regulations.

The reasonable cost of said resurvey shall be paid by Seller. If the Vestavia Hills Planning and Zoning Commission fails or refuses to approve a resurvey and final plat map by said deadline, then in such event this Agreement shall automatically terminate and the Earnest Money and any accrued interest shall be refunded in its entirety to Purchaser.

The plat shall include a relocation of the existing sewer line to the approximate location on the Property shown on Exhibit B attached hereto and incorporated herein by reference. At Closing, Purchaser will receive a credit in an amount equal to the cost of relocating such sewer line, as determined by a contract bid obtained by Purchaser, not to exceed \$70,000.00, LESS any cost savings, determined as of the Closing, which Purchaser may save if Purchaser is allowed to deposit excess dirt from the Property on adjacent property owned by Seller. To the extent the amount of any such cost savings to Purchaser is mutually approved by Seller and Purchaser, then at the Closing, Seller and Purchaser shall enter into a temporary easement agreement in form mutually satisfactory to Seller and Purchaser which will allow for the permanent placement of fill dirt from the Property onto Seller's adjacent property.

**J. RESTRICTIVE COVENANTS LIMITING USE OF PROPERTY TO PUBLIC PURPOSES:** Seller shall provide to Purchaser within ninety (90) days following the Effective Date a written legal opinion from the City Attorney, that the restrictive covenants appearing in the Deed, dated December 29, 1960, which said Deed was filed in the office of the Judge of Probate of Jefferson County, Alabama on April 10, 1961 and recorded at Deed 6590, Page 182, limiting the use of the Property to only public purposes has now expired and is no longer in full force and effect. If the City Attorney has not written such opinion and delivered a copy thereof to Purchaser within ninety (90) days following the effective date of this Agreement, then in such event this Agreement shall automatically be cancelled and terminated and the Earnest Money and any accrued interest shall be returned to Purchaser.

**K. NOTICE OF LIMITATION OF USE:** Seller shall use its best efforts to cause the limitation of use of the Property to public outdoor recreation uses as described in that Notice of Limitation of Use filed in the office of the Judge of Probate of Jefferson County, Alabama on August 27, 1979 and recorded at Real 1806, Page 437, be neutralized and released from the Property so that the said Property may be developed by the Purchaser for its intended use described above. If the Seller is unsuccessful in neutralizing and having said limitation of use released from the Property within ninety (90) days from the Effective Date of this Agreement, then in such event this Agreement shall be cancelled, terminated and the Earnest Money and any accrued interest shall be

Agreement for Purchase and Sale of Real Estate  
Page 6

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refunded in its entirety to the Purchaser.

**L. NEW PUBLIC WORKS FACILITY:** As of the date of the execution and delivery of this Agreement, the Seller is in the process of seeking those approvals necessary to relocate the Public Works and City Shop Facilities to a location in the Liberty Park community section of the City of Vestavia Hills. If the Seller is unable to obtain any and all approvals necessary to relocate said Public Works and City Shop Facilities within ninety (90) days following the effective date of this Agreement, then in such event the Seller shall have the right to cancel and terminate this Agreement and the Earnest Money and any accrued interest shall be returned to the Purchaser.

**10. INSPECTIONS:** Purchaser, or Purchaser's representatives, shall have the right to enter the Property for the purpose of inspection of the same, and/or making boundary line and topographical surveys of the same, and/or making soil tests thereon, and/or in general observing and investigating the condition of the Property. Purchaser agrees to indemnify Seller from and against any liability that results from Purchaser performing any of its inspections as provided herein, and such indemnity shall survive any termination of this Agreement.

**11. INSPECTION PERIOD:** Purchaser shall have a period of forty-five (45) days following the rezoning of the Property to a B-2 (General Business District) ("Inspection Period") to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the Property (including without limitation the condition of all improvements thereon) material to Purchaser's decision to purchase the Property. The determination shall include, without limitation, Purchaser satisfying itself as to title matters, soil testing, survey matters, structural matters, zoning matters, subdivision regulations, engineering and site planning, environmental matters, specifically including, but not limited to Phase I ESA, existing contracts and financial matters affecting the Property, all soil, landscaping and other physical conditions of the Property, availability and sufficient quantities of all utilities, and all additional matters that Purchaser believes relevant, in its sole and absolute discretion, in determining whether or not to purchase the Property. Purchaser, at Purchaser's sole discretion, for any reason or no reason, shall have the right and option to cancel this Agreement by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which the right and option to cancel this Agreement by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which event this Agreement shall be of no further force or affect except for any indemnity or other obligations that expressly survive, and the Earnest Money shall be refunded to Purchaser. If Purchaser cancels and terminates this Agreement prior to the expiration of the Inspection Period, then in such event the Earnest Money shall be refunded by the Seller to Purchaser in full.

**12. APPROVAL PERIOD:** Purchaser shall have up to one hundred twenty (120) days following the Inspection Period (the "Approval Period") to obtain the following (collectively, the "Governmental Approvals"): (a) a building permit for the proposed development on the Property, including drive-through facility, and (b) City of Vestavia Hills, Alabama Design Review Board approval of the plans for development of the Property. Purchaser shall have one thirty (30) day extension of the Approval Period if the Governmental Approvals have not been obtained during the

Agreement for Purchase and Sale of Real Estate  
Page 7

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Approval Period. If the Governmental Approvals are not obtained by Purchaser during the Approval Period, as the same may be extended as provided above, then Purchaser shall have the right to terminate the Agreement with full refund of Earnest Money and accrued interest to Purchaser. Purchaser shall regularly inform Seller as to the progress of such approvals, and all such approvals shall be satisfactory to Purchaser in its sole discretion.

**13. ENVIRONMENTAL CONCERNS:** Seller has no actual knowledge that the Property has in the past been used or is presently used for the handling, storage, manufacturing, refining, transportation or disposal of “toxic material”, “hazardous substances” or “hazardous waste”. The terms “hazardous waste”, “hazardous substances” and “toxic material” include, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §960, et seq.), the Hazardous Materials Transportation Act, as amended (42 USC §1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 USC §9601, et seq.), the regulations adopted and publications promulgated pursuant to the foregoing and any other federal, state or local environmental law, ordinance, rule or regulation. Furthermore, Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority as to any of the above environmental concerns. Notwithstanding the above, Purchaser acknowledges that the Seller has used the Property for the operation of the City of Vestavia Hills, Alabama Public Works and City Shop facilities.

**14. CONDITION OF PROPERTY:** Purchaser acknowledges and agrees that:

A. Seller has not made and does not make any covenant, representation of warranty, either expressed or implied, regarding the physical condition of the Property or any portion thereof, the suitability of the Property for any particular purpose or use whatsoever, utility availability for the Property, whether the Property is subject to surface or subsurface contamination by toxic or hazardous waste or with respect to any other matters affecting the Property or Purchaser’s contemplated use thereof;

B. Purchaser has been given the absolute and unfettered right during the Inspection Period to conduct such Inspections of the Property as Purchaser, in its sole discretion, may determine necessary in order to satisfy itself of all conditions and other aspects of the Property; and

C. Purchaser has available to it such resources, expertise, consultants and advisors so that it can make a sound and reasonable judgment as to the condition of the Property as well as to all economic conditions, suitability requirements and all other matters affecting the use, development and ownership of the Property. Purchaser acknowledges and agrees that the Property is to be sold and conveyed to, and accepted by, Purchaser in its present condition, “AS IS, WHERE IS AND WITH ALL FAULTS,” and Purchaser hereby assumes the risk that adverse physical characteristics and existing conditions may have not been revealed by the Inspections.

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 Page 8

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**15. EXISTING DOCUMENTS, SURVEY AND TITLE INSURANCE:** Within ten (10) days following the Effective Date of this Agreement, the Seller agrees to provide Purchaser, at Seller's expense, and no later than 5:00 p.m. (Birmingham, Alabama time) on said date copies of all existing surveys, existing title insurance policies, existing environmental reports, and other documentation in any way relating to the Property that are in the possession of the Seller or the Seller's agents.

**16. CLOSING COSTS:** The Closing shall be held at the City of Vestavia Hills Municipal Center. The closing attorney shall be Patrick H. Boone.

**A. CLOSING COSTS FOR SELLER:** The Seller shall pay the following costs:

- (1) Title insurance premium.
- (2) Real estate broker's fee described in Section 20 below.
- (3) Legal fee to Seller's attorney.
- (4) Cost of surveying the Property and preparing the subdivision plat.

**B. CLOSING COSTS FOR PURCHASER:** The Purchaser shall pay the following closing costs:

- (1) The fee for recording the deed.
- (2) Legal fee to Purchaser's attorney.
- (3) Cost of due diligence.
- (4) Financing costs.
- (5) Cost incurred for Governmental Approvals.

**17. TAXES:** The Property is exempt from ad valorem taxes and there shall be no proration of ad valorem taxes for the Property at the Closing.

**18. ASSIGNMENT:** Purchaser may not assign this Agreement or any of its rights hereunder without the express written consent of Seller. Any assignment in violation of the restriction on assignment in this Section 18 shall be void and of no force and effect. Notwithstanding the foregoing, Purchaser may assign all of its rights hereunder to an entity that controls, is controlled by or is under common control with Purchaser. In no event shall Purchaser be released from its duties and obligations hereunder unless expressly released in writing by Seller.

**19. POSSESSION:** Possession of the Property shall be given on the Closing Date.

**20. BROKER:**

**A. PURCHASER:** The Purchaser is represented in this contemplated transaction by SRS Real Estate Partners and Seller shall be responsible for paying the real estate broker/agent

Agreement for Purchase and Sale of Real Estate  
 Page 9

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commission to said SRS Real Estate Partners in the amount of five percent (5%) of the Purchase Price and shall obtain a release of any broker's lien related thereto.

**B. SELLER:** The Seller is represented in this contemplated transaction by Retail Specialists, LLC and Seller shall be responsible for paying said Retail Specialists, LLC pursuant to the Listing Agreement, dated April 6, 2015, by and between Seller and Retail Specialists, LLC and shall obtain a release of any broker's lien related thereto.

**21. NOTICES:** All notices and demands to be given or made hereunder shall be in writing and shall be given by (i) personal or hand delivery, (ii) nationally recognized express overnight delivery service (with charges therefor prepaid, or (iii) certified or registered mail, return receipt requested (with postage therefor prepaid). Notices shall be deemed received upon (a) receipt, if hand or personally delivered, (b) the next business day after the notice has been deposited with a nationally recognized express overnight delivery service, or (the third business day after the notice has been deposited with the United States Postal Service. Notices shall be provided to the parties at the follow addresses:

**IF TO SELLER:**

City of Vestavia Hills, Alabama  
 1032 Montgomery Highway  
 Vestavia Hills, Alabama 35216  
 Attention: Alberto C. Zaragoza, Jr., Mayor  
 Fax (205) 978-0189  
 Email: [bzaragoza@vhal.org](mailto:bzaragoza@vhal.org)

and

City of Vestavia Hills, Alabama  
 1032 Montgomery Highway  
 Vestavia Hills, AL 35216  
 Attention Mr. Jeff Downes, City Manager  
 Fax (205) 978-0189  
 Email: [jdownes@vhal.org](mailto:jdownes@vhal.org)

With copies to:

Patrick H. Boone  
 215 Richard Arrington Jr., Blvd. N., Suite 705  
 Birmingham, Alabama 35203-3720  
 Fax (205) 324-2295  
 Email: [patrickboone@bellsouth.net](mailto:patrickboone@bellsouth.net)

Stephen R. Monk  
 Bradley Arant Boult Cummings LLP  
 One Federal Place  
 1819 Fifth Avenue North  
 Birmingham, Alabama 35243



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Page 10

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Fax (205) 488-6429  
Email: [smonk@bab.com](mailto:smonk@bab.com)

**IF TO PURCHASER:**

BAMA 3-RE, LLC  
916 North Maxwell Street  
McPherson, Kansas 67640  
Attention: Mike Fyler  
Fax: (\_\_\_\_)  
Email: [mike.fyler@ercmanagement.com](mailto:mike.fyler@ercmanagement.com)

With a copy to:

Michael J. Brandt  
Wallace, Jordan, Ratliff & Brandt, LLC  
800 Shades Creek Parkway, Suite 400  
Birmingham, Alabama 35209  
Fax: (205) 874-3280  
Email: [mbrandt@wallacejordan.com](mailto:mbrandt@wallacejordan.com)

**IF TO TITLE COMPANY:**

Land Title Company of Alabama  
600 North 20<sup>th</sup> Street, Suite 100  
Birmingham, Alabama 35203  
Attention: Michelle Gilbert  
Fax: (205) 226-9280  
Email: [smg@land-title.net](mailto:smg@land-title.net)

Either party hereto may change the address to which it is to receive notice or the representative to whom notice is to be given by written notice to the other part in the manner set forth above.

**22. DEFAULT AND REMEDIES:**

A. In the event that Seller shall fail to consummate the transaction as contemplated herein for any reason other than Purchaser's default, then Purchaser may, as its sole and exclusive remedy, either (i) enforce this Agreement and the purchase and sale transaction contemplated herein by specific performance or (ii) terminate this Agreement, whereupon the Earnest Money paid to Seller and accrued interest shall be promptly returned to Purchaser, this Agreement shall be deemed cancelled and terminated and, except for the indemnification obligations of Purchaser set forth in Section 10 above, neither party shall have any further obligation or liability to the other hereunder. Purchaser hereby expressly waives any right to seek or obtain any monetary judgment or damages against Seller in the event of any default hereunder by Seller and acknowledges and agrees that no other damages, rights or remedies shall be collectible, enforceable or available to Purchaser.

Agreement for Purchase and Sale of Real Estate  
Page 11

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B. If, at any time after the expiration of the Inspection Period, Purchaser shall fail to perform its obligation to close the transaction contemplated herein for any reason other than Seller's default, then the Earnest Money shall be delivered to Seller as liquidated damages in which event this Agreement shall automatically be deemed terminated and cancelled and, except for the indemnification obligations of Purchaser set forth in Section 10 above, neither party shall have any further obligation or liability to the other hereunder. Because of the difficulty, inconvenience and uncertainty of ascertaining actual damages, no other damages, rights or remedies shall in any case be collectible, enforceable or available to Seller and Seller agrees to accept and retain the Earnest Money as its total damages and relief hereunder in the event Purchaser fails to close the purchase and sale transaction contemplated herein.

C. Both Seller and Purchaser contemplate that Purchaser will incur due diligence expenses for permitting and/or site plan approval (the "costs") during the Inspection Period set forth in Section 11 hereof and the approval period as set forth in Section 12 hereof. If this Agreement is cancelled and terminated by Seller for any of the following reasons, then in such event Seller shall not be liable to Purchaser for the reimbursement of any portion or all of said costs:

(i) The failure of Seller, within ninety (90) days following the effective date, to have the limitation of use filed in the office of the Judge of Probate of Jefferson County, Alabama on August 27, 1979 and recorded at Real 1806, Page 437 be removed, released and/or neutralized so as to enable Purchaser to use the Property for restaurant and other retail businesses; or

(ii) If the Property is not rezoned, within ninety (90) days following the effective date, to a zoning classification that will allow Purchaser to use the Property for development and operation of a restaurant and/or other retail businesses; or

(iii) If the Vestavia Hills Planning and Zoning Commission finds and determines that the Application for Resurvey and plat map does not meet the requirements of the Rules and Regulations of the City of Vestavia Hills Zoning Regulations and, within ninety (90) days following the effective date, denies the said Application for Resurvey and plat map as designed by Purchaser; or

(iv) If the Seller, within ninety (90) days following the effective date, fails for any reason whatsoever to obtain any and all approvals necessary for the relocation, construction and operation of a Public Works and City Shop Facility in a location situated in the Liberty Park community of the City of Vestavia Hills, Alabama.

Should any of the events described in this Section 22-C(i), (ii), (iii) and (iv) occur, then in such event this Agreement shall automatically be cancelled and terminated and any and all Earnest Money plus accrued interest shall be returned to Purchaser.

However, if Seller fails to close the sale of this Property pursuant to this Agreement for any other reason and through no fault of Purchaser, then in such event Seller shall be liable to Purchaser

Agreement for Purchase and Sale of Real Estate  
Page 12

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for the payment of said costs up to Seventy-five Thousand Dollars (\$75,000.00); provided, however, that the costs were necessarily incurred and further that the Purchaser provide Seller with evidence of prior payment by Purchaser.

Anything contained in this Agreement to the contrary notwithstanding, the Seller and Purchaser agree that if this sale closes and Seller conveys title to Purchaser pursuant to this Agreement, then in such event Seller shall not be obligated for the payment of any portion or all of said costs.

**23. MISCELLANEOUS**

**A. GOVERNING LAW:** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

**B. BINDING AGREEMENT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**C. SURVIVAL:** All representations and warranties of this Agreement shall survive the Closing, as shall any covenants for performance after Closing.

**D. TIME OF THE ESSENCE:** Time is of the essence of this Agreement.

**E. NO WAIVER:** The failure of either party to exercise any rights under this Agreement shall not constitute a waiver of any right, nor excuse the other party's full performance. No express waiver of any matter shall affect any other matter under this Agreement. Express waivers are only effective if in writing.

**F. CONSTRUCTION OF TERMS:** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

**G. SEVERABILITY:** In case of any of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable by any court of competent jurisdiction in any respect, the remaining provisions shall remain in effect and the Agreement be performed in a fair and equitable manner as to any uncertainties arising from the unenforceable provisions.

**H. DATES:** If any date provided in this Agreement falls on a Saturday, Sunday or holiday, the date shall be the next business day.

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**I. EXECUTION IN COUNTERPARTS:** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

**J. ENTIRE AGREEMENT:** This written Agreement contains the entire agreement between the parties, incorporating all prior agreements, and may only be amended in writing executed by both parties.

**K. EFFECTIVE DATE:** The effective date of this Agreement is the sixth (6<sup>th</sup>) day following the posting (in accordance with Title 11-45-8(b), *Code of Alabama, 1975*) of the ordinance authorizing and directing the execution and delivery of this Agreement and the closing of the sale all in accordance with the terms, provisions and conditions thereof.

**L. RECORDING:** Neither this Agreement nor any memorandum thereof shall be recorded by either party.

[Remainder of Page Intentionally Left Blank]

Agreement for Purchase and Sale of Real Estate  
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IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement to be executed as of the date first above written.

**SELLER:**

THE CITY OF VESTAVIA HILLS, ALABAMA,  
an Alabama municipal corporation

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

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

ATTESTED:

By \_\_\_\_\_

**PURCHASER:**

BAMA 3-RE, LLC,  
a Kansas limited liability company

By Michael A. Tyler  
Its operating manager

ATTESTED:

By Allen Bechtel

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**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 Agreement for Purchase and Sale of Real Estate, and who is known to me, acknowledged before me on this day that being informed of the contents of the Agreement, 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 \_\_\_\_\_, 2016.

---

Notary Public

My Commission Expires:

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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 Agreement for Purchase and Sale of Real Estate, and who is known to me, acknowledged before me on this day that being informed of the contents of the Agreement, 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 \_\_\_\_\_, 2016.

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Notary Public

My Commission Expires:

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SEAL

Agreement for Purchase and Sale of Real Estate

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STATE OF ~~ALABAMA~~ Kansas  
JEFFERSON COUNTY  
McPherson

**ACKNOWLEDGMENT**

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Michael A. Fyler, whose name as Operating Manager of BAMA 3-RE, LLC, a Kansas limited liability, is signed to the foregoing Agreement for Purchase and Sale of Real Estate, and who is known to me, acknowledged before me on this day that being informed of the contents of the Agreement, (s)he in his/her capacity as such and with full authority, executed the same voluntarily for and as the act of said BAMA 3-RE, LLC on the day the same bears date.

Given under my hand and official seal, this the 30<sup>th</sup> day of March, 2016.

Jeryl W Rogers  
Notary Public

My Commission Expires:

12-2-2019

SEAL



## Exhibit A

### Prohibited Uses

No portion of the Property shall be used or operated for any of the Prohibited Uses, as herein defined. As used herein, the term “**Prohibited Uses**” means any of the following uses or purposes:

(i) adult book stores or facilities devoted primarily to the sale of pornographic books, films, tapes or similar audio or video products; provided, however, that the foregoing shall not prohibit or limit the operation of a national, regional or local, reputable, general interest book or video store;

(ii) a tattoo or piercing parlor;

(iii) establishment selling cars or other motor vehicles, motor vehicle maintenance or repair shop or gas station, or any establishment selling trailers;

(iv) a convenience store;

(v) establishment of any business involving the sale of paraphernalia for use with illicit drugs or for the sale of medicinal marijuana;

(vi) gambling establishment, casino, gaming room, or “off track betting” operation;

(vii) exotic dance business or any businesses such as a “Hooters”, “Twin Peaks”, “Tilted Kilt” bar or restaurant;

(viii) mobile home, manufactured home or trailer sales facilities or parks; provided, however, that the foregoing shall not be deemed to prohibit the use of construction trailers or sales and leasing trailers during the initial construction, development, leasing and sale of any portions of the Property;

(ix) any warehouse or industrial use;

(x) any self-storage facility;

(xi) a venture whose primary business is the operation of video or arcade games;

(xii) labor camps, prisons, jails, honor farms or other correctional institutions;

(xiii) landfills or garbage disposal areas or areas for the dumping, processing, incineration or reduction of garbage, sewage, dead animals, refuse or



waste (other than on-site underground sanitary sewage disposal facilities, including septic tanks, which are specifically allowed as authorized uses);

(xiv) smelting of iron, tin, zinc or other ores, refining of petroleum or its products or mining activities;

(xv) drive-in theaters;

(xvi) stock yards or slaughter houses or commercial poultry, livestock, swine or other animal production or breeding farms;

(xvii) junk yards, baling, storage or processing of scrap metal, glass, paper or rags, storage or processing of wrecked or junked motor vehicles or any other type of outdoor storage other than for service areas and storage areas; provided, however, that the foregoing shall not be deemed to prohibit the use of any Property for the storage of construction materials during the construction or improvement of the Property;

(xviii) racetracks, raceways or drag strips;

(xix) the sale of fireworks;

(xx) pawn shops or “pay-day” loan-type businesses; provided, however, that the foregoing shall not prohibit banks, credit unions, mortgage businesses and similar financial institution uses;

(xxi) flea markets or thrift stores;

(xxii) massage parlors;

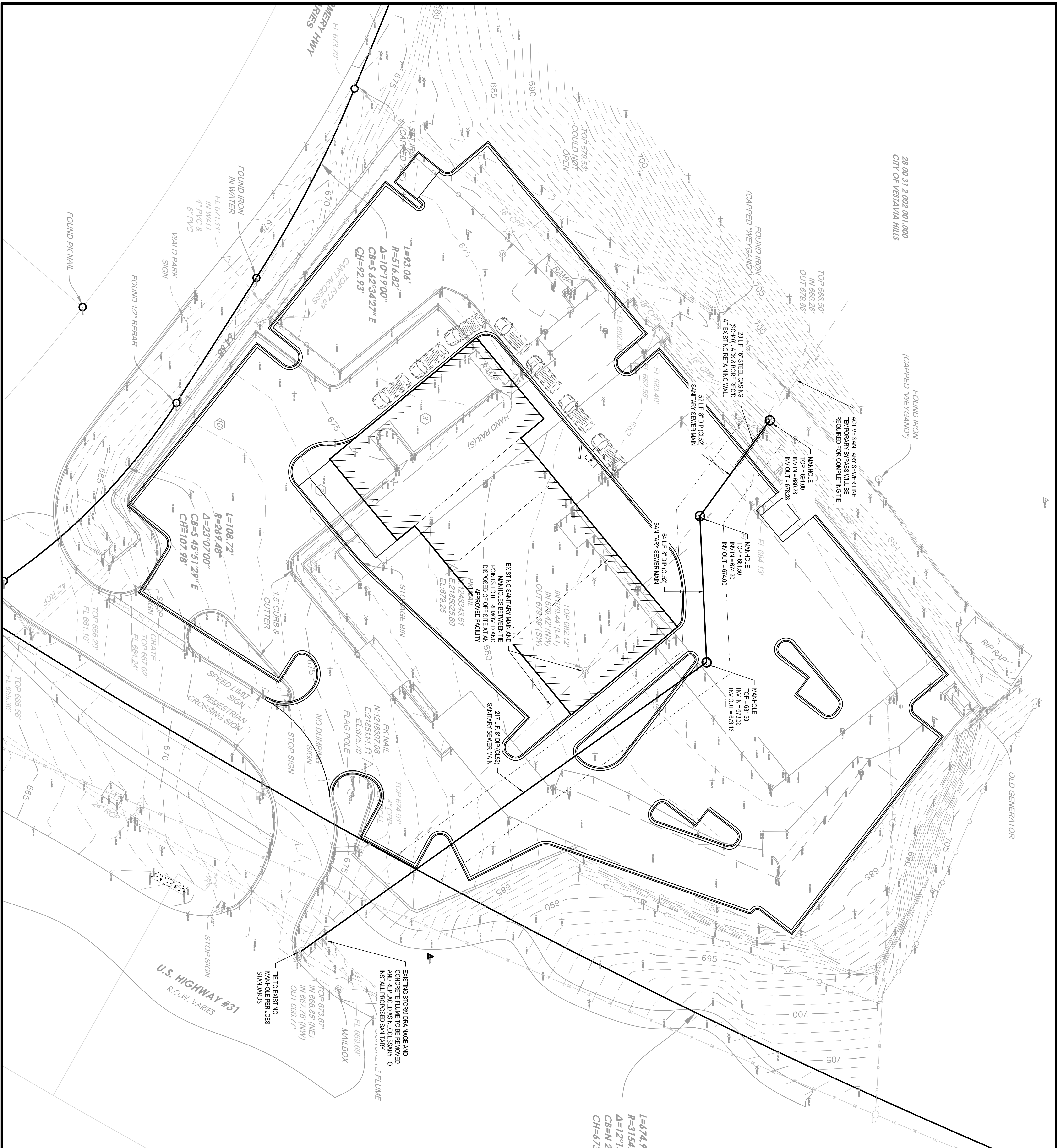
(xxiii) “disco” or other dance hall; or

(xxiv) cemetery, mortuary or funeral parlor.

**Exhibit B**

**Sanitary Sewer Relocation Plan**

See attached.



28.00.31.2.002.001.000  
CITY OF VESTAVIA HILLS

FOUND IRON (CAPPED W/WEYGAND)

ACTIVE SANITARY SEWER LINE  
TEMPORARY BRASS WILL BE  
REQUIRED FOR COMPLETING THE

20' L.F. 16\"/>

64' L.F. 8\"/>

277' L.F. 8\"/>

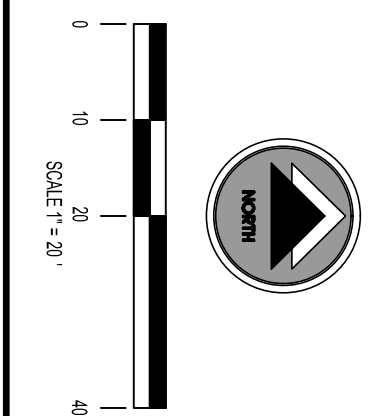
L=674.9'  
R=315.4'  
Δ=12°11'  
CB=N.22°  
CH=67.3'

EXISTING SANITARY MAIN AND  
MANHOLES BETWEEN THE  
POINTS TO BE REMOVED AND  
DISPOSED OF OFF-SITE IN AN  
APPROVED FACILITY

EXISTING STORM DRAINAGE AND  
CONCRETE FLUME TO BE REMOVED  
AND REPLACED AS NECESSARY TO  
INSTALL PROPOSED SANITARY  
FLUME

U.S. HIGHWAY #31  
R.O.W. VARIES

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STANDARDS AND SPECIFICATIONS OF JEFFERSON COUNTY, THE LOCAL MUNICIPALITY AND/OR THE STATE HIGHWAY DEPARTMENT AND APPLICABLE OSHA REGULATIONS, AS APPLICABLE.
2. THE CONTRACTOR SHALL NOTIFY THE JEFFERSON COUNTY ENVIRONMENTAL SERVICES DEPARTMENT OF ANY CHANGES TO THE ORIGINAL CONSTRUCTION PERMITS AND SHALL BE RESPONSIBLE FOR OBTAINING ANY NECESSARY CHANGES WITHOUT APPROVAL BY THE JEFFERSON COUNTY ENVIRONMENTAL SERVICES DEPARTMENT.
3. DUCTILE IRON PIPE SHALL BE CLASS 52 OR BETTER.
4. PVC PIPE SHALL BE AWWA C900 CAST IRON (CI) STANDARD DIMENSIONS DIMENSION RATIO DR/18 PRESSURE CLASS (PC) 150 PSI OR BETTER.
5. IN EARTH TRENCHES, 4" OF CRUSHED STONE SHALL BE PLACED UNDER SEWER LINES OF 12" IN DIAMETER OR SMALLER AND 6" OF CRUSHED STONE SHALL BE PLACED UNDER ALL LARGER SEWERS. THE DITCH SHALL BE BACKFILLED WITH CRUSHED STONE TO A DEPTH OF 12" ABOVE THE TOP OF STONE AND PROPERLY COMPACTED.
6. AT THE DIRECTION OF THE ESD INSPECTOR, A CONNECTION OF SANITARY SEWER PRESS (8" THROUGH 16") OF SIMILAR SIZES OR FOR REPAIR OF SANITARY SEWER PRESS OF SIMILAR MATERIALS MAY BE MADE BY MEANS OF AN APPROVED MECHANICAL SEAL TYPE ADJUSTABLE COUPLING. COUPLINGS WITH ANY REQUIRED ADAPTING BUSHINGS SHALL BE MANUFACTURED OF AN APPROVED PREFORMED ELASTOMER MATERIAL SPECIFICALLY FOR THE DIMENSIONS OF THE PIPE MATERIALS TO BE CONNECTED. COUPLINGS OF THE MECHANICAL SEAL TYPE SHALL HAVE NUT AND BOLT TIGHTENING CLAMPS OR DEVICES MADE OF 316 STAINLESS STEEL WITH AN ADJUSTABLE STAINLESS STEEL SHEAR RING, AND STAINLESS STEEL HARDWARE. A CONCRETE COLLAR SHALL BE SWORN ON APPROXIMATE RADIUS DRAWINGS SPECIFIED BY THE MANUFACTURER. EACH COUPLING SHALL BEAR THE MANUFACTURER'S NAME AND REQUIRED MARKINGS.
7. MANHOLES SHALL MEET ASTM SPECIFICATIONS C-478. JOINTS BETWEEN THE MANHOLES SECTIONS SHALL BE OFFSET TONGUE AND GROOVE PUSH ON TYPE SUPPLIED WITH TLOX SUPER SEAL PRE-LUBRICATED GASKET AS MANUFACTURED BY HAMILTON KENT MEETING THE REQUIREMENTS OF ASTM D443. EACH JOINT SHALL ALSO BE SUPPLIED WITH CONSEAL CS-231 WATERSTOP SEALANT AS MANUFACTURED BY CONCRETE SEALANTS, IN WIDTH AS RECOMMENDED BY THE MANUFACTURER. MANHOLES SHALL HAVE A MINIMUM DIAMETER OF 48" AND A MINIMUM THICKNESS OF 5" ALL MANHOLE COVERS SHALL BE OF THE CONCRETE TYPE. MANHOLES MAY BE FINISHED TO STREET GRADE WITH 12" OF CONCRETE OR 18" OF ASPHALT. MANHOLES SHALL BE FINISHED TO FINISH GRADE WITH 8" STREETS FOR SANITARY SEWER SERVICE LINES SHALL END ON OR NEAR THE PROPERTY LINE UNLESS OTHERWISE NOTED. ON TOWNHILL, SIDE LOTS INSTALL LATERALS ON A MINIMUM 1% GRADE. ON UPHILL, FIRST JOINT OUT OF A MANHOLE, FOR BUILDING OR HOUSE SERVICE, SHALL BE DUCTILE IRON PIPE CLASS 52 OR BETTER (MINIMUM 8 FEET). ANY BUILDING SERVICE LINE SET OUTSIDE OF EASEMENT OR R.O.W. MUST BE INSTALLED BY A MASTER PLUMBER AND HAVE A SEWER CONNECTION PERMIT FOR EACH LOT.
9. IF THE CONTRACTOR IS INSTALLING SERVICE LINES AT THE SAME TIME AS MAIN LINE, THE SERVICE LINE SHALL BE INSTALLED IN ACCORDANCE WITH JEFFERSON COUNTY'S STANDARDS FOR CONSTRUCTION OF SERVICE LINES AND CONNECTIONS, AND INSPECTED TESTED BY COUNTY INSPECTOR BEFORE IT IS OPENED TO TRAFFIC.
10. ALL SERVICE LINE STUBBOURS INSTALLED IN ROAD ROW OR UNDER ASPHALT SHALL BE PER STRANDARD SPECIFICATIONS FOR SANITARY SEWER SERVICE LINES AND CONNECTIONS SECTION 4.
11. CONSTRUCTION SIGNS FOR WORK WITHIN AND ADJACENT TO PUBLIC ROADS, HIGHWAYS, AND ALLEYS SHALL BE IN ACCORDANCE WITH ADOT STANDARDS.
12. CONTRACTOR WILL BE RESPONSIBLE FOR THE CONTINUOUS AND PROPER OPERATION OF ALL EXISTING UTILITIES LOCATED ON OR ADJACENT TO THE PROJECT SITE AND WITHIN THE CONSTRUCTION LIMITS OF THIS PROJECT.
13. ALL EMBARKMENT FILL AREAS SHALL BE FILED AND COMPACTED PRIOR TO EXCAVATION OF SEWER LINES AND TRENCHES.
14. CONTRACTOR SHALL BE RESPONSIBLE FOR THE CONSTRUCTION AND MAINTENANCE OF EROSION AND SEDIMENTATION CONTROLS AND FOR ACQUISITION OF ALL PERMITS DURING CONSTRUCTION TO INSURE THAT DAMAGE DOES NOT OCCUR TO ADJACENT PROPERTIES, PUBLIC ROADS AND/OR OTHERS (CREKS, STREAMS).
15. UPON COMPLETION OF ALL OR ANY PART OF A SANITARY SEWER LINE, THE CONTRACTOR WILL BE REQUIRED TO TEST SAID SEWER FOR ACCEPTABILITY. GRAVITY SEWERS WILL BE PRESSURE TESTED WITH AIR. FORCE MAIN SEWERS WILL BE PRESSURE TESTED WITH WATER. MANHOLES WILL BE VACUUM TESTED. ALL TESTS WILL BE CONDUCTED IN THE PRESENCE OF THE COUNTY SEWER CONSTRUCTION INSPECTOR IN ACCORDANCE WITH SECTION 500 STANDARDS FOR COMMERCIAL AND RESIDENTIAL INSPECTION OF SANITARY SEWER SYSTEMS. SANITARY SEWER SERVICES SHALL BE TELEPHONICALLY INSPECTED FOR LEAKS USING THE FINAL VIDEO TAPES AND LOGS TURNED OVER TO THE COUNTY FOR RECORD INFORMATION.



<p>Sheet Number <b>C50</b></p> <p>Scale 1"=20'</p>	<p>Drawn By <b>DAD</b></p> <p>Checked By <b>TSM</b></p>	<p>Date <b>3/08/2016</b></p>	<p>Project Name <b>FREDDY'S FROZEN CUSTARD &amp; STEAKBURGERS BAMA 1 CUSTARD VESTAVIA HILLS, AL</b></p>	<p>Revision Date</p>	<p>Scale Date</p>	<p>102-15-028.004</p>	<p><b>LBVD, Inc.</b> 716 South 30th Street Birmingham, AL 35233 Phone (205) 251-2200 Fax (205) 251-2201 Civil Fax (205) 488-0226</p> <p><b>Chil and Structural Engineers</b> Birmingham, Alabama Tampa Bay, Florida www.lbvd.com</p>
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**ORDINANCE NUMBER 2652**

**AN ORDINANCE ESTABLISHING POLICY AND PROTOCOLS FOR THE MANAGEMENT, HARBORING AND/OR FEEDING OF STRAY, FERAL, OR ABANDONED CATS AND FELINES AND TO PRESCRIBE PENALTIES FOR VIOLATION THEREOF**

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

**Section 1. Purpose.**

The purpose of this Ordinance is to establish policies and protocols to manage stray, feral or abandoned cats in the City of Vestavia Hills, to authorize the humane trapping, collection, adoption and sterilization and/or disposal of said cats and to provide for penalties for violation thereof.

**Section 2. Definitions.**

The following definitions shall apply in the interpretation of this Ordinance:

1. *Cat*: The terms “stray cat,” “feral cat” or “abandoned cat” shall mean any domestic cat that is reasonably believed not to be owned or under the entrusted care of any person. This shall include any animal that appears to be homeless, abandoned, non-socialized, undomesticated or uncared for based upon the behavior or physical condition of the cat and the absence of any collar, tag, microchip, or other means of identifying the name, address, or telephone number of the owner.
2. *Superannuated*: Incapacitated or disqualified for active duty by advanced age.
3. *Infirm*: Not physically or mentally strong, especially through age or illness.
4. *Glandered*: Affected by a contagious disease caused by bacteria and characterized by swellings beneath the jaw and a profuse mucous discharge from the nostrils.

**Section 3. Specific Violations.**

- a. *Keeping or harboring*: It shall be unlawful for any person to keep or harbor at any place within the City any feral cat, regardless of the age or size of any such animal, and regardless of whether or not such animal was born and/or raised in captivity.
- b. *Feeding*: Except as otherwise provided by this subsection, it shall be unlawful for any person to knowingly feed, offer food, or in any manner provide food to any feral cat on private or public property within the City limits for the purpose of attracting or harboring such animals.

**Section 4. Exceptions.**

The provisions of this Ordinance do not apply to any of the following:

- a. Employees or agents of the City, county, state, and federal government or veterinarians who, in the course of their official duties, have feral cats in their custody or under their management;
- b. The provision of food to domesticated cats that are household pets and that are owned by or whose care and feeding have been entrusted to the person providing the food;
- c. The provision of food that is incidental to other lawful activities and that is not intended to attract feral cats as defined herein; and
- d. The provision of food in connection with the humane trapping of feral cats for the purposes of relocating said animals to nonresidential areas.

**Section 5. Impoundment of stray, feral, or abandoned cats and felines.**

1. *Purpose*. The purpose of this subsection is to authorize the humane trapping, collection, release, adoption and sterilization and/or disposal of feral cats that are reasonably believed not to be owned or under the care of any person and which, by virtue of such status, are deemed to represent an actual or potential threat to the health, safety, and welfare of the public. Nothing herein shall be deemed to prevent the City and its employees or agents from using reasonable discretion in discharging the functions and activities hereby authorized. Nothing herein shall be interpreted or deemed to create or to impose on the City, its agents, employees, persons, or entities

- acting on behalf thereof any duty, standard of care, or liability to the public generally or to any member thereof with respect to the collection, care, or disposition of cats impounded under authority hereof.
2. The City or its representatives, including the code enforcement official, animal control officer, or person serving in like capacity, or such persons or firms as may be designated or employed by the City or with whom the City may contract for such purposes, shall have the authority to trap or collect by humane means and impound any cat or member of the feline family that appears to be stray, abandoned, feral, or non-socialized, or uncared for based upon the behavior or physical condition of the cat, and the absence of any collar, tag, microchip, or other means of identifying the name, address, or telephone number of the owner of the cat.
  3. A cat that is trapped and impounded pursuant to Section 2 above, will be held for a minimum period of seven (7) days pursuant to the provisions of Code of Alabama, 1975 §3-7A-8 in which notice may be given to the owner, if known and/or to allow the owner to redeem said cat. If the owner redeems the cat, in such instance, the owner shall pay the City or the City's representative all costs associated with the impoundment including, but not limited to, boarding and required medical treatment.
  4. If the impounded cat is not redeemed by its owner within the required seven (7) day detention period or, following the seven (7) day detention period, the City or its representative may offer the cat for adoption if the cat is deemed adoptable by reasonable means.
  5. Following the required seven (7) day detention period, the City or its representative may allow the cat to be released into the general area from which it was trapped subject to the following requirements:
    - a. The cat is determined by reasonable means to be feral or undomesticated, but not suitable for adoption; and
    - b. The cat is determined by reasonable means to be healthy and without disease or infection of any kind and sociable so as not to pose a danger to itself, a pet or a human; and

- c. The cat is sterilized pursuant to the sterilization requirements set forth in the Code of Alabama 1975 §3-9-2 and other state law governing such practices; and
  - d. The cat is vaccinated for rabies; and
  - e. The cat is marked with ear tags, a clipped ear, or other means to identify that said cat has been sterilized.
6. The collection, care, and disposition of any impounded cat shall be subject to state law governing such practices, including but not limited to sterilization requirements set forth in the Code of Alabama 1975, §3-9-2.
  7. Any agent, officer or member of a duly incorporated society for the prevention of cruelty to animals may lawfully destroy or cause to be destroyed any animal found abandoned and not properly cared for which may appear, in the judgment of two reputable citizens called by him to view the same in his presence, to be superannuated, infirm, glandered, injured or diseased past recovery for any useful purpose pursuant to provisions of Code of Alabama, 1975, § 3-1-8.

**Section 6. Fines and Punishment.**

Any person violating the provisions of this section shall, upon conviction, be punished pursuant to Alabama law.

**Section 7. Severability.**

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

**Section 8. Effective Date.**

This Ordinance Number 2652 shall become effective immediately following adoption and publishing/posting pursuant to Alabama law.

**DONE, ORDERED, APPROVED and ADOPTED** this 25<sup>th</sup> day of April, 2016.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 2652 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 25<sup>th</sup> day of April, 2016, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, and Vestavia Hills Recreational Center this the \_\_\_ day of \_\_\_\_\_, 2016.

Rebecca Leavings  
City Clerk