

**Vestavia Hills
City Council Agenda
April 25, 2016
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Pastor Scott Guffin, Liberty Park Baptist Church
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
6. Presentation – March 9, 2016 Incident Responder Commendation
7. Presentation – Joan Wright – Child Care Resources
8. Presentation – John Norris – A Police Department Tribute
9. City Manager’s Report
10. Councilors’ Reports
11. Financial Reports – George Sawaya, Asst. City Treasurer
12. Approval of Minutes – April 11, 2016 (Regular Meeting) and April 18, 2016 (Special Meeting)

Old Business

13. 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
14. Resolution Number 4821 – A Resolution Amending Resolution Number 4598 And Authorizing The City Manager To Complete All Actions Necessary To Secure Payment For Construction Of The New City Hall Facility Located At 1032 Montgomery Highway

New Business

15. Ordinance Number 2653 – Annual Jefferson County Tax Levy
16. Ordinance Number 2654 – Annual Shelby County Tax Levy
17. Resolution Number 4825 – Appointing A Member To The Vestavia Hills Board Of Education
18. Resolution Number 4817-A – A Resolution Amending Resolution Number 4817 – A Resolution Approving An Additional \$24,000 For Mowing Of The Former Altadena Valley Country Club

19. Resolution Number 4822 – A Resolution Establishing The Use Of Electronic Vote Counting Devices For Municipal Elections
20. Resolution Number 4823 – A Resolution Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property
21. Resolution Number 4824 – A Resolution Granting An Overhead Power Easement For Alabama Power On The Property Located At 501 Montgomery Highway
22. Resolution Number 4826 – A Resolution initiating the rezoning of the property located at 1280 Montgomery Highway from Unzoned to VH B-2
23. Resolution Number 4827 – A Resolution Initiating A Conditional Use Approval For Major Mechanical On A Portion Of Lot 1, Vestavia Hills Sports Park For Construction Of A City Fleet Operations Facility
24. Resolution Number 4828 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With The Alabama Department Of Transportation For Project Number ACAA59494-ATRP(006); ATRIP #37-03-33
25. Resolution Number 4829 - A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With The Alabama Department Of Transportation For Project Cmaq-7030(600), Project Reference Number 100057174; Construction Project For Sidewalks Along Portions Of Massey Road, Columbiana Road And Montgomery Highway

New Business (Requesting Unanimous Consent)

First Reading (No Action Taken At This Meeting)

26. Resolution Number 4830 – A Resolution Authorizing The City Manager To Accept A Proposal To Design A Motor Scout Building For The City Of Vestavia Hills Police Department
27. Resolution Number 4831 – A Resolution Authorizing The City Manager To Accept A Proposal To Design A Municipal Fleet Operations Facility At Lot 1, Vestavia Sports Park And Renovation Of Current Park Maintenance Facility At Wald Park
28. Citizens Comments
29. Executive Session
30. Motion For Adjournment

Rebecca Leavings

From: Joan Wright <jwright@ccr-bhm.org>
Sent: Tuesday, April 19, 2016 4:17 PM
To: Rebecca Leavings
Subject: Present to City Council

Hi Beckie,

I welcome the opportunity to be on the agenda for Monday's City Council Meeting, 4/25 at 5PM.

The purpose is to express our gratitude for City of Vestavia Hills' generous, continued support of the mission of our agency.

Here's a [link](#) to our most recent annual report that I will reference in my remarks.

Please confirm if this can be arranged.

Thank you kindly,

Joan Wright
Executive Director
Childcare Resources
244 West Valley Avenue, Suite 200
Birmingham, AL 35209-3616
O: 205-945-0018 ext. 301
F: 205-945-0039
C: 205-908-7939
E: jwright@ccr-bhm.org
W: www.ccr-bhm.org

Childcare Resources...We Make Quality Child Care Happen!



Rebecca Leavings

From: John Norris <norrisa_j@yahoo.com>
Sent: Tuesday, April 19, 2016 4:31 PM
To: Rebecca Leavings
Cc: Butch Zaragoza
Subject: A Vestavia Police Department Tribute

Rebecca;

Reference my conversation with you yesterday, please put me on the agenda for the next 5 P.M. City Council Meeting which takes place on 4/25..

My subject will be: **A Vestavia Police Department Tribute**

Thank you,
Jack Norris 205-423-5893

C/c Chief Rary: Thank you for your time. I have made some changes to the letter as a result of our conversation. The new format will be sent to you on Wednesday.....Please send me a list of some other community services (other than Mama Kitty) so I can mention the information next Monday.
C/c Mayor Zaragoza: Please let me know if you any suggestions after you read the final draft

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

APRIL 11, 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 City Clerk called the roll with the following:

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick H. Boone, City Attorney
Rebecca Leavings, City Clerk
Dan Rary, Police Chief
Jim St. John, Fire Chief
Marvin Green, Assistant Fire Chief
Brian Davis, Public Services Director
Christopher Brady, City Engineer

Invocation was given by Marvin Green, Assistant Fire Chief, followed by the Pledge of Allegiance led by Boy Scouts Josh Kaiser, Carson Hughes, Riley Howerton and Corbin Menrer.

ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES

- Mr. Pierce recognized Scott Perry and Zack Jones attending the meeting representing the Vestavia Hills Chamber of Commerce.
- Mr. Henley read the final listing for the Board of Education applications. Interviews will be held April 20, 2016 beginning at 7:30 AM: Steve Bendall, Charlie Shah, Jon Vickers, Lisa Baker, Pat Dewees, Celia Anthony, Kimberly Cook, Allison Maners, Thomas Parchman and Lloyd Peoples.
- The Mayor stated that the Art in the Hills was held last weekend at the City Hall. He thanked the volunteers as well as the committee for the event.

- Mr. Ammons stated that he spoke to a group from the former Soviet Union. It was an interesting meeting and the first time he has spoken through a translator.
- Mr. Ammons stated that this City Hall was constructed to be the City's Center and would be used for many community gatherings and he looks forward to these events.

PROCLAMATION

The Mayor presented a Proclamation designating April 26, 2016 as a "Day of Prayer and Thanksgiving." Mr. Downes read the Proclamation. The Mayor stated that this is the 26th annual Mayor's Prayer Breakfast at the Vestavia Country Club and invited everyone to attend.

CITY MANAGER'S REPORT

- Mr. Downes showed renderings of the newly repaired pool at Wald Park. The resurfacing job is complete and there are no leaks in the pool. The project came in right on budget and timing.
- The City has a cash emergency reserve fund of \$9.4 million or 100 days of operating expenses. He stated that the Finance Director "shops" the best deals for interest on this fund. In reviewing a 24-month certificate of deposit, Southpoint Bank came back with the best interest rate of 1.26%. Mr. Turner stated that they invited more than 18 banks to respond to the request and the best was Southpoint Bank.
- Mr. Downes gave an update on the progress of the Wald Park Planning Committee. They have been gathering site data and site visits from the various consultants that the Council has hired to assist in this endeavor.

COUNCILORS' REPORTS

- Mr. Henley asked if the line of credit is sought from that CD collateral, would it affect the certificate at all. Mr. Turner stated that there would be no affect.
- Mr. Downes explained that tonight is the 2nd try toward recording the meeting.
- Mr. Pierce stated that a former Vestavia Hills student tried in the Master's recently and represented the City very well.

APPROVAL OF MINUTES

The minutes of March 28, 2016 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of March 28, 2016 (Regular Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll call vote as follows:

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

OLD BUSINESS

RESOLUTION NUMBER 4817

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

MOTION Motion to approve Resolution Number 4817 was by Mr. Ammons and second was by Mr. Sharp.

Mr. Downes explained that this Resolution would allow the City's current vendor to mow the former AVCC which wasn't included on the bid that was accepted a few months ago. Now that the property is owned by the City, the responsibility to mow has become apparent. The fee to cut this acreage for the remainder of the budget year comes to \$24,000.

Mr. Pierce stated that the original email said \$2,000 per cut. Mr. Downes stated they were able to negotiate it further to \$1,750 per cut.

Mr. Sharp asked about some of the digging that has occurred on the site.

Mr. Downes explained that some erosion control measures will soon be installed.

Mr. Henley indicated this is general fund.

The Mayor opened the floor for a public hearing. There being no one else 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 4818

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

MOTION Motion to approve Resolution Number 4818 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes explained that this is an acceptance for preventative and total maintenance of HVAC for all city-owned facilities; an invitation to bid was sent to allow a centralized method of handling all HVAC needs. The City received 6 bid responses and, after analysis, recommendation to accept the response of H&M Mechanical was made by the Public Services Director. He explained the current budget showing that the funding for the remainder of the year is covered by what is in the current budget.

Mr. Pierce stated that he is a proponent of this and he states the contract is only for one year and can be terminated.

Mr. Downes stated that the intent of the bid was a 3-year term.

Mr. Davis stated that they would like a longer contract but have every intention to renew this for the 3-year period.

Mr. Henley asked if this would solve issues like the coils at the library. Mr. Downes stated that they would fall under this agreement.

Mr. Downes stated that this begins with an equipment inspection and any immediate detected failures would have to be resolved before the agreement is effective.

Mr. Henley indicated that it seems to be aggressive pricing.

Mr. Downes stated that they are familiar with the systems they installed here and may be bid aggressively because of that.

Mr. Boone recommended that the indemnity clauses need to be removed and that the agreement should have 3-year terms.

There being no one to address the Council regarding the request, the Mayor Pro-Tem 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 4819

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

MOTION Motion to approve Resolution Number 4819 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes explained that this is an abatement request by the Code Enforcement Officer, Jimmy Coleman.

Officer Coleman stated that the request is 1600 Gentilly Drive. He stated that he has been working with the owner for several months to get the property cleaned up. He indicated it has extremely overgrown bushes. This past weekend he did a lot of work and there are a few things that need to be corrected but he has made progress.

Mr. Ammons asked for a percentage of what has been corrected and what he still needs to do.

Mr. Coleman stated that maybe just over 50% of what is needed has been done.

Mr. Pierce asked if the citation has been issued.

Discussion ensued about postponing or giving additional time. Mr. Coleman suggested 2 more weeks might give him enough time to get it accomplished, the nature of the complaints,

Charles Fletcher, 1600 Gentilly Drive, stated that Mr. Coleman has been a big help and that most of the problem seems to be centered on vines. He stated that he thinks that the next 2 weeks he might could do more toward getting it addressed if the weather holds out.

Discussion ensued as to whether or not to postpone, why the situation occurred in the first place, the owner suffered from cancer over the past few years and he finally hired some help to address the situation.

Mr. Boone stated that Section 3E of the City's ordinance allows the Council to postpone this hearing to a certain date.

The Mayor stated that the City's next meeting is on April 25 and asked if the work could be completed by then. Mr. Fletcher stated that he would work with Mr. Coleman to try and get it addressed.

MOTION Motion to amend the effective date of Resolution Number 4819 to April 27, 2016 in order to allow the property owner two additional weeks to bring the property into compliance and failure to do so will approve the property abatement pursuant to Ordinance 2567 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.

Mr. Sharp reiterated that Mr. Coleman can hire the contractors to abate the nuisance if the property is not cleared in that 2-week extension.

The Mayor opened the floor for a public hearing. No one was present in regard to this issue. The Mayor closed the public hearing.

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 Ordinance Number 2625.

MOTION Motion for unanimous consent for the immediate consideration and action on and Ordinance Number 2625 was by Mr. Henley and second was by Mr. Sharp. Roll call vote as follows:

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

ORDINANCE NUMBER 2625

MOTION Motion to approve Ordinance Number 2625 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Downes stated that this property has been on the market for several years and that this Ordinance was originally put in as a first read several months ago. Circumstances made further negotiations necessary so the item was pulled. This is coming today with a purchase/sale agreement whereby Freddy's would purchase the site for \$1.2 million. There are sanitary sewer issues that have been identified on site and the cost of these issues ranged from \$50,000 to \$70,000, so there is a provision that, at closing, a contract amount would be deducted from the purchase price. In addition, there are other contingencies including rezoning, existing covenants in site and the ability for

the City to take the existing public works operations to other facilities. The goal for closing is early 2017.

The Mayor indicated that this was on as a first read a few months ago.

Mr. Boone stated that he sees no problems and recommended approval.

Mr. Henley asked if the timeline is good for allowing relocation of public works. Mr. Downes stated he does feel good about it.

Discussion ensued concerning the first Freddy's location in Hoover at Lee Branch which opened 2 weeks ago. Their 2nd location is being constructed in Tuscaloosa and this would be the third location; covenants on the property which expired in 2011; Freddy's wants to be owner/operators in this location and that'll encourage them to maintain tenants in the center they construct to maximize use of the site.

The Mayor opened the floor for a public hearing. No one was present in regard to this issue. The Mayor closed the public hearing.

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 25, 2016 at 5 PM.

- 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

CITIZEN COMMENTS

Michael Epes, 133 21st Avenue NE, Centerpoint, stated that he was present representing St. John Lodge 57 under the auspices of the Most Worshipful Prince Hall Grand Lodge of Alabama and wanted to offer assistance to any civic activity that might be needed.

Susan Swartz, Mountain Brook, stated that she wanted to speak to the ordinance to be presented at the next meeting. She stated that they are concerned citizens and some people have been taking care of these cat colonies for years and they feel it will have negative impact of the image on the City and the Humane Society.

The Mayor stated that the City has had meetings on this and this ordinance is not something that is taken lightly; however, it will be open to a public hearing at the next meeting.

At 6:10 PM, Mr. Pierce made a motion to adjourn; seconded by Mr. Ammons. Meeting adjourned at 6:10 PM.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

SPECIAL MEETING

APRIL 18, 2016

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

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Rebecca Leavings, City Clerk
Melvin Turner, Treasurer
Dan Rary, Police Chief
Jason Hardin, Police Captain
Jim St. John, Fire Chief
Melvin Turner, Finance Director
George Sawaya, Asst. Treasurer
Christopher Brady, City Engineer
Steve Monk, City Legal Counsel
Deloye Burrell, Planning & Zoning Comm.

Invocation was given by Melvin Turner, Finance Director, followed by the Pledge of Allegiance.

NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)

The Mayor opened the floor for unanimous consent for immediate consideration and possible action of all items on the agenda.

MOTION Motion for unanimous consent and immediate action of all items on the agenda was made by Mr. Pierce and second was by Mr. Henley Roll call vote as follows:

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

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

RESOLUTION NUMBER 4820

Resolution Number 4820 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement For The Purchase Of 1.2 Acres, More Of Less, To Provide Access To And From Acton Road And Property Formerly Known As The Altadena Valley Country Club (Public Hearing)

MOTION Motion to approve Resolution Number 4820 was by Mr. Henley and second was by Mr. Sharp

Mr. Downes stated that this Resolution will help the City with an alternate entrance to the recreational fields to be located on the old AVCC. This was drafted by the City’s legal counsel, Steve Monk, and was accepted by the owners of the subject real estate. With the Council’s approval, this will help to make this alternate entrance a reality. He gave the background of the events which made a portion of the AVCC the property of the City to be developed into some passive parks. Up until now, the property is only accessed by one roadway which meets Acton Road at a very narrow point and was a challenge to the nearby residential area for “cut thru” traffic. In order to minimize the traffic, this alternate entrance was identified and this portion of property is needed in order to construct this alternate entrance. He also explained the challenges to create this entrance because the property was part of a development contract of the larger property located to the west. He also explained the reasoning within the contract which made it expire on April 20, 2016 and the difficulty of getting an extension with a member of the owning party being located overseas. This Resolution will be the decision to allow the purchase and sale agreement in the amount of \$495,000. There will be another action required at a later date as part of the development agreement which will be the construction of the alternate entrance making the total cost near \$1.5 million.

Mr. Monk stated that the provisions of this contract are short-lived.

Discussion ensued that the City was purchasing a portion of a 40 +/- acres of vacant property and the property is located in the City of Hoover. Mr. Downes stated they had to follow the strictest adherence for Hoover in order to estimate the cost of this proposed construction; continued use of the original access which has options including addition of deceleration/acceleration lanes, traffic flow through the residential neighborhood, and correcting the challenging turn at Acton Road which is extreme and leaves a lot unknown; permits and engineering required for construction of the alternate entrance, etc.

The Mayor reiterated the timing of this entrance is essential to finalizing the deal because the deadline is April 20 and the terms were completed in negotiating the end of last week.

Mr. Downes concurred. He stated that he specifically asked for an extension and was told it would not be granted.

Mr. Ammons explained the reasons why the City was searching for needed recreational space for the City which made the construction of these fields so attractive and to provide this alternate access is money well spent since this property was donated to the City.

The Mayor opened the floor for a public hearing.

Deloye Burrell, 3273 Farrington Wood Drive, stated this is a good thing.

Mike Gargus 3931 South River Circle, asked if the developer is going to be given access to this roadway and why he is not sharing in the cost.

Mr. Downes stated that clearly the developer would benefit but the amount ultimately proposed is significantly different from the original. All of these factors have been taken into consideration.

Randy Johnston, 2709 Altadena Lake Drive, asked the Council to proceed with this purchase and provide an alternate entrance to the fields. He asked if there will be any park access from this direction.

The Mayor stated that there would be no back entrance.

Peggy Gargus, 3931 South River Circle, representing the Cahaba River Keeper, stated that they have requested information and are expressing concerns with stormwater runoff during this construction.

The Mayor stated that the City has made contact with Beth Stewart of the Cahaba River Society and will be working with her to take all actions possible to keep from having any runoff to the river.

Robert Debuys, 3467 Mossbrook Lane, asked about the configuration of the property line and if it's in the City of Hoover. He asked what Hoover will govern in this construction and what will Vestavia complete. Mr. Downes explained that the City will construct the roadway to Hoover's specifications and will be a part of the ultimate development agreement and would be maintained by the City. The City has no obligation to building the roadway until the ultimate development agreement is completed.

There being no one else 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 25, 2016 at 5 PM.

- Resolution Number 4821 – A Resolution Amending Resolution Number 4598 And Authorizing The City Manager To Complete All Actions Necessary To Secure Payment For Construction Of The New City Hall Facility Located At 1032 Montgomery Highway

CITIZEN COMMENTS

Deloye Burrell, 3273 Farrington Wood Drive, addressed the Council of the Green Valley Road/Crosshaven Drive intersection. He stated that he is getting a lot of questions concerning this intersection, and asked about the City mitigating the traffic going from the Summit to Overton Road. He asked that the City slow the traffic down, not speed it up. He asked if there was any way to get a periodic update from the County on the progress of this intersection.

Mr. Downes stated that he and the City Engineer discuss this every month for inclusion of turning lanes on the roadways of this intersection and communicate with the County. Since this money is moving through ALDOT, we are at their mercy. This is in the midst of ROW acquisition which follows the Uniform Relocation Act, which protects the property owners from the government unfairly seizing private property. The County has engaged an appraiser which, alone, took a year to retain. He is in the process of acquiring the property and this may take another year or two. There is no way to put this out that it will be done by a "date certain" because the City is not in control.

Mr. Burrell asked about a problem with a property owner who is having heavy odors coming from a neighboring residence. Mr. Downes asked him to refer the property owner to the Action Center.

At 5:53 PM, Mr. Henley made a motion to adjourn into the work session located in the Executive Conference room and was seconded by Mr. Ammons. Meeting adjourned at 5:53 PM.

Alberto C. Zaragoza, Jr
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

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 25th 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 25th 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

RESOLUTION NUMBER 4821

A RESOLUTION AMENDING RESOLUTION NUMBER 4598 AND AUTHORIZING THE CITY MANAGER TO COMPLETE ALL ACTIONS NECESSARY TO SECURE PAYMENT FOR CONSTRUCTION OF THE NEW CITY HALL FACILITY LOCATED AT 1032 MONTGOMERY HIGHWAY

WHEREAS, on May 28, 2014, the Mayor and City Council adopted and approved Resolution Number 4598 approving an expenditure not to exceed \$20,000,000 for construction of a new City Hall facility; and

WHEREAS, it was noted that this approval did not include such unknown expenditures as technology, unforeseen soil problems, utility relocations, required change orders, etc.; and

WHEREAS, final invoices are arriving which requires an adjustment into the final expenditure approval for the new City Hall Expenses and are detailed in the attached Exhibit A which is incorporated into this Resolution Number 4821 as though written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to approve the final expenses for said construction.

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

1. The City Manager is hereby authorized to expend an additional \$755,778.63 for the final construction expenditures of the City Hall facilities; and
2. This Resolution Number 4821 shall become effective immediately upon adoption.

ADOPTED and APPROVED this the 25th day of April, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Construction of New City Hall and Police/Municipal Court Complex			
Expenditure Recap			
April 2016			
Council Approved Budget - Resolution No. 4598			
All Project Cost not to Exceed	\$	20,000,000.00	
Actual Expenditures - (Paid as of Monday, April 11, 2016)			
		\$ 19,931,790.00	
Excluding property purchase		-	
Council Approved - Available Funds		\$ 68,210.00	
Outstanding Invoices "In-Hand"		\$ 588,600.48	
Balances on Purchases Orders:			
Williams Black Stock (PO Balance + %)	\$	150,000.00	(PO Bal \$113,562 + % \$36,438)
Business Interiors, Inc.	\$	14,382.00	
Veterans Landscaping, Inc.	\$	47,921.32	
Slapey Telephone	\$	9,538.78	
AI Corporate Interiors	\$	2,743.00	
Unknown Vendors - (communications repairs - Police Dept)	\$	2,000.00	
Add-Ons - Melissa Hipp (Police & Court)	\$	8,803.05	
Sub-total	\$	235,388.15	
Approximate Balance Outstanding		\$ 823,988.63	

Construction of New City Hall and Police/Municipal Court Complex					
Expenditure Recap					
April 2016					
Less - Approved Available Funds		\$ 68,210.00			
Balance Requiring Council Approval		\$ 755,778.63			

ORDINANCE NUMBER 2653

AN ORDINANCE TO AMEND ORDINANCE 2565 PROVIDING FOR LEVYING OF MUNICIPAL TAXES FOR THE CITY OF VESTAVIA HILLS, ALABAMA, AND FOR ASSESSMENT AND COLLECTION THEREOF.

WITNESSETH THESE HISTORICAL RECITALS:

WHEREAS, prior to November 15, 1982, the ad valorem tax rate of each One Hundred Dollars (\$100.00) of assessed value of property in the City of Vestavia Hills, Jefferson County, Alabama, amounted to Eight and 21/100 Dollars (\$8.21), which consisted of the following amounts:

1.	<u>State of Alabama:</u> Sixty-five cents on each One Hundred dollars (\$100.00) of assessed value of such property.	\$	0.65
2.	<u>Jefferson County:</u> One and 35/100 Dollars on each One Hundred Dollars (\$100.00) of the assessed value of such property.		1.35
3.	<u>Jefferson County Schools:</u> Eighty-two cents on each One Hundred Dollars (\$100.00) of the assessed value of such property.		0.82
4.	<u>Special School District Tax:</u> Ninety-six cents on each One Hundred Dollars (\$100.00) of the assessed value of such property.		0.96
5.	<u>Special District Tax:</u> Fifty-five cents on each One Hundred Dollars (\$100.00) of the assessed value of such property.		0.55
6.	<u>Local General Municipal and Special Municipal School Taxes:</u> Three and 88/100 Dollars on each One Hundred Dollars (\$100.00) of the assessed value of such property.		3.88
			<hr/>
		TOTAL	\$ 8.21

and;

WHEREAS, prior to November 15, 1982, the aggregate locally approved millage for general municipal purposes and local school taxes of 38.8 mills (being at the rate of \$3.88 per \$100.00 of assessed value) consisted of the following:

General Municipal Purposes	10.275
Garbage Collection	10.275
West Elementary - Warrants	3.150
High School and Operations	<u>15.100</u>

TOTAL 38.800 and;

WHEREAS, all real property in the City of Vestavia Hills, Alabama, has been reappraised; and

WHEREAS, the Tax Assessor of Jefferson County in 1982 certified to the City of Vestavia Hills that total assessed value increased from \$42,983,320.00 in 1981 to \$63,427,627.00 in 1982; and

WHEREAS, the City of Vestavia Hills, Alabama, pursuant to the authority granted by Constitutional Amendment Number 373 (Lid Bill) of the Constitution of Alabama 1901, adopted Ordinance Number 633 on November 15, 1982, which reduced the ad valorem tax rate by 7.8 mills (\$0.78 per \$100.00 of assessed value). Following the enactment of Ordinance Number 633, the total millage rate consisted of the following separate taxes:

1. State of Alabama: Sixty-five cents on each One Hundred dollars (\$100.00) of assessed value of such property. \$ 0.65
2. Jefferson County: One and 35/100 Dollars on each One Hundred Dollars (\$100.00) of the assessed value of such property. 1.35

3.	<u>Jefferson County Schools:</u> Eighty-two cents on each One Hundred Dollars (\$100.00) of the assess value of such property.	0.82
4.	<u>Special School District Tax:</u> Ninety-six cents on each One Hundred Dollars (\$100.00) of the assessed value of such property.	0.96
5.	<u>Special District Tax:</u> Fifty-five cents on each One Hundred Dollars (\$100.00) of the assessed value of such property.	0.55
6.	<u>Local General Municipal and Special Municipal School Taxes:</u> Three and 10/100 Dollars on each One Hundred Dollars (\$100.00) of the assessed value of such property.	3.10
TOTAL		\$ 7.43

After the adoption of Ordinance Number 633, the aggregate locally approved millage for general municipal purposes and local school district taxes of 31.0 mills (being at the rate of \$3.10 per \$100.00 of assessed value) consisted of the following:

General Municipal Purposes	0.821
Garbage Collection	0.821
West Elementary - Warrants	0.252
High School and Operations	<u>1.206</u>

TOTAL 3.100 and;

WHEREAS, the Vestavia Hills Board of Education unanimously adopted a resolution requesting that the ad valorem tax millage for education purposes be returned to the pre-November 15, 1982, rates by reinstating the 3.7 mills (.37 per \$100.00 of assessed value) as follows:

West Elementary Warrants from	2.52	to	3.15
High School & Operations from	12.06	to	15.10; and

WHEREAS, said resolution was presented to the City Council on February 4, 1985; and

WHEREAS, a public hearing was held on February 11, 1985, on the issue of whether or not to reinstate the 3.7 mills for the benefit of the Vestavia Hills Board of Education; and

WHEREAS, the Vestavia Hills Board of Education has requested the City Council to return the ad valorem millage tax rates that affect the Vestavia Hills School System to those rates in force and effective immediately prior to the adoption of Ordinance Number 633 on November 15, 1982, by reinstating Thirty-Seven Cents (\$0.37) on each One Hundred Dollars (\$100.00) of the assessed value of property so that the rates when adjusted will be as follows:

1. The 12.06 High School mills (\$1.206 on each \$100.00 of assessed value) be adjusted to 15.1 mills (\$1.51 on each \$100.00 of assessed value).
2. The 2.52 West Elementary mills (\$0.252 on each \$100.00 of assessed value) be adjusted to 3.15 mills (\$0.315 on each \$100.00 of assessed value); and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, agreed to approve the request of the Board of Education by reinstating the 3.7 mills (\$0.37 per \$100.00 of assessed value). The City Council of the City of Vestavia Hills, Alabama, approved and adopted Ordinance Number 744 on February 18, 1985, which said Ordinance provided, among other things, as follows:

1. Reinstatement of 3.7 mills (0.37 on each One Hundred dollars of assessed value).
2. Established that the aggregate local millage for general municipal purposes and local school district tax rates are Three and 47/100 Dollars (\$3.47) per One Hundred Dollars (\$100.00) of the assessed value of said property.
3. That the \$3.47 local millage consists of the following:

(a)	General Municipal Purposes	0.823
(b)	Garbage Collection	0.823
(c)	West Elementary - Warrants	0.315
(d)	High School and Operations	<u>1.510</u>
	TOTAL	3.470 and;

4. The total ad valorem tax rate of each One Hundred Dollars (\$100.00) of assessed value of property in the City of Vestavia Hills, Alabama, shall amount to Seven and 80/100 Dollars (\$7.80) and shall consist of the following:

State of Alabama	\$	0.65
Jefferson County		1.35
Jefferson County Schools		0.82
Special School District Tax		0.96
Special School District Tax		0.55
General Municipal Purpose Tax		1.96
Special Municipal School Tax		<u>1.51</u>
TOTAL	\$	7.80

WHEREAS, the City Council of the City of Vestavia Hills subsequently desired to return the millage tax rates that affect the General Fund to those rates in force and effective immediately prior to the adoption of Ordinance Number 633 on November 15, 1982, by reinstating (4.1 mills) forty-one cents on each One Hundred Dollars (\$100.00) of the assessed value of property so that the rates when adjusted will be as follows:

1. The 8.23 General Fund Mills (0.823 on each \$100.00 of assessed value) be adjusted to 10.275 mills (1.0275 on each \$100.00 of assessed value).
2. The 8.23 Garbage Collection Fund Mills (0.823 on each \$100.00 of assessed value) be adjusted to 10.275 mills (1.0275 on each \$100.00 of assessed value).

The total ad valorem tax rate of each One Hundred Dollars (\$100.00) of assessed value property in the City of Vestavia Hills, Alabama, shall amount to Eight Dollars and 21 Cents (\$8.21) and shall consist of the following:

1. State of Alabama: Sixty-five cents on each One Hundred dollars (\$100.00) of assessed value of such property. \$ 0.65
2. Jefferson County: One and 35/100 Dollars on each One Hundred Dollars (\$100.00) of the assessed value of such property. 1.35
3. Jefferson County Schools: Eighty-two cents on each One Hundred Dollars (\$100.00) of 0.82

the assess value of such property.

4.	<u>Special School District Tax:</u> Ninety-six cents on each One Hundred Dollars (\$100.00) of the assessed value of such property.	0.96
5.	<u>Special District Tax:</u> Fifty-five cents on each One Hundred Dollars (\$100.00) of the assessed value of such property.	0.55
6.	<u>Local General Municipal and Special Municipal School Taxes:</u> Three and 88/100 Dollars on each One Hundred Dollars (\$100.00) of the assessed value of such property.	3.88
TOTAL		\$ 8.21

WHEREAS, on May 4, 1987, the City Council of the City of Vestavia Hills, Alabama, approved and adopted Ordinance Number 901, which established the ad valorem tax rate of Eight and 21/100 Dollars (\$8.21) per One Hundred Dollars (\$100.00) of assessed value as shown in the schedule immediately above; and

WHEREAS, a referendum was held in the City of Vestavia Hills, Alabama, on Tuesday, May 8, 1990, at which election the qualified electors of the city voted on the following issue:

**TEN AND ONE-HALF MILL TAX INCREASE
IN VESTAVIA HILLS, ALABAMA,
FOR PUBLIC SCHOOL PURPOSES**

Shall the ad valorem tax presently being levied in the City of Vestavia Hills, Alabama, pursuant to provisions of the Constitution and the laws of the State of Alabama, including the election held in the City on April 28, 1970, at the rate of One Dollar and Fifty-one Cents on each One Hundred Dollars worth of taxable property in the City be increased to the rate of Two Dollars and Fifty-six Cents on each One Hundred Dollars worth of taxable property in the City (an increase of One Dollar and Five Cents on each One Hundred Dollars worth of taxable property, or ten and one-half mills); such additional ten and one-half mill tax to be levied and collected for each year beginning with the levy for the tax year October 1, 1989, to

September, 1990 (the tax for which year will be due and payable October 1, 1990) and ending with the levy for the tax October 1, 2016, to September 30, 2017 (the tax for which year will be due and payable October 1, 2017) and to be used by the City Board of Education of the City of Vestavia Hills for public schools purposes?

_____ For Proposed Taxation

_____ Against Proposed Taxation

The majority of the qualified electors voted "For Proposed Taxation". The specific totals were:

For Proposed Taxation	3,097
Against Proposed Taxation	3,065

Following the referendum vote on May 8, 1990, the aggregate ad valorem tax rate on each One Hundred Dollars (\$100.00) of assessed value of property in the City of Vestavia Hills, Jefferson County, Alabama, amounted to Nine and 26/100 Dollars (\$9.26) and consisted of the following millages:

1.	State of Alabama	\$	0.650
2.	Jefferson County		1.350
3.	Jefferson County Schools		0.820
4.	Special School District Tax		0.960
5.	Special School District Tax		0.550
6.	Local General Municipal Purpose Tax		2.055
7.	Special Municipal School Tax		2.560
8.	West Elementary		0.315

TOTAL \$ 9.260

On August 27, 1991, the voters of the City of Vestavia Hills, Alabama, elected to renew the 8.2 mill Jefferson County School ad valorem tax.

On April 28, 1992, the voters of the City of Vestavia Hills, Alabama, elected to renew the 5.5 mill Special School District ad valorem tax.

On May 3, 1993, the City Council of the City of Vestavia Hills, Alabama, approved and adopted Ordinance Number 1353, levying ad valorem taxes at the rate of \$9.26 per \$100.00 of assessed value on real and personal property located within the City for the period beginning October 1, 1993, and ending September 30, 1994.

On October 26, 1993, the voters of the City of Vestavia Hills, Alabama, voted in favor of a 9.6 mill increase of the 5.5 mill ad valorem tax (under Section 2 of Amendment 3, sometimes referred to as Amendment Number 3, Three Mill District Tax) to 15.1 mills.

Because of the 9.6 mill increase of the 5.5 mill ad valorem tax to 15.1 mills, the 9.6 mill ad valorem tax authorized by Amendment Number 82 of the Constitution of the State of Alabama was not renewed.

On March 11, 2014, the voters of the City of Vestavia Hills, Alabama, voted in favor of renewing the levy of the said 10.5 mill tax commencing with the tax year for which taxes will become due and payable on October 1, 2018 and for each consecutive tax year thereafter without limit as to time.

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

SECTION ONE - TAX LEVY: Taxes are hereby levied for the City tax year commencing on the first (1st) day of October 2016, on all real and personal property and other properties and franchises in the City of Vestavia Hills, Alabama, subject to taxation by the laws of the State of Alabama, based on the valuation of said property as assessed for County taxation, as shown by the books of assessment for the State and County tax year ending on the 30th day of September, 2017, as follows:

- A. A tax for general municipal purposes of Two and 37/100 Dollars (\$2.37) on each One Hundred Dollars (\$100.00) of the assessed value of such property.
- B. A tax for public school purposes of Two and 56/100 Dollars (\$2.56) on each One Hundred Dollars (\$100.00) of the assessed value of such property.
- C. In summary, the aggregate local millage for general municipal purposes and local school district tax rates are Four and 93/100 Dollars (\$4.93) per One Hundred Dollars (\$100.00) of the assessed value of such property.
- D. The local millage, for City accounting purposes, shall be allocated as follows:

General Municipal Purposes	1.0275
Garbage Collection	1.0275
West Elementary - Warrants	.3150
High School and Board Operations	<u>2.5600</u>

TOTAL 4.9300

SECTION TWO - SPECIAL DISTRICT TAXES: In addition to the taxes levied in SECTION ONE above, taxes are hereby levied for the City tax year commencing on the 1st day of October, 2016, on all real and personal property and other properties and franchises in the City of Vestavia Hills, Alabama, subject to taxation by the laws of the State of Alabama, based on the valuation of said property as assessed for County taxation, as shown by the books of assessment for the State and County tax year ending on the 30th day of September, 2017, as follows:

- A. A further tax of One Dollar and Fifty-one Cents (\$1.51) of each One Hundred Dollars (\$100.00) of the assessed value of such property, in addition to the above mentioned taxes to be applied exclusively to public school purposes pursuant to the authority conferred by the Constitution and the election held on February 11, 1969; renewed on April 28, 1992, and increased to 15.1 mills on October 26, 1993.
- B. A further tax of Eighty-two Cents (\$0.82) of each One Hundred Dollars (\$100.00) of the assessed value of such property, to be used solely and only for public school purposes pursuant to the Constitution of the State of Alabama.

Should the City Council of Vestavia Hills, Alabama, have no legal authority to provide for the levy, assessment and collection of the said Special School District Taxes as described in this SECTION TWO, then in such event, this SECTION TWO shall be considered as the City's support of the Vestavia Hills Board of Education.

SECTION THREE - TAX BASIS AND WHEN DUE: On and after the 1st day of October, 2016, all municipal taxes due the City of Vestavia Hills, Alabama, shall be based and due on all County assessments of the property within the limits of said County for the preceding year, and shall be due and delinquent at the time when State and County taxes for the preceding year are due and delinquent.

SECTION FOUR - EFFECTIVE DATE AND LIEN: The levy of taxes made herein shall go into force and effect as of October 1, 2016, and shall on said date become a lien on the property subject thereto.

SECTION FIVE - TAX ASSESSOR AND TAX COLLECTOR, AND THEIR COMPENSATION: The Tax Assessor and Tax Collector of Jefferson County, Alabama, shall be considered to be the Tax Assessor and Tax Collector respectively for the City of Vestavia Hills, Alabama, and shall each receive as compensation for this service in assessing and collecting respectively the taxes herein levied, as fee equivalent to one-half of one per centum (1/2 of 1%) of the taxes collected and then remitted to the City of Vestavia Hills, Alabama.

SECTION SIX - CONFLICTS: That all Ordinances, or parts of Ordinances, including Ordinance Number 2653, heretofore, adopted by the City Council of the City of Vestavia Hills, Alabama, in conflict with the provisions hereof are hereby expressly repealed.

SECTION SEVEN - SEVERABILITY: The provisions of this Ordinance are hereby declared severable. Should any provision of this Ordinance be held invalid, the invalidity thereof shall not affect the remaining provisions of this Ordinance.

SECTION EIGHT - INTENT: It is the intent of the City of Vestavia Hills, Alabama, with the passage of this Ordinance Number 2653, that the aggregate local millage for general municipal purposes and local school district tax rates be Four and 93/100 Dollars (\$4.93) per One Hundred Dollars (\$100.00) of the assessed value of such property and consist of the following:

Special High School Tax and Operations	\$	2.560
General Municipal Including Garbage		2.055
West Elementary		<u>.315</u>
TOTAL	\$	4.930

It is the further intent that the aggregate ad valorem tax rate of each One Hundred Dollars (\$100.00) of assessed value of property in the City of Vestavia Hills, Jefferson County, Alabama, shall amount to Nine and 26/100 Dollars (\$9.26), which shall consist of the following millages:

1.	State of Alabama	\$	0.650
2.	Jefferson County		1.350
3.	Jefferson County Schools		0.820
4.	Special School District Tax		1.510
5.	Local General Municipal Purpose Tax		2.055
6.	Special Municipal School Tax		2.560
7.	West Elementary		<u>0.315</u>
	TOTAL	\$	9.260

SECTION NINE - TAX ABATEMENT: Whereas, the City of Vestavia Hills has annexed no parcels of land with tax abatements.

SECTION 10 - EFFECTIVE DATE: This Ordinance shall become effective immediately upon its adoption and approval and is adopted and approved all in accordance with Title 11-51-40, et seq., Code of Alabama, 1975.

ADOPTED and APPROVED this the 25th day of April, 2016.

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 # 2653 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 25th day of April, 2016, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2654

AN ORDINANCE PROVIDING FOR LEVYING OF MUNICIPAL TAXES FOR THE CITY OF VESTAVIA HILLS, ALABAMA, AND FOR ASSESSMENT AND COLLECTION THEREOF IN SHELBY COUNTY.

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

SECTION ONE - TAX LEVY: Taxes are levied for the City tax year commencing on the first (1st) day of October, 2016, on all real and personal property and other properties and franchises in the City of Vestavia Hills, Alabama, subject to taxation by the laws of the State of Alabama, based on the valuation of said property as assessed for State taxation as shown by the books of assessment for the State and County tax year ending during the preceding year, as follows:

- A. A tax for general municipal purposes of Two and 37/100 Dollars (\$2.37) on each One Hundred Dollars (\$100.00) of value of such property;
- B. A tax for Public School purposes of Two and 56/100 Dollars (\$2.56) on each One Hundred Dollars (\$100.00) of value of such property;
- C. In summary, the aggregate local millage for general Municipal purposes and Municipal School tax rates are Four and 93/100 Dollars (\$4.93) per One Hundred (\$100.00) of the value of such property;
- D. The local millage for the City's accounting purposes shall be allocated as follows:

General Municipal Purposes	1.0275
Garbage Collection	1.0275
West Elementary Warrants	0.3150
High School and Board Operations	<u>2.5600</u>
Total	4.9300

SECTION TWO - SHELBY TAX LEVY: Taxes are hereby levied by the Shelby County Commission §40-7-42, Code of Alabama, 1975 for the City tax year commencing on the first day of October, 2015, on all real and personal property and other properties and franchises in the City of Vestavia Hills, Alabama, subject to taxation by the laws of the State of Alabama, based on the valuation of said property as assessed for County taxation, as shown by the books of assessment for the State and County tax year ending on the 30th day of September, 2017, as follows:

- A. A tax of Fifty Cents (\$0.50) on each One Hundred Dollars (\$100.00) of the value of such property for general fund purposes;
- B. A tax of One Dollar and Sixty Cents (\$1.60) on each One Hundred Dollars (\$100.00) of the value of such property for school districts;
- C. A tax of Twenty-five Cents (\$0.25) for each One Hundred Dollars (\$100.00) of the value of such property for roads and bridges;
- D. In summary, the aggregate County millage for general purposes, countywide school taxes, and road and bridges is Two and 35/100 Dollars (\$2.35) per One Hundred Dollars (\$100.00) of the value of such property.

It is the further intent that the aggregate ad valorem tax rate of each One Hundred Dollars (\$100.00) of assessed value of property in the City of Vestavia Hills, Shelby County, Alabama, should amount to Seven and 93/100 Dollars (\$7.93) which shall consist of the following millages:

State of Alabama	0.650
Shelby County	0.500
Shelby County School Countywide	1.600
Shelby County Road and Bridge	0.250

General Municipal Purpose Tax	2.055
Special Municipal School Tax	2.560
West Elementary Warrants	<u>0.315</u>
Total	7.930

SECTION THREE - TAX BASIS AND WHEN DUE: On and after the 1st day of October, 2016, all municipal taxes due the City of Vestavia Hills, Alabama, shall be based and due on all County assessments of the property within the limits of said County for the preceding year, and shall be due and delinquent at the time when State and County taxes for the preceding year are due and delinquent.

SECTION FOUR - EFFECTIVE DATE AND LIEN: The levy of taxes made herein shall go into force and effect as of October 1, 2016, and shall on said date become a lien on the property subject thereto.

SECTION FIVE - TAX ASSESSOR AND TAX COLLECTOR, AND THEIR COMPENSATION: The Tax Assessor and Tax Collector of Shelby County, Alabama, shall be considered to be the Tax Assessor and Tax Collector respectively for the City of Vestavia Hills, Alabama, and shall each receive as compensation for this service in assessing and collecting respectively the taxes herein levied, as fee equivalent to one-half of one per centum (1/2 of 1%) of the taxes collected and then remitted to the City of Vestavia Hills, Alabama.

SECTION SIX - CONFLICTS: That all Ordinances, or parts of Ordinances, including Ordinance Number 2654, heretofore, adopted by the City Council of the City of Vestavia Hills, Alabama, in conflict with the provisions hereof are hereby expressly repealed.

SEVERABILITY: The provisions of this Ordinance are hereby declared severable. Should any provision of this Ordinance be held invalid, the invalidity thereof shall not affect the remaining provisions of this Ordinance.

EFFECTIVE DATE: This Ordinance shall become effective immediately upon its adoption and approval.

ADOPTED AND APPROVED this the 25th 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 # 2496 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 25th day of April, 2016, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, and Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2016.

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4825

**A RESOLUTION APPOINTING A MEMBER OF
THE VESTAVIA HILLS BOARD OF EDUCATION
FOR A TERM OF FIVE YEARS**

WITNESSETH THESE RECITALS:

WHEREAS, Section 11-16-3, Code of Alabama, 1975, provides that the City Council shall appoint members of the City Board of Education to serve for a term of five (5) years; and

WHEREAS, the five-year term of Nat Robin as a member of the Vestavia Hills Board of Education expires at 6:00 PM on June 22, 2016 and

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

1. The City Council does hereby elect and appoint _____ as a member of the Vestavia Hills Board of Education for a term of five (5) years, beginning with the first regularly scheduled meeting of the Vestavia Hills Board of Education in June at 6:00 p.m. and ending at 6:00 p.m. on the date of the first regularly scheduled meeting of the Board in June of the year 2021; and

2. This Resolution shall become effective upon the approval and adoption by the City Council of the City of Vestavia Hills, Alabama.

RESOLVED, DONE, ORDERED, APPROVED and ADOPTED, on this the 25th day of April, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4817-A

**A RESOLUTION AMENDING RESOLUTION NUMBER 4817 -
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, on the 28th day of March, 2016, the City Council approved and adopted Resolution Number 4817 to accept a bid from Turf Management for a period of three (3) years; and

WHEREAS, Resolution Number 4817 authorized the addition of Turf Management's bid of the Altadena Valley Country Club at a cost not to exceed "\$2,000 per month through the end of September 2016 (total of \$24,000)" and the actual cost is \$2,000 per cut for a total not to exceed \$24,000.

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 cut 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 25th day of April, 2016,

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
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 28th day of March, 2016,

Alberto C. Zaragoza, Jr.
Mayor

Rebecca Leavings

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

  WWW.ALIFEABOVE.ORG

RESOLUTION NUMBER 4822

A RESOLUTION ESTABLISHING THE USE OF ELECTRONIC VOTE COUNTING DEVICES FOR MUNICIPAL ELECTIONS

WHEREAS, Chapter 7 of Title 17 of the Alabama Code of 1975, and the regulations adopted pursuant thereto by the Alabama Electronic Voting Committee, provide for the use of Electronic Vote Counting Systems; and

WHEREAS, Section 17-7-21 of the Code of Alabama of 1975 provides that a municipality may, in its discretion, by adoption of an appropriate resolution, authorize, adopt and direct the use of electronic vote counting systems for us in all elections held in such municipality; and

WHEREAS, the City of Vestavia Hills desires to utilize, by agreement, voting tabulators described as ES&S DS-200 Ballot Tabulators owned by Jefferson County, Alabama for all municipal elections.

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

1. For all municipal elections held subsequent to the passage of this Resolution Number 4822, the use of ES&S DS-200 Ballot Tabulators, a system which complies with Section 17-7-21 of the Code of Alabama, 1975 and any regulations adopted pursuant thereto, is hereby authorized for reporting, counting, and tabulating of any and all municipal election results; and
2. The Mayor of the City of Vestavia Hills is hereby directed to file a copy of this Resolution Number 4822 with the Secretary of State as provided in Section 17-7-21 of the Code of Alabama of 1975; and
3. This Resolution Number 4822 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 25th day of April, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4823

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

WITNESSETH THESE RECITALS

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

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

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

1. The City Manager is hereby authorized to sell and/or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 4823 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 25th day of April, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Rebecca Leavings

From: Brian Davis
Sent: Tuesday, April 19, 2016 10:08 AM
To: Rebecca Leavings
Cc: Bobby Mcdaniel
Subject: surplus

Please add a utility trailer manufactured by Crosley trailers to the surplus list for the first available council meeting. The VIN # CTL816C53TS007182 but there is no asset number.

***"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

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4/19/16

To: Rebecca Leavings

From: Sgt. Gaston, Officer Wilson

Re: Surplus City Property

Please request that the City Council deem the following property surplus at the next meeting:

- 2010 Ford Crown Vic Vin # 2FABP7BV1AX113857
- 2005 Ford Crown Vic Vin # 2FAFP71W05X160914
- 2004 Ford Crown Vic Vin # 2FAFP71W84X116030
- 2008 Ford Crown Vic Vin # 2FAHP71V98X141654
- 2005 Ford Crown Vic Vin # 2FAFP71W85X160918
- 2007 Dodge Durango Vin # 1D8HD38P27F573825

Please contact me with any questions or concerns.

Thanks, Sgt. Gaston ext.#1137

Officer Wilson ext.#1110

RESOLUTION NUMBER 4824

**A RESOLUTION GRANTING ALABAMA POWER COMPANY A
UTILITY EASEMENT FOR CONNECTION OF ELECTRICAL
SERVICE**

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

1. The Mayor is hereby authorized to sign an agreement with Alabama Power Company to grant an easement, right and privilege as described in said agreement (copy attached); and
2. Resolution Number 4824 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 25th day of April, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

STATE OF ALABAMA

COUNTY OF JEFFERSON

W.E. No. A6173-10-A416 & A6173-06-AE16

APCO Parcel No. _____

Transformer No. S19112

This instrument prepared by: Dean Fritz

Alabama Power Company
2 Industrial Park Dr
Pelham, AL 35124

KNOW ALL MEN BY THESE PRESENTS, That City of Vestavia Hills, Alabama, an Alabama Municipal Corporation

as grantor(s), (the "Grantor", whether one or more) for and in consideration of One and No/100 Dollar (\$1.00) and other good and valuable consideration paid to Grantor in hand by Alabama Power Company, a corporation, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to Alabama Power Company, its successors and assigns (the "Company"), the easements, rights and privileges described below.

The right from time to time to construct, install, operate and maintain upon, over and across the Property described below, all poles, towers, wires, fiber optics, cables, communication lines, transformers, anchors, guy wires and other facilities useful or necessary in connection therewith (collectively, the "Facilities") for the overhead transmission and distribution of electric power and communications, along a route selected by the Company which is generally shown on the Company's drawing attached hereto and made a part hereof and which is to be determined by the locations in which the Company's Facilities are installed, and also the right to clear and keep clear a strip of land extending fifteen feet (15') from each side of the center line of the Facilities; further, the right in the future to install and utilize intermediate poles and Facilities on said strip, and the right to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the thirty foot (30') strip for the Facilities that, in the sole opinion of the Company, may now or hereafter endanger, interfere with or fall upon any of the Facilities. Grantor hereby grants to the Company all easements, rights and privileges necessary or convenient for the full enjoyment and use thereof, including without limitation the right of ingress and egress to and from the Facilities and the right to excavate for installation, replacement, repair and removal thereof; and also the right to cut, remove and otherwise keep clear any and all structures, obstructions or obstacles of whatever character, on, under or above said Facilities.

The easements, rights and privileges granted hereby shall apply to, and the word "Property" as used in this instrument shall mean, the following real property situated in Jefferson County, Alabama (the "Property"): A part of a parcel of land located in the NE¼ of the SW¼ and in the SE¼ of the SW¼ of Section 19, Township 18 South, Range 2 West, more particularly described as Lot 2 on Map Book 241, Page 82 in the Office of the Judge of Probate of said county.

In the event it becomes necessary or desirable for the Company from time to time to move any of the Facilities in connection with the construction or improvement of any public road or highway in proximity to the Facilities, Grantor hereby grants to the Company the right to relocate the Facilities and, as to such relocated Facilities, to exercise the rights granted above; provided, however, the Company shall not relocate the Facilities on the Property at a distance greater than ten feet (10') outside the boundary of the right of way of any such public road or highway as established or re-established from time to time. This grant and agreement shall be binding upon and shall inure to the benefit of Grantor, the Company and each of their respective heirs, personal representatives, successors and assigns and the words "Company" and "Grantor" as used in this instrument shall be deemed to include the heirs, personal representatives, successors and assigns of such parties.

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

IN WITNESS WHEREOF, the said Grantor, has caused this instrument to be executed by _____,

its authorized representative, as of the _____ day of _____, 20____.

ATTEST (if required) or WITNESS:

City of Vestavia Hills, Alabama, and Alabama Municipal Corporation
(Grantor - Name of Corporation/Partnership/LLC)

By: _____

By: _____ (SEAL)

Its: _____

Its: _____
[indicate: President, General Partner, Member, etc.]

For Alabama Power Company Corporate Real Estate Department Use Only Parcel No: _____

All facilities on Grantor: _____ Station to Station: _____

CORPORATION/LLC NOTARY

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, in and for said County in said State, hereby
certify that _____, whose name as _____ of
_____ a Corporation is signed to the
foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument,
he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said _____ Corporation.

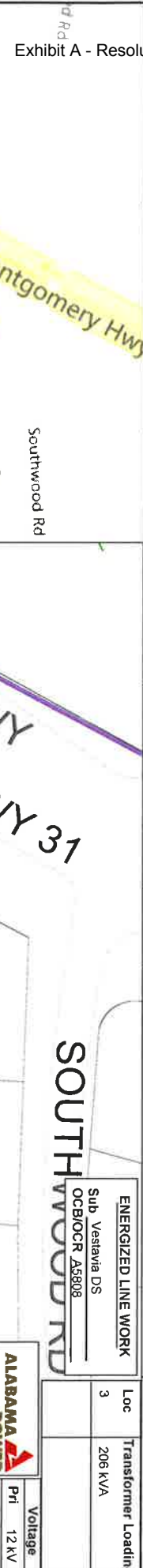
Given under my hand and official seal, this the _____ day of _____, 20____.

[SEAL]

Notary Public

My commission expires: _____

Customer Chick FIA	Location 5111 Montgomery Hwy	Created, Svc Date 6/30/2016	County Jefferson	Section 19	Township 18S	Range 02W	Add'l Info.	Estimate No. A6173-06-AE16
Division PD Birmingham	District Metro South	Town Vestavia Hills	UserID jwhitak	Created: 3/31/2016	Substation X-04976	Y-XG1301		MISSALL#



ALABAMA POWER A SPINNEY COMPANY	
Voltage	12 kV
Pri	120/208
Sec	120/208
SHORT CIRCUIT	
3Ø	5852
2Ø	5068
ØG	4780
ØG-R	283
Meter Information	
20 Amp 3Ø Meter	Maximo # 438283
(3) 400:5 CT's	Maximo # 431486

I: 25' 3Ø 1/0 AXNU
in 5" Conduit

I: 3Ø Pri. Vert. DE
N DE

I: 40/5 CCA Pole
#6 CU Enhanced Ground
3Ø Pri. Flat DE on Steel Arm
N DE

Tri-mount bkt
(3) CO, (3) LA
4" Pri. Riser

I: 300 kVA - 120/208 Padmount Transformer
(3) 1/0 Elbows
(3) LA
(3) 400:5 Bushing Mounted CT's

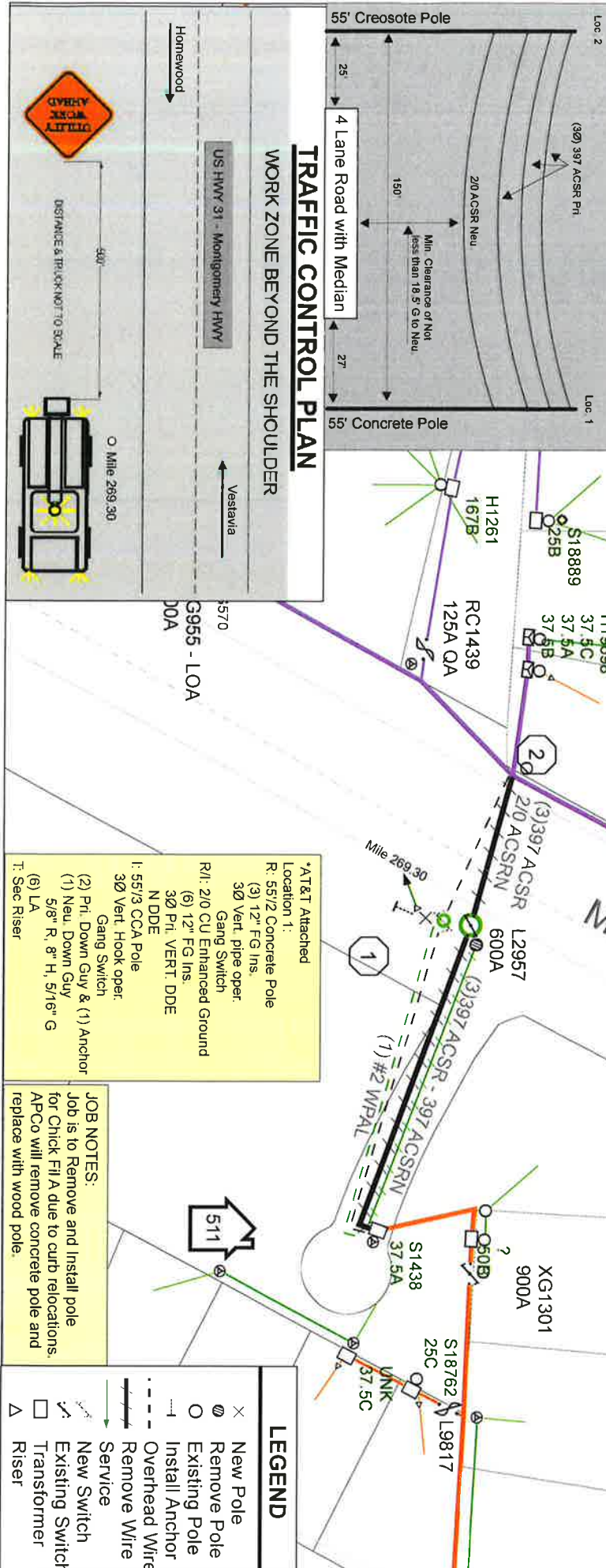
Notes
Customer to install (2) 5" Conduits from Riser pole(Loc. 2) to Padmount Transformer(Loc. 3) with pull string in both conduits. Customer to install Transformer Pad per APCo Specifications.
*Cust. Wire: 3 Runs of (4) 400 KCM

On-Site contact
Eddie for WH Bass
770-828-6738

Josh Whitaker
APCo Engineer
Tel 205-226-1432
Radio 1*10*14
jwhitak@southemco.com



Customer: Chick-Fil-A	Location: 5111 Montgomery Hwy	City: Vestavia Hills	County: Jefferson	Section: 19	Township: 18S	Range: 02W	Estimate No: A6173-10-A416
Division: PD Birmingham	District: Metro South	Town: Vestavia Hills	User ID: jrwhitak	Created: 4/13/2016	Substation: X-_____	Addr Info: Y-_____	MISSALL#
Map Center UTM: 1704894 12143221	Map Center LatLong: 33.450589 -86.78854	Map Center UTM: 1704894 12143221		Map Center LatLong: 33.450589 -86.78854		Map Center UTM: 1704894 12143221	



ENERGIZED LINE WORK
 Sub Valley DS
 OCB/OCR 283116
 Sub Vestavia DS
 OCB/OCR AS508

Josh Whitaker
 APCo Engineer
 Tel 205-226-1432
 Radio 1*10*14
 jrwhitak@southernco.com

ALABAMA POWER
 A SOUTHERN COMPANY

Volage
 Pri 12 KV
 Sec 120/240

*AT & T Attached
 Location 1:
 R: 55/2 Concrete Pole
 (3) 12" FG Ins.
 3Ø Vert. pipe oper.
 Gang Switch
 R/I: 2/0 CU Enhanced Ground
 (6) 12" FG Ins.
 3Ø Pri. VERT. DDE
 N DDE
 I: 55/3 CCA Pole
 3Ø Vert. Hook oper.
 Gang Switch
 (2) Pri. Down Guy & (1) Anchor
 (1) Neu. Down Guy
 5/8" R, 8" H, 5/16" G
 (6) LA
 T: Sec Riser

JOB NOTES:
 Job is to Remove and Install pole for Chick Fil A due to curb relocations. APCo will remove concrete pole and replace with wood pole.

LEGEND	
✕	New Pole
⊗	Remove Pole
○	Existing Pole
—+—	Install Anchor
---	Overhead Wire
---	Remove Wire
---	Service
---	New Switch
---	Existing Switch
□	Transformer
△	Riser

RESOLUTION NUMBER 4826

A RESOLUTION INITIATING THE REZONING OF 1280 MONTGOMERY HIGHWAY FROM UNZONED TO VESTAVIA HILLS B-2 (BUSINESS DISTRICT)

WHEREAS, on April 12, 2016, the Mayor and City Manager executed and delivered an agreement with BAMA 3-RE, LLC to sell a tract of land of approximately 2.34 acres, more or less, located at 1280 Montgomery Highway (hereinafter referred to as “Property”) a copy of which is marked as “Exhibit B” attached to and incorporated into this Resolution Number 4826 as though written fully therein; and

WHEREAS, a condition of the agreement was that the City would file a petition requesting the rezoning of said property from its current unknown zoning classification to VH B-2 with restrictions for the construction of a small business district; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to initiate the request to rezone the property located at 1280 Montgomery Highway from the current unknown zoning classification to Vestavia Hills B-2 (business district) substantially as depicted in the site drawing marked as “Exhibit A” attached to and incorporated into this Resolution Number 4826; and

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

1. The City Clerk is hereby authorized to file this Resolution Number 4826 to rezone the Property from Unknown to Vestavia Hills B-2 (business district) with restrictions; and
2. This Resolution Number 4826 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 25th day of April, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



CONCEPTUAL LAYOUT
 9/12/2015
 DWD
 LBN
 1

FREDDY'S FROZEN CUSTARD & STEAKBURGERS
BAMA 1 CUSTARD
VESTAVIA HILLS, AL

LEVD, Inc.
 715
 Birmingham, AL 35203
 Phone: (205) 251-4111
 Cell: (205) 486-6218
 Fax: (205) 486-6218
 www.levd.com

LBVD
 CIVIL AND STRUCTURAL
 ENGINEERS
 11000
 Vestavia Hills, AL 35215
 Phone: (205) 971-1100
 Fax: (205) 971-1101
 www.lbvd.com



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 12th 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 11th day of April, 2015, the City Council of the City of Vestavia Hills, Alabama enacted Ordinance Number 2625 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**

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 – 20th 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

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. Crolly 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

B. PURCHASER'S INTENDED USE OF PROPERTY: The Purchaser intends to use the Property for a 10,100 square foot ± multi-tenant building, which will include a 3,700 square foot Freddy's Frozen Custard & Steakburgers 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 & Steakburgers 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

(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**

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 effect 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**

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.

Agreement for Purchase and Sale of Real Estate

Page 8

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

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: baragoza@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

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

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

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Fax (205) 488-6429
Email: smonk@babco.com

IF TO PURCHASER:

BAMA 3-RE, LLC
916 North Maxwell Street
McPherson, Kansas 67640
Attention: Mike Fyler
Fax: ()
Email: 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

IF TO TITLE COMPANY:

Land Title Company of Alabama
600 North 20th Street, Suite 100
Birmingham, Alabama 35203
Attention: Michelle Gilbert
Fax: (205) 226-9280
Email: 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**

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

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Page 12

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.

Agreement for Purchase and Sale of Real Estate
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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 (6th) 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.

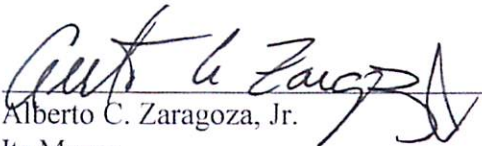
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Agreement for Purchase and Sale of Real Estate
Page 14

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

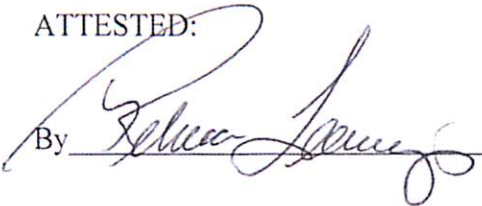
SELLER:

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

By 
Alberto C. Zaragoza, Jr.
Its Mayor

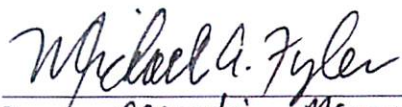
By 
Jeffrey D. Downes
Its City Manager

ATTESTED:

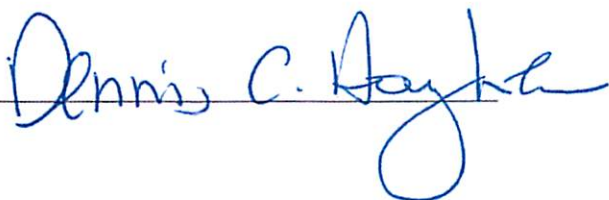
By 

PURCHASER:

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

By 
Its Operating Manager

ATTESTED:

By 

Agreement for Purchase and Sale of Real Estate
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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 12th day of April, 2016.

Melissa N. Hipp

Notary Public

My Commission Expires:

10/14/2017

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 12th day of April, 2016.

Melissa N. Hipp

Notary Public

My Commission Expires:

10/14/2017

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

Agreement for Purchase and Sale of Real Estate
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STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

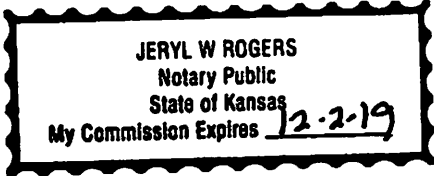
I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Michael A. Fyler, whose name as Operating Manager of BAMA 3-RE, LLC, a Kansas limited liability, is signed to the foregoing Agreement for Purchase and Sale of Real Estate, and who is known to me, 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 31st day of March, 2016.

Jeryl W. Rogers
Notary Public

My Commission Expires:
12-2-19

SEAL



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.

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 11th 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*.

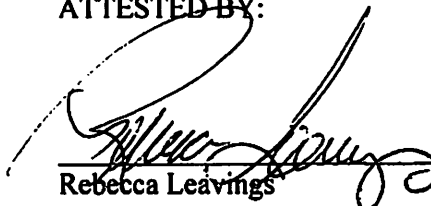
6. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance which shall continue in full force and effect notwithstanding such holding.

DONE, ORDERED, APPROVED and ADOPTED this the 11th day of April, 2016.

CITY OF VESTAVIA HILLS, ALABAMA

By 
Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:


Rebecca Leavings
City Clerk

Ordinance Number 2625

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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 11th 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 12th day of April, 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
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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 – 20th 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.

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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."

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B. PURCHASER'S INTENDED USE OF PROPERTY: The Purchaser intends to use the Property for a 10,100 square foot ± multi-tenant building, which will include a 3,700 square foot Freddy's Frozen Custard & Steakburgers 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 & Steakburgers 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:

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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

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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

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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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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

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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

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

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

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

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Fax (205) 488-6429
Email: smonk@babc.com

IF TO PURCHASER:

BAMA 3-RE, LLC
916 North Maxwell Street
McPherson, Kansas 67640
Attention: Mike Fyler
Fax: ()
Email: 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

IF TO TITLE COMPANY:

Land Title Company of Alabama
600 North 20th Street, Suite 100
Birmingham, Alabama 35203
Attention: Michelle Gilbert
Fax: (205) 226-9280
Email: 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.

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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

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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 (6th) 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.

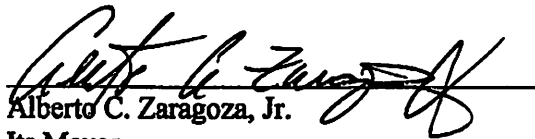
[Remainder of Page Intentionally Left Blank]

Agreement for Purchase and Sale of Real Estate
Page 14

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

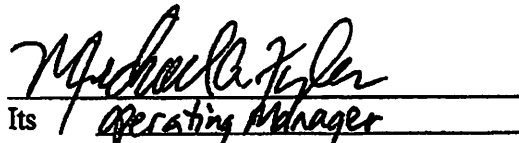
By _____
Jeffrey D. Downes
Its City Manager

ATTESTED:

By _____

PURCHASER:

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

By 
Its operating manager

ATTESTED:

By 

Agreement for Purchase and Sale of Real Estate
Page 15

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:

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.

Notary Public

My Commission Expires:

SEAL

Agreement for Purchase and Sale of Real Estate
Page 16

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 30th day of March, 2016.

Jeryl W Rogers
Notary Public

My Commission Expires:
12-2-2019
SEAL

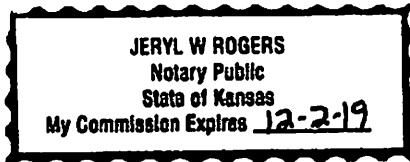


Exhibit A

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;

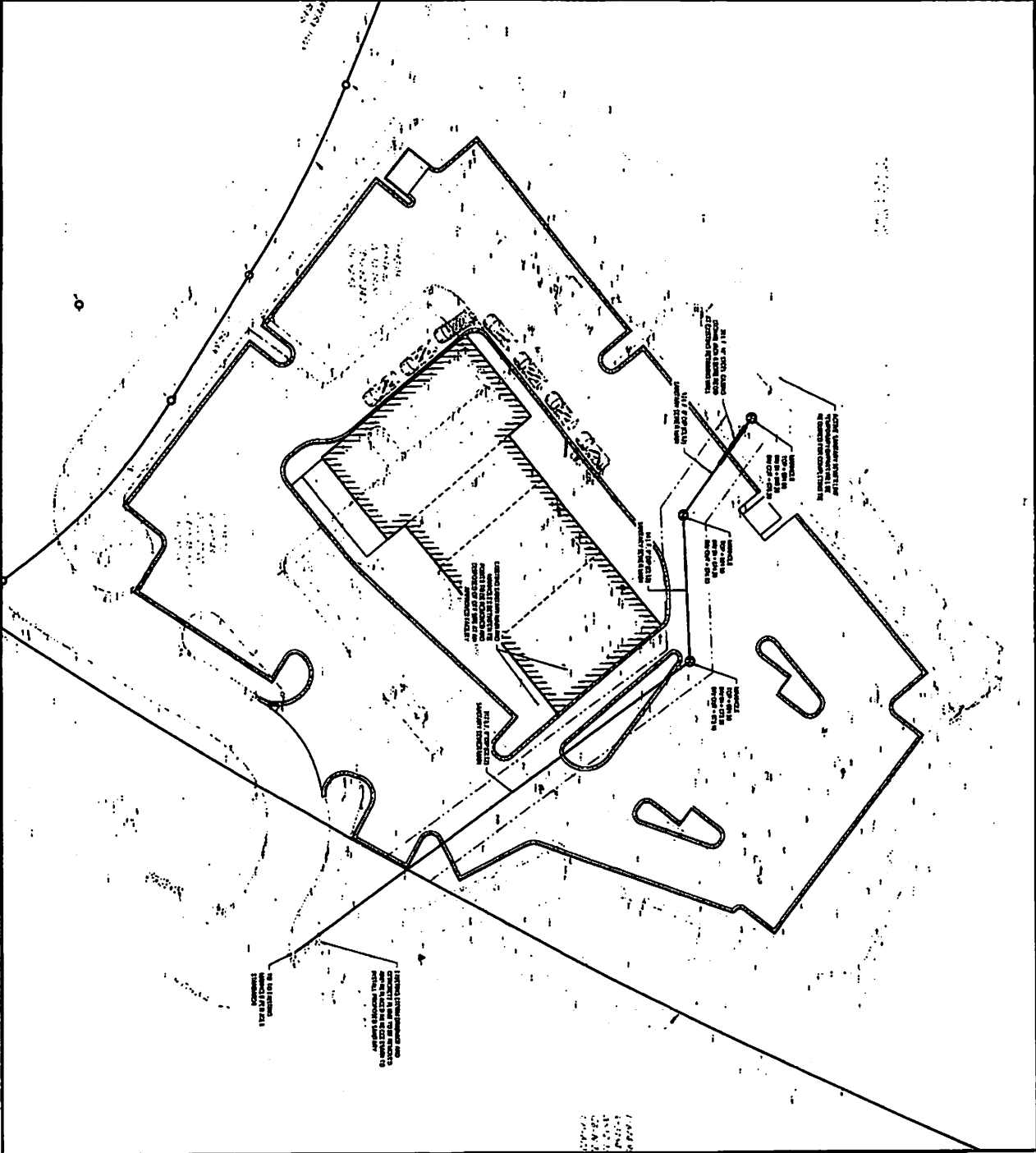
(xxiii) "disco" or other dance hall; or

(xxiv) cemetery, mortuary or funeral parlor.

Exhibit B

Sanitary Sewer Relocation Plan

See attached.



ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08/08/01 BY [Redacted] UNDER EXECUTIVE ORDER 11652 WHICH AUTHORIZED THE DECLASSIFICATION OF ALL INFORMATION CONTAINED HEREIN, EXCEPT WHERE SHOWN OTHERWISE. THIS DOCUMENT IS HEREBY CLASSIFIED "UNCLASSIFIED" AND ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08/08/01 BY [Redacted] UNDER EXECUTIVE ORDER 11652 WHICH AUTHORIZED THE DECLASSIFICATION OF ALL INFORMATION CONTAINED HEREIN, EXCEPT WHERE SHOWN OTHERWISE.

CSO

DATE: 04/14/04

FREDDY'S FROZEN CUSTARD & STEAKBURGERS
BAMA 1 CUSTARD
VESTAVIA HILLS, AL



LOT NO. _____
 BLOCK NO. _____
 PLAT NO. _____
 SECTION NO. _____

LEVOY

LEVOY, Inc.
 10000 N. 10th Street
 Suite 100
 Phoenix, AZ 85028
 Phone: 602-998-2000
 Fax: 602-998-2001
 Website: www.levoy.com



RESOLUTION NUMBER 4827

A RESOLUTION INITIATING A REQUEST FOR CONDITIONAL USE APPROVAL FOR HEAVY MECHANICAL FOR A PORTION OF LOT 1, VESTAVIA HILLS SPORTS PARK FOR CONSTRUCTION OF A CITY FLEET OPEATIONS FACILITY

WHEREAS, Lot 1 Vestavia Sports Park is located within the Liberty Park P.U.D. in an area designated as PR-1 for recreational park use; and

WHEREAS, a portion of Lot 1, Vestavia Sports Park is located adjacent to Sicard Hollow Road and is currently utilized as a park maintenance facility; a diagram of said location is detailed on a map marked as “Exhibit A” which is attached to and incorporated into this Resolution Number 4827 as though written fully therein; and

WHEREAS, the City of Vestavia Hills desires to construct a new Fleet Operations Facility for the maintenance and repair of all City vehicles on the above-described portion of Lot 1, Vestavia Sports Park (“the Subject Property”); and

WHEREAS, said use for a Fleet Operations Facility on this property requires the approval of a Conditional Use pursuant to the zoning of the Liberty Park P.U.D.

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

1. The City of Vestavia Hills shall request a conditional use approval for “major mechanical” for the property detailed in the attached Exhibit and referred to as “the Subject Property”; and
2. The City Clerk shall file this Resolution Number 4827 to serve as a petition with the City Planner in order to begin said process to request a Conditional Use approval; and
3. This Resolution Number 4827 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 25th day of April, 2016.

Alberto C. Zaragoza, Jr.
Mayor

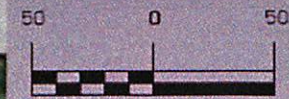
ATTESTED BY:

Rebecca Leavings
City Clerk



SITE A

SICARD HOLLOW ROAD



SCALE
1" = 50'

01-25-2016

RESOLUTION NUMBER 4828

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH THE ALABAMA DEPARTMENT OF TRANSPORTATION FOR PROJECT NUMBER ACAA59494-ATRP(006); ATRIP #37-03-33

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

1. That the City enters into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

The resurfacing on CR-99 (Columbiana Road), CR-42 (Tyler Road), and CR-2336 (Overton Road). Length – 1.71 miles

Project # ACAA59494-ATRP(006); ATRIP #37-03-33

2. That the agreement be executed in the name of the City, by its City Manager, for and on its behalf; and
3. That the agreement be attested by the City Clerk and seal of the City affixed thereto.

BE IT FURTHER RESOLVED that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City Clerk.

PASSED, ADOPTED and APPROVED this the 25th day of April, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I the undersigned qualified and acting City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and forgoing is a true copy of a Resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 25th day of April, 2016, and that such Resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this _____ day of _____, 2016.

Rebecca Leavings
City Clerk

**AGREEMENT
FOR
ALABAMA TRANSPORTATION REHABILITATION AND IMPROVEMENT PROGRAM
(ATRIP) PROJECT
BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF VESTAVIA HILLS, ALABAMA**

This agreement is made and entered into by and between the State of Alabama, (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Vestavia Hills (FEIN 63-6002218), hereinafter referred to as the CITY; in cooperation with the United States Department of Transportation, the Federal Highway Administration, hereinafter referred to as the FHWA:

WITNESSETH

WHEREAS, the STATE and the CITY desire to cooperate in the resurfacing on CR-99 (Columbiana Road), CR-42 (Tyler Road), and CR-2336 (Overton Road). Length – 1.71 miles
Project# ACAA59494-ATRP(006); ATRIP# 37-03-33

NOW THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) The CITY will acquire any additional right-of-way, if needed, for the PROJECT at no cost to the STATE or this PROJECT.
- (2) The CITY or its representative, if applicable to the PROJECT, agree to adjust and/or relocate all utilities on the PROJECT without cost to the STATE or this PROJECT.
- (3) The CITY or its representative, will provide the required surveys, complete the plans and perform all other preliminary engineering duties for the PROJECT at no cost to the STATE or this PROJECT. The CITY will be responsible for submitting all required environmental documents to the STATE and obtaining approval prior to right-of-way acquisition or submittal of final plan assembly to the STATE. The plans will be subject to the approval of the STATE and the PROJECT will be constructed in accordance with the plans approved by the STATE and the terms of this agreement.
- (4) If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for the PROJECT. The CITY and the contractor will be responsible for compliance with the permit and the STATE will have no obligation regarding the permit. The CITY will furnish the STATE (Region) a copy of the permit prior to any work being performed by the contractor.

- (5) The CITY will furnish all construction engineering for the PROJECT with CITY forces or with a consultant selected and approved by the STATE as part of the PROJECT cost. The cost of construction engineering and inspection shall be included as part of the construction cost for the PROJECT and will be paid from funds provided herein.
- (6) The STATE will furnish the necessary inspection and testing of materials with STATE forces when needed as part of the PROJECT cost. The cost of inspection and testing of materials shall be included as part of the construction cost for the PROJECT and will be paid from funds provided herein.
- (7) The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction (latest edition) on the PROJECT and will ensure that alignment and grades on this PROJECT meet the standards of the Alabama Department of Transportation and that the PROJECT will be constructed in accordance with the approved plans.
- (8) The PROJECT will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of eighty (80) percent Federal ATRIP funds and twenty (20) percent CITY funds, unless otherwise noted below. Any Federal aid non-participating costs shall be borne by the CITY at one hundred (100) percent.
- (9) Funding for this agreement is subject to the availability of Federal ATRIP funds at the time of authorization. The STATE will not be liable for Federal ATRIP funds in any amount. It is understood that the amounts stated below are estimates only. Any shortfall in funding or overrun in construction costs shall be borne by the CITY from Federal ATRIP funds, if available, and from CITY funds. In the event of an under-run in construction costs, the amount of Federal ATRIP funds will be the amount stated below, or eighty (80) percent of eligible costs, whichever is less.
- (10) The estimated cost of construction of this PROJECT will be provided from the funds outlined as follows:

Federal ATRIP Funds	\$ 909,304.00
CITY Funds	\$ <u>227,326.00</u>
Total (Including E & I)	\$ 1,136,630.00
- (11) The STATE will be responsible for advertisement and receipt of bids, and the award of the contract. Following the receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its prorata share of the estimated cost (if applicable) as reflected by the bid of the successful bidder plus E & I, and the CITY will pay this amount to the STATE no later than 30 days after the date bids are opened. Payment must be received prior to award of the contract.
- (12) A final audit will be made of all PROJECT records after completion of the PROJECT and a copy will be furnished to the Alabama Department of Examiners of Public Accounts, in accordance with Act. 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the final audit and this agreement.

- (13) The CITY will submit reimbursement invoices for the work performed under the terms of this agreement to the STATE within six (6) months after the completion and acceptance of the PROJECT. Any invoices submitted after this six (6) month period will not be eligible for payment.
- (14) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the improvements which are not a part of the Alabama Highway Maintenance System. Upon completion and acceptance of the work by the STATE, the CITY will maintain the PROJECT in satisfactory condition in accordance with the requirements of the Alabama Department of Transportation.
- (15) Subject to the limitations on damages applicable to municipal corporations under Alabama Code § 11-47-190 (1975), the CITY shall defend, indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees, from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the CITY, its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants, representatives or employees, or anyone whose acts the CITY may be liable.
- (16) By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents, or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- (17) Each party will provide, without cost to the other, information available from its records that will facilitate the performance of the work.
- (18) Nothing will be construed under the terms of this agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th law).
- (19) The CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities.
- (20) Exhibits M and N are attached and hereby made a part of this agreement.
- (21) This agreement is made and expressly executed in the names of the parties hereto by their respective officers, officials or other persons who are authorized to execute it, and it is deemed by the parties to be an agreement or contract under seal.
- (22) The terms of this agreement may be modified by supplemental agreement duly executed by the parties hereto.

- (23) This agreement may be terminated by either party upon the delivery of a thirty (30) day notice termination.

IN WITNESS WHEREOF, the parties hereto cause this agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Governor of Alabama.

SEAL

ATTEST: CITY OF VESTAVIA HILLS, ALABAMA

City Clerk (Signature)

BY: _____
City Manager (Signature)
City of Vestavia Hills

Print Name of City Clerk

Print Name of City Manager

RECOMMENDED FOR APPROVAL:

**STATE OF ALABAMA
ACTING BY AND THROUGH THE
ALABAMA DEPARTMENT OF
TRANSPORTATION**

Innovative Programs Engineer
Edward N. Austin, P.E.

Chief Engineer
Don T. Arkle, P.E.

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED AND APPROVED AS TO FORM AND CONTENT:

Chief Counsel
Jim R. Ippolito, Jr.

Transportation Director
John R. Cooper

**THE WITHIN AND FOREGOING AGREEMENT IS HEREBY APPROVED ON
THE _____ DAY OF _____, 20_____.**

**GOVERNOR OF ALABAMA
ROBERT BENTLEY**

7/18/90

Exhibit M

CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

07/01/2002

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

AMENDED ALABAMA IMMIGRATION LAW:

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



ALABAMA DEPARTMENT OF TRANSPORTATION

Bureau of Innovative Programs
1409 Coliseum Boulevard
Administrative Building, Room 110
Montgomery, Alabama 36110
Telephone: 334-353-6234 / Fax: 334-353-6550
www.dot.state.al.us



Robert Bentley
Governor

John R. Cooper
Transportation Director

March 16, 2016

Mr. Jeffery D. Downes, City Manager
City of Vestavia Hills
PO Box 660854
Vestavia Hills, Alabama 35216

RE: ACAA59494-ATRP(006)
ATRIP 37-03-33
Jefferson County
City of Vestavia Hills

Dear Mr. Downes:

Attached is the **original** Agreement between the Alabama Department of Transportation and the City of Vestavia Hills covering the listed project's financing costs for construction.

Please complete and return this **original** Agreement as soon as possible with all **signatures** and **seals** to minimize delay of further approval and distribution. Upon approval of all parties, a properly executed copy of this Agreement will be sent to you for your information and file.

- **PLEASE DO NOT EXECUTE THE FAXED COPY OF THE AGREEMENT!**

Sincerely,

Terry W. Robinson, Acting Bureau Chief
Innovative Programs Bureau

TWR:mk

Attachment(s)

- cc: DeJarvis Leonard, P.E. (East Central Region Engineer)
Geneva M. Brown (Asst. Region Engineer)
Robert Camp, P.E. (Area Operations Engineer)
Clay McBrien, P.E. (Ms. Melva Bradford)
Christopher Brady, P.E. (City Engineer)
File

RESOLUTION NUMBER 4829

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH THE ALABAMA DEPARTMENT OF TRANSPORTATION FOR PROJECT CMAQ-7030(600), PROJECT REFERENCE NUMBER 100057174; CONSTRUCTION PROJECT FOR SIDEWALKS ALONG PORTIONS OF MASSEY ROAD, COLUMBIANA ROAD AND MONTGOMERY HIGHWAY

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

1. That the City enters into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Project CMAQ-7030(600), Project Reference Number 100057174, Construction project for sidewalks along CR-42 (Massey Road) from AL-3 (US-31, Montgomery Highway) to CR-99 (Columbiana Road) in the City of Vestavia Hills, Alabama; which Agreement is before this Council; and

2. That the agreement be executed in the name of the City, by its City Manager, for and on its behalf and that it be attested by the City Clerk and the seal of the City affixed thereto; and

BE IT FURTHER RESOLVED that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City Clerk.

PASSED, ADOPTED and APPROVED this the 25th day of April, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I the undersigned qualified and acting City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and forgoing is a true copy of a Resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 25th day of April, 2016, and that such Resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this _____ day of _____, 2016.

Rebecca Leavings
City Clerk

**AGREEMENT
FOR
CONSTRUCTION**

**BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF VESTAVIA HILLS, ALABAMA**

**Project: CMAQ-7030(600)
Sidewalks along CR-42 (Massey Road) from AL-3 (US-31,
Montgomery Highway) to CR-99 (Columbiana Road)
Vestavia Hills, Alabama
Project Reference Number: 100057174**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Vestavia Hills, Alabama, hereinafter referred to as CITY, in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham urbanized area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and the CITY desire to cooperate in a construction project to include engineering and inspection for sidewalks along CR-42 (Massey Road) from AL-3 (US-31, Montgomery Highway) to CR-99 (Columbiana Road) in the City of Vestavia Hills, Alabama.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham Area by the 2012 Moving Ahead for Progress in the 21st Century (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- 1) This Agreement will cover only funding of construction in accordance with plans approved by the STATE. The East Central Region of the Alabama Department of Transportation will be the lead agency for the STATE relative to the work under this agreement and will be the point of contact for the CITY.
- 2) Cost for the project will be financed, when eligible for federal participation, on the basis of 80 percent federal funds and 20 percent CITY funds. Funding for this agreement is subject to availability of Federal Aid funds at

the time of authorization. Funds will be available for obligation when allocation by FHWA is made and will be at the level prescribed by FHWA. The estimated cost and participation by the various parties are as follows:

	TOTAL ESTIMATED COST	TOTAL ESTIMATED FEDERAL FUNDS	TOTAL ESTIMATED LOCAL FUNDS
Construction Including Engineering and Inspection	<u>\$912,377.44</u>	<u>\$729,901.95</u>	<u>\$182,475.49</u>
Total	<u>\$912,377.44</u>	<u>\$729,901.95</u>	<u>\$182,475.49</u>

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share.

- 3) Any cost for work not eligible for Federal participation will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- 4) Ownership of Property: All work accomplished under the provisions of this agreement will be accomplished on property owned by or will be acquired by CITY at no expense to the STATE or FHWA. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the CITY. In cases where property is leased, the terms of the lease will not be less than the expected life of the improvements.
- 5) The construction of the improvements will be by contract and the STATE will be responsible for advertisement and receipt of bids and for the award of the contract. Following receipt of bids and prior to award of the contract, the STATE will invoice the CITY for its pro rata share of the estimated construction cost as reflected by the bid of the successful bidder plus the engineering and inspection cost, and the CITY will promptly pay this estimated cost before the award of the contract. The STATE will not award the contract until it is in receipt of the estimated cost payable by the CITY as reflected by the bid of the successful bidder, plus the engineering and inspection cost. All required off-site testing shall be the responsibility of the Alabama Department of Transportation. All on-site engineering, inspection, and testing (including obtaining and delivery of test specimens to the Alabama Department of Transportation testing facility) shall be the responsibility of the CITY or its designated representative.
- 6) The CITY will coordinate any required adjustments to utilities with the utility company involved in accordance with usual STATE procedures.
- 7) The project will commence upon execution of this agreement and upon written authorization to proceed from the STATE directed to the CITY.

- 8) It is expressly understood that this is a cost reimbursement program and no federal funds will be provided to the CITY prior to accomplishment of work for which reimbursement is requested.
- 9) The CITY will, when appropriate, submit invoices to the STATE for reimbursement for work performed by or for the CITY in carrying out the terms of this agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the East Central Region Engineer for payment. The CITY may bill the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid and the invoice will be notarized. All invoices will be approved by the STATE.
- 10) Invoices for any work performed by the CITY under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- 11) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the improvements which are not part of the Alabama Highway Maintenance System.
- 12) The CITY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to the rights and responsibilities under this Agreement, without the prior written approval of the STATE.
- 13) A final audit will be made of all project records after the completion of the project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with ACT 1994, No.94-414. A final financial settlement will be made between the parties as reflected by the final audit and this Agreement.
- 14) The performance of the work covered by this Agreement will be in accordance with the current requirements of the STATE and FHWA.
- 15) The STATE will assist the CITY, if necessary, in any public involvement actions that may be required.
- 16) Each party will provide without cost to the other, information available from its records that will facilitate the performance of the work.
- 17) Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the City shall indemnify, and hold harmless the State of Alabama, the Alabama Department of

Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the City, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the City pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the City its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the City, its agents, servants, representatives or employees, or anyone for whose acts the City may be liable

By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.

- 18) Retention of Records: The CITY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.
- 19) Any dispute concerning a question of fact in connection with the work not disputed of by this Agreement between the CITY and the STATE will be referred to the director of the State of Alabama Department of Transportation, whose decision will be final.
- 20) Exhibits M and N are hereby attached to and made a part of this Agreement.
- 21) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- 22) Either party has the right to terminate this Agreement at any time by giving thirty (30) days written notice of termination. Said notice will be mailed by certified or registered mail.
- 23) By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed

in breach of the agreement and shall be responsible for all damages resulting therefrom.

24)7/24th Law: Nothing shall be construed under the terms of this Agreement by the CITY or the STATE that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of the approval of the Governor of Alabama.

SEAL

ATTEST: THE CITY OF VESTAVIA HILLS, ALABAMA

BY: _____
City Clerk (Signature)

Type name of City Clerk

BY: _____
City Manager Mayor (Signature)

Jeffrey D. Downes

Type name of Mayor City Mgr

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED AND APPROVED AS TO FORM AND CONTENT.

BY: _____
Jim R. Ippolito, Jr.
Chief Counsel
Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

DeJarvis Leonard, P.E.
East Central Region Engineer

Robert J. Jilla
Multimodal Transportation Engineer

Don T. Arkle, P.E.
Chief Engineer

STATE OF ALABAMA
ACTING BY AND THROUGH THE
ALABAMA DEPARTMENT OF
TRANSPORTATION

John R. Cooper, Transportation Director

The foregoing Agreement is hereby executed in the name of the State of Alabama and signed by the Governor on this _____ day of _____, 20____.

Robert Bentley
Governor, State of Alabama

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CONSULTANT 3/19/90
REVISED 7/18/90
REVISED 6/16/11

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

CONSULTANT 2/15/95
REVISED 5/30/02
REVISED 6/16/11

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to consider using appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.





Robert Bentley
GOVERNOR

ALABAMA DEPARTMENT OF TRANSPORTATION

EAST CENTRAL REGION
100 CORPORATE PARKWAY
SUITE 450
HOOVER, AL 35242
P.O. BOX 382348
BIRMINGHAM, AL 35238-2348
TELEPHONE: (205) 327-4962

March 1, 2016



John R. Cooper
TRANSPORTATION DIRECTOR

The Honorable Alberto C. Zaragoza, Jr.
Mayor, City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

RE: Jefferson County
Project No. CMAQ-7030(600)
[Proj. Ref. No. 100057174]
Sidewalks along CR-42 (Massey Road)
from AL-3 (US-31, Montgomery
Highway) to CR-99 (Columbiana Road)

Dear Mayor Zaragoza:

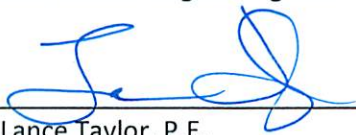
I have enclosed the original Construction Agreement between the State of Alabama and the City of Vestavia Hills, Alabama for the above referenced project.

This agreement is submitted to the City for approval. After execution by the City Council, please return the original document, with original signatures and the City Seal affixed to this office for further handling. A certified resolution, which authorizes the Mayor to sign the agreement, affixed with the City Seal should also be included with the original agreement.

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeJarvis Leonard, P.E.
East Central Region Engineer

by: 
Lance Taylor, P.E.
Asst. Region Engineer, Pre-Construction

LAT/trs

Attachment

C: Mrs. Sandra F. P. Bonner
File w/att.

RESOLUTION NUMBER 4830

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL TO DESIGN A MOTOR SCOUT BUILDING FOR THE CITY OF VESTAVIA HILLS POLICE DEPARTMENT

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

1. The City Manager is hereby authorized to accept a proposal from Williams Blackstock for design of a motor scout building for the City of Vestavia Hills Police Department at a cost not to exceed \$20,800 (\$19,800 plus \$1,000 travel/misc. expenses); and
2. A copy of said proposal is marked as “Exhibit A” attached to and incorporated into this Resolution Number 4830 as though written fully therein; and
3. This Resolution Number 4830 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 9th day of May, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

WILLIAMS · BLACKSTOCK

A R C H I T E C T S

April 20, 2016

Christopher Brady
City of Vestavia Hills
1032 Montgomery Hwy
Vestavia Hills, AL 35216

Re: Vestavia Hills Motor Scout Building – Proposal for Architectural/Engineering Services

Christopher,

We really appreciate this opportunity to work with the City of Vestavia Hills to relocate the Motor Scout storage facility to the City Hall and Police Department grounds in an effort to better streamline City services. We have prepared this proposal for architectural and engineering services for this building design based on our discussions concerning scope and overall vision for the building to blend in with the new City Hall aesthetic.

SCOPE

We understand the scope of this project is to construct a new storage and reporting facility for Motor Scout division of the Vestavia Hills Police Department. This facility will primarily consist of a storage room for motorcycles with overhead door access and a storage room for supplies. This space will be used for storage and routine maintenance of the vehicles. The building will also include office space and a reporting room for the patrols.

The building will be located in a triangular area of unoccupied land on the City Hall site immediately north of the secured/fenced parking area, and access will be provided from the secured parking area.

The building will be roughly 800 to 850 square feet and be used for routine, light maintenance and will not include water or toilets due to the proximity of the existing facilities, and also due to likely high cost for extending water and sanitary sewer utilities to this area. The building office space will be conditioned at a minimum, with the storage/maintenance space being heated and vented at a minimum. The facility will need power and data from the existing facility so they are tied together.

Based on preliminary information we anticipate this facility and affected site work to be in the \$100,000 to \$150,000 cost range.

SCHEDULE

We will work as quickly as you need us to in order to meet your schedule needs.

SERVICES

Our services will include the normal architectural services, as well as civil site design, mechanical and electrical engineering services. Our services will include preliminary and final drawing reviews with the appropriate City officials and stakeholders. At this time we anticipate the project will be bid to general contractors and we our services will include bidding and construction administration services.

COMPENSATION

We propose to provide these services outlined above for schematic design through construction administration (from beginning to end) on a lump sum basis for \$19,800.

We propose to invoice for these services on a monthly basis as work is completed.

ADDITIONAL SERVICES

Additional Services are services outside the scope of Basic Services or services that are unanticipated or may typically be provided by the Owner. We will provide these services if requested or approved by you in advance. The fee for additional services, if required will be a lump sum fee negotiated for the scope of work or on an hourly basis per the attached hourly rates. Additional services by our consultants will be invoiced at 1.2 times direct cost. Additional services that could possibly be required may include, but are not limited to the following:

- Geotechnical and environmental engineering, or studies (anticipate to use recent report)
- Construction Materials Testing (anticipate by Owner)
- ADEM NPDES Construction Stormwater General Permit (need not anticipated)
- ADEM Permit (need not anticipated)
- Major design changes after Owner approval of design (need not anticipated)
- LEED Certification (need not anticipated)
- Major Roadway and/or Utility redevelopment (need not anticipated)

REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to compensation incurred by the Architect and its consultants in the interest of the Project and include drawing reproductions, postage, delivery, long distance communications, renderings, etc. Reimbursable expenses will be billed monthly at a multiple of 1.20 times the expenses incurred. We would be willing to provide a cap on reimbursable expenses with a lump sum amount upon request.

We greatly appreciate the opportunity to provide you with this proposal and really want to work with you. If our assumptions about the scope of work are not quite correct please let us know and we can revisit the work scope and related fee to ensure you can provide you with the most effective services and value.

If after review you find this proposal acceptable, please indicate by signing below and we will formalize our agreement with a standard AIA (American Institute of Architects) Agreement between Owner Architect. If you have any questions, or if we can be of further service, please do not hesitate to call.

Sincerely,



Stephen Allen

Accepted by: _____

Date: _____

RESOLUTION NUMBER 4831

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL TO DESIGN A MUNICIPAL FLEET OPERATIONS FACILITY AT LOT 1, VESTAVIA SPORTS PARK; LIBERTY PARK ATHLETIC COMPLEX AND RENOVATIONS AT THE PARK MAINTENANCE FACILITY AT WALD PARK

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

1. The City Manager is hereby authorized to accept a proposal from Volkert, Inc., for design of a municipal fleet operations facility for the City of Vestavia Hills and for renovations of the Park Maintenance Facility at Wald Park at a cost not to exceed \$189,400 (\$184,400 plus \$5,000 bid /misc. expenses); and
2. A copy of said proposal is marked as “Exhibit A” attached to and incorporated into this Resolution Number 4831 as though written fully therein; and
3. This Resolution Number 4831 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 9th day of May, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



Volkert, Inc.

Two North Twentieth Building
2 20th Street North, Suite 300
Birmingham, AL 35203

Office 205.214.5500
Fax 205.214.5501
birmingham@volkert.com

www.volkert.com

April 22, 2016

Mr. Christopher Brady
City Engineer, Public Service Department
City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills, Alabama 35216

**RE: Proposal for Design Services
Public Works Improvements at Wald Park and New Municipal Fleet Operations Facility at
Sicard Hollow Road**

Dear Mr. Brady:

Please find herein Volkert Inc.'s proposal to perform certain professional and engineering design services as requested by the City for the following two (2) sites:

- Design of improvements to repurpose the existing public works facility and construct a new 3,000 square foot (SF) building at Wald Park to house facilities for Public Works and Parks and Recreation. The new building will be conventional construction.
- Design of a new municipal fleet operations facility located along Sicard Hollow Road at Liberty Park. The building shall be a pre-engineered metal building with a conventional façade and shall be approximately 6,400 SF with three (3) drive through bays and other support facilities.

The scope of services proposed to complete this project is summarized herein below.

A. SCOPE OF WORK

- Conduct a project kick-off meeting to discuss project details, schedule, and confirm City's goals and objectives.
- Preliminary Engineering/Design and Programming:
 - Boundary survey and topographic survey, including location of existing utilities, for both sites. Assist with rezoning documentation and proceedings.
 - Subsurface evaluation of both sites, including test pit excavations and rock core borings in planned cut areas (Wald Park) and soil borings.
 - Hazardous materials assessment at the existing facility located at the Sicard Hollow Road site.
 - Programming and preliminary plan layout for each facility
 - Site layout, drainage, and utility plans
- Final Design Engineering and Plan Preparation
 - Final site design include grading, drainage, utilities, and erosion control.
 - Final Architectural, including structural and MEP services.
 - Preparation of final plans and specifications for bidding

Office Locations:

Birmingham, Foley, Mobile, Montgomery, Alabama • Chipley, Ft. Myers, Gainesville, Pensacola, Tampa, Florida
Atlanta, Columbus, Georgia • Collinsville, Wheaton, Illinois • Baton Rouge, New Orleans, Slidell, Louisiana
Jackson, Mississippi • Jefferson City, Missouri • Raleigh, North Carolina • Harrisburg, Pennsylvania
Chattanooga, Nashville, Tennessee • Alexandria, Chesapeake, Virginia • Washington, D.C.



- Development of a final construction estimate
- QA/QC to include conformance of documents and constructability review

This proposal includes time for coordination of the Fleet Operations Facility with the Sicard Hollow Pedestrian Tunnel design. We anticipate some revisions required to the tunnel design to account for CCTV/lighting and general site grading/layout that will integrate with the operations facility/site.

Additionally, the proposal includes time for attending three (3) project meetings for design programming, review, and assistance communicating the improvements to the City Council and public.

B. SCHEDULE - Work will be scheduled upon receipt of authorization with a goal of overall project completion (beneficial occupancy of facilities) no later than April 2017. Volkert shall provide the design resources required to meet the determined design schedule.

C. FEE – The Lump Sum Fee for Engineering Services shall be \$184,400. Fee does not include time for Bid Period Services or Construction Engineering and Inspection services. Bid Period Services from advertisement to award of a construction contract shall be hourly and per Volkert's standard and current hourly rates, not to exceed \$5,000 plus reimbursables without approval from the City. Construction Period Services shall be added by supplemental agreement. Fees will be billed monthly based on the Engineer's estimate of services completed.

We appreciate the opportunity to work with the City. Please call me with any questions or concerns you have.

Sincerely,



Kirk Mills, P.E.
Vice President

CC: Mr. Brian Davis, PE
Mrs. Lori Beth Kearley, PE
Mr. Rob Vermillion
Mr. John Smith