

**Vestavia Hills
City Council Agenda
June 25, 2018
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Jim Cartledge, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Candidates, Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Financial Reports – Melvin Turner, III; Finance Director
9. Approval of Minutes – May 21, 2018 (Work Session) and June 11, 2018 (Regular Meeting)

Old Business

10. Resolution Number 5066 - Authorizing The City Manager To Execute Supplemental Agreement For Neel Schaffer For Additional Design Work For Massey Road (*public hearing*)
11. Resolution Number 5067 - A Resolution Declaring A Weed And Other Vegetation Nuisance Pursuant To Ordinance Number 2567 And Directing The City Manager To Abate Said Nuisance For Property Located At 704 Rockbridge Road (*public hearing*)
12. Ordinance Number 2772 - An Ordinance Granting A Non-Exclusive Right-Of-Way Use Agreement To Access Fiber Group, Inc. For The Purpose Of Constructing, Installing, Maintaining And Operating A Network Within The Public Rights-Of-Way Within The City Of Vestavia Hills, Alabama (*public hearing*)

New Business

New Business (Unanimous Consent Requested)

13. Ordinance Number 2773 - A Resolution Authorizing The City Manager To Expend An Amount Not To Exceed \$4,835,548 For Professional Services Of The Community Spaces Plan, TCU Managed Projects (*public hearing*)

First Reading (No Action Taken At This Meeting)

14. Citizen Comments
15. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

WORK SESSION

MAY 21, 2018

The City Council of Vestavia Hills met in a regular work session on this date at 6:00 PM following posting/publication as required by Alabama law. The Mayor Pro-Tem called the meeting to order and the roll with the following:

MEMBERS PRESENT:

Rusty Weaver, Mayor Pro-Tem
Kimberly Cook, Councilor
Paul J. Head, Councilor
George Pierce, Councilor

MEMBERS ABSENT:

Mayor Ashley C. Curry

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick Boone, City Attorney
Wendy Dickerson, Deputy City Clerk
Brian Davis, Public Services Director
Marvin Green, Fire Chief
Christopher Brady, City Engineer
Jason Hardin, Police Captain
Brian Gilham, Police Captain
Johnny Evans, Police Captain

COMMUNITY SPACES

Mr. Downes introduced Chris Williams, Rice Advisory, LLC, is in attendance to explain the Community Spaces RFP and recommendation to the Council.

Mr. Williams explained the RFP and the recommendation. He stated that Citi Group stood out with the best proposal and least fee. Citi Group did the financing for the schools in 2016, which is close to the same as proposed here.

Mr. Downes stated that he has reviewed the RFP with Mr. Turner, Finance Director, and agreed and concur with Rice Advisory.

FLOOD MANAGEMENT PLAN

Mr. Brady introduced the members of the committee and introduced William Thomas, Schoel Engineering, to give details and outline the progress at this time.

Mr. Thomas presented the planning process which has transpired over the course of several years. He stated it is now at the stage for public meetings, with this being the kick off meeting. There is a survey up on the website for the public to review and make comments.

Discussion ensued for the timeline and extending the survey time frame.

STORMWATER ORDINANCES

Mr. Downes stated that Mr. Brady will give an update on the progress of three ordinances that will be presented to the Council.

Mr. Brady updated the Council on the Sediment Erosion Control Ordinance, and Elicit Nuisance Ordinance and the Post Construction BMP Ordinance.

Mr. Randy Haddock explained that the Cahaba River Society has redlined to show changes that they would like made.

Discussion ensued about the content of the proposed ordinances.

ENTERTAINMENT DISTRICTS

Mr. Downes presented areas that may be suitable for entertainment districts.

Discussion ensued about the districts and the properties that should be included in them. Mr. Downes stated that they will continue to work on the boundaries.

“BRUNCH” BILL

Mr. Downes stated that some of the area restaurants have expressed a desire to serve Sunday brunch for the on-site consumption of alcohol.

Discussion ensued about the bill.

VHPD SOFTWARE UPGRADE AND SAVINGS

Mr. Downes explained that replacing the old software with a new user friendly software could save the City money and it is heavily recommended.

Discussion ensued on the cost.

WALD PARK POOL

Mr. Head stated that the rental equipment will be running in one to two days. The Health Department has to approve it, but will hopefully be in operation by the weekend.

Mr. Davis stated that the public will not lose days from the normal swimming season.

GOLD'S GYM

Mr. Downes stated that Public Works will move into the Gold's Gym facility while the Public Works facility is being constructed.

CURRENT PUBLIC WORKS SITE

Mr. Downes stated that a grading exercise has to take place.

There being no further business, the meeting adjourned at 7:30 PM.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

Wendy Dickerson
Deputy City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JUNE 11, 2018

The City Council of Vestavia Hills met in special session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. Mayor Curry called the meeting to order and the City Clerk called the roll with the following:

MEMBERS PRESENT:

Mayor Ashley C. Curry
Rusty Weaver, Mayor Pro-Tem
Kimberly Cook, Councilor
Paul Head, Councilor
George Pierce, Councilor

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Rebecca Leavings, City Clerk
Dan Rary, Police Chief
Melvin Turner, Finance Director
George Sawaya, Asst. Finance Director
Terry Ray, Asst. Fire Chief
Scott Key, Fire Marshal
Umang Patel, Court Director
Cinnamon McCulley, Communications Specialist
Brian Davis, Public Services Director
Christopher Brady, City Engineer

Tom Bell, Vestavia Hills Chaplain, provided the invocation followed by the Pledge of Allegiance led by Boy Scout Troop 4, Vestavia Hills.

PROCLAMATION

The Mayor presented a proclamation designating June 14, 2018 as Flag Day. Mr. Downes read the proclamation and the Mayor presented it to Boy Scout, Troop 4, Vestavia Hills.

PROCLAMATION

The Mayor presented a proclamation designating June 2018 as Paint the Town Purple for Alzheimer's Month. Mr. Downes read the proclamation and the Mayor presented it to Kimberly Stephens, Aimee Johnson, Lisa Holman and Rachel Brooks, representing the Alzheimer's

Foundation. Ms. Stephens stated that the walk will be on Sunday and gave details for anyone interested in participating.

PRESENTATION

Steve Ammons, President of the Vestavia Hills Rotary Club, presented a check to the Vestavia Hills Police Foundation and the Vestavia Hills Fire Department in the amount of \$14,000. These funds were derived from fundraisers throughout the year. He gave details of past purchases from the various departments.

Lori Muller, Treasurer, also thanked Mr. Ammons for allowing her to serve and thanked the City Council for the support for the Rotary and the fundraising endeavors.

Mr. Ammons asked the Mayor and the Fire Chief to come forward for the presentation in which he presented the check to the first responders.

ANNOUNCEMENTS, GUEST RECOGNITION

- Mike Anderton, Candidate for District Attorney, introduced himself and requested support in the general election in November.
- Mrs. Cook stated there are upcoming meetings at the Board of Education regarding three proposed school rezoning options. She stated the meetings are scheduled for June 12 beginning at 5 PM and the other is scheduled for June 13, beginning at 9 AM. She indicated that there will be community meetings to receive feedback concerning the proposed rezoning. She also encouraged everyone to take the survey found on the Board website. She encouraged all stakeholders to participate.
- Mrs. Cook thanked the Scouts of Troop 4 for their service in putting up the flags along Highway 31. She also thanked Scouts from Troop 76 for putting up the flags in Liberty Park.
- Mr. Pierce announced the 37th annual I Love America Day celebration will begin the night of June 28, 2018 beginning at 6 PM at Wald Park. There will be free swimming, a movie and many other activities.
- Mr. Pierce welcomed Kym Prewitt and James Robinson, Vestavia Hills Chamber of Commerce members.
- The Mayor a reception was held in City Hall yesterday which was hosted by the “Distinguished Young Women Association” (formerly Junior Miss) for a Vestavia Hills School student who won as the representative for the State of Alabama. She will be competing in Mobile, representing the State of Alabama, soon for the national title. Her name is Brooke Tarrant and we all wish her well in her endeavors.
- Mr. Head welcome Earl Lawson, President of the Parks and Recreation Board, who was in attendance.

CITY MANAGER'S REPORT

- Mr. Downes gave an update on actions of the Liberty Park Cooperative Board. He stated the bids for the infrastructure came in and the finalizing of the Board, funding and soon the work should begin in the improvements. He stated that the various entities will begin their portions of the funding.
- The Community Spaces Plan is getting momentum. Quotes for the design team are being collected to begin the scope and develop a timetable. TCU, the Consultant, has been leading this effort and will update the Council at the work session next Monday. Working in a parallel path, there has also been a process to fund this as it goes to the bond market for interest rates. He reminded the Council that their approvals will be needed to finalize all of these actions but he hopes these will culminate during the summer months.

COUNCILOR REPORTS

- Mr. Pierce announced regular monthly luncheon for the Vestavia Hills Chamber of Commerce tomorrow at the Vestavia Country Club.
- Mayor Curry announced that tomorrow morning at Canterbury United Methodist Church, the second Freedom from Addiction Coalition meeting will be held with a free breakfast beginning at 7:30 AM. He invited everyone to attend.
- Mr. Weaver announced that the regular Planning and Zoning Commission meeting will be held Thursday beginning at 6 PM.

APPROVAL OF MINUTES

The minutes of the May 30, 2018 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the May 30, 2018 (Regular Meeting) and approve them as presented was by Mrs. Cook and second by Mr. Weaver. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

OLD BUSINESS

ORDINANCE NUMBER 2605-A

Ordinance Number 2605-A – Rezoning – 3127 Blue Lake Drive And 4565 Pine Tree Circle; Lot 10-A, Acton's Resurvey Of Lot 8 Thru 10 And Lots 11 & 12, Topfield Subdivision; Rezone From Vestavia Hills B-1.2 (Neighborhood Mixed Use District) To B-1.2 (Neighborhood Mixed Use District) With A Revised Site Plan; Pine Tree Partners LLC And Seed Corn, Owners (public hearing)

Derek Waltchack, owner and developer for the project, was present and requested that this be postponed until the indefinitely because there's still some details being worked out on the site plan. He stated that they are trying to lock down a site plan with a larger corporation and the approvals from the corporation are slow. He stated they do not want to amend this site plan and once again be locked down when they aren't fully approved. He stated notification will be sent prior to this being added back to the agenda if the Council allows the extension.

MOTION Motion to postpone consideration of Ordinance Number 2605-A indefinitely by Mr. Weaver seconded by Mr. Pierce.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

RESOLUTION NUMBER 5061

Resolution Number 5061 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver A Contract With Southern Software, Inc., For A Records Management System For The City Of Vestavia Hills Police Department And To Split Funding For Said System Evenly Within The City Of Vestavia Hills General Fund Budgets Of FY2018 And FY2019 (public hearing)

MOTION Motion to approve Resolution Number 5061 was made by Mr. Weaver and second was by Mr. Pierce.

Mr. Downes explained that this request is for a new records management system for the Police Department which far surpasses and updates their current system. He explained that the request will divide payment into two fiscal year budgets.

Chief Rary explained the proposal and the need for an updated system. He stated the system has a 3-year maintenance built into the purchase. Following that 3 years, the maintenance costs will be less expensive than the current system.

Mr. Pierce asked about the installation time.

Chief Rary explained that they will submit the agreement in the morning following this approval and execution of the document and it will be placed in line with other jurisdictions.

Mrs. Cook asked if there are additional costs for population of data, etc. Chief Rary stated everything is covered by the proposed initial cost.

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

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes

Mayor Curry – yes

Motion carried.

RESOLUTION NUMBER 5062

Resolution Number 5062 – A Resolution Approving Additional Funding For A Filtering System For The Swimming Pool At Wald Park (public hearing)

Mr. Downes explained that this request would allow the City to rent filtration equipment to bring the pool through the summer months to allow summertime activities which exceed the City's budgeted amount. Since this exceeds the required bid amount, it is required to be declared an emergency in order to go ahead and obtain the equipment. He stated that Mr. Boone has opined that this qualifies as an emergency situation and is not subject to bid.

MOTION Motion to approve Resolution Number 5062 was made by Mr. Weaver and second was by Mrs. Cook.

Earl Lawson, Park Board President, stated that over the past month the Park Board and the City Staff has spent a good deal of time to study the issue of the failure of filtration equipment at the pool and thanked the Council for the timely consideration of this matter in order to allow the pool to open this summer. He also thanked Jason Burnett for all of his extra work in getting the pool back up and running.

Mr. Davis echoed Mr. Lawson's, comments stating that Jason has done outstanding work to get this back operating.

Mrs. Cook also thanked Mr. Burnett and Mr. Davis for their quick actions in getting the pool open.

MOTION Motion to amend Resolution Number 5062 to declare this as an emergency situation was made by Mr. Weaver and second was by Mr. Pierce.

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Mayor Curry – yes

Motion carried.

The Mayor opened the floor for a public hearing.

Mr. Davis stated that the Birmingham Swim League is a great partner and has given the City an additional \$8,000 for this system.

Mr. Pierce asked about the plans for next year. Mr. Downes explained that there will be a challenge for opening the pool next year but the plans are being drawn and considered.

There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes
Mayor Curry – yes

Mr. Weaver – yes
Motion carried.

ORDINANCE NUMBER 2762

Ordinance Number 2762 – Rezoning – 3293 Overton Trail; Rezone From Vestavia Hills R-5 To Vestavia Hills R-2 For Construction Of A Single-Family Home; Ben And Susanne Webb, Owners (*public hearing*)

MOTION Motion to approve Ordinance Number 2762 was made by Mr. Weaver and second was by Mr. Head.

There was no one present to represent this request. Mr. Downes explained that this request is a request to rezone this property from multi-family to single-family for construction of a new home.

Mr. Brady stated the request is being made by the property owner in order to obtain a permit to build a single family home. He stated that some long ago act in Jefferson County zoned the property for apartments although a single-family home was located on the property. The owner wishes to rebuild his home and in order to do that, he must rezone to single family.

Mr. Weaver stated that the request was unanimously recommended for rezoning.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Mayor Curry – yes

Motion carried.

ORDINANCE NUMBER 2763

Ordinance Number 2763 – Rezoning – 3107 Timberlake Road; Rezone from Vestavia Hills R-1 to Vestavia Hills O-1; Estate of Ivorene Norris, Owner (*public hearing*)

MOTION Motion to approve Ordinance Number 2763 was made by Mr. Weaver and second was by Mr. Pierce.

Mr. Weaver stated this area is in transition to commercial with an office building next door and was recommended for approval by the Planning and Zoning Commission.

The Mayor opened the floor for a public hearing.

Russell Doyle was present in regard to this request.

There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

ORDINANCE NUMBER 2768

Ordinance Number 2768 - An Ordinance Pertaining To The Start Time For On-Premises Alcohol Sales On Sundays (*public hearing*)

MOTION Motion to approve Ordinance Number 2768 was made by Mr. Weaver and second was by Mr. Head.

Mr. Downes explained that the Legislature gave cities the opportunity to allow sales of alcohol beginning at 10 AM on Sundays in order to allow service during “brunch”. He stated that the City of Birmingham and Auburn have adopted such an ordinance and some businesses in Vestavia Hills have requested that Vestavia Hills also adopt such an ordinance. He stated that the Chamber reached out to other restaurants and received 100% support for the Ordinance.

Discussion ensued as to whether or not the restaurants are within the Entertainment Districts. Mr. Downes explained.

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

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

ORDINANCE NUMBER 2769

Ordinance Number 2769 - An Ordinance Rescinding Ordinance Number 1782 And Amending Chapter 5.5; Article II, Entitled “Erosion And Sediment Control” Of The Vestavia Hills Code Of Ordinances (*public hearing*)

MOTION Motion to approve Ordinance Number 2769 was made by Mr. Weaver and second was by Mrs. Cook.

The Mayor stated that the next three items are in regard to the participation of storm water runoff ordinances.

Mr. Brady explained that this proposed ordinance replaces the current erosion and sediment control ordinance in order to come into compliance with the new MP4 regulations. This is the updated ordinance which includes a project with land disturbance activities.

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

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

ORDINANCE NUMBER 2770

Ordinance Number 2770 - An Ordinance Establishing Methods For Controlling The Introduction Of Pollutants Into Municipal Separate Storm Sewer System In Order To Comply With The Requirements Of The National Pollutant Discharge Elimination System (NPDES) Permit Process (Illicit Discharge) (*public hearing*)

MOTION Motion to approve Ordinance Number 2770 was made by Mr. Weaver and second was by Mr. Pierce.

Mr. Brady stated that this Ordinance deals with water quality and addresses illicit discharge and creates enforceability for non-compliance.

Mr. Pierce pointed out that the State of Alabama is not exempt from these regulations.

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

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

ORDINANCE NUMBER 2771

Ordinance Number 2771 – An Ordinance Establishing Post-Construction Best Management Practices For Permanent Storm Water Management Control Structures (*public hearing*)

MOTION Motion to approve Ordinance Number 2771 was made by Mr. Weaver and second was by Mrs. Cook.

Mr. Brady stated that this ordinance addresses the requirements for post construction regulations and adds an enforceable mechanism to post construction violations.

Discussion ensued concerning the participation of HOA's which bear responsibility in some instances. Mr. Brady explained annual updates.

The Mayor opened the floor for a public hearing.

Beth Stewart, Executive Director of the Cahaba River Society, stated that they recognize the improvements of these new ordinance and had suggested a revised statement which she stated appears to have been amended. She submitted a letter and asked that it be made a part of these minutes (see Exhibit A, attached). She also commended Mr. Brady on his exemplary work on these ordinances by reaching out to other cities and bringing them together on a more cohesive ordinance.

There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

NEW BUSINESS

RESOLUTION NUMBER 5064

Resolution Number 5064 – A Resolution Declaring Certain Personal Property As Surplus And Directing The City Manager To Dispose/Sell Said Surplus

MOTION Motion to approve Resolution Number 5064 was made by Mr. Weaver and second was by Mr. Pierce.

Mr. Downes stated that this is a 2013 Police Tahoe that has been disabled for a long time and needs to be sold.

There being no one to address the Council, the Mayor called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

RESOLUTION NUMBER 5065

Resolution Number 5064 – A Resolution Declaring Certain Personal Property As Surplus And Directing The City Manager To Dispose/Sell Said Surplus

MOTION Motion to approve Resolution Number 5065 was made by Mr. Weaver and second was by Mr. Pierce.

Jason Harpe, Carr Riggs and Ingram, was present to present the audit for the fiscal year 2017. He explained the audit and explained the audit, financial statements. He indicated that the City has a good fund balance as well as financial reserves. He thanked the Finance Department for their assistance in the audit.

There being no one to address the Council, the Mayor called for the question.

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Mayor Curry – yes

Motion carried.

NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)

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 regular meeting on June 25, 2018, at 6:00 PM.

- Resolution Number 5066 - Authorizing The City Manager To Execute Supplemental Agreement For Neel Schaffer For Additional Design Work For Massey Road
- Resolution Number 5067 - A Resolution Declaring A Weed And Other Vegetation Nuisance Pursuant To Ordinance Number 2567 And Directing The City Manager To Abate Said Nuisance For Property Located At 704 Rockbridge Road
- Ordinance Number 2772 - An Ordinance Granting A Non-Exclusive Right-Of-Way Use Agreement To Access Fiber Group, Inc. For The Purpose Of Constructing, Installing, Maintaining And Operating A Network Within The Public Rights-Of-Way Within The City Of Vestavia Hills, Alabama
-

CITIZEN COMMENTS

At 7:13 PM, Mr. Weaver made a motion to adjourn. The meeting adjourned at 7:14 PM.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Exhibit A



Restoring and protecting the Cahaba River watershed and its rich diversity of life

June 11, 2018

Board of Directors

Officers

Tam Spencer, *President*
Robert Pless,
President-elect
Chair, Development
Stuart Roberts, *Treasurer*
Jeet Radia, PE, CIH, *Secretary*
Rob Angus, PhD,
VP Conservation, Chair, Science
Pam Baugh
Co-chair, Education
Helen Hays
Co-chair, Education
Henry Hughes,
Co-Chair, Stewardship
Bradford T. McLane, JD
Chair, Policy

Board Members

Neil Davis, AIA, LEED AP
Betsy Dobbins, PhD
Emily Harley
Balaji Kukoyi, PE
Matt Leavell, AIA, LEED AP
Min Sun Lee
Lea Ann Madinally
Bryance Matheny
Anthony Overton, PhD
Jay Pigford
Robert Pless
Margot Shaw
Stacy Thompson

Emeritus Board

Sanja Cobb (deceased)
Eleanor DelBene, DD
Co-Chair, Stewardship
David Cunningham
Bob Tate
Beth Maynor Finch
Frank Young, III

Staff

Beth Stewart
Executive Director
Tricia Sheets
Director of Administration
Randall Haddock, PhD
Field Director
Casey Laycock
Director of Development
Gordon Black
Education Director
La'Tanya Scott
Environmental Educator
Katie Robertson Shaddix
*Office/Communications
Manager*

City of Vestavia Hills City Council
1032 Montgomery Highway
Vestavia Hills, AL 35216

Regarding: Adoption of Vestavia Hills' Post-Construction Stormwater Ordinance

Dear Councilors,

The Cahaba River Society is a 501 (c) 3 non-profit conservation group located in Birmingham, Alabama. Our mission is to restore and protect the Cahaba River watershed and its rich diversity of life. The diverse lives depending on the Cahaba River include the 600,000 people and numerous businesses in the Birmingham Water Board service area relying on the river as a major source of its drinking water as well as its internationally significant diversity of freshwater wildlife.

We want to express our great appreciation for the thoughtful consideration Mayor Ashley and your staff have given to our comments on the SWMA *pro forma* stormwater ordinance. SWMA's version had several important shortcomings.

However, we believe the version prepared by your staff, which you have before you now, is an ordinance that will benefit both the citizens of Vestavia Hills as well as the Cahaba River.

Vestavia's DRAFT ordinance incorporates by reference the post-construction stormwater technical memorandum ('Addendum A'). We know that Irondale included language following the description of detention and retention ponds as being "highlighted as design options to assist in meeting the post-construction stormwater management requirements of the City's NPDES permit." Irondale added a following sentence that reads something like "However, these stormwater management approaches may not, by themselves, completely meet the City's requirements." (Please check with Irondale for that exact language).

That additional language addresses the serious concern CRS has about specifically highlighting detention and retention ponds as a means to assist "...meeting the post-construction stormwater management requirements of the City's NPDES permit." Ponds help meet important goals such as flood management, but such ponds alone will not meet the post-construction goals of this ordinance. We hope Vestavia Hills and the other Cahaba basin municipalities will consider inclusion of a similar qualification in their ordinance.

There are two qualitatively different pollution sources from stormwater runoff. The first is from the pollutants that wash *directly* off the landscape into Vestavia's storm drains. Oil and grease dripping from vehicles, pesticides from lawns, wood

preservatives from telephone poles and other outdoor wooden structures, and many, many other sources are examples.

The other important pollution source is an **indirect result** of the increased rate and volume of stormwater discharge that accompanies urbanization of a watershed. The increased amount of pavement associated with roads and parking lots, along with rooftops all 'harden' the landscape. As a result, streams must physically adapt to an increased rate and volume of stormwater discharge. The resulting 'in-stream' or 'channel' erosion causes stream sedimentation, the most important pollutant problem the Cahaba now faces.

Addressing these 'direct' and 'indirect' pollution sources requires different approaches. Detention ponds and retention ponds can help reduce flooding problems and somewhat reduce direct pollutant discharges. Detention/retention ponds typically will not infiltrate stormwater and thus may not meet the permit expectations for matching pre- and post-construction hydrology and filtering pollutants. Also, detention/retention ponds are not an effective practice to successfully address the increased volume of stormwater runoff that is a root cause of 'in-stream'/'channel' erosion.

Low Impact Development (LID) techniques and Green Infrastructure (GI) approaches developed over recent decades do filter pollutants and reduce both the rate and volume of stormwater runoff. This not only reduces 'in-stream' erosion, but can also minimize the size and cost of building detention/retention ponds, leaving more developable area for the project.

However, the development and engineering community in Alabama are only beginning to appreciate the importance of LID and GI techniques. While these stormwater management approaches have been shown to be less expensive than traditional approaches, only a few progressive engineering firms in Alabama have cultivated their understanding and ability to implement LID/GI approaches.

This puts the City of Vestavia Hills in a challenging position. We appreciate that encouraging the adoption of these new approaches is not easy. We hope you will think of the Cahaba River Society as a helpful resource in the educational work that is essential for encouraging the development community to adopt LID/GI approaches to managing these pollution problems that impact both Vestavia citizens and the Cahaba River.

We appreciate Vestavia Hills' leadership in addressing these post-construction stormwater pollution problems. Your staff have provided important leadership in bringing along other municipalities in the Cahaba River basin and we appreciate your commitment enormously.

We pledge to do what we can to facilitate Vestavia Hills' leadership in this collaborative effort among developers, their engineering contractors, and the City in the hope those efforts may result in better stormwater management for future projects.

Sincerely,



Beth K. Stewart
Executive Director
Cahaba River Society

RESOLUTION NUMBER 5066

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH NEEL-SCHAFFER, INC., FOR DESIGN SERVICES OF PROJECT NO. CMAQ-7030(600); SIDEWALKS ALONG CR-42 (MASSEY ROAD) FROM SR-3 (US-31, MONTGOMERY HIGHWAY) TO COLUMBIANA ROAD IN THE CITY OF VESTAVIA HILLS, JEFFERSON COUNTY

WHEREAS, on February 24, 2014, the City Council adopted and approved Resolution Number 4553 authorizing the City Manager to execute and deliver an agreement with Neel-Schaffer, Inc. (“the Consultant”), for design services for Project No. CMAQ-7030(600) for repairs along Massey Road; and

WHEREAS, the consultant recognized the need for the roadway to be widened to 22’ in the area where the roadway is being reconstructed thus requiring a redesign order to accommodate the wider roadway along with changes to the geotechnical analysis and report to reflect said changes; and

WHEREAS, the Consultant has submitted a supplemental agreement No. 2 detailing the anticipated costs of \$60,000 of which the City will be responsible for approximately 20% of said costs, an amount estimated at \$12,000; and

WHEREAS, a copy of said supplemental agreement is marked as Exhibit A, attached to and incorporated into this Resolution Number 5066 as though written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept said recommendations and retain the Consultant for the revisions through the execution of the supplemental agreement as detailed in Exhibit A.

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

1. The City Manager is hereby authorized to execute and deliver a supplemental agreement with Neel-Schaffer, Inc., for design services of Project No. CMAQ-7030(600); Sidewalks along CR-42 (Massey Road) From SR-3 (US-31, Montgomery Highway) To Columbiana Road In The City Of Vestavia Hills, Jefferson County; and
2. Said agreement is marked as Exhibit A, attached and incorporated into this Resolution Number 5066 as though written fully therein; and

3. This Resolution Number 5066 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 25th day of June, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



**ALABAMA
DEPARTMENT OF TRANSPORTATION**

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

Kay Ivey
Governor

John R. Cooper
Transportation Director

March 9, 2018

Mr. Christopher Brady
City Engineer, City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

RE: Jefferson County
Project No. CMAQ-7030(600)
Sidewalks Along CR-42(Massey Rd) from SR-3
(US-31, Montgomery Hwy) to CR-99 (Columbiana
Rd) in Vestavia Hills

Dear Mr. Brady,

Reference is made to the negotiated supplemental man-day and fee proposal from Neel-Schaffer, Inc. to perform additional work on the above-referenced project.

The overhead rate and operating margin will be as previously approved by the Bureau of Finance and Audits, External Audit Section.

Attached is a copy of the supplemental man-day and fee proposal as submitted by the consultant. After consideration of the work involved in the request, for additional Field Survey work, the Region agrees with the amount of \$13,583; for additional Geotechnical work, the Region agrees with the amount of \$6,946; for the additional Right-of-Way work, the Region agrees with the amount of \$25,985; for additional Roadway Plan Design work, the Region agrees with the amount of \$12,764; Therefore, the maximum fee has been approved for the amount of \$59,278. We feel this fee amount is just and fair compensation for the required work in this supplement.

The City of Vestavia may proceed with the supplemental agreement with Neel-Schaffer, Inc, using the aforementioned fee.

If we 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

DL/LAT/ddr
Attachment

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

Cc: Project File

March 20, 2018
NSI Project No. 11357

Mr. Christopher Brady, P. E.
City Engineer
City of Vestavia Hills
513 Montgomery Highway
P.O. Box 660854
Vestavia Hills, AL 35266-0854

RE: SUPPLEMENTAL AGREEMENT NO. 2
Project No. CMAQ-7030(600)
Sidewalks along CR-42 (Massey Road)
From SR-3 (US-31, Montgomery Highway) to
Columbiana Road in the City of Vestavia Hills
Jefferson County

Dear Christopher:

Enclosed is Supplemental Agreement No. 2 to the original Agreement between the City of Vestavia Hills and Neel Schaffer, Inc. dated February 25, 2014.

This supplemental agreement is being submitted for your approval and issuance of a notice to proceed with the work.

Should you have any questions concerning this submittal or need any additional information, do not hesitate to contact me at 205.912.8541.

Sincerely,
NEEL-SCHAFFER, INC.



Bob Portera, P.E.
Transportation Engineer Manager

Enclosures
Cc: File

**SUPPLEMENTAL AGREEMENT NO. 2
TO
THE AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
CITY OF VESTAVIA HILLS
AND
NEEL-SCHAFFER, INC.**

WHEREAS: The **City of Vestavia Hills (CITY)**, and **NEEL-SCHAFFER, INC. (CONSULTANT)** entered into an **AGREEMENT** on February 25, 2014 to perform engineering and environmental studies, prepare required environmental documents, secure corridor approval, perform field surveys, perform geotechnical investigations and reporting and prepare contract plans for improvements to Massey Road from US-31 (Montgomery Highway) to Columbiana Road in the City of Vestavia Hills, Jefferson County, Alabama.

WHEREAS: The **CONSULTANT** has identified the need for the roadway to be widened to 22' in the area where the roadway is being reconstructed. As a result, a portion of the project has been redesigned to accommodate the wider roadway. The geotechnical analysis and report will also need to be revised to reflect the changes.

NOW THEREFORE: In accordance with Section 8. of the Exhibit A, General Terms and Conditions of the **AGREEMENT**, the **CONSULTANT**, will provide the additional geotechnical services for a lump sum fee of \$59,278.00.

This work will be started immediately upon receipt of a notice to proceed. This Supplemental Agreement in no way modifies or changes the **AGREEMENT** of which it becomes a part, except as specifically stated herein.

CITY:

CITY OF VESTAVIA HILLS

CONSULTANT:

NEEL-SCHAFFER. INC.

BY:

Jeff Downes



BY:

Robert Portera, P.E.

TITLE:

City Manager

TITLE:

Engineer Manager

DATE:

DATE: 5/30/2018

3/7/2018

Alabama Department of Transportation

11:25 AM

Project No. CMAQ-7030(600) County Jefferson Description Massey Road from US-31 to Columbiana Road Scope of Work Corridor Study, Survey, Geotech, Contract Plans Project Length 0.78 Miles Consultant Neel-Schaffer, Inc.				
FIELD SURVEY				
Based on a 3 Man Crew				
Task A: Mobilization and Basic Control Survey				
A-1 Mobilize/Demobilize		0.50		
A-2 Contact Property Owners				
A-3 Perform Basic Control Survey	0.50	1.00	1.00	
A-4 Conduct On-site Inspection	0.50	0.50		
Task A Totals	1.00	2.00	1.00	
Task B: Project Alignment and Profile				
B-1 Run Closure of Basic Control Survey/Prepare Closure Diagram				
B-2 Establish Centerline/Obtain Ground Profile				
B-3 Obtain Topographic Data				
Task B Totals				
Task C: Supplemental Control Surveys and Data Gathering				
C-1 Traverse Cross-Roads and Railroads				
C-2 Stream Topography & Cross Sections/Complete HYD-100 & 101 Forms				
C-3 Define Drainage Areas/Prepare Schematic Drainage Map				
C-4 Obtain Cross-Sections at 50 feet Intervals and Ground Break Points				

3/7/2018

Alabama Department of Transportation

11:25 AM

FIELD SURVEY				
	PLS	Crew	Tech/CADD	Clerical
Task C Totals				
Task D: Utility Surveys, Drainage Sections and Compilation of Data				
D-1 Identify/Locate Utilities				
D-2 Obtain Hydrological Location Survey				
D-3 Tie All Available Section Corners & All Available Front Corners of Affected Properties to Project Centerline	1.00	3.00	1.00	
D-4 Obtain Copies of Latest Deeds	1.00		1.50	
D-5 Set & Reference Pls, PCs, POTs, POCs, & other critical points				
D-6 Reduce Survey Field Notes	0.50			
D-7 Submit Work for Review/Sealed Mylar Plot of Accepted Field Map	1.00		1.00	
Task D Totals	3.50	3.00	3.50	
TOTALS	4.50	5.00	4.50	

Project No.	CMAQ-7030(600)
County	Jefferson
Description	Massey Road from US-31 to Columbiana Road
Scope of Work	Corridor Study, Survey, Geotech, Contract Plans
Project Length	0.78 Miles
Consultant	Neel-Schaffer, Inc.
Fee Proposal (Field Survey)	

PERSONNEL COST			
	Man-days	x Daily Rate	
Project Manager (10% of PLS)	0.45	\$ 483.22	\$ 217.45
PLS	4.50	\$ 279.01	\$ 1,255.55
Survey Crew (see man-day sheet)	5.00	\$ 416.00	\$ 2,080.00
Engineering Technician/CADD	4.50	\$ 232.00	\$ 1,044.00
Clerical	0.00	\$ 176.00	\$ -
Total Direct Labor			\$ 4,597.00
Combined Overhead (%)	153.83		\$ 7,071.57
Out-of-Pocket Expenses**			\$ 674.73
Sub-Total			\$ 12,343.30
Operating Margin (10%)			\$ 1,234.33
Sub-Total			\$ 13,577.63
SUB-CONSULTANTS (attach man-day & fee FROM each sub-consultant; show total fee for each here)			
			\$ -
			\$ -
			\$ -
Subconsultant Administration Expense (5%)			\$ -
Sub-Total			\$ 13,577.63
Facilities Capital Cost of Money (% of Direct Labor)	0.11		\$ 5.06
TOTAL FEE			\$ 13,582.69

Project No.	CMAQ-7030(600)
County	Jefferson
Description	Massey Road from US-31 to Columbiana Road
Scope of Work	Corridor Study, Survey, Geotech, Contract Plans
Project Length	0.78 Miles
Consultant	Neel-Schaffer, Inc.

Out-of-pocket Expenses (Field Survey)

TRAVEL COST				
Mileage Cost	Trips	Miles/Trip	\$/Mile	Total
	7	116	\$0.540	\$ 438.48
	0	0	\$0.540	\$ -
	0	0	\$0.540	\$ -
	0	0	\$0.540	\$ -
Total Mileage Cost				\$ 438.48

Subsistence Cost	Days	# People	\$/Day	Total
Travel allowance (6 hour trips)	7	3	\$11.25	\$ 236.25
Travel allowance (12 hour trips - meal provided by others)	0	0	\$20.00	\$ -
Travel allowance (12 hour trips)	0	0	\$30.00	\$ -
Travel allowance (overnight)***	0	0	\$75.00	\$ -
				\$ -
Total Subsistence Cost				\$ 236.25
Total Travel Cost				\$ 674.73

PRINTING / REPRODUCTION COST					
Type of printing/reproduction	# of Sets	Sheets/Set	Total Sheets	Cost/Sheet	Total
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
Total Printing/Reproduction Cost					\$ -

Communication Cost (telephone, fax, etc.)	Total
	\$ -

Postage Cost (overnight, stamps, etc.)	Total
	\$ -

Other (provide description on next line)	Total
	\$ -

Total Out-of-pocket Expenses	\$ 674.73
-------------------------------------	------------------

Comments:

***You must have ALDOT approval for ANY overnight trips of less than 100 miles.

Project No.	CMAQ-7030(600)
County	Jefferson
Description	Massey Road from US-31 to Columbiana Road
Scope of Work	Corridor Study, Survey, Geotech, Contract Plans
Project Length	0.77 Miles
Consultant	Neel-Schaffer, Inc.
Fee Proposal (Geotechnical)	

PERSONNEL COST			
	Man-days	x Daily Rate	
			\$ -
PLS		\$ -	\$ -
Survey Crew (see man-day sheet)		\$ -	\$ -
Engineering Technician/CADD		\$ 271.56	\$ -
Clerical		\$ 176.00	\$ -
Total Direct Labor			\$ -
Combined Overhead (%)	157.06		\$ -
Out-of-Pocket Expenses**			
Sub-Total			\$ -
Operating Margin (10%)			\$ -
Sub-Total			\$ -
SUB-CONSULTANTS (attach man-day & fee FROM each sub-consultant; show total fee for each here)			
S&ME			\$ 6,615.00
			\$ -
			\$ -
Subconsultant Administration Expense (5%)			\$ 330.75
Sub-Total			\$ 6,945.75
Facilities Capital Cost of Money (% of Direct Labor)	0.11		\$ -
TOTAL FEE			\$ 6,945.75

Project No.	CMAQ-7030(600)				
County	Jefferson				
Description	Massey Road from US-31 to Columbiana Road				
Scope of Work	Corridor Study, Survey, Geotech, Contract Plans				
Project Length	0.77 Miles				
Consultant	Neel-Schaffer, Inc.				

Supporting Documentation for ROW Fee Proposal

Date of Research	Parcel Tax ID #	# of Tracts				
	39 00 01 2 000 019.000	1 of 25				
	39 00 01 1 002 004.000	2 of 25				
	29 00 36 4 006 009.000	3 of 25				
	29 00 36 4 006 008.000	4 of 25				
	29 00 36 4 006 007.000	5 of 25				
	29 00 36 4 006 006.000	6 of 25				
	29 00 36 4 006 004.013	7 of 25				
	29 00 36 4 006 004.012	8 of 25				
	29 00 36 4 006 004.011	9 of 25				
	29 00 36 4 006 004.010	10 of 25				
	29 00 36 4 006 004.009	11 of 25				
	29 00 36 4 006 004.008	12 of 25				
	29 00 36 4 006 004.007	13 of 25				
	29 00 36 4 006 004.006	14 of 25				
	29 00 36 4 006 004.005	15 of 25				
	29 00 36 4 006 004.004	16 of 25				
	29 00 36 4 006 004.003	17 of 25				
	29 00 36 4 006 004.002	18 of 25				
	29 00 36 4 006 004.001	19 of 25				
	29 00 36 4 006 004.000	20 of 25				
	29 00 36 4 006 003.000	21 of 25				
	29 00 36 4 006 003.001	22 of 25				
	29 00 36 4 006 003.002	23 of 25				
	29 00 36 4 006 002.000	24 of 25				
	29 00 36 4 006 001.000	25 of 25				
	Total Tracts:	25				

3/7/2018

Alabama Department of Transportation

11:25 AM

Project No. CMAQ-7030(600) County Jefferson Description Massey Road from US-31 to Columbiana Road Scope of Work Corridor Study, Survey, Geotech, Contract Plans Project Length 0.77 Miles Consultant Neel-Schaffer, Inc.

ROW Map, Tract Sketches and Deeds	PLS	Tech/CADD	Clerical
Estimated number of tracts= 25			
Task A: Right-of-Way Map	1.50	3.00	
Task B: Tract Sketches	3.00	12.50	
Task C: Deeds	3.00	12.50	2.00
TOTALS	7.50	28.00	2.00

Note: A "Tract" is all property of a single owner acquired by ALDOT. This includes all parcels, drainage easements, construction easements, etc.

Project No.	CMAQ-7030(600)
County	Jefferson
Description	Massey Road from US-31 to Columbiana Road
Scope of Work	Corridor Study, Survey, Geotech, Contract Plans
Project Length	0.77 Miles
Consultant	Neel-Schaffer, Inc.
Fee Proposal (ROW Map, Tract Sketches & Deeds)	

PERSONNEL COST			
	Man-days	x Daily Rate	
Project Manager (10% of Eng.)	0.75	\$ 483.22	\$ 362.42
PLS	7.50	\$ 279.01	\$ 2,092.58
Engineering Technician/CADD	28.00	\$ 232.00	\$ 6,496.00
Clerical	2.00	\$ 176.00	\$ 352.00
Total Direct Labor			\$ 9,303.00
Combined Overhead (%)	153.83		\$ 14,310.80
Out-of-Pocket Expenses**			\$ -
Sub-Total			\$ 23,613.80
Operating Margin (10%)			\$ 2,361.38
Sub-Total			\$ 25,975.18
SUB-CONSULTANTS (attach man-day & fee FROM each sub-consultant; show total fee for each here)			
			\$ -
			\$ -
			\$ -
Subconsultant Administration Expense (5%)			\$ -
Sub-Total			\$ 25,975.18
Facilities Capital Cost of Money (% of Direct Labor)	0.11		\$ 10.23
TOTAL FEE			\$ 25,985.41

**See Grand Total Fee sheet

Project No.	CMAQ-7030(600)
County	Jefferson
Description	Massey Road from US-31 to Columbiana Road
Scope of Work	Corridor Study, Survey, Geotech, Contract Plans
Project Length	0.77 Miles
Consultant	Neel-Schaffer, Inc.

Out-of-pocket Expenses (ROW Map, Tract Sketches & Deeds)

TRAVEL COST				
Mileage Cost	Trips	Miles/Trip	\$/Mile	Total
	0	0	\$0.535	\$ -
	0	0	\$0.535	\$ -
	0	0	\$0.535	\$ -
	0	0	\$0.535	\$ -
Total Mileage Cost				\$ -

Subsistence Cost				
	Days	# People	\$/Day	Total
Travel allowance (6 hour trips)	0	0	\$11.25	\$ -
Travel allowance (12 hour trips - meal provided by others)	0	0	\$20.00	\$ -
Travel allowance (12 hour trips)	0	0	\$30.00	\$ -
Travel allowance (overnight)***	0	0	\$75.00	\$ -
				\$ -
Total Subsistence Cost				\$ -
Total Travel Cost				\$ -

PRINTING / REPRODUCTION COST					
Type of printing/reproduction	# of Sets	Sheets/Set	Total Sheets	Cost/Sheet	Total
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
Total Printing/Reproduction Cost					\$ -

Communication Cost (telephone, fax, etc.)	Total
	\$ -

Postage Cost (overnight, stamps, etc.)	Total
	\$ -

Other (provide description on next line)	Total
	\$ -

Total Out-of-pocket Expenses		\$ -
-------------------------------------	--	-------------

Comments:

***You must have ALDOT approval for ANY overnight trips of less than 100 miles.

Project Number	<u>CMAQ-7030(600)</u>
County	<u>Jefferson</u>
Description	<u>Massey Road from US-31 to Columbiana Road</u>
Scope of work	<u>Corridor Study, Survey, Geotech, Contract Plans</u>
Length	<u>0.77</u> miles
Consultant Neel-Schaffer, Inc.	

ROADWAY PLANS SHEET TITLE	NO OF SHEETS	% REWORK	ESTIMATED MAN-DAYS			
			ENGINEER		TECHNICIAN	
			SHEET	TOTAL	SHEET	TOTAL
TITLE SHEET						
INDEX SHEET						
PROJECT NOTE SHEET						
PLANS LEGEND						
TYPICAL SECTIONS						
Main Roadway	2.00	75%	0.15	0.23	0.75	1.13
Cross Roads						
Detour & Misc.						
Ramps						
SUMMARY SHEET						
Main Summary	1.00	25%	0.10	0.03	0.50	0.13
SUMMARY BOX SHEETS						
Roadway Pipe	0.10	50%	0.10	0.01	0.50	0.03
Culvert Extension, New Culvert						
Bridge Culvert Extension, New Bridge Culvert						
Guardrail						
Slope Paving (Under Bridges)						
Side Drain Pipe						
Signing						
Base & Pavement						
Bridge						
Striping & Pavement Markings						
Curb & Gutter						
Bridge End Slabs						
Roadway Lighting						
Sidewalk	0.50	25%	0.10	0.01	0.50	0.06
Slope Paving (Ditches)						
Ditch Summary						
Concrete Safety Barrier						
Retaining Wall	0.10	100%	0.10	0.01	0.50	0.05
Misc. Boxes						
Erosion Control	0.10	25%	0.10		0.50	0.01
PLAN & PROFILE						
Main Roadway	6.00	50%	0.50	1.50	1.00	3.00
Crossroads						
Detours						
Retaining Walls						
PAVING LAYOUT						

ROADWAY PLANS SHEET TITLE	NO OF SHEETS	% REWORK	ESTIMATED MAN-DAYS			
			ENGINEER		TECHNICIAN	
			SHEET	TOTAL	SHEET	TOTAL
Main Roadway (includes striping and signing)	1.50	25%	0.25	0.09	0.75	0.28
Crossroads						
Intersections						
INTERCHANGES						
Geometrics						
Ramps Profiles						
Site Grading						
Cross Sections						
Signing						
TRAFFIC CONTROL						
Sequence of Construction						
Summary & notes						
Typical Section Sketches						
Signing Layout						
Special Drawings						
SIGNING						
Sign Layout						
Sign X-Section						
Sign Panel Details						
Soils Data Sheets (provided by ALDOT)						
SIGNALIZATION						
Signal Layout (1 per site)						
Traffic Analysis						
Traffic Counts (1 per site)						
Signal Warrant Analysis (1 per site)						
Soils Data Sheets (provided by ALDOT)						
Special Details						
UTILITY SHEETS						
Utility Locations						
DRAINAGE SECTIONS						
Pipe & Culvert X-Sect./Hydraulic Computation	3.00	100%	0.25	0.75	0.75	2.25
Hydraulic Data Sheet						
SOIL SHEETS						
Soil Boring Logs	1.00	100%	0.06	0.06	0.13	0.13
Soil Profile						
LIGHTING						
Plan Layout						
Special Details						
EROSION CONTROL						
Erosion Control Plans	2.00	25%	0.10	0.05	0.50	0.25

ROADWAY PLANS SHEET TITLE	NO OF SHEETS	% REWORK	ESTIMATED MAN-DAYS			
			ENGINEER		TECHNICIAN	
			SHEET	TOTAL	SHEET	TOTAL
CBMPP						
ROADWAY CROSS SECTIONS						
Main Roadway	6.00	100%	0.15	0.90	0.50	3.00
Crossroads						
Earthwork Balancing						
REVIEW COMMENTS						
30% Review						
Plan-in-Hand Inspection						
PS&E Inspection						
Stormwater Permits						
Cost Estimates						
Design Hearing						
SUB-TOTAL	23.30			3.64		10.32
10% Supervision				0.36		
TOTALS	23.30			3.64		10.32

Project No.	CMAQ-7030(600)
County	Jefferson
Description	Massey Road from US-31 to Columbiana Road
Scope of Work	Corridor Study, Survey, Geotech, Contract Plans
Project Length	0.77 Miles
Consultant	Neel-Schaffer, Inc.
Fee Proposal (Roadway Plans)	

PERSONNEL COST			
	Man-days	x Daily Rate	
Project Manager (10% of Eng.)	0.36	\$ 483.22	\$ 173.96
Engineer	3.64	\$ 412.92	\$ 1,503.03
Engineering Technician/CADD	10.32	\$ 271.56	\$ 2,802.50
Clerical	0.00	\$ 176.00	\$ -
Total Direct Labor			\$ 4,479.49
Combined Overhead (%)	157.06		\$ 7,035.49
Out-of-Pocket Expenses**			\$ 84.60
Sub-Total			\$ 11,599.58
Operating Margin (10%)			\$ 1,159.96
Sub-Total			\$ 12,759.54
SUB-CONSULTANTS (attach man-day & fee FROM each sub-consultant; show total fee for each here)			
			\$ -
			\$ -
Subconsultant Administration Expense (5%)			\$ -
Sub-Total			\$ 12,759.54
Facilities Capital Cost of Money (% of Direct Labor)	0.11		\$ 4.93
TOTAL FEE			\$ 12,764.47

**See Grand Total Fee sheet

Project No.	CMAQ-7030(600)
County	Jefferson
Description	Massey Road from US-31 to Columbiana Road
Scope of Work	Corridor Study, Survey, Geotech, Contract Plans
Project Length	0.77 Miles
Consultant	Neel-Schaffer, Inc.

Out-of-pocket Expenses (Roadway Plans)

TRAVEL COST				
Mileage Cost	Trips	Miles/Trip	\$/Mile	Total
City Hall/Project Site	2	30	\$0.535	\$ 32.10
ALDOT Birmingham Area		50	\$0.535	\$ -
			\$0.535	\$ -
			\$0.535	\$ -
Total Mileage Cost				\$ 32.10

Subsistence Cost	Days	# People	\$/Day	Total
Travel allowance (6 hour trips)			\$11.25	\$ -
Travel allowance (12 hour trips - meal provided by others)			\$20.00	\$ -
Travel allowance (12 hour trips)			\$30.00	\$ -
Travel allowance (overnight)***			\$75.00	\$ -
				\$ -
Total Subsistence Cost				\$ -
Total Travel Cost				\$ 32.10

PRINTING / REPRODUCTION COST					
Type of printing/reproduction	# of Sets	Sheets/Set	Total Sheets	Cost/Sheet	Total
Half Size Prints	15	23.30	350	\$ 0.15	\$ 52.50
					\$ -
				\$ -	\$ -
				\$ -	\$ -
				\$ -	\$ -
Total Printing/Reproduction Cost					\$ 52.50

Communication Cost (telephone, fax, etc.)	Total
	\$ -

Postage Cost (overnight, stamps, etc.)	Total
	\$ -

Other (provide description on next line)	Total
	\$ -

Total Out-of-pocket Expenses	\$ 84.60
-------------------------------------	-----------------

Comments:

***You must have ALDOT approval for ANY overnight trips of less than 100 miles.

RESOLUTION NUMBER 5067

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

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

WHEREAS, the City's Compliance Officer has made a "First Demand" on the property located at 704 Rockbridge Road; a copy of which is marked as "Exhibit A," attached to and incorporated into this Resolution Number 5067 as if written fully therein; and

WHEREAS, a public hearing was conducted at the regularly scheduled City Council meeting of June 25, 2018 at 6:00 PM in which the facts of the matter were discussed; and

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

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

1. The property located at 704 Rockbridge Road is hereby declared a nuisance pursuant to the provisions of Ordinance Number 2567 and the City Manager is hereby authorized to abate said nuisance pursuant to the terms and provisions of said ordinance.
2. This Resolution shall become effective immediately upon its approval and adoption.

APPROVED and ADOPTED this the 25th day of June, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

1 ORI # AL0010900	2 Date of Report 06 01 18	3 Time of Report 13:30	4 Incident Type <input type="checkbox"/> AM <input type="checkbox"/> PU <input checked="" type="checkbox"/> ML	5 Supplement Date	6 Agency Case Number 2018-00014202
----------------------	------------------------------	---------------------------	---	-------------------	---------------------------------------

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

10 Type of Incident or Offense <input type="checkbox"/> Felony <input checked="" type="checkbox"/> Misdemeanor <input type="checkbox"/> Attempted <input checked="" type="checkbox"/> Completed Weeds	11 Degree (Circle) 1 2 3	12 UCR Code	13 State Code/Local Ordinance VHC 302.4
14 Type of Incident or Offense <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Attempted <input type="checkbox"/> Completed	15 Degree (Circle) 1 2 3	16 UCR Code	17 State Code/Local Ordinance

18 Place of Occurrence Check here if event occurred at victim's residence

If offense occurred at victim's residence, then only the approximate location should be listed in this section. (For example, a block number should be entered.) If the offense occurred elsewhere, then the specific address should be listed here.

Victim Demographics (Where victim is an individual)

19 Sex <input type="checkbox"/> M <input type="checkbox"/> F	20 Race <input type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> I	21 Ethnicity <input type="checkbox"/> Hispanic <input type="checkbox"/> Other	22 Multiple Victims <input type="checkbox"/> LE Officer	23 Age
---	--	--	--	--------

24 Offender Suspected of Using
 Alcohol Drugs N/A
 Computer Equipment

25 Juvenile Gang Adult Gang None/Unknown

26 Hate Bias Yes No

27 Bias Code

29 Point of Entry <input type="checkbox"/> Door <input type="checkbox"/> Roof <input type="checkbox"/> Window <input type="checkbox"/> Other	30 Method of Entry <input type="checkbox"/> Forcible <input type="checkbox"/> Attempted Forcible <input type="checkbox"/> No Force	31 Local Use	32 Lighting <input checked="" type="radio"/> Natural 2 Moon 3 Artificial Exterior 4 Artificial Interior 5 Unknown	33 Weather 1 Clear <input checked="" type="radio"/> 2 Cloudy 3 Rain 4 Fog 5 Snow 6 Hail 7 Unknown	34 Location Type (Circle) 01 Terminal 09 Drug Store 02 Bank 10 Field/Woods 03 Bar 11 Govt/Public Building 04 Church 12 Supermarket 05 Commercial 13 Highway/Street 06 Construction 14 Hotel/Motel 07 Conv Store 15 Jail/Prison 08 Dept Store 16 Lake/Waterway	17 Liquor Store 18 Parking Lot/Garage 19 Storage Facility <input checked="" type="radio"/> 20 Residence/Home 21 Restaurant 22 School/College 23 Service/Gas Station 24 Specialty Store 25 Other/Unknown
---	---	--------------	--	--	---	---

35 Occurred from MM/DD/YY: 05/23/18 36 Time of Event: 12:00 AM PM MIL 37 Day of Week: **Wednesday**

38 Occurred to MM/DD/YY: 06/01/18 39 Time of Event: 12:00 AM PM MIL 40 Day of Week: **Friday**

41 # Premises Entered (Burglary)

42 Type Criminal Activity
B Buying/Receiving D Distributing/Selling O Operating/Promoting T Transporting/Importing
C Cultivating/Manu E Exploiting Children P Possessing/Concealing U Using/Consuming

43 Victim Type
I Individual F Financial (Bank) R Religious Org
B Business G Government S Society

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

Continued on Supplement

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

50 Stolen Vehicle Only Area Stolen Residence Business Rural 51 Ownership verified by: Tag Receipt Title Bill of Sale Other

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

53 Vehicle Year 54 Vehicle Make 55 Vehicle Model 56 Number Veh Stolen 57 Vehicle Description

58 Vehicle Style 59 Vehicle Color
Top _____ Bottom _____

60 License 61 LST 62 LIY 63 Tag Color

64 Vehicle VIN Number 65 Warrant Signed Yes No Warrant Number _____

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

67 Recovered in your jurisdiction? Yes No Where? _____

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

74 Case Status 1 Pending 2 Inactive 3 Closed	75 Multiple Cases Closed Listed Above <input type="checkbox"/> Multiple Cases Closed Listed On Supplement <input type="checkbox"/>	76 Entered NCIC/ACJIC <input type="checkbox"/> Yes <input type="checkbox"/> No	77 Case Disposition 1 Cleared by Arrest (Juvenile) 2 Cleared by Arrest (Adult) 3 Unfounded 4 Exceptional Clearance 5 Administratively Cleared	78 Exceptional Clearance (Circle One) A Suspect/Offender Dead B Prosecution Declined/ Other Prosecution C Extradition Denied D Victim Refused to Cooperate E Juvenile (No Custody) F Death of Victim	79 Reporting Officer Coleman, James Officer ID Number _____
Date (MMDD/YY)				80 Assisting Officer Officer ID Number _____	
NIC/AIN #:				81 Supervisor Approval Officer ID Number _____	
				82 Watch Commander Officer ID Number _____	

28 Domestic Violence
Yes No

EVENT

PROPERTY

VEHICLES

ADMINISTRATION

Incident/Offense Report - Continued		83 Date of Report (MM/DD/YY) 06 01 18		84 Time of Report 13:30		85 Agency Case Number 2018-00014202		87 <input type="checkbox"/> Offender <input checked="" type="checkbox"/> Suspect <input type="checkbox"/> Missing Person		<input type="checkbox"/> Check if Multiple	
88 Reported By (Last, First, Middle Name) Corp. J. Coleman,						89 Suffix		90 <input type="checkbox"/> Resident <input type="checkbox"/> Non-Resident		91 Home Phone	
94 Victim #		95 Victim (Last, First, Middle Name) City of Vestavia				96 Suffix		97 Address (Street, City, State, Zip) 1032 Montgomery Highway Vestavia Hills, AL 35216		98 Home Phone	
99 Work Phone (205)978-0113		93 Other Phone		99 Work Phone (205)978-0140		100 Other Phone		104 Work Phone		105 Other Phone	
101 Employer/School		102 Occupation		103 Address (Street, City, State, Zip)		104 Work Phone		105 Other Phone			
106 Sex <input type="checkbox"/> M <input type="checkbox"/> F		107 Race <input type="checkbox"/> W <input type="checkbox"/> B		108 English <input type="checkbox"/> Spanish <input type="checkbox"/> Other		109 HGT		110 WGT		111 Date of Birth	
112 Age		113 Victim SSN		114 Complainant SSN		115 Multiple Victims <input type="checkbox"/> LE Officer		116 Ethnicity <input type="checkbox"/> Hispanic <input type="checkbox"/> Other		117 Injury <input type="checkbox"/> Yes <input type="checkbox"/> No	
118 Offender known to victim? <input type="checkbox"/> Yes <input type="checkbox"/> No		119 Victim was? (Explain Relationship.)		120 Relationship Code		121 Weapons Used <input type="checkbox"/> Firearm <input type="checkbox"/> Knife <input type="checkbox"/> Hands, Fist, Feet, Voice, etc. <input type="checkbox"/> Other Dangerous		122 Description of Weapons/Firearms/Tools Used in Offense Describe: _____		<input type="checkbox"/> Handgun <input type="checkbox"/> Rifle <input type="checkbox"/> Shotgun <input type="checkbox"/> Unknown	
123 Place of Occurrence 704 Rockbridge Rd. Vestavia Hills, AL 35216		124 Type of Injury N None I Internal Injury M Minor Injury T Loss of Teeth B Broken Bones L Severe Laceration O Other Major Injury U Unconscious		125 Sector		126 Circumstances: Homicide & Assault		128 Assault <input type="checkbox"/> Simple <input type="checkbox"/> Aggravated		129 Treatment for Assault? <input type="checkbox"/> Yes <input type="checkbox"/> No	
127 Location: Rape		130 Verify for Rape Exam? <input type="checkbox"/> Yes <input type="checkbox"/> No		131 Treatment for Rape? <input type="checkbox"/> Yes <input type="checkbox"/> No		132 Off #		133 Name (Last, First, Middle) Savage, Terry		134 SFX	
135 Alias		136 Social Security #		137 Race <input checked="" type="checkbox"/> W <input type="checkbox"/> B		138 Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F		139 Date of Birth		140 Age 74	
141 Address (Street, City, State, Zip) 704 Rockbridge Rd. Vestavia Hills, AL 35216		142 HGT 5'9		143 WGT 210		144 Ethnicity <input checked="" type="checkbox"/> Other		145 Language <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Other			
146 Probable Destination		147 Eye BRO		148 Hair BRO		149 Complexion		150 Armed <input type="checkbox"/> Yes <input type="checkbox"/> No		Weapon	
151 Clothing		152 <input type="checkbox"/> Scars <input type="checkbox"/> Marks <input type="checkbox"/> Tattoos <input type="checkbox"/> Amputations		153 <input type="checkbox"/> Arrested <input type="checkbox"/> Dual Arrest (Domestic Violence) <input type="checkbox"/> Wanted		154 Off #		155 Name (Last, First, Middle)		156 SFX	
157 Alias		158 Social Security #		159 Race <input type="checkbox"/> W <input type="checkbox"/> B		160 Sex <input type="checkbox"/> M <input type="checkbox"/> F		161 Date of Birth		162 Age	
163 Address (Street, City, State, Zip)		164 HGT		165 WGT		166 Ethnicity <input type="checkbox"/> Hispanic <input type="checkbox"/> Other		167 Language <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Other			
168 Probable Destination		169 Eye		170 Hair		171 Complexion		172 Armed <input type="checkbox"/> Yes <input type="checkbox"/> No		Weapon	
173 Clothing		174 <input type="checkbox"/> Scars <input type="checkbox"/> Marks <input type="checkbox"/> Tattoos <input type="checkbox"/> Amputations		175 <input type="checkbox"/> Arrested <input type="checkbox"/> Dual Arrest (Domestic Violence) <input type="checkbox"/> Wanted		176 Name (Last, First, Middle)		177 Sex <input type="checkbox"/> M <input type="checkbox"/> F		178 Race <input type="checkbox"/> W <input type="checkbox"/> B	
179 Date of Birth		180 Address		181 Home		182 Work		183 Other			
184		185		186		187		188		189 Home	
190 Work		191 Other		192		193		194		195	
196		197 Home		198 Work		199 Other		200 Witness # 1 SSN		201 Witness # 2 SSN	
202 Witness # 3 SSN		203 6-1-2018 506 Weed Ordinance		204 Continued on Supplement <input type="checkbox"/> Yes <input type="checkbox"/> No		205 Assisting Agency ORI		206 Assisting Agency Case Number		207 SFX	
208 Warrant Signed <input type="checkbox"/> Yes <input type="checkbox"/> No		209 Add. Cases Closed Narrative <input type="checkbox"/> Y <input type="checkbox"/> N		210		211 Local Use		212 State Use			
<p>NARRATIVE</p> <p>Corporal J. Coleman received three complaints from neighbors who live around the suspect, Mr. Savage about his yard. I went over to the property and observed that the property was in violation of the City's Weed Ordinance. On 5-23-2018 I went to the suspect's house and knocked on the door. No one answered. I placed a letter on the front storm door of the residence. The letter stated that the property was in violation of the City's Weed Ordinance and had to be corrected within 48 hrs. per the ordinance. Corporal Coleman observed after the 48 hrs. were up, nothing had been done to the property. I received a phone call from the suspect several days after the letter was posted. The suspect stated that they had just put his wife on hospice care and someone would come to the house on 5-29-2018 to cut the grass. Corp. waited until after 5-29-2018 and went to look at the property. The property still hadn't been touched. Corp.</p>											
<p>I hereby affirm that I have read this report and that all the information given by me is correct to the best of my knowledge. I will assume full responsibility for notifying the agency if any stolen property or missing person herein reported is returned.</p> <p>Signature _____</p>											

**ADDITIONAL INCIDENT/OFFENSE
NARRATIVE CONTINUED**

79 Date and Time of Report			
0	6	0	1
M	D	Y	8
82 Type Report: <input checked="" type="checkbox"/> 1. Continuation			

13:30

<input type="checkbox"/> AM	80 Case #
<input type="checkbox"/> PM	2018-00014202
<input checked="" type="checkbox"/> NLT	

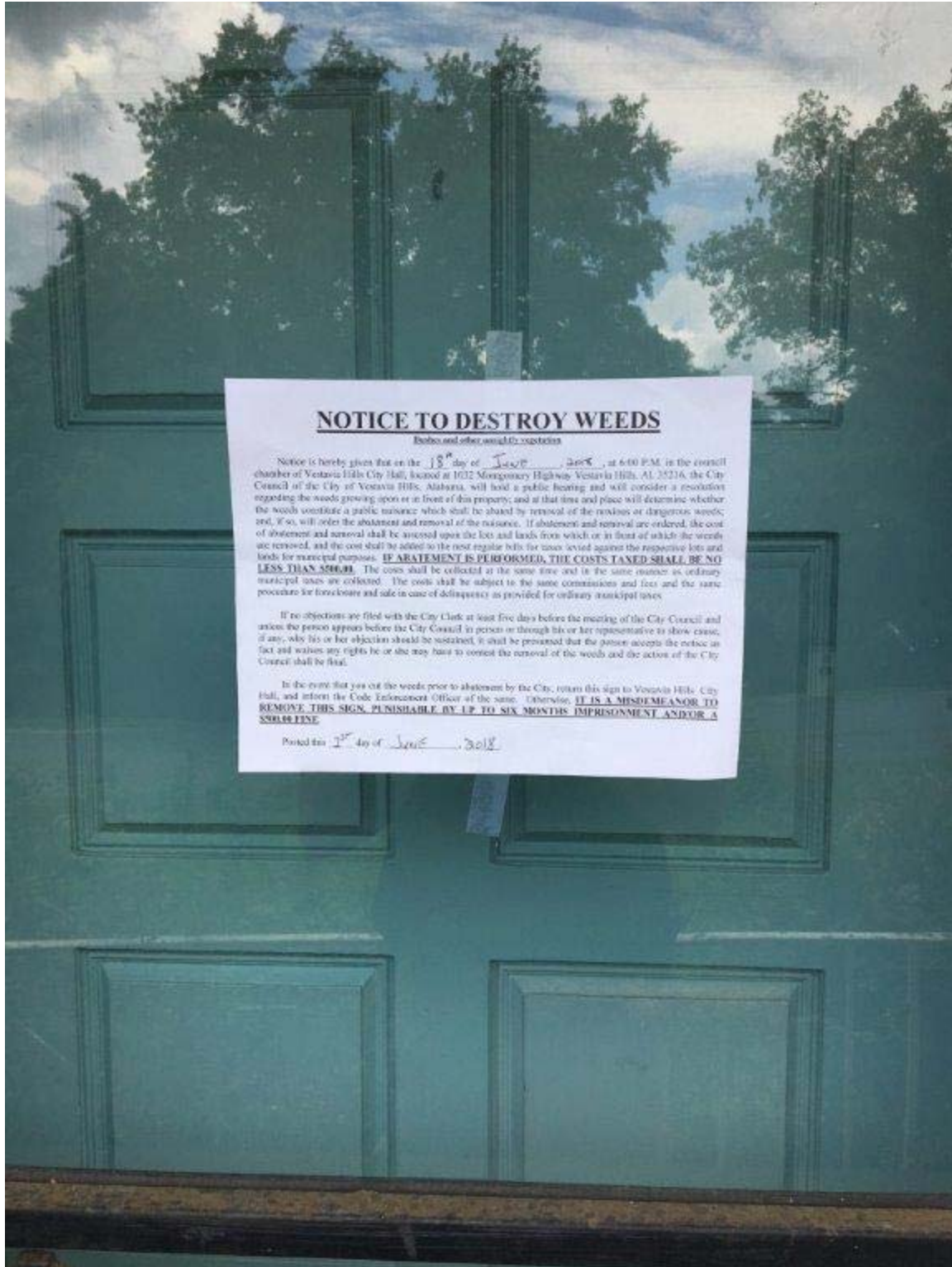
NARRATIVE

6-1-2018 506 Weed Ordinance

had knowledge that the suspect's son and daughter-in-law were living with the suspect and were capable of cutting the grass plus they have a teenage son who could've cut the grass. On 6-1-2018 I placed a Notice To Destroy Weeds sign on the front door. The notice stated that the suspect was to appear before the City Council on 6-18-2018 or have the yard cut and cleaned up. The neighbors are very upset that the property looks the way it does. The neighbors are concerned about their property values.

NARRATIVE

NARRATIVE



NOTICE TO DESTROY WEEDS

Brush and other unwanted vegetation

Notice is hereby given that on the 18th day of June, 2018, at 6:00 P.M. in the council chamber of Vestavia Hills City Hall, located at 1032 Montgomery Highway, Vestavia Hills, AL 35216, the City Council of the City of Vestavia Hills, Alabama, will hold a public hearing and will consider a resolution regarding the weeds growing upon or in front of this property; and at that time and place will determine whether the weeds constitute a public nuisance which shall be abated by removal of the noxious or dangerous weeds; and, if so, will order the abatement and removal of the nuisance. If abatement and removal are ordered, the cost of abatement and removal shall be assessed upon the lots and lands from which or in front of which the weeds are removed, and the cost shall be added to the next regular bills for taxes levied against the respective lots and lands for municipal purposes. **IF ABATEMENT IS PERFORMED, THE COSTS TAXED SHALL BE NO LESS THAN \$500.00.** The costs shall be collected at the same time and in the same manner as ordinary municipal taxes are collected. The costs shall be subject to the same commissions and fees and the same procedure for foreclosure and sale in case of delinquency as provided for ordinary municipal taxes.

If no objections are filed with the City Clerk at least five days before the meeting of the City Council and unless the person appears before the City Council, in person or through his or her representative to show cause, if any, why his or her objection should be sustained, it shall be presumed that the person accepts the notice in fact and waives any rights he or she may have to contest the removal of the weeds and the action of the City Council shall be final.

In the event that you cut the weeds prior to abatement by the City, return this sign to Vestavia Hills City Hall, and inform the Code Enforcement Officer of the same. **Otherwise, IT IS A MISDEMEANOR TO REMOVE THIS SIGN, PUNISHABLE BY UP TO SIX MONTHS IMPRISONMENT AND/OR A \$500.00 FINE.**

Posted this 18th day of June, 2018



VESTAVIA HILLS
POLICE DEPARTMENT

ASHLEY C. CUREY
Mayor

DANNY P. BARY
Chief of Police

May 23, 2018

To: Owner of listed property

Property Location: 704 RockBridge Rd.
Vestavia Hills, AL 35216

A complaint has been received that the following Violation exists on the above referenced property.

City Ordinance Number 2567

All premises and exterior property shall be maintained free from weeds or plant growth in excess of (12) twelve inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation. This is pertaining to the front, sides and back of your property.

Legal action will be taken against you if the lot is not taken care of within 48 Hrs.
Please give me a call so we can resolve this matter at 205-978-0113

Respectfully,
Corporal Jimmy Coleman
Code Enforcement
Vestavia Hills Police Department

A LIFE ABOVE

VESTAVIA HILLS CITY HALL
1011 MONTGOMERY HWY
VESTAVIA HILLS, AL 35216

205 978 0140
VESTAVIAHILLSPOLICE.COM









ORDINANCE NUMBER 2772

AN ORDINANCE GRANTING A NON-EXCLUSIVE RIGHT-OF-WAY USE AGREEMENT TO ACCESS FIBER GROUP, INC. FOR THE PURPOSE OF CONSTRUCTING, INSTALLING, MAINTAINING AND OPERATING A NETWORK WITHIN THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF VESTAVIA HILLS, ALABAMA

WHEREAS, Access Fiber Group, Inc. desires to construct, install, operate and maintain, in accordance with regulations promulgated by the Federal Communications Commission and the Alabama Public Service Commission, a fiber-based telecommunications Network (or Networks) (as defined herein) within the City of Vestavia Hills, Alabama; and

WHEREAS, Access Fiber Group, Inc. agrees and recognizes that it is required to obtain consent in the form of a right-of-way use agreement from the City of Vestavia Hills in order to construct the proposed Network within the corporate limits of the City of Vestavia Hills; and

WHEREAS, the City Council of the City of Vestavia Hills wishes to accommodate the request of Access Fiber Group, Inc. and grant it a right-of-way use agreement for the construction, installation, operation, and maintenance of the proposed Network in accordance with the terms and conditions contained herein.

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

The City Council of the City of Vestavia Hills does hereby grant to Access Fiber Group, Inc. a non-exclusive rights-of-way use agreement granting it the limited authority to construct, install, operate and maintain a Network (or Networks) in the City of Vestavia Hills in and along public rights-of-way, subject to the terms and conditions set forth in the following agreement:

AGREEMENT

This Rights-of-way Use Agreement (this "Agreement") is entered into on this the _____ day of _____, 2018 (the "Effective Date"), by and between the City of Vestavia Hills, Alabama (hereinafter referred to as the "City"), and Access Fiber Group, Inc., a Delaware corporation, on behalf of itself and for the benefit of its affiliates (hereinafter referred to as the "Company").

WITNESSETH:

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

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

1.1 "City" means the City of Vestavia Hills, Alabama.

1.2 "City Council" means the City Council of the City of Vestavia Hills, Alabama.

1.3 “Equipment” means the fiber optic and coaxial cables, wires, meters, pedestals, power switches, poles and other support structures, and related equipment, whether referred to singly or collectively, to be installed and operated by the Company hereunder.

1.4. “Gross Revenue” means recurring revenue received by the Company for the provision of Services to customers of such Services wholly consumed within the City. Gross Revenue shall not include: (a) sales, ad valorem or other types of “add on” taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid or collected for any governmental or quasi-governmental agency; (b) retail discounts or other promotions; (c) non-collectable amounts due Company or its customers; (d) refunds or rebates; (e) non-operating revenues such as interest income or gain from the sale of an asset; or (f) payments received by Company for the construction of the Network or Network facilities.

1.5 Intentionally Omitted

1.6 “Network”, or collectively “Networks”, means one or more of the protocol-agnostic, fiber-based optical networks operated by the Company to serve its customers in the City.

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

1.8 "Rights-of-way" means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights-of-way, including, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses held by the City or location within the City which shall entitle the Company to use the same for the purpose of installing, operating, repairing and maintaining the Network. This term shall not include county, state, or federal rights-of-way or any property owned by any person or entity other than the City, except as provided by applicable laws or pursuant to an agreement between the City and any such person or entity.

1.9 “Services” means Telecommunications services provided through the Network by the Company to its customers.

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

SECTION 2. Grant of Authority.

2.1 Access to Rights-of-way. The City hereby grants to the Company the non-exclusive and limited authority to construct, install, maintain, and operate its Network in and along the Rights-of-way in the City. Except as otherwise provided herein, the Company shall obtain the reasonable approval of the City Engineer or his/her designee before constructing, expanding, or extending the Network.

2.2 Attachment to Third-Party Property. Subject to obtaining the permission of the owner(s) of the affected property, the City hereby authorizes and permits the Company to enter upon the Rights-of-way and to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Equipment in or on poles or other structures located within the Rights-of-way owned by public utility companies or other property owners as may be permitted by the public utility company or property owner, as the case may be. Where third-party property is not available for the attachment of Equipment, the Company may install its own poles in the Rights-of-way, consistent with the requirements that the City imposes on similar installations made by other utilities that use and occupy the Rights-of-way.

SECTION 3. Compensation. In order to compensate the City for Company's entry upon and deployment within the Rights-of-way, Company shall pay to the City an annual use fee (the "Use Fee") in the amount equal to five percent (5%) of Gross Revenues received by Company for the provision of Services that are wholly consumed by its customers within the City, and shall be due and payable in arrears not later than forty-five (45) days after each anniversary of the Effective Date. The City represents and covenants that the City owns or controls all Rights-of-way for the use of which it is collecting from Company the Use Fee pursuant to this section.

SECTION 4. Duration and Term. This Agreement granted hereunder shall be for an initial term of twenty (20) years commencing on the Effective Date of this Ordinance and Agreement, unless otherwise lawfully renewed, revoked or terminated as herein provided. The term of this Agreement shall be renewed automatically for three (3) successive terms of five (5) years each on the same terms and conditions as set forth herein, unless the Company notifies the City of its intention not to renew not less than thirty (30) calendar days prior to commencement of the relevant renewal term.

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

SECTION 6. Reservation of Regulatory and Police Powers. The City, by the granting of this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its Rights-of-way by the Company or any person, and the Company, by its acceptance of this right-of-way use agreement and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers. In the event any local, state, or federal law is enacted in the future that requires the City to charge a fee that is lower than the Use Fee for use of the Rights-of-way, the parties agree that the Use Fee shall be reduced to comply with such law(s).

SECTION 7. Standards of Service.

7.1 Conditions of Street Occupancy. All portions of the Network and all associated Equipment installed or erected by the Company pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the Rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such Rights-of- way.

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

7.3 Relocation at Request of the City. Upon its receipt of reasonable written notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Company shall, at

its own expense, protect, support, temporarily disconnect, relocate in the Rights-of-way, or remove from the Rights-of-way, any property of the Company when lawfully and reasonably required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the City. Should the Company refuse or fail to remove its Equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable, actual and itemized cost thereof shall be chargeable to the Company.

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

7.5 Safety and Permit Requirements. Construction, installation, repair and maintenance of the Network shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The Network or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area. The City agrees that no zoning or planning board permit, variance, conditional use permit, or site plan permit, or their equivalent under the City's ordinances, codes, or laws, shall be required for the installation of the Company's Equipment installed in the City's Rights-of-way, unless such process has been required for the placement of all Equipment in the public Rights-of-way by any other occupant of the public Rights-of-way, including but not limited to the incumbent local exchange company, utilities, and local cable provider(s). However, if required, the City agrees to process applications pursuant to the terms of and within the timeframes provided by the FCC's Declaratory Ruling, WT Docket No. 08-165, FCC 09-99, November 18, 2009.

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

7.7 Obstructions of Rights-of-Way. Except in the case of an emergency, or with the approval of the City Engineer or his/her designee, no Rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work. The Company shall not so obstruct the Rights-of-way as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways.

7.8 Safety Requirements.

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

B. The Company shall install and maintain the Network in accordance with the requirements of all applicable and lawful regulations of the City, which may be amended from time to time, and in such

manner that its operations will not interfere with any installations of the City or of a public utility serving the City.

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

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

7.9. Least Disruptive Technology. The Company is encouraged to perform construction and maintenance of the Network in a manner resulting in the least amount of damage and disruption to the Rights-of-way. However, underground installation shall be a last resort and only upon consent of the City, which such consent shall not be unreasonably withheld, conditioned or delayed. The Company will be required to use trenchless technology for any portion of construction or maintenance projects which lies beneath the paved or improved portion of any Rights-of-way to which this Agreement applies, unless otherwise approved by the City Engineer or his/her designee. The City Engineer or his/her designee may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Company may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any Rights-of-way to which this Agreement applies.

SECTION 8. Enforcement and Termination of Agreement.

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

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

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

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

- A. Seek specific performance of any provision which reasonably lends itself to such a remedy;
- B. Make a claim against any surety or performance bond which may be required to be posted;
- C. Restrain by injunction the default or reasonably anticipated default by the Company of any

provision of this Agreement;

- D. Seek any other available remedy permitted by law or in equity;
- E. In the case of a material default of this Agreement, declare the Agreement to be revoked in accordance with the following:

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

(2) At the designated meeting, the City shall give the Company an opportunity to state its position on the matter, after which it shall determine whether or not this Agreement shall be terminated. The Company may appeal such determination to the Circuit Court of Jefferson County, Alabama, which shall have the power to review the decision of the City and to modify or reverse such decision as justice may require. Such appeal must be taken within 30 days of the issuance of the determination by the City.

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

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

SECTION 9. Fiber. Company shall lease to the City, free of charge except for City's obligations set forth in Exhibit A or elsewhere in this Agreement, two dark fiber strands along Company's planned Network routes to be used by the City for public purposes in connection with its operations in accordance with the terms set forth on Exhibit A attached hereto (the "City Fibers"). Company will notify the City when the City Fibers will be available for the City's use. The City agrees to comply with the provisions outlined in Exhibit A.

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

- (1) Failure to make any payments to the City required to be made as set forth in this Agreement;
- (2) Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to the Company;
- (3) Failure to provide or furnish any information required under this Agreement to the City that is not cured within thirty (30) days following written notice to the Company;

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

SECTION 11. Work Permit. Prior to any excavation within the Rights-of-way, the Company shall obtain a permit from the City pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the Rights-of-way due to the Company's installation, removal, relocation, maintenance and repair of its Network or Equipment shall be accomplished to the reasonable satisfaction of the City. The City agrees to review and approve any Company application for a permit within thirty (30) calendar days of submittal, and, if no comment is received in writing within thirty (30) calendar days, the application will be deemed approved. In the case of attachments to utility-owned pole infrastructure, or to any pole the Company intends to place in the Rights-of-way, and upon written request by the City, the Company agrees to provide the City with a list of proposed attachment locations in advance of its deployment in the City, and the City agrees to use reasonable efforts to review and approve such list within ten (10) business days of submittal. If no written comment is received by the Company from the City within ten (10) business days, the list shall be considered approved, and no further action will be required prior to the Company's installation of its Equipment. Notwithstanding the foregoing, the City agrees to process applications for upgrades, modifications, colocations and other applicable requests, if application is required, pursuant to the terms of Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act") and the terms and timeframes provided by the FCC's Report and Order, WT Docket No. 13-238, FCC 14-153, October 17, 2014, as respectively applicable.

SECTION 12. Insurance. The Company shall maintain in full force and effect, at its own cost and expense, a commercial general liability insurance policy in the amount of \$1,000,000.00 for bodily injury and property damage per person and \$3,000,000.00 as to each occurrence, satisfactory to the City, which limits

may be met by a combination of primary and excess or umbrella insurance. In addition, the Company shall obtain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be named as an additional insured on the commercial general liability policy, and the Company shall provide the City with a certificate of insurance designating the City as an additional insured on the policy and extension or renewal thereof. An endorsement shall be included with the policy that states that, except with respect to a cancellation due to nonpayment of premium, the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City.

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

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

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

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

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

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

determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

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

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

CITY OF VESTAVIA HILLS
Attention: Jeff Downes, City Manager
1032 Montgomery Highway
Vestavia Hills, AL 35216

With a copy to:

Patrick H. Boone, Esq.
Vestavia Hills City Attorney
215 Richard Arrington Jr. Blvd. N, Suite 705
Birmingham, AL 35203

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

ACCESS FIBER GROUP, INC.
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn.: Kenneth J. Simon, General Counsel, Legal Department

with a copy which shall not constitute legal notice to:

ACCESS FIBER GROUP, INC.
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn.: SCN Contracts Administration

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

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

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

SECTION 23. Assignment. The Company's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council, and such consent shall not be unreasonably withheld, conditioned or delayed. The City reserves the right to be reimbursed by the Company for costs incurred by it in reviewing the request for transfer of ownership. Notwithstanding anything to the contrary in this Section 23, the transfer of the rights and obligations of the Company to a parent, subsidiary, or other affiliate of the Company or to any successor in interest or entity acquiring fifty-one percent (51%) or more of the Company's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment or transfer for the purposes of this Agreement and therefore shall not require the consent of the City, provided that the Company reasonably demonstrates to the City's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of the Company immediately prior to the transfer; (ii) any such transferee assumes all of the Company's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with the Company's management team, in the provision of telecommunications or similar services, evidences an ability to operate the Network. The Company shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the City of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why the Company believes the Exempted Transfer Criteria have been satisfied. The City Council shall have a period of thirty (30) days (the "Exempted Transfer Evaluation Period") from the date that the Company gives the City its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. If the City Council fails to act upon the Company's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City Council that the Company has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

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

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

SECTION 26. Governing Law. This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

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

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

SECTION 29. Effective Date. This Ordinance and Agreement shall become effective upon

posting/publication pursuant to Alabama law and only upon receipt of a written unconditional acceptance by the Company of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance.

ADOPTED, AGREED TO AND APPROVED, this 25th day of June, 2018.

CITY OF VESTAVIA HILLS, ALABAMA:

By: _____

Name: _____

Its: Mayor

By: _____

Its: City Manager

ATTEST:

BY: _____

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 Number 2772 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 June, 2018, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hill Library in the Forest, New Merkle House and Vestavia Hills Recreation Center this _____ day of _____, 20____.

CITY CLERK

AGREED TO AND APPROVED BY COMPANY:

ACCESS FIBER GROUP, INC., a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

CITY USE OF FIBER

(i) Limited Use. City's use of City Fibers shall be limited to City. City may not assign, lease, or allow any other party the right to use the City Fibers without Company's express consent. Any other use of the City Fibers by City shall be grounds for Company to reclaim the City Fibers.

(ii) Ownership. Legal title to Company's Network and Equipment including the fiber optic communications system, including fiber and cable sheathing and any bridge attachments, conduits, brackets, insulators, fixtures, guy wires, anchors, splice boxes, fiber distribution centers, and other hardware needed or used to fasten or support the cable shall be held by Company. Neither anything contained in this Agreement, nor any use, however extended, of the City Fibers shall create or vest (or be construed as creating or vesting) in City any right, title or interest in or to any real or personal property owned by Company other than the rights contained in this Agreement for the City Fibers.

(iii) Troubleshooting and Maintenance. City must contact Company's Network Operations Center at 888-632-0931 in the event it observes or experiences any service impacting issue. In the event Company receives such notification, Company shall perform troubleshooting to determine the source of the problem, and the City shall reimburse Company for the cost of any troubleshooting plus ten percent (10%). Upon determining the source of the problem, Company shall notify the City of the side of the demarcation point on which source of the problem is located. If the source of the problem is on Company's side of the demarcation point, then Company shall perform all splicing, maintenance, and repairs to the City Fibers, and the City shall reimburse Company for the cost of any such splicing, maintenance, and repairs plus ten percent (10%). If the source of the problem is on the City's side of the demarcation point, then the City will perform appropriate repairs to the City's network. Company shall provide reasonable supporting documentation for any invoice Company provides to the City pursuant to this Section (iii). The City acknowledges and accepts that (a) Company does not monitor the City Fibers and shall have no obligation to do so, (b) Company has no obligation to light the City Fiber or provide any equipment related to lighting the fiber, (c) the City shall not access the City Fibers or Company's manholes or handholes in any manner, (d) the City shall not perform any installation, splicing or repair work to the City Fibers, and (e) Company shall have no liability whatsoever for any outage or interruption experienced by City in relation to its use of the City Fiber, and City shall not be entitled to any compensation in relation to such outage or interruption.

(iv) Demarcation Point(s) and Required Rights. Company will bring the City Fibers to a Company-designated demarcation point(s), and the City will connect its network to the City Fibers at the demarcation point(s). The City shall obtain and maintain all approvals, permits, agreements, etc. on the City's side of the demarcation point(s) between the Company's network and the City's network that are necessary for the City to connect to and use the City Fibers. Company shall obtain and maintain all approvals, permits, agreements, etc. on Company's side of the demarcation point(s) between the Company's network and the City's network that are necessary install, operate, and maintain the City Fibers.

(v) Relocation. After installation of the City Fibers by Company, except as specifically set forth in Section 7.3 of this Agreement, the City shall not have any right to request Company to relocate the City Fibers.

(vi) Taxes. The City shall be obligated to pay for all taxes and other governmental impositions that arise directly or indirectly from the City's use of the City Fibers.

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

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

June 5, 2018

By Hand Delivery

City Manager Jeff Downes
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Franchise for Access Fiber Group, Inc. (Crown Castle)

Dear Mr. Downes:

On June 1, 2018, you hand delivered to me a proposed Franchise Agreement by and between the City of Vestavia Hills, Alabama (“City”) and Access Fiber Group, Inc. (“Crown Castle”) allowing Crown Castle the right to use the City’s rights-of-way for a fiber based optical network. You requested that I review the document and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. LEGAL ISSUE ONE

A. LEGAL ISSUE ONE: May municipalities legally spend public funds to indemnify third parties as required by Section 13 of the Agreement?

B. LEGAL OPINION: It is my legal opinion that the answer to Legal Issue One is in the negative.

C. BASIS FOR LEGAL OPINION: I base my legal upon the following Alabama legal authorities.

1. **Constitution of Alabama of 1901:** Section 94, as amended by Amendments 112 and 558, of the *Constitution of Alabama* provides as follows:

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

June 5, 2018

Page 2

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

3. **Violations of Established Law:** In my opinion, it would be a violation of the following laws for a municipality to indemnify a third party for actions, costs, expenses, damages and liabilities:

(a) Article IV Section 94(a) of the *Constitution of Alabama*; and

(b) the expenditure of public funds pursuant to an indemnification agreement would not be for a “public purpose” and, therefore, violate the holdings in the cases cited in section C-2 above; and

(c) would waive the statutory maximum limits (\$100,000.00) of liability set forth in Title 11-93-2, *Code of Alabama, 1975*; and

(d) would waive the discretionary function immunity for its public employees established by the holdings in *Woods v. Wilson*, 539 So.2d 224 and *Hilliard v. Huntsville*, 585 So.2d 889; and

(e) violate the joint liability statute set forth at Title 11-47-191(b), *Code of Alabama, 1975*; and

(f) would prejudice the rights of the City general comprehensive liability insurance carrier and jeopardize coverage under the policy.

II. **LEGAL ISSUE TWO**

A. **LEGAL ISSUE TWO:** May municipalities legally spend public funds to indemnify third parties as required in section (vii) of Exhibit A to the proposed Franchise Agreement?

B. **LEGAL OPINION:** It is my legal opinion that the answer to Legal Issue Two is in the negative.

C. **BASIS FOR LEGAL OPINION:** I base my legal opinion upon the Alabama legal authorities set forth in section I-C above.

June 5, 2018

Page 3

III. RECOMMENDATIONS

- A. Delete the language of Section 13 in its entirety.
- B. Section 13 should read as follows:

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

- C. Delete the language of section (vii) of Exhibit A in its entirety.

IV. OTHER MATTERS

I want to point out that the City may be liable for damages as a result of the negligence of its employees while acting within the line and scope of his or her duties (Title 11-47-190, *Code of Alabama, 1975*). The City protects the municipality and its employees and officials with general comprehensive liability insurance coverage.

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

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by hand)

ORDINANCE NUMBER 2773

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXPEND AN AMOUNT NOT TO EXCEED \$4,835,548 FOR PROFESSIONAL SERVICES OF TCU MANAGED PROJECTS OF THE COMMUNITY SPACES PLAN

WHEREAS, the City Council of the City of Vestavia Hills has begun implementation of the Community Spaces Plan; and

WHEREAS, the City's Consultant, TCU, has presented the City Council with a preliminary detail of anticipated expenses for the projects which were designated to be TCU managed projects which include Wald Park, Community Building "Golds", Cahaba Heights, New Merkle, Crosshaven, and Grant Funds (SHAC); and

WHEREAS, the TCU managed projects estimate that professional service expenses are anticipated at an estimated \$4,835,548 as detailed in "Exhibit A" which is attached to and incorporated into this Ordinance Number 2773 as though written fully therein; and

WHEREAS, the Mayor and City Council agree that it is in the best public interest to authorize the City Manager to expend an amount up to \$4,835,548 in TCU managed projects professional services in order to allow the project designs to remain on schedule.

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 amount not to exceed \$4,835,548 for professional services of TCU managed projects of the Vestavia Hills Community Spaces Plan; and
2. There City Manager and/or the City Manager and Mayor are hereby authorized to execute and deliver any and all documents pursuant to Alabama law following legal review and approval as to form by the City Attorney in order to proceed with said detailed TCU managed projects professional services.
3. This Ordinance Number 2773 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 25th day of June, 2018.

Ashley C. Curry
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 2773 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 June, 2018, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, and Vestavia Hills Recreational Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2018.

Rebecca Leavings
City Clerk

VESTAVIA HILLS TCU MANAGED PROGRAM FUNDS		WALD PARK	COMMUNITY BLDG GOLD'S	CAHABA HEIGHTS	NEW MERKEL	CROSSHAVEN	GRANT FUNDS	TOTAL TO COMPLETE	CONTRACT BUDGET SUMMARY				FINAL BUDGET	
Cost Code	DESCRIPTION	APPROVED PROGRAM BUDGET	APPROVED PROGRAM BUDGET	APPROVED PROGRAM BUDGET	APPROVED PROGRAM BUDGET	APPROVED PROGRAM BUDGET	APPROVED PROGRAM BUDGET		Contract Amount	Change Orders Modifications to Date	Total Contract to Date	Paid to Date	Balance Remaining to be Paid	Project Budget Over/Under
2000	CONSTRUCTION COSTS							43,959,971						
	Total:	12,421,524	12,012,360	6,014,632	500,000	3,684,653	750,000	35,380,169						
2000	EQUIPMENT & FURNISHINGS							0						
	Total:	0	0	0	0	0	0	0						
3000	FEES & REIMBURSABLE EXPENSES							4,835,548						
	Total:	1,605,536	1,869,813	714,563	0	645,636	0	4,835,548						
4000	NON-DESIGN EXPENSES							0						
	Total:	0	0	0	0	0	0	0						
5000	OWNER CONTINGENCY							3,744,254						
	Total:	1,402,706	1,389,217	672,620	0	280,711	0	3,744,254						
	TOTAL PROGRAM COST	15,429,766	15,270,390	7,398,815	500,000	4,611,000	750,000	43,959,971						
OTHER														
VESTAVIA HILLS COSTS TO PROGRAM MANAGED BY CITY														
Cost Code	DESCRIPTION	Original Program Budget	PAVING PROJECTS	MISC. PIPE PROJECTS	SIDE WALKS			TOTAL TO COMPLETE						
	APPROVED PROGRAM BUDGET	8,900,000	2,200,000	550,000	2,500,000			14,150,000						
	CONSTRUCTION COSTS													
	Total:	8,900,000	2,200,000	550,000	2,500,000			14,150,000						
	EQUIPMENT & FURNISHINGS													
	Total:	0	0	0	0			0						
	FEES & REIMBURSABLE EXPENSES													
	Total:	0	0	0	0			0						
	NON-DESIGN EXPENSES													
	Total:	0	0	0	0			0						
	OWNER CONTINGENCY													
	Total:	0	0	0	0			0						
	OWNER CONTINGENCY/ESCALATION													
	Total:	0	0	0	0			0						
	TOTAL PROGRAM COST	8,900,000	2,200,000	550,000	2,500,000			14,150,000						
TOTAL FUNDS AVAILABLE RECONCILIATION														
TCU MANAGED PROGRAM FUNDS		43,959,971												
OTHER COSTS TO PROGRAM MANAGED BY CITY		14,150,000												
TOTAL PROGRAM FUNDS		58,109,971												
LESS GRANT FUNDS		750,000												
TOTAL FUNDS AVAILABLE		57,359,971												

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

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

June 25, 2018

By Electronic Mail

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Resolution Number 5069

Dear Mr. Downes:

The City Council will consider the approval and adoption of Resolution Number 5069 at its regularly scheduled meeting on June 25, 2018. Resolution Number 5069 authorizes you as City Manager to spend an amount not to exceed Four Million Eight Hundred Thirty-five Thousand Five Hundred Forty-eight Dollars (\$4,835,548.00) for professional services for TCU Managed Projects of the Community Spaces Plan. On Friday, you telephoned me and requested my legal opinion regarding Resolution Number 5069. The purpose of this letter is to comply with your request.

I. FACTS

The City Council has approved the Community Spaces Plan. On June 12, 2017, the City Council approved and adopted Resolution Number 4951 selecting TCU Consulting Services, LLC as the Community Spaces Plan Program Manager. CitiGroup Global Markets, Inc. is the underwriter for a warrant issue to fund the Community Spaces Plan. A preliminary official statement has been prepared for a warrant issue in the contemplated amount of Fifty-eight Million One Hundred Nine Thousand Nine Hundred Seventy-one Dollars (\$58,109,971.00).

II. LEGAL ISSUE

Does Resolution Number 5069 meet the requirements of Alabama law?

III. LEGAL OPINION

It is my legal opinion that the answer to the legal question is in the affirmative.

IV. BASIS FOR LEGAL OPINION

I base my legal opinion upon the following Alabama legal authorities:

A. The Alabama Competitive Bid Law at Title 41-16-51(a)(3), *Code of Alabama, 1975*, provides:

“(a) Competitive bids shall not be required for utility services, the rates for which are fixed by law, regulation, or ordinance, and the competitive bidding requirements of this article shall not apply to:...

(3) Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part.”

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

C. 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. Since most municipal contracts will impact in some way the property or finances of a municipality, the decision to enter into a contract must be made by the City Council.

D. Municipal contracting is a two-step procedure requiring cooperation between the administration and council. The City Council must decide whether the municipality should enter into the contract. After the City Council votes to accept a contract, the City Manager and Mayor must then execute the contract for the municipality. (*Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3d 1166 (2011).)

E. 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.

F. Title 11-43-21(b)(7), *Code of Alabama, 1975*, requires the City Manager to sign all lawful contracts on behalf of the municipality and reads as follows:

“(b) The City Manager shall have the power and it shall be his duty:...

(7) To make and execute all lawful contracts on behalf of the municipality as to matters within the jurisdiction; provided, that no contract, purchase or obligation involving more than \$100.00 shall be binding until after the approval by the governing body.”

June 25, 2018

Page 3

G. Alabama law regarding the Council-Manager form of government at Title 11-43A-48, *Code of Alabama, 1975*, requires certain municipal contracts to be signed by both the City Manager and Mayor and reads as follows:

“No contract involving the payment of money out of the appropriation of more than one year shall be made for a period of more than five years, nor shall any such contract be valid unless made or approved by ordinance, and signed in the name of the municipality by the mayor and countersigned by the manager.”

V. RECOMMENDATION

I recommend that Resolution Number 5069 be changed to an ordinance in order to comply with Title 11-43A-48, *Code of Alabama, 1975*.

VI. CONCLUSION

If the City Council enacts an ordinance that authorizes you to execute and deliver certain contracts for professional services to be performed for the development of the Community Spaces Plan in accordance with a recommendation by TCU and approved by legal counsel, then in such event it is my legal opinion that the requirements of Alabama law will have been met.

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

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp