

**Vestavia Hills
City Council Agenda
September 10, 2018
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Ron Hige, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Candidates, Announcements and Guest Recognition
6. Proclamation – Constitution Week – September 17-23, 2018
7. Proclamation – Assisted Living Week – September 9-15, 2018
8. Proclamation – Family Week – September 23-29, 2018
9. City Manager’s Report
10. Councilors’ Reports
11. Approval of Minutes – August 8, 2018 (Special Called Meeting), August 20, 2018 (Work Session) and August 27, 2018 (Regular Meeting)

Old Business

12. Ordinance Number 2783 – Annexation – 90-Day Final – Gresham School Campus; Vestavia Hills Board of Education, Owners (*public hearing*)
13. Ordinance Number 2784 – Rezoning – Gresham School Campus – Rezoning From Jefferson County Institutional-1 To Vestavia Hills Institutional For Annexation; Vestavia Hills Board Of Education, Owners (*public hearing*)
14. Ordinance Number 2786 – Rezoning - 2424 And 2732 Dolly Ridge Road; Lots 15, 18 And The South 25’ Of Lot 17, Rocky Ridge Estates; Rezone From Jefferson County E-2 To Vestavia Hills R-2 For Construction Of 4 Homes; Thornton Construction (*public hearing*)
15. Ordinance Number 2785 – Annexation – 90 Day Final – 2424 And 2732 Dolly Ridge Road; Lots 15, 18 And The South 25’ Of Lot 17, Rocky Ridge Estates; Thornton Construction (*public hearing*)
16. Resolution Number 5083 – A Resolution Approving The Final 10% Of The 2017-2018 Budget For The City Of Vestavia Hills And Authorizing The City Manager To Purchase Certain Capital Items And Expense Said Items To The FY18 Fiscal Year (*public hearing*)
17. Ordinance Number 2788 – An Ordinance Approving A General Fund Budget, A Special Funds Budget, A Capital Projects Funds Budget And An Infrastructure And Community

Spaces Fund Budget For The City Of Vestavia Hills For The Period Of October 1, 2018 Until September 30, 2019 (*public hearing*)

18. Resolution Number 5084 - A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Sain Associates For Services Related To Designing The Community Spaces Connector Sidewalk TAP Project (*public hearing*)
19. Resolution Number 5085 – A Resolution accepting a bid for Wald Park Initial Site Package (*public hearing*)

New Business

20. Resolution Number 5088 – A Resolution Authorizing A Three Percent (3%) Cost Of Living Increase For Employees
21. Resolution Number 5089 - A Resolution Authorizing The City Manager To Accept A Lease Rate For The Lease/Purchase Of Equipment And Vehicles For FY2019
22. Resolution Number 5090 – A Resolution To Initiate The Second Amendment To The Patchwork Farm Planned Unit Development
23. Resolution Number 5091 – A Resolution Declaring Certain Personal Property As Surplus And Directing The City Manager To Sell/Dispose Of Said Property

New Business (Unanimous Consent Requested)

First Reading (No Action Taken At This Meeting)

24. Ordinance Number 2789 – Annexation – 90-Day Final – 2441 Jannebo Road, Lot 116, Buckhead, 4th Sector; Richard And Samantha Wheeler (Owners) (*public hearing*)
25. Ordinance Number 2790 – Rezoning - 2441 Jannebo Road, Lot 116, Buckhead, 4th Sector; Rezone From JC R-2 To VH R-1; Richard And Samantha Wheeler (Owners) (*public hearing*)
26. Ordinance Number 2791 – Annexation – 90-Day Final – 3332 Misty Lane; Jacob And; Marjorie Pollard (Owners) (*public hearing*)
27. Ordinance Number 2792 – Rezoning - 3332 Misty Lane; Rezone From JC E-2 To R-1; Jacob And; Marjorie Pollard (Owners) (*public hearing*)
28. Ordinance Number 2793 – Annexation – 90-Day Final – 2764 Altadena Lake Drive; ; Lot 4, Block 5, First Add, Altadena Valley, 4th Sector; Murray And Kelly Statham (Owners) (*public hearing*)
29. Ordinance Number 2794 – Rezoning - 2764 Altadena Lake Drive; Lot 4, Block 5, First Add, Altadena Valley, 4th Sector Rezone From JC R-1 To VH R-2; Murray And Kelly Statham, (Owners) (*public hearing*)

30. Ordinance Number 2795 – Rezoning – 2401 Mountain Vista Drive, Lot 45, Altadena Brook; 2nd Sector, Rezone From JC E-2 To VH R-1, Paul Phillips, Owner (*public hearing*)
31. Resolution Number 5092 – A Resolution Accepting The Dedication Of The Street Known As Anna Steele Lane (*public hearing*)
32. Resolution Number 5093 – A Resolution Authorizing The City Manager To Execute And Deliver Proposals For Survey And Civil Engineering Services For The Following Sidewalk Projects: East Street Improvements; Cahaba Heights Road Sidewalk Improvements; Mountainview Drive Sidewalk Improvements; And Rocky Ridge Road Sidewalk Improvements (*public hearing*)
33. Ordinance Number 2796 – An Ordinance Granting A Non-Exclusive Right-Of-Way Use Agreement To McImetro Access Transmission Services Corp. D/B/A Verizon Access Transmission Services For The Purpose Of Conducting Business As A Communications Services Provider Within Certain Public Right-Of-Way Within The City Of Vestavia Hills, Alabama (*public hearing*)
34. Citizen Comments
35. Motion For Adjournment

WHEREAS, our Founding Fathers, in order to secure the blessings of liberty for themselves and their posterity, did ordain and establish a Constitution for the United States of America; and

WHEREAS, it is of the greatest importance that all citizens fully understand the provisions and principles contained in the Constitution in order to effectively support it, preserve and defend it against all enemies; and

WHEREAS, the 231st anniversary of the signing of the Constitution provides a historic opportunity for all Americans to remember the achievements of the Framers of the Constitution and the rights, privileges, and responsibilities they afforded us in this unique document; and

WHEREAS, the independence guaranteed to American citizens, whether by birth or naturalization, should be celebrated by appropriate ceremonies and activities during Constitution Week, September 17 through 23, as designated by proclamation of the President of the United States of America in accordance with Public Law 915;

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim September 17 - 23, 2018 as

CONSTITUTION WEEK

in the City of Vestavia Hills, Alabama, and urge our citizens to pay special attention to our Federal Constitution and the advantage of American citizenship.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 5th day of September 2018.

Ashley C. Curry
Mayor

WHEREAS, residents of assisted living communities are active members of the larger community, offering their knowledge, life experiences and involvement; their past contributions continue to be a vital part of Vestavia Hills rich history; and their ongoing participating deepens our identity; and

WHEREAS, assisted living is a critical long term care service for older adults and individuals with disabilities that fosters choice, dignity, and independence; assisted living communities are committed to excellence, innovation and the advancement of person-centered care; and

WHEREAS, in 1995, the National Center for Assisted Living established national Assisted Living Week to honor the contributions of assisted living communities in providing long term care to America's seniors and individuals with disabilities;

WHEREAS, this year's theme of National Assisted Living Week is *Capture the Moment*, which hopes to inspire assisted living residents to enjoy the present while celebrating the past;

WHEREAS, *Capture the Moment* is also meant to encourage assisted living staff to focus on the little, everyday interactions with residents to continue delivering high-quality, person-centered care;

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim September 9 - 15, 2018 as

NATIONAL ASSISTED LIVING WEEK

and encourage our residents to volunteer in an assisted living community, to visit friends and loved ones who reside at these communities, and to learn more about how assisted living services benefit Vestavia Hills.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 5th day of September 2018.

Ashley C. Curry
Mayor

WHEREAS, children are our future and society's greatest asset, and committed families shape and guide children by preparing them for obstacles and encouraging them to overcome life's demanding challenges; and

WHEREAS, children who spend significant time with both parents show lower risks of suicide, dropout, teen pregnancy, incarceration, and drug abuse; however the importance of children having two parents is diminishing in society as approximately 40,000 Alabama children a year experience court ordered visitation with one parent for only two to six days a month; and

WHEREAS, social scientists agree that shared parenting should be the norm for children of all ages, and strong and engaged families help build a strong Alabama; and

WHEREAS, Family Day in Alabama promotes the importance of family interaction and stresses that children need both parents and during Family Day and Week we honor the devotion of parents and call on community and state leaders to support shared parenting because of its benefits for children;

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim September 24, 2018 as Family Day and September 23 through September 29, 2018 as

FAMILY WEEK

in the City of Vestavia Hills, Alabama, and encourage our citizens to join together in observing this week by engaging in activities that honor and strengthen our city's and state's families.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 5th day of September 2018.

Ashley C. Curry
Mayor

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

SPECIAL MEETING

AUGUST 8, 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 called the meeting to order and the roll with the following:

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick Boone, City Attorney
Rebecca Leavings, City Clerk
Marvin Green, Fire Chief
Danny Rary, Police Chief
Melvin Turner, III, Finance Director
Christopher Brady, City Engineer

George Pierce, Councilor, provided the invocation followed by the Pledge of Allegiance

NEW BUSINESS (REQUESTING UNANIMOUS CONSENT):

The Mayor stated that the sole item on the agenda required unanimous consent for immediate consideration and action. He opened the floor for a motion:

MOTION Motion for unanimous consent of consideration and immediate action of Ordinance Number 2780 was by Mr. Weaver and second was by Mr. Pierce. Roll call vote as follows:
Mrs. Cook – yes Mr. Head – yes
Mr. Pierce – yes Mr. Weaver – yes
Mayor Curry – yes Motion carried.

ORDINANCE NUMBER 2780

Ordinance Number 2780 – 2018 General Obligation Warrant Issue (*public hearing*)

MOTION Motion to approve Ordinance Number 2780 was by Mr. Pierce. Second was by Mrs. Cook.

Mr. Downes gave a brief background of the Council's actions up to this point which included planning, funding, retainage of a consultant all for the Infrastructure and Community Spaces Plan.

Chris Williams, Rice Advisory, explained that they went to Moody's and Fitch for classification. He explained that the AAA rating was reaffirmed by Moody's and there was a AA positive outlook rating from Fitch. He explained the new debt service which is being funded by the sale tax increase recently implemented by the Council. He explained the terms of the bonds

Discussion ensued and Mr. Williams stated that they cannot pull many comps reflected like the City's because the City's ratings are so good.

Mr. Downes explains the returns from the first month of sales taxes collected during the month of June which would be the first month of these new collections. Twenty-five percent of that would go toward the Community Spaces Plan which would equate to roughly \$4 million in revenues.

Mr. Williams reminded the Council that \$9.2 of these bonds went to pay off the BB&T bonds. He explained to the Council about building an escrow to allow the City to reduce some of the debt load at will.

Mayor Curry stated that this entire process has been done professionally, promotion of the sales taxes, public input, retainage of ratings in the process of borrowing \$52 million. He stated this is a credit to the City Manager and the Finance Department and the City is in great shape.

Mr. Pierce stated that the City has worked for 18 years to better the finances of the City and to improve the financial standing. He stated those efforts have moved the City forward and he commended the past administrations for their work.

The Mayor opened the floor for a public hearing

David Harwell, 1803 Catala Road, asked why this special meeting was needed and why this couldn't wait until the regular meeting of the Council.

Mr. Downes stated that they rely on the advice of the financial team and the timing of the financial market warranted this special meeting.

Mr. Rice explained the timing of the market and the signing of the agreement is critical to be completed at the right time.

Mr. Harwell asked if the 1% sales tax increase funded the entire project and, if so, why increase the lodging taxes.

The Mayor explained that the City examined existing lodging taxes from sister cities and it was found that Vestavia Hills was lower than the neighboring cities. He stated that there are only three hotels located in the City so there is not a lot of lodging taxes that are collected.

Mr. Downes explained the category which lumps all of these together.

Mr. Harwell stated that he has been advising past Councils and this one that bond issues have to be voted upon by the people. He asked the difference between the bonds and warrants.

Mr. Williams explained the terms of warrant and bond issues along with calendar constraints and timing.

There being no further business, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

CITIZEN COMMENTS

David Harwell, 1803 Catala Road, thanked the Council for helping to get the debris issue addressed in his neighborhood. He stated it is better this month than the last and wants to ensure that all areas are being addressed.

There being no further business, the meeting adjourned at 6:21 PM.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

WORK SESSION

AUGUST 20, 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 called the meeting to order and the roll with the following:

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Rebecca Leavings, City Clerk
Marvin Green, Fire Chief
Lori Beth Kearley, Sr. Civil Engineer
Danny Rary, Police Chief
Jason Hardin, Police Captain
Shane Ware, Police Lieutenant
Melvin Turner, Finance Director
Brian Davis, Public Services Director
Umang Patel, Court Director
Cinnamon McCulley, Communication Specialist
Taneisha Tucker, Library Director
Darrin Estes, IT Director
Keith Blanton, Building Official

BUSINESS INCUBATOR – VESTAVIA HILLS CHAMBER OF COMMERCE

John Henley, representing the Vestavia Hills Chamber of Commerce, approached the Council with a request for creating a business incubator which is designed to promote entrepreneurs within the City. He explained the Chamber's due diligence into the endeavor and indicated that this would be deemed a "co-working space". He stated some of the specifics are still a work in progress and wanted to know if the City Council was interested in moving forward with the service. The Council discussed the pros and cons of the

incubator. Mr. Henley stated they anticipate a need of about 5,000 square feet if it were to move ahead.

Discussion ensued into the end goal of the program that Mr. Henley stated would hopefully be more local businesses. He stated there are no guarantees that the businesses would remain and/or locate in the City.

Mrs. Cook asked for more information on what constituted a public use for proceeding with the business incubator.

INFRASTRUCTURE & COMMUNITY SPACES PLAN UPDATE - TCU

Ken Upchurch, TCU, updated the Council with the July 2018 monthly report. This was the first of the series of reports from the consultant. Mr. Upchurch explained the reports, the status of each project and the progress.

He explained the update on the initial site improvements of Wald Park, the letting of bids for the project. He stated they have begun to solidify designs for the pool along with location of the pool and fields. Drawings were shown to support these preliminary design concepts.

SIDEWALK UPDATE – INFRASTRUCTURE AND COMMUNITY SPACES PLAN

Mr. Downes stated that Mr. Brady is beginning coordinating efforts with a designated consultant to begin the process of connecting commercial areas with residential areas along with staying consistent with the City's sidewalk master plan. He showed areas of consideration located in four geographic locations within the City.

Discussion ensued with Council concurrence to begin said studies.

FY2019 FISCAL YEAR BUDGETS

Mr. Downes stated that he had presented his requested budgets at the last Council meeting and indicated that he and the department heads were present in order to discuss and/or answer any questions. He stated there was a change from the original budget of \$19,000 for utility cuts that were not included in the first and how that expense was offset.

Discussion ensued regarding a one-time retiree bonus, the costs of said bonus and the fact that an increase in retiree insurance was adopted earlier in the year by the Council which costs about the same amount as the bonus. Mr. Downes indicated that not all of the retirees saw any savings from this increase as some do not have the retiree insurance.

Discussion on other areas including donations to non-profits also ensued. Questions related to the budget were answered.

MASSEY ROAD UPDATE

Mr. Downes gave an update on Massey Road project which has been ongoing for years. .

There being no further business, the meeting adjourned at 7:42 PM.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

AUGUST 27, 2018

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

MEMBERS PRESENT:

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

MEMBERS ABSENT:

Mayor Ashley C. Curry

OTHER OFFICIALS PRESENT:

Patrick H. Boone, City Attorney
Rebecca Leavings, City Clerk
Melvin Turner, Finance Director
George Sawaya, Asst. Finance Director
Dan Rary, Police Chief
Terry Ray, Asst. Fire Chief
Christopher Brady, City Engineer
Keith Blanton, Building Official
Taneisha Tucker, Library Director

Steve Dedmon, Vestavia Hills Chaplain followed by the Pledge of Allegiance

ANNOUNCEMENTS, GUEST RECOGNITION

- Mrs. Cook welcomed Baker Bolton, Boy Scout Troop 4 to the meeting.
- Mr. Pierce welcomed Doug Dean, Chairman, Vestavia Hills Chamber of Commerce members, who were in attendance representing the Chamber.

PROCLAMATION

The Mayor presented a proclamation for Gynecologic Cancer Awareness Month, September 2018. Mr. Pierce read the Proclamation aloud and Mrs. Cook presented it Dr. Alice Laurendine.

Dr. Laurendine stated that September is the month for Cancer Awareness including ovarian cancer. She stated there is presently no cure for ovarian cancer. She urged everyone to learn the symptoms of Cancer. She stated this cancer can affect women of all ages.

CITY MANAGER'S REPORT

- None.

COUNCILOR REPORTS

- Mrs. Cook stated that the Board of Education met briefly this afternoon. She stated that she was unable to attend but the information could be found on the Board's website.
- Mr. Head stated that the Parks and Recreation next work session will be held on Friday at noon.

FINANCIAL REPORTS

Melvin Turner, Finance Director, presented the financial reports for month ending July 2018. He read and explained the balances.

Mrs. Cook asked about the ad valorem personal revenues. Mr. Turner explained that these revenues to decrease with depreciation and Finance has to work with it to ensure it is correct.

Mr. Pierce asked about real property revenues. Mr. Turner stated those revenues stem from individuals who protests their valuation.

APPROVAL OF MINUTES

The minutes of August 13, 2018 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the August 13, 2018 (Regular Meeting) and approve them as presented was by Mr. Cook and second by Mr. Pierce Roll call vote as follows:

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Motion carried.

OLD BUSINESS

RESOLUTION NUMBER 5081

Resolution Number 5081 – A Resolution to adopt the 2018 City of Vestavia Hills Floodplain Management Plan (public hearing)

MOTION Motion to approve Resolution Number 5081 was by Mr. Pierce seconded by Mr. Head.

Christopher Brady, City Engineer explained that this represents the official adoption of the City of Vestavia Hills Floodplain Management Plan. This is the culmination of a funded project with Schoel Engineer and Lehe Engineering. He give a background of the development of the plan and explained this will allow some relief in flood insurance for some homeowners.

Mrs. Cook asked if there were any notable public comments.

Mr. Brady stated they received several public comments, primarily from owners along the Montgomery Highway southern corridor. He stated that is a visible flood hazard area and they are doing what they can to assist with those concerns.

Mr. Pierce asked where the plan can be found and reviewed. Mr. Brady stated it is on the website.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Motion carried.

ORDINANCE NUMBER 2781

Ordinance Number 2781 – An Ordinance Authorizing The Mayor And City Manager To Enter Into An Agreement With Alabama Department Of Transportation For Project #TAPAA-TA18(911); CPMS#100068361; Sidewalk From Merryvale Road To The Future Community Building and Connecting To The Existing Sidewalk On Mayland Lane (public hearing)

MOTION Motion to approve Ordinance Number 2781 was by Mr. Pierce seconded by Mr. Cook.

Mr. Brady explained that his funding agreements will help to construct and connect the Golds Gym property next door down to Wald Park. He explained the funding which is covered at 80% of the project.

Mr. Pierce asked if this will be bid. Mr. Brady stated it would be bid.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Motion carried.

NEW BUSINESS

ORDINANCE NUMBER 2787

Ordinance Number 2787 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Second Amendment to PCS Site Agreement With STC Five LLC, For Lease Property Located On Montgomery Highway; Allen Grier, Real Estate Specialist, Crown Castle, Representing

MOTION Motion to approve Ordinance Number 2787 was by Mr. Cook seconded by Mr. Pierce.

Allen Grier, Crown Castle, explained that this were new negotiated terms to add 30 years to the current agreement and to amend the lease revenues related to a lease sharing agreement. He stated that this was worked out through the City Manager and was reviewed by the City Attorney.

Mr. Boone stated he did review this agreement. He gave a background of the history of the leasing of the cell tower located behind the Bill F. Towers Fire Station No. 1 along with the series of Site Agreements that have been executed through the years and the terms amended in this proposed Second Amendment. He state originally there were options presented which were revised at his recommendation from a legal standpoint. He stated the revised document does meet the terms of Alabama law.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Motion carried.

RESOLUTION NUMBER 5086

Resolution Number 5086 – A Resolution Authorizing The City Manager To Execute And Deliver Agreements With ALDOT For Improvements In Rights-Of-Way At Wald Park

MOTION Motion to approve Resolution Number 5086 was by Mr. Pierce seconded by Mr. Head.

Mr. Brady stated that these permits are required by ALDOT in order to do ROW improvements needed in the grading that is being planned at Wald Park. He gave a quick summation of the ROW work as well as the sewer improvements in the next request.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Motion carried.

RESOLUTION NUMBER 5087

Resolution Number 5087 – A Resolution Authorizing The City Manager To Execute And Deliver Applications To Jefferson County Environmental Services For Improvements To The Sewer System At Wald Park

MOTION Motion to approve Resolution Number 5087 was by Mr. Cook seconded by Mr. Pierce.

Mr. Brady stated this was explained in the previous resolution.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Motion carried.

NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)

The Mayor Pro-Tem indicated that unanimous consent for the immediate consideration and action on Resolution Number 5082 would be required. He opened the floor for a motion.

MOTION Motion for unanimous consent for the immediate consideration and action for Resolution Number 5082 was by Mr. Cook and second was by Mr. Pierce. Roll call vote as follows:

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Motion carried.

RESOLUTION NUMBER 5082

Resolution Number 5082 – A Resolution Authorizing The City Manager To Purchase And Equip A Police Department Vehicle To Replace A Vehicle Declared Totaled In A Vehicle Accident (public hearing)

MOTION Motion to approve Resolution Number 5082 was by Mr. Pierce seconded by Mr. Head.

Chief Rary gave the background of a vehicle accident that was done when an officer had a vehicle stopped. He indicated that the vehicle was totaled and the damage has been recovered. This request is to replace and equip the vehicle.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Motion carried.

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

The Mayor stated that the following resolutions and/or ordinances will be presented at a public hearing at the Council's next regular meeting on September 10, 2018, at 6:00 PM.

- Ordinance Number 2783 – Annexation – 90-Day Final – Gresham School Campus; Vestavia Hills Board of Education, Owners (public hearing)
- Ordinance Number 2784 – Rezoning – Gresham School Campus – Rezoning From Jefferson County Institutional-1 To Vestavia Hills Institutional For Annexation; Vestavia Hills Board Of Education, Owners (public hearing)
- Ordinance Number 2785 – Annexation – 90 Day Final – 2424 And 2732 Dolly Ridge Road; Lots 15, 18 And The South 25' Of Lot 17, Rocky Ridge Estates; Thornton Construction (public hearing)
- Ordinance Number 2786 – Rezoning - 2424 And 2732 Dolly Ridge Road; Lots 15, 18 And The South 25' Of Lot 17, Rocky Ridge Estates; Rezone From Jefferson County E-2 To Vestavia Hills R-2 For Construction Of 4 Homes; Thornton Construction (public hearing)
- Resolution Number 5083 – A Resolution Approving The Final 10% Of The 2017-2018 Budget For The City Of Vestavia Hills And Authorizing The City Manager To Purchase Certain Capital Items And Expense Said Items To The FY18 Fiscal Year (public hearing)
- Ordinance Number 2788 – An Ordinance Approving A General Fund Budget, A Special Funds Budget, A Capital Projects Funds Budget And An Infrastructure And Community

Spaces Fund Budget For The City Of Vestavia Hills For The Period Of October 1, 2018
Until September 30, 2019 (*public hearing*)

- Resolution Number 5084 - A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Sain Associates For Services Related To Designing The Community Spaces Connector Sidewalk TAP Project (*public hearing*)
- Resolution Number 5085 – A Resolution accepting a bid for Wald Park Initial Site Package (*public hearing*)

CITIZEN COMMENTS

None.

At 6:26 PM, Mr. Pierce made a motion to adjourn. The meeting adjourned at 6:27 PM.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2783

**ANNEXING CERTAIN TERRITORY TO THE
CORPORATE LIMITS OF THE CITY OF VESTAVIA
HILLS, ALABAMA.**

WHEREAS, on the 14th day of May, 2018, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

WHEREAS, the City Council of the City of Vestavia Hills, at the time and place of its regular meeting on said date, made a determination that the matters contained in the Petition were true and that it was in the public interest that said property be annexed to the City of Vestavia Hills, Alabama.

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

1. That the following property which was described in said petition be annexed to the City of Vestavia Hills, Alabama:

Gresham School Campus
Vestavia Hills Board of Education, Owner(s)

More particularly described as follows;

A tract of land situated in the NW 1/4 of the SW 1/4 of Section 28, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows: Begin at the Southwest corner of the NW 1/4 of the SW 1/4 of said Section 28; thence run N 00° 17' 16" W along the West line of said 1/4 - 1/4 section for 907.31 feet to a point on the South line of the Gresham Woods Subdivision, as recorded in Map Book 227, page 2, in the Probate Office of Jefferson County, Alabama; thence run S 88° 32' 33" E along the South line of said Subdivision for 797.24 feet to a point on the South Right of Way line of Gresham Drive; thence run S 83° 58' 48" E along said road right of way for 408.26 feet to the point of a non

tangent curve to the right, said curve having a radius of 150.00 feet and a chord bearing of S 34° 13' 12" E and run along the arc of said curve and said road right of way for 157.34 feet; thence run S 00° 28' 05" E along said road right of way for 755.98 feet to a point on the South line of the NW 1/4 of the SW 1/4 of said Section 28; thence run N 88° 24' 07" W along the South line of said 1/4 - 1/4 section for 1289.60 feet to the point of beginning.

2. That this Annexation shall become effective upon the adoption and approval of this Ordinance in accordance with the provisions of law, after which the heretofore described property shall become a part of the City of Vestavia Hills, Alabama.

3. That the City Clerk be and is hereby directed to publish this Ordinance in accordance with the requirements of the law and to file a copy hereof, together with a duly certified copy of the petition, with the Probate Judge of Jefferson County, Alabama.

ADOPTING and APPROVED this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

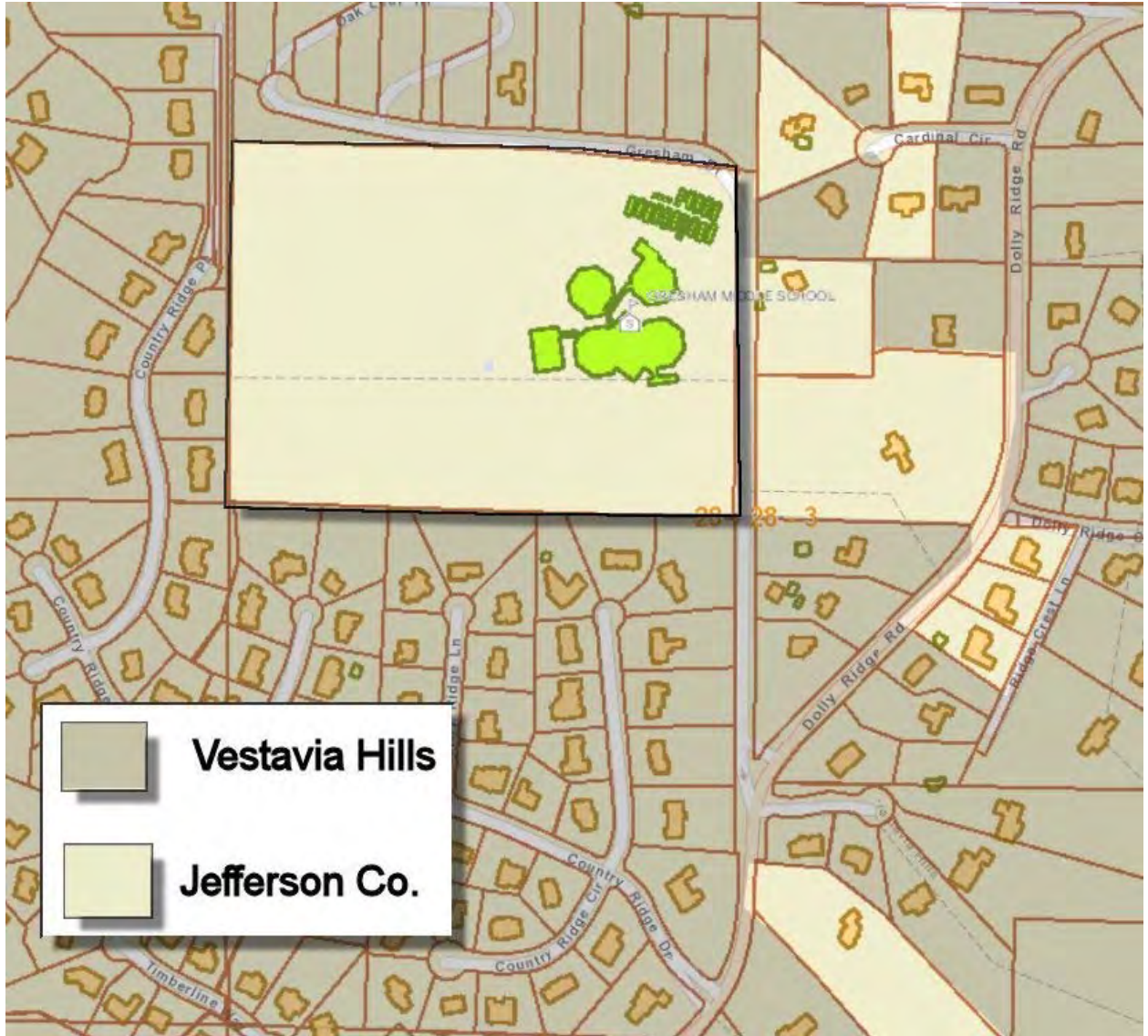
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2783 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 10th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



Annexation Committee Petition Review

Property: Gresham School

Owners: Jefferson County Board of Education

Date: 4-23-18

1. The property in question is contiguous to the city limits.
 Yes No Comments: _____

2. The land use of the petitioned property is compatible with land use in the area.
 Yes No Comments: _____

3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.
 Yes No Comments _____

4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.
 Yes No Comments Roadway split is in fair to poor condition.

5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of N/A. Meets city criteria: Yes No
 Comment: _____

6. This street has fewer than 100% of the individual properties within the limits of the city
 Yes No
 Number of total homes _____ Number in city majority are in Vestavia Hills 98%

7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.
 Agreed to by petitioner: Yes No Comment _____

Property: Gresham School


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

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

10. Are there any concerns from city departments? Yes No _____ Comments: see Engineering and Emp Dept. comments

11. Information on children: Number in family N/A; Plan to enroll in VH schools Yes _____ No _____ Comments: _____

Other Comments: _____



George Pierce
Chairman

EXHIBIT "C"

CITY OF VESTAVIA HILLS
Department Review of Proposed Annexation
(To Be completed by City Staff)

The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: Gresham School

Engineering:

Date: _____ Initials: CB

2650 Gresham Drive -- (Gresham Elementary School) no significant concerns noted; roadway asphalt is in fair to poor condition; a few neighboring properties will remain in unincorporated Jefferson County, so we anticipate roadway maintenance will remain a shared responsibility with the County; will recommend School Board evaluate turnlane improvements that may be necessary for added school traffic.

Board of Education:

Date: _____ Initials: _____

Comments: _____

Police Department:

Date: _____ Initials: _____

The proposed annexation of Gresham School will have minimal impact to the Police Department. The intersection of Dolly Ridge Road and Gresham Drive is already in the city so the traffic will not have an additional impact on Patrol.

The only impact to the Police Department will be the addition of an additional School Resource Officer.

The Police Department does not oppose the annexation.

Fire Department:

Date: 4/23/18 Initials: SO

Comments: Wiring at ballfields needs to be cleaned up. No opposition to annexation.

STATE OF ALABAMA

JEFFERSON COUNTY

PETITION FOR ANNEXATION TO THE
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: MAY 10, 2018

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

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

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

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

EXHIBIT "A"

LOT: SEE DEED ATTACHED HERETO

BLOCK: _____

SURVEY: _____

RECORDED IN MAP BOOK _____, PAGE _____ IN THE
PROBATE OFFICE OF _____ COUNTY, ALABAMA.

COUNTY ZONING: _____

COMPATIBLE CITY ZONING: _____

LEGAL DESCRIPTION (METES AND BOUNDS):

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

SIGNATURE(S)

DESCRIPTION OF PROPERTY

_____ Lot _____ Block _____ Survey _____

_____ Lot _____ Block _____ Survey _____

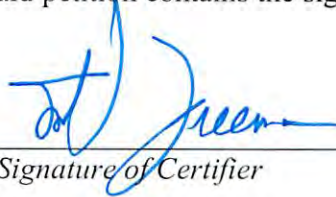
_____ Lot _____ Block _____ Survey _____

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

STATE OF ALABAMA

JEFFERSON COUNTY

DR. TODD FREEMAN being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.



Signature of Certifier

Subscribed and sworn before me this the 10th day of MAY, 2018.



Notary Public

My commission expires: June 14, 2021



EXHIBIT "B"

VESTAVIA HILLS BOARD OF EDUCATION

1204 Montgomery Highway
 Vestavia Hills AL 35216

(To be completed by the City)

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

(To be completed by Homeowner)

Name(s) of Homeowner(s): THE BOARD OF EDUCATION OF THE CITY OF VESTAVIA HILLS

Address: 1204 MONTGOMERY HIGHWAY

City: _____ State: _____ Zip: _____

Information on Children:

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

	Name(s)	Age	School Grade	Yes	No
1.					
2.					
3.					
4.					
5.					
6.					

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

SEND TAX NOTICE TO:

Board of Education of the
City of Vestavia Hills, Alabama
1204 Montgomery Highway
Vestavia Hills, Alabama 35216

Clerk: NICOLE

Note: The real property described in this Deed is exempt from all ad valorem taxes by virtue of Amendment 373(k) of *Constitution of Alabama* and Title 40-9-1, *Code of Alabama, 1975*

This Instrument Was Prepared By:
Patrick H. Boone; Attorney at Law
705 New South Federal Savings Building
215 Richard Arrington, Jr. Boulevard North
Birmingham, Alabama 35203-3720
Telephone No. 205-324-2018

**STATE OF ALABAMA
JEFFERSON COUNTY**

STATUTORY WARRANTY DEED

THIS STATUTORY WARRANTY DEED (this "Deed") is executed and delivered as of the 10th day of May, 2018, by the County Board of Education of Jefferson County (hereinafter referred to as "Grantor"), in favor of the Board of Education of the City of Vestavia Hills, Alabama (hereinafter referred to as "Grantee").

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of Six Million Seven Hundred Fifty Dollars (\$6,750,000.00), in hand paid by the Grantee to Grantor and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged by Grantor, the said Grantor does by these presents, grant, bargain, sell and convey unto Grantee that certain real property (the "Property") situated in Jefferson County, Alabama which is more particularly described as follows:

A tract of land situated in the NW 1/4 of the SW 1/4 of Section 28, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows: Begin at the Southwest corner of the NW 1/4 of the SW 1/4 of said Section 28; thence run N 00° 17' 16" W along the West line of said 1/4 - 1/4 section for 907.31 feet to a point on the South line of the Gresham Woods Subdivision, as recorded in Map Book 227, page 2, in the Probate Office of Jefferson County, Alabama; thence run S 88° 32' 33" E along the South line of said Subdivision for 797.24 feet to a point on the South Right of Way line of Gresham Drive; thence run S 83° 58' 48" E along said road right of way for 408.26 feet to the point of a non tangent curve to the right, said curve having a radius of 150.00 feet and a chord bearing of S 34° 13' 12" E and run along the arc of said curve and said road right of way for 157.34 feet; thence run S 00° 28' 05" E along said road right of way for 755.98 feet to a point on the South line of the NW 1/4 of the SW

Statutory Warranty Deed
Page 2

1/4 of said Section 28; thence run N 88° 24' 07" W along the South line of said 1/4 - 1/4 section for 1289.60 feet to the point of beginning.

This conveyance is made subject to all matters of record, all existing restrictions, rights of way, limitations, easements, exceptions, reservations, releases and covenants of record ("Permitted Exceptions"), specifically including but not limited to:

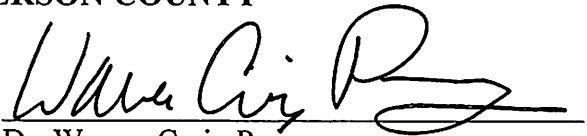
1. Easement to Alabama Power Company recorded in Instrument 200315/2842 and Book LR200716, page 466, in the Probate Office of Jefferson County, Alabama.

2. Right of Way to Jefferson County, recorded in Real 1798, page 836; Real 1812, page 462; Book LR200620, page 7784; Book LR200620, page 7782; Real 1262, page 60; Real 2712, page 85 and Real 3550, page 359, in the Probate Office of Jefferson County, Alabama.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns forever; subject, however, to the Permitted Exceptions.

IN WITNESS WHEREOF, the said Grantor by its Superintendent authorized to execute this conveyance, hereto set its signature and seal, on this the 10th day of May, 2018.

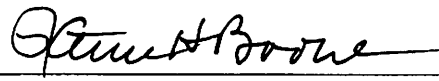
**COUNTY BOARD OF EDUCATION OF
JEFFERSON COUNTY**

By: 
Dr. Warren Craig Pouncey
Superintendent

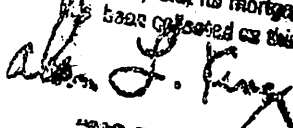
**STATE OF ALABAMA
JEFFERSON COUNTY**

I, the undersigned, a notary public in and for said county in said state, hereby certify that Dr. Warren Craig Pouncey, whose name as Superintendent of the County Board of Education of Jefferson County, is signed to the foregoing Statutory Warranty Deed, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he, as such Superintendent and with full authority, executed the same voluntarily for and as the act of said County Board of Education of Jefferson County.

Given under my hand and official seal this 10th day of May, 2018.


Notary Public

My Commission Expires:
June 14, 2021
SEAL

STATE OF ALABAMA - JEFFERSON COUNTY
I hereby certify that no mortgage tax or deed tax
has been collected on this instrument.

Judge of Probate
"NO TAX COLLECTED"

ORDINANCE NUMBER 2784

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY JEFFERSON COUNTY INST-1 TO VESTAVIA HILLS INSTITUTIONAL

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County Inst-1 (institutional district) to Vestavia Hills Inst (institutional district):

2650 Gresham Drive; Gresham School Campus
Vestavia Hills Board of Education, Owner(s)

More particularly described as follows;

A tract of land situated in the NW 1/4 of the SW 1/4 of Section 28, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows: Begin at the Southwest corner of the NW 1/4 of the SW 1/4 of said Section 28; thence run N 00° 17' 16" W along the West line of said 1/4 - 1/4 section for 907.31 feet to a point on the South line of the Gresham Woods Subdivision, as recorded in Map Book 227, page 2, in the Probate Office of Jefferson County, Alabama; thence run S 88° 32' 33" E along the South line of said Subdivision for 797.24 feet to a point on the South Right of Way line of Gresham Drive; thence run S 83° 58' 48" E along said road right of way for 408.26 feet to the point of a non tangent curve to the right, said curve having a radius of 150.00 feet and a chord bearing of S 34° 13' 12" E and run along the arc of said curve and said road right of way for 157.34 feet; thence run S 00° 28' 05" E along said road right of way for 755.98 feet to a point on the South line of the NW 1/4 of the SW 1/4 of said Section 28; thence run N 88° 24' 07" W along the South line of said 1/4 - 1/4 section for 1289.60 feet to the point of beginning.

APPROVED and ADOPTED this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

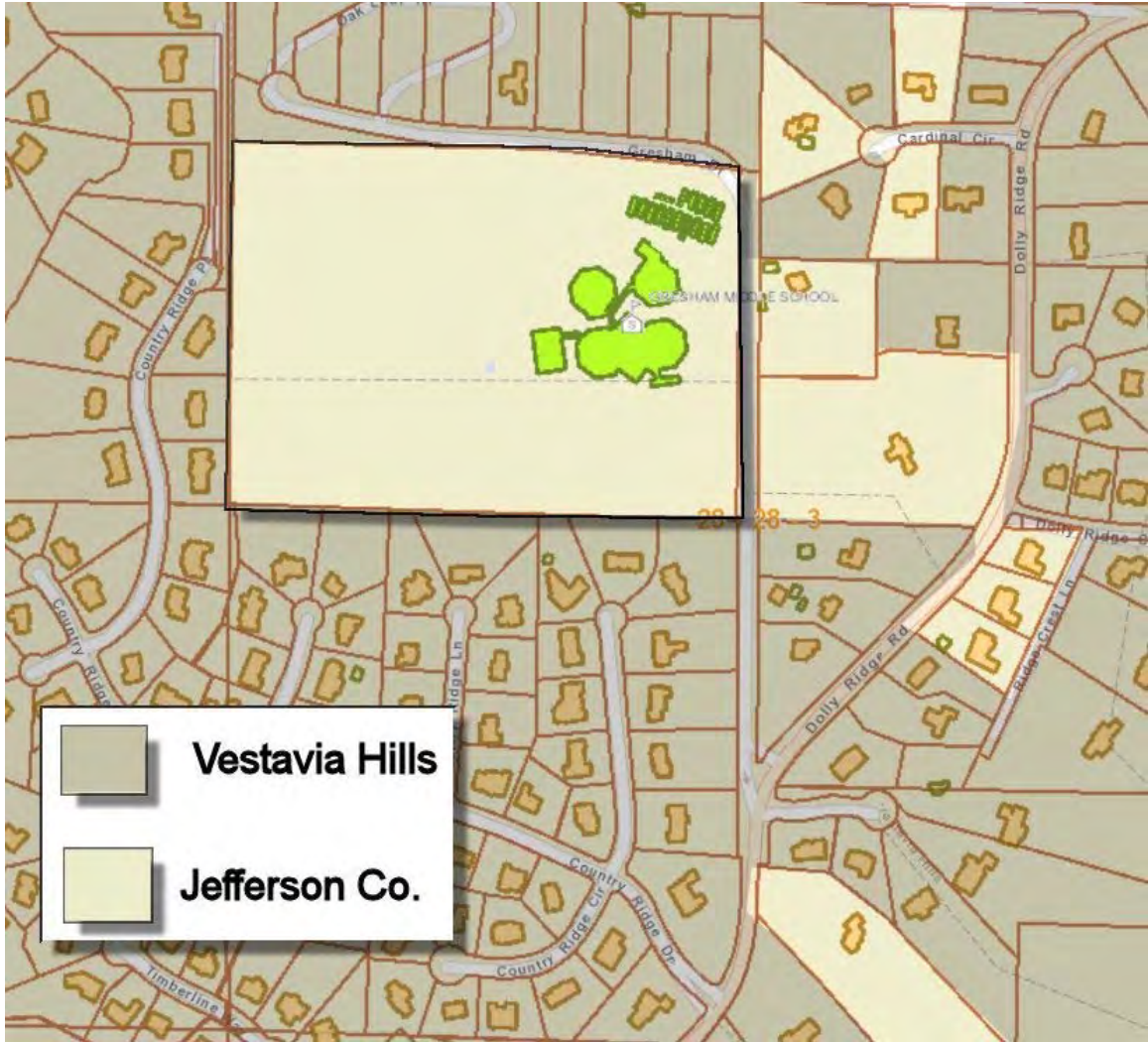
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2784 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 10th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



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

Date: **JULY 12, 2018**

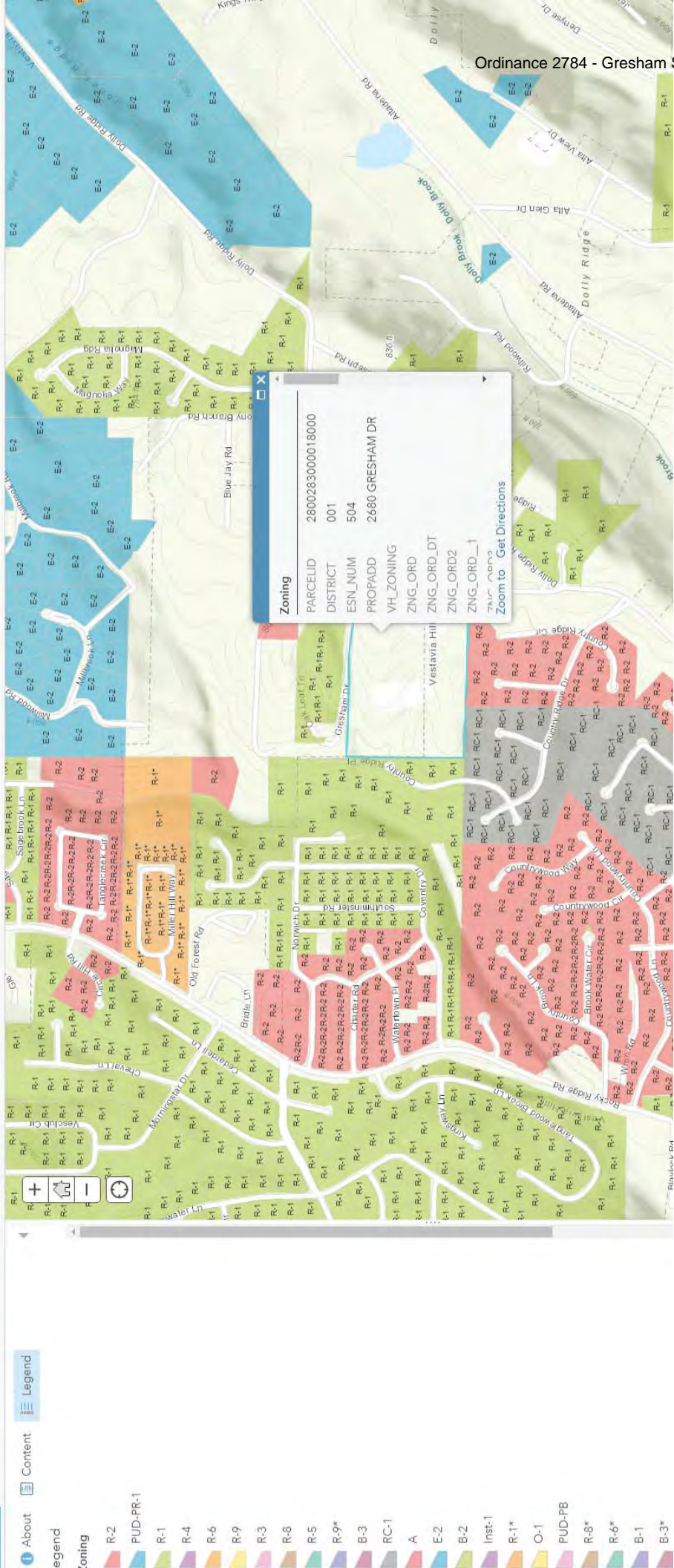
- **CASE: P-0718-25**
- **REQUESTED ACTION:** Rezoning Jefferson County Inst-1 to Vestavia Hills Inst-1
- **ADDRESS/LOCATION:** 2650 Gresham Dr.
- **APPLICANT/OWNER:** Vestavia Hills Board Of Education
- **GENERAL DISCUSSION:** Property was annexed overnight by City Council on 5/14/18 with the passage of Ordinance 2765. Applicant is requesting the compatible rezoning.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Gilchrist made a motion to recommend rezoning approval for 2650 Gresham Dr. from Jefferson County Inst-1 to Vestavia Hills Inst-1. Second was by Mr. Weaver. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. House – yes
Mr. Larson – yes

Mr. Sykes – yes
Mrs. Barnes – yes
Mr. Weaver – yes
Motion carried.



ORDINANCE NUMBER 2786

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY JEFFERSON COUNTY E-2 TO VESTAVIA HILLS R-2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County E-2 (estate single family district) to Vestavia Hills R-2 (medium density residential district):

2424 and 2532 Dolly Ridge Road
Lot 15, Lot 18 and the S 25' of Lot 17, Rocky Ridge Estates
Thornton Construction, Owner(s)

APPROVED and ADOPTED this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

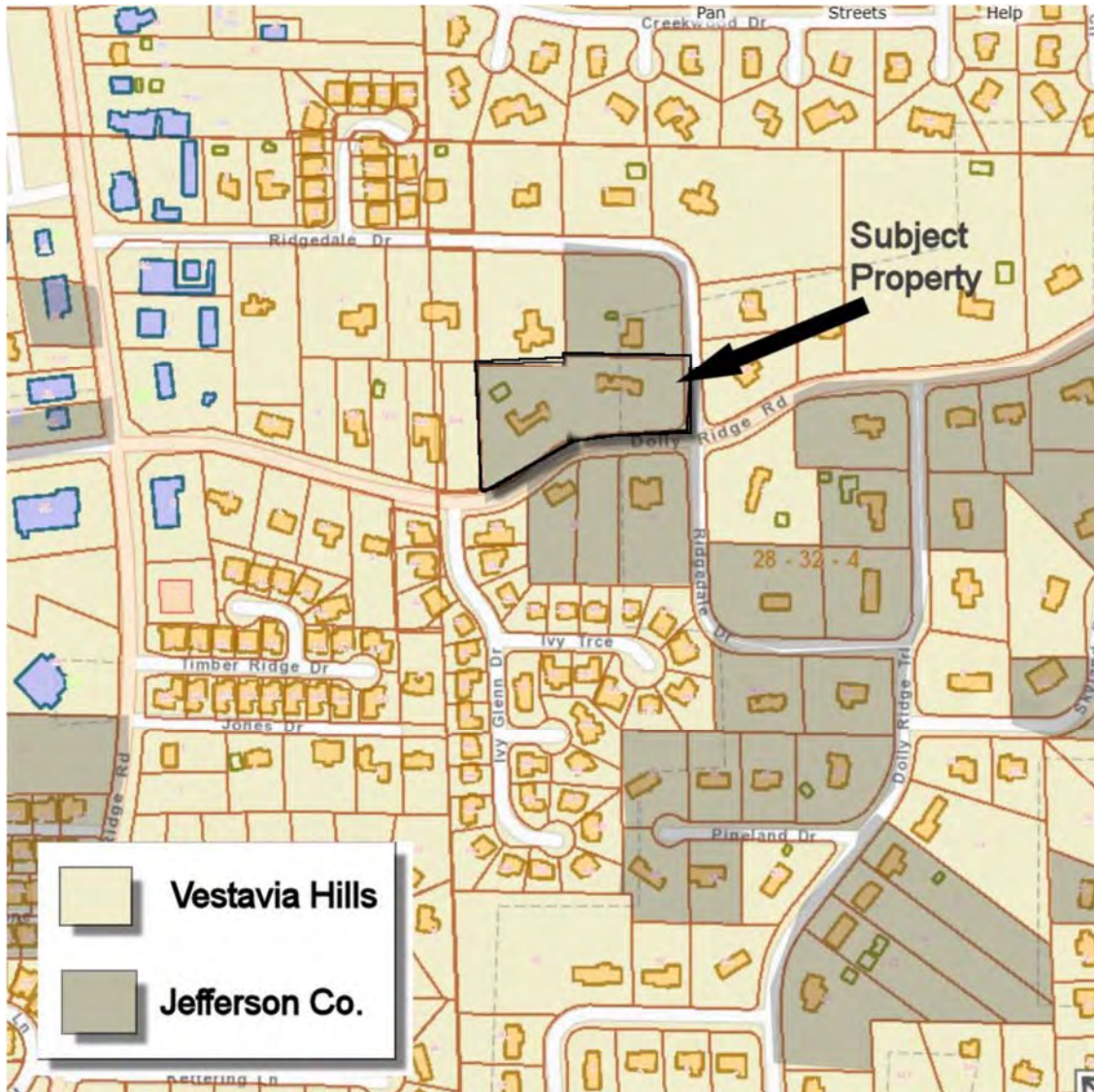
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2786 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 10th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



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

Date: **JULY 12, 2018**

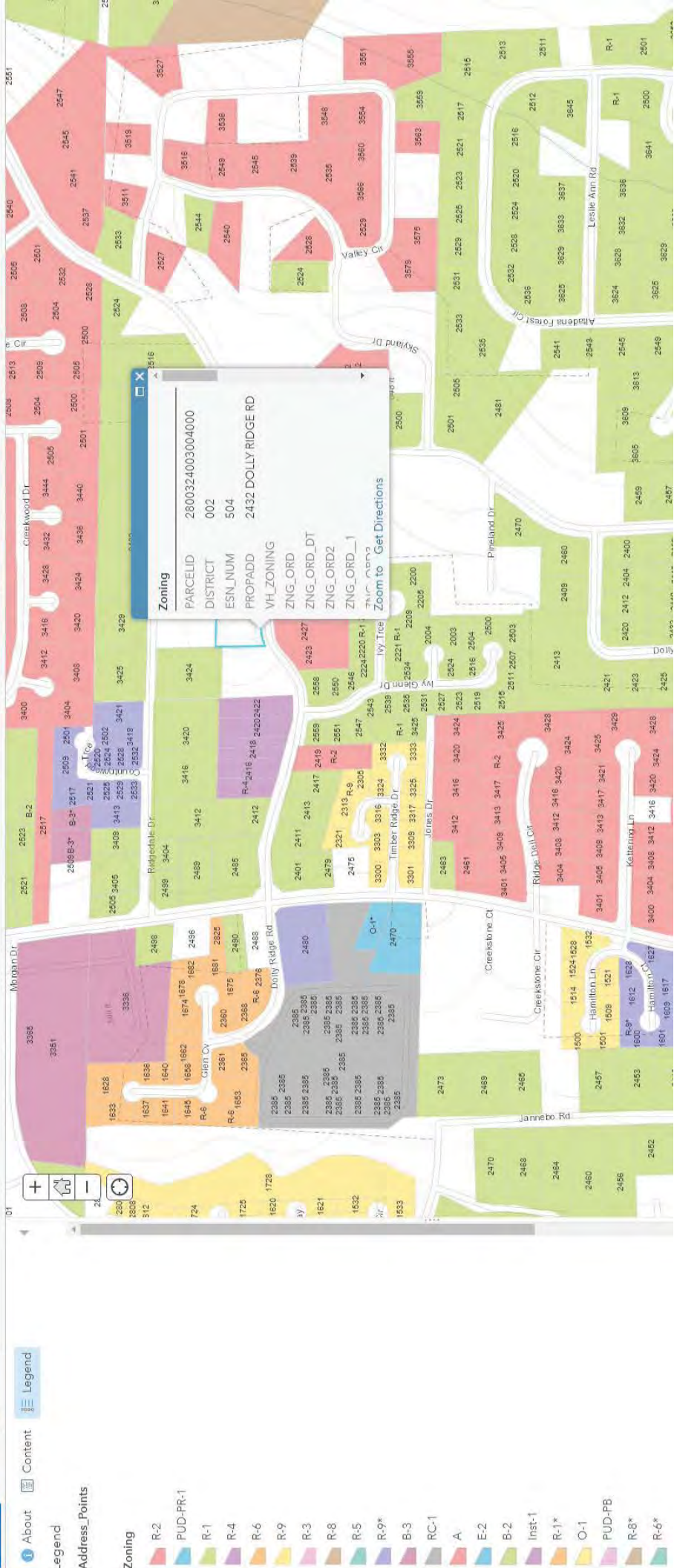
- **CASE: P-0718-27**
- **REQUESTED ACTION:** Rezoning Jefferson County E-2 to Vestavia Hills R-2
- **ADDRESS/LOCATION:** 2424 & 2432 Dolly Ridge Rd.
- **APPLICANT/OWNER:** Thorton Construction Company, Inc.
- **GENERAL DISCUSSION:** Property began 90 day annexation process by City Council on 5/30/18 with the passage of Resolutions 5046 & 5047. Applicant is requesting the rezoning to R-2 for a 4 lot subdivision on Dolly Ridge Rd. The proposed lots meet the minimum requirements for an R-2 zoning. Lots 1-3 you have access from Dolly Ridge Rd. while Lot 4 would access Ridgedale Dr. This is not a compatible rezoning.
- **VESTAVIA HILLS COMPREHENSIVE PLAN:** The request is consistent with the plan for medium density residential.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Gilchrist made a motion to recommend rezoning approval for 2424 & 2432 Dolly Ridge Rd. from Jefferson County E-2 to Vestavia Hills R-2 based on the site plan presented. Second was by Mr. Weaver. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. House – yes
Mr. Larson – yes

Mr. Sykes – yes
Mrs. Barnes – yes
Mr. Weaver – yes
Motion carried.



- Zoning**
- R-2
 - PUD-PR-1
 - R-1
 - R-4
 - R-6
 - R-9
 - R-3
 - R-8
 - R-5
 - R-9*
 - B-3
 - RC-1
 - A
 - E-2
 - B-2
 - Inst-1
 - R-1*
 - O-1
 - PUD-PB
 - R-8*
 - R-6*

Legend

Address_Points

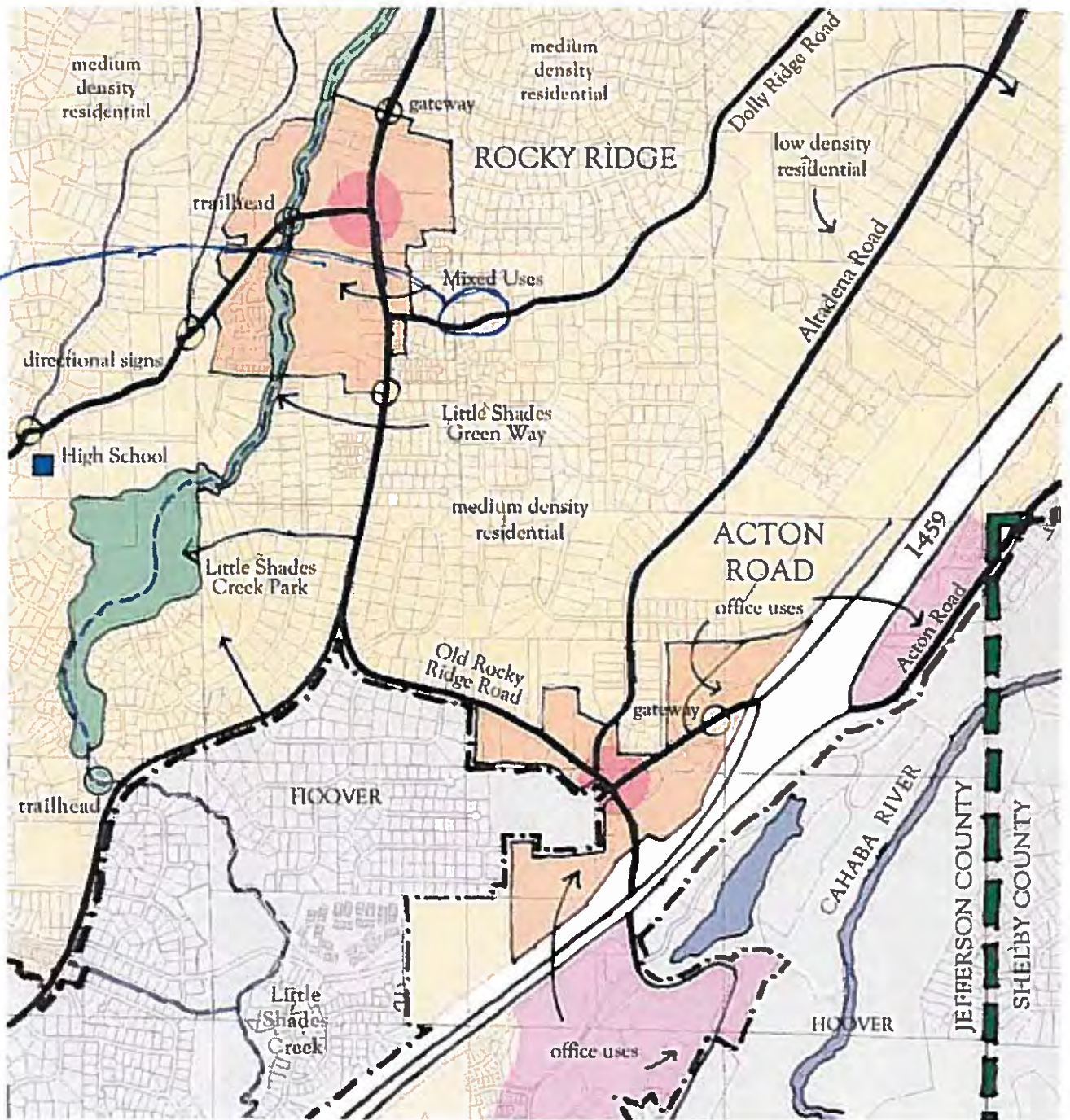


Figure 21: Rocky Ridge Road / Acton Road West
Land Use Analysis

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

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



ORDINANCE NUMBER 2785

**ANNEXING CERTAIN TERRITORY TO THE
CORPORATE LIMITS OF THE CITY OF VESTAVIA
HILLS, ALABAMA.**

WHEREAS, on the 30th day of May, 2018, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

WHEREAS, the City Council of the City of Vestavia Hills, at the time and place of its regular meeting on said date, made a determination that the matters contained in the Petition were true and that it was in the public interest that said property be annexed to the City of Vestavia Hills, Alabama.

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

1. That the following property which was described in said petition be annexed to the City of Vestavia Hills, Alabama:

2424 and 2432 Dolly Ridge Road
Lot 15, Lot 18 & S 25' Lot 17, Rocky Ridge Estates
Jim Thornton Construction, Owner(s)

2. That this Annexation shall become effective upon the adoption and approval of this Ordinance in accordance with the provisions of law, after which the heretofore described property shall become a part of the City of Vestavia Hills, Alabama.

3. That the City Clerk be and is hereby directed to publish this Ordinance in accordance with the requirements of the law and to file a copy hereof, together with a duly certified copy of the petition, with the Probate Judge of Jefferson County, Alabama.

ADOPTING and APPROVED this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

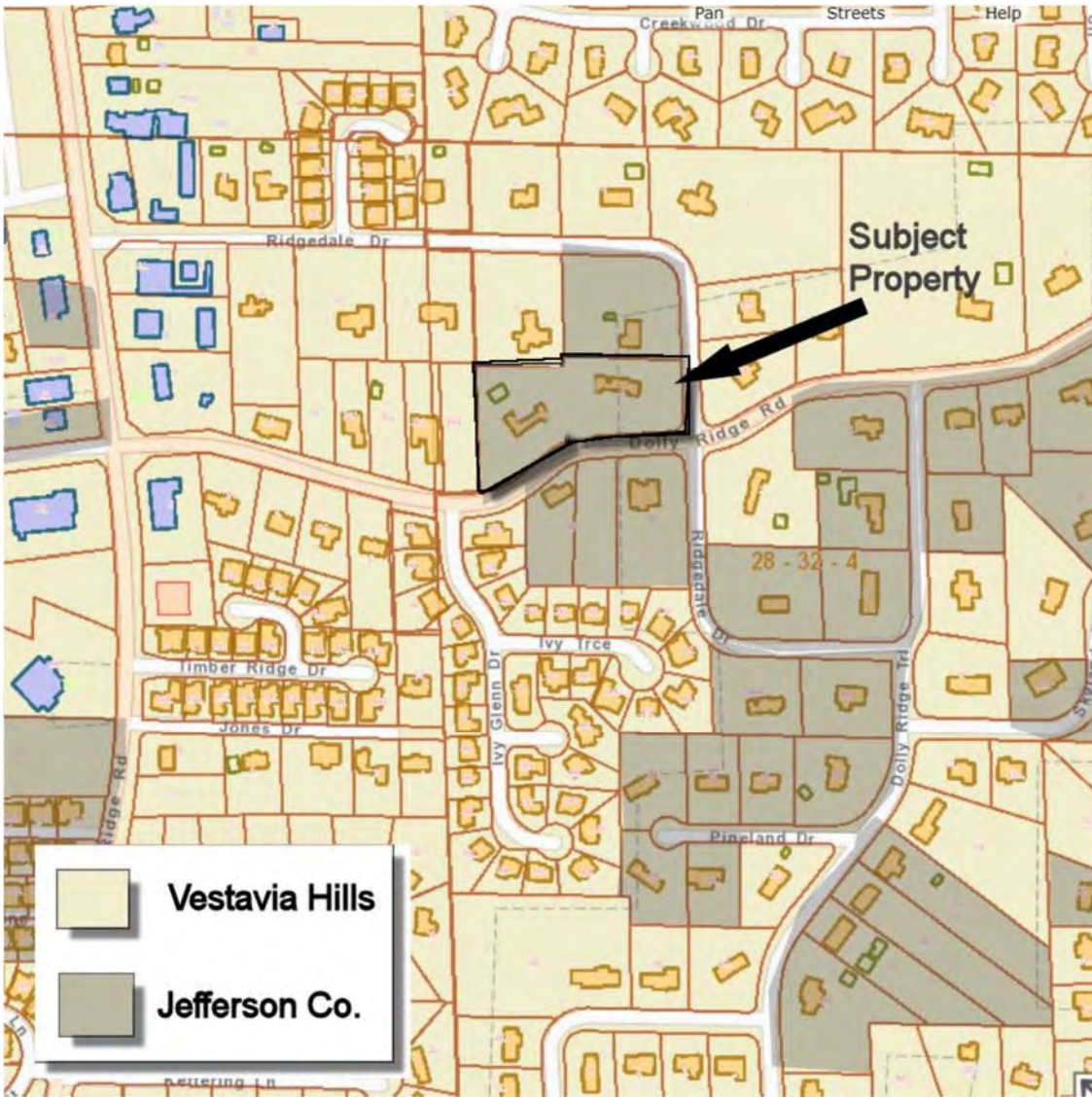
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2785 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 10th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



Annexation Committee Petition Review

Property: 2424 Dolly Ridge Road

Owners: Jim Thornton Construction

Date: 4-6-18

1. The property in question is contiguous to the city limits.

Yes No Comments: _____

2. The land use of the petitioned property is compatible with land use in the area.

Yes No Comments: _____

3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.

Yes No Comments _____

4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.

Yes No Comments _____

5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of 218,960. Meets city criteria: Yes No

Comment: developer plans to demolish current home, divide lot and build 2 homes - \$600,000 +

6. This street has fewer than 100% of the individual properties within the limits of the city

Yes No

Number of total homes _____ Number in city majority of homes are in VH

7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.

Agreed to by petitioner: Yes _____ No _____ Comment _____

Property: 2424 Dolly Ridge Road

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

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

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

11. Information on children: Number in family N/A; Plan to enroll in VH schools Yes _____ No _____ Comments: _____

Other Comments: + the committee discussed many issues with this proposed development such as density and possible student impact on VHCS



George Pierce
Chairman 4-6-18

EXHIBIT "C"

CITY OF VESTAVIA HILLS
Department Review of Proposed Annexation
(To Be completed by City Staff)

The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 2424 Dolly Ridge Road

Engineering: Date: _____ Initials: _____

Comments: _____

2424 Dolly Ridge Road -- no significant concerns noted; see comments for 2432 Dolly Ridge Road.

Comments: _____

Police Department: Date: _____ Initials: _____

The police department has reviewed the listed properties up for annexation; we have no reason to oppose said annexation on the law enforcement side.
3332 Misty Lane; 2764 Altadena Lake Drive; 2441 Jannebo Road; 2432 Dolly Ridge Road; 2424 Dolly Ridge Road.

Fire Department: Date: 3/15/18 Initials: CV

Comments: NP

PARCEL #: 28 00 32 4 003 003.000
OWNER: HILL JOAN
ADDRESS: 3424 KETTERING LANE VESTAVIA AL 35243
LOCATION: 2424 DOLLY RIDGE RD BHAM AL 35243

[111-C-] Baths: 2.0 H/C Sqft: 1,907
 18-034.0 Bed Rooms: 3 Land Sch: L1
 Land: 100,000 Imp: 137,500 Total: 237,500
 Acres: 0.000 Sales Info: \$0

<< Prev Next >> [1 / 0 Records] Processing...

Tax Year : 2017

[SUMMARY](#) [LAND](#) [BUILDINGS](#) [SALES](#) [PHOTOGRAPHS](#) [MAPS](#)

SUMMARY

ASSESSMENT

PROPERTY CLASS: 3 OVER 65 CODE: X
 EXEMPT CODE: 5-5 DISABILITY CODE:
 MUN CODE: 02 COUNTY HS YEAR: 0
 SCHOOL DIST: EXM OVERRIDE AMT: \$0.00
 OVR ASD VALUE: \$0.00 TOTAL MILLAGE: 50.1
 CLASS USE:
 FOREST ACRES: 0 TAX SALE:
 PREV YEAR VALUE: \$223,600.00 BOE VALUE: 0

VALUE

LAND VALUE 10% \$99,960
 LAND VALUE 20% \$0
 CURRENT USE VALUE [DEACTIVATED] \$0
CLASS 2
CLASS 3
 GARAGE WOOD OR 24WCBFA \$7,400
 BLDG 001 111 \$130,100
 TOTAL MARKET VALUE [APPR. VALUE: \$237,500]: \$237,460
 Assesment Override:
 MARKET VALUE:
 CU VALUE:
 PENALTY:
 ASSESSED VALUE:

TAX INFO

	CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
STATE	3	2	\$23,760	\$154.44	\$23,760	\$154.44	\$0.00
COUNTY	3	2	\$23,760	\$320.76	\$23,760	\$320.76	\$0.00
SCHOOL	3	2	\$23,760	\$194.83	\$23,760	\$194.83	\$0.00
DIST SCHOOL	3	2	\$23,760	\$0.00	\$23,760	\$0.00	\$0.00
CITY	3	2	\$23,760	\$0.00	\$23,760	\$0.00	\$0.00
FOREST	3	2	\$0	\$0.00	\$0	\$0.00	\$0.00
SPC SCHOOL1	3	2	\$23,760	\$121.18	\$23,760	\$121.18	\$0.00
SPC SCHOOL2	3	2	\$23,760	\$399.17	\$23,760	\$399.17	\$0.00

ASSD. VALUE: \$23,760.00

\$1,190.38

GRAND TOTAL: \$0.00

FULLY PAID

DEEDS

PAYMENT INFO

INSTRUMENT NUMBER	DATE	PAY DATE	TAX YEAR	PAID BY	AMOUNT
2017131811	12/19/2017		2017		\$0.00
0-0	01/10/2001		2016		\$0.00
			2015		\$0.00
			2014		\$0.00
			2013		\$0.00
			2012		\$0.00

STATE OF ALABAMA

Jefferson COUNTY

PETITION FOR ANNEXATION TO THE
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: February 1, 2018

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

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

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

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

Jim Thornton
Thornton Construction Company, Inc.
5300 Cahaba River Road, Suite 200
Birmingham, AL 35243
jmt@thorntonconstruction.com
Office:205-870-5498
Cell:205-305-2561

Larry W. Ingram, P.E.
Gonzalez-Strength & Associates, Inc.
2176 Parkway Lake Drive
205-942-2486
lingram@gonzalez-strength.com

EXHIBIT "A"

LOT: 15

BLOCK: _____

SURVEY: Rocky Ridge Estates

RECORDED IN MAP BOOK 28, PAGE 78 IN THE

PROBATE OFFICE OF Jefferson COUNTY, ALABAMA.

COUNTY ZONING: E-2 (Estate 2)

COMPATIBLE CITY ZONING: R-2 (Medium Density Residential)

LEGAL DESCRIPTION (METES AND BOUNDS):

Lot 15 Rocky Ridge Estates

(2424 Dolly Ridge Road)

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

SIGNATURE(S)

DESCRIPTION OF PROPERTY

<u>James M. Thornton</u>	Lot <u>15</u> Block _____ Survey <u>Rocky Ridge Estates</u>
<u>President - Thornton Construction Co. LLC</u>	Lot _____ Block _____ Survey _____
_____	Lot _____ Block _____ Survey _____

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

STATE OF ALABAMA

Jefferson COUNTY

James M. Thornton being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

James M. Thornton
Signature of Certifier

Subscribed and sworn before me this the 2nd day of February, 2018.

Lauren Elizabeth Thornton
Notary Public

My commission expires: April 27, 2019

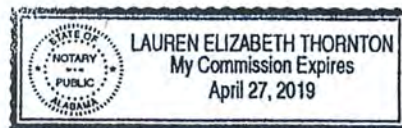


EXHIBIT "B"

VESTAVIA HILLS BOARD OF EDUCATION

1204 Montgomery Highway
Vestavia Hills AL 35216

(To be completed by the City)

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

(To be completed by Homeowner)

Name(s) of Homeowner(s): THORNTON Construction Co. LLC.
Address: 2424 Dolly Ridge Road
City: Birmingham State: AL Zip: 35243

Information on Children:

Plan to Enroll In
Vestavia Hills School?

	Name(s)	Age	School Grade	Yes	No
1.	0				
2.					
3.					
4.					
5.					
6.					

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes": _____

STATE OF ALABAMA

Jefferson COUNTY

PETITION FOR ANNEXATION TO THE
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: February 1, 2018

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

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

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

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

Jim Thornton
Thornton Construction Company, Inc.
5300 Cahaba River Road, Suite 200
Birmingham, AL 35243
jmt@thorntonconstruction.com
Office:205-870-5498
Cell:205-305-2561

Larry W. Ingram, P.E.
Gonzalez-Strength & Associates, Inc.
2176 Parkway Lake Drive
205-942-2486
lingram@gonzalez-strength.com

EXHIBIT "A"

LOT: 18 & South 25 ft of Lot 17

BLOCK: _____

SURVEY: Rocky Ridge Estates

RECORDED IN MAP BOOK 28, PAGE 78 IN THE
PROBATE OFFICE OF Jefferson COUNTY, ALABAMA.

COUNTY ZONING: E-2 (Estate 2)

COMPATIBLE CITY ZONING: R-2 (Medium Density Residential)

LEGAL DESCRIPTION (METES AND BOUNDS):

Lot 18 & South 25 ft of Lot 17 Rocky Ridge Estates

(2432 Dolly Ridge Road)

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

SIGNATURE(S)

DESCRIPTION OF PROPERTY

<u>Judith Lynn Vesper</u>	Lot <u>18</u> Block _____ Survey <u>Rocky Ridge Estates</u>
_____	Lot _____ Block _____ Survey _____
_____	Lot _____ Block _____ Survey _____

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

STATE OF ALABAMA

Jefferson COUNTY

Judith LYNN VESPER being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

Judith Lynn Vesper
Signature of Certifier

Subscribed and sworn before me this the 2nd day of February, 2018.

Lauren Elizabeth Thornton
Notary Public

My commission expires: April 27, 2019

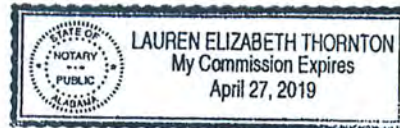


EXHIBIT "B"

VESTAVIA HILLS BOARD OF EDUCATION

1204 Montgomery Highway
Vestavia Hills AL 35216

(To be completed by the City)

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

(To be completed by Homeowner)

Name(s) of Homeowner(s): Judith Lynn Vesper

Address: 2432 Dolly Ridge Road

City: Birmingham State: AL Zip: 35243

Information on Children:

Plan to Enroll In
Vestavia Hills School?

	Name(s)	Age	School Grade	Yes	No
1.	NONE				
2.					
3.					
4.					
5.					
6.					

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

RESOLUTION NUMBER 5083

A RESOLUTION FOR APPROVAL OF THE FINAL 10% OF THE BUDGET FOR THE CITY OF VESTAVIA HILLS, ALABAMA FOR THE FISCAL YEAR 2017-2018 AND TO AUTHORIZE THE CITY MANAGER TO EXPEND UP TO \$235,600 FOR CERTAIN CAPITAL EXPENDITURES TO BE EXPENSED TO FY 2018

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, at its regular meeting of August 28, 2017, adopted and approved Resolution Number 4975 to adopt 90% of a General Fund budget, 90% of a Special Revenue Fund budget, 90% of a Capital Project Fund budget and 90% of a Sidewalk Fund Budget for the fiscal year 2017-2018; and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, wishes to adopt the final portion (10%) of aforesaid budgets for the fiscal year 2017-2018.

Total Budget Recap

	General Funds	Special Funds	Capital Projects Funds	Sidewalk Projects Fund
Total Budget Approved	\$ 38,616,956.00	\$ 3,968,866.00	\$ 2,398,341.00	\$ 582,420.00
Less 90% approved in Res. 4308 & 4233	\$ 34,755,260.00	\$ 3,571,979.00	\$ 2,158,507.00	\$ 524,178.00
Final 10% to be approved	\$ 3,861,696.00	\$ 396,887.00	\$ 239,934.00	\$ 58,242.00

BE IT RESOLVED, by the City Council of the City of Vestavia Hills, Alabama, that the final portion of the annual budget amounting to \$3,861,696.00 (general funds), \$396,887.00 (special funds), \$239,934.00 (capital projects funds) and \$58,242.00 (Sidewalk Projects Fund) for the fiscal year 2017-2018 is hereby adopted.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to expend an amount not to exceed \$235,600 for certain capital expenditures to be expensed to the 2018 fiscal year; said items are detailed in the attached Exhibit A.

APPROVED and ADOPTED this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

PURCHASES - USE OF FISCAL 2018 SURPLUS FUNDS

<u>POLICE DEPARTMENT</u>			<u>TOTAL</u>
	Flir Accessory for Drone	\$ 7,500	
	Tasers	\$ 9,600	\$ 17,100
<u>FIRE DEPARTMENT</u>			
	Renovations - Station #1	\$ 138,000	
	Dark Fiber - Station #1	\$ 12,000	
	Cardiac Monitor	\$ 32,000	
			\$ 182,000
<u>PUBLIC SERVICES</u>			
	General Fence Repairs	\$ 12,000	
	Zero Turn Mower	\$ 9,500	
			\$ 21,500
<u>LIBRARY - 70</u>			
	Parking Lot Resurfacing	\$ 15,000	
			\$ 15,000
GRAND TOTAL			\$ 235,600

ORDINANCE NUMBER 2788

AN ORDINANCE APPROVING AND ADOPTING THE GENERAL FUND BUDGET, A SPECIAL REVENUE FUND BUDGET, A CAPITAL PROJECT FUND BUDGET, AND AN INFRASTRUCTURE AND COMMUNITY SPACES PROJECT FUND BUDGET FOR THE CITY OF VESTAVIA HILLS FOR THE PERIOD BEGINNING OCTOBER 1, 2018 UNTIL SEPTEMBER 30, 2019.

WHEREAS, the City Manager has prepared and presented a “general fund budget” which has been reviewed and amended by the City Council for said period reflecting anticipated expenditures in the amount of \$44,376,286 including transfers out, to be effective for the period beginning October 1, 2018, through September 30, 2019; and

WHEREAS, the City Manager has prepared a “special fund budget” for said period reflecting anticipated expenditures in the amount of \$3,259,642 including transfers from the General Fund, to be effective for the period beginning October 1, 2018, through September 30, 2019; and

WHEREAS, the City Manager has prepared a “capital projects fund budget” for said period reflecting expenditures in the amount of \$2,038,735 to be effective for the period beginning October 1, 2018, through September 30, 2019.

WHEREAS, the City Manager has prepared an “infrastructure and community spaces fund budget” for said period reflecting expenditures in the amount of \$3,244,878 to be effective for the period beginning October 1, 2018, through September 30, 2019.

WHEREAS, Title 11-43-57, Code of Alabama, 1975, provides as follows:

Annual appropriation of funds for expenditures of all departments and interest on indebtedness: In all cities, the Council shall appropriate the sums necessary for the expenditures of the several City departments and for the interest on its bonded and other indebtedness, not exceeding in the aggregate within ten (10) percent of its estimated expenses, and such City Council shall not appropriate in the aggregate an amount in excess of its annual legally authorized revenue. But, nothing in this section shall prevent such cities from anticipating their revenues for the year for which such appropriation was made, or from contracting for temporary loans as provided in the applicable provision of this title, or from bonding or refunding their outstanding indebtedness or from appropriating anticipated revenue at any time for the current expenses of the City and interest on the bonded and other indebtedness of the City; and

WHEREAS, the City Council agrees to approve and adopt ninety (90) percent, or \$39,938,657, of the municipal “general fund budget” for the City of Vestavia Hills for fiscal year 2018-2019 upon the terms, conditions, and provisions set forth below; and

WHEREAS, the City Council agrees to approve and adopt ninety (90) percent, or \$2,933,678, of the municipal “special revenue fund budget” for the City of Vestavia Hills for fiscal year 2018-2019 upon the terms, conditions and provisions set forth below; and

WHEREAS, the City Council agrees to approve and adopt ninety (90) percent, or \$1,834,862, of the “capital project fund budget” for the City of Vestavia Hills for fiscal year 2018-2019 upon the terms, conditions and provisions set forth below.

WHEREAS, the City Council agrees to approve and adopt ninety (90) percent, or \$2,920,390, of the “infrastructure and community spaces project fund budget” for the City of Vestavia Hills for fiscal year 2018-2019 upon the terms, conditions and provisions set forth below.

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

1. The municipal “general fund budget” for the City of Vestavia Hills, Alabama, prepared by the City Manager and submitted to the City Council is hereby approved and adopted to the extent of expenditures of \$39,938,657, which said amount is not exceeding the aggregate within ten (10) percent of the estimated expenses:

\$44,376,286 multiplied by 90% equals
\$39,938,657; and

2. The municipal “special revenue fund budget” for the City of Vestavia Hills, Alabama, prepared by the City Manager and submitted to the City Council is hereby approved and adopted to the extent of expenditures of \$2,933,678 which said amount is not exceeding the aggregate within ten (10) percent of the estimated expenses:

\$3,259,642 multiplied by 90% equals
\$2,933,678; and

3. The “capital projects fund budget” for the City of Vestavia Hills, Alabama, prepared by the City Manager and submitted to the City Council is hereby approved and adopted to the extent of expenditures of \$1,834,862 which said amount is not exceeding the aggregate within ten (10) percent of the estimated expenses:

\$2,038,735 multiplied by 90% equals
\$1,834,862; and

4. The “infrastructure and community spaces fund budget” for the City of Vestavia Hills, Alabama, prepared by the City Manager and submitted to the City Council is hereby approved and adopted to the extent of expenditures of \$2,920,390 which said amount is not exceeding the aggregate within ten (10) percent of the estimated expenses:

\$3,244,878 multiplied by 90% equals
\$2,920,390; and

5. The City Manager is hereby authorized to expend the sum of \$39,938,657 from the General Fund, \$2,933,678 from the Special Revenue Fund, \$1,834,862 from the Capital Projects Fund, and \$2,920,390 from the Infrastructure and Community Spaces Fund for municipal expenses for the period beginning October 1, 2018, and ending September 30, 2019.

6. Copies of the budget outlines are attached hereto, marked as Exhibit “A” and incorporated into this Resolution by reference as though set out fully herein.

BE IT FURTHER RESOLVED, this Resolution shall become effective immediately upon its approval and adoption.

APPROVED and ADOPTED this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2788 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 10th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk

**CITY OF VESTAVIA HILLS
ANNUAL BUDGET
SUMMARY OF "ALL FUNDS" REVENUE & EXPENDITURES
FISCAL YEAR ENDING SEPTEMBER 30, 2019**

<u>EXPENDITURES:</u>	<u>GENERAL</u>	<u>SPECIAL</u>	<u>CAPITAL</u>	<u>COMMUNITY SPACES</u>	<u>TOTAL</u>
NON DEPARTMENTAL	7,303,203			3,164,834	10,468,037
CITY COUNCIL	84,598				84,598
MAYOR & ADMINISTRATION	1,256,955				1,256,955
CITY CLERK	464,476				464,476
MUNICIPAL COMPLEX	286,309				286,309
INFORMATION SERVICES / TECHNOLOGY	583,951		99,295		683,246
POLICE	9,267,700		722,951		9,990,651
FIRE	10,118,413		885,385		11,003,798
BUILDING SAFETY & INSPECTIONS	567,000		61,798		628,798
PUBLIC SERVICES	6,864,214		219,306	80,044	7,163,564
PUBLIC LIBRARY	2,193,253				2,193,253
4 CENT GASOLINE TAX		207,000			207,000
5 CENT GASOLINE TAX		100,000			100,000
7 CENT GASOLINE TAX		1,188,682			1,188,682
E-911 FUNDS		896,161			896,161
COURT & CORRECTIONS		537,285			537,285
LIBRARY STATE AID		22,015			22,015
LIBRARY BOOKS & DONATIONS		174,900			174,900
VEHICLE TAGS / ADMINISTRATION		133,599			133,599
SUB-TOTAL EXPENDITURES	\$38,990,072	\$3,259,642	\$1,988,735	\$3,244,878	\$47,483,327
TRANSFER-OUT:					
General Fund to Special Funds (funds 07 & 11)	144,449				\$144,449
General Fund to Capital Reserve Fund (Sales Tax %)	780,688				\$780,688
General Fund to Community Spaces	4,461,077				\$4,461,077
Capital/Confiscation to General Fund (policeman salary offset)			50,000		\$50,000
TOTAL - TRANSFER-OUT	\$5,386,214		50,000		\$5,436,214
TOTAL EXPENDITURES	\$44,376,286	\$3,259,642	\$2,038,735	\$3,244,878	\$52,919,541

CITY OF VESTAVIA HILLS
 ANNUAL BUDGET
 SUMMARY OF "ALL FUNDS" REVENUE & EXPENDITURES
 FISCAL YEAR ENDING SEPTEMBER 30, 2019

<u>REVENUE:</u>	<u>GENERAL</u>	<u>SPECIAL</u>	<u>CAPITAL</u>	<u>COMMUNITY SPACES</u>	<u>TOTAL</u>
STATE REVENUE	127,535		290,650		418,185
COUNTY REVENUE	16,134,982				16,134,982
CITY REVENUE	27,802,069		797,220		28,599,289
PARKS & RECREATION	261,700				261,700
4 CENT GASOLINE TAX		207,000			207,000
5 CENT GASOLINE TAX		100,000			100,000
7 CENT GASOLINE TAX		1,061,000			1,061,000
E-911 FUNDS		782,250			782,250
COURT & CORRECTIONS		462,282			462,282
LIBRARY STATE AID		22,015			22,015
LIBRARY BOOKS & DONATIONS		110,000			110,000
VEHICLE TAGS / ADMINISTRATION		133,599			133,599
TOTAL REVENUE	\$44,326,286	\$2,878,146	\$1,087,870	\$0	\$48,292,302

Budget Fiscal 2018-2019				
<u>Funds</u>	<u>100.00%</u>	<u>90.00%</u>	<u>10.00%</u>	<u>Variance</u>
GF	\$44,376,286	\$39,938,657	\$4,437,629	\$0
Special	\$3,259,642	\$2,933,678	\$325,964	\$0
Capital	\$2,038,735	\$1,834,862	\$203,874	\$0
Comm Spaces	\$3,244,878	\$2,920,390	\$324,488	\$0
GT	\$52,919,541	\$47,627,587	\$5,291,954	\$0

RESOLUTION NUMBER 5084

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH SAIN ASSOCIATES FOR PROFESSIONAL SERVICES RELATED TO THE DESIGN OF THE COMMUNITY SPACES CONNECTOR SIDEWALK TAP PROJECT

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 execute and deliver an agreement with Sain Associates for professional services related to designing the Community Spaces Connector Sidewalk TAP Project at a cost of approximately \$69,900; and
2. Said agreement is marked as Exhibit A attached to and incorporated into this Resolution Number 5084 as though written fully therein; and
3. This Resolution Number 5084 is effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

**CITY OF VESTAVIA HILLS
DEPARTMENT OF PUBLIC SERVICES
OFFICE OF CITY ENGINEER
INTER-DEPARTMENT MEMO**

August 23, 2018

To: Rebecca Leavings, City Clerk

Cc: Brian Davis, Director of Public Services
Jeff Downes, City Manager

From: Christopher Brady, City Engineer

RE: TAP Community Spaces Connector – Sain Proposal for Engineering Services

Sain Associates has provided a proposal for civil engineering, surveying, environmental document, and lighting services related to designing the Community Spaces Connector sidewalk that has been approved for TAP funding by ALDOT. The overall intent of the project is to provide pedestrian connectivity from the future City recreation center to Wald Park.

The funding agreement with ALDOT for this project was previously presented as a first read item at the August 13th City Council meeting. Design services are not eligible for reimbursement under the grant. The total estimated budget for design services is \$69,900.00. This includes survey, easement coordination, environmental documents, lighting design, construction documents, and permitting coordination.

Please let me know if any questions.

Sincerely,

Christopher



August 07, 2018

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

**SUBJECT: Proposal for Civil Engineering Services for
 Community Spaces Connector TAP Project
 Vestavia Hills, Alabama
 Sain Project No. 18-0139**

Dear Mr. Brady:

We are pleased to submit this proposal for civil engineering, surveying, environmental document, and lighting services related to designing the Community Spaces Connector sidewalk TAP Project. We have compiled the following proposal for civil engineering services.

GENERAL PROJECT UNDERSTANDING

The following understanding is based on the January 02, 2018 revised Transportation Alternatives Program (TAP) application prepared by the City of Vestavia Hills, as well as conversations held with Vestavia Hills and ALDOT.

- The primary project Team will consist of Sain Associates for surveying and civil engineering design, MRS Consultants, Inc. for the Phase I cultural resources survey, Environmental Inc. for an environmental survey, and Edmonds Engineering for lighting design.
- The City has received a TAP grant to complete the project, and review of this project will flow through ALDOT, as well as the City.
- The TAP funding is based on connecting to sidewalks near City Hall but the scope was reduce to tie to the existing Gold's Gym parking lot as the City is preparing a site plan for a Community Building and the site plan design will connect the sidewalk through the parking lot and connect this sidewalk project to the existing sidewalk at City Hall. The City will handle coordination with ALDOT for reducing the scope of the TAP project. City will also handle coordination of the Community Center design with the Sain Associates design.
- According to our conversation with ALDOT, there will be two separate reviews, PS&E and Final, that will consist of comments only, rather than their more extensive review process, and we have scoped this proposal as such.
- This proposal includes topographic survey, civil design, environmental document, lighting design, and permitting with the City, ALDOT, and impacted utility companies.
- The intent of the design will be to provide a six (6) feet wide sidewalk connecting to an existing sidewalk near Merryvale Road to the Vestavia Community Building, as shown on the enclosed concept. Two concepts will be considered. The approximate length is 1200 feet. Should the concept be changed by the City to increase the scope of civil design, we would provide a supplemental proposal for such expanded scope.
- A pedestrian bridge, per ALDOT special provision, will be necessary to cross an existing ditch.
- Lighting shall consist of 32 LED decorative lamps spaced fifty (50) feet apart.
- There will be no landscaping or irrigation required for this project.

- The design plans will include the following, which are typically required for ALDOT approval: Title Sheet; Index/ Standard Drawings Sheet, Geometric Control Sheet, Typical Sections, Project Notes, Quantities, Layout Plan, Sidewalk Profiles, Traffic Control Plan, Erosion Control Plan, Drainage Profiles, Cross Sections (at 25' spacing), Utility Relocation Plan (provided by others), and Details.
- A geotechnical investigation and report is not required. Sain will coordinate with the City on the best approach to the bidding as the excavation will most likely require rock removal.
- In the design process, Sain will attempt to avoid impacts to utilities and the City will coordinate with affected utility owners. However, in the event that utility relocations are necessary, the City will coordinate with affected owners to include any relocation plans to be prepared by the utility owner. Sain's design of utility relocations is not included within this scope, but may be provided under a supplemental agreement if requested by the City.
- The City will prepare contract documents for the project, and the City will coordinate the advertising and bidding the project. ALDOT specifications will be utilized as the technical specifications for the work, and all bids received for the project will need to be reviewed by ALDOT.
- During construction, Sain will be available to perform Construction Engineering and Inspection (CE&I) services for the City. These services would be provided under a supplemental proposal.
- This project will require an NPDES permit from ADEM if disturbance exceeds 1 acre. The City will prepare the NPDES permit to be issued to the City, and our plans will require the contractor to transfer that permit into his name before construction begins. The City will prepare an NPDES Stormwater Pollution Prevention Package for submittal to ADEM if disturbance exceeds 1 acre.
- We understand that there are no anticipated environmental impacts in this project, and this proposal is based on completing the environmental Type 1 Programmatic Categorical Exclusions checklist with no impacts.
- Our proposal is based on the information shown above. If any of this information changes, please let us know, and we will revise our proposal.

SCOPE OF SERVICES

I. Topographic Survey, Easement Drawings, and Legal Descriptions

We will perform a topographic survey of the project area, as shown on the attached site map. Contours will be shown at 1-foot intervals and based from USGS datum. Spot elevations will be shown in flat areas. Two benchmarks will be set on site. We will show visible utilities and subsurface utilities as marked by utility companies or as shown on maps. We will coordinate with Alabama One Call requesting all subsurface utilities situated in public right-of-way marked to enable an accurate location and depiction of the subsurface utilities. Alabama One Call does NOT mark any utilities that are within the limits of private property. It is the responsibility of the client to coordinate with a private line locator to have any subsurface utilities within the limits of private property, to be located by Sain Associates, marked prior to our arrival. Visible drainage structures will be shown indicating top and invert elevations as well as type and size of pipes. Visible improvements will be shown including buildings, walls, fences, sidewalks, curbs, parking areas, and paved areas. Landscaped areas and tree lines will be shown on survey, individual shrubs and trees will NOT be shown on survey. (See attached Site Map for approximate location).

We will prepare easement exhibits and legal descriptions in the areas the trail will cross the property of Tree Top Apartments, Lot 1 as recorded in Map Book 93, Page 28 in the Probate office of Jefferson County, Alabama, and the property of Southminster Presbyterian Church, Lot 2 as recorded in Map Book 93 Page 28, Deed Book 9712 Page 844, and Deed Book 9807 Page

8407 in the Probate Office of Jefferson County, Alabama. The City will handle securing the easement.

Exclusions

This survey is not to be construed as an ALTA/NSPS Land Title Survey. No easements, liens, encumbrances, or other items that might be revealed in a Land Title search will be researched, drawn or located. No sub surface utility locations, other than the locations listed in the above scope of work, will be researched or shown. This is not a boundary survey.

II. PCE Checklist

Based on conversations with ALDOT, a PCE1 Document (Programmatic Categorical Exclusion Level 1) will be required for completion of the project. Sain Associates will prepare this PCE1 Document, and will team with MRS Consultants, LLC. and Environmental, Inc. to complete the environmental studies that will be necessary for inclusion within the document. Due to the fact that right-of-way acquisitions and/or temporary construction easements will be required, it is likely that a PCE2 (Programmatic Categorical Exclusion Level 2) will be required and prepared by ALDOT. Preparation of the PCE2 Document is excluded from this scope. In the event it is determined a more comprehensive level of document is required for environmental clearance, a supplemental agreement will need to be executed as part of the scope of this project. Since discussion with ALDOT have resulted in a concurrence to prepare a PCE1 Document, preparation for and attendance at the Federal Highway Administration Kickoff meeting have been excluded from this contract. The PCE1 document shall consist of evaluating:

1. Project Purpose
2. Right-of-Way
3. Streams/Wetlands/Waterways/Coastal Zone
4. Floodplain/Floodway
5. Threatened/Endangered Species
6. Cultural Resources
7. Hazardous Materials
8. Environmental Commitments
9. Bicycle and Pedestrian Accommodations

III. Lighting Design

Sain Associates will subcontract with Edmonds Engineering to prepare the lighting design.

IV. Construction Documents

The construction plans will include the following, which are typically required for ALDOT approval: Title Sheet; Index/ Standard Drawings Sheet, Geometric Control Sheet, Typical Sections, Project Notes, Quantities, Layout Plan, Sidewalk Profiles, Traffic Control Plan, Erosion Control Plan, Drainage Profiles, Cross Sections (at 25' spacing), Utility Relocation Plan (if provided by utility owners), and Details. We will reference ALDOT technical specifications in our design. Sain will prepare quantities and an opinion of probable cost.

V. Permitting and Plan Reviews

We will submit our design plans to and coordinate with the City of Vestavia Hills, ALDOT, affected utilities, and Jefferson County, if necessary, regarding the proposed improvements. We have included time to make reasonable plan revisions if required by governing authority review. We do not anticipate any public hearings (re-zoning, variances, conditional use, etc.) and have excluded this coordination or attendance at any public meetings. The City will prepare the required submittal package to ADEM for issuance of an NPDES permit, if necessary. We will

coordinate with respective utility companies for adjustments of existing utilities impacted by this project.

We will also coordinate with ALDOT for approval of this TAP project, which we anticipate will involve two separate submittal packages, as on other TAP projects we have done in the past. We have included time for one (1) meeting with ALDOT.

EXCLUSIONS

The following services are excluded from this proposal but can be provided if deemed necessary and requested by you: the cost of filing fees for permits and approvals; public meetings or zoning activities; geotechnical studies; environmental studies or permitting not specifically included within this scope; permitting with United State Corps of Engineers; permitting with ADEM; off-site utility main extensions; utility coordination; retaining wall design; traffic impact studies; boundary surveys; platting, and/or subdivision coordination; coordination with property owners for securing easement; property appraisal; construction stakeout; sanitary sewer lift station design; bid package, advertising, and pre-bid meeting; full time CE&I (inspections); stormwater inspections during construction; or other scope not specifically included. Although not anticipated at this time, any work listed above that may arise will not begin until we have received written authorization from you to proceed.

FEES

We propose to provide the above described services based on the following fee schedule:

- I. Topographic Survey, Easement Drawings, and Legal Descriptions Lump Sum \$9,600.00
- II. PCE Checklist..... Hourly with Maximum Budget of \$9,000.00
- III. Lighting Design..... Lump Sum \$7,500.00
- IV. Construction Documents Lump Sum \$30,500.00
- V. Permitting and Plan Reviews..... Hourly with Maximum Budget of \$13,300.00

Total Estimated Budget \$69,900.00

PROCEDURES FOR CHANGES IN SCOPE OF WORK

The scope of work documented herein is based upon information known as of the date of this proposal. Should future changes (e.g. site plan, regulatory, project phasing, additional meetings, etc.) necessitate changes in the scope of work, we will contact you to discuss the scope of the additional work and its impact to our contracted fees and project schedule. No additional work will be undertaken by Sain without your authorization.

TERMS AND CONDITIONS

This contract is subject to the enclosed Terms and Conditions. All subsequent services required by you outside the scope of service specified will be performed on a time and materials basis according to the schedule of rates enclosed. Any modification to this contract document must be approved in writing by both parties with approval indicated by each signatory's initials and the date of approval.

PROPOSAL LIMITATIONS

We reserve the right to revise this proposal if not contracted within 60 days.



Community Spaces Connector TAP Project
Vestavia Hills, AL
18-0139

Sain Associates has provided this proposal with the understanding that you have selected our firm to perform professional services based upon our staff's qualifications, experience and reputation and not solely upon the cost of the services proposed. We trust the fees outlined herein are acceptable and within your project budgetary plans. We look forward to commencement of the work and will be glad to address any questions or concerns you have regarding the technical scope and/or schedule of fees for this proposal. If you should request additional prices for the scope of work included herein from other consulting engineers and/or land surveyors, please consider our proposal withdrawn in order to comply with Alabama Administrative Code Chapter 330-X-14-.05(f).

SCHEDULE

We are prepared to begin immediately upon your approval of this agreement.

Thank you for the opportunity to provide this proposal. If you have any questions or need clarification on any item, please call me. We look forward to working with you.

Sincerely,

SAIN ASSOCIATES, INC.



Alicia Bailey, P.E.
Infrastructure
Alabama License No. 26339


Enclosures:
Sain Terms & Conditions (sch. 2018)
Concepts
Survey Exhibit

cc: Alicia Bailey

OFFERED:

SAIN ASSOCIATES, INC.

BY: James A. Meads / President / AL No.17294


Signature of Authorized Representative

Date: 08/07/18

ACCEPTED:

CITY OF VESTAVIA HILLS

BY: _____
Signature of Authorized Representative

Print Name & Title

Date: _____



SAIN ASSOCIATES, INC. TERMS AND CONDITIONS

Rates:

Principal.....	\$167.00 - \$187.00 per Hour
Engineer/Planner.....	\$98.00 - \$152.00 per Hour
Designer.....	\$82.00 - \$117.00 per Hour
GIS Professional.....	\$133.00 per Hour
Surveyor.....	\$93.00 - \$130.00 per Hour
Survey Crew (1-Person).....	\$90.00 per Hour
Survey Crew (2-Person).....	\$135.00 per Hour
Survey Crew (3-Person).....	\$175.00 per Hour
Survey Crew (Overtime, Holidays – 2-Person).....	* \$175.00 per Hour
Survey Crew (Overtime, Holidays – 3-Person).....	* \$215.00 per Hour
Survey Per Diem.....	\$100.00 per Man per Night
Administrative Support.....	\$60.00 per Hour

* Overtime rate is based on working over 8 hours a day.

Reimbursable Expenses

Printing and travel expenses are included within our basic fee. Permitting and advertising fees are not included within our basic fee and will be passed along to you at our cost, plus 10%.

Payment

To be made monthly based upon the percentage of work completed and invoiced to you. Your obligation to pay for services rendered hereunder is in no way dependent upon your ability to obtain financing, to obtain payment from a third party, or to obtain approval of any governmental or regulatory agencies, or upon your successful completion of the project. If any payment due for services and expenses hereunder is not made in full within thirty (30) days after receipt of invoice, the amounts due Sain Associates, Inc., shall include a charge at the rate of 1½% per month from said thirtieth (30th) day, plus attorney’s fees for collection in the amount of 1/3 of the outstanding balance or such greater amount as the court finds reasonable. In addition, we reserve the right to suspend services under this agreement until receipt of payment in full for all amounts due for services rendered and expenses incurred.

Standard of Care

The standard of care for all professional services performed or furnished by Sain Associates under this Agreement will be the skill and care used by members of Consultant’s profession practicing under similar circumstances at the same time and in the same locality. Sain makes no warranties, express or implied, under this Agreement or otherwise, in connection with Sain’s services.

Responsibility of the Client

Client shall provide all criteria and full information as to his requirements for the Project, including budgetary limitations.

Schedules, Budgets and Estimates or Opinions of Cost

Any schedules or completion dates, budgets, or estimates of cost prepared by Consultant represent Consultant’s professional judgment based on its experience and available information. Since neither Consultant nor Client has control over: the cost of labor, materials, or equipment, or contractor’s methods of determining prices; competitive bidding or market conditions; utility conflicts or right-of-way acquisition; agency approval times or actions of a Consultant Program Manager not employed by Sain, the Consultant cannot and does not warrant or represent that actual schedules, budgets or completion dates or actual costs will not vary from schedules or completion dates, budgets or estimates of cost prepared by Consultant or proposed, established, or approved by Client.

Use of Electronic Media

Copies of documents that may be relied upon by the Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data, graphic or other types that are furnished by Consultant to Client are only for convenience of the Client. Any conclusion or information obtained or derived from such electronic files will be at the user’s sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application, operating systems or computer hardware differing from those in use by Consultant at the beginning of this assignment.

Dispute Resolution

Client and Sain Associates agree that if a dispute arises out of or relates to this contract, the parties will attempt to settle the dispute through good faith negotiations. If direct negotiations do not resolve the dispute, the parties agree to endeavor to settle the dispute by mediation prior to the initiation of any legal action unless delay in initiating legal action would irrevocably prejudice one of the parties. Mediation to take place in County where project is located and if mediation cannot be agreed upon by parties then it is agreed that AAA (American Arbitration Association) will appoint mediator.

Indemnification

Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys’ fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party’s negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.

Force Majeure



Community Spaces Connector TAP Project
Vestavia Hills, AL
18-0139

PAGE 7

Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.

Termination of Contract

Client may terminate this Agreement with seven days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Consultant has been paid in full all amounts due for services, expenses and other related charges. In the event of termination, Consultant must reimburse Client for any payments by Client to Consultant for services not performed.

Ownership of Documents

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein. Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

Schedule 2018

Concept Exhibit



SURVEY EXHIBIT



MRS Consultants, LLC.

Cultural Resource Specialists Phase I Assessments Section 106 Compliance

July 16, 2018

Jennifer Brown
Sain Associates, Inc.
Two Perimeter Park South
Suite 500 East
Birmingham, Alabama 35243

Re: Phase I Cultural Resources Survey for a Proposed TAP Sidewalk Project from Merryvale Road to a Vestavia Municipal Building in Vestavia, Jefferson County, Alabama

Dear Jennifer:

Thank you for contacting MRS Consultants, LLC regarding the above referenced project. A cost proposal is attached for MRS to conduct a Phase I cultural resources assessment survey for the proposed project. The project involves a proposed TAP sidewalk project from Merryvale Road to a Vestavia Municipal Building in Vestavia, Alabama. The exact route of the sidewalk is undetermined, but the survey area includes approximately 2.5 acres of land. All phases of the research will be conducted in compliance with the guidelines set forth by the Alabama Historical Commission (AHC) and will consider both archaeological and historic structural resources in the study area, as well as historic resources that may exist in the surrounding Area of Potential Effect (APE).

This contract will entail a Phase I cultural resources assessment of the survey area. There will be three general stages to this project: 1) Background Research; 2) Field Research; and 3) Analysis and Reporting. Following is a brief description of each stage of research.

Stage 1: This stage of research includes the background research conducted before the field investigation. Background research will be conducted to identify any known cultural resources within the study area, especially archaeological sites, cemeteries, historic structures, and historic communities. This research will also serve to identify the potential for such resources. Several sources will be consulted during the research, including but not necessarily limited to the Alabama State Site File (ASSF), the National Register of Historic Places (NRHP), the Alabama Register of Landmarks & Heritage (ARLH), and the Online Archaeological GIS website for Alabama.

Stage 2: This stage will include the field assessment of the project area, and will document archaeological sites, cemeteries, and historic structures. The project area will receive a pedestrian review. Standard archaeological techniques will be employed during the survey, especially visual observation of the ground surface and subsurface shovel testing. Environmental conditions and shovel tests will be documented on field maps. Shovel tests generally will measure 30 cm in diameter and will be excavated into subsoil. Soils will be sifted through a 6 mm mesh screen to search for cultural material. Any artifacts recovered during the investigation will be bagged by provenience, and returned to the laboratory for analysis. Each discovered resource (archaeological sites, cemeteries, and historic structures) will be evaluated to a preliminary level necessary for determining its potential eligibility for inclusion on the NRHP. Standard information will be derived for each archaeological site, i.e. GPS coordinates, dimensions, vertical depth, positive/negative shovel tests, environmental context, photographs, sketch maps, etc. The architectural survey will also document any historic structures that exist on adjacent properties, if any exist.

MRS Consultants, LLC.
TAP Vestavia Sidewalk Project, Jefferson County, AL

Stage 3: This stage includes the laboratory analysis and preparation of the technical report and other documentation. Artifacts will undergo standard laboratory procedures, i.e. washing, analysis, and preparation for curation. ASSF forms will be completed for each archaeological site, which will be submitted to the ASSF for a permanent site number. Historic properties identified during the survey will be described. A technical report will be written detailing the survey and findings of the research. Recommendations of NRHP eligibility will be made for each cultural resource. Those cultural resources that are considered *Not Eligible* for the NRHP will be recommended for clearance. Those cultural resources that have an *Undetermined* or *Potentially Eligible* NRHP eligibility will be recommended for avoidance or additional research.

If you have any questions, please do not hesitate to call me on my cell phone at (205) 242-8650. We look forward to working with you, and thank you for considering MRS Consultants, LLC.

Sincerely,



Catherine C. Meyer
MRS Consultants, LLC.

Enclosure

MRS Consultants, LLC.
TAP Vestavia Sidewalk Project, Jefferson County, AL

July 16, 2018

COST PROPOSAL

Phase I Cultural Resources Assessment
for a Proposed TAP Sidewalk Project from Merryvale Road to a Vestavia Municipal Building
in Vestavia, Jefferson County, Alabama

PERSONNEL COSTS	<u>No. Days</u>	<u>Daily Rate</u>	<u>Costs</u>
<u>Background Research/Administration</u>			
MRS Cultural Resource Specialist	0.50	\$350.00	\$175.00
<u>Fieldwork</u>			
MRS Cultural Resource Specialist	1.00	\$350.00	\$350.00
Research Assistant	1.00	\$250.00	\$250.00
<u>Lab Analysis/Report/Drafting</u>			
Research Assistant	0.50	\$250.00	\$125.00
Cultural Resource Specialist	2.50	\$350.00	\$875.00
	Personnel Subtotal		\$1,775.00
OPERATING BUDGET			
AHC Research--Per Diem (\$20.00/day)	0	\$20.00	\$0.00
AHC Research--Mileage (.54/mile)	0	\$0.540	\$0.00
Fieldwork--Per Diem (\$20.00/day)	2	\$20.00	\$40.00
Fieldwork--Mileage (.54/mile)	130	\$0.540	\$70.20
Miscellaneous Supplies/Equipment			\$25.00
	Total Operating		\$135.20
INDIRECT COSTS ON OPERATING (43%)			\$58.14
TOTAL COSTS			\$1,968.34
LUMP SUM/FIXED PRICE			\$1,970.00



ENVIRONMENTAL, INC.

1345 Blair Farms Road, Odenville, Alabama 35120

Environmental, Remediation, and Ecological Consultants

June 22, 2018

Ms. Jennifer Brown
Sain Associates, Inc.
Two Perimeter Park South, Suite 500 East
Birmingham, Alabama 35243

Subject:
**Proposed Scope of Services & Fees
Vestavia TAP Corridor Project
Jefferson County, Alabama
Environmental, Inc. Proposal No.: E18-293**

Dear Ms. Brown:

Environmental, Inc. is pleased to provide this proposed Scope of Services to be performed on the Vestavia TAP Corridor Project in Jefferson County, Alabama. Based on the information provided, it is our understanding that the project area will include a vegetated area that connects Merryvale Road to a Vestavia Municipal Building; the limits of the project area were provided to our office via electronic mail on June 18, 2018.

I. WETLAND & WATERS OF THE U.S. DELINEATION SCOPE

Environmental, Inc. will provide qualified personnel to assess the property and determine the presence/absence of any potential jurisdictional wetlands and/or Waters of the U.S., as defined by the U.S. Army Corps of Engineers (USACE) Field Guide for Wetland Delineation, 1987 Corps of Engineers Manual (Manual) and the Regional Supplement to the Corps of Engineers Manual for the Eastern Mountains and Piedmont Region (April 2012). The Wetland Delineation will include, at a minimum, the following services:

- A review of publically available aerial photographs and hydrologic maps.
- A reconnaissance of the subject site to review representative vegetation and hydrology information.
- Photographic documentation of the site.
- Flagging and classification of the identified jurisdictional features (if any) on the site.
- Generation of a Wetland Delineation Report summarizing the findings of the field activities.

COST

Wetland Delineation\$ 1,000.00

Phone: (205) 629-3868 • Fax: (877) 847-3060

II. THREATENED & ENDANGERED SPECIES EVALUATION SCOPE

Environmental, Inc. will provide qualified personnel to conduct a Threatened & Endangered Species Evaluation in accordance with US Fish & Wildlife Service procedures and will include, at a minimum, the following services:

- A review of published literature regarding the watershed, geology, soils, and topography of the general area of the site.
- Consultation with the US Fish & Wildlife Service Daphne Field Office regarding potentially occurring imperiled species within the project area.
- A review of published literature regarding habitat requirements, known distributions, and Recovery Plans for each target species.
- A review of historical aerial photographs depicting the general area of the site.
- A site reconnaissance to observe the site for target species and target species habitat.
- Generation of a Threatened & Endangered Species Evaluation Report detailing our findings.

COST

Threatened & Endangered Species Evaluation\$ 600.00

III. HAZARDOUS MATERIALS EVALUATION SCOPE

The Hazardous Materials Evaluation will utilize ASTM Standards on Environmental Site Assessments for Commercial Real Estate (ASTM E 1527-13) and will include, at a minimum, the following services:

- A review of published literature regarding the geology, soils, and topography of the general area of the project.
- A site reconnaissance to observe the site and adjacent properties for evidence of *recognized environmental conditions* as defined in ASTM E 1527-13.
- A review of environmental regulatory records regarding the project areas and surrounding properties.
- A review of City Directories, and/or a review of available historical maps depicting the project area or project vicinity.
- A review of available aerial photographs depicting the general area of the project.
- Generation of a Hazardous Materials Evaluation report.



COST

Hazardous Materials Evaluation\$ 1,400.00

CLOSING & SCHEDULE


We are prepared to begin the assessment field work within ten business days of authorization to proceed. The complete reports for each service would be submitted to your office within 30 days following notice to proceed.

Terms and Conditions for these services would be in accordance with the guidelines established in Sain Associates Consultant Contract for Services.

Thank you for allowing us to submit this information. We appreciate your consideration of Environmental, Inc. If you have any questions concerning this proposal, please call (205) 629-3868 or email cstinnett@envciv.com.

Sincerely,

ENVIRONMENTAL, INC.



Chad Stinnett
Senior Project Scientist



2 Riverchase Office Plaza
Suite 205
Hoover, AL 35244
(205) 988-2069

June 29, 2018

Sain Associates
2 Perimeter Park South
Suite 500 East
Birmingham, AL 35243

Attention: Erin L. Curry, P.E.
Subject: Vestavia Hills Lighting Proposal
Edmonds Project No.: BHM18138

Dear Erin:

We are pleased to offer the following proposal for the design of the **Electrical** systems for the subject project:

FACILITY

The project consists of approximately 1300 feet of sidewalk pathway lighting every 50 linear feet (fixture to be compliant with ALDOT standards and specs and cannot be sole-sourced). Location is just west of US 31 near Merryvale Lane. No receptacles, cameras, or irrigation control are required on the poles. Sain will handle utility coordination. Any ALDOT forms/worksheets and ALDOT specific meetings are not included as it is not anticipated that they will be required. If such scope is required, assistance will be provided if time is 1-2 hours but any substantial amount over that not being anticipated or specified now would obviously need to be handled on an hourly basis.

PROJECT SCOPE / DESIGN SERVICES

1. Site survey to gather existing conditions and develop and assist with new fixture layout.
2. New electrical service, distribution panels, and circuiting for new light poles from Alabama Power service points. This assumes suitable power is located adjacent to the pathway or if not that any utility relocation, extensions, etc. will be provided/coordinated by others so that Edmonds will show connection to a nearby (within 200') pole, transformer, or other APCO power source.

3. Cost estimate for item 1 above.
4. Complete drawings and copy ready specifications suitable for competitive bids and construction. Drawings and documents furnished for each deliverable will be transmitted in electronic digital file format ready for reproduction (Adobe Acrobat .pdf).

PROJECT CONSTRUCTION PERIOD SERVICES

Construction period services shall not be included as requested, but can be performed as a separate proposal. As a result, Edmonds Engineering, Inc. and its employees have no involvement in the observation of the construction and installation of the engineered systems designed, thus neither Edmonds Engineering, Inc. nor its owners, engineers, or employees shall be held liable for any improperly operating or potentially unsafe or unsanitary conditions which may arise as a result of such installations.

SITE VISITS AND / OR MEETINGS

We have included the following maximum number of site visits and / or meetings:

(1)

One for pre-construction survey

NOT INCLUDED

Our Proposal does not include the following:

1. Construction period services including submittal review or final observation.
2. Any printing or plotting other than for internal and coordination purposes.
3. Any out of town trips or site visits, except as noted above.
4. Any travel or per diem expenses for site visits.
5. Design for "Fast Track" construction.
6. Any other utilities other than the site lighting electrical service(s). Utility coordination is handled by Sain according to email of 6/27/2018.
7. Standby/generator backup design
8. Auxiliary, cameras, or other power/receptacle, irrigation, etc. design.
9. Advertising for bids.
10. As-built drawings.
11. Storm drainage.
12. Sewage lift station, or onsite sewage disposal.
13. Design for renovation of existing facilities other than those described above.
14. Design for future expansion
15. Seismic design for components

16. ALDOT specific meetings, forms/worksheets requiring more than 1-2 hours to complete or assist in completion

The above items not included in the scope of work can be billed as additional services if requested.

INFORMATION PROVIDED BY CLIENT

The Client agrees to furnish Edmonds Engineering, Inc. with the following:

1. A site plan of the facility in AutoCAD DWG or Revit format.
2. Architectural plans or computer files as required to define the construction of the facility, including building sections, elevations, and details.
3. A site plan indicating locations and sizes of all above ground and below ground utilities.

FEE

Per your request, we offer a lump sum fee as follows:

Total MEP lump sum fee for = \$ 7,500.00

PAYMENT

To be made monthly based on percentage of the work completed up to 80% of the fee. The remaining 20% will be paid monthly over the construction time frame.

Any payments due over 60 days shall be subject to interest of 1 ½% per month, and we reserve the right to stop work until payment is received. Reasonable Attorney's fees that we incur for collections shall be paid by the client.

ADDITIONAL SERVICES

Edmonds Engineering, Inc. may also perform additional services not included above at the request of the Client. Additional services, which shall be billed on an hourly basis as set forth in the Hourly Fee schedule below, may include, but shall not be limited to:

1. Construction Administration Services
2. Design work not within the "Scope of Work".
3. Detailed cost estimates.
4. Additional work which is due to the "Information Provided by Client" being incomplete.
5. Additional site visitation.
6. Excessive revisions to drawings or specifications inconsistent with instructions previously given.

- 7. Consultations made necessary by major defects in Contractor's work.
- 8. Bi-weekly or monthly site visits during construction, depending on project size and complexity.

Hourly Fee	
Regional Manager	\$205 / hr.
Team Leader	\$195 / hr.
Group/Account Manager	\$180 / hr.
Project Manager 2	\$160 / hr.
Project Manager 1	\$155 / hr.
BIM Manager	\$130 / hr.
Project Engineer 2	\$115 / hr.
Project Engineer 1	\$110 / hr.
Project Designer 3	\$130 / hr.
Project Designer 2	\$105 / hr.
Project Designer 1	\$100 / hr.
Office Manager	\$80 / hr.

LIMITATION OF LIABILITY

Client agrees to limit Edmonds' liability to the sum of \$50,000 or Edmonds' fee, whichever is greater. The limitation shall apply regardless of the cause of action or legal theory pled or asserted and shall extend to Edmonds' officers, directors and employees.

By signing this Proposal, Client agrees to Edmonds' Terms and Conditions, which are attached to this Proposal and are part of this Proposal.

Thank you for the opportunity to submit this proposal. We look forward to working with you. If you have any questions, please call.

Sincerely,

Accepted by,

EDMONDS ENGINEERING, INC.

Sain Associates

Ronald F. Dingus, Jr.

Name

Signature, Title & Date

PROJECT MANAGER

Terms and Conditions

1. These terms and conditions are incorporated into the letter proposal between Edmonds Engineering, Inc. ("Edmonds") and the Client as if set forth fully therein.
2. In providing services under its Proposal, Edmonds shall perform its services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession while acting under the same or similar circumstances at the same time and in the same locality. Edmonds makes no warranty, express or implied, as to its professional services provided under its Proposal.
3. Edmonds shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs or safety practices, nor shall Edmonds have any authority or responsibility to stop or direct the work of any contractor. However, Edmonds shall have the authority to reject work which does not conform to Edmonds' plans, drawings and/or specifications.
4. Any review by Edmonds of shop drawings or submittals shall be for general compliance with the contract documents and shall not relieve the contractor from compliance with the contract documents.
5. In performing its scope of work, Edmonds shall have the right to rely on the accuracy of documents provided by the Client or any contractor or other design professional hired by the Client.
6. Client is responsible for notifying Edmonds when site visits are to be made by Edmonds. Client shall provide Edmonds with reasonable notice of when Edmonds is to conduct its site visit(s).
7. In no event shall Edmonds or Client be liable to the other for special, indirect, incidental or consequential damages.
8. In the event of a dispute arising out of or relating to the Proposal or Edmonds' scope of work, Edmonds and the Client agree to attempt to resolve any such disputes as follows:
First: Edmonds and Client agree to attempt to resolve such disputes through direct negotiations between Edmonds and Client.
Second: If such negotiations do not fully resolve the dispute(s) between Edmonds and Client, Edmonds and Client agree to attempt to resolve any remaining dispute(s) by formal non-binding mediation. Edmonds and Client agree mediation is a condition precedent to litigation. Edmonds and Client agree to split the costs of mediation equally.
Third: Edmonds and Client agree the exclusive venue for any dispute arising out of or related to the Proposal or Edmonds' scope of work shall be in State Court in Jefferson County, Alabama-Birmingham Division.
9. Edmonds agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Edmonds' negligent performance of professional services under the Proposal or Edmonds' scope of work. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Edmonds, its officers, directors, employees and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Proposal, Edmonds' scope of work and the acts of Client's contractors, subcontractors or consultants or anyone for whom the Client is legally liable. Neither the Client nor Edmonds shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
10. Edmonds shall carry the following insurance and limits of liability throughout its work for the Client under the Proposal:
Commercial General Liability - \$1,000,000 per occurrence/\$2,000,000 aggregate/
\$5,000,000 umbrella aggregate
Worker's Compensation Insurance- statutory
Automobile Liability Insurance - \$1,000,000 per accident
Professional Liability Insurance - \$2,000,000 per claim/\$2,000,000 aggregate
11. All documents prepared by Edmonds arising out of or relating to the Proposal or Edmonds' scope of work are instruments of service and shall remain the property of Edmonds. Such documents and instruments of service are not intended or represented to be suitable for reuse by Client or others on any other project.
12. Electronic files that are furnished by Edmonds are only for the convenience of Client. In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.
13. This Proposal shall be subject to termination by Edmonds or Client, with or without cause upon twenty (20) days advance notice in writing. Edmonds shall not be required to provide its instruments of service to Client until Edmonds is paid for the appropriate percentage of its work completed under the Proposal.

RESOLUTION NUMBER 5085

A RESOLUTION ACCEPTING A BID FOR WALD PARK INITIAL SITE PACKAGE FOR THE CITY OF VESTAVIA HILLS, ALABAMA

WHEREAS, on August 22, 2018 at 10:00 a.m. the City of Vestavia Hills publicly read aloud bids submitted for Wald Park Initial Site Package for the City of Vestavia Hills; and

WHEREAS, a copy of the bid tabulation for said bids is marked as Exhibit A, attached to this Resolution Number 5085; and

WHEREAS, the City's consultant for the Community Spaces Project, Ken UpChurch, TCU Consulting Services LLC, submitted a letter to the City Manager reviewed the bids, detailed them in a letter dated August 22, 2018 recommending acceptance of the bid package submitted by Forestry Environmental a copy of which is marked as Exhibit A and is attached to and incorporated into this Resolution Number 5085 as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to follow the recommendation of the Consultant and accept said bid as detailed above.

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

1. The bid submitted by Forestry Environmental as detailed in Exhibit A is attached and recommended by the City Manager and TCU is hereby accepted; and
2. The City Manager is hereby authorized to execute and deliver any and all documents necessary to secure said agreement and/or for said services; and
3. This Resolution Number 5085 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 10th day of September, 2018.

Rusty Weaver
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

BID TABULATION

WALD PARK INITIAL SITE PACKAGE - VESTAVIA HILLS

DATE: Wednesday, 22 AUGUST 2018				
TIME: 2:00pm CDT				
LOCATION: Vestavia City Hall - Executive Conference Room				
		Forestry Environmental	TE Stevens Construction	Tortorigi Construction
Envelope Sealed		X	X	X
License No. on Envelope		21921	16607	11804
Addenda 1 through 6 Acknowledged		X	X	X
Unit Price Allowances		X	X	X
Bid Bond		X	X	X
Surety		Travelers Casualty and Surety	Mid-Continent Casualty	NGM Insurance
Power of Attorney for Surety		X	X	X
License No. on Bid Form		X	X	X
Bid Signed		X	X	X
BID ITEM 1 - Base Bid		\$ 1,730,000.00	\$ 2,133,940.00	\$ 2,331,194.00
BID ITEM 2 - Base Bid		\$ 1,790,000.00	\$ 1,747,889.00	\$ 1,402,250.00
BASE BID TOTAL		\$ 3,520,000	\$ 3,881,829	\$ 3,733,444
ALTERNATE #1		\$ 35,787.00	\$ 261,500.00	\$ 115,436.00
ALTERNATE #2		\$ 50,000.00	\$ -	\$ 1.00
Envelope Notations		NA	NA	NA
TOTAL BASE BID W/ ALTERNATES (INCLUDING ALL ENVELOPE NOTES)		\$ 3,605,787	\$ 4,143,329	\$ 3,848,881
UNIT PRICE #1	CY	\$ 38.00	\$ 30.00	\$ 30.00
	1,000 CY	\$ 38,000.00	\$ 30,000.00	\$ 30,000.00
UNIT PRICE #2	SY	\$ 8.00	\$ 9.00	\$ 10.00
	20 SY	\$ 160.00	\$ 180.00	\$ 200.00
UNIT PRICE #3	TON	\$ 32.00	\$ 35.00	\$ 40.00
	100 TONS	\$ 3,200.00	\$ 3,500.00	\$ 4,000.00

I certify that this is a true and accurate tabulation of the bids received on the captioned project.

Signature 

D. Matthew Foley
Williams Blackstock Architects
Printed Name


Notary Public

AMANDA FOWLER
NOTARY PUBLIC
STATE OF ALABAMA



TCU CONSULTING SERVICES, LLC
CONSTRUCTION CONSULTANTS

Owner Representation

Program Management

Facilities Planning

Strategic Planning

Construction Claims Consulting

Development Consulting

August 22, 2018

Mr. Jeff Downes
City Manager
City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

Re: Wald Park Project

Dear Mr. Downes:

Attached is the letter of recommendation on the Wald Park Initial Site Package for the City of Vestavia Hills from Williams Blackstock Architects. We have reviewed the bid and concur with the architect. It is our recommendation that the City of Vestavia Hills proceed with contract award to Forestry Environmental for the Base Bid.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Ken Upchurch, III'.

W. Ken Upchurch, III
Principal

AIA[®] Document A101[™] – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 11th day of September in the year 2018
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

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

(205) 978-0100

and the Contractor:
(Name, legal status, address and other information)

Forestry Environmental Services, Inc
2871 Acton Road Suite 222
Vestavia Hills, AL 35243
(205) 298-6799

for the following Project:
(Name, location and detailed description)

Wald Park - Initial Site Package
Vestavia Hills, Alabama
Vestavia Hills Community Spaces Wald Park Initial Site Package

The Architect:
(Name, legal status, address and other information)

Williams Blackstock Architects
2204 1st Ave S Suite 200
Birmingham, AL 35233

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101[™]-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201[™]-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Contractor agree as follows.

Exhibit Res. 5085

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Init.

- Not later than () calendar days from the date of commencement of the Work.
- By the following date: Bid Item #1 shall be complete by January 10, 2019. The balance of the Work shall be complete by March 15, 2019.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
Bid Item #1	January 10, 2019

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Three Million, Six Hundred and Five Thousand, Seven Hundred and Eighty-Seven Dollars (\$ 3,605,787.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
Alternate #1	\$35,787.00
Alternate #2	\$50,000.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum: *(Identify each allowance.)*

Item	Price
Permitting Allowance	\$75,000.00
Owner Allowance	\$100,000.00
Unforeseen Conditions Allowance	\$100,000.00

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
Unit Price #1	1,000 CY	\$38.00
Unit Price #2	20 SY	\$8.00
Unit Price #3	100 Tons	\$32.00

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

\$1,000.00 per calendar day.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 7th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 28th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than (60) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

Init.

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User Notes:

(1916363632)

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

In accordance with the Contract Documents.

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

In accordance with the Contract Documents.

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

In accordance with the Contract Documents.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

In accordance with the Contract Documents.

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

In accordance with the Contract Documents.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Jeff Downes, City Manager
City of Vestavia Hills
1032 Montgomery Hwy
Vestavia Hills, AL 35216

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

Mark Lawrence, President
Forestry Environmental Services, Inc.
2871 Acton Road Suite 222
Vestavia Hills, AL 35243

Init.

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .3 AIA Document A312 2010, Performance Bond
- .4 AIA Document A312 2010, Payment Bond
- .5 City of Vestavia Hills, First Addendum To Construction Contract and General Conditions By and Between Owner and Contractor

.5 Drawings
(Row deleted)

Title	Title	Date
Wald Park Initial Site Package	100% Bid Documents	July 30, 2018

.6 Specifications

Title	Title	Date
Wald Park Initial Site Package	100% Bid Documents	July 30, 2018

.7 Addenda, if any:

Number	Date
Addendum No.1	August 3, 2018
Addendum No.2	August 10, 2018
Addendum No.3	August 16, 2018
Addendum No.4	August 17, 2018
Addendum No.5	August 20, 2018
Addendum No.6	August 21, 2018

Init.

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

(Table deleted)
(Paragraphs deleted)

(Paragraphs deleted).9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)
 Jeff Downes, City Manager
 City of Vestavia Hills
 (Printed name and title)

CONTRACTOR (Signature)
 Mark Lawrence, President
 Forestry Environmental Services, Inc.
 (Printed name and title)

Exhibit RES: 5085

Additions and Deletions Report for AIA® Document A101™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:18:58 on 09/05/2018.

PAGE 1

AGREEMENT made as of the 11th day of September in the year 2018

...

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

(205) 978-0100

...

Forestry Environmental Services, Inc
2871 Acton Road Suite 222
Vestavia Hills, AL 35243
(205) 298-6799

...

Wald Park - Initial Site Package
Vestavia Hills, Alabama
Vestavia Hills Community Spaces Wald Park Initial Site Package

...

Williams Blackstock Architects
2204 1st Ave S Suite 200
Birmingham, AL 35233

PAGE 2

A date set forth in a notice to proceed issued by the Owner.

PAGE 3

By the following date: Bid Item #1 shall be complete by January 10, 2019. The balance of the Work shall be complete by March 15, 2019.

...

Bid Item #1

January 10, 2019

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Three Million, Six Hundred and Five Thousand, Seven Hundred and Eighty-Seven Dollars (\$ 3,605,787.00), subject to additions and deductions as provided in the Contract Documents.

...

<u>Alternate #1</u>	<u>\$35,787.00</u>
<u>Alternate #2</u>	<u>\$50,000.00</u>

...

<u>Permitting Allowance</u>	<u>\$75,000.00</u>
<u>Owner Allowance</u>	<u>\$100,000.00</u>
<u>Unforeseen Conditions Allowance</u>	<u>\$100,000.00</u>

...

<u>Unit Price #1</u>	<u>1,000 CY</u>	<u>\$38.00</u>
<u>Unit Price #2</u>	<u>20 SY</u>	<u>\$8.00</u>
<u>Unit Price #3</u>	<u>100 Tons</u>	<u>\$32.00</u>

...

\$1,000.00 per calendar day.
PAGE 4

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 7th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 28th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than (60) days after the Architect receives the Application for Payment.

PAGE 5

In accordance with the Contract Documents.

...

In accordance with the Contract Documents.

...

In accordance with the Contract Documents.

...

In accordance with the Contract Documents.
PAGE 6

Arbitration pursuant to Section 15.4 of AIA Document A201-2017

...

In accordance with the Contract Documents.

...

Jeff Downes, City Manager
City of Vestavia Hills
1032 Montgomery Hwy
Vestavia Hills, AL 35216

...
Mark Lawrence, President
Forestry Environmental Services, Inc.
2871 Acton Road Suite 222
Vestavia Hills, AL 35243
 PAGE 7

- .2 AIA Document A101™ 2017, Exhibit A, Insurance and Bonds
 - .3 ~~AIA Document A201™ 2017, General Conditions of the Contract for Construction~~
 - .4 ~~AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below;~~ .3 AIA Document A312 2010, Performance Bond
 - .4 AIA Document A312 2010, Payment Bond
- (Insert the date of the E203-2013 incorporated into this Agreement.) .5 City of Vestavia Hills, First Addendum To Construction Contract and General Conditions By and Between Owner and Contractor

...

<u>Number</u>	<u>Title</u>	<u>Date</u>
<u>Wald Park Initial Site Package</u>	<u>100% Bid Documents</u>	<u>July 30, 2018</u>

...

<u>Section</u>	<u>Title</u>	<u>Date</u>	<u>Pages</u>
<u>Wald Park Initial Site Package</u>	<u>100% Bid Documents</u>	<u>July 30, 2018</u>	

...

<u>Number</u>	<u>Date</u>	<u>Pages</u>
<u>Addendum No.1</u>	<u>August 3, 2018</u>	
<u>Addendum No.2</u>	<u>August 10, 2018</u>	
<u>Addendum No.3</u>	<u>August 16, 2018</u>	
<u>Addendum No.4</u>	<u>August 17, 2018</u>	
<u>Addendum No.5</u>	<u>August 20, 2018</u>	
<u>Addendum No.6</u>	<u>August 21, 2018</u>	

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[] ~~AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:~~
 (Insert the date of the E204 2017 incorporated into this Agreement.)

[] ~~The Sustainability Plan:~~

<u>Title</u>	<u>Date</u>	<u>Pages</u>
--------------	-------------	--------------

[] ~~Supplementary and other Conditions of the Contract:~~

<u>Document</u>	<u>Title</u>	<u>Date</u>	<u>Pages</u>
-----------------	--------------	-------------	--------------

.9 Other documents, if any, listed below:

...

Jeff Downes, City Manager
City of Vestavia Hills

Mark Lawrence, President
Forestry Environmental Services, Inc.

Exhibit Res. 5085

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:18:58 on 09/05/2018 under Order No. 1512329983 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Exhibit Res. 5085



AIA[®] Document A201[™] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Wald Park - Initial Site Package
Vestavia Hills, Alabama

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

Williams Blackstock Architects
2204 1st Ave S Suite 200
Birmingham, AL 35233

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11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

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The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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For guidance in modifying this document to include supplementary conditions, see AIA Document A503[™], Guide for Supplementary Conditions.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

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G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely

upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT**§ 4.1 General**

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

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- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or

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expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during

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that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

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§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;

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- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Exhibit Res. 5085

Additions and Deletions Report for **AIA® Document A201™ – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:19:17 on 09/05/2018.

PAGE 1

Wald Park - Initial Site Package
Vestavia Hills, Alabama

...

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

...

Williams Blackstock Architects
2204 1st Ave S Suite 200
Birmingham, AL 35233

Exhibit Res. 5085

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:19:17 on 09/05/2018 under Order No. 1512329983 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Exhibit Res. 5085

STATE OF ALABAMA

JEFFERSON COUNTY

**FIRST ADDENDUM TO CONSTRUCTION CONTRACT AND
GENERAL CONDITIONS BY AND BETWEEN OWNER AND CONTRACTOR**

WITNESSETH THIS FIRST ADDENDUM TO CONSTRUCTION CONTRACT AND GENERAL CONDITIONS, by and between the City of Vestavia Hills, Alabama, a municipal corporation, as "Owner" ("City"), and Forestry Environmental Services, Inc., as "Contractor", made and entered into on this the 11th day of September, 2018.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama, a municipal corporation, as "Owner," and Forestry Environmental Services, Inc., as "Contractor," have executed and delivered a Construction Contract (being "AIA Document A101-2017") and General Conditions (being "AIA Document A201-2017") on this date; and

WHEREAS, the Owner and Contractor wish to amend the Construction Contract and General Conditions by the execution and delivery of this First Addendum.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the Owner and Contractor hereby mutually and expressly amend the Construction Contract and General Conditions as set forth below.

Notwithstanding anything contained in the Construction Contract and General Conditions to the contrary, the Owner and Contractor agree to modify, add and/or delete the following terms, provisions, limitations and conditions to said Construction Contract and General Conditions:

A. PUBLIC WORKS PROJECT: The following language is hereby added to Article 2 on page 1 of the contract:

"The Owner and Contractor agree that the work described in Article 2 on page 1 of the contract is a public works project as defined by Title 39-2-1(6), *Code of Alabama, 1975*, and that the Public Works law of Alabama set forth in Title 39-1-1, et seq., *Code of Alabama, 1975*, applies to this contract."

B. PERFORMANCE BOND AND PAYMENT BOND: The following language is hereby added to Section 11.1.2 on page 30 of the General Conditions:

"1. Before commencing the work, Contractor shall execute and deliver a Performance Bond using AIA Document A312-2010, with penalty equal to one hundred percent (100%) of the amount of the contract price (\$ 3,605,787.00).

2. Before commencing the work, Contractor shall execute and deliver a Payment Bond using AIA Document A312-2010 payable to the City of Vestavia Hills, Alabama executed in the amount of the contract price of (\$ 3,605,787.00) with the obligation that the Contractor shall promptly make all payments to persons supplying labor, materials or supplies for or in the prosecution of the work provided in the contract and for the payment for reasonable attorneys' fees incurred by successful claimants or plaintiffs in civil actions on the bond.

3. The Performance Bond and the Payment Bond referred to in sections 1 and 2 above shall be executed and delivered all in accordance with the requirements of the Alabama Public Works Law set forth at Title 39-1-1(a), *Code of Alabama, 1975.*"

C. **REQUIREMENT FOR ARCHITECT:** The following language is hereby added to Section 2.3.2 on page 11 of the General Conditions,

"The Architect shall be selected by the Owner all in accordance with Title 34-2-30 and Title 34-2-32(c), *Code of Alabama, 1975.*"

D. **REQUIREMENT FOR ENGINEERS:** The following language is hereby added as Section 2.3.7 on page 12 of the General Conditions,

"Any and all engineers selected by the Contractor, any subcontractor or the Owner shall be selected all in accordance with the requirements of Title 34-11-10, *Code of Alabama, 1975.*"

E. **REQUIREMENT OF LICENSED GENERAL CONTRACTOR:** The following language is hereby added to Section 3.1.1 on page 12 of the General Conditions as follows,

"The Contractor represents and warrants that it is properly licensed by the State of Alabama as required by Title 34-8-1(a), *Code of Alabama, 1975.*"

F. **LIMITS OF INSURANCE COVERAGES:** The following language is hereby added to Section 11.1.1 on page 30 of the General Conditions:

LIMITS OF INSURANCE COVERAGES: The insurance policy limits for the insurance coverages referred to in Article 11 of the General Conditions shall be as follows:

11.1.1. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE:

1. Worker's Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers' compensation claims.

2. Employer's Liability Insurance limits shall be at least:
 - (a) Bodily Injury by Accident--\$1,000,000 each accident
 - (b) Bodily Injury by Disease--\$1,000,000 each employee

11.1.1. COMMERCIAL GENERAL LIABILITY INSURANCE:

1. Commercial General Liability Insurance ("CGL"), written on an ISO Occurrence Form (current edition of ISO CG 00 01 as of the date of Advertisement of Bids) or equivalent, shall include but need not be limited to coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

<u>Coverage</u>	<u>Limit</u>
(a) General Aggregate	\$2,000,000 per Project
(b) Products, Completed Operations Aggregate	\$2,000,000 per Project
(c) Personal and Advertising Injury	\$1,000,000 per Occurrence
(d) Each Occurrence	\$1,000,000

2. Additional Requirements for Commercial General Liability Insurance:

(a) The policy shall name the City of Vestavia Hills, Alabama, as Owner, and its public officials and employees, and its agents, consultants and employees as additional insureds (the "Indemnitees"), and state that this coverage shall be primary insurance for the additional insureds. Evidence that Contractor's insurance is primary with respect to any coverages available to the Indemnitees shall be provided in the form of an endorsement to the Contractor's CGL policy. Evidence that the Indemnitees have been named as additional insureds shall be provided by endorsements equivalent to ISO CG 2010 or CG 2033 and CG 2037.

(b) The policy must include separate per project aggregate limits.

11.1.1. COMMERCIAL BUSINESS AUTOMOBILE LIABILITY INSURANCE:

1. Commercial Business Automobile Liability Insurance shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each occurrence.

2. The policy shall name the Owner, City of Vestavia Hills, Alabama, its public officials and employees, and its agents, consultants and employees as additional insureds.

11.1.1. COMMERCIAL UMBRELLA LIABILITY INSURANCE:

1. Umbrella Liability Insurance shall provide coverage limits excess of the Commercial General Liability, Commercial Business Automobile Liability and the Employers' Liability coverage limits, on a follow-form basis, to satisfy the minimum limits set forth herein.

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Page 4

2. Minimum Combined Primary Commercial General Liability and Commercial/Excess Umbrella Limits of:

- (a) \$5,000,000 per Occurrence
- (b) \$5,000,000 Aggregate.

11.1.1. **BUILDER'S RISK INSURANCE:** The Builder's Risk Policy shall be provided by the Owner.

11.1.1. **SUBCONTRACTOR'S INSURANCE:**

1. **Worker's Compensation and Employer's Liability Insurance:** The Contractor shall require each Subcontractor to obtain and maintain statutory Workers' Compensation Insurance and adequate Employer's Liability Insurance covering all employees working on the jobsite.

2. **Liability Insurance:** The Contractor shall require each Subcontractor to obtain and maintain adequate Commercial General Liability and Automobile Liability Insurance coverages equal to those of the Prime Contractor. Such coverages shall be in effect at all times that the Subcontractor is performing Work under the Contract.

3. **Enforcement Responsibility:** The Contractor shall have responsibility to enforce its Subcontractors' compliance with these or similar insurance requirements; however, the Contractor, shall, upon request, provide the Owner acceptable evidence of insurance for any Subcontractor.

11.1.1. **TERMINATION OF OBLIGATION TO INSURE:** Unless otherwise expressly provided in the Contract Documents, the obligation to insure as provided herein shall continue as follows:

1. **Products and Completed Operations.** The obligation to carry Products and Completed Operations coverage specified under subparagraph B(2) shall remain in effect for at least the time period established by applicable state law for bringing actions based on defective construction or design claims.

2. **All Other Insurance.** The obligation to carry their insurance coverages specified above shall remain in effect after the Date(s) of Substantial Completion until such time as all Work required by the Contract Documents is completed. Equal or similar insurance coverages shall remain in effect if, after completion of the Work, the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable returns to the Project to perform warranty or maintenance work pursuant to the terms of the Contract Documents.

11.1 The Contractor shall, at the Contractor's own expense, provide insurance coverage for materials stored off the site after written approval of the Owner at the value established in the approval, and also for portions of the work in transit until such materials are permanently attached to the Work.

The insurance required herein is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment.”

G. ADDITIONAL INSUREDS: Section 11.1.5 is hereby added on page 31 of the General Conditions, which shall read in words and figures as follows:

SECTION 11.1.5 ADDITIONAL INSUREDS: The Contractor shall cause all of the insurance policy coverages described in Article 11 of the General Conditions of the Construction Contract and hereinabove (except for the Worker's Compensation coverages) to include:

1. The City of Vestavia Hills, Alabama, a municipal corporation, and its elected public officials and employees, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations and/or performance of the work; and

2. The City of Vestavia Hills, Alabama, a municipal corporation, and its elected public officials and employees as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations and/or performance of the work; and

3. The insurance policy coverages shall state that these coverages shall be primary insurance for the additional insureds.

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

5. The policies must be on an 'occurrence' basis."

H. SALES TAXES: Section 3.6 on page 14 of the General Conditions is hereby amended to read as follows:

"The Contractor and the Owner shall avoid the payment of sales, use and similar taxes by using the process outlined in Act Number 2013-205 now codified at Title 40-9-14.1, *Code of Alabama, 1975.*"

I. **MATERIALMEN'S LIENS:** Section 2.1.2 on page 11 of the General Conditions is hereby amended to read in words and figures as follows:

“Anything contained in the Contract and/or General Conditions to the contrary notwithstanding, including specifically but not limited to, Sections 2.12, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 10.4 and 15.2.8, the Contractor and Owner specifically agree that claims for unpaid labor, materials or supplies for this public works project shall be resolved by the requirements and process set forth in Title 39-1-1(b), *Code of Alabama, 1975.*”

J. **INDEPENDENT CONTRACTOR:** Section 3.3.4 is hereby added to page 13 of the General Conditions and shall read as follows:

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

K. **CHANGE ORDERS:** The following language is hereby added to the General Conditions on page 22 as Section 7.2.2:

“Anything contained herein to the contrary notwithstanding, the guidelines, which provide criteria for approving change orders to an existing public works contract are set forth in an opinion issued to the Alabama State Building Commission on June 15, 1979 by the State of Alabama Attorney General. Contractor and Owner agree that said opinion sets forth the guidelines for determining whether or not a proposed change order is legally justified. The Owner, its Architect and legal advisor shall sign any and all change order justifications.”

L. **COMPLIANCE WITH ALL LAWS:** The following section 3.7.4 is hereby added to the General Conditions on page 14 thereof:

“**GENERAL COMPLIANCE WITH ALL LAWS:** Contractor shall comply with the provisions of the labor law and all state, federal and local laws, statutes, codes, rules, regulations and ordinances that are applicable to the performance of this Contract Between City and Contractor, including specifically, but not limited to Ordinance Numbers 2769, 2770 and 2771 enacted by the City Council of the City of Vestavia Hills, Alabama on June 11, 2018.”

M. **MUNICIPALITIES CANNOT INDEMNIFY AND HOLD HARMLESS THIRD PARTIES:** Sections 10.3.3 and 10.3.6 on page 30 of the General Conditions are hereby deleted in their entireties.

N. **IMMIGRATION:** The following section 16.1 is hereby added to the General Conditions on page 39 thereof:

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

O. **BOYCOTT LIMITATIONS:** The following section 16.2 is hereby added to the General Conditions on page 39 thereof:

“COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS: Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. The Contractor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.”

P. **MISCELLANEOUS:** Article 18 entitled “Miscellaneous” is hereby added to the General Conditions:

“ARTICLE 18. MISCELLANEOUS:

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

(b) **Waiver of Modification:** Any waiver, alteration or modification of any of the provisions of this agreement or cancellation or replacement of this agreement shall not be valid unless in writing and signed by the parties hereto. This agreement may be amended at any time by written agreement of the parties signatory hereto.

(c) **Notices:** Any and all notices required or permitted to be given under this agreement will be sufficient if furnished in writing and sent by Registered Mail to the parties' last known address.

(d) **Governing Law:** This agreement shall be interpreted, construed and governed to the laws of the State of Alabama.

(e) **Article and Section Headings:** The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

(f) **Construction of Terms:** Any ambiguities of this contract shall be construed fairly and equitably regardless of the participation of either party in drafting this contract. The reference in terms to gender and number shall be modified as may be appropriate.

(f) **Execution in Counterparts:** The contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(g) **Binding Effect:** The contract shall inure to the benefit of, and shall be binding upon Owner and Contractor and their heirs, successors and assigns.

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

(i) **Entire Agreement:** This written contract contains the entire agreement between the Owner and the Contractor.

Q. **CONTRACT DOCUMENTS:** The following language is hereby added to Article 1 on page 2 of the Contract:

“The contract documents described above shall also include the following:

1. AIA Document A312-2010 Performance Bond.
2. AIA Document A312-2010 Payment Bond.
3. This First Addendum to the Contract and General Conditions.”

R. RATIFY CONTRACT AND GENERAL CONDITIONS: Article 17 is hereby added to the General Conditions to read in words and figures as follows:

“The Owner and Contractor hereby ratify and reconfirm the terms, provisions, limitations and conditions of the contract documents that were not modified or otherwise amended by this First Addendum to Construction Contract.”

IN WITNESS WHEREOF, the Owner and Contractor have hereunto set their hands and seals all being done in duplicate originals with one (1) original being delivered to each party on the day first above written.

OWNER:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

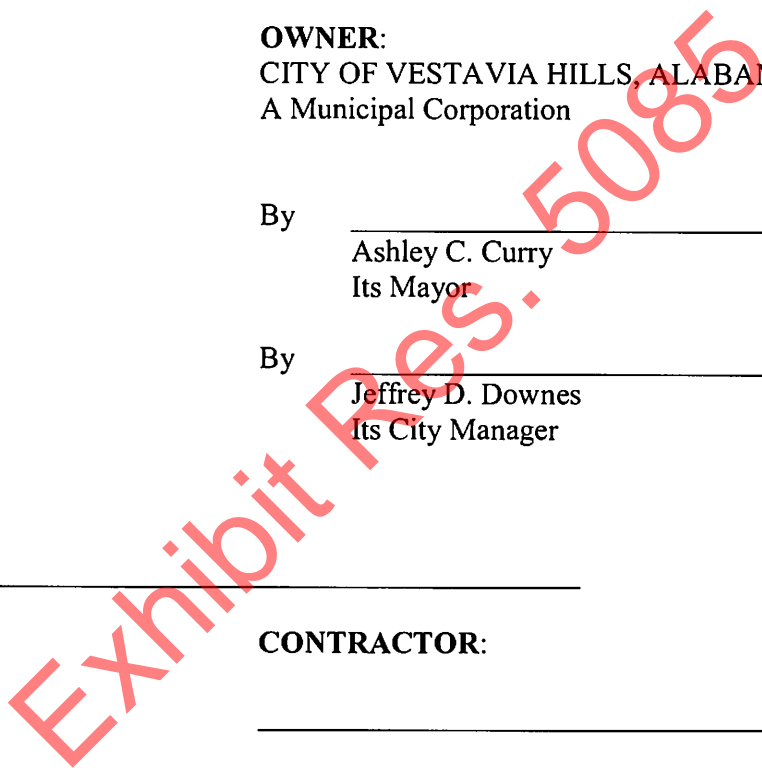
By _____

CONTRACTOR:

By _____
Its _____

ATTESTED

By _____



**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Addendum to Construction Contract and General Conditions and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2018.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

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

Given under my hand and official seal, this the _____ day of _____, 2018.

Notary Public

My Commission Expires:

SEAL

First Addendum
Page 11

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

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

Given under my hand and official seal, this the _____ day of _____, 2018.

Notary Public

My Commission Expires:

SEAL

Exhibit Res. 5085

RESOLUTION NUMBER 5088

**AUTHORIZING AND APPROVING AN INCREASE
IN SALARY AND WAGES FOR EMPLOYEES**

**THIS RESOLUTION WAS ADOPTED AND APPROVED BY THE CITY
COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA ON SEPTEMBER
10, 2018.**

WITNESSETH THESE RECITALS

WHEREAS, the City Manager has prepared budgets for the said fiscal year 2018-2019 for a three-percent (3%) across-the-board increase of wages and salaries for all employees; and

WHEREAS, the Council, at its regularly scheduled meeting of September 10, 2018, voted to approve a three-percent (3%) across-the-board increase in wages and salaries for all employees.

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

1. The City Council hereby approves a three-percent (3%) across-the-board increase in wages and salaries for all employees; and
2. Said increase is effective October 1, 2018.

APPROVED and ADOPTED this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 5089

A RESOLUTION APPROVING FINANCING TERMS FOR CITY VEHICLES THROUGH REGIONS EQUIPMENT FINANCE CORPORATION

WHEREAS, The City of Vestavia Hills (“Governmental Entity”) has previously determined to undertake a project for the purchase of various vehicles & equipment (the “Project”) and the Officer of the Governmental Entity responsible for financial affairs of the Governmental Entity (the “Finance Officer”) has now presented a proposal for the financing of such Project.

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

1. The Governmental Entity hereby determines to finance the Project through Regions Equipment Finance Corporation (“Regions”), in accordance with the proposals obtained by the Finance Officer as detailed in Exhibit A attached to and incorporated into this Resolution Number 5089 as though written fully therein; and
2. All financing contracts and all related documents for the closing of the financing (the “Financing Documents”) shall be consistent with the foregoing terms. All officers and employees of the Governmental Entity are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Project Fund Agreement as Regions may request.
3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer’s satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Governmental Entity officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer’s release of any Financing Document for delivery constituting conclusive evidence of such officer’s final approval of the document’s final form.

4. The Governmental Entity shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations under the Financing Documents. The Governmental Entity hereby designates its obligations to make principal and interest payments under the Financing Documents as “qualified tax-exempt obligations” for the purpose of Internal Revenue Code Section 265(b)(3).
5. The Governmental Entity intends that the adoption of this resolution will be a declaration of the Governmental Entity’s official intent to reimburse expenditures for the Project that is to be financed from the proceeds of the Regions financing described above. The Governmental Entity intends that funds that have been advanced, or that may be advanced, from the Governmental Entity’s general fund, or any other Governmental Entity fund related to the Project, for Project costs may be reimbursed from the financing proceeds.
6. The officers of the Governmental Entity and any person or persons designated and authorized by any officer of the Governmental Entity to act in the name and on behalf of the Governmental Entity, or any one or more of them, are authorized to do and perform or cause to be done and performed in the name and on behalf of the Governmental Entity such other acts, to pay or cause to be paid on behalf of the Governmental Entity such related costs and expenses, and to execute and deliver or cause to be executed and delivered in the name and on behalf of the Governmental Entity such other notices, requests, demands, directions, consents, approvals, orders, applications, certificates, agreements, further assurances, or other instruments or communications, under the corporate seal of the Governmental Entity, or otherwise, as they or any of them may deem necessary, advisable, or appropriate in order to (a) complete the plan of financing contemplated by the Financing Documents, (b) carry into effect the intent of the provisions of this resolution and the Financing Documents, and (c) demonstrate the validity of the Financing Documents, the absence of any pending or threatened litigation with respect to the Financing Documents and the plan of financing contemplated by the Financing Documents, and the exemption of interest on the interest payment obligations under the Financing Documents from federal and State of Alabama income taxation.

7. All prior actions of Governmental Entity officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

ADOPTED and APPROVED this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

SEAL

RESOLUTION NUMBER 5090

A RESOLUTION TO INITIATE THE SECOND AMENDMENT TO THE PATCHWORK PUD

WITNESSETH THESE RECITALS

WHEREAS, on February 23, 2009, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 2253 to rezone the property formerly known as Patchwork Farms consisting of 87 +/- acres from various zoning classifications to Planned Unit Development pursuant to a PUD plan submitted by the City of Vestavia Hills and the City of Vestavia Hills Board of Education as owners; and

WHEREAS, on September 22, 2014, the City Council adopted and approved Ordinance Number 2532 to adopt the First Amendment to the Patchwork Farm Planned Unit Development in order to change the classifications of 22 +/- acres owned by the Board of Education and to increase the maximum attached residency to be located within any PB district from 100 units to 270 units; and

WHEREAS, applications have been filed by various property owners which warrants a Second Amendment to the Patchwork Farms Planned Unit Development including, but not limited to the following;

- Reducing the PUD detached single-family density from 5 units to zero, rezoning the existing five (5) single-family units from Vestavia Hills PR-1 to Vestavia Hills R-1 and withdrawing said units from the Patchwork Farms Planned Unit Development; and
- Increasing the maximum density of attached residential units located within the PB districts from 270 to 305 with the additional 30 units to be located on Lot 5A and/or Lot 5C, according to the Survey of the Patchwork Farms Resurvey of Lot 5, recorded in MB 241, MP 37 in the Office of the Judge of Probate, Jefferson County, Alabama, and

WHEREAS, the Mayor and City Council agree it would be in the best public interest to initiate the Second Amendment to the Patchwork Farms Planned Unit Development (“the Amendment”), a copy of which is marked as Exhibit A, attached to and incorporated into this Resolution Number 5090 as though written fully therein; and

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

1. That the City Clerk initiate the process for the Amendment pursuant to the Vestavia Hills Zoning Code.

APPROVED and ADOPTED this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

**SECOND AMENDMENT TO PATCHWORK FARM PLANNED UNIT
DEVELOPMENT ZONING APPLICATION AND DEVELOPMENT PLAN**

THIS SECOND AMENDMENT TO PATCHWORK FARM PLANNED UNIT DEVELOPMENT ZONING APPLICATION AND DEVELOPMENT PLAN (this "Amendment") is dated as of the 6th day of September, 2018 and is submitted by CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation ("Developer"), DANIEL/RIME PATCHWORK FARMS, LLC, a Delaware limited liability company ("Daniel/Rime"), PATCHWORK FARM COMMERCIAL ASSOCIATION, INC., an Alabama nonprofit corporation (the "Association"), CHRISTOPHER, LLC, an Alabama limited liability company ("Christopher"), CLARENCE CHAPIN, an unmarried man ("Chapin"), and those certain owners (collectively, the "Thuss Farms Property Owners") whose signatures are attached to this Amendment.

R E C I T A L S:

Developer has heretofore submitted certain real properties situated in the City of Vestavia Hills, Jefferson County, Alabama to the terms and provisions of the Patchwork Farm Planned Unit Development Zoning Application and Development Plan dated December 3, 2008, as revised on February 26, 2009 and approved by the City of Vestavia Hills, Alabama (the "City") as Ordinance No. 2253, as amended by First Amendment thereto dated July 10, 2014 and approved by the City as Ordinance No. 2532 (collectively, the "PUD Plan"). *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the PUD Plan.*

Daniel/Rime is the owner of that certain real property ("Lot 3") which is more particularly described in Exhibit A-1 attached hereto and incorporated herein by reference. Lot 3 is subject to the terms and provisions of the PUD Plan.

The Thuss Farms Property Owners are the owners of that certain real property (collectively, the "Thuss Farms Property") described in Exhibit A-2 attached hereto and incorporated herein by reference. The Thuss Farms Property is currently subject to the PUD Plan.

Chapin is the owner of that certain real property (the "Chapin Property") which is more particularly described in Exhibit A-3 attached hereto and incorporated herein by reference. The Chapin Property is not subject to the PUD Plan.

The Thuss Farms Property and the Chapin Property are adjacent to and abut Lot 3.

The Thuss Farms Property Owners desire to have their respective properties removed from the terms and provisions of the PUD Plan and contemporaneously herewith, have filed with the City a rezoning request to rezone the Thuss Farms Property under the "R-1" zoning classification of the Zoning Ordinance.

Christopher is the owner of that certain real property (the "Christopher Property") which is more particularly described in Exhibit A-4 attached hereto and incorporated herein by reference. The Christopher Property is subject to the PUD Plan and is zoned Planned Business (PB) under the PUD Plan.

The parties hereto desire to amend the PUD Plan in order to (a) remove the Thuss Farms Property from the terms and provisions of the PUD Plan, (b) establish specific rear setback requirements and landscaping buffer requirements which are applicable to Lot 3 and (c) add, for the sole benefit of the Christopher Property, the right to add thirty (30) attached, for-sale condominium units to the PUD Plan to be developed as part of a boutique hotel and mixed use development within the Christopher Property.

The Association is the property owners' association created for all of the Property (other than the Thuss Farms Property) subject to the PUD Plan and has agreed to enter into this Amendment to confirm its obligations to maintain that certain real property ("Lot 3C") which is more particularly described in Exhibit A-5 attached hereto and incorporated herein by reference as part of the Nature Park Parcel.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PUD Plan is amended as follows:

1. Exhibit B-1. Exhibit B-1 to the PUD Plan is deleted in its entirety and Exhibit B-1-1 attached to this Amendment is substituted in lieu thereof.

2. Removal of Thuss Farms Property from PUD Plan. All of the Thuss Farms Property is hereby removed from, and shall no longer be subject to, any of the terms and provisions of the PUD Plan. Contemporaneously herewith, the Thuss Farms Property Owners have filed with the City a rezoning request to rezone all of the Thuss Farms Property to an "R-1" zoning classification under the Zoning Ordinance.

3. Setback/Yards Applicable to Lot 3. Paragraph 2 of Exhibit E-1 of the PUD Plan is amended as follows:

"Notwithstanding anything provided to the contrary in the PUD Plan, the Zoning Ordinance, or any other documents, instruments or agreements, including, without limitation, any subdivisions plats applicable to Lot 3 (collectively, the "Governmental Filings"), with respect to Lot 3 only, there is no minimum setback requirement for any portions of Lot 3 which abut and are directly adjacent to any portions of the Thuss Farms Property and the Chapin Property, subject to the following:

(a) All existing improvements situated on Lot 3, including, specifically, all garages, walkways, and pavement (collectively, the "Existing Improvements"), which are currently situated within 35 feet of the common boundary of Lot 3 and the Thuss Farms Property and/or the Chapin Property, are hereby approved and the same may, from time to time and at any time, be torn-down, restored and otherwise re-built in the same locations as the same currently exist.

(b) Except for the Existing Improvements (as the same may be torn down, restored or rebuilt as provided above), no additional buildings or other structures shall be constructed, erected, operated or maintained within 35 feet of

the common boundary of Lot 3 and the Thuss Farm Property and/or the Chapin Property.

(c) The parties hereto acknowledge and agree that the improvements, including the Existing Improvements, constructed on Lot 3 are hereby approved and are in compliance with all of the terms and provisions of the Zoning Ordinance and the PUD Plan, as amended by this Amendment.”

4. Greenbelt Requirements. Paragraph 8 of Exhibit E-1 of the PUD Plan is amended by adding the following thereto:

“Subject to the remaining terms of this Paragraph 8, the existing 17.5 foot wide landscaping buffer along the rear of Lot 3 adjacent to and abutting the Thuss Farms Property and the Chapin Property is hereby approved and the parties hereto confirm that the same satisfies all of the terms and provisions of Paragraph 8 of Exhibit E-1 of the PUD Plan and the Zoning Ordinance. Notwithstanding anything provided herein to the contrary, Daniel/Rime has agreed to construct and install certain additional landscaping behind the Compere Property, as defined in Exhibit A-2 hereto, and the Chapin Property pursuant to the terms and provisions of a separate agreement between said parties.”

5. PUD Exhibit G-1. PUD Exhibit G-1 attached to the PUD Plan is deleted in its entirety.

6. Affirmation of Setback and Landscaping Requirements. The parties hereto do hereby acknowledge, affirm and agree that, notwithstanding anything provided to the contrary in any of the Governmental Filings with respect to Lot 3, the setback requirements and the greenbelt requirements specified in this Amendment shall supersede anything provided to the contrary in any of the Governmental Filings and shall be binding upon all of the parties hereto, including their respective heirs, personal representatives, successors and assigns.

7. Confirmation of Maintenance Obligation. The Association does hereby confirm that Lot 3C is part of the Nature Park Parcel and does further agree to maintain said Lot 3C in good condition and repair in substantially the same manner as it maintains the remainder of the Nature Park Parcel.

8. Uses Allowed in Planned Business Districts. Paragraph 1(b) of Exhibit E-1 of the PUD Plan is amended as follows:

(a) The first sentence of Paragraph 1(b) of Exhibit E-1 of the PUD Plan is amended by adding the phrase “Subject to the provisions of Paragraph 1(d) below,”.

(b) The second “Paragraph 1(b)” of Exhibit E-1 of the PUD Plan is hereby renumbered as “Paragraph 1(c)”.

(c) The following is added as Paragraph 1(d) of Exhibit E-1 of the PUD Plan:

“(d) Notwithstanding anything provided to the contrary in Paragraph 1(a) above, the Christopher Property may be developed with up to thirty (30) attached, for-sale condominium units which must be developed and constitute a part of a boutique hotel and the mixed-use development planned for the Christopher Property.”

9. Full Force and Effect. Except as expressly modified and amended herein, all of the terms and provisions of the PUD Plan shall remain in full force and effect and are hereby ratified, confirmed and approved.

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

DEVELOPER:

CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation

By: Ashley C. Curry
Printed Name: Ashley C. Curry
Title: Mayor

By: Jeffery Downes
Printed Name: Jeffery Downes
Title: City Manager

DANIEL/RIME:

DANIEL/RIME PATCHWORK FARMS, LLC, a Delaware limited liability company

By: RIME, INC., an Alabama corporation, Its Manager

By: _____
Printed Name: _____
Title: _____

ASSOCIATION:

PATCHWORK FARM COMMERCIAL ASSOCIATION, INC., an Alabama nonprofit corporation

By: _____
Printed Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

DEVELOPER:

CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation


By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

DANIEL/RIME:

DANIEL/RIME PATCHWORK FARMS, LLC, a Delaware limited liability company

By: RIME, INC., an Alabama corporation, Its Manager

By: 
Printed Name: LAWRENCE S. NICKLES
Title: SECT. / TREAS.

ASSOCIATION:

PATCHWORK FARM COMMERCIAL ASSOCIATION, INC., an Alabama nonprofit corporation

By: _____
Printed Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

DEVELOPER:

CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

DANIEL/RIME:

DANIEL/RIME PATCHWORK FARMS, LLC, a Delaware limited liability company

By: RIME, INC., an Alabama corporation, Its Manager

By: _____
Printed Name: _____
Title: _____

ASSOCIATION:

PATCHWORK FARM COMMERCIAL ASSOCIATION, INC., an Alabama nonprofit corporation



By: _____
Printed Name: Chris Reebals
Title: Association President

CHRISTOPHER:

CHRISTOPHER, LLC, an Alabama limited liability company



By: _____
Printed Name: Chris Reebals
Title: Managing Member for Christopher, LLC

CHAPIN:

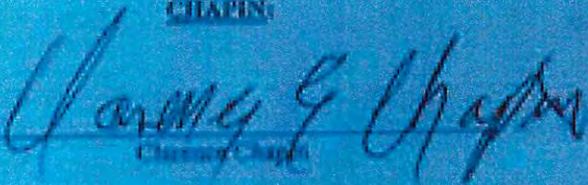
Clarence Chapin

CHRISTOPHER

CHRISTOPHER, LLC, an Alabama limited liability company

By: _____
Printed Name: _____
Title: _____

CHAPIN


Charney G. Chapin
Charney Chapin

THUSS FARMS PROPERTY OWNERS:



Jeff Maze



Cristina Maze

S. Collins Compere

Collins Compere

Jennifer Compere

Jennifer Compere





Chris

Chris Donohoo

Denise Donohoo

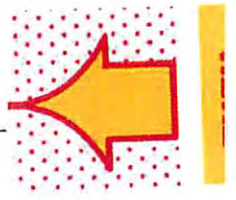
Denise Donohoo

Xiu Lin

Xiu Lin

Yong Chen

Yong Chen





Tyler Joseph Auton



Eliza Gruwell Auton

CONSENT OF SCHOOL BOARD

The undersigned, Vestavia Hills Board of Education, joins in the execution of this Amendment and does hereby approve the foregoing Amendment.

VESTAVIA HILLS BOARD OF EDUCATION

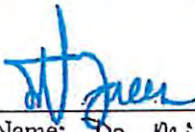
By: 
Printed Name: Dr. Michael Todd Freeman
Title: Superintendent

Exhibit A-1

Legal Description of Lot 3

Lot 3B, according to the Resurvey of Patchwork Farms Lot 3 Resurvey Final Plat, as recorded in Map Book 239, Page 90 in the Probate Office of Jefferson County, Alabama, Birmingham Division.

Exhibit A-2

Legal Description of Thuss Farms Property

Maze:

Lot 5A, according to the Survey of Thuss Farms Resurvey #1, as recorded in Map Book 236, Page 85, in the Probate Office of Jefferson County, Alabama.

Compere:

Lot 1A, according to the Survey of Thuss Farms Resurvey #1, as recorded in Map Book 236, Page 85, in the Probate Office of Jefferson County, Alabama.

Donohoo:

Lot 3A, according to the Survey of Thuss Farms Resurvey #1, as recorded in Map Book 236, Page 85, in the Probate Office of Jefferson County, Alabama.

Chen:

Lot 4A, according to the Survey of Thuss Farms Resurvey #1, as recorded in Map Book 236, Page 85, in the Probate Office of Jefferson County, Alabama.

Auton:

Lot 2A, according to the Survey of Thuss Farms Resurvey #1, as recorded in Map Book 236, Page 85, in the Probate Office of Jefferson County, Alabama.

Exhibit A-3

Legal Description of Chapin Property

Lot 6, according to the survey of Old Looney Mill Estates, as recorded in Map Book 117, page 17, in the Probate Office of Jefferson County, Alabama.

Exhibit A-4

Legal Description of Christopher Property

Lots 5A and 5C, according to the Survey of the Patchwork Farms Resurvey of Lot 5 Final Plat, as recorded in Map Book 241, Page 37 in the Office of the Judge of Probate of Jefferson County, Alabama.

Exhibit A-5

Legal Description of Lot 3C

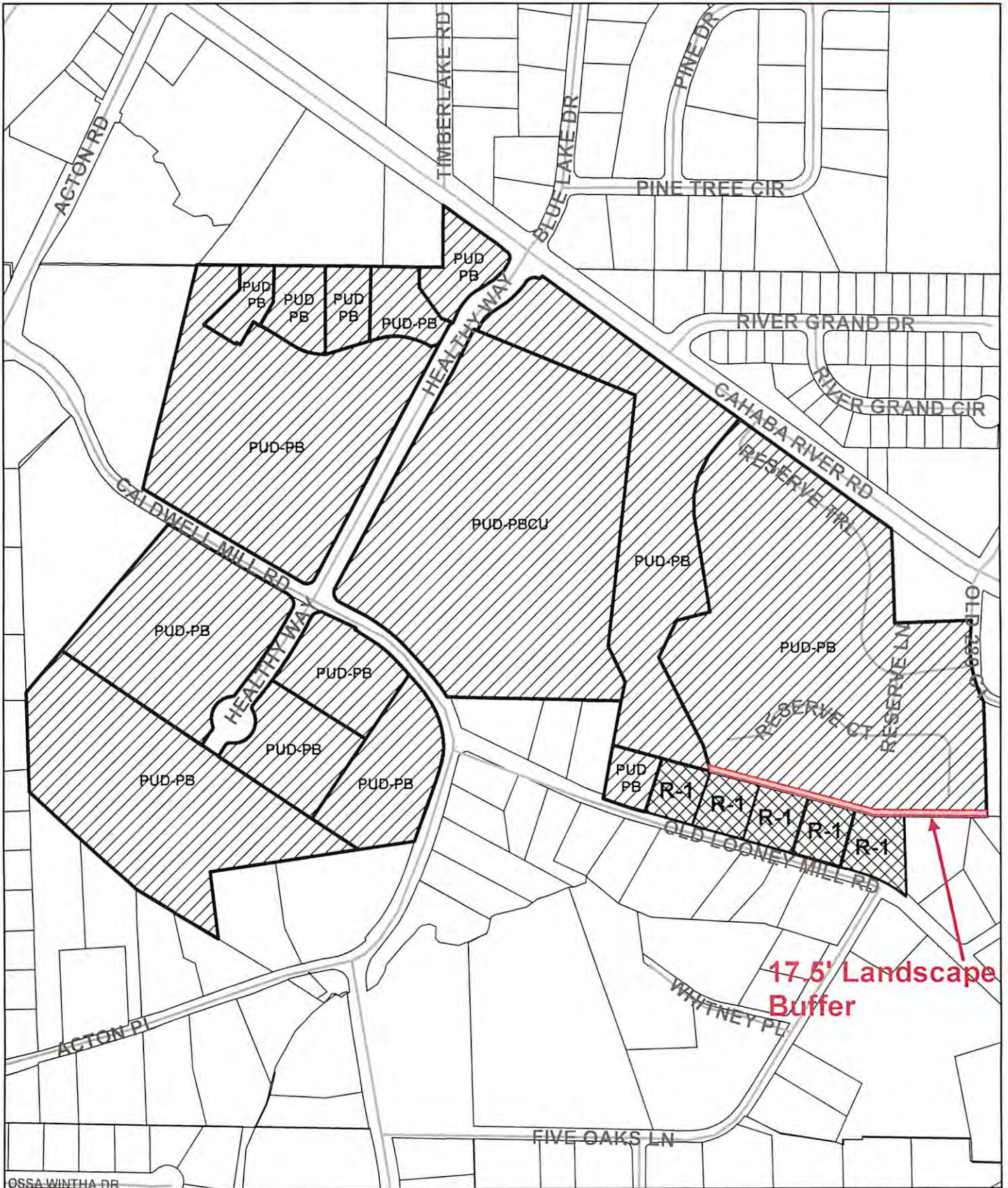
Lot 3C, according to the Resurvey of Patchwork Farms Lot 3 Resurvey Final Plat, as recorded in Map Book 239, Page 90 in the Probate Office of Jefferson County, Alabama, Birmingham Division.

Exhibit B-1-1

Zoning Plan

See Attached.

Exhibit B-1-1 2nd Amendment to Patchwork Farms PUD



17.5' Landscaping Buffer
 PUD
 To Be Removed From PUD



RESOLUTION NUMBER 5091

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

WITNESSETH THESE RECITALS

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

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

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

1. The City Manager is hereby authorized to sell or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 5091 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 10th day of September, 2018.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk



VESTAVIA HILLS FIRE DEPARTMENT

MEMORANDUM

TO: Jeff Downes, City Manager
FROM: Marvin Green, Fire Chief
DATE: August 23, 2018
RE: Surplus Equipment

The Fire Department has purchased new self-contained breathing apparatus (SCBA) which has created equipment for disposal. I recommend the 45 SCBA and 98 bottles be deemed as surplus and donated to the Terry Ferrell Fund. The units have little value due to the short service life remaining.

Also, we have a 2000 Ford F-350 Wheeled Coach Ambulance, VIN 1FDWF36F4YEA44518 with 141,146 miles. The vehicle has exceeded its useful service life and is not suitable for remounting. I recommend it be sold as surplus.

Rebecca Leavings

From: Brian Davis
Sent: Thursday, August 30, 2018 2:44 PM
To: Rebecca Leavings; Jason Burnett
Subject: surplus

Becky, we need to declare this miscellaneous property below as surplus so we can put it on gov deals. There are no asset numbers but Finance needs to document it from the council. Also a tractor with an asset number is below the pool equipment. It doesn't run.

Lounge reclining chairs
Lounge chairs
Basketball goals
Lifeguard stands
Umbrella stands and umbrellas
Diving board
Starting blocks

John Deere 750 Tractor – asset number 13236

Can we get this on the council agenda at the next possible chance? Thanks.

“When a train goes through a tunnel and it gets dark, you don't throw away the ticket and jump off. You sit still and trust the engineer.”

Corrie ten Boom



Brian C. Davis, Director
Department of Public Services
1032 Montgomery Highway
Vestavia Hills, AL 35216
P 205 978 0150 | vhal.org

  WWW.ALIFEABOVE.ORG

ORDINANCE NUMBER 2789

**ANNEXING CERTAIN TERRITORY TO THE
CORPORATE LIMITS OF THE CITY OF VESTAVIA
HILLS, ALABAMA.**

WHEREAS, on the 30th day of May, 2018, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

WHEREAS, the City Council of the City of Vestavia Hills, at the time and place of its regular meeting on said date, made a determination that the matters contained in the Petition were true and that it was in the public interest that said property be annexed to the City of Vestavia Hills, Alabama.

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

1. That the following property which was described in said petition be annexed to the City of Vestavia Hills, Alabama:

2441 Jannebo Road
Lot 116, Buckhead, 4th Sector
Richard and Samantha Wheeler, Owner(s)

2. That this Annexation shall become effective upon the adoption and approval of this Ordinance in accordance with the provisions of law, after which the heretofore described property shall become a part of the City of Vestavia Hills, Alabama.

3. That the City Clerk be and is hereby directed to publish this Ordinance in accordance with the requirements of the law and to file a copy hereof, together with a duly certified copy of the petition, with the Probate Judge of Jefferson County, Alabama.

ADOPTING and APPROVED this the 24th day of September, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

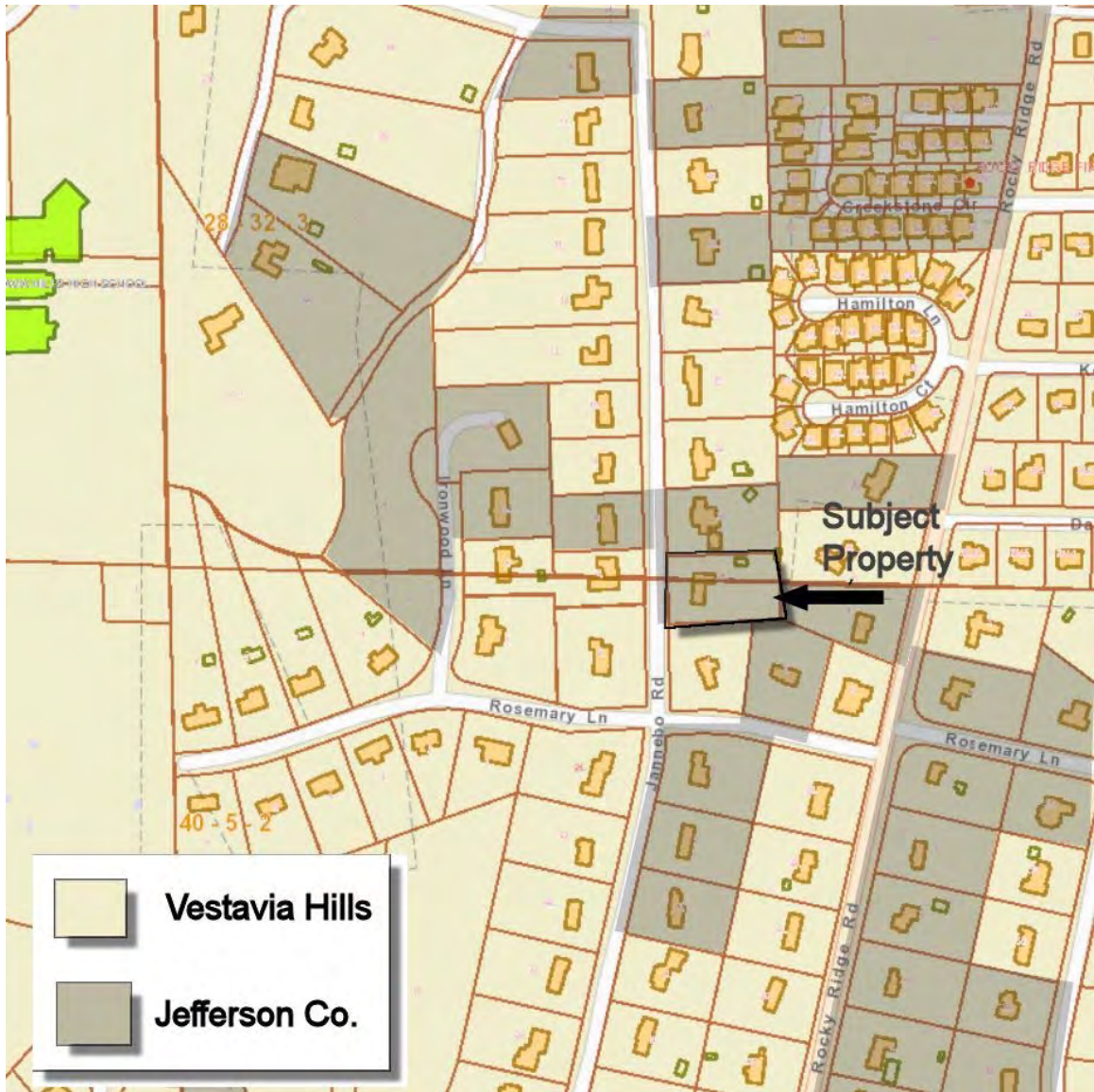
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2789 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 24th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



ANNEXATION DETAIL SHEET

Address: 2441 Jannebo Road
Parcel ID#: 28-00-32-3-002-034.000
Owner(s): Richard and Samatha Wheeler
Current Use: One Single-Family home
Proposed Use: same
Google Image:



Annexation Committee Petition Review

Property: 2441 Jannebo Road

Owners: Richard & Samantha Wheeler

Date: 4-6-18

1. The property in question is contiguous to the city limits.
Yes No Comments: _____

2. The land use of the petitioned property is compatible with land use in the area.
Yes No Comments: _____

3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.
Yes No Comments _____

4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.
Yes No Comments ROADWAY IS NARROW BUT IN GOOD CONDITION.
5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of 203,400. Meets city criteria: Yes No
Comment: CITY CRITERIA TO BE DISCUSSED
6. This street has fewer than 100% of the individual properties within the limits of the city
Yes No
Number of total homes 10 Number in city ~~10~~ 6
7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.
Agreed to by petitioner: Yes No Comment _____

Property: 2441 Jannebo Road


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

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

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

11. Information on children: Number in family 3; Plan to enroll in VH
schools Yes _____ No Comments: _____

Other Comments: _____



George Pierce
Chairman 4-6-18

EXHIBIT "C"

CITY OF VESTAVIA HILLS

*Department Review of Proposed Annexation
(To Be completed by City Staff)*

The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 2441 Jannebo Road

Engineering: Date: _____ Initials: _____

Comments: _____

2441 Jannebo Road -- no significant concerns noted; roadway is narrow but in generally good condition and is already on City's maintenance schedule.

Comments: _____

Police Department: Date: _____ Initials: _____

The police department has reviewed the listed properties up for annexation; we have no reason to oppose said annexation on the law enforcement side.
3332 Misty Lane; 2764 Altadena Lake Drive; 2441 Jannebo Road; 2432 Dolly Ridge Road; 2424 Dolly Ridge Road.

Fire Department: Date: 3/15/13 Initials: CEV

Comments: NP

PARCEL #: 28 00 32 3 002 034.000
OWNER: WHEELER RICHARD M. & SAMANTHA H.
ADDRESS: 2441 JANNEBO RD BIRMINGHAM AL 35216
LOCATION: 2441 JANNEBO RD BHAM AL 35216

[111-D+] Baths: 2.0 H/C Sqft: 1,502
 18-015.0 Bed Rooms: 3 Land Sch: L1
 Land: 123,100 Imp: 80,300 Total: 203,400
 Acres: 0.000 Sales Info: 12/19/2014
\$196,500

<< Prev Next >> [1 / 0 Records] Processing...

Tax Year : 2017

SUMMARY LAND BUILDINGS SALES PHOTOGRAPHS MAPS

SUMMARY

ASSESSMENT

PROPERTY CLASS: 3 OVER 65 CODE:
 EXEMPT CODE: 2-2 DISABILITY CODE:
 MUN CODE: 02 COUNTY HS YEAR: 2016
 SCHOOL DIST: EXM OVERRIDE AMT: \$0.00
 OVR ASD VALUE: \$0.00 TOTAL MILLAGE: 50.1

VALUE

LAND VALUE 10% \$123,100
 LAND VALUE 20% \$0
 CURRENT USE VALUE [DEACTIVATED] \$0

CLASS 2

CLASS 3

UTILITY WOOD H 26WDHOM \$700
 BLDG 001 111 \$79,600

CLASS USE:
 FOREST ACRES: 0 TAX SALE:
 PREV YEAR VALUE: \$194,700.00 BOE VALUE: 0

TOTAL MARKET VALUE [APPR. VALUE: \$203,400]: \$203,400

Assesment Override:

MARKET VALUE:

CU VALUE:

PENALTY:

ASSESSED VALUE:

TAX INFO

	CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
STATE	3	2	\$20,340	\$132.21	\$4,000	\$26.00	\$106.21
COUNTY	3	2	\$20,340	\$274.59	\$2,000	\$27.00	\$247.59
SCHOOL	3	2	\$20,340	\$166.79	\$0	\$0.00	\$166.79
DIST SCHOOL	3	2	\$20,340	\$0.00	\$0	\$0.00	\$0.00
CITY	3	2	\$20,340	\$0.00	\$0	\$0.00	\$0.00
FOREST	3	2	\$0	\$0.00	\$0	\$0.00	\$0.00
SPC SCHOOL1	3	2	\$20,340	\$103.73	\$0	\$0.00	\$103.73
SPC SCHOOL2	3	2	\$20,340	\$341.71	\$0	\$0.00	\$341.71

TOTAL FEE & INTEREST: (Detail) \$5.00

ASSD. VALUE: \$20,340.00

\$1,019.03

GRAND TOTAL: \$971.03

FULLY PAID

DEEDS

PAYMENT INFO

INSTRUMENT NUMBER	DATE	PAY DATE	TAX YEAR	PAID BY	AMOUNT
201419-5142	12/19/2014	1/12/2018	2017	CORELOGIC	\$971.03
201419 5142	12/19/2014	12/31/2016	2016	FRANKLIN AMERICAN MORTGAGE COMPANY	\$927.95
200508-6949	06/09/2005	12/29/2015	2015	CORELOGIC	\$927.95
5335-356	12/21/1951	11/13/2014	2014	RUBY TAYLOR'S LENTS RVOC LIVING TRST	\$959.01
		12/21/2013	2013	RUBY LENTS	\$919.93

STATE OF ALABAMA

Jefferson COUNTY

PETITION FOR ANNEXATION TO THE
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: 11/17/17

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

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

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

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

EXHIBIT "A"

LOT: 034.000

BLOCK: 002

SURVEY: Lot 116 Buckhead 4th Sector

RECORDED IN MAP BOOK 37, PAGE 99 IN THE
PROBATE OFFICE OF Jefferson COUNTY, ALABAMA.

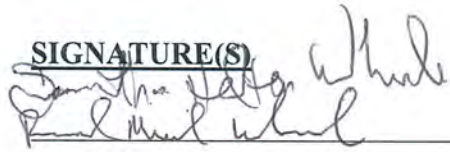
COUNTY ZONING: E2

COMPATIBLE CITY ZONING: Vestavia R-1

LEGAL DESCRIPTION (METES AND BOUNDS):

LOT 116 BUCKHEAD 4th SECTOR

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


<u>SIGNATURE(S)</u>	<u>DESCRIPTION OF PROPERTY</u>
	Lot <u>034</u> Block <u>002</u> Survey <u>Lot 116 Buckhead 4th Sector</u>
_____	Lot _____ Block _____ Survey _____
_____	Lot _____ Block _____ Survey _____

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

STATE OF ALABAMA

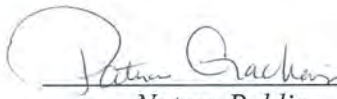
Jefferson COUNTY

Richard Michael Wheeler being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.


Signature of Certifier

Subscribed and sworn before me this the 20th day of November, 2017.




Notary Public

My commission expires: 9/15/2021

EXHIBIT "B"

VESTAVIA HILLS BOARD OF EDUCATION

**1204 Montgomery Highway
Vestavia Hills AL 35216**

(To be completed by the City)

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

(To be completed by Homeowner)

Name(s) of Homeowner(s): Richard Michael and Samantha Wheeler
Address: 2441 Jannepo Road
City: Birmingham State: AL Zip: 35216

Information on Children:

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

	Name(s)	Age	School Grade	Yes	No
1.	Emma Wheeler	16 months		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.				<input type="checkbox"/>	<input type="checkbox"/>
3.				<input type="checkbox"/>	<input type="checkbox"/>
4.				<input type="checkbox"/>	<input type="checkbox"/>
5.				<input type="checkbox"/>	<input type="checkbox"/>
6.				<input type="checkbox"/>	<input type="checkbox"/>

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes": _____

ORDINANCE NUMBER 2790

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY JEFFERSON COUNTY E-2 TO VESTAVIA HILLS R-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County E-2 (estate single family district) to Vestavia Hills R-1 (low density residential district):

2441 Jannebo Road
Lot 116, Buckhead, 4th Sector
Richard and Samantha Wheeler, Owner(s)

APPROVED and ADOPTED this the 24th day of September, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

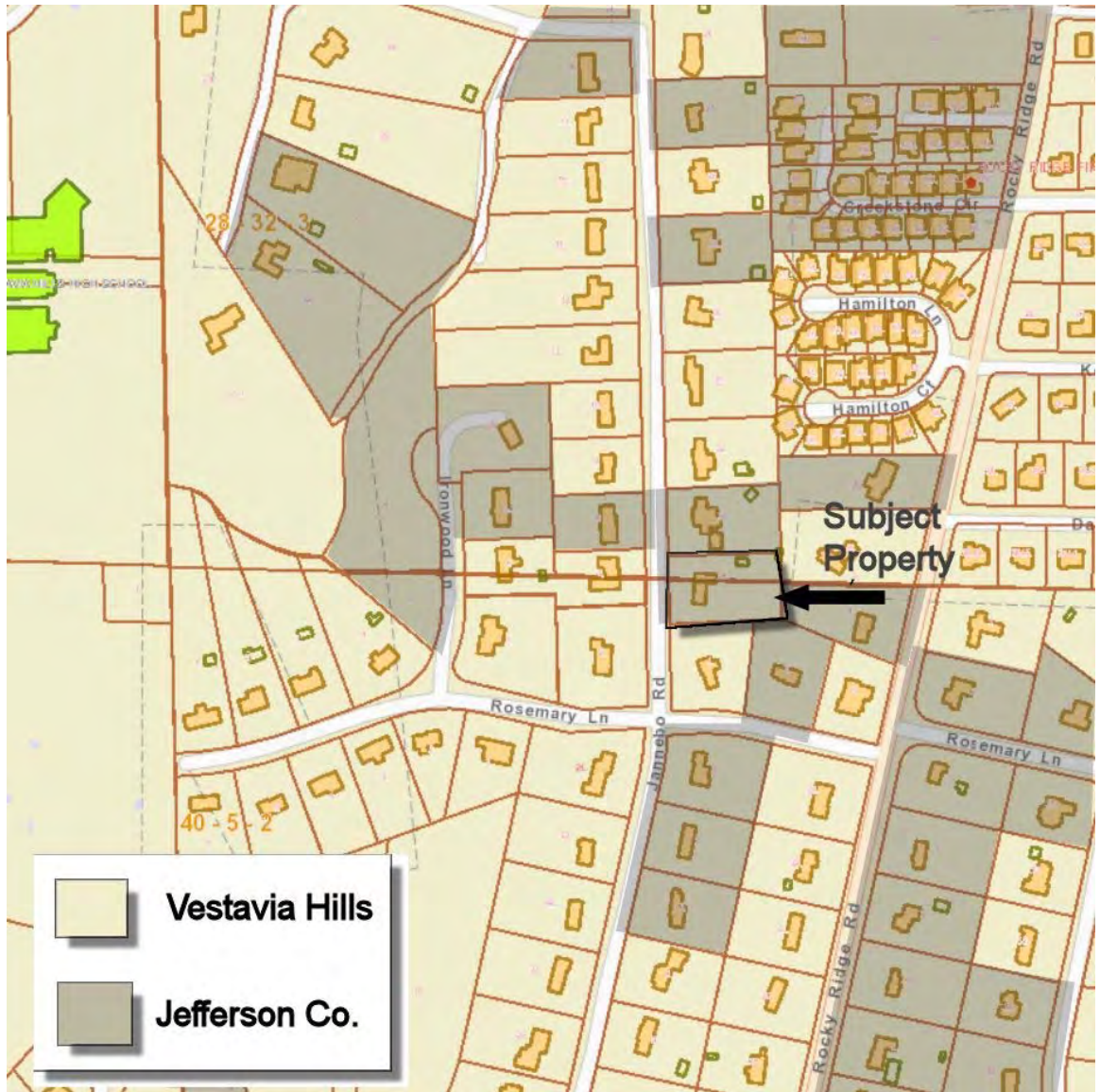
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2790 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 24th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



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

Date: **JULY 12, 2018**

- **CASE: P-0718-23**
- **REQUESTED ACTION:** Rezoning Jefferson County E-2 to Vestavia Hills R-1
- **ADDRESS/LOCATION:** 2401 Jannebo Rd.
- **APPLICANT/OWNER:** Richard & Samantha Wheeler
- **GENERAL DISCUSSION:** Property was annexed overnight by City Council on 5/30/18 with the passage of Ordinance 2760. Applicant is requesting the compatible rezoning.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

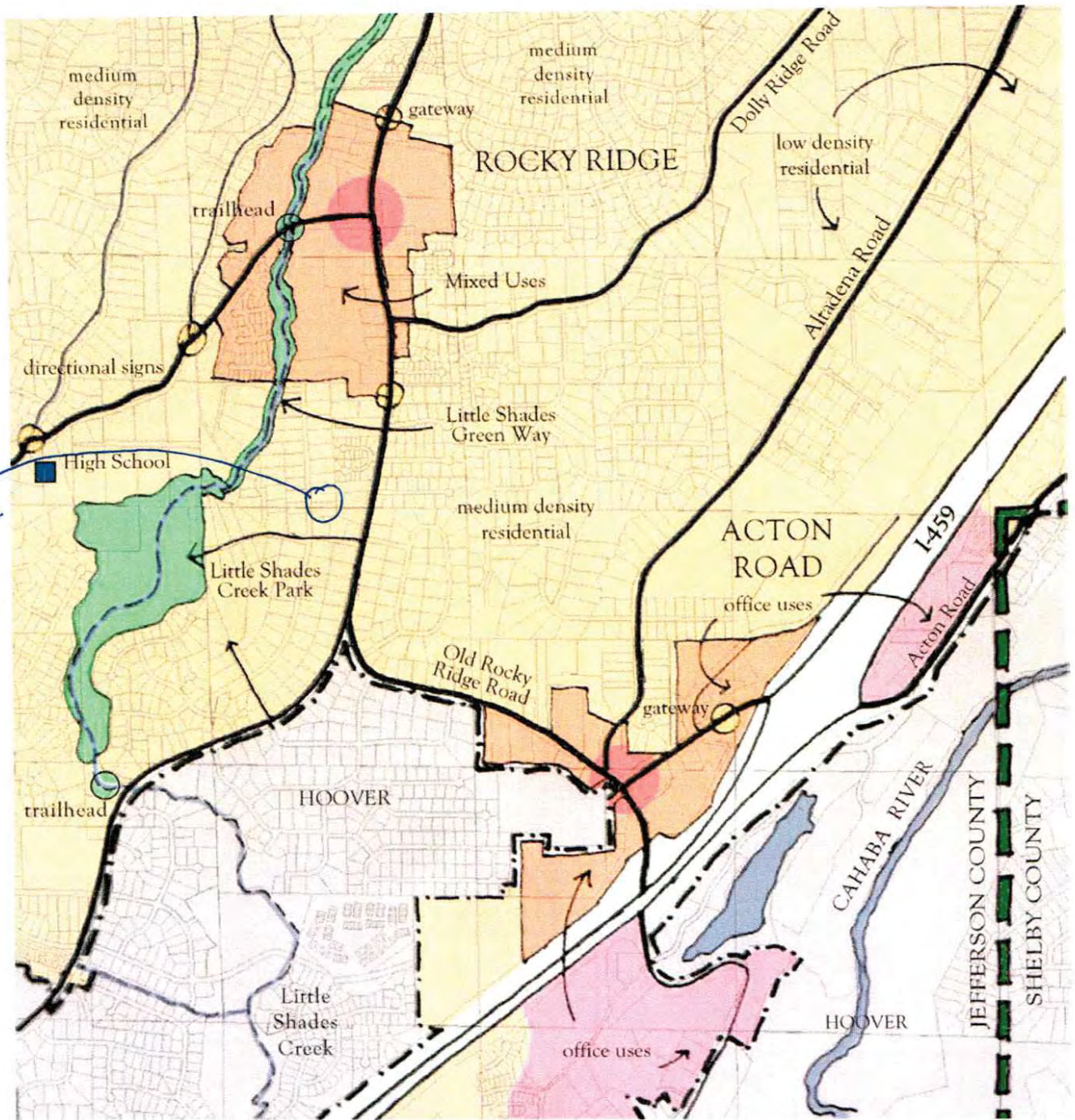
MOTION Mr. Gilchrist made a motion to recommend rezoning approval for 2401 Jannebo Rd. from Jefferson County E-2 to Vestavia Hills R-1. Second was by Mr. Weaver. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. House – yes
Mr. Larson – yes

Mr. Sykes – yes
Mrs. Barnes – yes
Mr. Weaver – yes
Motion carried.



Zoning	
PARCELID	2800323002034000
DISTRICT	002
ESLN_NUM	504
PROFADD	2441 JANNEBO RD
VH_ZONING	
ZNG_ORD	
ZNG_ORD_DT	
ZNG_ORD2	
ZNG_ORD_1	
ZNG_ORD_2	
Zoom to Get Directions	

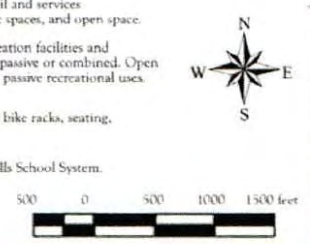


Subject Parcel

Figure 21: Rocky Ridge Road / Acton Road West
Land Use Analysis

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

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



ORDINANCE NUMBER 2791

**ANNEXING CERTAIN TERRITORY TO THE
CORPORATE LIMITS OF THE CITY OF VESTAVIA
HILLS, ALABAMA.**

WHEREAS, on the 30th day of May, 2018, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

WHEREAS, the City Council of the City of Vestavia Hills, at the time and place of its regular meeting on said date, made a determination that the matters contained in the Petition were true and that it was in the public interest that said property be annexed to the City of Vestavia Hills, Alabama.

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

1. That the following property which was described in said petition be annexed to the City of Vestavia Hills, Alabama:

3332 Misty Lane
Jacob and Marjorie Pollard, Owner(s)

More particularly described as follows:

The South $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 20, Township 18, Range 2 West,
Described as follows: Begin 210 Feet East of the SW corner of said $\frac{1}{2}$ of
 $\frac{1}{4}$; thence North 210 feet for a point of beginning, thence North 210 feet;
thence East 210 feet; thence South 210 feet; thence West 210 feet to the
point of beginning.

2. That this Annexation shall become effective upon the adoption and approval of this Ordinance in accordance with the provisions of law, after which the heretofore described property shall become a part of the City of Vestavia Hills, Alabama.

3. That the City Clerk be and is hereby directed to publish this Ordinance in accordance with the requirements of the law and to file a copy hereof, together with a duly certified copy of the petition, with the Probate Judge of Jefferson County, Alabama.

ADOPTING and APPROVED this the 24th day of September, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

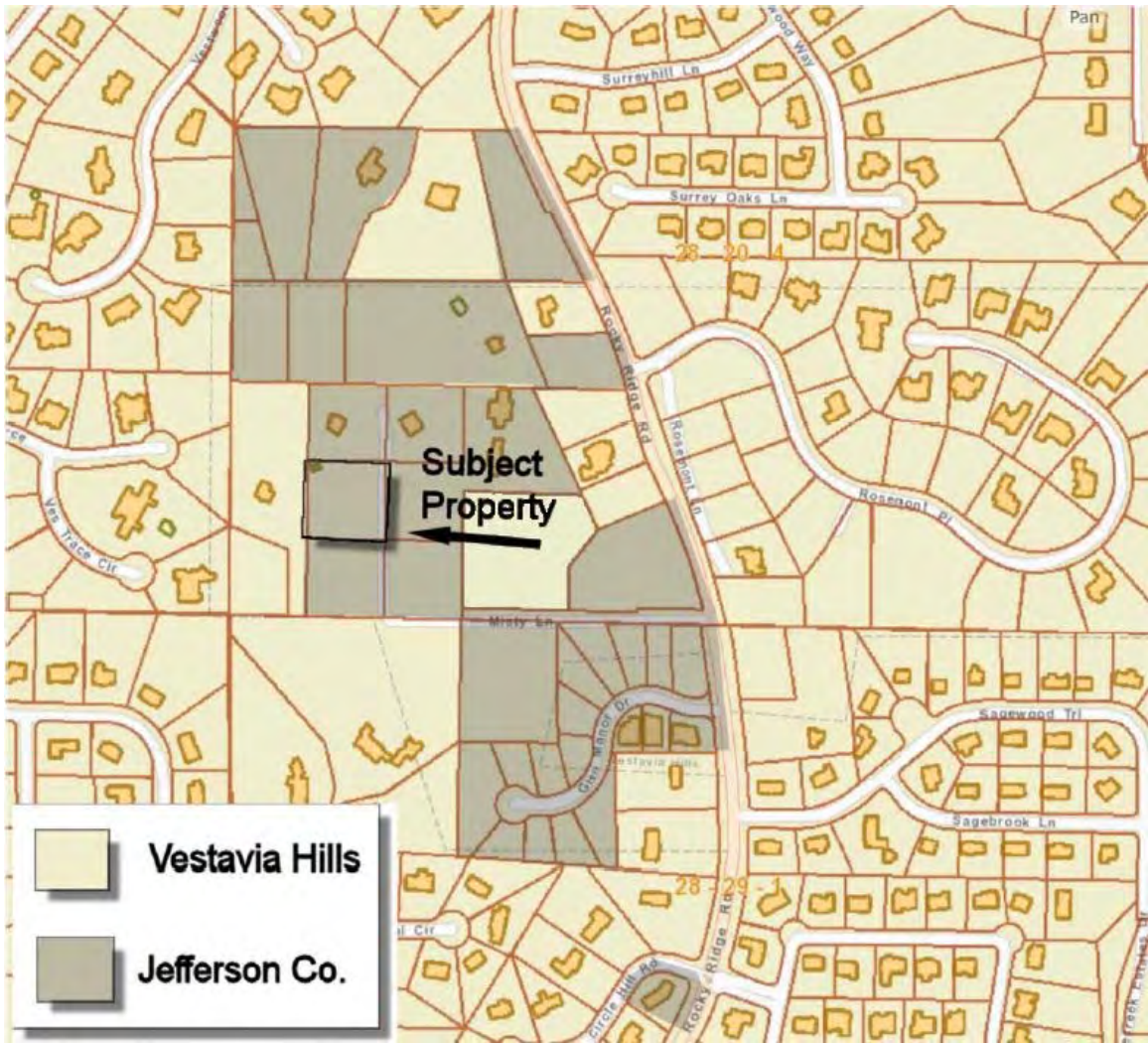
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2791 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 24th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



ANNEXATION DETAIL SHEET

Address: 3332 Misty Lane

Parcel ID#: 28-00-20-4-002-008.001

Owner(s): Jacob and Marjorie Pollard

Current Use: Vacant Property

Proposed Use: Construct one single-family residence (approx. 4,000 SF)

Google Image:



Annexation Committee Petition Review

Property: 3332 Misty Lane

Owners: Jacob and Marjorie Pollard

Date: 4-6-18

1. The property in question is contiguous to the city limits.

Yes No Comments: _____

2. The land use of the petitioned property is compatible with land use in the area.

Yes No Comments: _____

3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.

Yes No Comments _____

4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.

Yes No Comments current roadway does not meet city minimum standards

5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of Lot - 113,120. Meets city criteria: Yes No

Comment: VACANT LOT, Proposed Home value \$150,000,000

6. This street has fewer than 100% of the individual properties within the limits of the city

Yes No
Number of total homes 2 Number in city 2

7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.

Agreed to by petitioner: Yes No Comment _____

Property: 3332 Misty Lane

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

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

10. Are there any concerns from city departments? Yes No _____ Comments: Current Roadway does NOT meet city minimum standards.

11. Information on children: Number in family 5; Plan to enroll in VH schools Yes No _____ Comments: children ages 5-4-1, 2 children currently enrolled in VHCS.

Other Comments: Road issue was discussed



George Pierce
Chairman 4-6-18

EXHIBIT "C"

CITY OF VESTAVIA HILLS
Department Review of Proposed Annexation
(To Be completed by City Staff)

The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 3332 Misty Lane

Engineering: Date: _____ Initials: _____

Comments: _____

3332 Misty Lane -- concerns noted; no dedicated roadway right-of-way to access this property; existing asphalt drive is approximately 10' wide, crosses private property, and does not have adequate shoulders; there is no public accessed turnaround for garbage or fire response. This area is not on City's maintenance schedule and current roadways do not meet City's minimum standards.

Police Department: Date: _____ Initials: _____

The police department has reviewed the listed properties up for annexation; we have no reason to oppose said annexation on the law enforcement side.

3332 Misty Lane; 2764 Altadena Lake Drive; 2441 Jannebo Road; 2432 Dolly Ridge Road; 2424 Dolly Ridge Road.

Fire Department: Date: _____ Initials: _____

Comments: _____

PARCEL #: 28 00 20 4 002 008.001
OWNER: GREENE SHARON L
ADDRESS: 4257 OLD CAHABA PARKWAY HELENA AL 35080
LOCATION: 3332 MISTY LN VESTAVIA HILLS AL 35243

18-011.0 Baths: 0.0 H/C Sqft: 0
 Land: 113,100 Bed Rooms: 0 Land Sch: A114
 Acres: 0.000 Imp: 0 Total: 113,100
 Sales Info: \$0

<< Prev Next >> [1 / 0 Records] Processing...

Tax Year : 2017

SUMMARY LAND BUILDINGS SALES PHOTOGRAPHS MAPS

VACANT

SUMMARY

ASSESSMENT

PROPERTY CLASS: 2 OVER 65 CODE:
 EXEMPT CODE: DISABILITY CODE:
 MUN CODE: 01 COUNTY HS YEAR: 0
 SCHOOL DIST: EXM OVERRIDE AMT: \$0.00
 OVR ASD VALUE: \$0.00 TOTAL MILLAGE: 50.1

VALUE

LAND VALUE 10% \$0
 LAND VALUE 20% \$113,120
 CURRENT USE VALUE [DEACTIVATED] \$0

CLASS USE:
 FOREST ACRES: 0 TAX SALE:
 PREV YEAR VALUE: \$113,100.00 BOE VALUE: 0

TOTAL MARKET VALUE [APPR. VALUE: \$113,100]: \$113,120
 Assesment Override:

MARKET VALUE:
 CU VALUE:
 PENALTY:
 ASSESSED VALUE:

TAX INFO

	CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
STATE	2	1	\$22,620	\$147.03	\$0	\$0.00	\$147.03
COUNTY	2	1	\$22,620	\$305.37	\$0	\$0.00	\$305.37
SCHOOL	2	1	\$22,620	\$185.48	\$0	\$0.00	\$185.48
DIST SCHOOL	2	1	\$22,620	\$0.00	\$0	\$0.00	\$0.00
CITY	2	1	\$22,620	\$0.00	\$0	\$0.00	\$0.00
FOREST	2	1	\$0	\$0.00	\$0	\$0.00	\$0.00
SPC SCHOOL1	2	1	\$22,620	\$115.36	\$0	\$0.00	\$115.36
SPC SCHOOL2	2	1	\$22,620	\$380.02	\$0	\$0.00	\$380.02

ASSD. VALUE: \$22,620.00

\$1,133.26

GRAND TOTAL: \$1,133.26

FULLY PAID

DEEDS

PAYMENT INFO

INSTRUMENT NUMBER	DATE	PAY DATE	TAX YEAR	PAID BY	AMOUNT
2018003457	1/10/2018	12/8/2017	2017	GREENE SHARON	\$1,133.26
9511-1114	10/10/1995	12/29/2016	2016	GREENE MICKEY	\$1,133.26
		12/21/2015	2015	-	\$1,133.26
		12/9/2014	2014	-	\$1,148.26
		12/19/2013	2013	-	\$1,148.26
		12/12/2012	2012	GREENE SHARON L	\$1,148.26
		20111108	2011	***	\$1,148.26
		20101208	2010	***	\$1,148.26
		20091124	2009	***	\$1,148.26
		20081217	2008	***	\$1,148.26

M.B. & J.L. Pollard

2627 Fargo Circle
Vestavia Hills, AL 35226

Planning and Zoning Committee Members,

My name is Jacob Pollard, my wife Marjorie and I currently live in Vestavia. We moved from Helena to Vestavia in 2013 after our daughter was born in 2012. Since then we have never given a second thought to living anywhere else. The community, public services, school system, and our friends and neighbors are the reason we have been able to set our roots here.

We now have three children; Colette, Graham, and Asher. Our daughter, Colette, is in 5K this year at VHEW. As our family has grown, we quickly realized that we need more space and began the search for land on which to build a home. We have recently closed on one acre located at 3332 Misty Lane, in Jefferson County.

We have had house plans drawn, and have septic approval from Jefferson County. Documents for both are enclosed with our Petition for annexation.

We are Vestavians. We love our land, and envision raising our children in Vestavia where our family can enjoy the outdoors and all the amenities that the City of Vestavia has to offer.

Thank you for your time in reviewing this request.

Sincerely,

Jacob and Marjorie Pollard

STATE OF ALABAMA

JEFFERSON COUNTY

PETITION FOR ANNEXATION TO THE
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: 2/19/2018

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

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

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

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

JACOB POLLARD - (205) 965-7291 JACOB.ALABAMA@GMAIL.COM
MARGORIE POLLARD - (205) 612-9734 MARGORIE_629@HOTMAIL.COM

EXHIBIT "A"

LOT: N/A

BLOCK: N/A

SURVEY: N/A

RECORDED IN MAP BOOK 28, PAGE 20-4 IN THE
PROBATE OFFICE OF JEFFERSON COUNTY, ALABAMA.

COUNTY ZONING: E-2 ESTATE

COMPATIBLE CITY ZONING: R-1

LEGAL DESCRIPTION (METES AND BOUNDS):

THE SOUTH 1/2 OF THE SE 1/4 OF SECTION 20,
TOWNSHIP 18, RANGE 2 WEST, DESCRIBED AS
FOLLOWS: BEGIN 210 FEET EAST OF THE SOUTHWEST
CORNER OF SAID 1/2 OF 1/4, THENCE NORTH 210
FEET FOR A POINT OF BEGINNING; THENCE NORTH 210
FEET; THENCE EAST 210 FEET; THENCE SOUTH 210 FEET;
THENCE WEST 210 FEET TO THE POINT OF BEGINNING

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

SIGNATURE(S)

DESCRIPTION OF PROPERTY

<u>[Signature]</u>	Lot <u>N/A</u> Block <u>N/A</u> Survey <u>(REVERSE FOR DESCRIPTION)</u>
<u>Margie B. Pollard</u>	Lot _____ Block _____ Survey _____
_____	Lot _____ Block _____ Survey _____

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

STATE OF ALABAMA

Jefferson COUNTY

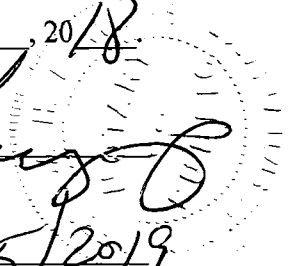
Margie + Jacob Pollard being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

[Signature]
Signature of Certifier

Subscribed and sworn before me this the 20th day of Feb, 2018

[Signature]
Notary Public

My commission expires: 7/15/2019



DESCRIPTION:

THE SOUTH $\frac{1}{2}$ OF THE SE $\frac{1}{4}$ OF SECTION 20, TOWNSHIP 18,
RANGE 2 WEST, DESCRIBED AS FOLLOWS: BEGIN 210 FEET
EAST OF THE SOUTHWEST CORNER OF SAID SOUTH $\frac{1}{2}$ OF SE $\frac{1}{4}$,
THENCE NORTH 210 FEET FOR A POINT OF BEGINNING; THENCE
NORTH 210 FEET; THENCE EAST 210 FEET; THENCE SOUTH 210 FEET;
THENCE WEST 210 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

VESTAVIA HILLS BOARD OF EDUCATION

1204 Montgomery Highway
Vestavia Hills AL 35216

(To be completed by the City)

Date of Annexation Petition _____ Action Taken: Grant _____
Deny _____

Resolution: Date: _____ Number: _____
Overnight Ordinance: Date: _____ Number: _____
90 Day Final Ordinance: Date: _____ Number: _____

(To be completed by Homeowner)

Name(s) of Homeowner(s): MARTORIE & JACOB POLLARD

Address: 2627 FARGO CIRCLE

City: VESTAVIA State: AL Zip: 35226

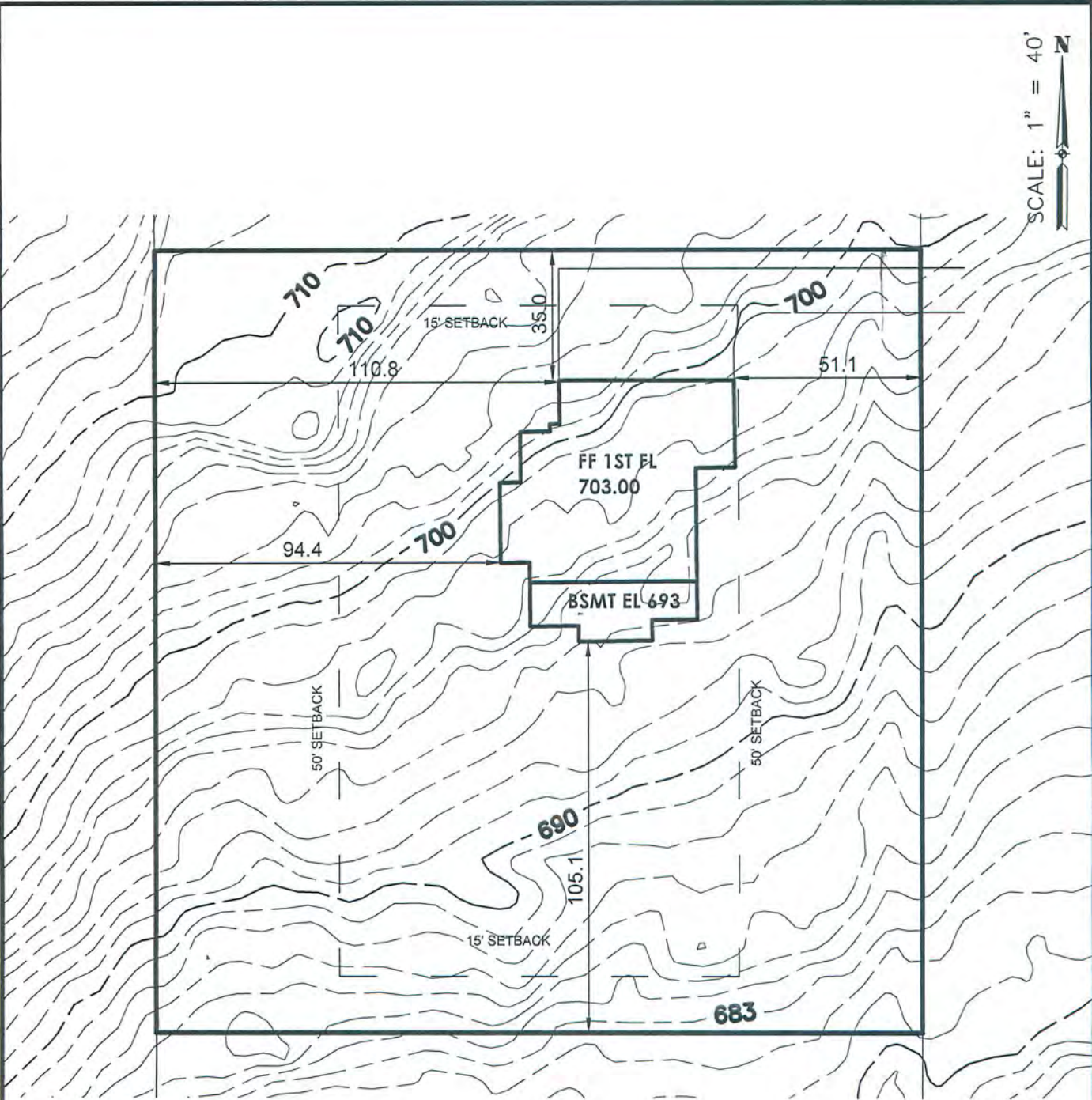
Information on Children:

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

	Name(s)	Age	School Grade	Yes	No
1.	COLETTE POLLARD	5	K-5	✓	
2.	GRAHAM POLLARD	4	PRE-SCHOOL	✓	
3.	ASHER POLLARD	1	N/A	✓	
4.					
5.					
6.					

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes": _____

SCALE: 1" = 40'
N



PLOT PLAN

3332 MISTY LANE
 BIRMINGHAM, AL
 DB 9511 PG 1114
 JEFFERSON COUNTY, ALABAMA
 PREPARED FOR: JACOB POLLARD
 PREPARED 12/1/17 ME
 PROJECT #66885

NOTE TO PROSPECTIVE HOME OWNER:
 THE DRIVEWAY LOCATION SHOWN ON THIS PLOT PLAN IS
 SUBJECT TO CHANGE TO BEST MATCH THE LOT GRADE
 AND/OR EXISTING UTILITY APPURTENANCES.

ARRINGTON ENGINEERING AND LAND SURVEYING INC. PERFORMED NO SURVEYING, TITLE SEARCH, OR FLOOD ZONE DETERMINATION IN CONNECTION WITH THE PREPARATION OF THIS PLOT PLAN. WE MAKE NO GUARANTEE THAT THIS PROPERTY IS NOT SUBJECT TO ANY ADDITIONAL EASEMENTS, SETBACKS, RESTRICTIONS OR COVENANTS, OTHER THAN THOSE SHOWN ON THIS PLOT PLAN. THE BUILDER IS RESPONSIBLE FOR VERIFYING ALL LOT RESTRICTIONS PRIOR TO CONSTRUCTION.

APPROVED TO STAKE BY:



ARRINGTON ENGINEERING
 Civil Engineers - Surveyors - Land Planners
 Office: (205) 985-9315 Fax: (205) 985-9385
 2032 VALLEYDALE ROAD BIRMINGHAM AL 35244

Liability Release:

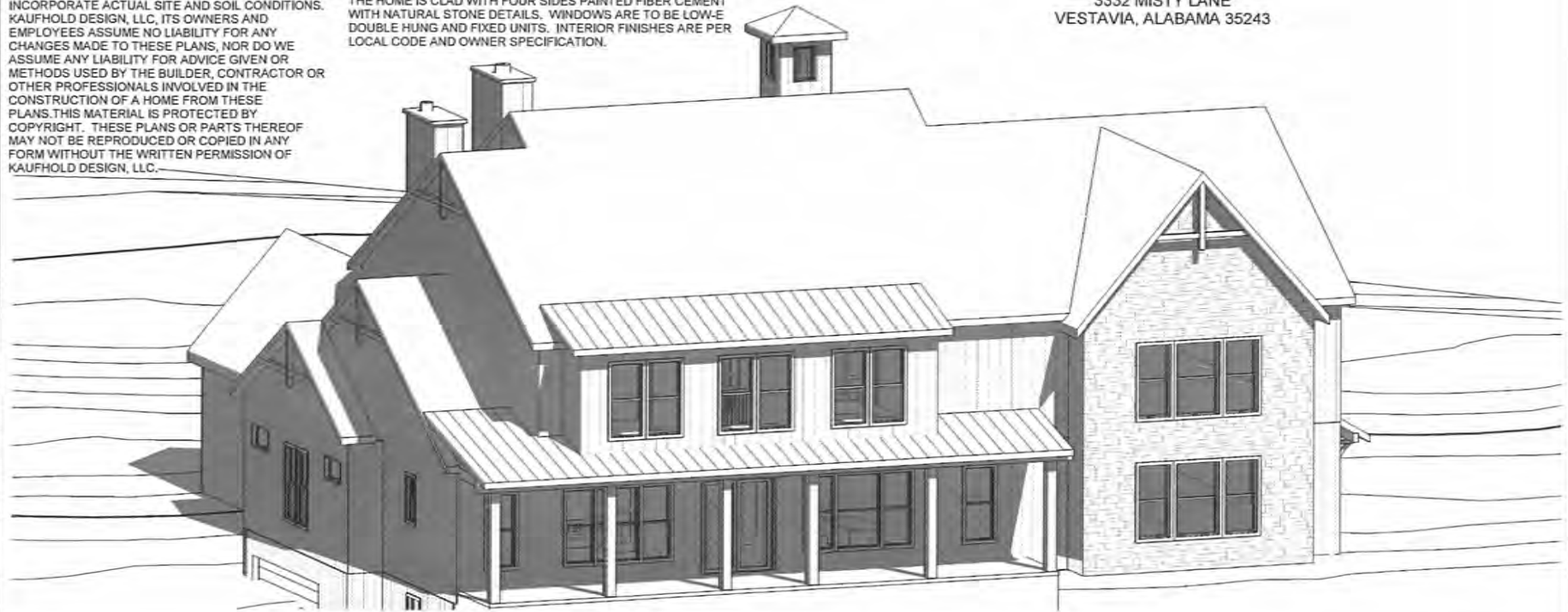
KAUFHOLD DESIGN, LLC, ITS OWNERS AND EMPLOYEES ASSUME NO LIABILITY FOR ANY HOME CONSTRUCTED FROM THIS PLAN. IT IS THE RESPONSIBILITY OF THE PURCHASER OF THIS PLAN TO PERFORM THE FOLLOWING BEFORE BEGINNING CONSTRUCTION. THE BUILDER OR CONTRACTOR MUST VERIFY THE DIMENSIONS AND ALL ASPECTS OF THE PLANS FOR COMPLIANCE WITH ALL LOCAL BUILDING CODES AND ORDINANCES WHERE THE HOUSE IS TO BE CONSTRUCTED. VERIFY ALL STRUCTURAL ELEMENTS FOR DESIGN, SIZE AND REINFORCEMENT WITH LOCAL ENGINEERING AND BUILDING OFFICIALS. PLANS INDICATE LOCATIONS ONLY; ENGINEERING ASPECTS SHOULD INCORPORATE ACTUAL SITE AND SOIL CONDITIONS. KAUFHOLD DESIGN, LLC, ITS OWNERS AND EMPLOYEES ASSUME NO LIABILITY FOR ANY CHANGES MADE TO THESE PLANS, NOR DO WE ASSUME ANY LIABILITY FOR ADVICE GIVEN OR METHODS USED BY THE BUILDER, CONTRACTOR OR OTHER PROFESSIONALS INVOLVED IN THE CONSTRUCTION OF A HOME FROM THESE PLANS. THIS MATERIAL IS PROTECTED BY COPYRIGHT. THESE PLANS OR PARTS THEREOF MAY NOT BE REPRODUCED OR COPIED IN ANY FORM WITHOUT THE WRITTEN PERMISSION OF KAUFHOLD DESIGN, LLC.

Project Description:

A NEW RESIDENTIAL SINGLE FAMILY DWELLING WITH THREE LEVELS MEASURING APPROXIMATELY 36' 8" IN HEIGHT. THE HEATED AND COOLED AREA OF THE BASEMENT IS 906SF. LEVEL ONE IS 2,708SF AND LEVEL TWO IS 1,440SF. THE STRUCTURE INCLUDES AN ENCLOSED 449SF TWO CAR GARAGE IN THE BASEMENT AND A 1,101SF THREE CAR GARAGE ON THE MAIN LEVEL. THE HOME HAS A COVERED FRONT PORCH AT 401SF AND A REAR PORCH MEASURING 636SF. THE PRIMARY STRUCTURE IS WOOD FRAME CONSTRUCTION ON CONCRETE SLAB AND CRAWL SPACE. ALL BEARING ELEMENTS REST UPON CONCRETE FOOTINGS, CMU STEM WALL, HAUNCH OR THICKEED SLAB. THIS PLAN INCLUDES DECORATIVE AND STRUCTURAL WOOD COLUMNS AND A 30 YEAR SHINGLE ROOF. THE HOME IS CLAD WITH FOUR SIDES PAINTED FIBER CEMENT WITH NATURAL STONE DETAILS. WINDOWS ARE TO BE LOW-E DOUBLE HUNG AND FIXED UNITS. INTERIOR FINISHES ARE PER LOCAL CODE AND OWNER SPECIFICATION.

THE POLLARD HOME

3332 MISTY LANE
VESTAVIA, ALABAMA 35243



Kaufhold Design

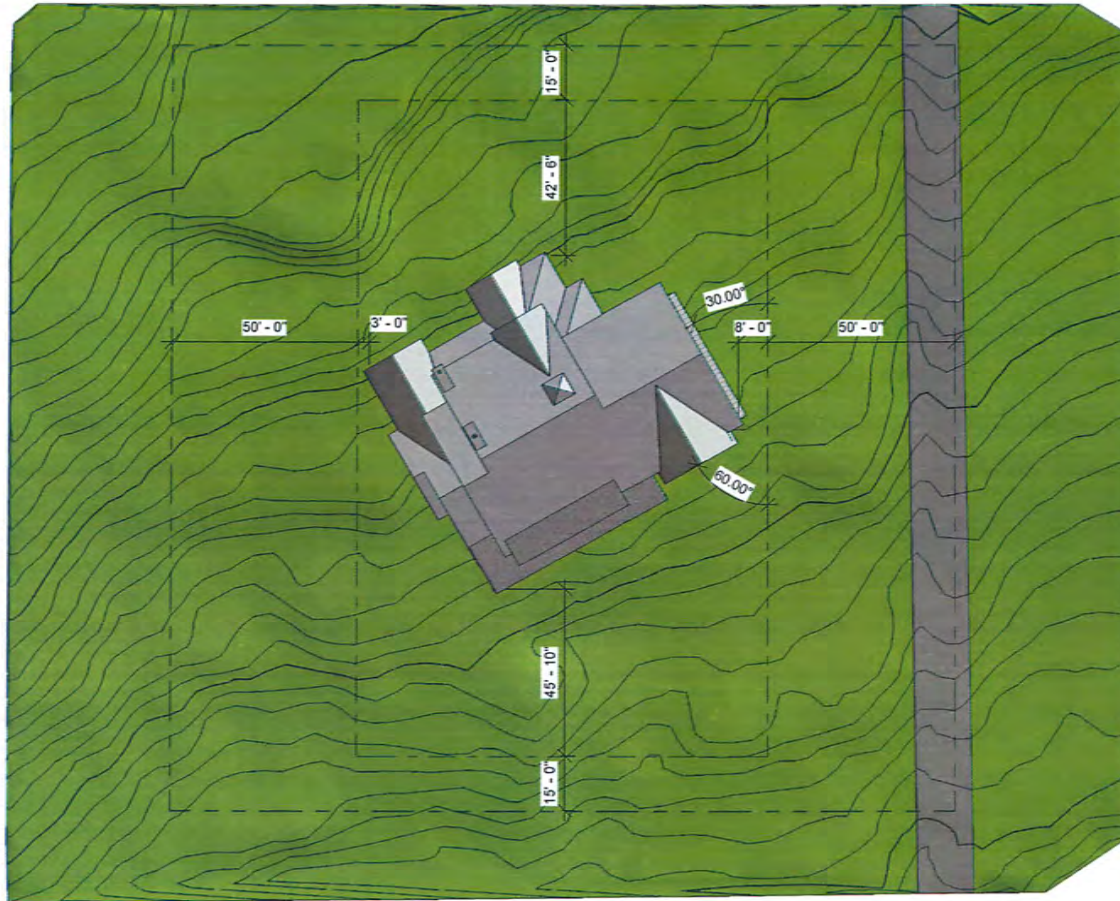
Kaufholddesign@gmail.com

The Pollard Residence
Jacob & Marjorie Pollard

No.	Description	Date

TITLE PAGE

Project number	2018-1006	A1
Date	FEBRUARY 2018	
Drawn by	MICAH KAUFHOLD	
Checked by	THE POLLARDS	
Scale		1 1/2" = 1'-0"



① Site
1" = 30'-0"

Kaufhold Design

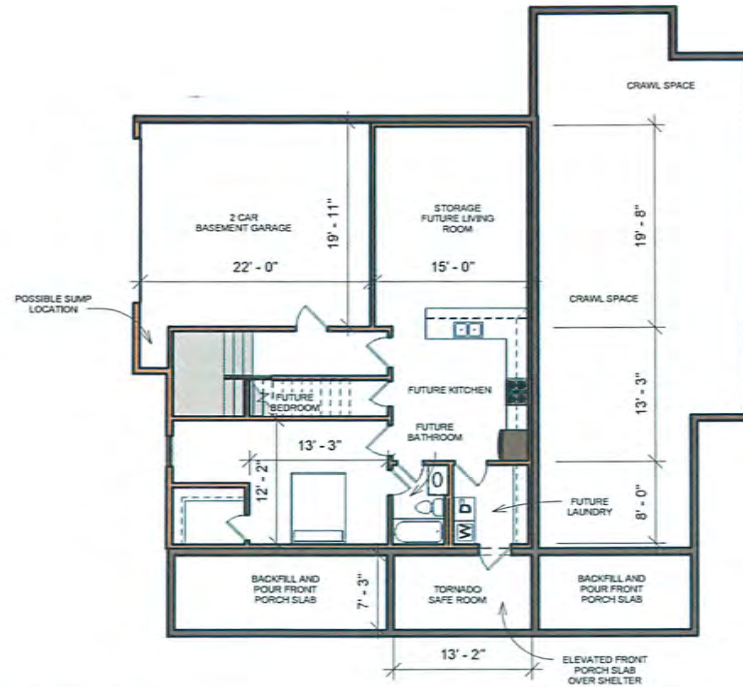
Kaufholddesign@gmail.com

The Pollard Residence
Jacob & Marjorie Pollard

No.	Description	Date

SITE PLAN

Project number	2018-1006	A2
Date	FEBRUARY 2018	
Drawn by	MICAHKAUFHOLD	Scale As indicated
Checked by	THE POLLARDS	



1 BASEMENT LEVEL
3/32" = 1'-0"

Kaufhold Design

Kaufholddesign@gmail.com

The Pollard Residence
Jacob & Marjorie Pollard

No.	Description	Date

BASEMENT LEVEL

Project number	2018-1006	A3
Date	FEBRUARY 2018	
Drawn by	MICAH KAUFHOLD	
Checked by	THE POLLARDS	
Scale		3/32" = 1'-0"

Kaufhold Design

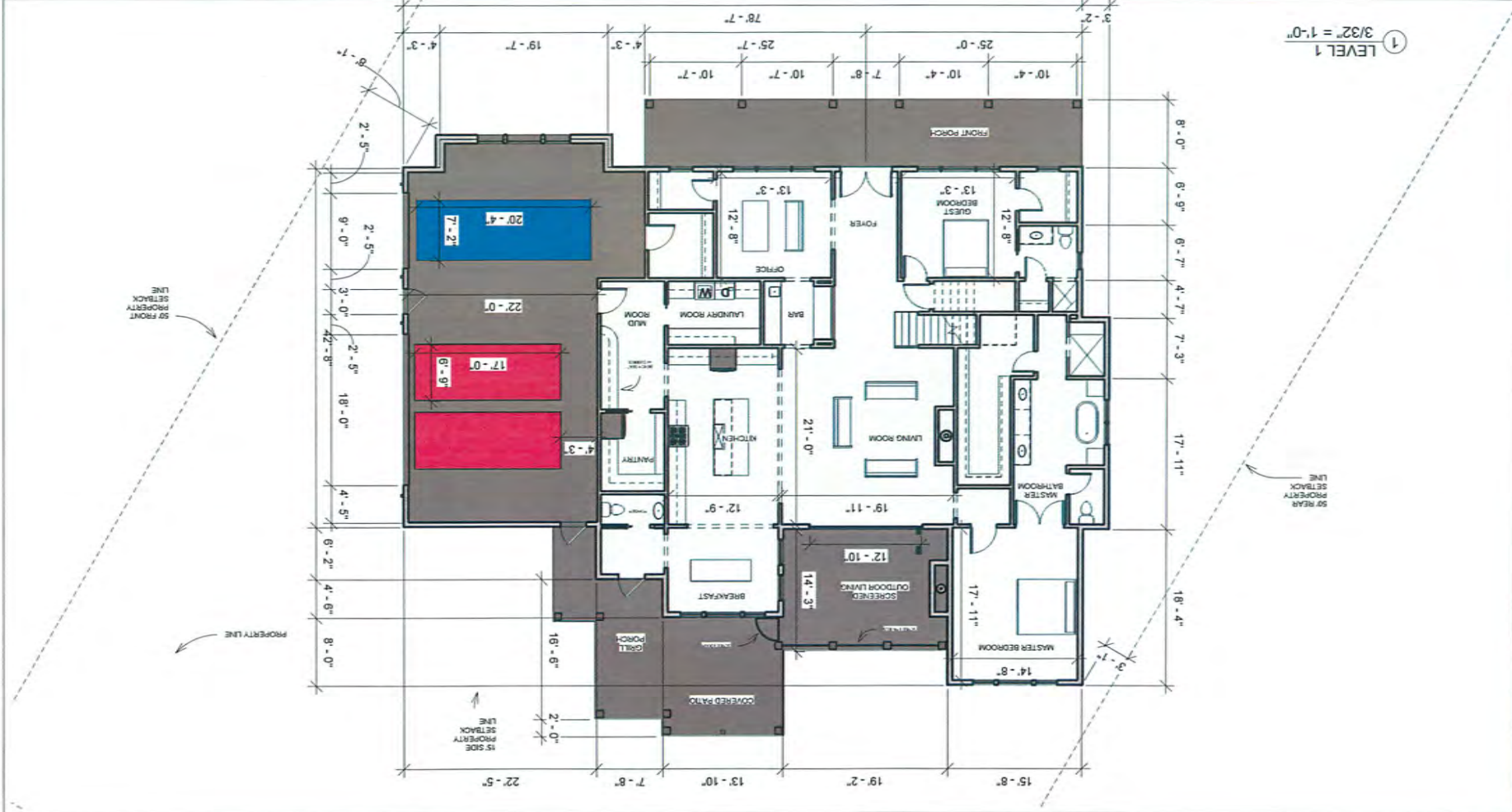
Kaufholddesign@gmail.com

The Pollard Residence
Jacob & Marjorie Pollard

No.	Description	Date

MAIN LEVEL	
Project number	2018-1006
Date	FEBRUARY 2018
Drawn by	MICAH KAUFHOLD
Checked by	THE POLLARDS
Scale	3/32" = 1'-0"
A4	

① LEVEL 1
3/32" = 1'-0"



2/19/2018 7:46:01 PM





① FRONT-SOUTH
3/32" = 1'-0"



② BACK-REAR-NOTRTH
3/32" = 1'-0"

Kaufhold Design

Kaufholddesign@gmail.com

The Pollard Residence
Jacob & Marjorie Pollard

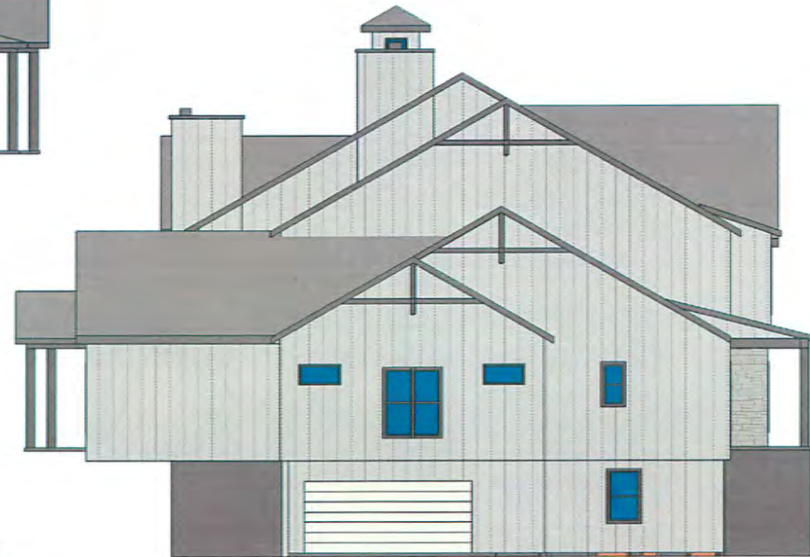
No.	Description	Date

ELEVATIONS

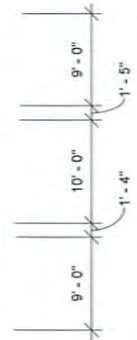
Project number	2018-1006	A10
Date	FEBRUARY 2018	
Drawn by	MICAH KAUFHOLD	
Checked by	HARRIS DOYLE	
Scale		3/32" = 1'-0"



① SIDE-RIGHT-EAST
3/32" = 1'-0"



② SIDE-LEFT-WEST
3/32" = 1'-0"



Kaufhold Design

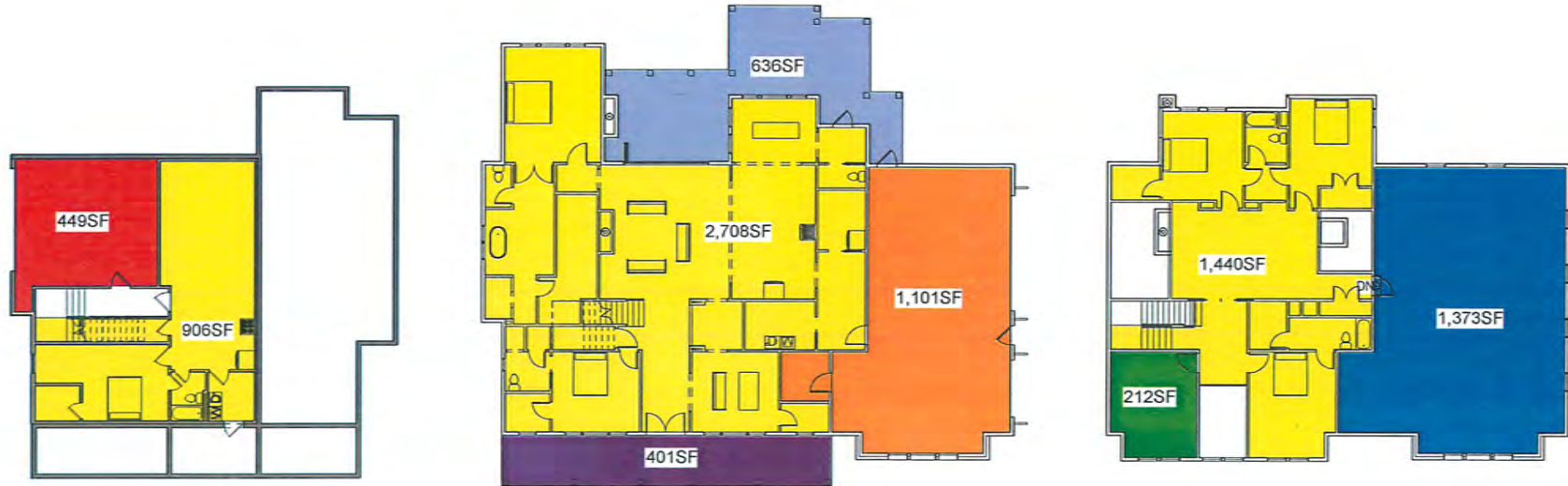
Kaufholddesign@gmail.com

The Pollard Residence
Jacob & Marjorie Pollard

No.	Description	Date

ELEVATIONS

Project number	2018-1006	A11
Date	FEBRUARY 2018	
Drawn by	MICAH KAUFHOLD	
Checked by	HARRIS DOYLE	
Scale		3/32" = 1'-0"



① BASEMENT LEVEL SQUARE FOOTAGES
1/16" = 1'-0"

② LEVEL 1 SQUARE FOOTAGES
1/16" = 1'-0"

③ LEVEL 2 SQUARE FOOTAGES
1/16" = 1'-0"

Kaufhold Design

Kaufholddesign@gmail.com

The Pollard Residence
Jacob & Marjorie Pollard

No.	Description	Date

SQUARE FOOTAGES

Project number	2018-1006	A22
Date	FEBRUARY 2018	
Drawn by	Author	
Checked by	Checker	
Scale		1/16" = 1'-0"

ORDINANCE NUMBER 2792

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY JEFFERSON COUNTY E-2 TO VESTAVIA HILLS R-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County E-2 (estate single family district) to Vestavia Hills R-1 (low density residential district):

3332 Misty Lane
Jacob and Marjorie Pollard, Owner(s)

More particularly described as follows:

The South $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 20, Township 18, Range 2 West, Described as follows: Begin 210 Feet East of the SW corner of said $\frac{1}{2}$ of $\frac{1}{4}$; thence North 210 feet for a point of beginning, thence North 210 feet; thence East 210 feet; thence South 210 feet; thence West 210 feet to the point of beginning.

APPROVED and ADOPTED this the 24th day of September, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

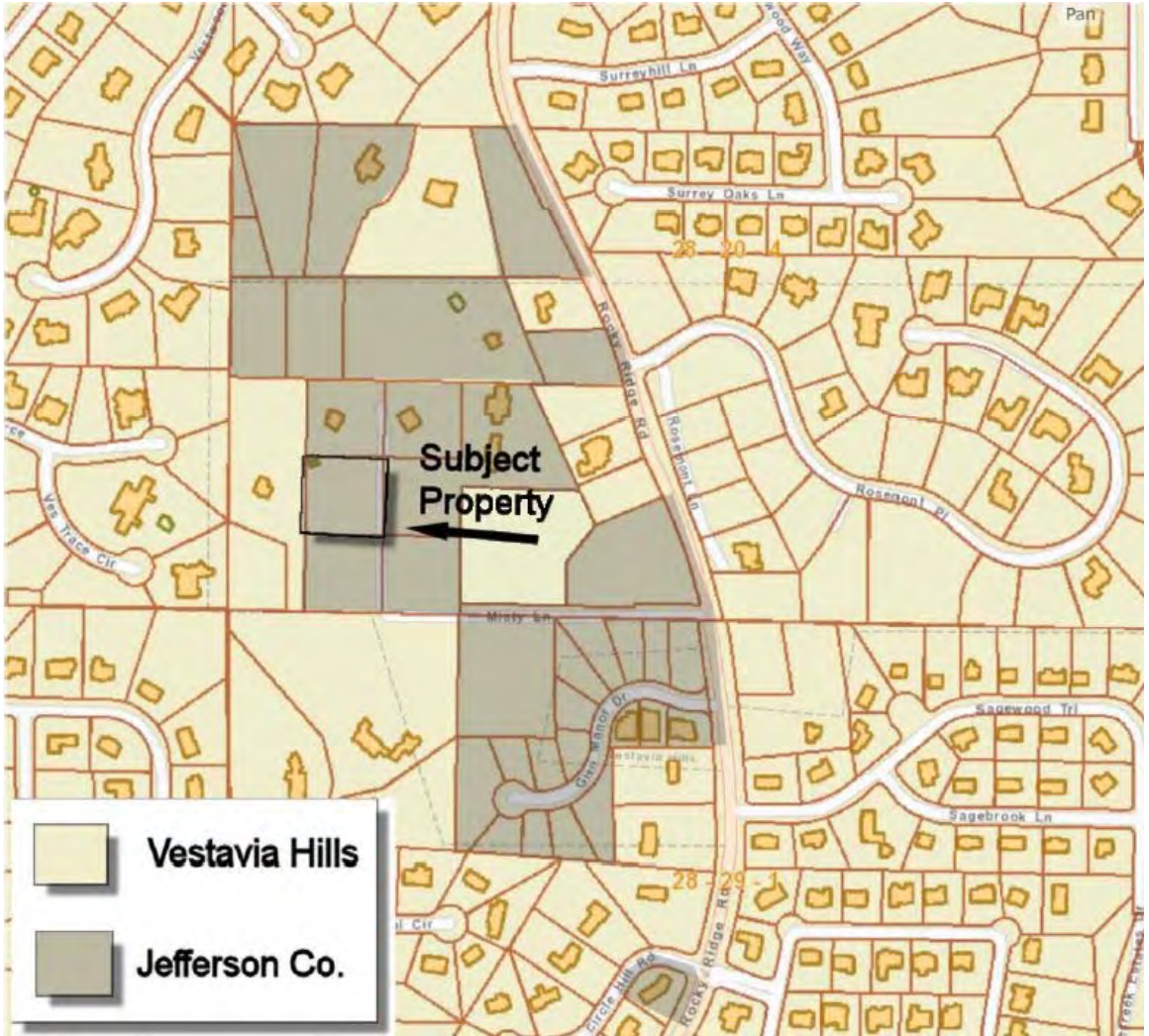
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2792 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 24th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



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

Date: **JULY 12, 2018**

- **CASE: P-0718-24**
- **REQUESTED ACTION:** Rezoning Jefferson County E-2 to Vestavia Hills R-1
- **ADDRESS/LOCATION:** 3332 Misty Ln.
- **APPLICANT/OWNER:** Jacob & Marjorie Pollard
- **GENERAL DISCUSSION:** Property was annexed overnight by City Council on 5/30/18 with the passage of Ordinance 2759. Applicant is requesting the compatible rezoning.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Gilchrist made a motion to recommend rezoning approval for 3332 Misty Ln. from Jefferson County E-2 to Vestavia Hills R-1. Second was by Mr. Weaver. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. House – yes
Mr. Larson – yes

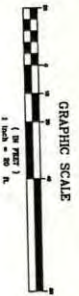
Mr. Sykes – yes
Mrs. Barnes – yes
Mr. Weaver – yes
Motion carried.

TOPOGRAPHIC & BOUNDARY SURVEY

3332 MISTY LANE

SITUATED IN THE SOUTHEAST QUARTER, SECTION 20,
TOWNSHIP 18 SOUTH, RANGE 7 WEST,
JEFFERSON COUNTY, ALABAMA.

PREPARED FOR:
JACOB POLKARD
Birmingham, AL 35204
205-228-3180



SURVEY CONTROL

THE BASIS OF BEARINGS AND ON
CORNER POSITIONS FOR THIS SURVEY ARE
BASED ON ALABAMA STATE PLANE WEST ZONE
COORDINATES (NAD 83) (ELEVATION
AND DISTANCE WAS OBTAINED FROM GCS
OBSERVATIONS TO THE SURVEY CONTROL
NETWORK AD CONTROL.

LEGEND	
▲	CONTROL POINT
○	UTILITY POLE
■	WATER METER
□	CORNER MONUMENT
—	OPTIC CO. ELECTRIC
- - -	WALL
- · - · -	MINOR CONTIGNS
▬	ASPHALT

- NOTES:**
- NO TITLE SEARCH OF THE PUBLIC RECORDS HAS BEEN PERFORMED BY THE SURVEYOR. THE SURVEYOR HAS BEEN ADVISED BY THE CLIENT THAT THE PARCEL AND/OR RIGHTS OF WAY RECORDED ON UNRECORDED. THE PARCEL AND/OR RIGHTS OF WAY RECORDED ON UNRECORDED. THE PARCEL AND/OR RIGHTS OF WAY RECORDED ON UNRECORDED. THE PARCEL AND/OR RIGHTS OF WAY RECORDED ON UNRECORDED.
 - ALL BEARINGS AND/OR ANGLES, AND DISTANCES ARE DEED AND ACTUAL. UNLESS OTHERWISE CALCULATED.
 - UNDERGROUND UTILITIES OR FOUNDATIONS, FOOTINGS, OR OTHER UNDERGROUND STRUCTURES WERE NOT LOCATED UNLESS OTHERWISE NOTED.
 - THIS SURVEY IS VALID ONLY WITHIN ORIGINAL, SOURCE AND A LEGIBLE SCALE.

I HEREBY STATE THAT ALL PARTS OF THIS SURVEY AND DRAWING HAVE BEEN CONDUCTED IN ACCORDANCE WITH THE CURRENT REQUIREMENTS OF THE SURVEYING BOARD OF ALABAMA AND THE STATE OF ALABAMA TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

SURVEYOR:
JEFF S. HARRINGTON
ALABAMA NO. 35004

DATE: _____

ARRINGTON ENGINEERING
Civil Engineers - Surveyors - Land Planners

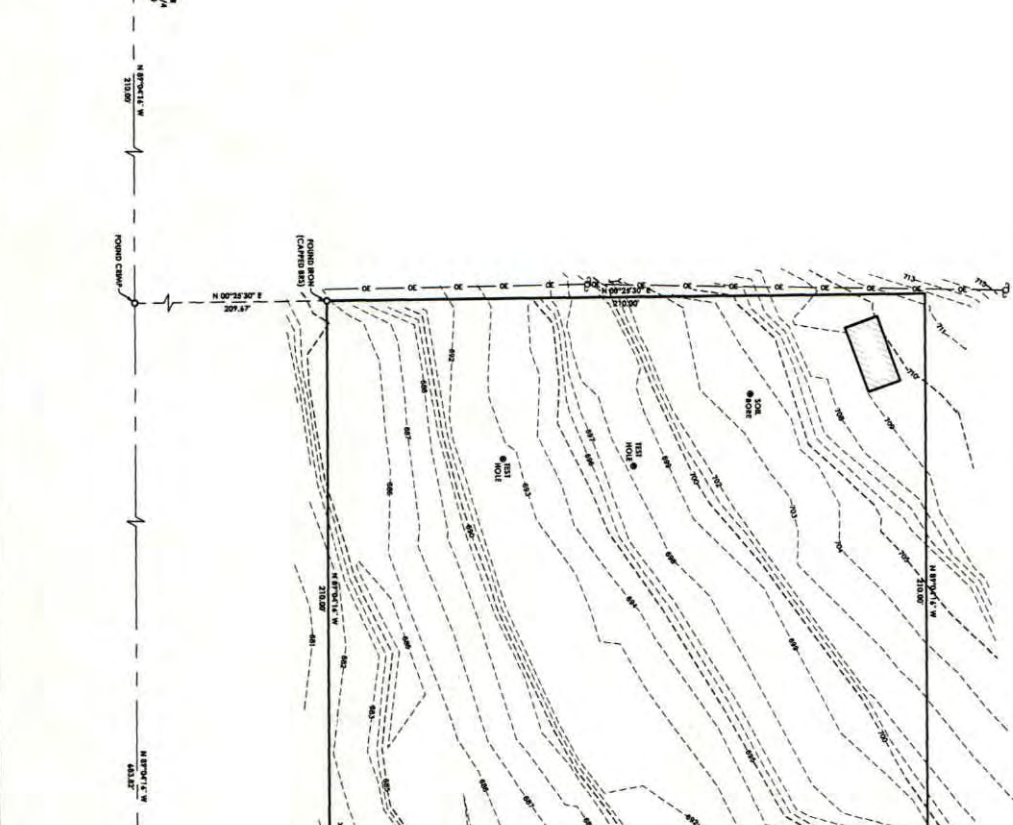
<p>STATE OF ALABAMA SURVEYOR JEFF S. HARRINGTON ALABAMA NO. 35004</p>	<p>DATE: _____</p>
---	--------------------

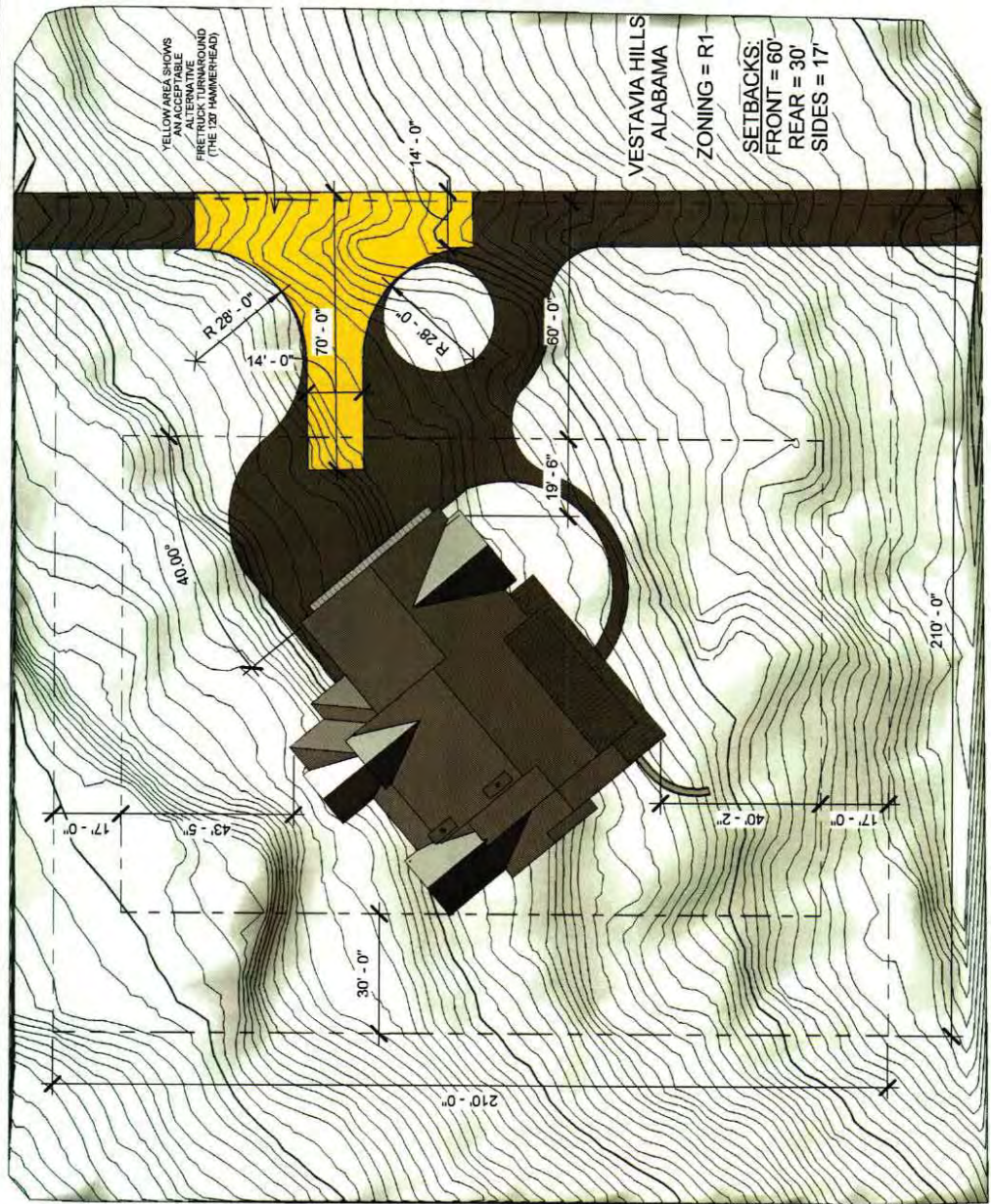
<p>PROJECT NO. 107-1</p>	<p>DATE: 10/11/11</p>
<p>PROJECT NAME: 3332 MISTY LN</p>	<p>SCALE: 1" = 20'</p>
<p>PROJECT NO. 107-1</p>	<p>DATE: 10/11/11</p>

811

Know what's below.
Call before you dig.

Call 2 working days before digging.
At the least.





YELLOW AREA SHOWS
ALTERNATIVE
FIRE TRUCK TURNAROUND
(THE 13' HAMMERHEAD)

VESTAVIA HILLS
ALABAMA

ZONING = R1

SETBACKS:
FRONT = 60'
REAR = 30'
SIDES = 17'

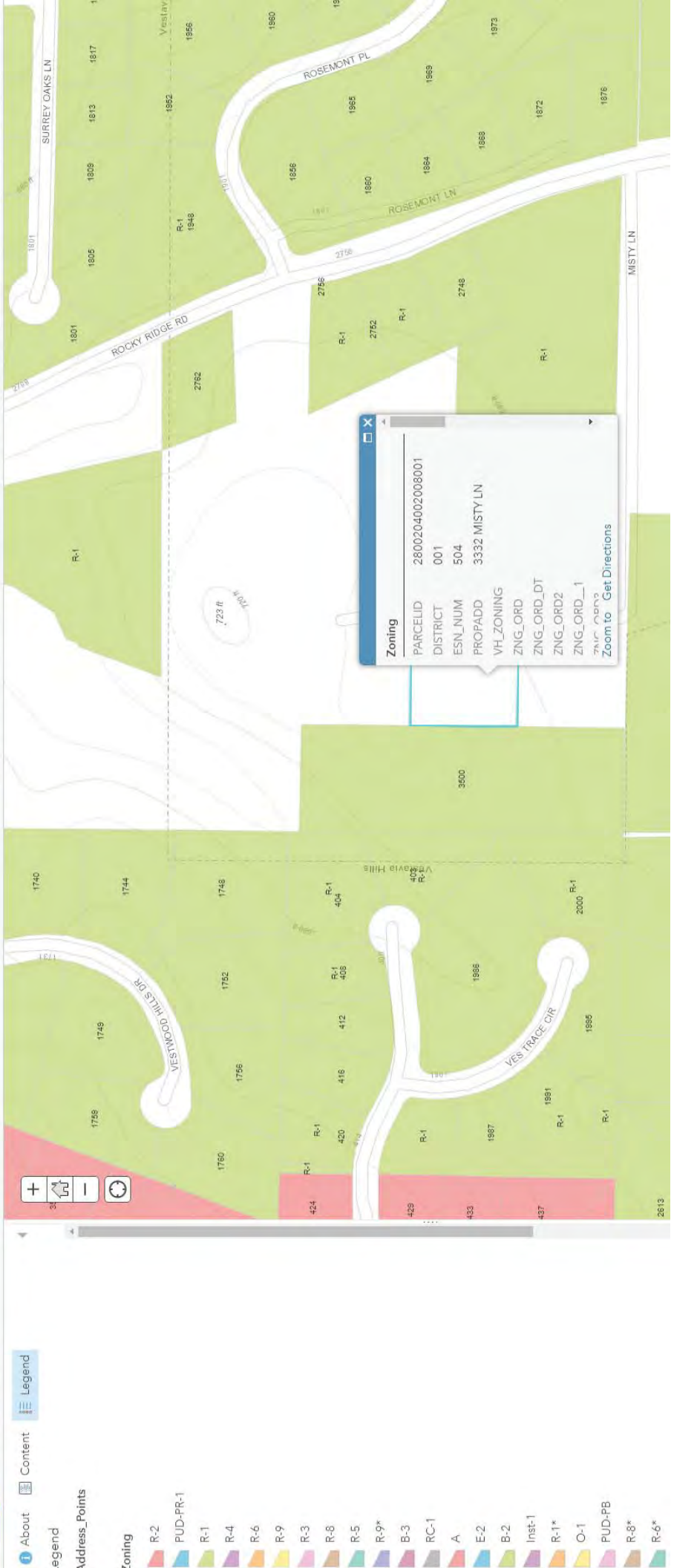
① SITE
1" = 30'-0"

No.	Description	Date

SITE PLAN	
Project number	2018-1006
Date	AS NOTED
Drawn by	MICAH KAUFHOLD
Checked by	THE POLLARDS
Scale As Indicated	

The Pollard Residence
Jacob & Marjorie Pollard

Kaufhold Design
Kaufholddesign@gmail.com



- R-2
- PUD-PR-1
- R-1
- R-4
- R-6
- R-9
- R-3
- R-8
- R-5
- R-9*
- B-3
- RC-1
- A
- E-2
- B-2
- Inst-1
- R-1*
- O-1
- PUD-PB
- R-8*
- R-6*

ORDINANCE NUMBER 2793

**ANNEXING CERTAIN TERRITORY TO THE
CORPORATE LIMITS OF THE CITY OF VESTAVIA
HILLS, ALABAMA.**

WHEREAS, on the 30th day of May, 2018, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

WHEREAS, the City Council of the City of Vestavia Hills, at the time and place of its regular meeting on said date, made a determination that the matters contained in the Petition were true and that it was in the public interest that said property be annexed to the City of Vestavia Hills, Alabama.

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

1. That the following property which was described in said petition be annexed to the City of Vestavia Hills, Alabama:

2764 Altadena Lake Drive
Lot 4, Block 5, First Add., Altadena Valley, 4th Sector
Murray and Kelly Statham, Owner(s)

2. That this Annexation shall become effective upon the adoption and approval of this Ordinance in accordance with the provisions of law, after which the heretofore described property shall become a part of the City of Vestavia Hills, Alabama.

3. That the City Clerk be and is hereby directed to publish this Ordinance in accordance with the requirements of the law and to file a copy hereof, together with a duly certified copy of the petition, with the Probate Judge of Jefferson County, Alabama.

ADOPTING and APPROVED this the 24th day of September, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2793 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 24th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



ANNEXATION DETAIL SHEET

Address: 2764 Altadena Lake Drive

Parcel ID#: 28-00-34-3-007-010.000

Owner(s): Murray & Kelly Statham

Current Use: One Single-Family home

Proposed Use: same

Google Image:



Annexation Committee Petition Review

Property: 2764 Altadena Lake Drive

Owners: Murray & Kelly Statham

Date: 4-6-18

- 1. The property in question is contiguous to the city limits.
Yes No Comments: _____

- 2. The land use of the petitioned property is compatible with land use in the area.
Yes No Comments: _____

- 3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.
Yes No Comments _____

- 4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.
Yes No Comments Roadway is in fair to poor condition

- 5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of 234,000. Meets city criteria: Yes No
Comment: city criteria to be discussed

- 6. This street has fewer than 100% of the individual properties within the limits of the city
Yes No
Number of total homes 6 Number in city 2

- 7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.
Agreed to by petitioner: Yes No Comment _____

Property: 2764 Altadena Lake Drive

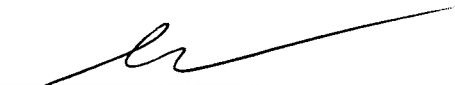
8. A non-refundable administrative fee of \$100 has been paid to the city. Furthermore, voluntary contributions, including an application fee, of \$_____ will be paid to offset costs associated with the annexation.
Yes _____ No _____ Comment _____

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

10. Are there any concerns from city departments?
Yes No _____ Comments: Roadway is in FAIR
TV poor condition

11. Information on children: Number in family 2; Plan to enroll in VH schools Yes _____ No Comments: _____

Other Comments: _____



George Pierce
Chairman 4-6-18

EXHIBIT "C"

CITY OF VESTAVIA HILLS
Department Review of Proposed Annexation
(To Be completed by City Staff)

The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 2764 Altadena Lake Drive

Engineering: _____ Date: _____ Initials: _____

Comments: _____

2764 Altadena Lake Drive -- no concerns noted; roadway is in fair to poor condition and will be evaluated to add to City's maintenance schedule. _____

Comments: _____

Police Department: _____ Date: _____ Initials: _____

The police department has reviewed the listed properties up for annexation; we have no reason to oppose said annexation on the law enforcement side.

3332 Misty Lane; 2764 Altadena Lake Drive; 2441 Jannebo Road; 2432 Dolly Ridge Road; 2424 Dolly Ridge Road.

Fire Department: _____ Date: 3/15/18 Initials: CV

Comments: NP _____

PARCEL #: 28 00 34 3 007 010.000
OWNER: STATHAM STEPHEN M JR
ADDRESS: 2764 ALTADENA LAKE DR VESTAVIA AL 35243-3005
LOCATION: 2764 ALTADENA LAKE DR BHAM AL 35243

[111-B-] Baths: 2.0 H/C Sqft: 1,974
 18-036.0 Bed Rooms: 3 Land Sch: L1
 Land: 65,300 Imp: 148,700 Total: 214,000
 Acres: 0.000 Sales Info: 09/01/2011
\$214,900

<< Prev Next >> [1 / 0 Records] Processing...

Tax Year : 2017

SUMMARY LAND BUILDINGS SALES PHOTOGRAPHS MAPS

SUMMARY

ASSESSMENT		VALUE	
PROPERTY CLASS:	3	OVER 65 CODE:	
EXEMPT CODE:	2-2	DISABILITY CODE:	
MUN CODE:	02 COUNTY	HS YEAR:	0
SCHOOL DIST:		EXM OVERRIDE AMT:	\$0.00
OVR ASD VALUE:	\$0.00	TOTAL MILLAGE:	50.1
		CLASS 2	
		CLASS 3	
		BLDG 001	111
			\$148,700
CLASS USE:		TOTAL MARKET VALUE	[APPR. VALUE: \$214,000]:\$214,040
FOREST ACRES:	0	TAX SALE:	
PREV YEAR VALUE:	\$214,000.00	BOE VALUE:	0
		Assesment Override:	
		MARKET VALUE:	
		CU VALUE:	
		PENALTY:	
		ASSESSED VALUE:	

TAX INFO

	CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
STATE	3	2	\$21,400	\$139.10	\$4,000	\$26.00	\$113.10
COUNTY	3	2	\$21,400	\$288.90	\$2,000	\$27.00	\$261.90
SCHOOL	3	2	\$21,400	\$175.48	\$0	\$0.00	\$175.48
DIST SCHOOL	3	2	\$21,400	\$0.00	\$0	\$0.00	\$0.00
CITY	3	2	\$21,400	\$0.00	\$0	\$0.00	\$0.00
FOREST	3	2	\$0	\$0.00	\$0	\$0.00	\$0.00
SPC SCHOOL1	3	2	\$21,400	\$109.14	\$0	\$0.00	\$109.14
SPC SCHOOL2	3	2	\$21,400	\$359.52	\$0	\$0.00	\$359.52

TOTAL FEE & INTEREST: (Detail) \$5.00

ASSD. VALUE: \$21,400.00 **\$1,072.14** **GRAND TOTAL: \$1,024.14**
FULLY PAID

DEEDS

PAYMENT INFO

INSTRUMENT NUMBER	DATE	PAY DATE	TAX YEAR	PAID BY	AMOUNT
201108-9036	09/09/2011	11/17/2017	2017	CORE LOGIC INC	\$1,024.14
385-366	12/16/1967	11/21/2016	2016	CORELOGIC	\$1,024.14
		12/1/2015	2015	CORELOGIC INC	\$1,024.14
		12/2/2014	2014	CORELOGIC INC	\$949.99
		11/19/2013	2013	CORELOGIC INC	\$1,406.79
		11/21/2012	2012	CORELOGIC INC	\$1,000.09
		20111021	2011	***	\$2,138.24

STATE OF ALABAMA

Jefferson COUNTY

PETITION FOR ANNEXATION TO THE
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: November 28th, 2017

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

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

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

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

CAR TAG #'s

(A) WDB112

(B) VSM208

EXHIBIT "A"

LOT: 4

BLOCK: 5

SURVEY: First Addition, Altadena Valley, Fifth sector

RECORDED IN MAP BOOK 79, PAGE 8 IN THE
PROBATE OFFICE OF Jefferson COUNTY, ALABAMA.

COUNTY ZONING: Jefferson

COMPATIBLE CITY ZONING: Birmingham

LEGAL DESCRIPTION (METES AND BOUNDS):

Lot 4 Blk 5 1st Addl Altadena Valley 5th Sector

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

SIGNATURE(S)

DESCRIPTION OF PROPERTY

<u>S. Murray Statham Jr.</u>	Lot <u>4</u> Block <u>5</u> Survey <u>First Addition, Altadena Valley, Fifth Sector</u>
<u>Kelly C. Statham</u>	Lot <u>4</u> Block <u>5</u> Survey <u>First Addition, Altadena Valley, Fifth Sector</u>
_____	Lot _____ Block _____ Survey _____

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

STATE OF ALABAMA

Jefferson COUNTY

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

S. Murray Statham Jr.
Signature of Certifier

Subscribed and sworn before me this the 28 day of November, 2017.

[Signature]
Notary Public
My commission expires: MY COMMISSION EXPIRES MARCH 2, 2021



EXHIBIT "B"

VESTAVIA HILLS BOARD OF EDUCATION

1204 Montgomery Highway
Vestavia Hills AL 35216

(To be completed by the City)

Date of Annexation Petition _____ Action Taken: Grant _____
Deny _____

Resolution: Date: _____ Number: _____
Overnight Ordinance: Date: _____ Number: _____
90 Day Final Ordinance: Date: _____ Number: _____

(To be completed by Homeowner)

Name(s) of Homeowner(s): Stephen Murray Statham Jr and Kelly Coleman Statham
(previously Catherine Kelly Coleman)

Address: 2764 Altadena Lake Drive

City: Birmingham State: AL Zip: 35243

Information on Children:

No children yet.

Plan to Enroll In
Vestavia Hills School?

	Name(s)	Age	School Grade	Yes	No
1.					
2.					
3.					
4.					
5.					
6.					

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes": _____

ORDINANCE NUMBER 2794

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY JEFFERSON COUNTY R-1 TO VESTAVIA HILLS R-2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County R-1 (medium density single family district) to Vestavia Hills R-2 (medium density residential district):

2764 Altadena Lake Drive
Lot 4, Block 5, Altadena Valley, 4th Sector
Murray and Kelly Statham, Owner(s)

APPROVED and ADOPTED this the 24th day of September, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2794 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 24th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



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

Date: **JULY 12, 2018**

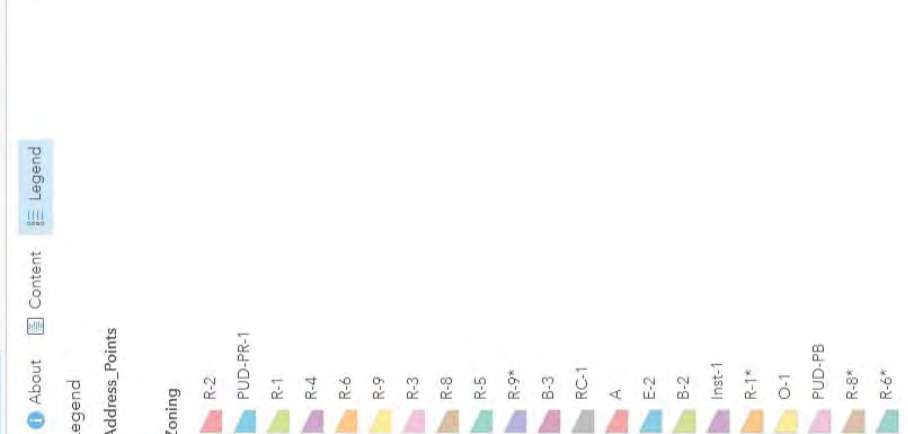
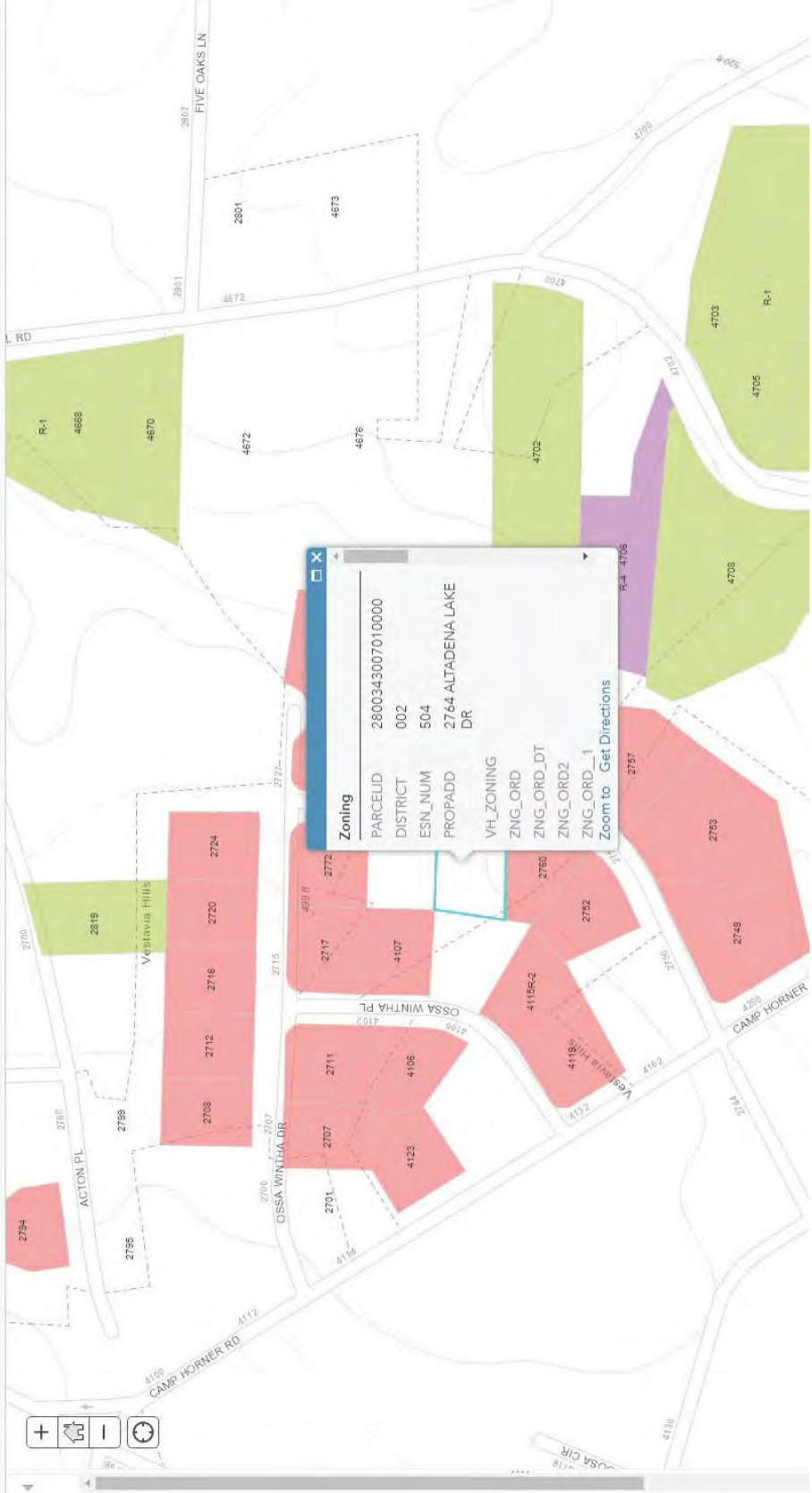
- **CASE: P-0718-26**
- **REQUESTED ACTION:** Rezoning Jefferson County R-1 to Vestavia Hills R-2
- **ADDRESS/LOCATION:** 2764 Altadena Lake Dr.
- **APPLICANT/OWNER:** Murray & Kelly Statham
- **GENERAL DISCUSSION:** Property was annexed overnight by City Council on 5/30/18 with the passage of Ordinance 2761. Applicant is requesting the compatible rezoning.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

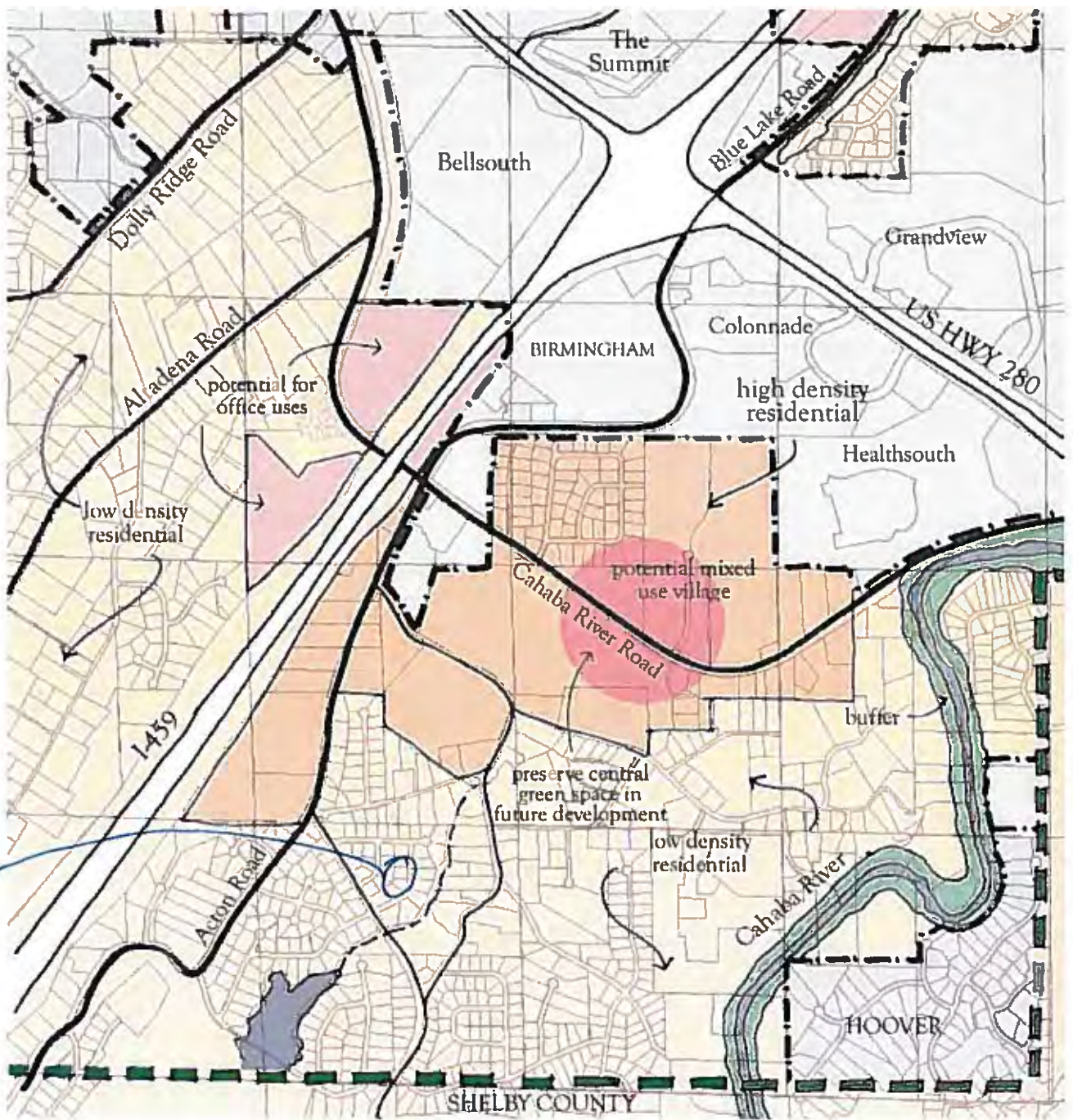
City Planner Recommendation: No recommendation
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Gilchrist made a motion to recommend rezoning approval for 2764 Altadena Lake Dr. from Jefferson County R-1 to Vestavia Hills R-2. Second was by Mr. Weaver. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. House – yes
Mr. Larson – yes

Mr. Sykes – yes
Mrs. Barnes – yes
Mr. Weaver – yes
Motion carried.





Subject Parcel

Figure 22: Cahaba River Road / Acton Road East
Land Use Analysis

- Neighborhood primarily low / medium density single-family residential areas with higher densities near village centers. Other uses may include schools, places of worship, recreational areas, and open space.
- Village Center mixed use centers with highest densities in core areas. Mix of uses should include retail and service businesses, professional offices, high density residential areas, institutions, recreation areas, and public spaces.
- Commercial Core primarily high density, retail and service business areas with professional offices and multi-family residences on upper floors or on periphery. Other uses may include institutions and public space.
- Gateways and Nodes Gateways are entryways into the community or village enhanced with consistent signage, landscaping, and other elements. Nodes are sites, such as transit stops, where public spaces, signage, and other public design elements should be considered.
- Professional Offices primarily professional office uses. Density should vary according to surroundings. Other uses may include retail and services (supporting offices and employees), places of worship, public spaces, and open space.
- Recreation and Open Space public and private recreation facilities and preserved natural spaces. Recreation facilities may be active, passive or combined. Open spaces are areas preserved in a natural state and may include passive recreational uses.
- Trailheads Trailheads are public sites along a trail, where bike racks, seating, parking, and public amenities are provided for trail users.
- Schools School facilities administered by the Vestavia Hills School System.



ORDINANCE NUMBER 2795

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY JEFFERSON COUNTY E-2 TO VESTAVIA HILLS R-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County E-2 (low density single family district) to Vestavia Hills R-1 (low density residential district):

2401 Mountain Vista Drive
Lot 45, Altadena Brook, 2nd Sector
Paul Phillips, Owner(s)

APPROVED and ADOPTED this the 24th day of September, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2795 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 24th day of September, 2018, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk



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

Date: AUGUST 9, 2018

- **CASE: P-0818-29**
- **REQUESTED ACTION:** Rezoning Jefferson County E-2 to Vestavia Hills R-1
- **ADDRESS/LOCATION:** 2401 Mountain Vista Dr.
- **APPLICANT/OWNER:** Paul Phillips
- **GENERAL DISCUSSION:** Property was annexed by the City in the 1990's but never rezoned. This is a compatible rezoning/clean-up.
- **VESTAVIA HILLS COMPREHENSIVE PLAN:** This request is consistent with the plan for medium density residential.
- **STAFF REVIEW AND RECOMMENDATION:**

1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation

2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Weaver made a motion to recommend rezoning approval for 2401 Mountain Vista Dr. from Jefferson County E-2 to Vestavia Hills R-1. Second was by Mr. House. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mrs. Cobb – yes
Mr. Romeo – yes

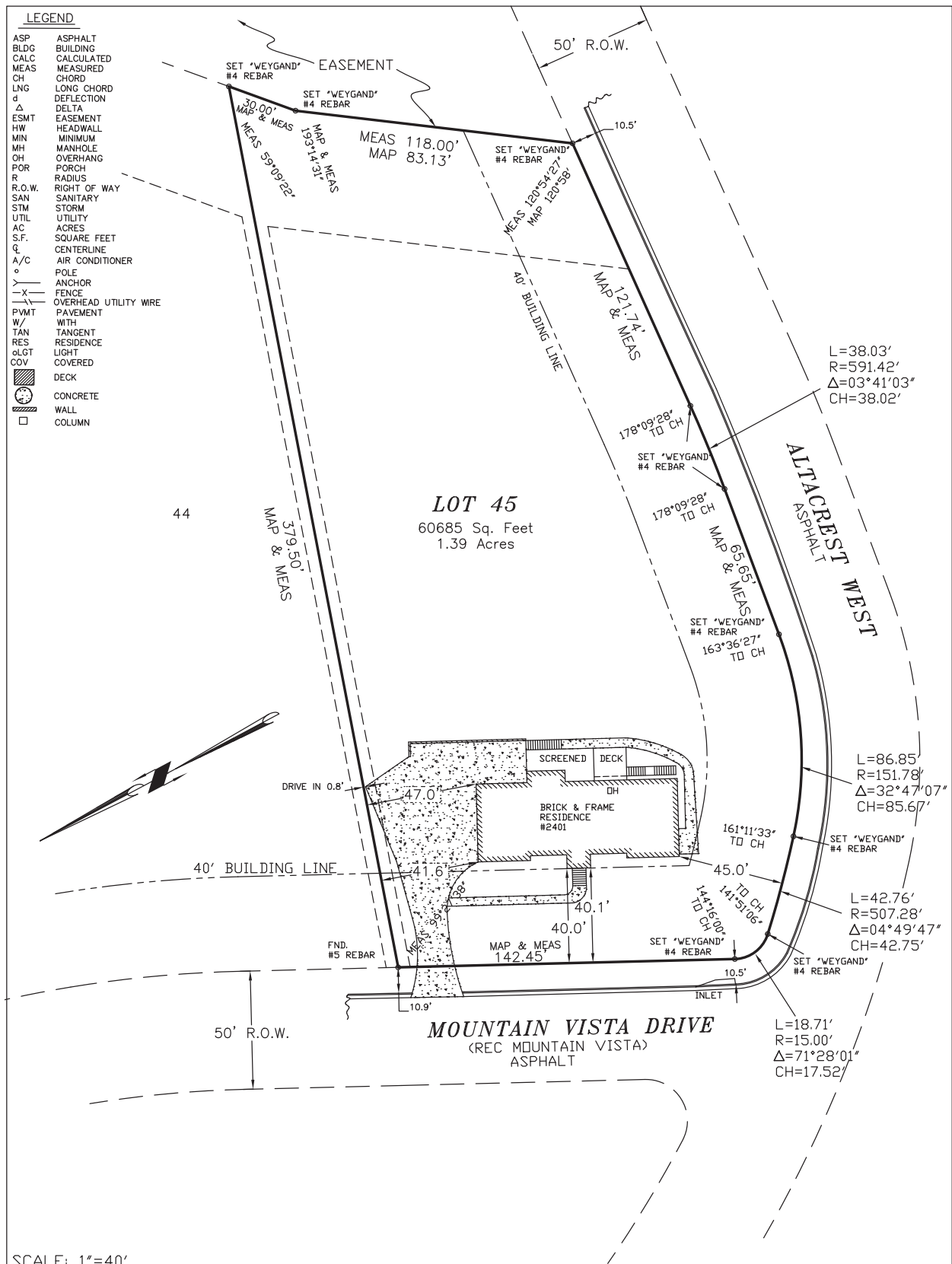
Mr. Sykes – yes
Mr. Larson – yes
Mr. Weaver – yes

Mr. House – yes
Motion carried.

Mrs. Barnes – yes

LEGEND

ASP	ASPHALT
BLDG	BUILDING
CALC	CALCULATED
MEAS	MEASURED
CH	CHORD
LNG	LONG CHORD
d	DEFLECTION
Δ	DELTA
ESMT	EASEMENT
HW	HEADWALL
MIN	MINIMUM
MH	MANHOLE
OH	OVERHANG
POR	PORCH
R	RADIUS
R.O.W.	RIGHT OF WAY
SAN	SANITARY
STM	STORM
UTIL	UTILITY
AC	ACRES
S.F.	SQUARE FEET
CL	CENTERLINE
A/C	AIR CONDITIONER
o	POLE
—	ANCHOR
-X-	FENCE
—X—	OVERHEAD UTILITY WIRE
PWMT	PAVEMENT
W/	WITH
TAN	TANGENT
RES	RESIDENCE
oLGT	LIGHT
COV	COVERED
▨	DECK
▩	CONCRETE
▧	WALL
□	COLUMN



SCALE: 1"=40'

STATE OF ALABAMA
JEFFERSON COUNTY

"Closing Survey"

I, Ray Weygand, a Registered Land Surveyor, hereby certify to the purchaser of this property at this time, that I have surveyed Lot 45, ALTADENA BROOK 2nd SECTOR, as recorded in Map Volume 149, Page 31, in the Office of the Judge of Probate, Jefferson County, Alabama. I hereby state that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information and belief, according to my survey of JUNE 9, 2018. Survey invalid if not sealed in red.

Order No.: 99112

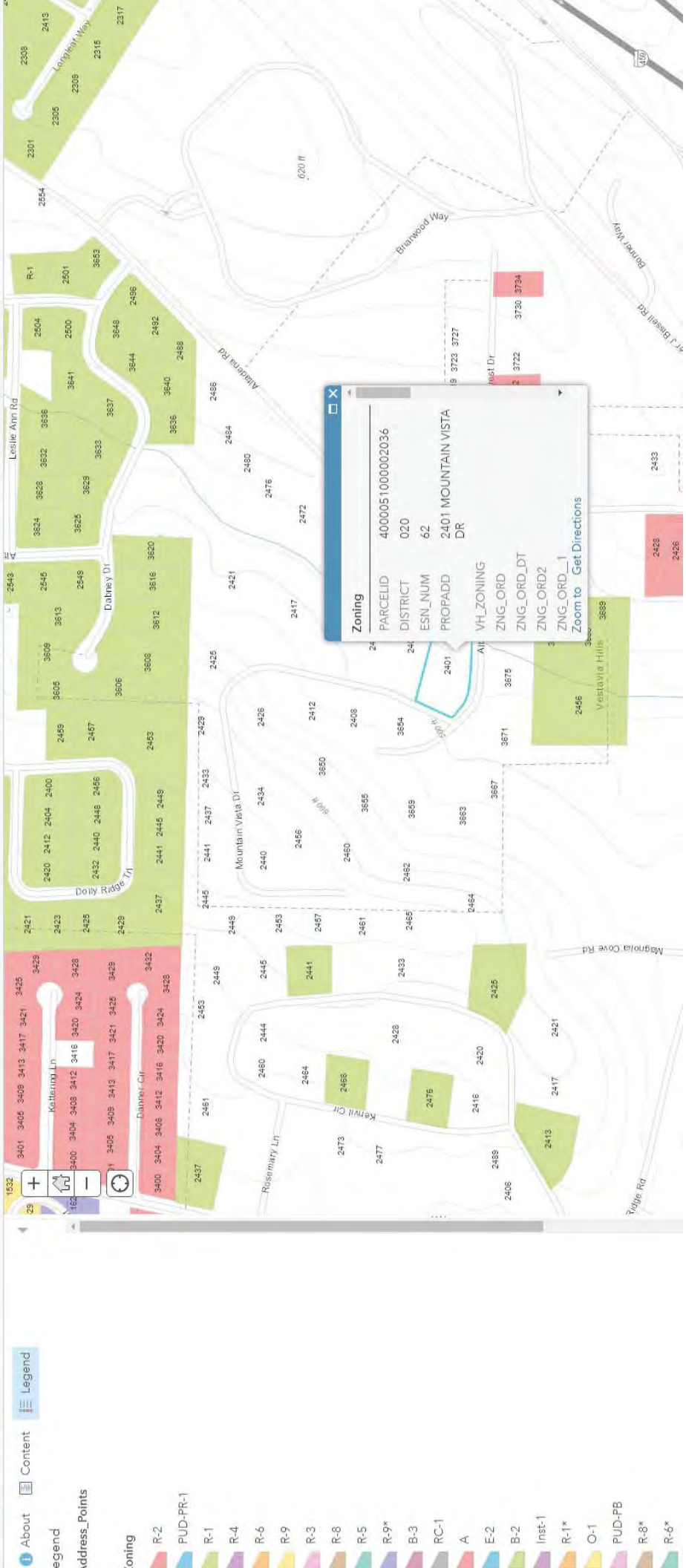
Purchaser:

Address: 2401 MOUNTAIN VISTA DRIVE

Ray Weygand, Reg. L.S. #24973
169 Oxmoor Road, Homewood, AL 35209
Phone: (205) 942-0086 Fax: (205) 942-0087
Copyright ©



Note: (a) No title search of the public records has been performed by this firm and land shown hereon was not abstracted for easements and/or rights-of-way, recorded or unrecorded. The parcel shown hereon is subject to setbacks, easements, zoning, and restrictions that may be found in the public records of said county and/or city. (b) All bearings and/or angles, are deed/record map and actual unless otherwise noted. (c) Underground portions of foundations, footings, and/or other underground structures, utilities, cemeteries or burial sites were not located unless otherwise noted. (d) The shown north arrow is based on deed/record map. (e) This survey is not transferable. (f) Easements not shown on recorded map are not shown above.



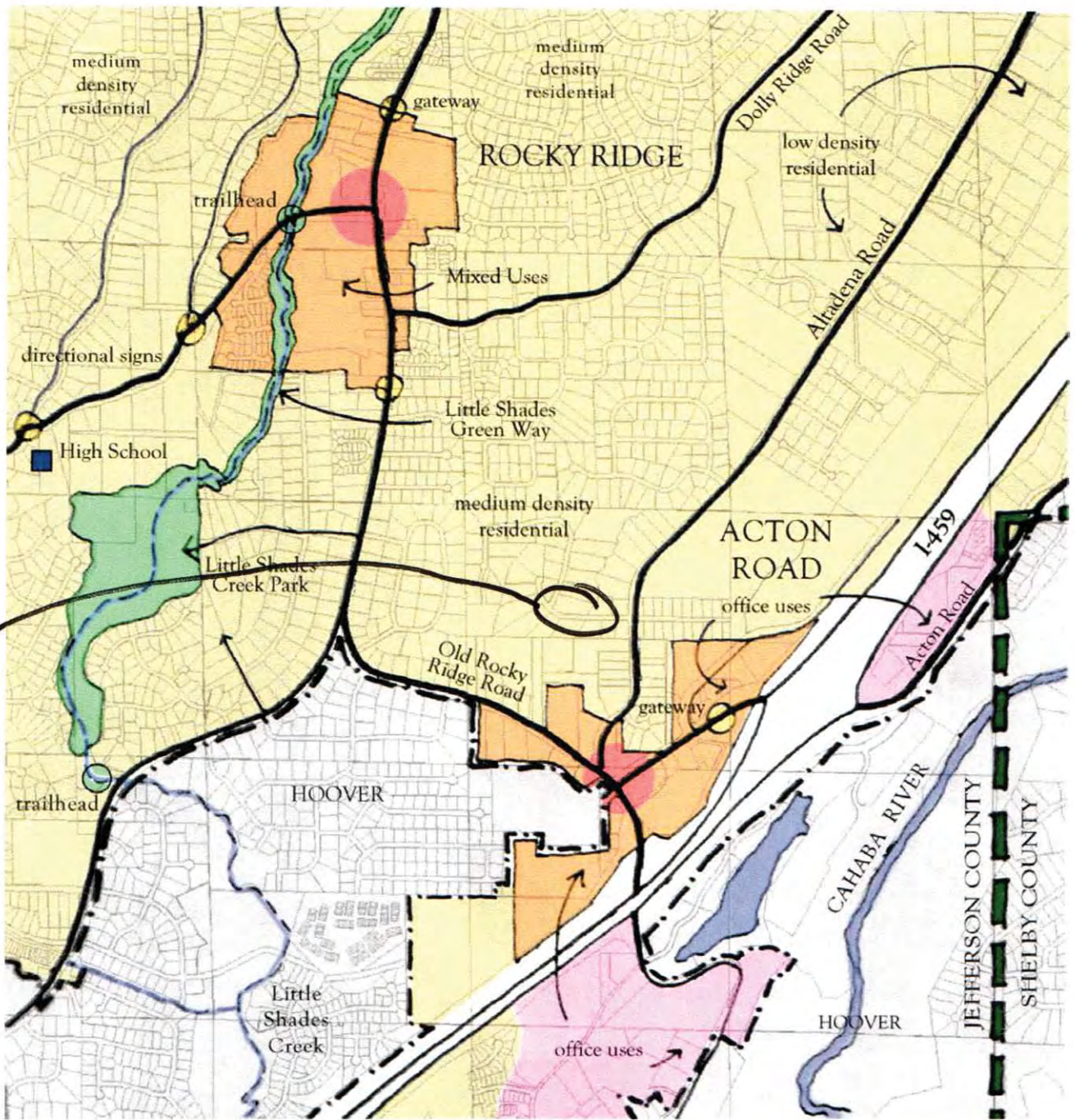


Figure 21: Rocky Ridge Road / Acton Road West
Land Use Analysis

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

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



RESOLUTION NUMBER 5092

**A RESOLUTION ACCEPTING THE DEDICATION OF THE STREET
KNOWN AS ANNA STEELE LANE**

WHEREAS, Harris Doyle Homes is the developer for Steelemont Estates Subdivision, Phase II in Vestavia Hills, Alabama. This dedication consists of the street named “Anna Steele Lane”; such dedication not to include any improvements other than the streets named in this Resolution.

WHEREAS, the streets were built according to the Vestavia Hills specifications and the development company is presenting them to the City of Vestavia Hills for acceptance complete with a guarantee against any defects for a period of one (1) year from date of dedication.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, that the City hereby accepts the offer of dedication made by Harris Doyle Homes for Anna Steele Lane and is hereby named a public street.

ADOPTED and APPROVED this the 24th day of September, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



HARRIS DOYLE
HOMES

April 26, 2018

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

Attn: Lori Beth Kearley

Dear Lori Beth,

Dunn Construction recently applied the required final wearing surface to the road known as Anna Steele Lane, located within Steelemont Estates Subdivision, Phase II. To my knowledge, this road as well as the other public improvements within Steelemont were constructed within the standards set forth by the City of Vestavia Hills. Therefore, I request that these improvements be dedicated to the City at the earliest possible time.

I appreciate your consideration of this request. Please let me know if I can provide any additional information.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Brooks Harris', is written over a faint, light-colored background that looks like a watermark or a very light stamp. The signature is fluid and cursive.

J. Brooks Harris
Chief Business Development Officer
Harris Doyle Homes

CITY OF VESTAVIA HILLS
DEPARTMENT OF PUBLIC SERVICES
OFFICE OF CITY ENGINEER
INTER-DEPARTMENT MEMO

August 31, 2018

To: Jeff Downes, City Manager

Cc: Brian Davis, Director of Public Services

From: Christopher Brady, City Engineer

RE: Dedication of Anna Steele Lane as Public Street

The Developer has formally requested dedication of Anna Steele Lane to the City of Vestavia Hills for all public improvements within the platted right-of-way. Upon final inspection, I have found all improvements to be complete and in compliance with City standards for public streets and support its dedication to the City for roadway maintenance. This dedication will include 50' of public right-of-way.

A Final Wearing Surface Maintenance Bond in the amount of \$5,945 is required to be kept on file with the City for a full year after the roadway improvements have been accepted by the City Council to ensure all improvements are kept in good repair.

Reply

RESOLUTION NUMBER 5093

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER PROPOSALS FOR SURVEY AND CIVIL ENGINEERING SERVICES FOR THE FOLLOWING SIDEWALK PROJECTS: EAST STREET IMPROVEMENTS; CAHABA HEIGHTS ROAD SIDEWALK IMPROVEMENTS; MOUNTAINVIEW DRIVE SIDEWALK IMPROVEMENTS; AND ROCKY RIDGE ROAD SIDEWALK IMPROVEMENTS

WHEREAS, the City Council is desirous of sidewalk improvements in the City of Vestavia Hills pursuant to the City's Master Sidewalk Plan; and

WHEREAS, the City Engineer has received proposals for design, survey and civil engineering services for the following four (4) sidewalk improvement projects:

- East Street Improvements;
- Cahaba Heights Road Sidewalk Improvements;
- Mountainview Drive Sidewalk Improvements; And
- Rocky Ridge Road Sidewalk Improvements; and

WHEREAS, said proposals are marked as Exhibits A, B, C and D respectively and are attached and incorporated into this Resolution Number 5093 as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept said proposals and begin said professional services as detailed in Exhibits A, B, C, and D.

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 execute the agreements detailed in Exhibits A, B, C and D attached; and
2. This Resolution Number 5093 is effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 24th day of September, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



September 6, 2018

The City of Vestavia Hills, Alabama
1032 Montgomery Highway
Vestavia Hills, AL 35216
Attn: Jeff Downes, City Manager

**Re: Proposal of Survey and Civil Engineering Services
East Street Sidewalk Improvements**

Dear Jeff,

Engineering Design Group, LLC is pleased to submit this proposal of land survey and civil engineering services for the above-referenced project. Our scope of services is based on a conceptual layout plan developed by City of Vestavia Hills staff. Our understanding of the project is that the City will construct approximately 3,200 linear feet of sidewalk along East Street, between the intersection of White Oak Drive and entrance of Rathmell Sports Park.

Our scope of services includes roadway survey, pre-design layout and alignment planning, ~~civil engineering design, and bidding~~ services. These scope items are described in detail on the following pages. Thank you for the opportunity to present this document. We look forward to providing our services to the City of Vestavia Hills.

This document is provided with the expectation that it is not being used in a price comparison with other professional services firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

Attachments: Exhibit A-Conceptual Site Plan

1.0 Scope of Services

1.1 Roadway Survey

Engineering Design Group, LLC will perform a corridor Roadway Survey along a portion of East Street.

We will re-establish the rights-of-way along the subject corridor. Individual surveys of adjacent private parcels of land will not be performed during the Roadway Survey. However, we will locate existing property corners and will research Jefferson County records (retrieve deeds and record plats) in order to graphically show private parcels adjacent to the corridor. Missing property corners will not be set during the survey. Should additional right-of-way be required to accommodate new sidewalk, additional boundary line verification may be needed in isolated areas to accurately depict the private parcels.

Contours will be shown at 1-foot intervals and based on USGS datum. Spot elevations will be shown in flat areas. Visible drainage structures will be shown, indicating top and invert elevations as well as type and size of pipes. Visible improvements including utilities, buildings, walls, fences, sidewalks, curbs, parking areas, signage and paved areas will be shown on the survey. Tree lines and landscaped areas will be shown on the survey. Individual shrubs, and trees will not be shown on survey.

Visible utilities and subsurface utilities (as marked by utility companies or as shown on maps) will be included. We will coordinate with Alabama One Call requesting that all subsurface utilities situated in public right-of-way be marked to enable an accurate location and depiction of the subsurface utilities. Alabama One Call does not mark any utilities that are within the limits of private property. In many cases engineering and surveying utility locate request to Alabama One Call is delayed and even ignored. If the request is delayed or ignored, we will seek assistance from City of Vestavia Hills Staff to have the subsurface utilities marked.

Engineering Design Group will provide a signed and sealed hard copy of the survey depicting the existing conditions along the corridor. In addition to the hard copies, an electronic CAD file will be provided.

East Street

The East Street corridor limits will extend from the intersection of East Street and White Oak Drive in an easterly direction along East Street to the entrance of the Rathmell Sports Park. Topographic locations will extend 75 feet to the north and south from the centerline of East Street. Locations at side streets and intersections will extend an additional 75 feet beyond the mainline locations.

1.2 Pre-Design Layout and Alignment

Upon completion of the roadway survey, we will provide a pre-design layout. The purpose of this task item is to prove that the anticipated sidewalk alignment can be designed per the conceptual site plan provided by City Staff. Additionally, we will

provide guidance on previously-unknown conditions that could hinder design or construction (underground utility conflicts, drainage and grading/wall considerations). Should the alignment require revisions, we will provide reasoning for the realignment as well as alternative alignments. Once the sidewalk alignment is proven feasible, we will proceed with civil construction documents.

1.3 Civil Construction Documents

We will develop a set of civil construction documents associated with the construction of the sidewalk. We will submit the Construction Documents to the City of Vestavia Hills for technical review and comment. We will meet with City Officials as needed to work through any design issues that arise during the development of civil construction documents. The Construction Documents will include the following design information, at a minimum:

- a. Sidewalk Alignment Plan-Plans will provide horizontal and vertical control for the layout and construction of the proposed sidewalk. Additionally, the plan will include layout and control for any additional permanent site items, i.e. crosswalks, pedestrian signals, walls, and railing. Design of pedestrian signals and specifications is excluded from our scope of services.
- b. Site Grading and Drainage Plan-Plan will include existing and finished contours, and storm water drainage facilities.
- c. Storm Drainage Profiles-We will provide necessary profiles for storm drainage pipes associated with the new sidewalk.
- d. Erosion Control Plan-Plan will include the necessary structural BMP devices for the control of sedimentation along the construction route.
- e. Notes and Details-We will provide standard notes and details which pertain to the site's specific construction requirements.

1.4 Alabama Department of Environmental Management NPDES Permit (If Required)

Effective April 1, 2011, ADEM established General Permit No. ALR 100000 for discharges associated with regulated construction activity that will result in land disturbance equal to or greater than one acre or from construction activities involving less than one acre and which are part of a common plan of development or sale equal to or greater than one acre. Construction site operators/owners seeking coverage under this general permit must submit a Notice of Intent (NOI) in accordance with the permit requirements. Operators/owners of all regulated construction sites must implement and maintain effective erosion and sediment controls in accordance with a Construction Best Management Practices Plan (CBMPP) prepared and certified by a Qualified Credentialed Professional (QCP). Engineering Design Group will create the CBMPP Plan and submit it, along with the NOI, to ADEM for the purpose of obtaining the NPDES permit. Engineering Design Group is not responsible for the application fee associated with the NPDES Permit.

1.5 Bid Documents and Specifications

We will provide project specifications and bid documents. Bid documents will include the following:

- a. Preparation of Construction Contract-EDG will prepare a Construction Contract for acceptance and execution by the Contractor and Owner and the forms for the Performance Bond and the Labor and Materials Bond as required by the Public Works Law set forth in Title 39-1-1-Code of Alabama
- b. Advertisement for Bids-EDG will prepare the advertisement for bids and have it appropriately published in newspapers all in accordance with the requirements of the Alabama Public Works Law set for in Title 39-2-2-Code of Alabama. The City of Vestavia Hills shall pay the cost of said advertisement.
- c. Prequalification of Bidders: EDG shall prequalify contractors who wish to bid on the work. Prequalifying conditions will be discussed and agreed to by the City of Vestavia Hills and EDG.

Additionally, we will attend a pre-bid conference and assist the City with bid openings. We will examine the bid submittals, ensuring that all criteria are met, and assist the City in awarding the bid.

1.6 Best Management Practices (BMP) Field Inspections (If Required)

As a requirement of the ADEM NPDES permit, inspections of structural BMP devices (erosion control measures) are required at least monthly, or after each 3/4" rainfall event. Engineering Design Group will monitor rainfall amounts at the site and provide these inspections. A report of our findings will be issued to you and your site contractor. The report will include site photographs, and recommendations for maintenance of any failing BMP devices.

1.7 Construction Administration

We will be available during the construction phase to answer questions or provide clarifications to the project team. We will meet with the Contractor and/or the City as necessary during construction. We have not anticipated a full-time on-site inspector. We have provided an estimated fee for this task item as shown in section 2.0.

1.8 Additional Services

Any service need that arises and is required but has not been included in our original scope of services will be performed on an hourly basis according to the fee schedule included in this proposal. We will discuss with the Client any additional service before performing the service and will not proceed with additional work without the Client's approval.

Exclusions

Items specifically **NOT INCLUDED** in this scope of work include: Traffic Studies, Electrical Design, Signal Timing, Construction Stake-Out, Geotechnical Engineering, Geotechnical Testing, Corps of Engineers Permitting, Structural Design of Retaining Walls, Landscape Design, Storm Water Monitoring, Utility Main Relocation and any Off-Site Improvements other than those included within the scope of services. If any of these items becomes necessary, we will perform those tasks as Additional Services or help you to contract with an entity which provides that service.

Your signature on the following page will serve as our formal notice to proceed with the above-described scope of services. Again, we appreciate the opportunity to present our proposal of professional services and we look forward to a successful project.

2.0 Compensation and Payment for Services:

Engineering Design Group, LLC's fee for the scope of services outlined in Part 1.0 is as follows:

2.1 Roadway Survey	\$35,400.00 Lump Sum
2.2 Pre-Design Layout and Alignment	\$ 2,500.00 Budget Estimate
2.3 Civil Construction Documents	\$80,100.00 Lump Sum
2.4 ADEM NPDES Permit (If Required)	\$ 2,500.00 Lump Sum
2.5 Bid Documents and Specifications	\$ 4,500.00 Lump Sum
2.6 BMP Field Inspections (If Required)	\$ 200.00 Per Inspection
2.7 Construction Administration	\$ 2,000.00 Budget Estimate
2.8 Additional Services	Hourly, if Required
Reimbursables	\$ 1,000.00 Budget

Engineering Design Group, LLC can commence work immediately upon receipt of your written authorization to proceed. If this proposal is acceptable, please authorize Engineering Design Group, LLC to proceed with the above Scope of Services by signing in the appropriate location and returning a copy to Engineering Design Group, LLC.

Sincerely,

Engineering Design Group, LLC

Wade H. Lowery P.E., Alabama License #27002

"This cost proposal is accepted as written and Engineering Design Group LLC is hereby authorized to commence the work as described in the above Scope of Services"

Authorization by: _____

Title: _____ Date: _____

HOURLY RATE SCHEDULE AND REIMBURSABLE EXPENSES:

Personnel time for additional services covered under this agreement will be invoiced based on the following Rate Schedule. These Rates are subject to adjustment on January 1st of each year.

Engineering Rate Schedule

- | | |
|--------------------------|-------------------|
| • Principal in Charge | \$125.00 per hour |
| • Project Manager | \$115.00 per hour |
| • Senior Design Engineer | \$105.00 per hour |
| • Project Engineer | \$ 95.00 per hour |

Surveying Rate Schedule

- | | |
|------------------------------|-------------------|
| • Field Crew | \$135.00 per hour |
| • Professional Land Surveyor | \$115.00 per hour |
| • Senior Drafter | \$ 95.00 per hour |
| • Drafter | \$ 75.00 per hour |

Reimbursable Expenses

Expenses incurred for work covered under this contract will be invoiced at cost plus 15 percent. These expenses include, but are not limited to:

- Printing
- Shipping
- Permitting and Application Fees
- Outside Consultants
- Travel – (Travel will be reimbursed at \$0.58 per mile)

Payment

Services rendered in accordance with this proposal will be invoiced monthly based on work completed. Invoices are due upon receipt and will be considered delinquent if not received within 30 days after receipt. Engineering Design Group LLC may, without legal consequence, suspend services until payment is received.

Client agrees that payment for services rendered shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this agreement.



East Street sidewalk

Preliminary scope, approx 3200 LF of 5' wide sidewalk from intersection of White Oak to entry of Rathmal Sports Park

Legend

- Inc
- proposed sidewalk

TERMS AND CONDITIONS:

1. **CONTRACT** - These Contract Provisions and the accompanying Proposal constitute the full and complete Agreement between the parties and may be changed, amended, added to, superseded, or waived only if both parties specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these Contract Provisions and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these Contract Provisions shall govern.
2. **RIGHT OF ENTRY** - When entry to property is required for the CONSULTANT to perform its services, the Client agrees to obtain legal right-of-entry on the property.
3. **DOCUMENTS** - All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by CONSULTANT are instruments of CONSULTANT's service that shall remain CONSULTANT's property. The Client agrees not to use CONSULTANT-generated documents for marketing purposes, for projects other than the project for which the documents were prepared by CONSULTANT, or for future modifications to this project, without CONSULTANT's express written permission.

Any reuse or distribution to third parties without such express written permission or project-specific adaptation by CONSULTANT will be at the Client's sole risk and without liability to CONSULTANT or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors.

4. **DISPOSAL OF SAMPLES** - CONSULTANT will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.
5. **HAZARDOUS MATERIALS** - The scope of CONSULTANT's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.
6. **CONSTRUCTION PHASE SERVICES** - If CONSULTANT performs any services during the construction phase of the project, CONSULTANT shall not supervise, direct, or have control over Contractor's work. CONSULTANT shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. CONSULTANT does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
7. **STANDARD OF CARE** - CONSULTANT and its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by design professionals providing similar services.
8. **OPINION OF PROBABLE COSTS** - When required as part of its work, CONSULTANT will furnish opinions of probable cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by CONSULTANT hereunder will be made on the basis of CONSULTANT's experience and qualifications and will represent CONSULTANT's judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that CONSULTANT does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
9. **SUSPENSION OF WORK** - The Client may, at any time, by written notice, suspend further work by CONSULTANT. The Client shall remain liable for, and shall promptly pay CONSULTANT for all services rendered to the date of suspension of services, plus suspension charges, which shall include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on Client's behalf.

Client shall pay CONSULTANT pursuant to the rates and charges set forth in the Proposal. CONSULTANT will submit monthly invoices to Client for services rendered and expenses incurred. If Client does not pay invoices within thirty (30) days of submission of invoice, CONSULTANT may, upon written notice to the Client, suspend further work until payments are brought current.

10. **CHANGES OR DELAYS** - Unless the accompanying Proposal provides otherwise, the proposed fees constitute CONSULTANT's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information, or if CONSULTANT's failure to perform is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of CONSULTANT. Temporary work stoppage caused by any of the above may result in additional cost beyond that outlined in the accompanying Proposal.

11. **CONFLICTS OF INTEREST** - This assignment may involve parties with adverse interests to clients with whom CONSULTANT has current or past relationships. It is CONSULTANT policy to make reasonable attempts to identify such relationships prior to acceptance of a professional assignment, but CONSULTANT cannot assure that conflicts or perceived conflicts will not arise, and CONSULTANT does not accept responsibility for such occurrences.
12. **REIMBURSABLE EXPENSES** - CONSULTANT will bill direct non payroll expenses at cost plus 10%. Direct expenses include all reasonable expenses resulting from required responses to subpoenas or court orders related to work under the Contract.
13. **MISCELLANEOUS** - Invalid Terms: In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken. Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Agreement.

Mediation: The Client and CONSULTANT agree to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

CONSULTANT Reliance: CONSULTANT shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

Certifications: CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in CONSULTANT's having to certify, guaranty, or warrant the existence of conditions that CONSULTANT cannot ascertain.

Third Parties: Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or CONSULTANT. CONSULTANT's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against CONSULTANT because of this Agreement or CONSULTANT's performance of services hereunder.

Consequential Damages: Neither the Client nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

14. **OTHER PROVISIONS** - Notwithstanding anything contained in the Agreement to the contrary, the City and Engineering Design Group, LLC agree to add the following terms, provisions and conditions to the said Agreement as Section 15 to said Agreement:

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

INDEPENDENT CONTRACTOR - Engineering Design Group, LLC is an independent contractor for purposes of this Agreement. Nothing contained in the Agreement shall be construed to mean that said Engineering Design Group, LLC is the servant, agent or employee of the City of Vestavia Hills, Alabama.

WORKER'S COMPENSATION - EDG shall carry Worker's Compensation insurance for all of its employees and those of its subcontractors engaged in the work at the site in accordance with the State of Alabama Worker's Compensation Law.

LIABILITY INSURANCE - EDG shall carry Public Liability Insurance with limits of Three Hundred Thousand Dollars (\$300,000.00), per person, and One Million Dollars (\$1,000,000.00), per occurrence, to cover and protect the City and EDG and its subcontractors against claims or injury to or death of one or more than one person because of accidents which may occur or result from operations under the Agreement. The City of Vestavia Hills, Alabama shall be added as "an additional insured" to the general comprehensive liability insurance policy of EDG.

INDEMNITY - EDG shall indemnify and save harmless the City of Vestavia Hills, Alabama, its Mayor, City Manager, individual members of the City Council, servants, agents, employees or representatives from any and all claims, demands, controversies, actions, causes of action, liabilities of action, lawsuits, liabilities and damages arising out of or resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of work performed by EDG under this Agreement.

PROFESSIONAL ENGINEER - EDG represents, covenants and warrants that it is a licensed professional engineer within the meaning of Title 34-11-1(3), Code of Alabama, 1975, in good standing with the State of Alabama Board of Licensure for Professional Engineers and Land Surveyors.

WARRANTIES AND COMPLIANCE WITH APPLICABLE LAWS - EDG shall perform its work in a good and workmanlike manner and will comply with the provisions of the labor law and all state, federal and local laws, statutes, codes, rules, regulations and ordinances that are applicable to the performance of this Agreement between the City and Engineering Design Group, LLC.

ARBITRATION; MEDIATION; ALTERNATE DISPUTE RESOLUTION - The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (a) the rights and remedies available under such arbitration rules or processes do not afford EDG greater relief (e.g., attorney's fees, damages, etc.) than would be available under otherwise applicable law, (b) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (c) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.

ATTORNEY'S FEES; COURT COSTS; LITIGATION EXPENSES - The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

INDEMNIFICATION; HOLD HARMLESS; RELEASE; WAIVER; LIMITATIONS OF LIABILITY OF REMEDIES - The City shall not and does not indemnify, hold harmless or release EDG or any other person, firm, or legal entity for, from or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof, nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against EDG or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of EDG or any person, firm or entity in privity therewith or acting on EDG's behalf. Any limitation or restriction regarding the type, nature, form, amount or extent of any right, remedy, relief or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the Agreement, and void.

GOVERNING LAW - This Agreement shall be governed by the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS - Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. EDG represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.



September 6, 2018

The City of Vestavia Hills, Alabama
1032 Montgomery Highway
Vestavia Hills, AL 35216
Attn: Jeff Downes, City Manager

**Re: Proposal of Survey and Civil Engineering Services
Cahaba Heights Road Sidewalk Improvements**

Dear Jeff,

Engineering Design Group, LLC is pleased to submit this proposal of land survey and civil engineering services for the above-referenced project. Our scope of services is based on a conceptual layout plan developed by City of Vestavia Hills staff. Our understanding of the project is that the City will construct approximately 2,300 linear feet of sidewalk along Cahaba Heights Road, between the intersections of Dolly Ridge Road and Cross Haven Drive. Additionally, we understand that plans are being developed by others for improvements to Pump House Road. We will coordinate our sidewalk design with those planned improvements.

Our scope of services includes roadway survey, pre-design layout and alignment planning, ~~civil engineering design, and bidding~~ services. These scope items are described in detail on the following pages. Thank you for the opportunity to present this document. We look forward to providing our services to the City of Vestavia Hills.

This document is provided with the expectation that it is not being used in a price comparison with other professional services firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

Attachments: Exhibit A-Conceptual Site Plan

1.0 Scope of Services

1.1 Roadway Survey

Engineering Design Group, LLC will perform a corridor Roadway Survey along a portion of Cahaba Heights Road.

We will re-establish the rights-of-way along the subject corridor. Individual surveys of adjacent private parcels of land will not be performed during the Roadway Survey. However, we will locate existing property corners and will research Jefferson County records (retrieve deeds and record plats) in order to graphically show private parcels adjacent to the corridor. Missing property corners will not be set during the survey. Should additional right-of-way be required to accommodate new sidewalk, additional boundary line verification may be needed in isolated areas to accurately depict the private parcels.

Contours will be shown at 1-foot intervals and based on USGS datum. Spot elevations will be shown in flat areas. Visible drainage structures will be shown, indicating top and invert elevations as well as type and size of pipes. Visible improvements including utilities, buildings, walls, fences, sidewalks, curbs, parking areas, signage and paved areas will be shown on the survey. Tree lines and landscaped areas will be shown on the survey. Individual shrubs, and trees will not be shown on survey.

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Engineering Design Group will provide a signed and sealed hard copy of the survey depicting the existing conditions along the corridor. In addition to the hard copies, an electronic CAD file will be provided.

Cahaba Heights Road

The Cahaba Heights Road corridor limits will extend from the intersection of Cahaba Heights Road and Dolly Ridge Road in an easterly direction along Cahaba Heights Road to the intersection of Cross Haven Drive. Topographic locations will extend 75 feet to the north and south from the centerline of Cahaba Heights Road. Locations at side streets and intersections will extend an additional 75 feet beyond the mainline locations.

1.2 Pre-Design Layout and Alignment

Upon completion of the roadway survey, we will provide a pre-design layout. The purpose of this task item is to prove that the anticipated sidewalk alignment can be designed per the conceptual site plan provided by City Staff. Additionally, we will

provide guidance on previously-unknown conditions that could hinder design or construction (underground utility conflicts, drainage and grading/wall considerations). Should the alignment require revisions, we will provide reasoning for the realignment as well as alternative alignments. Once the sidewalk alignment is proven feasible, we will proceed with civil construction documents.

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We will develop a set of civil construction documents associated with the construction of the sidewalk. We will submit the Construction Documents to the City of Vestavia Hills for technical review and comment. We will meet with City Officials as needed to work through any design issues that arise during the development of civil construction documents. The Construction Documents will include the following design information, at a minimum:

- a. Sidewalk Alignment Plan-Plans will provide horizontal and vertical control for the layout and construction of the proposed sidewalk. Additionally, the plan will include layout and control for any additional permanent site items, i.e. crosswalks, pedestrian signals, walls, and railing. Design of pedestrian signals and specifications is excluded from our scope of services.
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1.4 Alabama Department of Environmental Management NPDES Permit (If Required)

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- a. Preparation of Construction Contract-EDG will prepare a Construction Contract for acceptance and execution by the Contractor and Owner and the forms for the Performance Bond and the Labor and Materials Bond as required by the Public Works Law set forth in Title 39-1-1-Code of Alabama
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Additionally, we will attend a pre-bid conference and assist the City with bid openings. We will examine the bid submittals, ensuring that all criteria are met, and assist the City in awarding the bid.

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As a requirement of the ADEM NPDES permit, inspections of structural BMP devices (erosion control measures) are required at least monthly, or after each $\frac{3}{4}$ " rainfall event. Engineering Design Group will monitor rainfall amounts at the site and provide these inspections. A report of our findings will be issued to you and your site contractor. The report will include site photographs, and recommendations for maintenance of any failing BMP devices.

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Exclusions

Items specifically **NOT INCLUDED** in this scope of work include: Traffic Studies, Electrical Design, Signal Timing, Construction Stake-Out, Geotechnical Engineering, Geotechnical Testing, Corps of Engineers Permitting, Structural Design of Retaining Walls, Landscape Design, Storm Water Monitoring, Utility Main Relocation and any Off-Site Improvements other than those included within the scope of services. If any of these items becomes necessary, we will perform those tasks as Additional Services or help you to contract with an entity which provides that service.

Your signature on the following page will serve as our formal notice to proceed with the above-described scope of services. Again, we appreciate the opportunity to present our proposal of professional services and we look forward to a successful project.

2.0 Compensation and Payment for Services:

Engineering Design Group, LLC's fee for the scope of services outlined in Part 1.0 is as follows:

2.1 Roadway Survey	\$28,200.00 Lump Sum
2.2 Pre-Design Layout and Alignment	\$ 2,500.00 Budget Estimate
2.3 Civil Construction Documents	\$70,200.00 Lump Sum
2.4 ADEM NPDES Permit (If Required)	\$ 2,500.00 Lump Sum
2.5 Bid Documents and Specifications	\$ 4,500.00 Lump Sum
2.6 BMP Field Inspections (If Required)	\$ 200.00 Per Inspection
2.7 Construction Administration	\$ 2,000.00 Budget Estimate
2.8 Additional Services	Hourly, if Required
Reimbursables	\$ 1,000.00 Budget

Engineering Design Group, LLC can commence work immediately upon receipt of your written authorization to proceed. If this proposal is acceptable, please authorize Engineering Design Group, LLC to proceed with the above Scope of Services by signing in the appropriate location and returning a copy to Engineering Design Group, LLC.

Sincerely,

Engineering Design Group, LLC

Wade H. Lowery P.E., Alabama License #27002

"This cost proposal is accepted as written and Engineering Design Group LLC is hereby authorized to commence the work as described in the above Scope of Services"

Authorization by: _____

Title: _____ Date: _____

HOURLY RATE SCHEDULE AND REIMBURSABLE EXPENSES:

Personnel time for additional services covered under this agreement will be invoiced based on the following Rate Schedule. These Rates are subject to adjustment on January 1st of each year.

Engineering Rate Schedule

- | | |
|--------------------------|-------------------|
| • Principal in Charge | \$125.00 per hour |
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Expenses incurred for work covered under this contract will be invoiced at cost plus 15 percent. These expenses include, but are not limited to:

- Printing
- Shipping
- Permitting and Application Fees
- Outside Consultants
- Travel – (Travel will be reimbursed at \$0.58 per mile)

Payment



Services rendered in accordance with this proposal will be invoiced monthly based on work completed. Invoices are due upon receipt and will be considered delinquent if not received within 30 days after receipt. Engineering Design Group LLC may, without legal consequence, suspend services until payment is received.

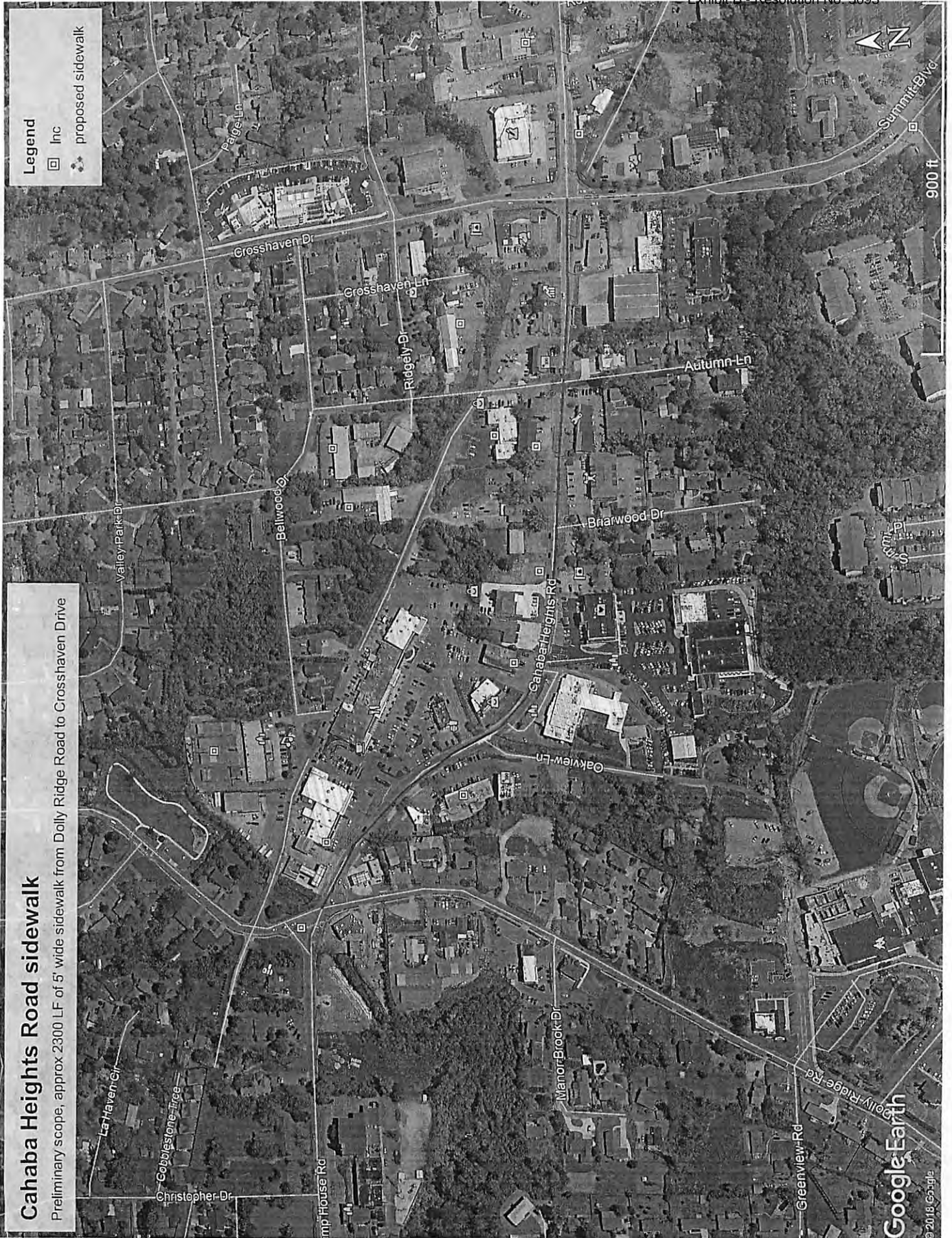
Client agrees that payment for services rendered shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this agreement.

Cahaba Heights Road sidewalk

Preliminary scope, approx 2300 LF of 5' wide sidewalk from Dolly Ridge Road to Crosshaven Drive

Legend

-  Inc
-  proposed sidewalk



Google Earth

© 2018 Google

TERMS AND CONDITIONS:

1. **CONTRACT** - These Contract Provisions and the accompanying Proposal constitute the full and complete Agreement between the parties and may be changed, amended, added to, superseded, or waived only if both parties specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these Contract Provisions and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these Contract Provisions shall govern.
2. **RIGHT OF ENTRY** - When entry to property is required for the CONSULTANT to perform its services, the Client agrees to obtain legal right-of-entry on the property.
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Any reuse or distribution to third parties without such express written permission or project-specific adaptation by CONSULTANT will be at the Client's sole risk and without liability to CONSULTANT or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors.
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CONSULTANT Reliance: CONSULTANT shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

Certifications: CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in CONSULTANT's having to certify, guaranty, or warrant the existence of conditions that CONSULTANT cannot ascertain.

Third Parties: Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or CONSULTANT. CONSULTANT's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against CONSULTANT because of this Agreement or CONSULTANT's performance of services hereunder.

Consequential Damages: Neither the Client nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

14. **OTHER PROVISIONS** - Notwithstanding anything contained in the Agreement to the contrary, the City and Engineering Design Group, LLC agree to add the following terms, provisions and conditions to the said Agreement as Section 15 to said Agreement:

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

INDEPENDENT CONTRACTOR - Engineering Design Group, LLC is an independent contractor for purposes of this Agreement. Nothing contained in the Agreement shall be construed to mean that said Engineering Design Group, LLC is the servant, agent or employee of the City of Vestavia Hills, Alabama.

WORKER'S COMPENSATION - EDG shall carry Worker's Compensation insurance for all of its employees and those of its subcontractors engaged in the work at the site in accordance with the State of Alabama Worker's Compensation Law.

LIABILITY INSURANCE - EDG shall carry Public Liability Insurance with limits of Three Hundred Thousand Dollars (\$300,000.00), per person, and One Million Dollars (\$1,000,000.00), per occurrence, to cover and protect the City and EDG and its subcontractors against claims or injury to or death of one or more than one person because of accidents which may occur or result from operations under the Agreement. The City of Vestavia Hills, Alabama shall be added as "an additional insured" to the general comprehensive liability insurance policy of EDG.

INDEMNITY - EDG shall indemnify and save harmless the City of Vestavia Hills, Alabama, its Mayor, City Manager, individual members of the City Council, servants, agents, employees or representatives from any and all claims, demands, controversies, actions, causes of action, liabilities of action, lawsuits, liabilities and damages arising out of or resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of work performed by EDG under this Agreement.

PROFESSIONAL ENGINEER - EDG represents, covenants and warrants that it is a licensed professional engineer within the meaning of Title 34-11-1(3), Code of Alabama, 1975, in good standing with the State of Alabama Board of Licensure for Professional Engineers and Land Surveyors.

WARRANTIES AND COMPLIANCE WITH APPLICABLE LAWS - EDG shall perform its work in a good and workmanlike manner and will comply with the provisions of the labor law and all state, federal and local laws, statutes, codes, rules, regulations and ordinances that are applicable to the performance of this Agreement between the City and Engineering Design Group, LLC.

ARBITRATION; MEDIATION; ALTERNATE DISPUTE RESOLUTION - The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (a) the rights and remedies available under such arbitration rules or processes do not afford EDG greater relief (e.g., attorney's fees, damages, etc.) than would be available under otherwise applicable law, (b) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (c) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.

ATTORNEY'S FEES; COURT COSTS; LITIGATION EXPENSES - The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

INDEMNIFICATION; HOLD HARMLESS; RELEASE; WAIVER; LIMITATIONS OF LIABILITY OF REMEDIES - The City shall not and does not indemnify, hold harmless or release EDG or any other person, firm, or legal entity for, from or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof, nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against EDG or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of EDG or any person, firm or entity in privity therewith or acting on EDG's behalf. Any limitation or restriction regarding the type, nature, form, amount or extent of any right, remedy, relief or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the Agreement, and void.

GOVERNING LAW - This Agreement shall be governed by the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS - Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. EDG represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.



September 6, 2018

The City of Vestavia Hills, Alabama
1032 Montgomery Highway
Vestavia Hills, AL 35216
Attn: Jeff Downes, City Manager

**Re: Proposal of Survey and Civil Engineering Services
Mountain View Drive Sidewalk Improvements**

Dear Jeff,

Engineering Design Group, LLC is pleased to submit this proposal of land survey and civil engineering services for the above-referenced project. Our scope of services is based on a conceptual layout plan developed by City of Vestavia Hills staff. Our understanding of the project is that the City will construct approximately 3,000 linear feet of sidewalk along Mountain View Drive, from Vestavia Hills Elementary School East's access drive to the intersection of Lexington Road.

Our scope of services includes roadway survey, pre-design layout and alignment planning, ~~civil engineering design, and bidding services~~. These scope items are described in detail on the following pages. Thank you for the opportunity to present this document. We look forward to providing our services to the City of Vestavia Hills.

This document is provided with the expectation that it is not being used in a price comparison with other professional services firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

Attachments: Exhibit A-Conceptual Site Plan

1.0 Scope of Services

1.1 Roadway Survey

Engineering Design Group, LLC will perform a corridor Roadway Survey along a portion of Mountain View Drive.

We will re-establish the rights-of-way along the subject corridor. Individual surveys of adjacent private parcels of land will not be performed during the Roadway Survey. However, we will locate existing property corners and will research Jefferson County records (retrieve deeds and record plats) in order to graphically show private parcels adjacent to the corridor. Missing property corners will not be set during the survey. Should additional right-of-way be required to accommodate new sidewalk, additional boundary line verification may be needed in isolated areas to accurately depict the private parcels.

Contours will be shown at 1-foot intervals and based on USGS datum. Spot elevations will be shown in flat areas. Visible drainage structures will be shown, indicating top and invert elevations as well as type and size of pipes. Visible improvements including utilities, buildings, walls, fences, sidewalks, curbs, parking areas, signage and paved areas will be shown on the survey. Tree lines and landscaped areas will be shown on the survey. Individual shrubs, and trees will not be shown on survey.

Visible utilities and subsurface utilities (as marked by utility companies or as shown on maps) will be included. We will coordinate with Alabama One Call requesting that all subsurface utilities situated in public right-of-way be marked to enable an accurate location and depiction of the subsurface utilities. Alabama One Call does not mark any utilities that are within the limits of private property. In many cases engineering and surveying utility locate request to Alabama One Call is delayed and even ignored. If the request is delayed or ignored, we will seek assistance from City of Vestavia Hills Staff to have the subsurface utilities marked.

Engineering Design Group will provide a signed and sealed hard copy of the survey depicting the existing conditions along the corridor. In addition to the hard copies, an electronic CAD file will be provided.

Mountain View Drive

The Mountain View Drive corridor limits will extend from the intersection of Mountain View Drive and Eastwood Place in an easterly direction along Mountain View Drive to the intersection of Lexington Road. Topographic locations will extend 75 feet to the north and south from the centerline of Mountain View Drive. Locations at side streets and intersections will extend an additional 75 feet beyond the mainline locations.

1.2 Pre-Design Layout and Alignment

Upon completion of the roadway survey, we will provide a pre-design layout. The purpose of this task item is to prove that the anticipated sidewalk alignment can be designed per the conceptual site plan provided by City Staff. Additionally, we will

provide guidance on previously-unknown conditions that could hinder design or construction (underground utility conflicts, drainage and grading/wall considerations). Should the alignment require revisions, we will provide reasoning for the realignment as well as alternative alignments. Once the sidewalk alignment is proven feasible, we will proceed with civil construction documents.

1.3 Civil Construction Documents

We will develop a set of civil construction documents associated with the construction of the sidewalk. We will submit the Construction Documents to the City of Vestavia Hills for technical review and comment. We will meet with City Officials as needed to work through any design issues that arise during the development of civil construction documents. The Construction Documents will include the following design information, at a minimum:

- a. Sidewalk Alignment Plan-Plans will provide horizontal and vertical control for the layout and construction of the proposed sidewalk. Additionally, the plan will include layout and control for any additional permanent site items, i.e. crosswalks, pedestrian signals, walls, and railing. Design of pedestrian signals and specifications is excluded from our scope of services.
- b. Site Grading and Drainage Plan-Plan will include existing and finished contours, and storm water drainage facilities.
- c. Storm Drainage Profiles-We will provide necessary profiles for storm drainage pipes associated with the new sidewalk.
- d. Erosion Control Plan-Plan will include the necessary structural BMP devices for the control of sedimentation along the construction route.
- e. Notes and Details-We will provide standard notes and details which pertain to the site's specific construction requirements.

1.4 Alabama Department of Environmental Management NPDES Permit (If Required)

Effective April 1, 2011, ADEM established General Permit No. ALR 100000 for discharges associated with regulated construction activity that will result in land disturbance equal to or greater than one acre or from construction activities involving less than one acre and which are part of a common plan of development or sale equal to or greater than one acre. Construction site operators/owners seeking coverage under this general permit must submit a Notice of Intent (NOI) in accordance with the permit requirements. Operators/owners of all regulated construction sites must implement and maintain effective erosion and sediment controls in accordance with a Construction Best Management Practices Plan (CBMPP) prepared and certified by a Qualified Credentialed Professional (QCP). Engineering Design Group will create the CBMPP Plan and submit it, along with the NOI, to ADEM for the purpose of obtaining the NPDES permit. Engineering Design Group is not responsible for the application fee associated with the NPDES Permit.

1.5 Bid Documents and Specifications

We will provide project specifications and bid documents. Bid documents will include the following:

- a. Preparation of Construction Contract-EDG will prepare a Construction Contract for acceptance and execution by the Contractor and Owner and the forms for the Performance Bond and the Labor and Materials Bond as required by the Public Works Law set forth in Title 39-1-1-Code of Alabama
- b. Advertisement for Bids-EDG will prepare the advertisement for bids and have it appropriately published in newspapers all in accordance with the requirements of the Alabama Public Works Law set for in Title 39-2-2-Code of Alabama. The City of Vestavia Hills shall pay the cost of said advertisement.
- c. Prequalification of Bidders: EDG shall prequalify contractors who wish to bid on the work. Prequalifying conditions will be discussed and agreed to by the City of Vestavia Hills and EDG.

Additionally, we will attend a pre-bid conference and assist the City with bid openings. We will examine the bid submittals, ensuring that all criteria are met, and assist the City in awarding the bid.

1.6 Best Management Practices (BMP) Field Inspections (If Required)

As a requirement of the ADEM NPDES permit, inspections of structural BMP devices (erosion control measures) are required at least monthly, or after each 3/4" rainfall event. Engineering Design Group will monitor rainfall amounts at the site and provide these inspections. A report of our findings will be issued to you and your site contractor. The report will include site photographs, and recommendations for maintenance of any failing BMP devices.

1.7 Construction Administration

We will be available during the construction phase to answer questions or provide clarifications to the project team. We will meet with the Contractor and/or the City as necessary during construction. We have not anticipated a full-time on-site inspector. We have provided an estimated fee for this task item as shown in section 2.0.

1.8 Additional Services

Any service need that arises and is required but has not been included in our original scope of services will be performed on an hourly basis according to the fee schedule included in this proposal. We will discuss with the Client any additional service before performing the service and will not proceed with additional work without the Client's approval.

Exclusions

Items specifically **NOT INCLUDED** in this scope of work include: Traffic Studies, Electrical Design, Construction Stake-Out, Geotechnical Engineering, Geotechnical Testing, Corps of Engineers Permitting, Structural Design of Retaining Walls, Landscape Design, Storm Water Monitoring, Utility Main Relocation and any Off-Site Improvements other than those included within the scope of services. If any of these items becomes necessary, we will perform those tasks as Additional Services or help you to contract with an entity which provides that service.

Your signature on the following page will serve as our formal notice to proceed with the above-described scope of services. Again, we appreciate the opportunity to present our proposal of professional services and we look forward to a successful project.

2.0 Compensation and Payment for Services:

Engineering Design Group, LLC's fee for the scope of services outlined in Part 1.0 is as follows:

2.1 Roadway Survey	\$35,200.00 Lump Sum
2.2 Pre-Design Layout and Alignment	\$ 2,500.00 Budget Estimate
2.3 Civil Construction Documents	\$75,000.00 Lump Sum
2.4 ADEM NPDES Permit (If Required)	\$ 2,500.00 Lump Sum
2.5 Bid Documents and Specifications	\$ 4,500.00 Lump Sum
2.6 BMP Field Inspections (If Required)	\$ 200.00 Per Inspection
2.7 Construction Administration	\$ 2,000.00 Budget Estimate
2.8 Additional Services	Hourly, if Required
Reimbursables	\$ 1,000.00 Budget

Engineering Design Group, LLC can commence work immediately upon receipt of your written authorization to proceed. If this proposal is acceptable, please authorize Engineering Design Group, LLC to proceed with the above Scope of Services by signing in the appropriate location and returning a copy to Engineering Design Group, LLC.

Sincerely,

Engineering Design Group, LLC

Wade H. Lowery P.E., Alabama License #27002

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CONSULTANT Reliance: CONSULTANT shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

Certifications: CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in CONSULTANT's having to certify, guaranty, or warrant the existence of conditions that CONSULTANT cannot ascertain.

Third Parties: Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or CONSULTANT. CONSULTANT's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against CONSULTANT because of this Agreement or CONSULTANT's performance of services hereunder.

Consequential Damages: Neither the Client nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

14. **OTHER PROVISIONS** - Notwithstanding anything contained in the Agreement to the contrary, the City and Engineering Design Group, LLC agree to add the following terms, provisions and conditions to the said Agreement as Section 15 to said Agreement:

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

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INDEMNITY - EDG shall indemnify and save harmless the City of Vestavia Hills, Alabama, its Mayor, City Manager, individual members of the City Council, servants, agents, employees or representatives from any and all claims, demands, controversies, actions, causes of action, liabilities of action, lawsuits, liabilities and damages arising out of or resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of work performed by EDG under this Agreement.

PROFESSIONAL ENGINEER - EDG represents, covenants and warrants that it is a licensed professional engineer within the meaning of Title 34-11-1(3), Code of Alabama, 1975, in good standing with the State of Alabama Board of Licensure for Professional Engineers and Land Surveyors.

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GOVERNING LAW - This Agreement shall be governed by the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

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September 6, 2018

The City of Vestavia Hills, Alabama
1032 Montgomery Highway
Vestavia Hills, AL 35216
Attn: Jeff Downes, City Manager

**Re: Proposal of Survey and Civil Engineering Services
Rocky Ridge Road Sidewalk Improvements**

Dear Jeff,

Engineering Design Group, LLC is pleased to submit this proposal of land survey and civil engineering services for the above-referenced project. Our scope of services is based on a conceptual layout plan developed by City of Vestavia Hills staff. Our understanding of the project is that the City will construct approximately 2,900 linear feet of sidewalk. The project will begin near the entrance to Mountain Chapel United Methodist Church. From this location, the sidewalk will run south along Rocky Ridge Road to its intersection with Dolly Ridge Road. From this intersection, the sidewalk will follow Dolly Ridge Road to its intersection with Ridgedale Drive.

Our scope of services includes roadway survey, pre-design layout and alignment planning, ~~civil engineering design, and bidding~~ services. These scope items are described in detail on the following pages. Thank you for the opportunity to present this document. We look forward to providing our services to the City of Vestavia Hills.

This document is provided with the expectation that it is not being used in a price comparison with other professional services firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

Attachments: Exhibit A-Conceptual Site Plan

1.0 Scope of Services

1.1 Roadway Survey

Engineering Design Group, LLC will perform a corridor Roadway Survey along a portion of Rocky Ridge Road and Dolly Ridge Road.

We will re-establish the rights-of-way along the subject corridor. Individual surveys of adjacent private parcels of land will not be performed during the Roadway Survey. However, we will locate existing property corners and will research Jefferson County records (retrieve deeds and record plats) in order to graphically show private parcels adjacent to the corridor. Missing property corners will not be set during the survey. Should additional right-of-way be required to accommodate new sidewalk, additional boundary line verification may be needed in isolated areas to accurately depict the private parcels.

Contours will be shown at 1-foot intervals and based on USGS datum. Spot elevations will be shown in flat areas. Visible drainage structures will be shown, indicating top and invert elevations as well as type and size of pipes. Visible improvements including utilities, buildings, walls, fences, sidewalks, curbs, parking areas, signage and paved areas will be shown on the survey. Tree lines and landscaped areas will be shown on the survey. Individual shrubs, and trees will not be shown on survey.

Visible utilities and subsurface utilities (as marked by utility companies or as shown on maps) will be included. We will coordinate with Alabama One Call requesting that all subsurface utilities situated in public right-of-way be marked to enable an accurate location and depiction of the subsurface utilities. Alabama One Call does not mark any utilities that are within the limits of private property. In many cases engineering and surveying utility locate request to Alabama One Call is delayed and even ignored. If the request is delayed or ignored, we will seek assistance from City of Vestavia Hills Staff to have the subsurface utilities marked.

Engineering Design Group will provide a signed and sealed hard copy of the survey depicting the existing conditions along the corridor. In addition to the hard copies, an electronic CAD file will be provided.

Rocky Ridge Road

The Rocky Ridge Road and Dolly Ridge Road corridor limits will extend from the intersection of Rocky Ridge Road and Dolly Ridge Road in a northerly direction along Rocky Ridge Road to the intersection of the south entrance to Mountain Chapel United Methodist Church, situated 425 feet north of the intersection of Rocky Ridge Road and Morgan Drive. Topographic locations will extend 75 feet to the east and west from the centerline of Rocky Ridge Road. Locations at side streets and intersections will extend an additional 75 feet beyond the mainline locations.

Limits will also extend from the intersection of Rocky Ridge Road and Dolly Ridge Road in an easterly direction along Dolly Ridge Road to the intersection of Ridgedale Drive. Topographic locations will extend 75 feet to the north from the centerline of Dolly Ridge Road. Locations at side streets and intersections will extend an

additional 75 feet beyond the mainline locations. Minimum property line investigation to verify the existing right-of-way will be performed along the south side of Dolly Ridge Road.

1.2 Pre-Design Layout and Alignment

Upon completion of the roadway survey, we will provide a pre-design layout. The purpose of this task item is to prove that the anticipated sidewalk alignment can be designed per the conceptual site plan provided by City Staff. Additionally, we will provide guidance on previously-unknown conditions that could hinder design or construction (underground utility conflicts, drainage and grading/wall considerations). Should the alignment require revisions, we will provide reasoning for the realignment as well as alternative alignments. Once the sidewalk alignment is proven feasible, we will proceed with civil construction documents.

1.3 Civil Construction Documents

We will develop a set of civil construction documents associated with the construction of the sidewalk. We will submit the Construction Documents to the City of Vestavia Hills for technical review and comment. We will meet with City Officials as needed to work through any design issues that arise during the development of civil construction documents. The Construction Documents will include the following design information, at a minimum:

- a. Sidewalk Alignment Plan-Plans will provide horizontal and vertical control for the layout and construction of the proposed sidewalk. Additionally, the plan will include layout and control for any additional permanent site items, i.e. crosswalks, pedestrian signals, walls, and railing. Design of pedestrian signals and specifications is excluded from our scope of services.
- b. Site Grading and Drainage Plan-Plan will include existing and finished contours, and storm water drainage facilities.
- c. Storm Drainage Profiles-We will provide necessary profiles for storm drainage pipes associated with the new sidewalk.
- d. Erosion Control Plan-Plan will include the necessary structural BMP devices for the control of sedimentation along the construction route.
- e. Notes and Details-We will provide standard notes and details which pertain to the site's specific construction requirements.

1.4 Alabama Department of Environmental Management NPDES Permit (If Required)

Effective April 1, 2011, ADEM established General Permit No. ALR 100000 for discharges associated with regulated construction activity that will result in land disturbance equal to or greater than one acre or from construction activities involving less than one acre and which are part of a common plan of development or sale equal to or greater than one acre. Construction site operators/owners seeking coverage under this general permit must submit a Notice of Intent (NOI) in accordance with the permit requirements. Operators/owners of all regulated construction sites must implement and maintain effective erosion and sediment controls in accordance with a Construction Best Management Practices Plan (CBMPP) prepared and certified by a Qualified Credentialed Professional (QCP).

Engineering Design Group will create the CBMPP Plan and submit it, along with the NOI, to ADEM for the purpose of obtaining the NPDES permit. Engineering Design Group is not responsible for the application fee associated with the NPDES Permit.

1.5 Bid Documents and Specifications

We will provide project specifications and bid documents. Bid documents will include the following:

- a. Preparation of Construction Contract-EDG will prepare a Construction Contract for acceptance and execution by the Contractor and Owner and the forms for the Performance Bond and the Labor and Materials Bond as required by the Public Works Law set forth in Title 39-1-1-Code of Alabama
- b. Advertisement for Bids-EDG will prepare the advertisement for bids and have it appropriately published in newspapers all in accordance with the requirements of the Alabama Public Works Law set for in Title 39-2-2-Code of Alabama. The City of Vestavia Hills shall pay the cost of said advertisement.
- c. Prequalification of Bidders: EDG shall prequalify contractors who wish to bid on the work. Prequalifying conditions will be discussed and agreed to by the City of Vestavia Hills and EDG.

Additionally, we will attend a pre-bid conference and assist the City with bid openings. We will examine the bid submittals, ensuring that all criteria are met, and assist the City in awarding the bid.

1.6 Best Management Practices (BMP) Field Inspections (If Required)

As a requirement of the ADEM NPDES permit, inspections of structural BMP devices (erosion control measures) are required at least monthly, or after each $\frac{3}{4}$ " rainfall event. Engineering Design Group will monitor rainfall amounts at the site and provide these inspections. A report of our findings will be issued to you and your site contractor. The report will include site photographs, and recommendations for maintenance of any failing BMP devices.

1.7 Construction Administration

We will be available during the construction phase to answer questions or provide clarifications to the project team. We will meet with the Contractor and/or the City as necessary during construction. We have not anticipated a full-time on-site inspector. We have provided an estimated fee for this task item as shown in section 2.0.

1.8 Additional Services

Any service need that arises and is required but has not been included in our original scope of services will be performed on an hourly basis according to the fee schedule included in this proposal. We will discuss with the Client any additional service before performing the service and will not proceed with additional work without the Client's approval.

Exclusions

Items specifically **NOT INCLUDED** in this scope of work include: Traffic Studies, Electrical Design, Signal Timing, Construction Stake-Out, Geotechnical Engineering, Geotechnical Testing, Corps of Engineers Permitting, Structural Design of Retaining Walls, Landscape Design, Storm Water Monitoring, Utility Main Relocation and any Off-Site Improvements other than those included within the scope of services. If any of these items becomes necessary, we will perform those tasks as Additional Services or help you to contract with an entity which provides that service.

Your signature on the following page will serve as our formal notice to proceed with the above-described scope of services. Again, we appreciate the opportunity to present our proposal of professional services and we look forward to a successful project.

2.0 Compensation and Payment for Services:

Engineering Design Group, LLC's fee for the scope of services outlined in Part 1.0 is as follows:

2.1 Roadway Survey	\$27,200.00 Lump Sum
2.2 Pre-Design Layout and Alignment	\$ 2,500.00 Budget Estimate
2.3 Civil Construction Documents	\$72,500.00 Lump Sum
2.4 ADEM NPDES Permit (If Required)	\$ 2,500.00 Lump Sum
2.5 Bld Documents and Specifications	\$ 4,500.00 Lump Sum
2.6 BMP Field Inspections (If Required)	\$ 200.00 Per Inspection
2.7 Construction Administration	\$ 2,000.00 Budget Estimate
2.8 Additional Services	Hourly, if Required
Reimbursables	\$ 1,000.00 Budget

Engineering Design Group, LLC can commence work immediately upon receipt of your written authorization to proceed. If this proposal is acceptable, please authorize Engineering Design Group, LLC to proceed with the above Scope of Services by signing in the appropriate location and returning a copy to Engineering Design Group, LLC.

Sincerely,

Engineering Design Group, LLC

Wade H. Lowery P.E., Alabama License #27002

“This cost proposal is accepted as written and Engineering Design Group LLC is hereby authorized to commence the work as described in the above Scope of Services”

Authorization by: _____

Title: _____ Date: _____

HOURLY RATE SCHEDULE AND REIMBURSABLE EXPENSES:

Personnel time for additional services covered under this agreement will be invoiced based on the following Rate Schedule. These Rates are subject to adjustment on January 1st of each year.

Engineering Rate Schedule

- | | |
|--------------------------|-------------------|
| • Principal in Charge | \$125.00 per hour |
| • Project Manager | \$115.00 per hour |
| • Senior Design Engineer | \$105.00 per hour |
| • Project Engineer | \$ 95.00 per hour |

Surveying Rate Schedule

- | | |
|------------------------------|-------------------|
| • Field Crew | \$135.00 per hour |
| • Professional Land Surveyor | \$115.00 per hour |
| • Senior Drafter | \$ 95.00 per hour |
| • Drafter | \$ 75.00 per hour |

Reimbursable Expenses

Expenses incurred for work covered under this contract will be invoiced at cost plus 15 percent. These expenses include, but are not limited to:

- Printing
- Shipping
- Permitting and Application Fees
- Outside Consultants
- Travel – (Travel will be reimbursed at \$0.58 per mile)

Payment

Services rendered in accordance with this proposal will be invoiced monthly based on work completed. Invoices are due upon receipt and will be considered delinquent if not received within 30 days after receipt. Engineering Design Group LLC may, without legal consequence, suspend services until payment is received.

Client agrees that payment for services rendered shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this agreement.

RockyRidge/Dolly Ridge sidewalk

Preliminary scope, approx 2900 LF of 5' wide sidewalk including Rocky Ridge Entertainment District and Dolly Ridge Road to Ridgedale

Legend

-  Inc
-  proposed sidewalk



TERMS AND CONDITIONS:

1. **CONTRACT** - These Contract Provisions and the accompanying Proposal constitute the full and complete Agreement between the parties and may be changed, amended, added to, superseded, or waived only if both parties specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these Contract Provisions and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these Contract Provisions shall govern.
2. **RIGHT OF ENTRY** - When entry to property is required for the CONSULTANT to perform its services, the Client agrees to obtain legal right-of-entry on the property.
3. **DOCUMENTS** - All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by CONSULTANT are instruments of CONSULTANT's service that shall remain CONSULTANT's property. The Client agrees not to use CONSULTANT-generated documents for marketing purposes, for projects other than the project for which the documents were prepared by CONSULTANT, or for future modifications to this project, without CONSULTANT's express written permission.

Any reuse or distribution to third parties without such express written permission or project-specific adaptation by CONSULTANT will be at the Client's sole risk and without liability to CONSULTANT or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors.
4. **DISPOSAL OF SAMPLES** - CONSULTANT will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.
5. **HAZARDOUS MATERIALS** - The scope of CONSULTANT's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.
6. **CONSTRUCTION PHASE SERVICES** - If CONSULTANT performs any services during the construction phase of the project, CONSULTANT shall not supervise, direct, or have control over Contractor's work. CONSULTANT shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. CONSULTANT does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
7. **STANDARD OF CARE** - CONSULTANT and its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by design professionals providing similar services.
8. **OPINION OF PROBABLE COSTS** - When required as part of its work, CONSULTANT will furnish opinions of probable cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by CONSULTANT hereunder will be made on the basis of CONSULTANT's experience and qualifications and will represent CONSULTANT's judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that CONSULTANT does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
9. **SUSPENSION OF WORK** - The Client may, at any time, by written notice, suspend further work by CONSULTANT. The Client shall remain liable for, and shall promptly pay CONSULTANT for all services rendered to the date of suspension of services, plus suspension charges, which shall include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on Client's behalf.

Client shall pay CONSULTANT pursuant to the rates and charges set forth in the Proposal. CONSULTANT will submit monthly invoices to Client for services rendered and expenses incurred. If Client does not pay invoices within thirty (30) days of submission of invoice, CONSULTANT may, upon written notice to the Client, suspend further work until payments are brought current.
10. **CHANGES OR DELAYS** - Unless the accompanying Proposal provides otherwise, the proposed fees constitute CONSULTANT's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information, or if CONSULTANT's failure to perform is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of CONSULTANT. Temporary work stoppage caused by any of the above may result in additional cost beyond that outlined in the accompanying Proposal.

11. **CONFLICTS OF INTEREST** - This assignment may involve parties with adverse interests to clients with whom CONSULTANT has current or past relationships. It is CONSULTANT policy to make reasonable attempts to identify such relationships prior to acceptance of a professional assignment, but CONSULTANT cannot assure that conflicts or perceived conflicts will not arise, and CONSULTANT does not accept responsibility for such occurrences.
12. **REIMBURSABLE EXPENSES** - CONSULTANT will bill direct non payroll expenses at cost plus 10%. Direct expenses include all reasonable expenses resulting from required responses to subpoenas or court orders related to work under the Contract.
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PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720
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E-Mail: patrickboone@bellsouth.net

August 31, 2018

By Hand Delivery and Electronic Mail

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

In Re: Four (4) Proposed Agreements Between Engineering Design Group, LLC (“EDG”) and the City of Vestavia Hills (“City”) for Design of Sidewalk Construction Projects

Dear Mr. Downes:

You provided to me copies of four (4) proposed Agreements by and between Engineering Design Group, LLC (“EDG”) and the City of Vestavia Hills, Alabama (“City”) for the design of sidewalk construction projects with a request that I review them and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. FACTS

Engineering Design Group, LLC has submitted four (4) separate proposals to perform design services for the following four sidewalk construction projects:

A. ROCKY RIDGE ROAD SIDEWALK IMPROVEMENTS:

2.1	Roadway Survey	\$27,200.00 Lump Sum
2.2	Pre-Design Layout and Alignment	\$ 2,500.00 Budget Estimate
2.3	Civil Construction Documents	\$72,500.00 Lump Sum
2.4	ADEM NPDES Permit (If Required)	\$ 2,500.00 Lump Sum
2.5	Bid Documents and Specifications	\$ 4,500.00 Lump Sum
2.6	BMP Field Inspections (If Required)	\$ 200.00 Per Inspection
2.7	Construction Administration	\$ 2,000.00 Budget Estimate
2.8	Additional Services	Hourly, if Required
	Reimbursables	\$ 1,000.00 Budget

B. EAST STREET SIDEWALK IMPROVEMENTS:

2.1	Roadway Survey	\$35,400.00 Lump Sum
2.2	Pre-Design Layout and Alignment	\$ 2,500.00 Budget Estimate
2.3	Civil Construction Documents	\$80,100.00 Lump Sum
2.4	ADEM NPDES Permit (If Required)	\$ 2,500.00 Lump Sum
2.5	Bid Documents and Specifications	\$ 4,500.00 Lump Sum
2.6	BMP Field Inspections (If Required)	\$ 200.00 Per Inspection
2.7	Construction Administration	\$ 2,000.00 Budget Estimate
2.8	Additional Services	Hourly, if Required
	Reimbursables	\$ 1,000.00 Budget

C. CAHABA HEIGHTS ROAD SIDEWALK IMPROVEMENTS:

2.1	Roadway Survey	\$28,200.00 Lump Sum
2.2	Pre-Design Layout and Alignment	\$ 2,500.00 Budget Estimate
2.3	Civil Construction Documents	\$70,200.00 Lump Sum
2.4	ADEM NPDES Permit (If Required)	\$ 2,500.00 Lump Sum
2.5	Bid Documents and Specifications	\$ 4,500.00 Lump Sum
2.6	BMP Field Inspections (If Required)	\$ 200.00 Per Inspection
2.7	Construction Administration	\$ 2,000.00 Budget Estimate
2.8	Additional Services	Hourly, if Required
	Reimbursables	\$ 1,000.00 Budget

D. MOUNTAIN VIEW DRIVE SIDEWALK IMPROVEMENTS:

2.1	Roadway Survey	\$35,200.00 Lump Sum
2.2	Pre-Design Layout and Alignment	\$ 2,500.00 Budget Estimate
2.3	Civil Construction Documents	\$75,000.00 Lump Sum
2.4	ADEM NPDES Permit (If Required)	\$ 2,500.00 Lump Sum
2.5	Bid Documents and Specifications	\$ 4,500.00 Lump Sum
2.6	BMP Field Inspections (If Required)	\$ 200.00 Per Inspection
2.7	Construction Administration	\$ 2,000.00 Budget Estimate
2.8	Additional Services	Hourly, if Required
	Reimbursables	\$ 1,000.00 Budget

The Terms and Conditions of the four Agreements are the same except for the contract price and the locations of the contemplated sidewalks. Therefore, this legal opinion applies to all four proposed Agreements.

II. RECOMMENDATIONS FOR DELETIONS

Municipalities in Alabama have the legal authority to enter into contracts (Title 11-40-1, *Code of Alabama, 1975*) and to design and construct sidewalks (Title 11-48-4, *Code of Alabama, 1975*). However, municipalities have limitations and even some restrictions in contract matters that do not apply to private entities. My recommendations for deletions and additions are set forth below.

I recommend that the following language should be deleted from all four Agreements:

A. **INDEMNITY PROVISION:** All language requiring the City to indemnify EDG specifically including the language in sections 3, 9 and 14 should be deleted.

B. **LIMITATION OF LIABILITY:** Section 11 limiting the liability of EDG should be deleted in its entirety.

C. **WARRANTIES:** The last sentence of paragraph 1 of section 7 reading "Client agrees that services provided will be rendered without any warranties expressed or implied" should be deleted.

D. **COMPLIANCE WITH APPLICABLE LAWS:** The second paragraph of section 7 should be deleted in its entirety.

E. **GOVERNING LAW:** The Agreement must be amended so as to provide that the laws of Alabama shall govern the validity and interpretation of said Agreement.

III. BASIS FOR LEGAL OPINION

I base my legal opinion upon the following Alabama laws.

A&B. **INDEMNITY and LIMITATION OF LIABILITY:**

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

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

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

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

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

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

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

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

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

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

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

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

In my opinion, the payment of public funds to indemnify a third party would not constitute a "public purpose."

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

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

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

limits set out in the provisions of Section 11-93-2 notwithstanding.”

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

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

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

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

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

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

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

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

C&D. COMPLIANCE WITH APPLICABLE LAWS AND WARRANTIES: The City expects EDG to perform its work in a good and workmanlike manner and to comply with the provisions of the labor law and all state, federal and local laws, statutes, codes, rules, regulations and ordinances that are applicable to the performance of this Agreement between the City and EDG.

E. **GOVERNING LAW:** In 1912, the Court of Civil Appeals of Alabama decided the case of *Hirsch & Spitz Mfg. Co. v. City of Enterprise*, 59 So. 315, 5 Ala.App. 387, and held that the right of a municipal corporation to contract must be construed by the laws of the state irrespective of where a contract is made.

IV. RECOMMENDED ADDITIONS TO THE AGREEMENT

I recommend that section 15 entitled "Other Provisions" be added to and incorporated into the Agreement as follows:

"15. **OTHER PROVISIONS:** Notwithstanding anything contained in the Agreement to the contrary, the City and Engineering Design Group, LLC agree to add the following terms, provisions and conditions to the said Agreement as Section 15 to said Agreement:

15.1. **PREPARATION OF CONSTRUCTION CONTRACT:** EDC shall prepare the Construction Contract for acceptance and execution by the Contractor and Owner and the forms for the Performance Bond and the Labor and Materials Bond as required by the Public Works Law set forth in Title 39-1-1, et seq., *Code of Alabama, 1975*.

15.2 **ADVERTISEMENT FOR BID:** EDG shall prepare the advertisement for bids and have it appropriately published in newspapers all in accordance with the requirements of the Alabama Public Works Law set forth at Title 39-2-2, *Code of Alabama, 1975*. The City shall pay the cost for said advertisement for bids.

15.3 **PREQUALIFICATION OF BIDDERS:** EDG shall prequalify contractors who wish to bid on the work.

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

15.5 **INDEPENDENT CONTRACTOR:** Engineering Design Group, LLC is an independent contractor for purposes of this Agreement. Nothing contained in the Agreement shall be construed to mean that said Engineering Design Group, LLC is the servant, agent or employee of the City of Vestavia Hills, Alabama.

15.6 **WORKER'S COMPENSATION:** EDG shall carry Worker's Compensation insurance for all of its employees and those of its subcontractors engaged in the work at the site in accordance with the State of Alabama Worker's Compensation Law.

15.7 **LIABILITY INSURANCE:** EDG shall carry Public Liability Insurance with limits of Three Hundred Thousand Dollars (\$300,000.00), per person, and One Million Dollars (\$1,000,000.00), per occurrence, to cover and protect the City and EDG and its subcontractors against claims or injury to or death of one or more than one person because of accidents which may occur or result from operations under the Agreement. The City of Vestavia Hills, Alabama shall be added as "an additional insured" to the general comprehensive liability insurance policy of EDG.

15.8 **INDEMNITY:** EDG shall indemnify and save harmless the City of Vestavia Hills, Alabama, its Mayor, City Manager, individual members of the City Council, servants, agents, employees or representatives from any and all claims, demands, controversies, actions, causes of action, liabilities of action, lawsuits, liabilities and damages arising out of or resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of work performed by EDG under this Agreement.

15.9 **PROFESSIONAL ENGINEER:** EDG represents, covenants and warrants that it is a licensed professional engineer within the meaning of Title 34-11-1(3), *Code of Alabama, 1975*, in good standing with the State of Alabama Board of Licensure for Professional Engineers and Land Surveyors.

15.10 **WARRANTIES AND COMPLIANCE WITH APPLICABLE LAWS:** EDG shall perform its work in a good and workmanlike manner and to comply with the provisions of the labor law and all state, federal and local laws, statutes, codes, rules, regulations and ordinances that are applicable to the performance of this Agreement between the City and Engineering Design Group, LLC.

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15.11 ARBITRATION; MEDIATION; ALTERNATE DISPUTE RESOLUTION: The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (a) the rights and remedies available under such arbitration rules or processes do not afford EDG greater relief (e.g., attorney's fees, damages, etc.) than would be available under otherwise applicable law, (b) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (c) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.

15.12 ATTORNEY'S FEES; COURT COSTS; LITIGATION EXPENSES: The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

15.13 INDEMNIFICATION; HOLD HARMLESS; RELEASE; WAIVER; LIMITATIONS OF LIABILITY OF REMEDIES: The City shall not and does not indemnify, hold harmless or release EDG or any other person, firm, or legal entity for, from or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against EDG or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of EDG or any person, firm or entity in privity therewith or acting on EDG's behalf. Any limitation or restriction regarding the type, nature, form, amount or extent of any right, remedy, relief or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the Agreement, and void."

15.14 GOVERNING LAW: This Agreement shall be governed by the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

15.15 COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS: Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. EDG represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

From a legal standpoint, I approve the Agreements provided the modifications set forth in this legal opinion are made to all of the four Agreements.

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

Sincerely,

A handwritten signature in blue ink that reads "Patrick H. Boone". The signature is fluid and cursive, with the first name being the most prominent.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by e-mail and hand)

ORDINANCE NUMBER 2796

AN ORDINANCE GRANTING A NON-EXCLUSIVE RIGHT-OF-WAY USE AGREEMENT TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION SERVICES FOR THE PURPOSE OF CONDUCTING BUSINESS AS A COMMUNICATIONS SERVICES PROVIDER WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF VESTAVIA HILLS, ALABAMA

THIS FRANCHISE AGREEMENT effective as of _____, 2018, by and between the **CITY of VESTAVIA HILLS, ALABAMA**, a municipal corporation, (hereinafter referred to as the “City”) and **MCI metro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services**, a Delaware corporation, whose address is **One Verizon Way, Basking Ridge, NJ 07920** (hereinafter referred to as the “Franchisee”).

WHEREAS the City has and reserves the right to exercise control over the highways, streets, alleys and public places and to require City’s consent prior to using such highways, streets, alleys and public places; and

WHEREAS State law, confers to the City certain rights and requirements for franchises and permission to use the public ways of City; and

WHEREAS the Franchisee has requested from City a franchise to use the streets and public ways of the City to conduct business as a communications services provider; and

WHEREAS the City and the Franchisee have negotiated this Franchise Agreement which is mutually agreeable to both parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, the City and Franchisee enter into this Franchise Agreement and agree as follows:

SECTION 1. GRANT OF NON-EXCLUSIVE FRANCHISE. A non-exclusive franchise is hereby granted to Franchisee, subject to the City’s receipt of monetary compensation, to construct, maintain and operate in, over, under, across and through the public rights-of-way of the City of Vestavia Hills, Alabama, a fiber-based communications system within the City of Vestavia Hills and any future additions thereto, the duration of such franchise to be a period of fifteen (15) years, to commence on the ____ day of 2018. The grant of this non-exclusive franchise is for the use by the Franchisee for the purpose of providing telecommunication and communications services, including dark

fiber, within the City of Vestavia Hills as a "competitive access provider" which directly connects customers within the franchise area with other businesses, local area networks, a local exchange carrier and interexchange carriers and for such other services, including local exchange and enhanced services, as may be authorized by the Alabama Public Service Commission or federal law, other than cable services as defined below. Franchisee shall not provide services directly regulated by the Alabama Public Service Commission (PSC) unless authorized by the PSC. Franchisee is permitted to operate a telecommunications system as defined by the Telecommunications Act of 1996. Franchisee shall not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USCA §521 et seq., as amended) without first having obtained a separate cable franchise with the City.

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 set forth herein, provided that Franchisee shall have performed according to the terms hereof, and, further provided that statutory authority shall exist for the City of Vestavia Hills to renew this franchise. New terms and conditions may be required by either party for renewal if the telecommunications and broadband technology and rights-of-way laws change after the date of this franchise ordinance and cause substantial effects on service types, availability, character of service, system technology or the regulatory environment. New terms, provisions, or conditions may also be required by either party upon renewal which are applicable generally to other franchisees for similar services or applicable generally to the industry to clarify the intent of this franchise, which may arise from any unforeseen circumstances or interpretations of this franchise, and/or which are based on the history of performance of the Franchisee. The parties agree to negotiate new terms and conditions in good faith.

When used herein, the term "facilities" shall mean all or any part of a network of fiber optic cables and all related property, including but not limited to, conduit, carrier pipe, fiber optic cables, poles, handholes, manholes, repeaters, power sources, and other attachments and appurtenances necessary for the fiber-based communications system and located within the City's rights of way.

SECTION 2. GENERAL TERMS. Franchisee, for the duration of this franchise and for the purposes hereinabove expressed, shall have the privilege to construct, operate and maintain facilities and to make any and all necessary excavations therefore, in, over, under, across and through all or any of the portions of the streets, alleys, avenues or public ways of the City of Vestavia Hills, to utilize defined existing City owned conduit within the public rights-of-way as may be specifically approved in writing by the City Engineering Department and to utilize, with permission of the affected utility companies, their facilities

within public rights-of-way for the purpose of providing a fiber-based communications system within the City of Vestavia Hills, to be exercised in such manner only, however, as to offer the least interference with the public use of said streets, alleys, avenues and public ways; and Franchisee shall be subject to and shall comply with all laws and ordinances of the City of Vestavia Hills and shall be further subject to and shall comply with all rules, regulations and other restrictions of the City of Vestavia Hills set forth herein. The granting of this franchise shall not prohibit the City from granting other non-exclusive franchises or otherwise allowing or making other uses of the City's rights-of-way. The granting of this franchise shall in no way interfere with or hinder the use by the City of the rights-of-way for any purpose.

SECTION 3. SCOPE OF FRANCHISE. The franchise hereby granted shall extend to and include all portions of streets, alleys, avenues and other public ways that conform to the General Terms set forth in Section 2, above, as may be necessary to carry out the purpose of this franchise.

SECTION 4. INDEMNIFICATION. Franchisee hereby agrees to indemnify, defend and hold harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, employees and insurance carriers, individually and collectively from all losses, claims, suits, judgments, demands, expenses, subrogation, attorney's fees, costs or actions of any kind and nature resulting from personal injury to any person, including employees of Franchisee or of any contractor or subcontractor employed by Franchisee, (including bodily injury and death) or damages to any property, arising out of the acts or omissions of Franchisee, its contractors, subcontractors, officers, agents and employees while exercising any of the rights or privileges granted by this franchise. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. The terms and provisions of this section are intended to be for the benefit of the City and Franchisee and are not intended to be for the benefit of any third party. Notwithstanding the foregoing, Franchisee shall not be obligated to indemnify the City for Claims resulting solely from the negligent or willful acts of the City or its representatives.

SECTION 5. CITY TAKING PART IN LITIGATION. The Franchisee shall immediately notify the City of any litigation which would affect the franchise. The City shall have the right to take part, by intervention or otherwise at its option and at its sole cost, in any suit, action, or proceeding instituted by or against Franchisee in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of Franchisee to do or not to do anything which, by its franchise, it is obligated or may be required to do or not to do or affecting, such as by foreclosure or lien, Franchisee's title to any facility. Franchisee shall not object to the City's exercise of such right.

SECTION 6. BOND, CERTIFICATE OF DEPOSIT OR LETTER OF CREDIT.

Franchisee shall obtain and maintain, or cause to be obtained and maintained, during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the City Clerk a corporate surety bond, certificate(s) of deposit assigned to the City or irrevocable, unconditional letter of credit in the amount of Fifty Thousand Dollars (\$50,000), both to guarantee the timely construction and full activation of Franchisee's system and to secure the faithful performance of Franchisee of all its obligations provided under the franchise. Failure to timely obtain, file, assign and/or maintain said bond, certificate(s) of deposit or letter of credit at all times at the required amount shall constitute a substantial violation of this Agreement. If Franchisee elects to deposit and assign for the benefit of the City a certificate(s) of deposit, any interest earned on the principal sum required shall inure to the benefit of the Franchisee and any tax liability on said interest will inure to the Franchisee.

The performance bond shall provide and certificate(s) of deposit and letter of credit shall be subject to the following conditions:

(1) There shall be recoverable by the City, jointly and severally from the principal and surety, or from the certificate(s) of deposit or letter of credit, any and all fines and penalties due to the City and any and all damages, losses, costs, and expenses suffered, incurred by or resulting from failure of Franchisee to: faithfully comply with the provisions of the franchise; comply with all applicable orders, permits and directives of any City agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due to the City which arises from or by reason of the construction, operation, maintenance or repair of the communications system.

(2) The total amount of the bond, certificate(s) of deposit or letter of credit shall be forfeited in favor of the City in the event:

- (a) Franchisee abandons its system at any time during the term of the franchise or extension thereof or ceases operation of the system for a period in excess of six (6) months; and/or
- (b) Franchisee assigns the franchise without the express written consent of the City, if such consent is required by the terms of this franchise, which consent shall not be unreasonably withheld.

The performance bond, certificate(s) of deposit or letter of credit required herein shall be in a form satisfactory to the City Attorney. The surety bond, certificate(s) of deposit or letter of credit shall at all times be maintained at the amount and levels as required in this section and shall be a continuing obligation for the

duration of the franchise and thereafter until the Franchisee has liquidated all of its obligations with the City that may have arisen by reason of the construction, operation or maintenance of the system or breach or termination of the franchise. If the bond, certificate(s) of deposit or letter of credit is drawn-down for any reason, the bond, certificate(s) of deposit or letter of credit shall be renewed to the amounts required by the city.

The City shall notify the Franchisee in writing and allow Franchisee thirty (30) days to cure, unless such time to cure is extended by the City Attorney, before calling the surety bond or drawing upon the certificate of deposit or letter of credit.

SECTION 7. INSURANCE REQUIREMENTS. Franchisee shall maintain in full force and effect, for the full term of the franchise, at its own cost and expense, a commercial general liability insurance policy in the amount of \$1,000,000 per occurrence for bodily injury and property damage and \$3,000,000 general aggregate. In addition, Franchisee shall obtain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be included as an additional insured as their interest may appear under this Agreement on the commercial general liability insurance, and Franchisee shall provide the City with a Certificate of Insurance evidencing the City as an additional insured on the commercial general liability policy and extension or renewal thereof. Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days' prior written notice of such cancellation.

SECTION 8. NON-ASSIGNMENT.

(a) The rights granted by this franchise or any interest therein shall not be assigned or transferred to any other unrelated entity without the express written consent of the Mayor and Council. A written copy of any such proposed assignment must be filed with the City. Any required consent is to be evidenced by an ordinance or resolution of the Council that fully recites the terms and conditions, if any, upon which consent is given. No sale or transfer of the Agreement, as allowed hereunder, shall be effective unless and until the vendee or assignee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale or assignment, accepting the terms of this Agreement and agreeing to perform all the conditions thereof, and the City has approved said transfer, which approval shall not be unreasonably withheld. The City shall take action on such request for approval of transfer within sixty (60) days of filing of all information required by this section. This section shall not apply in connection with execution of secured financing agreements made by the Franchisee.

A copy of the completed sales or transfer agreement, or a functionally equivalent instrument between the Franchisee and proposed Franchisee, shall be provided on a confidential basis to the City

Attorney for review, so that the City may discover the assumption of obligations by the Franchisee and proposed Franchisee with respect to the fiber-based communications system.

After receipt of the petition for proposed transfer or assignment, the City Council may, as it deems necessary or appropriate, schedule a public hearing on the petition. Further, the City Council may review Franchisee's performance under the terms and conditions of this franchise. The Franchisee shall provide all requested assistance to the City Council in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all persons involved in said action.

Should the Franchisee sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under this franchise or attempt to do so in violation of this requirement to obtain prior consent, the City may revoke this franchise for default and the purported sale, transfer, assignment or conveyance shall be null and void. For purposes of clarity, Franchisee may assign, transfer or convey any of its rights or interest under this franchise without consent or approval of the City to any affiliated company, or if the assignment, transfer or conveyance is carried out as part of a merger, restructuring, or sale or transfer of all or substantially all of Franchisee's assets.

(b) Franchisee will not lease any part of its fiber optics system pursuant to this franchise to any other unrelated company for providing cable television services to subscribers or customers within the City unless the lessee holds a valid cable television franchise with the City.

(c) In the event of a change in majority control of Franchisee, the system or the franchise granted herein that occurs after the effective date of the franchise, by act of Franchisee, by act of any person holding control of the Franchisee, the network or the franchise granted herein, by operation of law, or otherwise, Franchisee shall provide reasonable notice to the City. The requirements of this section shall also apply whenever any change in partial ownership is proposed which would result in a change of majority ownership or control of Franchisee, the system, the franchise granted herein or of any person holding control of Franchisee or in the system or in the franchise, and any other event which could result in a change in majority ownership or control of Franchisee, regardless of the manner in which such ownership or control is evidenced (e.g., stock, bonds, debt instruments or other indicia of ownership or control).

SECTION 9. LOCATION AND CONSTRUCTION OF FACILITIES.

(a) Except as provided in Section 11, facilities maintained or installed by Franchisee within the City shall be so located and constructed as not to:

- (1) Interfere with usual travel (automotive and/or pedestrian) within the public rights-of-way;

- (2) Interfere with the rights or reasonable convenience of property owners who adjoin such public rights-of-way;
- (3) Interfere with access to or use of any water or fire hydrant;
- (4) Obscure the vision of or interfere with the installation of any traffic control device or traffic or information sign or signal;
- (5) Interfere with sight distance established by any ordinance or law;
- (6) Obscure the light from any street light;
- (7) Cross any water or sewer line except at a ninety degree (90°) angle, except in accordance with a specific permit for such crossing issued by the City;
- (8) Damage irrigation, landscaping or trees owned or maintained by the City;
- (9) Damage any communications lines owned or maintained by the City.

(b) Placement of facilities in the paved sidewalk area is prohibited unless authorized by the City.

(c) The City shall have authority to require Franchisee to remove or relocate any facility located in violation of this section at Franchisee's sole expense. Such relocation or removal shall be completed with thirty (30) days of written notice from the City. In the event that thirty (30) days is not sufficient, Franchisee may in writing request an additional thirty (30) days to accomplish the relocation. The notice shall prescribe the area where the facility is located and any other special conditions deemed necessary by the City.

(d) Map of Network. Upon request, the Franchisee shall provide to the City's GIS representative per instructions from the City its fiber optics location data in conformance with data definition standards defined by the City GIS staff. The fiber optics location data layer shall be incorporated into the GIS data dictionary and any appropriate Franchisee documentation. The City shall provide GIS data to serve as the base for the fiber optics location data. The City shall provide to the Franchisee existing data in a format agreed to by the City. Specific data layers that make up the base shall be defined in discussions with the Franchisee. At a minimum, the fiber optics location data layer shall represent the conduit duct banks, as well as overall size, material and configuration of the duct bank or any other underground burial and location of all aerial wiring. The fiber optics location data shall be returned to the City on the same type medium and format as previously identified.

After construction of new network facilities or extensions of existing network facilities, as a separate requirement, the Franchisee shall develop as built drawings and maps in a format as requested by the City and be provided to the City in that format.

SECTION 10. WORK IN PUBLIC RIGHT-OF-WAY: RESTORATION OF DAMAGED AREAS.

(a) Whenever Franchisee excavates or does other work in the public right-of-way, such excavation or other work shall be done in compliance with the laws and regulations of the City in effect at the time of such excavation or other work.

(b) Prior to the erection or installation by Franchisee of any poles, underground conduits, or fixtures for use in connection with the installation, construction, maintenance or operation of a fiber optics system, Franchisee shall obtain any required permits in accordance with City code.

(c) Franchisee shall not excavate or do other work in any public right-of-way unless Franchisee has applied for and received a written permit entitled "Street Cut Permit" from the City, or its designee, granting permission for such excavation or other work. The permit shall describe the area where the excavation and/or work is expected to be completed, the method of construction, the contractor performing the work and any other conditions. If directional boring, trenching or other excavation is the method of construction, detailed plans shall be submitted describing how the work will be performed so as not to damage other lines and conduit located in the right-of-way; provided that, to the extent possible Franchisee shall use trenchless technology for any portion of construction or maintenance of its facilities that lie beneath the paved or improved portion of any public right-of-way, unless otherwise approved by the City. If the installation utilizes facilities of another entity, Franchisee shall provide written authorization for use of such facilities prior to a permit being issued. If the excavation or other work requires closure of a street lane or sidewalk, Franchisee shall, five (5) working days prior to said closure, submit a Traffic Control Plan to the City for approval. In emergencies involving service outages, Franchisee shall proceed with all necessary operations without first obtaining the permit, but shall obtain the required permit at its earliest opportunity.

(d) Franchisee shall not open, disturb or encumber, at any one time, any more public rights-of-way than may, in the opinion of the City, be necessary to enable Franchisee to economically install or repair its facilities; nor shall Franchisee permit any public right-of-way to remain open, disturbed or encumbered for a longer period of time than shall, in the opinion of the City, be necessary.

(e) Immediately upon completion of repairs or installation of any facility, Franchisee shall refill and compact any trench or excavation to the standards required by the City and the State of Alabama Department of Transportation's "Standard Specifications of Roads and Structures." Promptly, and in no less than ten (10) business days after the completion of repair or installation, unless otherwise approved by the City, Franchisee shall restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material or other

materials or structure damaged in the course of its work to City standards at Franchisee's sole expense. In the event excavation or disturbance of special sidewalk pavement areas is necessary, Franchisee shall restore those areas to their preexisting conditions which restoration shall meet City standards. Failures within an area which has been disturbed, excavated or encumbered by Franchisee which are discovered within twelve (12) months of the restoration or replacement specified herein, shall be the responsibility of Franchisee pursuant to this provision.

(f) If Franchisee fails, neglects or refuses to refill any trench or excavation or to restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material, or other material or structure or to repair failed materials as specified herein, the City may do all or any part of the work that remains undone at the cost or expense of Franchisee. Failure of Franchisee to reimburse the City within thirty (30) days of the City's presentation of a bill for the costs shall result in denial of any permit request made by Franchisee until payment is made. City may, at its option, recover such amount from the performance bond, certificate of deposit, letter of credit or insurance required herein.

(g) In any case where a public right-of-way is being excavated, disturbed or encumbered by Franchisee, Franchisee shall take all precautions required by law, in particular, the Manual on Uniform Traffic Control Devices, or otherwise necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to give notice and warning to the public of the existence of actual conditions present. Nothing in this paragraph shall alter or waive any rights enjoyed by Franchisee or any other party under Alabama's underground damage prevention law (Ala. Code Title 37, Section 37-15-1, -11).

(h) Any construction project authorized by a specific permit shall be completed within one year from the date that any necessary permits are issued, provided that the City may allow reasonable extension due to weather or Acts of God, or other reasonable circumstances that in the sole discretion of the City justifies an extension of the project target completion date.

SECTION 11. USE OF STREETS.

(a) Franchisee understands that City prefers that underground installations shall be a last resort and require the consent of the City, which consent shall not be unreasonably withheld, delayed or denied, provided that installations may be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Franchisee may install its service above ground, provided that, at such time as those facilities are

required to be placed underground by the City, Franchisee shall likewise place its services underground without additional cost to the City. Where not otherwise required to be placed underground by this franchise agreement, Franchisee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground, private property and utilities. Franchisee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the City, County or State may deem proper to make;
- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; or
- (5) Not obstruct, hinder or interfere with any gas, electric, traffic control, water or telephone facilities or other utilities located within the City.

(b) Work within right-of-way. The closing of any part of a publicly maintained street or right-of-way must be approved by the Department of Planning, Engineering and Permits, and may be prohibited during peak travel hours, 7-9 A.M. and 4-6 P.M., Monday through Friday. During repairs or improvements, traffic on streets must be maintained. Where full closing of the street is required, the request for approval must be by the Planning, Engineering and Permits Department and Traffic Engineering is to be notified as soon as possible. All closings are to be protected with signage in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).

(c) Removal of City Property. No City property is to be removed from the right-of-way, including signage on utility poles, without proper permission from the City Department of Planning, Engineering and Permits and Department of Traffic Engineering.

SECTION 12. ACQUISITION OF RIGHT-OF-WAY. In acquiring or widening public rights-of-way, the City shall determine the minimum right-of-way necessary to accommodate paved streets,

pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities.

SECTION 13. RELOCATION OF FACILITIES.

(a) Wherever a public right-of-way or other public property is being constructed, paved (whether or not such paving is part of a more extensive improvement project), resurfaced, relocated or otherwise altered or improved (including, but not limited to, the installation of sidewalk, curb, gutter, drainage facilities, water mains, or sewer mains, traffic signals or trees), Franchisee shall, within ninety (90) days of written notice from the City and at no cost (direct or indirect) to the City, remove or relocate any of Franchisee's facility located within such public right-of-way or public property or perform such work as it deems necessary for the extension of new facilities. Nothing in this franchise is intended to eliminate or waive any right Franchisee may have to reimbursement under applicable law or the terms of any public funding grant for a project.

If Franchisee believes it will be unable to complete the relocation within ninety (90) days from receipt of notice from the City, Franchisee shall explain the reasons for its inability in detail and City and Franchisee shall attempt to agree on an alternate schedule, subject, however, it is the City's right to finally determine the schedule, as long as its decision is not unreasonable.

SECTION 14. TREES. Trimming of the trees and shrubbery within the public right-of-way to prevent contact with Franchisee's facilities shall be done only in accordance with standards approved by the Director of Public Works. Removal or severe pruning of any tree or shrub, work on the surface within five (5) feet of any tree or shrub, and underground excavation within the drip line of a tree or shrub, which will require cutting of ten percent (10%) or more of the circumference of the root system, may be undertaken only in accordance with a specified permit obtained from the Director of Public Works and in compliance with the special conditions of such permit and other standards established by this franchise or other law. Where trees or shrubs in the public right-of-way are damaged as a result of work undertaken by or on behalf of Franchisee, Franchisee shall pay the City, within thirty (30) days of submission of a statement by the City, the cost of any treatment required to preserve the tree or shrub and/or cost for removal and replacement of the tree or shrub with landscaping of equal value and/or the value of the tree or shrub prior to the damage or removal as determined by the Director of Public Works or other authorized agent of the City Engineer.

The City may collect such damages through draw-down of the security required in Section 6, through the insurance required in Section 7 or through other means allowed by law.

SECTION 15. CONSTRUCTION STAFFING. During the franchise term, Franchisee shall have sufficient full-time supervisors on staff solely to supervise construction plans and the construction practices of subcontractors. The Franchisee shall provide the means for immediate notification and communication by the City with the supervisor in the field by means of a pager, cellular phone or other similar means of communication during all phases of construction. All construction work or any other work performed by Franchisee, its employees, agents, its duly licensed contractors and sub-contractors shall be in compliance with the plans and specifications approved by the City, and shall be subject to all applicable ordinances, rules and regulations, including licensing and permitting, as well as any licensing and permitting fees charged to all persons and businesses for construction and street opening.

SECTION 16. FRANCHISE NOT A JOINT VENTURE. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in the manner which would indicate any such relationship with the other.

SECTION 17. FRANCHISEE FEE; CONDITIONS.

(a) As consideration for this franchise, the Franchisee shall pay to the City an amount equal to five percent (5%) of the gross revenue, as defined herein, collected by the Franchisee.

(b) In consideration of the agreement of the Franchisee to make such franchise payments, the City agrees that no additional business license fee shall be imposed upon or required of the Franchisee by the City during the term of this franchise. This provision shall not exempt the property of the Franchisee from lawful ad valorem taxes and local improvement district assessments. This provision shall also not exempt the Franchisee from conditions, exactions, fees and charges, which are generally applicable during Franchisee's real property development or use as required by the City's ordinances.

(c) Commencing the month following the month this franchise becomes effective, the franchise fee shall be paid quarterly on the 20th day of April, July, October and January; such fee shall be for revenues received by the Franchisee for the preceding quarter. The Franchisee shall furnish to the City with each payment of compensation required by this section a written statement, showing the amount of gross revenue of the Franchisee within the City for the period covered by the payment. Such statement will be accorded confidential treatment to the extent permitted by law. Upon receipt of such payment the City shall issue a receipt to the Franchisee. Nothing herein shall preclude the Franchisee and the City from agreeing to a revised payment schedule.

(d) On or before the first (1st) day of February of each succeeding year, the Franchisee shall submit to the City, a statement of the franchise fee actually due to the City based upon the actual gross revenue for the previous calendar year, together with a check for any amount due from the Franchisee or a statement for any amount due from the City. Such statement will be accorded confidential treatment to the extent permitted by law.

(e) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

(f) As used in this section, gross revenue shall mean all revenues (exclusive of sales tax) collected by Franchisee from the provision of telecommunications services pursuant to this franchise within the corporate limits of the City, including, but not limited to:

- (1) All revenues from installation service charges,
- (2) All revenues from connection or disconnection fees,
- (3) All revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid, and penalties, interest or charges for late payment,
- (4) All revenues from equipment sold or rented to customer upon customer premises,
- (5) All revenues from authorized rental of conduit space located within the corporate limits of the City,
- (6) All recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from gross revenue, and
- (7) The value of any free services provided by Franchisee except (1) those free services required under this agreement; (2) services provided as a credit against non-recurring charges imposed on Franchisee's customers by a local exchange carrier for converting circuits to Franchisee.

Notwithstanding the foregoing, gross receipts *does not include*: (i) Any tax of general applicability imposed upon the Franchisee; (ii) any regulatory fees or surcharges collected from customers as well as amounts reflecting cost-recovery of regulatory fees and surcharges (iii) those revenues that the Franchisee receives from another telecommunications service provider and upon which the other telecommunications service provider has paid or will pay a franchise fee; (iv) pass through revenues which are in turn paid to a local exchange carrier for

interconnection for long distance service; and (v) revenues that the Franchisee receives from its corporate parent, or any subsidiary or affiliate.

Payment of money under this section shall in no way limit or inhibit any of the privileges or rights of the City of Vestavia Hills, whether under this franchise or otherwise. Nothing in this Section 17 is intended to alter, amend modify or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under this franchise under applicable law. Except as provided elsewhere in this franchise, all payments made by franchisee to the City pursuant to this franchise shall be made to the Director of Finance. Nothing in this Agreement shall be construed to prevent Franchisee from passing through some or all of the franchise fee to its customers.

Any transactions which have the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by non-collection or non-reporting of gross receipts, bartering, or any other means which evade the actual collection of revenues for business pursued by Franchisee are prohibited and may constitute a default of this agreement.

If as a result of such audit or any other review, the City determines that the Franchisee has underpaid its fees by ten percent (10%) or more for any twelve (12) month period, then in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants.

The City may collect the costs associated with such audit or review either through the draw-down of the security required in Section 6, or through other means as allowed by law.

If as a result of such audit or other review, the City determines that the Franchisee has underpaid its fees for any twelve (12) month period, the Franchisee shall pay interest on such underpayment at the rate of ten percent (10%) interest or prime plus two percent (2%), whichever is greater. The underpayment and interest thereon may be collected by the City through the drawdown of the security required in Section 6, or through other means as allowed by law.

SECTION 18. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS.

(a) Franchisee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Franchisee's network, Franchisee's accounting methods and procedures in connection therewith, and the recording and reporting by Franchisee of all revenues and uncollectibles.

(b) Franchisee shall keep complete and accurate books of account and records of its business and operations pursuant to this franchise agreement in accordance with generally accepted accounting principles, subject to approval by the City.

(c) Franchisee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review, and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Franchisee pertaining to this franchise. Franchisee shall fully cooperate in making available its records and otherwise assisting in these activities.

(d) The City may, at any time, make inquiries pertaining to Franchisee's operation of its network within the City of Vestavia Hills. Franchisee shall respond to such inquiries on a timely basis.

SECTION 19. NATURE OF FRANCHISE FEE PAYMENTS.

(a) Nothing in this Section is intended to alter, amend, modify or expand the taxes and/or fees that may lawfully be assessed on Franchisee's business activities under this franchise pursuant to applicable law.

(b) The payment of a franchise fee by the Franchisee in no way limits the right of the City to charge fees for any permits the Franchisee is required to obtain for any construction project.

SECTION 20. FORFEITURE AND TERMINATION.

(a) In addition to all other rights and powers of the City, the City reserves the right to forfeit and terminate this franchise and all rights and privileges of the Franchisee in the event of a material or substantial breach of its terms and conditions including, but not limited to, the following:

- (1) The appointment of a receiver or trustee in bankruptcy to take over and conduct the business of the Franchisee;
- (2) A failure to begin construction of the fiber optics system within twelve (12) months of the effective date of this franchise;
- (3) A failure to provide insurance, bonds, certificates of deposit or letters of credit as required herein;
- (4) A failure to pay the required franchise fee or provide to the City as required herein;
- (5) Permitting the use of its fiber optics system or facilities in any manner that would avoid or seek to avoid the need for a franchise with the City for the business of another person; or
- (6) A failure to operate the fiber optics system for a period of six (6) months.

(b) The Franchisee shall not be excused by mere economic hardship, nor by nonfeasance or malfeasance of its directors, officers, agents, subcontractors or employees.

(c) The City shall notify the Franchisee in writing of any breach specifying the nature of the breach. The Franchisee shall have thirty (30) days after the date of such notice to come back into compliance unless such period is extended by the City Attorney. Should the Franchisee fail or refuse to comply with the notice given by the City, the City may consider the franchise in default and pursue remedies as it determines. If the remedy elected by the City is to forfeit and terminate this franchise, the Franchisee may request an appeal of such decision to the Council of the City of Vestavia Hills which appeal must be filed in writing with the City Clerk no later than ten (10) days after the date of written notice of forfeiture and termination to the Franchisee. The Council shall set a public hearing on such appeal within thirty days after notice of appeal is received.

SECTION 21. REMEDIES AND PENALTIES NOT EXCLUSIVE. All remedies and penalties under this franchise are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penalty provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee by or pursuant to this franchise. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by or pursuant to this franchise shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

For any period of performance or cure under this Agreement, the time period within which Franchisee is to perform or cure, as the case may be, shall be extended, without liability to Franchisee, for at least as long as Franchisee's ability to perform or cure is delayed for reasons beyond Franchisee's control provided that Franchisee shall employ all commercially reasonable efforts to eliminate or mitigate the impact of said reasons and to thereafter reasonably accelerate, where feasible, its performance or cure.

Prior to taking any adverse action against Franchisee or this franchise, City shall provide Franchisee with such notice and due process, including a reasonable period of time to cure, as is required by applicable law, but in all cases no less than reasonable notice and opportunity to cure.

SECTION 22. CONTINUING OBLIGATION. In the event the Franchisee continues to operate all or any part of the network after the terms of this franchise agreement expire or are terminated, and before any renewal of the franchise by the City, then the Franchisee shall continue to comply with all applicable provisions of this franchise, including, without limitation, all compensation and other payment provisions of this franchise, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this franchise.

SECTION 23. LIMITATION ON PRIVILEGES. All rights, authority and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the rights-of-way and other public ways of the City are not to operate in any way so as to be an enhancement of the franchise's properties or values or to be an asset or item of ownership in any appraisal thereof.

SECTION 24. CONFIDENTIALITY.

To the fullest extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information, including maps, submitted to or made available by the Franchisee to the City under this Agreement, provided that the Franchisee notifies the City of, and clearly labels, the information which the Franchisee deems to be confidential, proprietary information as such. Such confidential, proprietary information shall include, but not be limited to any customer names and lists, financial information, technical information or maps regarding placement of equipment with the exception of any map(s) attached to the Agreement, or other information clearly identified as "Confidential" pertaining to services provided to its customers. Confidential, proprietary information disclosed by Franchisee to the City shall be regarded as confidential, proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify Franchisee of such request and allow Franchisee a reasonable opportunity to defend its information from disclosure.

SECTION 25. CAPTIONS. The captions given to various provisions of this franchise are for purposes of convenience only and are to have no impact upon the interpretation of any such provisions.

SECTION 26. ENTIRE AGREEMENT. This franchise, with its exhibits, comprises the entire agreement between the City and the Franchisee for purposes of this franchise and supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof.

SECTION 31. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. Franchisee shall, at all times during the term of its franchise, be subject to the present ordinances, resolutions, rules, regulations, and laws of the City of Vestavia Hills and of the State of Alabama, and to

the provisions of any further ordinance, resolution, rule, regulation, or law of the City or of the State of Alabama, so far as they may be applicable.

SECTION 32. ALABAMA LAW GOVERNS. In any controversy or dispute under this franchise, the laws and jurisdiction of the State of Alabama shall apply to the extent such law has not been superseded or preempted.

SECTION 33. NOTICE. Any notice required or permitted under this franchise shall be deemed given if sent by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the City:

City of Vestavia Hills
Attn. City Manager
1032 Montgomery Highway
Vestavia Hills, AL 35216

To the Franchisee:

MCImetro Access Transmission Services Corp.
Attn: Franchise Manager
600 Hidden Ridge
Irving, TX 75038

With copies to (except for invoices):

Verizon
1320 N. Courthouse Road, Suite 900
Arlington, VA 22201
Attn: Vice President and Deputy General Counsel

or such other address as may be designated in the future in writing by either party.

SECTION 34. EFFECTIVE DATE AND PUBLICATION. After the execution hereof, this franchise shall be published once in a daily newspaper published in the City of Vestavia Hills at Franchisee's expense, and shall not take effect until such publication or thirty (30) days after the Ordinance authorizing this franchise, whichever is later.

SECTION 35. MODIFICATION. This franchise, including all documents specifically incorporated herein, cannot be changed orally but only by an agreement in writing properly executed by the parties.

SECTION 36. SEVERABILITY. Should any part, term or provision of this franchise be held invalid or unenforceable by any court of competent jurisdiction, such part, term, or provision shall be deemed a separate, distinct and independent provision and such holding shall not invalidate or render unenforceable any other provision of this franchise.

SECTION 37. RIGHT TO NOTICE AND CURE. Other provisions herein to the contrary notwithstanding, prior to exercising its right to terminate or revoke this Agreement as provided herein, the City shall first give written notice to Franchisee setting out the circumstance or basis on which the City has the right to terminate or revoke this Agreement, and the Franchisee shall have a period of thirty (30) days after the receipt of the notice within which to cure, correct, or resolve the circumstance or basis, and if the Franchisee is successful in the cure, correction, or resolution thereof, then the City shall not exercise its right to terminate or revoke this Agreement. If the Franchisee has commenced the cure, correction or resolution within thirty (30) days after its receipt of notice, but additional time is necessary to the completion thereof, then Franchisee shall have an additional thirty (30) days or such addition time upon which the parties can agree, not to be unreasonably withheld by either party, to accomplish the cure, correction, or resolution.

ADOPTED and APPROVED by the City Council of the City of Vestavia Hills, Alabama on this the 24th day of September, 2018.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

IN WITNESS WHEREOF, the parties have executed this franchise as of the _____ day of _____, 20____.

CITY OF VESTAVIA HILLS, a municipal corporation

By: _____
Its: Mayor

By: _____
Its: City Manager

ATTEST

City Clerk

(Franchisee)

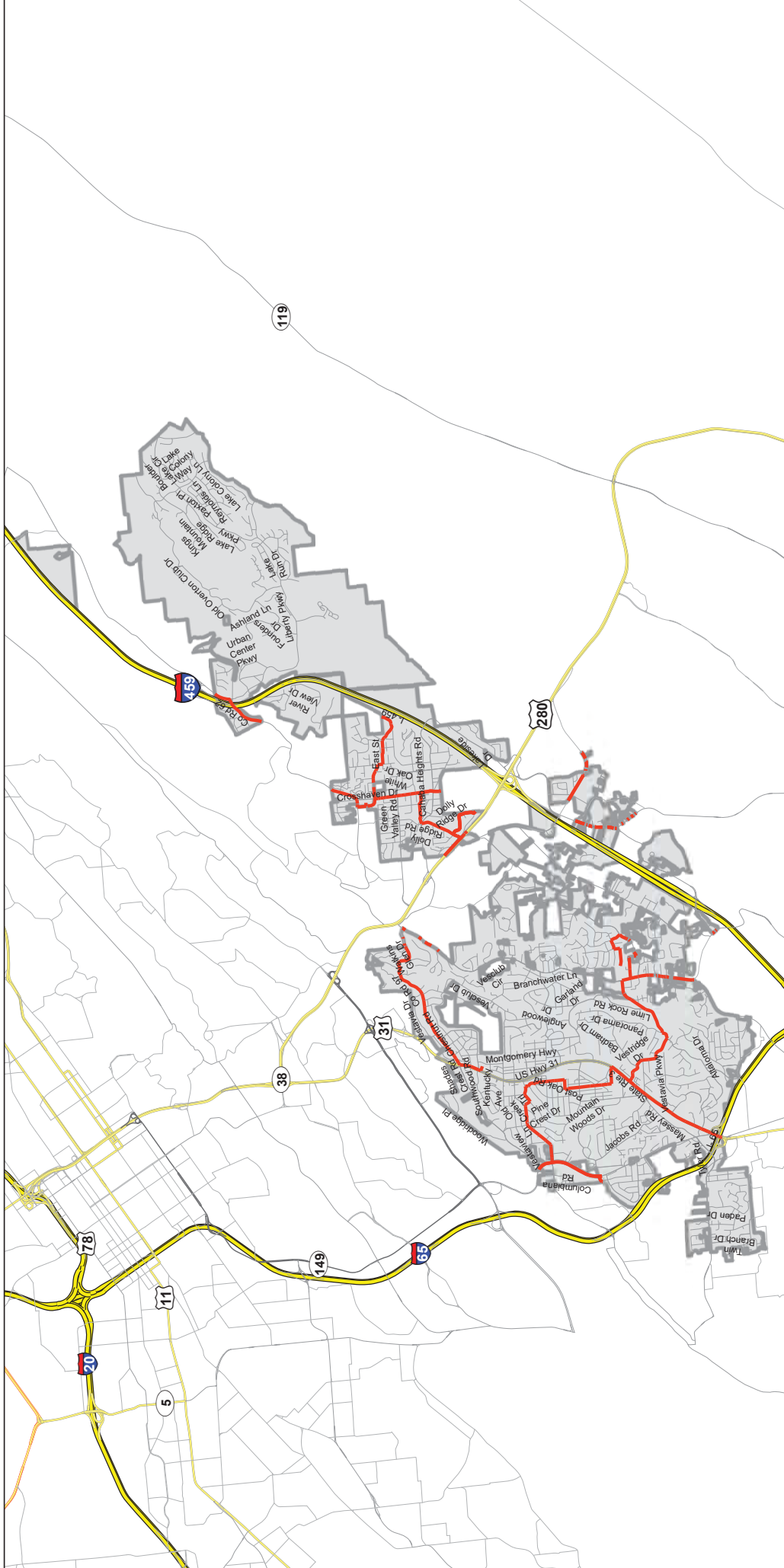
By: _____
Its: _____

Witness

EXHIBIT 1

(Build-Out Plan)

**MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services
License Area Proposed Fiber Routes
City of Vestavia, AL**



Legend

- Proposed Lines - 104,073 Linear Ft
- Vestavia Hills

Note: This is a PRELIMINARY VIEW only
Final design not yet completed, thus routes subject to change.
Cables shown in Red represent backbone fiber to existing or new cell sites. Not shown above are additional laterals off backbone cables to be determined to serve business customers along the routes.

NTS

Confidentiality Statement: Confidential and proprietary materials for authorized Verizon personnel and outside agencies only. All other information shown on this map is not permitted to any unauthorized persons or their parties except by written agreement.
Data Source: VZB
Projection: GCS_VGS_1984
Map Created: 10/30/17
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May 29, 2018

By Hand Delivery

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

In Re: McImetro Access Transmission Services Corp.
d/b/a Verizon Access Transmission Services

Dear Mr. Downes:

McImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services ("Verizon") has submitted a proposed Franchise Agreement ("agreement"), which if approved by the City of Vestavia Hills, Alabama ("City") would allow Verizon to operate a fiber-based communication system within the City for a period of fifteen (15) years and three (3) automatic successive renewal terms of five (5) years each. You have requested that I review the proposed agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. ALABAMA LAW

At the outset, I want to furnish you with some of the Alabama laws applicable to Franchise Agreements with utility companies and other parties that use public streets.

A. DEFINITION: A franchise is a contract (*Phoenix City v. Alabama Power Company*, 239 Ala. 547, 195 So. 894 (1940)).

B. AUTHORITY: Title 11-40-1, *Code of Alabama, 1975*, declares municipalities bodies corporate and gives them the power to contract and be contracted with forming the basis of franchise agreements.

C. MAXIMUM TERM OF FRANCHISE: Section 228 of the *Alabama Constitution of 1901*, sets a maximum term of a franchise in cities over 6,000 of 30 years.

D. FRANCHISE MUST BE NONEXCLUSIVE: Section 22 of the *Alabama Constitution of 1901* in essence prohibits exclusive grants of franchises, as well as irrevocable or non-alterable franchises.

E. USE OF PUBLIC STREETS:

1. **Section 220 of Alabama Constitution of 1901:** This Constitutional provision prohibits any person or firm from using municipal streets or public places of a city for the construction or operation of a public utility or private enterprise without city consent. This statute is the principal authority for municipal franchising of public utilities and companies engaged in the business of cable television and fiber based communication systems.

2. **Title 11-49-1, Code of Alabama, 1975:** This statute is the companion to Section 220 of the *Alabama Constitution of 1901* concerning general franchising authority of municipalities. Fundamentally, it prohibits any person, firm, association or corporation from using the streets, alleys or other public places of a city or a town with the construction or operation of any public utility or private enterprise without first obtaining the consent of the proper authorities of said city or town.

3. **Title 11-49-3, Code of Alabama, 1975:** This statute, in essence, grants to municipalities, the authority to require any public utility using the streets to prescribe the manner in which they will use them.

4. **Title 11-43-62, Code of Alabama, 1975:** This statute similarly authorizes the municipal council to regulate the use of streets for the erection of telegraph, telephone and electric and all other systems of wires and conduits, and authorizes the municipality to acquire the same to be placed underground if deemed necessary for the public convenience and safety, and generally to control and regulate the use of streets for any and all purposes.

F. MAXIMUM AMOUNT OF PRIVILEGE OR LICENSE TAX: Title 11-51-129, *Code of Alabama, 1975*, provides that the maximum amount of privilege or license tax, which a municipality within the State of Alabama may annually assess and collect of entities operating a water works company, a power company and a gas company shall not exceed three percent (3%) of the gross receipts of the business done by the utility in the municipality during the preceding year.

G. REGULATION OF RATES: Title 37-1-31, et seq., *Code of Alabama, 1975*, gives to the Public Service Commission (PSC) the sole right to control the rates, service regulations and equipment of utilities and gives it jurisdiction over the same and not cities.

H. POWER TO REQUIRE REPAIR OF STREETS: Title 37-1-35, *Code of Alabama, 1975*, reserves certain powers to municipalities such as control of streets and highways, the right to limit and require utilities to maintain and pave portions of streets and the right of cities to adopt regulations to protect the public in regard to the utility.

I. FRANCHISE FEES FOR CABLE COMPANIES: Municipalities have the authority to charge entities operating cable companies up to a five percent (5%) franchise fee on all gross revenues derived from the provision of services within the City (47 U.S.C. §542).

II. PRESENT FRANCHISE AGREEMENTS

According to City Clerk Rebecca Leavings, the City is a party to the following Franchise Agreements:

<u>Name of Company</u>	<u>Type of Business</u>	<u>Ordinance Number</u>	<u>Date</u>	<u>Franchise Fee</u>
Southern Light	Dark Fiber	Ord. 2558	4/13/15	5%
Bham Water Works	Water	Ord 2136	1/18/06	3%
Marcus Cable d/b/a Charter	Cable	Ord 1866	2/05/01	5%
TCI Cablevision	Cable	Ord 1844	10/02/00	5%
BellSouth Interactive Media Services	Media/Cable	Ord 1570	10/02/95	5%
Alabama Gas	Gas	Ord 1239	11-18-91	1%
Alabama Power	Power	Ord 1218	06/17/91	3%

III. FRANCHISE AGREEMENT FOR SOUTHERN LIGHT

On March 9, 2015, the City Council of the City of Vestavia Hills, Alabama (“City”) approved and adopted Ordinance Number 2558, which granted to Southern Light, LLC a non-exclusive right-of-way use agreement granting the limited authority to construct a fiber-optic transmission line in the City.

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

Some of the important provisions of the Southern Light, LLC franchise are set forth below.

“Section 3. Compensation. Five percent (5%) of its gross receipts.

Section 12. Insurance. One Million Dollars (\$1,000,000.00) for bodily injury and property damage per person and Three Million Dollars (\$3,000,000.00) as to each occurrence.

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

Section 9. Public Use Pathways: Southern Light, LLC agreed to unrestricted use by the City for non-commercial public purposes only, at no cost to the City, of two (2) fiber strands along the backbone of its fiber optic system.”

IV. PROPOSAL BY VERIZON

Some of the important provisions of the Verizon agreement are set forth below.

“Section 17. Franchise Fee; Conditions

a) Three percent (3%) of the gross revenue for first three (3) years; four percent (4%) of the gross revenue for the following three (3) years; and five percent (5%) of the gross revenue for the remainder of the term of the franchise.

Section 7. Insurance:

(1) One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury and for real property damage.

(2) One Million Dollars (\$1,000,000.00) general aggregate.

Section 10. Work in Public Right of Way. Restoration of Damaged Area.

(c) Franchisee shall not excavate or do other work in any public right-of-way unless Franchisee has applied for and received a written permit entitled “Street Cut Permit” from the City.... If directional boring, trenching or other excavation is the method of construction, detailed plans shall be submitted describing how the work will be performed so as not to damage other lines and conduit located in the right of way.... If the excavation or other work requires closure of a street lane or sidewalk, Franchisee shall, five (5) working days prior to said closure, submit a Traffic Control Plan to the City for approval.

Section 11. Use of Streets.

(a) All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Franchisee may install its service above ground, provided that, at such time as those facilities are required to be placed underground by the City, Franchisee shall likewise place its services underground without additional cost to the City. Where not otherwise required to be placed underground by this franchise agreement, Franchisee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground, private property and utilities."

Public Use Pathways: None provided for.

V. MY RECOMMENDATIONS

If the City awards a franchise to Verizon, then in such event I recommend that the following changes be made to the agreement in substance as follows:

- A. That the franchise fee be an amount equal to five percent (5%) of the gross receipts.
- B. That the insurance limits be a minimum of One Million Dollars (\$1,000,000.00) for bodily injury and property damage per person and Three Million Dollars (\$3,000,000.00) as to each occurrence.
- C. That underground installation shall be a last resort and only upon consent of the City. I further recommend that Verizon be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any right-of-way unless otherwise approved by the City.

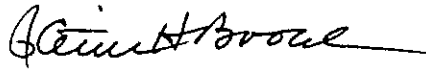
I base my legal opinion upon the following:

The equal protection clause does not deprive government of its police powers to pass statutes for the protection of public health, safety, morals and for the general welfare. In such matters, the legislative body has wide discretion as long as the acts have an equal and uniform application to all persons similarly situated. When the act does not apply equally and uniformly to all who are similarly situated or there is no reasonable basis for the classification, it is in violation of the Fourteenth Amendment to the Federal Constitution. *Hale v. State*, 217 Ala. 403, 116 So. 369; *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369.

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

Sincerely,

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

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp
cc: City Clerk Rebecca Leavings (by hand)