

**Vestavia Hills  
City Council Agenda  
May 13, 2019  
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Jim Cartledge, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
6. Proclamation – National Public Works Week – May 19-25, 2019
7. Proclamation – National Police Week – May 12-18, 20
8. Proclamation – Peace Officers Memorial Day – May 15, 2019
9. City Manager’s Report
10. Councilors’ Reports
11. Financial Report – Melvin Turner, III, Finance Director
12. Approval of Minutes – April 10 & 16, 2019 (Work Session); April 15, 2019 (Work Session) and April 22, 2019 (Regular Meeting)

**Old Business**

13. Ordinance Number 2840 – Conditional Use Approval – 1506-1514 Montgomery Highway; Royal Automotive; Conditional Use Approval To Allow Lamar Advertising To Dismantle Sixteen Billboard Faces On Eight Free Standing Structures Within The City Limit Of The City Of Vestavia Hills And Allow The Erection And Operation Of An Free Standing Billboard Structure With Two Faces – One Face Reading To I-65 And The Other Reading To Montgomery Highway (*public hearing*)
14. Ordinance Number 2846 – An Ordinance Changing Polling Places In The City From The Cahaba Heights Senior Center To The Cahaba Heights Baptist Church (*public hearing*)

**New Business**

15. Citizen Address To The City Council – Dennis Hardy

**New Business (Requesting Unanimous Consent)**

16. Ordinance Number 2848 - A Resolution Authorizing The City Manager To Execute And Deliver All Documents Needed In Order To Acquire Rights-Of-Way And Easements For

Improvements Along Crosshaven Drive pursuant to the Infrastructure and Community Spaces Plan (*public hearing*)

17. Resolution Number 5157 – A Resolution authorizing the City Manager to accept proposals for professional services for construction of a road to connect Blue Lake Drive with Timberlake Road (*public hearing*)
18. Resolution Number 5160 – A Resolution Authorizing The City Manager To Take All Action Necessary To Replace A 2.5 Ton Gas Pack Roof Top Air Conditional Unit At James F. Wyatt Fire Station Number 5 (*public hearing*)

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

19. Resolution Number 5158 – A Resolution Accepting A Bid For Construction Of A Pedestrian Tunnel Under Sicard Hollow Road (*public hearing*)
20. Resolution Number 5159 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement For CEI Services For A Pedestrian Tunnel Under Sicard Hollow Road Road (*public hearing*)
21. Citizen Comments
22. Motion For Adjournment

WHEREAS, public works services provided in our community are an integral part of our citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as water, sewers, streets and highways, public buildings, and solid waste collection; and

WHEREAS, the health, safety and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities, as well as their planning, design, and construction, are vitally dependent upon the efforts and skill of public works officials; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff public works departments is materially influenced by the people's attitude and understanding of the importance of the work they perform.

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 May 19 – 25, 2019 as

**NATIONAL PUBLIC WORKS WEEK**

in Vestavia Hills and call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our public works and to recognize the contributions which public works officials make every day to our health, safety, comfort and quality of life.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 1<sup>st</sup> day of May 2019.

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Ashley C. Curry  
Mayor

WHEREAS, the Congress and President of the United States have designated the week of May 12-19, 2019 as “National Police Week” and May 15 as “Peace Officers Memorial Day;” and

WHEREAS, the members of the Vestavia Hills Police Department play an essential role in safeguarding the rights and freedoms of the public and provide a critical public service to the community; and

WHEREAS, it is important that all citizens understand the challenges, duties, and responsibilities of their police department; and, that members of our Police Department recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression and intimidation; and

WHEREAS, it is well known and accepted that law enforcement is an inherently dangerous and demanding profession in which dedicated professionals knowingly place their lives in harm’s way to protect others who are unable to protect themselves.

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 May 12-18, 2019 and May 15, 2019 as

**NATIONAL POLICE WEEK  
and  
PEACE OFFICERS MEMORIAL DAY**

and hereby express our continued support of the Vestavia Hills Police Department and all peace officers throughout our nation in their efforts to build safer and more secure communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 1st day of May 2019.

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Ashley C. Curry  
Mayor



**CITY OF VESTAVIA HILLS**

**CITY COUNCIL**

**MINUTES**

**WORK SESSION**

**APRIL 10 & APRIL 16, 2019**

The City Council of Vestavia Hills met in a special called work session on this in the Executive Conference Room at 8:00 AM, following posting/publication as required by Alabama law. The Clerk checked the roll with the following:

**MEMBERS PRESENT:**

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

The Mayor called the work session to order. The following applicants were interviewed by the City Council:

8:00 AM	Mark "Todd" Bailey
9:00 AM	Scott S. Brown
10:00 AM	Jaclyn Hudson
11:00 AM	Corey Milner
12:00 PM	Lunch
1 PM	French McMillan
2 PM	Tealla Stewart

There being no further business, the work session recessed until 8:00 AM, April 16, 2019.

The City Council of Vestavia Hills met to continue a special called work session on this in the Executive Conference Room at 8:00 AM, following posting/publication as required by Alabama law. The Clerk checked the roll with the following:

**MEMBERS PRESENT:**

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

The Mayor called the meeting back to order. The following applicants were interviewed by the Council:

8:00 AM	Brian Demarco
9:00 AM	Jeffrey M. Florio
10:00 AM	Steven Shepherd

The Council discussed the candidates and their qualifications. Mrs. Cook indicated she would be calling references and people who knew the candidates well to gather as much information as possible about the candidates, before making her final selection, and suggested others do the same.

There being no further business, work session adjourned at 11:20 AM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## **CITY OF VESTAVIA HILLS**

### **CITY COUNCIL**

### **MINUTES**

### **WORK SESSION**

**APRIL 15, 2019**

The City Council of Vestavia Hills met in a regular scheduled work session on this day in the Executive Conference Room at 6:00 PM, following posting/publication as required by Alabama law. The Clerk checked the roll with the following:

**MEMBERS PRESENT:**

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

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Rebecca Leavings, City Clerk  
Brian Davis, Public Services Director  
Marvin Green, Fire Chief  
Cinnamon McCulley, Communications Specialist  
Jason Hardin, Police Captain  
Christopher Brady, City Engineer  
Umang Patel, Court Director

The Mayor called the work session to order.

### **MAYOR'S ASSOCIATION ACTIVITIES**

Mayor Curry gave a report on committees recently formed including a 9-1-1 Committee to promote regional cooperation for 9-1-1 services. He stated that was tried previously in the past with Vestavia Hills and some sister cities and ended with the City going to Shelby County for these services.

The Mayor stated that the Mayor's Association recently signed a "good neighbor pledge" to indicate that cities will not actively "poach" businesses from other cities in an effort to have them relocate to their city. He stated that he did sign off on that pledge and indicated that any incentive packages for businesses would have to be approved by the Council.

Mrs. Cook stated agreements must be approved by joint Resolution of the Council in order to bind the City.

### **OUTDOOR ADVERTISING**

The Mayor introduced Wayne Gillis, a resident of the City and an area expert on digital billboards.

Mr. Gillis described billboard advertising versus digital billboard advertising. He gave facts and figures on the construction, revenues, and purpose of electronic advertising.

The Mayor indicated that a request from Lamar will be on the next agenda and that he felt a little due diligence into electronic advertising would be beneficial to the Council in deciding that issue.

Mrs. Cook suggested that, given the high potential revenue of the digital sign, she thought we could do better than a 6:1 trade (traditional billboard: digital billboard) and asked if the Mayor and a member of the Council could meet with a Lamar representative to negotiate a deal more favorable to the City before the next meeting.

### **UPDATE ON COMMUNITY SPACES PLAN**

Mr. Downes and Raynor Boles, TCU, gave updates on the bidding for the Cahaba Heights renovations, saying bids will open soon and updates on other projects would follow at a later date.

Discussion ensued as to preference for artificial turf in order to curtail down field use time. Mr. Boles stated that the bidding would include a provision for artificial turf and the decision would be up to the Council when the figures are presented.

Mr. Boles gave an update on the Crosshaven ROW acquisition. He stated that this task has been turned over to attorney Martin Evans, and work is continuing under Mr. Evans's direction. He stated that appraisals and re-appraisals are being done because of the utilization of federal dollars in the project.

### **MUNICIPAL COURT TECHNOLOGY FUND**

Umang Patel, Court Director, addressed the Council and explained an ordinance revision that will appear on the next agenda, establishing a municipal court technology fund to offset purchase of a much-needed upgrade to the computer system for municipal court. He stated that this is not approval of an increase in revenue, but rather a diversion of existing revenue from the General Fund to this new fund.

## **PROJECT UPDATES**

Mr. Downes updated the Council on the following:

- Planned Road Construction Connecting Blue Lake Drive and Timberlake Drive
  - Mr. Downes briefed the Council on the latest negotiations concerning the road connection.
  - Property owners have agreed to pursue a mutually acceptable property conveyance to make this project a reality.
  - Funds to pay for survey, appraisal and engineering expenses would be needed to move this project to the next phase. Funds exist in the General and Gas Tax funds to handle such expenses. After initial evaluation, the project would be brought back to the City Council for consideration of full project approval. The Council concurred with this approach.
- Overton Road – APPLE Grant
  - The City of Mountain Brook has applied and received an APPLE planning grant to study traffic along Overton Rd. This included an emphasis on the Wellington Place neighborhood intersection. The City of Vestavia Hills will help offset the grant match for this project picking up \$4,000 expense with Mt Brook expending \$8,000.

There being no further business, the work session adjourned at 7:45 PM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## **CITY OF VESTAVIA HILLS**

### **CITY COUNCIL**

### **MINUTES**

**APRIL 22, 2019**

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 Curry called the meeting to order and the City Clerk called the roll with the following:

**MEMBERS PRESENT:**

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

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Patrick H. Boone, City Attorney  
Rebecca Leavings, City Clerk  
Melvin Turner, Finance Director  
George Sawaya, Asst. Finance Director  
Jason Hardin, Police Captain  
Johnny Evans, Police Captain  
Umang Patel, Court Director  
Marvin Green, Fire Chief  
Brian Davis, Public Services Director

Marlon Ellington, Vestavia Hills Chaplain, led the invocation followed by the Pledge of Allegiance.

### **ANNOUNCEMENTS, GUEST RECOGNITION**

- Mrs. Cook stated there is a school board work session and meeting next Monday beginning at 3:15 PM.
- Mr. Pierce recognized Chamber members Becky Abbott and Gary Jordan.
- The Mayor welcomed a group of high school students who were attending the meeting for their civics class.

**PROCLAMATION – NATIONAL GET ON BOARD DAY – APRIL 25, 2019**

The Mayor presented a proclamation designating April 25, 2019, as National Get On Board Day. Mr. Downes read the proclamation and the Mayor presented it Donald Harwell, the City's representative member to the BJCTA Board. He thanked Mr. Harwell for his service on this very important Board.

Mr. Harwell thanked the Council and indicated that Thursday is the day to ride the bus for free.

**PROCLAMATION – MUNICIPAL CLERKS WEEK – MAY 5-11, 2019**

The Mayor presented a proclamation designating May 5-11, 2019, as Municipal Clerk's Week. Mr. Downes read the proclamation and the Mayor presented it Rebecca Leavings, Municipal Clerk for the City in honor of the work she does in performance of her duties.

Mrs. Cook stated that, before she became a Councilor, she had no idea how many different duties a City Clerk actually performs. She commended Mrs. Leavings on her excellent work for the City and said Mrs. Leavings was an important part of the City staff team.

**CITY MANAGER'S REPORT**

- Mr. Downes highlighted the status some items of legislation progressing through the Alabama Legislature, including the Tier I/Tier II bill, which was supported by the City Council.
- Mr. Downes stated that he received the first batch of property appraisals for the offers of the rights-of-way for Crosshaven Drive. He stated that any questions concerning the offers from the appraisals should come to him and that he is leaning on these appraisals.

**COUNCILOR REPORTS**

- Mr. Pierce stated that he attended the last Chamber Board meeting, at which they began planning I Love America Day, which will be held at the Vestavia Hills High School, due to the construction at Wald Park.
- The Mayor announced the 29<sup>th</sup> Annual Mayor's Prayer Breakfast with keynote speaker, Micah McElveen of Vapor Ministries.
- Mr. Weaver stated that there are a number of zoning cases to be considered tonight which were considered by the Planning and Zoning Commission at a previous meeting.

**APPROVAL OF MINUTES**

The minutes of the following meeting were presented for approval: April 8, 2019 (regular meeting).

**MOTION** Motion to dispense with the reading of the minutes of the April 8, 2019 (regular meeting) and approve them as presented was by Mr. Weaver and second by Mrs. Cook. Roll call vote as follows:

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

**OLD BUSINESS**

**ORDINANCE NUMBER 2840**

**Ordinance Number 2840 – Conditional Use Approval – 1506-1514 Montgomery Highway; Royal Automotive; Conditional Use Approval To Allow Lamar Advertising To Dismantle Twelve Billboard Faces On Six Free Standing Structures Within The City Limit Of The City Of Vestavia Hills And Allow The Erection And Operation Of An Free Standing Billboard Structure With Two Faces – One Face Reading To I-65 And The Other Reading To Montgomery Highway (public hearing)**

**MOTION** Motion to approve Ordinance Number 2840 was by Mr. Weaver seconded by Mr. Pierce.

Tom Traylor, Lamar Advertising, was present in regard to this request.

The Mayor stated that he has had discussions with Mr. Traylor regarding this and has negotiated the removal of eight billboards instead of the original six. He stated that he is requesting that this item be delayed until May 13, 2019. He read the amended Ordinance as a first read. The Mayor opened the floor for a motion.

**MOTION** Motion to postpone consideration and public hearing of Ordinance Number 2840 was by Mr. Pierce and second was by Mr. Weaver. Roll call vote as follows:

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



**ORDINANCE NUMBER 2838**

**Ordinance Number 2838 – Conditional Use Approval – 3788 Crosshaven Drive; Lot 5 And The N 20’ Of Lot 4, Block 1, Glass’ 3<sup>rd</sup> Add To New Merkle; Conditional Use For Beekeeping; Installation And Maintenance Of Four (4) Beehives; St. Stephens Episcopal Church (public hearing)**

**MOTION** Motion to approve Ordinance Number 2838 was by Mr. Weaver seconded by Mrs. Cook.

Mr. Weaver stated that this request, to allow installation of four beehives, was heard by Planning and Zoning. He stated that the nearest residence is over 200’ away and the hives will have a 6’ fence around it. He stated it was unanimously recommended for approval by the Planning and Zoning Commission.

Chris Williams, member of St. Stephens Church, was present in regard to the request.

Mrs. Cook asked about the purpose of this requested use.

Mr. Williams stated that they would like to have a community garden there, eventually, and there are several members who are experienced in beekeeping, so they got together and wanted to use the property for this purpose.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Mayor Curry – yes

Motion carried.

**ORDINANCE NUMBER 2839**

**Ordinance Number 2839 – Conditional Use Approval – 1476 Montgomery Highway; Conditional Use Approval For The Purpose Of Automotive Sales, Automotive Services – Major And Minor, Including But Not Limited To Mechanical And Collision Repair; Serra Automotive (public hearing)**

**MOTION** Motion to approve Ordinance Number 2839 was by Mr. Weaver, seconded by Mrs. Cook.

No one was present in regard to this request.

Mr. Weaver stated that this came to Planning and Zoning with another extension. Previous dealerships have closed due to flooding and remedial steps have been taken to reduce flooding

risk. Serra wishes to reopen the dealership and this request was unanimously recommended for approval by the Planning and Zoning Commission.

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

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

### **ORDINANCE NUMBER 2835**

**Ordinance Number 2835 – Rezoning – 3984 And 3988 Natchez Drive; Lots 2 & 3, Block 1, Hermitage Forest 1<sup>st</sup> Sector; Rezone From Vestavia Hills R-4 To Vestavia Hills R-9; Arthur Powell, Owner (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2835 was by Mr. Weaver, seconded by Mr. Head.

Mr. Weaver explained that this request is to demolish two duplexes and build five single-family homes. The request was unanimously recommended for approval by the Planning and Zoning Commission.

Jason Kessler, developer, stated these will be single-family detached homes, with sewer connections. Each lot will be 47' X 150 with two-car main-level garages to allow on-site parking.

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

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

### **ORDINANCE NUMBER 2836**

**Ordinance Number 2836 – Rezoning – 3785 Glass Drive; Lot 29, Glass' 3<sup>rd</sup> Add To New Merkle; Rezoning From Vestavia Hills R-4 To Vestavia Hills R-9; Tucker And Company, LLC (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2836 was by Mr. Pierce, seconded by Mr. Weaver.

Mr. Weaver stated that this is a unique lot with a small flag line for sewer connection. Current specifications from Jefferson County Environmental Services does not allow their sewers to be located in an easement. This was unanimously recommended for approval.

Mr. Brady explained the purpose to request the R-9 zoning classification for this and the following property in order to construct a single-family home on each lot.

Jason Kessler was present in regard to this request.

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

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

### **ORDINANCE NUMBER 2837**

**Ordinance Number 2837 – Rezoning – 3784 Poe Drive; Lot 8, Block 3, Glass’ 3<sup>rd</sup> Add To New Merkle; Rezoning From Vestavia Hills R-4 To Vestavia Hills R-9; Jonathan B. Culver (public hearing)**

**MOTION** Motion to approve Ordinance Number 2837 was by Mr. Weaver, seconded by Mrs. Cook.

The Mayor stated that this property is adjacent to the property in the previous request and is the same type of request.

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

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

### **ORDINANCE NUMBER 2841**

**Ordinance Number 2841 - An Ordinance Amending Section 5 Of Ordinance Number 2427 And Section 10-14(E), Vestavia Hills Code Of Ordinances, Rep. 2013 Entitled “Educational Programs” (public hearing)**

**MOTION** Motion to approve Ordinance Number 2841 was by Mr. Weaver, seconded by Mr. Pierce.

Umang Patel, Court Director, explained that this establishes a court technology fund, which will be funded through a portion of the fees already collected from defensive driving. He estimates that this would put about \$25,000 into the fund each year to eventually help to upgrade the court’s computer system.

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

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

### **ORDINANCE NUMBER 2842**

**Ordinance Number 2842 – Annexation – Overnight – Magnolia Cove Subdivision; Lots 1 through 13; Chase Beard, et al, Owners (public hearing)**

**MOTION** Motion to approve Ordinance Number 2842 was by Mr. Weaver, seconded by Mrs. Cook.

Mr. Pierce stated that the 90-day annexation was begun, previously, and this is following that up with an overnight annexation.

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

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

### **NEW BUSINESS**

#### **RESOLUTION NUMBER 5152**

**Resolution Number 5152 - A Resolution appointing a member to the Vestavia Hills Board of Education**

**MOTION** Motion to approve Resolution Number 5152 was by Mrs. Cook, seconded by Mr. Weaver.

The Mayor opened the floor for a motion to amend in order to nominate an appointee.

Mrs. Cook read the following statement:

*“Before I make my motion, I want to share the process I went through in choosing the person who I will nominate.*

*I am the education liaison, so I spend a lot of time attending board meetings, PTO meetings and listening to my constituents about issues. I feel a **heavy responsibility** for this decision because I am more **passionate** about our schools than any other issue. It is **the reason** I ran for city council.*

*Because of this, I am committed to not just selecting a good candidate, but to choose the **very best candidate** for this time and this board.*

*People in our community could say about many of our candidates, “How could you not pick that person?”, and they would be right. We have a great pool of candidates, so it is not surprising that it is hard to make a choice.*

*I also think it is important for the community to understand **we can only pick one person to ultimately support**. This doesn't mean we don't find value and great qualifications in other candidates. I certainly hope our candidates realize this and know we appreciate their application.*

*What was our process?*

- *We received applications.*
- *We interviewed candidates.*
- *If I had questions, I contacted the candidates directly to get answers.*
- *I called references and listened to people in the community.*

*I worked hard to ask lots of questions so that we would have an accurate picture of the candidates. I wanted to make sure we had more than a snapshot—we wanted the full picture.*

*Then, at the end of a long two weeks, I made my decision, knowing full well that any applicant I chose would make some people happy and some people unhappy. I have found that choosing the best fit does not follow hard and fast rules—in any given year, it's all about what you value most, the needs of the board at the time and the degree to which you think a candidate meets those values.*

*What attributes and qualifications was I looking for this time? This is the most important question to answer first.*

*I wanted a board member who would **represent the community**. The board is an extension of the community and the council.*

*I wanted a candidate who would **approach issues objectively**, reach independent conclusions and then work with the board to achieve consensus--someone who would work as a part of a whole board team and not be afraid to speak up.*

*I wanted a candidate who clearly **understands current challenges** the board faces.*

*I wanted a candidate who would **promote transparency**, being an **ambassador** in the community and **asking questions** in board meetings so that the public can better understand board decisions and what is going on in our schools.*

*I wanted a candidate who demonstrated the ability think critically, to provide oversight and fulfill the board's fiduciary responsibility. I want someone who will dig into concerns and **not be shy about talking to the superintendent and rest of the board**—someone who would have the confidence to function as a full member of the board.*

*This is not a comprehensive list, but these are my top priorities. There are lots of other things that are pluses, but I've **got to have these strengths** in my candidate.*

*Weighing these priorities, I came to the conclusion that **Tealla Stewart** was my top pick.*

*What did I hear in Tealla's interview and from her references that stood out?*

- *She stated her first priority is to represent the people of VH and to be the eyes and ears of the superintendent in the community; she said she would work to promote open communication between the board and the council and make board processes as transparent as possible, while understanding there are some things that cannot be openly shared.*
- *She had the insight to know that some of the challenges our system faces are*
  - ***strategic planning** for future facility needs*
  - ***budgeting** for these future needs*
  - *ensuring a **smooth transition** with the opening of our new schools*
  - *the importance of **parity**--providing the same great experiences at all of our schools.*

*Of all the candidates, I thought she had the best understanding of the issues facing the board and had the right attitude about how she could help. She already understands the role of a board member and has demonstrated she works with the team. She may not have always agreed with decisions, but she helped present a united front to the community once a difficult decision was made.*

- *I closely questioned the community about Tealla and I am confident she is a boardsman of the highest caliber--ready to work with our team. Even though she faced some difficult situations in her previous tenure, the interim superintendent during that time said she worked with her board team to make some tough decisions, while staying within the bounds of the law and her proper role as a school board member. She didn't make these decisions individually, but as a member of a board—a team. Ultimately, these decisions got us out of a tough spot and led to the continuing success of our system. This shows leadership and courage.*
- *When discussing candidates, Councilor Head said, "Our system needs to move forward." It is not just the superintendent's job to move the system forward. He needs the support of a board that is paying attention, sharing observations and setting policies. Tealla understands the challenges and will not be shy about sharing with the superintendent behind the scenes to help him move our schools*

*forward. She will be open to discovering what the other board members think in making decisions.*

- *Our teachers and families want **stability and experience** at this time of transition in our schools. I attend the public meetings and I talk to parents; I know this is important. Tealla understands this too because she has been at those same meetings. She mentioned in her interview that, in her business, she has the opportunity to serve people from all parts of our city. Ordinarily, I would say, “**Give someone else a chance,**” but this is a time that wants experience and maturity. She has the perspective of a teacher, a board member, a business owner and an active member of the community.*
- *The council wants a person who understands that she is an **extension of this Council**. Tealla has said that she would be excited to work with each one of the councilors, as well as the community. **She understands the Council is a stakeholder too.***

*As I said at the beginning, choosing one is hard when there were many fine, qualified candidates, and I know we have individually wrestled with this decision. But, Tealla Stewart is the candidate I feel will best serve.*

*So, Council, at this time, I make a motion to appoint Tealla Stewart to fill the open seat on our school board and I ask for your support and consideration of my reasons for supporting her.”*

**MOTION** Motion to amend Resolution Number 5152 to nominate Tealla Stewart was by Mrs. Cook, seconded by Mr. Pierce. Roll call vote as follows:  
Mrs. Cook – yes                      Mr. Head – no  
Mr. Pierce – yes                      Mr. Weaver – no  
Mayor Curry – no                      Motion failed.

**MOTION** Motion to amend Resolution Number 5152 to nominate Steven Shepherd was by Mrs. Cook. Mrs. Cook cited reasons for her nomination. The Mayor passed the gavel to the Mayor Pro-Tem and seconded the motion. The Mayor Pro-Tem called for the question. Roll call vote as follows:  
Mrs. Cook – yes                      Mr. Head – no  
Mr. Pierce – no                      Mr. Weaver – no  
Mayor Curry – no                      Motion failed.

**MOTION** Motion to amend Resolution Number 5152 to nominate Jaclyn Hudson was by Mayor Curry, seconded by Mr. Head. The Mayor Pro-Tem called for the question. Roll call vote as follows:  
Mrs. Cook – no                      Mr. Head – yes  
Mr. Pierce – no                      Mr. Weaver – yes  
Mayor Curry – yes                      Motion carried.

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

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

The Mayor Pro-Tem passed the gavel to the Mayor.

### **RESOLUTION NUMBER 5153**

**Resolution Number 5153 - Alcohol License – Tazikis Mediterranean Café; 1425 Montgomery Highway, Suite 199; John Michael Bodnar, James Matthew Bodnar, Gerald Edison Rushton, Jr., Executives (public hearing)**

**MOTION** Motion to approve Resolution Number 5153 was by Mr. Weaver, seconded by Mrs. Cook.

Adam Calvert, Tazikis, explained the request for the license due to new restaurant.

Mr. Pierce asked about training of employees.

Mr. Calvert explained that they use an in-house training process called Create and stated that this is an ongoing training program and is primarily dedicated to front-end cashiers. He stated they plan to open April 30, 2019.

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

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

### **RESOLUTION NUMBER 5154**

**Resolution Number 5154 – A Resolution of the Mayor and City Council of the City of Vestavia Hills In Opposition To Proposed Senate Bill 264 Regarding Small Cell Technology**

**MOTION** Motion to approve Resolution Number 5154 was by Mr. Weaver, seconded by Mr. Pierce.

The Mayor gave a brief background of this proposed legislation and indicated this shows the Council's opposition to the legislation as it inhibits municipal powers to regulate the installation of these utilities and poles.



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

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

### **RESOLUTION NUMBER 5155**

#### **Resolution Number 5155 – A Resolution Changing The City Officials Designated And Authorized To Sign Checks And Drafts For Payments From City Of Vestavia Hills Accounts On Deposit In The Regions For The Court Bond Account**

Mr. Patel stated that this designates the magistrates within the courts that can sign checks from the City's bond account.

**MOTION** Motion to approve Resolution Number 5155 was by Mrs. Cook, seconded by Mr. Head.

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

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

### **RESOLUTION NUMBER 5156**

#### **Resolution Number 5156 – A Resolution Renaming The Street Magnolia Cove To Magnolia Cove Road**

**MOTION** Motion to approve Resolution Number 5156 was by Mr. Weaver, seconded by Mr. Pierce.

The Mayor stated that this Resolution renames Magnolia Cove to Magnolia Cove Road, which is the name used by the residents. This subdivision was annexed earlier in the meeting.

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

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

**ORDINANCE NUMBER 2844**

**Ordinance Number 2844 – Annual Jefferson County Tax Levy**

**MOTION** Motion to approve Ordinance Number 2844 was by Mr. Weaver, seconded by Mr. Head.

The Mayor explained that this is the annual tax levy authorizing Jefferson County to assess and collect municipal taxes pursuant to Alabama law.

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

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

**ORDINANCE NUMBER 2845**

**Ordinance Number 2845 – Annual Shelby County Tax Levy**

**MOTION** Motion to approve Ordinance Number 2845 was by Mr. Weaver, seconded by Mr. Head.

The mayor explained that this is the annual tax levy authorizing Shelby County to assess and collect municipal taxes pursuant to Alabama law.

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

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

**NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)**

**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 May 13, 2019, at 6:00 PM.

- Ordinance Number 2846 – An Ordinance Changing Polling Places In The City From The Cahaba Heights Senior Center To The Cahaba Heights Baptist Church (*public hearing*)
- Ordinance Number 2840 – Conditional Use Approval – 1506-1514 Montgomery Highway; Royal Automotive; Conditional Use Approval To Allow Lamar Advertising

To Dismantle Sixteen Billboard Faces On Eight Free Standing Structures Within The City Limit Of The City Of Vestavia Hills And Allow The Erection And Operation Of An Free Standing Billboard Structure With Two Faces – One Face Reading To I-65 And The Other Reading To Montgomery Highway (*public hearing*)

**CITIZEN COMMENTS**

Patrick Dewees, 3068 Asbury Park Place, asked about the moving of the polling place in Cahaba Heights to the Cahaba Heights Baptist Church and wanted to ensure that residents knew to go there for both general and municipal elections.

The Mayor stated that this polling place mirrors the County's polling place and should be for all elections for those who normally vote at New Merkel House.

Mrs. Leavings stated that Jefferson County would be notifying the affected voters.

At 7:00 PM, Mr. Weaver made a motion to adjourn. The meeting adjourned at 7:01 PM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**ORDINANCE NUMBER 2840**

**AN ORDINANCE GRANTING CONDITIONAL USE APPROVAL ON THE PROPERTY LOCATED AT 1506-1514 MONTGOMERY HIGHWAY; ROYAL AUTOMOTIVE, OWNERS; CONDITIONAL USE APPROVAL TO ALLOW LAMAR ADVERTISING TO DISMANTLE FOURTEEN BILLBOARD FACES ON SEVEN FREE STANDING STRUCTURES WITHIN THE CITY LIMITS OF THE CITY OF VESTAVIA HILLS AND TWO BILLBOARD FACES ON A SINGLE STRUCTURE LOCATED JUST BEYOND THE CORPORATE LIMITS OF THE CITY OF VESTAVIA HILLS IN ORDER TO ALLOW THE ERECTION AND OPERATION OF AN FREE STANDING BILLBOARD STRUCTURE WITH TWO ELECTRONIC DIGITAL FACES – ONE FACE READING TO I-65 AND THE OTHER READING TO MONTGOMERY HIGHWAY**

**WHEREAS**, on December 13, 2010, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 2331, also known as the City of Vestavia Hills Zoning Code; and

**WHEREAS**, Gregory L. Belcher, Royal Automotive, Inc., are owners of the property located at 1506-1514 Montgomery Highway zoned Vestavia Hills B-3 (business district); and

**WHEREAS**, Royal Automotive, Inc., has offered to lease to Lamar Advertising an area of the above referenced property for erection of a billboard for a period of ten years; and

**WHEREAS**, Tom Traylor, Lamar Advertising, presented an application for Conditional Use approval for the purpose of erecting a new freestanding billboard structure upon the property located at 1506-1514 Montgomery Highway for the purpose of digital advertising; and

**WHEREAS**, Lamar Advertising has indicated that said Conditional Use approval shall be conditioned upon the dismantling and permanent removal of sixteen existing billboard faces on eight freestanding structures located in other areas within and near the corporate limits of the City; and

**WHEREAS**, a copy of the application for Conditional Use approval by Lamar Advertising detailing the locations of the structures to be removed, the existing structures to remain within the City and information concerning the new freestanding structure to be

constructed is marked as Exhibit A, attached to and incorporated into this Ordinance Number 2840 as though written fully therein.

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

1. Conditional Use Approval is hereby granted for Lamar Advertising to dismantle and permanently remove sixteen billboard faces on eight existing billboard structures located in various areas of the City and just outside the corporate boundaries as detailed in the attached Exhibit A and, upon doing so, to construct and operate a single billboard structure with two digital faces – one face to read to I-65 northbound traffic and the other to read to Montgomery Highway south bound traffic; and
2. Conditional Use approval for the new structure shall be considered null and void if, for any reason, the dismantle and permanent removal of the structures to be removed and construction of the new structure are not substantially completed within 12 months of the effective date of this Ordinance Number 2840; and
3. Should the new structure cease to exist or operate on the property for a period of twelve (12) consecutive months, said use shall be considered null and void and said structure shall be immediately removed; and
4. This Ordinance Number 2840 shall become effective immediately upon adoption, approval and publishing/posting pursuant to Alabama law; and

**DONE, ORDERED, ADOPTED and APPROVED** this the 13<sup>th</sup> day of May, 2019.

Rusty Weaver  
Mayor Pro-Tem

ATTESTED BY:

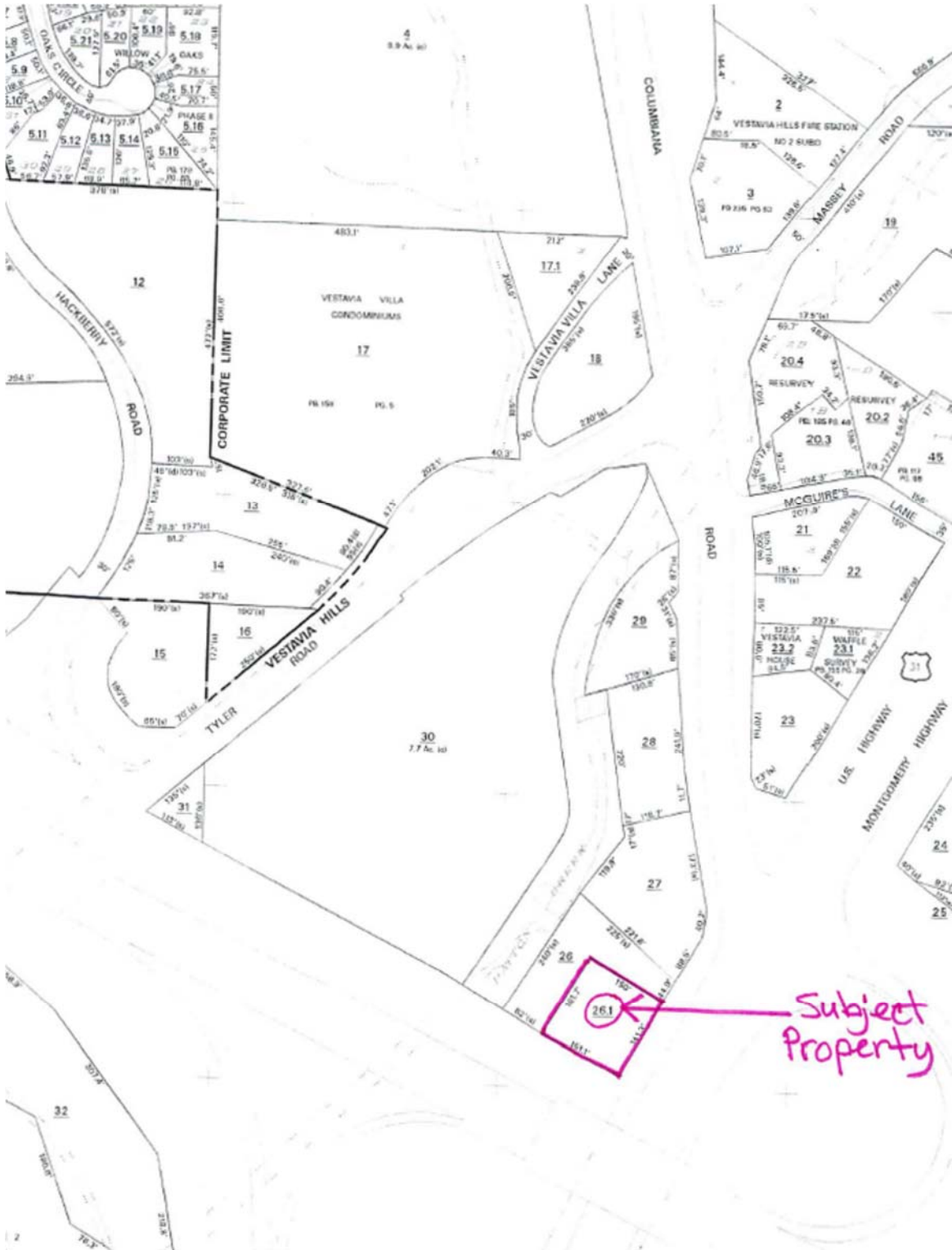
Rebecca Leavings  
City Clerk

**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 # 2840 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 13<sup>th</sup> day of May, 2019 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Rebecca Leavings  
City Clerk



## TY OF VESTAVIA HILLS

### APPLICATION

2019 FEB - 7 P 4: 02

## PLANNING AND ZONING COMMISSION

### I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered.** All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. *\*\*No permits will be issued until all fees have been paid.*
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

### II. APPLICANT INFORMATION: (owner of property)

NAME: Lamar Advertising

ADDRESS: 920 6th Street South, Birmingham, Al. 35205

MAILING ADDRESS (if different from above) same

PHONE NUMBER: Home 2053687472 Office 2055992700

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: Tom Traylor



**III. ACTION REQUESTED**

Request that the above described property be approved conditional use approval pursuant to Section 11.4.1 - 4 of the Vestavia Hills Zoning Code.

Current Zoning of Property: Commercial Amended to 8 structures

Requested Conditional use For the intended purpose of: dismantle 6 billboard structures

and install one digital structure at I-65 and Hwy. 31 (both attached)

*(Example: From "VH R-1" to "VH O-1" for office building)*

*\*\*if additional information is needed, please attached full description of request\*\**

(Attached) Quid

**IV. PROPERTY DESCRIPTION: (address, legal, etc.)**

1506 Montgomery Hwy.

(1514) changed in year 2012)

Vestavia Hills, Al. 35216

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

**V. INFORMATION ATTACHED:**



Attached Checklist complete with all required information.



Application fees submitted.

**VI.** I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

B B Kerson

Owner Signature/Date

[Signature]

Representing Agent (if any)/date

Given under my hand and seal  
this 7 day of Feb., 2019.

Christie J. Wood

Notary Public

My commission expires \_\_\_\_\_  
day of \_\_\_\_\_, 2021.  
My Commission Expires: July 7, 2021



Lamar Co #138

This Instrument Prepared by:  
James R. McIlwain  
5321 Corporate Boulevard  
Baton Rouge, Louisiana 70808



James R. McIlwain

New

Lease # **P0319-11/3900012000026.001**  
**1506 (aka 1514) Montgomery Hwy.**  
Cond. Use for digital sign  
Lamar Advertising

**SIGN LOCATION LEASE**

THIS LEASE AGREEMENT, made this 3rd day of August, 2018, by and between: ROYAL AUTOMOTIVE, INC. (hereinafter referred to as "Lessor") and THE LAMAR COMPANIES (hereinafter referred to as "Lessee"), provides

**WITNESSETH**

"LESSOR hereby leases to LESSEE, its successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR'S acceptance of the first rental payment due after the construction of the sign.

The premises are identified in Rider #C and are a designated portion of the property located in the County of Jefferson, State of Alabama, more particularly described as:

1506 Montgomery Highway, Vestavia, AL  
Parcel ID#39-00-01-2-000-026.001

1. This Lease shall be for a term of ten (10) years commencing on the first day of the calendar month following the date of completion of construction of the sign, except that LESSOR shall have the option to terminate this lease if construction of the sign is not completed by March 1, 2020.

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions, except that the annual rent shall be increased from [redacted] to [redacted]. The prepayment of [redacted] in Rider A shall remain the same. Said renewal term shall automatically go into effect unless LESSEE shall give to LESSOR written notice of non-renewal at least sixty (60) days prior to the expiration of the original term.

The premises which are the subject of this Sign Location Lease are owned by the Estate of David R. Belcher (the "Estate") and leased by the Estate to Lessor, which is subleasing the subject premises to Lessee pursuant to the terms of this Sign Location Lease. Attached hereto as Rider D as an addendum, signed by the authorized representative of the Estate.

2. LESSEE shall pay to LESSOR an annual rental of [redacted] Dollars, payable quarterly in advance in equal installments of [redacted] each, (SEE ALSO PERCENTAGE RIDER A, PROHIBITIVE ADVERTISING RIDER B, AND RIDER C ATTACHED), with the first installment due on the first day of the month following commencement. Percentage calculations shall be computed at the end of each quarter and provided by LESSEE to LESSOR. Any additional amount due will be paid within 30 days of the end of each quarter. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default. Upon LESSEE's default and failure to timely cure such default, LESSOR may terminate this lease and all remaining rental payments under the lease through the remainder of the lease's term shall be accelerated and immediately due and payable to LESSOR. Additionally, LESSEE shall pay all of LESSOR's costs and attorney's fees incurred by LESSOR in the collection of amounts owed by LESSEE following any termination.

3. LESSOR agrees not to erect or allow any other off-premise advertising structure(s), other than LESSEE'S, on property owned or controlled by LESSOR within two thousand (2000) feet of LESSEE'S sign. LESSOR further agrees not to erect or allow the erection of any other obstruction that may obstruct the highway view of LESSEE'S sign. Upon written approval of LESSOR, which approval shall not be unreasonably withheld, LESSEE is hereby authorized to trim or remove any such other advertising structure, obstruction or vegetation at LESSEE'S option which obstructs the highway view of LESSEE'S sign. LESSEE shall give LESSOR fourteen (14) days written notice of any such proposed trimming or removal of such advertising structure, obstruction or vegetation.

4. LESSEE may terminate this lease upon giving thirty (30) days written notice in the event that the highway view of the sign becomes entirely or partially obstructed in any way such that the location becomes economically or otherwise undesirable. If LESSEE is prevented from constructing or maintaining a sign at the premises by reason of any final governmental law, regulation,

5. All structures, equipment and materials placed upon the premises by the LESSEE or its predecessor shall remain the property of LESSEE and may be removed by LESSEE at any time prior to or within a reasonable time after expiration of the term hereof or any renewal. At the termination of this lease, LESSEE agrees to restore the surface of the premises to its original condition. The LESSEE shall have the right and obligation to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of LESSEE'S sign. All such permits and any nonconforming rights pertaining to the premises shall be the property of LESSEE.

6. LESSOR represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant LESSEE free access to the premises to perform all acts necessary to exercise its rights pursuant to this lease. LESSOR is not aware of any recorded or unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of the sign. Notwithstanding, it is the obligation of LESSEE to determine whether any prohibitions exist, and LESSOR shall have no liability to LESSEE for any such prohibitions. LESSOR and LESSEE acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of the other party to this lease.

7. In the event of any change of ownership of the property herein leased, LESSOR agrees to notify LESSEE promptly of the name, address, and phone number of the new owner, and LESSOR further agrees to give the new owner formal written notice of the existence of this lease and to deliver a copy thereof to such new owner at or before closing. In the event that LESSEE assigns this lease, assignee will be fully obligated under this Lease and LESSEE will no longer be bound by the lease. Any such assignment by LESSEE must be approved in advance by LESSOR in writing, and such approval shall not be unreasonably withheld. LESSOR may assign this lease and shall notify LESSEE promptly following such assignment. This lease is binding upon the personal representatives, heirs, executors, successors, and assigns of both LESSEE and LESSOR.

8. In the event of condemnation of the subject premises or any part thereof by proper authorities, or relocation of the highway, which adversely affects the highway view of the sign, this lease may be terminated by LESSOR. Any condemnation award for LESSEE'S property shall accrue to LESSEE and any condemnation award for LESSOR'S property shall accrue to LESSOR.

9. LESSEE agrees to defend, indemnify and hold harmless LESSOR and its officers, employers, and agents from any and all claims, actions, liabilities, damages, fines, costs, and expenses, including attorney's fees, threatened or asserted by any person or entity arising out of or related to the installation, operation, maintenance, or dismantling of LESSEE'S sign during the term of this lease. LESSEE further agrees to repair any damage to the premises or property at the premises resulting from the installation, operation, maintenance, or dismantling of the sign, less ordinary wear and tear.

10. LESSOR agrees to indemnify LESSEE from any and all damages, liability, costs and expenses, including attorney's fees, resulting from any inaccuracy in or nonfulfillment of any representation, warranty or obligation of LESSOR herein. LESSEE at all times during construction of the sign and during the lease term shall, at its own expense, keep in full force and effect comprehensive general liability insurance with personal injury coverage, broad form property damage, contractual liability coverage, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), with minimum limits of Three Million and no/100 Dollars (3,000,000.00). LESSOR and the Estate of David R. Belcher shall be named as additional insureds on such policy, and such policy shall provide that (i) such insurance shall be primary and shall not contribute with any insurance carried by LESSOR or the Estate of David R. Belcher and (ii) the insurance company issuing the same shall notify LESSOR thirty (30) days prior to the expiration date of the policy if the policy is not renewed prior to such date. All insurance policies or duly executed certificates for the same required to be carried by LESSEE under this lease shall be delivered to LESSOR before the date LESSEE first begins construction of the sign and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of the same. All insurance required to be carried by LESSEE under this lease shall be in form and content, and written by insurers, reasonably acceptable to LESSOR.

11. Certain types of advertising described in Rider B shall be prohibited.

12. If required by LESSEE, LESSOR will execute and acknowledge a memorandum of lease suitable for recordation.

13. This Lease is NOT BINDING UNTIL ACCEPTED by the General Manager of a Lamar Advertising Company.

THE LAMAR COMPANIES, LESSEE:

BY: [Signature]

ITS: VICE PRESIDENT/GENERAL MGR

DATE: 9.19.18

LESSOR: ROYAL AUTOMOTIVE, INC.

BY: [Signature: Gregory L. Belcher]

ITS: PRESIDENT

DATE: 9.18.18

205-823-3100  
LESSOR'S TELEPHONE NUMBER


63-0578682  
LESSOR'S SOCIAL SECURITY NUMBER /  
EMPLOYER IDENTIFICATION NUMBER

ROYAL AUTOMOTIVE, INC.  
W-9 Name (as shown on your Income Tax Return)

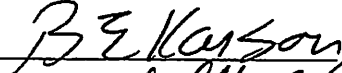
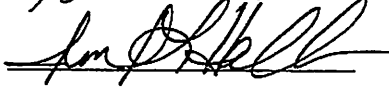
Address of LESSEE:  
920 6<sup>th</sup> Street South  
Birmingham, AL 35205

Address of LESSOR:  
3010 Columbiana Rd.  
Vestavia Hills, AL 35216

Witnesses (LESSEE)

  
\_\_\_\_\_  
  
\_\_\_\_\_

Witnesses (LESSOR)

  
\_\_\_\_\_  
  
\_\_\_\_\_

THE **LAMAR** COMPANIES

Lamar Co # 138

Rider # A to Lease dated the 3rd day of August, 2018, by and between Royal Automotive, as Lessor and The Lamar Companies, as Lessee.

At the commencement of its obligation to pay rental under this lease, Lessee shall pay to Lessor the sum of [REDACTED] ( [REDACTED] ) DOLLARS, which payment shall be prepaid rental for 10 years. If, for any reason except for breach of this lease by Lessee, this lease should be terminated or Lessee is prohibited from using the premises for advertising purposes, Lessor shall immediately upon such happening, refund to Lessee, pro rata, the unearned portion of this payment.

Also, as further consideration, Lessor and Lessee agree to the following additional provisions:

The annual lease rent shall be the greater of [REDACTED] or [REDACTED] of the total revenue generated. The base rent shall be paid quarterly at [REDACTED], with the percentage calculations to be computed at the end of each quarter. Any additional amount due will be paid within 30 days of the end of each quarter.

\*The Percentage amount will be matched against the total of both the prepayment and the annual lease payment ( [REDACTED] + [REDACTED] = [REDACTED] annual expense) on a quarterly basis.

Gregg Z Becker  
LESSOR  
[Signature]  
LESSEE

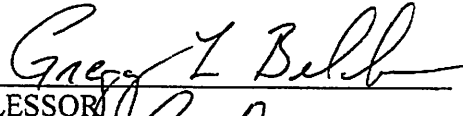
THE **LAMAR** COMPANIES

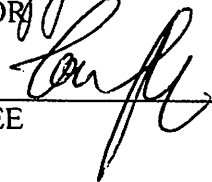
Lamar Co # 138

Rider #B to Lease dated the 3<sup>rd</sup> day of August, 2018, by and between Royal Automotive, Inc., as Lessor and The Lamar Companies, as Lessee.

As further consideration to Lessor for the granting of this lease, Lessee agrees that during the term of this lease and any renewals or extensions, Lessee will not use the advertising structure(s) for the purpose of advertising any of the following:

1. Ads that would be of a competitive nature to the Lessor
2. Sexually oriented business ads
3. Ads that would be considered morally offensive to the Lessor

  
LESSOR

  
LESSEE

THE **LAMAR** COMPANIES

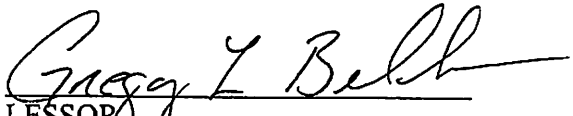
Lamar Co # 138


Rider # C to Lease dated the 3rd day of August, 2018, by and between Royal Automotive, as Lessor and The Lamar Companies, as Lessee.

The following are identified by Lessor and Lessee as the premises and location of the sign:

1506 Montgomery Highway, Vestavia, AL  
Parcel ID #39-00-01-2-000-026.001

Please reference site Map #3, included as a part of this Rider.

  
LESSOR

  
LESSEE

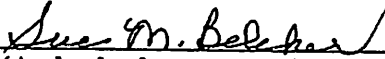
THE **LAMAR** COMPANIES


Lamar Co # 138

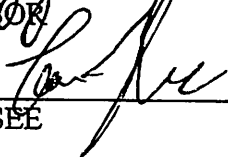
Rider #D to Lease dated the 3<sup>rd</sup> day of August, 2018, by and between Royal Automotive, as Lessor and The Lamar Companies, as Lessee.

Lessor and Lessee agree to the following additional provisions:

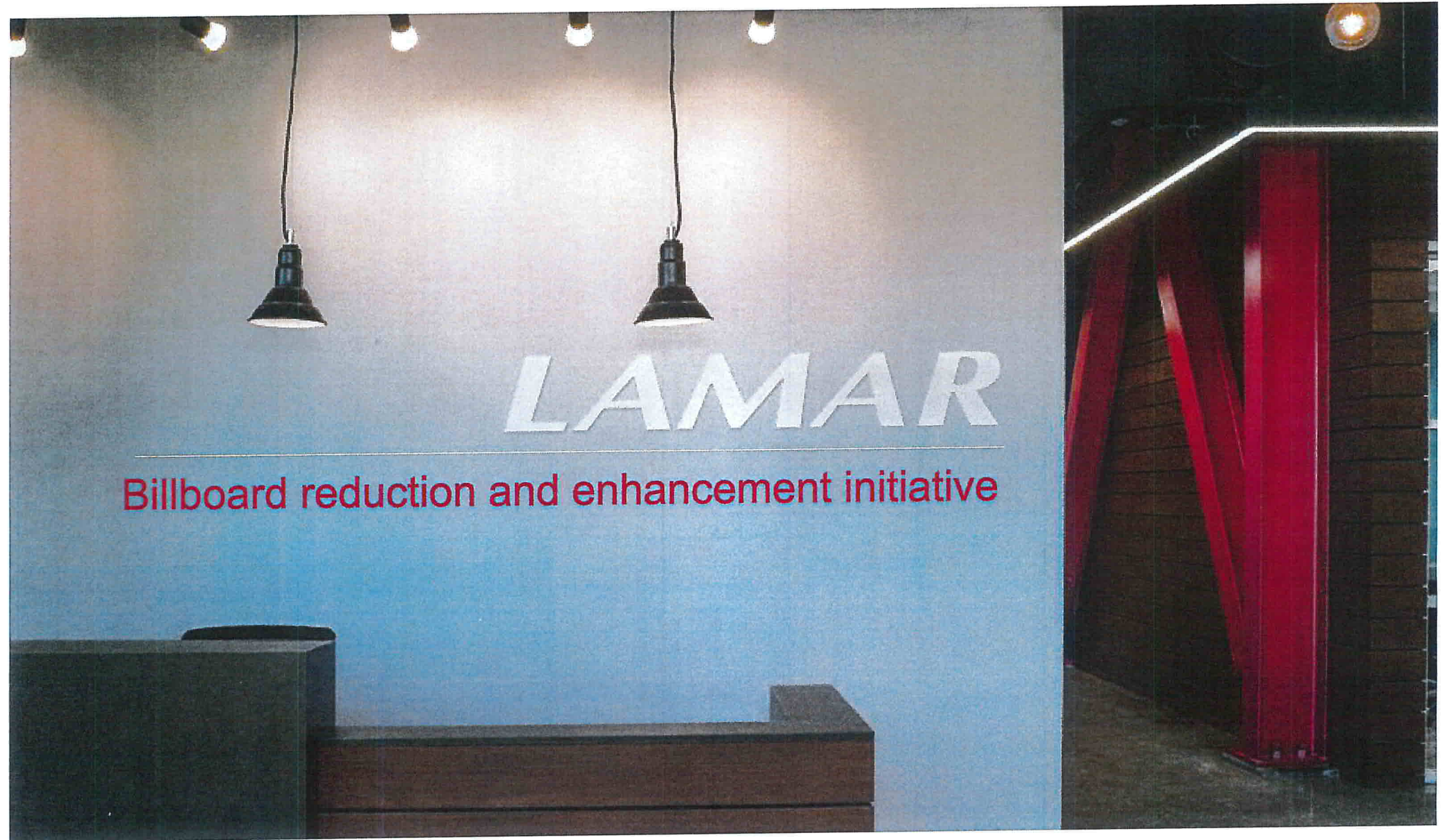
Be it understood that the premises are owned by the Estate of David R. Belcher (the "Estate") and leased by the Estate to Lessor (Royal Automotive, Inc.), which is subleasing the subject premises to Lessee pursuant to the terms for this Sign Location Lease.

  
\_\_\_\_\_  
(Authorized representative of the "Estate")

  
\_\_\_\_\_  
LESSOR

  
\_\_\_\_\_  
LESSEE





# The Concept

---

Lamar advertising proposes to dismantle, permanently, **16 billboard faces** situated on **8 free standing structures**, inside the city limits.

In return, the city would allow Lamar Advertising to construct **one digital billboard** at Royal Automotive at the corner of I-65 and Hwy. 31, with **one face** reading to the interstate and **one face** reading to Hwy. 31.



## What makes a city qualify for this kind of initiative?

- Affluent community with high demand from advertisers
- An already established presence by Lamar Advertising
- Prohibitive ordinance with no way to partner with the city
- There are no other companies who have inventory to exchange in this manner



# Proposed Reductions

Specific locations



Vestavia locations

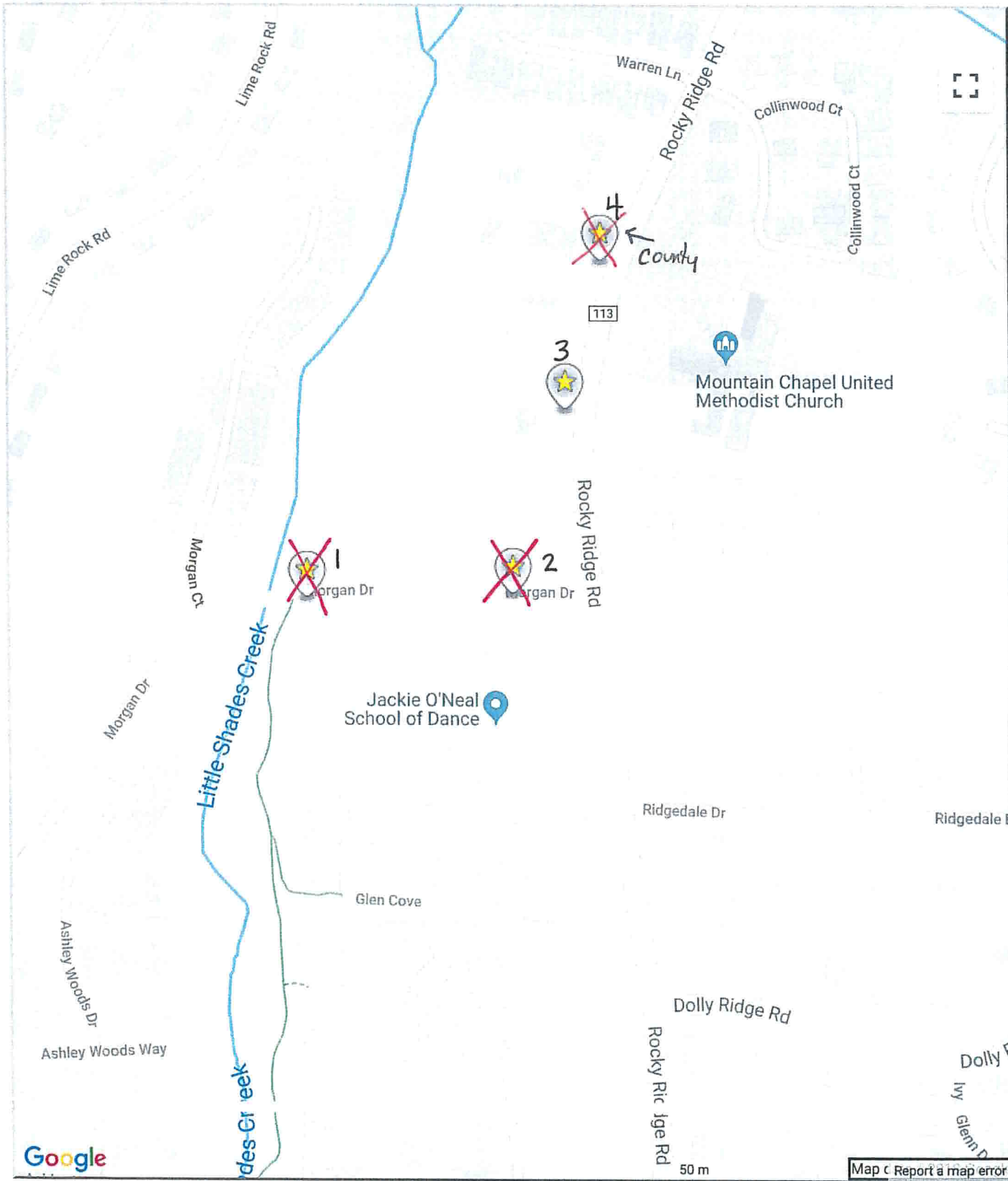
Location(s)		
1 Andy's	X	
2 Clothes Horse	X	
3 Champion Cleaners	Remains	
4 Express Oil	X	[County]
5 Dolly Ridge @ Cahaba Heights	X	
6 Cahaba Heights @ Dolly Ridge	X	
7 Cahaba Cycle	Remains	
8 Cahaba Heights Hardware	X	
9 Doodles	X	
10 Ms. Myra's	X	





### Vestavia locations

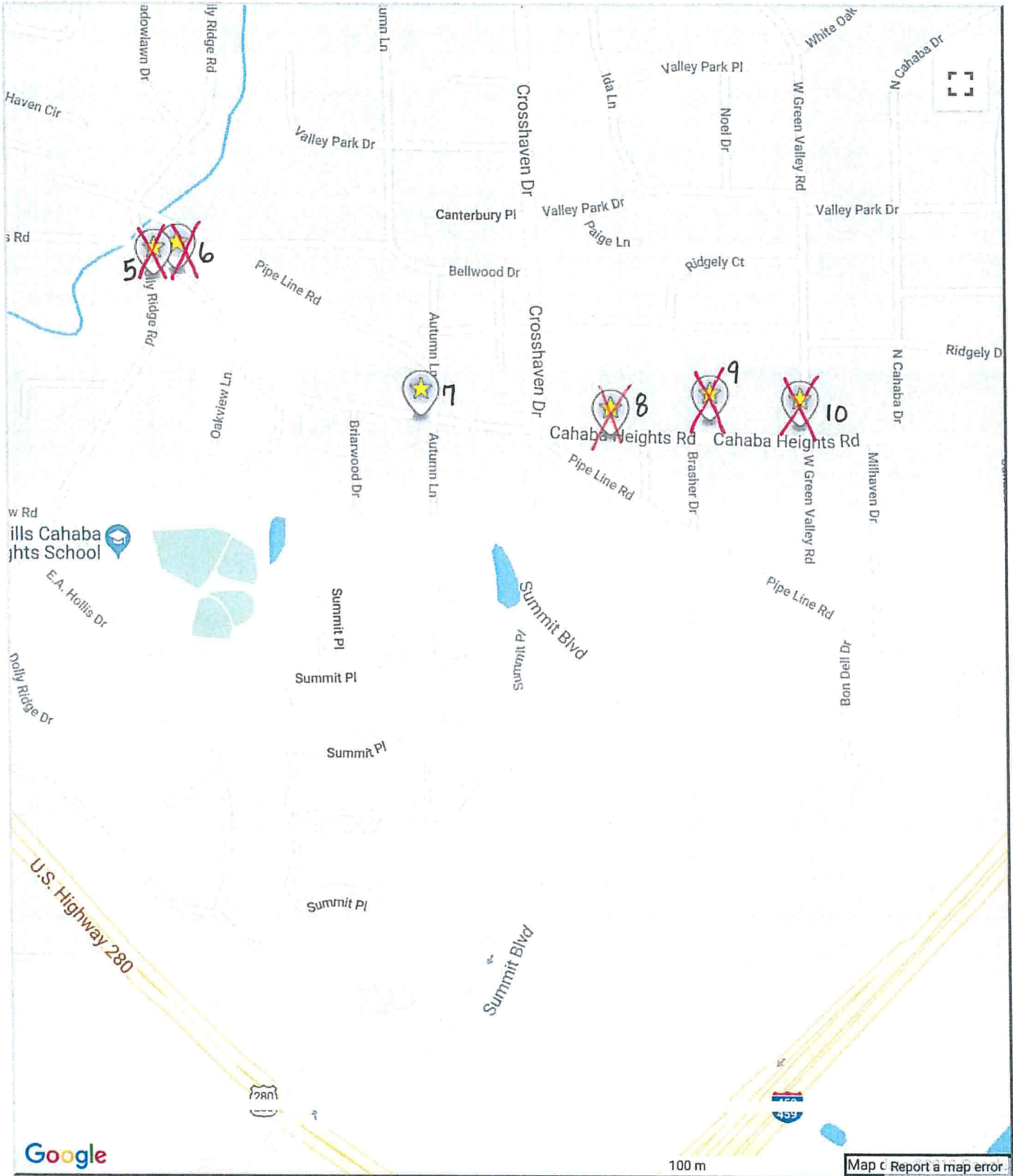
Map #1





### Vestavia locations

Map #1





Morgan Drive at The Western

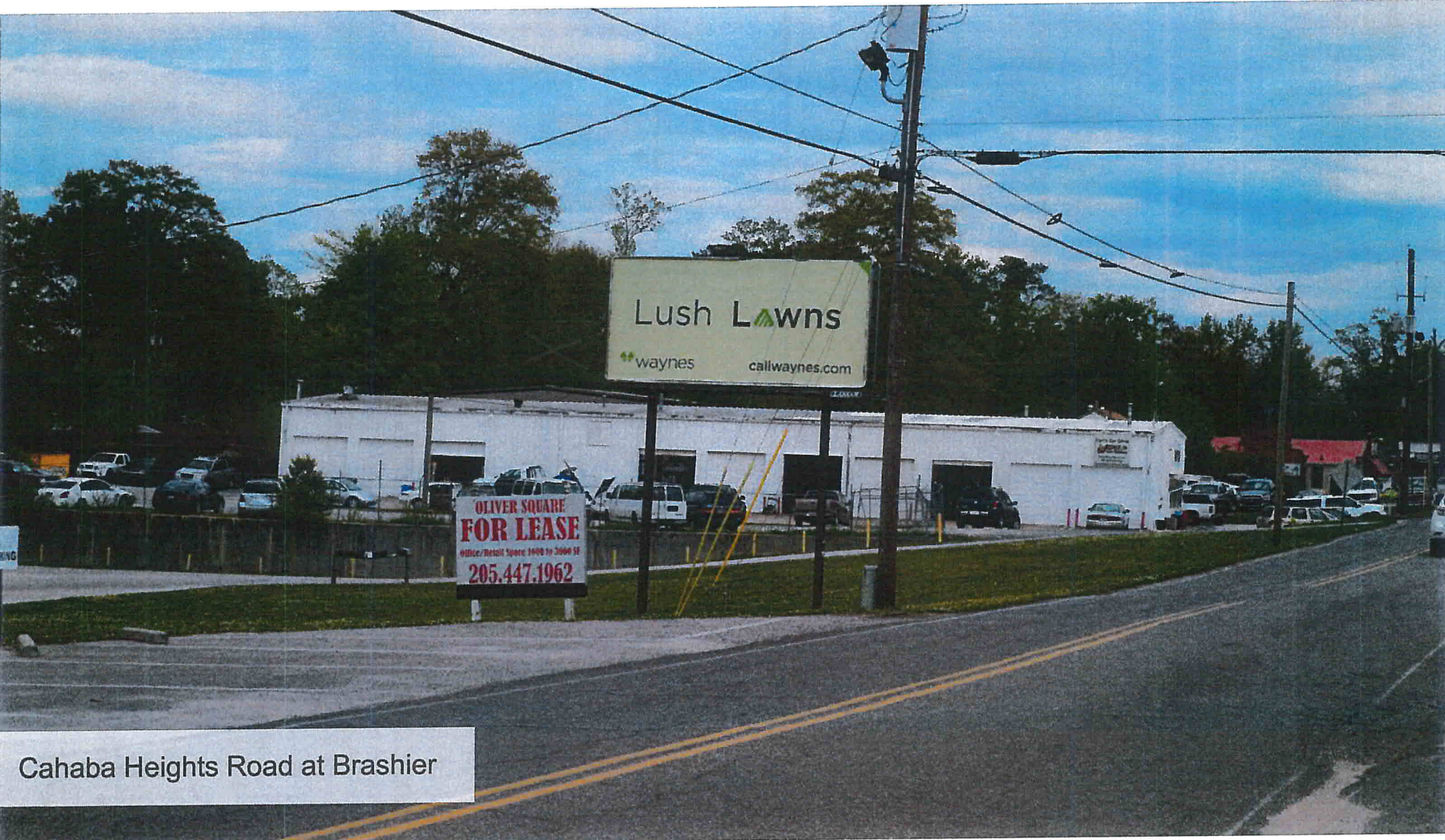




Morgan Drive at Andy's







Lush Lawns  
waynes callwaynes.com

OLIVER SQUARE  
FOR LEASE  
office/retail space 1000 to 2000 sf  
205.447.1962

Cahaba Heights Road at Brashier





Cahaba Heights Road at White Oak





Cahaba Heights Road at Dolly Ridge





Dolly Ridge Road at Cahaba Heights Road







**WEDDING SHOW**  
SUNDAY, JANUARY 30  
B.JCC  
PINK RIDE







**Locations that remain**  
Specific locations













Proposed Enhancement







## Benefits to the City

---

### Aesthetics

50+% reduction in the number of billboard structures

City's usage on unsold slots

Emergency messaging



## Timing of the initiative:

Stage 1 - Dismantle the **8** existing structures within 90 days of the City Council's approval of the initiative

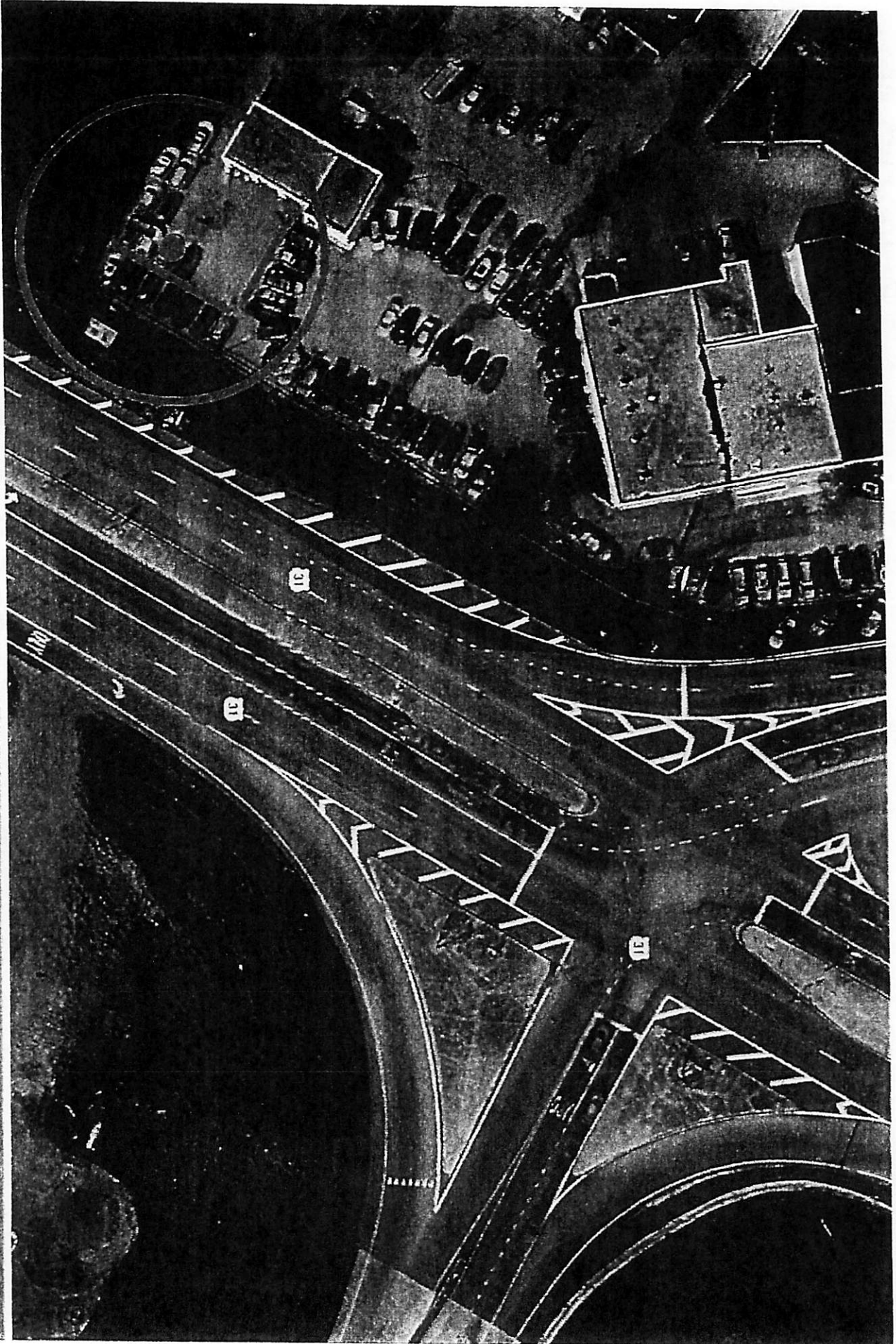
Stage 2 - Construction of the Royal Automotive location within 120 days of the City Council's approval of the initiative.

*JL*

Map #3

**LAMAR**

BIRMINGHAM





**ORDINANCE NUMBER 2846**

**AN ORDINANCE ESTABLISHING VOTING AND POLLING PLACES FOR ALL MUNICIPAL ELECTIONS FOR THE CITY OF VESTAVIA HILLS, ALABAMA.**

**THIS ORDINANCE NUMBER 2886 IS APPROVED AND ADOPTED ON THIS THE 13<sup>th</sup> DAY OF May, 2019.**

**WITNESSETH THESE RECITALS:**

**WHEREAS**, Alabama law at Title 11-46-21, *Code of Alabama, 1975*, provides that the regular municipal elections in cities and towns in Alabama shall be held on the fourth Tuesday in August 1984, and quadrennially thereafter and, when necessary as provided in subsection (d) of Title 11-46-55, a second or runoff election shall be held on the first Tuesday of October following said regular election; and

**WHEREAS**, Alabama law at Title 11-46-24, *Code of Alabama, 1975*, requires the municipal governing body designates voting places for municipal elections; and

**WHEREAS**, the City of Vestavia Hills, Alabama adopted Ordinance Number 152 on June 3, 1968 to establish voting and polling sites at the following locations: (1) Vestavia Hills City Hall at 513 Montgomery Highway and (2) Vestavia Hills Shopping Center at 700 Montgomery Highway; and

**WHEREAS**, Ordinance Number 1818 adopted on June 5, 2000 established the voting and polling sites in the City of Vestavia Hills for municipal elections at the following locations: (1) Vestavia Hills Municipal Center, at 513 Montgomery Highway and (2) Vestavia Hills Civic Center, at 1973 Merryvale Road, relocating the second polling site because of the closure and renovation of the Vestavia Hills Shopping Center; and

**WHEREAS**, the City of Vestavia Hills, Alabama adopted Ordinance Number 1849 on November 6, 2000 for the addition of a voting and polling site at the Liberty Park Fire Station located at 13041 Liberty Parkway in the Liberty Park community of Vestavia Hills; and

**WHEREAS**, in 2001, the Jefferson County Board of Registrars relocated the voting and polling site at the Vestavia Hills Municipal Center to the Vestavia Hills United Methodist Church at 2061 Kentucky Avenue at the request of the City of Vestavia Hills

due to problems in parking facilities. This location is used for all Federal, County and State elections; and

**WHEREAS**, in 2002, the Jefferson County Board of Registrars established a voting and polling site at the Liberty Park Baptist Church located at 12001 Liberty Parkway in the Liberty Park community of Vestavia Hills for use in all Federal, County and State elections; and

**WHEREAS**, the City of Vestavia Hills experienced extensive growth in an easterly direction through annexation of many unincorporated portions of Jefferson County between Vestavia Hills proper and the Vestavia Hills Liberty Park community; and

**WHEREAS**, on the 6<sup>th</sup> day of October, 2003, the Mayor and City Council adopted and approved Ordinance Number 2370 to relocate existing polling and voting sites as well as locating additional polling and voting sites within the corporate limits to better serve the voting public with more convenient access to polling and voting locations within the City and established six (6) voting and polling places for all municipal elections at the following locations: (1) the Vestavia Hills United Methodist Church, 2061 Kentucky Avenue; (2) the Vestavia Hills Civic Center, 1973 Merryvale Road; (3) the Liberty Park Baptist Church, 12001 Liberty Parkway; (4) the MountainTop Community Church, 225 Centerview Drive; (5) the Town Village Vestavia Hills, 2385 Dolly Ridge Road; and (6) the Cahaba Heights Community and Senior Citizens Center, 4401 Dolly Ridge Road. All of these locations were also regular polling and voting sites utilized by the Jefferson County Board of Registrars for all Federal, County and State elections and are within corporate limits of City of Vestavia Hills; and

**WHEREAS**, development occurred within the site of the Vestavia Hills Civic Center in which traffic flow became extremely congested with the carpool traffic of two schools, activities from the Senior Citizens Community Room as well as the location of the Vestavia Hills Chamber of Commerce. Following repeated complaints from citizens on polling days, it was found that traffic flow was virtually impassable at certain times which tended to disenfranchise voters at that location; and

**WHEREAS**, at the request of the Mayor of the City of Vestavia Hills, the Jefferson County Board of Registrars investigated and has determined it is in the best public interest to relocate its polling location from the Vestavia Hills Civic Center at 1973 Merryvale

Road, Vestavia Hills, Alabama to a new polling location at Vestavia Alliance Church at 1380 Montgomery Highway for all Federal, State and County elections; a change which was submitted to the U.S. Department of Justice by letter dated February 8, 2011 from Barry Stephenson, Chairman, Jefferson County Board of Registrars and was subsequently precleared; and

**WHEREAS**, on July 25, 2011, the City Council of the City of Vestavia Hills adopted and approved Ordinance Number 2370 to relocate the municipal polling location from Vestavia Hills Civic Center at 1973 Merryvale Road, Vestavia Hills, Alabama to a new polling location at Vestavia Alliance Church at 1380 Montgomery Highway for all municipal elections. This new polling location was subsequently precleared by the U. S. Department of Justice by letter dated November 7, 2011; and

**WHEREAS**, on March 13, 2012, primary elections for Federal, State and County offices were held and the new polling location at the Vestavia Alliance Church (now named Birmingham International Church) at 1380 Montgomery Highway proved to be an extremely bad location for polling. Numerous complaints by voters were received by the Jefferson County Registrar as well as Mayor Alberto C. Zaragoza, Jr., citing confusing parking, dismal lighting within the facilities and inaccessibility onto Montgomery Highway.

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama has determined that it is in the best public interest to again relocate the third precinct polling location from the Vestavia Alliance Church (now called Birmingham International Church), 1380 Montgomery Highway, Vestavia Hills, Alabama to a new polling location at Horizon Church, 2345 Columbiana Road, Vestavia Hills, Alabama for all municipal elections. The new polling location will allow controlled access to Columbiana Road as well as ample space and parking to accommodate all voters at this location; and

**WHEREAS**, on April 9, 2012, the City Council adopted and approved Ordinance Number 2396 to move the polling location to Horizon Church, 2345 Columbiana Road; and

**WHEREAS**, continued growth and construction at the Vestavia Hills Cahaba Heights Elementary School, traffic concerns and reconstruction of the Cahaba Heights Sports Complex has warranted a change in the Cahaba Heights Community and Senior

Citizens Center located at 4401 Dolly Ridge Road voting location. In February 2019, Jefferson County Board of Registrars moved the County polling location to Cahaba Heights Baptist Church, 3800 Crosshaven Road, Vestavia Hills, Alabama; and

**WHEREAS**, the Mayor and City Council feel it is in the best interest of the public to mirror the County's actions and move the City's polling place from the Cahaba Heights Community and Senior Citizens Center located at 4401 Dolly Ridge Road to the Cahaba Heights Baptist Church, 3800 Crosshaven Road, Vestavia Hills, Alabama.

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

1. The six (6) voting and polling places for all municipal elections for the City of Vestavia Hills, Alabama, shall be at the following sites:
  - A. Liberty Park Baptist Church: One voting and polling place for municipal elections in the City of Vestavia Hills, Alabama shall be at the Liberty Park Baptist Church in the Liberty Park community located at 12001 Liberty Parkway, Vestavia Hills, Alabama. All qualified electors who regularly vote in the Precincts and Box Numbers 48-06 (Brookwood Baptist Church), 48-07 (Liberty Park Baptist Church), and 48-08 (Overton Road United Methodist Church) shall vote at the Liberty Park Baptist Church.
  - B. Vestavia Hills United Methodist Church: One voting and polling place for municipal elections in the City of Vestavia Hills, Alabama shall be at the Vestavia Hills United Methodist Church located at 2061 Kentucky Avenue, Vestavia Hills, Alabama. All qualified electors who regularly vote at the Precinct and Box Number 47-08 (Vestavia Hills United Methodist Church) shall vote at the Vestavia Hills United Methodist Church.
  - C. Horizon Church: One voting and polling place for municipal elections in the City of Vestavia Hills, Alabama shall be at the Horizon Church located at 2345 Columbiana Road, Vestavia Hills, Alabama. All qualified electors who regularly vote at Precinct and Box Numbers 47-05 (Horizon Church) and 46-06 (Homewood Public Library) shall vote at the Horizon Church.
  - D. MountainTop Community Church: One voting and polling place for municipal elections in the City of Vestavia Hills, Alabama shall be at the

MountainTop Community Church located at 255 Centerview Drive, Vestavia Hills, Alabama. All qualified electors who regularly vote at Precinct and Box Numbers 47-04 (Saint Mark United Methodist Church) and 47-06 (MountainTop Community Church) shall vote at the MountainTop Community Church.

- E. Town Village Vestavia Hills: One voting and polling place for municipal elections in the City of Vestavia Hills, Alabama shall be at the Town Village Vestavia Hills located at 2385 Dolly Ridge Road, Vestavia Hills, Alabama. All qualified electors who regularly vote at Precinct and Box Numbers 47-07 (Town Village Vestavia Hills) and 48-02 (Mountain Chapel United Methodist Church) or at any Shelby County polling location shall vote at the Town Village Vestavia Hills.
- F. Cahaba Heights Baptist Church: One voting and polling place for municipal elections in the City of Vestavia Hills, Alabama shall be at the Cahaba Heights Baptist Church located at 3800 Crosshaven Drive, Vestavia Hills, Alabama. All qualified electors who regularly vote at Precinct and Box Numbers 48-03 (St. Thomas Episcopal Church), 48-04 (Fire Station #2 Mountain Brook) and 48-05 (Cahaba Heights Baptist Church) shall vote at the Cahaba Heights Baptist Church.

- 2. Any and all ordinances or resolutions in conflict with this Ordinance are hereby repealed.
- 3. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance which shall continue in full force and effect notwithstanding such holding.
- 4. This Ordinance shall become effective upon approval and adoption in its publication and/or posting as required by Alabama law.

**DONE, ORDERED, APPROVED and ADOPTED**, on this the 13<sup>th</sup> day of May, 2019.

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 #2846 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 13<sup>th</sup> day of May, 2019 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 \_\_\_\_\_, 2019.

Rebecca Leavings  
City Clerk

## **ORDINANCE NUMBER 2848**

### **AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER ALL DOCUMENTS AND ACTIONS NECESSARY TO ACQUIRE RIGHTS-OF-WAY AND EASEMENTS FOR PROPOSED IMPROVEMENTS ALONG CROSSHAVEN DRIVE PURSUANT TO THE INFRASTRUCTURE AND COMMUNITY SPACES PLAN**

**WHEREAS**, the area known and referred to as Cahaba Heights was annexed into the City of Vestavia Hills by referendum vote in 2002; and

**WHEREAS**, prior to annexation, improvements to Cahaba Heights were drawn and proposed by Jefferson County and built into a multi-project grant request; and

**WHEREAS**, in 2017, the City of Vestavia Hills adopted the Infrastructure and Community Spaces Plan which, among other projects, proposed improvements to Crosshaven Drive pursuant to the Jefferson County plan; and

**WHEREAS**, the City has retained legal counsel to assist with the necessary acquisition of various rights-of-way and easements deemed necessary in order to construct said improvements; and

**WHEREAS**, the Mayor and City Council have agreed that said acquisition of rights-of-way and easements pursuant to the plans drawn for the improvements along Crosshaven Drive are in the best interest of the general public.

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

1. The Mayor and City Manager are hereby authorized to execute all documents and take all actions necessary in order to acquire the needed rights-of-way and easements needed in order to accomplish the proposed improvements along Crosshaven Drive; and
2. Said funding for these acquisitions shall be derived from the Community Spaces Plan funding account; and
3. This Ordinance Number 2848 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 13<sup>th</sup> day of May, 2019.

Rusty Weaver  
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings  
City Clerk



## **RESOLUTION NUMBER 5157**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AGREEMENTS FOR DESIGN AND CONSTRUCTION OF A ROADWAY TO CONNECT BLUE LAKE DRIVE AND TIMBERLAKE ROAD PURSUANT TO THE BLUE LAKE AREA STUDY**

**WHEREAS**, The Vestavia Hills Planning and Zoning Commission adopted the Blue Lake Area Study on March 9, 2017 which was an update special plan for Blue Lake Area development and to be used as an infrastructure guide for the area of Blue Lake Drive, Pine Tree Drive, Timberlake Road and Cahaba River Road; and

**WHEREAS**, the Mayor and City Council agree that it is in the best public interest to construct a small roadway to connect Blue Lake Drive with Timberlake Road for enhanced commercial development of the area; and

**WHEREAS**, the City Manager has obtained professional proposals for civil engineering, property appraisal and geo-technical in order to design a construction plan for said road in an amount not to exceed \$55,000; and

**WHEREAS**, said proposals are marked as Exhibit A and are attached to and incorporated into the Resolution Number 5157 as if written fully therein.

### **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 and deliver agreements in order to obtain a design for construction of said connector roadway; and
2. Funding for said project shall be derived from the City's Gas Tax; and
3. This Resolution Number 5157 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 13<sup>th</sup> day of May, 2019.

Rusty Weaver  
Mayor Pro-Tem

ATTESTED:

Rebecca Leavings  
City Clerk



**Schematic Design**  
Not for Construction

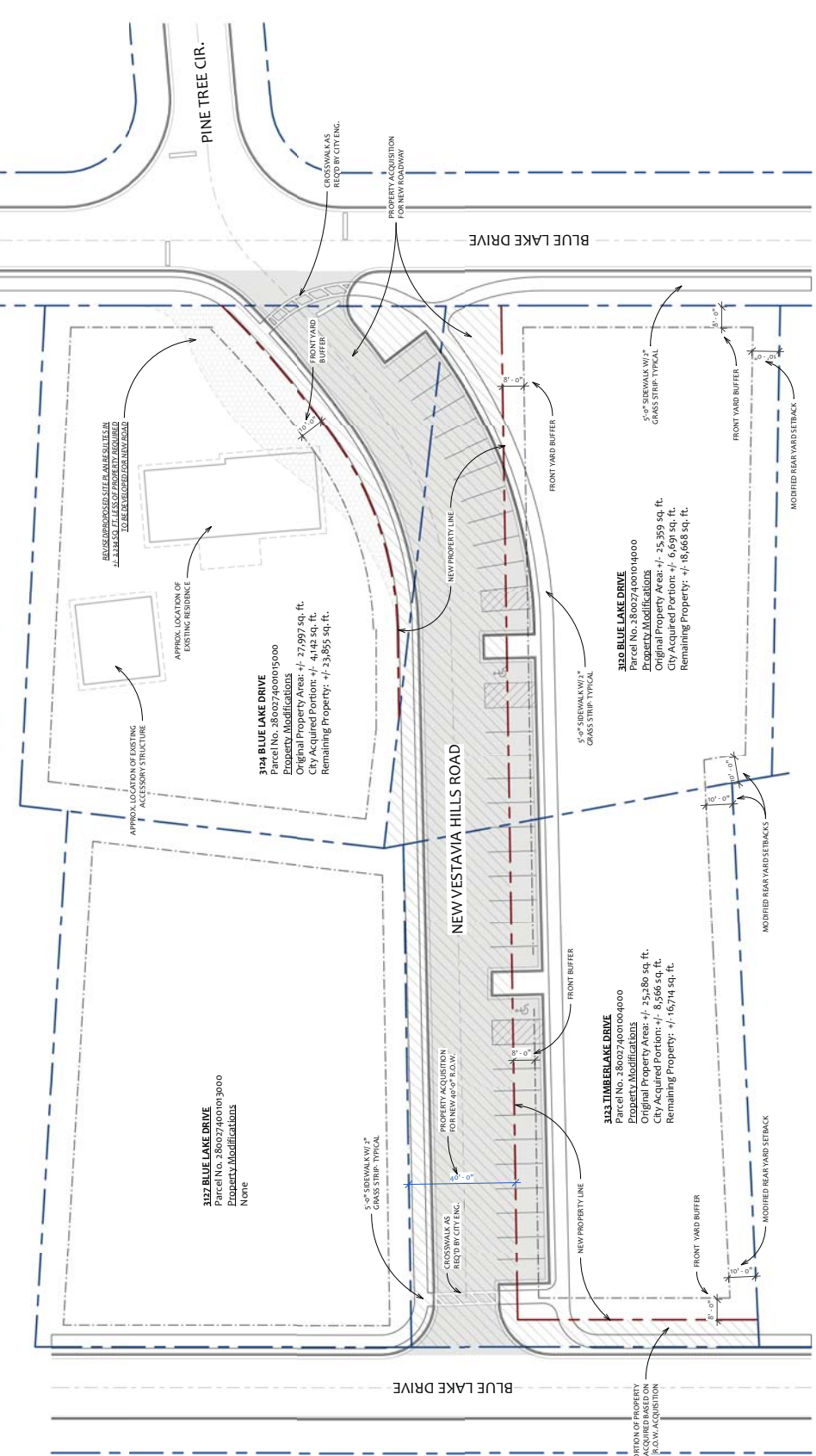
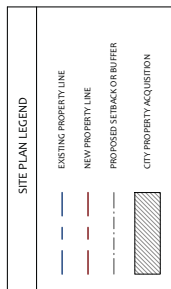
**Blue Lake Neighborhood  
Proposed Development**  
ADDRESS:  
3120 Blue Lake Drive / 3123  
Timberlake Drive, Vestavia Hills,  
AL 35243  
W. Walker Renneker Jr.  
2213 Morris Avenue  
Birmingham, AL 35203

10/02/2018 City Staff Meeting, Concept Presentation  
11/02/2018 City Staff Meeting, Revised Concept Plan  
01/02/2019 Site Plan Update  
01/02/2019 City Staff Meeting, Final Review

Exhibit A - Resolution No. 5157  
PROJECT NO.: 18109  
DATE: 01/02/2019  
PROJECT ARCHITECT: W. WALKER RENNEKER JR.  
MARCH 6, 2019  
COPYRIGHT:  
Tent Shop Design 2018  
SHEET TITLE:  
Site Plan No. 02 - Revised  
**A1.2-R**

**DISCLAIMER**

NOT FOR CONSTRUCTION. THIS DOCUMENT PROVIDES MULTIPLE CONCEPTUAL DESIGN OPTIONS THAT HAVE NOT BEEN REVIEWED FOR CONFORMANCE WITH ANY APPLICABLE ZONING JURISDICTION, AND PROPERTY OWNERS ALL SITE DESIGNS ARE SCHEMATIC IN NATURE AND ARE MEANT TO REPRESENT ELEMENTS, ALL PROPERTY AND SITE INFORMATION PROVIDED IS APPROXIMATE AND BASED ON G.S. DATA. NO SITE SURVEY OR AS-BUILT DATA HAS BEEN OBTAINED BY TENT SHOP DESIGN, LLC. TENT SHOP DESIGN, LLC TAKES NO RESPONSIBILITY FOR THE USE OR IMPLEMENTATION OF THESE PLANS. NO USE OF THESE PLANS BY ANY OTHER PARTY WITHOUT EXPRESS WRITTEN CONSENT BY TENT SHOP DESIGN, LLC.



1" = 30'-0"

May 3, 2019

Mr. Jeff Downes, City Manager  
City of Vestavia Hills  
1032 Montgomery Hwy.  
Vestavia Hills, AL 35216  
o: (205) 978-0195

**Re: *Blue Lake Drive/Timber Lake Drive Connector Road – Vestavia Hills, AL*  
Proposal for Civil Engineering Services - Revised**

Dear Mr. Downes:

We appreciate your trust in Caprine Engineering, LLC and look forward to working with you on this project. Caprine Engineering will provide professional engineering services for **a new connector road between Blue Lake Drive and Timber Lake Drive**. Although we do not wish to be overly formal in our relationship, it helpful to confirm with our clients the nature and terms of our engagement. You and your company are referred to as “Client” below.

#### **UNDERSTANDING OF PROJECT**

We understand the project to generally consist of the following:

- The project consists of a new 2-way road with street parking to connect Blue Lake Drive and Timber Lake Drive and will also include road widening and improvements along Timber Lake Drive to tie into the existing improvements at the north end of the Slice Pizza property.
- The project is wholly contained within the corporate limits of Vestavia Hills and subject to only their review and approval.
- Initial project surveying for the project will be contracted directly between the City and a surveying consultant.
- As-built surveying of sewer main extensions will be contracted directly with Caprine Engineering
- The project will be publicly advertised and bid for construction.
- We will coordinate with the private property owner regarding final roadway layout, parking and driveway turnouts, and limits of right-of-way.

#### **SCOPE OF SERVICES**

Caprine Engineering will provide the following professional services:

##### **Civil Engineering**

- Connector road layout and design
  - Plan and profile
  - Street parking
  - Establish right-of-way or easement limits as required
  - Drainage plan
- Timber Lake Drive roadway widening and improvements
- Sanitary sewer main extension
  - Plan & profiles
  - Deeds for right-of-way
  - As-built surveying of constructed mains
- Erosion and sediment controls
- Construction details
- Coordination and permitting thru the City of Vestavia Hills

- Project meetings with Client – 4x
- Public bid process coordination
- Project manual and construction contract coordination with Client
- Punch out – 1x
- Water main extension (Separate Fee)
  - Utility plan
  - Administration of extension of mains agreement with BWWB

**CLARIFICATIONS AND EXCLUSIONS**

- Permitting, agency, and advertisement fees are not included in the above fees.
- The land disturbance impacts to the project area are anticipated to be below the 1.0 ac. threshold for qualification for an ADEM construction storm water permit, and it has not been included in the scope of work. Should it be required as design unfolds, additional fees will apply.
- Work and corresponding time related to construction administration and inspection have not been included in this proposal but may be added upon request.
- The fee provided includes the cost of 7 total sets of construction plans and project manuals for the Client’s and the Contractor’s use. If requested by the Owner or Contractor, additional sets of plans and project manuals will be billed at 1.2x actual cost of reprographics to the respective party.

**FEES/ COMPENSATION**

Civil Engineering	Lump Sum	\$40,400
Water main extension	Lump Sum	\$3,500

**TERMS OF ENGAGEMENT**

Services described above shall be provided in accordance with the following terms and conditions:

- Caprine Engineering will provide all services to the level of care and skill ordinarily used by members of our profession under similar circumstances in our area. Caprine Engineering makes no express or implied warranties in connection with any services we provide.
- Client has agreed that Caprine Engineering is not a general contractor, and is not responsible for the disposal of asbestos, toxic agents, or other hazardous materials. We, further, are not engaged for the purpose of creating a plan for the disposal of asbestos, toxic agents, or other hazardous materials.
- The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the express, written consent of the other party before any attempt to assign or transfer those rights.
- This agreement may be terminated by either party upon 30 calendar days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party seeking to terminate the agreement. In the event of termination of this agreement due to the fault of someone other than Caprine Engineering, Caprine Engineering shall be paid for services performed to termination date, including reimbursements then due.
- This agreement shall constitute the entire agreement between the parties and any earlier understanding or representation of any kind before the date of this agreement is not binding upon either party except to the extent incorporated in this agreement.
- Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

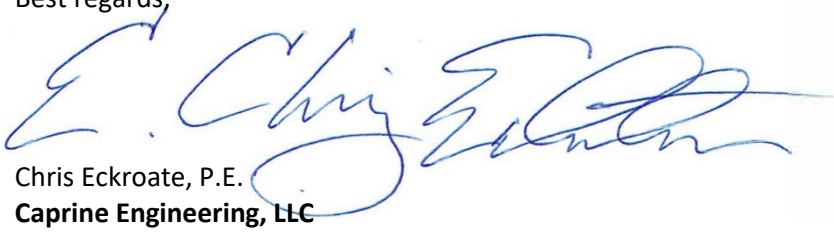
- Client assumes responsibility for any and all changes made by other people, parties, or contractors to any plans we produce after the completion of our work, including changes made during the construction phase of any project.
- The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- The invalidity of any portion of this agreement will not and shall not affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.
- Neither party to this agreement shall be liable to the other for any loss, cost, or damages, arising out from or resulting from any failure to perform in accordance with the terms of this agreement where the causes of such failure shall include, but not be limited to, acts of God; strikes, lockouts, or other industrial disturbances; wars, whether declared or undeclared, blockades, insurrections, riots, or governmental action; explosions, fire, floods, or any other cause not within the reasonable control of either party.
- Caprine Engineering shall secure and maintain insurance to protect it from claims made under the worker's compensation acts and claims for bodily injury, death, or property damage that may arise for the performance of this agreement. Certificates of such coverage will be provided to Client upon request.
- Client shall provide Caprine Engineering safe access to the project site necessary for Caprine Engineering to provide the services outlined.
- Caprine Engineering grants to Client a limited license to use documents or plans created for the Client. Reuse of any documents or other deliverables pertaining to the project by the Client other than for the project for which documents or deliverables were prepared without written verification by Caprine Engineering shall be at the Client's risk, and violates the terms of this agreement.
- No employee or agent of Caprine Engineering shall have individual liability to the Client, and the Client is the only party to whom Caprine Engineering may have any liability at all. Client is responsible for indemnification against any other party. Neither Client nor any other party or person may seek consequential or special damages against Caprine Engineering.
- Due to factors outside the control of Caprine Engineering that affect pricing on any given project, Caprine Engineering makes no warranty or guarantee that Client's actual project costs, economic feasibility, or schedules will not vary from Caprine Engineering's opinions, projections, estimates or budgets.
- The representatives signing this agreement warrant that they have the authority to sign on behalf of the Client and Caprine Engineering.
- Caprine Engineering does not control Client's safety program and shall not be responsible for the means, methods, or procedures used by the Client, Client's contractor, or others for construction procedures or the health and safety of the Client, Caprine Engineering subcontractors, or others incident to this contract.
- It is agreed that this agreement shall be governed, construed, and enforced in accordance with the laws of the State of Alabama. Client agrees that all disputes with Caprine Engineering related to this contract for services shall be handled through mediation unless otherwise agreed between both parties. If mediation should fail, any suit filed based on this agreement must be filed in the courts of Jefferson County, Alabama.

**Payment Terms**

- This project is undertaken with the express understanding that the invoices for services of Caprine Engineering and related expenses should be paid in a timely manner. Services rendered under this proposal and contract for services will be invoiced monthly based on work completed. Invoices are due upon receipt and will be considered delinquent if not received within 30 calendar days after receipt.
- Caprine Engineering may, without legal consequences, suspend services until payment is received. Client also agrees to pay reasonable attorney's fees and costs Caprine Engineering may incur in the event an action is commenced to collect on unpaid invoices.
- Invoices outstanding over thirty calendar days shall accrue interest at the rate of 1% per month.

I would be pleased to answer questions Client may have or to clarify the various points above. If this proposal meets with Client's approval, a returned- signed copy will authorize us to proceed.

Best regards,



Chris Eckroate, P.E.  
Caprine Engineering, LLC

**Acceptance:**

**I accept terms and conditions in this letter.**

**Date:** \_\_\_\_\_

**Client Representative:** \_\_\_\_\_

---

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

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

E-Mail: [patrickboone@bellsouth.net](mailto:patrickboone@bellsouth.net)

May 8, 2019

By Hand Delivery

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

In Re: Contract By and Between Caprine Engineering, LLC  
and the City of Vestavia Hills, Alabama

Dear Mr. Downes:

On May 7, 2019, you sent to me via electronic mail a proposed Contract by and between Caprine Engineering, LLC (“Caprine”) and the City of Vestavia Hills, Alabama (“City”) with a request that I review it and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

**I. FACTS**

Caprine proposes to perform professional engineering services for the City for a new connector road between Blue Lake Drive and Timber Lake Drive for and in consideration of \$43,900.00.

**II. MY RECOMMENDATIONS**

A. **DELETION:** It is my legal opinion that municipalities in Alabama cannot spend public funds to indemnify, defend or hold harmless third parties. I base my opinion upon the following Alabama legal authorities:

**1. Municipalities Cannot Spend Public Funds to Indemnify Third Parties:**

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

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



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

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

It is my legal opinion that the expenditure of public funds to indemnify, defend and hold harmless would not be for a “public purpose.”

**B. ADDITIONS:** I recommend that the following language be added to the Contract:

“1. Caprine shall prepare the Bid Documents. The Bid Documents consist of the Advertisement for Bids, the Instructions to Bidders, any modifications of or supplements to the Instructions to Bidders, the Proposal Form, and the proposed Contract Documents. The proposed Contract Documents consist of the Construction Contract, the Performance Bond and Payment Bond, the Conditions of the Contract (General, Supplemental and other Conditions), Drawings, Specifications and all addenda issued prior to execution of the Construction Contract. Bid Documents may be obtained or examined as set forth in the Advertisement for Bids. The City shall pay the cost incurred in the Advertisement for Bids.

2. Caprine shall establish the prequalification requirements and conduct the prequalification procedures.

3. Caprine will assist the City in determining the lowest and responsible bidder.”

4. **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.”

5. 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. Caprine 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.”

### III. CONCLUSION

From a legal standpoint, I approve the contract provided the deletion and additions as set forth above are made. Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp



Geotechnical, Environmental, and Materials Engineers

Exhibit A - Resolution No. 5157  
5545 Derby Drive  
Birmingham, AL 35210  
Ph: (205) 836-6300  
[www.BuildingAndEarth.com](http://www.BuildingAndEarth.com)

April 24, 2019

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

Attn: Mr. Jeff Downes

c/o: Chris Eckroate, P.E. ([Chris.eckroate@caprineeng.com](mailto:Chris.eckroate@caprineeng.com))  
Caprine Engineering, LLC  
2730 19th Street S.  
Birmingham, AL 35209

Subject: Proposal to Provide Subsurface Exploration and  
Geotechnical Consultation Services  
Blue Lake – Timberlake Connector  
Vestavia Hills, Alabama  
Building & Earth Proposal No. BH21191

Dear Mr. Downes:

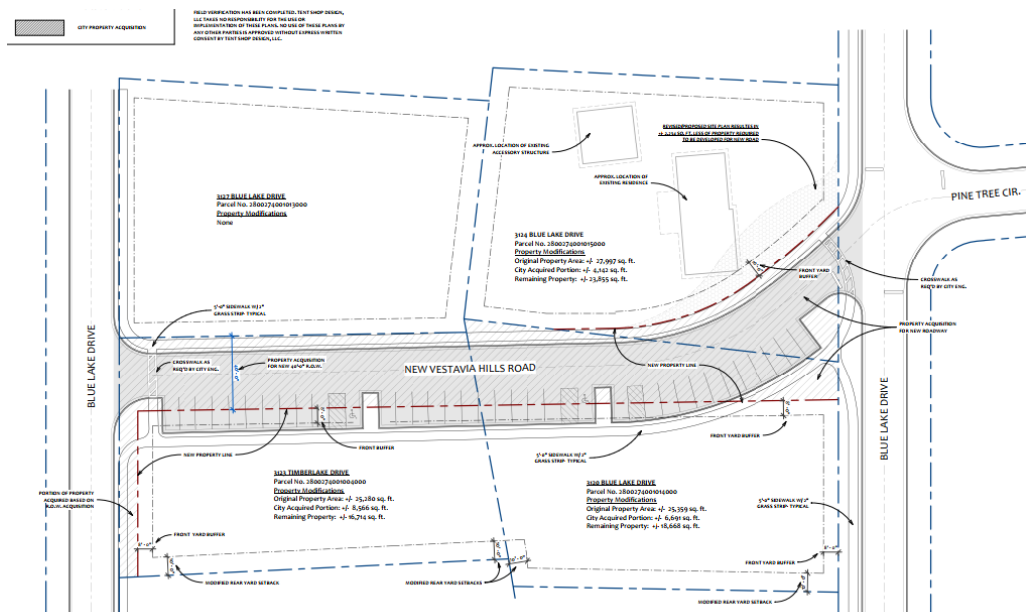
Building & Earth Sciences, Inc. is pleased to submit this proposal to provide subsurface exploration and geotechnical consultation services for the subject project. This proposal documents our understanding of the proposed construction, outlines our approach to the work, and presents a budget for our services.

### **PROJECT INFORMATION**

The project consists of the construction of a new connector road and parking area between Blue Lake Drive and Timberlake Drive, in Vestavia Hills, Alabama. Widening of Timber Lake Drive may be included in the project as well.

A grading plan was not provided at the time of this proposal, however, based on the surrounding topography, we anticipate cuts and fills on the order of 1 to 3 feet will be required to reach proposed grades.

A schematic design is shown below.



Schematic Design – Prepared by Tent Shop Design

## GEOTECHNICAL SCOPE OF SERVICES

The purpose of the geotechnical exploration will be to determine general subsurface conditions and to gather data on which to base a geotechnical evaluation with respect to the proposed construction. The work will include soil test borings, laboratory analysis, and geotechnical evaluation appropriate to address the geotechnical aspects of the proposed construction.

### Field Exploration

- A geotechnical site reconnaissance and subsurface exploration will be performed consisting of six (6) soil test borings within the proposed connector alignment and along Timber Lake Drive. The borings will be located in accessible areas of the site. The borings will be advanced to a depth of 10 feet below the surface or auger refusal, whichever occurs first. No rock coring is included in this proposal.

### Laboratory Analysis

- Two (2) Atterberg Limits determination or #200 wash sieve tests, as appropriate.
- Ten (10) natural soil moisture content tests.



## Report

The results of the subsurface exploration will be documented in a report that will address the following items:

- Site geology and its impact on site development.
- Summary of existing surface conditions.
- A description of the subsurface and groundwater conditions encountered at the soil test boring locations. (Long-term water level monitoring is not included in this proposal.)
- Presentation of laboratory test results.
- Site preparation considerations including material types to be expected at the site and treatment of unsuitable soils, if encountered.
- Compaction requirements and recommended criteria to establish suitable material for structural backfill.
- Recommendations for suitable pavement sections, based on assumed traffic loading.

## BUDGET

The cost of our services will be based on the amount of work necessary to evaluate the geotechnical conditions for construction purposes. Based on the scope of work described in this proposal, the budget for the subsurface exploration and geotechnical evaluation is **\$4,100.00**.

If conditions are encountered that require additional analysis, then we will discuss a modified work scope with your office. We will not exceed the indicated budget without your prior authorization.

After issuance of the geotechnical report, any additional revisions, client meetings, and/or consultations will be billed at a rate of **\$125** per hour.

## UTILITIES / SITE ACCESS

Based on a recent site visit, the majority of the site appears to be accessible to our track-mounted drill rig, without requiring access preparation. **We request right of entry be arranged for all properties along the proposed alignment prior to our mobilization. No re-grading or re-vegetation of the site following the completion of our field exploration is included in our scope of work.** The borings will be backfilled with auger cuttings upon completion of drilling. Borings located in Timberlake Drive will be patched with cold mix asphalt.

We will contact the Alabama One-Call Center to locate underground utilities at the site. We request the current owner provide us with any available information regarding underground utilities. Building & Earth will not be held liable for damage to unmarked utility lines or lines marked erroneously by others.

### AUTHORIZATION AND SCHEDULE

We have attached a copy of a Standard Proposal Acceptance Form, which, when signed and returned to Building and Earth, will serve as our authorization to proceed with the proposed scope of work. Changes to the work scope by virtue of design changes or unusual subsurface conditions should be authorized in writing. We anticipate that the field exploration could be started within 5 business days after receiving written authorization to proceed. The written report will be available within 10 business days following the field exploration.

We will discuss the site conditions with you during the course of the work and can provide preliminary recommendations as the work proceeds. Weather may extend the time required for the field exploration (and overall schedule) if rainy days occur prior to or after commencement of the exploration.

### CLOSING

We appreciate the opportunity to submit this proposal for subsurface exploration and geotechnical engineering services for the proposed construction, and look forward to working with you on this project. If you have any questions regarding this proposal, please contact the undersigned.

Respectfully submitted,  
**BUILDING & EARTH SCIENCES, INC.**



Joey Jones, P.E.  
Geotechnical Department Manager



Richard D. Brown, P.E.  
Assistant Branch Manager

Attachment:  
Boring Location Plan  
Authorization Sheet and Terms & Conditions



**Proposed Boring Location** 



Geotechnical, Environmental, and Materials Engineers

Reference used to create this drawing:	<b>PROPOSED BORING LOCATION PLAN</b>	
Survey Scope, dated 4/15/2019	<b>PROPOSAL NO.</b>	<b>PROJECT NAME / LOCATION</b>
	BH21191	Blue Lake-Timberlake Connector Vestavia, AL
	<b>APPROX SCALE:</b>	<b>DATE:</b>
	NTS	4/24/19



**INFORMATION SHEET**

**PROJECT NAME/LOCATION:** Blue Lake – Timberlake Connector (GEO) Vestavia, AL

**PROPOSAL/PROJECT NO.** BH21191 **DATE:** 4/24/19

**CLIENT:** City of Vestavia Hills

**FOR PAYMENT OF CHARGES:**

Charge invoice to the account of:

**Firm:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**Attention:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**FOR APPROVAL OF CHARGES:**

If the invoice is to be mailed to someone other than the account charges, please indicate where to mail the invoice in the space below:

**Firm:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**Attention:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**REPORT DISTRIBUTION:**

**Firm:** \_\_\_\_\_ **Firm:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Address:** \_\_\_\_\_

**Attention:** \_\_\_\_\_ **Attention:** \_\_\_\_\_

**Email:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**SERVICES:** See Consultant’s Proposal

**PAYMENT:** See Consultant’s Proposal





**PROJECT NAME/LOCATION:** Blue Lake – Timberlake Connector (GEO) Vestavia, AL

**PROPOSAL/PROJECT NO.** BH21191 **DATE:** 4/24/19

**CLIENT:** City of Vestavia Hills

**ACCEPTANCE OF CONTRACT:**

The Contract consists of the Information Sheet, the Consultant’s Proposal, and the attached General Terms and Conditions (the “Contract”), including all additions, deletions, and modifications as agreed upon in writing by Consultant. The Contract sets forth the entire agreement between the parties pertaining to the services and supersedes all inquiries, proposals, agreements, negotiations and commitments, whether written or oral, prior to the execution of the Contract. The provisions of the Contract may be changed only by a writing executed by Consultant and Client.

THIS CONTRACT is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CLIENT:

\_\_\_\_\_  
[Company Name]

Sign:\_\_\_\_\_

Print:\_\_\_\_\_

Its:\_\_\_\_\_

Address:\_\_\_\_\_

\_\_\_\_\_



## GENERAL TERMS AND CONDITIONS

### SECTION 1: STANDARD OF CARE

- 1.1** The standard of care for all services performed or furnished by Building & Earth Sciences, Inc. ("Consultant") under this Contract will be that level of care and skill ordinarily exercised by members of Consultant's profession practicing under similar conditions at the same time and in the same geographical region. Consultant makes no warranties, express or implied, under this Contract or otherwise, in connection with the Consultant's services.

### SECTION 2: CONSULTANT'S SERVICES

- 2.1** Services. Consultant shall perform the services described in Consultant's Proposal in accordance with this Contract, which may include construction materials testing services or subsurface exploration and geotechnical consultation services.

- 2.2** Subsurface Exploration and Geotechnical Consultation Services. If Consultant's Proposal includes services for subsurface exploration and geotechnical consultation, then this Section 2.2 shall apply:

(a) Subsurface Risks. Client recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Site exploration may fail to detect unknown or undocumented conditions such as sinkholes, underground mines, caverns, hazardous materials, etc. Subsurface sampling may also result in unavoidable contamination of certain subsurface areas, or bodies of water if unknown contaminated zones exist at the site. The passage of time also must be considered, and Client recognizes that, due to natural occurrence or other direct or indirect human intervention at the site or distance from it, actual conditions may quickly change. Client understands that elimination of these risks is not possible and therefore waives any claim against Consultant, for injury or loss or property liability that may arise from such subsurface conditions.

(b) Site Clearing/Erosion Control. When clearing of vegetation or benching into the earth is required to provide access for exploration equipment, rough-cleared access roads and some felled trees may result. Consultant shall not be responsible for restoring the site to its original condition, and Consultant shall not conduct any regrading, revegetation or erosion control.

(c) Utilities/Existing Man Made Objects. Prior to Consultant commencing the services, Client shall disclose the presence and accurate location of any utilities and any hidden or obscure man-made objects to Consultant in writing. Consultant shall not be responsible for any damages to subterranean structures or objects that were not specifically identified to Consultant in writing prior to Consultant commencing the services and/or which were not correctly shown on the plans furnished to Consultant. The Client agrees to waive any and all claims against the Consultant Group and to defend, indemnify and hold harmless the Consultant Group from and against all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to damage to subsurface conditions or structures, whether owned by Client or third parties.

(d) Samples. Consultant will retain all soil and rock samples for thirty (30) days. Further storage or transfer can be made at the Client's expense upon written request.

(e) Construction Estimates/Bid Documents/Plans and Specifications.

(1) Any reports prepared by Consultant in connection this Contract are for general geotechnical design purposes only, and Client shall not rely on these reports to prepare accurate bids or estimates for excavation and rock quantities, dewatering, removal of unsuitable materials or excavation support. An entirely different work scope will be required for quantity estimation purposes.

(2) Client agrees to retain Consultant to review the plans and specifications and work with other design professionals who are affected by any report furnished by Consultant in connection with this Contract. The review of plans and specifications is to assure that the geotechnical issues have been dealt with properly and that geotechnical findings and recommendations are properly interpreted and incorporated in design.

(3) Misinterpretation or improper use of Consultant's reports by contractors or others in preparing cost and quantity estimates or bid documents is a major cause of construction claims. Client agrees to defend, indemnify and hold harmless the Consultant Group from and against all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to cost or quantity estimates or bid documents prepared by others without Consultant's written approval.

- 2.3** Time. Unless specific periods of time or specific dates are specified in this Contract, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services. If in this Contract specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are changed through no fault of Consultant, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.
- 2.4** Changes. If Client requests changes in the scope of Consultant's services, the time of performance of Consultant's services shall be adjusted equitably and the rates and amounts of compensation provided for herein shall also be subject to equitable adjustment.

### **SECTION 3: OWNERSHIP OF DOCUMENTS**

- 3.1** All reports, boring logs, field notes, laboratory test data, calculations, estimates, proprietary information and other documents or information ("Instruments of Service") prepared, developed, or acquired by Consultant shall be the property of Consultant, and Consultant shall retain an ownership and property interest therein.
- 3.2** Client agrees that all Instruments of Service or other work furnished to the Client or its agents, which are not paid for in accordance with the Contract, shall be returned to Consultant upon demand and shall not be used by the Client for any purpose whatever.
- 3.3** Consultant hereby grants to Client a nonexclusive license to use the Instruments of Service furnished by Consultant only for the purpose of the operation and maintenance of the Project for which the Instruments of Service were provided. Client may make and retain copies of the Instruments of Service only for use on the Project by Client. The Instruments of Service are not suitable for reuse by Client or others on extensions, modifications, or expansions of the Project or any other project. Any such reuse or modification without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, shall be at Client's sole risk and without liability or legal exposure to Consultant, or to Consultant's officers, directors, partners, employees, agents, or representatives (the "Consultant Group").
- 3.4** Client agrees to waive any and all claims against the Consultant Group and to defend, indemnify and hold harmless the Consultant Group from and against any and all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to Client's use of the Instruments of Service in violation of the Contract.

### **SECTION 4: PAYMENT TERMS**

- 4.1** Client shall pay Consultant for the services performed or furnished on the basis set forth on the Information Sheet.
- 4.2** Invoices will be submitted monthly to Client and upon Consultant's completion of services. Invoices are due and payable within thirty (30) days of receipt. If Client fails to make any payment due Consultant for services or expenses within thirty (30) days after receipt of Consultant's invoice, the amounts due Consultant will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Consultant may, after giving seven (7) days written notice to Client, suspend the services until Consultant has been paid in full all amounts due. Payments will be credited first to interest and then to principal.

- 4.3** In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and Client shall pay to Consultant the undisputed portion.
- 4.4** Client agrees to pay all collection costs and expenses, including attorneys' fees, incurred by Consultant in collecting or attempting to collect any past due account.

**SECTION 5: INSURANCE & LIMITATION OF LIABILITY**

**5.1** Consultant shall procure and maintain the following insurance coverage:

(a) Worker's Compensation Insurance	statutory limit
(b) Employer's Liability	\$1,000,000
(c) Comprehensive General Liability Insurance	
General Aggregate	\$2,000,000
Bodily injury & property damage	\$1,000,000 per occurrence
(d) Automobile Liability Insurance	\$1,000,000 per occurrence

- 5.2** Limitation of Professional Liability. Notwithstanding anything in the Contract to the contrary, and to the fullest extent permitted by law, Client agrees that the total liability of the Consultant Group to Client and anyone claiming by, through, or under Client for any cost, loss, or damages caused by the acts or omissions of Consultant shall not exceed \$100,000.00 or Consultant's total fee for the services, whichever is less.
- 5.3** Waiver of Consequential Damages. Notwithstanding anything herein to the contrary, neither Consultant nor Client shall be liable to the other for any consequential, special, or indirect losses or damages, whether arising in contract, warranty, tort, strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

**SECTION 6: RIGHT OF ENTRY**

**6.1** Client and/or property owner shall provide access to and make all provisions for right of entry to Consultant and all equipment necessary for Consultant to perform the services. It is understood by Client that in the normal course of services some damage may occur, the correction of which is not part of this Contract. Client shall not be responsible whatsoever for any such damage or for the correction of any damage.

**SECTION 7: SAMPLING OR TEST LOCATION**

**7.1** Unless otherwise specified in writing, the Consultant's fees set forth on the Information Sheet do not include costs associated with surveying the site for the accurate horizontal and vertical locations of boreholes, test pits or other field tests performed. Client shall be responsible for such additional costs. Field tests or boring locations described in Consultant's report or shown on sketches are based on information furnished by others or estimates made in the field by Consultant's representatives. Client acknowledges and agrees that such dimensions, depths, or elevations are approximations only. Client shall not rely upon such information, and Consultant makes no warranties, express or implied, as to this information.

**SECTION 8: MONITORING OF FIELD ACTIVITIES**

- 8.1** The presence of Consultant's field personnel, either full-time or part-time, at the Project will be for the purpose only of providing periodic observation and field testing of specific aspects of the Project as authorized by the Client. Client acknowledges and agrees that Consultant will not be responsible for the supervision or direction of the contractor's work, or the work of contractor's employees, agents, or subcontractors. The presence or absence of Consultant's field representatives, or Consultant's observation or testing, shall not relieve the contractor of its responsibilities to perform its work in accordance with the plans and specifications. Consultant shall not have any control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the contractor's work or of any other persons or entities performing portions of the work at the Project.
- 8.2** The observations and tests performed by Consultant's field representative are valid only for the time and location the test is performed. The Client acknowledges that outside factors such as construction activity, weather and the passage of time can alter condition of the material tested or observed.



- 8.3** Client agrees that the contractor will be solely and completely responsible for working conditions at the Project, including safety of all persons and property during performance of its work, and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Client acknowledges and agrees that Consultant will not be responsible for job or site safety on the Project, and that Consultant does not have the duty or right to stop the work of the contractor.
- 8.4** Client waives any and all claims against the Consultant Group and agrees to indemnify, defend and hold harmless the Consultant Group from and against all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to contractor's failure to perform its work in accordance with plans and specifications or contractor's failure to comply with the applicable safety requirements and regulations.

## **SECTION 9: HAZARDOUS SUBSTANCES**

**9.1** Client agrees to comply with all applicable laws related to Hazardous Substances. Consultant shall not be responsible in any way for any Hazardous Substances uncovered, revealed, or discovered at the Project site.

**9.2** The term "Hazardous Substance" means any substance or material: (i) the presence of which requires management, reporting, investigation or remediation under any federal, state or local law, statute, rule, regulation, ordinance, order, action, policy or common law; (ii) which is or becomes regulated by any federal, state or local governmental authority, including without limitation, any substance or waste material which is defined or listed as a "hazardous waste," "acutely hazardous waste," "extremely hazardous substance," "restricted hazardous waste," "industrial waste," "hazardous substance," "hazardous material," "pollutant" "hazardous air pollutant," "criteria pollutant," "volatile organic compound," "priority pollutant," "special waste," "SARA 313 chemical" or "contaminant" under any law; (iii) which contains gasoline, diesel fuel or other petroleum hydrocarbons or a petroleum derivative; (iv) which contains polychlorinated biphenyls ("PCBs"), asbestos or urea formaldehyde; or (v) which poses an unreasonable risk of injury to human health or the environment.

**9.3** If any Hazardous Substance is discovered at the Project site, the Client shall be solely responsible for all costs and expenses associated with the discovery of such Hazardous Substance. To the fullest extent permitted by law, the Client shall defend, indemnify and hold harmless the Consultant Group from and against any and all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or related to Consultant's performance of the services in an area where a Hazardous Substance is discovered.

## **SECTION 10: DISPUTES**

**10.1** In the event of a dispute arising out of or relating to this Contract or the services to be rendered hereunder, Client and Consultant agree to attempt to resolve such disputes in the following manner:

(a) Amicable Resolution. The parties agree to first attempt to resolve such disputes amicably through direct negotiations between the appropriate representatives of each party.

(b) Mediation. If such negotiations are not fully successful, the parties agree to attempt to resolve any remaining disputes by mediation conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Birmingham, Alabama. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(c) Arbitration. The parties acknowledge and agree that the Contract and the subject matter hereof are substantially connected with and involved with interstate commerce. Any controversy, dispute or claim arising out of or related to the Contract, or the breach thereof, not otherwise resolved in accordance with this Section shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The arbitration hearing shall be held in Birmingham, Alabama. The provisions of this section to arbitrate and any judgment rendered upon the award by the arbitrator or arbitrators may be enforced in any court having jurisdiction thereof. The prevailing party shall be entitled to have its reasonable attorneys' fees and related costs and expenses paid by the non-prevailing party.

**SECTION 11: THIRD PARTY CLAIMS**

**11.1** To the fullest extent permitted by law, Client agrees to defend, indemnify and hold harmless the Consultant Group from and against any and all third party claims whatsoever (including, but not limited to, all attorneys' fees and dispute resolution costs) arising from any act, error, or omission of Client relating to the Project. To the fullest extent permitted by law, Consultant agrees to defend, indemnify and hold harmless the Client from and against any and all third party claims whatsoever (including, but not limited to, all attorneys' fees and dispute resolution costs) arising from any act, error, or omission of Consultant relating to the Project.

**SECTION 12: TERMINATION**

**12.1** This Contract may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with this Contract, and provided that the defaulting party has not cured such failure within five (5) days after receiving such written notice. In the event of termination, Consultant shall be paid for services performed to the termination date plus reasonable termination expenses.

**12.2** In the event Client terminates or suspends Consultant's services for three (3) months or more prior to Consultant's completion of all reports contemplated by this Contract, Consultant may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of termination or suspension. Client shall be responsible for the expenses of such termination or suspension, which shall include, without limitation, all costs of Consultant to complete such analyses, reports or records.

**12.3** Consultant may terminate the Contract by written notice to Client if Client fails to pay Consultant's undisputed invoices in the manner required by this Contract, if such failure continues for a period of ten (10) days after written notice is given to Client.

**SECTION 13: ASSIGNS**

**13.1** Neither the Client nor Consultant may delegate, assign, sublet or transfer any obligation or interest in this Contract without the written consent of the other party.

**SECTION 14: CERTIFICATIONS, GUARANTEES AND WARRANTIES**

**14.1** Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant having to certify, guarantee or warrant the existence of conditions whose existence Consultant cannot ascertain. Client shall not make resolution of any dispute with Consultant or payment of any amount due to Consultant in any way contingent upon signing any such certification, guarantee, or warranty.

**SECTION 15: MISCELLANEOUS**

**15.1** Governing Law. This Contract shall be governed by the law of the state in which the Project is located.

**15.2** Notices. Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally, by certified mail (return receipt requested), or by Federal Express, UPS, or other nationally recognized overnight carrier. All notices shall be effective upon the date of receipt.

**15.3** Waiver. Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Contract.

**15.4** Headings. This Contract may be executed in one or more counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument. All signatures need not appear on the same counterpart.

**15.5** Severability. The determination of the invalidity of all or any provision in this Contract shall not render the remaining provisions void or unenforceable, and this Contract shall thereafter be construed as though such invalid provision were not a part hereof.

**15.6** Expiration. This proposal is good for a period of 90 days from the date of the proposal. After 90 days, Consultant will consider extending the offer if requested to do so by Client.

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

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

**E-Mail: [patrickboone@bellsouth.net](mailto:patrickboone@bellsouth.net)**

May 8, 2019

**By Hand Delivery**

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

In Re: Proposed Contract By and Between the City of Vestavia Hills, Alabama  
and Building & Earth Sciences, Inc.

Dear Mr. Downes:

On May 7, 2019, you sent to me via electronic mail a proposed Contract by Building & Earth Sciences, Inc., as “Consultant”, and the City of Vestavia Hills, Alabama, as “Client”, with a request that I review it and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

**I. BACKGROUND**

Recently, the Consultant and City entered into two Contracts wherein the Consultant agreed to perform the following subsurface exploration and geotechnical consultation services at the Cahaba Heights Athletic Fields:

A. Professional services pursuant to a Proposal dated February 4, 2019 for and in consideration of \$4,200.00.

B. Professional services pursuant to a Proposal dated February 11, 2019 for and in consideration of \$30,340.00.

On February 19, 2019, I prepared and submitted to you a written legal opinion regarding the two Proposals.

## **II. PRESENT FACTS**

The Consultant has submitted a Proposal dated April 24, 2019 for professional services, including six (6) soil test borings for and in consideration of \$4,100.00, plus \$125.00 per hour for additional services relative to the construction of a new connector road and parking area between Blue Lake Drive and Timberlake Drive.

The General Terms and Conditions of the Contract dated April 24, 2019 are identical to the two submitted in February 2019.

## **III. GENERAL TERMS, CONDITIONS AND PROVISIONS OF CONTRACT**

The Contract requires the Client to defend, indemnify and hold harmless the Consultant in the following sections of the General Terms and Conditions:

- A. **SECTION 2.2(c)**: The last sentence of this section consisting of five lines.
- B. **SECTION 2.2(e)(3)**: The final sentence of this section consisting of five lines.
- C. **SECTION 3.4**: The entire section consisting of five lines.
- D. **SECTION 5.2**: Limitation of liability consisting of four lines.
- E. **SECTION 8.4**: The entire section consisting of five lines.
- F. **SECTION 9.3**: The last sentence of this section consisting of five lines.
- G. **SECTION 11.1**: The first sentence of this section consisting of three lines.

## **IV. LEGAL ISSUE**

May municipalities in Alabama legally spend public funds to indemnify other parties?

## **V. LEGAL OPINION**

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

## VI. BASIS FOR LEGAL OPINION

I base my legal opinion upon the following Alabama laws.

### A. MUNICIPALITIES CANNOT SPEND PUBLIC FUNDS TO INDEMNIFY THIRD PARTIES:

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

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

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.

2. 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*.

3. 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.



4. **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.

5. **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.”

**B. MUNICIPALITIES MAY BE LIABLE FOR THE NEGLIGENT ACTS OF ITS EMPLOYEES ACTING IN THE LINE AND SCOPE OF THEIR EMPLOYMENT:**

1. 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.”

2. **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.”

3. **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.”

4. **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.”

5. **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 Berkley Risk Administrators Company, LLC.

6. **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.

## VII. **MY RECOMMENDATIONS**

A. I recommend that all language requiring the City to defend, indemnify and hold harmless the Consultant and other third parties as set forth in section III of this legal opinion be deleted from the Contract.

B. Alabama law at Title 31-13-9(k), *Code of Alabama, 1975*, provides as follows:

“(k) All contracts or agreements to which the state, a political subdivision, or state-funded entity are a party shall include the following clause: ‘By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.’”

Therefore, I recommend that the following language be added to the Contract:

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

C. The Contract/Proposal is exempt from the Alabama Competitive Bid Law by virtue of Title 41-16-51(a)(3), *Code of Alabama, 1975*.

D. From a legal standpoint, I recommend the approval of the Contract provided that it is amended consistent with this legal opinion.

Please call me if you have any questions regarding the proposed Contract or this legal opinion.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp



April 26, 2019

John E. Hall, III MAI  
334-277-5077  
jhall@valbridge.com

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

RE: Narrative Summary Appraisals  
3 Tracts on Blue Lake Neighborhood Project  
Vestavia Hills, AL 35243

Dear Mr. Downes,

Valbridge Property Advisors | Alabama-Florida Panhandle ("Appraiser") is pleased to present the following requested proposal to perform Appraisal Services regarding the above referenced property(ies) for City of Vestavia Hills ("Client"). If this document is executed by both parties, it will form the engagement contract for our services ("Agreement"). The following provisions will apply to our services:

<b>Subject Property</b>	City of Vestavia Hills Blue Lake Neighborhood Project # 18-0249 30 tracts
<b>Intended Use</b>	Market value for acquisition and possible temporary easements. Alternate uses are neither intended nor authorized.
<b>Intended User(s)</b>	City of Vestavia Hills
<b>Date of Value</b>	Date of inspection
<b>Scope of Assignment</b>	The scope of our engagement will include the applicable research and analysis required to provide the market value of the property and any effects of the acquisitions.
<b>Assignment Conditions</b>	None

**Valbridge – Alabama**  
200 Cahaba Park Circle, Ste 213  
Birmingham, AL 35242  
Phone: (205) 783-5104  
www.Valbridge.com



<b>Presentation of Findings</b>	Narrative Appraisal Report Electronic copy in PDF format. Hard copies upon request for an additional charge.
<b>Professional Fee</b>	The professional fee for this assignment will not exceed \$7,500 for complete appraisals. \$2,500 per tract.
<b>Retainer</b>	\$0 Fee for services due upon delivery of work product.
<b>Responsibility for Fees</b>	If the assignment is terminated prior to completion and delivery of the report, billing will reflect expenses to date and work to date. Billing of a cancelled assignment will follow the standard payment policy described in the included Terms and Conditions.
<b>Additional Services</b>	In the event that additional services are needed, such as, but not limited to additional reports, further analysis, formal presentations, court testimony or any other services, a fee of \$250 per hour will be charged.
<b>Delivery</b>	TBD Est. June 30-2019 (final electronic report)  Appraiser will use Appraiser's best efforts to deliver the appraisal report by the above date. Appraiser's delivery of the report is contingent on receipt of an executed copy of this engagement contract, receipt of the retainer, if required, within 7 business days of provision of the proposal to Client and receipt of the requested information and documentation from Client within 10 business days of provision of the proposal to Client.
<b>Requested Information</b>	Property owner contact information and most up to date revised maps. Current is January 16, 2019.
<b>Professional Standards Governing Assignment</b>	The analyses, opinions, and conclusions will be developed and presented in conformance with (and the use of this report is subject to) the requirements of: (1) the Uniform Standards of Professional Appraisal Practice, and (2) the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute.
<b>Disclosure of Prior Services Regarding Subject Property</b>	The appraiser(s) who will perform the appraisal has not performed any prior services regarding the Subject Property within the three-year period immediately preceding the date of this Agreement, as an appraiser or in any other capacity.

Attached to and incorporated in this engagement letter are Valbridge Property Advisors |Alabama-Florida Panhandle's Terms and Conditions of Agreement. These Terms and Conditions form a material part of this Agreement and are no less important than any other part. The appraisal(s) performed under this Agreement also will be subject to all assumptions and limiting conditions and other conditions (collectively, "Appraisal Conditions") set forth in the appraisal report(s). Client's use of the appraisal will constitute acceptance of the Appraisal Conditions stated in a report. The Appraisal Conditions shall be considered as being incorporated into and forming part of this Agreement with respect to the appraisal in which they are contained and to the services relating to that appraisal.

Thank you for considering our firm for this assignment. If these terms are acceptable to you, please indicate below by your signature, or the signature of an authorized alternate. Please retain a copy for your records and return a signed copy to us, along with the retainer. We look forward to working with you on this assignment.

Respectfully submitted,  
Valbridge Property Advisors | Alabama-Florida Panhandle



John E. Hall, III, MAI  
Certified General Real Property Appraiser  
Senior Managing Director  
Alabama License Number G00495  
Alabama License Expires September 30, 2019  
jhall@valbridge.com

**AGREED AND ACCEPTED**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Date

1. "Appraiser" means Valbridge Property Advisors | Alabama-Florida Panhandle and its appraisers, employees, partners, owners, shareholders, members, officers, directors and independent contractors.
2. Acceptance of this Agreement assumes that Client will provide all necessary information needed for the appraisal on a timely and truthful basis.
3. It is Client's responsibility to read the report and to inform Appraiser of any errors or omissions, prior to utilizing the report or making it available to any third party.
4. The fee quoted is based on Appraiser's understanding of the assignment as outlined in the scope of work. Changes in scope will be billed at Appraiser's normal hourly rates. The fee and estimated completion time are subject to change if the property is not as outlined in our proposal, or if issues come to light during the course of Appraiser's investigation which, in Appraiser's opinion, necessitates such change. If Client places an assignment "on hold," then reactivates the appraisal, an additional charge may apply due to the inefficiency created. If Appraiser is requested or required to provide testimony as a result of this appraisal, testimony and preparation time will be charged at our normal hourly rates.
5. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Alabama-Florida Panhandle. Neither Valbridge Property Advisors, Inc., nor any of its affiliates, has been engaged to provide this report. Valbridge Property Advisors, Inc., does not provide valuation services, and has taken no part in the preparation of this report.
6. If any legal action or claim is filed against any of Valbridge Property Advisors, Inc., a Florida Corporation, its affiliates, officers or employees, or Appraiser, in connection with, or in any way arising out of, or relating to, the appraisal(s) or this Agreement, then (1) under no circumstances shall such claimant be entitled to consequential, special or other damages, except only for direct compensatory damages and (2) the maximum amount of such compensatory damages recoverable by such claimant shall be the amount actually received by Appraiser from Client.
7. Unless the time period is shorter under applicable law, any legal action or claim in connection with, or in any way arising out of, or relating to, the appraisal(s) or this Agreement shall be filed in court (or in the applicable arbitration tribunal) within two (2) years from the date of delivery to Client of the appraisal to which the claims or causes of action relate or, in the case of acts or conduct after delivery of the report, two (2) years from the date of the alleged acts or conduct. The time period stated in this section shall not be extended by any delay in the discovery or accrual of the underlying claims, causes of action or damages. The time period stated in this section shall apply to all non-criminal claims or causes of action of any type.
8. Legal claims or causes of action in connection with, or in any way arising out of, or relating to, the appraisal(s) or this Agreement are not assignable, except: (i) as the result of a bona fide merger, consolidation, sale or purchase of a legal entity, (ii) with regard to the collection of a bona fide existing debt for services but then only to the extent of the total compensation for the appraisal plus reasonable interest, or (iii) in the case of an appraisal performed in connection with the origination of a mortgage loan, as part of the transfer or sale of the mortgage before an event of default on the mortgage or note or its legal equivalent.
9. Appraisal reports and associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes. If Client is unwilling to waive confidentiality for this purpose, client must inform Alabama-Florida Panhandle upon acceptance of this assignment.
10. This appraisal shall be used only for the function outlined in the attached letter, unless expressly authorized by Valbridge Property Advisors |Alabama-Florida Panhandle. The format and value reported may or may not be valid for other purposes.
11. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | Alabama-Florida Panhandle will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client secure appropriate inspections from qualified experts if the presence of hazardous materials or contamination poses any concern.

12. Our standard payment policy is as follows: the balance is due upon presentation of the invoice; if payment is not made within 30 days of date due, interest at the rate of 1.5% per month will be added to the principal from the due date to date payment is received, and you shall pay all expenses of collection, including court costs and attorney fees. If the client requests a draft, the fee is due upon delivery of the draft. shall be under no obligation to continue work on an assignment that is not paid current.
13. The fee for this appraisal is not contingent upon the valuation of the property, the funding of any loan or outcome of litigation. Any opinions Appraiser may have expressed about the outcome of your matter or case are expressions of Appraiser's opinions only and do not constitute any guarantee about the outcome. Should the assignment be terminated prior to completion, you agree to pay for time and costs incurred prior to Appraiser's receipt of written notice of cancellation.
14. If this assignment includes a provision for work performed on an hourly billing basis, such work is subject to periodic adjustment to Appraiser's then-current rates. Valbridge Property Advisors | Alabama-Florida Panhandle shall provide 30 days' notice to client prior to any rate increase. If client chooses not to consent to the increased rates, client may terminate Valbridge Property Advisors |Alabama-Florida Panhandle's services by written notice effective when received by Valbridge Property Advisors |Alabama-Florida Panhandle.
15. If this assignment includes a provision for work on an hourly billing basis, client acknowledges that Valbridge Property Advisors | Alabama-Florida Panhandle has made no promises about the total amount of fees to be incurred by client under this agreement.
16. Client and Valbridge Property Advisors | Alabama-Florida Panhandle both agree that any dispute over matters in excess of \$5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | Alabama-Florida Panhandle and the client cannot agree on the arbitrator, the presiding civil administrative judge the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, the Client and Appraiser both acknowledge that, by agreeing to binding arbitration, each is giving up the right to have the dispute decided in a court of law before a judge or jury. In the event that the client, or any other party entitled to do so, makes a claim against Alabama-Florida Panhandle or any of its employees in connection with or in any way relating to this assignment, the maximum damages recoverable from Valbridge Property Advisors | Alabama-Florida Panhandle or its employees shall be the amount of monies actually collected by Valbridge Property Advisors | Alabama-Florida Panhandle for this assignment and under no circumstances shall any claim for consequential damages be made.
17. Appraiser shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors |Alabama-Florida Panhandle. "Client" shall not include partners, affiliates or relatives of the party named in the engagement letter. Client shall hold Appraiser harmless in the event of any lawsuit brought by any third party, lender, partner or part owner in any form of ownership or any other party as a result of this assignment.
18. Distribution of this report is at the sole discretion of the client, and the Appraiser will make no distribution without the specific direction of the client. However, in no event shall client give a third party a partial copy of the appraisal report.
19. This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this agreement will be binding on the parties. This agreement may be modified by subsequent agreement of the parties.

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

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

**E-Mail: [patrickboone@bellsouth.net](mailto:patrickboone@bellsouth.net)**

May 8, 2019

By Hand Delivery

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

In Re: Proposed Agreement Between City of Vestavia Hills, Alabama and  
Valbridge Property Advisors

Dear Mr. Downes:

On May 7, 2019, you sent to me via electronic mail a proposed Contract by and between Valbridge Property Advisors/Alabama—Florida Panhandle (“Appraiser”) and the City of Vestavia Hills, Alabama (“Client”) with a request that I review the same and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

**I. BACKGROUND**

Recently, the City and Appraiser entered into a written Contract wherein the Appraiser agreed to appraise thirty (30) separate tracts of land located along Crosshaven Drive. The total cost for partial appraisal of the 30 tracts amounted to \$50,800.00. Complete appraisals for the 30 tracts would total \$83,900.00.

I wrote a legal opinion dated February 13, 2019 regarding that Contract and submitted it to you. A copy of that legal opinion is attached hereto.

**II. PRESENT FACTS**

The Appraiser now proposes to perform appraisal services for the City. The properties to be appraised are situated in the Blue Lake neighborhood. Among other things, the Proposal reads “The professional fee for this assignment will not exceed \$7,500 for complete appraisals. \$2,500 per tract.” The Contract is dated April 26, 2019.

The Contract for appraisals of properties along Crosshaven Drive and the Contract for the appraisals in the Blue Lake neighborhood are identical, except for the description of the properties to be appraised and the cost for the appraisal services.



### **III. MY RECOMMENDATIONS**

**A. DELETION:** The last sentence of section 17 of the Contract reads, “Client shall hold Appraiser harmless in the event of any lawsuit brought by any third party, lender, partner or part owner in any form of ownership or any other party as a result of this assignment.”

It is my legal opinion that the expenditure of public funds to indemnify, defend and hold harmless would not be for a “public purpose.” I, therefore, recommend that the indemnity language set forth above be deleted in its entirety.

I base my legal opinion upon the legal authorities cited in my previous legal opinion dated February 13, 2019, which is marked as Exhibit A and incorporated into this legal opinion by reference as though set out fully herein.

**B. ADDITIONS:** I recommend that the following additions be made to the Contract:

1. The following section should be added to the Contract:

**“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.”

I base this recommendation upon Title 31-13-9(k), *Code of Alabama, 1975*, that requires this language in all City contracts.

**B.** The following section should also be added to the Contract:

**“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. Appraiser 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.”

**IV. CONCLUSION**

From a legal standpoint, I approve the Contract provided that the last sentence of section 17 is deleted from the Contract and the additions as set forth above are made. Please call me if you have any questions regarding this legal opinion.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp  
Attachment

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

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

**E-Mail: [patrickboone@bellsouth.net](mailto:patrickboone@bellsouth.net)**

February 13, 2019

By Electronic Mail

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

In Re: Contract With Valbridge Property Advisors/Alabama—Florida Panhandle for Property Appraisal Services

Dear Mr. Downes:

On February 5, 2019, you sent to me via electronic mail a proposed Contract by and between Valbridge Property Advisors/Alabama—Florida Panhandle (“Appraiser”) and the City of Vestavia Hills, Alabama (“Client”) with a request that I review the same and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

**I. FACTS**

Appraiser proposes to appraise thirty (30) separate tracts of land located along Crosshaven Drive. The total cost for partial appraisal of the 30 tracts amounts to \$50,800.00. Complete appraisals for the 30 tracts will total \$83,900.00.

At the outset, it is important to note that the Contract is not subject to the Alabama Competitive Bid Law. Title 41-16-51(a)(3), *Code of Alabama, 1975*, provides that contracts for securing services of appraisers is exempt from the bid law.

Section 17 of the Terms and Conditions provides, “The Client also agrees that in case of lawsuit arising from or any way involving these appraisal services, Client will hold Appraiser harmless from and against any liability, loss, cost or expense incurred or suffered by Appraiser in such action, regardless of its outcome.”

It is my legal opinion that municipalities in Alabama cannot spend public funds to indemnify, defend or hold harmless third parties. I base my opinion upon the following Alabama legal authorities:

A. **MUNICIPALITIES CANNOT SPEND PUBLIC FUNDS TO INDEMNIFY THIRD PARTIES:**

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

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

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

B. **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).

It is my legal opinion that the expenditure of public funds to indemnify, defend and hold harmless would not be for a “public purpose.”

From a legal standpoint, I approve the contract provided the indemnity language set forth above is deleted in its entirety. Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

**RESOLUTION NUMBER 5160**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO REPLACE A 2.5 TON AIR CONDITIONING UNIT AT JAMES F. WYATT FIRE STATION NUMBER 5**

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

1. The City Manager is hereby authorized to take all actions necessary in order to replace a 2.5 ton air conditioning unit at James F. Wyatt Fire Station Number 5 at a cost not to exceed \$9,000 as detailed in the attached proposal from Comfort Systems USA marked as Exhibit A, attached to and incorporated into this Resolution Number 5160 as if written fully therein; and
2. This Resolution Number 5160 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 13<sup>th</sup> day of May, 2019.

Rusty Weaver  
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings  
City Clerk





3100 Richard Arrington Jr Blvd. N  
Birmingham, Al. 35203  
205-664-3300

May 6, 2019

Attn: Brian Davis

Re: Fire Station #5 Unit Replacement

Comfort Systems USA proposes to replace (1) 2.5 ton gas pack roof top unit. Comfort Systems USA standard terms and conditions apply. Our estimated price for this work will be:

**Eight Thousand Eight Hundred Forty Dollars: \$8,840.00**

**Work to be performed:**

- Demo and remove existing Trane unit.
- Furnish and install (1) new Trane 2.5 ton equivalent unit.
- Reuse existing power and disconnect.
- Reuse existing gas supply and only make necessary additions to account for curb adaptor height.
- New curb adaptor.
- Crane provided for lifting requirements.
- Work verification and start up.
- Work to be performed during normal business hours (Monday-Friday 8 a.m. to 5 p.m.)

**Proposal does not include:**

- Anything not listed in this proposal
- Portable cooling or heating equipment during the job.

Please do not hesitate to call if you have any further questions. We look forward to doing business with you.

Thanks,

Brian Fancher



*Quality People. Building Solutions.*

Cell: 205-552-2777

[brian.fancher@comfortsystemsusa.com](mailto:brian.fancher@comfortsystemsusa.com)

Please return this proposal with a signature which I will use as our "letter to proceed with work"

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

## **RESOLUTION NUMBER 5158**

### **A RESOLUTION ACCEPTING A BID FOR A PEDESTRIAN TUNNEL UNDER SICARD HOLLOW ROAD AND AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO SECURE SAID CONSTRUCTION**

**WHEREAS**, in December, 2014, the City of Vestavia Hills entered into an agreement with Alabama Department of Transportation (“ALDOT”) for grant funding for a proposed pedestrian tunnel connecting parks across Sicard Hollow Road, a copy of which is marked as Exhibit A and is attached to and incorporated into this Resolution Number 5158; and

**WHEREAS**, on May 8, 2018, the Metropolitan Planning Organization (“MPO”) amended said agreement to increase Federal participation in the previously awarded grant; and

**WHEREAS**, Invitation to Bids were invited and publically read on March 21, 2019 with two bids received; and

**WHEREAS**, recommendation was made via memorandum to accept the bid package submitted by Gillespie Construction LLC, a copy of which is marked as Exhibit B and is attached to and incorporated into this Resolution Number 5158 as if written fully therein; and

**WHEREAS**, anticipated expenditures with anticipated utility relocations as well as reimbursement from TAP funding agreements are detailed in an email sent by the City Engineer on May 8, 2019, a copy of which is marked as Exhibit C attached to and incorporated into this Resolution Number 5158 as if written fully therein; and

**WHEREAS**, the Mayor and the City Council feel it is in the best interest of the public to accept said bid as recommended.

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

1. The bid package submitted by Gillespie Construction LLC is hereby accepted; and
2. The City Manager is hereby authorized to execute and deliver all agreements necessary in order to secure said construction; and
3. This Resolution number 5158 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 20<sup>th</sup> day of May, 2019.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



ROBERT BENTLEY  
GOVERNOR

# ALABAMA DEPARTMENT OF TRANSPORTATION

THIRD DIVISION  
OFFICE OF DIVISION ENGINEER  
1020 BANKHEAD HWY., WEST  
P.O. BOX 2745  
BIRMINGHAM, ALABAMA 35202-2745  
Telephone: (205) 328-5820



JOHN R. COOPER  
TRANSPORTATION DIRECTOR

December 5, 2014

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

RE: Jefferson County  
Project No. TAPAA-TA14(931)  
Sicard Hollow Road Tunnel Safe  
Routes for Non-Drivers  
City of Vestavia Hills

Dear Mayor Zaragoza:

Please find attached a copy of the fully executed original agreement between the Alabama Department of Transportation and the City of Vestavia Hills. This is for your file and instructions for construction of the above referenced project.

This is not a notice to proceed with construction on this project. You will be given an official written notice to proceed when the Federal Highway Administration has informed the Alabama Department of Transportation that the project has been authorized for construction.

You may submit your plans, specifications and the project budget to the Department while you are waiting on authorization to proceed with construction. The budget is described in Part Two: Project Provisions section "D" of the original agreement. Please read section "D" of the agreement carefully and be governed by its contents in order to not hold up the letting of the project.

If there are any questions, please contact Mrs. Renya Hooks of this office, phone (205) 581-5883.

Sincerely,

Brian C. Davis  
Division Engineer

BCD/LAT/RMH/trs  
Attachment  
C: File w/att.



K-15-0226  
100062997

**AGREEMENT  
FOR A TRANSPORTATION ALTERNATIVES PROJECT**

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

**Jefferson County**

**Sicard Hollow Road Tunnel Safe Route**

**Project No. TAPAA-TA14(931)**

**PART ONE (1): INTRODUCTION**

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as STATE; and the City of Vestavia Hills, Alabama, hereinafter referred to as AGENCY, in cooperation with the U. S. Department of Transportation, Federal Highway Administration, hereinafter referred to as FHWA, and

WHEREAS, legislation enacted by the U. S. Congress authorizing the establishment of a Transportation Alternatives Program, and

WHEREAS, said legislation requires that two percent of the "Moving Ahead for Progress in the 21<sup>st</sup> Century Act" or the "MAP-21" funds be available for transportation alternatives activities, and

WHEREAS, transportation alternatives activities are defined as...

1. Construction of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian lighting, downtown streetscape (combination of sidewalks, pedestrian lighting and landscaping), and other transportation projects to achieve compliance with the Americans with Disabilities Act of 1990.
2. Construction of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.

3. Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users.
4. Construction of turnouts, overlooks, and viewing areas.
5. Community improvement activities, including-
  - i. inventory, control, or removal of outdoor advertising;
  - ii. historic preservation and rehabilitation of historic transportation facilities;
  - iii. vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and
  - iv. archaeological activities relating to impacts from implementation of a transportation project eligible under Title 23.
6. Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to-
  - i. address storm water management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff.
  - ii. reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

WHEREAS, the AGENCY developed a project application, including the document relating thereto, which was subsequently submitted to the STATE and approved, and

WHEREAS, it is in the public interest for the STATE and the AGENCY to participate in a transportation alternatives program, as reflected by such project application.

NOW, THEREFORE, the parties hereto do hereby agree as follows:

#### **PART TWO (2): PROJECT PROVISIONS**

- A. Project Description:** The AGENCY will undertake a transportation alternatives project in accordance with this Agreement, plans approved by the STATE and the requirements, provisions, terms, and conditions of the project application, including the documents relating thereto, developed by the AGENCY and approved by the STATE. This application, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the AGENCY that failure to carry out the project in accordance with the Agreement, approved plans and the project application,

including documents related thereto, may result in the loss of federal funding for the project.

- B. Time Limit:** This project will commence upon execution of this Agreement and upon written authorization to proceed from the STATE directed to the AGENCY. The AGENCY shall have no more than two (2) years from the date of execution of this agreement to have the project authorized for construction, or to begin right-of-way acquisition, or to commence other eligible activities in accordance with the scope of work approved by the STATE. If this stipulation is not met, the STATE will notify the AGENCY in writing that the project is terminated.
  
- C. Project Funding:** It is expressly understood that federal funds for this project will be provided from Transportation Alternatives Program funds as authorized under MAP-21 and the STATE will not be liable for any funding. It is further understood that this is a cost reimbursement program and no federal funds will be provided to the AGENCY prior to accomplishment of work for which reimbursement is requested. Cost for the project will be financed, when eligible for federal participation, on the basis of 80 percent federal transportation alternatives funds and 20 percent AGENCY funds, not to exceed a maximum sum of \$378,966.00 in federal funds. The estimated cost and participation by the various parties is as follows:

	<u>Total Estimated Cost</u>	<u>Estimated Federal Funds</u>	<u>Estimated Agency Funds</u>	<u>Estimated State Funds</u>
Construction (Including Professional Fees For Construction Engineering and Inspection)	\$473,708.00	\$378,966.00	\$94,742.00	\$0
Total	\$473,708.00	\$378,966.00	\$94,742.00	\$0

Plans for constructing improvements under this project will be developed by or for the AGENCY at no expense to the STATE or FHWA. Construction of improvements under this agreement will be by contract in keeping with applicable competitive bid laws.

Necessary engineering and inspection during construction will be performed by or for the AGENCY and will be paid for with project funds. Any cost incurred by the AGENCY relating to this project which is determined to be ineligible for reimbursement by the FHWA or in excess of the limiting amount previously stated will be borne and paid by the AGENCY with no liability of the STATE for any such cost.

**D. Project Budget:** The AGENCY will develop and submit to the STATE for approval a project budget. This budget will be in such form and detail as may be required by the STATE. As a minimum, all major work activities will be described and an estimated cost and source of funds will be indicated for each activity. Space will be provided for approval by the Division Engineer and date of such approval. All cost for which the AGENCY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the AGENCY be reimbursed for expenditures over and beyond the amount approved by the STATE.

**E. Ownership of Property:** All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the AGENCY (in accordance with the provisions of 23 CFR Part 635 and 49 CFR Part 24) at no expense to the STATE. This should be shown on the "City and Other Local Public Agency Certification for Physical Construction" form (ROW Certification). Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the AGENCY. In cases where

property is leased, the terms of the lease will not be less than the expected life of the improvements.

- F. Acquisition of Property:** Acquisition of real property by the AGENCY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.
- G. Relocation of Utilities:** The AGENCY will relocate any utilities in conflict with the project improvements without cost to the STATE or FHWA.
- H. Protection of Interest:** No change in use or ownership of real property acquired or improved with funds provided under the terms of this agreement will be permitted without prior written approval from the STATE and FHWA. The STATE and FHWA will be credited on a prorata share any revenues received by the AGENCY from the sale or lease of property, which is the site of the federally funded project.
- I. Purchase of Project Equipment and/or Services:** The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable state and federal laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity. The AGENCY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement. The AGENCY will not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the AGENCY will provide all bids to the STATE with a recommendation for award. The AGENCY will not award the contract until it has received written approval from the STATE.



- J. Invoicing:** The AGENCY will, when appropriate, submit invoices to the STATE for reimbursement for work performed by or for the AGENCY in carrying out the terms of this agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Division Engineer for payment. The AGENCY may bill the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. The cost allowable is the cost defined in 41 CFR Subpart 1-15.7 of the Federal Procurement Regulations and will include direct and indirect cost incurred in carrying out the project as shown in the approved application and the documents related thereto. Invoices for any work performed by the AGENCY under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- K. Maintenance:** Upon completion and acceptance of the work by the STATE, the AGENCY will assume full responsibility for the project work and will maintain the project work for a reasonable life expectancy.
- L. Contracts under this Agreement:** The AGENCY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.
- M. Records and Reports:**
1. Establishment and Maintenance of Accounting Records: The AGENCY will establish and maintain, in accordance with requirements established by the

STATE, separate accounts for the project, either independently or separately within its existing system, to be known as the Project Account. The cost accounting system must be adequate and acceptable to the STATE as determined by the auditor of the Alabama Department of Transportation.

2. Documentation of Project Cost: All charges to the Project Account will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the STATE.
  3. Checks, Orders and Vouchers: All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.
  4. Reports: The AGENCY will report to the STATE the progress of the project in such manner as the STATE may require. The AGENCY will also provide the STATE any information requested by the STATE regarding the project.
  5. Financial Statements: The AGENCY will submit to the STATE, at such time as the STATE may require, such financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.
  6. Right of Access to Records: The STATE will have full access to and right to examine all project records at all times, and all records of any nature which in any manner relate to the project or to this Agreement in any way.
- N. **Regulations**: The STATE hereby obligates the AGENCY to comply with all state and federal laws, rules, regulations, and procedures applicable to this Agreement. The

STATE, upon request, will furnish to the AGENCY a copy of any and all applicable state and federal laws, rules, regulations, and procedures.

- (1) Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a federal, state or local law, must be applied for the maintenance and long term upkeep of the transportation alternatives project authorized by this agreement.
- (2) The AGENCY agrees that in the event it is determined the user fees have not been applied to long term upkeep of the transportation alternatives project, that federal funds expended on this project must be refunded to the FHWA and the AGENCY will reimburse and pay to the STATE a sum of money equal to the total amount of federal funds expended under this agreement.

**O. Point of Contact:** The applicable or appropriate division office of the Alabama Department of Transportation will be the lead agency for the STATE relative to the work under this agreement and will be the point of contact for the AGENCY.

### **PART THREE (3): MISCELLANEOUS PROVISIONS**

**A. Agency to Indemnify:** The AGENCY will be responsible at all times for this project and all of the work performed under this Agreement and especially the AGENCY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, employees, in both their official and individual capacities, and agents of each, from and against any and all claims, actions, damages, loss, liabilities, including attorney's fees and expenses whatsoever or any amount paid in compromise thereof arising out of or in connection with the performance of the work under this Agreement and this project and from and against these at any time arising out of or in connection with the performed work and project. By entering into this agreement, the AGENCY is not an agent of the State, its officers, employees, agents or

assigns. The AGENCY is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.

- B. Federal Immigration Law:** By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- C. Audit and Inspection:** The AGENCY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, any and all vehicles and equipment utilized or used in performance of the project; records of all transportation services rendered by the AGENCY in the use of such vehicles and equipment; and any and all data and records which in any way relate to the project or to the accomplishment of the project. The AGENCY will also permit the above noted persons to audit the books, records and accounts of the AGENCY pertaining to the project at any and all times, and the AGENCY will give its full cooperation to those persons or their authorized representatives, as applicable.
- D. Audit Requirements:** The AGENCY will comply with all audit requirements set forth in the Federal Office of Management and Budget (OMB) circular A-128 or A-133 whichever is applicable.
- E. Termination:** In the event the AGENCY fails at any time, in any manner, to comply with any provision, requirement, term or condition of this Agreement, such failure will constitute a default by the AGENCY under this Agreement. Any such default or defaults not corrected by the AGENCY within thirty (30) days following receipt of written notice

from the STATE by certified or registered mail of such default or defaults, will be deemed a breach by the AGENCY of this Agreement, and the right on the part of the STATE to terminate the Agreement by giving ten (10) days written notice of termination. A waiver by the STATE of a default or defaults by the AGENCY will not constitute a waiver of subsequent default or defaults by the AGENCY. In addition, if funding for this project is terminated by FHWA, the STATE will have the right to terminate this Agreement by giving ten (10) days written notice of termination. Said notice will be mailed by certified or registered mail.

- F. Retention of Records:** The AGENCY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.
- G. Performance:** The AGENCY will commence, carry on, and complete the project with all practical dispatch, in a sound, economical, and efficient manner.
- H. Equal Employment Opportunity:** The AGENCY will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The AGENCY will take affirmative action to insure that applicants for employment are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such actions will include, but not be limited to the following: employment; upgrading; demotion; transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Furthermore, the STATE and the Secretary of the USDOT, or either of them or their respective authorized representatives,



will have full access to, and right to examine any and all AGENCY materials for the purpose of monitoring the AGENCY'S compliance with the provisions of this section.

- I. Title VI – Civil Rights Act of 1964:** The AGENCY will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d.)et seq.), the regulations of USDOT issued thereunder (49 CFR, Subtitle A, Part 21), and the assurance by the AGENCY pursuant thereto. Furthermore, the STATE and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any and all AGENCY materials which will permit them to monitor the AGENCY for compliance with the provisions of this section.
- J. Prohibited Interest:** No member, officer, or employee of the AGENCY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- K. Americans with Disabilities Act:** The AGENCY will comply with all requirements of The Americans with Disabilities Act of 1990 (ADA).
- L. Arbitration:** Following the utilization of voluntary alternative dispute resolution, if any dispute should remain, then the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.
- M. Permission to Start Work:** The AGENCY will not proceed with the project work until the STATE gives written authorization for the AGENCY to proceed.
- N. Restrictions on Lobbying:** The prospective participant/recipient, by causing the execution of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under 31 U. S. C. §1352 and the person signing same for and on behalf of the prospective participant/recipient that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient as mentioned above, to any person for

influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

(3) The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under 31 U.S.C. § 1352, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, and that all such subrecipients shall certify and disclose accordingly.

**O. Other Applicable Regulations:** The AGENCY will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, 42 U.S.C. § 1857(h) as amended by 42 U.S.C. § 7401, et seq., Section 508 of the Federal

Water Pollution Control Act, 33 U.S.C. § 1368, Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

- P. Subcontracts:** The AGENCY will not enter into any subcontract without prior written consent of the STATE and will include in all subcontracts entered into pursuant to this Agreement all of the above clauses as required by the STATE.
- Q. Exhibits M and N** are hereby attached to and made a part of this Agreement.
- R. Agreement Change:** The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- S. Drug Free Workplace Act of 1988:** The AGENCY assures the STATE that it publishes a statement notifying employees of the policies in support of a drug free workplace; and establishes an ongoing drug-free awareness program.
- T. 7/24<sup>th</sup> Law:** Nothing shall be construed under the terms of this Agreement by the AGENCY or the STATE that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.

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

ATTEST:

By: [Signature]  
City Clerk (Signature)  
Rebecca Leavins  
Type Name of Clerk

City of Vestavia Hills, Alabama  
By: [Signature]  
As ~~Mayor~~ (Signature) City Manager  
Jeff Downes  
Type Name of ~~Mayor~~ City Manager

APPROVED AS TO FORM:

By: [Signature]  
Jim R. Ippolito, Jr.  
Chief Counsel  
Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

[Signature]  
Brian Davis, Division Engineer  
[Signature]  
Robert J. Jilla  
Multimodal Transportation Engineer  
[Signature]  
Ronald L. Baldwin, P. E.  
Chief Engineer

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

[Signature]  
John R. Cooper, Transportation Director

The foregoing Agreement is hereby executed in the name of the State of Alabama and signed by the Governor on this 1st day of December, 2014.

[Signature]  
Robert Bentley  
Governor, State of Alabama  
11/24/14

**RESOLUTION NUMBER 4643**

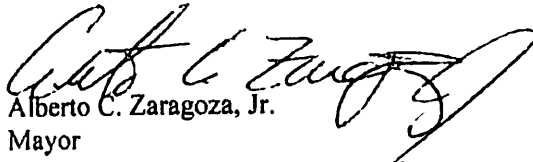
**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH ALABAMA DEPARTMENT OF TRANSPORTATION FOR PROJECT NO. TAPAA-TA14(931) SICARD HOLLOW ROAD TUNNEL SAFE ROUTES FOR NON-DRIVERS, CITY OF VESTAVIA HILLS**

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

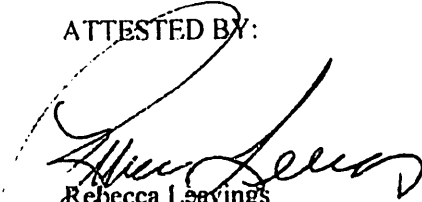
1. That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation ("ALDOT") relating to a Transportation Alternatives project with partial funding by the Federal Highway Administration, which agreement is before this Council; and
2. That the agreement be executed in the name of the City, for an on behalf of the City. by its City Manager; and
3. That it be attested by the Clerk and the seal of the City affixed thereto; and

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

**ADOPTED and APPROVED** this the 13<sup>th</sup> day of October, 2014.

  
Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

  
Rebecca Leavings  
City Clerk

9

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

EXHIBIT M

**CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING**

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

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

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

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

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

7  
✓



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

EXHIBIT N

**FUNDS SHALL NOT BE CONSTITUTED AS A DEBT**

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

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive on all parties.

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

**TERMINATION DUE TO INSUFFICIENT FUNDS**

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

**NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS**

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

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

7

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

**May 8, 2019**

To: Rebecca Leavings, City Clerk

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

From: Christopher Brady, City Engineer

RE: Sicard Hollow Tunnel Bid Award

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On April 3, 2019, the City received 2 bids to construct the Sicard Hollow Road Pedestrian Tunnel. Please see attached Bid Summary.

We recommend award of bid to Gillespie Construction with a contract amount of \$813,589.40.

Please let me know if questions,

Sincerely,  
-Christopher





## Rebecca Leavings

---

**From:** Christopher Brady  
**Sent:** Wednesday, May 08, 2019 10:56 AM  
**To:** Rebecca Leavings  
**Cc:** Jeff Downes; Brian Davis  
**Subject:** RE: council agenda  
**Attachments:** 2019\_04\_16\_12\_37\_13.pdf

Sicard Hollow Tunnel funding agreement is TAPAA-TA14(931), approved Res 4643, Oct 2014, funding agreement dated Dec 2014 (attache). This agreement is anticipated to be amended with additional funding approved by MPO (meeting today, 5/8); increasing FED participation by \$200k and City match by \$50k.

Anticipated construction costs..... 813,589.40 (Gillespie Construction)  
Includes anticipated utility relocation costs.....\$235,000  
Anticipated CE&I..... 99,408.04 (Volkert)  
Total Anticipated Construction Costs.... \$912,997.44

Anticipated reimbursement from TAP funding agreement.... \$578,966 (eligible construction costs including CE&I)  
Required City Match per TAP funding agreement..... \$144,741  
Balance of utility relocation costs, upto \$235,000, being requested to be offset by BWWB.

Please let me know if questions



**Christopher Brady, City Engineer**  
Department of Public Services  
P 205 978 0150 | [vhal.org](http://vhal.org)  
City of Vestavia Hills

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

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**From:** Christopher Brady  
**Sent:** Wednesday, May 08, 2019 10:14 AM  
**To:** Rebecca Leavings  
**Cc:** Jeff Downes; Brian Davis  
**Subject:** council agenda

See attached for Council agenda, approval of bid for Sicard Hollow Tunnel project.

We are working on a funding summary; Jeff or I will give you an update as you finalize, but see my following email as a tentative summary.

**RESOLUTION NUMBER 5159**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH VOLKERT, INC., TO PERFORM CEI SERVICES FOR THE CONSTRUCTION OF A PEDESTRIAN TUNNEL UNDER SICARD HOLLOW ROAD; CITY OF VESTAVIA HILLS PROJECT TAPAA-TA14(931)**

**WHEREAS**, on May 20, 2019, the City Council of the City of Vestavia Hills approved and adopted Resolution Number 5158 to authorize construction of a pedestrian tunnel under Sicard Hollow Road; and

**WHEREAS**, Vokert, Inc., has submitted an agreement for CEI services for the construction of said tunnel, a copy of which is marked as Exhibit A, attached to and incorporated into this Resolution Number 5159 as though written fully therein; and

**WHEREAS**, the Mayor and the City Council feel it is in the best interest of the public to accept said proposal for professional services as written.

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

1. The City Manager is hereby authorized to execute and deliver an agreement as proposed by Volkert, Inc., for CEI services in an amount not to exceed \$100,000; and
2. This Resolution number 5159 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 20<sup>th</sup> day of May, 2019.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## **AGREEMENT**

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between **City of Vestavia Hills**, hereinafter referred to as the Owner, and **Volkert, Inc.**, hereinafter referred to as the Consultant; WITNESSETH THAT:

WHEREAS, the OWNER desires to retain the CONSULTANT to perform certain professional planning, programming, and engineering services as outlined in the Scope of Services;

WHEREAS, the CONSULTANT desires to perform said professional services for the Owner;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, the parties hereto agree as follows:

### **ARTICLE I – SCOPE OF SERVICES**

#### **SECTION I – GENERAL SERVICES**

The Consultant shall perform certain professional construction engineering and inspection services related to the City of Vestavia Hills Project TAPAA-TA14(931) for the Pedestrian Tunnel under Sicard Hollow Road in Jefferson County, Alabama, in accordance with Article I, Scope of Work, of the agreement between the Consultant and the State dated April 10, 2017 (attached as Exhibit “A”).

#### **SECTION II – SPECIAL SERVICES**

At the written request of the OWNER, the CONSULTANT shall accomplish such special services as required by the OWNER. When the CONSULTANT is requested to provide special services, such services may be provided by CONSULTANT’S own forces or through subcontracts with other professionals. However, contracts with other professionals for special services must have the written approval of the OWNER before the work is initiated. Special services which may be requested include, but are not necessarily limited to the following:

- A. Land Surveys as necessary to establish property boundaries required for property acquisition purposes or preparation of property maps.
- B. Soils and Materials Investigations including test borings, laboratory and field testing of soils and materials and related reports as required for design and construction quality control purposes.
- C. Engineering Surveys (for design and construction) to include topographic surveys, base line surveys, cross section surveys, aerial photography, etc., as required and approved by the OWNER.



- D. Inspection of construction by project representative as approved by the OWNER. When authorized by the OWNER, the duties, responsibilities and limitations of authority shall be included in a supplemental agreement.
- E. Assistance to the OWNER as expert witness in litigation arising from development or construction of project as determined appropriate by OWNER and CONSULTANT.
- F. Accomplishment of special surveys and investigations, and the preparation of special reports and drawings as may be requested or authorized in writing by the OWNER.
- G. Preparation of pre-applications and applications for federal and/or state assistance grants for funding of projects.

## **ARTICLE II – GENERAL PROVISIONS**

### **SECTION I – RESPONSIBILITIES OF THE OWNER**

As a party to this Agreement, the OWNER shall:

- A. Make available for CONSULTANT'S use all record drawings, maps, soil data, etc. that are readily available to the OWNER, and the CONSULTANT shall have the right to rely upon the completeness and accuracy thereof.
- B. Designate a person to act with authority on OWNER'S behalf and respond in a timely manner to submissions by CONSULTANT providing approvals and authorizations as appropriate so that work may continue at a normal pace.
- C. Pay all costs associated with special services authorized by the OWNER, and all costs associated with obtaining bids from contractors.

### **SECTION II - METHOD OF PAYMENT**

The Consultant agrees to provide professional services for all services included in Article I - Scope of Services and the City agrees to pay the Consultant as compensation for its services in accordance with Article III, Payment, of the attached agreement (Exhibit "A") between the Consultant and the State. The maximum fee payable under this agreement is **ninety nine thousand four hundred eight dollars and 04 cents (\$99,408.04)**, which is based on a construction duration of sixty (60) calendar days. If the construction duration exceeds sixty (60) calendar days, the fee will be increased by supplemental agreement.

- A. Partial payments for all services performed by the CONSULTANT under the terms of the Agreement shall be made no more often than monthly to the CONSULTANT by the OWNER upon receipt of invoices and other evidence of performance as may be deemed necessary by the OWNER. Payments shall be due and payable within thirty (30) days of the date of invoice. The OWNER shall reimburse CONSULTANT for any expenses, including legal costs, incurred in collection of outstanding amounts due from OWNER.
- B. For Projects involving a supplemental agreement, the scope of services and amount of compensation to be paid will be included therein.
- C. The OWNER will pay the CONSULTANT for special services performed by subconsultants at the actual invoice amount times a factor of 1.10 for assisting and coordinating the subconsultant's services.
- D. Reimbursable expenses are defined in Attachment 1 of Exhibit "A" attached.
- E. The OWNER as purchaser of the services described herein shall pay any applicable sales tax in the manner and in the amount as required by law.
- F. Payment shall be made payable to Volkert, Inc. and submitted to the following address: ***Dept. #2042, Volkert, Inc., P.O. Box 11407, Birmingham, AL 35246-2042***

### **SECTION III – MISCELLANEOUS**

- A. Extra Work: It is mutually understood and agreed that the OWNER will compensate the CONSULTANT for services resulting from changes in the scope of a project or its design, including but not necessarily limited to, change in size, complexity, project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for preparation of documents for separate bids, when such revisions are due to causes beyond the CONSULTANT'S control and when requested or authorized by the OWNER. Compensation for such extra work when authorized by the OWNER shall be mutually agreed upon prior to beginning work.
- B. Ownership and Reuse of Documents: All Project documents including but not necessarily limited to reports, drawings, studies, findings, correspondence, specifications, survey notes, estimates, maps, computations, calculations, computer files, Computer Assisted Design and Drafting (CADD) files (electronic and hard copy), and other data, as well as any and all other documents and other materials prepared, generated, or furnished by or for CONSULTANT and/or its Subconsultant(s) for the Project pursuant to this Agreement (hereinafter referred to in this Section B. as "Documents") are instruments of service with respect to the Project, and CONSULTANT shall retain an ownership and intellectual property interest therein regardless whether the Project is completed. OWNER

may make and retain copies thereof for information and reference in connection with the use and/or occupancy of the Project by OWNERS and others. However, such Documents are not intended for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. No representation is made that such Documents are or will be suitable for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. Any use of such Documents by OWNER or others on any project other than the project which is the subject of this Agreement is not advised and shall be done without warranty, representation, or liability to any extent whatsoever on the part of CONSULTANT. OWNER shall defend, indemnify, save and hold harmless CONSULTANT, its officers, directors, employees, agents, successors, and assigns against any and all liability for any and all claims, demands, fines, fees, damages, actions, causes of action, lawsuits, expenses (including attorneys' fees), mediations, and arbitrations arising out of, resulting from, or relating in any way to the OWNER'S use of such Documents.

- C. Exclusivity of Remedies: To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT'S officers, directors, employees, agents and independent professional associates and consultants, and of any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to CONSULTANT'S services, the project or this agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract by CONSULTANT or CONSULTANT'S officers, directors, employees, agents or independent professional associates or consultants, or any of them, shall be limited to and shall not exceed the total compensation received by CONSULTANT under this agreement.
- D. Indemnification: To the fullest extent permitted by law, and up to the limits of the exclusivity of remedies provision, *supra*, CONSULTANT shall indemnify OWNER and OWNER'S officers, directors and employees for costs, losses, judgments, damages and expenses (including reasonable attorneys' fees) to the extent caused by the negligent acts, errors and omissions of CONSULTANT in the performance of its professional services hereunder. In any matters involving allegations of negligent performance of professional services by CONSULTANT, CONSULTANT'S defense duties under this indemnification provision (which are expressly disclaimed) shall include only reimbursement of reasonable defense costs to the extent incurred as a proximate result of CONSULTANT'S actual negligent performance.

- E. Insurance: CONSULTANT shall furnish OWNER with Certificate of Insurance confirming following forms and minimum limits of insurance:

<b>TYPE OF COVERAGE</b>	<b>LIMITS</b>
<b>I. Worker Compensation Employer Liability</b>	<b>State – Statutory \$500,000 per accident \$500,000 disease/each accident \$500,000 disease/policy limit</b>
<b>II. Comprehensive or Commercial General Liability</b>	<b>\$1,000,000 per person bodily injury \$1,000,000 per occurrence bodily injury \$1,000,000 property damage \$2,000,000 policy aggregate</b>
<b>III. Automobile Liability</b>	<b>\$1,000,000 combined single limit</b>
<b>IV. Professional Liability</b>	<b>\$2,000,000</b>

- F. Termination: In the event of failure by the CONSULTANT to fulfill in timely and proper manner CONSULTANT'S obligations under this contract, or if the CONSULTANT violates any of the covenants, agreements, or stipulations of this contract, the OWNER shall thereupon have the right to terminate this contract by written notice to the CONSULTANT of such termination, specifying the effective date thereof at least five days before the effective date of such termination.

- G. Contract Period: All contracts, agreements, provisions and stipulations of this Agreement shall remain in full force for a period of **18 months** from the date of the Agreement, and for such periods as the contract time may be extended by mutual written agreement between the OWNER and the CONSULTANT.

- H. Successors and Assigns:

1. OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by paragraph 2, the assigns of OWNER and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
2. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the

written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in performance of services hereunder.

3. Nothing under this Agreement shall be construed to give any right or benefits in this Agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.
- I. Dispute Resolution: If a dispute arises out of or relates to this Agreement or its alleged breach, the OWNER and CONSULTANT shall direct their representatives to endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the OWNER and CONSULTANT shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, before recourse to litigation. The OWNER'S and CONSULTANT'S representatives shall attend all mediation sessions. Engaging in mediation is a condition precedent to litigation. Should mediation fail to resolve the dispute, the parties shall engage in arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, before recourse to litigation. Arbitration is a condition precedent to litigation. Only after the parties have exhausted direct discussions, mediation, AND arbitration in accordance with the foregoing shall either of them be entitled to initiate litigation. Should either party initiate litigation prior to engaging in direct discussions, good faith mediation, and arbitration, it shall pay all attorneys' fees and expenses and other costs incurred by the other party in responding to said litigation.
  - J. Right of Entry: OWNER shall furnish right-of-way on the property for CONSULTANT to perform undisturbed the Services hereunder. CONSULTANT shall take reasonable precautions to minimize damage to the property during the course of its services. OWNER acknowledges that a certain amount of damage, wear and tear, and depreciation is likely to result from CONSULTANT'S operations on the property in furtherance of CONSULTANT'S Services under this Agreement. The cost for restoration or remediation of damaged property which may result from CONSULTANT'S operations is not included in CONSULTANT'S compensation hereunder unless explicitly stated otherwise in this Agreement. If the property is damaged during CONSULTANT'S operations and if OWNER

desires CONSULTANT to restore or remediate the property to its former condition, CONSULTANT will do so for additional costs in accordance with the fee schedule referenced herein.

- K. Standard of Care: CONSULTANT shall perform its services hereunder consistent with the professional skill and care ordinarily exercised under similar conditions by similarly situated professional consultants practicing in the same field at the same time in the same or similar locality. CONSULTANT shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. No warranty, express or implied, is made or intended related to the services provided herein, and CONSULTANT guarantees no particular result.
- L. Disclaimer of Third-Party Benefits: OWNER and CONSULTANT expressly disclaim third-party beneficiaries hereunder and no one not a Party to the Agreement shall be entitled to seek enforcement against OWNER and/or CONSULTANT of any provision herein, or to otherwise seek damages from either Party for the alleged breach of any provision contained herein or purported duty or standard created or conferred hereunder. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a Party to the Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms and provisions of this Agreement.
- M. Waiver of Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither OWNER nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants 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 to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both OWNER and CONSULTANT shall require similar waivers of consequential damages protecting all of the entities and persons named herein in all contracts and subcontracts with others involved in this Project.
- N. Jurisdiction/Venue: It is expressly agreed and stipulated between the parties that this contract shall be deemed to have been executed in the State of Alabama where the principal office of Volkert, Inc. is located. This contract shall be governed by the laws of the State of Alabama. The Circuit or District Court of the Thirteenth Judicial Circuit of Alabama, Mobile County, Alabama, shall have



jurisdiction over any dispute which arises under this contract, and each of the parties shall submit and hereby consents to the jurisdiction of either such court.

This agreement shall comply with the terms and conditions of the Alabama Department of Transportation statewide CE&I Contract and applicable portions thereof. The terms and conditions of CE&I Contract are hereby made a part of this agreement by reference

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement in duplicate as of the day and year first above written.

ATTEST:

_____	_____
_____	_____
Title	Title
	Federal Employer
	ID # (Corporation): _____
	Social Security # _____
	(Individual): _____

ATTEST:

_____	_____
Cornelia Sides Project Manager	John W. Nelson Vice President
_____	_____