

**Vestavia Hills
City Council Agenda
May 20, 2019
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Don Richards, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Approval of Minutes – None

Old Business

9. Resolution Number 5158 – A Resolution Accepting A Bid For Construction Of A Pedestrian Tunnel Under Sicard Hollow Road (*public hearing*)
10. 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*)

New Business

11. Ordinance Number 2849 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Jefferson County And The Rocky Ridge Fire District To Use As A Fire Training Facility For The Vestavia Hills Fire Department And The Rocky Ridge Fire District
12. Resolution Number 5161 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With ALDOT For Funding Of Sicard Hollow Road Tunnel Safe Route; Project #TPAPP-AT14(931); CPMS Ref #100062997

New Business (Requesting Unanimous Consent)

13. Ordinance Number 2850 – An Ordinance To Approve An Agreement For Land Swap Between The City Of Vestavia Hills, Alabama And The Board Of Education Of The City Of Vestavia Hills, Alabama; To Authorize And Direct The Mayor And City Manager To Execute And Deliver Said Agreement For And On Behalf Of The City To Complete The Conveyances Described In The Agreement And To Take Any And All Actions Necessary

To Comply With The Terms, Provisions And Conditions Of Said Agreement (*public hearing*)

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

14. Ordinance Number 2847 - Conditional Use Approval For Construction Of A Privacy Fence 9.5' High (At Highest Point) At 1320 Willoughby Road; Lot 8, Block 3, 4th Addition To Vesthaven, 5th Sector (*public hearing*)
15. Citizen Comments
16. Motion For Adjournment

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 20th 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 21st 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. 7/24th 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 Leavings
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

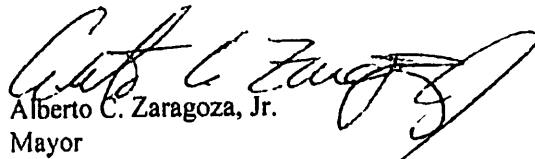
A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH ALABAMA DEPARTMENT OF TRANSPORTATION FOR PROJECT NO. TAPAA-TA14(931) SICARD HOLLOW ROAD TUNNEL SAFE ROUTES FOR NON-DRIVERS, CITY OF VESTAVIA HILLS

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

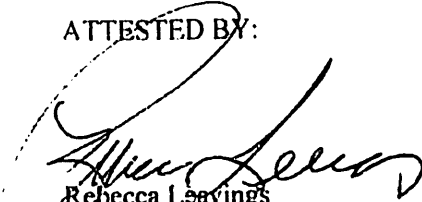
1. That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation ("ALDOT") relating to a Transportation Alternatives project with partial funding by the Federal Highway Administration, which agreement is before this Council; and
2. That 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 13th 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.

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

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





CITY OF VESTAVIA HILLS

Sicard Hollow Road Pedestrian Tunnel
 ALDOT Project No.TAPAA-TA14(931)
 BID OPENING: April 3, 2019, 10am
 BID TABULATION

| Line No. | Item No. | Description | Unit | Bid Qty | Forestry Environmental | | Gillespie Construction | |
|---------------------------------------|----------|---|------|---------|------------------------|---------------|------------------------|---------------|
| | | | | | Unit Price | Total Price | Unit Price | Total Price |
| 1 | 201A-002 | Clearing & Grubbing (Maximum Allowable Bid \$4000 per | LS | 1 | \$ 4,000.00 | \$ 4,000.00 | \$ 4,000.00 | \$ 4,000.00 |
| 2 | 206D-001 | Removing Guardrail | LF | 113 | \$ 17.88 | \$ 2,020.44 | \$ 20.00 | \$ 2,260.00 |
| 3 | 210A-000 | Unclassified Excavation | CY | 1312 | \$ 33.15 | \$ 43,492.80 | \$ 40.00 | \$ 52,480.00 |
| 4 | 214A-000 | Structure Excavation | CY | 550 | \$ 63.51 | \$ 34,930.50 | \$ 40.00 | \$ 22,000.00 |
| 5 | 214B-001 | Foundation Backfill, | CY | 120 | \$ 71.22 | \$ 8,546.40 | \$ 65.00 | \$ 7,800.00 |
| 6 | 301A-012 | Crushed Agg Base Course, Type B, Plant Mix, 6" Compacted | SY | 456 | \$ 15.50 | \$ 7,068.00 | \$ 30.00 | \$ 13,680.00 |
| 7 | 401A-000 | Bituminous Treatment A | SY | 456 | \$ 16.98 | \$ 7,742.88 | \$ 17.00 | \$ 7,752.00 |
| 8 | 405A-000 | Tack Coat | GAL | 21 | \$ 5.07 | \$ 106.47 | \$ 10.00 | \$ 210.00 |
| 9 | 407B-000 | Joint Sealant for Hot Mix | MI | 1 | \$ 216.33 | \$ 216.33 | \$ 200.00 | \$ 200.00 |
| 10 | 408A-052 | Planing Existing Pavement (1.1" | SY | 374 | \$ 41.72 | \$ 15,603.28 | \$ 40.00 | \$ 14,960.00 |
| 11 | 424A-340 | Superpave Bituminous Concete Wearing Surface, 1/2" max Agg, | TON | 65 | \$ 327.78 | \$ 21,305.70 | \$ 310.00 | \$ 20,150.00 |
| 12 | 424B-636 | Superpave Bituminous Concete | TON | 77 | \$ 464.85 | \$ 35,793.45 | \$ 425.00 | \$ 32,725.00 |
| 13 | 502A-000 | Steel Reinforcement | LB | 18966 | \$ 4.00 | \$ 75,864.00 | \$ 1.40 | \$ 26,552.40 |
| 14 | 524A-010 | Culvert Concrete | CY | 116 | \$ 3,750.00 | \$ 435,000.00 | \$ 825.00 | \$ 95,700.00 |
| 15 | 529A-010 | Retaining Wall | SF | 684 | \$ 264.39 | \$ 180,842.76 | \$ 55.00 | \$ 37,620.00 |
| 16 | 600A-000 | Mobilization | LS | 1 | \$ 160,000.00 | \$ 160,000.00 | \$ 50,000.00 | \$ 50,000.00 |
| 17 | 610C-001 | Loose Riprap, Class 2 | TON | 254 | \$ 42.25 | \$ 10,731.50 | \$ 50.00 | \$ 12,700.00 |
| 18 | 610D-003 | Filter Blanket | SY | 580 | \$ 3.32 | \$ 1,925.60 | \$ 6.00 | \$ 3,480.00 |
| 19 | 614A-000 | Slope Paving | CY | 4 | \$ 500.00 | \$ 2,000.00 | \$ 850.00 | \$ 3,400.00 |
| 20 | 618A-000 | Concrete Sidewalk, 4" thick | SY | 230 | \$ 59.60 | \$ 13,708.00 | \$ 65.00 | \$ 14,950.00 |
| 21 | 630A-001 | Steel Beam Guardrail, Class A, | LF | 113 | \$ 83.43 | \$ 9,427.59 | \$ 120.00 | \$ 13,560.00 |
| 22 | 634A-014 | Industrial Fence, 4 Feet High, | LF | 171 | \$ 30.00 | \$ 5,130.00 | \$ 50.00 | \$ 8,550.00 |
| 23 | 650A-000 | Topsoil | CY | 270 | \$ 30.65 | \$ 8,275.50 | \$ 30.00 | \$ 8,100.00 |
| 24 | 654A-001 | Solid Sodding, Bermuda | SY | 2462 | \$ 7.22 | \$ 17,775.64 | \$ 6.00 | \$ 14,772.00 |
| 25 | 664A-000 | Temporary Seeding | ACRE | 1 | \$ 603.11 | \$ 603.11 | \$ 500.00 | \$ 500.00 |
| 26 | 665B-001 | Temporary Mulching | TON | 3 | \$ 541.13 | \$ 1,623.39 | \$ 200.00 | \$ 600.00 |
| 27 | 665Q-002 | Wattle | LF | 896 | \$ 9.05 | \$ 8,108.80 | \$ 6.00 | \$ 5,376.00 |
| 28 | 665T-000 | Temporary Earth Berms | LF | 43 | \$ 5.96 | \$ 256.28 | \$ 120.00 | \$ 5,160.00 |
| 29 | 674A-000 | Construction Safety Fence | LF | 200 | \$ 4.82 | \$ 964.00 | \$ 5.00 | \$ 1,000.00 |
| 30 | 680A-001 | Geometric Controls | LS | 1 | \$ 25,000.00 | \$ 25,000.00 | \$ 7,500.00 | \$ 7,500.00 |
| 31 | 698A-000 | Construction Fuel, Max Bid | LS | 1 | \$ 7,500.00 | \$ 7,500.00 | \$ - | \$ - |
| 32 | 701G-253 | Solid White, Class 2 Traffic | LF | 600 | \$ 0.89 | \$ 534.00 | \$ 5.00 | \$ 3,000.00 |
| 33 | 401G-265 | Solid Yellow Class 2 Traffic | LF | 600 | \$ 0.89 | \$ 534.00 | \$ 5.00 | \$ 3,000.00 |
| 34 | 703D-001 | Temporary Traffic Control | SF | 1200 | \$ 2.38 | \$ 2,856.00 | \$ 6.00 | \$ 7,200.00 |
| 35 | 705A-005 | Pavement Markers, Class A | EA | 8 | \$ 5.96 | \$ 47.68 | \$ 100.00 | \$ 800.00 |
| 36 | 726A-000 | Portable Concrete Safety | LF | 280 | \$ 65.56 | \$ 18,356.80 | \$ 60.00 | \$ 16,800.00 |
| 37 | 726A-001 | Portable Concrete Safety | LF | 10 | \$ 23.84 | \$ 238.40 | \$ 60.00 | \$ 600.00 |
| 38 | 726D-025 | Portable Impact Attenuator | EA | 1 | \$ 15,196.97 | \$ 15,196.97 | \$ 15,000.00 | \$ 15,000.00 |
| 39 | 740B-000 | Construction Signs | SF | 130 | \$ 13.71 | \$ 1,782.30 | \$ 20.00 | \$ 2,600.00 |
| 40 | 740D-000 | Channelizing Drums | EA | 26 | \$ 53.64 | \$ 1,394.64 | \$ 100.00 | \$ 2,600.00 |
| 41 | 740E-000 | Cones | EA | 26 | \$ 26.22 | \$ 681.72 | \$ 50.00 | \$ 1,300.00 |
| 42 | 740F-002 | Barricades, Type III | EA | 4 | \$ 226.46 | \$ 905.84 | \$ 300.00 | \$ 1,200.00 |
| 43 | 740I-002 | Warning Lights, Type B | EA | 2 | \$ 125.15 | \$ 250.30 | \$ 100.00 | \$ 200.00 |
| 44 | 740M-001 | Ballast for Cone | EA | 26 | \$ 12.52 | \$ 325.52 | \$ 2.00 | \$ 52.00 |
| 45 | | Lighting | LS | 1 | \$ 82,000.00 | \$ 82,000.00 | \$ 36,500.00 | \$ 36,500.00 |
| Non-Federal Participation Item | | | | | | | | |
| 46 | | Water Main Relocation | LF | 211 | \$ 850.00 | \$ 179,350.00 | \$1113.74* | \$ 235,000.00 |
| Total Bid Price | | | | | \$ 1,450,016.59 | | \$ 813,589.40 | |

Bid Bond? yes no Contractor's License No.? yes no

* price entered in unit price column was entered as a lump sum; this amount is calculated from the lump sum

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
City of Vestavia Hills

  WWW.ALIFEABOVE.ORG

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 20th 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:

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

- 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 |
| _____ | _____ |

RESOLUTION NUMBER 2849

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH JEFFERSON COUNTY AND ROCKY RIDGE FIRE DISTRICT TO USE AS A FIRE TRAINING FACILITY FOR THE VESTAVIA HILLS FIRE DEPARTMENT AND THE ROCKY RIDGE FIRE DISTRICT

WHEREAS, the Vestavia Hills Fire Department (“VHFD”) has been desirous of a local fire training facility to enhance the training of the department; and

WHEREAS, the Rocky Ridge Fire District (“RRFD”) has also been desirous of a local fire training facility to enhance the training of their fire department; and

WHEREAS both agencies have identified property located at 3790 Veona Daniels Road, owned by Jefferson County, which could be instrumental in improving for use as a fire training facility; and

WHEREAS, the RRFD and the VHPD have approached Jefferson County and drafted a license agreement to improve the existing structure on the property located at 3790 Veona Daniels Road and construct other structures in order to promote the training of both departments; and

WHEREAS, a copy of said agreement is marked as Exhibit A and is attached to and incorporated into this Resolution Number 2849 as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to provide such a training facility for the VHFD.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver an agreement with Jefferson County and the RRFD as detailed in the attached Exhibit A; and
2. This Ordinance Number 2849 is effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 20th day of May, 2019.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

LICENSE AGREEMENT

State of Alabama)

County of Jefferson)

This License Agreement between, Jefferson County, Alabama (hereinafter, referred to as “Licensor”), and Rocky Ridge Fire District and the City of Vestavia Hills (hereinafter, referred to as “Licensees”), made and entered into as reflected below.

WHEREAS, Licensees are a fire district and a municipal corporation, governmental entities, established under the laws of the State of Alabama; and

WHEREAS, Licensees desire to utilize property owned by the County located at 3790 Veona Daniels Road as a fire training facility, to improve the existing structure on the property, as well as, construct other structures on the property to promote the training of their respective fire departments; and

WHEREAS, Licensor has no current use for the subject property and believes such use of the property by the Licensees serves a sufficient public purpose and benefit to residents of Jefferson County and therefore is in agreement to license the property to the Licensees in accordance with the following:

WITNESSETH:

IN CONSIDERATION OF THE PREMISES, the parties agree as follows:

- (1) Licensor hereby lets and licenses to Licensee, to the extent of its ownership interest and for the limited purpose described below, the surface use, existing structures and existing sub-surface improved areas of the property described on Exhibit A (herein “the property”) attached hereto.
- (2) The limited purpose of this LICENSE shall be the utilization of the property for a fire training facility including those buildings and out-buildings normally associated with fire training facility operations.
- (3) Licensees are authorized to improve the surface by leveling, paving and installing appropriate drainage facilities, to the extent required for the stated purpose.
- (4) Licensees agree to position all structures located on the property such as not to cover any existing sewer lines in use located under the surface of said property.
- (5) Licensees are authorized to pave on the property, but realizes that any pavement located over existing sewer lines is subject to being removed by the Licensor, if so deemed by the Licensor for the purposes of the Licensor to access, maintain or repair the Jefferson County Sewer System.
- (6) Licensor shall not be held liable for any claims for damage which may arise on account of the exercise by the Licensees of the rights herein granted; and Licensees hereby agree to release Licensor and shall defend, indemnify and hold Licensor harmless from all loss, claim, damage and expense of every nature, including attorney's fees, judgments and other legal costs, to which Licensor may be subject on account of the exercise by Licensees, of any of its rights hereunder or on account of any act, errors or omissions by Licensees, its servants, agents,

employees or contractors, including any failure to comply with all provisions of this LICENSE.

- (7) Licensees hereby acknowledge that this LICENSE is granted to Licensees only and shall not be sold, assigned, transferred in any manner whatsoever, without specific written approval of Licensor.
- (8) The term of this LICENSE shall begin upon execution and end September 30, 2068, or earlier upon Licensees' dissolution, bankruptcy, receivership or vacation of the property. Provided, Licensor and Licensees may extend the term hereof by mutual agreement. Licensor and Licensees may terminate this License, for any reason and with or without cause, upon at least ninety (90) days written notice to the other parties. Upon such termination, Licensees shall immediately vacate the premises, leaving them in good order and repair.
- (9) In consideration for use of the Premises, Licensee agrees to pay the Licensor an annual rent of One and 00/100 Dollar (\$1.00) (the "Rent") for the Premises. Licensee agrees to pay the Rent to the Licensor on or before the 15th day of each October for each year that this License is in effect, with the first Rent payment being due on or before October 15, 2019.
- (10) Licensees shall maintain the premises in a condition at all times satisfactory to Licensor (keep the property clean and free of litter, junk, trash and debris and further agrees to control weeds, shrubs, grass and trees in order to keep the property in a neat and tidy appearance at all times).
- (11) Licensees shall provide security for the entire premises as described in Exhibit A.
- (12) Purchase and maintain throughout the term of this license and all

extensions hereof comprehensive general public liability insurance, naming the Licensee and Jefferson County, Alabama, Jefferson County Commission and Commissioners and County employees as named insureds with a company duly authorized and approved to do business in Alabama. Said insurance shall include minimum coverage as follows:

- i. \$300,000.00 for personal injury liability and/or death from any one occurrence.
- ii. \$100,000.00 for personal injury and/death for any single injury or death.
- iii. A clause obligating the insurance company to give not less than 30 days written notice to the President, Jefferson County Commission and the Director, Environmental Services Department of Jefferson County, before cancellation thereof. No Such cancellation shall relieve the insurance company for any insurance liability or responsibility for any occurrence, injury, death or claim whatsoever occurring or arising before the cancellation becomes effective.
- iv. Workers compensation insurance if required by law, for all Licensees' employees.

Notwithstanding the aforementioned insurance, proof of self-insurance which meets all the above requirements is sufficient in lieu of a purchased policy.

- (13) The parties agree that the Licensor or their assigns and specifically Environmental Services Department shall have the right to enter the Premises in order to access, inspect, service, and/or replace any utility, sewer, power, gas and water lines currently or hereafter located on the Premises. Licensees shall have the right to have utilities placed on the premises to service any structures on the property. Licensees shall be responsible for payment of all utilities
- (14) This License shall be governed by the laws of the state of Alabama and any applicable local ordinances. The venue for any dispute arising under this License

shall be the Birmingham Division of the Circuit Court of Jefferson County,
Alabama.

- (15) All notices to the Licensor will be addressed to:

County Manager
Suite 216,
716 Richard Arrington Jr. Blvd. No.
Birmingham, AL 35203.

All notices to Licensees will be addressed to:

Chief Jon A. Lord
Rocky Ridge Fire District
2911 Metropolitan Way
Birmingham, AL 35243

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

- (16) This License may be amended at any time only with the written consent of all parties.
- (17) Licensees shall not suffer or permit any mechanics' or materialmen's liens to be filed against the Premises or other property of the Licensor by reason of any work, labor, services, materials or equipment supplied or claimed to have been supplied to the Licensees or any contractor or subcontractor of the Licensees. If any mechanics' or materialmen's lien is filed against the Premises or other property of the Licensor, then the Licensees shall promptly, after notice of filing, either (i) cause the same to be discharged of record by deposit in court or by the issuance of a bond; or (ii) furnish the Licensor with indemnification or other security against loss or damage arising from the lien in form and substance satisfactory to the Licensor. If the Licensee learns of any claim or action

pertaining to mechanics' or materialmen's liens with respect to the Premises or other property of the Licensor the Licensee shall give prompt notice of the same to the Licensor.

- (18) This License constitutes the entire agreement of the parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions and agreements that have been made in connection with the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this LICENSE AGREEMENT to be executed by their duly authorized representatives this _____ day of _____, 2019.

ATTEST:

Millie Diliberto, Minute Clerk

Jefferson County, Alabama

By _____
James A. Stephens, President
Jefferson County Commission

Rocky Ridge Fire District

By _____
John Pleasant, President Board of Trustees

City of Vestavia Hills

By _____
Ashley C. Curry, Mayor

By _____
Jeff Downes, City Manager

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, _____, a Notary Public in said County and State, hereby certify that **James A Stephens** whose name as **President of the Jefferson County Commission** is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said commission.

Given under my hand and official seal, this ____ day of _____, 2019.

Notary Public

My Commission expires: _____

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, _____, a Notary Public in said County and State, hereby certify that **John Pleasant** whose name as **President of the Board of Trustees, Rocky Ridge Fire District** is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said commission.

Given under my hand and official seal, this ____ day of _____, 2019.

Notary Public

My Commission expires: _____

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, _____, a Notary Public in said County and State, hereby certify that **Ashley C. Curry** whose name as **Mayor of the City of Vestavia Hills** is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said commission.

Given under my hand and official seal, this ____ day of _____, 2019.

Notary Public

My Commission expires: _____

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, _____, a Notary Public in said County and State, hereby certify that **Jeff Downes** whose name as **City Manager of the City of Vestavia Hills** is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said commission.

Given under my hand and official seal, this ____ day of _____, 2019.

Notary Public

My Commission expires: _____

EXHIBIT "A"

A parcel located partly in the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and partly in the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 18, Township 19 South, Range 2 West of the Huntsville Principal Meridian, Jefferson county, Alabama and being more particularly described as follows:

Begin at the southwest corner of said Southwest quarter of Northeast quarter of Section 18; thence in a northerly direction along the west boundary of said Southwest quarter of Northeast quarter 541.21 feet; thence turning an angle of 127 degrees and 55 minutes to the right in a southeasterly direction along a straight line 405.43 feet to the point of beginning of boundary of tract of land herein described; thence continuing in a southeasterly direction along said straight line 511.26 feet to intersection with the north boundary of said Northwest quarter of Southeast quarter; thence turning an angle of 52 degrees and 06 minutes to the right in a southerly direction 521.02 feet; thence turning an angle of 111 degrees and 14 minutes to the right in a northwesterly direction 560.95 feet; thence turning an angle of 90 degrees and 00 minutes to the right in a northeasterly direction along a straight line 400.16 feet to the point of beginning of an arc of a curve turning to the left, having a radius of 287.94 feet, being subtended by a central angle of 53 degrees and 43 minutes and 17 seconds and having a chord 260.19 feet in length; thence northeasterly, thence northerly, and thence northwesterly along said arc 269.98 feet to the point of beginning.

Less and except:

Commence at the Northwest corner of the Southeast $\frac{1}{4}$ of Section 18, Township 19 South, Range 2 West; thence run east along the North line of said $\frac{1}{4}$ section a distance of 722.37 feet to a found 3 open pipe; thence turn an angle right of $88^{\circ}21'30''$ and run Southerly a distance of 240.00 feet to the Point of Beginning of a parcel of land; thence continue along the last named course a distance of 281.23 feet to a found solid rod; thence turn an angle right of $111^{\circ}13'09''$ and run Northwesterly a distance of 520.79 feet to a found $\frac{1}{2}''$ Rebar; thence turn an angle right of $90^{\circ}00'00''$ and run Northeasterly a distance of 70.00 feet; thence an angle right of $65^{\circ}21'46''$ and run easterly a distance of 460.96 feet to the Point of Beginning containing 1.9 acres, more or less.

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

April 26, 2019

By Hand Delivery

Fire Chief Marvin D. Green
Vestavia Hills Fire Department
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: License Agreement By and Between Jefferson County, Alabama (“Licensor”) and Rocky Ridge Fire District and the City of Vestavia Hills, Alabama (“Licensees”)

Dear Chief Green:

On April 9, 2019, you sent to me via electronic mail a proposed License Agreement by and between Jefferson County, Alabama (“Licensor”) and Rocky Ridge Fire District and the City of Vestavia Hills, Alabama (“Licensees”) 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

Jefferson County (“Licensor”) has agreed to allow Rocky Ridge Fire District and the City of Vestavia Hills (“Licensees”) to use the real estate and improvements situated at 3790 Veona Daniels Road for the purpose of building a Fire Training Center for a term of forty-nine (49) years in consideration of the payment of rent of One Dollar (\$1.00) per year.

II. THE LICENSE AGREEMENT

Among other things, the License Agreement provides as follows:

A. **INDEMNITY:** Section 6 of the License Agreement reads as follows:

“(6) Licensor shall not be held liable for any claims for damage which may arise on account of the exercise by the Licensees of the rights herein granted; and Licensees hereby agree to release

April 26, 2019
Page 2

Licensors shall defend, indemnify and hold Licensors harmless from all loss, claim, damage and expense of every nature, including attorney's fees, judgments and other legal costs, to which Licensors may be subject on account of the exercise by Licensees, of any of its rights hereunder or on account of any act, errors or omissions by Licensees, its servants, agents, employees or contractors, including any failure to comply with all provisions of this LICENSE.”

B. INSURANCE: Section (12) of the License Agreement provides as follows:

“(12) Purchase and maintain throughout the term of this license and all extensions hereof comprehensive general public liability insurance, naming the Licensee and Jefferson County, Alabama, Jefferson County Commission and Commissioners and County employees as named insureds with a company duly authorized and approved to do business in Alabama. Said insurance shall include minimum coverage as follows:

i. \$300,000.00 for personal injury liability and/or death from any one occurrence.

ii. \$100,000.00 for personal injury and/death for any single injury or death.

iii. A clause obligating the insurance company to give not less than 30 days written notice to the President, Jefferson County Commission and the Director, Environmental Services Department of Jefferson County, before cancellation thereof. No Such cancellation shall relieve the insurance company for any insurance liability or responsibility for any occurrence, injury, death or claim whatsoever occurring or arising before the cancellation becomes effective.

iv. Workers compensation insurance if required by law, for all Licensees’ employees.

Notwithstanding the aforementioned insurance, proof of self-insurance which meets all the above requirements is sufficient in lieu of a purchased policy.”

III. LEGAL ISSUE

May the City of Vestavia Hills legally agree to the indemnity and insurance provisions set forth in the License Agreement?

April 26, 2019
Page 3

IV. LEGAL OPINION

It is my legal opinion that the answer to the legal question is in the affirmative; provided, however, that the City keep the insurance coverages in full force and effect for the next forty-nine (49) years.

V. BASIS FOR LEGAL OPINION

I have written literally hundreds of legal opinions opining that the City cannot legally indemnify and hold harmless another party from tort liability. My position on that legal principal has not changed! However, I approve the language of sections (6) and (12) in the License Agreement for the following reasons:

A. In my opinion, Jefferson County would never make this License Agreement without including the indemnity and insurance requirements. It would not be in the best interest of the citizens of the City of Vestavia Hills or its Fire Department to lose 49 years of the use of the property for fire training purposes for the nominal sum of \$49.00.

B. GOVERNMENTAL ENTITIES: Alabama law at Title 11-93-1, *Code of Alabama, 1975*, provides that municipalities and counties are “governmental entities.” Therefore, the City of Vestavia Hills (“Licensee”) and Jefferson County (“Licensor”) are governmental entities.

Title 11-93-2, *Code of Alabama, 1975*, sets forth the maximum damages recoverable for tort claims and judgments against local governmental entities and reads as follows:

“§11-93-2. Maximum damages recoverable. The recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence. Recovery of damages under any judgment or judgments against a governmental entity shall be limited 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. Recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for damage or loss of property arising out of any single occurrence. No governmental entity shall settle or compromise any claim for bodily injury, death or property damage in excess of the amounts hereinabove set forth.”

C. Alabama law authorizes municipalities to purchase liability insurance policies pursuant to Title 11-47-24, *Code of Alabama, 1975*.

April 26, 2019

Page 4

D. The maximum liability of a county in Alabama for a tort claim is \$100,000.00/\$300,000.00 and \$100,000.00. The required liability insurance coverages under the provisions of Section 12 of the License Agreement are also \$100,000/\$300,000/\$100,000. Therefore, any claim pursuant to the indemnity requirement would be paid by the insurance company. The City would not be required to pay any part of any judgment or settlement. In my opinion, there would be no violation of the *Constitution of Alabama* or the Public Purpose Doctrine that I have cited many times in previous legal opinions.

V. MY RECOMMENDATIONS

I make the following recommendations:

A. I recommend the License Agreement from a legal standpoint.

B. I further recommend that if the City Council approves the License Agreement, then in such event the City shall keep, maintain and pay the premiums in order to keep the liability insurance coverages as described in Section (12) in full force and effect for the next 49 years.

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

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeffrey D. Downes (by hand)
City Clerk Rebecca Leavings (by hand)

RESOLUTION NUMBER 5161

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH ALABAMA DEPARTMENT OF TRANSPORTATION FOR FUNDING OF SICARD HOLLOW ROAD TUNNEL SAFE ROUTE; PROJECT #TAPAA-TA14(931); CPMS REF #100062997

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

That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation relating to a project for:

**Sicard Hollow Road Tunnel Safety Route; Project #TAPAA-TA14(931);
CPMS Ref #100062997.**

Which agreement is before this Council, and that the agreement be executed in the name of the City, by the Mayor for an on its behalf and that it be attested by the City Clerk and the official seal of the City be affixed thereto.

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

ADOPTED and APPROVED this the 20th day of May, 2019.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, the undersigned qualified and acting clerk of the City of Vestavia Hills, Alabama do hereby certify that the above and fore going is a true and copy of sure Resolution lawfully passed and adopted by the City named therein, at a regular meeting of such Council, held on the ____ day of _____, 2019 and that such resolution is on file in the City Clerk's office.

City Clerk

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Ctiy on this the _____ day of _____, 2019.

City Clerk



Kay Ivey
Governor

ALABAMA DEPARTMENT OF TRANSPORTATION

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



John R. Cooper
Transportation Director

May 16, 2019

Honorable Ashley C. Curry, Mayor
City of Vestavia Hills
1032 Montgomery Hwy
Vestavia Hills, AL 35216

Attn: Christopher Brady
City Engineer

RE: TAPAA- TA14(931)
Sicard Hollow Road Tunnel Safe Route
Project Reference No: 100062997
City of Vestavia Hills
Jefferson County

Mayor Curry:

Please find attached a copy of the Revised Funding Agreement between The State of Alabama and the City of Vestavia Hills. This agreement is to obligate funds for construction and engineering inspection on the above-referenced project.

To execute this agreement, it must be signed by the Mayor with the City seal affixed. In addition, the attached resolution must be completed authorizing the Mayor to be the signatory on behalf of the City. After this agreement is executed by the City please return to this office for Regional authorization.

Should you have questions or need additional information, please contact this office.

Sincerely,
DeJarvis Leonard, P.E.
Region Engineer

Jesse P. Miller, Jr., P.E.
County Transportation Engineer
East Central Region-Birmingham Area

DL/GMB /JPM/SJ/jcm
pc: file

**REVISED
CONSTRUCTION
AGREEMENT
FOR A
TRANSPORTATION ALTERNATIVES PROGRAM
PROJECT**

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

**Project No. TAPAA-TA14(931)
CPMS Ref# 100062997
Sicard Hollow Road Tunnel Safe Route**

PART ONE (1): INTRODUCTION

This Revised Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Vestavia Hills, Alabama, hereinafter referred to as the CITY.

WHEREAS, the STATE and the CITY desire to cooperate in the Sicard Hollow Road Tunnel Safe Route; Project# TAPAA-TA14(931); CPMS Ref# 100062997.

NOW, THEREFORE, it is mutually agreed between the STATE and the CITY as follows:

PART TWO (2): FUNDING PROVISIONS

- A. **Project Funding:** Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. It is expressly understood that federal funds for this project will be provided from Transportation Alternatives Program (TAP) funds as authorized by the U.S. Congress and the STATE will not be liable for any funding. Cost for the project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds, based on the contract as let price plus CE&I or the estimated costs below, whichever is lower. Any deficiency in Federal Aid or overrun in costs will be borne by the CITY from CITY funds unless approved in writing by the STATE. In the event of an underrun in construction costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible costs, whichever is less.
- B. The estimated cost and participation by the various parties is as follows:

| FUNDING SOURCE | ESTIMATED COSTS |
|-----------------------|-----------------|
| Federal TAP Funds | \$ 378,966.40 |
| Federal MPO TAP Funds | \$ 200,000.00 |
| City Funds | \$ 144,741.60 |
| | ----- |
| TOTAL (Incl CE&I) | \$ 723,708.00 |

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the CITY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the CITY relating to this project which is determined to be ineligible for reimbursement by the Federal Highway Administration (FHWA) or in excess of the limiting amounts previously stated will not be an eligible cost to the project and will be borne and paid by the CITY.

- C. **Time Limit:** This project will commence upon written authorization to proceed from the STATE directed to the CITY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Board and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

- A. The CITY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost to the Project. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the CITY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the CITY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the CITY 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.

Any property acquired shall be in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.

The CITY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

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 or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the CITY from the sale or lease of property.

- B. The CITY will adjust and/or relocate all Utilities in conflict with the Project improvements. Associated Utility costs will be an eligible cost to the Project, as approved by the application.

The CITY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures.

- C. The CITY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the Project with CITY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not be an eligible cost to the Project.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the CITY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. All cost for which the CITY 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 CITY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The CITY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the CITY and approved by the STATE. The plans, 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 CITY that failure of the CITY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal funding and the refund of any federal funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for *Procedures for Processing State and Industrial Access Funded County and City Projects*, and attached hereto as a part of this Agreement prior to the CITY letting the contract.

- D. The CITY will furnish all construction engineering for the Project with CITY forces or with a consultant approved by the STATE as part of the cost of the Project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost to the Project.
- E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The CITY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

- A. The CITY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the CITY to proceed.
- B. Associated Construction cost will be an eligible cost to the project.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids, and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the CITY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The CITY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the CITY, the CITY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The CITY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement. The CITY shall 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 CITY will provide all bids to the STATE with a recommendation for award. The CITY shall not award the contract until it has received written approval from the STATE.

For projects with approval by the STATE to use CITY Forces, the Construction for the project will be performed by the CITY at actual costs for labor, materials, and equipment, as approved by the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State 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.

- C. If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The CITY will be the permittee of record with ADEM for the permit. The CITY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The CITY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The CITY will secure all permits and licenses of every nature and description applicable to the project in any manner and will conform to and comply with the requirements of any such permit or license, and with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

- D. The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation and the project will be built in accordance with the approved plans.
- E. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the CITY its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants, representatives or employees, or anyone for whose acts the CITY may be liable.
- F. The CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities.
- G. Upon completion and acceptance of this project by the State, the CITY will assume full ownership and responsibility for the project work and maintain the project in accordance

with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

PART FIVE (5): ACCOUNTING PROVISIONS

- A. The CITY will, when appropriate, submit reimbursement invoices to the STATE for work performed 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 Region Engineer for payment. The CITY may invoice 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. Invoices for any work performed 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.
- B. The CITY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.
- C. The CITY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

All charges to the Project 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. 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.

The CITY will report to the STATE the progress of the project in such manner as the STATE may require. The CITY will also provide the STATE any information requested by the STATE regarding the project. The CITY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

The CITY 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, vehicles and equipment utilized or used in performance of the project; any and all data and records which in any way relate to the project or to the accomplishment of the project. The CITY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the CITY will give its full cooperation to those persons or their authorized representatives, as applicable.

The CITY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.

- D. The CITY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.
- E. 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 project authorized by this agreement.

- F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the CITY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

- A. By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- B. It is agreed that the terms and commitments contained in this agreement 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 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in this agreement shall be deemed null and void.
- C. 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.
- D. No member, officer, or employee of the CITY 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.
- E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.
- F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
- G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.
- H. **Exhibits A, E, H, M, and N** are hereby attached to and made a part of this Agreement.
- I. This Agreement supersedes the Agreement dated December 1, 2014, and that Agreement dated December 1, 2014, is hereby deemed to be null and void.

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:

City of Vestavia Hills, Alabama

**By: _____
City Clerk (Signature)**

**By: _____
As Mayor (Signature)**

**Print Name of Clerk
(AFFIX SEAL)**

Print Name of Mayor

This agreement has been legally reviewed and approved as to form and content.

**By: _____
William F. Patty,
Chief Counsel**

RECOMMENDED FOR APPROVAL:

**DeJarvis Leonard, P.E.
East Central Region Engineer**

**D.E. (Ed) Phillips, P.E.
State Local Transportation Engineer**

**Don T. Arkle, P. E.
Chief Engineer**

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

John R. Cooper, Transportation Director

**THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND
SIGNED BY THE GOVERNOR ON THIS _____ DAY OF _____, 20_____.**

**KAY IVEY
GOVERNOR, STATE OF ALABAMA**

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

EXHIBIT E

TERMINATION OR ABANDONMENT

- a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.

- b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CITY upon an equitable basis. The value of the work performed by the CITY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:
 1. The ratio of the amount of work performed by the CITY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.

 2. The amount of the expense to which the CITY is put in performing the work to be terminated in proportion to the amount of expense to which the CITY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CITY prior to the termination, no consideration will be given to profit, which the CITY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CITY, the value of the work performed by the CITY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

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 of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

- a. This contract shall be binding upon the successors and assigns of the respective parties hereto.

- b. Should the AGREEMENT be terminated due to default by CITY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

EXHIBIT H

Page 1

EQUAL RIGHTS PROVISIONS

During the performance of this contract, the CITY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

EXHIBIT H

Page 2

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CITY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. **Solicitations**

In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the CITY of the CITY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. **Information and Reports**

The CITY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

EXHIBIT H

Page 3

records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the CITY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the CITY under contract until the CITY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The CITY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The CITY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CITY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the CITY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the CITY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

EXHIBIT H
Page 4

The CITY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.
3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CITY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The CITY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The CITY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

- a. The CITY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

EXHIBIT H

Page 5

- b. The CITY, in accordance with the status of CITY as an independent contractor, covenants and agrees that the conduct of CITY will be consistent with such status, that CITY will neither hold CITY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CITY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of CITY.

CITYS' CERTIFICATIONS

The CITY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CITY. The CITY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CITY at the time of execution of the AGREEMENT. The CITY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CITY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CITY agrees that a meal allowance shall be limited to CITY employees while in travel status only and only when used in lieu of a per diem rate.

The CITY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CITY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

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:

- a. 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.
- b. 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.

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.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use 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 CITY 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, CITY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CITY 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.

**STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION**

**SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL
ACCESS FUNDED COUNTY AND CITY PROJECTS**

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an in-place annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL:


BUREAU CHIEF/REGION ENGINEER

APPROVAL:


CHIEF ENGINEER

APPROVAL:


TRANSPORTATION DIRECTOR

NOVEMBER 1, 2017

DATE

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

May 16, 2019

By Hand Delivery

City Clerk Rebecca Leavings
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Ordinance Number 2850 Approving Agreement for Land Swap

Dear Becky:

I have prepared and enclose Ordinance Number 2850 regarding the Agreement for Land Swap between the City and the Board.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp
Enclosure
cc: City Manager Jeffrey D. Downes

ORDINANCE NUMBER 2850

AN ORDINANCE TO APPROVE AN AGREEMENT FOR LAND SWAP (THE “AGREEMENT”) BETWEEN THE CITY OF VESTAVIA HILLS, ALABAMA (“CITY”) AND THE BOARD OF EDUCATION OF THE CITY OF VESTAVIA HILLS, ALABAMA (“BOARD”), TO AUTHORIZE AND DIRECT THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER SAID AGREEMENT FOR AND ON BEHALF OF THE CITY, TO COMPLETE THE CONVEYANCES DESCRIBED IN THE AGREEMENT AND TO TAKE ANY AND ALL ACTIONS NECESSARY TO COMPLY WITH THE TERMS, PROVISIONS AND CONDITIONS OF SAID AGREEMENT.

THIS ORDINANCE NUMBER 2850 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 20th day of May, 2019.

WITNESSETH THESE RECITALS:

WHEREAS, on February 25, 2019, the City of Vestavia Hills, Alabama (“City”) and The Board of Education of the City of Vestavia Hills, Alabama (“Board”) approved and adopted Resolutions at their respective regularly scheduled public meetings, after giving the required legal notice, a Memorandum of Understanding for Shared Facility Use, Land Planning and Funding Between the City and Board (“MOU”); and

WHEREAS, the City and Board wish to formalize, approve, complete and implement a part of that MOU by making certain swaps of land (located in Cahaba Heights) as set forth in said MOU; and

WHEREAS, the City Manager for and on behalf of the City and the Superintendent for and on behalf of the Board have negotiated an Agreement for Land Swap, a copy of which is attached hereto and marked as Exhibit AFLS.

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

1. The Agreement for Land Swap (consisting of 9 pages, List of Exhibits and 17 Exhibits) a copy of which is attached hereto, marked as Exhibit AFLS and is incorporated in its entirety into this ordinance by reference as though set out fully herein.
2. The Agreement for Land Swap (Exhibit AFLS) is hereby approved.
3. The City, as required by Title 11-47-20, *Code of Alabama, 1975*, finds and determines that Conveyance Parcel 1, Conveyance Parcel 2 and Conveyance Parcel 3 owned by

the City are not needed by the City for municipal or public purposes and further that the Board needs said real property to better serve public education at Cahaba Heights Elementary School.

4. The Mayor and City Manager are hereby authorized and directed to execute and deliver the Agreement for and on behalf of the City of Vestavia Hills, Alabama.

5. The Mayor and City Manager are hereby authorized and directed to execute any and all legal documents required to complete the conveyances and to comply with this Agreement for Land Swap, including specifically, but not limited to, the Statutory Warranty Deeds, Affidavits and other necessary documents related to said Agreement for Land Swap, for and on behalf of the City of Vestavia Hills, Alabama. In addition, the City Manager is hereby authorized to make editorial revisions and corrections that do not substantially change said Agreement.

6. The City Manager is further authorized and directed to take any and all actions and to execute any and all legal documents necessary to complete the legal obligations of the City under the Agreement marked as Exhibit AFLS.

7. This Ordinance Number 2850 shall become effective upon its approval, adoption, enactment and publication by posting as set forth in Title 11-45-8(b), *Code of Alabama, 1975*.

8. 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.

ADOPTED and APPROVED this the 20th day of May, 2019.

CITY OF VESTAVIA HILLS, ALABAMA

By

Ashley C. Curry
Mayor

ATTESTED BY

Rebecca Leavings
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

AGREEMENT FOR LAND SWAP

THIS AGREEMENT FOR LAND SWAP (“the Agreement”), is hereby made and entered into as of the 20th day of May, 2019 (“the Effective Date”) by and between the City of Vestavia Hills, Alabama, a municipal corporation (hereinafter referred to as “City”) and The Board of Education of the City of Vestavia Hills, Alabama (hereinafter referred to as “Board”).

WITNESSETH THESE RECITALS:

WHEREAS, city boards of education may enter into cooperative agreements, projects and programs with the City Council and may take such other actions as they deem necessary and appropriate for the management of public schools pursuant to Title 16-11-9.1, *Code of Alabama, 1975*; and

WHEREAS, on February 25, 2019, the City of Vestavia Hills, Alabama (“City”) and The Board of Education of the City of Vestavia Hills, Alabama (“Board”) approved and adopted Resolutions at their respective regularly scheduled public meetings, after giving the required legal notice, a Memorandum of Understanding for Shared Facility Use, Land Planning and Funding Between the City and Board (“MOU”), a copy of which is attached hereto and marked as Exhibit 1; and

WHEREAS, the City and Board wish to formalize, approve, complete and implement a part of that MOU by making certain swaps of land (located in Cahaba Heights) as set forth in said MOU; and

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

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

WHEREAS, municipalities in the State of Alabama have full power and authority to acquire land by purchase pursuant to Title 11-40-1 and Title 11-47-170, *Code of Alabama, 1975*; and

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

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

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

WHEREAS, city school boards are agencies of the State of Alabama and are vested with all the powers necessary or proper for the administration and management of the free public schools within such city by virtue of Title 16-11-9, *Code of Alabama, 1975*; and

WHEREAS, city school boards in the State of Alabama have the legal authority to buy and sell and/or convey interests in real property pursuant to Title 16-11-12, *Code of Alabama, 1975*, and to enter into contracts pursuant to the authority of Titles 16-11-2(b), 16-11-9, 16-1-30 and 16-11-9.1, *Code of Alabama, 1975*; and

WHEREAS, both the City and the Board own property in the Cahaba Heights community of the City of Vestavia Hills, Alabama; and

WHEREAS, the City and the Board have found and determined that it will be in the best public interest for the City to convey certain parcels of its property to the Board in exchange for certain parcels of property owned by the Board property; and

WHEREAS, the City has found and determined, as required by Title 11-47-20, *Code of Alabama, 1975*, that the following real property owned by the City is not needed by the City for municipal or public purposes and further that the Board needs said real property to better serve public education at Cahaba Heights Elementary School:

| <u>Parcel Number</u> | <u>Legal Description Set Forth in Exhibit Number</u> |
|----------------------|--|
| Conveyance Parcel 1 | Exhibit 2 |
| Conveyance Parcel 2 | Exhibit 3 |
| Conveyance Parcel 3 | Exhibit 4; and |

WHEREAS, the Board has found and determined that it will better serve the Parks and Recreation Programs of the City if the City owned the following parcels of Board real property:

| <u>Parcel Number</u> | <u>Legal Description Set Forth in Exhibit Number</u> |
|----------------------|--|
| Conveyance Parcel 4 | Exhibit 5 |
| Conveyance Parcel 5 | Exhibit 6 |
| Conveyance Parcel 6 | Exhibit 7 |
| Conveyance Parcel 7 | Exhibit 8; and |

WHEREAS, the City is willing to convey without monetary consideration Conveyance Parcel 1 (Exhibit 2), Conveyance Parcel 2 (Exhibit 3) and Conveyance Parcel 3 (Exhibit 4) to the Board in exchange for Conveyance Parcel 4 (Exhibit 5), Conveyance Parcel 5 (Exhibit 6), Conveyance Parcel 6 (Exhibit 7) and Conveyance Parcel 7 (Exhibit 8) presently owned by the Board; and

WHEREAS, the Board is willing to convey without monetary consideration Conveyance Parcel 4 (Exhibit 5), Conveyance Parcel 5 (Exhibit 6), Conveyance Parcel 6 (Exhibit 7) and Conveyance Parcel 7 (Exhibit 8) to the City in exchange for Conveyance Parcel 1 (Exhibit 2), Conveyance Parcel 2 (Exhibit 3) and Conveyance Parcel 3 (Exhibit 4) presently owned by the City; and

WHEREAS, Conveyance Parcels 1, 2, 3, 4, 5, 6 and 7 are shown on the color coded map, which is attached hereto and marked as Exhibit 9; and

WHEREAS, Conveyance Parcels 1, 2, 3, 4, 5, 6 and 7 are also shown on the color coded Survey entitled "Parcels 1-7 Conveyance", a copy of which is attached hereto and marked as Exhibit 10; and

WHEREAS, the City and Board agree that the property designated as "Shared Use Easement #1" described in Exhibit 11 attached hereto shall be used by the City and Board for the purposes of ingress, egress and parking; and

WHEREAS, the City and Board agree that the property designated as "Shared Use Easement #2" described in Exhibit 12 attached hereto shall also be used by the City and Board for the purposes of ingress, egress and parking; and

WHEREAS, the Board shall be responsible for the maintenance of the properties for Shared Use Easements #1 and #2; and

WHEREAS, the “Public Access Road” more particularly described in Exhibit 13 shall be a public dedicated street for use by the public; and

WHEREAS, the City shall be responsible for the maintenance of the Public Access Road; and

WHEREAS, the Shared Use Easements #1 and #2 and Public Access Road are reflected on the survey by Bailey Land Group, a copy of which is attached hereto and marked as Exhibit 14; and

WHEREAS, it is the intent of the City and Board that their respective properties, following the conveyances described above, be configured as shown on the site map marked as Exhibit 15 and attached hereto; and

WHEREAS, it is the intent of the City and Board, following the conveyances set forth above, that the property owned by the Board be referred to as Parcel 1 consisting of 11.15 acres and be more particularly described in Exhibit 16 entitled “Board Property in Cahaba Heights,” a copy of which is attached hereto; and

WHEREAS, it is the intent of the City and Board, following the conveyances set forth above, that the property owned by the City be referred to as Parcel 2 consisting of 11.33 acres and be more particularly described in Exhibit 17 entitled “City Property in Cahaba Heights,” a copy of which is attached hereto; and

WHEREAS, the City and Board agree to jointly file an application with the Vestavia Hills Planning and Zoning Commission for a Resurvey of the Board property (Parcel 1 as described in Exhibit 16) and the City property (Parcel 2 described in Exhibit 17).

NOW, THEREFORE, in consideration of the premises set forth above, the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, City and Board hereby mutually covenant and agree as follows:

1. **RECITALS**: The recitals set forth in the premises above are incorporated into this Agreement for Land Swap by reference as though set out fully herein.

2. **EXHIBITS**: Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 are incorporated into this Agreement for Land Swap by reference as though set out fully herein.

3. **CONVEYANCES BY CITY:** The City shall, by Statutory Warranty Deed, convey to the Board the following described properties situated in the Cahaba Heights community of the City of Vestavia Hills, Jefferson County, Alabama:

| <u>Parcel Number</u> | <u>Described in Exhibit Number</u> |
|-----------------------------|---|
| Conveyance Parcel 1 | Exhibit 2 |
| Conveyance Parcel 2 | Exhibit 3 |
| Conveyance Parcel 3 | Exhibit 4. |

4. **CONVEYANCES BY BOARD:** The Board shall, by Statutory Warranty Deed, convey to the City the following described properties situated in the Cahaba Heights community of the City of Vestavia Hills, Jefferson County, Alabama:

| <u>Parcel Number</u> | <u>Described in Exhibit Number</u> |
|-----------------------------|---|
| Conveyance Parcel 4 | Exhibit 5 |
| Conveyance Parcel 5 | Exhibit 6 |
| Conveyance Parcel 6 | Exhibit 7 |
| Conveyance Parcel 7 | Exhibit 8. |

5. **SHARED USE EASEMENTS:** The Board shall, by proper legal document entitled "Shared Use Easements," grant to the City an easement for the purposes of parking, ingress and egress, over, along and on the properties more particularly described in Exhibits 11 and 12. The Board shall have the responsibility for the maintenance of said "Shared Use Easement" properties.

6. **PUBLIC ACCESS ROAD:** The Public Access Road described in Exhibit 13 shall be a dedicated public street. The City shall have the responsibility for maintenance of said Public Access Road.

7. **EXECUTION AND DELIVERY OF LEGAL DOCUMENTS:**

A. **FOR CITY:** The Mayor and City Manager are hereby authorized and directed to execute any and all legal documents required to complete the conveyances and to comply with this Agreement for Land Swap, including specifically, but not limited to, the Statutory Warranty Deeds, Affidavits and other necessary documents related to said Agreement for Land Swap, for and on behalf of the City of Vestavia Hills, Alabama. In addition, the City Manager is hereby authorized to make editorial revisions and corrections that do not substantially change said Agreement.

B. FOR BOARD: The Superintendent is hereby authorized and directed to execute any and all legal documents required to complete the conveyances and to comply with this Agreement for Land Swap, including specifically, but not limited to, the Statutory Warranty Deeds, Affidavits and other necessary documents related to said Agreement for Land Swap, for and on behalf of the Board of Education of the City of Vestavia Hills, Alabama. In addition, the Superintendent is hereby authorized to make editorial revisions and corrections that do not substantially change said Agreement.

8. RESURVEY: The City and Board shall jointly file an application with the Vestavia Hills Planning and Zoning Commission for a Resurvey of the Board property (Parcel 1 as described in Exhibit 16) and the City property (Parcel 2 described in Exhibit 17) following the filing of the Statutory Warranty Deeds and Share Use Easements for record in the office of the Judge of Probate of Jefferson County, Alabama.

9. AFFIRMATION: The City and Board further agree to all other aspects, terms, provisions and conditions of the MOU (dated February 4, 2019 and approved by both the City and Board on February 25, 2019) and they are hereby ratified, approved and confirmed by the City and Board again so that the same shall remain in full force and effect.

10. MISCELLANEOUS

A. GOVERNING LAW: This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Alabama.

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

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

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

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

F. CONSTRUCTION OF TERMS: Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in

drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

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

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

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

J. ENTIRE AGREEMENT: This written Agreement may only be amended in writing executed by both parties.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama, a municipal corporation, and the Board of Education of the City of Vestavia Hills, Alabama have hereunto caused this Agreement for Land Swap to be executed by their duly authorized officers and their respective seals to be affixed hereto as of the date first above written.

CITY:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

BOARD:
THE BOARD OF EDUCATION OF THE
CITY OF VESTAVIA HILLS, ALABAMA

By _____
Dr. Todd Freeman
Its Superintendent

ATTESTED:

By _____

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Agreement for Land Swap, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the 20th day of May, 2019.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Agreement for Land Swap, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the 20th day of May, 2019.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Dr. Todd Freeman, whose name as Superintendent of the Board of Education of the City of Vestavia Hills, Alabama is signed to the foregoing Agreement for Land Swap, and who is known to me, acknowledged before me on this day that being informed of the contents of the contract, he in his capacity as such and with full authority, executed the same voluntarily for and as the act of said the Board of Education of the City of Vestavia Hills, Alabama on the day the same bears date.

Given under my hand and official seal, this the 20th day of May, 2019.

Notary Public

My Commission Expires:

SEAL

LIST OF EXHIBITS

| <u>EXHIBIT NUMBER</u> | <u>DESCRIPTION</u> |
|----------------------------------|---|
| Exhibit 1 | Memorandum of Understanding |
| Exhibit 2 | Legal Description of Conveyance Parcel 1 |
| Exhibit 3 | Legal Description of Conveyance Parcel 2 |
| Exhibit 4 | Legal Description of Conveyance Parcel 3 |
| Exhibit 5 | Legal Description of Conveyance Parcel 4 |
| Exhibit 6 | Legal Description of Conveyance Parcel 5 |
| Exhibit 7 | Legal Description of Conveyance Parcel 6 |
| Exhibit 8 | Legal Description of Conveyance Parcel 7 |
| Exhibit 9 | Color Coded Map |
| Exhibit 10 | Color Coded Survey |
| Exhibit 11 | Legal Description of Shared Use Easement #1 |
| Exhibit 12 | Legal Description of Shared Use Easement #2 |
| Exhibit 13 | Legal Description of Public Access Road |
| Exhibit 14 | Survey |
| Exhibit 15 | Site Plan |
| Exhibit 16 | Final Legal Description of Board Property in Cahaba Heights (11.15 Acres) |
| Exhibit 17 | Final Legal Description of City Property in Cahaba Heights (11.33 Acres) |

**Memorandum Of Understanding For Shared Facility Use, Land Planning
And Funding Between The City of Vestavia Hills And The Vestavia Hills City Schools**

February 4, 2019

Whereas, Vestavia Hills City School System ("school system") is a foundational element of the success of the City of Vestavia Hills ("City") as evidenced by the reliable statistic that nearly 75% of city residents move to Vestavia Hills due to the school system and

Whereas, the financial sustainability of the school system is directly correlated with the long term economic success of the City thus requiring inter organizational collaboration in areas such as finance, operations and recreation/athletics and

Whereas, the school system and City are both currently engaging in an unprecedented building program to improve the quality and capacity of its assets

Now therefore, the City and school system agree that an explicit memorandum of understanding ("MOU") is warranted for clear expression of the desires of both entities along with a tool for planning and communication that can be utilized by each as well. As such, the following narrative is a comprehensive list of items that will support the collaboration mentioned above. This MOU is designed as a letter of intent for both parties, and it is recognized that many of the items listed will require formal approval of the school system and the City before they can be considered finally approved.

- The school system has an unanticipated financial need associated with components of its building program that include traffic/parking infrastructure, site improvements and roofing requirements. The additional costs will require an additional \$9mm added to the school system program to be financed over 10 years. The City agrees to utilize surplus Community Space funds to cover 25% of the cost of debt service on this additional need. The anticipated annual City support will be \$280,000 per year for ten years.
- The school system agrees to construct two new ball fields on its new Pizitz campus as illustrated on exhibit A. Construction is scheduled to commence on 10/1/19. These ballfields will be available to the City as recreational fields consistent with a mutually acceptable field/facility agreement policy attached as exhibit B.
- The City shall collaborate and agree to construct mutually acceptable pedestrian crossings between the new Wald Park and West Elementary School (VHEW) for safety purposes.
- The City and school system agree that the current property lines at the Cahaba Heights Elementary School (VHECH) adjacent to the City's recreation facilities do not represent the current space needs for each entity. As such, the school system and the City agree to resurvey and plat new property lines similar to exhibit C to this document.
- Given the facility needs of both entities a mutual conveyance of assets will occur as follows:
 - The school system will convey excess property at Cahaba Heights in return for the City's conveyance of excess property at Wald Park as illustrated in exhibit D to this document. The City shall only use the conveyed Cahaba Heights property for recreational purposes

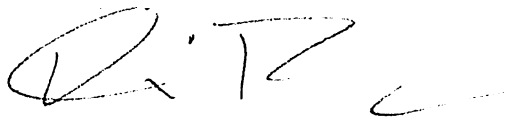
and the school system shall only use the conveyed Wald Park property for educational purposes.

- The City shall demolish the current New Merkel facility and convey the site of such demolished structure to the school system when a new facility is constructed adjacent to the City's athletic fields.
- Upon conveyance of the excess property at Wald Park, the current gymnasium can be utilized by the City consistent exhibit B as long as it is still in operations by the school system for athletic purposes.
- The City and school system agree to utilize a master scheduling system for its recreational and athletic facilities consistent with exhibit B
- The City and school system agree to develop a formal shared parking agreement for all adjacent real estate/ facilities


This MOU is agreed to serve as a letter of intent by both parties as evidenced by the signature of the following



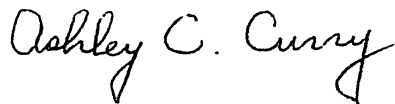
Superintendent of Vestavia City Schools



Vestavia Hills Board of Education, Chair



Vestavia Hills City Manager

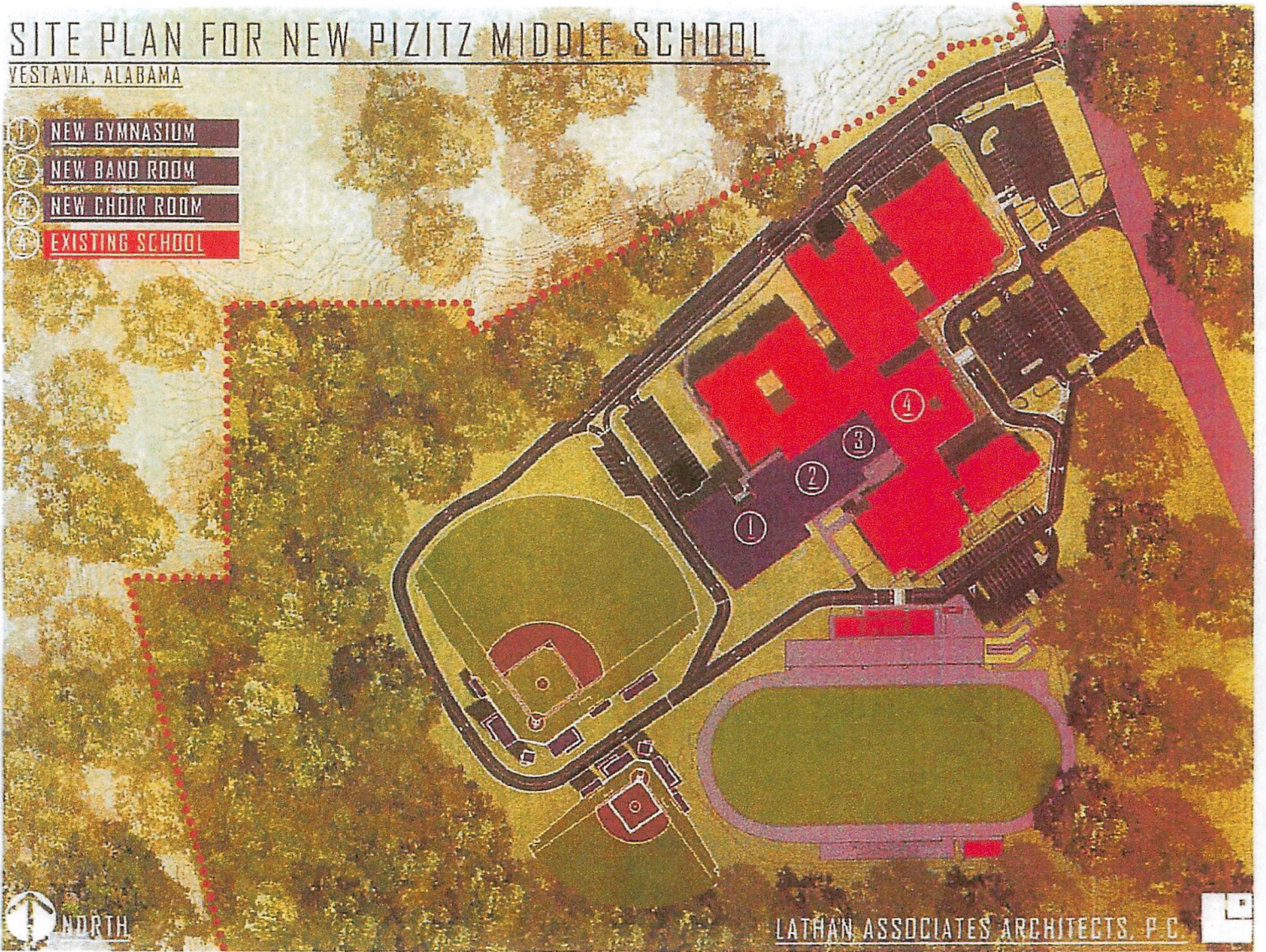


Vestavia Hills Mayor

SITE PLAN FOR NEW PIZITZ MIDDLE SCHOOL

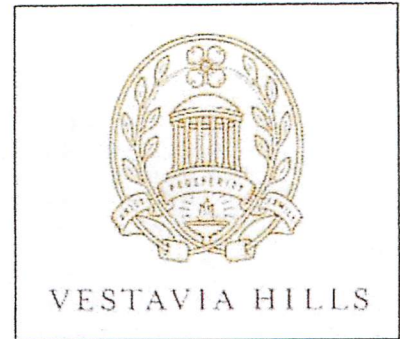
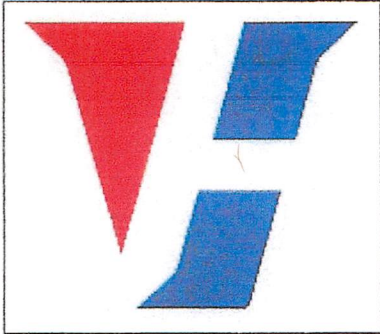
VESTAVIA, ALABAMA

- 1 NEW GYMNASIUM
- 2 NEW BAND ROOM
- 3 NEW CHOIR ROOM
- 4 EXISTING SCHOOL



LATHAN ASSOCIATES ARCHITECTS, P.C.





Intergovernmental Facility and Public Space Use Agreement
Vestavia Hills City Schools
City of Vestavia
November 19, 2018

Vestavia Hills City Schools Facility Sites

| VHHS | 9th Grade | Pizitz | LPMS | Central | Elementaries |
|-----------------------------|------------------|-------------------|-----------------|----------------|------------------------------|
| Competition Gym | Competition Gym | Grass Field | Competition Gym | Grass Field | Gym Spaces |
| Practice Gym | Practice Gym | Competition Gym | Weight Room | Gym | Dolly Ridge (Baseball Field) |
| Turf Field | Grass Field | Auxiliary Gym | Grass Field | | Dolly Ridge (soccer Field) |
| Track | Weight Room | Track | | | |
| Grass Field | Activity Courts | Proposed Baseball | | | |
| Baseball Turf Field | | Proposed Softball | | | |
| Softball Field (off campus) | | Weight Room | | | |
| Wrestling Room | | Wrestling Room | | | |
| Cheer Room | | | | | |
| Weight Room (2) | | | | | |
| Tennis Courts | | | | | |

Vestavia Hills Park and Recreation Facility Sites

| Wald Park | McCallum | Cahaba Heights | Liberty Park | SHAC | Community Building |
|----------------------|------------------|-----------------------|----------------------------------|--|-----------------------------|
| Tennis Courts | Picnic Pavilion | Baseball Fields (4) | Baseball/Softball Diamonds (9) | Full Size - multipurpose turf rectangles (4) | Basketball Courts (3) |
| Swimming Pool | Walking Trails | Playground (2) | Soccer Fields (5) | Smaller - multipurpose turf rectangle (1) | Multipurpose Activity Space |
| Baseball Fields (3) | Bike Trails | Picnic Pavilion | Playgrounds (2) | 1 mile of walking trails | Indoor Walking Track |
| Miracle League Field | Open Green Space | New Merkel House | Walking Tracks - baseball fields | Playgrounds (2) | VH Hall of Fame |
| Recreation Center | | Dog Park | Meeting Space | Picnic Pavilion | Meeting Space |
| Rental Lodge | | | | Splash Pad | Banquet Space |
| Walking Track/Trails | | | | Meeting Space | |
| Playgrounds | | | | | |
| Dog Park | | | | | |
| Meeting Space | | | | | |

Athletic Facility Usage Agreement:

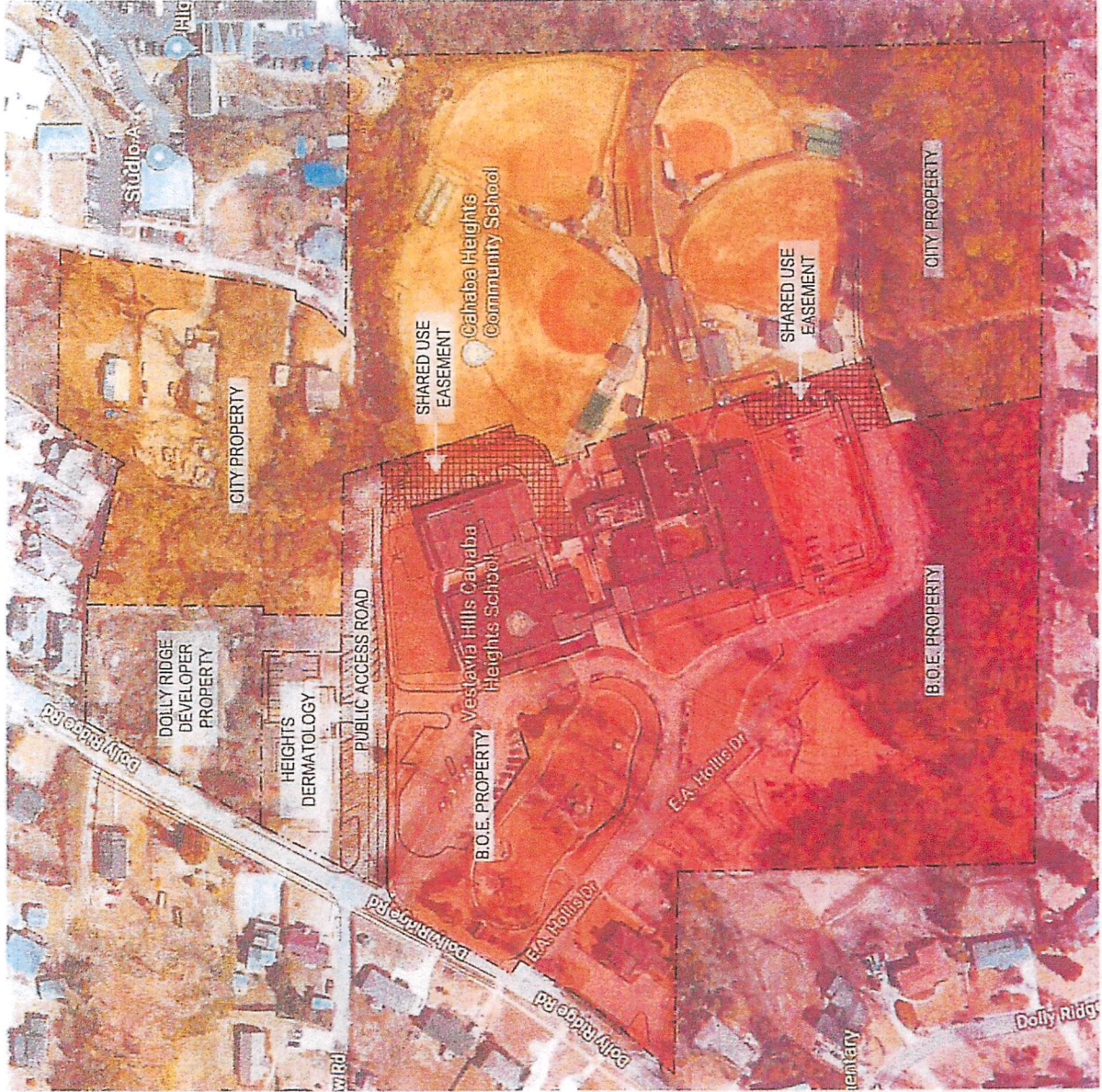
1. The Vestavia Hills Park and Recreation Board and the Vestavia Hills Board of Education have a reciprocal agreement with regards to facility usage.
 - All Park and Recreation requests for VHCS athletic facilities should be made by the Park and Recreation Superintendent to the Vestavia Hills Athletic Director.
 - All Board of Education requests for Park and Recreation athletic facilities should be made by the VHCS Athletic Director to the Park and Recreation Superintendent.
 - Each entity agrees that there must be an employee of either the Park and Recreation Board and/or VHCS at all indoor sanctioned events and must be present during the entirety of the event. For outdoor events, there will be a designated point person with ultimate responsibility for the facility in use agreed to by each entity.
 - The Park and Recreation Superintendent will coordinate directly with the individual school representatives with regard to scheduling recreation basketball at the VHCS sites.

2. The owner of the property has first priority with regards to scheduling.
 - In general, requests should only be made when there are no additional options available to either entity.

3. General maintenance of any facilities is the responsibility of the owner.
4. Any issues beyond general wear and tear of facilities is the responsibility of the group who caused the issues.
 - All issues that arise should be addressed immediately between the Park and Recreation Superintendent and VHCS Athletic Director
 - Each entity reserves the right through this agreement to terminate an individual group or groups right to use a facility
5. It will be the responsibility of each entity to coordinate and facilitate an up to date Emergency Action Plan, as well as provide proper equipment (i.e. AED, etc.) for the facility used.
6. Maintenance on shared properties such as the high school tennis courts will be completed with a 50/50 split of costs.
 - All expenses anticipated and incurred must be discussed between each entity prior to the authorization and approval of maintenance.

Additional Considerations:

1. All efforts will be made by the VHBOE and VH City Council to created specs and jointly bid for lawn maintenance for athletic fields and other shared public spaces.



CONVEYANCE PARCEL 1

A parcel of land located in the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence S $0^{\circ} 59' 32''$ E a distance of 849.30' to a 2" open top; thence N $89^{\circ} 09' 58''$ W a distance of 433.12' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS); thence continue N $89^{\circ} 09' 58''$ W a distance of 566.63' to a $\frac{3}{4}$ " crimp; thence N $1^{\circ} 07' 27''$ W a distance of 434.86' to a 1" crimp and the Point of Beginning of the following described parcel; thence N $88^{\circ} 45' 24''$ W a distance of 247.32' to a 1" open top; thence N $40^{\circ} 44' 36''$ E a distance of 54.77' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS) and the beginning of a curve to the left having a radius of 963.18' and an angle of $10^{\circ} 37' 01''$, with a chord bearing and distance of N $35^{\circ} 26' 06''$ E for 178.22'; thence along the arc of said curve a distance of 178.48' to a PK nail with shiner (Bailey AL 899LS); thence S $53^{\circ} 45' 47''$ E a distance of 113.50' to a point; thence S $48^{\circ} 32' 26''$ E a distance of 95.03' to a point; thence S $41^{\circ} 19' 53''$ W a distance of 82.65' back to the Point of Beginning. Said parcel containing 31,604 SQ FT (0.73 acres), more or less.

EXHIBIT 2

CONVEYANCE PARCEL 2

A parcel of land located in the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence S $0^{\circ} 59' 32''$ E a distance of 849.30' to a 2" open top; thence N $89^{\circ} 09' 58''$ W a distance of 433.12' to a 5/8" capped rebar (Bailey Land Group CA 899LS) and the Point of Beginning; thence continue N $89^{\circ} 09' 58''$ W a distance of 566.63' to a 3/4" crimp; thence N $1^{\circ} 07' 27''$ W a distance of 391.43' to a point; thence S $40^{\circ} 41' 40''$ E a distance of 237.30' to a point; thence N $46^{\circ} 29' 46''$ E a distance of 151.22' to a point; thence S $55^{\circ} 11' 01''$ E a distance of 4.35' to a point; thence S $8^{\circ} 56' 15''$ W a distance of 29.16' to a point; thence S $10^{\circ} 18' 31''$ E a distance of 37.91' to a point; thence S $27^{\circ} 13' 36''$ E a distance of 37.85' to a point; thence S $44^{\circ} 18' 49''$ E a distance of 53.37' to a point; thence S $55^{\circ} 34' 05''$ E a distance of 32.90' to a point; thence S $75^{\circ} 34' 06''$ E a distance of 31.93' to a point; thence N $82^{\circ} 38' 02''$ E a distance of 43.39' to a point; thence N $76^{\circ} 04' 07''$ E a distance of 33.86' to a point; thence N $72^{\circ} 21' 45''$ E a distance of 44.04' to a point; thence N $63^{\circ} 03' 21''$ E a distance of 113.82' to a point; thence N $17^{\circ} 07' 09''$ W a distance of 169.54' to a point; thence N $9^{\circ} 26' 51''$ E a distance of 15.00' to a point; thence S $16^{\circ} 23' 23''$ E a distance of 215.48' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S $73^{\circ} 36' 37''$ W a distance of 81.29' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S $10^{\circ} 08' 24''$ E a distance of 197.26' back to the Point of Beginning. Said parcel containing 130,673 SQ FT (3.00 acres), more or less.

EXHIBIT 3

CONVEYANCE PARCEL 3

A parcel of land located in the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence N $89^{\circ} 51' 14''$ W a distance of 85.59' to a point; thence N $87^{\circ} 54' 45''$ W a distance of 86.08' to a $\frac{3}{4}$ " open top; thence N $89^{\circ} 32' 45''$ W a distance of 123.79' to a PK nail; thence N $89^{\circ} 10' 50''$ W a distance of 45.38' to a PK nail; thence continue N $89^{\circ} 10' 50''$ W a distance of 163.28' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS); thence S $16^{\circ} 23' 23''$ E a distance of 52.34' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS) and the Point of Beginning of the following described parcel; thence continue S $16^{\circ} 23' 23''$ E a distance of 162.00' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS); thence S $73^{\circ} 36' 37''$ W a distance of 18.48' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS); thence S $0^{\circ} 37' 53''$ W a distance of 11.42' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS) and the beginning of a curve to the right having a radius of 30.98' and an angle of $62^{\circ} 33' 53''$, with a chord bearing and distance of S $31^{\circ} 54' 49''$ E for 32.17'; thence along the arc of said curve a distance of 33.83' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS); thence S $63^{\circ} 11' 46''$ W a distance of 6.01' to a point; thence N $26^{\circ} 16' 53''$ W a distance of 1.86' to a point; thence N $18^{\circ} 34' 26''$ W a distance of 207.44' to a point; thence N $57^{\circ} 41' 57''$ W a distance of 8.89' to a point; thence S $89^{\circ} 10' 50''$ E a distance of 68.93' back to the Point of Beginning. Said parcel containing 10,559 SQ FT (0.24 acres), more or less.

EXHIBIT 4

CONVEYANCE PARCEL 4

A parcel of land located in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence N $89^{\circ} 51' 14''$ W a distance of 85.59' to a point; thence N $87^{\circ} 54' 45''$ W a distance of 86.08' to a $\frac{3}{4}$ " open top; thence N $89^{\circ} 32' 45''$ W a distance of 123.79' to a PK nail; thence N $89^{\circ} 10' 50''$ W a distance of 45.38' to a PK nail; thence continue N $89^{\circ} 10' 50''$ W a distance of 163.28' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS); thence continue N $89^{\circ} 10' 50''$ W a distance of 147.51' to the Point of Beginning of the following described parcel; thence S $64^{\circ} 35' 07''$ E for a distance of 54.05'; thence S $57^{\circ} 41' 57''$ E for a distance of 52.66'; thence S $89^{\circ} 10' 50''$ E for a distance of 328.65'; thence N $28^{\circ} 42' 24''$ E for a distance of 103.91; thence S $83^{\circ} 58' 38''$ E for a distance of 253.96'; thence S $64^{\circ} 35' 07''$ E for a distance of 12.12'; thence S $0^{\circ} 49' 48''$ W for a distance of 13.77'; thence S $89^{\circ} 10' 50''$ E for a distance of 30.08' back to the Point of Beginning. Said parcel containing 27,305 SQ FT (0.63 acres), more or less.

EXHIBIT 5

CONVEYANCE PARCEL 5

A parcel of land located in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence N $89^{\circ} 51' 14''$ W a distance of 85.59' to a point; thence N $87^{\circ} 54' 45''$ W a distance of 86.08' to a $\frac{3}{4}$ " open top; thence N $89^{\circ} 32' 45''$ W a distance of 123.79' to a PK nail; thence N $89^{\circ} 10' 50''$ W a distance of 45.38' to a PK nail; thence continue N $89^{\circ} 10' 50''$ W a distance of 163.28' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS); thence continue N $89^{\circ} 10' 50''$ W a distance of 177.59' to a $\frac{5}{8}$ " capped rebar (GSA CA-560-LS); thence N $0^{\circ} 49' 48''$ E a distance of 42.86' to the Point of Beginning of the following described parcel; thence continue N $0^{\circ} 49' 48''$ E a distance of 52.19' to a $\frac{5}{8}$ " capped rebar (GSA CA-560-LS); thence S $88^{\circ} 03' 07''$ E a distance of 9.94' to a $\frac{5}{8}$ " capped rebar (GSA CA-560-LS); thence N $0^{\circ} 40' 38''$ E a distance of 216.09' to a $\frac{1}{2}$ " capped rebar (J. O'Perry 12697); thence S $88^{\circ} 19' 28''$ E a distance of 37.21' to a point; thence S $32^{\circ} 48' 25''$ W a distance of 10.00' to a $\frac{1}{2}$ " capped rebar (J. O'Perry 12697); thence S $78^{\circ} 28' 02''$ E a distance of 137.37' to a $\frac{1}{2}$ " capped rebar (J. O'Perry 12697); thence S $32^{\circ} 32' 44''$ E a distance of 9.51' to a $\frac{1}{2}$ " capped rebar (J. O'Perry 12697); thence S $58^{\circ} 44' 31''$ E a distance of 8.48' to a $\frac{5}{8}$ " capped rebar (Keel); thence S $89^{\circ} 09' 30''$ E a distance of 239.19' to a railroad spike; thence S $9^{\circ} 47' 33''$ W a distance of 115.68' to a $\frac{5}{8}$ " capped rebar (LDW 10373); thence S $9^{\circ} 56' 04''$ W a distance of 90.97' to a PK nail; thence N $89^{\circ} 58' 34''$ W a distance of 11.96' to a $\frac{5}{8}$ " capped rebar (LDW 10373); thence S $24^{\circ} 08' 18''$ W a distance of 16.86' to a point; thence N $89^{\circ} 24' 00''$ W a distance of 376.95' back to the Point of Beginning. Said parcel containing 93,602 SQ FT (2.15 acres), more or less.

EXHIBIT 6

CONVEYANCE PARCEL 6

A parcel of land located in the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Begin at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence S $0^{\circ} 59' 32''$ E a distance of 849.30' to a 2" open top; thence N $89^{\circ} 09' 58''$ W a distance of 433.12' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $10^{\circ} 08' 24''$ W a distance of 197.26' to a 5/8" capped rebar (Bailey Land Group CA 89LS); thence N $73^{\circ} 36' 37''$ E a distance of 81.29' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $16^{\circ} 23' 23''$ W a distance of 215.48' to the Point of Beginning of the following described parcel; thence continue N $16^{\circ} 23' 23''$ W a distance of 71.51' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S $73^{\circ} 36' 37''$ W a distance of 10.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $16^{\circ} 23' 23''$ W a distance of 106.56' to a PK nail w/shiner (Bailey AL 899LS); thence N $63^{\circ} 11' 46''$ E a distance of 13.41' to a point; thence S $26^{\circ} 16' 53''$ E a distance of 78.73' to a point; thence S $16^{\circ} 18' 43''$ E a distance 68.62' to a point; thence S $9^{\circ} 26' 51''$ W a distance of 38.13' back to the Point of Beginning. Said parcel containing 3,274 SQ FT (0.08 acres), more or less.

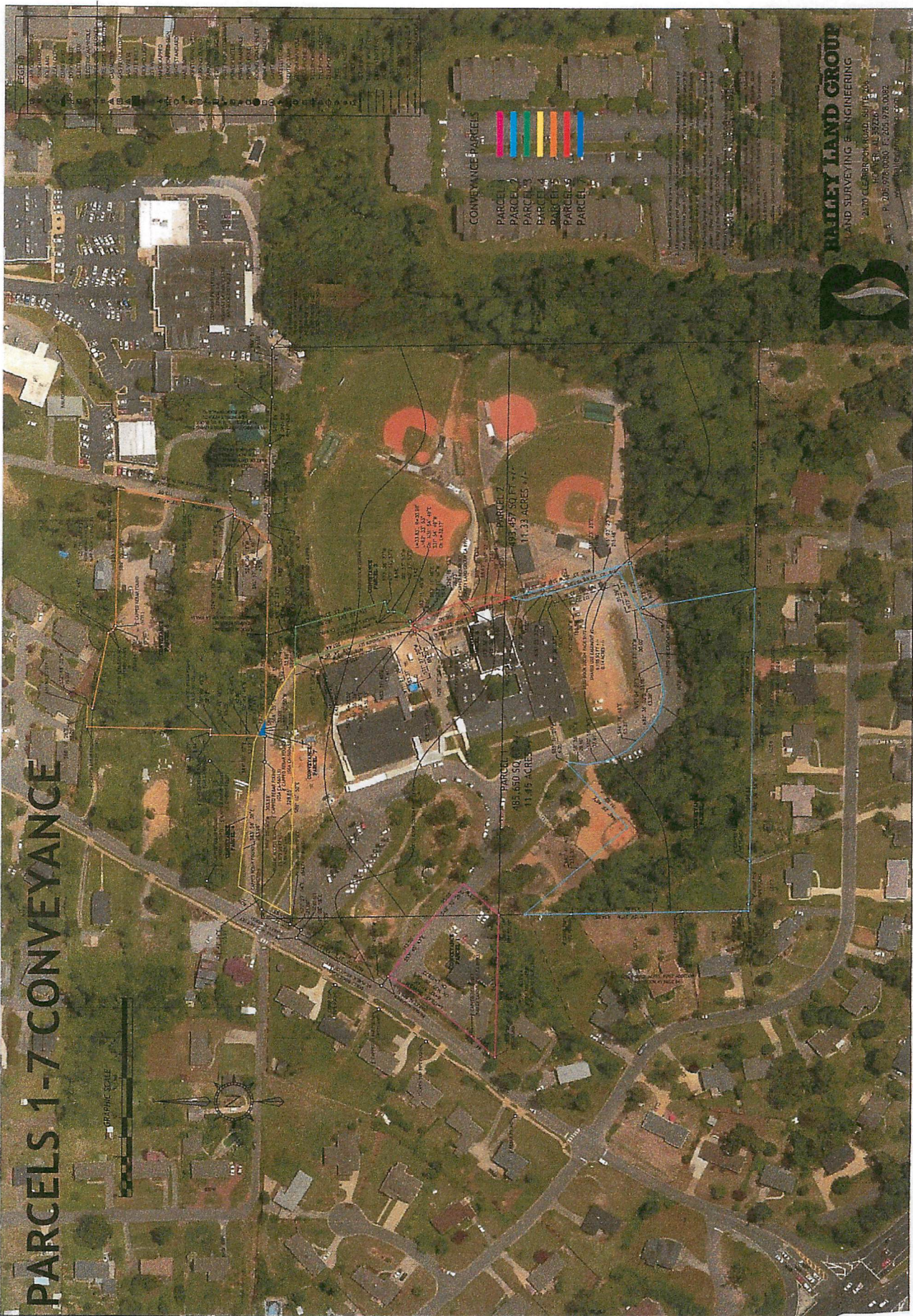
EXHIBIT 7

CONVEYANCE PARCEL 7

A parcel of land located in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence N $89^{\circ} 51' 14''$ W a distance of 85.59' to a point; thence N $87^{\circ} 54' 45''$ W a distance of 86.08' to a $\frac{3}{4}$ " open top; thence N $89^{\circ} 32' 45''$ W a distance of 123.79' to a PK nail; thence N $89^{\circ} 10' 50''$ W a distance of 45.38' to a PK nail; thence continue N $89^{\circ} 10' 50''$ W a distance of 163.28' to a $\frac{5}{8}$ " capped rebar (Bailey Land Group CA 899LS); thence continue N $89^{\circ} 10' 50''$ W a distance of 147.51' to the Point of Beginning of the following described parcel; thence continue N $89^{\circ} 10' 50''$ W a distance of 30.08' to a $\frac{5}{8}$ " capped rebar (GSA CA-560-LS); thence N $0^{\circ} 49' 48''$ E a distance of 13.77' to a point; thence S $64^{\circ} 35' 07''$ E a distance of 33.08' back to the Point of Beginning. Said parcel containing 207 SQ FT, more or less.

EXHIBIT 8



COLOR CODED MAP

SHARED USE EASEMENT #1

An easement of land located in the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence S $0^{\circ} 59' 32''$ E a distance of 849.30' to a 2" open top; thence N $89^{\circ} 09' 58''$ W a distance of 433.12' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $10^{\circ} 08' 24''$ W a distance of 197.26' to a 5/8" capped rebar (Bailey Land Group CA 89LS); thence N $73^{\circ} 36' 37''$ E a distance of 81.29' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $16^{\circ} 23' 23''$ W a distance of 287.00' to a 5/8" capped rebar (Bailey Land Group CA 899 LS); thence S $73^{\circ} 36' 37''$ W a distance of 10.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $16^{\circ} 23' 23''$ W a distance of 106.56' to a PK nail with shiner (Bailey AL 899LS) and the Point of Beginning of the following described shared use easement; thence S $71^{\circ} 27' 20''$ W a distance of 86.70' to a point; thence N $18^{\circ} 32' 40''$ W a distance of 43.55' to a point; thence N $71^{\circ} 27' 20''$ E a distance of 53.37' to a point beginning a curve to the left having a radius of 25.00' and an angle of $89^{\circ} 55' 39''$, with a chord bearing and distance of N $26^{\circ} 29' 31''$ E for 35.33'; thence along the arc of said curve a distance of 39.24' to a point; thence N $18^{\circ} 28' 18''$ W a distance of 155.01' to a point; thence S $89^{\circ} 10' 50''$ E a distance of 85.29' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S $16^{\circ} 23' 23''$ E a distance of 162.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S $73^{\circ} 36' 37''$ W a distance of 18.48' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S $0^{\circ} 37' 53''$ W a distance of 11.42' to a 5/8" capped rebar (Bailey Land Group CA 899LS) and the beginning of a curve to the right having a radius of 30.98' and an angle of $62^{\circ} 33' 53''$, with a chord bearing and distance of S $31^{\circ} 54' 49''$ W for 32.17'; thence along the arc of said curve a distance of 33.83' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S $63^{\circ} 11' 46''$ W a distance of 19.42' back to the Point of Beginning. Said easement containing 18,747 SQ FT (0.43 acres), more or less.

Same as Shared Use Easement #1 of Proposed Cahaba Heights Elementary Subdivision Plat.

SHARED USE EASEMENT #2

An easement of land located in the Northeast ¼ of the Southwest ¼ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE ¼ of the SW ¼ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence S 0° 59' 32"E a distance of 849.30' to a 2" open top; thence N 89° 09' 58"W a distance of 433.12' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 10° 08' 24"W a distance of 197.26' to a 5/8" capped rebar (Bailey Land Group CA 89LS) and the Point of Beginning of the following described shared use easement; thence N 16° 23' 23"W a distance of 30.00' to a point; thence N 73° 36' 37"E a distance of 51.29' to a point; thence N 16° 23' 23"W a distance of 117.20' to a point; thence N 73° 36' 37"E a distance of 15.00' to a point; thence N 16° 23' 23"W a distance of 10.00' to a point; thence N 73° 36' 37"E a distance of 15.00' to a point; thence S 16° 23' 23"E a distance of 157.20' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 73° 36' 37"W a distance of 81.29' back to the Point of Beginning. Said easement containing 6,105 SQ FT (0.14 acres), more or less.

Same as Shared Use Easement #2 of Proposed Cahaba Heights Elementary Subdivision Plat.

PUBLIC ACCESS ROAD

A parcel of land located in the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence S $0^{\circ} 59' 32''$ E a distance of 849.30' to a 2" open top; thence N $89^{\circ} 09' 58''$ W a distance of 433.12' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $10^{\circ} 08' 24''$ W a distance of 197.26' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $73^{\circ} 36' 37''$ E a distance of 81.29' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $16^{\circ} 23' 23''$ W a distance of 287.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S $73^{\circ} 36' 37''$ W a distance of 10.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $16^{\circ} 23' 23''$ W a distance of 106.56' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $63^{\circ} 11' 46''$ E a distance of 19.42' to a 5/8" capped rebar (Bailey Land Group CA 899LS) and the beginning of a curve to the left having a radius of 30.98' and an angle of $62^{\circ} 33' 53''$, with a chord bearing and distance of N $31^{\circ} 54' 49''$ E for 32.17'; thence along the arc of said curve a distance of 33.83' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $0^{\circ} 37' 53''$ E a distance of 11.42' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $73^{\circ} 36' 37''$ E a distance of 18.48' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $16^{\circ} 23' 23''$ W a distance of 214.34' to a 5/8" capped rebar (Bailey Land Group CA 899LS) and the Point of Beginning; thence N $89^{\circ} 10' 50''$ W a distance of 177.59' to a 5/8" capped rebar (GSA CA-560-LS); thence N $89^{\circ} 10' 50''$ W a distance of 303.58' to a $\frac{1}{2}$ " capped rebar (Arrington); thence S $27^{\circ} 27' 04''$ W a distance of 55.93' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S $89^{\circ} 10' 50''$ E a distance of 328.65' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N $16^{\circ} 23' 23''$ W a distance of 52.34' back to the Point of Beginning. Said parcel containing 25,073 SQ FT (0.58 acres), more or less.

Same as Public Access Road of Proposed Cahaba Heights Elementary Subdivision Plat.



SITE MAP

BOARD PROPERTY IN CAHABA HEIGHTS (11.15 ACRES)

LEGAL DESCRIPTIONS:

CAHABA HEIGHTS ELEMENTARY SUBDIVISION LEGAL DESCRIPTIONS

PARCEL 1

A parcel of land located in the Northeast ¼ of the Southwest ¼ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE ¼ of the SW ¼ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence S 0° 59' 32"E a distance of 849.30' to a 2" open top; thence N 89° 09' 58"W a distance of 433.12' to a 5/8" capped rebar (Bailey Land Group CA 899LS) and the Point of Beginning; thence continue N 89° 09' 58"W a distance of 566.63' to a ¾" crimp; thence N 1° 07' 27"W a distance of 434.86' to a 1" crimp; thence N 88° 45' 24"W a distance of 247.32' to a 1" open top; thence N 40° 44' 36"E a distance of 54.77' to a 5/8" capped rebar (Bailey Land Group CA 899LS) and the beginning of a curve to the left having a radius of 963.18' and an angle of 10° 37' 01", with a chord bearing and distance of N 35° 26' 06"E for 178.22'; thence along the arc of said curve a distance of 178.48' to a PK nail with shiner (Bailey AL 899LS); thence N 53° 45' 47"W a distance of 20.26' to a PK nail with shiner (Bailey AL 899LS); thence N 29° 03' 37"E a distance of 170.27' to a PK nail with shiner (Bailey AL 899LS); thence S 61° 08' 18"E a distance of 16.29' to an X cut; thence N 27° 27' 04"E a distance of 21.86' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 89° 10' 50"E a distance of 328.65' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 16° 23' 23"E a distance of 162.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 73° 36' 37"W a distance of 18.48' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 0° 37' 53"W a distance of 11.42' to a 5/8" capped rebar (Bailey Land Group CA 899LS) and the beginning of a curve to the right having a radius of 30.98' and an angle of 62° 33' 53", with a chord bearing and distance of S 31° 54' 49"W for 32.17'; thence along the arc of said curve a distance of 33.83' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 63° 11' 46"W a distance of 19.42' to a PK nail with shiner (Bailey AL 899LS); thence S 16° 23' 23"E a distance of 106.56' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 73° 36' 37"E a distance of 10.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 16° 23' 23"E a distance of 287.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 73° 36' 37"W a distance of 81.29' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence S 10° 08' 24"E a distance of 197.26' back to the Point of Beginning. Said parcel containing 485,650 SQ FT (11.15 acres), more or less.

Same as Parcel 1 of Proposed Cahaba Heights Elementary Subdivision Plat.

EXHIBIT 16

CITY PROPERTY IN CAHABA HEIGHTS (11.33 ACRES)

PARCEL 2

A parcel of land located in the Northeast ¼ of the Southwest ¼ and the Southeast ¼ of the Northwest ¼ of Section 22, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Begin at a PK nail with shiner (Bailey AL 899LS) found in an paved parking lot being the Northeast corner of the NE ¼ of the SW ¼ of Sec. 22, T18S, R2W, Jefferson County, Alabama; thence S 0° 59' 32"E a distance of 849.30' to a 2" open top; thence N 89° 09' 58"W a distance of 433.12' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 10° 08' 24"W a distance of 197.26' to a 5/8" capped rebar (Bailey Land Group CA 89LS); thence N 73° 36' 37"E a distance of 81.29' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 16° 23' 23"W a distance of 287.00' to a 5/8" capped rebar (Bailey Land Group CA 899 LS); thence S 73° 36' 37"W a distance of 10.00' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 16° 23' 23"W a distance of 106.56' to a PK nail with shiner (Bailey AL 899LS); thence N 63° 11' 46"E a distance of 19.42' to a 5/8" capped rebar (Bailey Land Group CA 899LS) and the beginning of a curve to the left having a radius of 30.98' and an angle of 62° 33' 53", with a chord bearing and distance of N 31° 54' 49"E for 32.17'; thence along the arc of said curve a distance of 33.83' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 0° 37' 53"E a distance of 11.42' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 73° 36' 37"E a distance of 18.48' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 16° 23' 23"W a distance of 214.34' to a 5/8" capped rebar (Bailey Land Group CA 899LS); thence N 89° 10' 50"W a distance of 177.59' to a 5/8" capped rebar (GSA CA-560-LS); thence N 0° 49' 48"E a distance of 95.05' to a ½" capped rebar (GSA CA-560-LS); thence S 88° 03' 07"E a distance of 9.94' to a 5/8" capped rebar (GSA CA-560-LS); thence N 0° 40' 38"E a distance of 216.09' to a ½" capped rebar (J. O'Perry 12697); thence S 88° 19' 28"E a distance of 37.21' to a point; thence S 32° 48' 25"W a distance of 10.00' to a ½" capped rebar (J. O'Perry 12697); thence S 78° 28' 02"E a distance of 137.37' to a ½" capped rebar (J. O'Perry 12697); thence S 32° 32' 44"E a distance of 9.51' to a ½" capped rebar (J. O'Perry 12697); thence S 58° 44' 31"E a distance of 8.48' to a 5/8" capped rebar (Keel); thence S 89° 09' 30"E a distance of 239.19' to a railroad spike; thence S 9° 47' 33"W a distance of 115.68' to a 5/8" capped rebar (LDW 10373); thence S 9° 56' 04"W a distance of 90.97' to a PK nail; thence N 89° 58' 34"W a distance of 11.96' to a 5/8" capped rebar (LDW 10373); thence S 24° 08' 18"W a distance of 31.49' to a 5/8" capped rebar (LDW 10373); thence S 45° 17' 12"W a distance of 43.25' to a PK nail; thence S 89° 10' 50"E a distance of 45.38' to a PK nail; thence S 89° 32' 45"E a distance of 123.79' to a ¾" open top; thence S 87° 54' 45"E a distance of 86.08' to a point; thence S 89° 51' 14"E a distance of 85.59' back to the Point of Beginning. Said parcel containing 493,457 SQ FT (11.33 acres), more or less.

Same as Parcel 2 of Proposed Cahaba Heights Elementary Subdivision Plat.

EXHIBIT 17

ORDINANCE NUMBER 2847

**AN ORDINANCE GRANTING CONDITIONAL USE APPROVAL
ON THE PROPERTY LOCATED AT 1320 WILLOUGHBY ROAD
FOR INSTALLATION OF A PRIVACY FENCE TO BE 9.5' TALL
AT HIGHEST POINT**

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, Eric Brosch is the owner of the property located at 1320 Willoughby Road, Lot 8, Block 3, 4th Addition to Vesthaven, 5th Sector zoned Vestavia Hills R-2 (medium density residential district); and

WHEREAS, Eric Brosch presented an application for Conditional Use approval for the purpose of erecting a privacy fence at the northeast end of his home which, at the highest point of said fence stands at 9.5 feet; and

WHEREAS, a copy of the application for Conditional Use approval by Eric Brosch detailing the location of the structure is marked as Exhibit A, attached to and incorporated into this Ordinance Number 2847 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 Eric Brosch for installation of a privacy fence to be located as detailed in the attached Exhibit A which, at the highest point, shall stand 9.5' tall; and
2. Should the new structure be destroyed or cease to exist 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
3. This Ordinance Number 2847 shall become effective immediately upon adoption, approval and publishing/posting pursuant to Alabama law; and

DONE, ORDERED, ADOPTED and APPROVED this the 10th day of June, 2019.

Ashley C. Curry
Mayor

ATTESTED BY:

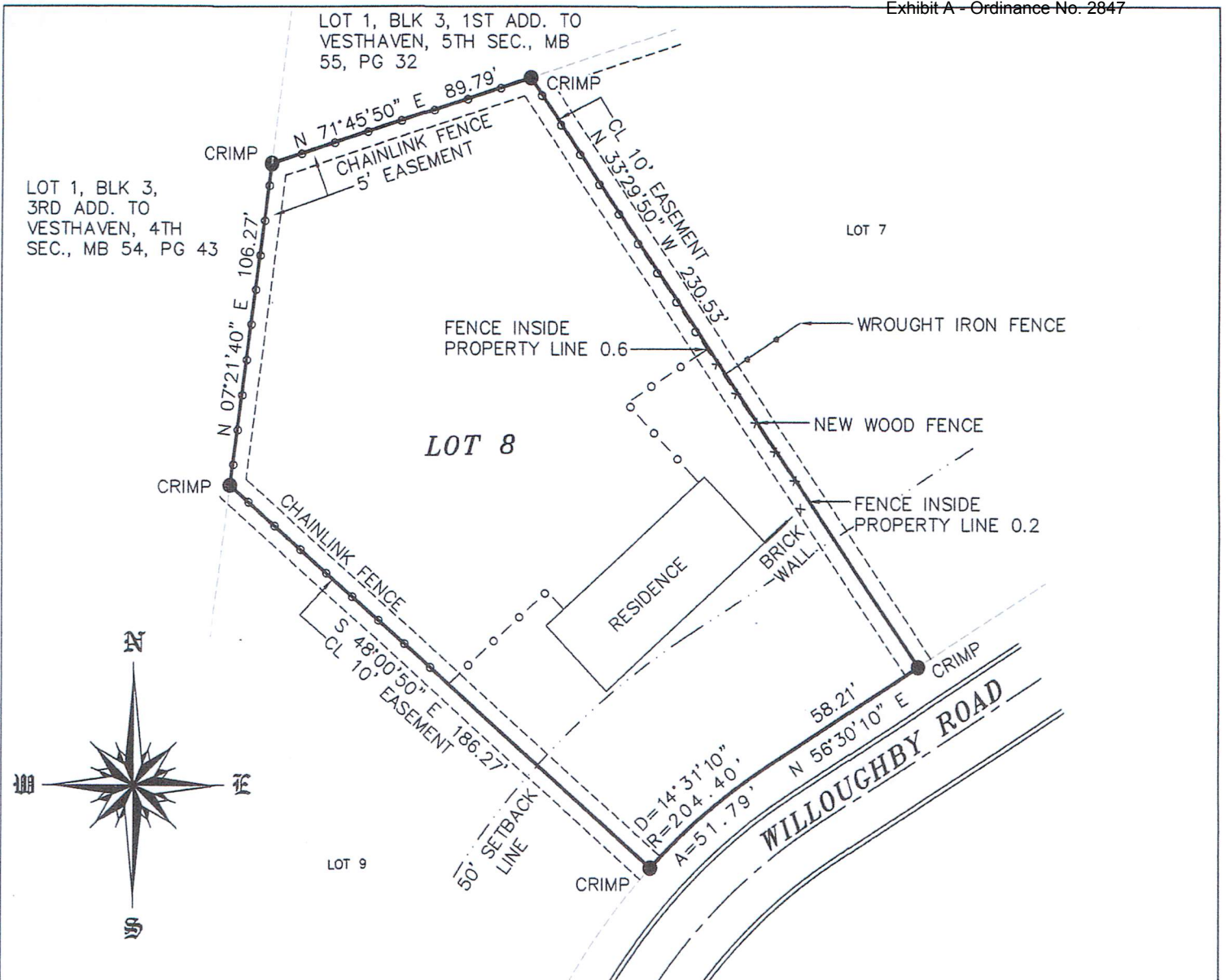
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2847 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 10th day of June, 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



I, Rodney Shiflett, a Registered Professional Land Surveyor in the State of Alabama do hereby certify that this is a true and correct plat of my survey as shown hereon. That there are no visible encroachments of any kind upon the subject lot except as shown hereon, excluding utility service lines, wires or pipes that serve the subject lot only that are within dedicated easements or rights of way. That steel corners have been found or installed at all lot corners. I hereby certify that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information and belief, the correct legal description being as follows:

Lot 8, Block 3 of 4th Addition to Vesthaven, 5th Sector, as recorded in Map Book 60, Page 41, in the Office of the Judge of Probate of Jefferson County, Alabama.

Rodney Shiflett
 Rodney Shiflett Al. Reg. #21784

FENCE LOCATION SURVEY

| | | |
|--|---|---|
| | <p>LEGEND</p> <ul style="list-style-type: none"> ○ 1/2" REBAR SET ● IRON PIN FOUND — R.O.W. RIGHT-OF-WAY — NOT TO SCALE ○ UTILITY POLE — E — OVERHEAD UTILITIES (M) FIELD MEASURED (P) PLAT / RECORDED MAP ▢ COVERED DECK/PORCH ▨ DECK/PORCH | <p>JOB NO. <u>18673</u></p> <p>DATE <u>12/10/18</u> DATE OF FIELD SURVEY <u>12/7/18</u></p> <p>ADDRESS <u>1320 Willoughby Road</u> SCALE <u>1" = 50'</u></p> <p>DRAWN BY <u>H. LETTS</u> CHECK BY <u>R.Y.S.</u></p> |
| | <p>RODNEY SHIFLETT SURVEYING</p> <p>P.O. BOX 204 COLUMBIANA, ALABAMA 35051 TEL. 205-669-1205 FAX. 205-669-1298</p> | |

CITY OF VESTAVIA HILLS

APPLICATION

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: Eric T. Brosch

ADDRESS: 1320 Willoughby Rd

Vestavia Hills, AL 35216

MAILING ADDRESS *(if different from above)* _____

PHONE NUMBER: Home 205-567-8722 Office 317-435-5145

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: _____

2019 FEB 20 P 2:42

1320 Willoughby Rd.

Fence 9.5 ft. high

Eric Brosch

III. ACTION REQUESTED

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

Current Zoning of Property: Vesthaven Lot 8, 5th Sec, Block 3

Requested Conditional use For the intended purpose of: building a privacy fence

9.5 ft. high at the midway point of the fence. See survey for exact location.

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

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

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

9.5 ft. high (at highest point) privacy fence at the NE end of house to block the line

of site from our neighbor's house into our backyard, living room and kitchen.

Property size: _____ feet X _____ feet. Acres: approx. 1 acre

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.

Eric Brosch 2-19-19

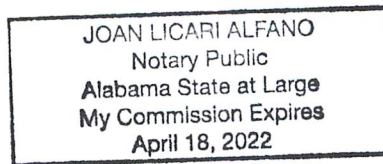
Owner Signature/Date

Representing Agent (if any)/date

Given under my hand and seal
this 19 day of February, 20 19.

Joan Licari Alfano
Notary Public

My commission expires 18
day of April, 20 22.



Additional Justification:

The height of the privacy fence is necessary in order to block the line of site from our neighbor's kitchen window and back deck (which sit at an elevated position at least 10 ft. above our house) into our house and backyard. From their kitchen window (40+ feet away) our neighbors could see our dog counter surfing on our kitchen countertops 20 ft. into our house. The fence height would also block out intrusive noise and exhaust fumes from our neighbor's vehicles entering and exiting their garages as well as 6 flood lights from their house shining into ours. In summary, we are unable to enjoy any privacy in our own home.

Respectfully Submitted,



Eric T. Brosch

Joan Licari Alfano 2/19/19
JOAN LICARI ALFANO
Notary Public
Alabama State at Large
My Commission Expires
April 18, 2022

P0419-15//2800304013021.000
1320 Willoughby Rd.
Fence 9.5 ft. high
Eric Brosch

Rebecca Leavings

From: Eric <ericbrosch@hotmail.com>
Sent: Monday, April 22, 2019 12:27 PM
To: Rebecca Leavings
Cc: Traci
Subject: Fw: Privacy Fence Issue

Mrs. Leavings,

We are planning to appeal the recent recommendation from the zoning board to the city council in June. Below is the email I sent to Scott Eason the assistant store manager at the Lowes in Homewood location. He will forward it to Sara at the Lowes Corporate Office in North Carolina for action. We will continue to stay on top of this and keep you informed as to when Lowes will take action.

What is the ruling on the authorized fence height? Is it 8ft or 6ft?

Sincerely,

Eric T. Brosch

From: Eric
Sent: Monday, April 22, 2019 5:16 PM
To: james.s.eason@store.lowes.com
Cc: Traci
Subject: Privacy Fence Issue

Scott,

Thanks again for taking my call today. Here is the email you requested. Please forward all pictures, the stop work notice and all other documentation we provide you as well.

Dear Sara(sp),

My name is Eric Brosch and I live in Vestavia Hills, AL with my wife Traci. Late last year, we ordered a privacy fence installation from a Lowes store in neighboring Homewood, AL. The material we ordered was to be pressure treated wood (item numbers 494984 and 444958). The work began in early November 2018. The posts were the correct material but the 6in x 12ft boards were non-pressure treated wood (item number 1660) completely unsuitable for outside use on a fence. Because the wood was non-pressure treated we had to pressure wash the mold off of it. This issue was not identified until after the installation. The gate to the fence was also installed incorrectly causing it to sag to one side and not function properly. The contractor also did not use galvanized nails and failed to properly clean up the material laydown area after the work was complete leaving plastic and pallets behind.

Furthermore, the Lowes install contractor conducted the install without first obtaining a building permit from the city of Vestavia Hills. The city found out about this through our next door neighbor and on 20 November

2018 issued a stop work notice pending approval of a work permit request. This came after the fence was 99% complete. Also, because the fence was to exceed the maximum authorized height of 8ft (ours is 9 1/2ft) at its highest point, a variance from the city is required. On April 11th my wife and I sought to obtain the permit with the variance at the city's zoning commission hearing but were denied in large part because of lack of correct materials and overall poor planning by the contractor. We are appealing this decision to the city council in June 2019. Our intent is to have Lowes remove the non-pressure treated 6in x 12ft boards and replace them with the correct pressure treated wood. Pending the city council's approval we will build to the original height of 9 1/2ft at the highest point. If we do not get approval, we will likely only build to the authorized height of 8ft.

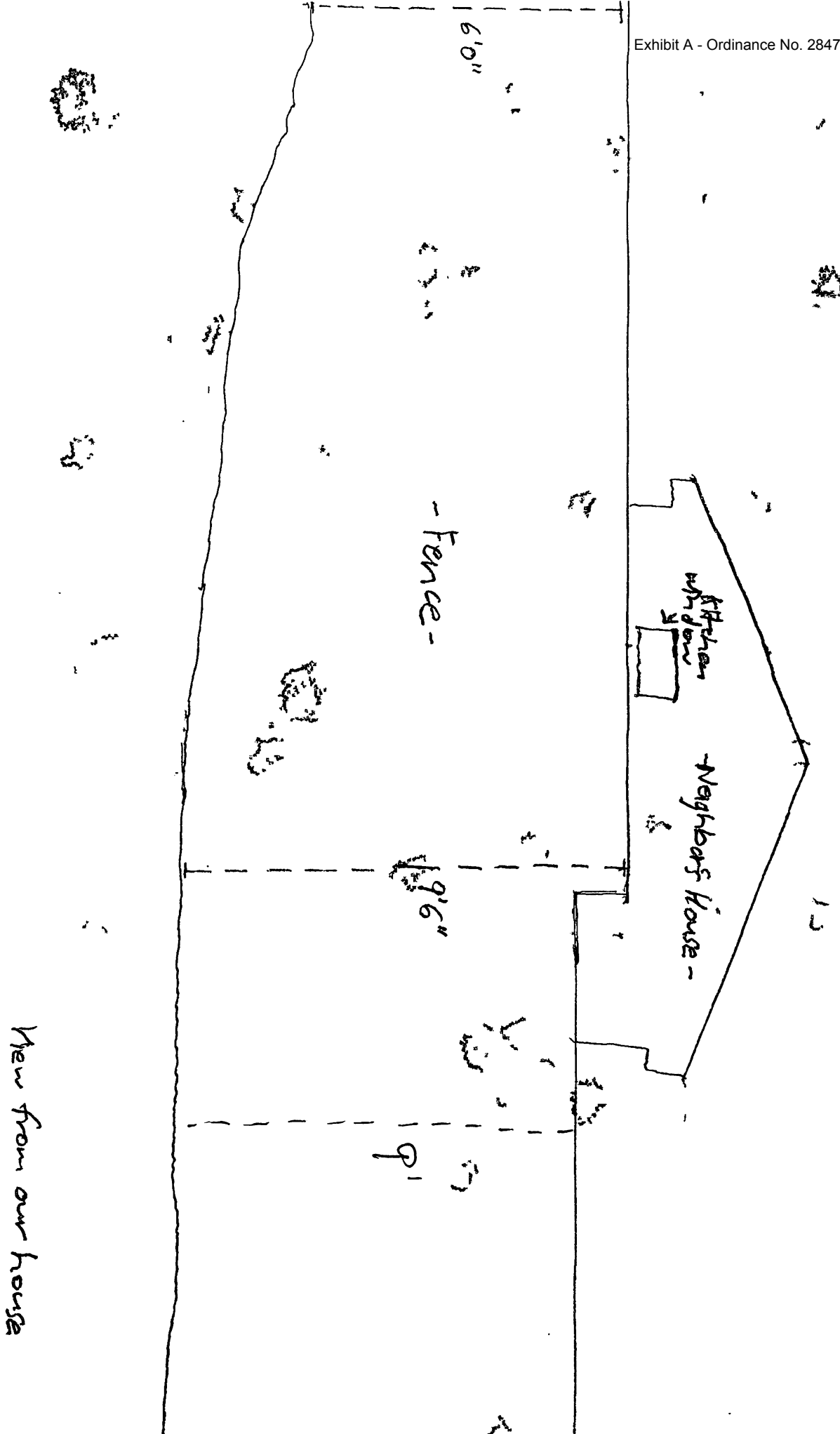
The associated costs for that we have occurred for this project so far are as follows:

- Pressure wash: \$400.00
- Survey to request a permit: \$450.00
- City of Vestavia Hills mailing out notices for zoning commission and city council hearings: \$584.00

We need Lowes to reimburse those expenses and make this right at no additional cost to us.

Sincerely,

Eric T. Brosch



New from our house

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

Date: APRIL 11, 2019

- **CASE: P-0419-15**
- **REQUESTED ACTION:** Conditional Use Approval For Installation Of Privacy Fence Over 8’
- **ADDRESS/LOCATION:** 1320 Willoughby Road
- **APPLICANT/OWNER:** Eric Brosch
- **GENERAL DISCUSSION:** The fence is currently constructed and used to block the line of sight from neighbor’s house into the backyard, living room, and kitchen. The privacy fence will be 9.5’ (at its peak) at the midway point of the fence. The applicant states that the neighbor’s kitchen window and back deck sit at an elevated position, at least 10’ above the applicant’s house. The applicant contends this would also prevent automobile exhaust and light pollution of the neighboring house from intruding into their backyard. The property is currently zoned R-2.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** Not recommended over 8’

MOTION Mr. Gilchrist made a motion to recommend Conditional Use Approval For Installation Of Privacy Fence Over 8’ for The Property Located At 1320 Willoughby Road. Second was by Mr. Goodwin. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – no

Mr. Sykes – no

Mr. Larson – no

Mr. Gilchrist – no

Mr. House – no

Mrs. Barnes – no

Motion failed due to the application not meeting the requirements stated in Section 13.3.4.1, 4, & 7.



