

**Vestavia Hills
City Council Agenda
January 27, 2020
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Tom Bell
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Approval Of Minutes – January 13, 2020 (Regular Meeting)

Old Business

9. Ordinance Number 2905 – An Ordinance To Approve A Contract To Purchase The Real Estate And Improvements Situated At 3995-3103 Greendale Road In The City Of Vestavia Hills, Alabama Consisting Of Approximately 0.34 Acres, More Or Less (“Property”) And Authorizing And Directing The Mayor And City Manager To Execute And Deliver Said The Contract And Any And All Other Documents Necessary To Close The Sale Pursuant To The Terms, Provisions And Conditions Of Said Contract (*public hearing*)
10. Ordinance Number 2906 – Rezoning – 3122, 3128, 3134, and 3136 Sunview Drive; Rezone from Vestavia Hills B-2, Inst, Agriculture to Vestavia Hills B-1.2. Thomas Holdings, Owners (*public hearing*)
11. Ordinance Number 2908 –An Ordinance Adopting And Enacting Procedures And Requirements For Unclaimed Property For The City Of Vestavia Hills Police Department And Municipal Court (*public hearing*)

New Business

12. Resolution Number 5218 – Alcohol License – Publix Alabama LLC D/B/A Publix Alabama 1692; For A 050 – Retail Beer (Off-Premises) And 070- Retail Table Wine (Off-Premises); Joseph Dibenedetto Jr., Et Al, Executive (*public hearing*)
13. Resolution Number 5219 – Alcohol License – Rajajit Hotel LLC d/b/a Hilton Garden Inn Birmingham Liberty Park; For A 020 – Restaurant Retail Liquor (On-Premises); Kishor Desai, Et Al, Executive (*public hearing*)
14. Resolution Number 5220 – A Resolution Accepting A Bid For A Heavy Rescue Truck For The Vestavia Hills Fire Department

15. Ordinance Number 2914 – An Ordinance Authorizing The Mayor And The City Manager To Execute And Deliver A Joint Purchasing Agreement With The Vestavia Hills Board Of Education For Paving Services For The Board

New Business (Requesting Unanimous Consent)

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

16. Ordinance Number 2915 – An Ordinance To Approve An Assignment And Assumption Of Agreement And A Sales Contract For A Right-Of-Way Purchase Of Real Estate Situated At 3995-3103 Greendale Road In The City Of Vestavia Hills, Alabama Consisting Of Approximately 0.34 Acres, More Or Less (“Property”) And Authorizing And Directing The Mayor And City Manager To Execute And Deliver Said The Contract And Any And All Other Documents Necessary To Close The Sale And/Or Conveyance Pursuant To The Terms, Provisions And Conditions Of Said Agreement (*public hearing*)
17. Citizens Comments
18. Motion for Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JANUARY 13, 2020

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

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Rebecca Leavings, City Clerk
Melvin Turner, Finance Director
George Sawaya, Asst. Finance Director
Danny Rary, Police Chief
Jason Hardin, Police Captain
Umang Patel, Court Director
Marvin Green, Fire Chief
Christopher Brady, City Engineer
Joanie Alfano, Admin. Asst. to the Mayor
Cinnamon McCulley, Communications Director

Butch Williams; Vestavia Hills Senior Chaplain, led the invocation followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION

- Mrs. Cook stated that today, she enjoyed attending the opening of the new Vestavia Hills Surgical Center, Dr. Swaid Swaid's new building, located across Montgomery Highway from the City Hall. She stated it is a wonderful facility and the opening was attended by many dignitaries.
- Mr. Pierce stated that the Chamber of Commerce will be installing new officers tomorrow with John Henley coming in as Chairman. He stated that, on Thursday, the Chamber will have their annual retreat and will formulate a list to be again send two Board member representatives to the City Council meetings.

- The Mayor stated he will be meeting with the Attorney General tomorrow down in Montgomery relative to human trafficking. He explained that the City is working to become a Human TraffickingFree Zone.
- Mr. Weaver echoed Mrs. Cook's comments about the new Surgery Center and that he will be joining the Mayor tomorrow in Montgomery.
- Mr. Head welcomed Parks and Recreation Board President, Kirk McCulley to the meeting along with Past Board President, Anne Smyth.

CERTIFICATE OF RECOGNITION – JULIE HARPER

The Mayor presented to Julie Harper, Vestavia Hills Civic Activities Coordinator, a Certificate of Recognition for her 32 years of municipal service. Mr. Downes read the Certificate aloud and the Mayor presented it to her with Brian Davis, Public Services Director and Kirk McCulley, Parks and Recreation Board President.

Mr. Davis and Mr. McCulley thanked Mrs. Harper for all her years and her services to the citizens of the City.

PROCLAMATION – HUMAN TRAFFICKING AWARENESS MONTH

The Mayor presented a proclamation designating January as "Human Trafficking Awareness Month." Mr. Downes read the proclamation and the Mayor presented it to Barbara Fowler and Christy Peters.

Mrs. Fowler thanked the Mayor and City Council and for the City's participation in being the first City to declare as a Human TraffickingFree zone.

CITY MANAGER'S REPORT

- Mr. Downes announced gave an update on the Infrastructure and Community Spaces projects. He stated that they are been working with design professionals in order to soon put out bids for the East Street Sidewalks. He stated there was a productive meeting this afternoon with businesses affected along Cahaba Heights Road and the residents along Mountainview Road in order to begin to bring together designs for sidewalk projects. He announced that Matt Gilmore on East Street; Bill Visintainer on Mountainview and Katherine McCree on Cahaba Heights Road all will act as representatives for their respective neighborhood on each project.
- Mr. Downes addressed a right-in and right-out intersection improvement on that was installed Gentilly Drive/Columbiana Road intersection last week. He indicated that the City did not permit or pay for that installation. It was a project by the school system to follow the direction of their traffic engineer in coordination with Jefferson County traffic engineering. Our staff has had conversations with the County and Mr. Downes stated he has spoken to school officials to ensure that they have future forewarning of any further

infrastructure changes made in school construction zones. He explained that there will not be a cuing of school carpool on Gentilly.

- Mrs. Cook stated she spoke to Jim Sharp, former Councilmember, who indicated that the School Board and Superintendent has been working with the residents to help to alleviate concerns and problems with the installation of this intersection and the improvements along with the traffic of Linda Vista.
- Mr. Pierce stated he found out about this on social media and went and viewed the improvements. He indicated that it concerns him that this was done without notification to the City. He believes that the City and the residents deserve more forewarning of this type of improvement.

COUNCILOR REPORTS

- Mr. Pierce stated that Chamber will install officers tomorrow and Thursday will be the Chamber's retreat. He stated that he will report back after the retreat.

FINANCIAL REPORTS

Mr. Turner presented the financial reports for month ending December 2019. He read and explained the balances. He explained that the ad valorem taxes are still sluggish due to the protests filed by residents regarding this year's assessment.

Mrs. Cook stated that the Board of Education also mentioned the lag in receipt of ad valorem taxes.

Discussion ensued and Mr. Pierce stated he has heard that some appeals were approved and some were denied. Mr. Turner stated that they are showing an 8 percent increase, just not the forecasted 10 percent.

APPROVAL OF MINUTES

The Mayor opened the floor for approval of the following minutes: December 9, 2019 (Regular Meeting), December 16, 2019 (Work Session) and December 16, 2019 (Regular Meeting).

MOTION Motion to approve the minutes of the December 9, 2019 (Regular Meeting), December 16, 2019 (Work Session) and December 16, 2019 (Regular Meeting) was by Mrs. Cook, seconded by Mr. Weaver. Roll call vote as follows:

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Mayor Curry – yes

motion carried.

OLD BUSINESS

NEW BUSINESS

RESOLUTION NUMBER 5216

Resolution Number 5216 - A Resolution Authorizing A Special Economic Development Agreement By The City Of Vestavia Hills, Alabama And Maddox Enterprises, LP (*public hearing*)

MOTION Motion to approve Resolution Number 5216 was by Mr. Weaver seconded by Mr. Pierce.

Mr. Downes stated that this Council has previously approved an outline of a deal that is transpiring on a piece of property on Montgomery Highway owned by the Maddox family. He stated they believe that this will set the stage for future improvements along that corridor. He stated that approval of this will waive a portion of the \$75,000 lien on this property in order to allow a subdivision of the property and ½ of the property to be sold for development of a restaurant. This will also include an agreement to restrict the use of the remaining property to no temporary businesses.

Walter Barrino, developer, was present in regard to this request along with owners Larry Maddox and Richard Maddox Jr.

Larry Maddox expressed appreciation for the assistance in bringing this to fruition.

Discussion ensued relative to the existing Waffle House on Columbiana Road, the leasing of that building, the size planned for the new building, etc.

The Mayor opened the floor for a public hearing. There being no one to further address the Council, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 5217

Resolution Number 5217 – A Resolution Appointing A Member To The Jefferson-Blount-St. Clair Mental Health Authority Board

MOTION Motion to approve Resolution Number 5217 was by Mr. Weaver seconded by Mr. Pierce.

The Mayor stated that Vestavia Hills has worked for many years with the JBS Mental Health Authority and they have invited a Board member to represent the City. For the past several years, the City has had a representative who recently retired. His name was Dr. Bob Terry. The Mayor recommended Dr. Bill Brunson, the Senior Pastor of the Vestavia Hills United Methodist Church to serve on this Board.

There being no one to further address the Council, the Mayor called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2907

Ordinance Number 2907 – An Ordinance Accepting A Request For Proposal For The Sale Of Concessions To Patrons At City Recreational Facilities And Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With FH Concession Group For The Sale Of Concessions To Patrons At City Recreational Facilities

MOTION Motion to approve Ordinance Number 2907 was by Mr. Weaver seconded by Mr. Pierce.

Mr. Davis stated that Trenton Turner previously handled this for the City but he recently passed away. This concessionaire filled in during this process and did an outstanding job. This was approved by the park board.

There being no one to further address the Council, the Mayor called for the question. Roll call vote as follows:

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

NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)

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

The Mayor announced that the following resolutions and/or ordinances will be presented at a public hearing at the Council's regular meeting on January 27, 2020, at 6:00 PM.

- Ordinance Number 2905 – An Ordinance To Approve A Contract To Purchase The Real Estate And Improvements Situated At 3995-3103 Greendale Road In The City Of Vestavia Hills, Alabama Consisting Of Approximately 0.34 Acres, More Or Less

(“Property”) And Authorizing And Directing The Mayor And City Manager To Execute And Deliver Said The Contract And Any And All Other Documents Necessary To Close The Sale Pursuant To The Terms, Provisions And Conditions Of Said Contract (*public hearing*)

- Ordinance Number 2906 – Rezoning – 3122, 3128, 3134, and 3136 Sunview Drive; Rezone from Vestavia Hills B-2, Inst, Agriculture to Vestavia Hills B-1.2. Thomas Holdings, Owners (*public hearing*)
- Ordinance Number 2908 –An Ordinance Adopting And Enacting Procedures And Requirements For Unclaimed Property For The City Of Vestavia Hills Police Department And Municipal Court (*public hearing*)

CITIZEN COMMENTS

Daniel and Janet Rubio, 1633 Gentilly Drive, stated that the recent improvements previously described on Gentilly Drive are located directly in front of their home. They explained there was no communication given to them at all before installation of this concrete barrier and they are concerned that with these improvements, it'll take longer for emergency services to reach them and it also take longer for them to get to work or anywhere that requires a left turn.

Mrs. Cook clarified that Mr. Sharp reported that he didn't know about this concrete improvement, only of other improvements of the school construction and that he's been working with area residents in regard to those improvements.

Mr. Pierce stated that he would like to know why the County wanted this improvement since peak times were only in the morning and afternoon. He stated he would like to know the reasoning and maybe revisit it when school begins there.

Mr. Downes stated that the City is not in control of the situation but he will go back and see about getting the traffic engineers and have facilitate these conversations.

Mr. Brady stated that the reason of the placement is the signal on Columbiana road is moving closer to Gentilly Drive which didn't leave sufficient space needed for stacking. He stated that their department recognized that the improvement would be made at some point in the future, but didn't know when it would be installed.

Mr. Weaver stated it needs to be readdressed with the County and the City will facilitate that conversation according to Mr. Downes.

David Harwell, 1803 Catala Road, stated that these residents are family. He stated that he promptly sent emails on this situation and appreciated the prompt responses. However, there was no transparency on these improvements or this project. He stated that there was transparency along Gresham and other areas but this improvement got zero information and zero transparency. He stated that this can be changed. He added that there will be a cue line in front of their house when school begins at this location.

Donald Harwell, 1357 Willoughby Road, indicated that Mr. Downes said there was no Vestavia money funding this project.

Mr. Downes clarified that the City spent no money on this project. It was funded by the Board of Education.

Mr. Harwell pointed out that is still taxpayer money.

At 6:49 PM, Mrs. Cook made a motion to adjourn. The meeting adjourned at 6:50 PM.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2905

AN ORDINANCE TO APPROVE A CONTRACT TO PURCHASE THE REAL ESTATE AND IMPROVEMENTS SITUATED AT 3995-3103 GREENDALE ROAD IN THE CITY OF VESTAVIA HILLS, ALABAMA CONSISTING OF APPROXIMATELY 0.34 ACRES, MORE OR LESS (“PROPERTY”) AND AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER SAID THE CONTRACT AND ANY AND ALL OTHER DOCUMENTS NECESSARY TO CLOSE THE SALE PURSUANT TO THE TERMS, PROVISIONS AND CONDITIONS OF SAID CONTRACT.

THIS ORDINANCE NUMBER 2905 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 27th day of January, 2020.

WITNESSETH THESE RECITALS:

WHEREAS, the City Manager has negotiated with the owner of the real estate and improvements situated at 3995-3103 Greendale Road in the City of Vestavia Hills, Alabama consisting of approximately 0.34± acres (the “Property”) for the possible purchase of said Property by the City of Vestavia Hills, Alabama (“City”); and

WHEREAS, if the City purchases the Property, then in such event the City Manager recommends that:

- (1) Approximately 0.02± acres be used for an in progress public works project to widen Crosshaven Road (“project to widen Crosshaven Road”); and
- (2) The balance of the Property be sold to another party; and

WHEREAS, the City Attorney has prepared an Agreement for Purchase and Sale of Real Estate (“Agreement”) setting forth the terms, provisions and conditions of the negotiations and recommendation by the City Manager for consideration by the City Council; and

WHEREAS, a copy of the Agreement is attached hereto, marked as Exhibit A and is incorporated into this Ordinance Number 2905 by reference as though set out fully herein.

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

1. The Agreement attached hereto and marked as Exhibit A is incorporated in its entirety into this Ordinance Number 2905 by reference as though set out fully herein.
2. The Agreement is hereby approved by the City Council.

3. 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.

4. The City Council hereby authorizes and directs the City Manager to execute any and all other documents necessary to close the purchase and sale of the Property pursuant to the terms, provisions and conditions of the Agreement attached hereto. In addition, the City Manager is hereby authorized to make editorial revisions and corrections that do not substantially change said Agreement.

5. 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.

6. This Ordinance Number 2905 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*.

DONE, ORDERED, APPROVED and ADOPTED on this the 27th day of January, 2020.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
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 #2905 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 27th day of January, 2020 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the 28th day of January, 2020.

Rebecca Leavings
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (“the Agreement”), is hereby made and entered into as of the ____ day of January, 2020 by and between Nonidez Properties, an Alabama General Partnership (hereinafter referred to as “Seller”), and the City of Vestavia Hills, Alabama, a municipal corporation (hereinafter referred to as “Purchaser”).

WITNESS THESE RECITALS:

WHEREAS, the Seller owns real estate and improvements situated at 3095-3103 Greendale Road in the City of Vestavia Hills, Jefferson County, Alabama, (hereinafter referred to as “Property”); and

WHEREAS, the Property consists of approximately 0.34 acres ± (being approximately 14,790 square feet) and is more particularly in that certain Deed dated September 30, 1982, which said Deed was filed in the office of the Judge of Probate of Jefferson County, Alabama on September 30, 1982 and recorded at Real 2244, Page 906, described as follows:

That part of the Southeast Quarter of Southeast Quarter (SE¹/₄ of SE¹/₄) of Section 15, Township 18, South, Range 2 West, bounded by and lying within the following described boundary lines, viz: Begin at the Northwest corner of said Southeast Quarter of Southeast Quarter of said Section and run thence Eastwardly along the North boundary line thereof for a distance of Seventy-five (75) feet; thence Southwardly and parallel with the West boundary of said Southeast Quarter of Southeast Quarter of said Section for a distance of One Hundred forty-five (145) feet; thence Westwardly and parallel with the North boundary of said Southeast Quarter of Southeast Quarter of said Section a distance of Seventy-five (75) feet to a point on the West boundary of said Southeast Quarter of Southeast Quarter of said Section; thence Northwardly along said West boundary of said Southeast Quarter of Southeast Quarter of said Section a distance of one hundred forty-five (145) feet to the point of beginning.

WHEREAS, Seller derived title to the Property by virtue of that certain Deed dated September 30, 1982, which said deed was filed in the office of the Judge of Probate of Jefferson County, Alabama on September 30, 1982 and recorded at Real 2244, Page 906; and

WHEREAS, Purchaser (City) is actively engaged in a public works project to widen Crosshaven Road known as “Project to Widen Crosshaven Road” (hereinafter referred to as “Project”); and

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WHEREAS, Purchaser needs to acquire a portion of Seller’s property in order to construct and complete the Project; and

WHEREAS, the portion of Seller’s property needed by Purchaser for public access purposes shall hereinafter be referred to as “public access area”, and

- (i) consists of approximately 0.02± acres (being approximately 909 square feet);
- (ii) is shown on Exhibit 1, which is attached hereto and incorporated into this Agreement by reference as though set out fully herein;
- (iii) is more particularly described in Exhibit 2, which is attached hereto and incorporated into this Agreement by reference as though set out fully herein.

WHEREAS, Purchaser has the legal authority to condemn and take the public access area under the power of eminent domain pursuant to the Alabama Eminent Domain Code set forth in Title 18-1A-1, et seq., *Code of Alabama, 1975*; and

WHEREAS, John E. Hall, III, MAI appraised the Property to have the following fair market values as of April 11, 2019:

Fair Market Value of the Property	\$500,000.00
Fair Market Value less the public access area	\$384,846.00
Fair Market Value of the public access area	\$115,154.00; and

WHEREAS, W. Paulk Turner, MAI appraised the property and opined that the fair market value of the property was Four Hundred Twenty Thousand Dollars (\$420,000.00) as of April 7, 2018; and

WHEREAS, municipalities in Alabama have the legal authority to acquire real estate by purchase pursuant to Title 11-40-1, *Code of Alabama, 1975*; and

WHEREAS, the City Council (“City Council”) of the City of Vestavia Hills, Alabama (a municipal corporation (the “City”) hereby finds and determines that it prefers to purchase the Property pursuant to this Agreement rather than to condemn said Property and acquire it by eminent domain; and

WHEREAS, the City Council finds and determines that the purchase by the City of the real estate and improvements for the property located at 3095-3103 Greendale Road hereinafter described in Section 3 will promote the health, safety and general welfare of the City; and

WHEREAS, the Ordinance Number 2905 will be introduced by a first reading at the

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regularly scheduled meeting of the City Council on January 13, 2020 and considered for approval by the City Council at its regularly scheduled meeting on January 27, 2020 pursuant to the procedure for adoption of an ordinance set forth at Title 11-45-2(b), *Code of Alabama, 1975*; and

WHEREAS, the Alabama Open Meetings Act set forth at Title 36-25A-7(a)(7), *Code of Alabama, 1975*, provides that the material terms of a contract to purchase real property shall be disclosed in a public meeting prior to the execution of the contract; and

WHEREAS, only the City Council by the enactment of an ordinance or resolution can authorize and direct the execution and delivery of a contract for and on behalf of the municipality (*Van Antwerp, et al v. Board of Commissions of City of Mobile, et al*, 217 Ala. 201, 115 So. 239 (1928); and *Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3d 1166 (2011)); and

WHEREAS, Title 11-47-5, *Code of Alabama, 1975*, reads as follows:

“Contracts entered into by a municipality shall be in writing, signed and executed in the name of the city or town by the officers authorized to make the same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk. This section shall not be construed to cover purchases for ordinary needs of the municipality;” and

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

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

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

WHEREAS, the City will own and keep title to the public access area depicted on Exhibit 1 and more particularly described in Exhibit 2 and use said public access area for the construction and completion of the Project; and

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WHEREAS, municipalities in Alabama cannot engage in private enterprise (*Edmonson v. State Indus. Dev. Auth.*, 279 Ala. 206, 184 So.2d 115; *Board of Rev. & Road v. Puckett*, 227 Ala. 374; *Opinion of Justices No. 269*, 384 So.2d 1051; and *Opinion of Justices No. 261*, 373 So.2d 290); and

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

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

WHEREAS, the Vestavia Hills City Council hereby finds and determines that the balance of the Property (after carving out the public access area) is not needed for public purposes and that the said balance of Property shall be sold at a later date, which said balance of property is shown on Exhibit 3 and more particularly described in Exhibit 4, which said Exhibits are attached hereto and incorporated into this Agreement by reference as though set out fully herein.

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

1. **RECITALS:** The recitals set forth in the premises above are hereby incorporated into this Agreement for Purchase and Sale of Real Estate (“Agreement”) by reference as though set out fully herein.

2. **PURCHASE AND SALE.** For and in consideration of One and No/100 Dollars (\$1.00) in hand paid by Purchaser to Seller and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller, Seller agrees to sell and Purchaser agrees to purchase all (and not less than all) of the Property for the Purchase Price (as defined below) and on the terms, provisions and conditions hereinafter set forth.

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3. **PROPERTY.** The Property is situated at 3095-3103 Glendale Road in the City of Vestavia Hills, Jefferson County, Alabama. The legal description of the Property to be conveyed by Seller to Purchaser has been determined by the survey as required by and described in Section 8 of this Agreement.

The Property is shown on the Survey prepared by Gonzalez-Strength & Associates, Inc., which is attached hereto, marked as Exhibit 5 and incorporated into this Agreement by reference as though set out fully herein. The legal description of the Property as shown on said Survey is set forth on Exhibit 6, which is attached hereto and incorporated into this Agreement by reference as though set out fully herein.

4. **PURCHASE PRICE.** The purchase price for all of the Property shall be Four Hundred Forty Thousand Dollars (\$440,000.00) (the "Purchase Price").

5. **PAYMENT OF PURCHASE PRICE.** The payment of the Purchase Price shall be paid by the Purchaser to the Seller as follows:

A. **EARNEST MONEY ("THE EARNEST MONEY"):** Earnest Money in the amount of Ten Thousand Dollars (\$10,000.00) shall be paid by Purchaser concurrently with the execution and delivery of this Agreement. The Earnest Money shall be paid to Land Title Company of Alabama, Inc. ("title company"), 600 – 20th Street North in the City of Birmingham, Alabama 35203. The title company shall deposit said earnest money in an interest-bearing account and pay the same to the Seller at closing. If Purchaser terminates the Purchase Agreement during the Inspection Period or for failure of any of the contingencies listed below to be satisfied prior to the Closing, the Earnest Money will be returned to Purchaser in full.

B. **CASH ON CLOSING THIS SALE:** The entire remaining balance of the Purchase Price in the amount of Four Hundred Thirty Thousand and No/100 Dollars (\$430,000.00) shall be paid to Seller by Purchaser in cash or immediately available funds at closing.

6. **CLOSING AND CLOSING DATE.** Subject to the terms, provisions and conditions of this Agreement, the closing of the sale and purchase of the Property (the "Closing") shall occur on or before the date that is fifteen (15) days after the expiration of the Inspection Period or earlier at Purchaser's election, as hereinafter defined (the "Closing Date").

7. **CONVEYANCE.** Seller agrees to convey the Property to Purchaser by statutory warranty deed (the "Deed") at the Closing, subject to the Permitted Exceptions (as herein defined).

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8. SURVEY. Purchaser selected Gonzalez-Strength & Associates, Inc. (“Surveyor”) to prepare the legal description of the Property to be conveyed prior to the execution and delivery of this Agreement. The Surveyor completed the Survey on October 2, 2019 and delivered copies to Seller and Purchaser. The Surveyor prepared Exhibits 1, 2, 3, 4, 5 and 6 as follows:

<u>Exhibit No.</u>	<u>Description</u>
6	Legal description of Property to be conveyed by Seller to Purchaser.
5	Boundary Survey of Property to be conveyed by Seller to Purchaser.
1	Boundary Survey of public access area to be used by the Purchaser in the “Project to Widen Crosshaven Road.”
2	Legal description of public access area to be used by the Purchaser in the “Project to Widen Crosshaven Road.”
3	Boundary Survey of the balance of the Property (Property less and except the public access area to be sold to a third party).
4	Legal description of the balance of the Property (Property less and except the public access area to be sold to a third party).

Both Seller and Purchaser accept and approve the Survey prepared by Surveyor.

9. TITLE INSURANCE. Seller shall, within thirty (30) days after the Effective Date, secure a title commitment (the “Title Commitment”) naming Purchaser as the proposed insured on a Chicago Title Insurance Company Standard Form Owners Policy issued by Land Title Company of Alabama, Inc. as agent for Chicago Title Insurance Company (the “Title Agent”) for the Property described in Section 3 (Exhibit 6) hereof in the amount of the Purchase Price (the “Title Policy”) subject to the following permitted exceptions (a) easements, covenants and other encumbrances of record, (b) mineral and mining rights not owned by Seller, (c) matters that would be disclosed by a current survey of the Property. Anything contained herein to the contrary notwithstanding, the Property to be conveyed at closing shall be free and clear of any mortgage indebtedness or other liens.

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10. INSPECTIONS: Purchaser, or Purchaser's representatives, shall have the right to enter the Property for the purpose of inspection of the same, and/or making boundary line and topographical surveys of the same, and/or making soil tests thereon, and/or in general observing and investigating the condition of the Property. Purchaser agrees to indemnify Seller from and against any liability that results from Purchaser performing any of its inspections as provided herein, and such indemnity shall survive any termination of this Agreement.

11. INSPECTION PERIOD: Purchaser shall have a period of one hundred twenty (120) days following the effective date of this Agreement ("Inspection Period") to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the Property (including without limitation the condition of all improvements thereon) material to Purchaser's decision to purchase the Property. The determination shall include, without limitation, Purchaser satisfying itself as to title matters, soil testing, survey matters, structural matters, zoning matters, subdivision regulations, engineering and site planning, environmental matters, specifically including, but not limited to Phase I ESA, existing contracts and financial matters affecting the Property, all soil, landscaping and other physical conditions of the Property, availability and sufficient quantities of all utilities, and all additional matters that Purchaser believes relevant, in its sole and absolute discretion, in determining whether or not to purchase the Property. Purchaser, at Purchaser's sole discretion, for any reason or no reason, shall have the right and option to cancel this Agreement by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which the right and option to cancel this Agreement by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which event this Agreement shall be of no further force or effect except for any indemnity or other obligations that expressly survive, and the Earnest Money shall be refunded to Purchaser. If Purchaser cancels and terminates this Agreement prior to the expiration of the Inspection Period, then in such event the Earnest Money (held in escrow by the Title Company) shall be refunded by the Seller to Purchaser in full and this Agreement shall be cancelled, null and void.

12. ENVIRONMENTAL CONCERNS: Seller has no actual knowledge that the Property has in the past been used or is presently used for the handling, storage, manufacturing, refining, transportation or disposal of "toxic material", "hazardous substances" or "hazardous waste". The terms "hazardous waste", "hazardous substances" and "toxic material" include, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §960, et seq.), the Hazardous Materials Transportation Act, as amended (42 USC §1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 USC §9601, et seq.), the regulations adopted and publications promulgated pursuant to the foregoing and any other federal, state or local environmental law, ordinance, rule or regulation. Furthermore, Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority as to any of the above environmental concerns.

13. CONDITION OF PROPERTY: Purchaser acknowledges and agrees that:

A. Seller has not made and does not make any covenant, representation of warranty, either expressed or implied, regarding the physical condition of the Property or any portion thereof, the suitability of the Property for any particular purpose or use whatsoever, utility availability for the Property, whether the Property is subject to surface or subsurface contamination by toxic or hazardous waste or with respect to any other matters affecting the Property or Purchaser's contemplated use thereof;

B. Purchaser has been given the absolute and unfettered right during the Inspection Period to conduct such Inspections of the Property as Purchaser, in its sole discretion, may determine necessary in order to satisfy itself of all conditions and other aspects of the Property; and

C. Purchaser has available to it such resources, expertise, consultants and advisors so that it can make a sound and reasonable judgment as to the condition of the Property as well as to all economic conditions, suitability requirements and all other matters affecting the use, development and ownership of the Property. Purchaser acknowledges and agrees that the Property is to be sold and conveyed to, and accepted by, Purchaser in its present condition, "AS IS, WHERE IS AND WITH ALL FAULTS," and Purchaser hereby assumes the risk that adverse physical characteristics and existing conditions may have not been revealed by the Inspections.

14. EXISTING DOCUMENTS, SURVEY AND TITLE INSURANCE: Within ten (10) days following the Effective Date of this Agreement, the Seller agrees to provide Purchaser, at Seller's expense, and no later than 5:00 p.m. (Birmingham, Alabama time) on said date copies of all existing surveys, existing title insurance policies, existing environmental reports, and other documentation in any way relating to the Property that are in the possession of the Seller or the Seller's agents. The documents shall also include, but not be limited to, the following:

- A. Rent roll.
- B. Description of items tenant pays for and what owner pays for.
- C. Copies of leases.
- D. List of tenant deposits, if any, that owner may be liable to return.
- E. Utility deposits.
- F. Any capital improvements and significant repairs.
- G. Age of roof, HVAC equipment, appliances.

Agreement for Purchase and Sale of Real Estate
Page 9

H. Copies of all contracts and service agreements: not limited to dumpster, landscaping, property management and cable/internet. A representation that no other binding contracts/agreements exist that have not been provided.

I. Prior three (3) years income statement and balance sheet, including year to date financials.

J. List of any property policies and rules.

K. Any parking agreements with tenants.

L. Property tax assessments and notices.

M. Certificate of insurance and five year loss runs.

N. Representation language in contract that there are no pending lawsuits.

O. Copy of any existing surveys.

P. Representation that all owner liabilities, including mortgages, if any, will be satisfied on or before closing.

15. CLOSING COSTS: The Closing shall be held at the Vestavia Hills Municipal Center located at 1032 Montgomery Highway, Vestavia Hills, Alabama. The closing attorney shall be Patrick H. Boone.

A. CLOSING COSTS FOR SELLER: The Seller shall pay the following costs:

- (1) Title insurance premium.
- (2) Legal fee to Seller's attorney, if any.

B. CLOSING COSTS FOR PURCHASER: The Purchaser shall pay the following closing costs:

- (1) The fee for recording the deed, if any.
- (2) Legal fee to Purchaser's attorney.
- (3) Cost of due diligence during Inspection Period.
- (4) Financing costs, if any.
- (5) Cost of surveying the Property.

16. TAXES: The ad valorem taxes shall be prorated as of the date of closing.

Agreement for Purchase and Sale of Real Estate
Page 10

17. **ASSIGNMENT:** Purchaser may assign this Agreement or any of its rights hereunder without the express written consent of Seller.

18. **POSSESSION:** Possession of the Property shall be given on the Closing Date.

19. **BROKER:** None.

A. **PURCHASER:** The Purchaser is not represented in this contemplated transaction by any real estate broker/agent.

B. **SELLER:** The Seller is not represented in this contemplated transaction by any real estate broker/agent.

20. **NOTICES:** All notices and demands to be given or made hereunder shall be in writing and shall be given by (i) personal or hand delivery, (ii) nationally recognized express overnight delivery service (with charges therefor prepaid, or (iii) certified or registered mail, return receipt requested (with postage therefor prepaid). Notices shall be deemed received upon (a) receipt, if hand or personally delivered, (b) the next business day after the notice has been deposited with a nationally recognized express overnight delivery service, or (the third business day after the notice has been deposited with the United States Postal Service. Notices shall be provided to the parties at the follow addresses:

IF TO SELLER:

Bill Nonidez
Nonidez Properties
c/o Terry Gloor, Esq.
200 Century Park South, Suite 114
Birmingham, Alabama 35226
Telephone No. (205) 913-3567
E-mail: tgloor@gloorlawfirm.com

IF TO PURCHASER:

Jeffrey D. Downes, City Manager
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216
Telephone No. 205-978-0195
E-Mail: jdownes@vhal.org

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With copies to: Patrick H. Boone
215 Richard Arrington Jr., Blvd. N., Suite 705
Birmingham, Alabama 35203-3720
Telephone No. (205) 324-2018
Fax (205) 324-2295
Email: patrickboone@bellsouth.net

IF TO TITLE COMPANY: Land Title Company of Alabama
600 North 20th Street, Suite 100
Birmingham, Alabama 35203
Attention: William F. Miller
Telephone No. (205) 251-9280
Fax: (205) 226-9280
Email: wfm@land-title.net

Either party hereto may change the address to which it is to receive notice or the representative to whom notice is to be given by written notice to the other part in the manner set forth above.

21. DEFAULT AND REMEDIES:

A. In the event that Seller shall fail to consummate the transaction as contemplated herein for any reason other than Purchaser's default, then Purchaser may, as its sole and exclusive remedy, either (i) enforce this Agreement and the purchase and sale transaction contemplated herein by specific performance or (ii) terminate this Agreement, whereupon the Earnest Money paid to Seller and accrued interest shall be promptly returned to Purchaser, this Agreement shall be deemed cancelled and terminated and, except for the indemnification obligations of Purchaser set forth in Section 11 above, neither party shall have any further obligation or liability to the other hereunder.

B. If, at any time after the expiration of the Inspection Period, Purchaser shall fail to perform its obligation to close the transaction contemplated herein for any reason other than Seller's default, then the Earnest Money shall be delivered to Seller as liquidated damages in which event this Agreement shall automatically be deemed terminated and cancelled and, except for the indemnification obligations of Purchaser set forth in Section 11 above, neither party shall have any further obligation or liability to the other hereunder. Because of the difficulty, inconvenience and uncertainty of ascertaining actual damages, no other damages, rights or remedies shall in any case be collectible, enforceable or available to Seller and Seller agrees to accept and retain the Earnest Money as its total damages and relief hereunder in the event Purchaser fails to close the purchase and sale transaction contemplated herein.

Agreement for Purchase and Sale of Real Estate
 Page 12

22. EFFECTIVE DATE: The “Effective Date” to be inserted on the first page of this Agreement is the date upon which this Agreement has been fully executed by Seller and Purchaser and each of Seller and Purchaser has received a fully executed original counterpart. The last party executing this Agreement will deliver a fully executed original counterpart to the other party by overnight delivery for receipt on the next succeeding business day and will insert the next succeeding business day on the first page of all original counterparts of this Agreement.

23. CONTINGENCIES: This Agreement is subject to and contingent upon the following conditions:

A. AGREEMENT: This Agreement is subject to and contingent upon the formal approval of the Agreement by the City Council of the City of Vestavia Hills, Alabama by duly enacted ordinance pursuant to and in accordance with the laws of the State of Alabama. If this condition of approval as aforesaid is not completed, then in such event this Agreement shall automatically be terminated and any and all accrued interest shall be refunded to Purchaser.

B. CLOSING OF SALE: This closing of the sale contemplated by this Agreement is subject to and contingent upon the following conditions:

1. The execution and delivery of an Agreement for Sale and Purchase of Real Estate by and between the City of Vestavia Hills, Alabama, as “Seller,” and a Third Party, as “Purchaser,” wherein the Seller agrees to sell and the Purchaser agrees to buy, the property less and except the public access area for and in consideration of Three Hundred Four Thousand Eight Hundred Forty-six Dollars (\$304,846.00) calculated pursuant to the following formula:

Property	less	Public Access Area	=	Purchase Price
\$420,000.00	-	\$115,154.00	=	\$304,846.00

2. The Agreement referred to in Section 23-B(1) above must be:

- (i)** legally binding upon Purchaser;
- (ii)** with no chance of Purchaser failing to close; and
- (iii)** the sale closed simultaneously with the City and Nonidez Properties sale (back-to-back).

Agreement for Purchase and Sale of Real Estate
Page 13

If the City (as Purchaser herein) fails to close the resale of this Property to a third party pursuant to the contingencies set forth in Section 23 above, then in such event the earnest money shall be refunded to said City (as Purchaser) and this Agreement shall become null, void, cancelled, terminated and of no legal force and effect.

24. ASSIGNMENT AND ASSUMPTION OF LEASES AND RENTS: Seller, shall at closing, execute legal documents necessary to assign and transfer to the City of Vestavia Hills, Alabama (Purchaser herein) all of Seller's right, title and interest in and to the leases of tenants presently occupying the Greendale Apartment building, together with related rents and security deposits.

25. MISCELLANEOUS

A. GOVERNING LAW: This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

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

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

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

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

F. CONSTRUCTION OF TERMS: Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

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

Agreement for Purchase and Sale of Real Estate
Page 14

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 contains the entire agreement between the parties, incorporating all prior agreements, and may only be amended in writing executed by both parties.

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

SELLER:

NONIDEZ PROPERTIES

An Alabama General Partnership

By _____
William K. Nonidez
Its Managing Partner

PURCHASER:

THE CITY OF VESTAVIA HILLS, ALABAMA

A Municipal Corporation

By _____
Ashley C. Curry
Mayor

By _____
Jeffrey D. Downes
City Manager

ATTESTED:

By _____

Agreement for Purchase and Sale of Real Estate
Page 15

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that William K. Nonidez, whose name as Managing Partner of Nonidez Properties, an Alabama General Partnership, is signed to the foregoing Agreement for Purchase and Sale of Real Estate, and who is known to me, acknowledged before me on this day that being informed of the contents of the Agreement, he/she in his/her capacity as such and with full authority, executed the same voluntarily for and as the act of said Nonidez Properties on the day the same bears date.

Given under my hand and official seal, this the _____ day of January, 2020.

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 Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Agreement for Purchase and Sale of Real Estate, and who is known to me, acknowledged before me on this day that being informed of the contents of the Agreement, he in his capacity as such and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama, a municipal corporation, on the day the same bears date.

Given under my hand and official seal, this the _____ day of January, 2020.

Notary Public

My Commission Expires:

SEAL

Agreement for Purchase and Sale of Real Estate
Page 16

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

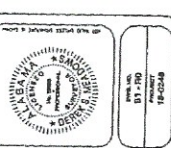
I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Agreement for Purchase and Sale of Real Estate, and who is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

Given under my hand and official seal, this the _____ day of January, 2020.

Notary Public

My Commission Expires:

SEAL



GONZALES-STRENGTH & ASSOCIATES, INC.
 CIVIL ENGINEERING, LAND SURVEYING, PLANNING, TRAFFIC & TRANSPORTATION
 1500 WOODS OF RIVERCHASE DRIVE SUITE 200
 HOUSTON, ALABAMA 35894
 PHONE (205) 942-2022
 WWW.GONZALES-STRONG.COM

CITY OF VESTAVIA HILLS
 LAND SURVEYING DIVISION
 2801 CROSSHAVEN DRIVE - 3109 GREENBAY RD.
 VESTAVIA HILLS, ALABAMA
CROSSHAVEN-GREENDALE
 AS BUILT SURVEY

NO.	REVISIONS	DATE

SECTION 16
 TOWNSHIP 8 NORTH
 RANGE 3 WEST
 BOUNTYMAN QUARTER
 SOUTHEAST QUARTER

STATE OF ALABAMA
 JEFFERSON COUNTY
 I, hereby certify that all parts of this survey and drawing have been completed in accordance with the provisions of the Alabama Surveying and Mapping Act of 1901, as amended, and that the survey and drawing are correct in accordance with the provisions of the Alabama Surveying and Mapping Act of 1901, as amended, and that the survey and drawing are correct in accordance with the provisions of the Alabama Surveying and Mapping Act of 1901, as amended.

DATE: 10-23-18
 SIGNATURE: [Signature]
 TITLE: SURVEYOR
 ALABAMA LICENSE NO. 28998

NOTES

- All measurements are in feet and inches.
- The survey was conducted in accordance with the provisions of the Alabama Surveying and Mapping Act of 1901, as amended.
- The survey was conducted in accordance with the provisions of the Alabama Surveying and Mapping Act of 1901, as amended.
- According to the deed instrument that this map (7704) for Parcel 15, Vestavia Hills, Alabama, was recorded in the Public Records of Jefferson County, Alabama, on 10/23/18, the survey was conducted in accordance with the provisions of the Alabama Surveying and Mapping Act of 1901, as amended.
- The survey was conducted in accordance with the provisions of the Alabama Surveying and Mapping Act of 1901, as amended.

GENERAL

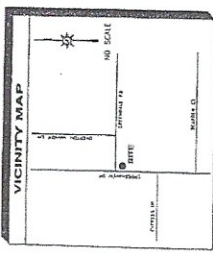
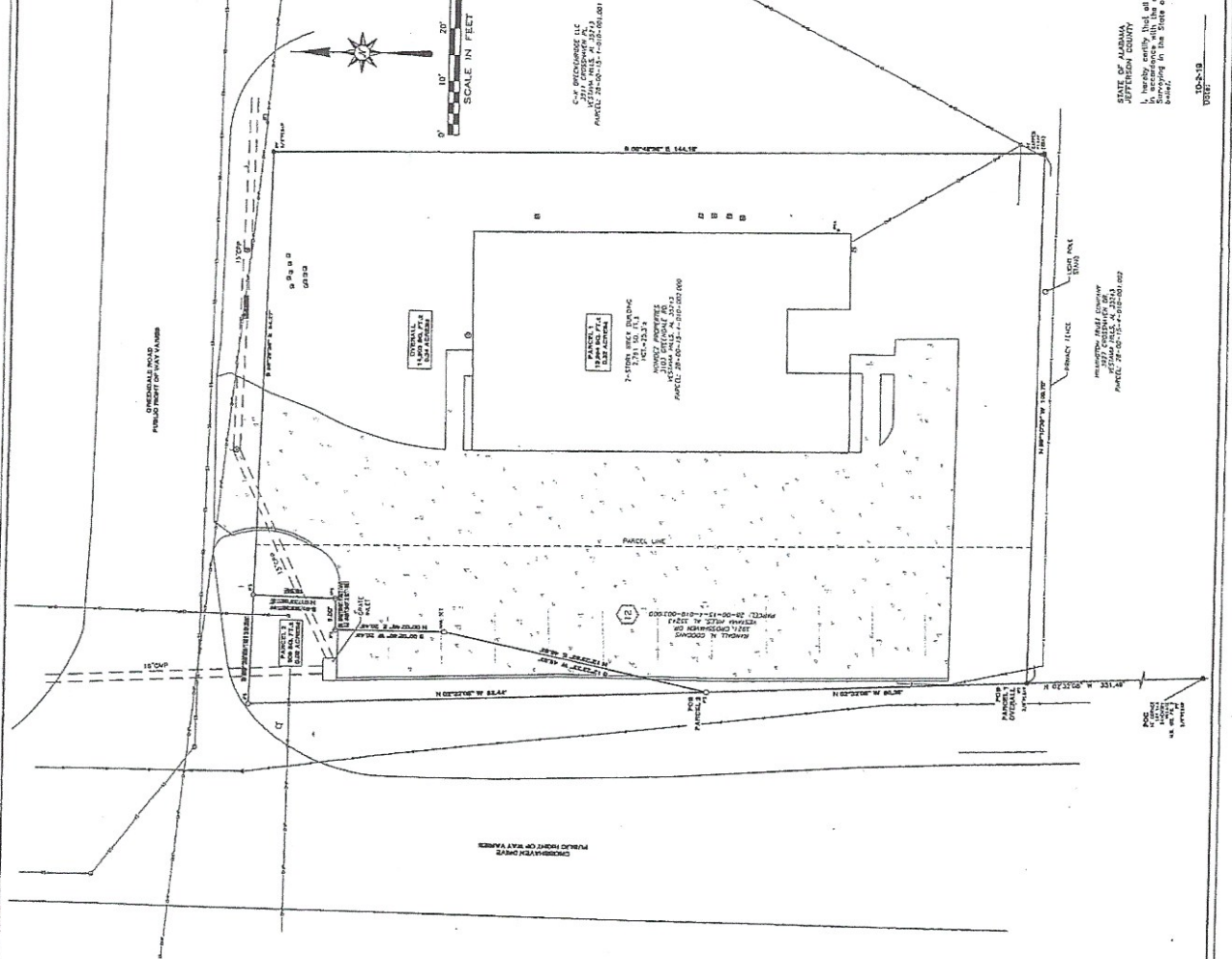
All recorded lines shown on this map are the true and correct lines of the parcels shown on this map. All other lines shown on this map are for information only. The survey was conducted in accordance with the provisions of the Alabama Surveying and Mapping Act of 1901, as amended.

PARCEL 15

Parcel 15 is bounded on the north by the boundary line of Parcel 14, on the east by the boundary line of Parcel 16, on the south by the boundary line of Parcel 17, and on the west by the boundary line of Parcel 18. The area of Parcel 15 is 1.2345 acres.

PARCEL 1

Parcel 1 is bounded on the north by the boundary line of Parcel 2, on the east by the boundary line of Parcel 3, on the south by the boundary line of Parcel 4, and on the west by the boundary line of Parcel 5. The area of Parcel 1 is 1.2345 acres.

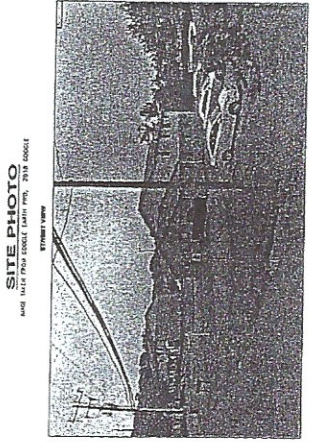


ABBREVIATIONS

SYMBOL	DESCRIPTION
—	BOUNDARY LINE
—	ADJACENT PROPERTY
—	ADJACENT ROAD
—	ADJACENT RAILROAD
—	ADJACENT WATERWAY
—	ADJACENT AIRWAY
—	ADJACENT POWER LINE
—	ADJACENT TELEPHONE LINE
—	ADJACENT CABLE TV LINE
—	ADJACENT FENCE
—	ADJACENT CONCRETE SURFACE
—	ADJACENT ASPHALT DRIVE
—	ADJACENT DRIVEWAY
—	ADJACENT SIDEWALK
—	ADJACENT CURB
—	ADJACENT GROUND
—	ADJACENT VEGETATION
—	ADJACENT UTILITY
—	ADJACENT SIGN
—	ADJACENT LIGHT
—	ADJACENT SOUND
—	ADJACENT VIBRATION
—	ADJACENT EMISSIONS
—	ADJACENT INTERFERENCE
—	ADJACENT OBSTRUCTION
—	ADJACENT HAZARD
—	ADJACENT POLLUTION
—	ADJACENT CLIMATE
—	ADJACENT SOIL
—	ADJACENT WATER
—	ADJACENT AIR
—	ADJACENT LAND
—	ADJACENT SEA
—	ADJACENT OCEAN
—	ADJACENT LAKE
—	ADJACENT RIVER
—	ADJACENT STREAM
—	ADJACENT CREEK
—	ADJACENT BRANCH
—	ADJACENT TRIBUTARY
—	ADJACENT DELTA
—	ADJACENT ESTUARY
—	ADJACENT BAY
—	ADJACENT GULF
—	ADJACENT OCEAN

LEGEND

SYMBOL	DESCRIPTION
—	BOUNDARY LINE
—	ADJACENT PROPERTY
—	ADJACENT ROAD
—	ADJACENT RAILROAD
—	ADJACENT WATERWAY
—	ADJACENT AIRWAY
—	ADJACENT POWER LINE
—	ADJACENT TELEPHONE LINE
—	ADJACENT CABLE TV LINE
—	ADJACENT FENCE
—	ADJACENT CONCRETE SURFACE
—	ADJACENT ASPHALT DRIVE
—	ADJACENT DRIVEWAY
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—	ADJACENT RIVER
—	ADJACENT STREAM
—	ADJACENT CREEK
—	ADJACENT BRANCH
—	ADJACENT TRIBUTARY
—	ADJACENT DELTA
—	ADJACENT ESTUARY
—	ADJACENT BAY
—	ADJACENT GULF
—	ADJACENT OCEAN



Know what's below
 Call before you dig.
 811

ALL PARTS OF THIS SURVEY AND DRAWING HAVE BEEN PREPARED IN ACCORDANCE WITH THE STANDARDS AND PRACTICES FOR SURVEYING IN THE STATE OF ALABAMA.

PARCEL 2

A parcel of land situated in the Southeast quarter of Section 15, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described by metes and bounds as follows:

Commence at a found 5/8 inch rebar marking the Northwest corner of Lot 1-A, Daventry Village as recorded in Map Book 160, Page 2 in the Office of the Judge of Probate of said County and the Easterly right of way line of Crosshaven Drive; thence run North 02 Degrees 32 minutes 08 seconds West along the said right of way line for a distance of 331.49 feet to a found 5/8 inch rebar; thence continue North 02 Degrees 32 minutes 08 seconds West along said right of way line for a distance of 60.28 feet to a set capped rebar stamped (CA-560-LS) and the Point of Beginning; thence continue North 02 Degrees 32 minutes 08 seconds West along said right of way line for a distance of 85.44 feet to a set capped rebar stamped (CA-560-LS) on the South right of way line of Greendale Road; thence run South 88 Degrees 26 minutes 28 seconds East along said right of way line for a distance of 20.92 feet to a set capped rebar stamped (CA-560-LS); thence leaving said right of way line run South 01 Degrees 33 minutes 32 seconds West for a distance of 15.55 feet to a set capped rebar stamped (CA-560-LS); thence run South 89 Degrees 05 minutes 12 seconds West for a distance of 6.00 feet to a set capped rebar stamped (CA-560-LS); thence run South 00 Degrees 02 minutes 49 seconds West for a distance of 20.48 feet to a set capped rebar stamped (CA-560-LS); thence run South 12 Degrees 23 minutes 33 seconds West for a distance of 49.83 feet to the Point of Beginning. Said parcel contains 909 square feet or 0.02 acres more or less.

PARCEL 1

A parcel of land situated in the Southeast quarter of Section 15, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described by metes and bounds as follows:

Commence at a found 5/8 inch rebar marking the Northwest corner of Lot 1-A, Daventry Village as recorded in Map Book 160, Page 2 in the Office of the Judge of Probate of said County and the Easterly right of way line of Crosshaven Drive; thence run North 02 Degrees 32 minutes 08 seconds West along the said right of way line for a distance of 331.49 feet to a found 5/8 inch rebar and the Point of Beginning; thence continue North 02 Degrees 32 minutes 08 seconds West along said right of way line for a distance of 60.28 feet to a set capped rebar stamped (CA-560-LS); thence leaving said right of way line run North 12 Degrees 23 minutes 33 seconds East for a distance of 49.83 feet to a set capped rebar stamped (CA-560-LS); thence run North 00 Degrees 02 minutes 49 seconds East for a distance of 20.48 feet to a set capped rebar stamped (CA-560-LS); thence run North 89 Degrees 05 minutes 12 seconds East for a distance of 6.00 feet to a set capped rebar stamped (CA-560-LS); thence run North 01 Degrees 33 minutes 32 seconds East for a distance of 15.55 feet to a set capped rebar stamped (CA-560-LS) on the South right of way line of Greendale Road; thence run South 88 Degrees 26 minutes 28 seconds East along said right of way line for a distance of 84.27 feet to a found 5/8 inch rebar; thence leaving said right of way line run South 00 Degrees 48 minutes 36 seconds East for a distance of 144.18 feet to a found capped rebar stamped (GSA); thence run North 89 Degrees 10 minutes 30 seconds West for a distance of 100.70 feet to the Point of Beginning. Said parcel contains 13,994 square feet or 0.32 acres more or less.

OVERALL

A parcel of land situated in the Southeast quarter of Section 15, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described by metes and bounds as follows:

Commence at a found 5/8 inch rebar marking the Northwest corner of Lot 1-A, Daventry Village as recorded in Map Book 160, Page 2 in the Office of the Judge of Probate of said County and the Easterly right of way line of Crosshaven Drive; thence run North 02 Degrees 32 minutes 08 seconds West along the said right of way line for a distance of 331.49 feet to a found 5/8 inch rebar and the Point of Beginning; thence continue North 02 Degrees 32 minutes 08 seconds West along said right of way line for a distance of 60.28 feet to a set capped rebar stamped (CA-560-LS); thence continue North 02 Degrees 32 minutes 08 seconds West along said right of way line for a distance of 85.44 feet to a set capped rebar stamped (CA-560-LS) on the South right of way line of Greendale Road; thence run South 88 Degrees 26 minutes 28 seconds East along said right of way line for a distance of 20.92 feet to a set capped rebar stamped (CA-560-LS); thence run South 88 Degrees 26 minutes 28 seconds East along said right of way line for a distance of 84.27 feet; thence leaving said right of way line run South 00 Degrees 48 minutes 36 seconds East for a distance of 144.18 feet to a found capped rebar stamped (GSA); thence run North 89 Degrees 10 minutes 30 seconds West for a distance of 100.70 feet to the Point of Beginning. Said parcel contains 14,903 square feet or 0.34 acres more or less.

ORDINANCE NUMBER 2906

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS B-2, INST AND A TO VESTAVIA HILLS B-1.2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills B-2 (general business district), Inst (institutional district) and A (agricultural district) to Vestavia Hills B-1.2 (neighborhood mixed use district):

3122, 3128, 3134, and 3136 Sunview Drive
Thomas Holdings, Owners

Real property in the City of Vestavia Hills, County of Jefferson, State of Alabama, described as follows:

Parcel I: Commence at the Southwest corner of the NE 1/4 of the SW 1/4 of the SE 1/4 of Section 15, Township 18 South Range 2 West, Jefferson County, Alabama and run Southerly a distance of 62.40 feet, thence 117°07'32" to the right and run Northwesterly a distance of 35.25 feet to the point of beginning, thence 62°28'34" to the right and run Northerly a distance of 45.56 feet, thence 88°30' to the left and run Westerly a distance of 92.84 feet, thence 42°29' to the left and run Southwesterly a distance of 32.36 feet, thence 27°46' to the left and run Southwesterly distance of 32.00 feet, thence 22°24' to the right and run Southwesterly a distance of 4.53 feet to the Northeasterly right of way of Sunview Drive, thence 75°32'15" to the left and run Southeasterly along the Northeasterly right of way of Sunview Drive a distance of 71.55 feet; thence 4°16'57.5" to the left and run Southeasterly along chord of a curve to the left, having a chord distance of 49.46 feet, a delta angle of 8°33'55", an arc distance 49.50 feet and a radius of 331.15 feet: thence 12°01 '22.5" to the left and run Southeasterly along the Northeasterly right of way of Sunview Drive a distance of 29. 18 feet; thence 132°09'53" to the left and run Northerly a distance of 149.48 feet; thence 117°52'54" to the right and run Southeasterly a distance of 49.79 feet to the point of beginning.

Parcel II: A port of land in the SW 1/4 of the SW 1/4 of SE 1/4, Section 15, Township 18 South, Range 2 West being more particularly described as

follows: Commence at the NE corner of SW 1 / 4 of SW 1 / 4 of SE 1 / 4, Section 15, Township 18 South, Range 2 West, thence South 62.4 feet for a point beginning thence 117"07' right 85 feet; thence 117"0 left 150 feet to the right of public road; thence 117"07' left 85 feet along the said right of way; thence 117"07' 150 feet point of beginning.

Parcel III: The South portion of a 20 foot right-of-way of 2nd Avenue located in Block 2 of the map according to Glass's Second Addition to New Merkle, as recorded in Map Book 28, Page 51, in the office of the Judge of Probate, Jefferson County, Alabama, extending from the right-of-way of Sunview Drive (Sunset Drive as per map) for a distance of 150 feet along the west side of 2nd Avenue and extending from the right-of-way of Sunview Drive (Sunset Drive as per map, for a distance of 162. 79 feet along the east side of 2nd Avenue.) All of said property being situated in the SW 1/4 of the SE 1/4 of Section 15, Township 18 South, Range 2 West, Jefferson County, Alabama.

Parcel IV: Lots 11, 12 & 13, Block 2, according to the Survey of Glass's Addition to New Merkle, as recorded in Map Book 28, page 51, in the Probate Office of Jefferson County, Alabama, Birmingham Division..

APPROVED and ADOPTED this the 27th day of January, 2020.

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 # 2906 is a true and correct copy of such 27th day of January, 2020, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2019.

Rebecca Leavings
City Clerk

Sunview Drive Rezoning



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

Date: DECEMBER 12, 2019

- **CASE: P-1219-65**
- **REQUESTED ACTION:** Rezoning Vestavia Hills Inst-1, Vestavia Hills A, Vestavia Hills B-2 to Vestavia Hills B-1.2
- **ADDRESS/LOCATION:** 3122, 3128, 3134, 3136 Sunview Dr.
- **APPLICANT/OWNER: Thomas Holdings; Adam Hudson, rep.**
- **GENERAL DISCUSSION:** Applicant is seeking to rezone 3122, 3128, 3134, 3136 Sunview Dr. from Inst-1, Vestavia Hills A, Vestavia Hills B-2 to Vestavia Hills B-1.2 for a salon. The applicant would build a 3,000 sq. ft. building and a 13 lot parking lot. The building would have a front setback of 13'. Additionally, the applicant will construct intersection improvements and build 14 angled on-street parking spaces in accordance with the regulations for B-1.2 zoning. The proposed site plan, landscaping plan, and rendering and covenants are attached.
- **CAHABA HEIGHTS COMMUNITY PLAN:** The request is consistent with the plan for limited mixed use.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

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

MOTION Mr. Larson made a motion to recommend Rezoning from Vestavia Hills Inst-1, Vestavia Hills A, Vestavia Hills B-2 to Vestavia Hills B-1.2 for the property located At 3122, 3128, 3134, 3136 Sunview Dr. Second was by Ms. Weaver. Motion was carried on a roll call; vote as follows:

Mr. Vercher – yes
Mr. Sykes– yes
Mr. Weaver – yes
Motion carried.

Mr. Farrell – yes
Mr. Larson – yes
Mrs. Barnes – yes

Land Available For Development Cahaba Heights, AL

For Sale




Area Map



Property Details

- ▶ Location: 3112 Sunview Drive
Cahaba Heights, AL 35243
- ▶ Zoning: C-1
- ▶ Acres: ±1.18 Acres (51,225 SF)
- ▶ Utilities: All Available
- ▶ Listing Price: \$350,000
- ▶ Description: Vacant land ideal for retail, or office
- ▶ Location: Conveniently located in Cahaba Heights with excellent access to Highway 280, I-459 and The Summit

Contact Information :

Wes Cline, CCIM 
Wes@hsccommercial.com
Phone : (205) 515-7610

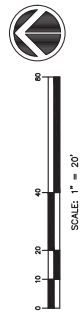
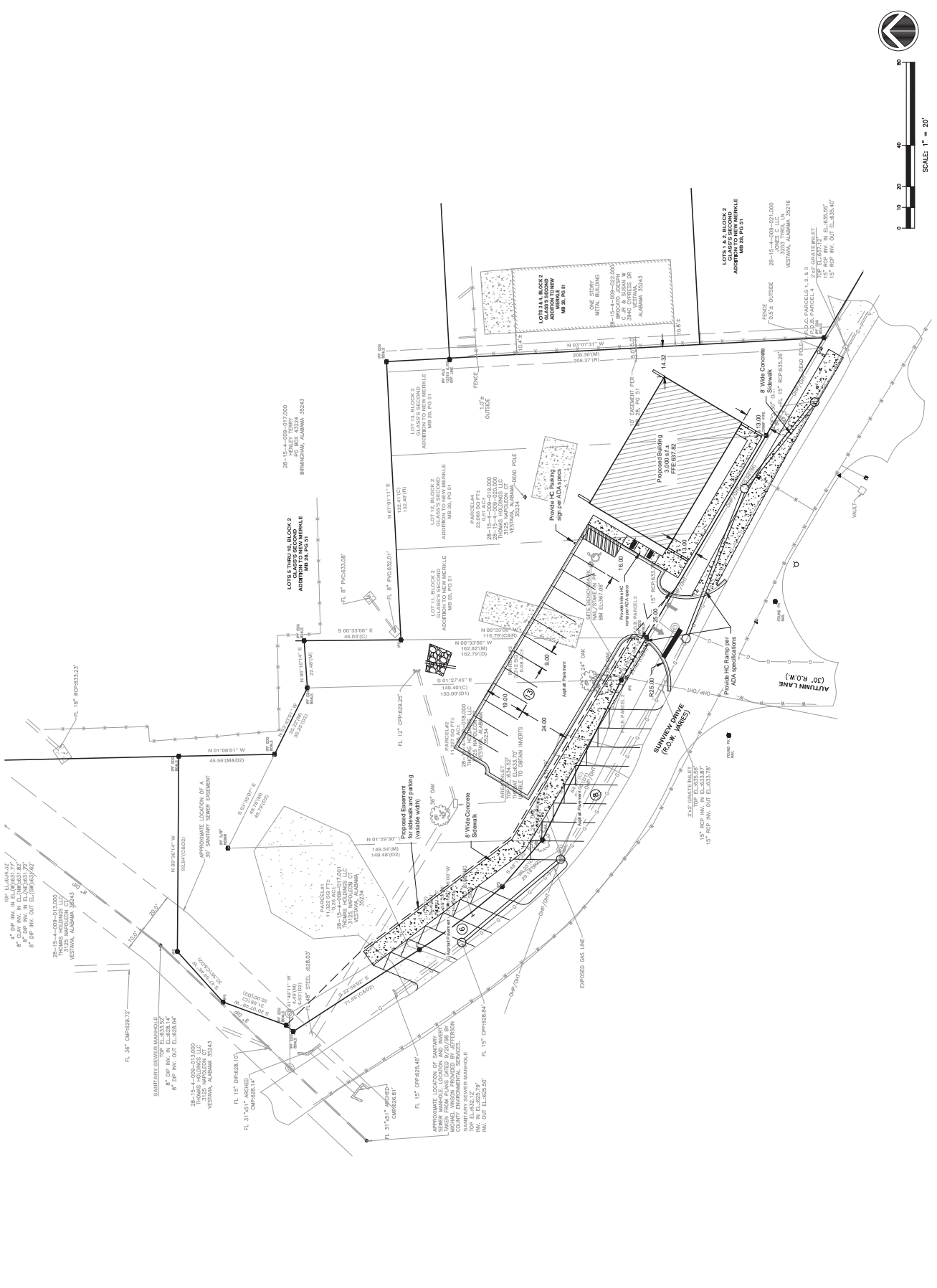
P1219-65//2800154009017.001
3122,3128,3134,3136 Sunview Dr.
Rezone to B-1.2
Adam Hudson Inst.,A &
B2

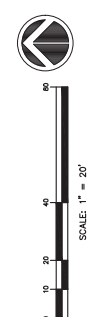
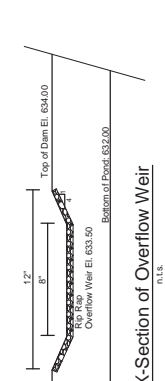
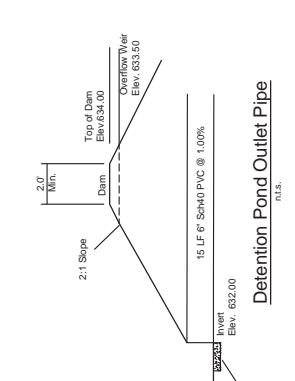
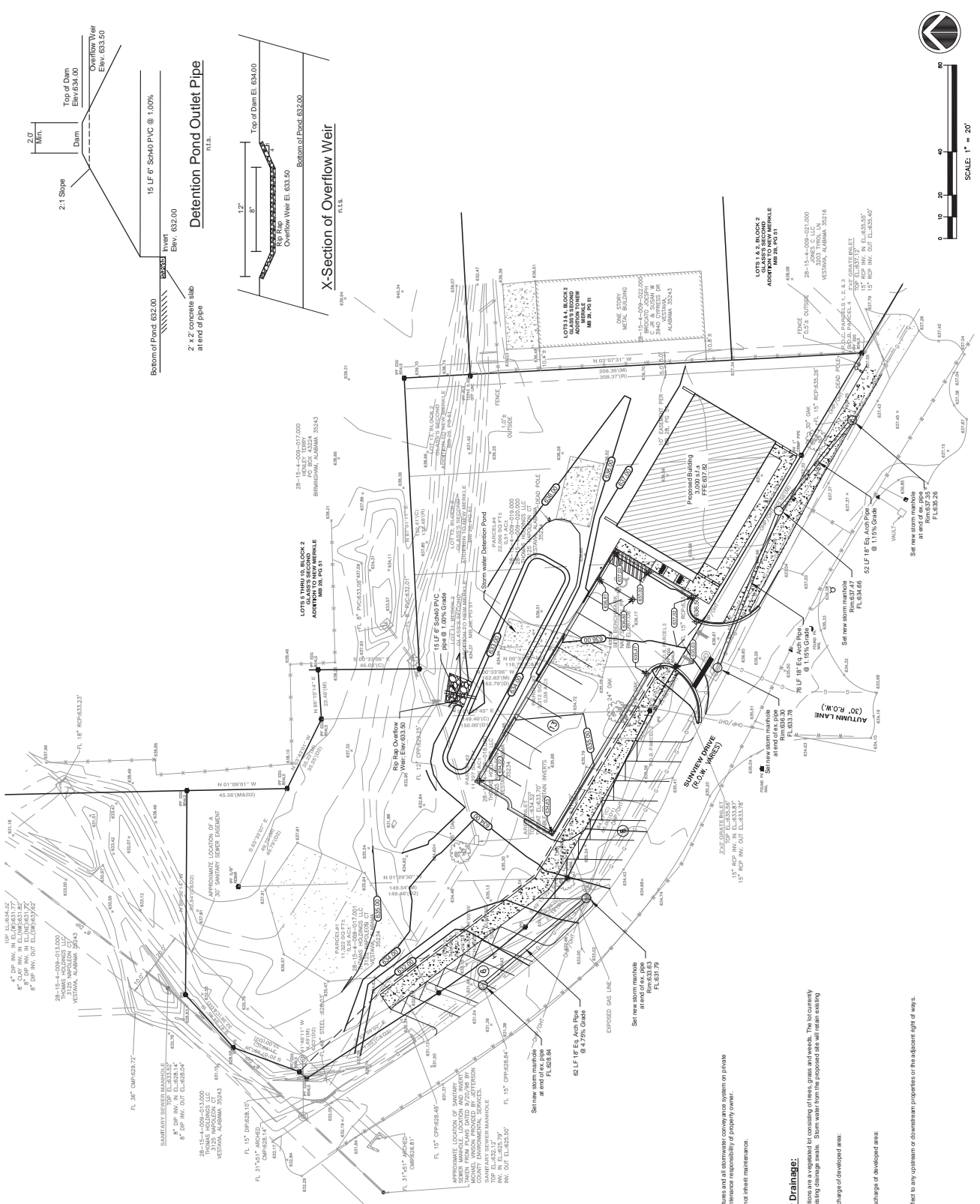
www.hsccommercial.com

2801 Hwy 280 S
Bldg 3 Suite 500
Birmingham, AL 35223
(205) 380-3334



HYDINGER STEWART & CHEW
COMMERCIAL PROPERTIES, LLC





All drainage pipe and structures and all stormwater conveyance system on private property is considered maintenance responsibility of property owner. City of Vestavia Hills does not inherit maintenance.

Site Storm Water Drainage:
Pre-development site conditions are as vegetated (lot consisting of trees, grass and weeds). The lot currently drains to the curb to the existing drainage swale. Storm water from the proposed site will remain existing drainage swale.
Pre-development Peak Discharge of developed area:
DA 0.07 A
CA 0.04 B
CA 0.01 C
DA 0.07 A
CA 0.04 B
CA 0.01 C

There will be no adverse affect to any upstream or downstream properties or the adjacent right of ways.

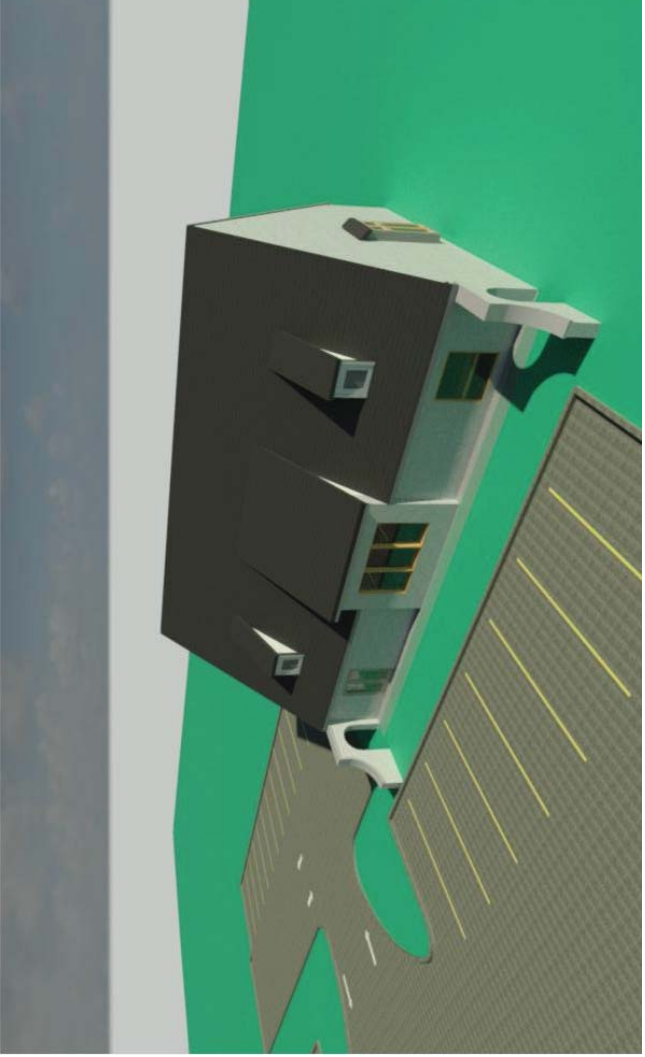
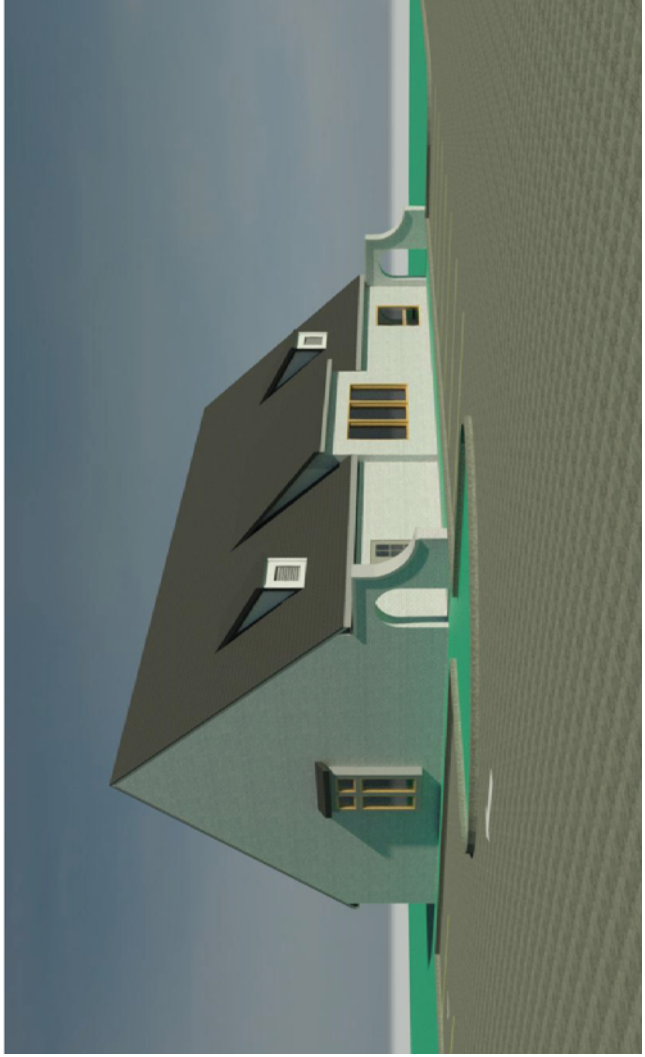


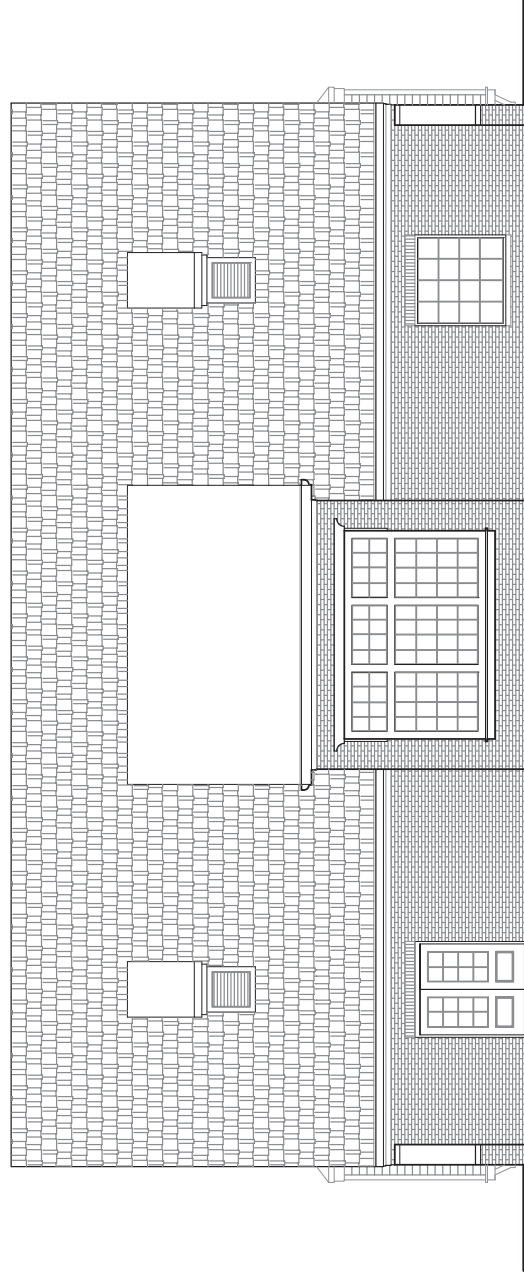
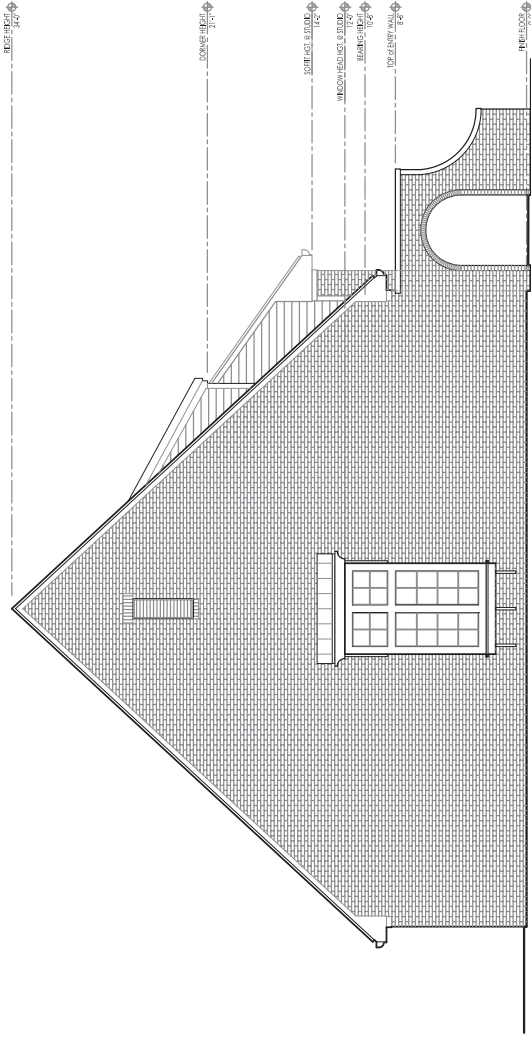
architecture • planning • interior design
 2326 Mesa Avenue
 Birmingham, AL 35205
 Telephone (205) 322-1775
 Fax (205) 322-1778
 www.hendonhuckestein.com
 www.hendonspace.com

A New Building for:
CAHABA HEIGHT SALON
 Birmingham Alabama

RELEASES / DESCRIPTION / DATES

NOT FOR CONSTRUCTION RELEASED FOR CONSTRUCTION	<input type="checkbox"/>
DATE	12/08/19
DRAWN	MJL/EBR
CHECKED	DMH
APPROVED	PHMA
PROJECT NUMBER	1902B/00
SHEET TITLE	EXTERIOR ELEVATIONS
DRAWING NO.	A2.1





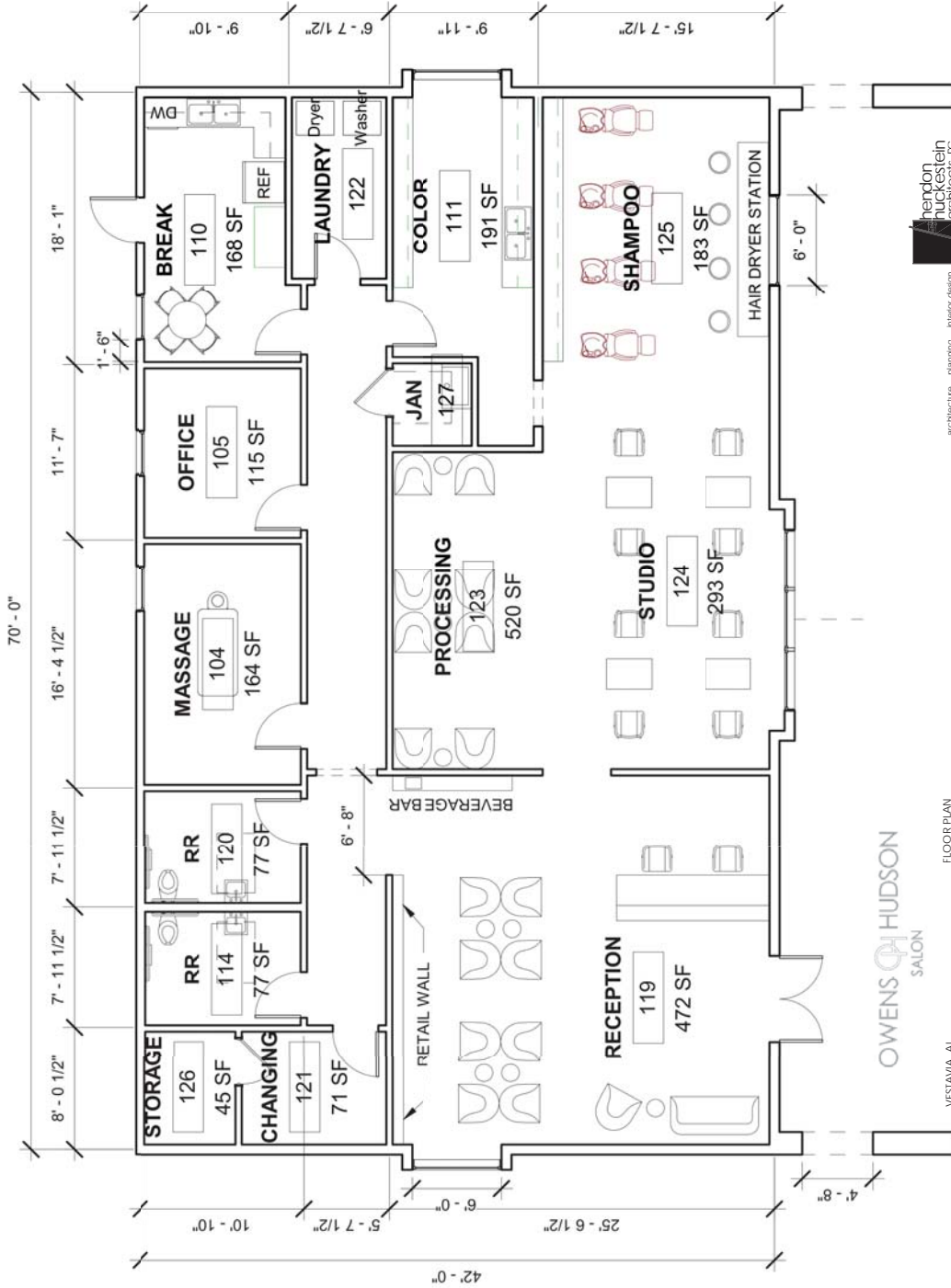
OWENS HUDSON
SALON

VESTAVIA, AL
scale: 1/8" = 1'-0"

EXTERIOR ELEVATIONS
December 2, 2019



hendon
buckstein
architects
architecture • planning • interior design

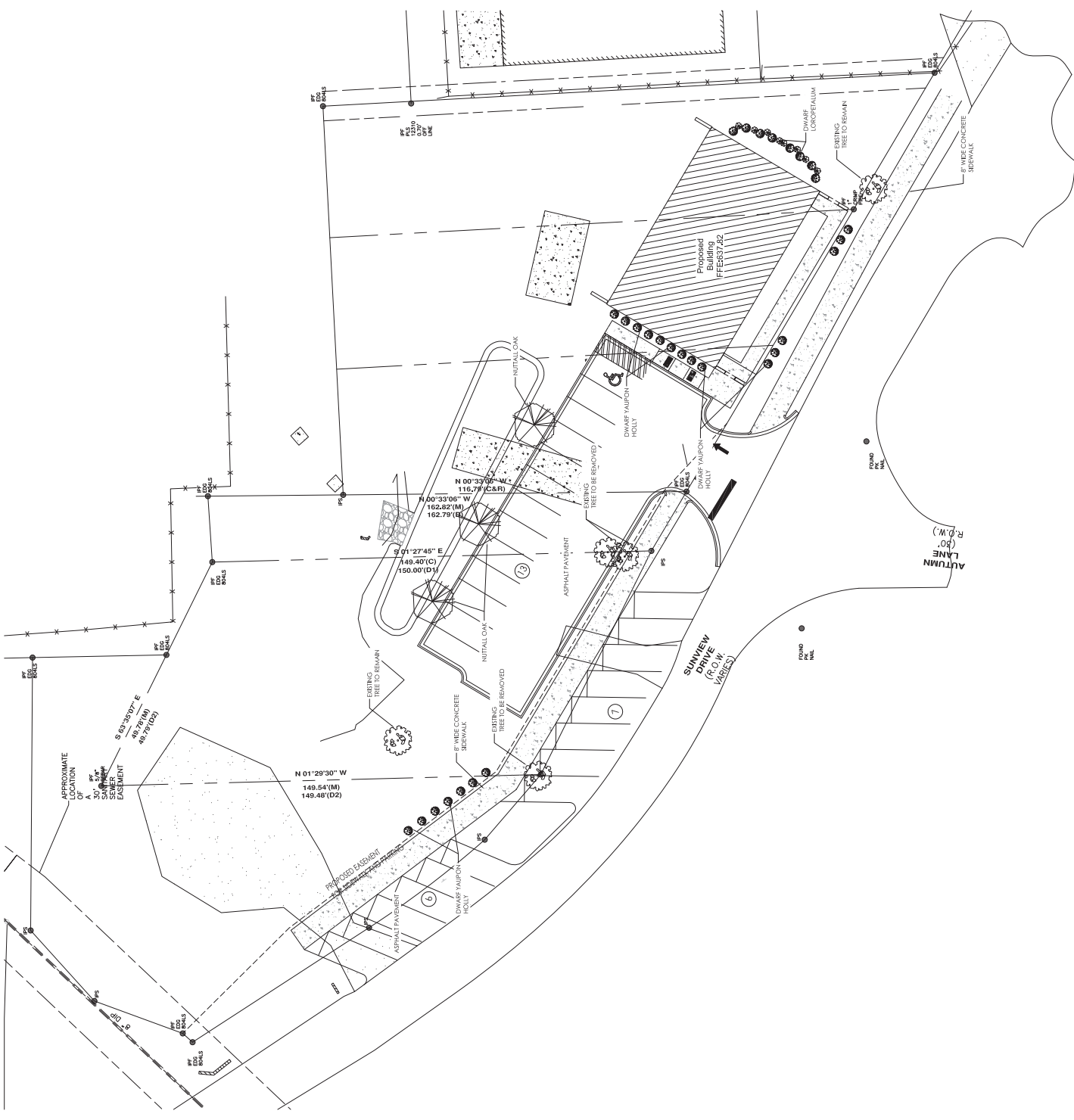


henderson
huckestein
architects, pc

architecture • planning • interior design

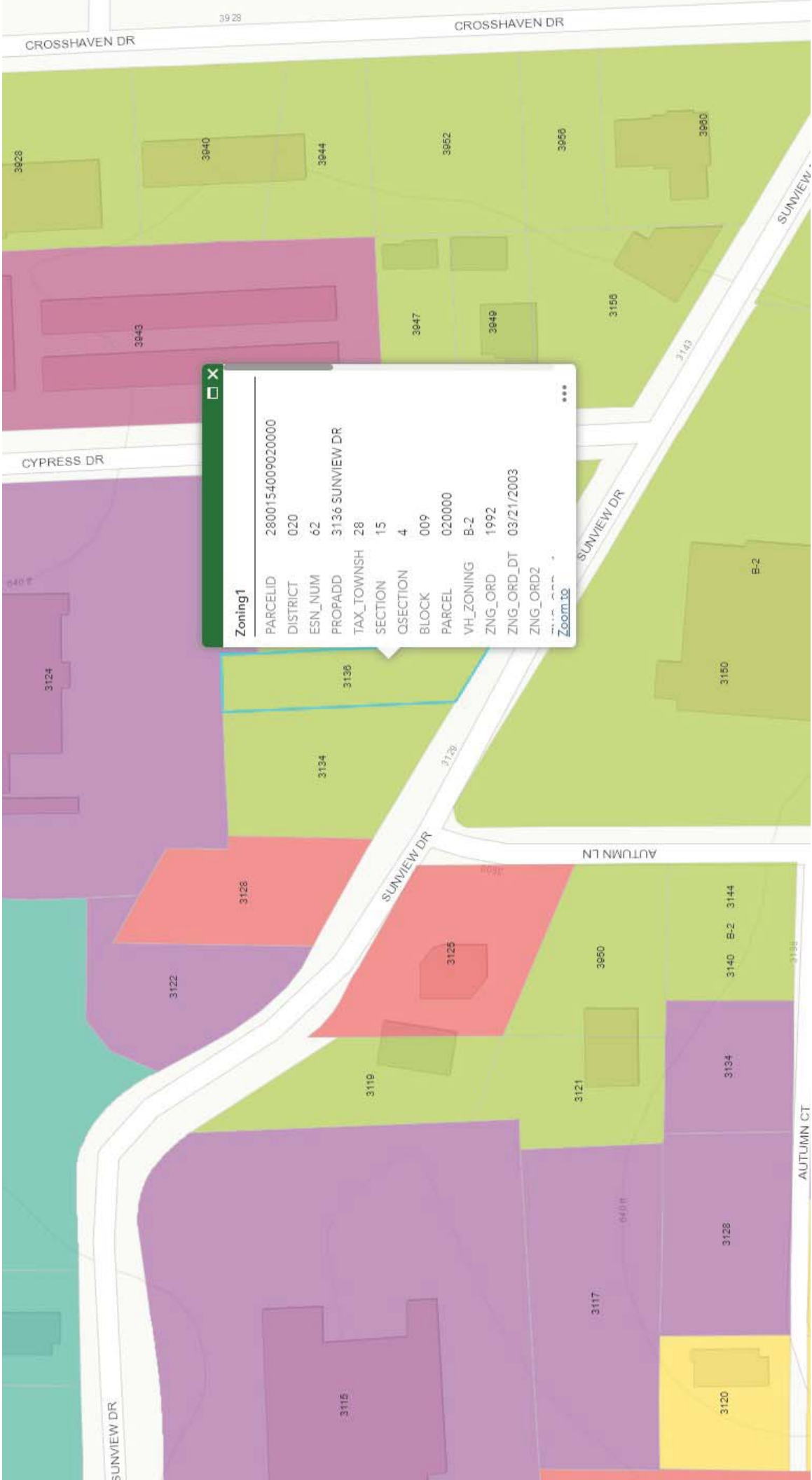
FLOOR PLAN
December 2, 2019

VESTAVIA, AL
Scale: 1/8" = 1'-0"



CAHABA HEIGHT SALON -
LANDSCAPING
BIRMINGHAM, AL
 12.06.19





Zoning1

PARCELID	2800154009020000
DISTRICT	020
ESN_NUM	62
PROPADD	3136 SUNVIEW DR
TAX_TOWNSH	28
SECTION	15
OSECTION	4
BLOCK	009
PARCEL	020000
VH_ZONING	B-2
ZNG_ORD	1992
ZNG_ORD_DT	03/21/2003
ZNG_ORD2	

Zoom to

CROSSHAVEN DR

CROSSHAVEN DR

3928

3940

3944

3952

3956

3960

3943

3947

3949

3156

3103

SUNVIEW

CYPRESS DR

3124

3122

3124

3136

3134

3126

SUNVIEW DR

B-2

3150

3128

SUNVIEW DR

3126

AUTUMN LN

3125

3950

3140

B-2

3144

3138

3119

3121

3134

AUTUMN CT

SUNVIEW DR

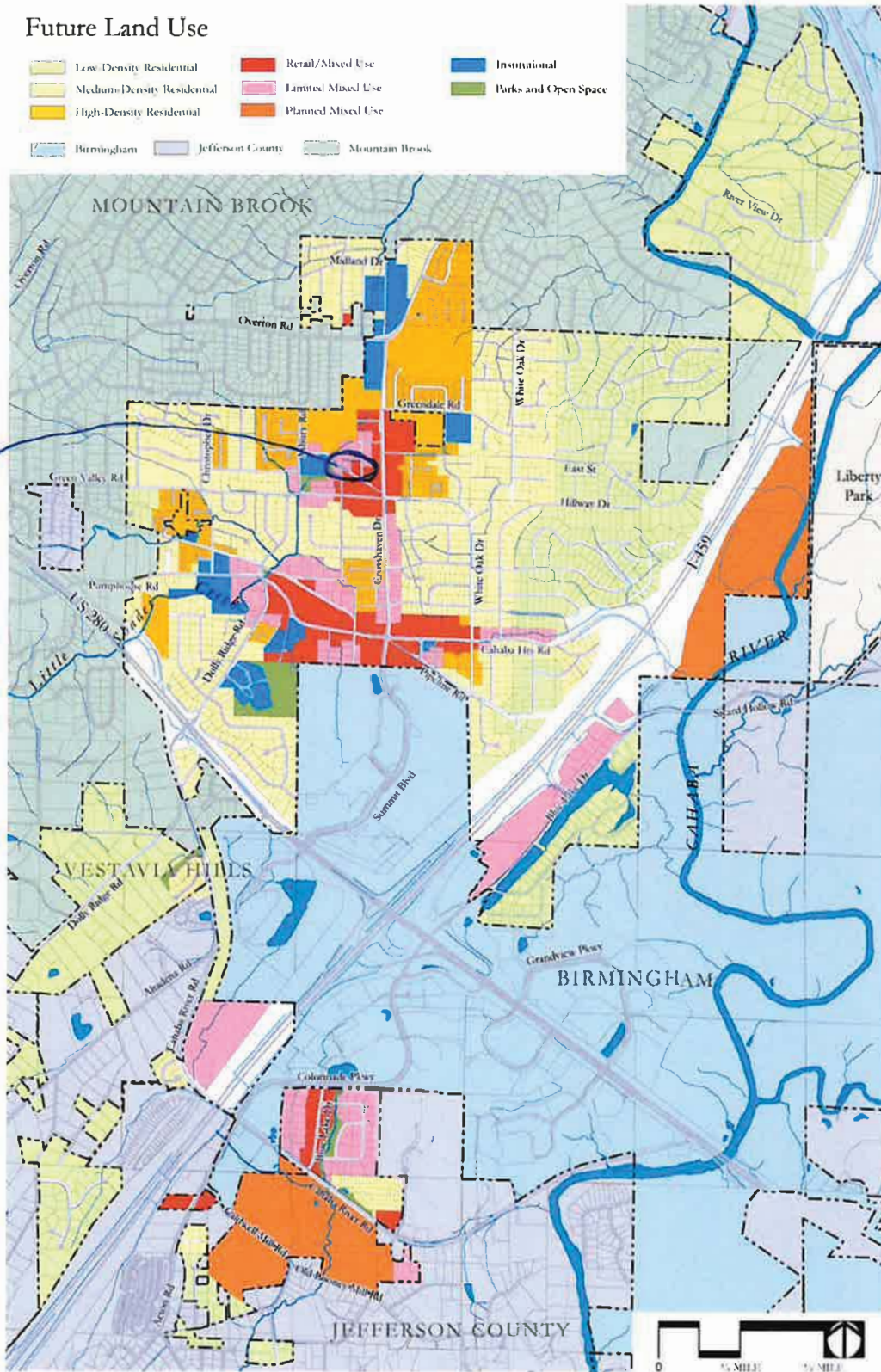
3115

3117

3128

3120

Future Land Use



Subject Parcel

Figure 4: Future Land Use Map

ORDINANCE NUMBER 2908

AN ORDINANCE ADOPTING AND ENACTING PROCEDURES AND REQUIREMENTS FOR UNCLAIMED PROPERTY FOR THE CITY OF VESTAVIA HILLS POLICE DEPARTMENT AND MUNICIPAL COURT

WHEREAS, in 2013, the Code entitled "The Code of Ordinances of the City of Vestavia Hills, Alabama," ("the Code") was re-published by Municipal Code Corporation, consisting of chapters 1 through 17, each inclusive, was adopted; and

WHEREAS, Municipalities in Alabama are exempt from the Uniform Disposition of Unclaimed Property Act of 2004 by virtue of Title 35-12-73(a)(2) and Title 11-40-15, Code of Alabama, 1975; and

WHEREAS, additions or amendment so the code are needed to address unclaimed property within the Vestavia Hills Police Department and the Vestavia Hills Municipal Court and procedures for handling same; and

WHEREAS, the Mayor and City Council find it in the best public interest to make the necessary additions or amendments a part of the Code in order to establish procedures for handling of unclaimed properties in the Vestavia Hills Police Department and Vestavia Hills Municipal Court.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, that the City's code be amended as follows:

SECTION 1. ABANDONED AND STOLEN PROPERTY.

- A. For the purpose of this Ordinance Number 2908, the term "Property" shall mean any cash property, including, but not limited to any amounts forfeited, abandoned or stolen which is received and is held and stored for a requisite period of time as established by state, county, local laws and departmental rules and procedures.
- B. Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:
 - 1. Property held by a court, government, governmental subdivision, agency, or instrumentality becomes distributable in accordance with State, county, local, and departmental rules and procedures.

2. Police forfeitures as applicable laws.
- C. Property is unclaimed if, for the applicable period set forth in subsection (a), the apparent owner has not communicated in writing, or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

SECTION 2. PROCEDURE FOR REDEMPTION OF ABANDONED PROPERTY.

- A. An indication of an owner's or apparent owner's interest in property includes any of the following:
1. The presentment of a check or other instrument of payment.
 2. The making of a deposit to or withdrawal from a bank account. Any correspondence in writing from the holder to the apparent owner, such as the mailing of a statement, report of interest paid or credited, renewal of a deposit or other written information relating to the deposit shall be construed to mean that the apparent owner has indicated an interest in the deposit if the correspondence in writing is not returned to the holder for non-delivery thereof. Any activity or indication of interest by an apparent owner in the deposit or in any other deposits in a holder shall be construed to be activity and indication of interest in all other deposits of the apparent owner in the holder.
- D. Property is payable or distributable for purposes of this article notwithstanding the failure of the owner or apparent owner to make demand or present an instrument or document otherwise required to obtain payment.
- E. Upon declaring property unclaimed under section (a) and (b) the City of Vestavia Hills shall promptly deposit the unclaimed property in the departmental designated accounts.
- F. The City of Vestavia Hills shall retain 10% of all unclaimed property in the Unclaimed Property Reserve Fund.

G. A holder of property presumed abandoned shall make a proof of claim to the City of Vestavia Hills Finance Department concerning the property. The report shall be filed in person. The City of Vestavia Hills Finance Department may grant an exception upon written request as established by rule.

1. The proof of claim must be verified, balanced, and shall contain, but not limited to:
 - a) A description of the property;
 - b) copy of the owners driver's license or any official form used for identification;
 - c) The owners current address and list of all addresses used that may be associated with the property being claimed;
 - d) The owners Social Security number;
 - e) A daytime phone number(s).
2. The City of Vestavia Hills shall review the request of claim and take one (1) of the following steps:
 - a) Contact the claimant for additional information;
 - b) Deny the claim by written notification; or
 - c) Accept the claim for ownership and submit payment within thirty (30) days of the date of the claim submission.

SECTION 3. REPEALER.

In the event that any Ordinance or part thereof is in conflict with this Ordinance, then said Ordinance or part is hereby deemed repealed

SECTION 4. SEVERABILITY.

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

SECTION 5. EFFECTIVE DATE.

This Ordinance Number 2908 shall become effective immediately following adoption and publishing/posting pursuant to Alabama law.

DONE, ORDERED, ADOPTED and APPROVED this the 27th day of January, 2020.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 2908 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 27th day of January, 2020, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, and Vestavia Hills Recreational Center this the _____ day of _____, 2020.

Rebecca Leavings
City Clerk

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

September 3, 2019

By Electronic Mail

Honorable Umang G. Patel
Court Director Vestavia Hills Municipal Court
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Proposed Ordinance for Unclaimed Property

Dear Mr. Patel:

On August 29, 2019, you sent to me draft of proposed language to be incorporated into an Unclaimed Property Ordinance with a request that I review the same and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

Municipalities in Alabama are exempt from the Uniform Disposition of Unclaimed Property Act of 2004 by virtue of Title 35-12-73(a)(2) and Title 11-40-15, *Code of Alabama, 1975*. It is my legal opinion that the proposed language meets the requirements of Alabama. I congratulate you on a job well done.

My only recommendation is that you forward the language to City Clerk Rebecca Leavings with a request that she prepare an ordinance to be presented to the City Council for a first reading. Please call me if you have any questions regarding any of the matters set forth in this legal opinion.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeffrey D. Downes (by e-mail)
City Clerk Rebecca Leavings (by e-mail)

RESOLUTION NUMBER 5218

**A RESOLUTION APPROVING ALCOHOL LICENSE
FOR PUBLIX ALABAMA LLC D/B/A PUBLIX
ALABAMA 1692; JOSEPH DIBENEDETTO JR.,
JEFFREY GERARD CHAMBERLAIN, MERRIANN
MAY METZ, EXECUTIVES**

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for Publix Alabama LLC d/b/a Publix Alabama 1692, located at 3201 Endeavor Lane, Vestavia Hills, Alabama, for the sale of 050 - Retail Beer (off-premises) and 070 - Retail Table Wine (off-premises); Joseph DiBenedetto Jr., Jeffrey Gerard Chamberlain, Merriann May Metz, executives.

APPROVED and ADOPTED this the 27th day of January, 2020.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

INTEROFFICE MEMORANDUM

DATE: January 22, 2020
TO: Dan Rary, Police Chief
FROM: Rebecca Leavings, City Clerk
RE: Alcohol License Request – 050 - Retail Beer (off-premises) and 070 - Retail Table Wine (off-premises)

Please find attached information submitted by Joseph DiBenedetto Jr., Jeffrey Gerard Chamberlain, Merriann May Metz who request an alcohol license to sell 050 - Retail Beer (off-premises) and 070 - Retail Table Wine (off-premises) at the Publix Alabama LLC d/b/a Publix Alabama 1692, 3201 Endeavor Lane, Vestavia Hills, Alabama.


I am scheduling this case to be heard by the City Council on 27th day of January, 2020 at 6:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

J 17	<i>Application cleared by P.D. This indicates that there are NO convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>
	<i>Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
	<i>Does not recommend. This indicates that the Police Chief has found records of convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>

Reviewed: _____





STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20191127093734928

Type License: 050 - RETAIL BEER (OFF PREMISES ONLY) **State:** \$150.00 **County:** \$75.00

Type License: 070 - RETAIL TABLE WINE (OFF PREMISES ONLY) **State:** \$150.00 **County:** \$75.00

Trade Name: PUBLIX ALABAMA 1692

Filing Fee: \$100.00

Applicant: PUBLIX ALABAMA LLC

Transfer Fee:

Location Address: 3201 ENDEAVOR LANE VESTAVIA HILLS, AL 35242

Mailing Address: PO BOX 32027 LAKELAND, FL 33802

County: JEFFERSON **Tobacco sales:** YES

Tobacco Vending Machines: 0

Type Ownership: LLC

Book, Page, or Document info: 200013 5582

Date Incorporated: 11/27/2000 **State incorporated:** AL **County Incorporated:**

Date of Authority: 11/27/2000

Alabama State Sales Tax ID: R680016486

Federal Tax ID: 59-3682312

Name:	Title:	Date and Place of Birth:	Residence Address:
JOSEPH DIBENEDETTO JR 57290867 - GA	VICE PRESIDENT	03/12/1959 ASTORIA NY	716 FIRST COTTON DRIVE POWDER SPRINGS, GA 30127
JEFFREY GERARD CHAMBERLAIN C516427561230 - FL	PRESIDENT	04/03/1956 BOURNE MA	833 ASHTON OAKS CIRCLE LAKELAND, FL 33813
MERRIANN MAY METZ M320553756240 - FL	SECRETARY	04/04/1975 CLEARWATER FL	829 S NEWPORT AVENUE TAMPA, FL 33606

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES

Does ABC have any actions pending against the current licensee? NO

Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO

Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO

Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES

Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of a corporation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO

Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO

Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

Contact Person: MICHELLE MERCER

Home Phone: 863-688-1188

Business Phone: 863-688-1188

Cell Phone: 863-688-1188

Fax:

E-mail: MICHELLE.MERCER@PUBLIX.COM

PREVIOUS LICENSE INFORMATION:

Previous License Number(s)

Trade Name:

License 1:

Applicant:

License 2:



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20191127093734928

If applicant is leasing the property, is a copy of the lease agreement attached? YES
 Name of Property owner/lessor and phone number: LP DEVELOPMENT, LLC 999-999-9999
 What is lessors primary business? REAL ESTATE DEVELOPMENT
 Is lessor involved in any way with the alcoholic beverage business? NO
 Is there any further interest, or connection with, the licensee's business by the lessor? NO

Does the premise have a fully equipped kitchen? NO
 Is the business used to habitually and principally provide food to the public? NO
 Does the establishment have restroom facilities? YES
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? NO

Will the business be operated primarily as a package store? NO
 Building Dimensions Square Footage: 48387 Display Square Footage:
 Building seating capacity: 0 Does Licensed premises include a patio area? NO
 License Structure: SINGLE STRUCTURE License covers: ENTIRE STRUCTURE
 Location is within: CITY LIMITS Police protection: CITY

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:



STATE OF ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD ALCOHOL LICENSE APPLICATION



Confirmation Number: 20191127093734928

ImTaIeach

Signature page

Inreference to law violations, I attest to the truthfulness of the responses given within the application.

In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within application.

In reference to ACT No. 80-529, I understand that if my application is denied or discontinued, I will not be refunded the filing fee required by this application.

In reference to Special Retail or Special Events retail license, I agree to comply with all applicable laws and regulations concerning this class of license, and to observe the special terms and conditions as indicated within the application.

In reference to the Club Application information, I attest to the truthfulness of the responses given within the application.

In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.

In accordance with Alabama Rules & Regulations 20-X-5-.01(4), any social security number disclosed under this regulation shall be used for the purpose of investigation or verification by the ABC Board and shall not be a matter of public record.

The undersigned agree, if a license is issued as herein applied for, to comply at all times with and to fully observe all the provisions of the Alabama Alcoholic Beverage Control Act, as appears in Code of Alabama, Title 28, and all laws of the State of Alabama relative to the handling of alcoholic beverages.

The undersigned, if issued a license as herein requested, further agrees to obey all rules and regulations promulgated by the board relative to all alcoholic beverages received in this State. The undersigned, if issued a license as herein requested, also agrees to allow and hereby invites duly authorized agents of the Alabama Alcoholic Beverage Control Board and any duly commissioned law enforcement officer of the State, County or Municipality in which the license premises are located to enter and search without a warrant the licensed premises or any building owned or occupied by him or her in connection with said licensed premises. The undersigned hereby understands that he or she violate any provisions of the aforementioned laws his or her license shall be subject to revocation and no license can be again issued to said licensee for a period of one year. The undersigned further understands and agrees that no changes in the manner of operation and no deletion or discontinuance of any services or facilities as described in this application will be allowed without written approval of the proper governing body and the Alabama Alcoholic Beverage Control Board.

I hereby swear and affirm that I have read the application and all statements therein and facts set forth are true and correct, and that the applicant is the only person interested in the business for which the license is required.

Applicant Name (print): \0-Mteb . }J:hil

Signature of Applicant:

Notary Name (print):

Notary Signature:

ommission expires

1 d lJJ

Application Taken:

App. Inv. Completed:

Forwarded to District Office:

Submitted to Local Government:

Received from Local Government:

Received in District Office:

Reviewed by Supervisor:

Forwarded to Central Office:

RESOLUTION NUMBER 5219

**A RESOLUTION APPROVING ALCOHOL LICENSE
FOR RAJAJIT HOTEL LLC D/B/A HILTON
GARDEN INN BIRMINGHAM LIBERTY PARK;
KISHOR DESAI, MITESH PATEL AND RINKESH
PATEL, EXECUTIVES**

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for Rajajit Hotel LLC d/b/a Hilton Garden Inn Birmingham Liberty Park, located at 2090 Urban Center Parkway, Vestavia Hills, Alabama, for the on-premise sale of 020 - Restaurant Retail Liquor; Kishor Desai, Mitesh Patel and Rinkesh Patel, executives.

APPROVED and ADOPTED this the 27th day of January, 2020.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

INTEROFFICE MEMORANDUM

DATE: January 22, 2020

TO: Dan Rary, Police Chief

FROM: Rebecca Leavings, City Clerk

RE: Alcohol License Request – 020 - Restaurant Retail Liquor

Please find attached information submitted by Kishor Desai, Mitesh Patel and Rinkesh Patel who request an alcohol license to sell 020 - Restaurant Retail Liquor at the Rajajit Hotel LLC d/b/a Hilton Garden Inn Birmingham Liberty Park, 2090 Urban Center Parkway, Vestavia Hills, Alabama.

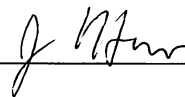
I am scheduling this case to be heard by the City Council on 27th day of January, 2020 at 6:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

SL	<i>Application cleared by P.D. This indicates that there are NO convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>
	<i>Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
	<i>Does not recommend. This indicates that the Police Chief has found records of convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>

Reviewed: _____





STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20200116100908468

Type License: 020 - RESTAURANT RETAIL LIQUOR **State:** **County:**
Type License: **State:** **County:**
Trade Name: HILTON GARDEN INN BIRMINGHAM LIBERTY PARK **Filing Fee:**
Applicant: RAJAJIT HOTEL LLC **Transfer Fee:** \$50.00
Location Address: 2090 URBAN CENTER PKWY VESTAVIA HILLS, AL 35242
Mailing Address: 233 12TH ST; SUITE 301 COLUMBUS, GA 31901
County: JEFFERSON **Tobacco sales:** NO **Tobacco Vending Machines:**
Type Ownership: LLC

Book, Page, or Document info: 00065 0312-0314

Date Incorporated: 09/09/2019 **State incorporated:** AL **County Incorporated:** RUSSELL

Date of Authority: 09/09/2019 **Alabama State Sales Tax ID:** R010596035

Federal Tax ID: 84-3197326

Name:	Title:	Date and Place of Birth:	Residence Address:
KISHOR DESAI 032368404 - AL	MEMBER	10/21/1951 TANZANIA	7470 ROLLING BEND RD COLUMBUS , GA 31904
MITESH PATEL 7439043 - AL	EXECUTIVE VP	04/02/1985 INDIA	620 MARTIN LUTHER KING JR. PKWY PHENIX CITY , AL 36869
RINKESH PATEL 7234229-AL	PRESIDENT	06/04/1982 INDIA	620 MARTIN LUTHER KING JR. PKWY PHENIX CITY , AL 36869

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? **YES**

Does ABC have any actions pending against the current licensee? **NO**

Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? **NO**

Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? **NO**

Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? **YES**

Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of a corporation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? **NO**

Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? **NO**

Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? **NO**

Contact Person: ANSUR AHMED

Business Phone: 205-503-5220

Fax:

Home Phone: 706-987-3181

Cell Phone: 706-987-3181

E-mail: ANSUR.AHMED@OUTLOOK.COM

PREVIOUS LICENSE INFORMATION:

Trade Name: HILTON GARDEN INN LIBERTY PARK

Applicant: SUMMITT HOTEL TRS 087 LLC

Previous license Number(s)

License 1: 010088537

License 2:



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
 ALCOHOL LICENSE APPLICATION
Confirmation Number: 20200116100908468



If applicant is leasing the property, is a copy of the lease agreement attached?

Name of Property owner/lessor and phone number: **RAJAJIT HOTEL, LLC** 706-660-5616

What is lessors primary business? **HOTEL**

Is lessor involved in any way with the alcoholic beverage business? **NO**

Is there any further interest, or connection with, the licensee's business by the lessor? **NO**

Does the premise have a fully equipped kitchen? **YES**

Is the business used to habitually and principally provide food to the public? **YES**

Does the establishment have restroom facilities? **YES**

Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? **YES**

Will the business be operated primarily as a package store? **NO**

Building Dimensions Square Footage: **13808** Display Square Footage:

Building seating capacity: 43 Does Licensed premises include a patio area? **YES**

License Structure: **MOTEUHOTEL** License covers: **ENTIRE STRUCTURE**

Location is within: **CITY LIMITS** Police protection: **CITY**

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name: **Violation & Date:** **Arresting Agency:** **Disposition:**

Name:	Violation & Date:	Arresting Agency:	Disposition:

RESOLUTION NUMBER 5220

A RESOLUTION ACCEPTING A BID FOR A USED HEAVY RESCUE TRUCK FOR THE CITY OF VESTAVIA HILLS FIRE DEPARTMENT

WHEREAS, on January 22, 2020 the City of Vestavia Hills publicly read aloud bids submitted for a used heavy rescue truck for the Vestavia Hills Fire Department with one bid received; and

WHEREAS, the Fire Chief has reviewed the bid and detailed it in an Interoffice Memorandum to the City Manager dated January 22, 2020 and recommended acceptance of the bid submitted by Brindlee Mountain Fire Apparatus LLC at a cost of \$110,000. A copy of said Interoffice Memorandum is marked as Exhibit A attached to and incorporated into this Resolution Number 5220 as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the recommendation of the Fire Chief and accept said bid as detailed in Exhibit A.

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

1. The bid submitted by Brindlee Mountain Fire Apparatus LLC as detailed in attached Exhibit A and recommended by the Fire Chief, is hereby accepted; and
2. This Resolution Number 5220 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 27th day of January, 2020.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



VESTAVIA HILLS FIRE DEPARTMENT

MEMORANDUM

TO: Jeff Downes, City Manager
FROM: Marvin Green, Fire Chief
DATE: January 22, 2020
RE: Heavy Rescue Bid Recommendation

We received one bid on the specifications for used heavy rescue to be purchased in the FY 2020 budget. Brindlee Mountain Fire Apparatus, LLC was the only bidder and did not take an exception or instance of deviation from the specifications.

Based upon thorough review of the specifications and inspection of the apparatus. I recommend that the bid by Brindlee Mountain Fire Apparatus for \$110,000.00 be accepted.

ORDINANCE NUMBER 2914

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A JOINT PURCHASING AGREEMENT WITH THE VESTAVIA HILLS BOARD OF EDUCATION FOR THE PURCHASE OF PAVING SERVICES

WHEREAS, on September 12, 2019, the City of Vestavia Hills (“City”) after inviting competitive bids for public street resurfacing, received a bid from Dunn Construction, Inc., for a period of three years; and

WHEREAS, the Vestavia Hills Board of Education (“Board”) is desirous to enter into a joint purchasing agreement pursuant to Alabama law for paving services pursuant to the City’s bid; and

WHEREAS, a copy of said joint purchasing agreement is marked as Exhibit A, attached to and incorporated into this Ordinance Number 2914 is if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to execute and deliver a joint purchasing agreement with the Board for needed paving services.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver the joint purchasing agreement marked as Exhibit A; and
2. Said agreement shall become effective immediately upon execution by the Board and by Dunn Construction Company, Inc.; and
3. A copy of said executed agreement shall be submitted to the Office of the City Clerk following full execution by all parties.

ADOPTED and APPROVED this the 27th day of January, 2020.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

JOINT PURCHASING AGREEMENT FOR PAVING SERVICES

TIDS JOINT PURCHASING AGREEMENT FOR PAVING SERVICES, is made and entered into on this the __ day of January, 2020, by and among the City of Vestavia Hills, Alabama, a municipal corporation ("City"), the Board of Education of the City of Vestavia Hills, Alabama ("Board") and Dunn Construction Company, Inc., an Alabama corporation ("General Contractor").

WITNESSETH THESE RECITALS:

WHEREAS, the Alabama Competitive Bid Law at Title 41-16-S0(b), *Code of Alabama, 1975*, authorizes municipalities in Alabama to enter into Joint Purchasing Agreements with other enumerated governmental bodies, including a city school board; and

WHEREAS, the Alabama Competitive Bid Law at Title 16-13B-1(c), *Code of Alabama, 1975*, authorizes city school boards in Alabama to enter into Joint Purchasing Agreements with other enumerated governmental bodies, including a municipality; and

WHEREAS, the City of Vestavia Hills, Alabama, a municipal corporation ("City"), and the Board of Education of the City of Vestavia Hills, Alabama ("Board") wish to enter into a Joint Purchasing Agreement pursuant to the two statutes cited above;

WHEREAS, on August 16, 2019, the City invited competitive bids for public street resurfacing for a period of three (3) years; and

WHEREAS, on September 12, 2019, the City received a bid from Dunn Construction Company, Inc. in the amount of \$3,743,375.00; and

WHEREAS, the scope of the work constituted a "public works" project within the meaning of Act No. 97-225 enacted by the Legislature of the State of Alabama effective April 22, 1997 and now codified as Title 39, Chapters 1 through 5, et seq., *Code of Alabama, 1975*, hereinafter referred to as the "Public Works Law of Alabama"; and

WHEREAS, on October 28, 2019, the City Council of the City of Vestavia Hills, Alabama determined that the General Contractor submitted the lowest responsible and responsive bid; and

WHEREAS, on October 28, 2019, the City approved and adopted Resolution Number 5199 accepting the bid and awarded the Construction Contract to Dunn Construction Company, Inc. ("General Contractor"); and

Joint Purchasing Agreement for Paving Services
page2

WHEREAS, the City and General Contractor entered into a Construction Contract on November 25, 2019; and

WHEREAS, a copy of the Construction Contract ("Contract") is attached hereto, marked as Exhibit 1 and is incorporated into this Joint Purchasing Agreement for Paving Services by reference as though set out fully herein; and

WHEREAS, the Contract provides, among other things:

1. Bid Documents: The Contract provides in Sections II and III that the Invitation to Bid and the bid itself are incorporated into the Contract.
2. Extra Work: Section 109.04(a) provides that the General Contractor will perform extra work at the unit prices or lump sum stipulated in the supplemental agreement.
3. Amendment: Section XXV-B of the Contract provides that the Contract may be amended at any time by written agreement of the parties signatory hereto; and

WHEREAS, the Vestavia Hills Board of Education ("Board") needs paving work for the construction project on, at and near the former Berry School campus purchased by the Board on October 5, 2016. The Board would like to have Dunn Construction Company, Inc. perform paving work pursuant to the legal authority of Title 41-16-S0(b), *Code of Alabama, 1975*; and

WHEREAS, the statute set forth in Title 41-16-S0(b), *Code of Alabama, 1975*, authorizing the City to enter into Joint Purchasing Agreements provides in pertinent part as follows:

"Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency."; and

WHEREAS, the statute set forth in Title 16-13B-1(c), *Code of Alabama, 1975*, authorizing the Board to enter into Joint Purchasing Agreements provides that:

"Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency."; and

WHEREAS, the General Contractor is willing to perform additional paving services for the Board; and

Joint Purchasing Agreement for Paving Services
page3

WHEREAS, the General Contractor has submitted a description of work and prices wherein it agreed to perform the work for an approximate total of \$245,447.50 with the understanding that unless the above is a lump sum price, that quantities are estimated only and that payment shall be made at the unit price on the actual field measured quantities of performed work; and

WHEREAS, a copy of the Standard Proposal and Contract prepared by the General Contractor is attached hereto, marked as Exhibit 2 and incorporated into this Joint Purchasing Agreement for Paving Services as though set out fully herein; and

WHEREAS, the City, Board and General Contractor are willing to enter into this Joint Purchasing Agreement for Paving Services.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the City, Board and General Contractor, hereby mutually and expressly amend the Contract as set forth below:

Notwithstanding anything contained in the Contract to the contrary, the City, Board and General Contractor agree to modify the Contract by adding the following terms, provisions, limitations and conditions to said Contract:

XXVI. RECITALS

The recitals set forth above are incorporated into this Joint Purchasing Agreement for Paving Services by reference as though set out fully herein.

XXVII. BOARD ADDED AS PARTY TO THE CONTRACT

The Board of Education of the City of Vestavia Hills, Alabama ("Board") is added as a party to the Contract dated November 25, 2019 (Exhibit 1 is attached).

XXVIII. SCOPE OF WORK FOR THE BOARD

The scope of the work to be performed by the General Contractor for the Board is set forth and described in Exhibit 2, attached hereto and is incorporated into this Joint Purchasing Agreement for Paving Services by reference as though set out fully herein. The work performed by the General Contractor for the Board shall be pursuant to the terms, provisions and conditions set forth in the Contract as amended by this Joint Purchasing Agreement for Paving Services.

XXIX. CONTRACT PRICE FOR BOARD

The Board shall pay to the General Contractor for the work described above, the approximate sum of Two Hundred Forty-five Thousand Four Hundred Forty-seven and 50/100 Dollars (\$245,447.50). It is understood, unless the above is a lump sum price, that quantities are

Joint Purchasing Agreement for Paving Services
page4

estimated only and that payment shall be made at the unit price on the actual field measured quantities of work performed.

XXX. LIABILITY OF CITY

The City shall not be liable to the General Contractor for any amount for work performed by the General Contractor for the Board.

XXXI. LIABILITY OF BOARD

The Board shall not be liable to the General Contractor for any amount for work performed by the General Contractor for the City.

XXXII. AFFIRMATION

The City, Board and General Contractor further agree to all other aspects, terms, provisions and conditions of the original Contract and they are hereby ratified, approved and confirmed by the parties so that the same shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama, a municipal corporation, the Board of Education of the City of Vestavia Hills, Alabama and Dunn Construction Company, Inc., an Alabama corporation, have hereunto caused this Joint Purchasing Agreement for Paving Services to be executed by their duly authorized officers and their respective seals to be affixed hereto on this the ___ day of January, 2020.

CITY:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

Joint Purchasing Agreement for Paving Services
page 5

BOARD:

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

By

Dr. Todd Freeman
Its Superintendent

ATTESTED:

By

GENERAL CONTRACTOR:

DUNN CONSTRUCTION COMPANY, INC.
An Alabama Corporation

By

Its -----

ATTESTED

By

Joint Purchasing Agreement for Paving Services
page6

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 Joint Purchasing Agreement for Paving Services, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the ___ day of _____, 2020.

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 Joint Purchasing Agreement for Paving Services, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the ___ day of _____, 2020.

Notary Public

My Commission Expires:

SEAL

Joint Purchasing Agreement for Paving Services
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**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Dr. Todd Freeman, whose name as Superintendent of the Board of Education of the City of Vestavia Hills, Alabama is signed to the foregoing Joint Purchasing Agreement for Paving Services, 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 ___ day of _____, 2020.

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 _____, whose name as _____ of Dunn Construction Company, Inc., an Alabama corporation, is signed to the foregoing Joint Purchasing Agreement for Paving Services, 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 Dunn Construction Company, Inc., an Alabama corporation.

Given under my hand and official seal, this the ___ day of _____, 2020.

Notary Public

My Commission Expires:

SEAL

STATE OF ALABAMA

JEFFERSON COUNTY

CONSTRUCTION CONTRACT

WITNESSETH THIS CONSTRUCTION CONTRACT, made and entered into on this the 25th day of November, 2019, by and between the City of Vestavia Hills, Alabama, a municipal corporation, organized, existing and operating pursuant to the laws of the State of Alabama situated at 1032 Montgomery Highway, Vestavia Hills, Alabama 35216, hereinafter referred to as the "City", and Dunn Construction, hereinafter referred to as the "General Contractor," whose principal place of business is situated at 3905 Messer Airport Highway, Birmingham, Alabama 35222.

WITNESSETH THESE RECITALS:

WHEREAS, on the 12th day of September, 2019, the City invited competitive bids for public street resurfacing for a period of three (3) years; and

WHEREAS, the scope of the work constitutes a "public works" project within the meaning of Act No. 97-225 enacted by the Legislature of the State of Alabama effective April 22, 1997 and now codified as Title 39, Chapters 1 through 5, et seq., *Code of Alabama, 1975*, hereinafter referred to as the "Public Works" Law of Alabama; and

WHEREAS, on the 28th day of October, 2019, the City Council of the City of Vestavia Hills, Alabama determined that the General Contractor submitted the lowest responsible and responsive bid and awarded the contract for the public works project to the General Contractor; and

WHEREAS, the City and the General Contractor have agreed to the terms, provisions and conditions of this Construction Contract and have further agreed that it is in the best interest of the parties that this contract be reduced to writing.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That in consideration of the mutual covenants, premises and promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by each of the parties hereto, the City and General Contractor mutually agree as follows:

I. PUBLIC WORKS LAW

Notwithstanding any other laws to the contrary, Act No. 97-225, which is set forth in Title 39, Chapters 1 through 5, of the *Code of Alabama, 1975*, ("Public Works Law") shall control the interpretation, construction, administration and enforcement of this Construction Contract. Both the City and the General Contractor agree that any and all terms, provisions, conditions and limitations of the said Public Works Law shall be and are hereby incorporated into this Construction Contract by reference as though set out fully herein.

II. INVITATION TO BID

The Invitation to Bid prepared by the City and submitted to the Contractor is attached hereto, marked as Exhibit I and is incorporated into this Construction Contract by reference as though set out fully herein.

III. BID BY GENERAL CONTRACTOR

The bid by General Contractor submitted to the City is attached hereto, marked as Exhibit 1 and is incorporated into this Construction Contract by reference as though set out fully herein.

IV. GENERAL CONTRACTOR

General Contractor represents, covenants and warrants that it is a licensed general contractor within the meaning of Title 34-8-1, *Code of Alabama, 1975*. Said General Contractor further represents that it is duly licensed and qualified to furnish the materials and supplies and perform the work of the public works project.

V. SCOPE OF THE WORK

The General Contractor shall furnish all labor, materials, taxes, insurance (worker's compensation and general liability) as follows:

Street repair and resurfacing

VI. CONTRACT PRICE

The City shall pay to the General Contractor for the faithful performance of this contract and the completion of the work described in paragraph II above in an amount calculated in accordance with the bid marked as Exhibit 1.

VII. PAYMENT OF CONTRACT PRICE

The City shall pay to the General Contractor the contract price in full upon completion of the work described in paragraph II hereof.

VIII. CONTRACT TIME

For this three-year contract, the General Contractor agrees to have all work completed within 90 days of submission of paving needs and agrees to commence work with an adequate force and sufficient equipment to complete the work within the allotted time.

IX. QUALITY OF WORK

All labor, construction and installation of materials installed by the General Contractor in the performance of this agreement shall be done in a workmanlike manner.

X. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE

Worker's Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers' compensation claims.

Employer's Liability Insurance limits shall be at least:

- Bodily Injury by Accident--\$1,000,000 each accident
- Bodily Injury by Disease--\$1,000,000 each employee

XI. COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance ("COL"), written on an ISO Occurrence Form (current edition of ISO CG 00 01 as of the date of Advertisement of Bids) or equivalent, shall include but need not be limited to coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$2,000,000 per Project
Products, Completed Operations Aggregate	\$2,000,000 per Project
Personal and Advertising Injury Each Occurrence	\$1,000,000 per Occurrence \$1,000,000

The policy shall name the City of Vestavia Hills, Alabama, as Owner, and its public officials and employees, and its agents, consultants and employees as additional insureds (the "Indemnitees"), and state that this coverage shall be primary insurance for the additional insureds. Evidence that Contractor's insurance is primary with respect to any coverages available to the Indemnitees shall be provided in the form of an endorsement to the Contractor's COL policy. Evidence that the Indemnitees have been named as additional insureds shall be provided by endorsements equivalent to ISO CG 2010 or CG 2033 and CG 2037.

The policy must include separate per project aggregate limits.

XII. COMMERCIAL BUSINESS AUTOMOBILE LIABILITY INSURANCE

Commercial Business Automobile Liability Insurance shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each occurrence.

The policy shall name the Owner, City of Vestavia Hills, Alabama, its public officials and employees, and its agents, consultants and employees as additional insureds.

XIII. COMMERCIAL UMBRELLA LIABILITY INSURANCE

Umbrella Liability Insurance shall provide coverage limits excess of the Commercial General Liability, Commercial Business Automobile Liability and the Employers' Liability coverage limits, on a follow-form basis, to satisfy the minimum limits set forth herein.

Minimum and Commercial/Excess	Combined Umbrella	Primary Limits of:	Commercial	General	Liability

\$5,000,000 per Occurrence
\$5,000,000 Aggregate.

XIV. INDEMNITY

The General Contractor shall indemnify and save harmless the City of Vestavia Hills, Alabama, its Mayor, individual members of the City Council, servants, agents, employees or representatives from any and all claims, demands, controversies, actions, causes of action, liabilities of action, lawsuits, liabilities and damages arising out of or resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result for work performed under this contract.

XV. INDEPENDENT GENERAL CONTRACTOR

The General Contractor is an independent contractor for purposes of this agreement. Nothing contained herein shall be construed to mean that said General Contractor is the servant, agent or employee of the City.

XVI. ASSIGNMENT

This contract shall not be assignable by the General Contractor in any respect without having first obtained the written consent of the City evidenced by a properly enacted resolution of the City Council of the City of Vestavia Hills, Alabama.

XVII. PERMITS, LAWS, CODES AND ORDINANCES

The General Contractor shall give all notices required by and comply with all applicable laws, ordinances and codes of the local, state and federal governments.

XVIII. BONDS

In accordance with Title 39-1-1, **Code of Alabama, 1975**, the General Contractor agrees to execute a performance bond with penalty equal to one hundred (100%) percent of the amount of the Contract price, and in addition thereto, another bond with good and sufficient surety payable to the City in an amount not less than fifty percent (50%) of the contract price with the obligation that such General Contractor shall promptly make payments to all persons supplying it

with the labor, materials, equipment or supplies for and in the prosecution of the work provided for in this Contract and for the payment of reasonable attorney's fees incurred by successful claimants or plaintiffs in civil actions on said bond.

A copy of the said performance bond shall be marked as Exhibit "2", attached hereto and incorporated and made a part of the contract as though set out fully herein. A copy of the labor and material bond shall be designated as Exhibit "3" attached hereto and incorporated and made a part of this contract as though set out fully herein.

XIX. ACCIDENT PREVENTION

The General Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to person or property, either on or off the site, which occur as a result of its prosecution of the work. The safety provisions of applicable laws and building and construction codes shall be observed. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the *Manual of Accident Prevention in Construction* published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable local, state or federal laws.

XX. SUBCONTRACTORS

No proposed subcontractor shall be disapproved by the City, except for cause.

The General Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by said subcontractors, as it is for the acts and omissions of persons directly employed by it.

The General Contractor shall cause appropriate provision to be inserted in all subcontracts relative to the work to require compliance by each subcontractor with the applicable provisions of the Contract for the improvements embraced in the project.

Nothing contained in the Contract shall create any contractual relation between any subcontractor and the City.

The General Contractor shall pay all subcontractors for materials and supplies installed in this project by said subcontractors and all work and labor performed by said subcontractors on said project.

XXI. INSPECTION

All materials and workmanship shall be subject to inspection, examination or test by the City at any and all times during installation or construction and at any and all places where such manufacture or construction is carried on. The City shall have the right to reject defective materials and workmanlike and/or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the project area and be replaced with material of specified quality without charge therefor. If the General Contractor fails to proceed at once with the correction of rejected workmanship or

defective material, the City may contract for or otherwise have the defects remedied or rejected materials removed from the project area and charge the cost of the same against any moneys which may be due the Contractor, without prejudice to any other rights or remedies of the City.

XXII. TERMINATION

The Contract, of which scope of work described in paragraph II hereof form a part, may be annulled by the City for any one of the following reasons:

A. Substantial evidence that the progress made by the General Contractor is insufficient to complete the work within the specified time.

B. Deliberate failure on the part of the General Contractor to observe the requirements of this Contract.

C. Failure on the part of the General Contractor to promptly make good any defects in materials or workmanship that may be indicated to it by the City.

D. Any other breach of contract by the General Contractor.

XXIII. GENERAL GUARANTY BY GENERAL CONTRACTOR

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements embraced in this Contract by the City or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the General Contractor of liability in respect to any express warranties of responsibility for faulty materials or workmanship. The General Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of twelve (12) months from the date of final acceptance of the work. The City will give notice of defective material and work with reasonable promptness.

XXIV. REMOVAL OF DEBRIS AND CLEANING

The General Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus material and debris, and keep the Project Area and public rights of way reasonable clear. Upon completion of the work, it shall remove all temporary construction facilities, debris and unused materials provided for the work, and put the whole site of the work and public rights of way in a neat and clean condition.

XXV. MISCELLANEOUS

A. Non Waiver: The failure of the City to insist, in any one or more instances, upon a strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect.

B. Waiver of Modification: Any waiver, alteration or modification of any of the provisions of this agreement or cancellation or replacement of this agreement shall not be valid

unless in writing and signed by the parties hereto. This agreement may be amended at any time by written agreement of the parties signatory hereto.

C. Notices: Any and all notices required or permitted to be given under this agreement will be sufficient if furnished in writing and sent by Registered Mail to the parties' last known address.

D. Governing Law: This agreement shall be interpreted, construed and governed to the laws of the State of Alabama.

E. Article and Section Headings: The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

F. Execution in Counterparts: The contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

G. Binding Effect: The contract shall inure to the benefit of, and shall be binding upon City and General Contractor and their heirs, successors and assigns.

H. Severability: In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

I. Entire Agreement: This written contract contains the entire agreement between the City and the General Contractor.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama and [Signature] have caused this agreement to be executed by their duly authorized officers and their respective seals to be affixed hereto on this the 3 day of December, 2019.

CITY OF VESTAVIA HILLS, ALABAMA

By [Signature] C. G. Wyatt
Its Mayor / ---Zt

ATTESTED

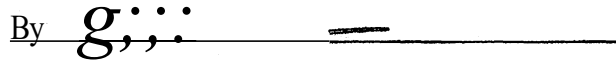
By [Signature]

By [Signature]
Its City Manager

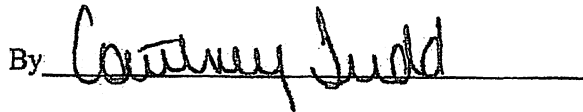
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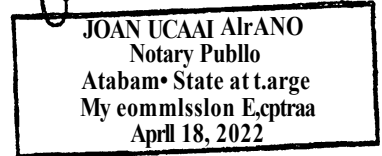
STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract, 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 3 day of U, 2019.

Joan Ucaai AlrANO
Notary Public



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 VESTAVIA HILLS, ALABAMA is signed to the foregoing contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract, (s)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 3 day of U, 2019.

Joan Ucaai AlrANO
Notary Public

INVITATION TO BID

**CITY OF VESTAVIA HILLS
1032 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216**

BIDS FOR STREET RESURFACING FOR A
PERIOD OF 3 YEARS TO BE OPENED
ON SEPTEMBER 12, 2019, AT 10:00 AM.
BIDS TO BE TURNED IN NO
LATER THAN 10:00 AM ON THIS DATE.

DATE OF INVITATION TO BID:
AUGUST 16, 2019

BID: STREET RESURFACING
FOR A PERIOD OF 3 YEARS

Ladies and Gentlemen:

Sealed bids will be received by the City of Vestavia Hills, Alabama, in the Office of the City Clerk at the Vestavia Hills City Hall until the above time and date, and opened at 10:00 a.m. on September 12, 2019, in the Executive Conference Room in the Vestavia Hills City Hall situated at 1032 Montgomery Highway, Vestavia Hills, Alabama 35216. Please return in a sealed envelope marked with the bid name as listed above. Bids must be returned by 10:00 AM by the date listed above. Bids received in the Office of the City Clerk either by hand delivery or mail after the specified date and hour will not be considered. A non-mandatory pre-bid meeting will be held in the Executive Conference Room in the Vestavia Hills City Hall at 10:00 AM on September 4, 2019. Determination of the lowest responsible and responsive bidder and consideration of acceptance of the bid will be considered by the City Council of the City of Vestavia Hills, Alabama at a public hearing to be conducted at its next regularly scheduled or special meeting.

NAME OF COMPANY: Dunn Construction Company, Inc.

PRICE*: SEE ATTACHED BIDS WARRANTY: 1 Year

I hereby affirm that I have not been in any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid at a fixed price or to refrain from bidding or otherwise.

This form must be notarized. FIRM Dunn Construction Company, Inc.

Sworn and Subscribed 1
this the 11 day of Aug,
2019.
BY Evans J. Dunn *CL* *[Signature]*
ADDRESS 3905 Airport Highway, Birmingham, AL 35222

d
Nora, y\pi.ibjt
PHONE 205-592-3866

My Commission Expires _____ DATE September 12, 2019

ALL BIDDERS MUST USE BID FORMS PROVIDED IN THIS PACKAGE. COMPLETE TYPED OR IN INK. THE CITY RESERVES THE RIGHT TO REJECT OR WAIVE ANY AND ALL BIDS OR PORTIONS THEREOF. QUESTIONS SHOULD BE ADDRESSED TO THE OFFICE OF THE CITY CLERK, PHONE (205) 978-0131.

Type text here

Rebecca Leavings, Purchasing Agent
Submitted _____, 2019

CITY OF VESTAVIA HILLS

The undersigned, as Bidder, hereby declares that the only person or persons interested in the bid as principal or principals is/or named herein and that no other person that herein mentioned has any interest in this bid or in the contract to be entered into; that this bid is made without connection with any person, company or parties making a bid and that it is in all respects fair and in good faith, without collusion or fraud.

The bidder further declares that bidder has examined the site of the work and informed bidder fully in regard to all conditions pertaining to the place where the work is to be done; that bidder has examined the contract documents for the work and has read all special conditions furnished prior to the opening of bids; that bidder has satisfied bidder relative to the work to be performed. The bidder further declares that bidder fully understands that the City of Vestavia Hills has put forth a good-faith effort of estimating the approximate amount of quantities for the seal, binder, Tack Coat, Milling, Striping, Temporary Striping, Permanent Markings (Stop Bars and Crosswalks), Traffic Loops, Raise Manholes, Valve Resets, etc. The bidder acknowledges and agrees that the final quantities may vary.

The bidder proposes and agrees, if this bid is accepted, to contract with the City of Vestavia Hills, Alabama, in the form of contracts attached hereto, to furnish all necessary materials, equipment, tools, machinery apparatus, means of transportation, and labor necessary to complete the construction of Street Repair and Resurfacing in full; and complete in accordance with shown, noted, described and reasonable intended requirements of the contract documents, to the full and entire satisfaction of the City of Vestavia Hills, Alabama.

The successful bidder will be awarded a 3-year contract; agrees to have all work completed within 90 days of submission of paving needs, and agrees to commence work with an adequate force and sufficient equipment to complete the work within the allotted time, at the unit prices hereinafter named (with said pricing adjustments pursuant to Page 5-6 of this bid).

The bidder to whom the award is made shall enter into a written contract on the form included in the proposal, plans and specifications, furnish a performance bond and payment bond executed by a surety company duly authorized and qualified to make such bonds in the State of Alabama in the amount required by subsection (a) of Section 39-1-1, *Code of Alabama, 1975*, and provide evidence of insurance as required by the bid documents within the period specified or, if no period is specified, within 15 days after the prescribed forms have been presented to bidder for signature. If extenuating circumstances prevail, the awarding authority may grant an extension in time not exceeding five days for the return of the contract, required bonds and required evidence of insurance.

The City shall approve the contractor's bonds meeting the requirements as set forth above and the contractor's evidence of insurance meeting the requirements of the bid documents, as well as complete the execution of the contract, within 20 days after their presentation by the contractor unless the successful contractor agrees in writing to a longer period.

A proceed order shall be issued by the City within 15 days after final execution of the contract by the City, unless both parties agree in writing to a stipulated extension of time for the issuance of a proceed order.

Should the successful bidder or bidders to whom a contract is awarded fail to execute a contract and furnish acceptable contract securities and evidence of insurance as required by law within the period as set forth above, the City shall retain from the proposal guaranty, if it is a cashier's check, or recover from the principal or the sureties, if the guaranty is a bid bond, the difference between the amount of the contract as awarded and the amount of the proposal of the next lowest bidder. If no other bids are received, the full amount of the proposal

guaranty shall be so retained or recovered as-liquidated damages for such default. Any sums so retained or recovered shall be the property of the City.

ALABAMA PUBLIC WORKS LAW

Alabama law regarding the letting, execution and administration of public improvements contracts ("public works") by municipalities is set forth in Title 39, Chapters 1 through 5, of the *Code of Alabama, 1975*. The Alabama Public Works Law regarding public works construction projects provides, among other things, as follows:

A. PUBLIC WORKS LAW: A public works project is the expenditure of public funds on real estate owned by the City or on a structure attached to that real estate. Section 39-2-1, *Code of Alabama, 1975*, defines "public works" as:

"The construction, repair, renovation or maintenance of public buildings, structures, sewers, water works, roads, bridges, docks, underpasses and viaducts, as well as any other improvement to be constructed, repaired, renovated or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise."

B. BIDDING ON PUBLIC WORKS PROJECTS: Alabama now provides that all public works projects shall be governed by Title 39-2-1, et seq., *Code of Alabama, 1975*. Simply stated, those laws provide as follows:

1. Public works projects involving expenditures of \$50,000 or less do not have to be bid; and

2. Public works projects involving more than \$50,000.00 must be bid; and

3. For public works contracts between \$50,000.00 and \$500,000.00, a City must publish notice of the request for bids at least once in a newspaper of general circulation published in the city; and

4. For contracts involving expenditures of more than \$500,000.00 for public works, a City must also advertise for sealed bids at least once in three newspapers of general circulation throughout the State of Alabama."

C. BID BOND: All contractors that submit a bid on a public works construction project must file a bid bond with the bid.

1. Requirement: Alabama law at Title 39-2-4, *Code of Alabama, 1975*.

2. Amount: Not less than five percent (5%) of the estimated cost or more than Ten Thousand Dollars (\$10,000.00).

3. Purpose: A guarantee by the contractor that it will perform the work for the amount of the bid.

D. PERFORMANCE BOND: Any contractor entering into a contract with the City for a public works project shall, before commencing work, execute a performance bond.

1. Requirement: Alabama law at Title 39-1-1(a), *Code of Alabama, 1975*.
2. Amount: One hundred percent (100%) of the amount of the contract price.
3. Purpose: To guarantee completion of the work.

E. PAYMENT BOND: All contractors entering into a contract with the City for any public works project shall, before commencing the work, execute a payment bond.

1. Requirement: Alabama law at Title 39-1-1(a) and (b), *Code of Alabama, 1975*.
2. Amount: Not less than fifty percent (50%) of the contract price.
3. Purpose: If the general contractor does not pay its subcontractors, then in such event the subcontractors or other people who have furnished labor, materials or supplies for the prosecution of the work can file a claim for payment under the payment bond.

F. BIDS AND BIDDING; AWARD: The contract shall be awarded to the lowest responsible and responsive bidder, unless the awarding authority finds that all the bids are unreasonable or that it is not to the interest of the awarding authority to accept any of the bids. A responsible bidder is one who, among other qualities determined necessary for performance, is competent, experienced, and financially able to perform the contract. A responsible bidder is one who submits a bid that complies with the terms and conditions of the invitation for bids. Minor irregularities in the bid shall not defeat responsiveness. The bidder to whom the award is made shall be notified by e-mail or letter at the earliest possible date. If the successful bidder fails or refuses to sign the contract, to make bond as provided in this chapter or to provide evidence of insurance as required by the bid documents, the awarding authority may award the contract to the second lowest responsible and responsive bidder. If the second lowest bidder fails or refuses to sign the contract, make bond as provided in this chapter or to provide evidence of insurance as required by the bid documents, the awarding authority may award the contract to the third lowest responsible and responsive bidder. Title 39-2-6(a), *Code of Alabama, 1975*.

G. CONTRACT, BONDS, AND INSURANCE; REQUIRED: The bidder to whom the award is made shall enter into a written contract on the form included in the proposal, plans, and specifications, furnish a performance bond and payment bond executed by a surety company duly authorized and qualified to make such bonds in the State of Alabama in the amount required by subsection (a) of Section 39-1-1 and provide evidence of insurance as required by the bid documents within the period specified or, if no period is specified, within 15 days after the prescribed forms have been presented to him or her for signature. If extenuating circumstances prevail, the awarding authority may grant an extension in time not exceeding five days for the return of the contract, required bonds and required evidence of insurance. Title 39-2-8, *Code of Alabama, 1975*.

H. APPLICABILITY: Notwithstanding any other laws to the contrary (Act 97-225, which is set forth in Title 39, Chapters 1 through 5, of the *Code of Alabama, 1975*, "Public Works" law) shall control all public works contracts on the state, county and municipal levels of government in the State of Alabama. Title 39-1-5, *Code of Alabama, 1975*.

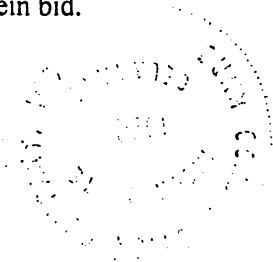
The bidder, by submission of this bid, hereby agrees that the contract executed and delivered by and between the City of Vestavia Hills, Alabama and bidder shall be interpreted, construed, administered and enforced all in accordance with the "Public Works" law of Alabama. The bidder further agrees that should

there by a conflict between the Invitation to Bid and/or the contract with the "Public Works" law of Alabama, then in such event the "Public Works" law shall govern the agreement.

CONSTRUCTION CONTRACT

The City shall award the Construction Contract to the lowest responsible and responsive bidder unless the City finds that all the bids are unreasonable or that it is not in the interest of the City to accept any of the bids. If the City awards the Construction Contract to this bidder, then in such event the bidder, by submission of this bid to the City, agrees to execute and deliver a Construction Contract, a copy of which is attached to this Invitation to Bid. The terms, provisions, limitations and conditions set forth in the contract are incorporated into this Invitation to Bid by reference as though set out fully herein.

The Bidder hereby certifies that no other person, firm or corporation, is either directly or indirectly interested in the bid herewith submitted or will share in any profits which may be derived from same; and that no other person, firm or corporation has any knowledge, either directly or indirectly or implied, as to the prices herein bid.



Signed: *Evans J. Dunn*
 By: Evans J. Dunn
 Address: 3905 Airport Highway
Birmingham, AL 35222
 Our Contractor's State License Number Is: 8
 Name of Partners (if bid on a Partnership): _____

Attached hereto is a certified check or a bidder's bond in the amount of \$10,000 made payable to the City of Vestavia Hills, Alabama.

The bidder proposes and agrees to perform the following items of work at the unit prices shown.

SEE ATTACHED

Price should include cleaning and preparing existing surface. All striping work after resurfacing efforts to be in accordance with existing conditions. The quantities listed below are a good faith effort estimate by the City of Vestavia Hills; the actual quantities might vary. All traffic control is the responsibility of the Contractor.

Item	Unit	Approximated Quantity	Unit Cost	Per	Total
<i>Seal**</i>	ton	25,000 tons	\$98.75	ton	\$ 2,468,750.00
<i>Binder**</i>	ton	250 tons	\$ 95.50	ton	\$ 23,875.00
<i>Tack Coat</i>	gallon	23,000 gallons	\$ 3.55	gallons	\$ 81,650.00
<i>Milling</i>	ton	33,000 tons	\$ 32.50	tons	\$ 1,072,500.00
<i>Striping</i>	mile	7 miles	\$ 3,400.00	miles	\$ 23,800.00
<i>Temp. Striping</i>	mile	7 miles	\$ 1,000.00	miles	\$ 7,000.00

Permanent Markings (Stop Bars & Crosswalks)	square foot	6,000 sf	\$ 5.90	square foot	\$ 35,400.00
Traffic Loops	linear foot	5,000 feet	\$ 5.30	linear foot	\$26,500.00
Raise Manholes	each	200 manholes	\$ 12.00	each	\$ 2,400.00
Valve Box Resets	each	50 valve box resets	\$30.00	each	\$ 1,500.00

TOTALS: \$ 3,743,375.00

**Bid amounts for bituminous materials (designated by **), shall be adjusted per the Asphalt Index published monthly by ALDOT (Alabama Department of Transportation). The procedure outlined in ALDOT Specifications Section 109.03 shall be used to determine the adjustment (see Exhibit "A" enclosed).*

Contractor guarantees that maximum cost to apply minimum thickness of slag aggregate seal will not exceed bid price as adjusted by the Asphalt Index.

The Bidder hereby agrees to the following:

The Contractor will be required to comply with the Minimum Wage and Hour Law.

It is assumed that the Contractor can secure sufficient labor at the minimum rate, although the Owner does not guarantee same.

It shall be the Contractor's responsibility to pay such rates of pay necessary to secure sufficient labor for the construction of this job, but no increase in contract price will be allowed for any increase in rates that the Contractor may be required to pay to secure sufficient labor for the construction of the project.

That the Owner shall have the right to reject any and all bids submitted on the proposed work, to waive technicalities and informalities, and to increase or decrease quantities.

*****A PRELIMINARY LISTING OF CURRENT RESURFACING NEEDS IS ATTACHED TO THIS BID. PLEASE CONTACT CHRISTOPHER BRADY, CITY ENGINEER, AT 978-0198, OR LORI BETH KEARLEY, ASSISTANT CITY ENGINEER, AT 978-0236, FOR EXACT LOCATION OF AREAS TO BE RESURFACED AT THIS TIME. *****

REQUIREMENTS
STREETS FOR RESURFACING 2019-2022

Bid Requirements

Bids not conforming to the following requirements may be rejected.

- (a) Bids must be made on the blank bid forms provided.
- (b) Bids must be complete and specific.
- (c) Bids will be free of alterations and erasures.
- (d) Bids will be properly signed by the bidder or by a legally authorized officer or agent of the bidder and notarized.
- (e) Bid bond to be included with bid complete with all information concerning State Contractor's License.
- (f) The bid will be enclosed in a sealed envelope marked **"SEALED BID – STREET RESURFACING."**
- (f) The sealed envelope must be addressed to:

City of Vestavia Hills
Office of the City Clerk
1032 Montgomery Highway
Vestavia Hills AL 35216
- (h) **All name brands listed in the bid specifications can be changed to an approved equivalent. The approved equivalent must be listed on the bid returned to the City of Vestavia Hills by September 12, 2019, at 10:00 AM in a sealed envelope as required in Section (f) above.**
- (i) A non-mandatory pre-bid meeting will be held in the Executive Conference Room in the Vestavia Hills City Hall at 10:00 AM on September 4, 2019.
- (j) If you have any questions regarding the bid specifications or to get an equivalent approved, please contact Christopher Brady, City Engineer, at 978-0198 or Lori Beth Kearley, Assistant City Engineer, at 978-0236.

2019-2022 PAVING LIST

	Linear Footage	Miles	Est SY	Est TN @ 165 m/SY
CAHABA HEIGHTS				
Beardon Court	970	0.18	2333	192
Bearden Drive	1580	0.10	3872	319
Fairhaven Drive	708	0.13	1337	110
Firewood Drive	870	0.16	2065	170
Greendale Road	2150	0.41	5773	476
Oakview Lane	800	0.15	1584	131
Old Overton Road (Overton Road to Vestavia Hills municipal limits)	3300	0.63	8870	732
Old Wood Lane	1130	0.22	2839	234
Pump House Road (City of Mt. Brook to Dolly Ridge)	1900	0.40	5632	465
Pue Drive	1032	0.20	2064	170
Portion of Ridgely Drive (Crosshaven Drive to White Oak Drive)	1320	0.25	3227	266
Ridgely Court	870	0.16	2065	170

TOTAL MILES 3.11

COLUMBIANA ROAD/TYLER ROAD				
Chatwood Road	970	0.18	2534	209
Edinburgh Lane	660	0.12	1690	139
Fleetway Drive	1550	0.29	4083	337
Frontier Drive	580	0.11	1549	128
Kingswood Road	600	0.12	1690	139
Vestavia Villas Lane	490	0.09	1089	90
Willow Brook Lane	890	0.17	2394	197

TOTAL MILES 1.08

HIGHWAY 31 - EAST SIDE				
Cloud Craft Circle	670	0.13	1787	147
Comer Circle	1550	0.29	4083	337
Comer Drive	1290	0.24	3379	279
Comer Place	1210	0.23	3238	267
Forestview Lane	1120	0.21	2957	244
Green Glen Road	1070	0.19	2675	221
Panama Trail	2650	0.50	7040	581
Shades Crest Circle	350	0.07	903	75
Vesthaven Circle	200	0.04	563	46
Vesthaven Way	1700	0.32	4506	372
Vesthaven Way I	7090	0.40	5632	465
Vista Circle	300	0.06	845	70
Vista Lane	1400	0.27	3802	314
Wickford Road	3060	0.60	8148	697
Willoughby Road	2610	0.50	7040	581
Woodhue Circle	1080	0.20	2816	232

TOTAL MILES 4.25

HIGHWAY 31 - WEST SIDE				
Beverly Hills Drive	2000	0.38	5350	441
Brookdale Lane	1900	0.36	5069	418
Canton Road	1150	0.22	3098	256
Catala	2130	0.40	5632	465
Cedarbark Lane	1460	0.27	3802	314
Cedarwood Road	2530	0.48	6758	558
Creek Lane	360	0.07	986	81
Forest Haven Ln	1070	0.19	2675	221
Mission Road	2180	0.41	5773	476
Old Creek Road	4270	0.81	11405	941
Old Orchard Road	2900	0.55	7741	639
Pinecrest Lane	540	0.10	1408	116
Shades View Lane	1740	0.33	4646	383
Southridge Drive	1230	0.23	3238	267
Southview Terrace	1170	0.21	2957	244
Southwood Road (West of Highway 31)	3370	0.64	9011	743
Vestavia Forest Drive	2340	0.44	6195	511
Waldrige Road	2760	0.52	7322	601

TOTAL MILES 6.61

ROCKY RIDGE/DOLLY RIDGE				
Ashley Wood Circle	460	0.09	1267	105
Ashley Wood Drive	1320	0.26	3661	302
Ashley Wood Place	370	0.07	986	81
Ashley Wood Way	390	0.07	986	81
Birchwood Circle	300	0.04	563	46
Birchwood Way	150	0.03	422	35
Buckhead Circle	1180	0.22	2839	234
Buckhead Drive	1450	0.27	3485	287
Buckhead Lane	400	0.07	903	75
Buckhead Road	830	0.16	2065	170
Buckhead Trail	190	0.04	516	43
Buckhead Way	270	0.04	516	43
Cedarhill Lane	1200	0.23	3238	267
Cherry Tree Lane	1140	0.23	3573	295
Cheval Circle	320	0.06	815	70
Cheval Lane	2170	0.41	4530	357
Country Ridge Lane	520	0.10	1408	116
Hunters Cove	2190	0.41	5773	476
Leslie Ann Road	960	0.18	2534	209
Morningstar Drive	1490	0.28	3942	325
Old Oak Circle	250	0.05	704	58
Old Oak Lane	1510	0.29	4083	337
Ridge Dell Circle	670	0.13	1678	138
Skyland Drive	1880	0.36	3379	279
Summer Lane	510	0.10	1408	116
Valley Circle	2400	0.45	4274	348
Wisteria Drive (Wagon Gap Trail to Rocky Ridge Road)	1350	0.25	3520	290
			TOTAL MILES	4.91

PATCHWORK FARMS AREA/ALTADENA				
Acton Drive	520	0.10	1278	105
Acton Place	750	0.14	1800	149
Old Looney Mill	1370	0.26	3051	252
Alta Vista Drive	760	0.14	1643	136
Alta Vista Circle	1670	0.32	3755	310
Allacrest Drive	1190	0.22	3098	256

TOTAL MILES 1.06

TOTAL ROAD PAVING MILES = 21

"Exhibit A"

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MEASUREMENT AND PAYMENT**

this method cannot be used other means of accurately measuring the material may be substituted with permission of the Engineer.

(b) GALLONAGE {LITERS}.

When specified on the plans or in the proposal, bituminous material will be measured by the gallon {liter} in the railroad car, tank truck, distributor tank, or drums. Each railroad tank, tank truck, drum or distributor tank of bituminous material delivered for the project will be measured. The measurement shall be taken when the bituminous material is of a uniform temperature and free from air bubbles.

(c) TEMPERATURE CORRECTION.

The volumetric measurement of the bituminous material will be based upon a temperature of 60 °F {16 °C}, using the following correction factors:

0.00035 per degree F {0.00063 per degree C} for petroleum oils having a specific gravity above 0.966 at 60 °F/60 °F {16 °C/16 °C};

0.00040 per degree F {0.00072 per degree C} for petroleum oils having a specific gravity between 0.850 and 0.966 at 60 °F/60 °F {16 °C/16 °C};

0.00025 per degree F {0.00045 per degree C} for emulsified asphalts.

109.03 Scope of Payment.

(a) QUANTITIES.

The quantities listed in the bid schedule do not govern final payment. Payments to the Contractor for contract items will be made for the actual quantities of these items performed in accordance with the plans and specifications. If upon completion of the construction these actual quantities show an increase or decrease from those in the proposal, the contract unit prices will still govern except where modified by supplemental agreement or allowance made as provided in Articles 104.02 and 104.03. Quantities included in supplemental agreements will be paid for as stipulated therein. Force account work will be paid for as provided in Article 109.04.

(b) BASIS OF PAYMENT.

The Contractor shall accept the compensation as herein provided, in full payment for furnishing all materials, labor, tools, equipment and incidentals necessary to the completed work and for performing all work contemplated and embraced under the contract; also for all loss or damage arising from the nature of the work, or from the action of the elements except as noted in Article 107.17, or from any unforeseen difficulties which may be encountered during the prosecution of the work and until its final acceptance; also for all risks of every description connected with the prosecution of the work.

(c) UNIT PRICE COVERAGE.

In cases where the basis of payment clause in the specifications relating to any unit price in the bid schedule requires that the said unit price cover and be considered compensation for certain work or materials essential to the item, this same work or materials will not be measured or paid for under any other pay item which may appear elsewhere in the specifications. Reference is made to Item 101.01(c)1.

(d) REPAIR OR RENEWAL OF DEFECTIVE WORK.

The payment of any current estimate shall in no way affect the obligation of the Contractor to repair or renew any defective parts of the construction or to be responsible for all damages due to such defects.

(e) BITUMINOUS MATERIAL PRICE ADJUSTMENTS.

1. ASPHALT INDEX.

The contract unit prices for bituminous materials shall be based on the asphalt prices at the time of opening bids. The Department will establish a monthly "Asphalt Index" to address fluctuations in the cost of the bituminous materials during the life of the project.

The index will be composed of the following four entries:

- PG Asphalt (for all grades without polymer);
- PG Asphalt with Polymer (for all grades with polymer);
- Emulsified Asphalt (for all grades without polymer and cutback asphalts);
- Emulsified Asphalt with Polymer (for all grades with polymer).

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2. USAGE AND PAYMENT.

Adjustments in compensation will be computed each month that bituminous materials are used in the work. Bituminous plant mix bases and pavements, surface treatments and tack coat are the only types of bituminous materials for which a price adjustment will be computed. Adjustments in compensation will be based on an index that is a monthly price per gallon for the bituminous material.

Before the expiration of contract time (plus approved time extensions) the dollar amount of adjustment will be determined by multiplying the increase or decrease of the current (current estimate month) index from a "base index" by the number of gallons of bituminous material used in the work during the period covered by the monthly estimate. The base index will be the value of the index for the month in which the project is let.

After the expiration of contract time (plus approved time extensions) two calculations of a potential price adjustment will be made. The first calculation will be made using the current index and the base index. The second calculation will be made using the index during the month that contract time (plus approved time extensions) expired and the base index. The amount of the price adjustment for the current estimate period will be the smallest amount of an increase in compensation if both calculations are an increase in compensation. The amount of the price adjustment will be the largest amount of a decrease in compensation if both calculations are a decrease in compensation. The amount of the price adjustment will be the decrease in compensation if one of the calculations is an increase in compensation and the other calculation is a decrease in compensation.

The amount of asphalt will be calculated as follows:

- Bituminous Plant Mix Bases and Pavements - the number of gallons {liters} of new bituminous material required by the approved job mix formula. A conversion factor of 8.51 pounds per gallon {1.02 kg/L} will be used for figuring quantities. No measurement for adjustment will be made for the amount of asphalt rejuvenator used or for the amount of bituminous material recovered and used in surface recycling operations.

- Surface Treatments - actual gallons {liters} of asphalt used within specification requirements with volumetric correction to 60 °F {16 °C} as per Subarticle 109.02(c).

- Tack Coat - actual gallons {liters} of asphalt used within specification requirements with volumetric correction to 60 °F {16 °C} as per Subarticle 109.02(c).

(f) ADJUSTMENTS DUE TO COST OF CONSTRUCTION FUEL FOR HMA PRODUCTION.

Changes in the compensation due the Contractor will be made by the Engineer to address changes in the cost of fuel required for the production of Hot Mix Asphalt (HMA) in a plant. The changes in compensation will be made based on a monthly index of the cost of fuel determined by the Department.

A monthly HMA production fuel index will be established based on the average area terminal price reports for No. 2 fuel and No. 6 (3.0 % S) fuel of the "Platts Oilgram Price Report" published during the week in which the first day of the month occurs.

Before the expiration of contract time (plus approved time extensions) the dollar amount of adjustment will be determined by multiplying the increase or decrease of the current (current estimate month) index from the base index by the number of gallons of fuel that are used in the production of the HMA during the period covered by the monthly estimate. The number of gallons of fuel required for the production of the HMA shall be 2.0 gallons per ton {7.6 L per metric ton} of HMA produced during the estimate period. The base index will be the value of the index for the month in which the project is let.

After the expiration of contract time (plus approved time extensions) two calculations of a potential price adjustment will be made. The first calculation will be made using the current index and the base index. The second calculation will be made using the index during the month that contract time (plus approved time extensions) expired and the base index. The amount of the price adjustment for the current estimate period will be the smallest amount of an increase in compensation if both calculations are an increase in compensation. The amount of the price adjustment will be the largest amount of a decrease in compensation if both calculations are a decrease in compensation. The amount of the price adjustment will be the decrease in compensation if one of the calculations is an increase in compensation and the other calculation is a decrease in compensation.

Changes in compensation will be made for the number of tons {metric tons} of HMA placed and paid for in accordance with the requirements given in the following Sections:

- Section 327, Plant Mix Bituminous Base;
- Section 404, Paver-Laid Surface Treatment;

**SECTION 109
MEASUREMENT AND PAYMENT**

Section 420, Polymer Modified Open Graded Friction Course;
Section 423, Stone Matrix Asphalt;
Section 424, Superpave Bituminous Concrete Base, Binder, and Wearing Surface Layers;
Section 429, Improved Bituminous Concrete Base, Binder, and Wearing Surfaces.

109.04 Extra and Force Account Work.

(a) GENERAL.

The Contractor will receive and accept payment for work performed under his contract either as contract items of work or as extra work. Contract items of work will be paid for at the unit prices stipulated in the contract. Extra work will be paid for at the unit prices or lump sum stipulated in supplemental agreement, or on a force account basis. Supplemental agreements shall be executed in accordance with Subarticle 104.03(b). When prices are negotiated for payment by supplemental agreement, satisfactory proof of administrative markups for profit, overhead, and other costs may be required by the engineer. Extra work performed on a force account basis will be compensated for in the following manner.

(b) FORCE ACCOUNT BASIS.

1. LABOR.

For all labor and foremen employed on the force account work, the Contractor shall receive the agreed hourly wages or scale for the number of hours the said laborers and foremen were actually engaged in such work. The wages or scale shall be comparable to the wages or scale paid by the Contractor for work of a like nature on his contract pay items and shall be agreed upon in writing by the Contractor and Engineer before the said force account work is begun.

To this sum shall be added an amount equal to 20 percent thereof.

No additional pay beyond the agreed hourly scale will be allowed for "overtime work" unless such overtime work is authorized in writing by the Engineer.

2. BOND, INSURANCE AND TAX.

For public liability and property damage insurance and workmen's compensation insurance premiums, increased bond premiums, unemployment insurance contributions and social security taxes, the Contractor shall receive the actual cost, to which no percent shall be added; in addition on projects which the State Gross Receipt Tax is applicable, may include said tax. The Contractor shall furnish satisfactory evidence of the rates paid for such bond, insurance, and tax.

3. MATERIALS.

For materials accepted by the Engineer and used, the Contractor shall receive the actual cost of such materials delivered on the work (exclusive of machinery rentals as herein set forth) to which cost 15% will be added.

4. EQUIPMENT.

For rental rates of equipment (other than small tools) authorized by the Engineer for use on force account work, the Engineer will use the latest publication of the Rental Rate Blue Book for construction equipment published by PRIMEDIA Information Incorporated to determine payment to the Contractor. Payment will be made for the actual time that the authorized equipment is in operation on the force account work. The hourly rate for each piece of equipment will be the monthly rate shown in the equipment table divided by 176. Weekly and daily rates will not be used. In addition, for equipment solely dedicated to the force account work, consideration will be given to paying standby cost. Operating rates and standby rates for computing the equipment payment will be determined as follows:

Operating rates. The hourly rate will be multiplied by the appropriate rate adjustment factor and regional factor shown in the Rate Adjustment Table and on the Regional Adjustment Map, respectively, to obtain the adjusted hourly rate. The estimated operating cost/hour from the equipment table will be added to the adjusted hourly rate to establish the operating rate.

Standby rates. The use of a standby rate is appropriate when equipment has been ordered to be available for force account work but is idle for reasons which are not the fault of the Contractor. The standby rate will be determined by multiplying the adjusted hourly rate by 0.50.

Operating rates will be used only when the equipment is actually being used. Standby rates will be used under the following conditions:

a. The equipment must be totally dedicated to the force account work and not used intermittently on other work.

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A310 Bid Bond

KNOW ALL MEN BY THESE PRESENTS, THAT WE Dunn Construction Company, Inc.

P.O. Box 11967, Birmingham, AL 35202

as Principal, hereinafter called the Principal, and Federal Insurance Company

15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061- 1615

a corporation duly organized under the laws of the State of _____ IN _____

as Surety, hereinafter called the Surety, are held and firmly bound unto City of Vestavia Hills

1032 Montgomery Highway, Vestavia Hills, AL 35216

as Obligee, hereinafter called the Obligee, in the sum of Five Percent of Amount Bid, Not to Exceed \$10,000.00

Dollars (\$ _____ 5% _____),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Street Resurfacing for a Period of Three Years

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 12th day of September, 2019

Courtney Judd
(Witness)

Dunn Construction Company, Inc.

(Principal)

(Seal)

By: [Signature]

(Title)

[Signature]
(Witness)

Federal Insurance Company

(Surety)

(Seal)

By: [Signature]

Attorney-in-Fact

Billie Jo Sanders

(Title)

CHUBB'

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents. That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint David J. Durden, Renee Ellis, Thomas J. Gentile, Billie Jo Sanders and Paul B. Scott Jr., of Montgomery, Alabama

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 9th day of January, 2019.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

ss.

On this 9th day of January, 2019, before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



ROSE CURTIS
NOTARY PUBLIC OF NEW JERSEY
No. 50072400
Commission Expires November 22, 2022

Rose Curtis
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this

September 12, 2019



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

STATE OF ALABAMA

BID LIMIT: U
AMOUNT: UNLIMITED



LICENSE NO.: 8
TYPE: RENEWAL

State Licensing Board for General Contractors

THIS IS TO CERTIFY THAT

DUNN CONSTRUCTION CO INC

BIRMINGHAM, AL 35202

is hereby licensed a General Contractor in the State of Alabama and is authorized to perform the following type(s) of work:

BC: BUILDING CONSTRUCTION, H/RR: HEAVY AND RAILROAD, HS: HIGHWAYS AND STREETS, MU: MUNICIPAL AND UTILITY

until September 30, 2019 when this Certificate expires.

Witness our hands and seal of the Board, dated Montgomery, Ala.,

146477

Mark N. O'Quinn

1st day September, 2018
SECRETARY-TREASURER

Alex Wilkly

CHAIRMAN



Company ID Number: 245291

**THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION
MEMORANDUM OF UNDERSTANDING**

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Department of Homeland Security (DHS) and Dunn Construction Company Inc. (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). This MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), and the Employer. E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of the Employment Eligibility Verification Form (Form I-9). For covered government contractors, E-Verify is used to verify the employment eligibility of all newly hired employees and all existing employees assigned to Federal contracts.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). Authority for use of the E-Verify program by Federal contractors and subcontractors covered by the terms of Subpart 22.18, "Employment Eligibility Verification", of the Federal Acquisition Regulation (FAR) (hereinafter referred to in this MOU as a "Federal contractor") to verify the employment eligibility of certain employees working on Federal contracts is also found in Subpart 22.18 and in Executive Order 12989, as amended.

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF SSA

1. SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all employees verified under this MOU and the employment authorization of U.S. citizens.
2. SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.
3. SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).



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4. SSA agrees to provide a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility within 3 Federal Government work days of the initial inquiry.

5. SSA agrees to provide a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

B. RESPONSIBILITIES OF DHS

1. After SSA verifies the accuracy of SSA records for aliens through E-Verify, DHS agrees to provide the Employer access to selected data from DHS's database to enable the Employer to conduct, to the extent authorized by this MOU:

- Automated verification checks on alien employees by electronic means, and
- Photo verification checks (when available) on employees.

2. DHS agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to provide to the Employer a manual (the E-Verify User Manual) containing instructions on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify. DHS agrees to provide training materials on E-Verify.

4. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in the E-Verify program. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

5. DHS agrees to issue the Employer a user identification number and password that permits the Employer to verify information provided by alien employees with DHS's database.

6. DHS agrees to safeguard the information provided to DHS by the Employer, and to limit access to such information to individuals responsible for the verification of alien employment eligibility and for evaluation of the E-Verify program, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and Nationality Act (INA) and Federal criminal laws, and to administer Federal contracting requirements.

7. DHS agrees to provide a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative



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nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

8. DHS agrees to provide a means of secondary verification (including updating DHS records as may be necessary) for employees who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.

2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.

3. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.

4. The Employer agrees that any Employer Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.

A. The Employer agrees that all Employer representatives will take the refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify, including any tutorials for Federal contractors if the Employer is a Federal contractor.

B. Failure to complete a refresher tutorial will prevent the Employer from continued use of the program.

5. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:

- If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.
- If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The employer will use the photocopy to verify the photo and to assist DHS with its review of photo non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the photo screening tool.



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6. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a rebuttable presumption is established that the Employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in compliance with the terms and conditions of E-Verify; (3) the Employer must notify DHS if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues to employ an employee after receiving a final nonconfirmation; and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith based on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

7. The Employer agrees to initiate E-Verify verification procedures for new employees within 3 Employer business days after each employee has been hired (but after both sections 1 and 2 of the Form I-9 have been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify User Manual. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability. In all cases, the Employer must use the SSA verification procedures first, and use DHS verification procedures and photo screening tool only after the SSA verification response has been given. Employers may initiate verification by notating the Form I-9 in circumstances where the employee has applied for a Social Security Number (SSN) from the SSA and is waiting to receive the SSN, provided that the Employer performs an E-Verify employment verification query using the employee's SSN as soon as the SSN becomes available.

8. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use not authorized by this MOU. Employers must use E-Verify for all new employees, unless an Employer is a Federal contractor that qualifies for the exceptions described in Article II.D.1.c. Except as provided in Article II.D, the Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. The Employer understands that if the Employer uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its access to SSA and DHS information pursuant to this MOU.

9. The Employer agrees to follow appropriate procedures (see Article III. below) regarding tentative nonconfirmations, including notifying employees of the finding, providing written referral instructions to employees, allowing employees to contest the finding, and not taking



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adverse action against employees if they choose to contest the finding. Further, when employees contest a tentative nonconfirmation based upon a photo non-match, the Employer is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

10. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo non-match, does not establish, and should not be interpreted as evidence, that the employee is not work authorized. In any of the cases listed above, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, refusing to assign the employee to a Federal contract or other assignment, or otherwise subjecting an employee to any assumption that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo non-match or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 or OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

11. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the unfair immigration-related employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

12. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

13. The Employer agrees that it will use the information it receives from SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of employees as

E-Verify



Company ID Number: 245291

authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

14. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

15. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, including by permitting DHS and SSA, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a timely and accurate manner to DHS requests for information relating to their participation in E-Verify.

D. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1. The Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801) in addition to verifying the employment eligibility of all other employees required to be verified under the FAR. Once an employee has been verified through E-Verify by the Employer, the Employer may not reverify the employee through E-Verify.

a. Federal contractors not enrolled at the time of contract award: An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to use E-Verify to initiate verification of employment eligibility of new hires of the Employer who are working in the United States, whether or not assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within 3 business days after the date of hire. Once enrolled in E-Verify as a Federal contractor, the Employer must initiate verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

b. Federal contractors already enrolled at the time of a contract award: Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to initiate verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within 3 business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must initiate verification of each employee assigned to the

E-Verify



Company ID Number: 245291

contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

c. Institutions of higher education, State, local and tribal governments and sureties: Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), State or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. The provisions of Article II.D, paragraphs 1.a and 1.b of this MOU providing timeframes for initiating employment verification of employees assigned to a contract apply to such institutions of higher education, State, local and tribal governments, and sureties.

d. Verification of all employees: Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to do so only in the manner designated by DHS and initiate E-Verify verification of all existing employees within 180 days after the election.

e. Form I-9 procedures for Federal contractors: The Employer may use a previously completed Form I-9 as the basis for initiating E-Verify verification of an employee assigned to a contract as long as that Form I-9 is complete (including the SSN), complies with Article II.C.5, the employee's work authorization has not expired, and the Employer has reviewed the information reflected in the Form I-9 either in person or in communications with the employee to ensure that the employee's stated basis in section 1 of the Form I-9 for work authorization has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen). If the Employer is unable to determine that the Form I-9 complies with Article II.C.5, if the employee's basis for work authorization as attested in section 1 has expired or changed, or if the Form I-9 contains no SSN or is otherwise incomplete, the Employer shall complete a new I-9 consistent with Article II.C.5, or update the previous I-9 to provide the necessary information. If section 1 of the Form I-9 is otherwise valid and up-to-date and the form otherwise complies with Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired subsequent to completion of the Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.C.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual. Nothing in this section shall be construed to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU, or to authorize verification of any existing employee by any Employer that is not a Federal contractor.

2. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.



Company ID Number: 245291

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation.
2. The Employer will refer employees to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.
3. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a system-generated referral letter and instruct the employee to visit an SSA office within 8 Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.
4. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must print the tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation.
2. If the Employer finds a photo non-match for an employee who provides a document for which the automated system has transmitted a photo, the employer must print the photo non-match tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the finding.
3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation received from DHS automated verification process or when the Employer issues a tentative nonconfirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible



Company ID Number: 245291

after the Employer receives it.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will provide the employee with a referral letter and instruct the employee to contact DHS through its toll-free hotline (as found on the referral letter) within 8 Federal Government work days.

5. If the employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will provide the employee with a referral letter to DHS. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (furnished and paid for by DHS).

7. The Employer understands that if it cannot determine whether there is a photo match/non-match, the Employer is required to forward the employee's documentation to DHS by scanning and uploading, or by sending the document as described in the preceding paragraph, and resolving the case as specified by the Immigration Services Verifier at DHS who will determine the photo match or non-match.

ARTICLE IV

SERVICE PROVISIONS

SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access the E-Verify System, an Employer will need a personal computer with Internet access.

ARTICLE V

PARTIES

A. This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train employers on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take



Company ID Number: 245291

mandatory refresher tutorials. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such a circumstance, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, that Employer will remain a participant in the E-Verify program, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.

B. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect its performance of its contractual responsibilities.

C. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.

D. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

E. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

F. The Employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

H. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively.

E-Verify



Company ID Number: 245291

To be accepted as a participant in E-Verify, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 888-464-4218.

Employer **Dunn Construction Company Inc.**

William L Hopper III

Name (Please Type or Print)

Title

Electronically Signed

Signature

09/02/2009

Date

Department of Homeland Security - Verification Division

USCIS Verification Division

Name (Please Type or Print)

Title

Electronically Signed

Signature

09/02/2009

Date



Company ID Number: 245291

Information Required for the E-Verify Program

Information relating to your Company:

Company Name: Dunn Construction Company Inc.

Company Facility Address: 3905 Messer Airport Highway

Birmingham, AL 35222

Company Alternate

Address: P O Box 11967

Birmingham, AL 35202

County or Parish: JEFFERSON

Employer Identification

Number: 630062040

North American Industry
Classification Systems

Code: 237

Parent Company: _____

Number of Employees: 100 to 499

Number of Sites Verified

for: 1

Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

- ALABAMA 1 site(s)



Company ID Number: 245291

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name:	Charles R Miller	Fax Number:	(205) 592 - 4632
Telephone Number:	(205) 592 - 3866 ext. 207		
E-mail Address:	cmiller@dunnconstruction.com		
Name:	Judith J Torres	Fax Number:	(205) 510 - 0275
Telephone Number:	(205) 592 - 3866 ext. 269		
E-mail Address:	jtorres@dunnconstruction.com		
Name:	William L Hopper III	Fax Number:	(205) 510 - 0276
Telephone Number:	(205) 592 - 3866 ext. 236		
E-mail Address:	whopper@dunnconstruction.com		
Name:	Janice F Goldstein	Fax Number:	(205) 592 - 4632
Telephone Number:	(205) 592 - 3866 ext. 257		
E-mail Address:	jgoldstein@dunnconstruction.com		

EXHIBIT 2

CHUBB®

Surety
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 08889-1650

O + 908.903.3485
F + 908.903.3656

Federal Insurance Company

AIA Document A312™ - 2010 Performance Bond

Bond No. 8246-21-07

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR

(Name, legal status and address):
Dunn Construction Company, Inc.
P.O. Box 11967
Birmingham, AL 35202

SURETY (Name and Principal Place of Business):

Federal Insurance Company
202B Hall's Mill Road
Whitehouse Station, NJ 08889

OWNER

(Name, legal status and address):
City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

CONSTRUCTION CONTRACT

Date: November 25, 2019
Amount: \$3,743,375.00 Three Million Seven Hundred Forty Three Thousand Three Hundred Seventy Five Dollars and 00/100
Description (Name and Location): Street Resurfacing

BOND

Date (Not earlier than Construction Contract Date): November 25, 2019
Amount: \$3,743,375.00 Three Million Seven Hundred Forty Three Thousand Three Hundred Seventy Five Dollars and 00/100
Modifications to this Bond: None See Page 4

CONTRACTORS AS PRINCIPAL

Company: (Corporate Seal)
Dunn Construction Company, Inc.

SURETY

Company: (Corporate Seal)
Federal Insurance Company

Signature: 
Name and Title: Evan Dunn VP

Signature: 
Attorney-in-Fact Name: Renee Ellis

Signed and Sealed this 25th day of November, 2019
(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, Address and Telephone)

AGENT or BROKER:
TIBCO, Inc. dba Turner Insurance & Bonding Co.
2801 Bell Road
Montgomery, AL 36117
334-244-0004

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

Printed in cooperation with the American Institute of Architects (AIA) by Chubb. The language in this document conforms to the language used in AIA Document A312™ - 2010.

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:
 1. the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 2. the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 3. the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract;
 - 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of Contractor Default; or
 - 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 - .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to commitment by the Owner to pay the Balance of the Contract Price, the Surety Is obligated, without duplication, for
- 1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
 - 3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators successors and assigns.
10. The surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- 14. DEFINITIONS**
- 14.1 Balance of the Contract Price:** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
- 14.2 Construction Contract:** The agreement between the Owner and the Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
- 14.3 Contractor Default:** Failure of the Contractor, which has not been remedied nor waived, to perform or otherwise to comply with the term of the Construction Contract.
- 14.4 Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 14.5. Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Federal Insurance Company

Signature: _____

Signature: _____

Name and Title:

Name and Title:

Address:

Address:

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EXHIBIT 3

CHUBB[®]

Surety
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 08889-1650

O +908.903.3485
F +908.903.3656

Federal Insurance Company

AIA Document A312™ - 2010 Payment Bond

Bond No. 8246-21-07

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR

(Name, legal status and address):

Dunn Construction Company, Inc.
P.O. Box 11967
Birmingham, AL 35202
OWNER

(Name, legal status and address):

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

CONSTRUCTION CONTRACT

Date: November 25, 2019

Amount: \$3,743,375.00 Three Million Seven Hundred Forty Three Thousand Three Hundred Seventy Five Dollars and 00/100

Description (Name and Location): Street Resurfacing

SURETY

(Name, legal status and principal place of business):

Federal Insurance Company
202B Hall's Mill Road
Whitehouse Station, NJ 08889

BOND

Date (Not earlier than Construction Contract

Date): November 25, 2019

Amount: \$3,743,375.00 Three Million Seven Hundred Forty Three Thousand Three Hundred Seventy Five Dollars and 00/100

Modifications to this Bond:

None

See Page 4

CONTRACTORS AS PRINCIPAL

Company: (Corporate Seal)
Dunn Construction Company, Inc.

SURETY

Company: (Corporate Seal)
Federal Insurance Company

Signature: [Signature]

Name and Title: Eugene Dunn VP

Signature: [Signature]

Attorney-in-Fact Name: Renee Ellis

Signed and Sealed this 25th day of November, 2019

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:
TIBCO, Inc. dba Turner Insurance & Bonding Co.
2601 Bell Road
Montgomery, AL 36117
334-244-0004

OWNER'S REPRESENTATIVE (Architect, Engineer or other party)

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1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants, who do not have a direct contract with the Contractor,
 - .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - .2 have sent a Claim to the Surety (at the address described in Section 13).
 - 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).
6. If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.
7. When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. DEFINITIONS

16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and,
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

16.2 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas power, light, heat, oil gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor

and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

16.3 Construction Contract: The agreement between the Owner and the Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

18.1 "Claim notices for FEDERAL INSURANCE COMPANY must be sent to the following address: Chubb, PO Box 2191, Chesapeake, Virginia 23327, Attention: Surety Support Team."

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Federal Insurance Company

Signature: _____

Signature: _____

Name and Title:

Name and Title:

Address:

Address:

CHUBB

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint David J. Durden, Renee Ellis, Thomas J. Gentile, Billie Jo Sanders and Paul B. Scott Jr., of Montgomery, Alabama

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 9th day of January, 2019.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

ss.

On this 9th day of January, 2019, before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



ROSE CURTIS
NOTARY PUBLIC OF NEW JERSEY
No. 50072400
Commission Expires November 22, 2022

Rose Curtis
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016:

*RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
(2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
(3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
(4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
(5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested.

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this November 25, 2019



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com



STANDARD PROPOSAL AND CONTRACT

January 13, 2020

Vestavia City Schools
1204 Montgomery Highway
Vestavia Hills, AL 35216

Attn: Mr. Patrick Martin

Dunn Construction Company, Inc. (Dunn) offers to furnish all labor, materials and equipment required to perform the following described work for Berry School Vestavia Hills, Alabama.

DESCRIPTION OF WORK AND PRICES:

Please refer to attached Schedule A for breakdown of work and unit prices.

Approximate Total.....\$ 245,447.50

It is understood, unless the above is a lump sum price, that quantities are estimated only and that payment shall be made at the unit price on the actual field measured quantities of work performed.

If the foregoing meets with your acceptance, please sign and return all copies to Dunn. Upon signing by an officer of Dunn, this proposal and the terms and conditions set forth on the reverse side hereof will constitute the full and complete contract.

Yours very truly,

DUNN CONSTRUCTION COMPANY, INC.

BY: Greg Caldwell
Greg Caldwell
Project Manager

Accepted: Vestavia City Schools

Accepted: Dunn Construction Co., Inc.

BY: _____
(NAME AND TITLE)

BY: _____
(NAME AND TITLE)

DATE: _____

DATE: _____



DUNN CONSTRUCTION COMPANY, INC.

P. O. DRAWER 11967
 BIRMINGHAM, AL 35202
 PHONE: (205) 510-0281
 FAX: (205) 599-1717
 EMAIL: gcaldwell@dunnconstruction.com
 ALABAMA GENERAL CONTRACTOR LICENSE NUMBER: 8

TO: Vestavia City Schools
 1204 Montgomery Highway
 Vestavia Hills, AL 35216

FROM: Greg Caldwell

ATTN: Patrick Martin

Phone: 252-9246

DATE: January 13, 2020

Email: martinp@vestavia.k12.al.us

SCHEDULE A

JOB: Berry School Vestavia Hills, Alabama					
ITEM NO.	DESCRIPTION	APPROX. QUANTITY	UNIT	UNIT PRICE	APPROX. TOTAL
1.	Mobilization - Milling and Paving Crews	1	LS	\$5,000.00	\$5,000.00
Paving at New Roadway and Parking (Blue Areas)					
2.	Nominal 1.5" Slag Seal and Tack Coat at New Binder Areas	1,315	TON	\$98.75	\$129,856.25
Subtotal Final Wearing Surface					\$129,856.25
Mill and Overlay at Existing Parking Areas (Yellow Areas)					
3.	Nominal 1" Milling of Existing Parking	470	TON	\$32.50	\$15,275.00
4.	Nominal 1" Slag Seal Overlay with Tack Coat at Existing Parking	587	TON	\$98.75	\$57,966.25
Subtotal Milling and Paving at Parking					\$73,241.25
Milling and Overlay at Existing Track (Orange Area)					
5.	Nominal 1" Milling of Existing Track	189	TON	\$64.50	\$12,190.50
6.	Nominal 1" Slag Seal Overlay with Tack Coat at Existing Track	235	TON	\$140.00	\$32,900.00
Subtotal Milling and Paving at Track					\$45,090.50
7.	Parking Lot and Roadway Striping - 2 coats paint	1	LS	\$37,350.00	\$37,350.00
Estimated Total Unit Price Bid					\$290,538.00

NOTES:

1. Price excludes: bond costs, permits, engineering, site excavation, testing, prime coat, patching at utility lines, geotextile fabrics, fine grading, sidewalks or concrete paving, curb and gutter, base under curb and gutter, backfill of curb and gutter, striping, signs or cleaning (in excess of power brooming). If Bonding is required please add 1% to our total bid.
2. Price excludes utility adjustments and/or relocation or patching at excavated utility lines.
3. This is a unit price proposal unless otherwise stated as lump sum.
4. Proposal includes one mobilization. If work is delayed, added or additional mobilizations are required for any phase add \$3,500 per mobilization.
5. Site is to be at design subgrade, blue topped and ready to receive base stone/asphalt upon our arrival.
6. Asphalt materials will be price per September 2019, ALDOT Asphalt Index.
7. Grades that are 1.5% or less may have "bird baths". Dunn does not accept responsibility for correction.
8. Work will not be scheduled until a mutually agreeable contract has been fully executed. Please schedule work 4 weeks in advance of mobilization.
9. Pricing matches those prices quoted to the City of Vestavia, except on the Track. Due to the nature of track paving we cannot perform this work at the same unit prices.

SUBMITTED BY:

GREG CALDWELL

TERMS AND CONDITIONS

I. Terms of Proposal. This proposal is valid only for thirty (30) days from the proposal date. Unless Dunn receives the accepted proposal within three (3) days after the thirtieth (30th) day from the proposal date, it shall be conclusively presumed that Dunn's proposal was not accepted. This proposal may be extended only in writing by an authorized officer of Dunn. The work covered under this Contract shall be available for completion within three months from the date of acceptance of the proposal. If the work is not available for completion within such time, the price of all work performed thereafter shall be adjusted to reflect actual increases in labor, fuel, materials, and other direct costs experienced by Dunn.

II. Terms of Payment. Payment in full for all work performed hereunder during any month shall be made not later than twenty-five (25) days after the invoice date relating to such work. Final and complete payment for all work performed hereunder shall be made not later than fifteen (15) days after the completion of such work. Interest at the rate of 1.5% per month (18% per annum), but not in excess of the highest legal rate allowable under applicable law, shall be charged and paid on all unpaid balances from the due date to the date Dunn receives payment. If credit conditions become unsatisfactory, in Dunn's sole discretion, at any time prior to completion of the work hereunder, Dunn shall be furnished adequate security upon request. Creditworthiness is inherently subjective, and accordingly Dunn may suspend credit, require payment in advance, or otherwise modify credit terms, from time to time in its discretion. Such modified payment terms, could include, without limitation, payment guarantees, personal guarantees, letters of credit, and posting of a bond by the owner and/or its principals. Dunn's acceptance of partial payment of any invoice will not constitute waiver of the balance.

III. Errors, Omissions and Defects. Dunn agrees to perform the work described in a workmanlike manner. Failures due to work performed by others are not the responsibility of Dunn. Failures for which Dunn has no responsibility include, but are not limited to, unsuitable subgrade, unsatisfactory base, or use in excess of design. During the job, Owner agrees to notify Dunn immediately of errors, omissions and defects in the work so that they may be corrected by Dunn promptly and at minimum cost. Failure to notify Dunn within fifteen (15) days after completion shall be deemed a waiver by Owner of all rights, claims, actions, and causes of action related to or arising out of any such error, omission or defect.

IV. Extra Work. Any deviations from the specifications or modification of the terms of this Contract and any extra or incidental work, or reductions in work, shall be set forth in writing and signed by both parties prior to the making of such change. Any extra work requested by Owner or his representative will be paid for on a cost plus fifteen percent (15%) for overhead and ten percent (10%) for profit basis unless a price can be agreed upon before extra work begins.

V. Variations in Quantity. If the actual quantity of any item of work varies more than twenty-five percent (25%) from the estimate, then a new unit price shall be negotiated.

VI. Events of Owner Default. Owner's insolvency, its failure to make any payment called for under this Contract when due, the filing of a petition in bankruptcy (whether voluntary or involuntary), the appointment of a receiver, the execution of an assignment for the benefit of creditors, any breach of the terms and conditions hereof, or any violation of applicable laws or regulations with respect to its obligations hereunder, shall separately and severally be deemed events of Owner default under this Contract.

VII. Remedies in the Event of Owner Default. Upon an Owner default, which Owner fails to cure within two (2) days after Dunn gives notice of the same, Dunn may declare this Contract terminated, and may cease performance hereunder immediately, in which case, Dunn shall be entitled to the following remedies, cumulatively: (i) all amounts owing hereunder by Owner pursuant to outstanding invoices shall become due and payable immediately; (ii) Owner shall be responsible for and pay Dunn for all work completed and materials furnished that have not yet been invoiced; (iii) Owner shall be responsible for and pay Dunn for all costs and expenses which Dunn incurred in anticipation of completion of the work, including costs of materials ordered; (iv) Owner shall be responsible for and pay Dunn 10% of the remaining amount owed for the work under this Contract for Dunn's anticipated lost profits for the remainder of the work and materials to be furnished; (v) interest shall accrue and be owed by Owner from the date of default at the rate of 1.5% per month (18% per annum), but not in excess of the highest legal rate allowable under applicable law, upon all amounts owed Dunn hereunder; (vi) Owner shall become liable for Dunn's costs

of collecting any such amounts that are due and owing hereunder, including reasonable attorneys' fees incurred by Dunn; and (vii) Dunn may also file a lien on the property on which it performed the work to secure payment of all amounts owing hereunder. Upon any such termination of this Contract of Dunn, all of the foregoing remedies shall become obligations of Owner which shall survive such cancellation of this Contract and which shall remain fully binding on Owner. No failure on the part of Dunn to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy.

VIII. Remedies in Event of Excusable Inability to Perform. Should Dunn be unable to perform the work because of a shortage of materials or petroleum products, or a strike, riot, tornado, fire, flood, earthquake, explosion, war, lack of transportation, government requirement, civil or military authority, act of god, act or omission of carriers or other cause beyond its control, which could not have been avoided by exercise of reasonable diligence, Owner's sole remedies shall be an extended time for performance or the right to cancel this Contract without further cost or liability to either party; provided, however, Owner shall still be obligated to make full payment to Dunn for all work performed prior to cancellation.

IX. Arbitration. It is agreed and acknowledged that this Contract affects and involves interstate commerce and that the materials being provided hereunder have traveled in interstate commerce. Any controversy or claim arising out of this Contract or the work, materials, labor and services to be furnished hereunder (including whether such claim is subject to arbitration) shall be settled by arbitration to be held in Birmingham, Alabama, except that Dunn may, in its sole discretion, bring claims against Owner for non-payment (including claims for interest, attorneys' fees and costs relating thereto) in a judicial forum (rather than an arbitral forum). The parties acknowledge and agree that they have substantial contacts with the State of Alabama, and that Birmingham is a neutral and convenient place for any such arbitration. Each party consents to the exclusive jurisdiction of the courts of the State of Alabama over any challenges to arbitration hereunder. Upon request for arbitration by either party, arbitration shall proceed through, and in accord with the rules of, the American Arbitration Association, with two exceptions: (a) unless the parties agree otherwise, only one arbitrator shall be chosen; (b) unless the parties agree otherwise, each party shall pay one-half of the expense of the arbitration proceeding. Judgment upon the arbitrator's award may be entered by any court having jurisdiction thereof. This Section constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior discussions, arrangements, negotiations and other communications on dispute resolutions. The provisions of this Section shall survive any termination, amendment or expiration of this Contract in which this Section is contained.

X. Governing Law. All questions concerning the construction, validity, and interpretation of this Contract and the performance of the obligations imposed by this Contract shall be governed by the internal law, not the law of conflicts, of the State of Alabama.

XI. Consent to Jurisdiction/Forum. Subject to the provisions of Article IX, each of the parties hereto consents that any legal action or proceeding arising hereunder, including the submission to the court of an arbitration award to enter final judgment thereon, shall be brought, in the Circuit Court of Jefferson County, of the State of Alabama, or in the United States District Court for the Northern District of Alabama, Southern Division, and each of the parties expressly assents and submits to the personal jurisdiction of any such courts in any such action or proceeding and waives any defenses based on lack of such jurisdiction.

XII. Entire Agreement. Upon acceptance of this Contract in writing by Dunn (which shall be deemed to occur at its principal place of business in Birmingham, Alabama), this Contract shall be binding upon and inure to the benefit of the parties hereto, and shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other terms submitted or proposed by either of the parties, as well as all prior oral and written quotations, bids, communications, orders, agreements, and understandings of the parties with respect to the subject matter hereof.

XIII. No Set-off. Any claim which Owner may have against Dunn shall be pursued independently of Owner's obligation to Dunn for the unpaid amounts owed hereunder, and Owner shall have no right of recoupment or set-off by virtue of any such claim.

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

January 15, 2020

By Hand Delivery

Dr. Patrick M. Martin
Assistant Superintendent of Operations and Services
Vestavia Hills Board of Education
Post Office Box 660826
Vestavia Hills, Alabama 35266-0826

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
Post Office Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Joint Purchasing Agreement for Paving Services

Dear Dr. Martin and Mr. Downes:

It is my understanding that representatives of the City of Vestavia Hills, Alabama ("City") and the Board of Education of the City of Vestavia Hills ("Board") have been discussing the possibility of entering into a Joint Purchasing Agreement for Paving Services.

Recently, Dr. Patrick Martin sent to me via electronic mail copies of the Construction Contract by and between the City of Vestavia Hills, Alabama ("City") and Dunn Construction Company, Inc. regarding paving services, together with the Invitation to Bid documents regarding said contract. He requested that I provide him with my written legal opinion. On December 5, 2019, I rendered my written legal opinion.

On January 14, 2020, Dr. Martin sent to me via electronic mail a copy of a Standard Proposal and Contract submitted by Dunn Construction Company, Inc. In connection with this matter, I am enclosing Joint Purchasing Agreement for Paving Services. You will note that the original Construction Contract between the City and General Contractor is attached to the document as Exhibit 1. The scope of the work to be performed by the General Contractor for the Board is attached as Exhibit 2.

January 15, 2020

Page 2

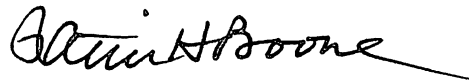
I recommend the following legal process for the Board and the City to complete in order to do business with Dunn Construction Company, Inc. pursuant to Title 16-13B-1(c) and Title 41-16-50(a), *Code of Alabama, 1975*:

1. **Recommendation by Superintendent:** The Superintendent should make a recommendation to the Board for the approval of the Joint Purchasing Agreement for Paving Services. The Board should vote on the Superintendent's recommendation.

2. **Recommendation by City Manager:** I recommend that the City Manager recommend the approval of a resolution authorizing the Mayor and City Manager to sign the Joint Purchasing Agreement for Paving Services. The resolution should be voted upon by the City Council.

Please call me if you have any questions regarding this matter.

Very truly yours,



Patrick H. Boone

PHB:gp

Enclosure

cc: Superintendent Dr. Todd Freeman (w/encl.-by hand)
City Clerk Rebecca Leavings (w/encl.-by hand)

ORDINANCE NUMBER 2915

AN ORDINANCE TO APPROVE AN ASSIGNMENT AND ASSUMPTION OF AGREEMENT AND A SALES CONTRACT FOR A RIGHT-OF-WAY PURCHASE OF REAL ESTATE SITUATED AT 3995-3103 GREENDALE ROAD IN THE CITY OF VESTAVIA HILLS, ALABAMA CONSISTING OF APPROXIMATELY 0.34 ACRES, MORE OR LESS (“PROPERTY”) AND AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER SAID THE CONTRACT AND ANY AND ALL OTHER DOCUMENTS NECESSARY TO CLOSE THE SALE AND/OR CONVEYANCE PURSUANT TO THE TERMS, PROVISIONS AND CONDITIONS OF SAID AGREEMENT.

THIS ORDINANCE NUMBER 2915 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 27th day of January, 2020.

WITNESSETH THESE RECITALS:

WHEREAS, on January 27, 2020, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 2905 to approve a purchase agreement for the real estate and improvements situated at 3995-3103 Greendale Road in the City of Vestavia Hills, Alabama consisting of approximately 0.34± acres (the “Property”) for the possible purchase of said Property by the City of Vestavia Hills, Alabama (“City”); and

WHEREAS, if the City purchases the Property, then in such event the City Manager recommended that:

(1) Approximately 0.02± acres be used for an in progress public works project to widen Crosshaven Road (“project to widen Crosshaven Road”); and

(2) The balance of the Property be sold to another party; and

WHEREAS, the City Attorney had prepared an Agreement for Purchase and Sale of Real Estate (“Agreement”) setting forth the terms, provisions and conditions of the negotiations and recommendation by the City Manager for consideration by the City Council; and

WHEREAS, the City Attorney further prepared an Assignment and Assumption of Agreement for Purchase and Sale of Real Estate and a Sales Contract to sell said property, less a portion to be dedicated as right-of-way, to Bridgewater Partners, LLC, an Alabama limited liability company, or its assignee; and

WHEREAS, a copy of the Agreement is attached hereto, marked as Exhibit A and is incorporated into this Ordinance Number 2915 by reference as though set out fully herein.

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

1. The Agreements attached hereto and marked as Exhibit A is incorporated in its entirety into this Ordinance Number 2915 by reference as though set out fully herein.

2. The Agreements are hereby approved by the City Council.

3. 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.

4. The City Council hereby authorizes and directs the City Manager to execute any and all other documents necessary to close the purchase and sale of the Property pursuant to the terms, provisions and conditions of the Agreement attached hereto. In addition, the City Manager is hereby authorized to make editorial revisions and corrections that do not substantially change said Agreement.

5. 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.

6. This Ordinance Number 2915 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*.

DONE, ORDERED, APPROVED and ADOPTED on this the 13th day of February, 2020.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
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 #2915 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 13th day of February, 2020 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of February, 2020.

Rebecca Leavings
City Clerk

**ASSIGNMENT AND ASSUMPTION OF
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**

This Assignment and Assumption of Agreement for Purchase and Sale of Real Estate (this "Assignment") is dated as of _____, 2020 (the "Effective Date") by and between The City of Vestavia Hills, Alabama, a municipal corporation ("Assignor"), and **BRIDGEWATER PARTNERS, LLC**, an Alabama limited liability company, or its assignee ("Assignee").

Recitals:

WHEREAS, Assignor entered into that certain Agreement for Purchase and Sale of Real Estate with Nonidez Properties ("Seller"), dated as of _____, 2020 (the "Contract"), for the purchase and sale of certain real property located in Jefferson County, Alabama, as more particularly described in the Contract (the "Property"); and

WHEREAS, the Assignor desires to assign all of its right, title and interest in and to the Contract to the Assignee, and the Assignee desires to accept the assignment.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Assignment.**

(a) Assignor does hereby assign, transfer, set over and deliver to Assignee all of Assignor's right, title and interest in and to the Contract, including without limitation all of its rights, privileges and benefits as the purchaser thereunder. TO HAVE AND TO HOLD the Contract unto Assignee, its successors and assigns.

(b) By accepting this assignment, Assignee hereby assumes and agrees to perform all of the obligations of the purchaser under the Contract from and after the Effective Date.

(c) Assignee shall indemnify, defend and hold Assignor harmless from and against any and all obligations, claims, costs, demands, losses, damages, liabilities, lawsuits, actions and other proceedings in law or in equity or otherwise, judgments, awards and expenses of every kind and nature whatsoever, including without limitation, attorneys' fees, arising out of or relating to, directly or indirectly, the Contract, vesting, accruing and/or arising on and after the Effective Date.

(d) Assignor shall indemnify, defend and hold Assignee harmless from and against any and all obligations, claims, costs, demands, losses, damages, liabilities, lawsuits, actions and other proceedings in law or in equity or otherwise, judgments, awards and expenses of every kind and nature whatsoever, including without limitation, attorneys' fees, arising out of or relating to, directly or indirectly, the Contract, vesting, accruing and/or arising prior to the Effective Date.

2. **Additional Agreement.** In connection with the foregoing, Assignee and Assignor agree to enter into a Sales Contract in the form attached as Exhibit A hereto (the ".02 Acre Contract") for the sale by Assignee to Assignee of a portion of the Property consisting of approximately .02 acres and more particularly described in the .02 Acre Contract (the ".02 Acre Parcel"). Assignor expressly agrees that, with respect to the portion of the Property retained by Assignee after its sale of the .02 Acre Parcel to Assignor, any and all existing municipal parking, signage and related zoning and other requirements shall be "grandfathered" and thus will not be modified by Assignor subsequent to such sale of the .02 Acre Parcel.

3. **Contingencies.** This Assignment is subject to and contingent upon (i) the formal approval of the Contract by the City Council of the City of Vestavia Hills, Alabama as described in the recitals above by duly enacted ordinance pursuant to and in accordance with the laws of the State of Alabama, and (ii) the formal approval of this Assignment by the City Council by the City of Vestavia Hills, Alabama by duly enacted ordinance pursuant to and in accordance with the laws of the State of Alabama; and (iii) the execution and delivery of the Sales Contract wherein

Assignee agrees to sell and Assignor agrees to purchase the 0.02 acre parcel pursuant to the terms, provisions and conditions of said Contract; and (iv) the closing of the sale described in (iii). If the foregoing contingencies are not completed, then in such event this Assignment shall automatically be terminated .

4. **Binding Effect.** This Assignment shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

5. **Definitions.** For all purposes of this Assignment, capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Contract.

6. **General Provisions.** Except as amended and modified by this Assignment, all of the terms, covenants, conditions and agreements of the Contract shall remain in full force and effect. In the event of any conflict between the Contract and the provisions of this Assignment, this Assignment shall control.

7. **Separability Clause.** If any provision of this Assignment shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

8. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

9. **Governing Law.** This Assignment shall be construed in accordance with and governed by the laws of the state in which the property that is subject to the Contract is located (without regard to conflict of law principles).

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the Effective Date.

ASSIGNOR:

THE CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By: _____
Ashley C. Curry
Mayor

By: _____
Jeffrey D. Downes
City Manager

ASSIGNEE:

[BRIDGEWATER ENTITY]

By: _____
Name: _____
Its: _____

Exhibit A

(Sales Contract)

See Attached.

SALES CONTRACT

_____, 2020

[BRIDGEWATER ENTITY] (“Seller”) hereby agrees to sell and THE CITY OF VESTAVIA HILLS, ALABAMA, a municipal corporation (“Purchaser”) hereby agrees to purchase the following described real estate, together with the improvements thereon and attached appurtenances, if any (the “Property”) consisting of approximately .02 acres and situated in Vestavia Hills, Jefferson County, Alabama, on the terms stated below:

Legal description shown in attached Exhibit “A”.

1. The **PURCHASE PRICE** shall be \$135,154, payable in cash at closing.
2. **CONDITION OF PROPERTY:** Neither Seller nor any agent of any party hereto makes any representations or warranties regarding the condition of the Property except to the extent expressly and specifically set forth herein. Purchaser has the obligation to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the property material to Purchaser's decision to buy the Property. Purchaser, or Purchaser's representative, shall have the right to enter the Property for the purpose of inspecting same, and/or making boundary line and topographical surveys of the same, and/or making soil tests thereon, and/or in general observing and investigating the conditions of the Property. Purchaser agrees to indemnify Seller and its successors and assigns from and against any liability associated with Purchaser's rights under this paragraph.
3. **CONVEYANCE:** Seller agrees to convey the Property to Purchaser by a statutory warranty deed, free of all encumbrances except as herein set forth, and Seller agrees that any encumbrances not herein excepted or assumed will be cleared at the time of closing. The Property is sold and is to be conveyed subject to: (i) mineral and mining rights not owned by Seller; (ii) utility easements serving the Property, easements, subdivision and other covenants and restrictions affecting the Property, and building lines of record; and (iii) title exceptions which would be shown by an accurate survey and title search of the Property.
4. **TITLE INSURANCE:** Purchaser may obtain a standard form title insurance policy issued by a company qualified to insure titles in Alabama in the amount of the purchase price, insuring Purchaser against loss on account of any defect or encumbrance in the title unless herein excepted. The expense of the title policy and premium shall be paid by Purchaser.
5. **PRORATIONS:** Ad valorem taxes are to be pro-rated between Seller and Purchaser as of the date of closing.
6. **CLOSING COSTS:** Except as otherwise specifically set forth herein, all closing costs, including without limitation any transfer taxes and other costs associated with the recording of the deed, shall be paid by Purchaser.
7. **CLOSING AND POSSESSION DATES:** The sale shall be closed and the deed delivered simultaneously with the Seller's purchase of the Property as defined in that certain Assignment and Assumption of Agreement for Purchase and Sale of Real Estate dated _____, 2020 between Purchaser, as assignor, and Seller, as assignee (the “Closing Date). Possession is to be given on the Closing Date, however, the Seller may continue to use the Property until such time as construction begins by the City on said roadway improvements.

- 8. DISCLAIMER:** Purchaser acknowledges that it has not relied upon advice or representations of Seller relative to (i) the legal or tax consequences of this Sales Contract and the sale, purchase or ownership of the Property; (ii) the structural condition of the Property, (iii) the availability of utilities or sewer service; (iv) the investment or resale value of the Property; or (v) any other matters affecting their willingness to purchase the Property on terms and price herein set forth. Purchaser acknowledges that if such matters are of concern to them in the decision to sell or purchase the Property, he/she/it have sought and obtained independent advice relative thereto. PURCHASER ACKNOWLEDGES AND AGREES THAT EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT, AT CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY “AS IS, WHERE IS, WITH ALL FAULTS”.
- 9. CONTINGENCY:** This Agreement is subject to and contingent upon the formal approval of the Agreement by the City Council of the City of Vestavia Hills, Alabama by duly enacted ordinance pursuant to and in accordance with the laws of the State of Alabama. If this condition of approval as aforesaid is not completed, then in such event this Agreement shall automatically be terminated.
- 10. ENTIRE AGREEMENT:** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN PURCHASER AND SELLER REGARDING THE PROPERTY, AND SUPERSEDES ALL PRIOR DISCUSSIONS, NEGOTIATIONS, AND AGREEMENTS BETWEEN PURCHASER AND SELLER, WHETHER ORAL OR WRITTEN. NEITHER PURCHASER, SELLER, NOR AGENT, NOR ANY SALES AGENT SHALL BE BOUND BY ANY UNDERSTANDING, AGREEMENT, PROMISE OR REPRESENTATION CONCERNING THE PROPERTY, EXPRESSED OR IMPLIED, NOT SPECIFIED HEREIN.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.

[SIGNATURES ON FOLLOWING PAGE]

Each of the parties acknowledges that he/she/it has a right to be represented at all times in connection with the Contract and the closing by an attorney of his/her/its own choosing, at his/her/its own expense.

The date of this Contract shall be the date this Contract is fully executed by all parties.

SELLER:

[BRIDGEWATER ENTITY]

Witness to Seller's Signature

BY: _____
NAME: _____
ITS: _____

DATE: _____

PURCHASER:

THE CITY OF VESTAVIA HILLS, ALABAMA

Witness to Purchaser's Signature

By: _____
Ashley C. Curry
Mayor

By: _____
Jeffrey D. Downes
City Manager

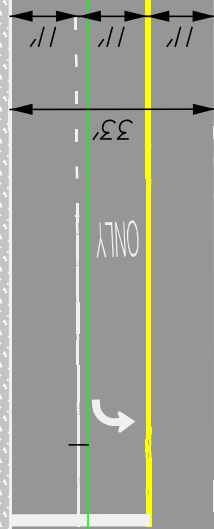
DATE: _____

EXHIBIT "A"

PARCEL 2

A parcel of land situated in the Southeast quarter of Section 15, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described by metes and bounds as follows:

Commence at a found 5/8 inch rebar marking the Northwest corner of Lot 1-A, Daventry Village as recorded in Map Book 160, Page 2 in the Office of the Judge of Probate of said County and the Easterly right of way line of Crosshaven Drive; thence run North 02 Degrees 32 minutes 08 seconds West along the said right of way line for a distance of 331.49 feet to a found 5/8 inch rebar; thence continue North 02 Degrees 32 minutes 08 seconds West along said right of way line for a distance of 60.28 feet to a set capped rebar stamped (CA-560-LS) and the Point of Beginning; thence continue North 02 Degrees 32 minutes 08 seconds West along said right of way line for a distance of 85.44 feet to a set capped rebar stamped (CA-560-LS) on the South right of way line of Greendale Road; thence run South 88 Degrees 26 minutes 28 seconds East along said right of way line for a distance of 20.92 feet to a set capped rebar stamped (CA-560-LS); thence leaving said right of way line run South 01 Degrees 33 minutes 32 seconds West for a distance of 15.55 feet to a set capped rebar stamped (CA-560-LS); thence run South 89 Degrees 05 minutes 12 seconds West for a distance of 6.00 feet to a set capped rebar stamped (CA-560-LS); thence run South 00 Degrees 02 minutes 49 seconds West for a distance of 20.48 feet to a set capped rebar stamped (CA-560-LS); thence run South 12 Degrees 23 minutes 33 seconds West for a distance of 49.83 feet to the Point of Beginning. Said parcel contains 909 square feet or 0.02 acres more or less.



PRES ROW

