

**Join us! In an effort to enhance meetings during the COVID-19 shutdown, the City Council invites you to join and/or participate in a variety of ways: Via computer Zoom meetings (no app is necessary), telephone, email and/or text! See details on page 3.**

**Vestavia Hills  
City Council Agenda  
AUGUST 10, 2020  
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Steve Dedmon, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Announcements, Candidates and Guest Recognition
6. Proclamation – National Senior Citizens Day – August 21, 2020
7. City Manager’s Report
8. Councilors’ Reports
9. Financial Reports
10. Approval Of Minutes – July 27, 2020 (Regular Meeting)

**Old Business**

11. Ordinance Number 2814-A – An Ordinance To Amend Chapter 16.5 Entitled “Telecommunications,” Article III Entitled “Small Cell Technology Facilities,” Of The Vestavia Hills Code Of Ordinances And To Amend Ordinance Number 2814 To Adopt Regulations For Small Cell Technology Facilities In The City Of Vestavia Hills, Alabama (*public hearing delayed until August 10*)
12. Ordinance Number 2940 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Supplemental Agreement No. 2 With Gresham Smith & Partners As Architect And Engineer For The Pedestrian Bridge Over US Highway 31 (*public hearing*)

**New Business**

13. Resolution Number 5262 – A Resolution Re-Appointing Members To The Vestavia Hills Design Review Board

14. Resolution Number 5263 – A Resolution Authorizing The City Manager To Execute And Deliver A Joint Services Agreement To Share Responsibilities For Improvements On Acton Drive And Acton Place
15. Resolution Number 5264 – A Resolution Appointing Election Officers For The Municipal Election To Be Held In The City Of Vestavia Hills, Alabama On August 25, 2020
16. Resolution Number 5265 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement For An Electrical Easement At The Vestavia Hills Community Center

**New Business (Requesting Unanimous Consent)**

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

17. Ordinance Number 2941 – An Ordinance Approving A Conditional Use For A Home Occupation For The Property Located At 4129 Vestview Drive For A Home Occupation. The Property Is Owned By Timothy Boyne And Is Zoned Vestavia Hills PUD PR-1 (*public hearing*)
18. Motion for Adjournment
19. Citizens Comments

## **SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS**

**Due to the COVID-19 “Stay at Home” Order issued by Gov. Ivey, the City Council work sessions and meetings are available via video-conference and teleconference. If you chose not to attend in person, you may still participate. Following are instructions for three options to participate remotely.**

### **COMPUTER PARTICIPATION (*view/participate in real time*)**

To participate in by videoconference, click <https://us02web.zoom.us/j/4555343275>. When the Zoom.us window opens in your browser, click “Allow” so that the meeting page may open. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, activate the “Raise Hand” feature and unmute yourself by toggling the mute button. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then you may address the Council.

Using the icons on the Zoom screen, you can:

- Mute/unmute your microphone (far left)
- Turn on/off camera (“Start/Stop Video”)
- View Participants – opens a pop-out screen that includes the “Raise Hand” icon that you may use to raise a virtual hand
- Change your screen name displayed in the participant list and video window
- Toggle between “speaker” and “gallery” views – “Speaker view” shows the active speaker; “Gallery view” tiles all of the meeting participants

### **TELEPHONE PARTICIPATION (*view/participate in real time*)**

To participate by telephone, dial 312.626.6799 and enter the meeting ID: 455 534 3275. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, press \*6 on your phone keypad to unmute yourself. Then state your name and wait for the Mayor to recognize you. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then address the Council.

### **TEXT AND/OR EMAIL (*prior to the meeting or in real time*)**

If you do not wish to join the meeting but would like to ask a question or make a statement regarding an item on the agenda, you may email the City Council directly at [City.Council@vhal.org](mailto:City.Council@vhal.org). You may also text your question/statement to City Council at 205.517.1370. Both of these options are available prior to and during each work session and meeting. Be sure to provide your name and address for the record and your comments will be recited to the City Council as the corresponding item is being addressed. Note: As a matter of record, your name and address are required. If identification is not provided, your comment/question will not be presented.

WHEREAS, throughout our history, older people have achieved much for our families, communities, and country; and

WHEREAS, with improved healthcare and more years of productivity, older citizens are reinforcing their historical roles as leaders and sense of purpose as individuals and as a Nation; and

WHEREAS, many of them are embarking on second careers, giving younger people an example of responsibility, resourcefulness, competence, and determination; and

WHEREAS, more than 11 million senior citizens are serving as volunteers in various programs and projects that benefit every sector of society; and

WHEREAS, we can best demonstrate our gratitude for the older seniors' accomplishments by making sure that our communities enable them to participate to the fullest and find the encouragement, acceptance, assistance, and services they need to continue to lead lives of independence and dignity;

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim August 21, 2020 as

**NATIONAL SENIOR CITIZENS DAY**

which is recognized annually and was authorized and requested by President Ronald Reagan in 1988 to encourage them to be active members of their community.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 10th day of August 2020.

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Ashley C. Curry  
Mayor

## CITY OF VESTAVIA HILLS

### CITY COUNCIL

### MINUTES

**JULY 27, 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. Due to the COVID-19 pandemic, in coordination with a Proclamation from Governor Ivey and pursuant to orders from the Jefferson County Health Department Official requiring social distancing along with limits of attendees, this meeting was held with a portion of the City Council digitally attending the meeting via remote computer locations utilizing a Zoom.com application. Staff and general public/audience members also were invited to attend via Zoom.com following publication pursuant to Alabama law. Mayor Curry called the meeting to order and the acting City Clerk called the roll with the following:

**MEMBERS PRESENT:**

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

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Patrick H. Boone, City Attorney  
Rebecca Leavings, City Clerk  
Melvin Turner, III, Finance Director  
Danny Rary, Police Chief  
Christopher Brady, City Engineer\*  
Marvin Green, Fire Chief\*  
Cinnamon McCulley, Communication Specialist\*  
*\*present via Zoom or telephone*

Jim Cartledge, Vestavia Hills Chaplain, led the invocation followed by the Pledge of Allegiance.

### **ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION**

- Mr. Pierce welcomed to the meeting Chamber Board members Jamie Pursell and Linda Parker.
- Mayor announced that he attended the League of Municipalities conference last week in Montgomery. At that conference, Governor Ivey, via Zoom, asked all municipalities to encourage citizens to wear a mask and observe social distance practices.

## **CITY MANAGER'S REPORT**

- Mr. Downes provided an in-depth report on all Infrastructure and Community Spaces Plan projects:
  - Cahaba Heights Park athletic fields are completed; playground is open and landscaping is being installed. The grand opening was intended to be the Chamber's annual Back to School event, but that event was cancelled. Instead, on Friday night, August 14, there will be an opening celebration, at which all public health practices will be observed.
  - New Merkel House contractor was given the Notice to Proceed with an estimated completion date of late January of next year.
  - Clearing and grubbing has begun on the Crosshaven Project to facilitate utility relocation. Mr. Downes stated there are plans to reinstall landscaping in areas where border privet and similar have been removed, and those areas will be addressed after the project is near completion. Mrs. Cook asked if there will be improvements to storm sewer system and Mr. Downes stated that the storm sewers will be improved along with installation of curb and gutter to direct water to that system. One more Saturday morning road closure is scheduled, but that should complete the Crosshaven Drive road closures for the clearing portion of the project.
  - The Community Building contractor has begun with a vengeance. Roof work has begun on the building with cranes removing HVAC systems and excavating for the new gym. Contractual delivery date is September 2021.
  - Wald Park has shown progress over the past few weeks. The road access from Hwy 31 is important for school traffic and is slated to be completed by the time school opens. Road base and asphalt will be added over the next two weeks and they hope to meet that deadline. The pool finishing work is ongoing with decorative fencing and furniture delivery scheduled for mid-August. The Jefferson County Health Department will inspect in mid-August with a hopeful opening of Labor Day weekend. An announcement of the plans for opening will be available soon. The ballfields have progressed to meet an estimated mid-August opening, with the biggest issue being the Miracle League Field because of limited surface providers and due to travel and supply chain limitations. There is no estimated timeframe to get the surface provider to install the turf. The lower playground installation begins this week, and the upper will be installed in September, because the focus is on the ballfields and the pool.
  - The SHAC project is waiting on sodding and should be completed soon.
  - East Street sidewalks are about 33% complete and progressing. There are challenges in some areas, but they are being managed.
  - Dolly Ridge sidewalks, a small project to connect two segments of sidewalk, has a contract set to begin within a week or so, with ongoing work to carry that sidewalk into the Rocky Ridge shopping areas.
  - Mountainview sidewalk bids are due on August 6, and that work should begin soon.

### **CANDIDATES WELCOMED**

- The Mayor recognized Mr. David Harwell, who is a candidate for Council in the upcoming election:
  - David Harwell, 1803 Catala Road, stated he is running for City Council, Place number 3 and asked for support. He reminded everyone that the election is four weeks from tomorrow on August 25.

### **COUNCILOR REPORTS**

- Mr. Pierce asked everyone to shop local, shop Vestavia Hills.

### **FINANCIAL REPORTS**

Mr. Turner, Finance Director, submitted the financial reports for month ending June 2020. He read and explained the balances.

### **APPROVAL OF MINUTES**

The Mayor opened the floor for approval of the following minutes: July 13, 2020 (Regular Meeting).

**MOTION** Motion to approve the minutes of the July 13, 2020 (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 5256**

**Resolution Number 5256 – A Resolution Declaring The Mayor To Be Elected Without Opposition**

**MOTION** Motion to approve Resolution Number 5256 was by Mr. Weaver, seconded by Mr. Pierce.

The Mayor explained that qualifications for City offices closed last Tuesday and that he was unopposed for the Office of the Mayor. This Resolution is a ministerial act that is required by Alabama law and will confirm there was no opposition.

There being no one else 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.

### **CERTIFICATE OF ELECTION – ASHLEY C. CURRY, MAYOR**

#### **Adoption of a Certificate of Election – Ashley C. Curry, Mayor**

**MOTION** Motion to adopt said Certificate of Election was by Mrs. Cook, seconded by Mr. Weaver.

The Mayor explained that, pursuant to state law, a Certificate of Election shall be issued at this Council meeting.

There being no one else 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.

### **RESOLUTION NUMBER 5257**

#### **Resolution Number 5256 – A Resolution Declaring The Council, Place Number 1 To Be Elected Without Opposition**

**MOTION** Motion to approve Resolution Number 5257 was by Mrs. Cook, seconded by Mr. Pierce.

The Mayor explained that qualifications for City offices closed last Tuesday and that Rusty Weaver was unopposed for the Council, Place Number 1. This Resolution is also a ministerial act that is required by Alabama law and will confirm there was no opposition.

There being no one else 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.



**CERTIFICATE OF ELECTION – RUSTY WEAVER, COUNCIL, PLACE NO. 1**

**Adoption of a Certificate of Election – Rusty Weaver, Council, Place No. 1**

**MOTION** Motion to adopt said Certificate of Election was by Mrs. Cook, seconded by Mr. Pierce.

The Mayor explained that, pursuant to state law, a Certificate of Election shall be issued at this Council meeting.

There being no one else 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.

**RESOLUTION NUMBER 5258**

**Resolution Number 5256 – A Resolution Declaring The Council, Place Number 2 To Be Elected Without Opposition**

**MOTION** Motion to approve Resolution Number 5258 was by Mr. Weaver, seconded by Mr. Pierce.

The Mayor explained that qualifications for City offices closed last Tuesday and that Kimberly B. Cook was unopposed for the Council, Place Number 2. This Resolution is also a ministerial act that is required by Alabama law and will confirm there was no opposition.

There being no one else 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.

**CERTIFICATE OF ELECTION – KIMBERLY B. COOK, COUNCIL, PLACE NO. 2**

**Adoption of a Certificate of Election – Kimberly B. Cook, Council, Place No. 2**

**MOTION** Motion to adopt said Certificate of Election was by Mr. Weaver, seconded by Mr. Pierce.

The Mayor explained that, pursuant to state law, a Certificate of Election shall be issued at this Council meeting.

There being no one else 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.

### **RESOLUTION NUMBER 5259**

#### **Resolution Number 5256 – A Resolution Declaring The Council, Place Number 4 To Be Elected Without Opposition**

**MOTION** Motion to approve Resolution Number 5258 was by Mr. Weaver, seconded by Mrs. Cook.

The Mayor explained that qualifications for City offices closed last Tuesday and that George Pierce was unopposed for the Council, Place Number 4. This Resolution is also a ministerial act that is required by Alabama law and will confirm there was no opposition.

There being no one else 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.

### **CERTIFICATE OF ELECTION – GEORGE PIERCE, COUNCIL, PLACE NO. 4**

#### **Adoption of a Certificate of Election – George Pierce, Council, Place No. 4**

**MOTION** Motion to adopt said Certificate of Election was by Mr. Weaver, seconded by Mrs. Cook.

The Mayor explained that, pursuant to state law, a Certificate of Election shall be issued at this Council meeting.

There being no one else 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.

**RESOLUTION NUMBER 5260**

**Resolution Number 5260 – A Resolution Accepting The 2018-2019 Audit For The City Of Vestavia Hills**

**MOTION** Motion to approve Resolution Number 5260 was by Mr. Weaver, seconded by Mr. Pierce.

Mr. Jason Harpe, Carr, Riggs & Ingram, presented the City’s annual 2018-2019 audit. He explained the modified opinion, including the process, testing and the procedures of the City’s audit.

Mr. Andrew Waites went over the financial statements and explained the separate funds. He went over the audit and explained various statements, etc.

Mr. Pierce asked if there were any areas of concern.

Mr. Waites stated nothing to be really concerned about.

Mr. Harpe stated he would advise the City to pay attention to the pension deficit because this might cause an increase in liability. He also cautioned the City might begins to experience a fall in revenues as the pandemic continues.

There being no one else 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.

**RESOLUTION NUMBER 5261**

**Resolution Number 5261 – A Resolution Authorizing The City Manager To Execute A Memorandum Of Understanding (MOU) With FivePoint Payments LLC For Merchant Payment Services For The City**

**MOTION** Motion to approve Resolution Number 5260 was by Mr. Weaver, seconded by Mrs. Cook.

Mr. Downes explained that this will allow more convenient payment systems for the City. He explained Communications Specialist Cinnamon McCulley led the committee to select this vendor.

Mrs. McCulley explained the RFP process which included interviews of all departments to understand various payment services needed within the departments. She thanked the committee and everyone involved in bringing forth the RFP. Seven proposals were submitted and, following investigation, the best system found was with FivePoint Payments LLC, which will easily integrate with the City's existing court payment system and will also integrate with the new Parks and Recreation payment system. Separate apps, provided free of charge for a trial period, by FivePoint, has been really great for appointment check-ins and more. She stated this vendor gave more robust reporting for the City and conveniences for residents paying for memberships, traffic fines, and other items.

Mrs. Cook asked if the new system will interface with the City's existing systems.

Mrs. McCulley stated that the tag system is not compatible with the new system, so the Finance Department chose to continue with the current vendor, for which the rates are similar. There will be two payment processing providers for the City. FivePoint provides interfacing with the other City systems.

There being no one else 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 August 10, 2020, at 6:00 PM.

- Ordinance Number 2814-A – An Ordinance To Amend Chapter 16.5 Entitled “Telecommunications,” Article III Entitled “Small Cell Technology Facilities,” Of The Vestavia Hills Code Of Ordinances And To Amend Ordinance Number 2814 To Adopt Regulations For Small Cell Technology Facilities In The City Of Vestavia Hills, Alabama (*public hearing delayed until August 10*)
- Ordinance Number 2940 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Supplemental Agreement No. 2 With Gresham Smith & Partners As Architect And Engineer For The Pedestrian Bridge Over US Highway 31 (*public hearing*)

**CITIZEN COMMENTS**

None.

At 6:55 PM, Mrs. Cook made a motion to adjourn. The meeting adjourned at 6:56 PM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## **ORDINANCE NUMBER 2814-A**

### **AN ORDINANCE TO AMEND CHAPTER 16.5 ENTITLED “TELECOMMUNICATIONS,” ARTICLE III ENTITLED “SMALL CELL TECHNOLOGY,” OF THE VESTAVIA HILLS CODE OF ORDINANCES AND TO AMEND ORDINANCE NUMBER 2814 TO ADOPT REGULATIONS FOR SMALL CELL TECHNOLOGY FACILITIES IN THE CITY OF VESTAVIA HILLS, ALABAMA**

**WHEREAS**, The City Council of the City of Vestavia Hills, Alabama seeks to facilitate the availability of reliable, personal wireless services for its citizens and the public by permitting the placement of Small Cell Technology Facilities and associated Support Structures along the Rights-Of-Way and on private properties in the City; and

**WHEREAS**, the installation, expansion, and maintenance of Small Cell Technology Facilities and associated Structures on or along the Rights-Of-Way and on private properties might have significant impact upon: (1) the aesthetic values and historical character of the City; (2) safe use and passage on or along the Rights-of-Way by the public; and (3) properties and property values in the City in areas where such Structures are placed; and

**WHEREAS**, the Federal Telecommunications Act of 1996 (the “Act”) and regulations promulgated with respect to the Act by the Federal Communications Commission (“FCC”) authorize local governments to enact responsible regulations for the placement, expansion, height, and maintenance of Small Cell Technologies Facilities and associated Support Structures; and

**WHEREAS**, as provided in this Ordinance Number 2814-A, the City seeks to mandate, where feasible, the colocation of Small Cell Technology Facilities on existing poles and other Support Structures as opposed to installation of new Structures; and

**WHEREAS**, the above-noted colocation and other provisions of this Ordinance are intended to be consistent with the Act and its associated regulation; and

**WHEREAS**, the adoption of the regulations, procedures, and requirements in this Ordinance will permit Applicants and Providers to enhance the provision of personal wireless service and protect the public welfare, health, safety and interests of the City’s citizens.

**WHEREAS**, the amendments made to this ordinance by action of the Vestavia Hills City Council at its meeting dated August 10, 2020 have an intent to clarify applicability of the ordinance as it relates to operations of public utilities governed by the Alabama Public Service Commission, and the intent is further expressed in a letter received from Alabama Power Company on August 5, 2020; and

**WHEREAS**, the letter from Alabama Power Company referenced above shall be incorporated for the record as an exhibit to this ordinance for purposes of documenting the intent of the August 10, 2020 amendments; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to amend said Ordinance Number 2814 and the applicable sections of the Vestavia Code of Ordinances.

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

Chapter 16.5 of the Vestavia Hills Code of Ordinances entitled “Telecommunications” is hereby amended as Ordinance Number 2814-A is hereby adopted and shall be inserted in the Vestavia Hills Municipal Code as follows:

## ARTICLE III. SMALL CELL TECHNOLOGY FACILITIES

### Section 1. Definitions.

The following definitions shall apply in the interpretation of this Ordinance:

- A. *Abandonment* or *Abandons* means that, following the placement of Small Cell Technologies Facilities (and associated Accessory Equipment) or Support Structures in the City pursuant to a permit issued to a Provider or an Applicant, any of the following has occurred: (a) for any reason the Facilities cease to be used to transmit signals, data, or messages or otherwise be used for their intended purposes for a period of ninety (90) days; (b) the City revokes the permit for placement and use of those Facilities due to nonpayment of applicable fees, the failure of the Provider or Applicant to comply with conditions in the permit or in this Ordinance concerning them, or other valid reason; or (c) the Provider or Applicant fails to perform any of its responsibilities, obligations and requirements in this ordinance or in a permit that relate to the installation, construction, maintenance, use or operation of the Facilities, Accessory Equipment or Support Structures, and that breach remains uncured for a period of sixty (60) days after the City provides written notice of the breach to the Provider or Applicant.
- B. *Accessory Equipment* means any equipment other than an antenna that is used in conjunction with Small Cell Technology Facility arrangements to offer or provide personal wireless services. This equipment may be attached to or detached from a Small Cell Technology Wireless Support Structure, and includes, but is not limited to, cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, microcells, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment on or in the immediate vicinity of a Support Structure.
- C. *Antenna* means communications equipment that transmits and receives electromagnetic radio signals, is attached to a Small Cell Technology Wireless Support Structure and is used to communicate wireless service.
- D. *Applicant*, whether singular or plural, means a personal wireless service provider, an entity that is authorized by a personal wireless service provider to apply for or receive a permit to install, construct, modify or maintain a Small Cell Technology Facility and related Accessory Equipment or Support Structure in the City, or an entity certificated by the Alabama Public Service Commission to provide telecommunication service.
- E. *Application* means a formal request submitted by a personal wireless service provider, provider, or entity authorized by a personal wireless service provider or provider, to the City for a permit to install, construct, modify or maintain a Small Cell Technology Facility and related Accessory Equipment or Support Structure.
- F. *City* means the City of Vestavia Hills, Alabama.
- G. *City Council* means the City Council of the City of Vestavia Hills, Alabama.
- H. *City Manager* means the person appointed by the City Council as the City Manager of the City. The City Manager includes any employee of the City or other person designated by that Manager to perform the responsibilities of this Ordinance.

- I. *Colocation* means the placement or installation of a new Small Cell Wireless Technology Facility or related Accessory Equipment on an existing pole or other Support Structure that is owned, controlled or leased by a utility, the City or other person or entity.
- J. *Personal Wireless Service Provider* or *Provider* means an entity that provides personal wireless services, as defined in 47 U.S.C 332, to the public or citizens of the City on a commercial basis and is authorized by the FCC to provide those services.
- K. *Private Property* means real property located within the corporate limits of the City that does not lie within the Right-of-Way.
- L. *Provider* – see Personal Wireless Service Provider.
- M. *Right-Of-Way* or *Rights-Of-Way*, whether singular or plural, means the surface and space in, upon, above, along, across, over and below any public streets, avenues, highways, roads, courts, lanes, alleys, boulevards, ways, sidewalks and bicycle lanes, including all public utility easements and public service easements within those places, as the same now or may hereafter exist, that are within the City’s corporate boundaries and under the jurisdiction of the City. This term shall not include county, state, or federal Rights-of-Way or any property owned by any person or entity other than the City.
- N. *Small Cell Technology Facility(ies)* or *Facilities*, whether singular or plural, means and includes the following types of Structures when used to offer or provide personal wireless services: (a) antenna; and (b) associated Accessory Equipment. Photographs and illustrations of the types, relative dimensions and scale of these Facilities that are currently contemplated by this ordinance are attached as Exhibit A to the permanent record of this ordinance that is maintained by the City Clerk.
- O. *Small Cell Technology Wireless Support Structure, Support Structure* or *Structure*, whether singular or plural, means a freestanding structure designed or used to support, or capable of supporting, Small Cell Technology Facilities, including, but not limited to, electric utility distribution poles, street light poles, traffic signal structures, rooftops, attics, or other enclosed or open areas of a building or accessory structure, a sign, or a flag pole. These terms do not include any electric utility transmission poles, or decorative and architecturally significant street light poles that are inappropriate for use as a Support Structure as determined by the City Manager.
- P. *Stealth Technology* means one or more methods of concealing or minimizing the visual impact of a Small Cell Technology Facility (and associated Accessory Equipment) and Support Structure by incorporating features or design elements which either totally or partially conceal such Facilities or Equipment. The use of these design elements is intended to produce the result of having said Facilities and associated Structures blend into the surrounding environment and/or disguise, shield, hide or create the appearance that the Facilities architectural component of the Support Structure. Photographs and illustrations of examples of the types of Stealth Technology that may be used when buildings are utilized as Support Structures and other applications of Stealth Technology that are currently contemplated are attached as Exhibit B to the permanent record of the ordinance that is maintained by the City Clerk.



## **Section 2. Permit Required to Place Small Cell Technology Facilities in Rights-Of-Way.**

- A. Provider or Applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on the Right-Of-Way, or substantially modifying the position or characteristics of any such existing Facility thereon.
- B. The City Manager will review and administratively process any request for a permit to determine whether, in the exercise of the City Manger's reasonable discretion, it should be issued for the location and in the manner requested by the Applicant. In this process, the burden is on the Provider or Applicant to demonstrate that the placement of the proposed Small Cell Technology Facility and associated Accessory equipment or Support Structure on the Right-of-Way is the minimal physical installation which will achieve the goal of enhancing the provision of personal wireless service when considering all pertinent factors discussed in the provision immediately below. Except as set forth in this section this permitting process will be administrative and not require the approval of any City Board or City Official other than the City Manager. The factors, requirements and guidelines that the City Manager may consider and will apply when determining whether to issue a permit for placement of Small Cell Technology Facilities and associated Structure on the Right-Of-Way include, but are not limited to, the following:
  1. the demonstrated need for placing the Structures at the requested location and geographic area in order to deliver or enhance personal wireless service;
  2. the visual impact of placing the Support Structure or Facilities in the subject area;
  3. the character of the area in which the Structures are requested, including surrounding buildings, properties, and uses;
  4. whether the appearance and placement of the requested Structures is aesthetically consistent with the immediate area;
  5. whether the Structures are consistent with the historic nature and characteristics of the requested location;
  6. the Applicant's or Provider's network coverage objective and whether the Applicant or Provider should use available or previously unconsidered alternative locations to place the Support Structures or Facilities;
  7. Colocation. To the extent practical, all Facilities and associated Accessory Equipment that are placed in the City shall be attached to a pre-existing Support Structure that is owned, controlled or leased by a utility, franchisee, the City or other entity. If the Applicant demonstrates that no colocation opportunities exist in the area where a technologically documented need for a Facility exists, the Applicant may request that a new pole or other Support Structure be installed in that area for purposes of constructing the Facilities. Before any new Support Structure is permitted, each of the following must occur:
    - a. The Applicant must have provided the City written evidence that no practical colocation opportunity exists. This evidence shall include, but not be limited to, affidavits, correspondence, or other written

information that demonstrates that the Applicant has taken all commercially reasonable actions to achieve colocation in the requested location or area, that the Applicant has perused but been denied access to all potential colocation sites in the subject area (and the reasons for any such denial(s)), and otherwise show that the Applicant is unable to co-locate on an existing Support Structure;

- b. The City Manager must recommend the placement of a new Support Structure in the Right-of-Way; and
  - c. The City Council must approve the recommendation of the City Manager to issue a permit that includes the placement of a new Support Structure in the Right-of-Way. The City Council will consider whether to approve any such new Structures at a regular Council meeting that will be conducted as soon as practical after the City Manager's recommendation is made.
8. If a Facility is attached to a utility pole or other Support Structure in the Right-Of-Way, no antenna or other part of the Facility shall extend no more than five (5) feet above the height of that structure; provided that, in the event that the Applicant demonstrates that National Electric Safety Code regulations or other factors create an undue hardship in complying with this height requirement, the City Manager may permit a Facility to extend up to ten (10) feet above the height of such Support Structure;
  9. The Accessory Equipment shall, if reasonably possible, be placed at least ten (10) feet above the ground;
  10. The color of Antenna and Accessory Equipment shall be compatible with that of the Support Structure;
  11. The Facility (including the Accessory Equipment) shall not be illuminated;
  12. Whether the proposed installation could cause harm to the public or pose any undue risk to public safety;
  13. Whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the Right-Of-Way by the public; and
  14. If the proposed installation will disturb conditions on the Right-Of-Way, whether the Applicant can demonstrate its ability and financial resources to restore the subject area to its pre-existing condition following installation.

C. Application Process.

1. At a minimum, each application for a permit shall contain all of the following:
  - a. Engineering drawings depicting the type of Facilities, Support Structure, and means and points at which such Facilities and associated Accessory Equipment will be attached to a Support Structure;
  - b. Map(s) designating with specificity the location(s) of the requested Facilities;
  - c. If the Facilities will be located on a Support Structure on the Right-Of-Way that is owned by any entity other than the City or the Applicant, a copy of any license, lease, agreement or other documentation evidencing that the owner of that Support Structure authorizes the Facilities to be attached thereto or agrees in principle to authorize that attachment, provided that, if a representation is made to the City that the

attachment has been authorized in principle by the owner of the Support Structure but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until that documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit may be revoked and any license to use that part of the Right-Of-Way be rescinded.

- d. If the Applicant requests permission to place Facilities on a new Support Structure, the substantiation therefor required by Section 2, Paragraph B-7 of this ordinance.
  - e. An application shall not be deemed complete until the Applicant has submitted all documents, information, forms and fees specifically enumerated in this Ordinance that pertain to the location, construction, or configuration of the Facilities or Support Structures at the requested location(s). Within thirty (30) calendar days after an application for permit is submitted, the City shall notify the Applicant in writing if any additional information is needed to complete that application or supplemental information is required to process the request. If the City does not notify the Applicant in writing that the application is incomplete within thirty (30) days following its receipt, the application is deemed complete.
2. Time for Processing Application. Unless another date is specified in a written agreement between the City and the Applicant, the City will have the following time periods to make its final decision to approve or disapprove an application for a permit contemplated in this ordinance and advise the Applicant in writing of that determination:
- a. Sixty (60) calendar days from the date an application for a permit is filed with respect to a request to co-locate Facilities on an existing Support Structure; and
  - b. Ninety (90) calendar days from the date an application for a permit is filed with respect to a request to attach Facilities to a new Support Structure.

To the extent additional information is required to complete the application after it is filed, the applicable calendar day review period set forth in this subsection shall be tolled and not continue to run until the Applicant has provided any missing or requested supplemental information; provided that tolling shall not occur if the City does not advise the Applicant in writing of the incompleteness of a submitted application within thirty (30) days after that submission.

3. Reconsideration/Appeal. Any Applicant that desires reconsideration of an administrative decision by the City Manager to deny a request for a permit to place a Facility or Support Structure on the Right-Of-Way may seek review, modification or reversal of that decision by the City Council by submitting a request for reconsideration with the City Clerk within twenty-one (21) calendar days following the City Manager's decision. That request for reconsideration will be considered by the City Council at a regular Council meeting that will be

conducted as soon as practical after the request for reconsideration is made. If no request of reconsideration is submitted, the decision of the City Manager will be final.

Additionally, the Applicant, within thirty (30) days following a decision by the City Council to deny either a) a request for reconsideration or b) a decision by City Council to not approve the placement of a new Support Structure on the Right-of-Way, may appeal either of those decisions by the City Council to the Circuit Court of Jefferson County, Alabama or Shelby County, Alabama, as applicable. If no appeal of those decisions of the City Council is made, those will be deemed final.

D. Additional Requirements. Any Provider or Applicant to whom a permit is issued and that places Facilities and associated Support Structures on the Right-Of-Way also shall comply with the following requirements as long as those Facilities and Support Structures are on or under the Right-of-Way:

1. Prior to installing the Facilities or Support Structures, the Applicant shall provide the City a certificate(s) of insurance evidencing that it has obtained and will maintain the following types of insurance in connection with its operations on or use of the Right-Of-Way:

a. General Liability Coverage insuring the risk of claims for damages to persons or property arising from or related to the installation, construction, maintenance, operation or any use of the Facility or Support Structure placed on or along the Right-of-Way by the Applicant (or any of their contractors) with minimum limits of \$1,000,000 per occurrence; and

b. Workers Compensation Insurance as required by statute.

The General Liability coverage shall list the City of Vestavia Hills, Alabama as an additional insured, and may be provided through a combination of a primary and umbrella policies. All insurance policies shall be furnished by insurers who are reasonably acceptable to the City and authorized to transact business in the State of Alabama. On an annual basis following initial installation, the Applicant also shall furnish the City a Certificate indicating that the above-noted coverage remains and will remain in effect. The City shall allow the applicant to provide a certificate of self-insurance in lieu of these provisions and must affirm adequate financial security on the part of the self-insured entity.

2. All Facilities and associated Support Structures shall be installed, erected, maintained and operated in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC.

3. Following the installation of any Facilities and associated Support Structures, the Provider or Applicant, upon reasonable request and for good cause, shall furnish the City Manager a written certification from a licensed professional engineer in the State of Alabama stating that those Structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the

Facilities and associated Support Structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those Support Structures should fail at any time to comply with applicable laws and regulation, the Provider or Applicant, at either of their expense, shall cause those Structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to them from the City Manager of non-compliance, or cease all personal wireless service operations related to those Structures until the Applicant or Provider comes into full compliance with said laws and regulations.

4. The Facilities and associated Support Structures must at all times be maintained in good and safe condition. On no more frequent than a triennial basis, the City Manager may request that the Provider or Applicant, at either of their expense, furnish certification from a professional engineer who is licensed in the State of Alabama that the Facilities and Support Structures are in sound condition. Should that engineer deem those Structures unsound, the Provider or Applicant shall furnish to the City Manager a plan to remedy any unsafe conditions or structural defect(s) and take that remedial action at the Provider or Applicant's expense.
  5. Each Applicant or Provider that applies for a permit to place Facilities (including the Accessory Equipment) and Support Structures on the Right-Of-Way and installs and utilizes those Structures shall defend, indemnify and hold the City and its employees or officials, harmless from all demands, losses, expenses (including attorney's fees and court costs), claims for personal injury or property damage, judgments or liabilities of any type that may be asserted or claimed against the City (or its employees or officials) by any third person, firm or entity that arise out of or relate in any manner to the following: 1) the installation, construction, maintenance, use or operation of the permitted Facilities, Accessory Equipment or any Support Structure on or about the Right-Of-Way; and 2) the failure of the Provider or Applicant to perform any of their respective responsibilities, obligations, and permit requirements in this ordinance. Notwithstanding the foregoing, the Provider or Applicant shall not be obligated to indemnify the City for claims resulting from the sole negligence or willful acts of the City (or its representatives).
- E. Permit and License Fees. The Applicant for a permit to place Facilities and associated Support Structures on the Right-of-Way shall pay the following types of fees that are enumerated in the City's officially adopted Fee Structure Ordinance, as amended:
1. A permit application and review fee to be paid when an application is submitted;
  2. A permit issuance fee for each Support Structure on the Right-of-Way contemplated for attachment; and
  3. An annual license fee per each Support Structure on the Right-of-Way pertaining to the ongoing use of public property.
- F. Removal, Relocation or Modification of Small Wireless Facility in the Right-of-Way.
1. Ninety (90) Day Notice to Remove, Relocate or Modify. Whenever the City reasonably determines that the relocation is needed as described below, then within ninety (90) days following written notice from the City, the Applicant

shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless Facilities within the Rights-Of-Way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for (excluding beautification-only projects), as follows:

- a. the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the Rights-Of-Way; and/or
- b. if required for the construction, completion, repair, relocation, or maintenance of a City improvement or project in or upon, or the operations of the City in or upon, the Rights-Of-Way; and/or
- c. because the small cell Facility or its related equipment is interfering with or adversely affecting proper operation of any City-owned light poles, traffic signals, or other equipment in the Public Way; and/or
- d. to protect or preserve the public health or safety.
- e. In any such case, the City shall use its best efforts to afford Applicant a reasonably equivalent alternate location. If Applicant shall fail to relocate any Equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, the City shall be entitled to relocate the Equipment at Applicant's sole cost and expense, without further notice to Applicant. If, at any time during the Term for which the permit is granted, the City determines that utility Facilities will be placed underground in an area including any City-owned Facilities upon which Applicant has installed Equipment, Applicant and the City will cooperate in good faith on the design and installation, at Applicant's costs, of suitable replacement of Applicant's Facilities, including decorative streetlight poles, provided that the City may not require an electric utility that is regulated by the Alabama Public Service Commission to install, move, remove, relocate, or modify its facilities, poles, attachments, or equipment in violation of the rules and regulations of the Alabama Public Service Commission; and Applicant agrees that if reasonably required by the City Manager or his designee or upon final appeal by the Vestavia Hills Design Review Board in order to ensure appropriately even and level lighting within a previously unlighted area, additional Facilities, which may include decorative streetlight poles beyond or more numerous than those required for Applicant's Facilities, shall be installed. Applicant agrees that decorative streetlight poles may be required by the City in the future in the place of initially-installed standard-design streetlight poles, in which replacement of the Applicant's Facilities and Equipment on decorative streetlights that were initially installed standard-design streetlight poles shall be solely at Applicant's cost. Further, Applicant agrees that in such instances and at such time as replacement poles are installed, the City may reasonably require that the configuration and/or location of ground furniture (which references any equipment on the ground that is needed to supply power or backhaul services to the small

cell Facility) and/or pole-mounted equipment or equipment cages be changed (such as changing from pole-mounted equipment cages to ground furniture), in the discretion of the City.

2. Emergency Removal or Relocation of Facilities. The City retains the Right and privilege to cut or move any small wireless Facility or related structure located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the Applicant and provide the Applicant an opportunity to move its own Facilities, if possible, prior to cutting electrical service or removing a Facility and shall notify the wireless Provider after cutting or removing a small wireless Facility.

### **Section 3. Placement of Small Cell Technology Facilities on Private Property.**

- A. A Provider or Applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on private property, or substantially modifying the position or characteristics of any such existing Facility thereon.
- B. The City Manager will review and administratively process any request for a permit to determine whether, in the exercise of the City Manager's reasonable discretion, it should be issued for the location and in the manner requested. In this process, the burden is on the Applicant to demonstrate that the placement of the proposed Small Cell Technology Facility and associated Accessory Equipment or Support Structure on private property is the minimal physical installation which will achieve the technological goal of enhancing the provision of personal wireless services. Except as set forth in this section, this permitting process will not require the approval of any City Board or City official other than the City Manager. The factors, guidelines and requirements that the City Manager may consider and will apply when determining whether to issue a permit for placement of Facilities and any associated Accessory Equipment or Support Structure on private property include, but are not limited to, the following:
  1. The factors and requirements set forth in Section 2 of this Ordinance Number 2814-A;
  2. Colocation. The guidelines in Section 2 of this Ordinance Number 2814-A to utilize existing poles and Support Structures for the placement of Facilities and Accessory Equipment are also applicable when considering whether to permit the installation of those Facilities and Support Structures on private property, provided that City Council approval is not required before a permit is issued to place a new pole or other Support Structure on private property if that action is appropriate.
  3. The Provider or Applicant shall use Stealth Technology when installing the Facilities and associated Accessory Equipment on any building or accessory to that building that is located on private property. Further, Stealth Technology should be used when placing Facilities on other types of Support Structures on

private property unless the Applicant can reasonably demonstrate that, given the nature of the requested application, the use of such Technology is (a) unnecessary; or (b) impractical.

4. If Facilities are placed on an existing or new building or accessory to that building, the following dimensional regulations shall apply:
  - a. Façade-mounted antennas shall not extend above the face of any wall or exterior surface of the building.
  - b. Roof-mounted antennas and Accessory Equipment may be permitted on buildings in accordance with the following table:

<b>Height of Building</b>	<b>Maximum Height of Facility above Highest Point of Roof</b>	<b>Required Setback from Edge of Roof of Building</b>
Up to 15 feet	8 feet, including antenna	1 foot for every foot of height of equipment
15-35 feet	10 feet, including antenna	1 foot for every foot of height of equipment
More than 35 feet	12 feet, including antenna	1 foot for every foot of height of equipment

- c. The antenna component of the Facilities shall be limited to a maximum height of three (3) feet and a maximum width of two (2) feet; provided that authorization to install antenna up to six (6) feet in height may be permitted if a showing of the technological need for such equipment is made and other requirements of this Section are met.
  - d. Accessory Equipment must be located in an equipment cabinet, equipment room in an existing building or in an unmanned equipment building. If the equipment building is freestanding, it shall conform to the Vestavia Hills Municipal Code with respect to building setbacks, that building shall not exceed 400 square feet, and its overall height shall be limited to 15 feet (if located on the ground) measured from the finished grade. Further, if an equipment building or cabinet is located in a residential zone, or the nearest adjoining property is in a residential zone, that building or cabinet shall be surrounded by landscaping to provide a screen of the same height as the building or cabinet.
5. Application Process. Except as provided in paragraphs a and b immediately below, the same application process that is set forth in Section 2.C will be utilized when processing any request for a permit to place Facilities or Support Structures on private property, except that:
  - a. City Council approval to install a new Support Structure on private property is not a condition for a permit to place Facilities thereon; and
  - b. If the Facilities are located on private property that is not owned or exclusively used by the Applicant, instead of providing the documentation contemplated in Section 2(c)(1)(c), the Applicant shall present a license, lease, agreement or other documentation indicating



that owner of said property authorizes the Applicant the Rights to place the Facilities thereon and access thereto, or that such owner agrees in principle to grant the Applicant those Rights; provided that, if a representation is made to the City that the owner of private property has agreed in principle to grant those Rights but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until the documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit and license may be revoked.

6. Additional Requirements. Any Provider or Applicant to whom a permit is issued and that places Facilities and associated Support Structures on private property also shall comply with the following requirements as long as those Facilities and Support Structures are located thereon:
  - a. All Facilities and Support Structures shall be installed, erected, and maintained in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC, the National Electric Safety Code, and the National Electric Code. At least triennially following the installation of the Facilities or associated Support Structures, upon reasonable request and for good cause, the Applicant shall furnish the City Manager a written certification from a professional engineer licensed in the State of Alabama indicating that those Structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals, along with the requirements of the National Electric Safety Code, as applicable. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the Facilities and associated Support Structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those Structures fail at any time to comply with said laws, regulations, and codes, the Provider or Applicant shall cause those Structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to either of them of such non-compliance, or cease all personal wireless communications operations related to those Structures until the Provider or Applicant comes into full compliance with applicable laws and regulations.
  - b. The Facilities and associated Support Structures on private property must at all times be maintained in good and safe condition.
- C. Permit and License Fees. The Provider or Applicant for a permit to place Facilities and associated Support Structures on private property shall pay the following types of fees that are enumerated in the City's officially adopted Fee Structure Ordinance as amended:
  1. a permit application and review fee to be paid when an application is submitted; and,

2. a permit issuance fee per each Support Structure on private property contemplated for attachment.

#### **Section 4. Abandonment of Facilities on Right-of-Way.**

If a Provider or Applicant abandons any Facility (including the Accessory Equipment) or an associated Support Structure (collectively "Facilities" for purposes of this Section) that is located on the Right-Of-Way, the following rights and obligations shall exist. The City may require the Provider or Applicant, at their expense, to remove and reclaim the abandoned Facilities within sixty (60) days from the date of written notice of Abandonment given by the City to them and to reasonably restore the condition of the property at which the Facilities are located to that existing before they were installed. If the Provider or Applicant fails to remove and reclaim its abandoned Facilities within such 60-day period and the Facilities are located on the Right-Of-Way, the City shall have the rights to:

1. remove them and charge its expense of any such removal operation to the account of the Provider or Applicant,
2. purchase all abandoned Facilities at the subject location from the Provider or Applicant in consideration for \$1.00,
3. at the City's discretion, either resell the abandoned Facilities to a third party or dispose and salvage them; provided that the proceeds of any resale of abandoned Facilities by the City to a third party shall be credited to the account of the Applicant or Provider that used those Facilities before the abandonment, and
4. charge any expense incurred by the City to restore the Right-of-Way to the account of the Provider or Applicant.

#### **Section 5. Colocation.**

To promote the public interest that is served by co-locating Facilities and associated Accessory Equipment on existing Support Structures and thereby mitigating the installation of additional Support Structures throughout the City, and to the extent permitted by 47 U.S.C. 224, no person or entity (including any Provider or Applicant that utilizes an existing Support Structure that is located on Right-of-Way or on private property in the City and has space available thereon may deny a Provider or Applicant the Right to use or access an existing Support Structure for purposes of attaching Facilities permitted by this ordinance without sound operational, technological or other good reason. Nothing in this Section shall be construed to grant mandatory access rights to any Support Structure to any Provider or Applicant where such access rights are not already granted by federal law. Nothing in this Ordinance shall affect, or be construed to affect, any pole attachment agreement between any Applicant or Provider and any owner, lessor, or controller of a Support Structure or Structure.

### **Section 6. Non-Applicability.**

- A. The placement of an antenna(s), Facilities or equipment related to the following types of wireless services are exempt from regulation under this ordinance:
  - 1. Amateur radio service that is licensed by the FCC if the Facilities related thereto are not used or licensed for any commercial purpose; and
  - 2. Facilities used by any federal, state or local government or agency to provide safety or emergency services. Further, the provisions in this Article are supplemental to, and not intended to alter, affect or modify the provisions in Article II of Chapter 16.5 pertaining to the placement or use of macro Telecommunications Towers.
- B. Nothing in this Ordinance shall be construed to apply to the attachments, equipment, facilities, or business activities of an electric utility that is regulated by the Alabama Public Service Commission. This Ordinance also does not apply to the attachments, equipment, facilities, or business activities of such electric utility's parents, affiliates, or subsidiaries when they are acting in support of the electric utility, provided they are not acting as a Personal Wireless Service Provider or Provider.

### **Section 7. Repealer.**

All Ordinances or parts of ordinances heretofore adopted by the City Council of the City of Vestavia Hills, Alabama that are inconsistent with the provisions of this Ordinance are hereby expressly repealed.

### **Section 8. Severability.**

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.

### **Section 9. Effective Date.**

This ordinance shall become effective immediately upon adoption and posting/publication as provided by Alabama law.

**DONE, ORDERED, APPROVED and ADOPTED** this the 17th day of December, 2018.

Ashley C. Curry  
Mayor

**ATTESTED BY:**

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 2814-A 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 10<sup>th</sup> day of August, 2020, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_ day of \_\_\_\_\_, 2020.

Rebecca Leavings  
City Clerk



August 5, 2020

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

RE: Proposed Revisions to Vestavia Hills Small Cell Ordinance

Dear Mr. Downes:

Alabama Power appreciates your consideration of the Company's proposed revisions to the Vestavia Hills small cell ordinance. These revisions are needed to clarify that the ordinance does not apply to an electric utility's core business activities, and if adopted, will ensure that these activities are not inadvertently subjected to the permitting requirements in the ordinance.

The language proposed in Section 6 of the ordinance states that the equipment and activities of an electric utility are exempted from the ordinance. It also states that the equipment and activities of an electric utility's parents, affiliates, or subsidiaries are exempted from the ordinance "when they are acting in support of the electric utility, provided they are not acting as a Personal Wireless Service Provider or Provider." Alabama Power – with support from its affiliates – uses wireless attachments and equipment to provide and monitor electric service to customers in Vestavia Hills and throughout the state. This equipment does not provide personal wireless services, but it does fall within the various hardware definitions set forth in this ordinance, which is why it could inadvertently capture Alabama Power's operations. This is not uncommon among municipal small cell ordinances, and approximately 20 cities in Alabama have already adopted similar clarifying language.

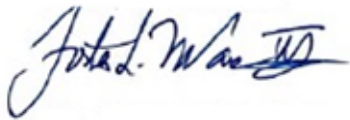
Alabama Power is not authorized under federal law to provide personal wireless services, and the language proposed to be included in Section 6 makes clear that the utility exemption only applies to Alabama Power's parents, affiliates, and subsidiaries when they are supporting the efforts of Alabama Power. More specifically, the exemption does not apply if such affiliate acts as a Personal Wireless Service Provider. Therefore, if an Alabama Power affiliate begins providing personal wireless services via small cell facilities in Vestavia Hills, the exemption would no longer apply and that entity would be

Page 2  
August 5, 2020

properly subjected to the permitting and other requirements of the city's small cell ordinance.

Thank you for your consideration of these revisions. We will be happy to answer any questions or provide any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Foster Ware". The signature is fluid and cursive, with a stylized "F" and "W".

Foster Ware  
Area Manager  
Birmingham Division

cc: Mayor Ashley Curry  
Mayor Pro Tem Rusty Weaver  
Councilor Kimberly Cook  
Councilor Paul Head  
Councilor George Pierce

**EXHIBIT A**

**PHOTOGRAPHS AND ILLUSTRATIONS DEPICTING TYPES, RELATIVE DIMENSIONS AND NATURE OF SMALL CELL TECHNOLOGY FACILITIES AND ASSOCIATED SUPPORT STRUCTURES REGULATED BY THIS ORDINANCE**

These photographs and illustrations are attached to the permanent record of this Ordinance that is maintained by the City Clerk and available upon request to that office.

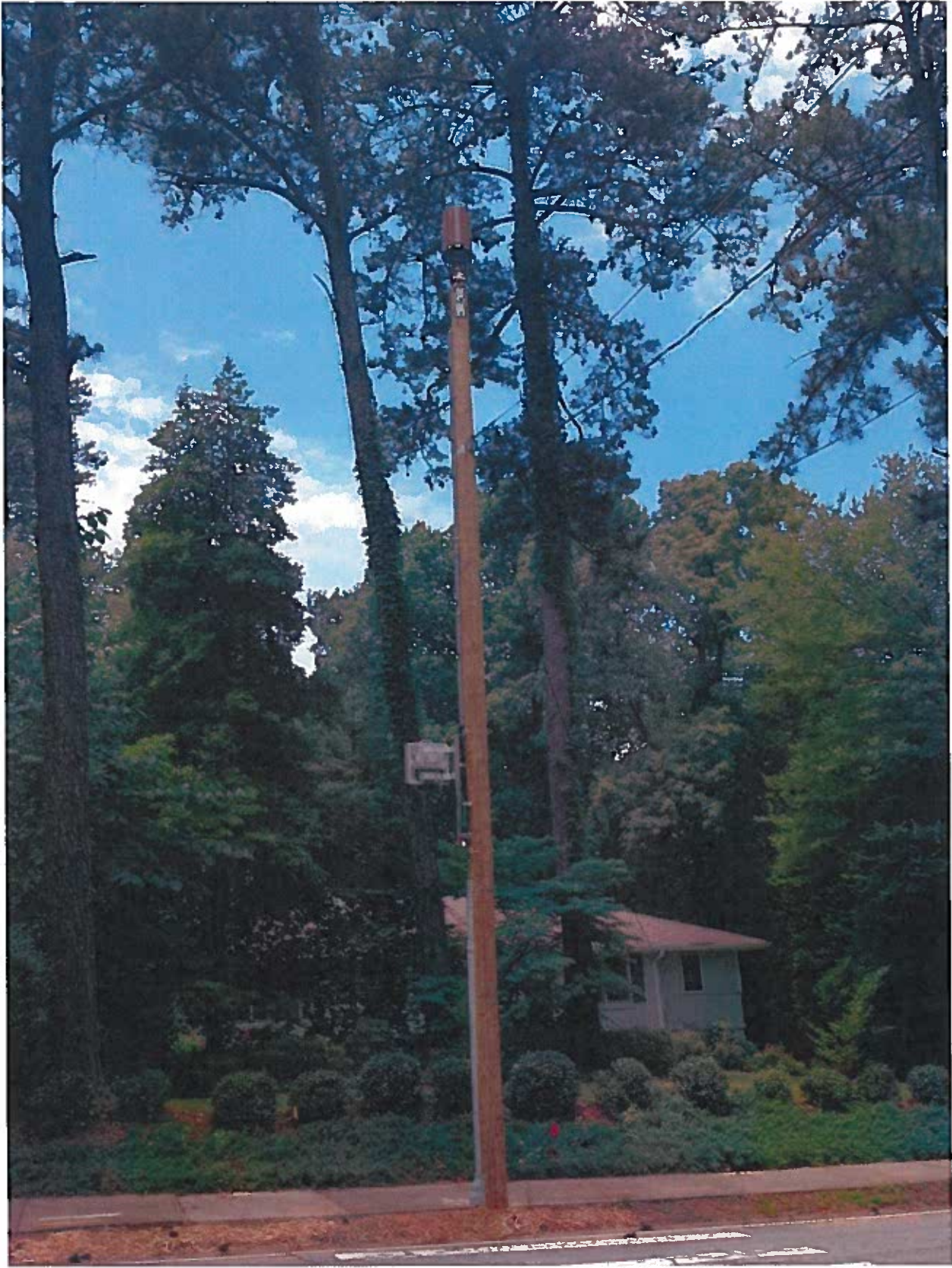


Recreation of The Fabulous Fox - Atlanta by James Hertz at www.flickr.com - licensed CC-BY (<http://creativecommons.org/licenses/by/2.0/>)

**ConcealFab**  
Corporation















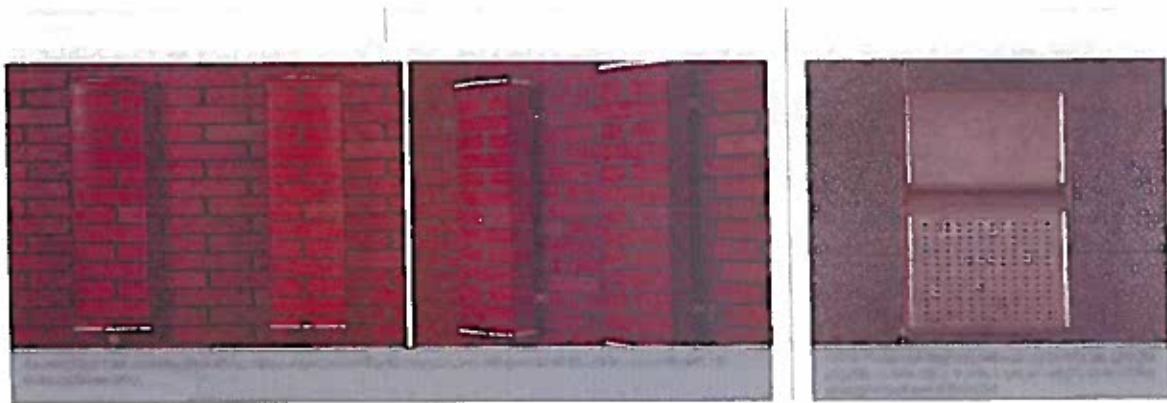




**EXHIBIT B**

**PHOTOGRAPHS AND ILLUSTRATIONS DEPICTING EXAMPLES OF STEALTH TECHNOLOGY FOR SMALL CELL TECHNOLOGY FACILITIES LOCATED ON BUILDINGS**

These photographs and illustrations are attached to the permanent record of this Ordinance that is maintained by the City Clerk and available upon request to that office.



PATRICK H. BOONE  
ATTORNEY AND COUNSELOR AT LAW  
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705  
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH  
BIRMINGHAM, ALABAMA 35203-3720  
TELEPHONE (205) 324-2018  
FACSIMILE (205) 324-2295

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

August 7, 2020

By Electronic Mail

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

In Re: Ordinance Number 2814-A/An Ordinance to Amend Chapter 16.5 Entitled "Telecommunications," Article III Entitled "Small Cell Technology," of the Vestavia Hills Code of Ordinances and to Amend Ordinance Number 2814 to Adopt Regulations for Small Cell Technology Facilities in the City of Vestavia Hills, Alabama

Dear Mr. Downes:

This letter confirms and supplements our telephone conversation yesterday regarding the above matter. During our discussion, you requested that I furnish you with my written legal opinion regarding the approval and adoption of Ordinance Number 2814-A that will amend Ordinance Number 2814 by including modifications requested by Alabama Power Company. The purpose of this letter is to comply with your request.

**I. FACTS**

The history of the ordinances regulating small cell technology facilities in the City of Vestavia Hills is set forth below.

<u>DATE</u>	<u>ACTION</u>
December 17, 2018	Ordinance Number 2814 adopting regulations for small cell technology facilities in the City of Vestavia Hills, Alabama was enacted.
December 17, 2018	Ordinance Number 2815 establishing fees for small cell technology facilities was enacted.



August 7, 2020  
Page 2

- July 11, 2019 A meeting of representatives of the City and representatives of AT&T was held to discuss Ordinance Number 2814 and Ordinance Number 2815. Present in person for the City were Mayor Ashley C. Curry, City Manager Jeffrey D. Downes and City Attorney Patrick H. Boone. Attending for AT&T were Wayne Hutchens, Terri Williams and attorney Thomas B. Alexander. Senator Dan Roberts was also there. During the meeting, AT&T highlighted its objection to the fees set forth in Ordinance Number 2815.
- August 26, 2019 Ordinance Number 2815 establishing a Fee Structure for Small Cell Technology Facilities in the City of Vestavia Hills, Alabama as Established by Ordinance Number 2814 was amended.
- May 12, 2020 Alabama Power Company requested that Ordinance Number 2814 be amended to include the following language:
- “Nothing in this Ordinance shall be construed to apply to the attachments, equipment, facilities, or business activities of an electric utility that is regulated by the Alabama Public Service Commission. This Ordinance also does not apply to the attachments, equipment, facilities, or business activities of such electric utility’s parents, affiliates, or subsidiaries when they are acting in support of the electric utility, provided they are not acting as a Personal Wireless Service Provider or Provider.”
- July 13, 2020 AT&T submitted written comments to you regarding the request by Alabama Power Company.
- August 5, 2020 Foster Ware, Area Manager for Birmingham Division of Alabama Power Company, wrote you a letter dated August 5, 2020 setting forth the reasons for the requested revision of Ordinance Number 2814 (the “APCo Letter”).
- August 10, 2020 The City Council will hold its first regularly scheduled meeting for August. Ordinance Number 2814-A is on the agenda for a first reading.

## **II. YOUR REQUEST**

During our telephone conversation yesterday, you requested that I do the following things:

- A. Review the changes to Ordinance Number 2814 requested by Alabama Power Company on May 12, 2020; and
- B. Review the comments submitted by AT&T on July 13, 2020; and

- C. Review Ordinance Number 2814-A; and
- D. Provide you with my written legal opinion; and
- E. Provide you with my recommendation from a legal standpoint.

### III. LEGAL OPINION

It is my legal opinion that Ordinance Number 2814-A with the APCo Letter attached and incorporated therein does not make substantive changes to Ordinance Number 2814. Instead, it simply expresses the intent that the ordinance does not apply to Alabama Power Company at the present time. The ordinance continues to apply to Personal Wireless Service Providers as defined in Article III, Section 1J of Ordinance Number 2814-A. If Alabama Power Company becomes a Personal Wireless Service Provider in the future, then in such event Ordinance Number 2814-A will apply to it.

### IV. BASIS FOR LEGAL OPINION

The Supreme Court of Alabama decided the case of *City of Birmingham, et al v. AmSouth Bank, N.A.*, et al, 591 So.2d 473 (1991) and wrote as follows:

“City ordinances are subject to the same general rules of construction as are acts of the legislature. *S&S Distributing Co. v. Town of New Hope*, 334 So.2d 905 (Ala.1976). In *John Deere Co. v. Gamble*, 523 So.2d 95, 99-100 (Ala.1988), quoting from *Clark v. Houston County Comm’n*, 507 So.2d 902, 903-04 (Ala.1987), this Court set out the following general rules of statutory construction, which also apply to city ordinances:

‘The fundamental rule of statutory construction is to ascertain and give effect to the intent of the [City Council] in enacting the [Ordinance]. *Advertiser Co. v. Hobbie*, 474 So.2d 93 (Ala.1985); *League of Women Voters v. Renfro*, 292 Ala. 128,290 So.2d 167 (1974). If possible, the intent of the [City Council] should be gathered from the language of the [Ordinance] itself. *Advertiser Co. v. Hobbie*, supra; *Morgan County Board of Education v. Alabama Public School & College Authority*, 362 So.2d 850 (Ala.1978).’”

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**V. MY RECOMMENDATION**

From a legal standpoint, I recommend the approval and adoption of Ordinance Number 2814-A with the APCo Letter attached thereto. The modifications requested by Alabama Power Company and the APCo Letter bolster the intent of the City of Vestavia Hills in regulating small cell technology and is consistent with *City of Birmingham, et al v. AmSouth Bank, N.A.* cited above.

It must be remembered that the regulation of small cell technology is a nationwide issue of great interest. I believe, particularly in this field of technology, that the expression of intent is extremely important. If the language of the ordinance is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the City Council must be given effect. *IMED Corp. v. Systems Engineering Associates Corp.*, 602 So.2d 344, 346 (1992).

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

Sincerely,

A handwritten signature in blue ink that reads "Patrick H. Boone". The signature is fluid and cursive, with the first name being the most prominent.

Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp  
cc: City Clerk Rebecca Leavings (by e-mail)

## **ORDINANCE NUMBER 2814**

### **AN ORDINANCE TO ADOPT REGULATIONS FOR SMALL CELL TECHNOLOGY FACILITIES IN THE CITY OF VESTAVIA HILLS, ALABAMA**

**WHEREAS**, The City Council of the City of Vestavia Hills, Alabama seeks to facilitate the availability of reliable, personal wireless ~~communication~~-services for its citizens and the public by permitting the placement of Small Cell Technology Facilities and associated Support Structures along the Rights-Of-Way and on private properties in the City; and

**WHEREAS**, the installation, expansion, and maintenance of Small Cell Technology Facilities and associated Structures on or along the Rights-Of-Way and on private properties might have significant impact upon: (1) the aesthetic values and historical character of the City; (2) safe use and passage on or along the Rights-of-Way by the public; and (3) properties and property values in the City in areas where such Structures are placed; and

**WHEREAS**, the Federal Telecommunications Act of 1996 (the "Act") and regulations promulgated with respect to the Act by the Federal Communications Commission ("FCC") authorize local governments to enact responsible regulations for the placement, expansion, height, and maintenance of Small Cell Technologies Facilities and associated Support Structures; and

**WHEREAS**, as provided in this Ordinance Number 2814, the City seeks to mandate, where feasible, the colocation of Small Cell Technology Facilities on existing poles and other Support Structures as opposed to installation of new Structures; and

**WHEREAS**, the above-noted colocation and other provisions of this Ordinance are intended to be consistent with the Act and its associated regulation; and

**WHEREAS**, the adoption of the regulations, procedures, and requirements in this Ordinance will permit Applicants and Providers to enhance the provision of personal wireless service and protect the public welfare, health, safety and interests of the City's citizens.

[WHEREAS, the amendments made to this ordinance by action of the Vestavia Hills City Council at its meeting dated August 10, 2020 have an intent to clarify applicability of the ordinance as it relates to operations of public utilities governed by the Alabama Public Service Commission, and the intent is further expressed in a letter received from Alabama Power Company on August 5, 2020; and](#)

[WHEREAS, the letter from Alabama Power Company referenced above shall be incorporated for the record as an exhibit to this ordinance for purposes of documenting the intent of the August 10, 2020 amendments](#)

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

Chapter 16.5 of the Vestavia Hills Code of Ordinances entitled "Telecommunications" is hereby amended as Ordinance Number 2814 is hereby adopted and shall be inserted in the Vestavia Hills Municipal Code as follows:

#### **ARTICLE III. SMALL CELL TECHNOLOGY FACILITIES**

##### **Section 1. Definitions.**

The following definitions shall apply in the interpretation of this Ordinance:



- A. *Abandonment* or *Abandons* means that, following the placement of Small Cell Technologies Facilities (and associated Accessory Equipment) or Support Structures in the City pursuant to a permit issued to a Provider or an Applicant, any of the following has occurred: (a) for any reason the Facilities cease to be used to transmit signals, data, or messages or otherwise be used for their intended purposes for a period of ninety (90) days; (b) the City revokes the permit for placement and use of those Facilities due to nonpayment of applicable fees, the failure of the Provider or Applicant to comply with conditions in the permit or in this Ordinance concerning them, or other valid reason; or (c) the Provider or Applicant fails to perform any of its responsibilities, obligations and requirements in this ordinance or in a permit that relate to the installation, construction, maintenance, use or operation of the Facilities, Accessory Equipment or Support Structures, and that breach remains uncured for a period of sixty (60) days after the City provides written notice of the breach to the Provider or Applicant.
- B. *Accessory Equipment* means any equipment other than an antenna that is used in conjunction with Small Cell Technology Facility arrangements to offer or provide personal wireless services. This equipment may be attached to or detached from a Small Cell Technology Wireless Support Structure, and includes, but is not limited to, cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, microcells, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment on or in the immediate vicinity of a Support Structure.
- C. *Antenna* means communications equipment that transmits and receives electromagnetic radio signals, is attached to a Small Cell Technology Wireless Support Structure and is used to communicate wireless service.
- D. *Applicant*, whether singular or plural, means a personal wireless service provider, an entity that is authorized by a personal wireless service provider to apply for or receive a permit to install, construct, modify or maintain a Small Cell Technology Facility and related Accessory Equipment or Support Structure in the City, or an entity certificated by the Alabama Public Service Commission to provide telecommunication service.
- E. *Application* means a formal request submitted by a personal wireless service provider, provider, or entity authorized by a personal wireless service provider or provider, to the City for a permit to install, construct, modify or maintain a Small Cell Technology Facility and related Accessory Equipment or Support Structure.
- F. *City* means the City of Vestavia Hills, Alabama.
- G. *City Council* means the City Council of the City of Vestavia Hills, Alabama.
- H. *City Manager* means the person appointed by the City Council as the City Manager of the City. The City Manager includes any employee of the City or other person designated by that Manager to perform the responsibilities of this Ordinance.
- I. *Colocation* means the placement or installation of a new Small Cell Wireless Technology Facility or related Accessory Equipment on an existing pole or other Support Structure that is owned, controlled or leased by a utility, the City or other person or entity.
- J. *Personal Wireless Service Provider* or *Provider* means an entity that provides personal wireless ~~communication~~ services, as defined in 47 U.S.C. 332, to the public or citizens

of the City on a commercial basis and is authorized by the FCC to provide those services.

- K. *Private Property* means real property located within the corporate limits of the City that does not lie within the Right-of-Way.
- L. *Provider* – see Personal Wireless Service Provider.
- M. *Right-Of-Way* or *Rights-Of-Way*, whether singular or plural, means the surface and space in, upon, above, along, across, over and below any public streets, avenues, highways, roads, courts, lanes, alleys, boulevards, ways, sidewalks and bicycle lanes, including all public utility easements and public service easements within those places, as the same now or may hereafter exist, that are within the City’s corporate boundaries and under the jurisdiction of the City. This term shall not include county, state, or federal Rights-of-Way or any property owned by any person or entity other than the City.
- N. *Small Cell Technology Facility(ies)* or *Facilities*, whether singular or plural, means and includes the following types of Structures when used to offer or provide personal wireless services: (a) antenna; and (b) associated Accessory Equipment. Photographs and illustrations of the types, relative dimensions and scale of these Facilities that are currently contemplated by this ordinance are attached as Exhibit A to the permanent record of this ordinance that is maintained by the City Clerk.
- O. *Small Cell Technology Wireless Support Structure, Support Structure* or *Structure*, whether singular or plural, means a freestanding structure designed or used to support, or capable of supporting, Small Cell Technology Facilities, including, but not limited to, electric utility distribution poles, street light poles, traffic signal structures, rooftops, attics, or other enclosed or open areas of a building or accessory structure, a sign, or a flag pole. These terms do not include any electric utility transmission poles, or decorative and architecturally significant street light poles that are inappropriate for use as a Support Structure as determined by the City Manager.
- P. *Stealth Technology* means one or more methods of concealing or minimizing the visual impact of a Small Cell Technology Facility (and associated Accessory Equipment) and Support Structure by incorporating features or design elements which either totally or partially conceal such Facilities or Equipment. The use of these design elements is intended to produce the result of having said Facilities and associated Structures blend into the surrounding environment and/or disguise, shield, hide or create the appearance that the Facilities architectural component of the Support Structure. Photographs and illustrations of examples of the types of Stealth Technology that may be used when buildings are utilized as Support Structures and other applications of Stealth Technology that are currently contemplated are attached as Exhibit B to the permanent record of the ordinance that is maintained by the City Clerk.

**Section 2. Permit Required to Place Small Cell Technology Facilities in Rights-Of-Way.**

- A. Provider or Applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on the Right-Of-Way, or substantially modifying the position or characteristics of any such existing Facility thereon.

B. The City Manager will review and administratively process any request for a permit to determine whether, in the exercise of the City Manger's reasonable discretion, it should be issued for the location and in the manner requested by the Applicant. In this process, the burden is on the Provider or Applicant to demonstrate that the placement of the proposed Small Cell Technology Facility and associated Accessory equipment or Support Structure on the Right-of-Way is the minimal physical installation which will achieve the goal of enhancing the provision of personal wireless service when considering all pertinent factors discussed in the provision immediately below. Except as set forth in this section this permitting process will be administrative and not require the approval of any City Board or City Official other than the City Manager. The factors, requirements and guidelines that the City Manager may consider and will apply when determining whether to issue a permit for placement of Small Cell Technology Facilities and associated Structure on the Right-Of-Way include, but are not limited to, the following:

1. the demonstrated need for placing the Structures at the requested location and geographic area in order to deliver or enhance personal wireless service;
2. the visual impact of placing the Support Structure or Facilities in the subject area;
3. the character of the area in which the Structures are requested, including surrounding buildings, properties, and uses;
4. whether the appearance and placement of the requested Structures is aesthetically consistent with the immediate area;
5. whether the Structures are consistent with the historic nature and characteristics of the requested location;
6. the Applicant's or Provider's network coverage objective and whether the Applicant or Provider should use available or previously unconsidered alternative locations to place the Support Structures or Facilities;
7. Colocation. To the extent practical, all Facilities and associated Accessory Equipment that are placed in the City shall be attached to a pre-existing Support Structure that is owned, controlled or leased by a utility, franchisee, the City or other entity. If the Applicant demonstrates that no colocation opportunities exist in the area where a technologically documented need for a Facility exists, the Applicant may request that a new pole or other Support Structure be installed in that area for purposes of constructing the Facilities. Before any new Support Structure is permitted, each of the following must occur:
  - a. The Applicant must have provided the City written evidence that no practical colocation opportunity exists. This evidence shall include, but not be limited to, affidavits, correspondence, or other written information that demonstrates that the Applicant has taken all commercially reasonable actions to achieve colocation in the requested location or area, that the Applicant has perused but been denied access to all potential colocation sites in the subject area (and the reasons for any such denial(s)), and otherwise show that the Applicant is unable to co-locate on an existing Support Structure;
  - b. The City Manager must recommend the placement of a new Support Structure in the Right-of-Way; and

- c. The City Council must approve the recommendation of the City Manager to issue a permit that includes the placement of a new Support Structure in the Right-of-Way. The City Council will consider whether to approve any such new Structures at a regular Council meeting that will be conducted as soon as practical after the City Manager's recommendation is made.
  8. If a Facility is attached to a utility pole or other Support Structure in the Right-Of-Way, no antenna or other part of the Facility shall extend no more than five (5) feet above the height of that structure; provided that, in the event that the Applicant demonstrates that National Electric Safety Code regulations or other factors create an undue hardship in complying with this height requirement, the City Manager may permit a Facility to extend up to ten (10) feet above the height of such Support Structure;
  9. The Accessory Equipment shall, if reasonably possible, be placed at least ten (10) feet above the ground;
  10. The color of Antenna and Accessory Equipment shall be compatible with that of the Support Structure;
  11. The Facility (including the Accessory Equipment) shall not be illuminated;
  12. Whether the proposed installation could cause harm to the public or pose any undue risk to public safety;
  13. Whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the Right-Of-Way by the public; and
  14. If the proposed installation will disturb conditions on the Right-Of-Way, whether the Applicant can demonstrate its ability and financial resources to restore the subject area to its pre-existing condition following installation.
- C. Application Process.
1. At a minimum, each application for a permit shall contain all of the following:
    - a. Engineering drawings depicting the type of Facilities, Support Structure, and means and points at which such Facilities and associated Accessory Equipment will be attached to a Support Structure;
    - b. Map(s) designating with specificity the location(s) of the requested Facilities;
    - c. If the Facilities will be located on a Support Structure on the Right-Of-Way that is owned by any entity other than the City or the Applicant, a copy of any license, lease, agreement or other documentation evidencing that the owner of that Support Structure authorizes the Facilities to be attached thereto or agrees in principle to authorize that attachment, provided that, if a representation is made to the City that the attachment has been authorized in principle by the owner of the Support Structure but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until that documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit may be revoked and any license to use that part of the Right-Of-Way be rescinded.



- d. If the Applicant requests permission to place Facilities on a new Support Structure, the substantiation therefor required by Section 2, Paragraph B-7 of this ordinance.
  - e. An application shall not be deemed complete until the Applicant has submitted all documents, information, forms and fees specifically enumerated in this Ordinance that pertain to the location, construction, or configuration of the Facilities or Support Structures at the requested location(s). Within thirty (30) calendar days after an application for permit is submitted, the City shall notify the Applicant in writing if any additional information is needed to complete that application or supplemental information is required to process the request. If the City does not notify the Applicant in writing that the application is incomplete within thirty (30) days following its receipt, the application is deemed complete.
2. Time for Processing Application. Unless another date is specified in a written agreement between the City and the Applicant, the City will have the following time periods to make its final decision to approve or disapprove an application for a permit contemplated in this ordinance and advise the Applicant in writing of that determination:
- a. Sixty (60) calendar days from the date an application for a permit is filed with respect to a request to co-locate Facilities on an existing Support Structure; and
  - b. Ninety (90) calendar days from the date an application for a permit is filed with respect to a request to attach Facilities to a new Support Structure.
- To the extent additional information is required to complete the application after it is filed, the applicable calendar day review period set forth in this subsection shall be tolled and not continue to run until the Applicant has provided any missing or requested supplemental information; provided that tolling shall not occur if the City does not advise the Applicant in writing of the incompleteness of a submitted application within thirty (30) days after that submission.
3. Reconsideration/Appeal. Any Applicant that desires reconsideration of an administrative decision by the City Manager to deny a request for a permit to place a Facility or Support Structure on the Right-Of-Way may seek review, modification or reversal of that decision by the City Council by submitting a request for reconsideration with the City Clerk within twenty-one (21) calendar days following the City Manager's decision. That request for reconsideration will be considered by the City Council at a regular Council meeting that will be conducted as soon as practical after the request for reconsideration is made. If no request of reconsideration is submitted, the decision of the City Manager will be final.
- Additionally, the Applicant, within thirty (30) days following a decision by the City Council to deny either a) a request for reconsideration or b) a decision by City Council to not approve the placement of a new Support Structure on the Right-of-Way, may appeal either of those decisions by the City Council to the

Circuit Court of Jefferson County, Alabama or Shelby County, Alabama, as applicable. If no appeal of those decisions of the City Council is made, those will be deemed final.

D. Additional Requirements. Any Provider or Applicant to whom a permit is issued and that places Facilities and associated Support Structures on the Right-Of-Way also shall comply with the following requirements as long as those Facilities and Support Structures are on or under the Right-of-Way:

1. Prior to installing the Facilities or Support Structures, the Applicant shall provide the City a certificate(s) of insurance evidencing that it has obtained and will maintain the following types of insurance in connection with its operations on or use of the Right-Of-Way:
  - a. General Liability Coverage insuring the risk of claims for damages to persons or property arising from or related to the installation, construction, maintenance, operation or any use of the Facility or Support Structure placed on or along the Right-of-Way by the Applicant (or any of their contractors) with minimum limits of \$1,000,000 per occurrence; and
  - b. Workers Compensation Insurance as required by statute.

The General Liability coverage shall list the City of Vestavia Hills, Alabama as an additional insured, and may be provided through a combination of a primary and umbrella policies. All insurance policies shall be furnished by insurers who are reasonably acceptable to the City and authorized to transact business in the State of Alabama. On an annual basis following initial installation, the Applicant also shall furnish the City a Certificate indicating that the above-noted coverage remains and will remain in effect. The City shall allow the applicant to provide a certificate of self-insurance in lieu of these provisions and must affirm adequate financial security on the part of the self-insured entity.

2. All Facilities and associated Support Structures shall be installed, erected, maintained and operated in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC.
3. Following the installation of any Facilities and associated Support Structures, the Provider or Applicant, upon reasonable request and for good cause, shall furnish the City Manager a written certification from a licensed professional engineer in the State of Alabama stating that those Structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the Facilities and associated Support Structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those Support Structures should fail at any time to comply with applicable laws and regulation, the Provider or Applicant, at either of their expense, shall cause those Structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to them from the City Manager of non-compliance, or

cease all personal wireless service operations related to those Structures until the Applicant or Provider comes into full compliance with said laws and regulations.

4. The Facilities and associated Support Structures must at all times be maintained in good and safe condition. On no more frequent than a triennial basis, the City Manager may request that the Provider or Applicant, at either of their expense, furnish certification from a professional engineer who is licensed in the State of Alabama that the Facilities and Support Structures are in sound condition. Should that engineer deem those Structures unsound, the Provider or Applicant shall furnish to the City Manager a plan to remedy any unsafe conditions or structural defect(s) and take that remedial action at the Provider or Applicant's expense.
  5. Each Applicant or Provider that applies for a permit to place Facilities (including the Accessory Equipment) and Support Structures on the Right-Of-Way and installs and utilizes those Structures shall defend, indemnify and hold the City and its employees or officials, harmless from all demands, losses, expenses (including attorney's fees and court costs), claims for personal injury or property damage, judgments or liabilities of any type that may be asserted or claimed against the City (or its employees or officials) by any third person, firm or entity that arise out of or relate in any manner to the following: 1) the installation, construction, maintenance, use or operation of the permitted Facilities, Accessory Equipment or any Support Structure on or about the Right-Of-Way; and 2) the failure of the Provider or Applicant to perform any of their respective responsibilities, obligations, and permit requirements in this ordinance. Notwithstanding the foregoing, the Provider or Applicant shall not be obligated to indemnify the City for claims resulting from the sole negligence or willful acts of the City (or its representatives).
- E. Permit and License Fees. The Applicant for a permit to place Facilities and associated Support Structures on the Right-of-Way shall pay the following types of fees that are enumerated in the City's officially adopted Fee Structure Ordinance, as amended:
1. A permit application and review fee to be paid when an application is submitted;
  2. A permit issuance fee for each Support Structure on the Right-of-Way contemplated for attachment; and
  3. An annual license fee per each Support Structure on the Right-of-Way pertaining to the ongoing use of public property.
- F. Removal, Relocation or Modification of Small Wireless Facility in the Right-of-Way.
1. Ninety (90) Day Notice to Remove, Relocate or Modify. Whenever the City reasonably determines that the relocation is needed as described below, then within ninety (90) days following written notice from the City, the Applicant shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless Facilities within the Rights-Of-Way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for (excluding beautification-only projects), as follows:

- a. the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the Rights-Of-Way; and/or
  - b. if required for the construction, completion, repair, relocation, or maintenance of a City improvement or project in or upon, or the operations of the City in or upon, the Rights-Of-Way; and/or
  - c. because the small cell Facility or its related equipment is interfering with or adversely affecting proper operation of any City-owned light poles, traffic signals, or other equipment in the Public Way; and/or
  - d. to protect or preserve the public health or safety.
  - e. In any such case, the City shall use its best efforts to afford Applicant a reasonably equivalent alternate location. If Applicant shall fail to relocate any Equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, the City shall be entitled to relocate the Equipment at Applicant's sole cost and expense, without further notice to Applicant. If, at any time during the Term for which the permit is granted, the City determines that utility Facilities will be placed underground in an area including any City-owned Facilities upon which Applicant has installed Equipment, Applicant and the City will cooperate in good faith on the design and installation, at Applicant's costs, of suitable replacement of Applicant's Facilities, including decorative streetlight poles, provided that the City may not require an electric utility that is regulated by the Alabama Public Service Commission to install, move, remove, relocate, or modify its facilities, poles, attachments, or equipment in violation of the rules and regulations of the Alabama Public Service Commission; and Applicant agrees that if reasonably required by the City Manager or his designee or upon final appeal by the Vestavia Hills Design Review Board in order to ensure appropriately even and level lighting within a previously unlighted area, additional Facilities, which may include decorative streetlight poles beyond or more numerous than those required for Applicant's Facilities, shall be installed. Applicant agrees that decorative streetlight poles may be required by the City in the future in the place of initially-installed standard-design streetlight poles, in which replacement of the Applicant's Facilities and Equipment on decorative streetlights that were initially installed standard-design streetlight poles shall be solely at Applicant's cost. Further, Applicant agrees that in such instances and at such time as replacement poles are installed, the City may reasonably require that the configuration and/or location of ground furniture (which references any equipment on the ground that is needed to supply power or backhaul services to the small cell Facility) and/or pole-mounted equipment or equipment cages be changed (such as changing from pole-mounted equipment cages to ground furniture), in the discretion of the City.
2. Emergency Removal or Relocation of Facilities. The City retains the Right and privilege to cut or move any small wireless Facility or related structure located

within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the Applicant and provide the Applicant an opportunity to move its own Facilities, if possible, prior to cutting electrical service or removing a Facility and shall notify the wireless Provider after cutting or removing a small wireless Facility.

**Section 3. Placement of Small Cell Technology Facilities on Private Property.**

- A. A Provider or Applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on private property, or substantially modifying the position or characteristics of any such existing Facility thereon.
- B. The City Manager will review and administratively process any request for a permit to determine whether, in the exercise of the City Manager's reasonable discretion, it should be issued for the location and in the manner requested. In this process, the burden is on the Applicant to demonstrate that the placement of the proposed Small Cell Technology Facility and associated Accessory Equipment or Support Structure on private property is the minimal physical installation which will achieve the technological goal of enhancing the provision of personal wireless services. Except as set forth in this section, this permitting process will not require the approval of any City Board or City official other than the City Manager. The factors, guidelines and requirements that the City Manager may consider and will apply when determining whether to issue a permit for placement of Facilities and any associated Accessory Equipment or Support Structure on private property include, but are not limited to, the following:
  - 1. The factors and requirements set forth in Section 2 of this Ordinance Number 2814;
  - 2. Colocation. The guidelines in Section 2 of this Ordinance Number 2814 to utilize existing poles and Support Structures for the placement of Facilities and Accessory Equipment are also applicable when considering whether to permit the installation of those Facilities and Support Structures on private property, provided that City Council approval is not required before a permit is issued to place a new pole or other Support Structure on private property if that action is appropriate.
  - 3. The Provider or Applicant shall use Stealth Technology when installing the Facilities and associated Accessory Equipment on any building or accessory to that building that is located on private property. Further, Stealth Technology should be used when placing Facilities on other types of Support Structures on private property unless the Applicant can reasonably demonstrate that, given the nature of the requested application, the use of such Technology is (a) unnecessary; or (b) impractical.

4. If Facilities are placed on an existing or new building or accessory to that building, the following dimensional regulations shall apply:
- a. Façade-mounted antennas shall not extend above the face of any wall or exterior surface of the building.
  - b. Roof-mounted antennas and Accessory Equipment may be permitted on buildings in accordance with the following table:

Height of Building	Maximum Height of Facility above Highest Point of Roof	Required Setback from Edge of Roof of Building
Up to 15 feet	8 feet, including antenna	1 foot for every foot of height of equipment
15-35 feet	10 feet, including antenna	1 foot for every foot of height of equipment
More than 35 feet	12 feet, including antenna	1 foot for every foot of height of equipment

- c. The antenna component of the Facilities shall be limited to a maximum height of three (3) feet and a maximum width of two (2) feet; provided that authorization to install antenna up to six (6) feet in height may be permitted if a showing of the technological need for such equipment is made and other requirements of this Section are met.
  - d. Accessory Equipment must be located in an equipment cabinet, equipment room in an existing building or in an unmanned equipment building. If the equipment building is freestanding, it shall conform to the Vestavia Hills Municipal Code with respect to building setbacks, that building shall not exceed 400 square feet, and its overall height shall be limited to 15 feet (if located on the ground) measured from the finished grade. Further, if an equipment building or cabinet is located in a residential zone, or the nearest adjoining property is in a residential zone, that building or cabinet shall be surrounded by landscaping to provide a screen of the same height as the building or cabinet.
5. Application Process. Except as provided in paragraphs a and b immediately below, the same application process that is set forth in Section ~~2.C~~ will be utilized when processing any request for a permit to place Facilities or Support Structures on private property, except that:
- a. City Council approval to install a new Support Structure on private property is not a condition for a permit to place Facilities thereon; and
  - b. If the Facilities are located on private property that is not owned or exclusively used by the Applicant, instead of providing the documentation contemplated in Section 2(c)(1)(c), the Applicant shall present a license, lease, agreement or other documentation indicating that owner of said property authorizes the Applicant the Rights to place the Facilities thereon and access thereto, or that such owner agrees in principle to grant the Applicant those Rights; provided that, if a

representation is made to the City that the owner of private property has agreed in principle to grant those Rights but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until the documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit and license may be revoked.

6. Additional Requirements. Any Provider or Applicant to whom a permit is issued and that places Facilities and associated Support Structures on private property also shall comply with the following requirements as long as those Facilities and Support Structures are located thereon:

~~a.~~ All Facilities and Support Structures shall be installed, erected, and maintained in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC, the National Electric Safety Code, and the National Electric Code, and any policies and procedures required of Support Structure owners.

~~b.a.~~ At least triennially following the installation of the Facilities or associated Support Structures, upon reasonable request and for good cause, the Applicant shall furnish the City Manager a written certification from a professional engineer licensed in the State of Alabama indicating that those Structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals, along with the requirements of the National Electric Safety Code, as applicable. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the Facilities and associated Support Structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those Structures fail at any time to comply with said laws, ~~and regulations,~~ and codes, the Provider or Applicant shall cause those Structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to either of them of such non-compliance, or cease all personal wireless communications operations related to those Structures until the Provider or Applicant comes into full compliance with applicable laws and regulations.

~~e.b.~~ The Facilities and associated Support Structures on private property must at all times be maintained in good and safe condition.

- C. Permit and License Fees. The Provider or Applicant for a permit to place Facilities and associated Support Structures on private property shall pay the following types of fees that are enumerated in the City's officially adopted Fee Structure Ordinance as amended:

1. a permit application and review fee to be paid when an application is submitted; and,
2. a permit issuance fee per each Support Structure on private property contemplated for attachment.

#### **Section 4. Abandonment of Facilities on Right-of-Way.**

If a Provider or Applicant abandons any Facility (including the Accessory Equipment) or an associated Support Structure (collectively "Facilities" for purposes of this Section) that is located on the Right-Of-Way, the following rights and obligations shall exist. The City may require the Provider or Applicant, at their expense, to remove and reclaim the abandoned Facilities within sixty (60) days from the date of written notice of Abandonment given by the City to them and to reasonably restore the condition of the property at which the Facilities are located to that existing before they were installed. If the Provider or Applicant fails to remove and reclaim its abandoned Facilities within such 60-day period and the Facilities are located on the Right-Of-Way, the City shall have the rights to:

1. remove them and charge its expense of any such removal operation to the account of the Provider or Applicant,
2. purchase all abandoned Facilities at the subject location from the Provider or Applicant in consideration for \$1.00,
3. at the City's discretion, either resell the abandoned Facilities to a third party or dispose and salvage them; provided that the proceeds of any resale of abandoned Facilities by the City to a third party shall be credited to the account of the Applicant or Provider that used those Facilities before the abandonment, and
4. charge any expense incurred by the City to restore the Right-of-Way to the account of the Provider or Applicant.

#### **Section 5. Colocation.**

To promote the public interest that is served by co-locating Facilities and associated Accessory Equipment on existing Support Structures and thereby mitigating the installation of additional Support Structures throughout the City, and to the extent permitted by 47 U.S.C. 224, no person or entity (including any Provider, ~~or Applicant, utility, or franchisee~~) that utilizes an existing Support Structure that is located on Right-of-Way or on private property in the City and has space available thereon may deny a Provider or Applicant the Right to use or access an existing Support Structure for purposes of attaching Facilities permitted by this ordinance without sound operational, technological or other good reason. Nothing in this Section shall be construed to grant mandatory access rights to any Support Structure to any Provider or Applicant where such access rights are not already granted by federal law. Nothing in this Ordinance shall affect, or be construed to affect, any pole attachment agreement between any Applicant or Provider and any owner, lessor, or controller of a Support Structure or Structure.

#### **Section 6. Non-Applicability.**

- A. The placement of an antenna(s), Facilities or equipment related to the following types of wireless ~~communication~~ services are exempt from regulation under this ordinance:
- A-1. Amateur radio service that is licensed by the FCC if the Facilities related thereto are not used or licensed for any commercial purpose; and
  - B-2. Facilities used by any federal, state or local government or agency to provide safety or emergency services. Further, the provisions in this Article are

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supplemental to, and not intended to alter, affect or modify the provisions in Article II of Chapter 16.5 pertaining to the placement or use of macro Telecommunications Towers.

B. Nothing in this Ordinance shall be construed to apply to the attachments, equipment, facilities, or business activities of an electric utility that is regulated by the Alabama Public Service Commission. This Ordinance also does not apply to the attachments, equipment, facilities, or business activities of such electric utility's parents, affiliates, or subsidiaries when they are acting in support of the electric utility, provided they are not acting as a Personal Wireless Service Provider or Provider.

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#### **Section 7. Repealer.**

All Ordinances or parts of ordinances heretofore adopted by the City Council of the City of Vestavia Hills, Alabama that are inconsistent with the provisions of this Ordinance are hereby expressly repealed.

#### **Section 8. Severability.**

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.

#### **Section 9. Effective Date.**

This ordinance shall become effective immediately upon adoption and posting/publication as provided by Alabama law.

Redline Draft

**DONE, ORDERED, APPROVED and ADOPTED** this the 17th day of December, 2018.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 2814 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 17<sup>th</sup> day of December, 2018, as same appears in the official records of said City.

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

Rebecca Leavings  
City Clerk

Redline Draft

## Jeff Downes

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**From:** WILLIAMS, TERRI Q <tg2790@att.com>  
**Sent:** Monday, July 13, 2020 5:49 PM  
**To:** Jeff Downes  
**Subject:** RE: Small Cell Ordinance changes  
**Attachments:** ATT comments Vestavia Hills Small Cell Ordinance (REDLINE 5-11-2020) - #13475052 v1 (004).DOCX

Jeff:

Again thank you for sharing a copy earlier today of the proposed amendments to the current Vestavia small cell ordinance. Although AT&T does believe that it is necessary to make any amendments since this ordinance does not affect electric utility service, we have provided a redline with suggested changes and comments on the attached draft. Since the draft that you sent already contained redlined changes, our changes are in yellow-highlight for your convenience to identify them.

Although we provided an explanation in the redlined attachment which is also yellow-highlighted, by way of example, deleting the word "communications" negatively impacts the provision of wireless services under the ordinance. As a result, our first suggestion is to not make this change. We added the word back to the proposed amendments. However, if the City chooses to alter the definitions under the ordinance by deleting the word "communication" then it needs to include the citation to the federal law for commercial mobile data service under 47 United States Code Section 401(8). Please note that AT&T did not make changes to some of the proposed language by Alabama Power even though we do not believe it is needed in this ordinance for small cells.

Please let me know if you or anyone else with the City has any questions. Looking forward to your feedback. Thank you, Terri

Terri Williams  
Regional Director of Legislative & External Affairs  
AT&T- Alabama  
1884 Data Drive, 1<sup>st</sup> Floor  
Hoover, AL 35244

No text, email, or post is worth a life. Please do not text and drive...It Can Wait!

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**From:** Jeff Downes <jdownes@vhal.org>  
**Sent:** Monday, July 13, 2020 8:57 AM  
**To:** WILLIAMS, TERRI Q <tg2790@att.com>  
**Subject:** RE: Small Cell Ordinance changes

Certainly

See attached...I will call you in a second



**JEFF DOWNES**

City Manager

P 205 978 0195 | [vhal.org](http://vhal.org)

City of Vestavia Hills

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

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**From:** WILLIAMS, TERRI Q [<mailto:tg2790@att.com>]

**Sent:** Monday, July 13, 2020 8:48 AM

**To:** Jeff Downes <[jdownes@vhal.org](mailto:jdownes@vhal.org)>

**Subject:** Small Cell Ordinance changes

Good morning Jeff!

Can you please supply me with a WORD formatted version of your redlined ordinance for our comments? Terri

Terri Williams

Regional Director-Legislative & External Affairs

AT&T Alabama

Sent from my iPhone

## Vestavia Hills Small Cell Ordinance

Alabama Power's Proposed Revisions – Alabama Power's proposed revisions to the Vestavia Hills small cell ordinance would clarify that the ordinance does not apply to Alabama Power's core business, non-small cell activities so that these activities are not inadvertently subjected to the permitting and other requirements in the ordinance.

### Alabama Power's Response to AT&T's Edits

#### 1. AT&T's proposed re-insertion of "communication" rather than using "personal wireless services" (pages 1, 2, and 13)

This change should NOT be made. "Personal wireless services" is a **specific, statutorily defined term that encompasses small cell services**. "Personal wireless services" are the focus of the FCC Small Cell Order, and this term is defined in 47 U.S.C. 332.

The term "personal wireless communication services" is not mentioned in the FCC Small Cell Order, is not a defined term in 47 U.S.C. 332, and is not a separately defined term in the Vestavia Hills ordinance. The inclusion of this term could create confusion about what it is intended to cover.

[AT&T Response – APCo's proposed deletion of "communication" is unnecessary, but if the City accepts the edit it should add "commercial mobile data service" to Section 1 (J)'s definition of "Personal Wireless Service Provider" to ensure all mobile data services are covered, as explained in below.]

#### 2. AT&T's proposed addition of "commercial mobile data service" (page 2)

This change should NOT be made. This term is not mentioned in the FCC Small Cell Order, and **we have not seen it used in any other municipal small cell ordinance in Alabama (or in the proposed state small cell bill)**. The term is not needed to accomplish the city's objectives and could be interpreted to capture something broader than small cell services – specifically, Alabama Power's core business data services.

[AT&T's Response: The City should ensure that all services that may be provided via a small wireless facility are covered; put differently, someone cannot argue that a small wireless facility is not permitted under the ordinance because it provides solely, for example, over-the-top video (which, as described below, may not be included in the federal definition of "personal wireless service" if the service is purely utilizing Internet Protocol (IP) addresses and does not use the North American Numbering Plan). Here is the relevant chain of definitions (highlighting the relevant language) to explain that gap:

- 47 USC 332(c)(7)(C)(i) - Definitions. For purposes of this paragraph--  
(i) the term "personal wireless services" means **commercial mobile services, unlicensed wireless services**, and common carrier wireless exchange access services;

■ 47 USC 332(d) Definitions. For purposes of this section--

(1)the term "**commercial mobile service**" means any **mobile service** (as defined in section 3 [47 USC §153]) **that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;**

(2)the term "**interconnected service**" means **service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission)** or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B);

■ Relevant definitions from 47 CFR 20.3

Interconnected Service. A service: (a) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network;

Public Switched Network. Any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that uses the North American Numbering Plan in connection with the provision of switched services.

To address this narrow gap, AT&T suggests that the following highlighted edit be made Section 1 (J)'s definition of "Personal Wireless Service Provider" to ensure all mobile data services are covered by the ordinance:

*Personal Wireless Service Provider or Provider* means an entity that provides personal wireless ~~communication~~ services, as defined in 47 U.S.C. 332, or commercial mobile data service, as defined in 47 U.S.C. 1401(8), to the public or citizens of the City on a commercial basis and is authorized by the FCC to provide those services.

For background, "commercial mobile data service," as defined in 47 U.S.C. 1401(8), reads:

**(8)COMMERCIAL MOBILE DATA SERVICE** - The term "commercial mobile data service" means any mobile service (as defined in section 153 of this title) that is—

**(A)** a data service;

**(B)** provided for profit; and

**(C)** available to the public or such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.]

3. **AT&T's proposed deletion of reference to policies and procedures of pole owners (page 12)**

Alabama Power does not object to this deletion, but the sole purpose of its inclusion is to enhance the safety and reliability of the infrastructure that will support small cell devices. We believe it is a prudent requirement that would provide utilities **and the city** with more flexibility and control over the maintenance of their poles.

[This reference should be deleted as APCo does not object.]

4. **AT&T's proposed deletion of "acting in support of the electric utility" (page 13)**

This change should NOT be made, because the language **provides clarity as to when the exemption would apply**. This language was developed during negotiations between Alabama Power and AT&T for the City of Birmingham's small cell ordinance. It was included in the Birmingham ordinance and has since been included in almost all of the municipal small cell ordinances in Alabama that have utility exemption language.

[AT&T's Response: APCo's stated concern is to make sure it is not inadvertently regulated. APCo can read the relevant definitions and determine whether its, or its affiliate Southern Linc's, services are covered. Southern Linc is Alabama Power's wireless affiliate that provides wireless services in Alabama. The disclaimer on Southern Linc's website states: "Southern Linc is a wireless communications network backed by the strength and reliability of Southern Company – the parent company of three electric utilities in the Southeast: Alabama Power, Georgia Power, and Mississippi Power, which are also Southern Linc customers." <https://www.southernlinc.com/faqs/>. Section 332(c)(7)(B)(i)(I) of the Telecommunications Act of 1996 states, "The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof **shall not unreasonably discriminate among providers of functionally equivalent services**." 47 U.S.C. 332(c)(7)(B)(i)(I). Southern Linc holds a FCC wireless license and provides functionally equivalent services. The point is that "in support of the electric utility" is vague, overbroad, and leaves room for dispute as AT&T does not know what it means in APCo's Section 6 edit. If Southern Linc is acting as a "personal wireless service provider," as defined in Section 1(J), it is required by law to be under the same rules as any other personal wireless service provider in city ROW. The City should make AT&T's proposed change.]

**ORDINANCE NUMBER 2940**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A SUPPLEMENTAL AGREEMENT NO. 2 WITH GRESHAM SMITH & PARTNERS AS ARCHITECT AND ENGINEER**

**WHEREAS**, the City wishes to construct a pedestrian bridge (hereinafter referred to as “Bridge”) over U.S. Highway 31 South of Round Hill Road as a connection between Wald Park and the new Vestavia Hills Library in the Forest; and

**WHEREAS**, the Bridge will be constructed in the City of Vestavia Hills, Alabama on, in and above the right-of-way of U.S. Highway 31 South (the “construction site”), which is not owned by the City; and

**WHEREAS**, on September 27, 2011, the City and Gresham Smith & Partners (hereinafter referred to as “GSP”) entered into a Contract wherein GSP agreed to perform architectural and engineering services for the design of the Bridge for an in consideration of the payment of Two Hundred Eight Thousand Three hundred forty-one Dollars (\$208,341.00); and

**WHEREAS**, GSP performed design services and has been paid the sum of \$187,177.10 to date; and

**WHEREAS**, the City and GSP negotiated a Supplemental Agreement to the Contract between the City and GSP, dated September 23, 2011; and

**WHEREAS**, The City and GSP have agreed to the terms, provisions and conditions of that supplemental agreement and agreed that it is in the best parties interest that this agreement be reduced to writing; and

**WHEREAS**, on July 23, 2018, the City Council adopted and approved Ordinance Number 2777 authorizing the Mayor and City Manager to execute said Supplemental Agreement; and

**WHEREAS**, The City and GSP have negotiated a Supplemental Agreement No. 2 to the Contract and Supplemental Agreement between the City and GSP; and

**WHEREAS**, The City and GSP have agreed to the terms, provisions and conditions of that Supplemental Agreement No. 2 and agreed that it is in the best parties interest that this agreement be reduced to writing; and

**WHEREAS**, a copy of said Supplemental Agreement No 2 is marked as Exhibit A, attached to and incorporated into this Ordinance Number 2940 as if written fully therein; and



**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept said Supplemental Agreement No. 2.

**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 said Supplemental Agreement No. 2 marked as Exhibit A, attached to and incorporated into this Ordinance Number 2940 as if written fully therein; and
2. Said agreement shall be attested by the City Clerk with the City Seal; and
3. If any portion of this agreement shall be held unconstitutional, invalid or unenforceable, such holding shall not affect the remaining portions of this agreement nor render the remaining portions of this agreement invalid, and to that end the provisions hereof are declared to be severable.
4. This ordinance shall become effective immediately upon publication/posting pursuant to Alabama law.

**ADOPTED and APPROVED** this the 10<sup>th</sup> day of August, 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 # 2940 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 10<sup>th</sup> day of August, 2020 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Rebecca Leavings  
City Clerk

**STATE OF ALABAMA**

**JEFFERSON COUNTY**

**SUPPLEMENTAL AGREEMENT NUMBER 2  
BETWEEN OWNER AND ARCHITECT/ENGINEER**

**WHITNESSETH THIS SUPPLEMENTAL AGREEMENT**, made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Vestavia Hills, Alabama, a municipal corporation, as “Owner”, hereinafter referred to as “City”, and Gresham Smith (formerly Gresham, Smith & Partners in original Agreement), as “Architect/Engineer”, hereinafter referred to as “Gresham Smith.”

**WHITNESSETH THESE RECITALS:**

**WHEREAS** all Recitals contained in the original Agreement dated September 27, 2011 and the Supplemental Agreement dated October 23, 2018 for the design of a pedestrian Bridge, hereinafter referred to as “Bridge”, over U.S. Highway 31 South of Round Hill Road, hereinafter referred to as “Project”, remain in force unless specifically modified herein; and

**WHEREAS** Gresham Smith is required by ALDOT to perform additional utility coordination services and utility-related plan revisions; and

**WHEREAS** Gresham Smith and City agree that additional design services are needed prior to the construction of the Bridge; and **WHEREAS**, the City and Gresham Smith have agreed for Gresham Smith to perform the additional utility coordination and plan revision services for and in consideration of the payment of Thirty Five Thousand Four Hundred Fifty Eight Dollars (\$35,458.00); and

**WHEREAS** the City and Gresham Smith have negotiated this Supplemental Agreement to the Contract between the City and Gresham Smith, dated \_\_\_\_\_, 2020.

**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 Gresham Smith mutually agree as follows:

All terms and conditions of the Agreement between the City and Gresham Smith, dated September 27, 2011, as amended in the Supplemental Agreement dated October 23, 2018, remain in force unless modified herein:

**6. PERFORMANCE OF THE WORK:** Gresham Smith agrees to perform the additional services as described in Exhibit A to this Supplemental Agreement.

**7. CONTRACT PRICE:** As consideration for this agreement, the City agrees to pay Gresham Smith for the faithful performance of the work in this Supplemental Agreement the

sum of Thirty-Five Thousand Four Hundred Fifty-Eight Dollars (\$35,458.00). The total contract price for all services completed by Gresham Smith under the Agreement shall be Five Hundred Thirty-One Thousand One Hundred Fourteen Dollars (\$531,114.00). The breakdown of this Supplemental Agreement price by task is further identified in Attachment B to this Supplemental Agreement.

**9. TERM OF THE CONTRACT:** The term of the Supplemental Agreement shall be for a period of 12 months beginning on the date of the execution and delivery of this Supplemental Agreement.

**IN WITNESS WHEREOF**, the City of Vestavia Hills, Alabama, a municipal corporation, and Gresham Smith have caused this Supplemental Agreement to be executed by their duly authorized officers on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**OWNER:**  
CITY OF VESTAVIA HILLS, ALABAMA  
A Municipal Corporation

By \_\_\_\_\_  
Jeffrey Downes  
Its City Manager

ATTESTED:

By \_\_\_\_\_  
Rebecca Leavings  
City Clerk

**ARCHITECT/ENGINEER:**  
GRESHAM SMITH

By \_\_\_\_\_

ATTESTED:

By \_\_\_\_\_

February 20, 2020 *(Revised July 24, 2020)*

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

Subject: Additional Utility Coordination  
ALDOT Project No. DE-HPP-TAPBH-A104(916)  
Pedestrian Bridge over US-31 at Wald Park  
Vestavia Hills, AL (Jefferson County)  
Gresham Smith Project No. 28668.00

Dear Christopher:

As you are well aware, the US-31 Pedestrian Bridge project has always been full of challenges. One of those challenges has been with the coordination of utilities for this project. We had high hopes that that we could move through the utility coordination and agreements process without any major issues, but that has not been the case. In our utility coordination efforts, we are largely at the mercy of all of the utility companies/owners and ALDOT as to how much time is required to coordinate the utilities and needed utility relocations, secure ALDOT approvals of the utility relocations and facilitate the necessary ALDOT utility agreements. We have run into a number of issues with the utility relocation that are beyond our control and have taken/are taking a considerable amount of time to resolve. These issues include:

- Determining the correct utility company/owner contacts for utility coordination.
- Utility companies/owners changing contacts during the course of utility coordination.
- Unresponsiveness from several of the utility companies/owners, particularly Birmingham Water Works Board (BWVB), AT&T, Charter/Spectrum and Jefferson County Environmental Services, that required us to place numerous calls and send numerous email to these utilities to coordinate the utilities.
- ALDOT requested that we update the 811 location ticket and provide to them.
- When the 811 ticket was updated, it showed MCI telecommunications has having facilities in the project limits. After finding a contact with MCI and having several calls and emails with MCI and ALDOT, they determined that they did not, in fact, have any facilities in the project limits.
- ALDOT's Birmingham Area Assistant Utility Manager, Daniel Pendley, did not approve the original BWVB water main relocation design and utility agreement. Pendley also advised that the water main relocation could not be included in the bridge construction project as originally planned.

- Coordinating with BWWB, ALDOT, and the City on how water main relocation would be designed, who would design, timeframe, cost, who fill fund relocation, utility agreements needed, etc.
- Additional utility coordination with BWWB and ALDOT on a revised location and design for the relocated BWWB water main to go around the elevator/stair tower.
- ALDOT ITS Reviewer (Jeff Little) asked us to move the relocated buried fiber optic line under the pedestrian bridge where the water main line was located (based on ALDOT's direction to relocate the BWWB water main behind the elevator/stair tower).
- ALDOT's Assistant Utility Manager, Daniel Pendley had multiple issues with BWWB's initial design and plans for relocation of BWWB water main (Dec 20<sup>th</sup> email from Daniel Pendley)
- Gresham Smith has continued to coordinate the BWWB water main relocation plans and addressing Pendley's comments with BWWB and ALDOT. Water main relocation plans were resubmitted to ALDOT in January 2020. Pendley continues to have multiple issues with design (Jan 30<sup>th</sup> email from Daniel Pendley).
- On October 4, 2019, ALDOT issued a new Construction Information Memorandum, CIM No 6-2019, that requires a minimum of 20' of horizontal clearance between the pedestrian bridge and overhead power lines. The horizontal clearance in our plans was approximately 17', which meets OSHA requirements, and was determined to be acceptable to Alabama Power Company in our initial utility coordination with them. However, ALDOT advised that the APCO lines must be de-energized or relocated to comply with their new CIM.
- Gresham Smith commenced additional utility coordination with Alabama Power Company (APCO) to determine if the overhead power line on the Wald Park side of the project could be de-energized or relocated to achieve the required 20' of horizontal clearance. We have also been coordinating this issue with the City, as the relocation of the APCO poles will be on the Wald Park property.
- Continuing to work with BWWB, ALDOT and the City to secure ALDOT's approval of the BWWB water main relocation plans. We anticipate that this may require several more submittals to ALDOT and coordinating with BWWB to address ALDOT's comments
  - Once ALDOT approves the water main relocation plans, Gresham Smith will coordinate with BWWB to obtain the required ALDOT utility agreement and submit to ALDOT for review and approval.
- Continuing to work with APCO, ALDOT and the City to secure ALDOT's approval of APCO's plan to temporarily relocate the overhead electric lines to obtain the 20' of horizontal clearance required by ALDOT.
  - Once ALDOT approves the APCO temporary relocation plans, Gresham Smith will coordinate with APCO to obtain the required ALDOT utility agreement and submit to ALDOT for review and approval.
  - Gresham Smith will coordinate with ALDOT, APCO and the other utility companies that are attached to the APCO poles (AT&T, Charter/Spectrum and MCI) to determine if the other utilities have to be relocated. If relocation of those utilities is required, we will work with those utilities to obtain the required ALDOT utility agreements and submit those to ALDOT for review and approval.
- Revise the utility certification and resubmit to ALDOT.
- Make revisions to the roadway and bridge plans to reflect the utility relocations. These plan revisions will include:
  - Updating the Utility Sheet with the relocated water main and relocated APCO overhead power line
  - Adding a pay item and quantity for removal of the existing BWWB water main
  - Adding notes to the ITS buried fiber optic relocation sheet advising the contractor of the location where the relocated fiber optic line must cross the relocated water main.
  - Adding details of the elevator sump discharge pipes to make sure that they do not conflict with the relocated water main

In Supplemental Agreement #1, we included eight (8) Senior Engineer hours (Blair Perry) and eight (8) Engineer hours (Leslie Corlett) for additional utility coordination. As of this date, we have spent 40 Senior Engineer hours and 138 Engineer hours coordinating the utilities with ALDOT, BWWB, APCO and you. Fortunately, at this point it appears that ALDOT has approved the APCO and BWWB Utility Agreements and the Utility Certificate for this project, and we can move forward with resubmitting the plans for a second ALDOT Construction Bureau review.

As stated above, the amount of time that we have spent on utility coordination is largely beyond our control. Given that we have significantly exceeded our budgeted time for utility coordination, Gresham Smith is requesting additional compensation in the amount of \$34,458 (not-to-exceed cost-plus billing) for the additional utility coordination work and plan revisions summarized above. Attached is an ALDOT fee proposal for the additional work for your review. **We appreciate the City's understanding of this issue. If you have any questions or would like to discuss this further, please don't hesitate to call or email me.**

Sincerely,

A handwritten signature in blue ink that reads "Blair C. Perry". The signature is written in a cursive, flowing style.

Blair Perry, P.E.  
Project Manager  
Alabama State Transportation Leader

BCP/lbc





7/24/2020

Alabama Department of Transportation

12:28 PM

<b>Project Number</b> DE-IBRD-A104(916) <b>CPMS #</b> _____ <b>County</b> Jefferson <b>Description</b> Pedestrian Walkway Over US-31 in Vestavia Hills Near Wald Park <b>Scope of work</b> Supplemental Agreement #2 - Additional Utility Coordination and Plan Revisions due to Utility Coordination <b>Length</b> 0.06 miles  <b>Consultant</b> Gresham, Smith and Partners						
ROADWAY PLANS SHEET TITLE	NO OF SHEETS	ESTIMATED MAN-DAYS				COMMENTS / REVISIONS
		SENIOR ENGINEER		ENGINEER		
		SHEET	TOTAL	SHEET	TOTAL	
<b>NOTE: SHEETS WITH NO CHANGES ARE HIDDEN</b>						
PROJECT NOTE SHEET (Project)	1.00	0.10	0.10	0.25	0.25	Add utility coordination notes to Project Notes sheet
<b>SUMMARY SHEET</b>						
Main Summary	1.00	0.05	0.05	0.20	0.20	Add pay items and quantities for removal of old water main and roof/elevator stormwater discharges
<b>SUMMARY BOX SHEETS</b>						
Misc Boxes	0.50	0.10	0.05	0.25	0.13	Add summary box roof drainage & oil/water separator discharges
<b>PLAN &amp; PROFILE</b>						
Main Roadway (Bridge Site Plan)	1.00	0.15	0.15	0.25	0.25	Add roof drainage and oil/water separator discharges in plan view
<b>TRAFFIC CONTROL</b>						
Sequence of Construction	0.50	0.10	0.05	0.50	0.25	Revise sequence to address utilities
<b>UTILITY SHEETS</b>						
Utility Locations	1.00	0.10	0.10	0.25	0.25	Update based on BWWB water main relocation prior to project and APCO temporary overhead electrical line relocation. Update utility contact information.
<b>DRAINAGE SECTIONS</b>						
Drainage Section for Elevator sump and oil/water separator discharge	1.00	0.15	0.15	0.50	0.50	Add drainage section to confirm that discharge pipes won't conflict with relocated water main.
<b>REVIEW COMMENTS</b>						
PS&E Inspection			0.75		0.75	PS&E spilled into second day due to ALDOT ITS reviewer could not attend first day
Construction Bureau resubmittal			0.15		0.75	Resubmit plans for ALDOT Construction Bureau
<b>SUB-TOTAL</b>						
	6.00		1.55		3.33	
<b>TOTALS</b>						
	6.00		1.55		3.33	

<b>Project No.</b>	DE-IBRD-A104(916)
<b>County</b>	Jefferson
<b>Description</b>	Pedestrian Walkway Over US-31 in Vestavia Hills Near Wald Park
<b>Scope of Work</b>	Supplemental Agreement #2 - Additional Utility Coordination and Plan Revisions due to Utility
<b>Project Length</b>	0.06 Miles
<b>Consultant</b>	Gresham, Smith and Partners
<b>Fee Proposal (Roadway Plans)</b>	

PERSONNEL COST			
	Man-days x Daily Rate		
Project Manager (10% of Eng.)	0.33	\$ 557.76	\$ 184.06
Senior Engineer	1.55	\$ 557.76	\$ 864.53
Engineer / Engineer Intern / Technician	3.33	\$ 361.20	\$ 1,202.80
Clerical		\$ 203.00	\$ -
<b>Total Direct Labor</b>			<b>\$ 2,251.39</b>
Combined Overhead (%)	164.47		\$ 3,702.86
Out-of-Pocket Expenses**			\$ 33.63
<b>Sub-Total</b>			<b>\$ 5,987.88</b>
Operating Margin (10%)			\$ 598.79
<b>Sub-Total</b>			<b>\$ 6,586.67</b>
SUB-CONSULTANTS (attach man-day & fee FROM each sub-consultant; show total fee for each here)			
			\$ -
			\$ -
			\$ -
Subconsultant Administration Expense (5%)			\$ -
<b>Sub-Total</b>			<b>\$ 6,586.67</b>
Facilities Capital Cost of Money (% of Direct Labor)	0.91		\$ 20.49
<b>TOTAL FEE</b>			<b>\$ 6,607.16</b>

\*\*See Grand Total Fee sheet

<b>Project No.</b>	DE-IBRD-A104(916)
<b>County</b>	Jefferson
<b>Description</b>	Pedestrian Walkway Over US-31 in Vestavia Hills Near Wald Park
<b>Scope of Work</b>	Supplemental Agreement #2 - Additional Utility Coordination and Plan Revisions due to Utility Coordination
<b>Project Length</b>	0.06 Miles
<b>Consultant</b>	Gresham, Smith and Partners

**Out-of-pocket Expenses (Roadway Plans)**

**TRAVEL COST**

Mileage Cost	Trips	Miles/Trip	\$/Mile	Total
Trips to Site (Vestavia Hills, AL)	1	15	\$0.575	\$ 8.63
Trips to ALDOT Birmingham Area Office	0	25	\$0.575	\$ -
	0	0	\$0.575	\$ -
	0	0	\$0.575	\$ -
<b>Total Mileage Cost</b>				<b>\$ 8.63</b>

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

<b>Total Travel Cost</b>				<b>\$ 8.63</b>
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**PRINTING / REPRODUCTION COST**

Type of printing/reproduction	# of Sets	Sheets/Set	Total Sheets	Cost/Sheet	Total
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
<b>Total Printing/Reproduction Cost</b>					<b>\$ -</b>

<b>Communication Cost (telephone, fax, etc.)</b>	<b>Total</b>
	<b>\$ -</b>

<b>Postage Cost (overnight, stamps, etc.)</b>	<b>Total</b>
Resubmit plans for ALDOT CN Review	<b>\$ 25.00</b>

<b>Other (provide description on next line)</b>	<b>Total</b>
	<b>\$ -</b>

<b>Total Out-of-pocket Expenses</b>		<b>\$ 33.63</b>
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**Comments:**

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

7/24/2020

Alabama Department of Transportation

12:28 PM

**Project Number** DE-IBRD-A104(916)      **CPMS #** \_\_\_\_\_  
**County** Jefferson  
**Description** Pedestrian Walkway Over US-31 in Vestavia Hills Near Wald Park  
**Scope of work** Supplemental Agreement #2 - Additional Utility Coordination and Plan Revisions due to Utility Coordination  
**Length** 0.06 miles  
**Consultant** Gresham, Smith and Partners

ROADWAY PLANS SHEET TITLE	NO OF SHEETS	ESTIMATED MAN-DAYS				COMMENTS / REVISIONS
		SENIOR ENGINEER		ENGINEER		
		SHEET	TOTAL	SHEET	TOTAL	
<b>UTILITY COORDINATION</b>						
Additional Utility Coordination (thru 2/18/2020)			2.50		9.00	Additional utility coordination time above what was budgeted in SA#1 thru 2/17/20
Additional Utility Coordination (future)			1.75		7.50	Estimated additional utility coordination time above what was budgeted in SA#1 after 2/17/20
<b>SUB-TOTAL</b>			4.25		16.50	
<b>TOTALS</b>			4.25		16.50	

<b>Project No.</b>	DE-IBRD-A104(916)
<b>County</b>	Jefferson
<b>Description</b>	Pedestrian Walkway Over US-31 in Vestavia Hills Near Wald Park
<b>Scope of Work</b>	Supplemental Agreement #2 - Additional Utility Coordination and Plan Revisions due to Utility
<b>Project Length</b>	0.06 Miles
<b>Consultant</b>	Gresham, Smith and Partners
<b>Fee Proposal (Roadway Plans)</b>	

PERSONNEL COST			
	Man-days x Daily Rate		
Project Manager (10% of Eng.)	1.65	\$ 557.76	\$ 920.30
Senior Engineer	4.25	\$ 557.76	\$ 2,370.48
Engineer / Engineer Intern / Technician	16.50	\$ 361.20	\$ 5,959.80
Clerical		\$ 203.00	\$ -
<b>Total Direct Labor</b>			<b>\$ 9,250.58</b>
Combined Overhead (%)	164.47		\$ 15,214.43
Out-of-Pocket Expenses**			\$ 73.60
<b>Sub-Total</b>			<b>\$ 24,538.61</b>
Operating Margin (10%)			\$ 2,453.86
<b>Sub-Total</b>			<b>\$ 26,992.47</b>
SUB-CONSULTANTS (attach man-day & fee FROM each sub-consultant; show total fee for each here)			
			\$ -
			\$ -
			\$ -
Subconsultant Administration Expense (5%)			\$ -
<b>Sub-Total</b>			<b>\$ 26,992.47</b>
Facilities Capital Cost of Money (% of Direct Labor)	0.91		\$ 84.18
<b>TOTAL FEE</b>			<b>\$ 27,076.65</b>

\*\*See Grand Total Fee sheet

**Project No.** DE-IBRD-A104(916)  
**County** Jefferson  
**Description** Pedestrian Walkway Over US-31 in Vestavia Hills  
Near Wald Park  
Supplemental Agreement #2 - Additional Utility  
Coordination and Plan Revisions due to Utility  
**Scope of Work** Coordination  
**Project Length** 0.06 Miles  
**Consultant** Gresham, Smith and Partners

**Out-of-pocket Expenses (Roadway Plans)**

**TRAVEL COST**

Mileage Cost	Trips	Miles/Trip	\$/Mile	Total
Trips to Site to meet with Utility Owners (Vestavia Hills, AL)	4	15	\$0.575	\$ 34.50
Trips to ALDOT Birmingham Area Office	2	25	\$0.575	\$ 28.75
Trips to City Hall (Vestavia Hills, AL)	1	18	\$0.575	\$ 10.35
	0	0	\$0.575	\$ -
<b>Total Mileage Cost</b>				<b>\$ 73.60</b>

Subsistence Cost	Days	# People	\$/Day	Total
Travel allowance (6 hour trips)	0	0	\$11.25	\$ -
Travel allowance (12 hour trips - meal provided by others)	0	0	\$20.00	\$ -
Travel allowance (12 hour trips)	0	0	\$30.00	\$ -
Travel allowance (overnight)**	0	0	\$75.00	\$ -
				\$ -
<b>Total Subsistence Cost</b>				<b>\$ -</b>
<b>Total Travel Cost</b>				<b>\$ 73.60</b>

**PRINTING / REPRODUCTION COST**

Type of printing/reproduction	# of Sets	Sheets/Set	Total Sheets	Cost/Sheet	Total
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
<b>Total Printing/Reproduction Cost</b>					<b>\$ -</b>

<b>Communication Cost (telephone, fax, etc.)</b>	<b>Total</b>
	<b>\$ -</b>

<b>Postage Cost (overnight, stamps, etc.)</b>	<b>Total</b>
	<b>\$ -</b>

<b>Other (provide description on next line)</b>	<b>Total</b>
	<b>\$ -</b>

<b>Total Out-of-pocket Expenses</b>	<b>\$ 73.60</b>
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**Comments:**

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

<b>Project Number</b> DE-IBRD-A104(916) <b>CPMS #</b> _____ <b>County</b> Jefferson <b>Description</b> Pedestrian Walkway Over US-31 in Vestavia Hills Near Wald Park <b>Scope of work</b> Supplemental Agreement #2 - Additional Utility Coordination and Plan Revisions due to Utility Coordination <b>Length</b> 0.06 miles <b>Consultant</b> Gresham, Smith and Partners						
UTILITY RELOCATION PLANS SHEET TITLE	NO OF SHEETS	ESTIMATED MAN-DAYS				COMMENTS / REVISIONS
		ENGINEER		TECHNICIAN		
		SHEET	TOTAL	SHEET	TOTAL	
<b>SUMMARY BOX SHEETS</b>						
Utility Relocation (Water main)	0.25	0.10	0.03	0.50	0.13	Add summary box for removal of old water main
Utility Relocation (Buried Fiber Optic Line)						
<b>UTILITY (WATER MAIN) RELOCATION SHEETS</b>						
Plan sheet & details	1.00	0.15	0.15	0.50	0.50	Add Service tap and meter detail for water service for elevator
Water main profile						
<b>UTILITY (BURIED FIBER OPTIC) RELOCATION SHEETS</b>						
Coordinate location, clearances, sequence, etc w/ALDOT & BWWB						
Temporary Relocation Plan & Details						
Permanent Relocation Plan	1.00	0.25	0.25	0.25	0.25	
Design Details, Coordination with Bridge Foundations						
Notes						
<b>SUB-TOTAL</b>	<b>2.25</b>		<b>0.43</b>		<b>0.88</b>	
10% Supervision			0.04			
<b>TOTALS</b>	<b>2.25</b>		<b>0.43</b>		<b>0.88</b>	

<b>Project No.</b>	DE-IBRD-A104(916)
<b>County</b>	Jefferson
<b>Description</b>	Pedestrian Walkway Over US-31 in Vestavia Hills Near Wald Park
<b>Scope of Work</b>	Supplemental Agreement #2 - Additional Utility Coordination and Plan Revisions due to Utility
<b>Project Length</b>	0.06 Miles
<b>Consultant</b>	Gresham, Smith and Partners
<b>Fee Proposal (Utility Relocation Plans)</b>	

PERSONNEL COST			
	Man-days	x Daily Rate	
Project Manager (10% of Eng.)	0.09	\$ 557.76	\$ 50.20
Senior Engineer	0.43	\$ 557.76	\$ 239.84
Engineer / Engineer Intern / Technician	0.88	\$ 361.20	\$ 317.86
Clerical	0.00	\$ 203.00	\$ -
<b>Total Direct Labor</b>			\$ 607.90
Combined Overhead (%)	164.47		\$ 999.81
Out-of-Pocket Expenses**			
<b>Sub-Total</b>			<b>\$ 1,607.71</b>
Operating Margin (10%)			\$ 160.77
<b>Sub-Total</b>			<b>\$ 1,768.48</b>
<b>SUB-CONSULTANTS (attach man-day &amp; fee FROM each sub-consultant; show total fee for each here)</b>			
			\$ -
			\$ -
			\$ -
Subconsultant Administration Expense (5%)			\$ -
<b>Sub-Total</b>			<b>\$ 1,768.48</b>
Facilities Capital Cost of Money (% of Direct Labor)	0.91		\$ 5.53
<b>TOTAL FEE</b>			<b>\$ 1,774.01</b>

\*\*See Grand Total Fee sheet



<b>Project No.</b>	DE-IBRD-A104(916)
<b>County</b>	Jefferson
<b>Description</b>	Pedestrian Walkway Over US-31 in Vestavia Hills Near Wald Park
<b>Scope of Work</b>	Coordination and Plan Revisions due to Utility Coordination
<b>Project Length</b>	0.06 Miles
<b>Consultant</b>	Gresham, Smith and Partners

**Out-of-pocket Expenses (Utility Relocation Plans)**

TRAVEL COST				
Mileage Cost	Trips	Miles/Trip	\$/Mile	Total
Trips to Site (Vestavia Hills, AL)	2	15	\$0.575	\$ 17.25
Trips to ALDOT Birmingham Area Office	0	25	\$0.575	\$ -
	0	0	\$0.575	\$ -
	0	0	\$0.575	\$ -
<b>Total Mileage Cost</b>				<b>\$ 17.25</b>

Subsistence Cost	Days	# People	\$/Day	Total
Travel allowance (6 hour trips)	0	0	\$11.25	\$ -
Travel allowance (12 hour trips - meal provided by others)	0	0	\$20.00	\$ -
Travel allowance (12 hour trips)	0	0	\$30.00	\$ -
Travel allowance (overnight)***	0	0	\$75.00	\$ -
				\$ -
<b>Total Subsistence Cost</b>				<b>\$ -</b>
<b>Total Travel Cost</b>				<b>\$ 17.25</b>

PRINTING / REPRODUCTION COST					
Type of printing/reproduction	# of Sets	Sheets/Set	Total Sheets	Cost/Sheet	Total
11"x17" checksets & submittals	25	#REF!	#REF!	\$ 0.53	#REF!
22"x34" Checksets	2	#REF!	#REF!	\$ 1.06	#REF!
	0	0.00	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
	0	0	0	\$ -	\$ -
<b>Total Printing/Reproduction Cost</b>					<b>#REF!</b>

<b>Communication Cost (telephone, fax, etc.)</b>	<b>Total</b>
	\$ -

<b>Postage Cost (overnight, stamps, etc.)</b>	<b>Total</b>
	\$ -

<b>Other (provide description on next line)</b>	<b>Total</b>
	\$ -

<b>Total Out-of-pocket Expenses</b>	<b>#REF!</b>
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**Comments:**

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

**RESOLUTION NUMBER 5262**

**A RESOLUTION RE-APPOINTING MEMBERS TO THE  
VESTAVIA HILLS DESIGN REVIEW BOARD**

**WHEREAS**, the Mayor has recommended the reappointment of Joe Ellis, David Giddens, Chris Pugh and Rip Weaver to the Vestavia Hills Design Review Board in an email dated August 6, 2020. A copy of said email is marked as Exhibit A and is attached to and incorporated into this Resolution Number 5262 as though written fully therein; and

**WHEREAS**, the Council concurs with the Mayor's recommendation.

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

1. Joe Ellis, David Giddens, Chris Pugh and Rip Weaver are hereby reappointed to the Vestavia Hills Design Review Board effective immediately; and
2. Said appointments shall expire on December 31, 2022; and
3. This Resolution Number 5262 shall become effective upon approval and adoption.

**APPROVED AND ADOPTED** this the 10<sup>th</sup> day of August, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



# VESTAVIA HILLS

## MEMORANDUM

TO: Rebecca Leavings, City Clerk

FROM: *ack* Ashley C. Curry, Mayor

DATE: August 6, 2020

RE: Reappointments to Design Review Board

I would like to recommend Joe Ellis, David Giddens, Chris Pugh and Rip Weaver be reappointed to the Design Review Board. This would be for a three year term which will be effective immediately and expire on December 31, 2022.

Thank you.

**RESOLUTION NUMBER 5263**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER A JOINT SERVICES AGREEMENT TO SHARE RESPONSIBILITIES FOR IMPROVEMENTS ON ACTON DRIVE AND ACTON PLACE**

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

1. The City Manager is hereby authorized to execute and deliver a Joint Services Agreement to share responsibilities for improvements along Acton Place and Acton Drive; and
2. A copy of said agreement is marked as Exhibit A, attached to and incorporated into this Resolution Number 5263 as though written fully therein; and
3. This Resolution Number 5263 shall be effective immediately following adoption and approval.

**ADOPTED and APPROVED** the 10<sup>th</sup> day of August, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

JEFFERSON COUNTY

STATE OF ALABAMA

**AGREEMENT**  
**TO**  
**SHARE RESPONSIBILITIES**  
**(JOINT SERVICES AGREEMENT)**

**Resurfacing Acton Drive and Acton Place**

**JEFFERSON COUNTY, ALABAMA** (the “County”) and the **CITY OF VESTAVIA HILLS, ALABAMA** (“Vestavia”), enter into this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2020 (collectively, the forgoing parties are sometimes referred to herein as “the Parties” or individually as a “Party”).

**WHEREAS**, Section 11-102-1 et seq., Code of Alabama (1975) authorizes counties or incorporated municipalities of the State of Alabama to enter into written contracts with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties, and further provides that the joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities; and

**WHEREAS**, Act No. 1969-916, Acts of Alabama (the “Act”), authorizes Jefferson County and municipalities and public corporations located therein to make the most efficient use of their respective powers by enabling such entities to cooperate with each other on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of Jefferson County and such municipality (Section 11-102-1 et seq., Code of Alabama (1975) and the Act are referred to collectively hereinafter as “the Intergovernmental Agreement Laws”); and

**WHEREAS**, pursuant to the Intergovernmental Agreement Laws, the County and Vestavia, desire to enter into this Agreement to act cooperatively for the public purpose of making certain improvements to **Acton Drive and Acton Place** (the “Project”); and

**WHEREAS**, this portion of the Project traverses through the two jurisdictions, with Acton Drive having a total length of 0.17 miles and Acton Place having a total length of 0.31 miles, while 42% of Acton Drive roadway surface is within unincorporated Jefferson County and 46% of Acton Place is within unincorporated Jefferson County, with the remaining roadway portion situated within Vestavia; and

**WHEREAS**, the cost of construction on Acton Drive and Acton Place is estimated to be Ninety One Thousand Eight Hundred Twenty Six Dollars and Forty Seven Cents (\$91,826.47); and

**WHEREAS**, both Parties desire to divide the construction costs as follows: the County will be responsible for approximately Forty Thousand Seven Hundred Ninety Eight Dollars and Eighty Four Cents (\$40,798.84) of the cost for construction on Acton Drive and Acton Place, the City of Vestavia Hills will be responsible for the remaining, Fifty One Thousand Twenty Seven Dollars and Sixty Three Cents (\$51,027.63); and

**WHEREAS**, the Parties find that it is in the public interest that the Parties enter into a joint purchasing/service agreement in accordance with the Intergovernmental Agreement Laws in order to authorize Vestavia to engage in the purchase of certain services and materials through the competitive bid process for use by the Parties, i.e. in order for the County and Vestavia to make certain improvements to **Acton Drive and Acton Place**.

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES** stated herein the County and Vestavia mutually agree as follows:

- I. **PURPOSE:** The Parties agree to jointly undertake to provide for the following improvements to **Acton Place and Acton Drive:** Milling, Resurfacing, Striping and other necessary repairs to the road bed for placement of the final pavement wearing surface.
- II. **BIDDING:** The Parties have authorized this Agreement pursuant to similar ordinances passed by Vestavia and a similar resolution passed by the County, adopted by the governing body of each Party, which set forth the categories of labor, services, or work, or for the purchase or lease materials of advertising for bids and the awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of this Agreement. Copies of the subject ordinance and resolution are attached hereto as **Exhibit A** and are incorporated herein by reference. The Parties agree to the following:
  - a. Vestavia will act as the joint purchasing or bidding agent and will advertise and accept bids for the construction of the Project.
  - b. Vestavia will determine the low bidder and enter into a separate Agreement with the contractor for the construction of the Project.
  - c. Vestavia will invoice the County for their respective share of the construction costs. The County's share being approximately **Forty Thousand Seven Hundred Ninety Eight Dollars and Eighty Four Cents (\$40,798.84)**.
  - d. Each Party's share of expenditures for purchases under this Agreement shall be appropriated and paid in the manner set forth in this Agreement and in the same manner as for other expenses of the entity.
  - e. All advertising costs incurred by Vestavia on behalf of the joint purchasing Agreement shall be paid by Vestavia.

- f. This Agreement shall be subject to all terms and conditions of the applicable Alabama bid laws.
- III. TERM:** The duration of this Agreement shall not exceed two (2) years from the date of its final execution or end of the Project, whichever first occurs.
- IV. IMPLEMENTATION:** The Parties agree as follows:
- a. Vestavia will assume responsibility for the management of the Project.
  - b. Vestavia will provide construction, engineering and inspection services during the construction phase of the Project, with the County providing additional staff for the inspection for the portion of the Project within the maintenance of Jefferson County.
  - c. The Parties expressly agree that (i) the County does not assume any risk or future liability, or any future responsibility for any portion of Acton Drive and Acton Place located within the corporate limits of Vestavia and (ii) Vestavia does not assume any risk or future liability, or any future responsibility for any portion of Acton Drive and Acton Place located within the County but outside the corporate limits of Vestavia.
  - d. Except as expressly provided in this Agreement, neither Party shall have any other power to incur any debt which shall become the responsibility of the other Party.
  - e. Except as specifically provided in this Agreement, the execution of this Agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the Parties the relationship of principal or agent or of partnership or of joint venture.
  - f. Except as otherwise provided by law and as limited by this Agreement, any entity which contracts to perform or exercise any service or power pursuant to this Agreement shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purpose of this Agreement.
  - g. Each Party to this Agreement shall take all actions necessary to effectuate its respective contractual duties and responsibilities under this Agreement.
- V. TERMINATION:**
- a. Any Party hereto may terminate this Agreement prior to commencement of work by giving thirty (30) days' notice of the intention to do so to the other Party. Such notice shall be sent to the governing body of the other Party.
  - b. The termination of this Agreement does not absolve the terminating Party from performing its obligations under this Agreement arising prior to the effective date of such termination. Upon termination, all unused materials purchased by Vestavia under this Agreement shall be returned to Vestavia within thirty (30) days of termination.

- c. After the Project is completed and accepted by Vestavia, the County agrees to pay its respective share of the Project costs within thirty (30) days of the acceptance date.
- VI. **SEVERABILITY:** If any provision of this Agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the Parties shall be constructed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- VII. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama as interpreted by Alabama courts.
- VIII. **DISPOSITION OF FUNDS UPON TERMINATION OF AGREEMENT:** Any jointly contributed funds remaining upon the termination of this Agreement will be distributed to the Parties pro rata based on the percentage of the overall funding contributed by each Party.
- IX. **LIABILITY RELATED TO ORDINANCES, POLICIES, RULES AND REGULATIONS:** In executing this Agreement, neither Party hereto assumes liability or responsibility for or in any way releases the other Party from any liability or responsibility which arises in whole or in part from the existence or effect of their respective ordinances, policies, rules, or regulations. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such ordinance, policy, rule or regulation is at issue, the Party responsible for such ordinance, policy, rule or regulation shall defend the same at its sole expense.
- X. **MUTUAL BENEFIT:** Both Parties acknowledge that the undertakings described herein are for their mutual benefit.
- XI. **NO SEPARATE ENTITY:** The Parties do not intend to create any separate legal or administrative entity with respect to this Agreement or the services to be provided hereunder.
- XII. **INSURANCE:** Each Party acknowledges and agrees that the other Party is self-insured and that neither Party will be required to obtain insurance with respect to its obligations under this Agreement. Each Party agrees to require any contractors it retains pursuant to this Agreement to include the other Party to be named as an additional insured with respect to the contractor's required insurance and to indemnify the other Party.
- XIII. **COMPLIANCE WITH LAWS:** The Parties shall comply with all Federal, State and local laws or ordinances applicable to their respective performances under this Agreement, including, but not limited to, the Intergovernmental Agreement Laws.
- XIV. **NOTICE:** Any notice required or permitted by this Agreement shall be personally delivered in writing or deposited with the U.S. Postal Service, postage prepaid, certified and returned receipt requested, and addressed as follows:

To the County:  
Director of Roads and Transportation/County Engineer  
Room A200 Courthouse  
716 Richard Arrington Jr. Blvd N  
Birmingham, Alabama 35203



To Vestavia:  
City Engineer  
Vestavia Hills Department of Public Services  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

- XV. NON-ASSIGNABILITY:** Neither Party shall delegate or assign any of its obligations or assign its benefits under this Agreement.
- XVI. AUTHORITY TO CONTRACT:** Each Party declares that it has obtained all necessary approvals of its governing authority to execute and bind the Party.
- XVII. NO THIRD-PARTY RIGHTS:** This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.
- XVIII. FORCE MAJEURE:** Neither Party shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of its respective duties or obligations under this Agreement or for any delay in such performance due to: (a) any cause beyond its respective reasonable control; (b) any act of God; (c) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (d) earthquake, fire, explosion, flood or other natural disaster; (e) strike or labor dispute; (f) delay or failure to act by any governmental or military authority; or (g) any war, act of terrorism, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion.
- XIX. NON-WAIVER:** Any Party's failure to seek redress for a violation or to insist upon strict performance of any Agreement provision will not prevent a subsequent act, which would originally have constituted a violation, from having the effect of an original violation. No waiver of a provision, breach or default shall apply to any other provision or subsequent breach or default or be deemed continuous.
- XX. NO WAIVER OF THE SOVEREIGN IMMUNITY:** Nothing contained in this Agreement constitutes a waiver of the sovereign immunity of any Party hereto under applicable law.
- XXI. WHEN AGREEMENT BECOMES EFFECTIVE:** This Agreement shall become effective following the approval hereof by the respective governing bodies of the Parties and upon the execution by a duly authorized official on behalf of each Party.
- XXII. SECTION HEADINGS:** The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.
- XXIII. ENTIRE AGREEMENT; AMENDMENT:** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no modifications hereof shall be effective unless executed in writing by duly authorized personnel of the Parties hereto. All previous communications between the Parties, whether verbal or written, with reference to

the subject matter hereof are hereby superseded by this Agreement. This Agreement may be amended or modified only by a written amendment approved and executed by the Parties.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representative as reflected below.

**JEFFERSON COUNTY, ALABAMA**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
James A. (Jimmie) Stephens, President

**ATTEST:**

\_\_\_\_\_  
Millie Diliberto, Minute Clerk

**CITY OF VESTAVIA HILLS, ALABAMA**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Jeffrey Downes, City Manager

**ATTEST:**

\_\_\_\_\_  
Rebecca Leavings, City Clerk

STATE OF ALABAMA)  
JEFFERSON COUNTY)

I, the undersigned, a notary public, in and for said County in said State, hereby certify that James A. (Jimmie) Stephens, whose name as President of the Jefferson County Commission is signed to the foregoing instrument and who is known to me that he acknowledged before me on this date that, being informed of the contents of said instrument, he as officer and with full authority, executed the same voluntarily for and as the act of Jefferson County, Alabama.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_.

STATE OF ALABAMA)  
JEFFERSON COUNTY)

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

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_.

**RESOLUTION NUMBER 5264**

**A RESOLUTION APPOINTING ELECTION OFFICERS  
FOR THE MUNICIPAL ELECTION TO BE HELD IN THE  
CITY OF VESTAVIA HILLS, ALABAMA ON AUGUST 25,  
2020.**

**WHEREAS**, a regular municipal election for the City of Vestavia Hills, Alabama, will be held on the 23<sup>rd</sup> day of August, 2016; and

**WHEREAS**, according to Title 37, Section 34 (26), Code of Alabama, 1975, the municipal governing body, or a majority of them, must appoint from the qualified electors of respective wards or voting districts, officers to hold the election as follows: a Chief Inspector and an Assistant Chief Inspector.

**WHEREAS**, the pay rates for each Chief Inspector will be at a rate of \$250.00 per day; each Assistant Chief Inspector will be at a rate of \$225.00 per day; and for each Clerk will be at a rate of \$200.00 per day. Poll worker hours begin at 6:30 a.m. and last until the Chief Inspector dismisses each clerk.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Vestavia Hills, Alabama, that the election officers for said election shall be as follows:

See attached Exhibit A; and

**BE IT FURTHER RESOLVED** that the City Clerk may amend the above list as needed due to unforeseen circumstances.

**APPROVED and ADOPTED** this the 8<sup>th</sup> day of August, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

<b>HORIZON CHURCH</b>		<b>TOTAL 11</b>	
CHIEF	LISA BARTLETT MCARDLE	1814 MONTCLAIRE DRIVE	35216
ASST. CHIEF	PATRICIA LEE CHAUCER (TISH)	3716 SHADY COVE DRIVE	35243
CLERK	DENISE PAULA BIVIN	1815 POST OAK ROAD	35216
CLERK	MARY MARGARET YEILDING	2584 MOUNTAIN WOODS DRIVE	35216
CLERK	SARAH CULVER	1828 MISSION ROAD	35216
CLERK	REBECCA DILLARD	3640 DABNEY DRIVE	35243
CLERK	KIM OWEN	1400 BADHAM DRIVE	35216
CLERK	NANCY KING	1722 VESTAWOOD CT #E	35216
CLERK	RHONDA HOOKS	1817 NOTTINGHAM DRIVE	35216
CLERK	ELIZABETH ISBELL (LIBBY)	2415 TARALANE TRAIL	35216
CLERK	RICHARD RICE (RICK)	2763 PADEN TRAIL	35226
<b>VESTAVIA HILLS UNITED METHODIST CHURCH</b>		<b>TOTAL 9</b>	
CHIEF	TERESA R. ROBERTS	2225 PINE CREST DRIVE	35216
ASST. CHIEF	CECELIA S. GREER	1414 BRANCHWATER CIRCLE	35216
CLERK	LAURA O. WALKER	2217 HUNTERS COVE	35216
CLERK	MELINDA G. DIBENEDETTO	2365 DOLLY RIDGE ROAD	35243
CLERK	CRYSTAL DIANE SHRUM	2120 VESTRIDGE CT	35216
CLERK	LEE GRACE MATHEWS	1821 CATALA ROAD	35216
CLERK	KAY R. EDDINS	1765 VESTAVIEW LANE	35216
CLERK	JAMES R. TARRANT	2413 MOUNTAIN VISTA DR.	35243
CLERK	RACHEL HARWELL	1927 SHADES CREST ROAD	35216
<b>MOUNTAINTOP COMMUNITY</b>		<b>TOTAL 5</b>	
CHIEF	CYNTHIA L. BARTLETT	2328 COUNTRY RIDGE DRIVE	35243
ASST. CHIEF	CAROL C. SIMS	3752 SHADY COVE DRIVE	35243
CLERK	KAREN ANN BERGQUIST	2213 JACOBS ROAD	35216
CLERK	SUSAN JESSUP	1968 SOUHTWOOD ROAD	35216
CLERK	MARY STANDLEY CARMAN	3604 MILLER HILL WAY	35243
<b>VESTAVIA CENTRAL ELEM. (FROM TOWN VILLAGE )</b>		<b>TOTAL 7</b>	
CHIEF	NANCY FOX KIRK	1529 BLIND BROOK LANE	35216
ASST. CHIEF	JULIE BROWN DANLEY	1720 CAROVEL CIRCLE	35216
CLERK	REBEKAH O. JONES	1348 TURNHAM LANE	35216
CLERK	ROBERT B. BOSTON	2216 IVY TRACE	35243
CLERK	SARAH A. GOFF	1653 GLEN COVE	35243
CLERK	SUSAN STOFEL	1421 PANAROMA DRIVE	35216
CLERK	NANCY MOSLEY	1533 BLIND BROOK LANE	35216

<b>CAHABA HEIGHTS BAPTIST CHURCH</b>		<b>TOTAL 6</b>	
CHIEF	DEBORAH BIDANSET PONDER	3846 WHITE OAK DRIVE	35243
ASST. CHIEF	THOMAS PARCHMAN	3208 ALTALOMA DRIVE	35216
CLERK	TAMMY BAILEY BEARDEN	4328 DOLLY RIDGE ROAD	35243
CLERK	LENORA SUE KEITH	3157 VALLEY PARK DRIVE	35243
CLERK	WILLIAM E. WILLIS	3616 LAKESIDE DRIVE	35243
CLERK	MARYANN LAMBERT	31217 DOLLY RIDGE DRIVE	35243
<b>THE CHURCH AT LIBERTY PARK</b>		<b>TOTAL 8</b>	
CHIEF	ROBERT BRIAN ALLISON	2505 MOUNTAIN WOODS DRIVE	25216
ASST. CHIEF	JANICE L. RENDA	3414 RIVER TERRACE DRIVE	35223
CLERK	LUCINDA EROS HARMON	4229 MARDEN WAY	35242
CLERK	LESLIE J. TAYLOR	4505 VESTLAKE RIDGE WAY	35242
CLERK	MARCELLA BAILEY	4149 ALSTON LANE	35242
CLERK	KELLY LAWHON	4049 CROSSHAVEN DRIVE	35242
CLERK	MICHAEL E. GREEN, JR.	1330 ANGLEWOOD DRIVE	35216
CLERK	NICOLE ZABRISKIE	711 TWIN BRANCH DRIVE	35226
<b>ABSENTEE POLL WORKERS</b>		<b>TOTAL 3</b>	
CLERK	GAYLE B. ENGLAND	808 VESTAVIA LAKE DRIVE	35216
CLERK	RUBY H. DENSON	1844 MONTCLAIRE LANE #B	35216
CLERK	ANNE N. BOSTON	2216 IVY TRACE	35243
	<b>TOTAL WORKERS</b>	<b>49</b>	

**RESOLUTION NUMBER 5265**

**A RESOLUTION GRANTING ALABAMA POWER COMPANY A  
UTILITY EASEMENT FOR CONNECTION OF ELECTRICAL  
SERVICE**

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

1. The City Manager is hereby authorized to sign an agreement with Alabama Power Company to grant an easement, right and privilege as described in said Exhibit A, attached to and incorporated into this Resolution Number 5265 as if written fully therein; and
2. Resolution Number 5265 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 10<sup>th</sup> day of August, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



APC Document # 72255462-001

**EASEMENT – DISTRIBUTION FACILITIES**

STATE OF ALABAMA

COUNTY OF JEFFERSON

This instrument prepared by: Dean Fritz

Alabama Power Company  
Corporate Real Estate  
2 Industrial Park Drive  
Pelham, AL 35124

**KNOW ALL MEN BY THESE PRESENTS** That the undersigned **City of Vestavia Hills, Alabama, a municipal corporation**, (hereinafter known as "Grantors", whether one or more) for and in consideration of One and No/100 Dollar (\$1.00) and other good and valuable consideration paid to Grantors in hand by Alabama Power Company, a corporation, the receipt and sufficiency of which are hereby acknowledged, do hereby grant to said Alabama Power Company, its successors and assigns (hereinafter the "Company"), the following easements, rights, and privileges:

**Overhead and/or Underground.** The right from time to time to construct, install, operate and maintain, upon, over, under and across the Property described below, all poles, towers, wires, conduits, fiber optics, cables, communication lines, trans closures, transformers, anchors, guy wires, and other facilities useful or necessary in connection therewith (collectively, "Facilities"), for the overhead and/or underground transmission and distribution of electric power and communications, along a route selected by the Company, as determined by the location(s) in which the Company's facilities are to be installed. The width of the Company's right of way will depend on whether the Facilities are underground or overhead: for underground, the right of way will extend five (5) feet on all sides of said Facilities as and where installed; for overhead Facilities, the right of way will extend fifteen (15) feet on all sides of said Facilities as and where installed.

The Company is further granted all the rights or privileges necessary or convenient for the full enjoyment and use of said right of way for the purposes above described, including, without limitation, the right of ingress and egress to and from said Facilities, as applicable, the right to excavate for installation, replacement, repair and removal of said Facilities, the right to install, maintain, and use anchors and guy wires on land adjacent to said right of way, the right in the future to install intermediate poles and facilities on said right of way, and also the right to cut, remove, and otherwise keep clear any and all trees, undergrowth, structures, obstructions, or obstacles of whatever character, on, under and above said right of way, as applicable. Further, with respect to overhead Facilities, the Company is also granted the right to trim and cut, and keep trimmed and cut, all dead, weak, leaning or dangerous trees or limbs outside of the aforementioned right of way that, in the opinion of the Company, may now or hereafter endanger, interfere with, or fall upon any of said overhead Facilities.

The easements, rights and privileges granted hereby shall apply to, and the word "Property" as used in this instrument shall mean the real property more particularly described in those certain instruments recorded in Instrument #2017057813, and in Deed Book 210319, Page 28266, in the Office of the Judge of Probate of the above-named County.

If, in connection with the construction or improvement of any public road or highway, it becomes necessary or desirable for the Company to move any of the Facilities, Grantor hereby grant to the Company the right to relocate the Facilities and, as to such relocated Facilities, to exercise the rights granted above; provided, however, the Company shall not relocate said Facilities on the Property at a distance greater than ten feet (10') outside the boundary of the right of way of any such public road or highway as established or re-established from time to time.

This grant and agreement shall be binding upon and shall inure to the benefit of Grantors, the Company and each of their respective heirs, personal representatives, successors and assigns and the words "Company" and "Grantors" as used in this instrument shall be deemed to include the heirs, personal representatives, successors and assigns of such parties.

**TO HAVE AND TO HOLD** the same to the Company, its successors and assigns, forever.

**IN WITNESS WHEREOF**, the said Grantors have caused this instrument to be executed by \_\_\_\_\_, its authorized representative, as of the \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_.

ATTEST (if required) or WITNESS: City of Vestavia Hills, Alabama, a municipal corporation  
GRANTOR:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

-----**For Alabama Power Company Corporate Real Estate Department Use Only**-----

W.E. # A6173-06-AW19 Transformer # H17675 All facilities on Grantor: Yes, less and except road R/W

¼, ¼ STR & LOC to LOC: NE ¼ of the SW ¼ of Section 30, Township 18 South, Range 2 West

**CORPORATION/LLC NOTARY**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

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

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**Ve**

**CORPORATION/PARTNERSHIP/LLC NOTARY**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, acting in its capacity as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such \_\_\_\_\_ and with full authority, executed the same voluntarily, for and as the act of said \_\_\_\_\_ acting in such capacity as aforesaid.

Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

# SKETCH OF PROPOSED WORK - SIMPLIFIED W.E.

Map Center UTM:  
-9661568 3953584

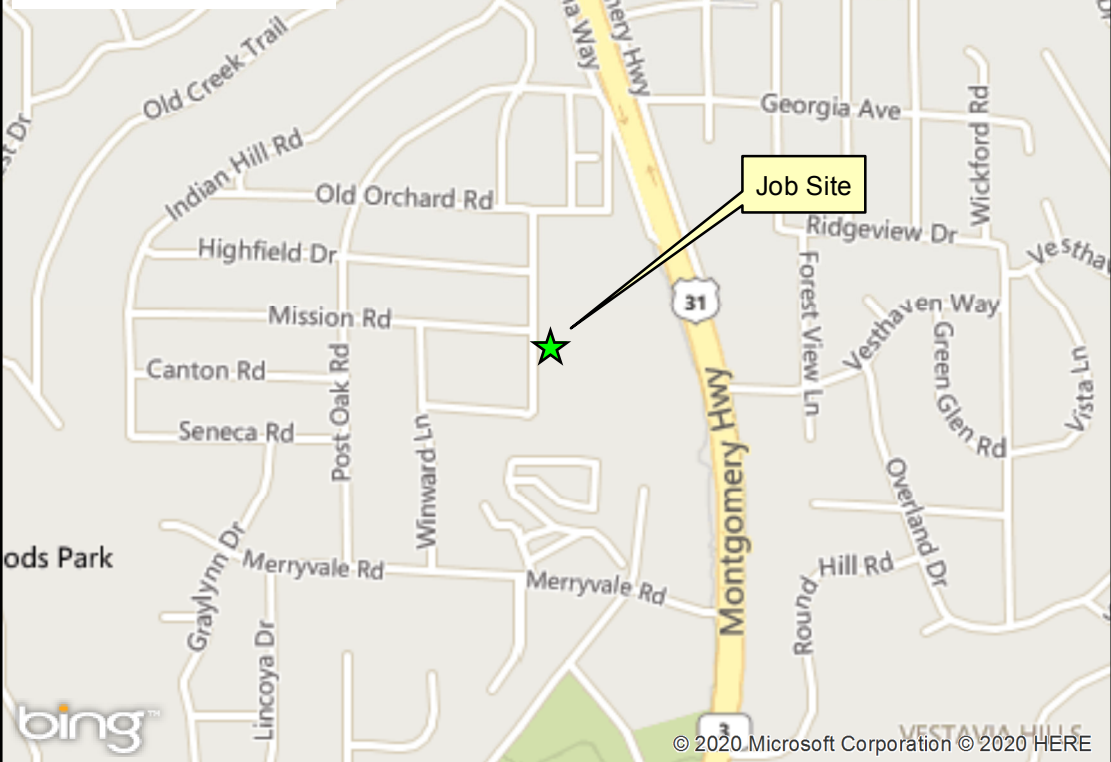
Map Center LatLon:  
33.437984 -86.791338

1 inch = 100 feet

Exhibit A - Resolution No. 5265

<b>Customer</b> City of Vestavia	<b>Location</b> 1090 Montgomery HWY	<b>Cmtd. Svc Date</b> 31 July 2019	<b>County</b>	<b>Section</b>	<b>Township</b>	<b>Range</b>	<b>Add'l Info.</b>	<b>Estimate No.</b> <b>A6173-06-AW19</b>
<b>Division</b> PD Birmingham	<b>District</b> Metro South	<b>Town</b> Vestavia Hills	<b>UserID</b> cdonalds	<b>Created:</b> 7/31/2020	<b>Substation</b> X- 04982, 04982 Y- L2091, L3219		<b>MISSALL#</b>	

## Work Location

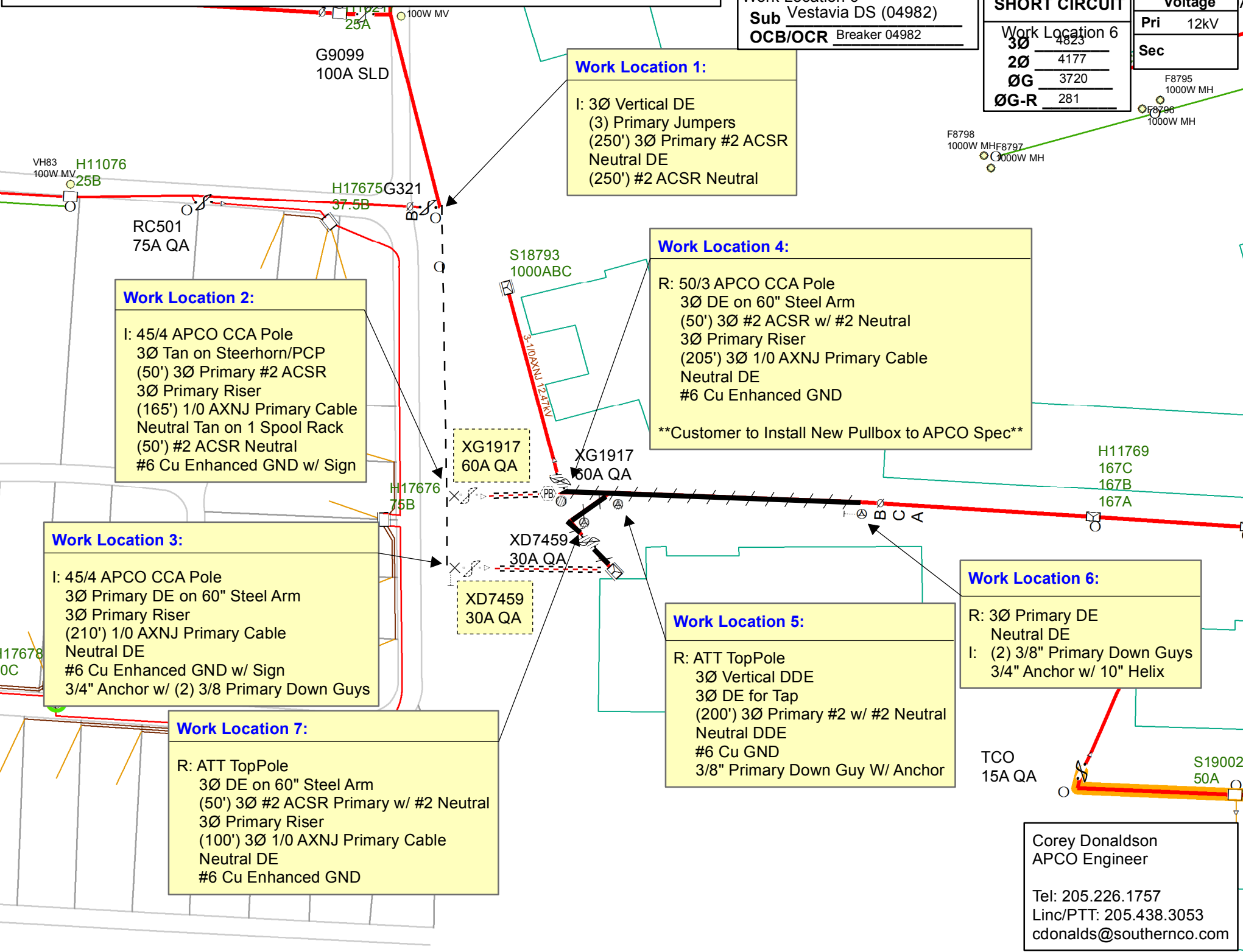


**Job Notes:**

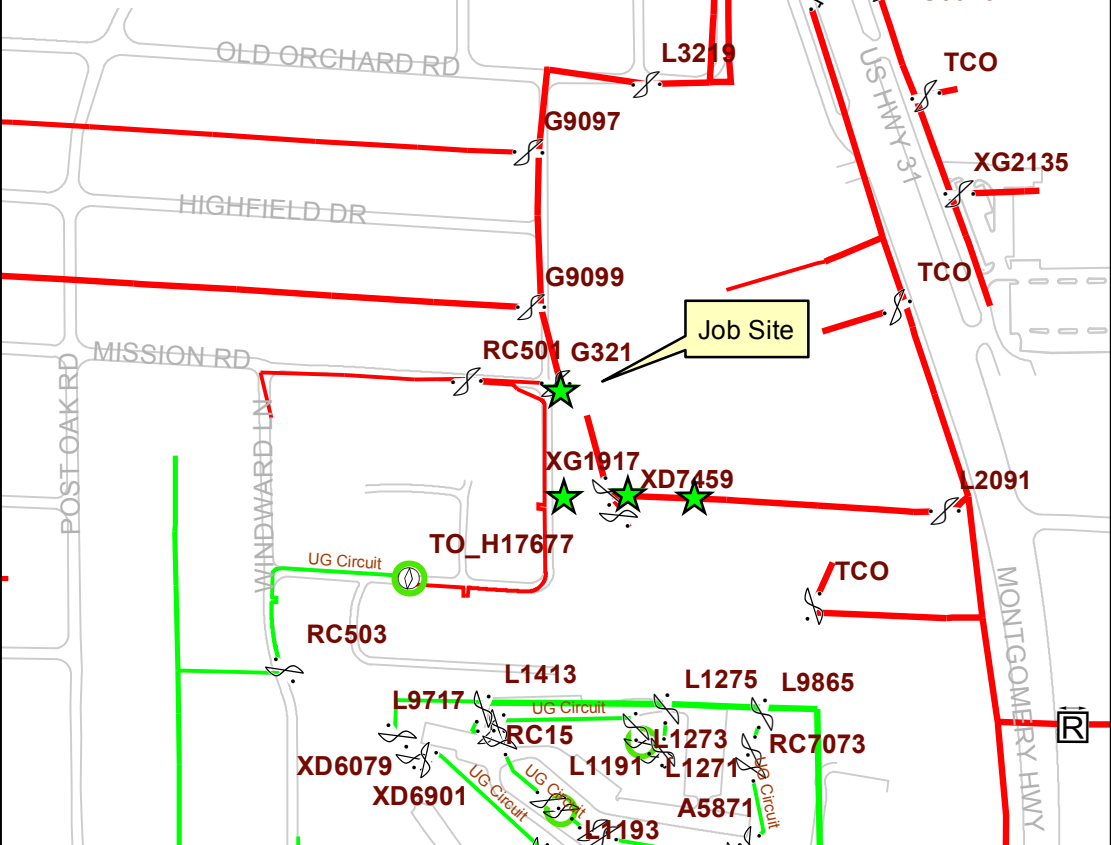
- All clearances to meet or exceed NESC requirements.
- Customer to trench and install 5" Schedule 40 Conduit and Pullbox to APCO Specs
- Customer to be billed \$40,818.49 for aid to construction costs.

<b>Energized Work Permit Info</b>
Work Location 1
Sub Vestavia DS (04982)
OCB/OCR RC32
<b>Energized Work Permit Info</b>
Work Location 6
Sub Vestavia DS (04982)
OCB/OCR Breaker 04982

<b>SHORT CIRCUIT</b>	<b>Voltage</b>
Work Location 1	Pri 12kV
3Ø 4815	Sec
2Ø 4170	
ØG 3736	
ØG-R 280	
<b>SHORT CIRCUIT</b>	
Work Location 6	
3Ø 4823	
2Ø 4177	
ØG 3720	
ØG-R 281	



## Sectionalizing



Corey Donaldson  
APCO Engineer  
  
Tel: 205.226.1757  
Linc/PTT: 205.438.3053  
cdonalds@southernco.com

**ORDINANCE NUMBER 2941**

**AN ORDINANCE GRANTING A CONDITIONAL USE APPROVAL  
FOR A HOME OCCUPATION**

**WHEREAS**, on October 16, 2000 the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 1838 creating and establishing a P.U.D. (planned unit development) classification; and

**WHEREAS**, on February 19, 2001 the City Council of the City of Vestavia Hills adopted and approved Ordinance Number 1864 to rezone 3,350 +/- acres from multiple Jefferson County and Vestavia Hills zoning classifications to Vestavia Hills P.U.D.; and

**WHEREAS**, Section 709.5.A.1.b of Ordinance Number 1838 classifies a “home occupation” permitted only as a “Conditional Use” and

**WHEREAS**, Timothy Boyne has submitted application for conditional use approval for a home occupation to be operated in the residence located at 4129 Vestview Drive, Vestavia Hills, Alabama located in the Liberty Park P.U.D.; and

**WHEREAS**, Mr. Boyne has indicated in his application for conditional use approval that he will operate a consulting business out of his home pursuant to the specifications of a home occupation; and

**WHEREAS**, a copy of said application dated May 18, 2020 is attached and hereby incorporated into this Ordinance Number 2941.

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

1. Conditional Use Approval is hereby approved for Timothy Boyne for a home occupation as described in the above-referenced application for their residence located at 4129 Vestview Drive, Vestavia Hills, Alabama located in Liberty Park P.U.D. subject to the provisions in Article 9 of the Vestavia Hills Zoning Code outlined as follows:
  - (1) “Home occupation is defined as any use customarily conducted entirely within a dwelling and carried on solely by the inhabitant thereof, and which use is clearly incidental, accessory, subordinate and secondary to the use of the dwelling for dwelling purposes, and does not change the character of the

dwelling itself or any part of parcel of property in the neighborhood surrounding said dwelling.

- (2) Home occupations shall be conducted only in the main dwelling building on the lot. No more than twenty-five percent (25%) of the said dwelling may be used for a home occupation.
  - (3) There shall be no public display of goods and absolutely no commodities sold on the premises; no customer, client or employee traffic to, at or near the residence that is generated, directly or indirectly, by said home occupation. There shall be no pickup or deliveries to the residences that are related to said home occupation whether directly or indirectly.
  - (4) No sign may be attached to the dwelling or any part of the real estate advertising any home occupation.
  - (5) No home occupation or profession shall be permitted if such occupation creates noise, odors, vibrations or traffic which interferes with the residential qualities of the neighborhood insofar as health, safety, morals, convenience and general welfare are concerned.
  - (6) In order to be a permitted home occupation or profession, the use must be one which is habitually, customarily and commonly established as a reasonable incidental, accessory, subordinate and secondary use.
  - (7) Operation of any and all other business of any nature in residential zones is expressly prohibited; and
  - (8) The activity carried on as home occupation shall be limited to the hours between 7:00 AM and 10:00 PM.”
2. Conditional Use Approval is further conditioned upon and subject to all applicable private and restrictive covenants attached to the property located at 4129 Vestview Drive, Vestavia Hills, Alabama located in the Liberty Park P.U.D.
  3. A City of Vestavia Hills Business License shall be issued upon application and payment by Mr. Boyne working to the rules and regulations outlined in the Vestavia Hills Business License Code and shall be renewed each year that the

home occupation is operated from the location at 4129 Vestview Drive, Vestavia Hills, Alabama located in the Liberty Park P.U.D.

4. At any time should Mr. Boyne vacate the premises located 4129 Vestview Drive, Vestavia Hills, Alabama, discontinue or relocate his business, this conditional use approval shall be nullified and said Ordinance Number 2941 shall be automatically repealed.

**ADOPTED and APPROVED** this the 24<sup>th</sup> day of August, 2020.

Alberto C. Zaragoza  
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 # 2941 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 24<sup>th</sup> day of August, 2020 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Rebecca Leavings  
City Clerk

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

Date: **JULY 9, 2020**

- **CASE: P-0720-17**
- **REQUESTED ACTION:** Conditional Use Approval for a home based business
- **ADDRESS/LOCATION:** 4129 Vestview Dr
- **APPLICANT/OWNER:** Timothy Boyne
- **GENERAL DISCUSSION:** The applicant wishes to conduct a home based business in Liberty Park. As currently required by the Liberty Park PUD a conditional use permit is required for a home based business. A description of the applicants business is attached. The property is zoned PR-1.
- **LIBERTY PARK MASTER PLAN:** This request is consistent with the procedures of the Liberty Park PUD.
- **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:** I recommend the Commission recommend approval with the following conditions:

    1. Home occupations shall be conducted only in the principal dwelling. No more than twenty-five (25) percent, up to 500 sq. ft., of the dwelling may be used for a home occupation.
    2. There shall be no outdoor display or storage associated with the home occupation and no commodities shall be sold on the premises other than by phone, mail or internet. No goods shall be delivered to a purchaser on the premises.
    3. No sign may be attached to the dwelling or any part of the real estate advertising any home occupation.
    4. No home occupation shall be permitted if it creates noise, odors, vibrations or traffic congestion, which interferes with the residential qualities of the neighborhood insofar as health, safety, morals, convenience and general welfare are concerned.

5. In order to be a permitted home occupation, the use must be one which is habitually, customarily, and commonly established as a reasonable incidental, accessory, subordinate and secondary use. The existing dwelling shall not be enlarged to accommodate the home occupation; nor shall any accessory structure be built for the purpose of operating the home occupation.

6. No home occupation shall be permitted that requires the operation or keeping on premises of a commercial vehicle.

7. No persons other than members of the family residing on the premises shall be employed by the home occupation.

8. Home occupations shall be limited to the hours between 7:00 a.m. and 10:00 p.m.

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 Conditional Use Approval for a home occupation for 4129 Vestview Dr. with the following conditions:

1. Home occupations shall be conducted only in the principal dwelling. No more than twenty-five (25) percent, up to 500 sq. ft., of the dwelling may be used for a home occupation.

2. There shall be no outdoor display or storage associated with the home occupation and no commodities shall be sold on the premises other than by phone, mail or internet. No goods shall be delivered to a purchaser on the premises.

3. No sign may be attached to the dwelling or any part of the real estate advertising any home occupation.

4. No home occupation shall be permitted if it creates noise, odors, vibrations or traffic congestion, which interferes with the residential qualities of the neighborhood insofar as health, safety, morals, convenience and general welfare are concerned.

5. In order to be a permitted home occupation, the use must be one which is habitually, customarily, and commonly established as a reasonable incidental, accessory, subordinate and secondary use. The existing dwelling shall not be enlarged to accommodate the home occupation; nor shall any accessory structure be built for the purpose of operating the home occupation.

6. No home occupation shall be permitted that requires the operation or keeping on premises of a commercial vehicle.

7. No persons other than members of the family residing on the premises shall be employed by the home occupation.



8. Home occupations shall be limited to the hours between 7:00 a.m. and 10:00 p.m.

Second was by Ms. Cobb. Motion was carried on a roll call; vote as follows:

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

Mr. Ferrell – yes  
Mr. Larson – yes  
Ms. Cobb – yes  
Mr. Weaver – yes

## CITY OF VESTAVIA HILLS

2020 MAY 21 A 10:13  
PLANNING AND ZONING COMMISSION

### Conditional Use Application

#### I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered.** Applications must be completed in its entirety and must contain all pertinent information in order to be considered. Acceptance by the Clerk does not constitute acceptance of complete and proper filing. All applicants are encouraged to present their request to the Zoning Staff on any Tuesday at 9 AM in the Executive Conference Room, City Hall, prior to submitting for a Conditional use.
- (3) This application must be filled out in its entirety completely, including zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Postage Fees for notification for Planning and Zoning and for City Council meetings along with applicable publication fees will be billed to applicant at a later date. The applicant is responsible for all notification fees. *\*\*No permits will be issued until all fees have been paid.\*\**
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

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

NAME: Timothy Boyne

ADDRESS: 4129 Vestview Drive, Vestavia Hills, AL. 35242

PHONE: 205.500.2168 EMAIL: tim@cahabawatersolutions.com

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: n/a

PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**II. BILLING/RESPONSIBLE PARTY: (FOR PAYMENT OF FEES)**

NAME: Timothy Boyne, President- Cahaba Water Solutions, Inc.  
ADDRESS: 4129 Vestview Drive, Vestavia Hills, AL. 35242  
PHONE: 205.500.2168 EMAIL: tim@cahabawatersolutions.com

**III. ACTION REQUESTED**

Request that the above described property be approved conditional use approval pursuant to Section \_\_\_\_\_ of the Vestavia Hills Zoning Code.  
Current Zoning of Property: Residential  
Requested Conditional use For the intended purpose of: Office

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

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

4129 Vestview Drive, Vestavia Hills, AL. 35242

Lot 57 according to the amended Map of Vestview Village, as recorded in Map Book 181, Page 97 in the Probate Office of Jefferson County, Alabama

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

***\*\*All applications must contain a full legal description of subject property.\*\****

**V. INFORMATION ATTACHED:**



Attached Checklist complete with all required information.



Application fees submitted.

**P0720-17//2700073004037.000**  
**4129 Vestview Drive**  
Conditonal Use for home office  
Timothy Boyne

**VI.** I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing. *\*Application must be signed by the owner of the property before a Notary and original submitted to the Office of the Clerk; no copies will be accepted\**

Timothy Boyne, President  
Owner Signature/Date

\_\_\_\_\_  
Representing Agent (if any)/date

Given under my hand and seal  
this 18<sup>th</sup> day of MAY, 2020.

Cheryl A. Triplett  
Notary Public

My commission expires 8<sup>th</sup>  
day of April, 2023.



P0720-17//2700073004037.000  
4129 Vestview Drive  
Conditonal Use for home office  
Timothy Boyne

# Cahaba Water Solutions, Inc.



[www.cahabawatersolutions.com](http://www.cahabawatersolutions.com)

May 18, 2020

Office of the City Clerk  
Attn: Ms. Rebecca Leavings, City Clerk  
1032 Montgomery Highway  
Vestavia Hills AL 35216

Re: Conditional Use Application  
Description of Business Activity

Dear Ms. Leavings:

Please find my description of office activity for Cahaba Water Solutions, Inc. at 4129 Vestview Drive, Vestavia Hills, AL. 35242. Cahaba Water Solutions, Inc. is a manufacturer's representative of water and wastewater treatment equipment. We are local representatives/agents for the manufacturers we represent serving the State of Alabama, Tennessee and the Florida Panhandle. This office of Cahaba Water Solutions, Inc. will serve as the primary mailing address of this company where day to day activities will be limited to home office activities. Office equipment at this location consists of a desk, computer, printer and file cabinets.

The company does not own any commercial vehicles, there will be no signs, no inventory/storage/manufacturing/repair of any equipment, no additional employees will operate an office at this location, no use of this location for meetings or presentations. There will be no traffic or other potential disturbances to neighboring residences associated with Cahaba Water Solutions, Inc.

Should you have any questions or would like to discuss further, please contact me at your convenience. Thank you.

Sincerely,  
*Tim Boyne*

President, Cahaba Water Solutions, Inc.

4129 Vestview Drive  
Vestavia Hills, Alabama 35242  
[tim@cahabawatersolutions.com](mailto:tim@cahabawatersolutions.com)  
P 205.500.2168

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