Join us! In an effort to enhance meetings post COVID-19 emergency orders, 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 4.

Vestavia Hills City Council Agenda January 24, 2022 6:00 PM

- 1. Call to Order
- 2. Roll Call
- 3. Invocation Don Richards, Vestavia Hills Chaplain
- 4. Pledge Of Allegiance
- 5. Approval Of The Agenda
- 6. Announcements, Candidates and Guest Recognition
- 7. Proclamation International Holocaust Remembrance Day January 27, 2022
- 8. City Manager's Report
 - a. Altadena Valley Park Master Plan Update
- 9. Councilors' Reports
- 10. Financial Reports Melvin Turner III, Finance Director
- 11. Approval Of Minutes January 10, 2022 (Work Session) And January 10, 2022 (Regular Meeting)

Old Business

- 12. Resolution Number 5370 A Resolution Accepting The Dedication Of The Streets In The Altadena Park Subdivision Known As Altadena Park Circle And Altadena Park Lane (public hearing)
- 13. Ordinance Number 3079 Rezoning 4575 Pine Tree Circle; Lot 12, Topfield Subdivision; Rezone From Vestavia Hills 1.2 (Planned Neighborhood Mixed Use District) To Vestavia Hills B-1 (Neighborhood Business District) With Limited Uses; Seed Corn, LLC & Pine Tree Partners, LLC, Owners (public hearing)
- 14. Resolution Number 5364 Annexation 90 Day 1718 Vestaview Lane; John G. Moss, III, Owner *(public hearing)*
- 15. Ordinance Number 3050 Annexation Overnight 1718 Vestaview Lane; John G. Moss, III, Owner *(public hearing)*

New Business

- 16. Resolution Number 5372 A Resolution Approving The Refunding Of An Overpayment Of Business License And Sales Taxes
- 17. Resolution Number 5373 A Resolution Declaring Certain Personal Property As Surplus And Authorizing The City Manager To Sell/Dispose Of Said Property
- 18. Ordinance Number 3080 An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Roy W. Gilbert, III And Wife, Sharon Gilbert ("Owners") For An Easement At 3175 Pipeline Road For Construction Of A Public Sidewalk On A Portion Of Said Property

New Business (Requesting Unanimous Consent)

- 19. Ordinance Number 3031-A An Ordinance Amending Ordinance Number 3031 An Ordinance To Declare That The Present Condition Of A Portion Of Oakview Lane Is In Such State Of Disrepair That It Endangers The Public Health, Safety And Welfare Of Members Of The General Public; To Declare That The Situation Is An Emergency; To Describe The Nature Of Said Emergency; To Authorize And Direct The Repair Of Oakview Lane Without Advertising For Competitive Bids Pursuant To The Authority Of Title 39-2-2(E), Code Of Alabama, 1975, At A Cost Not To Exceed One Hundred Eighteen Thousand Eight Hundred Fifty-Two Dollars (\$118,852.00); To Authorize And Direct The City Manager And Mayor To Negotiate And To Execute And Deliver A Construction Contract And Any And All Other Documents Necessary To Have The Repair Work Performed And Completed And To Authorize An Additional Replacement/Repair Of Pipe In The Amount Of \$84,726.25 (public hearing)
- 20. Ordinance Number 3082 An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver An Agreement To The Purchase Software For Consolidated Debt And Lease Management For The City (public hearing)

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

- 21. Resolution Number 5374 A Resolution Authorizing The City Manager To Execute All Actions Necessary To Install Resurfacing At The Meadowlawn Park Playground (public hearing)
- 22. Ordinance Number 3081 An Ordinance Authorizing The Settlement Of Four Tax Appeals (Being Jefferson County Circuit Court Case Numbers 01-Cv-2021-000125, 01-Cv-2021-000126, 01-Cv-2021-000127 And 01 Cv-2021-000128) Seeking Refunds Of The Overpayment Of Business License Taxes Erroneously Paid By Four Insurance Companies In 2017 And 2018; And Authorizing And Directing The Mayor And City Manager To

Execute And Deliver The Settlement Agreement And Any And All Documents And Other Actions Necessary To Effectuate Said Settlement Agreement (public hearing)

- 23. Citizens Comments
- 24. Time Of Adjournment

SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS

Due to the COVID-19 safety advice given by the ADPH, the City Council work sessions and meetings are available via video-conference and teleconference. If you choose 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/5539517181. When the Zoom.us window opens in your browser, click "Allow" so that the page may open to a waiting room. The host will open the meeting and bring all into the meeting room at that time. 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. 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.

	of European Jews by Nazi Germany and its collaborators between 1933 and 1945 during which six million Jews were murdered; and
WHEREAS,	other groups including people with disabilities, Roma, and Poles were targeted for destruction or decimation for racial, ethnic, or national reasons and millions more, including homosexuals, Jehovah Witnesses, Soviet prisoners of war and political dissidents also suffered grievous oppression and death under Nazi Tyranny; and
WHEREAS,	the history of the Holocaust offers an opportunity to reflect on the moral responsibilities of individuals, societies and governments; and

the Holocaust was the state-sponsored, systematic persecution and annihilation

WHEREAS.

WHEREAS we the people of Vestavia Hills should always remember the terrible events of the Holocaust and remain vigilant against hatred, persecution and tyranny; and

WHEREAS we the people of Vestavia Hills actively rededicate ourselves to the principles of individual freedom in a just society; and

WHEREAS the United Nations General Assembly designated January 27 – the anniversary of the liberation of Auschwitz-Birkenau – as International Holocaust Remembrance Day.

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

January 27, 2022 as

INTERNATIONAL HOLOCAUST REMEMBRANCE DAY

in memory of the victims of the Holocaust and in honor of the survivors as well as the rescuers and liberators, and call on all residents to promote human dignity and confront hate whenever and wherever it occurs.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 24th day of January 2022.

Ashley C. Curry Mayor

CITY OF VESTAVIA HILLS WORK SESSION JANUARY 10, 2022

The City Council met in special work session on this date following posting/publication as required by Alabama law. The Mayor called the work session to order and the Clerk checked the roll:

MEMBERS PRESENT: Ashley C. Curry, Mayor

Kimberly Cook, Councilor Paul Head, Councilor George Pierce, Councilor

MEMBERS ABSENT: Rusty Weaver, Mayor Pro-Tem

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager

Patrick H. Boone, City Attorney Rebecca Leavings, City Clerk Melvin Turner, III, Finance Director Brian Davis, Public Services Director

Dan Rary, Police Chief Jason Hardin, Police Captain Marvin Green. Fire Chief

Cinnamon McCulley, Communication Specialist

The Mayor recognized Jack Smith in the audience. Mr. Smith introduced his grandson, Jay Merchant, 3025 Dolly Ridge Drive, who was present working on his Citizenship in the Community merit badge, Troop 76.

Mr. Downes stated that he had three things to discuss: (1) annual planning session; (2) Development of The Bray at Liberty Park; and (3) an Executive Session for pending/expected litigation.

ANNUAL STRATEGIC SESSION

Mr. Downes indicated that the best dates for the strategic planning work session appear to be Monday, February 21 and Tuesday, February 22. He stated that the Council will be reviewing the strategies from last year and then start looking forward to the next year. The Council concurred on the dates.

Mr. Downes stated that over the last 1.5 years, Liberty Park Joint Venture (LPJV) has been working on long-range plans for the Bray development. Over that period, they have been meeting with City staff and residents, discussing ways to address public concerns expressed in those meetings. Subsequently, both the City and the Board of Education hired special legal counsel to assist with these negotiations. Special counsel and staff recommended that the best way to move forward would be to develop a comprehensive agreement, to be known as a "development agreement," which is in a draft stage at the moment. For the agreement to be enacted, it would have to be approved by the City Council and LPJV, along with a number of other zoning approvals to fully enact the agreement. There is an existing 1990 annexation agreement that would have to be amended, an amendment 772 incentive agreement, and an agreement to accept public dedication of roads. Supplementary approvals to enact such a development agreement would be followed by other public hearings and zoning approvals.

Downes stated that the regular work session needed to be cancelled as it is a holiday, so he suggested that LPJV present the proposed development agreement to the Council in work session on January 24, 5 PM, prior to the regular meeting. He stated the proposals and supplementary information will be posted on a dedicated webpage that will show clearly the details of the proposal, dates for public engagement, and the schedule of public meetings for Council consideration.

Mrs. Cook reiterated the plan is to conduct two town-hall meetings with one in the evening and one at lunch.

Mr. Downes stated that is correct and that meetings will be held in the Council Chamber so the meetings can be live-streamed and videos posted to the City's website.

Discussion ensued about gathering questions and feedback from the community so more complete information can be shared with the public and with the Council.

EXECUTIVE SESSION

The Mayor announced a need for an Executive Session for an estimated 20 minutes to discuss pending or possible litigation. Mr. Boone, City Attorney, noted that was an acceptable reason for this Executive Session.

Mr. Boone stated that a governmental body may be allowed to take an executive session for this purpose, and he recommends that the Council go into this Executive Session at his request.

Mrs. Cook stated that she is abstaining in this matter and will not attend the executive session.

MOTION: Motion for Executive session was made by Mr. Pierce and second was by Mr. Head. The roll call vote as follows:

Mrs. Cook – abstain Mr. Head – yes Mr. Pierce – yes Mayor Curry – yes

motion carried.

At 5:26 PM, the Council, without Mrs. Cook, exited the Chambers and entered into executive session. At 5:47 PM, the Council re-entered the Chambers and the Mayor called the Work session back to order.

There being no further business, the Mayor adjourned the work session.

Ashley C. Curry Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JANUARY 10, 2022

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. A number of staff and members of the general public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order. The City Clerk called the roll with the following:

MEMBERS PRESENT: Mayor Ashley C. Curry

Kimberly Cook, Councilor Paul Head, Councilor George Pierce, Councilor

MEMBERS ABSENT Rusty Weaver, Mayor Pro-Tem

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager

Patrick H. Boone, City Attorney Rebecca Leavings, City Clerk Danny Rary, Police Chief Jason Hardin, Police Captain Melvin Turner, Finance Director

Marvin Green, Fire Chief

Christopher Brady, City Engineer

Cinnamon McCulley, Communication Specialist

*present via Zoom or telephone

David Phillips, a Vestavia Hills Chaplain, led the invocation which was followed by the Pledge of Allegiance.

APPROVAL OF THE AGENDA

The Mayor opened the floor for a motion of approval of the agenda as presented.

MOTION Motion to approve the agenda as presented was by Mr. Pierce seconded by Mrs. Cook. Roll call vote was, as follows:

Mrs. Cook – yes Mr. Head – yes Mr. Pierce – yes Mayor Curry – yes

motion carried.

ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION

- Mrs. Cook welcomed Jay Merchant, Boy Scout Troop 76. Mr. Merchant was in attendance working on his Citizenship in the Community merit badge.
- Mayor Curry stated that yesterday was National Law Enforcement Appreciation Day. He recognized the VHPD and indicated that, in the State of the City address he gives each year, he has the opportunity to brag about the safety in the City which is due in a big way to the VHPD.

PROCLAMATION

The Mayor presented a Proclamation designating January 2022 as "Fire Fighter Cancer Awareness Month." Mr. Downes read the Proclamation and the Mayor presented it to Lt. Adrian Millican, Fire Fighter Frankie Bender and Fire Fighter Valerie George.

The Mayor stated that the Proclamation encourages all of the City's firefighters to participate in training and education to alert them of hidden dangers in their jobs. He stated that the City appreciates their services.

CITY MANAGER'S REPORT

- Mr. Downes introduced the City Engineer, Christopher Brady.
 - o Mr. Brady stated that public input is being invited for the City's updated stormwater management program. The plan outlines how the City will meet stormwater management goals and the permit requirements. He stated that commentary is open as of today and will continue through January 24, 2022. Elements of the City's Storm Water Management Program can be found on the City's website. The Mayor stated that stormwater is the number one issue in the City and he's encouraging everyone to read the report and provide comment. Mr. Pierce asked about employees who enforce the Ordinance and Mr. Brady stated that the City has a full-time employee dedicated to enforcement.

COUNCILOR REPORTS

- Mrs. Cook stated that the Board had an emergency meeting to address some HR concerns. She stated that Lauren Dressback has been moved to Cahaba Heights school to serve as interim principal.
- Mr. Pierce stated he will be attending the Chamber of Commerce luncheon tomorrow where various awards will recognize members. On January 20th he will be attending the planning session also held at the Country Club to plan for the new year.
- The Mayor stated that, on January 19, 2022, he will be attending Alabama League of Municipalities Legislative Advocacy Day, where he will meet with local legislators to

- discuss pending legislation. He stated this gives him information as to what will be considered in the 2022 Legislative Session.
- Mr. Head announced that Sammy Dunn has been elected to the Alabama Sports Hall of Fame.

WALD PARK TURF REPLACEMENT UPDATE

Ed Norton, Holcombe Norton Partners, the City's landscape consultant and architect, gave the Council an update on the turf replacement at Wald Park. Mr. Norton stated that the contractor is moving forward at the moment, but is fighting a bit of moisture on the third field. The green portion of the turf is ready to be shipped, and the clay-colored turf will be shipped this week. The steel and the fabric for the shade shelters should be delivered late January with a two-week install, so he thinks the City is in good shape with the schedule barring any unforeseen negative weather conditions. At SHAC, the old turf was removed from the upper fields. The install crew arrived today and will begin installation. On the dog park at SHAC, the pavilion was scheduled to be delivered today and should be installed soon. He stated that, when the pavilion is installed, the dog wash will be installed also and sidewalks will then be connected.

Mr. Pierce asked about anticipated completion. Mr. Norton stated that they are thinking late February.

APPROVAL OF MINUTES

The Mayor stated that the approval of the December 20, 2021 (Work Session) And December 20, 2021 (Regular Meeting) was needed and opened the floor for a motion.

MOTION

Motion to approve the minutes of the regular meeting of the December 20, 2021 (Work Session) And December 20, 2021 (Regular Meeting) was made by Mr. Pierce and second was by Mr. Head. Roll call vote as follows:

Mrs. Cook – abstain Mr. Head – yes Mr. Pierce – yes Mayor Curry – yes motion carried.

OLD BUSINESS

ORDINANCE NUMBER 3076

Ordinance Number 3076 – An Ordinance Approving An Agreement For Cancellation Of Present Contract And Substitution Of New Contract Regarding The Collection And Disposal Services For Single-Family Residential Garbage, Trash, Recyclables, Leaves And Storm Debris ("Agreement") And Authorizing And Directing The Mayor And City Manager To Execute And

Deliver Said Agreement, Which Is Attached Hereto And Marked As Exhibit1

MOTION Motion to approve Ordinance Number 3076 was by Mrs. Cook and seconded by Mr. Pierce.

Mr. Downes explained that this cancels the existing garbage contract. He stated that this, in no way, changes any of the City's garbage service. The provider and service level are exactly the same but results in a savings for the City because we are collaborating with other cities. This provider services the City of Hoover, and soon will service the cities of Pelham and Clanton. The value results in savings for all cities participating in the new solid waste authority.

Mayor Curry stated that Vestavia Hills was the first city to utilize AmWaste and other cities saw the advantage of working with this authority to obtain these advantages.

Discussion ensued and Mr. Downes explained the parameters of the contract and Mr. Pierce commended the services of AmWaste.

The Mayor opened the floor for a public hearing for Ordinance Numbers 3076 and 3077, the next ordinance approving the new contract. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mayor Curry – yes

motion carried.

ORDINANCE NUMBER 3077

Ordinance Number 3077 – An Ordinance Approving A New Contract Regarding The Collection And Disposal Services For Single-Family Residential Garbage, Trash, Recyclables, Leaves And Storm Debris ("Agreement") And Authorizing And Directing The Mayor And City Manager To Execute And Deliver Said Agreement, Which Is Attached Hereto And Marked As Exhibit

MOTION Motion to approve Ordinance Number 3077 was by Mrs. Cook and seconded by Mr. Pierce

The Mayor explained that there has already been a public hearing on this agenda item.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mayor Curry – yes

motion carried.

NEW BUSINESS

RESOLUTION NUMBER 5369

Resolution Number 5369 – A Resolution Appointing Members To The Vestavia Hills Design Review Board

MOTION Motion to approve Resolution Number 5369 was by Mrs. Cook and seconded by Mr. Pierce.

The Mayor explained that this is for the reappointment of two existing Design Review Board (DRB) members. He stated he has recommended the re-appointment of both members as no one has stepped up with an interest to serve and both of these individuals have done a great job on the board of them have indicated that they are willing to continue their services.

Mrs. Cook stated that she thinks many of the residents do not know of the work that this Board does and she encouraged qualified architects and landscape architects to reach out the Mayor if they have an interest in serving.

The Mayor explained the function of the DRB. He stated that the Board is comprised of seven members who each serve three-year terms. The Ordinance states some positions are required to be filled by architects and landscape architects. The current Board has three architects, three landscape architects, and one resident who has served for a long time on the Board. He read from the Ordinance the function of the DRB.

Mr. Pierce stated that he suggested that when these appointments come open, to have Mrs. McCulley advertise so that interested individuals can apply.

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

Mrs. Cook – yes
Mr. Head – yes
Mr. Pierce – yes
Mayor Curry – yes
motion carried.

RESOLUTION NUMBER 5371

Resolution Number 5371 – A Resolution Declaring Certain Personal Property As Surplus And Authorizing The City Manager To Sell/Dispose Of Said Property

MOTION Motion to approve Resolution Number 5371 was by Mr. Pierce and seconded by Mrs. Cook.

Mr. Downes explained that this particular vehicle police department unit is beyond its useful life and needs to be sold.

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

Mrs. Cook – yes
Mr. Head – yes
Mr. Pierce – yes
Mayor Curry – yes
motion carried.

NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)

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

- Resolution Number 5370 A Resolution Accepting The Dedication Of The Streets In The Altadena Park Subdivision Known As Altadena Park Circle And Altadena Park Lane (public hearing)
- Ordinance Number 3079 Rezoning 4575 Pine Tree Circle; Lot 12, Topfield Subdivision; Rezone From Vestavia Hills 1.2 (Planned Neighborhood Mixed Use District) To Vestavia Hills B-1 (Neighborhood Business District) With Limited Uses; Seed Corn, LLC & Pine Tree Partners, LLC, Owners (public hearing)
- Resolution Number 5364 Annexation 90 Day 1718 Vestaview Lane; John G. Moss, III, Owner
- Ordinance Number 3050 Annexation Overnight 1718 Vestaview Lane; John G. Moss, III, Owner

CITIZEN COMMENTS

None.

At 6:30 PM, Mr. Weaver made a motion to adjourn. The meeting adjourned at 6:31 PM.

Ashley C. Curry Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

RESOLUTION NUMBER 5370

A RESOLUTION ACCEPTING THE DEDICATION OF THE STREETS IN THE ALTADENA PARK SUBDIVISION KNOWN AS ALTADENA PARK CIRCLE AND ALTADENA PARK LANE

WHEREAS, Collat, Inc., is the developer for Altadena Park Subdivision in Vestavia Hills, Alabama. This dedication consists of the street named "Altadena Park Circle and Altadena Park Lane"; such dedication not to include any improvements other than the streets named in this Resolution.

WHEREAS, the streets were built according to the Vestavia Hills specifications and the development company is presenting them to the City of Vestavia Hills for acceptance complete with a guarantee against any defects for a period of one (1) year from date of dedication.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, that the City hereby accepts the offer of dedication made by Collat, Inc., for Altadena Park Circle and Altadena Park Lane and are hereby named public streets.

ADOPTED and APPROVED this the 10th day of January, 2022.

Ashley C. Curry Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

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

December 22, 2021

To: Jeff Downes, City Manager

Cc: Brian Davis, Director of Public Services Lori Beth Kearley, Assistant City Engineer

Rebecca Leavings, City Clerk

From: Christopher Brady, City Engineer

RE: Dedication of Altadena Park Lane and Altadena Park Circle

The Developer has formally requested dedication of Altadena Park Subdivision to the City of Vestavia Hills for all public improvements within the platted right-of-way. Upon final inspection, I have found all improvements to be complete and in compliance with City standards for public streets and support its dedication to the City for roadway maintenance. This dedication will include 50' of public right-of-way.

A Final Wearing Surface Maintenance Bond is required to be kept on file with the City for a full year after the roadway improvements have been accepted by the City Council to ensure all improvements are kept in good repair.

Sincerely,

Christopher Brady



A Financial Family Since 1933

1900 Crestwood Boulevard, Suite 300 Birmingham, AL 35210

October 26, 2021

Ms. Rebecca Leavings, City Clerk City of Vestavia 1032 Montgomery Highway Vestavia Hills, AL 35216

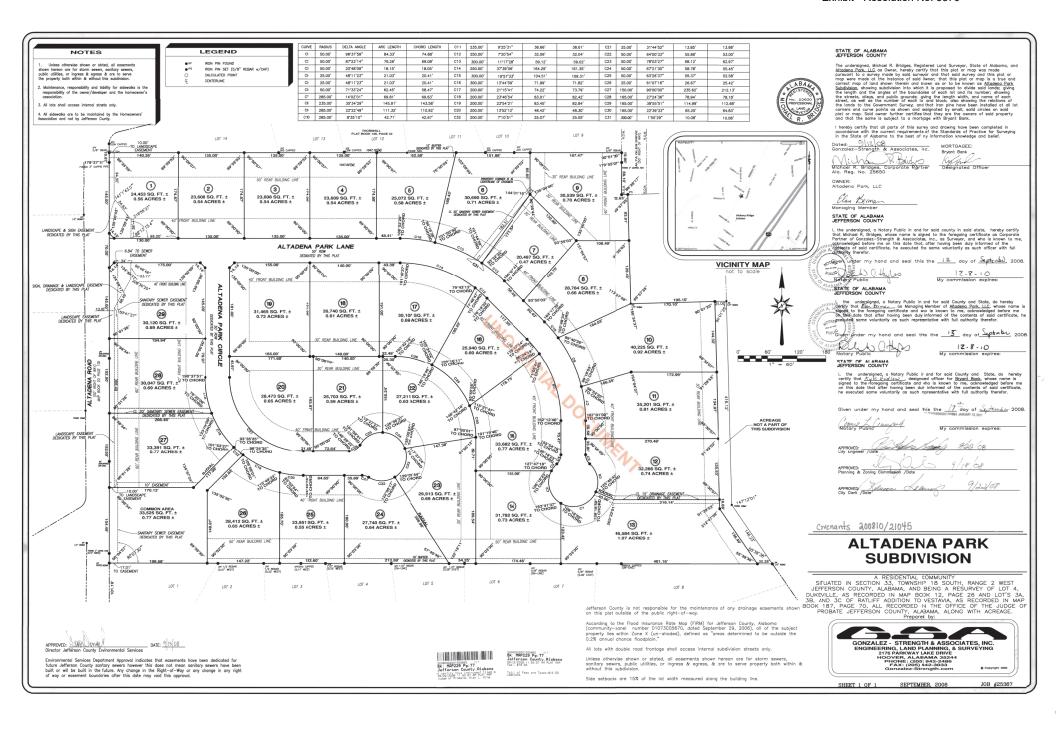
Dear Ms. Leavings,

I, William T. Ratliff, III, as President of Collat, Inc. request street dedication of Altadena Park streets "Altadena Park Lane" and "Altadena Park Circle" pending approval of the Engineering Department. Collat, Inc. will post the maintenance bond in the amount of \$9,212.25 and respectfully requests the balance of the wearing surface bond be remitted to Collat, Inc. at the time the streets are dedicated.

Sincerely

William T. Ratliff. III

President



ORDINANCE NUMBER 3079

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS B-1.2 TO VESTAVIA HILLS B-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills B-1.2 (planned neighborhood mixed use district) to Vestavia Hills B-1 (neighborhood business district):

4565 Pine Tree Circle Seed Corn LLC and Pine Tree Partners LLC, Owners

BE IT FURTHER ORDAINED, that said B-1 zoning is conditioned upon the following:

- 1. The following B-1 uses shall be prohibited: private clubs, day care centers, place of assembly, public facility, public utility facility, school (commercial), school (non-profit), school (public), convenience store, garden center/nursery, restaurant (fast food); and
- 2. Parking lot light poles shall not exceed 12' in height; and
- 3. Any future building must be constructed in a residential type style as approved by the City's Design Review Board.

APPROVED and ADOPTED this the 24th day of January, 2022.

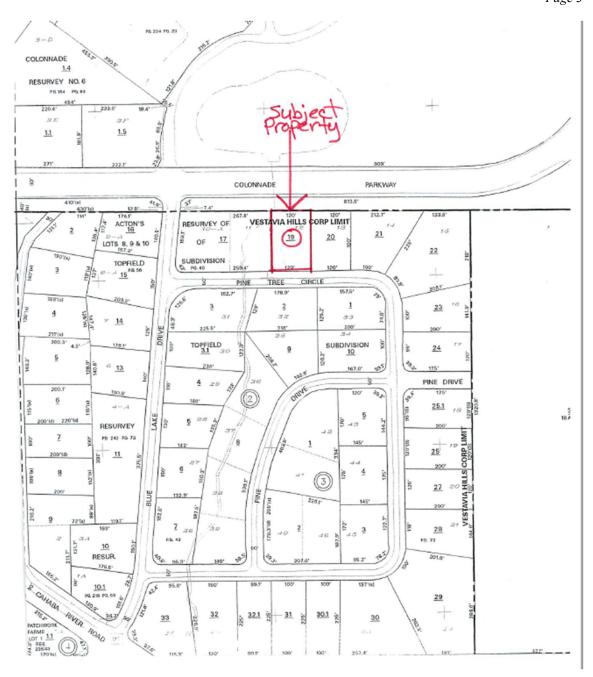
Ashley C.	Curry
Mayor	

ATTESTED BY:

Rebecca Leavings City Clerk

CERTIFICATION:

certify that the above and foregoing copy of	of the City of Vestavia Hills, Alabama, hereby f 1 (one) Ordinance # 3079 is a true and correct ame appears in the official records of said City.
•	restavia Hills Library in the Forest, New Merkle nter this the day of,
	Rebecca Leavings City Clerk



CITY OF VESTAVIA HILLS

SYNOPSIS AND STAFF RECOMMENDATION CONCERNING APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **DECEMBER 9, 2021**

- <u>CASE</u>: P-1221-46
- **REQUESTED ACTION:** Rezoning Vestavia Hills B-1.2 to Vestavia Hills B-1
- <u>ADDRESS/LOCATION</u>: 4565 Pine Tree Circle
- APPLICANT/OWNER: Seed Corn, LLC & Pine Tree Partners, LLC
- <u>GENERAL DISCUSSION</u>: The request rezone property on Pine Tree Cir. for an off-site parking lot for Studio 21. The lot would consist of 32 spots. Attached is the proposed site plan and restricted B-1 uses.
- <u>CAHABA HEIGHTS COMMUNITY PLAN:</u> The request is consistaint with the plan for Limited Mixed Use

• <u>STAFF REVIEW AND RECOMMENDATION</u>:

- 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.
- 2.
- City Planner Recommendation: Staff recommends the following conditions:
- A. Approval based on site plan;
- B. The following B-1 uses will be prohibited: Private Clubs, Day Care Centers, Place of Assembly, Public Facility, Public Utility Facility, School (Commercial), School (Non-Profit), School (Public), Convenience Store, Garden Center/Nursery, Restaurant (Fast Food);
- C. Parking Lot Light Poles may not extend greater than 12'.
- 3. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
- 4. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
- 5. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Weaver made a motion to recommend Rezoning from Vestavia Hills B-1.2 to Vestavia Hills B-1 for the property located at 4565 Pine Tree Circle with the following conditions:

- 1. The following B-1 uses will be prohibited: Private Clubs, Day Care Centers, Place of Assembly, Public Facility, Public Utility Facility, School (Commercial), School (Non-Profit), School (Public), Convenience Store, Garden Center/Nursery, Restaurant (Fast Food);
- 2. Parking Lot Light Poles may not extend greater than 12';
- 3. Any future buildings must be constructed in a residential style.

Second was by Ms. Barnes. Motion was carried on a roll call; vote:

Mr. Sykes – yes
Mr. Larson – yes
Mr. Barnes – yes
Ms. Weaver – yes
Mr. Vercher – yes

Motion carried.

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

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

 **No permits will be issued until all fees have been paid.
- (5) Appropriate plats and maps with proper legal description shall accompany this application. Please refer to attached checklist.

	Scott Deason P1221-46//28-00-27-4-001-	019.000
	NAME OF REPRESENTING ATTORNEY/AGENT & CONTACT INFORMATION:	
	EMAIL ADDRESS: Seshanwalt, com	
	PHONE NUMBER: Home Office 206 · 222 · 10	4
	WAIDING ADDRESS (IJ uijjereni jrom above)	
	MAILING ADDRESS (if different from above)	
	Birmingham AL 35243	
	ADDRESS: 4565 Pine Tree Circle	
	NAME: Seed Com, LLC / Pheree Partner, LLC	
II.	APPLICANT INFORMATION: (owner of property)	

4565 Pine Tree Circle
Rezone to B-1
Pine Tree Partners

III.	ACTION REQUESTED
	Request that the above described property be zoned/rezoned
	From: <u>B1.2</u>
	To: B.1
	For the intended purpose of: Parking
***************************************	(Example: From "VH R-1" to "VH O-1" for office building) **if additional information is needed, please attached full description of request**
IV.	PROPERTY DESCRIPTION: (address, legal, etc.)
	Property size: feet X feet. Acres:
<u>v.</u>	INFORMATION ATTACHED:
	Attached Checklist complete with all required information.
	Application fees submitted.
VI.	_I do hereby declare the above statements are true and that <u>I am the owner</u> and myself or my duly appointed representative will be at the scheduled hearing.
_	
1	(eQ
KAH	Owner Signature/Date Representing Agent (if any)/date
Given	under my hand and seal
TUNS R	day of <u>November</u> , 20 <u>26</u> .
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	P1221 46//28 00 27 4 004 00

P1221-46//28-00-27-4-001-019.000 4565 Pine Tree Circle
Rezone to B-1

Studio 21 - Remote Parking

4565 Pine Tree Circle, Vestavia Hills, Alabama 35243 Situated in Section 27, Township 18 South, Range 2 West,

Jefferson County, AL



SITE

Vicinity Map	n.t.s.

Alabama Counties



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Description Title Sheet Civil Notes Site Plan

Sheet # C-0.0 C-0.1 C-1.0 C-2.0 C-3.0 C-3.1 C-3.2 0.4.0 C-5.0

ale: NONE

C0.0

Intermediate Erosion Control Plan Initial Erosion Control Plan

Grading & Drainage Plan

Final Erosion Control Plan

Construction Details Landscape Plan

Studio 21 - Remote Parking

Fille; Studio 21 Remote Parking	November 3 2021
File: Studio 21	Date:

		tudio 21 Remote Parking	e: November 3, 2021	.el
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NONE

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4565 Pine Tree Circle estavia Hills, Alabama

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Erosion & Sedimentation Notes:

9	rts, must also be kept on-site and must be available for inspection by the city or ADEM official at any time.	a) proposing to conduct any land disturbing activity, an agent contractor or other representative of such preson, must contact the local
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PHASE 1 - PRE-CONSTRUCTION 1. INSTALL SILT FENCE ASSH

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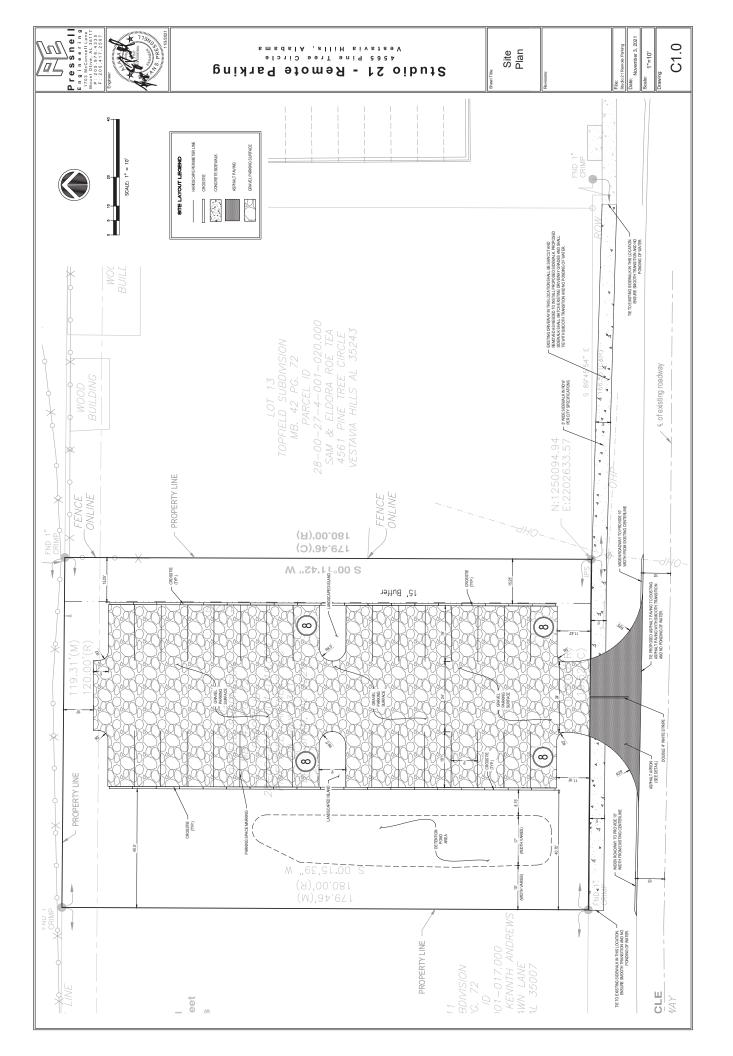
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control measures shall be checked, and repaired as necessary, monthly in dry periods and within twenty-four (24) hours after any rainfall at the site of	ves, within a twenty-four (24) hour period. During protonged reinfalls, daily checking and, if necessary, repairs shall be made. The permittee shall	ntain written records of such checks and repairs and those records shall be subject to the inspection of the Director or his/her designee at any reaso		
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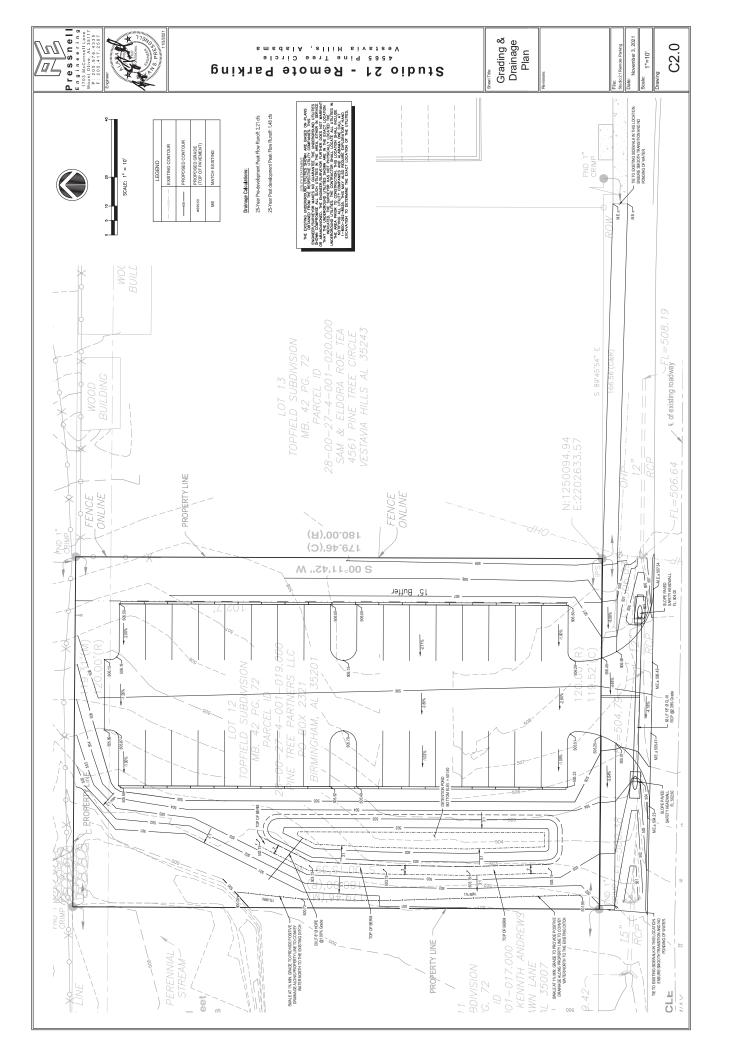
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sches, within a twenty-four (24) hour period. During protonged rainfalls, daly checking and, if necessary, repairs shall be made. The permittee shall	nahitah written records of such checks and repairs and those records shall be subject to the inspection of the Director or his/her designee at any reas		Woolenfally hazardose materials shall be properly stored and may not be exposed to rain or stockoled. All containers are to be dosed and stored or	n a covered area. All excess or waste materials are to be propelly disposed of and trash and waste must be disposed of every ten (10) days, at a min
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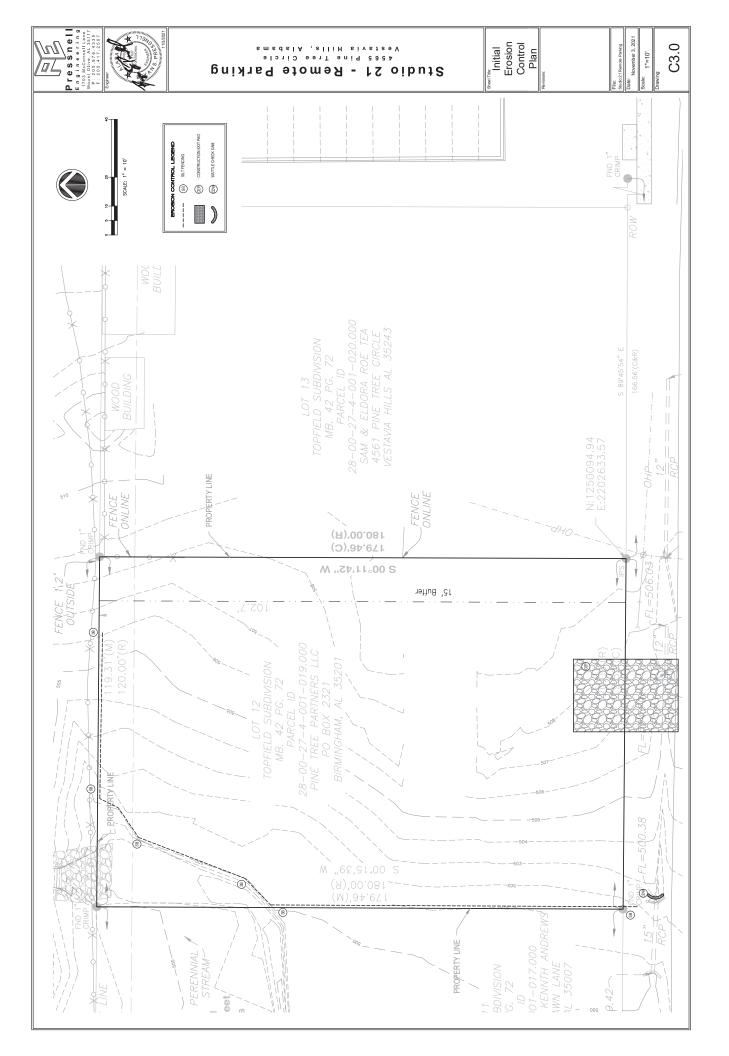
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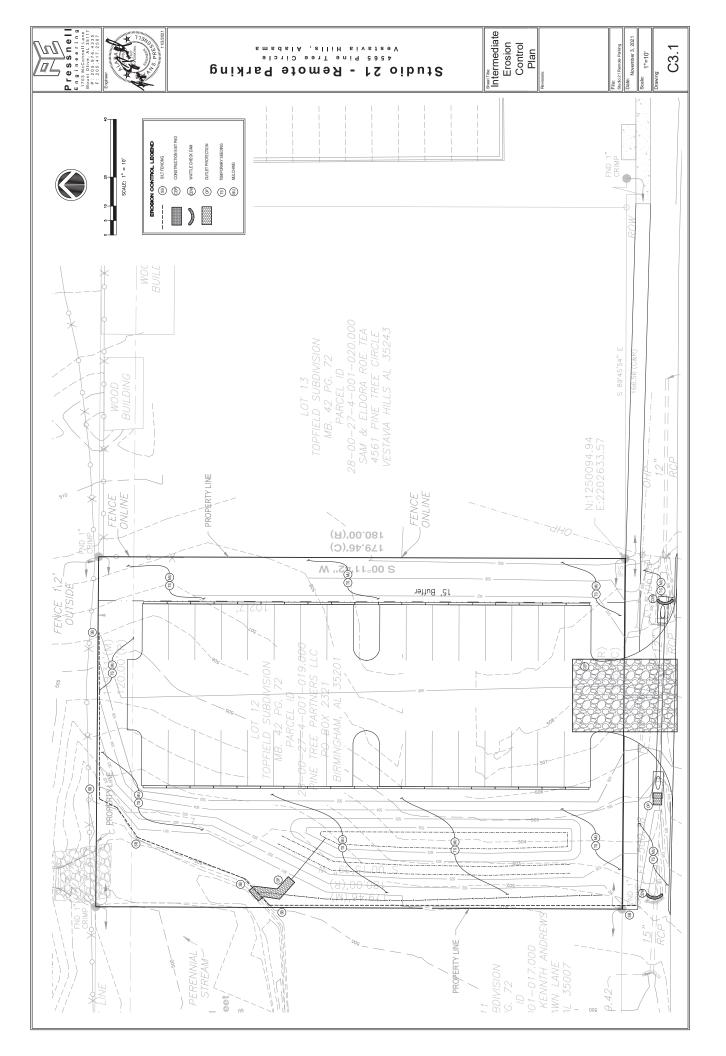
7. Erosko control measures shall be maintained as an effective banker to sedimentation and erosion in accordance with the provisions of this Ordinan	 Sed meet deposits must be removed when they reach a digith of 15 inches or 1/4 the height of the still fence as installed, to provide adequate storage for the next rain and to reduce the pressure on the still fencing. 	 Sit fending fabric that is collapsed, forn, decomposing, or becomes ineffective must be replaced promptly. 	10. There shall be no distinctly visible floating scum, cit, or other matter contained in the storm water discharge to an MS4 cause an unnatural color (except despire) or other an MS4 for the purpose of environments studies and which do not have a cause an unnatural color (except despire) or other as decharged to an MS4 for the purpose of environments studies and which do not have a cause an unnatural color (except despire) and other and a supplication.
n accordance with the provisions of this Ordinan	If fence as installed, to provide adequate storage	mpdy.	charge. The storm water discharge to an MS4 environmental studies and which do not have a

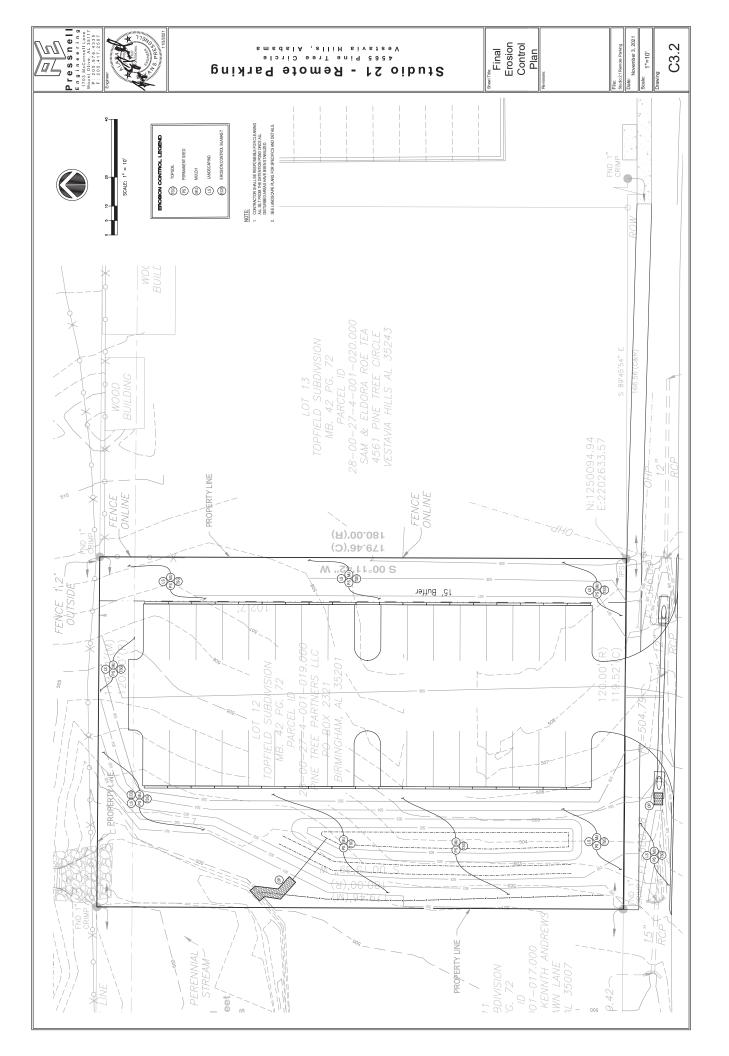
Final Inspection.	. Contractor shall refer to the Alabama Handbook for Ension Control, Sedment Control and Stormwater Management on Construction Sites and U (provided by the Alabama Soil and Water Conservation Committee) for details and measures referred to in this plan.	Erosion control devises shown on plans are minimum recommended requirements. Additional erosion control measures may be required to previ
Final Inspection.	Contractor shall ref (provided by the Ala	Erosion control devi

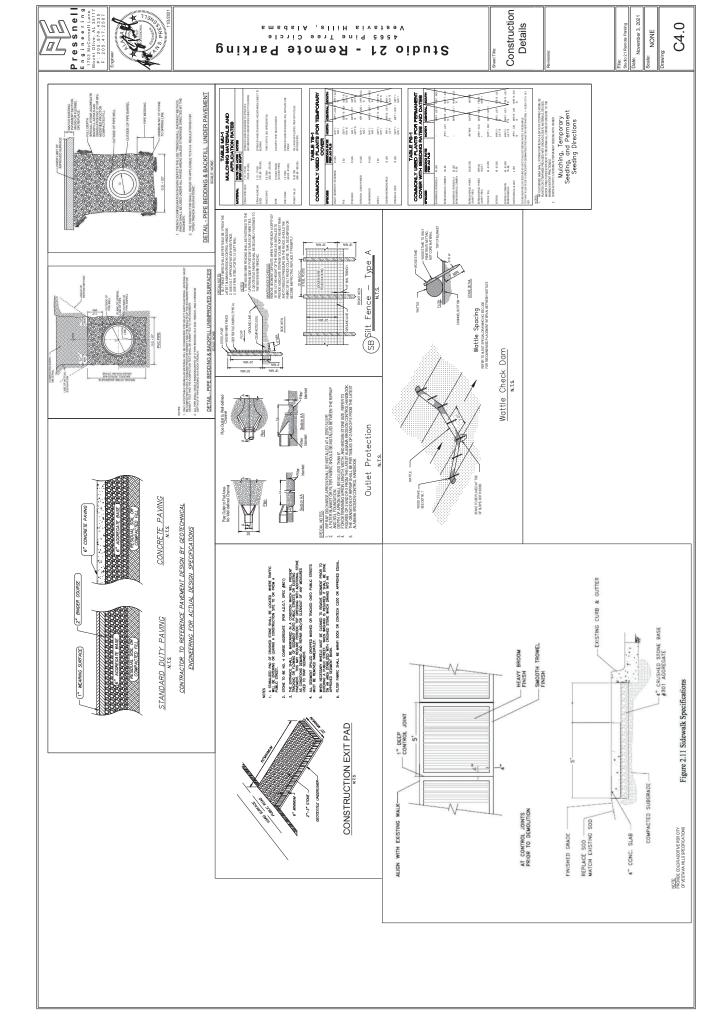


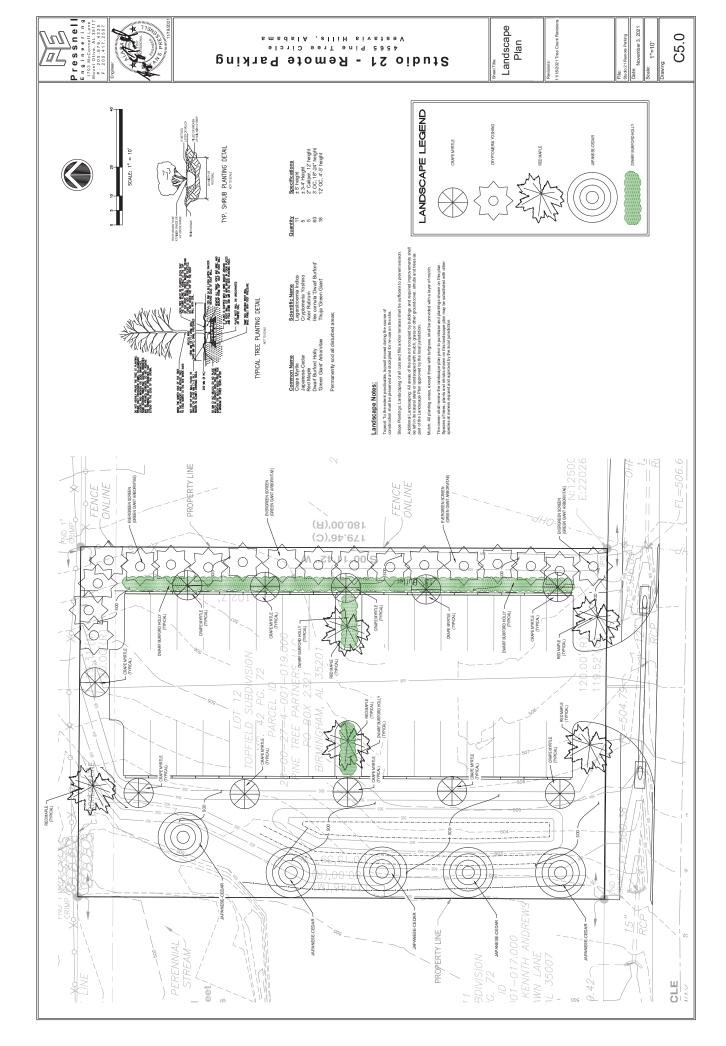


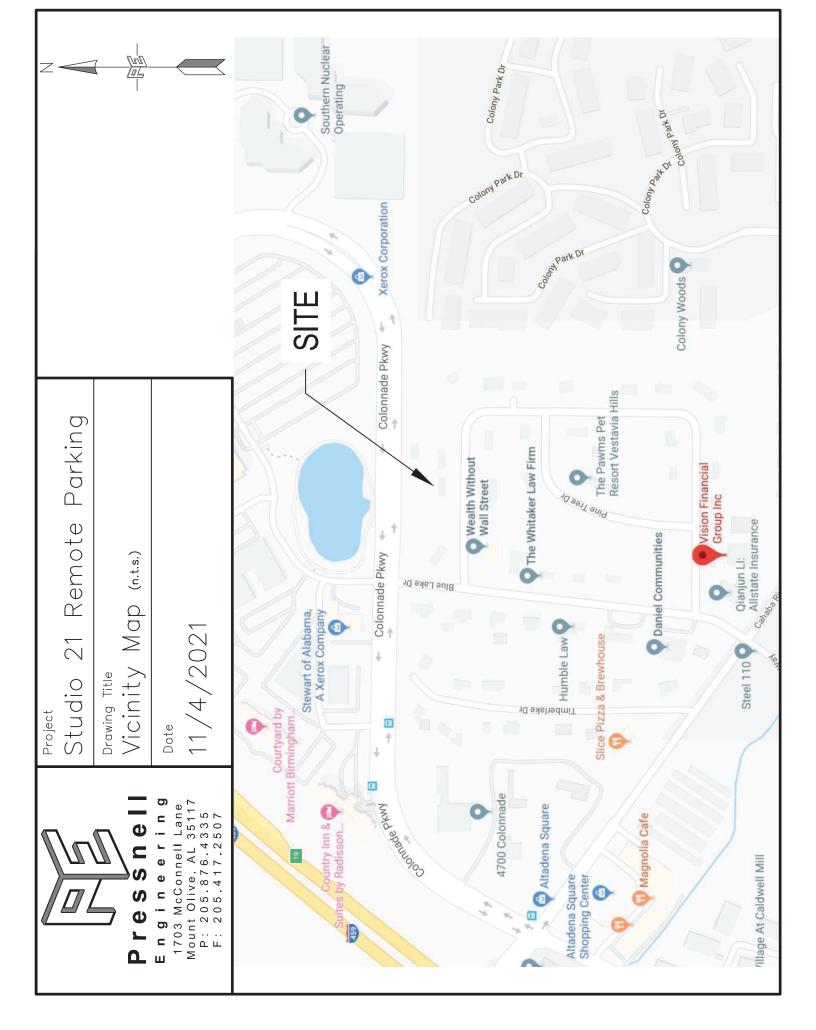














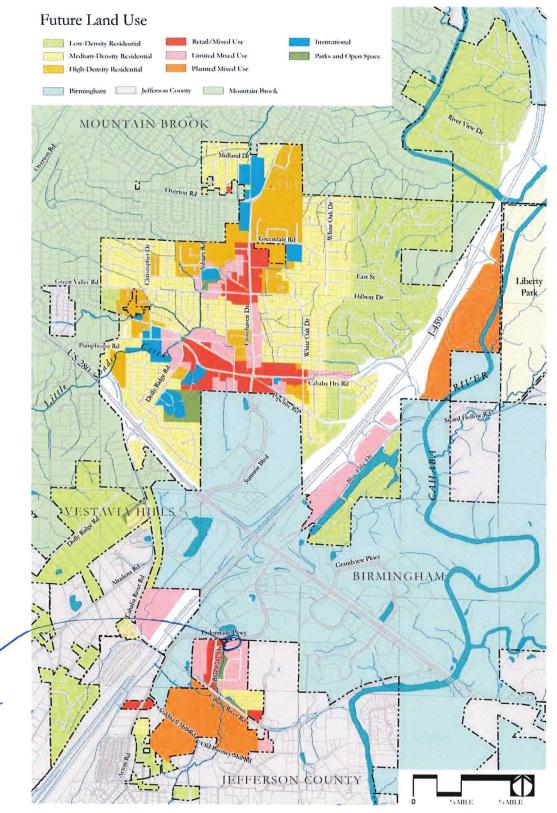


Figure 4: Future Land Use Map

.RESOLUTION NUMBER 5364

A RESOLUTION PROPOSING THE ANNEXATION OF CERTAIN TERRITORY TO THE CORPORATE LIMITS OF THE CITY OF VESTAVIA HILLS, ALABAMA.

WHEREAS, there has been a petition filed with the City Clerk of the City of Vestavia Hills, Alabama, and herein presented to the City Council of the City of Vestavia Hills, Alabama, dated October 7, 2021, wherein all owners of certain property contiguous to the City Limits of the City of Vestavia Hills, Alabama, ask that their property be annexed to the City of Vestavia Hills, Alabama; and

WHEREAS, said Petition has been presented to the City Council of the City of Vestavia Hills, Alabama, on the 24th day of January, 2022; and

WHEREAS, it would be in the best interest of the City of Vestavia Hills, Alabama, and to the citizens thereof to consider annexation of said territory and bringing it within the corporate limits of this Municipality; and

WHEREAS, said petitioners must comply with Act #604, 1970 Alabama Legislature regarding Fire Districts (property owners are to be responsible for fire dues if they are within another Fire District at the time of the annexation petition).

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

- 1. That the said Petition shall be published one (1) time in *The Birmingham News*, a newspaper of general circulation in Vestavia Hills, Jefferson County, Alabama, on the 28th day of January, 2022.
- 2. That on the 25th day of April, 2022, in the Vestavia Hills City Hall, a public hearing will be held to determine the truths of the matter set forth in said petition and to consider any protests or objections filed in writing with the City Clerk prior to such hearing, to determine whether it is in the public interest or not that said property be annexed to the City of Vestavia Hills, Alabama, and to consider adoption of an Ordinance annexing the territory described in said petition to this Municipality.
- 3. That this Resolution shall become known and referred to as Resolution Number 5364 by the City Council of the City of Vestavia Hills, Alabama, and as annexation of the following described property by the City Council of the City of Vestavia Hills, Alabama:

1718 Vestaview Lane John G. Moss III, Owner(s)

More Particularly Described as Follows:

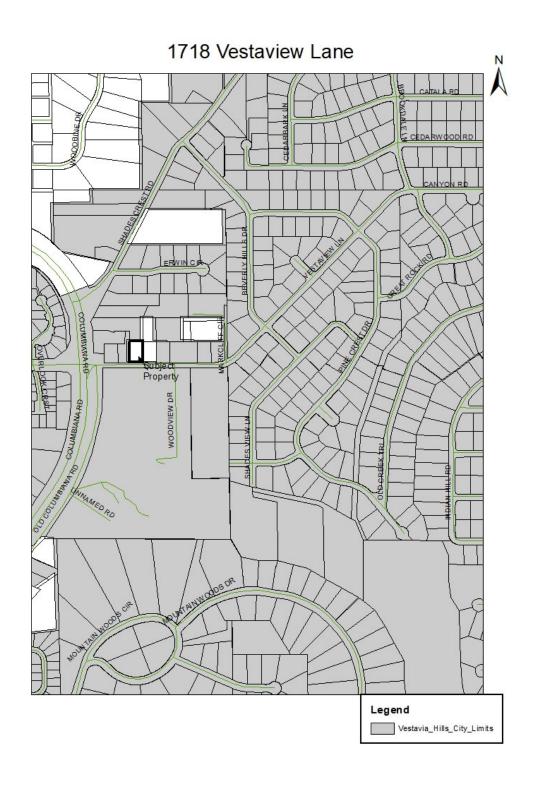
Part of the SE 1/4 of the NW 1/4 of Section 25, Township 18 South, Range 3 West, Jefferson County, Alabama, more particularly described as follows:

Commence at the southeast comer of said 1/4 1/4 section; thence west along the south line thereof a distance of 642.02 feet to the point of beginning of tract herein described, said point begin in the center of Rogers Road; thence continue west along said south line a distance of 100.01 feet; thence at an angle to the right of 88 degrees 53 minutes 30 seconds and run north a distance of 178.91 feet; thence at an angle to the right of 90 degrees 55 minutes and run a distance of 100.0 feet; thence at an angle to the right of 89 degrees 05 minutes and run south a distance of 179.24 feet to the point of beginning. Less and except right of way over the south 15 feet.

APPROVED and ADOPTED this the 24th day of January, 2022.

Ashley C. Curry Mayor

ATTESTED BY:



Annexation Committee Petition Review

Pro	perty: 1718 Vestaview Lane
Оw	ners: John Moss III
Da	te:
1.	The property in question is contiguous to the city limits. Yes No Comments:
2.	The land use of the petitioned property is compatible with land use in the area. Yes No Comments:
3.	The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation. Yes No Comments
4.	Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation. Yes No Comments
5.	Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of \$\frac{\psi}{283} \frac{20}{200}\$. Meets city criteria: Yes No
6.	This street has fewer than 100% of the individual properties within the limits of the city Yes No Number of total homes & Number in city
7.	Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city. Agreed to by petitioner: Yes No Comment

Fur \$	thermore,	voluntary o	strative fee of \$100 has ontributions, including id to offset costs associ	an application fee, of ated with the annexation.
Yes	}	No	Comment	
			of hazardous waste, de _ Comment	bris and materials.
			om city departments? Comments:	
				1.0
	_	n children:	Number in family	Y A; Plan to enroll i
11. Info	ormation of ools Yes	N	Commer	nts:
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CITY OF VESTAVIA HILLS

Department Review of Proposed Annexation (To be completed by Official City Reviewers)

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

Location: 1718 Vestaview Lane	
Engineering; Public Services	Date: 1029 202 Initials:
Comments: 1718 Vestaview Lane no significan maintains this section of roadway.	t concerns noted; roadway in fair condition; the City currently
Police Department:	Date/0/14/2021 Initials: J GASTON
Comments:	, o Problem
Fire Department:	Date: 10/14/20 Phitials: RF
Comments:	M/P
Board of Education:	Date:///08/202nitials: 5B
Comments:	
	P

City of Vestavia Hills Tax Calculator Homestead Properties

AD VALOREM TAX MILLAGE

Millage Multiplier		
0.02055	Ad valorem to City General Fund:	20.55 mills
0.02875	City BOE portion:	28.75 mills
0.0151	District 20 School:	15.1 mills
0.0082	Countywide School:	8.2 mills
0.05205	Ad valorem to Schools (TOTAL):	52.05 mills

ASSESSED VALUE

			Citizen Access Portal Descriptor	Notes
===>	1718 Vestaview Lane	Property Address		
===>	\$ 283,200	Appraised Value of Property	TOTAL MARKET VALUE	
,	10%	Assessment Homestead Rate		
	\$28,320.00	Assessed Value	ASSD. VALUE	

AD VALOREM REVENUE

		Citizen Access Portal Descriptor	Notes
\$581.98	City portion of ad valorem	(Subset of CITY)	(20.55 mills rate)
\$814.20	BOE portion of ad valorem	(Subset of CITY)	(28.75 mills rate)
\$1,396.18	Total County remits to City for split with BOE	CITY	
\$427.63	SPC DIST1 BOE local rev (County gives directly to BOE)	SPC SCHOOL1	(15.1 mills rate)
\$232.22	Countywide School Tax to VH	SCHOOL	(8.2 mills rate)

TOTAL AD VALOREM REVENUE

\$581.98	Annexation Revenue to CITY	CITY (General Fund portion)	(20.55 mills)
\$1,474.06	Annexation Revenue to BOE	SCHOOL + SPC SCHOOL1 + CITY (BOE portion)	(8.2 mills + 15.1 mills + 28.75 mills)
\$2,056.03	TOTAL ANNEXATION REVENUE BENEFIT		

<u>Legend</u>	
City Revenue	
BOE Revenue	

10/8/21, 10:34 AM

Untitled Page

Exhibit - Resolution No. 5364

PARCEL #: 29 00 25 2 009 029.000

OWNER: MOSS JOHN GLEN III

ADDRESS: 1718 VESTAVIEW LN VESTAVIA HILLS AL 35216

LOCATION: 1718 VESTAVIEW LN AL 35216

1718 Vestaview Lane Baths: 2.0 [111-C-] Bed Rooms: 3 18-020.0

H/C Sqft: 1,245 Land Sch: G1

Land: 199,000 Imp: 84,200 Total: 283,200 Acres: 0.000 Sales Info: **04/17/2020 \$230,000**

<< Prev

Next >>

[1/0 Records] Processing...

Tax Year: 2021 ✓

\$199,000

-SUMMARY-

ASSESSMENT.

PROPERTY 3 CLASS:

OVER 65 CODE:

EXEMPT CODE: 2-2

DISABILITY CODE:

MUN CODE:

02 COUNTY HS YEAR:

2021 EXM OVERRIDE \$0.00

SCHOOL DIST:

AMT:

OVR ASD VALUE:

\$0.00

TOTAL MILLAGE:

50.1

0

CLASS USE:

FOREST

ACRES:

0

TAX SALE:

PREV YEAR VALUE:

\$282,800.00BOE VALUE:

VALUE-

SUMMARY

LAND VALUE 10%

LAND VALUE 20% **CURRENT USE VALUE**

[DEACTIVATED]

\$0 \$0

CLASS 2

CLASS 3 **BLDG 001**

111

\$84,200

TOTAL MARKET VALUE [MARKET. OVR. VALUE: \$265,000]: \$283,200

- Assesment Override: -

MARKET VALUE: CU VALUE: PENALTY:

ASSESSED VALUE:

TAX INFO

- 1								1
		CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
	STATE	3	2	\$26,500	\$172.25	\$4,000	\$26.00	\$146.25
	COUNTY	3	2	\$26,500	\$357.75	\$2,000	\$27.00	\$330.75
	SCHOOL	3	2	\$26,500	\$217.30	\$0	\$0.00	\$217.30
	DIST SCHOOL	3	2	\$26,500	\$0.00	\$0	\$0.00	\$0.00
	CITY	3	2	\$26,500	\$0.00	\$0	\$0.00	\$0.00
	FOREST	3	2	\$0	\$0.00	\$0	\$0.00	\$0.00
	SPC SCHOOL1	3	2	\$26,500	\$135.15	\$0	\$0.00	\$135.15
	SPC SCHOOL2	3	2	\$26,500	\$445.20	\$0	\$0.00	\$445.20

TOTAL FEE & INTEREST: (Detail) \$5.00

\$1,327.65 GRAND TOTAL: \$1,279.65

Payoff Quote

AMOUNT

\$2,833.66

\$2,764.52

\$2,217.43

\$0.00

DEEDS-**INSTRUMENT NUMBER**

ASSD. VALUE: \$26,500.00

2020037666 4/17/2020 408-310

03/08/1968

DATE

12/3/2018 11/3/2017 10/31/2016

10/15/2015

PAYMENT INFO

TAX YEAR PAY DATE PAID BY 2021 12/22/2020 2020 2019 11/27/2019

CORELOGIC LLOYD L TURNER 2018 TURNER LLOYD

2017 ANNE D TURNER \$2,083.16 \$2,026.04 2016 2015 \$1,916.83

5/20/2015 2014 FNA NP LLC \$22,148.66 2013 \$1,939.84 11/13/2013 11/20/2012 2012 41 020 04 THIDNED ANNE D

Resolution Number 3824 Page 6

STATE OF ALABAMA

COUNTY

Eneil: Trippmoss27@gmail.com Phone#; (205)616-6240 (a(Tag#: WFG870

PETITION FOR ANNEXATION TO THE

CITY OF VESTAVIA HILLS, ALABAMA

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

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

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

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

EXHIBIT "A"

LOT: 29		
BLOCK: 009		
SURVEY:		
DEGODDED DALLAR DOOK	P. CF	DIMIE
RECORDED IN MAP BOOK	, PAGE	_ IN THE
PROBATE OFFICE OF	COUNTY, ALABAMA.	
COUNTY ZONING: 21		
COUNTY ZOMING.	_	
COMPATIBLE CITY ZONING:		
LEGAL DESCRIPTION (METES AND BO	UNDS):	

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

SIGNATURE(S)		DESCRIPT	TION OF PROPERTY
200	Lot 29	_Block_∞	Survey
	_Lot	_Block	Survey
	_Lot	_Block	_Survey
(Use reverse side hereof for	addition	al signatures	and property descriptions, if needed).
CTATE OF ALABAMA			
STATE OF ALABAMA			
Jefferson cou	JNTY		
signed the above petition, and I cer of the described property.			worn says: I am one of the persons who contains the signatures of all the owners
		· An	
		7.	
		Signature oj	Certifier
		- 7/	
Subscribed and sworn before me th	is the 🖊	day of	Oot ,202021
	6	Notary Pub	Joseph Jacobs Marie Company of the C
		My commis	sion expires: 7/03/2523

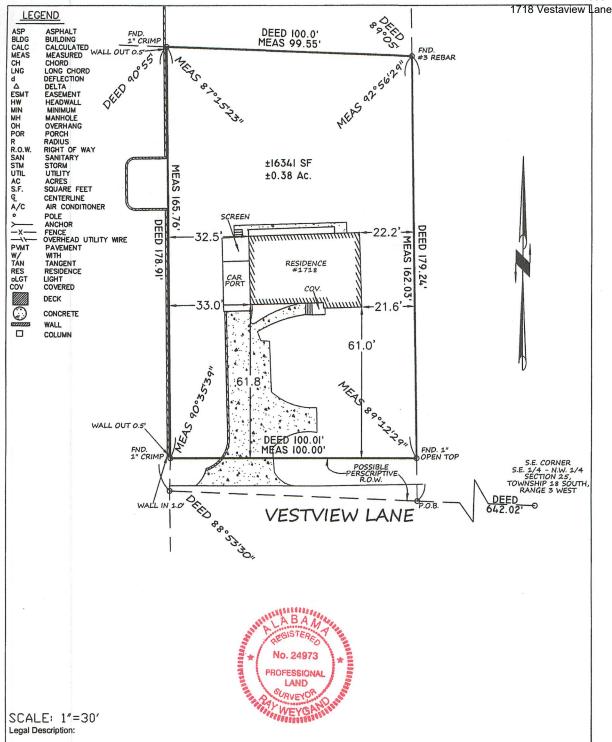
EXHIBIT "B"

VESTAVIA HILLS BOARD OF EDUCATION

1204 Montgomery Highway Vestavia Hills AL 35216

(To be completed by the City)

(10 be complete	ieu by in	ie City)		
Date of Annexation Petition		Action Taken: C		
Resolution: Date: Overnight Ordinance: Date: 90 Day Final Ordinance: Date:		Number: Number:	eny	
(To be completed	d by Hor	neowner)		
Name(s) of Homeowner(s): John 61=	nn /	No55		.2
Address: 1718 Vestaview Ir				
City: Bilmyham State:	AL	Zip: _	352	16
Information on Children:				Enroll In s School?
Name(s)	Age	School Grade	Yes	No
1. N/A				
2.				
3.				
4.				
5.				
6.				
Approximate date for enrolling students in Ve	estavia l	Hills City Schools	if abov	e response



Part of the SE % of the NW % of Section 25, Township 18 South, Range 3 West more particularly described as follows: Commence at the SE corner of said %- % section, thence West along the South line thereof a distance of 642.02 ft.to the point of beginning of tract here described said point being in the center of Rogers Road, thence continue West along said South line a distance of 100.01 ft. thence at an angle to the right of 88' 53' 30" run North a distance of 178.91 ft. thence at an angle to the right of 99' 55' run East a distance of 100.0 ft. thence at an angle to the right of 89' 05' run South a distance of 179.24 ft. to the point of beginning. Minerals and mining rights excepted. Subject to right of way for Rogers Road over the South 15 feet of said property.

STATE OF ALABAMA) JEFFERSON COUNTY)

"Property Boundary Survey"

I, Ray Weygand, a Registered Land Surveyor, hereby certify to the purchaser of this property at this time, that I have surveyed the real property as shown hereon in Jefferson County, Alabama. I hereby state that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information and belief; according to my survey of MARCH 16, 2020. Survey invalid if not sealed in red.

Order No.: 20200412

Ray Weygand, Reg. L.S. #24973 169 Oxmoor Road Homewood, AL 35209 Phone: (205) 942-0086 Fax: (205) 942-0087 Copyright ©



Note: (a) No title search of the public records has been performed by this firm and land shown hereon was not abstracted for easements and/or rights-of-way, recorded or unrecorded. The parcel shown hereon is subject to setbacks, easements, zoning, and restrictions that may be found in the public records of said county and/or city. (b) All bearings and/or angles, are deed/record map and actual unless otherwise noted. (c) Underground portions of foundations, footings, and/or other underground structures, utilities, cemeteries or burial sites were not located unless otherwise noted. (d) The shown north arrow is based on deed/record map. (e) This survey is not transferable. (f) Easements not shown on recorded map are not shown above.

ORDINANCE NUMBER 3050

AN ORDINANCE TO ALTER, REARRANGE, AND EXTEND THE CORPORATE LIMITS OF THE CITY OF VESTAVIA HILLS, ALABAMA, SO AS TO EMBRACE AND INCLUDE WITHIN THE CORPORATE AREA OF SAID CITY ALL TERRITORY NOW WITHIN SUCH CORPORATE LIMITS AND ALSO CERTAIN OTHER TERRITORY CONTIGUOUS TO SAID CITY.

WHEREAS, a certain petition signed by John G. Moss III dated October 7, 2021, that the property therein described be annexed to the City of Vestavia Hills, Alabama, together with a map of said territory showing its relationship to the corporate limits of the City, has been filed with the City Clerk of the City of Vestavia Hills; and

WHEREAS, this Council has determined and found that the matters set forth and alleged in said petition are true and correct, and that it is in the public interest that said territory be annexed to the City of Vestavia Hills;

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

SECTION 1. That said Council hereby assents to the annexation of said territory to the City of Vestavia Hills, Alabama, the corporate limits of the City to be extended and rearranged pursuant to the provisions of Title 11, Chapter 42, Article 2, Code of Alabama, 1975 (Sections 11-42-20 through 11-42-23, as amended) so as to embrace and include said territory, in addition to the territory already within its present corporate limits. The new boundary line does not lie at any point more than half the distance between the old city boundary and the corporate boundary of any other municipality. Said territory is described as follows:

1718 Vestaview Lane John G. Moss III

More Particularly Described as Follows:

Part of the SE 1/4 of the NW 1/4 of Section 25, Township 18 South, Range 3 West, Jefferson County, Alabama, more particularly described as follows:

Commence at the southeast comer of said 1/4 1/4 section; thence west along the south line thereof a distance of 642.02 feet to the point of beginning of tract herein described, said point begin in the center of Rogers Road; thence

continue west along said south line a distance of 100.01 feet; thence at an angle to the right of 88 degrees 53 minutes 30 seconds and run north a distance of 178.91 feet; thence at an angle to the right of 90 degrees 55 minutes and run a distance of 100.0 feet; thence at an angle to the right of 89 degrees 05 minutes and run south a distance of 179.24 feet to the point of beginning. Less and except right of way over the south 15 feet.

SECTION 2. That the City Clerk shall file a certified copy of this Ordinance containing an accurate description of said annexed territory with the Probate Judge of Jefferson County, Alabama, and also cause a copy of this Ordinance to be published/posted in accordance with Alabama law.

APPROVED and ADOPTED this the 24th day of January, 2022.

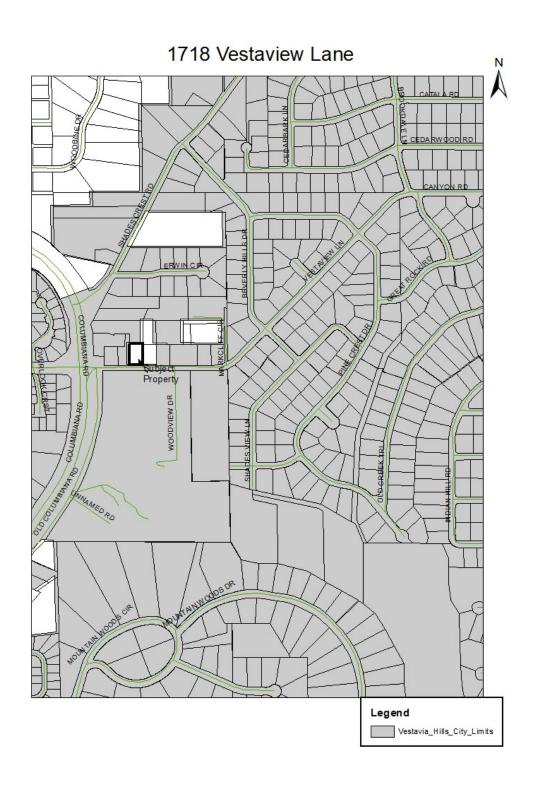
Ashley C. Curry Mayor

ATTESTED BY:

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 # 3050 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 10th day of January, 2022, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _______, 2022.



RESOLUTION NUMBER 5372

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ISSUE A REFUND ON PRIVILEGE LICENSE AND/OR SALES TAXES WHICH WERE REMITTED TO THE CITY IN ERROR

WHEREAS, the City of Vestavia Hills has received a petition from Varsity Shop Enterprises, Inc., d/b/a Mobley & Sons, requesting a refund totaling \$55,597.39 due to an error in remitted business licenses and reported sales taxes; and

WHEREAS, the Finance Director has reviewed the petition, investigated and verified that the refund is due and payable; and

WHEREAS, the City Manager has also reviewed the petition and recommended a refund; and

WHEREAS, the City Council feel it is in the best public interest to issue a refund to Varsity Shop Enterprises, Inc., d/b/a Mobley & Sons in the amount of \$55,597.39 as requested.

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

- 1. The City Manager is hereby authorized to issue a refund to Varsity Shop Enterprises, Inc., d/b/a Mobley & Sons in the amount of \$55,597.39 as requested; and
- 2. This Resolution shall become effective immediately upon adoption and approval. **DONE, ORDERED, ADOPTED and APPROVED** this the 24th day of January, 2022.

Ashley C. Curry Mayor

ATTESTED BY:

Varsity Shop Enterpris	ses, Inc.			
"Verification - City of	Vestavia Hills"			
<u>Period</u>	Gross Sales	Gross Tax Due	Discount/Penalty	Net Tax - Paid/Received
June 2019	\$57,080.41	\$2,283.22	\$48.66	\$2,234.56
July 2019	\$59,234.69	\$2,369.39	\$50.39	\$2,319.00
August 2019	\$72,315.86	\$2,892.63	\$60.85	\$2,831.78
September 2019	\$87,176.97	\$3,487.08	\$72.74	\$3,414.34
October 2019	\$94,556.77	\$3,782.27	\$78.65	\$3,703.62
November 2019	\$106,621.17	\$4,264.85	\$88.30	\$4,176.55
December 2019	\$194,117.00	\$7,764.68	\$158.29	\$7,606.39
January 2020	\$69,535.23	\$2,781.41	\$58.63	\$2,722.78
February 2020	\$73,359.45	\$2,934.38	\$61.69	\$2,872.69
March 2020	\$41,366.37	\$1,654.65	\$36.09	\$1,618.56
April 2020	\$0.00	\$0.00	\$0.00	\$0.00
May 2020	\$48,365.23	\$1,934.61	\$41.69	\$1,892.92
June 2020	\$48,698.56	\$1,947.94	\$41.96	\$1,905.98
July 2020	\$37,462.32	\$1,498.49	\$32.97	\$1,465.52
August 2020	\$46,483.77	\$1,859.35	\$40.19	\$1,819.16
September 2020	\$58,195.08	\$2,327.80	\$49.56	\$2,278.24
October 2020	\$64,982.14	\$2,599.29	\$54.99	\$2,544.30
November 2020	\$67,147.94	\$2,685.92	\$56.72	\$2,629.20
December 2020	\$164,880.12	\$6,595.20	\$134.90	\$6,460.30
Sub Total (1 of 2)	\$1,391,579.08	\$55,663.16	\$1,167.27	\$54,495.89
January 2020				\$1,089.50
				<u>\$12.00</u>
Sub Total (2 of 2)				\$1,101.50
Grand Total				<u>\$55,597.39</u>



600 Beacon Parkway West Suite 900 ● (800) 556-7274 ● (205) 324-0088 ● Fax (205) 423-4099 Birmingham, AL 35209

April 20, 2021

Taxpayer Name: Varsity Shop Enterprises Inc.

Account Number: 446529

Period: May 2019 through December 2020

Refund Amount: \$54495.89

Dear Melvin,

This is a valid refund. Taxpayer is not located in the city limits of Vestavia but in the city limits of Birmingham. Attached is State address lookup showing that the business is in Birmingham City limits.

When the city issues the refund they will need to make the refund check payable to Varsity Shop Enterprises Inc.

If you should have any questions, please feel free to let me know.

RDS/MuniServices Refund Administration refunds@avenuinsights.com

Enclosure



For Inquiries Only

Refund Petition

Business Name & Address:	Toll-Free Phone: (800) 556-7274
Varsity Shop Enterprises, INC	Email: <u>refunds@avenuinsights.com</u> Website: <u>www.avenuinsights.com</u>
DBA: Mobley & Sons	
123 Summit Blod Birminston, AL 352	Refund Petitions must be mailed in. Emailed/Faxed petitions cannot be
Telephone # (205) 870 - 0671 /205-870-792	I Drocessed
Contact Name: Hunt Mobby	Remittance address:
Avenu Account No.: 446529	Attn: Avenu Refund Department 600 Beacon Parkway West Suite 900
FEIN or SSN#: 81-3097242	Birmingham, AL 35209
[] Joint Refund Petition 5	Direct Refund Petition
Note: Separate petitions are required for each type of tax a	nd for each city or county. (Instructions on page 2)
The undersigned hereby makes application for refund of	
(\$54,495.89) fifty four thousand four had	red whely freme & 89 Dollars.
Taxes paid by said undersigned to the Tax Trust Account for	r (city or county) Vestavo Hills
for the period(s) May 2019- December 2020	, which amount was erroneously paid or paid
in excess of the amount due or was paid through mistake o	fact or law.
Explain in detail the reasons for refund claim (attach addition	al pages if necessary):
Our company has mistakenty app.	remed for a Vestavia Hills how
Towerse when we were actively	The Cory of Birminghan h
Sales top and paud It to Vestova L	Alls. through Avenue
Signatures: The petition must bear the signature of the party must sign. If a petitioner is a partnership or limited liability partner an officer of the corporation must sign. If a petitioner is a limited liability partner is a limited liability partner in the corporation must sign.	ship, a partner must sign. If a petitioner is a corporation,
2. Hunt Mobley Petitioner's Name (Seller)	Petitioner's Name (Consumer-Purchaser)
446529 205-527-6714	
Thorolly, Owner	
	Patilioner's Signature/Title
Petitioner's Email Address 112 Eucliul Auc	Petitioner's Email Address
Mailing Address	Mailing Address
City State Zip	State Zip
- 37 14 1	Date Signed
Representative.	

Selected Payments 446529

Exhibit - Resolution No. 5372

Report Date: 03/08/2021

VARSITY SHOP ENTERPRISES INC

Batch	Juris	sdiction	Tax Type	Rate Code		Period	Gross Sales	Deductions	Net Sales	Gross Tax Due	Discount/ Penalty	Net Tax Due	Check Amount	Entry Date	Deposit Date
ER3008	9333	Vestavia Hills	10	11	07/15/20	05/2019	0.00	0.00	0.00	0.00	0.00	0.00	0.00	07/17/2019	07/18/2019
ER8013	9333	Vestavia Hills	10	11	07/22/20	06/2019	57080.41	0.00	57080.41	2283.22	48.66	2234.56	2234.56	07/23/2019	07/25/2019
ERX031	9333	Vestavia Hills	10	11	08/19/20	07/2019	59234.69	0.00	59234.69	2369.39	50.39	2319.00	2319.00	08/20/2019	08/22/2019
EST089	9333	Vestavia Hills	10	11	09/20/20	08/2019	72315.86	0.00	72315.86	2892.63	60.85	2831.78	2831.78	09/23/2019	09/25/2019
ET7024	9333	Vestavia Hills	10	11	10/08/20	09/2019	87176.97	0.00	87176.97	3487.08	72.74	3414.34	3414.34	10/08/2019	10/10/2019
EU5009	9333	Vestavia Hills	10	11	11/14/20	10/2019	94556.77	0.00	94556.77	3782.27	78.65	3703.62	3703.62	11/14/2019	11/19/2019
EV3049	9333	Vestavia Hills	10	11	12/19/20	11/2019	106621.17	0.00	106621.17	4264.85	88.30	4176.55	4176.55	12/20/2019	12/26/2019
EVS023	9333	Vestavia Hills	10	11	01/16/20	12/2019	194117.00	0.00	194117.00	7764.68	158.29	7606.39	7606.39	01/16/2020	01/21/2020
EWV015	9333	Vestavia Hills	10	11	02/20/20	01/2020	69535.23	0.00	69535.23	2781.41	58.63	2722.78	2722.78	02/21/2020	02/25/2020
EXL081	9333	Vestavia Hills	10	11	03/17/20	02/2020	73359.45	0.00	73359.45	2934.38	61.69	2872.69	2872.69	03/18/2020	03/23/2020
EYA010	9333	Vestavia Hills	10	11	04/09/20	03/2020	41366.37	0.00	41366.37	1654.65	36.09	1618.56	1618.56	04/10/2020	04/14/2020
EZC007	9333	Vestavia Hills	10	11	05/19/20	04/2020	0.00	0.00	0.00	0.00	0.00	0.00	0.00	05/20/2020	05/21/2020
F09007	9333	Vestavia Hills	10	11	06/19/20	05/2020	48365.23	0.00	48365.23	1934.61	41.69	1892.92	1892.92	06/19/2020	06/23/2020
F15006	9333	Vestavia Hills	10	11	07/17/20	06/2020	48698.56	0.00	48698.56	1947.94	41.96	1905.98	1905.98	07/20/2020	07/22/2020
F21028	9333	Vestavia Hills	10	11	08/19/20	07/2020	37462.32	0.00	37462.32	1498.49	32.97	1465.52	1465.52	08/19/2020	08/21/2020
F2W022	9333	Vestavia Hills	10	11	09/17/20	08/2020	46483.77	0.00	46483.77	1859.35	40.19	1819.16	1819.16	09/18/2020	09/22/2020
F3U061	9333	Vestavia Hills	10	11	10/19/20	09/2020	58195.08	0.00	58195.08	2327.80	49.56	2278.24	2278.24	10/20/2020	10/22/2020
F4R052	9333	Vestavia Hills	10	11	11/19/20	10/2020	64982.14	0.00	64982.14	2599.29	54.99	2544.30	2544.30	11/20/2020	11/24/2020
F5L037	9333	Vestavia Hills	10	11	12/18/20	11/2020	67147.94	0.00	67147.94	2685.92	56.72	2629.20	2629.20	12/21/2020	12/23/2020
F60020	9333	Vestavia Hills	10	11	01/04/20	12/2020	164880.12	0.00	164880.12	6595.20	134.90	6460.30	6460.30	01/05/2021	01/07/2021

Month	Am	ount
May-19	\$	-
Jun-19	\$	2,234.56
Jul-19	\$	2,319.00
Aug-19	\$	2,831.78
Sep-19	\$	3,414.34
Oct-19	\$	3,703.62
Nov-19	\$	4,176.55
Dec-19	\$	7,606.39
Jan-20	\$	2,722.78
Feb-20	\$	2,872.69
Mar-20	\$	1,618.56
Apr-20	\$	-
May-20	\$	1,892.92
Jun-20	\$	1,905.98
Jul-20	\$	1,465.52
Aug-20	\$	1,819.16
Sep-20	\$	2,278.24
Oct-20	\$	2,544.30
Nov-20	\$	2,629.20
Dec-20	\$	6,460.30
Total	\$!	54,495.89



600 Beacon Parkway West Suite 900 ● (800) 556-7274 ● (205) 324-0088 ● Fax (205) 423-4099 Birmingham, AL 35209

April 20, 2021

Taxpayer Name: Varsity Shop Enterprises Inc.

Account Number: 446529

Period: License Year 2020

Refund Amount: \$1101.50

Dear Melvin,

This is a valid refund. Taxpayer is not located in the city limits of Vestavia but in the city limits of Birmingham. Attached is State address lookup showing that the business is in Birmingham City limits.

When the city issues the refund they will need to make the refund check payable to Varsity Shop Enterprises Inc.

If you should have any questions, please feel free to let me know.

RDS/MuniServices Refund Administration refunds@avenuinsights.com

Enclosure

600 Beacon Parkway West Suite 900 Birmingham, AL 35209



Refund Petition

		For Inquiries Only	
Business Name & Address:		Toll-Free Phone: (800) 556-72 Email: refunds@avenuinsight	
Varsty Shop Enterprises, INC	_	Website: www.avenuinsights.c	
DBA: Mobley & Sons	_ [Refund Petitions must be	mailed in
123 Summit Blood Birmingham, AL 35	343-3166	Emailed/Faxed petitions caprocessed.	
Telephone # (1-05) 870 - 0671	- -		
Contact Name: Hunt Mobby	-	Remittance address: Attn: Avenu Refund Depart	iment
Avenu Account No.: 446529		600 Beacon Parkway West	
FEIN or SSN#: 81-3097242		Birmingham, AL 35209	
[] Joint Refund Petition	✓ Direct Ref	und Petition	
Note: Separate petitions are required for each type of tax	and for <u>each city or</u>	r county. (Instructions on page 2)	
The undersigned hereby makes application for refund of	, 6	_	
(\$1,101.50) one lloan one hurles			_Dollars.
Taxes paid by said undersigned to the Tax Trust Account f	or (city or coun	ty) <u>Vestavia Hills</u>	
for the period(s) 2019 22020	, which	amount was erroneously	paid or paid
in excess of the amount due or was paid through mistake of	of fact or law.		
Explain in detail the reasons for refund claim (attach additio			
We were mistakenly approved +	for a Ve	stava Hills Biz	. lie
when it should have been for the	e coty	of Birminshin	
Signatures: The petition must bear the signature of the party must sign. If a petitioner is a partnership or limited liability partne an officer of the corporation must sign. If a petitioner is a limited	ership, a partner r	must sign. If a petitioner is a	individual corporation,
J. Hunt Mobley Petitioner's Name (Seller)	Petitioner's Name (Consu	mer-Purchaser)	•
446529 205-527-6714	Avenu Account #	Telephone #	_
Avenu Account # Telephone #			
Hunt@ MOBLEYAND SONS CLOTH ING.	Petitioner's Signature/Title	8	
Petitioner's Email Address 112 Euc It of Are	Petitioner's Email Address	S	
Mailing Address A 1 35213	Mailing Address		_
City State Zip	City	State Zip	_
Date Signed NOTE Name to a local by an Officer Mamber Change Radger of Legal	Date Signed	<u> </u>	
NOTE: Must be signed by an Officer, Member, Owner, Partner or Legal Representative.			



Selected Payments 446529

Exhibit - Resolution No. 5372

VARSITY SHOP ENTERPRISES INC

Report Date: 03/08/2021

Batch	Jurisdiction	Tax Type	Rate Code		Period	Gross Sales	Deductions	Net Sales	Gross Tax Due	Discount/ Penalty	Net Tax Due	Check Amount	Entry Date	Deposit Date
140765	9333 Vestavia Hills	1	13	01/07/20	01/2020	0.00	0.00	1089.50	1089.50	0.00	1089.50	1101.50	01/10/2020	01/14/2020
140765	9333 Vestavia Hills	2	14	01/07/20	01/2020	0.00	0.00	12.00	12.00	0.00	12.00	1101.50	01/10/2020	01/14/2020

RESOLUTION NUMBER 5373

A RESOLUTION DETERMINING THAT CERTAIN PERSONAL PROPERTY IS NOT NEEDED FOR PUBLIC OR MUNICIPAL PURPOSES AND DIRECTING THE SALE/DISPOSAL OF SAID SURPLUS PROPERTY

WITNESSETH THESE RECITALS

WHEREAS, the City of Vestavia Hills, Alabama, is the owner of personal property detailed in the attached "Exhibit A"; and

WHEREAS, the City has determined that it would be in the best public interest to sell or dispose of said property.

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

- 1. The City Manager is hereby authorized to sell or dispose of the abovereferenced surplus personal property; and
- 2. This Resolution Number 5373 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 24th day of January, 2022.

Ashley C. Curry Mayor

ATTESTED BY:

Vestavia Hills Public Services 1032 Montgomery Highway Vestavia Hills, AL 35216

INTEROFFICE MEMO

Date: January 18, 2021

TO: Jeff Downes

City Manager

From: Brian Davis

Director of Public Services

RE: Surplus Items

Please see the list of items below that we are requesting the council to declare as surplus property. Our staff has identified these as no longer necessary for our operations.

- 1 Burgundy Sofa
- 2 Floral Wing Back Chairs
- 3 End Tables
- 3 Lamps
- 4 Dining Chairs with white seats
- 1 Spindle Leg Dining Table
- 1 Armoire
- 2 large TV's (one with stand)
- 3 Paintings (Farm House, Pasture, English Cottage)
- 15 ft. Silk Fig Tree
- 2009 F-350 1FDWW36Y49EA10372 78,488
- 2000 GMC 3500 1GDHC34R0YF452670 52,719
- 2014 F-150 1FTEX1CM4EFFA71213 92,006
- 2005 F-450 1FDXW46Y85EDO6273 70,560
- 2012 F-150 1FTFX1CF3CFC37031 139,167
- 2013 F-450 1FD0W4GT2DEA19997 122,000
- 2004 Massey Ferguson Boom Tractor (Model 491) 000T491204C000125 1672 hr.
- 2007 Dodge Durango 1D8HB38P27F580134 104,301
- Toro Z Master Commercial Mower M-74242 S-240000851 1106 hr.

• Miscellaneous Christmas Decorations
Once declared as surplus property we will try and sell the items or simply dispose of those items that necessitate it.

CC: Rebecca Leavings

ORDINANCE NUMBER 3080

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT FOR A PUBLIC SIDEWALK EASEMENT WITH OWNERS ROY AND SHARON GILBERT FOR PROPERTY AT 3175 PIPELINE ROAD

WHEREAS, Roy W. Gilbert, III and wife, Sharon Gilbert ("Owners"), own the real estate situated at 3175 Pipeline Road in the Cahaba Heights community of the City of Vestavia Hills, Jefferson County, Alabama by virtue of that certain Statutory Warranty Deed filed in the office of the Judge of Probate of Jefferson County, Alabama on August 25, 2020 and recorded at Inst. #2020092709 ("Gilbert property"), Pages 1-4; and

WHEREAS, the City of Vestavia Hills, Alabama is a municipal corporation, organized, existing and operating pursuant to the laws of the State of Alabama ("City"); and

WHEREAS, municipalities in Alabama have the legal authority to construct public sidewalks pursuant to Title 11-48-4, Code of Alabama, 1975; and

WHEREAS, the commercial property on the west side of the Gilbert property is owned by R&R Investments, LLC; and

WHEREAS, the commercial property situated on the east side of the Gilbert property is owned by Red B, LLC; and

WHEREAS, the City Council has found and determined that it would be in the public interest to build a public sidewalk on a portion of the Gilbert property for the purpose of providing pedestrian access to and from the R&R Investments, LLC property and the Red B, LLC property; and

WHEREAS, the City has requested that the Owners grant a perpetual easement on, over and along the Gilbert property for the sole purpose of constructing a public sidewalk that will provide pedestrian access between the two commercial properties owned by R&R Investments, LLC and Red B, LLC; and

WHEREAS, the Owners are willing to grant the easement to the City as requested; and

WHEREAS, the City and Owners wish to reduce their agreement to writing, a copy of which is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3080 as if written fully therein; and

WHEREAS, a copy of Special Survey Access Easement Exhibit prepared by Engineering Design Group, LLC ("EDG") is attached hereto, marked as Exhibit B and is incorporated into this Agreement by reference as though set out fully herein; and

WHEREAS, Exhibit B accurately reflects the following information:

- a) The boundary lines of the Gilbert property;
- b) The location of the R&R Investments, LLC property;
- c) The location of the Red B, LLC property;
- d) The proposed access easement requested by the City; and
- e) The legal description of the access and maintenance easement.

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

- 1. The Mayor and City Manager are hereby authorized to execute and deliver the Agreement for Public Sidewalk Easement as detailed in the attached Exhibit A; and
- 2. Following execution said Agreement shall be recorded in the Office of the Judge of Probate Jefferson County and a copy delivered to the Office of the City Clerk for permanent record; and
- 3. This Ordinance Number 3080 shall become effective immediately upon adoption and approval following posting/publication as require by Alabama law.

APPROVED and ADOPTED this the 24th day of January, 2022.

Ashley C. Curry Mayor

ATTESTED BY:

This instrument prepared by: Patrick H. Boone, Attorney 705 New South Federal Savings Bldg. 215 Richard Arrington, Jr. Blvd. N. Birmingham, Alabama 35203-3720

STATE OF ALABAMA

JEFFERSON COUNTY

AGREEMENT FOR PUBLIC SIDEWALK EASEMENT

THIS AGREEMENT FOR PUBLIC SIDEWALK EASEMENT ("the Agreement"), is hereby made and entered on this the _____ day of January, 2022 by and between Roy W. Gilbert, III and wife, Sharon Gilbert (hereinafter referred to individually and collectively as "Owners") and the City of Vestavia Hills, Alabama, a municipal corporation (hereinafter referred to as "City").

WITNESSETH THESE RECITALS:

WHEREAS, Roy W. Gilbert, III and wife, Sharon Gilbert ("Owners"), own the real estate situated at 3175 Pipeline Road in the Cahaba Heights community of the City of Vestavia Hills, Jefferson County, Alabama by virtue of that certain Statutory Warranty Deed filed in the office of the Judge of Probate of Jefferson County, Alabama on August 25, 2020 and recorded at Inst. #2020092709 ("Gilbert property"), Pages 1-4; and

WHEREAS, the City of Vestavia Hills, Alabama is a municipal corporation, organized, existing and operating pursuant to the laws of the State of Alabama ("City"); and

WHEREAS, municipalities in Alabama have the legal authority to construct public sidewalks pursuant to Title 11-48-4, Code of Alabama, 1975; and

WHEREAS, the commercial property on the west side of the Gilbert property is owned by R&R Investments, LLC; and

WHEREAS, the commercial property situated on the east side of the Gilbert property is owned by Red B, LLC; and

WHEREAS, the City Council has found and determined that it would be in the public interest to build a public sidewalk on a portion of the Gilbert property for the purpose of providing pedestrian access to and from the R&R Investments, LLC property and the Red B, LLC property; and

WHEREAS, the City has requested that the Owners grant a perpetual easement on, over and along the Gilbert property for the sole purpose of constructing a public sidewalk that will provide

Agreement for Public Sidewalk Easement Page 2

pedestrian access between the two commercial properties owned by R&R Investments, LLC and Red B, LLC; and

WHEREAS, the Owners are willing to grant the easement to the City as requested; and

WHEREAS, the City and Owners wish to reduce their agreement to writing; and

WHEREAS, a copy of Special Survey Access Easement Exhibit prepared by Engineering Design Group, LLC ("EDG") is attached hereto, marked as Exhibit 1 and is incorporated into this Agreement by reference as though set out fully herein; and

WHEREAS, Exhibit 1 accurately reflects the following information:

- (a) The boundary lines of the Gilbert property;
- (b) The location of the R&R Investments, LLC property;
- (c) The location of the Red B, LLC property;
- (d) The proposed access easement requested by the City;
- (e) The legal description of the access and maintenance easement.

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

- 1. <u>RECITALS:</u> The recitals set forth in the premises above are hereby incorporated into this Agreement by reference as though set out fully herein.
- **2. EXHIBIT:** Exhibit 1 described in the premises above is hereby incorporated into this Agreement by reference as though set out fully herein.
- RESENTS: That for and in consideration of One Dollar (\$1.00) and other good and valuable consideration to Roy W. Gilbert, III and wife, Sharon Gilbert, in hand paid by the City of Vestavia Hills, Alabama, a municipal corporation, the receipt and sufficiency whereof is hereby acknowledged, the said Roy W. Gilbert, III and wife, Sharon Gilbert, hereinafter called "Grantor," does hereby grant, bargain, sell and convey unto the City of Vestavia Hills, Alabama, a municipal corporation in Jefferson County, Alabama, hereinafter called "Grantee," its successors and assigns, a perpetual right-of-way and easement for the purposes of construction, installation and continued operation, maintenance, repair, inspection, alteration and replacement of a public sidewalk, together with all necessary rights of access, ingress and egress thereto and therefrom, in, over, across, through and under the following described lands of the Grantor, in Jefferson County, Alabama, to-wit:

Agreement for Public Sidewalk Easement Page 3

Easement Description: Commence at the Northwest corner of the Southwest 1/4 of the Northeast 1/4 of Section 22, Township 18 South, Range 2 West and run thence south along the west line of said 1/4 - 1/4 section for a distance of 104.71 feet to a point on the South line of the Birmingham Water Works Company right-of-way; thence turn an angle left 58°28'30" and run Southeasterly along said right of way 468.98 feet to the Northwest corner of property as described in Inst#2020092709, as recorded in the Probate office of Jefferson County, Alabama; thence turn an angle to the right of 69°14' and run in a southerly direction along the westerly line of said property a distance of 168.91 feet to the POINT OF BEGINNING of an Access and Maintenance easement herein described: Thence continue along the last described course a distance of 45.93 feet to the southwest corner of said Property; Thence turn an angle left of 91°48'45' and run in an easterly direction along the south line of said Property a distance of 153.11 feet to the southeast corner of said Property; Thence turn an angle left of 93°50'33" and run in a northerly direction along the east line of said Property a distance of 60.00 feet to a point; Thence leaving said easterly line of said Property thence turn an angle left of 139°36'07" and run southwesterly a distance of 41.18 feet to a point; Thence turn an angle to the right of 58°28'17" and run northwesterly a distance of 47.01 feet to a point; Thence turn an angle to the left of 19°47'31" and run southwesterly a distance of 32.30 feet to a point; Thence turn an angle to the right of 42°02'42" and run northwesterly a distance of 50.69 feet to the POINT OF BEGINNING.

- 4. <u>LIABILITY:</u> The City hereby assumes the sole responsibility and liability for the operation, maintenance and repair of the sidewalk along the southside of the Gilbert property as shown on Exhibit 1 attached hereto.
- 5. <u>INDEMNITY:</u> The City agrees to indemnify and hold harmless the Owners and their successors and assigns from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to, attorneys' fees and court costs, which may be asserted against, or suffered by, the Owners on account of, or arising out of, the sidewalk.
- 6. <u>Construction of Sidewalk</u>: The City shall install, or have installed, the sidewalk in a good and workmanlike manner at the sole expense of the City.

7. FUTURE MAINTENANCE OF SIDEWALK:

Agreement for Public Sidewalk Easement Page 4

- (a) The City shall maintain the sidewalk in a good and safe condition.
- **(b)** The Owners shall have no responsibility with respect to the installation, maintenance or repair of the improvements.
- 8. Temporary Easement For Construction of Sidewalk: Owners hereby grant to City a temporary construction easement over, on and along the Gilbert property for a period of one hundred twenty (120) days beginning on the date of commencement of the construction of the public sidewalk over, on and along the easement described in section 3 hereof. The City shall promptly repair and replace any landscaping or damages to the Gilbert property which may be damaged or destroyed in connection with the work by the City and/or its contractor. Notwithstanding the foregoing or anything to the contrary herein, upon the completion of the work, the City shall promptly restore the Gilbert property to substantially the condition of the Gilbert property was prior to the commencement of the sidewalk construction work.

9. <u>Miscellaneous:</u>

- (a) <u>Non Waiver:</u> The failure of the City to insist, in any one or more instances, upon a strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect.
- **(b)** <u>Waiver of Modification:</u> Any waiver, alteration or modification of any of the provisions of this Agreement or cancellation or replacement of this Agreement shall not be valid unless in writing and signed by the City and Owners. This Agreement may be amended at any time by written agreement of the parties signatory hereto.
- (c) <u>Notices:</u> Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing and sent by Registered Mail to the parties' last known address.
- (d) <u>Construction of Terms:</u> The City and Owners negotiated the terms, provisions and conditions of this Agreement and both parties had the equal opportunity for input for the drafting of this Agreement. Therefore, any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.
- (e) Governing Law: This Agreement shall be interpreted, construed and governed to the laws of the State of Alabama.
- (f) <u>Article and Section Headings</u>: The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or

Agreement for Public Sidewalk Easement Page 5

affect in any manner the construction or interpretation hereof.

- (g) <u>Execution in Counterparts</u>: The Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- (h) <u>Binding Effect:</u> The Agreement shall inure to the benefit of, and shall be binding upon City and Owners, and their heirs, successors and assigns.
- (i) <u>Severability</u>: In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- (j) <u>Survival</u>: All representations and warranties of this Agreement shall survive the execution and delivery of this Agreement, as shall any covenants for performance thereafter.
- (k) Entire Agreement: This written Agreement contains the entire agreement between the City and the Owners.
- (I) Recording: This Agreement for Public Sidewalk Easement shall be filed for record in the office of the Judge of Probate of Jefferson County, Alabama.

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

OWNERS

Roy W. Gilbert, III

Sharon Gilbert

WITNESSED:

Agreement for Public Sidewalk Easement Page 6

	THE CITYOF VESTAVIA HILLS, ALABAMA A Municipal Corporation		
	Ву	Ashley C. Curry Mayor	
	Ву	Jeffrey D. Downes City Manager	
ATTESTED:			
By			
STATE OF ALABAMA JEFFERSON COUNTY ACKNO	OWLE	DGMENT	
certify that Ashley C. Curry, whose name municipal corporation, is signed to the fore known to me, acknowledged before me or Agreement, he in his capacity as such and w	as May going A n this d ith full a	c, in and for said County, in said State, hereby for of the City of Vestavia Hills, Alabama, a agreement for Sidewalk Easement, and who is ay that being informed of the contents of the authority, executed the same voluntarily for and municipal corporation, on the day the same bears	
Given under my hand and official se	al, this	the day of January, 2022.	
		Notary Public	
My Commission Expires:		-	
SEAL			

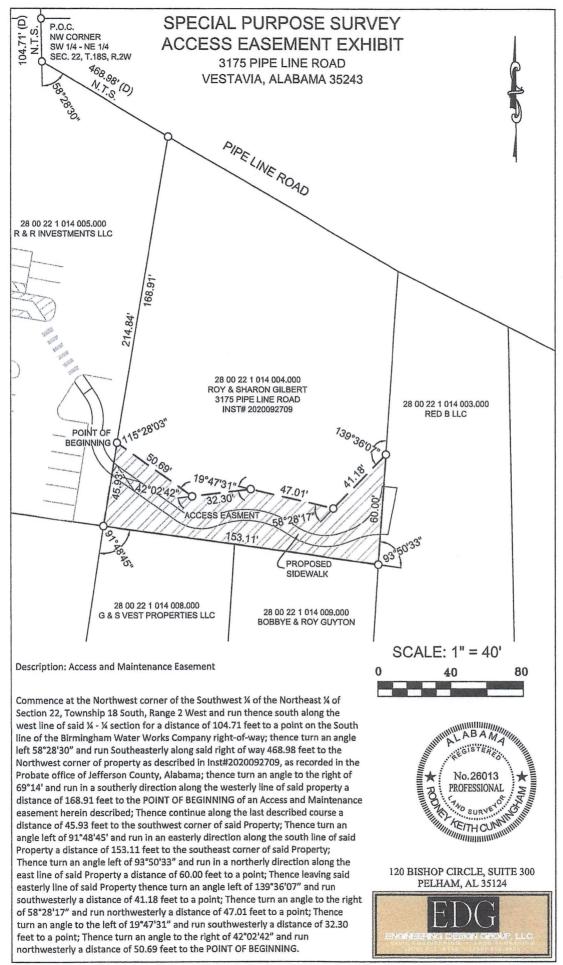
Agreement for Public Sidewalk Easement Page 7

STATE OF ALABAMA JEFFERSON COUNTY

ACKNOWLEDGMENT

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

Agreement, he in his capacity as such and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama, a municipal corporation, on the day the same bears date.
Given under my hand and official seal, this the day of January, 2022.
Notary Public
My Commission Expires:
SEAL
STATE OF ALABAMA JEFFERSON COUNTY
ACKNOWLEDGMENT
I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Roy W. Gilbert, III and wife, Sharon Gilbert, whose names are signed to the foregoing Agreement for Sidewalk Easement, and who are known to me, acknowledged before me on this day that being informed of the contents of the Agreement, they executed the same on the day the same bears date.
Given under my hand and official seal, this the day of January, 2022.
Notary Public
My Commission Expires:
SEAL



ORDINANCE NUMBER 3031-A

AN ORDINANCE AMENDING ORDINANCE NUMBER 3031 - AN ORDINANCE TO DECLARE THAT THE PRESENT CONDITION OF A PORTION OF OAKVIEW LANE IS IN SUCH STATE OF DISREPAIR THAT IT ENDANGERS THE PUBLIC HEALTH, SAFETY AND WELFARE OF MEMBERS OF THE GENERAL PUBLIC; TO DECLARE THAT THE SITUATION IS AN EMERGENCY; TO DESCRIBE THE NATURE OF SAID EMERGENCY; TO AUTHORIZE AND DIRECT THE REPAIR OF OAKVIEW LANE WITHOUT ADVERTISING FOR COMPETITIVE BIDS PURSUANT TO THE AUTHORITY OF TITLE 39-2-2(e), CODE OF ALABAMA, 1975, AT A COST NOT TO EXCEED ONE HUNDRED EIGHTEEN THOUSAND EIGHT HUNDRED FIFTY-TWO DOLLARS (\$118,852.00); TO AUTHORIZE AND DIRECT THE CITY MANAGER AND MAYOR TO NEGOTIATE AND TO EXECUTE AND DELIVER A CONSTRUCTION CONTRACT AND ANY AND ALL OTHER DOCUMENTS NECESSARY TO HAVE THE REPAIR WORK PERFORMED AND COMPLETED AND TO AUTHORIZE ADDITIONAL REPLACEMENT/REPAIR OF PIPE IN THE AMOUNT OF \$84,726.25.

THIS ORDINANCE NUMBER 3031-A is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 24th day of January, 2022.

WITNESSETH THESE RECITALS:

WHEREAS, Oakview Lane is a public road in the Cahaba Heights community, which said public road is owned by the City of Vestavia Hills, Alabama ("City"); and

WHEREAS, a portion of Oakview Lane is in such a state of disrepair that it endangers the public health, safety and welfare of members of the general public; and

WHEREAS, municipalities in the State of Alabama are authorized to spend public funds for the purpose of constructing, improving and repairing public streets and roads pursuant to the authority of Title 11-48-4, *Code of Alabama*, 1975, and Title 11-49-80, *Code of Alabama*, 1975, and have a legal duty to exercise ordinary and reasonable care to keep its streets and roads in a reasonably safe condition for travel. *City of Tallassee v. Harris*, 431 So.2d 1177 (1983); and

WHEREAS, Title 39-2-1(6), *Code of Alabama, 1975*, defines a public works project as follows:

"(6) PUBLIC WORKS. The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public

funds or with financing to be retired with public funds in the form of lease payments or otherwise."; and

WHEREAS, two of the primary requirements of the public works law in Alabama are that before entering into any contract for a public works project involving an amount in excess of Fifty Thousand Dollars (\$50,000.00), the awarding authority shall advertise for sealed bids (Title 39-2-2(a), *Code of Alabama, 1975*) and the contract shall be awarded to the lowest responsible and responsive bidder (Title 39-2-6(a), *Code of Alabama, 1975*); and

WHEREAS, *Ballentine Law Dictionary* defines the term "emergency" as a "pressing necessity, a situation calling for immediate action or remedy"; and

WHEREAS, Title 39-2-2(e), Code of Alabama, 1975, provides as follows:

"(e) In case of an emergency affecting public health, safety, or convenience, as declared in writing by the awarding authority, setting forth the nature of the danger to the public health, safety, or convenience which would result from delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. The action and the reasons for the action taken shall immediately be made public by the awarding authority upon request."; and

WHEREAS, on August 9, 2021, the City Council adopted and approved Ordinance Number 3031 which found and determined that the situation on Oakview Lane constituted an "emergency" within the meaning of the Alabama Competitive Bid Law at Title 39-2-2(e), *Code of Alabama, 1975*, because, if Oakview Lane is not repaired without delay, then in such event it is likely that motorists may be injured and motor vehicles damaged or destroyed; and

WHEREAS, the estimated cost to repair Oakview Lane, as determined by the City Engineer, is as follows:

Oakview Lane, Drainage Pipe Replacement Near 4216 Estimated Project Costs, Updated 7/30/2021

Contracted labor, equipment and project of	coordination \$ 83,552.00
City supplied materials:	
Pipe	\$ 25,000.00
Stone backfill	5,000.00
Concrete	3,300.00
Grates	1,500.00
Rebar	500.00

Estimated Material Costs 35,300.00
Total Estimated Project Costs \$118,852.00; and

WHEREAS, as work progressed on said emergency repairs, it was determined that additional pipes in the City's rights-of-way had deteriorated and collapsed which resulted in an additional 150 linear feet of large diameter pipe in dire need of replacement; and

WHEREAS, the City Engineer has detailed an estimate of \$84,726.25 is needed in funding in order to adequately address and repair/replace the additional piping needed in order to safely secure said rights-of-ways in good public order; a copy of said estimated is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3031-A as if written fully therein; and

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

- I. <u>RECITALS</u>: The recitals set forth in the premises above are hereby incorporated into this Ordinance Number 3031-A by reference as though set out fully herein.
- **II. EXHIBIT**: A copy of Memorandum dated January 12, 2022 from City Engineer Christopher Brady to City Manager Jeff Downes estimating the additional repair cost in the amount of \$84,726.25 is attached hereto, marked as Exhibit A and is incorporated into this Ordinance Number 3031-A by reference as though set out fully herein.
- III. <u>EMERGENCY DECLARED</u>: The City Council finds, determines and declares that Oakview Lane, in its present state of disrepair, constitutes an "emergency" situation as contemplated by Title 39-2-2(e), *Code of Alabama*, 1975.
- IV. <u>STATE OF EMERGENCY:</u> In accordance with the requirements of Title 39-2-2(e), *Code of Alabama, 1975*, the City Council hereby states and documents its reasons for taking the actions authorized by the enactment of this Ordinance Number 3031-A:
- **A**. To delay the work to repair Oakview Lane in order to advertise for sealed bids would be detrimental to the health, safety and welfare of the members of the general public.
- **B.** The emergency situation must be repaired promptly in order to reduce, to the greatest extent possible, personal injuries and property damages.
- C. Delay in the repair of Oakview Lane could possibly result in liability to the City pursuant to Title 11-47-190, *Code of Alabama*, 1975.
- **D**. Under the circumstances, immediate repair of Oakview Lane is the only and best action for the City to take.
 - **E**. Time is of the essence.

V. <u>EXPENDITURE OF PUBLIC FUNDS</u>: The City Manager is hereby authorized to spend an amount of City funds not to exceed Eighty-Four thousand, seven hundred twenty-six dollars and 25 cents (\$84,726.25) additional funding for the repair of Oakview Lane; said funding to be derived from the City's Capital Projects Fund.

VI. <u>NEGOTIATION, EXECUTION AND DELIVERY OF CONSTRUCTION</u> <u>CONTRACT AND OTHER CONTRACT DOCUMENTS:</u>

- **A.** The City Manager is hereby authorized and directed to negotiate a Construction Contract and/or amendment for and on behalf of the City of Vestavia Hills for the performance of work and purchase of materials necessary to complete the repair of Oakview Lane.
- **B**. The City Manager and Mayor are hereby authorized and directed to execute and deliver, for and on behalf of the City of Vestavia Hills, the Construction Contract, the contract documents and any and all other documents necessary for the additional repair work on Oakview Lane to be performed and completed. In addition, the City Manager is hereby authorized and directed to take any and all other actions that may be necessary for the performance and completion of said repair work.
- VII. <u>SEVERABILITY CLAUSE</u>: 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.
- VIII. <u>ARTICLE AND SECTIONS HEADINGS</u>: The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.
- **IX**. **ENACTMENT**: This Ordinance Number 3031-A is approved and adopted pursuant to the authority of Title 11-42-2(b), *Code of Alabama*, 1975, because of the reasons set forth herein.
- **X.** <u>EFFECTIVE DATE:</u> This Ordinance Number 3031-A shall become effective immediately upon adoption and posting as required by law.

DONE, (ORDERED.	ADOPTED	and APPROVED	this 24 th c	lay of January,	2022.
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Ashley C. Curry Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

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

January 15, 2022

To: Jeff Downes, City Manager

CC: Brian Davis, Director of Public Services

Lori Beth Kearley, Assistant City Engineer

Rebecca Leavings, City Clerk

From: Christopher Brady, City Engineer

RE: emergency drainage repair on Oakview Lane

As we have progressed with the emergency drainage repairs along Oakview, we have experience some increase in material costs that have exceeded our original estimates. Additionally, we have found more pipe in process of collapse and sinkholes forming along the edge of roadway.

While equipment and crews are available, we are recommending immediate repairs to this next section of pipe. Please see attached estimated costs associated with these additional costs.

As this is not part of a budgeted project, we request funding from Capital Reserves in the amount of \$84,726.25

Please let me if questions,

Sincerely,
-Christopher

Christopher Brady

From:

Christopher Brady

Sent:

Wednesday, January 12, 2022 12:28 PM

To:

Jeff Hughes; Jennifer Swann

Cc:

Rita Hosmer

Subject:

Oakview, additional costs

Here is my summary of additional costs. I have included a additional grate and rebar incase we determine we need. I have also added a contingency. We will be seeking Council approval for amended Ordinance 3031 on the 24th. Let me know if you see anything else we might need to consider. Thanks!

Overun of previous material costs

\$ 4,000.00

Additional labor, equipment and

project coordination

\$ 41,885.00

Estimated material costs

pipe \$ 22,190.00 stone \$ 3,000.00 concrete \$ 1,500.00 grate \$ 500.00 rebar \$ 600.00

Total additional

\$ 73,675.00

contingency (15%)

\$ 11,051.25

\$ 84,726.25



Christopher Brady, City Engineer

Department of Public Services P 205 978 0150 | vhal.org City of Vestavia Hills



\$

WWW.ALIFEABOVE.ORG





























ORDINANCE NUMBER 3082

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT TO PURCHASE SOFTWARE FOR CONSOLIDATED DEBT AND LEASE MANAGEMENT FOR THE CITY

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 an agreement for debt and lease management software from Fifth Asset, Inc., d/b/a DebtBook, Subscription Charge Tier 2 for the following years: FY2022 at a cost of \$5,000; FY2023 at a cost of \$7,500 and FY2024 at a cost of \$7,875 for a total 3-year cost of \$20,375; and
- 2. Funding for said first year cost of \$5,000 shall be expensed to the City's General Fund; and
- 3. A copy of said agreement is marked as Exhibit A, attached and incorporated into this Ordinance Number 3082 as if written fully therein; and
- 4. Said agreement shall be amended prior to execution in order to add the following paragraph as revised by the City Attorney: "Immigration: By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom."
- 5. This Ordinance Number 3082 shall be effective upon adoption and approval following posting/publication as required by Alabama law.

ADOPTED and APPROVED this the 24th day of January, 2022.

Ashley C. Curry Mayor

ATTESTED BY:

Rebecca Leavings City Clerk



VESTAVIA HILLS FINANCE DEPARTMENT

Memo

To: Rebecca Leavings, Vestavia Hills City Clerk

From: George A. Sawaya, Deputy Finance Director

CC: Melvin Turner, III Finance Director

Date: 1/19/2022

Re: DebtBook Software Contract

Pricing is based on the number of obligations under management. While the City is currently priced at a discount on first tier the addition of GASB 87 leases would place the City into 2nd Tier. Our 2nd Tier allows for the management of up to 75 obligations (realizing the city may have slightly more). Within the pricing are including the following:

- GASB 87 Data Extraction, Implementation and Ongoing Compliance
- GASB 96 Data Extraction, Implementation and Ongoing Compliance
- Waiving the Implementation Fee of \$2,250 for leases
- Accountants estimate it will take 1 3 hours of work per lease to evaluate and classify the leases. This assumes a price range of \$7,500 to \$22,500 for the implementation of just 50 leases
- There is no other application that can handle both Debt and Lease (which the GASB 87 standard requires). We have seen other entities that went out and purchased a Debt solution separate from a Lease solution which resulted in a price close to double our pricing.
- Included is a 5% escalator in Year 3 which is a Software as a Service industry standard
 - Funding from General Fund recurring annual expense

George A. Sawaya Deputy Finance Director City of Vestavia Hills 205-978-0127 Desk 205-908-9162 Cell



DebtBook Quote

Vestavia Hills, AL

1032 Montgomery Hwy Vestavia Hills, AL 35216

Melvin Turner

Finance Director/Treasurer mturner@vhal.org (205) 978-0128

Prepared By:

DebtBook Adam Fekini Regional Sales Manager adam.fekini@debtbook.com

Notice Address:

300 W. Summit Ave STE 110 Charlotte, NC 28203

Products & Services

Description	Qty	Unit Price	Annual Escalator	Total
Subscription Charge: Tier 2 This represents the annual subscription charge your organization pays for access to the DebtBook platform. There are no additional charges - this covers unlimited users, external sharing, support and training.	1	\$5,000 Year 1	-	\$5,000 Year 1 Cost
Subscription Charge: Tier 2 This represents the annual subscription charge your organization pays for access to the DebtBook platform. There are no additional charges - this covers unlimited users, external sharing, support and training.	1	\$7,500 Year 2	-	\$7,500 Year 2 Cost
Subscription Charge: Tier 2 This represents the annual subscription charge your organization pays for access to the DebtBook platform. There are no additional charges - this covers unlimited users, external sharing, support and training.	1	\$7,500 Year 3	5%	\$7,875 Year 3 Cost
		Total 3 Ye	ar Renewal Cost:	\$20,375

ORDER FORM

Fifth Asset, Inc., d/b/a DebtBook ("**DebtBook**") is pleased to provide City of Vestavia Hills, AL ("**Customer**") with the Services subject to the terms established in this Order Form. This Order Form may be modified or replaced from time to time by a subsequent Order Form duly executed and delivered by each party in connection with any Renewal Term.

The Services are subject to DebtBook's General Terms & Conditions (the "Terms & Conditions"), which have been provided to Customer, and the Incorporated Documents referenced in the Terms & Conditions. Each capitalized term used but not defined in this Order Form has the meaning given in the Terms & Conditions.

Order Details

Effective Date: 2/01/22 Initial Term End Date: 2/01/25 Initial Pricing Tier: Tier 2

Billing Frequency: Annually Payment Terms: Net 30

<u>Services</u>. Subject to the terms described in this Order Form, DebtBook will grant Customer access to the Application Services during the Initial Term described above and, if applicable, each subsequent Renewal Term. As part of the initial implementation and onboarding process, DebtBook will provide Customer with the Implementation Services. DebtBook will also provide Customer with the Support Services throughout the Term.

<u>Fees</u>. DebtBook will charge Customer (1) a one-time Implementation Fee for its initial Implementation Services and (2) a recurring Subscription Fee for Customer's ongoing access to the Application Services and Support Services.

Generally, DebtBook sets Fees using its standard pricing schedule for the Services based on the Customer's applicable Pricing Tier, which is based on the total number and amount of debt and lease obligations outstanding at the time of determination. The Initial Pricing Tier indicated above is based on Customer's good faith estimate of its total number and amount of debt and lease obligations currently outstanding and will not change during the Initial Term, regardless of (1) the actual number or amount of the Customer's debt and lease obligations implemented as part of the Implementation Services or (2) any changes during the Initial Term to Customer's debt and lease obligations.

Billing. Unless otherwise provided in the Customer Documents, all Fees will be due and payable in advance on the terms indicated above, and each invoice will be emailed to the Customer's billing contact indicated below.

<u>Renewal Term</u>. The Initial Term is subject to renewal on the terms set forth in the Terms & Conditions. The pricing tier applicable for each Renewal Term will be determined based on the aggregate number and amount of the Customer's debt and lease obligations outstanding at the time of renewal.

Termination. The Agreement is subject to early termination on the terms set forth in the Terms & Conditions.

<u>Entire Agreement.</u> By executing this Order Form, each party agrees to be bound by (1) this Order Form, (2) the Terms & Conditions, (3) the Incorporated Documents, and (4) any Customer Terms.

This Order Form, the Customer Documents, the Terms & Conditions, and the Incorporated Documents constitute the complete "Agreement" between the parties and supersede any prior discussion or representations regarding the Customer's purchase and use of the Services.

<u>Intellectual Property</u>. Except for the limited rights and licenses expressly granted to Customer under this Order Form and the Terms & Conditions, nothing in the Agreement grants to Customer or any third party any intellectual property rights or other right, title, or interest in or to the DebtBook IP.

<u>Important Disclaimers & Limitations</u>. EXCEPT FOR THE WARRANTIES SET FORTH IN THE TERMS & CONDITIONS, DEBTBOOK IP IS PROVIDED "AS IS," AND DEBTBOOK DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IN ADDITION, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES' LIABILITIES UNDER THE AGREEMENT ARE LIMITED AS SET FORTH IN THE TERMS & CONDITIONS.

Notices. Any Notice delivered under the Agreement will be delivered to the address below each party's signature below.

Authority; Execution. Each of the undersigned represents that they are authorized to (1) execute and deliver this Order Form on behalf of their respective party and (2) bind their respective party to the terms of the Agreement. This Order Form and any other documents executed and delivered in connection with the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. To the extent permitted by applicable law, electronic signatures may be used for the purpose of executing the Order Form by email or other electronic means. Any document delivered electronically and accepted is deemed to be "in writing" to the same extent and with the same effect as if the document had been signed manually.

FIFTH ASSET, INC., D/B/A DEBTBOOK		CITY OF VESTAVIA HILLS, AL			
Name:	Tyler Traudt CEO	By: Name: Title:			
		CITY OF VESTAVIA HILLS, AL			
		By: Name: Title:			

Notice Address

300 W. Summit Avenue, Suite 110 Charlotte, NC 28203 Attention: Chief Executive Officer tyler.traudt@debtbook.com

Notice Address

1032 Montgomery Hwy Vestavia Hills, AL 35216 Attention: Melvin Turner mturner@vhal.org

Billing Contact

1032 Montgomery Hwy Vestavia Hills, AL 35216 Attention: Melvin Turner mturner@vhal.org

DEBTBOOK'S GENERAL TERMS & CONDITIONS

Please carefully read these General Terms and Conditions (these "Terms & Conditions") which govern the Customer's access and use of the Services described in the Order Form.

By executing the Order Form and using any of the Services, the Customer agrees to be bound by these Terms.

1. Definitions.

"Aggregated Statistics" means data and information related to Customer's use of the Services that is used by DebtBook in an aggregate and anonymized manner, including statistical and performance information related to the Services.

"Agreement" means, collectively and to the extent applicable, the Order Form, any Customer Terms, these Terms & Conditions, and the Incorporated Documents, in each case as may be amended from time to time in accordance with their terms.

"Application Services" means DebtBook's debt and lease management software-as-a-service application.

"Appropriate Security Measures" means, collectively, commercially reasonable technical and physical controls and safeguards intended to protect Customer Data against destruction, loss, unauthorized disclosure, or unauthorized access by employees or contractors employed by DebtBook.

"Authorized User" means any of Customer's employees, consultants, contractors, or agents who are authorized by Customer to access and use any of the Services.

"Customer" means the person or entity purchasing the Services as identified in the Order Form.

"Customer Data" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is transmitted by or on behalf of Customer or an Authorized User through the Services.

"Customer Terms" means any terms or agreements provided by Customer and applicable to the Services but only to the extent such terms or agreements are expressly referenced and incorporated into the Order Form. For the avoidance of doubt, "Customer Terms" does not include any purchase order or similar document generated by Customer unless such document is expressly referenced and incorporated into the Order Form.

"DebtBook" means Fifth Asset, Inc., d/b/a DebtBook, a Delaware corporation, and its permitted successor and assigns.

"DebtBook IP" means (1) the Services, Documentation, and Feedback, including all ideas, concepts, discoveries, strategies, analyses, research, developments, improvements, data, materials, products, documents, works of authorship, processes, procedures, designs, techniques, inventions, and other intellectual property, whether or not patentable or copyrightable, and all embodiments and derivative works of each of the foregoing in any form and media, that are developed, generated or produced by DebtBook arising from or related to the Services, Documentation, or Feedback; and (2) any intellectual property provided to Customer or any Authorized User in connection with the foregoing other than Customer Data.

"Documentation" means DebtBook's end user documentation and content, regardless of media, relating to the Services made available from time to time on DebtBook's website at https://support.debtbook.com.

"Feedback" means any comments, questions, suggestions, or similar feedback transmitted in any manner to DebtBook, including suggestions for new features, functionality, or changes to the DebtBook IP.

"Governing State" means, if Customer is a governmental entity, the state in which Customer is located. Otherwise, "Governing State" means the State of North Carolina.

"Implementation Services" means onboarding and implementation services, including entry of relevant data, as necessary to make the Application Services available to the Customer during the Initial Term.

"Incorporated Documents" means, collectively, the Privacy Policy, the Documentation, the SLA, and the Usage Policy, as each may be updated from time to time in accordance with their terms. The Incorporated

Documents, as amended, are incorporated into these Terms & Conditions by this reference. Current versions of the Incorporated Documents are available at https://www.debtbook.com/legal.

"Initial Term" means the Initial Term of the Services beginning on the Effective Date and ending on the Initial Term End Date, as established in the Order Form.

"Order Form" means (1) the order document executed and delivered by DebtBook and Customer for the Initial Term or (2) to the extent applicable, any subsequent order document executed and delivered by DebtBook and Customer for any Renewal Term, including, in each case, any applicable Order Form Supplement.

"Order Form Supplement" means any Order Form Supplement expressly referenced and incorporated by reference into any Order Form.

"Privacy Policy" means, collectively, DebtBook's privacy policy and any similar data policies generally applicable to all users of the Application Services, in each case as posted to DebtBook's website and as updated from time to time in accordance with their terms.

"Renewal Term" means any renewal term established in accordance with the terms of the Agreement.

"Services" means, collectively, the Application Services, the Implementation Services, and the Support Services.

"SLA" means the Service Level Addendum generally applicable to all users of the Application Services, as posted to DebtBook's website and as updated from time to time in accordance with its terms.

"Support Services" means the general maintenance services and technical support provided in connection with the Application, as more particularly described in the SLA.

"Term" means, collectively, the Initial Term and, if applicable, each successive Renewal Term.

"Usage Policy" means, collectively, DebtBook's acceptable usage policy, any end user licensing agreement, or any similar policy generally applicable to all end users accessing the Application Services, in each case as posted to DebtBook's website and as updated from time to time in accordance with its terms.

Each capitalized term used but not otherwise defined in these Terms & Conditions has the meaning given to such term in the applicable Order Form.

2. Access and Use.

- (a) <u>Provision of Access</u>. Subject to the terms and conditions of the Agreement, DebtBook grants Customer and Customer's Authorized Users a non-exclusive, non-transferable (except as permitted by these Terms) right to access and use the Application Services during the Term, solely for Customer's internal use and for the Authorized Users' use in accordance with the Agreement. DebtBook will provide to Customer the necessary passwords and network links or connections to allow Customer to access the Application Services.
- (b) <u>Documentation License</u>. Subject to the terms and conditions of the Agreement, DebtBook grants to Customer and Customer's Authorized Users a non-exclusive, non-sublicensable, non-transferable (except as permitted by these Terms) license to use the Documentation during the Term solely for Customer's and its Authorized User's internal business purposes in connection with its use of the Services.
- (c) <u>Customer Responsibilities</u>. Customer is responsible and liable for its Authorized Users' access and use of the Services and Documentation, regardless of whether such use is permitted by the Agreement. Customer must use reasonable efforts to make all Authorized Users aware of the provisions applicable to their use of the Services, including the Incorporated Documents.
- (d) <u>Use Restrictions</u>. Customer may not at any time, directly or indirectly through any Authorized User, access or use the Services in violation of the Usage Policies, including any attempt to (1) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (2) sell, license, or otherwise transfer or make available the Services or Documentation except as expressly permitted by the Agreement; or (3) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part. Customer will not knowingly transmit any personally identifiable information to DebtBook or any other third-party through the Services.

- (e) <u>Suspension</u>. Notwithstanding anything to the contrary in the Agreement, DebtBook may temporarily suspend Customer's and any Authorized User's access to any or all of the Services if: (1) Customer is more than 45 days late in making any payment due under, and in accordance with, the terms of the Agreement, (2) DebtBook reasonably determines that (A) there is a threat or attack on any of the DebtBook IP; (B) Customer's or any Authorized User's use of the DebtBook IP disrupts or poses a security risk to the DebtBook IP or to any other customer or vendor of DebtBook; (C) Customer, or any Authorized User, is using the DebtBook IP for fraudulent or other illegal activities; or (D) DebtBook's provision of the Services to Customer or any Authorized User is prohibited by applicable law; or (3) any vendor of DebtBook has suspended or terminated DebtBook's access to or use of any third-party services or products required to enable Customer to access the Services (any such suspension, a "Service Suspension"). DebtBook will use commercially reasonable efforts to (i) provide written notice of any Service Suspension to Customer, (ii) provide updates regarding resumption of access to the Services, and (iii) resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. DebtBook is not liable for any damage, losses, or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.
- (f) Aggregated Statistics. Notwithstanding anything to the contrary in the Agreement, DebtBook may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between DebtBook and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by DebtBook. DebtBook may compile Aggregated Statistics based on Customer Data input into the Services. DebtBook may (1) make Aggregated Statistics publicly available in compliance with applicable law, and (2) use Aggregated Statistics as permitted under applicable law so long as, in each case, DebtBook's use of any Aggregated Statistics does not identify the Customer or disclose Customer's Confidential Information.
- 3. <u>Service Levels and Support</u>. Subject to the terms and conditions of the Agreement, DebtBook will use commercially reasonable efforts to make the Application Services and Support Services available in accordance with the SLA.

4. Fees and Payment.

- (a) Fees. Customer will pay DebtBook the fees ("Fees") set forth in the Order Form. DebtBook will invoice Customer for all Fees in accordance with the invoicing schedule and requirements set forth in the Order Form. Customer must pay all Fees in US dollars, and all Fees are fully earned once paid. To the extent permitted by applicable law, if Customer fails to make any payment when due, DebtBook may, without limiting any of its other rights, charge interest on the past due amount at the lowest of (1) the rate of 1.5% per month, (2) the rate established in any Customer Term, or (3) the maximum rate permitted under applicable law.
- (b) <u>Taxes</u>. All Fees and other amounts payable by Customer under the Agreement are exclusive of taxes and similar assessments. Unless Customer is exempt from making any such payment under applicable law or regulation, Customer is responsible for all applicable sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer under the Agreement, other than any taxes imposed on DebtBook's income.

5. <u>Confidential Information</u>.

- (a) From time to time during the Term, either party (the "Disclosing Party") may disclose or make available to the other party (the "Receiving Party") information about the Disclosing Party's business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether in written, electronic, or other form or media, that is marked, designated, or otherwise identified as "confidential", or which a reasonable person would understand to be confidential or proprietary under the circumstances (collectively, "Confidential Information"). For the avoidance of doubt, DebtBook's Confidential information includes the DebtBook IP and the Application Services source code and specifications. As used in the Agreement, "Confidential Information" expressly excludes any information that, at the time of disclosure is (1) in the public domain; (2) known to the receiving party at the time of disclosure; (3) rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (4) independently developed by the Receiving Party.
- (b) To the extent permitted by applicable law, the Receiving Party will hold the Disclosing Party's Confidential Information in strict confidence and may not disclose the Disclosing Party's Confidential

Information to any person or entity, except to the Receiving Party's employees, officers, directors, agents, subcontractors, financial advisors, and attorneys who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations under the Agreement or otherwise in connection with the Services. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (1) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order must first give written notice to the other party and make a reasonable effort to obtain a protective order; or (2) to establish a party's rights under the Agreement, including to make required court filings.

- (c) On the expiration or termination of the Agreement, the Receiving Party must promptly return to the Disclosing Party all copies of the Disclosing Party's Confidential Information, or destroy all such copies and, on the Disclosing Party's request, certify in writing to the Disclosing Party that such Confidential Information has been destroyed.
- (d) Each party's obligations under this Section are effective as of the Effective Date and will expire three years from the termination of the Agreement; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of the Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

6. <u>Intellectual Property</u>.

- (a) <u>DebtBook IP</u>. As between Customer and DebtBook, DebtBook owns all right, title, and interest, including all intellectual property rights, in and to the DebtBook IP.
- (b) <u>Customer Data</u>. As between Customer and DebtBook, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to DebtBook a non-exclusive, royalty-free, worldwide license to reproduce, distribute, sublicense, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary or appropriate for DebtBook to provide the Services to Customer.
- (c) <u>Effect of Termination</u>. Without limiting either party's obligations under Section 5, on written request by Customer made within 30 days after the effective date of termination of the Agreement, DebtBook, at no further charge to Customer, will (1) provide Customer with temporary access to the Application Services to permit Customer to retrieve its Customer Data in a commercially transferrable format and (2) use commercially reasonable efforts to assist Customer, at Customer's request, with such retrieval.

7. <u>Limited Warranties</u>.

- (a) <u>Functionality & Service Levels</u>. During the Term, the Application Services will operate in a manner consistent with general industry standards reasonably applicable to the provision of the Application Services and will conform in all material respects to the Documentation and service levels set forth in the SLA when accessed and used in accordance with the Documentation. Except as expressly stated in the SLA, DebtBook does not make any representation, warranty, or guarantee regarding availability of the Application Services, and the remedies set forth in the SLA are Customer's sole remedies and DebtBook's sole liability under the limited warranty set forth in this paragraph.
- (b) <u>Security</u>. DebtBook has implemented Appropriate Security Measures and has made commercially reasonable efforts to ensure its licensors and hosting providers, as the case may be, have implemented Appropriate Security Measures intended to protect Customer Data.
- (c) EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, DEBTBOOK IP IS PROVIDED "AS IS," AND DEBTBOOK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. DEBTBOOK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION, DEBTBOOK MAKES NO WARRANTY OF ANY KIND THAT THE DEBTBOOK IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

(d) DebtBook exercises no control over the flow of information to or from the Application Service, DebtBook's network, or other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt connections to the Internet. Although DebtBook will use commercially reasonable efforts to take all actions DebtBook deems appropriate to remedy and avoid such events, DebtBook cannot guarantee that such events will not occur. ACCORDINGLY, DEBTBOOK DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATING TO ALL SUCH EVENTS, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, ANY OTHER ACTIONS OR INACTIONS CAUSED BY OR UNDER THE CONTROL OF A THIRD PARTY.

8. <u>Indemnification</u>.

(a) <u>DebtBook Indemnification</u>.

- (i) DebtBook will indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) (collectively, "Losses") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("Third-Party Claim") that the Application Services, or any use of the Application Services in accordance with the Agreement, infringes or misappropriates such third party's US patents, copyrights, or trade secrets, provided that Customer promptly notifies DebtBook in writing of the Third-Party Claim, reasonably cooperates with DebtBook in the defense of the Third-Party Claim, and allows DebtBook sole authority to control the defense and settlement of the Third-Party Claim.
- (ii) If such a claim is made or appears possible, Customer agrees to permit DebtBook, at DebtBook's sole expense and discretion, to (A) modify or replace the DebtBook IP, or component or part of the DebtBook IP, to make it non-infringing, or (B) obtain the right for Customer to continue use. If DebtBook determines that neither alternative is reasonably available, DebtBook may terminate the Agreement in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, so long as, in each case, DebtBook promptly refunds or credits to Customer all amounts Customer paid with respect to the DebtBook IP that Customer cannot reasonably use as intended under the Agreement.
- (iii) DebtBook's indemnification obligation under this Section will not apply to the extent that the alleged infringement arises from Customer's use of the Application Services in combination with data, software, hardware, equipment, or technology not provided or authorized in writing by DebtBook or modifications to the Application Services not made by DebtBook.
- (b) <u>Sole Remedy</u>. SECTION 8(a) SETS FORTH CUSTOMER'S SOLE REMEDIES AND DEBTBOOK'S SOLE LIABILITY FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT WILL DEBTBOOK'S LIABILITY UNDER SECTION 8(a) EXCEED \$1,000,000.
- (c) <u>Customer Indemnification</u>. To the extent permitted by applicable law, Customer will indemnify, hold harmless, and, at DebtBook's option, defend DebtBook from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with the Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's negligence or willful misconduct or use of the Services in a manner not authorized by the Agreement.
- 9. <u>Limitations of Liability</u>. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION, IN NO EVENT WILL THE AGGREGATE LIABILITY OF DEBTBOOK ARISING OUT OF OR RELATED TO THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO DEBTBOOK UNDER THE AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION DO NOT APPLY TO CLAIMS PURSUANT TO SECTION 8.

10. <u>Term and Termination</u>.

- (a) <u>Term</u>. Except as the parties may otherwise agree in the Order Form, or unless terminated earlier in accordance with the Agreement:
 - (i) the Initial Term of the Agreement will begin on the Effective Date and end on the Initial Term End Date;
 - (ii) the Agreement will automatically renew for successive 12-month Renewal Terms unless either party gives the other party written notice of non-renewal at least 30 days before the expiration of the then-current term; and
 - (iii) each Renewal Term will be subject to the same terms and conditions established under the Agreement, with any Fees determined in accordance with DebtBook's then-current pricing schedule published on DebtBook's website and generally appliable to all users of the Services, as provided to Customer at least 60 days before the expiration of the then-current term.
 - (b) <u>Termination</u>. In addition to any other express termination right set forth in the Agreement:
 - (i) DebtBook may terminate the Agreement immediately if Customer breaches any of its obligations under Section 2 or Section 5;
 - (ii) Customer may terminate the Agreement in accordance with the SLA;
 - (iii) either party may terminate the Agreement, effective on written notice to the other party, if the other party materially breaches the Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach;
 - (iv) if (1) Customer is a governmental entity and (2) sufficient funds are not appropriated to pay for the Application Services, then Customer may terminate the Agreement at any time without penalty following 30 days prior written notice to DebtBook; or
 - (v) either party may, to the extent permitted by law, terminate the Agreement, effective immediately on written notice to the other party, if the other party becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law.
- (c) <u>Survival</u>. Only this Section and Section 1 (Definitions), Sections 4 through 6 (Fees; Confidential Information; Intellectual Property), Section 7(c) (Disclaimer of Warranties), and Sections 8, 9 and 12 (Indemnification; Limitations of Liability; Miscellaneous) will survive any termination or expiration of the Agreement.
- 11. <u>Independent Contractor</u>. The parties to the Agreement are independent contractors. The Agreement does not create a joint venture or partnership between the parties, and neither party is, by virtue of the Agreement, authorized as an agent, employee, or representative of the other party.

12. <u>Miscellaneous</u>.

- (a) <u>Governing Law; Submission to Jurisdiction</u>. The Agreement will be governed by and construed in accordance with the laws of the Governing State, without regard to any choice or conflict of law provisions, and any claim arising out of the Agreement may be brought in the state or federal courts located in the Governing State. Each party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding.
- (b) <u>Entire Agreement; Order of Precedence</u>. The Order Form, any Customer Terms, the Terms & Conditions, and the Incorporated Documents constitute the complete Agreement between the parties and supersede any prior discussion or representations regarding the Customer's purchase and use of the Services.

To the extent any conflict exists between the terms of the Agreement, the documents will govern in the following order or precedence: (1) the Order Form (2) the Customer Terms, (3) the Terms & Conditions, and (4) the Incorporated Documents. No other purchasing order or similar instrument issued by either party in connection with the Services will have any effect on the Agreement or bind the other party in any way.

- (c) Amendment; Waiver. No amendment to the Order Form, the Terms & Conditions, or the Customer Terms will be effective unless it is in writing and signed by an authorized representative of each party. DebtBook may update the Incorporated Documents from time-to-time following notice to Customer so long as such updates are generally applicable to all users of the Services. No waiver by any party of any of the provisions of the Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, delay in exercising, or any partial exercise of any rights, remedy, power, or privilege arising from the Agreement will in any way waive or otherwise limit the future exercise of any right, remedy, power, or privilege available under the Agreement.
- (d) Notices. All notices, requests, consents, claims, demands, and waivers under the Agreement (each, a "Notice") must be in writing and addressed, if to Customer, to the recipients and addresses set forth on the Order Form (or to such other address as Customer may designate from time to time in accordance with this Section). All Notices to DebtBook must be addressed to the recipients and addresses set forth at https://www.debtbook.com/legal. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid).
- (e) <u>Force Majeure</u>. In no event will either party be liable to the other party, or be deemed to have breached the Agreement, for any failure or delay in performing its obligations under the Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including acts of God, flood, fire, earthquake, pandemic, epidemic, problems with the Internet, shortages in materials, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
- (f) <u>Severability</u>. If any provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- (g) <u>Assignment</u>. Either party may assign its rights or delegate its obligations, in whole or in part, on 30 days prior written notice to the other party, to an affiliate or an entity that acquires all or substantially all of the business or assets of such party, whether by merger, reorganization, acquisition, sale, or otherwise. Except as stated in this paragraph, neither party may assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned, or delayed. The Agreement is binding on and inures to the benefit of the parties and their permitted successors and assigns.
- (h) <u>Marketing</u>. Neither party may issue press releases related to the Agreement without the other party's prior written consent. Either party may include the name and logo of the other party in lists of customers or vendors.
- (i) <u>State-Specific Certifications & Agreements</u>. To the extent required under the laws of the Governing State, DebtBook hereby certifies and agrees as follows:
 - (i) DebtBook has not been designated by any applicable government authority or body as a company engaged in the boycott of Israel under the laws of the Governing State:
 - (ii) DebtBook is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Agreement by any governmental department or agency of the Governing State;
 - (iii) DebtBook will not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state, or local law; and
 - (iv) DebtBook will verify the work authorization of its employees using the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security and, if applicable, will require its subcontractors to do the same.

(j) <u>Execution</u>. Any document executed and delivered in connection with the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. To the extent permitted by applicable law, electronic signatures may be used for the purpose of executing the Order Form by email or other electronic means. Any document delivered electronically and accepted is deemed to be "in writing" to the same extent and with the same effect as if the document had been signed manually.



City of Vestavia Hills, AL

Submitted by: Adam Fekini

Title: Regional Sales Director, Renewals

Date: 1/19/2022

adam.fekini@debtbook.com

Transmittal Letter

City of Vestavia Hills,

At DebtBook, our mission is to make great debt and lease management easy. We're building software to empower you to drive your organization to new heights. We have been developing a custom debt and lease management solution for local governments, educational institutions, and non-profits for over two years - we're doing it in collaboration with government finance teams and cities around the Country to make sure our industry gets the tools we deserve.

We have created a unique ever-evolving solution based on the wants and needs of local governments. We offer the latest technology, a product built specifically for local governments, a compelling vision for consolidated debt, lease (GASB 87) and IT contract (GASB 96) management software alongside an unmatched implementation experience and an education first approach. We believe that DebtBook is the most efficient and effective choice for the City for the following reasons:



Consolidated Debt & Lease Management - If the City doesn't rely on just debt, why should its software report on just debt? It shouldn't. DebtBook offers both Debt and Lease Management within a single application to make sure local governmental financial professionals can see the whole picture and manage their funds in a consolidated application rather than disparate systems. This means ongoing reporting and year end audit notes are consistent and come from the same place.



Made for Governments - The best way to make sure a solution meets a clients needs is to sit at a table with them and truly understand what those needs are. At DebtBook we have done just that. We initially built the software based on the challenges of local government and continue to iterate as those challenges evolve.



White Glove Onboarding - There is no point in getting good software if you can't get your information into the software. DebtBook removes the traditional headache of implementing new software through our White Glove Onboarding in which we do 90% of the work and have the City confirm the details.

As many of our clients have come to learn, the application being presented today will be vastly different than the application available next year. We will continue to introduce new features and functionality in the same way we have brought a GASB 87 compliance offering to the market over the last year. We are excited to highlight our existing functionality and discuss any upcoming functionality with the City and how we are able to do all of this at a substantially lower cost than our competition. This is our way of benefiting local governments around the country by providing a meaningful tool build through a collaborative process specifically for local governments.

Sincerely,

Tyler Traudt tyler.traudt@debtbook.com (804) 317-2917 Founder and CEO

Debt & Lease Management

"I believe DebtBook is one of those hidden gems, as far as tools go, to manage leases and general obligation bonds."

-- Kevin Bueso, Chief Financial Officer for McHenry County, IL

DebtBook is proud to say that it has built an application that can beat the best applications in Debt Management as well as best applications in Lease Management. DebtBook's all-in-one cloud based solution combines both Debt and Leases without the need for on-premise hosting. Due to recent changes from the Governmental Accounting Standards Board (GASB), the GASB 87 Standard supports our reasoning to consolidate these processes and create a single solution. The GASB 87 standard states that GASB is requiring local governments to reclassify their Capital and Operating Leases into "Debt" or "Lease". DebtBook is the only solution that will allow the City to store and report on this information no matter how it is classified.

Below, we have included a brief overview of both our Debt and Lease functionality.

Debt Management - DebtBook started as a Debt Management solution that was built by industry professionals for industry professionals. In other words, DebtBook's founding team took its experience in working with municipal and non-profit clients and combined it with ongoing client conversations to build a solution that eliminates errors while streamlining efficiencies. Whether a client is interested in seeing their Debt split by Type, Fund, Purpose, or Project or creating Year End Reporting Notes that meet GFOA Certificate of Achievement in Financial Reporting standards, DebtBook has created a solution that can do it all.

Lease Management - With the introduction of the GASB 87 standard it made sense for DebtBook to move into helping municipalities and nonprofits manage their leases. While GASB 87 is focused on the reclassification of Operating and Capital Leases we also know that GASB 96 is next and will be focusing on IT leases. As such, DebtBook's ability to show forward looking lease schedules, deferred inflow of resources, custom charts, in addition to high level summaries of both the Lessee and the Lessor side of leases makes DebtBook's solution a truly unique offering in the market. Furthermore, our GASB 87 functionality is live within the application and has received 100% positive reviews from clients that are live within the application. We continue to implement more cities, counties, and universities weekly.

Additionally, DebtBook will never see its application as "complete". This is important because it is within DebtBook's ethos to ensure we are constantly seeking feedback and making the necessary adjustments. This starts during the implementation process and continues through the life of the contract with continual requests for feedback and additional feature requests.

Scope of Services

DebtBook helps finance teams in local government, higher education, and healthcare effectively manage their debt and leases in the cloud, giving them the tools and resources to organize, track, and analyze their borrowing and leasing in a whole new way.



Audit Trails

Reduce the time it takes to prepare for audit season with detailed records and verification of payments and other events



Minimized Risk

Don't leave debt payments and other important tasks to chance; minimize risk with reminders for upcoming milestones



Automation

Free up your schedule by automating manual and painstaking tasks like yearend notes and amortization schedules



Reduced Data Errors

Replace outdated, inaccurate paper files and spreadsheets with trustworthy data and models you can feel confident in



Collaboration

No more emailing or requesting access to spreadsheets; invite unlimited internal and external users to your workspace



Reporting Efficiency

Generate reports, charts, and financial notes in seconds with a simple click of a button



Compliance

Implement and adhere to changing accounting standards with ongoing compliance made easy



Single Source of Truth

Create a master data warehouse where all debt and lease obligations and source documentation can be stored



Data Confidence

Feel confident when calculating complex reports and projections, knowing your data is accurate and tied out to the penny



Succession Planning

Ensure business continuity regardless of any future staffing or departmental changes



Data Security

Have peace of mind knowing your important and sensitive data is secure and protected 24/7



Transparency

Provide internal users, external networks, and constituents with comprehendible data visualization, charts, and other reports



Financial Reporting Excellence

Export financial notes and reports that are designed to meet Excellence in Financial Reporting standards

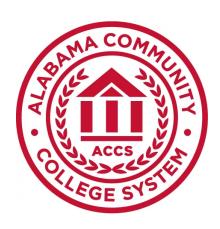
Empowering Teams Across Alabama and the United States

Hundreds of organizations across the country and throughout the state of Alabama trust DebtBook to help them modernize their Debt and Lease Management.

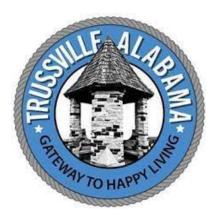
Local to the State of Alabama







Alabama Community College System



City of Trussville, AL

Across the Country



City of Nashville, TN



City of Memphis, TN



City of Jacksonville, FL



City of Austin, TX

DebtBook is a game-changer. It provides the end user the opportunity to retrieve reports on an as-needed basis, whether the information requested is an aggregate for one bond series or several bonds. Because the software platform is cloud-based, I can work from anywhere, at home or in the office.



Thank You

As part of our response we chose to provide a high level overview of our solution, however, if the City has any questions or would like further clarification regarding the information provided we are more than willing to assist in any way. We are committed to meeting the City's needs and are happy to provide further explanation, host demonstrations, or provide any additional written commentary.

We also want to thank you for considering our proposal and reiterate how excited we are to continue our partnership. We are confident that we will be able to meet the City's needs by making the City's day-to-day life easier. We do this through our white glove implementation process, streamlining processes, providing better access to documentation, and enabling cross functional sharing throughout the our client's organization and its supporting staff (accountants, lawyers, bankers, etc.).

We look forward to continuing our relationship!

PATRICK H. BOONE

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

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

E-Mail: patrickboone@bellsouth.net

January 21, 2022

By Electronic Mail

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

In Re: Ordinance Number 3082 Approving Contract Between the City and DebtBook

Dear Mrs. Leavings:

On January 19, 2022, you sent to me via electronic mail a copy of proposed Ordinance Number 3082 approving the execution and delivery of an agreement by and between the City of Vestavia Hills, Alabama ("City") and DebtBook with a request that I review the same and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. FACTS

Fifth Asset, Inc. d/b/a DebtBook ("DebtBook") presented to the Vestavia Hills Finance Department offering it the non-exclusive right to access and use software services during a term of three (3) years for and in consideration of the sum of \$20,375.00. My legal opinion and recommendations are set forth below.

II. <u>LEGAL ISSUE ONE</u>

- **A.** <u>LEGAL ISSUE ONE:</u> Is the contract with DebtBook subject to the Alabama Competitive Bid Law?
- **B.** <u>LEGAL OPINION:</u> It is my legal opinion that the contract is not subject to the Alabama Competitive Bid Law.

- C. <u>Basis for Legal Opinion</u>: I base my legal opinion upon the Alabama Competitive Bid Law, which states in pertinent parts as follows:
- (1) The Alabama Competitive Bid Law applicable to municipalities set forth at Title 41-16-50(a), *Code of Alabama*, 1975, provides in pertinent parts as follows:
 - With the exception of contracts for "(a) competitive public works whose bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000) more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars (\$15,000) or more, by or on behalf of any...governing bodies municipalities of the state ... shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder."
 - (2) Title 41-16-51(a)(11), *Code of Alabama*, 1975, provides as follows:

"§41-16-51. Exemptions—Void Contracts—Criminal Penalties.

- (a) Competitive bids shall not be required for utility services, the rates for which are fixed by law, regulation, or ordinance, and the competitive bidding requirements of this article shall not apply to:
- (11) Purchases of computer and word processing hardware when the hardware is the only type that is compatible with hardware already owned by the entity taking bids **and custom software**. (emphasis added)"

III. LEGAL ISSUE TWO

- **A.** <u>LEGAL ISSUE TWO:</u> Is the City required to pay sales taxes?
- **B.** <u>LEGAL OPINION:</u> It is my legal opinion that the City is not required to pay sales taxes.

C. <u>Basis For Legal Opinion</u>: I base my legal opinion upon Title 40-23-4(a), *Code of Alabama*, 1975. Municipalities in Alabama are not legally required to pay sales taxes. Title 40-23-4(a), *Code of Alabama 1975*, reads in pertinent part as follows:

"§40-23-4. Exemptions; Certain Sales.

- (a) There are exempted from the provisions of this division and from the computation of the amount of the tax levied, assessed, or payable under this division the following:
- (11) The gross proceeds of sales of tangible personal property to the State of Alabama, to the counties within the state and to incorporated municipalities in the State of Alabama.
- (15) The gross proceeds of the sale or sales of tangible personal property to county and city school boards, independent school boards, and all educational institutions and agencies of the State of Alabama, the counties within the state, or any incorporated municipalities of the State of Alabama."
- **D** MY RECOMMENDATION: I recommend that Section 4(b) of the contract be deleted in its entirety.

IV. <u>LEGAL ISSUE THREE</u>

- **A.** <u>LEGAL ISSUE THREE:</u> Can the City legally indemnify, defend and hold harmless another party as required by Section 8(c) of the contract?
- **B.** <u>LEGAL OPINION:</u> It is my legal opinion that a city cannot spend public funds to indemnify, defend and hold harmless other parties.
 - C. <u>Basis for Legal Opinion</u>: I base my opinion upon the following:

1. <u>Expenditure of Public Funds:</u>

(a) <u>Constitution of Alabama of 1901</u>: Section 94 of the *Constitution of Alabama*, as amended by Amendments 112 and 558, prohibits a city from granting public money to any individual, association or corporation whatsoever. Section 94 of the *Constitution of Alabama* as amended by Amendments 112 and 558, provides as follows:

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

Private Purposes: Municipalities in Alabama Cannot Spend Public Money for Private Purposes: Municipalities in Alabama may spend public funds only for public purposes. The Supreme Court of Alabama has interpreted the language of Sections 93 and 94 of the Constitution of Alabama to allow appropriations of public funds when the appropriation is used for public purposes. Alabama Constitution amend. 93; Alabama Constitution amend. 94; Slawson v. Alabama Forestry Comm'n, 631 So.2d 953 (Ala.1994). Opinion of the Justices No. 269, 384 So.2d 1051 (1980); Stone v. State, 251 Ala. 240 (1948).

It is my legal opinion, based upon the above legal authorities, that the City cannot spend public money to indemnify third parties.

D MY RECOMMENDATION: I recommend that Section 8(c) of the contract be deleted in its entirety.

IV. <u>LEGAL ISSUE FOUR</u>

- **A.** <u>LEGAL ISSUE FOUR:</u> Can the City legally enter into a contract without immigration language?
- **B.** <u>LEGAL OPINION:</u> It is my legal opinion that the answer to Legal Issue Four is in the negative.
- C. <u>Basis For Legal Opinion:</u> Alabama law at Title 31-13-9(k), *Code of Alabama*, 1975, provides as follows:
 - "(k) All contracts or agreements to which the state, a political subdivision, or state-funded entity are a party shall include the following clause: 'By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom'."

D. RECOMMENDATION: I recommend that the following language be added to the contract:

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

V. <u>RECOMMENDATION</u>

From a legal standpoint, I recommend that the City Council approve and adopt Ordinance Number 3082 subject to DebtBook amending the proposed contract consistent with this legal opinion. Please call me if you have any legal questions regarding this matter.

Sincerely,

Patrick H. Boone Vestavia Hills City Attorney

Tim HBoone

PHB:gp

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

Finance Director Melvin Turner, III (by e-mail)

RESOLUTION NUMBER 5374

A RESOLUTION AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO INSTALL RESURFACING AT THE MEADOWLAWN PARK

WHEREAS, the Director of Public Services has investigated and located a poured in place surfacing for the City's Meadowlawn Park playground that would be more durable and ease maintenance issues with the surfacing which is detailed in an Interoffice Memorandum marked as Exhibit A, a copy of which is attached to and incorporated into this Resolution Number 5374 as if written fully therein; and

WHEREAS, the surfacing replacement can be obtained through a purchasing cooperative as approved by the State of Alabama Office of Public Examiners pursuant to Alabama's cooperative bidding laws; and

WHEREAS, a proposal has been obtained from GameTime c/o Struthers Recreation, LLC., to replace said surfacing following the removal of the existing surface by City work crews for a total of \$67,264.00, which is detailed in the attached quote marked as Exhibit B, a copy of which is attached to and incorporated into this Resolution Number 5374 as if written fully therein; and

WHEREAS, Alabama Senator Dan Roberts has secured funding in the amount of \$64,000 for this project with \$3,264.00 in funding needed in order to completely fund the project; and

WHEREAS, the Mayor and City Council agree that it is in the best public interest to accept said quote and authorize the City Manager to take all actions necessary in order to resurface the areas of Meadowlawn Park as described.

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

- The City Manager is hereby authorized to accept the quote as detailed in Exhibit B and take all actions necessary in order to purchase and install the detailed surface to the Meadowlawn Park; and
- 2. Funding for the project shall be expensed to the \$64,000.00 donation by Senator Dan Roberts along with \$3,264.00 from the City's Capital Project's Fund; and
- 3. This Resolution Number 5374 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 14th day of February, 2022.

Ashley C.	Curry
Mayor	

ATTESTED BY:

Rebecca Leavings City Clerk

Vestavia Hills Public Services 1032 Montgomery Highway Vestavia Hills, AL 35216

INTEROFFICE MEMO

Date: January 18, 2021

TO: Jeff Downes

City Manager

From: Brian Davis

Director of Public Services

RE: Meadowlawn playground surfacing

Please see attached quote for poured in place surfacing at Meadowlawn Park for the playground. As you are aware, Senator Roberts gave a donation of \$64,000 toward this project. The quote shows that \$3,350 would be saved if our staff performed the work to remove the current surfacing, for a total cost of \$67,264.

I am requesting an additional \$3,264 to supplement the grant and complete this project. It should go a long way to ease ongoing maintenance issues with the surfacing, as well as make it more ascetically pleasing.

I have also discussed the bidding process with Becky, and I have attached the contract that was approved through OMNIA partners cooperative purchasing. This contract has been approved by the state of Alabama.

Please let me know if you have any questions.

CC: Rebecca Leavings



c/o Struthers Recreation, LLC. P.O. Box 1178 Pelham. AL 35124 Phone: 800-221-8869

Fax: 205-663-5012

Vestavia Hills - Meadowlawn Surfacing_2022

City of Vestavia Hills Parks and Recreation Attn: Brian Davis Meadowlawn Drive Vestavia Hills, AL 35243

Phone: 205-978-0100 Fax:205-978-0174 bdavis@vhal.org

Ship to Zip 35243

Quantity	Part #	Description	Unit Price	Amount
2640	PIPAL	GT-Impax - Square Feet - Poured in Place Rubber Safety Surfacing- 800sf @ 2" Thick for 5'CFH 1840sf @ 3.5" Thick for 8'CFH Includes dumpster and security pricing.	\$20.61	\$54,410.40
1	CONCRETE	Struthers Recreation - Concrete Base and 6" Perimeter Curb	\$20,800.00	\$20,800.00
1	DEMO	Struthers Recreation - Removal of Existing Mulch- May be deducted if performed by others	\$3,350.00	\$3,350.00
			Sub Total	\$78,560.40
			Discount	(\$7,946.40)
			Total	\$70,614.00

OMNIA Partners Contract #2017001134

Purchase Orders must me made out to **GameTime** when purchasing through the contract.

Pricing: Quotes are valid for 30 days from date of quotation. Pricing may change after 30 days. If ship to zip code changes, freight may change. Payment terms: Credit Cards Accepted - VISA, American Express or MasterCard.

If paying by card, a 3.74% plus \$0.15 convenience fee is applied to the total purchase.

UNLESS SPECIFICALLY INCLUDED, THIS QUOTATION EXCLUDES ALL EQUIPMENT ASSEMBLY AND INSTALLATION; SAFETY SURFACING; BORDERS AND DRAINAGE PROVISIONS, ALL SITE WORK AND LANDSCAPING; REMOVAL OF EXISTING EQUIPMENT; ACCEPTANCE OF EQUIPMENT AND OFF-LOADING AND STORAGE OF GOODS PRIOR TO INSTALLATION. SIGNED ACCEPTANCE OF THIS QUOTE ASSUMES ACCEPTANCE OF TERMS AND CONDITIONS ON ATTACHED PAGE. TERMS: NET 30 DAYS

Vestavia Hills - Meadowlawn Surfacing_2022

Acceptance of quotation:

SIGNED ACCEPTANCE OF THIS QUOTE ASSUMES ACCEPTANCE OF ALL TERMS AND CONDITIONS IN THIS QUOTE.

Accepted By (printed):	Signature:	
P.O. No:	Purchase Amount: \$70,614.00	
Date:	Title:	
Phone:	Facsimilie:	
Order Information:		
Bill To:	Contact:	
Address:	Tel:	
City, State, Zip:		
Email for Invoicing:		
Ship To:	Contact:	
Address:	Tel:	
City, State, Zip:		
	/IBER)	
SALES TAX EXEMPTION CERTIFICATI	E#:	

COPY OF TAX EXEMPTION CERTIFICATE MUST BE PROVIDED FOR ALL TAX EXEMPT ORDERS

Vestavia Hills - Meadowlawn Surfacing_2022

TERMS AND CONDITIONS OF SALE Required for Complete Order: Purchase Order or Signed quote, 50% down and 50% net 30 after delivery or installation with credit approval or 100% payment with order, complete billing & shipping address w/ contact names and phone numbers, and color selections. Contractors provide fully executed bid/performance/payments bonds as applicable. Pricing: f.o.b. factory, firm for 30 days from date of quotation. Acceptance of this Transaction: constitutes entire agreement between buyer and seller. Failure to pay when agreed is basis for legal action to be taken. Buyer agrees to pay all legal costs for collection and reasonable attorney fees, and hereby waives rights of exemption as to personal property under the laws of the state of Alabama or any other state. In connection with this transaction, a finance charge will be imposed on the past due balance at an annual percentage rate of 18%, or 1-1/2% per month. Delivery Schedule: Upon written notification of order (with or without installation services) delivery will be made in appx, 45-60 days. Customer has 10 days after ordering to make request to delay ship date if site will not be ready. All efforts will be made to accommodate requests, but no change is guaranteed. Freight carrier is instructed to call 24 hours in advance to arrange delivery. Returned Goods: Returned goods are subject for a restocking fee of 30% in addition to both the outbound and inbound freight charges. Goods must be packaged to protect against damage in transit in accordance with best commercial practices. Labor and material costs to make returned goods merchantable will be deducted from any credit. Returned goods will not be accepted without an authorization number (RGA) assigned by Struthers Recreation, LLC. To be eligible for credit, returned good must be received at manufacturer within 45 days of issuance of a returned goods authorization number. Unloading: Unless unloading service is contracted, unloading of delivery truck is responsibility of customer. Forklift may be required. If unloading, customer is responsible for accepting and noting any damages or shortages on the freight bill and inspecting/inventorying equipment upon receipt. Customer must notify our office immediately of any discrepancies. Freight carrier is instructed to call your designated contact 24 hours in advance to arrange delivery. If job site is not prepared and ready for installation when equipment delivers, any pre-existing unloading agreement is voided and customer is responsible for truck unloading and equipment storage. Additionally Insured: Any entity or person named as additionally insured, add \$150.00 per each occurrence. TERMS AND CONDITIONS IF CONTRACTING INSTALLATION SERVICES Utilities: Customer is responsible for the location and marking of all underground utilities and sprinklers prior to installation. Struthers Recreation, LLC, is not responsible for damages or repairs to any form of underground utility or sprinklers. Equipment Layout: To be as illustrated & accepted on submitted drawings. Any requested changes may result in additional charges. Site Conditions: Installation quotations are based on a prepared level surface (slope not to exceed 1/2" over 25'), and open truck access to the area. We require a 10' wide path into the site and unloaded equipment to be within 100'. Please notify estimator of site concerns to ensure proper quotation. If installation crew arrives and installation cannot be performed due to unprepared surface or inadequate access, an additional \$1.500.00 will be charged for return trip. Pier spoils from installation shall be spread at site. Site will be left rough grade. Upcharge of \$65.00 per hour per man plus necessary equipment rental will be added for installation in rock, concrete or existing asphalt. Removal of existing equipment, trees, etc. is by others unless specifically contracted. Machinery Use: Installation requires the use of heavy machinery. All efforts are made to minimize damage to the site. It is recommended that all final landscaping, fencing, sidewalks, etc. be completed after installation of equipment and/or surfacing. Struthers Recreation, LLC. is not responsible for damage to grass or other site features due to normal, necessary equipment use. Please notify estimator to discuss concerns prior to accepting quotation in case revisions are needed. Waste Disposal: Dumpster or approved dumping area must be provided for packaging and other waste during installation. Struthers Recreation, LLC, is not responsible for removing waste from the property unless specifically contracted. Security: Struthers Recreation, LLC. is pleased to supply & install your equipment in a timely, professional manner. Upon completion, the equipment is secured with tape to discourage play and allow concrete to dry for 72 hours. Premature play will cause equipment to become loose in the concrete footings. Customer is responsible for prohibiting access to equipment during this critical drying time. Struthers Recreation, LLC, is not responsible for equipment that becomes loose in the concrete due to premature access or events beyond our control. If purchasing rubber safety surfacing, the 72 hour waiting period also applies. Premature access will leave imprints in rubber surfacing. Customer is responsible for security.

Struthers Recreation, LLC.		
DATE		
CUSTOMER		
DATE	 	

Vestavia Hills - Meadowlawn Surfacing_2022

COLOR SELECTIONS

To view the GameTime color chart, click here: https://www.gametime.com/colors

Plastic:	Uprights:	
Accent Metal:	Decks:	
Rock:	_ Shade Fabric:	
HDPE:	_	
Quote prepared by: Kight Jones		

Location: 401 Adams Avenue, Suite 280 Montgomery, AL 36104-4338



Rachel Laurie Riddle Chief Examiner

January 4, 2022

Alabama Community College System Alabama County Commissions Alabama Municipalities City and County Boards of Education

To Whom It May Concern,

Mailing Address: P.O. Box 302251 Montgomery, AL 36130-2251 Telephone (334) 242-9200 Fax (334) 242-1775 www.examiners.alabama.gov

PUBLIC WORKS NOTICE: This letter does not authorize the purchase of any goods or services from Omnia related to "public works," as defined in Section 39-2-1(6), Ala. Code (2011), except as follows: the contracts for purchasing air conditioning and heating units and systems, which were awarded to Trane (RFP#15-JLP-023), Daikin Applied Americas, Inc. (RFP#20-04), Johnson Controls, Inc. (RFP#20-04), and TDIndustries, Inc. (RFP#20-04) have been approved for use under the provisions of Section 39-2-2(d)(2), Ala. Code (2018), as amended by Act No. 2021-282. This approval does not authorize installation, labor, or services related thereto, which must be bid in compliance with Title 39.

In accordance with Sections 16-13B-2(a)(13) and 41-16-51(a)(16), Ala. Code 1975, as amended by Act No. 2021-485, the Department has reviewed the competitive bidding process used by Omnia Partners Public Sector ("Omnia"), a national purchasing cooperative, for the contracts awarded as of the date of this letter. The Department did not identify any matters that were contrary to proper purchasing procedures or routine governmental procurement practices. Each contract was awarded by various governmental entities pursuant to the competitive bid laws in the state of the awarding authority.

Based on the Department's review, the competitive bid process used by Omnia is approved for use through **December 31, 2022**. This approval authorizes the purchase, lease, or lease/purchase of certain goods or services, other than voice or data wireless communication services, when certain statutory conditions are fulfilled. See Sections 16-13B-2(a)(13) and 41-16-51(a)(16), Ala. Code 1975, as amended by Act No. 2021-485. This approval does **not** apply to State Public Four-Year Universities within the State of Alabama.

Prior to utilizing Omnia, each governmental entity must verify that the goods or services to be purchased, leased, or lease/purchased are not at the time available on the state purchasing program or are not available at a price equal to or less than that on the state purchase program. *Id.* Further, any such purchases, leases, or lease/purchases must be made through a participating Alabama vendor holding an Alabama business license if such vendor exist. *Id.*

Should the Department receive notice that Omnia, its awarding authorities, or its awarded vendors are allowing Alabama governmental entities to make unauthorized purchases or other unlawful business transactions, Omnia's competitive bid process approval will subject to immediate revocation by the Department.

If the Department can be of further assistance, please let us know.

Sincerely,

Rachel Laurie Riddle CHIEF EXAMINER

(866) 875-3299

Contact Us



MENU

REGISTER





Click to expand menu ▼

U.S. Communities and National IPA, both wholly-owned subsidiaries of OMNIA Partners, have come together as OMNIA Partners, Public Sector. All public sector participants already registered with National IPA or U.S. Communities continue to have access to all contracts, with certain exceptions, in the portfolio and do not need to re-register to use a legacy National IPA, legacy U.S. Communities, or new OMNIA Partners contract. U.S. Communities and National IPA remain separate legal entities and lead agency contracts completed under each brand are effective and available for use through the contract's approved term. In the event we believe re-registration is necessary for any reason, OMNIA Partners will let you know.

Playground and Outdoor Fitness Equipment, Site Accessories, Surfacing, and Related Products and Services

City of Charlotte, NC

Contract Number: 2017001134

July 1, 2017 through June 30, 2022 Option to renew for two (2) additional two-year periods through June 30, 2026

Executive Summary

- Uniform Guidance
- Due Diligence

Master Agreement Documents

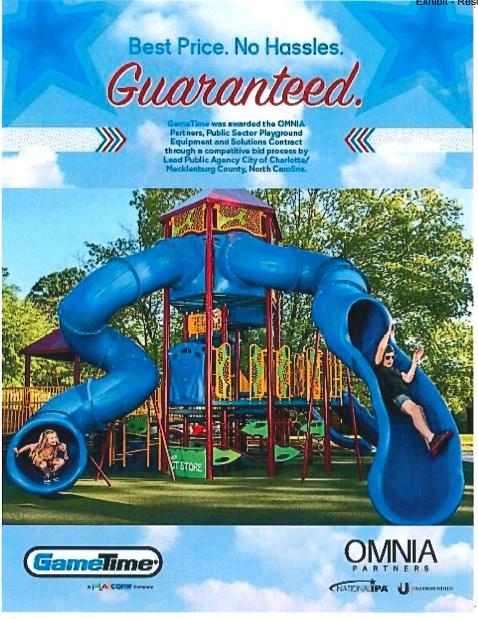
- GameTime Contract 2017001134
- Contract Amendment 1
- Contract Amendment 2
- Contract Amendment 3
- Contract Amendment 4
- Contract Amendment 5
- Contract Amendment 6
- Contract Amendment 7
- Contract Amendment 8
- Contract Amendment 9
- Contract Amendment 10

Solicitation Process

- RFP Playground Equipment 269-2017-028
- RFP 269-2017-028 Addendum 1
- RFP 269-2017-028 Addendum 2
- RFP 269-2017-028 Addendum 3
- RFP 269-2017-028 Postings Document

REQUEST CONTRACT INFORMATION

Click to Download



Contact Information

Tyler McCall

Senior Manager, Strategic Partnerships

GameTime/PlayCore

Mobile: (704)776-3193

tyler.mccall@gametime.com

www.gametime.com

SUPPLIER WEBSITE



Get in Touch

840 Crescent Centre Drive Suite 600 Franklin, TN 37067

866-875-3299

info@omniapartners.com

Sign up to receive email updates from OMNIA Partners, Public Sector

First name**	Last name**	
Company name**	Agency Type **	~
Email**		

By providing email address(es) and/or any other personal information, as defined under applicable law, you represent that you have the authority to provide such information and acknowledge that you are agreeing to OMNIA Partners' use of your information as provided in the Terms of Use and Privacy Notice.

□ Lagree*

ORDINANCE NUMBER 3081

AN ORDINANCE AUTHORIZING THE SETTLEMENT OF FOUR TAX APPEALS (BEING JEFFERSON COUNTY CIRCUIT COURT CASE NUMBERS 01-CV-2021-000125, 01-CV-2021-000126, 01-CV-2021-000127 AND 01 CV-2021-000128) SEEKING REFUNDS OF THE OVERPAYMENT OF BUSINESS LICENSE TAXES ERRONEOUSLY PAID BY FOUR INSURANCE COMPANIES IN 2017 AND 2018; AND AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER THE SETTLEMENT AGREEMENT AND ANY AND ALL DOCUMENTS AND OTHER ACTIONS NECESSARY TO EFFECTUATE SAID SETTLEMENT AGREEMENT.

THIS ORDINANCE NUMBER 3081 is approved, adopted and enacted by the City Council of the City of Vestavia Hills, Alabama on this the 14th day of February, 2022.

WITNESSETH THESE RECITALS:

WHEREAS, Alabama law at Title 11-51-191(5)(a), *Code of Alabama, 1975*, provides that a taxpayer may file an appeal with the Clerk of the Circuit Court of the County in which the municipality is located seeking a refund for any overpayment of business license tax erroneously by the taxpayer to a municipality; and

WHEREAS, four insurance companies filed appeals for such refunds in Jefferson County Circuit Court case numbers 01-CV-2021-000125, 01-CV-2021-000126, 01-CV-2021-000127 and 01 CV-2021-000128; and

WHEREAS, the four insurance companies have offered to settle the four said tax appeals upon the basis of the Settlement Agreement attached hereto, marked as Exhibit 1 and incorporated into this Ordinance Number 3081 by reference as though set out fully herein; and

WHEREAS, the City Attorney, City Manager and Finance Director have made a written recommendation that the City Council accept the Settlement Agreement and approve and adopt said Ordinance Number 3081; and

WHEREAS, a copy of said Recommendation is attached hereto, marked as Exhibit 2 and incorporated into this Ordinance Number 3081 by reference as though set out fully herein; and

WHEREAS, the City Council, based upon the recommendations set forth in Exhibit 1 and Exhibit 2 finds and determines that it will be in the best public interest to approve Ordinance Number 3081 and make the refunds and credits as requested by the four insurance companies.

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

- 1. <u>RECITALS:</u> The recitals set forth in the premises above are hereby incorporated into this ordinance by reference as though set out fully herein.
- **2. EXHIBITS:** Exhibit 1 and Exhibit 2 described in the premises above are hereby incorporated into this ordinance by reference as though set out fully herein.
- **3.** <u>AUTHORIZATION:</u> The Mayor and City Manager are hereby authorized and directed to execute and deliver the Settlement Agreement marked as Exhibit 1 and to execute and deliver any and all other documents and take any and all other actions necessary to implement the Settlement Agreement marked as Exhibit 1.
- 4. <u>SEVERABILITY:</u> 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.
- **5.** <u>EFFECTIVE DATE:</u> This Ordinance Number 3081 shall become effective upon its passage, approval and adoption as required by law.

ORDAINED, APPROVED, ADOPTED, DONE and ORDERED on this the 14th day of February, 2022.

Ashley C. Curry Mayor

ATTESTED BY

Rebecca Leavings City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA

STATE OF ALABAMA JEFFERSON COUNTY))
that the above and foregoing by the City Council of the C	City Clerk of the City of Vestavia Hills, Alabama, do hereby certify is a true and correct copy of an ordinance duly and legally adopted city of Vestavia Hills, Alabama, on the 14th day of February, 2022 the same appears of record in the minute book of said date of said
Witness my hand and	I seal of office this 14th day of February, 2022.
	Rebecca Leavings, City Clerk

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Settlement Agreement") is made and entered into as of January ____, 2022 by and among Garrison Property and Casualty Insurance Company, USAA General Indemnity Company, USAA Casualty Insurance Company, United States Automotive Association, on the one hand, and The City of Vestavia Hills, Alabama (collectively, the "City"), on the other hand.

Recitals

- A. For purposes of this Agreement, "Garrison" means Garrison Property and Casualty Insurance Company, and its parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, insurers, predecessors, successors, stockholders, members, assigns and any other person or entity acting or purporting to act on its behalf.
- B. For purposes of this Agreement, "GIC" means USAA General Indemnity Company, and its parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, insurers, predecessors, successors, stockholders, members, assigns and any other person or entity acting or purporting to act on its behalf.
- C. For purposes of this Agreement, "CIC" means USAA Casualty Insurance Company, and its parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, insurers, predecessors, successors, stockholders, members, assigns and any other person or entity acting or purporting to act on its behalf.
- D. For purposes of this Agreement, "USAA" means United States Automotive Association, and its parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, insurers, predecessors, successors, stockholders, members, assigns and any other person or entity acting or purporting to act on its behalf.
- E. For purposes of this Agreement, the "USAA Entities" means Garrison, GIC, CIC and USAA.
- F. For purposes of this Agreement, "Vestavia" and "Vestavia Hills" mean the City of Vestavia Hills, Alabama and all employees, agents, personnel, independent contractors, auditors, representatives, agencies, departments, and subdivisions of any of the foregoing.
- G. For purposes of this Agreement, "Parties" means the USAA Entities and Vestavia Hills.
 - H. The USAA Entities brought these appeals pursuant to ALA. CODE § 11-51-191.
- I. From 2016 through 2018, Vestavia Hills collected a business license tax from the USAA Entities based upon premiums collected by the USAA Entities from the USAA Entities' sale to residents within Vestavia Hills of new insurance policies and renewal insurance policies.

- J. However, the USAA Entities contend renewal premiums should not have been included, and Vestavia Hills should not have collected, business license tax based upon the Taxpayer's premiums collected from renewal insurance policies.
- K. On December 31, 2018, the USAA Entities submitted amended returns to Vestavia Hills as its petitions for refunds of the overpaid business license taxes paid to Vestavia Hills for the 2016, 2017 and 2018 municipal license years attributable to its renewal premiums ("Petitions for Refunds").
- L. Vestavia Hills never granted nor denied the Petitions for Refunds. Pursuant to ALA. Code § 11-51-191(g)(3), Vestavia Hills's failure to grant the full refund within six months of the filing of the Petitions for Refunds is deemed a denial.
- M. The USAA Entities brought the appeals (the "Appeals") to recover a refund. Those appeals were docketed as Case Nos. 01-CV-2021-000125, 01-CV-2021-000126, 01-CV-2021-000127, 01-CV-2021-000128.
- N. The Parties dispute the amount of the refund to which the USAA Entities are entitled.

WHEREFORE, the Parties, recognizing the certainty of further costs and the uncertainty of the results of protracted litigation, wish to completely and finally resolve their disputes and claims against one another in the litigation of the Appeals and have reached a compromise that fully resolves the assessments and the appeals as follows:

Agreement

- 1. <u>Resolution of the Appeals</u>. The Parties desire to reach a full and final resolution of the Appeals.
- **2.** Payment. In consideration for the promises and covenants made herein, Vestavia Hills shall pay to the USAA Entities the amount of fifty-nine thousand two hundred thirty-six and 25/100 dollars (\$59,236.25). Vestavia Hills will remit a check made payable to United States Automotive Association for thirty-four thousand five hundred eighty and 85/100 dollars (\$34,580.85). Vestavia Hills will also provide a credit to the USAA Entities for twenty-four thousand six hundred fifty-five and 40/100 dollars (\$24,655.40). This credit can be used by any of the USAA Entities towards future payments of their business license taxes, and it will not expire. This payment will settle all claims related to the refund sought by the USAA Entities. Upon payment of the sum specified, the USAA Entities hereby release and forever discharge Vestavia Hills from any and all claims related to the Petitions for Refunds sought by the USAA Entities.
- 3. <u>Closing of Relevant Tax Years</u>. In consideration for the promises and covenants made herein, Vestavia Hills agrees that the USAA Entities business license tax obligations for the 2016, 2017 and 2018 tax years shall be deemed satisfied in full and that Vestavia Hills shall not audit or enter any future assessments (or authorize the audit or assessment of) business license taxes owed by the USAA Entities for such years.

- 4. <u>Dismissal of the Appeal</u>. The Parties hereby consent to the dismissal with prejudice of all claims asserted in the Appeals. Within ten (10) days of the payment specified in this Settlement Agreement, the Parties agree to execute jointly a stipulation for dismissal with prejudice ("Stipulation for Dismissal") of all claims asserted in Appeals. The USAA Entities agree to file the executed Stipulation for Dismissal with the Circuit Court for Jefferson County, Alabama.
- 5. <u>Settlement of Disputed Issues</u>. The Parties agree that this Settlement Agreement represents a settlement and compromise of disputed issues. Accordingly, the Parties stipulate that the act of entering into this Settlement Agreement does not constitute any admission of liability, any other admission against interest, or any concession concerning the merits of any demands previously made by one against the other.
- **6.** <u>Authority</u>. Each of the Parties represents and warrants to the other Party that it has full power and authority to enter into, deliver and perform this Settlement Agreement. The individuals executing this Settlement Agreement on behalf of each Party represent and warrant by their signatures that they are duly authorized to execute and deliver this Settlement Agreement and that by executing this Settlement Agreement they bind that Party.
- 7. <u>Governing Law</u>. This Settlement Agreement shall be governed by the laws of the State of Alabama.
- **8.** <u>Modifications</u>. This Settlement Agreement contains all of the terms and conditions of and expresses the complete and only understanding between the Parties with respect to the subject matter of this Settlement Agreement. No change or modification of this Settlement Agreement shall be binding on either Party unless it is in writing and is executed by each Party.
- 9. <u>Counterparts</u>. This Settlement Agreement may be executed in several counterparts, each of which shall constitute an original, but together such counterparts shall constitute one and the same instrument.
- 10. <u>Further Actions</u>. The Parties agree to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Settlement Agreement.
- **IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates written below.

Garrison Property and Casualty Insurance Company

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By: _	Masses	Leffrey D. Dervines
		Jeffrey D. Downes
	its:	City Manager
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	Date: _	

EXHIBIT 2

RECOMMENDATION

TO: Mayor Ashley C. Curry and Members of the City Council

DATE: January 20, 2022

IN RE: Jefferson County Circuit Court Case Numbers 01-CV-2021-000125, 01-CV-2021-

000126, 01-CV-2021-000127 and 01 CV-2021-000128

The undersigned recommend to the Mayor and City Council of the City of Vestavia Hills, Alabama that Ordinance Number 3081 and the Settlement Agreement marked as Exhibit 1 and attached to that ordinance be approved, executed and delivered for and on behalf of the City of Vestavia Hills, Alabama.

Patrick H. Boone City Attorney

Jeffyey D. Downe City Manager

Melvin Turner, III Fnance Director