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**Vestavia Hills
City Council Agenda
March 28, 2022
(amended)
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Butch Williams, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
 - a. Upcoming Vacancy On Vestavia Hills Board Of Education – Kimberly Cook
7. City Manager’s Report
8. Councilors’ Reports
9. Financial Reports – Melvin Turner III, Finance Director
10. Approval Of Minutes – March 14, 2022 (Regular Meeting)

Old Business

11. Public Hearing – Ordinance Number 3088 – An Ordinance Granting A Franchise Agreement With Telepak Networks Inc., And Teklinks, Inc., Doing Business As C-Spire Business

New Business

12. Resolution Number 5379 – A Resolution Approving A New Personnel Compensation Schedule For Certain Non-Classified Personnel Of The City Of Vestavia Hills
13. Resolution Number 5380 – A Resolution Adopting The Division “G” Multi-Jurisdictional Hazard Mitigation Plan, In Fulfillment Of The Federal Disaster Mitigation Act Of 2000 And The Local Mitigation Plan Requirements Of The 44 C.F.R. Section 201.6

New Business (Requesting Unanimous Consent)

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

14. Public Hearing – Resolution Number 5381 - Annexation – 90 Day – 2245 And 2249 Blue Ridge Blvd; Request For Annexation And Development Of 25 Townhomes; Taylor Burton And Donald And Alicia Huey, Owners
15. Public Hearing – Resolution Number 5382 – A Resolution Authorizing The City Manager To Accept A Proposal For Acquisition Of Rights-Of-Way And Temporary Construction Easements For Project CMAQ-7030(600) Massey Road
16. Public Hearing – Resolution Number 5383 – A Resolution Authorizing The City Manager To Obtain Certain Professional Services Regarding Land Survey, Geotechnical Investigation, Landscape Design, Etc., For Altadena Valley Park In Preparation Of A Master Plan, Grading For An Access Road And Construction Of A Restroom Facility And Pavilion
17. Public Hearing – Ordinance Number 3083 – An Ordinance Authorizing And Directing The Mayor And City Manager To Execute And Between The City Of Childersburg, Alabama And The City Of Vestavia Hills, Alabama For The Development Of A Plan And The Preparation Of A Contract For The Implementation Of A Collaborative Use Of Land For A Public Safety Firing/Training Range By The Police Departments Of Both Cities.
18. Public Hearing – Ordinance Number 3095 - An Ordinance Adopting And Enacting Supplement IV For The Vestavia Hills Code Of Ordinances, Republished 2013
19. Citizens Comments
20. 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.

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

MARCH 14, 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
Rusty Weaver, Mayor Pro-Tem
Kimberly Cook, Councilor
Paul Head, Councilor
George Pierce, Councilor

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick Boone, City Attorney
Rebecca Leavings, City Clerk
Marvin Green, Fire Chief
Dan Rary, Police Chief
Melvin Turner, Finance Director
Zach Clifton, Accountant
Christopher Brady, City Engineer
Umang Patel, Court Director*
Keith Blanton, Building Official*

**present virtually via Zoom or telephone*

Jim Cartledge, 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. Weaver seconded by Mrs. Cook. Roll call vote was, as follows:

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

ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION

- Mayor Curry announced that a newly formed Kiwanis Club is currently meeting in the Executive Conference Room. He gave some background of the previous Kiwanis Club and indicated that they are regrouping and will be here to aid children in the area. He introduced David LeCompte.
 - Mr. LeCompete introduced himself and stated that he was with the Hoover Kiwanis and found out that there was no support system here in Vestavia Hills. He stated that they are meeting next door and need to get to the 15 members needed to put in for a Charter to begin this club. He stated that he's not aware of a community that gives back more than Vestavia Hills as evidenced by the Rotary Club and other civic organizations in this City and encouraged participation.
- Mr. Pierce welcome Jamie Purcell, Chamber of Commerce Board member present representing the Chamber.
- Mr. Head announced that the Parks and Recreation Board Parks will meet in a regular meeting tomorrow at 7 AM in the Executive Conference Room.
- Mrs. Cook announced an upcoming vacancy on the Vestavia Hills Board of Education. She stated that the Council will begin accepting applications on Tuesday, March 15, 2022. Applications will be accepted until 5 PM, Monday, April 11, 2022, and can be accessed tomorrow from the City's website. Interviews will be scheduled and an announcement of the appointment will be made April 25, 2022 at that Council meeting. She thanked the current Board of Education for their service over the past few years through the pandemic which took a lot of work and commitment. Questions about the application and interview process should be directed to City Clerk Rebecca Leavings.
- The Mayor announced an upcoming vacancy on the Birmingham-Jefferson County Transit Authority. This volunteer position is a four-year term. Our current representative's term expires on May 31, 2022. The BJCTA Board meets twice a month. The Board meetings are held at 12:00 noon on the first Wednesday of the month. The second meeting, a Work Session, is held on the third Wednesday at 10:00am. There are also called meetings that Board members are expected to attend. These meetings are held in the board room located in the BJCTA offices at 1801 Morris Avenue, Birmingham. Meetings are typically an hour and work sessions are generally 2-3 hours. Candidates for this position should have some knowledge of public transportation services, ADA mobility issues, logistics, and other transportation options, such as on-demand services, and be a resident of the City of Vestavia Hills. Candidates should consider and be aware of the time commitments that this position requires. Interested candidates should provide a letter of interest and resume (mail or email) to the Mayor's office, attention Joanie Alfano (jalfano@vhal.org). The deadline to apply is April 11, 2022, 5pm.

CITY MANAGER'S REPORT

- Mr. Downes stated that the City is about to reach another milestone on Crosshaven. Paving on the second phase of the project will be done at night to prevent any disruptions

of the businesses along that way. He stated that County crews were out there today installing new traffic signals.

- The Mayor stated that the bridge for the new Civic Center is being installed next door and that will be an exciting step.

COUNCILOR REPORTS

- Mr. Pierce stated he will attend Chamber of Commerce Board Meeting on Thursday, March 17, 2022.
- Mr. Weaver stated that the Planning and Zoning Commission met in regular session last Thursday with two conditional use requests for a veterinary clinic and a dog grooming facility and two compatible rezoning requests for annexations. These requests were discussed at length by the Commission, recommended for approval and will be coming for Council consideration soon.

APPROVAL OF MINUTES

The Mayor stated that the approval of the February 21 and 22, 2022 (Annual Strategic Work Session) and February 28, 2022 (Regular Meeting) was needed and opened the floor for a motion.

MOTION Motion to approve the minutes of the February 21 and 22, 2022 (Annual Strategic Work Session) was made by Mrs. Cook and second was by Mr. Weaver. Roll call vote as follows:

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

MOTION Motion to approve the minutes of the February 28, 2022 (Regular Meeting) was made by Mrs. Cook and second was by Mr. Weaver. Roll call vote as follows:

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

OLD BUSINESS

ORDINANCE NUMBER 3085

Public Hearing – Ordinance Number 3085 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Second Amendment To The Annexation Agreement With Liberty Park Joint Venture

Mr. Downes explained that even though the public hearings for this Ordinance and the next Ordinance are separate, they go hand-in-hand. He introduced Whit Colvin who is special counsel for the City concerning this development agreement. He gave a brief background of the meetings that have led to negotiations on these agreements, including public feedback from two town hall meetings and engagement through the Vestavia Listens portal. He explained that the City has created a project webpage so anyone can view current information about this proposed development. Tonight, consideration is for an amendment to the annexation agreement to adjust housing density from the earlier plan and to make it more compatible to current market demands. The other consideration is a development agreement that defines a public-private partnership between Liberty Park Joint Venture (LPJV) and the City for a town center live-work development called The Bray. He explained the concept of the development and the density of single-family units located along the south end of the tract. He explained the proposed transportation and pedestrian infrastructure that is planned, along with contribution of a 15-acre site for a proposed future school site. Jefferson County will gain benefit from this development and has offered to participate in the cost of the development. He stated that the public investment would be \$23 million over the next 20 years which would come out of new revenue along with \$11 million from other sources, with public payments triggered by completion requirements, constituting phases of the development.

MOTION Motion to approve Ordinance Number 3085 was by Mr. Weaver and seconded by Mrs. Cook.

Mrs. Cook stated she has been engaged in many conversations with the public concerning this development, and asked that her formal statement about conclusions be entered into the record, verbatim.

“BRAY SCHOOL IMPACTS

As I have considered this private development proposal, the number one priority for me has been to ascertain what would be the impact to our schools. As we first started discussing the Bray proposal, what we all quickly learned was that – regardless of whether the Bray proposal is accepted -- there will be a likely need for a second elementary school in Liberty Park, but no need for a high school. We learned that more students were coming to Liberty Park Elementary whether we approve the Bray or not – and this increase in students was eventually going to require the construction of a new elementary school.

For me, this was a game-changer. This meant we needed to secure a proper site for the school and choose a plan that would best provide the necessary funding to build the school – an annual debt service cost of \$1.5 million. This fact prompted the City to ask for new, more advantageous agreement terms. I believe Mr. Weaver will provide comments on steps the Council took to negotiate the most advantageous terms for the good of our school system.

IMPACT ON SCHOOL GROWTH AND REVENUE

Once I knew that a new elementary school would be needed in Liberty Park regardless, my next priority was to discover which plan would best provide the funding that would be needed to construct and operate the new school.

There are two choices: the current master plan or the Bray. First, I looked at the effect on housing units:

- The current plan would provide for the construction of 3,226 housing units, and the Bray plan provides for the construction of 3,870 housing units – a net difference of 644 housing units.*

Next, I looked at the effect on student population:

- Using current student yield rate per Liberty Park households and the actual Colonial Grand apartment yield rate, the current plan, after full build-out, would yield 711 students and the Bray plan would yield 878 students – a total difference of 167 more students across the entire system.*

Given the current number of students in our school system, this is a relatively small student impact. The number of additional students has no effect on the need for a new elementary school – the school will be needed regardless. This number also has negligible effect on the final capacity of the new elementary school.

For the purposes of discussion, I want to note that the debt service on a new elementary school would be about \$1.5 million. Additionally, the system would need an appropriate site. These facts drove our discussions with the developer.

THE BRAY PROPOSAL: A RARE REVENUE OPPORTUNITY

The Bray provides an estimated \$850 million in private capital investment with a gross city and schools' revenue benefit of \$230 million over 25 years.

By contrast, the current plan does not provide any strong likelihood of retail and commercial development other than one-off strip-mall developments like the Publix-anchored shopping center, On Tap, Anytime Fitness, and the gas station that are allowable under the current zoning. These businesses are not planned mixed-use developments like what the Bray plan provides, and I understand strip malls are not the type of development the people in Liberty Park want. I have heard this specific statement from many people in Liberty Park.

The Bray plan provides for significant private capital investment and solid revenue projections. The only revenue we can be sure of under the current plan is that of single-family and multi-family homes, and this would not produce the kind of revenue the school system will need to build the future elementary school. Residential housing units add students to our schools and cover

operational costs, but they don't put enough extra dollars in the school system's pocketbook for capital expenditures. Under the current plan single-family homes would produce \$82 million in City revenues over 25 years, compared to \$230 million with the Bray plan. The Bray plan is, quite obviously, a much stronger revenue model and it will produce the kind of development Liberty Park residents desire.

SCHOOL BOARD'S CAPITAL PLAN

After assessing the student and revenue impacts for our schools, I had a high-level discussion about Liberty Park capital planning with the superintendent. From that conversation, I understand that -- generally speaking -- the school system will budget to use Bray revenues to fund the new school. This prompted me to ask whether the Bray projected revenues will likely be sufficient to fund the projected building and operation of the schools in Liberty Park.

WILL BRAY REVENUE BE ENOUGH TO MEET SCHOOL CAPITAL NEEDS?

Obviously, the Bray plan provides significantly more revenue than the current plan, both for the city and the school system. My next question was: will the increased revenue be enough?

To answer this question, I asked for a comparison of the Bray school revenue projections and the new elementary school expense projections. Our system will have students that will come from new housing units, but our school board will also have new revenue coming from the development. I wanted to know what the flow of needs and cash would be over the next 25 years.

WHAT THE PRO FORMA SHOWS

Dr. Freeman put together a Liberty Park pro forma showing the comparison of Bray revenue to the cost to build and operate a new school over a 25-year period. The pro forma allowed me to put in various build-out rates to study the impact of the rate of development. I studied this comparison of revenue to costs and drew two conclusions:

- *First, over 25 years, the school system will almost certainly see a substantial cumulative net gain when comparing expenses to revenue. In other words, the Bray revenues should support the school need in the long-haul and produce a significant surplus by the end. **I concluded the Bray development would more than sustain the costs of providing an education to new Liberty Park students over the long-haul.***
- *Second, the school system was concerned the model showed there may be a short-term capital funding deficit during the early period of the new school construction. This would only occur if the single-family build-out rate was extremely fast – faster than our city has ever seen in its history. At this super-high rate of single-family build-out, this short-fall might occur for a period of 5-10 year. More likely, it will not occur at all. This shortfall only occurs at the most rapid rate of build-out – a rate of 86 units or more built per year, a rate which is unprecedented in our city's or Liberty Park's history. **From this, I concluded that the short-fall is very unlikely to occur, but it could happen.***

MITIGATING THE SCHOOL SYSTEM'S RISK

Because of this uncertainty in build-out rates and revenue projections, the school system has asked for assurance from the City that we are willing and able to serve as a backstop for our school system's capital needs in Liberty Park should we approve this proposal. In other words, if there is a temporary deficit in revenue, the school board wants to know if the City would be willing and able to step up to provide temporary support to cover some portion of debt service for the new elementary school.

CITY HISTORY OF SCHOOL SUPPORT

To answer this question, I reflected back on our city's history of supporting our schools and the partnership that has made our city's education system one of the best in the state. I reflected on the way our city has made decisions that support emergency school capital needs.

- In spring of 2016, the city gave the school system \$2 million to help with the purchase of what is now the new Pizitz Middle School campus.*
- In spring of 2018, this Council approved a new funding source, the one-cent sales tax. Before we approved this ordinance, the Council discussed how the new money would be spent and we put this into a Resolution. We only budgeted three-quarters of the expected yield, because we wanted to have a reserve to help the schools if there were future capital needs. For this reason, our Resolution stated one of the possible purposes of the new Community Spaces fund was for the "financial support of the public school system of the City." This Council included some cushion for schools because we knew there might a future emergency capital need based on student yield projections. We were thinking ahead.*
- In 2019, the school system asked the City to pay \$280,000 per year to back a short-term loan to finish up some important projects to complete the renovation and build-out at the Pizitz campus. This Council approved the commitment of \$280,000 per year, over 10 years (that is, \$2.8 million total), to cover various capital projects. The City's last payment on this commitment occurs in FY28.*

There are many such examples of our city -- time after time -- stepping up to ensure the quality of our school facilities. These examples demonstrate that our city will continue to support our schools' capital needs when there is an emergency short-fall.

COMMUNITY SPACES AS A SCHOOL FUNDING SOURCE

The Community Spaces yield has proven to be more than enough to cover our initial list of projects. We expect our Community Spaces projects will be wrapped up in FY22 with the last commitment of funds for Wald Park Phase III. Beginning in FY23, the city estimates that our uncommitted funds in that account will begin accumulating at the rate of \$2 million per year, and that is a conservative estimate. My point is simply that the city expects to have uncommitted

capital funds that we could appropriate to help the school system in the event of an emergency capital short-fall. The city must be prudent in planning for this possibility.

I believe that the Bray plan provides the most revenue for schools to meet their future needs, and I am in favor of approving the plan. If we approve the Bray, I suggest the City place a portion of Community Spaces funds in reserve, starting in FY23. I recommend we watch build-out and student yield rates in Liberty Park so we can anticipate when the need is coming. I do not really think the school system will need this supplemental capital funding – because I believe the Bray revenue will exceed the pro forma, and the build-out rate will be much slower than the worst-case projections; however, in the event the schools need some temporary capital help, I want the City to have sufficient uncommitted funds to serve as a backstop. Our schools are the most important asset in our city, and I know our residents would support such a commitment. Because some of us may no longer be sitting in these chairs when the school has this need, I want this statement to serve as a marker for future councils that we will plan for and support future capital needs of our schools caused by this development.

SCHOOLS' FIDUCIARY RESPONSIBILITY

I want to make clear that the school system has primary responsibility to provide school facilities. This school need was anticipated even before the Bray was conceived. The need for a new elementary school was not a surprise to our school system. The pro forma I have seen shows that, with a reasonable rate of build-out at 84 units/year, the school system should have sufficient surplus funds in reserve to cover the expense of building the new school at the time it is needed.

THE SCHOOL SYSTEM MUST DO ITS PART

Finally, I want to make one thing very clear and I have already expressed this to the school board members and superintendent: I expect the school board to set aside new school money from this development to pay for the new Liberty Park elementary school, and not for other purposes, until the new school is established and supporting itself. When the Bray starts producing new revenues, I understand the school system plans to set aside and use these revenues, in good faith, to pay for the new school and costs associated with the new school. If the school system properly performs its fiduciary duty to place this new revenue source in reserve for the new elementary school, then I would be inclined to support the city covering temporary short-falls in the future. We have a yardstick, and the city will use it to track our school system's progress toward saving for a new school.

SUMMARY

*In closing, I want to be very clear that **our projections show the Bray will yield adequate funds for the school system to pay -- on its own -- for a new Liberty Park elementary school – a school the system predicts will likely be needed regardless of whether we approve the Bray plan tonight.** However, if we approve this development, the city must be prepared to serve as a backstop for short-term capital deficits if there is a short-term need. It is important to note that I expect the school to do its part – to consciously and deliberately save Bray revenues to pay for the new school when it is needed.” (end verbatim)*

Mr. Pierce stated that he appreciates the extra work that both Councilor Cook and Councilor Weaver have done to bring this project to this point.

The Mayor stated that he concurs with Councilor Cook. He stated that he has examined all of the *pro formas* for build-out, which are quite aggressive based on prior construction rates in Liberty Park. He stated that he, too, believes that the Bray revenue will cover the indebtedness to finance the future school. He sees the “opportunity cost” of choosing the original plan instead of the Bray option is the money required to pay for a new school and a site on which to build it.

Mr. Weaver stated that he appreciates the work of the City and Council, and remarked on how much time and energy has gone into getting the project to this point of making a decision. He stated this issue has been discussed over two years. He thanked Whit Colvin for helping the Council through this process. He stated that no one in Liberty Park is more affected than he is, as his home is one of the closest to this development project. He stated that, in his heart, he feels the right decision is to approve this development. He encouraged anyone who disagrees to look at the information. These items were on the agenda at the last meeting and the Council considered, carefully, every word of this agreement to protect the City and the schools. He stated that LPJV has negotiated in good faith and has amended the terms to the satisfaction of the City Council.

Mrs. Cook stated that there is approximately \$2.7 million that the developer is offering for public road dedication. All of that funding with the exception of \$11,000 comes from the Vestlake HOA. She stated that these monies have been paid by property owners there and that she feels it is important for those homeowners to know that the monies will be used for the purpose of which it was collected -- to pave streets in Liberty Park. She stated that she would like this HOA contribution to be put into a special reserve. She acknowledged the City has hired a consultant to evaluate the condition of Liberty Park roads, and she will be paying close attention as to how that money is spent.

Mr. Boone added to Mrs. Cook’s comments regarding the City’s past support of the Board of Education. He stated that, since the creation of the Board, the City has worked hand-in-glove for the betterment of the schools. He gave several examples of the City contributing land and funding to the Board when there was an identified need.

The Mayor opened the floor for a public hearing.

David Harwell, 1803 Catala Road, thanked Mrs. Cook for her comments. He stated that there were comments on the possibility of the shortfall of school funds for the purposes of building the new school. He asked how to justify \$23 million in incentives when the City could put this money into reserves for the school.

Mr. Downes stated that the incentives are rebates that are paid back out of the new revenues generated from the Bray Development – revenues which also help pay for parks, trails, infrastructure within the development. The referenced need for additional school funding from the City would be driven by a faster-than-estimated build-out of residential units, which might require the building of a school before enough capital revenue is accumulated to fund it.

Mrs. Cook stated that the incentives to be given is money that does not yet exist. If the development is not approved, there would be no City or school money to pay towards school capital needs.

Mr. Harwell asked if the City gets a payback from the incentives and will it be recouped?

Mr. Downes stated that the city will recoup its investment in sales taxes, lodging taxes, and ad valorem which will exceed the \$23 million in incentives. The incentives will not be rebated until certain milestones are met by the developer showing progress in commercial development. In negotiating incentives, there is always a calculation of return on investment.

David Thomas, 908 Vestlake Hollow Circle, stated that he is a Liberty Park resident. He thanked the Council for the work on this project. He asked, if this is approved tonight, are there other approval steps the developer must go through on this project prior to construction.

Mr. Downes reported there are several other approval steps involving public hearings including a revision to the zoning code, amendment to the PUD, etc. All of these require further public hearings and approvals. He stated that there are other regulations and ordinances governing permits, etc., and that the developer would have to also comply with the terms of the development. He described the storm water permits and the approvals needed both pre- and post-development. These also include traffic, lighting, etc.

Mr. Pierce asked about the turnaround.

Mr. Downes stated the speed of development is up to the owner and will depend on getting through the approvals. He estimated at least six months before breaking ground.

There being no one else 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	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

ORDINANCE NUMBER 3086

Public Hearing Under Amendment 772 Of The Alabama Constitution – Development Agreement With Liberty Park Joint Venture LLP And Consideration And Action Of Resolution Number 5378 – A Resolution Authorizing A Development Agreement With Liberty Park Joint Venture LLP

MOTION Motion to approve Ordinance Number 3086 was by Mr. Pierce and seconded by Mrs. Cook.

The Mayor stated that this concerns the development agreement.

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	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

NEW BUSINESS

RESOLUTION NUMBER 5377

Public Hearing – Resolution Number 5377 –A Resolution Authorizing The Installation Of A New Support Structure For A Small Cell Facility To Be Located In The Right-Of-Way Adjacent To 2727 Briarberry Circle

MOTION Motion to approve Resolution Number 5377 was by Mr. Weaver and seconded by Mr. Pierce.

Mr. Downes stated that the small cell ordinance was adopted a couple of years ago and this is the first application for a new support structure location.

Ms. Leavings announced that the only property owner on either side is Benchmark, owner of Rollingwood Apartments. She indicated she sent the information to their corporate office and has communicated with the local property manager. Ms. Leavings introduced Acquanetta Love, Network Permitting Specialist; Sae Lee, Network Permitted Manager; and Mike Isaacs, Network Construction Manager, from Crown Castle, who are present to answer any questions.

Mrs. Cook asked about concerns from the adjacent property owner.

Ms. Leavings stated that the property owner asked questions regarding coverage, protection of existing landscaping, road access visibility, reimbursement of landscaping, etc. She stated that she answered the questions as best as she could and indicated that the pole would be located on City right-of-way but might be slightly hidden by landscaping existing in the area.

Mr. Pierce asked about the infrastructure.

Mr. Sae Lee, Crown Castle, explained that this is a shared model for 5G technology. He stated that they analyze customer needs.

The Mayor opened the floor for public hearing.

David Harwell, 1803 Catala Road, stated it was a photo of a nice pole that is more decorative, but the agenda packet says it's a brown wood pole.

Discussion ensued regarding equipment items that cover the pole and the wood underneath.

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

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

NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)

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

- Public Hearing – Ordinance Number 3088 – An Ordinance Granting A Franchise Agreement With Telepak Networks Inc., And Teklinks, Inc., Doing Business As C-Spire Business

CITIZEN COMMENTS

Donald Harwell, 1373 Willoughy Road, stated that the Council has the privilege of making various appointments on Boards and Commissions. He gave a background of when the City got the ability to make the BJCTA appointment which was previously made by Homewood. He stated that, with the new census, Homewood has one of three appointments along with Vestavia Hills and Birmingham. He stated that our City's first appointment was Andrew Edwards for a six-year term and that it was changed in 2013 to four-year terms. He explained that he filled the last two years of the previous board member's unexpired term and served his 4-year term. He expressed gratitude for the Council allowing him to serve on this Board for the past 6 years.

Mayor Curry stated that the Council appreciates Donald's service on this Board.

Matt Hottle, 1411 Branchwater Circle, stated that the speed limit has changed on Rocky Ridge and has become more consistent. He wanted to know if speed limits have been reviewed and changed to be more consistent in all of Vestavia Hills. He stated that there appear there are 40 mph signs all along the business area.

Mr. Downes stated that, as discussed in the strategic planning of the City, the City is reviewing speed limits throughout the City.

Chief Rary stated that they are currently analyzing all of the roadways to ensure that all areas are consistent between our City, County, and speed limits in other municipalities.

Mrs. Cook stated that the City recently lost a great statesman, David W. Wheeler, State Representative for District 47. She stated that Representative Wheeler had qualified for reelection to his seat and as she understands it, the Alabama GOP will select his replacement on the ballot because of the special circumstances. She added that Representative Wheeler will truly be missed.

At 7:18 PM, Mrs. Cook made a motion to adjourn. The meeting adjourned at 7:19 PM.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

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.

ORDINANCE NUMBER 3088

AN ORDINANCE GRANTING A FRANCHISE AGREEMENT WITH C SPIRE

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT, by and between the **CITY of VESTAVIA HILLS, ALABAMA**, a municipal corporation (hereinafter referred to as the “City”), and **TELEPAK NETWORKS, INC.**, a Mississippi corporation, individually and through its wholly owned subsidiary, **TEKLINKS, INC.**, a Delaware corporation, both doing business as **C SPIRE BUSINESS**, whose address is **1018 Highland Colony Parkway, Suite 400, Ridgeland, Mississippi 39157** (hereinafter referred to as the “Franchisee”).

WHEREAS, the City has and reserves the right to exercise control over the highways, streets, alleys and public places and to require City’s consent prior to using such highways, streets, alleys and public places; and

WHEREAS, State law confers to the City certain rights and requirements for franchises and permission to use the public ways of City; and

WHEREAS the Franchisee has requested from the City a franchise to use the streets and public ways of the City to construct, maintain and operate a Telecommunications System (as defined in Section 1(b)) to provide the Services (as defined in Section 1(b)); and

WHEREAS the City and the Franchisee have negotiated this Franchise Agreement which is mutually agreeable to both parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, the City and the Franchisee enter into this Franchise Agreement and agree as follows:

SECTION 1. GRANT OF NON-EXCLUSIVE FRANCHISE.

(a) A non-exclusive franchise is hereby granted to the Franchisee to construct, maintain and operate in, over, under, across and through the public rights-of-way of the City of Vestavia Hills, Alabama, a Telecommunications System to provide the Services within the City of Vestavia Hills, Alabama and any future additions thereto. The grant of this non-exclusive franchise is for the use by the Franchisee for the purpose of providing the Services, including dark fiber, within the City of Vestavia Hills as a "competitive access provider" which directly connects customers within the City of Vestavia Hills with other businesses, local area networks, a local exchange carrier and interexchange carriers and for such other telecommunications-related services, including, but not limited to local exchange and enhanced services, as may be authorized by the Alabama Public Service Commission (“PSC”) or federal law, but excluding Cable Services over a Cable System (as both terms are defined in the Cable Communications Policy Act of 1984, as amended (47 USC §521 *et seq.*) (the “Cable Act”). The Franchisee shall not operate a Cable System or provide Cable Services in the City without first having obtained a separate cable franchise or video services

agreement from the City. The Franchisee shall not provide services directly regulated by the PSC unless authorized by the PSC to do so. The Franchisee is permitted to operate a "Telecommunications System," defined as Franchisee's Facilities (as defined in Section 1(d)) within the City consisting of a set of fiber optic cables and associated signal generation, reception and control equipment or other communications equipment and facilities used to provide the Services to subscribers in the City.

(b) As used herein, the term "Telecommunications Service" has the meaning given to it by the Communications Act of 1934, as amended (47 U.S.C. § 153) (the "Communications Act"), but excludes Other Services. The term "Other Services" means "information services," as defined in the Communications Act, as well as other communications services but excluding Cable Service lawfully provided by the Franchisee in addition to and separate from Telecommunications Services, including, without limitation, private network services, broadband services, Internet access services, voice mail, call waiting, call forwarding, conference calling, voice-over-Internet-protocol, dark fiber and distance learning services. The term "Services" means, collectively, Telecommunications Services and Other Services. The Services do not include Cable Services. The Franchisee shall not operate a Cable System or provide Cable Service within the City without first having obtained a separate cable franchise or video services agreement from the City.

(c) This franchise shall continue in full force and effect for an initial term of ten (10) years (the "Initial Term") beginning on the Effective Date (as defined in Section 31), and the Initial Term of this Franchise Agreement shall be renewed automatically for one (1) successive term of ten (10) years (the "Renewal Term" and collectively with the Initial Term, the "Term"), on the same terms and conditions set forth herein, provided that statutory authority shall exist for the City of Vestavia Hills to renew this franchise. New terms and conditions may be required by either party for the Renewal Term if the telecommunications and broadband technology and rights-of-way laws change after the Effective Date of this franchise ordinance and such change substantially affects service types, availability, character of service, system technology, franchise fees or the regulatory environment. New terms, provisions, or conditions may also be negotiated by either party for the Renewal Term which are applicable generally to other franchisees for similar services or applicable generally to the industry to clarify the intent of this franchise, which may arise from any unforeseen circumstances or interpretations of this franchise, and/or which are based on the history of performance of the Franchisee. The parties agree to negotiate new terms and conditions in good faith. Nothing in this Section is intended to expand or contract any rights that the Franchisee may have as a matter of state or federal law to obtain a franchise from City. Any further renewals shall be in accordance with applicable laws.

(d) When used herein, the term "Facilities" shall mean all or any part of a network of fiber optic cables and all related property, including but not limited to, fiber optic wires, wires, telecommunications, amplifiers, electronics, transmission and reception equipment, supporting hardware, conduit, carrier pipe, fiber optic cables, poles, handholes, manholes, repeaters, power sources, and other attachments and appurtenances necessary for the Franchisee's Telecommunications System and located within the City's rights of way. For the purposes of this Franchise Agreement, the term Facilities excludes "microcell" facilities, "small cell facilities," "macro cell" facilities, and other similar wireless facilities, including towers and new base stations and other similar facilities used for the provision of "personal wireless services" as such terms are

defined in the Communications Act and in the City of Vestavia Hills's Small Cell Ordinance, as amended.

SECTION 2. GENERAL TERMS. The Franchisee, for the Term of this franchise and for the purposes hereinabove expressed, shall have the privilege to construct, operate and maintain Facilities and to make any and all necessary excavations therefor, in, over, under, across and through all or any of the portions of the streets, alleys, avenues or public ways of the City of Vestavia Hills, and to utilize, with permission of the affected utility companies, their facilities within public rights-of-way for the purpose of installing and operating a Telecommunications System within the City of Vestavia Hills, to be exercised in such manner only, however, as to offer the least interference with the public use of said streets, alleys, avenues and public ways; and the Franchisee shall be subject to and shall comply with all laws and ordinances of the City of Vestavia Hills and shall be further subject to and shall comply with all rules, regulations and other restrictions of the City of Vestavia Hills set forth herein. The granting of this franchise shall not prohibit the City from granting other non-exclusive franchises or otherwise allowing or making other uses of the City's rights-of-way. The granting of this franchise shall in no way interfere with or hinder the use by the City of the rights-of-way for any purpose.

SECTION 3. SCOPE OF FRANCHISE. The franchise hereby granted shall extend to and include all portions of streets, alleys, avenues and other public ways that conform to the General Terms set forth in Section 2, above, as may be necessary to carry out the purpose of this franchise.

SECTION 4. INDEMNIFICATION. (a) The Franchisee hereby agrees to indemnify, defend and hold harmless the City, its Mayor and Council, CityManager, appointed boards and commissions, officials, officers, employees (collectively, the City's "Representatives") and insurance carriers, individually and collectively, from all losses, damages, claims, suits, judgments, demands, expenses, subrogation, attorney's fees, costs or actions of any kind and nature (collectively, "Losses") resulting from the Franchisee's or its agent's or contractor's installation, operation, repair or maintenance of the Telecommunications System or provision of the Service within the City. Without limiting the foregoing, it is agreed that the Franchisee shall indemnify, defend and hold harmless the City, its Mayor and Council, City Manager, appointed boards and commissions, officials, officers, employees and insurance carriers, individually and collectively, from all Losses resulting from personal injury to any person (including bodily injury and death), including employees of the Franchisee or of any contractor or subcontractor employed by the Franchisee, or damages to any property, arising out of the acts or omissions of the Franchisee, its contractors, subcontractors, officers, agents and employees while exercising any of the rights or privileges granted by this franchise. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of indemnity in this Section. The terms and provisions of this Section are intended to be for the benefit of the City and the Franchisee and are not intended to be for the benefit of any third party. Notwithstanding the foregoing, the Franchisee shall not be obligated to indemnify the City, its Representative and insurance carriers, individually and collectively, for Losses resulting solely from the negligent or willful misconduct of the City or its Representatives.

(b) The City shall provide the Franchisee with prompt written notice of any claims for which the City or the aforementioned parties seeks indemnification from the Franchisee. The City shall afford the Franchisee the opportunity to participate in and control any compromise, settlement

or other resolution or disposition of any such claim or proceeding, and the City will cooperate with reasonable requests of the Franchisee in connection with any such compromise, settlement or resolution or other disposition of such claim or proceeding subject to this Section.

SECTION 5. CITY TAKING PART IN LITIGATION. The Franchisee shall promptly notify the City of any litigation which would affect this franchise. To the extent allowed by applicable law, the City shall have the right to take part, by intervention or otherwise at its option and at its sole cost, in any suit, action, or proceeding instituted by or against the Franchisee in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of the Franchisee to do or not to do anything which, by its franchise, it is obligated or may be required to do or not to do or affecting, such as by foreclosure or lien, the Franchisee's title to any facility. The Franchisee shall not object to the City's exercise of such right.

SECTION 6. BOND. Franchisee shall obtain and maintain, or cause to be obtained and maintained, during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the City Clerk a corporate surety bond in the amount of Fifty Thousand Dollars (\$50,000), both to guarantee the timely construction and full activation of the Franchisee's Telecommunications System and to secure the faithful performance of the Franchisee of all its obligations provided under the franchise. Failure to timely obtain, file, assign and/or maintain said bond at all times at the required amount shall constitute a substantial violation of this Franchise Agreement.

The performance bond shall provide that:

(1) There shall be recoverable by the City, jointly and severally from the principal and surety any and all fines and penalties due to the City and any and all damages, losses, costs, and expenses suffered, incurred by or resulting from failure of the Franchisee to: faithfully comply with the provisions of the franchise; comply with all applicable orders, permits and directives of any City agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due to the City which arises from or by reason of the construction, operation, maintenance or repair of the Telecommunications System.

(2) The total amount of the bond shall be forfeited in favor of the City in the event:

- (a) The Franchisee abandons its Telecommunications System at any time during the Term of the franchise or extension thereof or ceases operation of the Telecommunications System for a period in excess of six (6) months not due to an Event of Force Majeure (as defined in Section 13(a)); and/or
- (b) The Franchisee assigns the franchise without the express written consent of the City, if such consent is required by the terms of this franchise, which consent shall not be unreasonably withheld.

The performance bond required herein shall be in a form satisfactory to the City Attorney. The surety bond shall at all times be maintained at the amount and levels as required in this Section and shall be a continuing obligation for the duration of the franchise and thereafter until the

Franchisee has liquidated all of its obligations with the City that may have arisen by reason of the construction, operation or maintenance of the Telecommunications System or breach or termination of the franchise. If the bond is drawn-down for any reason, the bond shall be renewed to the amounts required by the City.

The City shall notify the Franchisee in writing and allow the Franchisee thirty (30) days to cure, unless such time to cure is extended by the City Attorney, before calling the surety bond.

SECTION 7. INSURANCE REQUIREMENTS. On the Effective Date of this Franchise Agreement, Franchisee shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full Term of the franchise, at the expense of Franchisee, a commercial general liability insurance policy, including coverage for explosion, collapse and underground, written by a company authorized to do business in the State of Alabama with a rating of at least A or higher, including the City as an additional insured as its interest may appear, protecting the City against liability for claims of bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the Telecommunications System by the Franchisee in the following amounts:

- (1) Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury and for real property damage.
- (2) Five Million Dollars (\$5,000,000) general aggregate.

The policy must be on an “occurrence” basis.

The Franchisee shall also file with the City Clerk a certificate of insurance for a commercial automobile liability insurance policy written by a company authorized to do business in the State of Alabama with a Best Rating of at least A or higher, covering all owned, non-owned, hired and leased vehicles operated by Franchisee, with a combined single limit of One Million Dollars (\$1,000,000) each accident for bodily injury and property damage.

The Franchisee shall also maintain, and by its acceptance of any franchise granted hereunder, specifically agrees that it will continually maintain throughout the Term of the franchise, workers compensation coverage in compliance with the statutory requirements of the State of Alabama and employers liability with a limit of One Million Dollars (\$1,000,000) each accident/disease/policy limit.

The Franchisee shall maintain, during the course of this Agreement, Commercial Umbrella or Excess Liability Insurance to provide excess coverage above the Commercial Liability, Commercial Automobile Liability and the Employer’s Liability coverage of Worker’s Compensation with Excess/Umbrella Limits of \$5,000,000 per Occurrence and \$5,000,000 per Aggregate. The policy must be on an “occurrence” basis.

The commercial general liability and commercial automobile liability insurance and the Commercial Umbrella or Excess Liability insurance policy required pursuant to this Section shall include the City of Vestavia Hills and its Mayor, members of the City Council, City Manager,

officers, employees, board members and elected officials as additional insureds as their interests may appear under this Franchise Agreement and shall be kept in full force and effect by the Franchisee during the Term of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by the Franchisee incident to the maintenance and operation of the Telecommunications System; provided however, that any fiber optic cable and associated conduits, manholes, poles, wires, cables and other facilities which are provided to the City as part of this Franchise Agreement shall not be removed without the written consent of the City. Failure to obtain and maintain continuously the required insurance shall constitute a substantial violation of this Franchise Agreement. Upon receipt of notice from its insurer(s), Franchisee shall use commercially reasonable efforts to provide the City thirty (30) days' prior written notice of cancellation of any coverage required herein and shall promptly obtain replacement coverage as required by this Franchise Agreement.

The Franchisee agrees that should any of its Facilities installed pursuant to this franchise be damaged or destroyed or the network be disrupted or damaged by the City, its agents, employees, contractors or subcontractors, the Franchisee shall repair or replace such facilities at its own expense or with the proceeds of the insurance it maintains and shall waive any right, claim or action for damages or other available remedies which it may have against the City, its agents, employees, contractors or subcontractors. The foregoing sentence shall not extend to intentional, willful, negligent or malicious damage to the Franchisee's Facilities by City employees. The City will endeavor to use its best efforts to avoid damage to the Franchisee's Facilities, provided that the Franchisee participates in Alabama's 811 program.

During construction or maintenance, if the Franchisee or its employees damage or break any lines, cables, ducts, conduit or other facilities located in the City's rights-of-way, notice shall be given promptly to the affected third party and to the City.

SECTION 8. ASSIGNMENT. The Franchisee's interest in this Franchise Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, however no consent shall be required (i) to transfer or assign this Franchise Agreement to any entity that controls, is controlled by, or is under common control with the Franchisee (with "control" meaning ownership of a majority interest or the actual working control and day to day management of Franchisee), (ii) for a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest in Franchisee, in the Agreement, or in the Telecommunications System in order to secure indebtedness, provided, however, that any lender or creditor in such transaction must obtain the City's consent and approval as provided in this Section for any assignment of rights granted by this Franchise Agreement following such lender or creditor's exercise of any rights against the Franchisee upon the Franchisee's default, and (ii) a transfer of this Franchise Agreement in connection with the assignment, transfer or conveyance carried out as a part of a merger, restructuring or sale or transfer of all or substantially all of the assets of the Franchisee. The Franchisee will provide written notice to the City of any of the foregoing transfers for which the City's consent is not required.

(a) Except as set forth above, the rights granted by this Agreement or any interest therein shall not be assigned or transferred to any other unrelated entity without the express written consent of the City. A written copy of any such proposed assignment for which the City's consent is requested must be filed by the Franchisee with the City. The City reserves the right to be reimbursed by the Franchisee for reasonable costs incurred by it in reviewing the request for the City's consent to such assignment or transfer. Any required consent is to be evidenced by an ordinance of the City Council that fully recites the terms and conditions, if any, upon which consent is given. No assignment or transfer of the Franchise Agreement, as allowed hereunder, shall be effective unless and until the vendee or assignee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such assignment or transfer, accepting the terms of this Franchise Agreement and agreeing to perform all the conditions thereof, and the City has approved said transfer in writing, which approval shall not be unreasonably withheld. The City shall take action on such request for approval of transfer within sixty (60) days of filing of all information required by this Section. This Section shall not apply in connection with execution of secured financing agreements made by the Franchisee or other transfers for which consent is not required as set forth above. In making a determination of whether to allow an assignment to an unrelated entity for which the City's consent is required, the City may consider any factors that the City deems necessary to make a determination concerning assignment of the Franchise Agreement, including, but not limited to, the following factors:

- (1) Experience of the proposed assignee or transferee (including conducting an investigation of proposed assignee's or transferee's service record in other communities);
- (2) Qualifications of the proposed assignee or transferee;
- (3) Legal integrity of the proposed assignee or transferee;
- (4) Financial ability and stability of the proposed assignee or transferee;
- (5) If requested by the City, submittals from the proposed assignee or transferee, regarding changes, if any, it intends to make in the operation and maintenance of the Telecommunications System;
- (6) The corporate connection, if any, between the Franchisee, and proposed assignee or transferee and/or between the Franchisee and any holder of a like franchise within the City;
- (7) Any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of the Telecommunications System; or
- (8) Effect of the proposed action on competition.

A copy of the completed sales or transfer agreement, or a functionally equivalent instrument between the Franchisee and proposed assignee or transferee, shall be provided on a confidential basis to the City Attorney for review, so that the City may review the assumption of obligations of the Franchisee by the assignee with respect to the Telecommunications System. After receipt of the request for approval of a proposed transfer or assignment, the City may, as it deems necessary or appropriate, schedule a public hearing before the City Council on the request. Further, the City Council may review the Franchisee's performance under the terms and conditions of this Franchise Agreement. The Franchisee shall provide reasonably requested assistance to the City Council in connection with any such inquiry and, if requested by the City, shall use its best efforts to secure the cooperation and assistance of persons involved in said action. Should the Franchisee sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under this Franchise Agreement or attempt to do so in violation of the requirements of this Section to obtain prior written consent, the City may revoke this Franchise Agreement for default and the purported sale, transfer, assignment or conveyance shall be null and void.

(b) The Franchisee shall notify any potential lessee of the necessity of obtaining a separate franchise from the City.

(c) A complete description of the ownership and control of the Franchisee as of January 1, 2021 in Exhibit 1 attached hereto.

SECTION 9. LOCATION AND CONSTRUCTION OF FACILITIES.

(a) Except as provided in Section 11, Facilities maintained or installed by the Franchisee within the City shall be so located and constructed as not to:

- (1) Interfere with usual travel (automotive and/or pedestrian) within the public rights-of-way;
- (2) Interfere with the rights or reasonable convenience of property owners who adjoin such public rights-of-way;
- (3) Interfere with access to or use of any water or fire hydrant;
- (4) Obscure the vision of or interfere with the installation of any traffic control device or traffic or information sign or signal;
- (5) Interfere with sight distance established by any ordinance or law;
- (6) Obscure the light from any street light;
- (7) Cross any water or sewer line except at a ninety degree (90°) angle, except in accordance with a specific permit for such crossing issued by the City;
- (8) Damage irrigation, landscaping or trees owned or maintained by the City;

(9) Damage any communications lines owned or maintained by the City.

(b) Placement of Facilities in the paved sidewalk area is prohibited unless authorized by the City.

(c) The City shall have authority to require the Franchisee to remove or relocate any Facility located in violation of this Section at the Franchisee's sole expense. Such relocation or removal shall be completed with thirty (30) days of written notice from the City. In the event that thirty (30) days is not sufficient, the Franchisee may in writing request an additional thirty (30) days to accomplish the relocation. The notice shall prescribe the area where the Facility is located and any other special conditions deemed necessary by the City.

(d) Map of Network. Upon request, the Franchisee shall provide the City with its fiber optics location data in digital files in AutoCAD or other industry standard reasonable formats described in Exhibit 2 hereto that are acceptable to the City. The City shall provide necessary data to serve as the base for the fiber optics location data. Specific data layers that make up the base shall be defined in discussions with the Franchisee. The fiber optics location data shall be returned to the City on the medium and in the format agreed to by the parties.

After construction of new network facilities or extensions of existing network facilities, as a separate requirement, the Franchisee shall develop as built drawings and maps in AutoCAD or other industry standard reasonable formats as requested by the City and be provided to the City in that format. A Professional Engineer seal or "P.E. stamp" shall not be required for such drawings.

(e) The Franchisee is under no obligation to build its Facilities to cover the entire City, or to serve any specific persons within the City. The decision of whether to construct its Facilities or what Services to provide is solely within the discretion of the Franchisee.

SECTION 10. WORK IN PUBLIC RIGHT-OF-WAY: RESTORATION OF DAMAGED AREAS.

(a) Whenever the Franchisee excavates or does other work in the public right-of-way, such excavation or other work shall be done in compliance with the laws and regulations of the City in effect at the time of such excavation or other work.

(b) Prior to the erection or installation by the Franchisee of any poles, underground conduits, or fixtures for use in connection with the installation, construction, maintenance or operation of the Telecommunications System, the Franchisee shall obtain any required permits in accordance with City code. If poles are erected by the Franchisee, the City requests that it be granted access privileges to those poles for the City's use.

(c) The Franchisee shall not excavate or do other work in any public right-of-way unless the Franchisee has applied for and received a written permit entitled "Street Cut Permit" from the City, or its designee, granting permission for such excavation or other work. The permit shall describe the area where the excavation and/or work is expected to be completed, the method of construction and the contractor performing the work and any other conditions. If directional boring, trenching or other excavation is the method of construction, detailed plans shall be submitted

describing how the work will be performed so as not to damage other lines and conduit located in the right-of-way. If the installation utilizes facilities of another entity, the Franchisee shall provide written authorization for use of such facilities prior to a permit being issued. If the excavation or other work requires closure of a street lane or sidewalk, the Franchisee shall, five (5) working days prior to such closure, submit a Traffic Control Plan to the City for approval. In emergencies involving service outages, the Franchisee shall proceed with all necessary operations without first obtaining the permit, but shall obtain the required permit at its earliest opportunity.

(d) The Franchisee shall not open, disturb or encumber, at any one time, any more public rights-of-way than may, in the opinion of the City, be necessary to enable the Franchisee to economically install or repair its Facilities; nor shall the Franchisee permit any public right-of-way to remain open, disturbed or encumbered for a longer period of time than shall, in the opinion of the City, be necessary.

(e) Immediately upon completion of repairs or installation of any Facility, the Franchisee shall refill and compact any trench or excavation to the standards required by the City and the State of Alabama Department of Transportation's "Standard Specifications of Roads and Structures." Promptly, and in no less than ten (10) business days after the completion of repair or installation, unless otherwise approved by the City, the Franchisee shall restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material or other materials or structure damaged in the course of its work to City standards at the Franchisee's sole expense. In the event excavation or disturbance of special sidewalk pavement areas is necessary, the Franchisee shall restore those areas to their preexisting conditions which restoration shall meet City standards. Failures within an area which has been disturbed, excavated or encumbered by the Franchisee which are discovered within twelve (12) months of the restoration or replacement specified herein, shall be the responsibility of the Franchisee pursuant to this provision.

(f) If Franchisee fails, neglects or refuses to refill any trench or excavation or to restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material, or other material or structure or to repair failed materials as specified herein, the City may do all or any part of the work that remains undone at the cost or expense of the Franchisee. Failure of the Franchisee to reimburse the City within thirty (30) days' of the City's presentation of a bill for the reasonable and verifiable costs incurred by the City shall result in denial of any permit request made by the Franchisee until payment is made. City may, at its option, recover such amount from the performance bond required herein.

(g) In any case where a public right-of-way is being excavated, disturbed or encumbered by the Franchisee, the Franchisee shall take all precautions required by law, in particular, the Manual on Uniform Traffic Control Devices, or otherwise necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to give notice and warning to the public of the existence of actual conditions present. Nothing in this Section shall alter or waive any rights enjoyed by the Franchisee or any other party under Alabama's underground damage prevention law (Ala. Code, Title 37, Section 37-15-1, -11).

(h) Any construction project authorized by a specific permit shall be completed within one year from the date that any necessary permits are issued, provided that the City may allow

reasonable extension due to weather or Acts of God, or other reasonable circumstances that in the sole discretion of the City justifies an extension of the project target completion date.

SECTION 11. USE OF STREETS.

(a) All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation, unless otherwise agreed by the City. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Franchisee may install its Facilities above ground, provided that, at such time as those telephone or electric utility facilities are required to be placed underground by the City, the Franchisee shall likewise place its Facilities underground without additional cost to the City, unless otherwise agreed by the City. Where not otherwise required to be placed underground by this Franchise Agreement, the Franchisee's Telecommunications System shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the adjacent property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground, private property and utilities. Franchisee's Telecommunications System and Facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such Facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the City, County or State may deem proper to make;
- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; or
- (5) Not obstruct, hinder or interfere with any gas, electric, traffic control, water or telephone facilities or other utilities located within the City.

(b) Work within Right-of-Way. The closing of any part of a publicly maintained street or right-of-way must be approved by the City Engineer, and may be prohibited during peak travel hours, 7-9 A.M. and 4-6 P.M., Monday through Friday. During repairs or improvements, traffic on streets must be maintained. Where full closing of the street is required, the request for approval must be submitted to the City Engineer at least 10 business days in advance. The notice requirement in this Section may be superseded by the terms and conditions of a subsequent ordinance(s) enacted by the City. All closings are to be protected with signage in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).

(c) Removal of City Property. No City property is to be removed from the right-of-way, including signage on utility poles, without proper permission from the City.

SECTION 12. ACQUISITION OF RIGHT-OF-WAY. In acquiring or widening public rights-of-way, the City shall determine the minimum right-of-way necessary to accommodate paved streets, pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities.

SECTION 13. RELOCATION OF FACILITIES.

(a) Wherever a public right-of-way or other public property is being constructed, paved (whether or not such paving is part of a more extensive improvement project), resurfaced, relocated or otherwise altered or improved (including, but not limited to, the installation of sidewalk, curb, gutter, drainage facilities, water mains, or sewer mains, traffic signals or trees), the Franchisee shall, within ninety (90) days (or such longer period of time as mutually agreed by the parties) after written notice from the City and at no cost (direct or indirect) to the City, remove or relocate any of the Franchisee's facility located within such public right-of-way or public property or perform such work as the City deems necessary for the extension of new facilities. If the Franchisee believes it will be unable to complete the relocation within such ninety (90) day period, the Franchisee shall explain the reasons for its inability in detail, and the City and the Franchisee shall attempt to agree on an alternate schedule, subject, however, to the City's right make a final determination as to such schedule in its reasonable discretion. Nothing in this franchise is intended to eliminate or waive any right the Franchisee may have to reimbursement from a third party under applicable law or the terms of any public funding grant for a project.

(b) Failure of the Franchisee to remove or relocate the Facility to a location approved and permitted by the City within ninety (90) days of the City's written notice (unless otherwise agreed by parties) shall entitle the City to recover liquidated damages from the Franchisee except to the extent said failure is for reasons beyond the Franchisee's control. Any delays in the performance of any obligation of the Franchisee under this Franchise Agreement shall be excused to the extent that such delays are caused by an Event of Force Majeure¹ not within the control of the Franchisee, and any time periods required for performance shall be extended for the period of the Event of Force Majeure. The liquidated damages assessed to the Franchisee, if any, shall be the same as liquidated damages specified in the City's contract with the prime contractor (either as executed at the time of the City's removal or relocation request or which will be executed prior to any construction for the project which requires the relocation or extension of new facilities). (If work which requires removal or relocation of Franchisee's facilities is being constructed by a developer, who has submitted a plan which indicates said work will be dedicated to the City, and there is no City contract with a prime to establish the amount of liquidated damages, then the liquidated damages for Franchisee's failure to remove or relocate a facility shall be Two Hundred Fifty Dollars (\$250) per diem.) If the Franchisee believes it will be unable to complete the relocation within ninety (90) days from receipt of written notice from the City, Franchisee shall explain the reasons for its inability in detail and City and Franchisee shall attempt to agree on an alternate schedule, subject, however, to the City's right make a final determination as to such

¹ An "Event of Force Majeure" is defined as an act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, pandemic, national emergency, natural disaster, inability to obtain materials or supplies, accident to machinery or equipment, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, or any other cause or occurrence outside the reasonable control of the Franchisee and which by the exercise of due diligence could not be reasonably prevented or overcome.

schedule and subject to the City's right to liquidated damages. Absent an Event of Force Majeure, the Franchisee shall be responsible to the City under the terms of this Franchise Agreement only for the amount of liquidated damages caused by its own failure to remove or relocate the Facility to a location approved by the City within a timeline provided for herein.

The City may collect any such liquidated damages owed by the Franchisee either through the draw-down of the security required in Section 6, or through other means allowed by law. Unless the delay is excused by the City, the City may immediately request payment of any liquidated damages due to the City by the Franchisee.

SECTION 14. TREES. Trimming of the trees and shrubbery within the public right-of-way to prevent contact with Franchisee's facilities shall be done only in accordance with standards approved by the City. Removal or severe pruning of any tree or shrub, work on the surface within five (5) feet of any tree or shrub, and underground excavation within the drip line of a tree or shrub, which will require cutting of ten percent (10%) or more of the circumference of the root system, may be undertaken only in accordance with a specified permit obtained from the City and in compliance with the special conditions of such permit and other standards established by this franchise or other law. Where trees or shrubs in the public right-of-way are damaged as a result of work undertaken by or on behalf of the Franchisee, the Franchisee shall pay the City, within thirty (30) days of submission of a statement by the City, the reasonable and verifiable cost of any treatment required to preserve the tree or shrub and/or the reasonable and verifiable cost for removal and replacement of the tree or shrub with landscaping of equal value and/or the value of the tree or shrub prior to the damage or removal as determined by the City.

The City may collect such damages through draw-down of the security required in Section 6, through the insurance required in Section 7 or through other means allowed by law.

SECTION 15. CONSTRUCTION STAFFING. During the franchise Term, the Franchisee shall have sufficient full-time supervisors on staff solely to supervise construction plans and the construction practices of its subcontractors. The Franchisee shall provide the means for immediate notification and communication by the City with the supervisor in the field by means of a pager, cellular phone or other similar means of communication during all phases of construction. All construction work or any other work performed by the Franchisee, its employees, agents, its duly licensed contractors and sub-contractors shall be in compliance with the plans and specifications approved by the City, and shall be subject to all applicable ordinances, rules and regulations, including licensing and permitting, as well as any licensing and permitting fees charged to all persons and businesses for construction and street opening.

SECTION 16. FRANCHISE NOT A JOINT VENTURE. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in the manner which would indicate any such relationship with the other.

SECTION 17. FRANCHISEE FEE; CONDITIONS.

(a) As consideration for this franchise, the Franchisee shall pay to the City an amount equal to five percent (5%) of the Gross Revenue (as defined in Section 17(f)) from sales of local Telecommunications Services to Subscribers located within the City, collected by the Franchisee.

(b) In consideration of the agreement of the Franchisee to make such franchise fee payments, the City agrees that no additional business license fee shall be imposed upon or required of the Franchisee by the City during the Term of this franchise. This provision shall not exempt the property of the Franchisee from lawful ad valorem taxes and local improvement district assessments. This provision shall also not exempt the Franchisee from conditions, exactions, fees and charges, which are generally applicable during the Franchisee's real property development or use as required by the City's ordinances.

(c) Commencing the month following the month in which the Effective Date of this franchise occurs, the franchise fee shall be paid quarterly on the 20th day of April, July, October and January; such franchise fee shall be paid for Gross Revenues received by the Franchisee for the preceding quarter. The Franchisee shall furnish to the City with each payment of franchise fees required by this Section a written statement, showing the amount of Gross Revenue collected by the Franchisee within the City for the period covered by the payment. Such statement will be accorded confidential treatment to the extent permitted by law. Upon receipt of such payment the City shall issue a receipt to the Franchisee. Nothing herein shall preclude the Franchisee and the City from agreeing to a revised payment schedule.

(d) On or before the first (1st) day of February of each succeeding year, the Franchisee shall submit to the City, a statement of the franchise fee actually due to the City based upon the actual gross revenue for the previous calendar year, together with a check for any amount due from the Franchisee or a statement for any amount due from the City. Such statement will be accorded confidential treatment to the extent permitted by law.

(e) Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. Payment by the Franchisee of any amounts due under this Section shall not be deemed to be a waiver by the Franchisee of any breach of this Agreement by the City occurring prior thereto.

(f) As used in this Section, "Gross Revenue" shall mean all revenues (exclusive of sales tax) collected by the Franchisee from the operation of the Telecommunications System to provide local Telecommunications Services pursuant to this franchise to subscribers within the corporate limits of the City, including, but not limited to:

- (1) All revenues from installation service charges directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,

- (2) All revenues from connection or disconnection fees directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,
- (3) All revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid, and penalties, interest or charges for late payment directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,
- (4) All revenues from equipment sold or rented to customer upon customer premises directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,
- (5) All revenues from authorized rental of conduit space located within the corporate limits of the City,
- (6) All recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from Gross Revenue, and
- (7) The value of any free local Telecommunications Services provided by the Franchisee except (i) any discounted or free services required under this Franchise Agreement; (ii) local Telecommunications Services provided as a credit against non-recurring charges imposed on the Franchisee's customers by a local exchange carrier for converting circuits to the Franchisee.

Notwithstanding the foregoing, Gross Revenue *does not include*: (i) Any tax of general applicability imposed upon the Franchisee; (ii) any regulatory fees or surcharges collected from customers as well as amounts reflecting cost-recovery of regulatory fees and surcharges; (iii) those revenues that the Franchisee receives from another telecommunications service provider and upon which the other telecommunications service provider has paid or will pay a franchise fee to the City; (iv) pass through revenues which are in turn paid to a local exchange carrier for interconnection for long distance service; and (v) revenues that the Franchisee receives from its corporate parent, subsidiary, or affiliate.

(g) Payment of franchise fees under this Section shall in no way limit or inhibit any of the privileges or rights of the City of Vestavia Hills, whether under this franchise or otherwise. Nothing in this Section 17 is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on the Franchisee's business activities under this franchise under applicable law. Except as provided elsewhere in this Franchise Agreement, all payments made by the Franchisee to the City pursuant to this franchise shall be made to the Chief Financial Officer. Nothing in this Franchise Agreement shall be construed to prevent the Franchisee from passing through some or all of the franchise fee to its customers.

(h) Any transactions which have the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by non-collection or non-reporting of Gross Receipts, bartering, or any other means which evade the actual collection of revenues for business pursued by the Franchisee are prohibited and may constitute a default of this Franchise Agreement.

(i) If as a result of such audit or any other review, the City determines that the Franchisee has underpaid its franchise fees by ten percent (10%) or more for any twelve (12) month period, then in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable and verifiable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants and other consultants. The City may collect the costs associated with such audit or review either through the draw-down of the security required in Section 6, or through other means as allowed by law.

If as a result of such audit or other review, the City determines that the Franchisee has underpaid its franchise fees for any twelve (12) month period, then the Franchisee shall pay interest on such underpayment at the rate of ten percent (10%) interest or prime plus two percent (2%), whichever is greater. The underpayment and interest thereon may be collected by the City through the drawdown of the security required in Section 6, or through other means as allowed by law.

SECTION 18. ADDITIONAL BENEFIT TO THE CITY. In addition to any franchise fee collected pursuant to Section 17 of this Agreement, the Franchisee shall provide fiber and facilities to the City's governmental and institutional facilities as follows:

(a) Within ninety (90) days after the City's written request for the same, Franchisee shall provide to the City without recurring rental, use or maintenance charges (collectively, "Recurring Charges") solely for its noncommercial telecommunications purposes, two (2) dark fiber pairs (four (4) fibers) in all City rights-of-way where Franchisee deploys at least 288 fiber strands ("backbone network"), whether underground or aerial (the "City Fibers") in up to a maximum of 10 miles of Franchisee's network (i.e., a total of 40 fiber miles). The City may divide the dark fiber pairs within the backbone network as it determines to best serve the City's facilities, but each division must include at least two (2) fibers. Franchisee shall not be entitled to offset against Gross Revenues the amount of any Recurring Charges associated with the provision of the City Fibers as set forth herein, but Franchisee shall be entitled to offset against Gross Revenues non-recurring installation and non-recurring maintenance costs associated with the City Fibers.

(b) Franchisee shall create a maximum of six (6) splice points at the request of the City among existing Franchisee access points. The City shall have its own handhole for such splice points, so the City's use of and connection to the City Fibers is separate and apart from Franchisee's Telecommunications System. The City shall reimburse Franchisee for Franchisee's costs for any splice points requested by the City beyond six (6). Franchisee shall perform all splicing of City lateral cables to the City Fibers. The City shall provide Franchisee with at least ninety (90) days' prior written notice of the need to splice to the City Fibers.

(c) Franchisee agrees that the cost of any routine maintenance of the City Fibers shall be borne by Franchisee, and Franchisee shall perform such routine maintenance on the maintenance schedule for Franchisee's Telecommunications System. To arrange for non-routine maintenance,

the City will provide at least sixty (60) days' prior written notice to Franchisee that such maintenance is required and will pay or reimburse Franchisee for the cost thereof. Notwithstanding the foregoing, however, the City shall pay only actual incremental labor costs to Franchisee to repair the City's share of dark fibers within any cable that is damaged as the result of any natural disaster or casualty other than normal wear and tear. Nothing in this subsection (c) shall supersede the provisions of this Agreement relating to the relocation of equipment at Franchisee's expense in the event of a City project.

(d) Franchisee acknowledges that the City has the right to connect its own equipment to the City Fibers to be provided hereunder for internal non-commercial municipal purposes, and to make full use at no Recurring Charges to the City of the fibers to be dedicated to the use of the City hereunder.

(e) The City recognizes that Franchisee's agreements, if any, to occupy rights-of-way or for pole attachments may be subject to the control of third parties who may require Franchisee to relocate its cable. In the event of such required relocation by Franchisee that impacts the City Fibers, Franchisee shall provide notice thereof to the City as soon as reasonably possible. Franchisee shall provide replacement dark fibers to the City in any Franchisee replacement cable as soon as reasonably possible.

(f) Franchisee acknowledges and agrees that in connection with the assignment or transfer of Franchisee's interests under this Franchise Agreement, any assignee shall be bound by all of the provisions of this Section 18, including without limitation, the requirement to provide the City Fibers at no Recurring Charges to the City.

SECTION 19. REPORTS AND INVESTIGATIONS.

(a) The Franchisee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Franchisee's Telecommunications System in the City in the context of the permitting process.

(b) The City may, at any time, make inquiries pertaining to the Franchisee's operation of its Telecommunications System within the City of Vestavia Hills. The Franchisee shall respond to such inquiries on a timely basis.

SECTION 20. RESERVATION OF RIGHTS. It is hereby reserved to the Franchisee every right and privilege available to the Franchisee under applicable law, and the Franchisee by its execution of this Franchise Agreement, shall not be deemed in any way to waive, relinquish, release or abrogate any of its lawful rights and privileges. Nothing in this Franchise Agreement is intended to alter, amend, modify or expand the taxes and/or fees that may lawfully be assessed on the Franchisee's business activities under this franchise pursuant to applicable law.

SECTION 21. FORFEITURE AND TERMINATION.

(a) In addition to all other rights and powers of the City, the City reserves the right to forfeit and terminate this franchise and all rights and privileges of the Franchisee in the event of a

material or substantial breach of its terms and conditions including, but not limited to, the following:

- (1) The appointment of a receiver or trustee in bankruptcy to take over and conduct the business of the Franchisee;
- (2) A failure to provide insurance, bonds, certificates of deposit or letters of credit as required herein;
- (3) Permitting the use of its Telecommunications System or Facilities in any manner that would avoid the need for a franchise with the City for the business of another person; or
- (4) A failure to operate the Telecommunications System for a period of six (6) months not due to an Event of Force Majeure.

(b) The Franchisee shall not be excused by mere economic hardship, nor by nonfeasance or malfeasance of its directors, officers, agents, subcontractors or employees.

(c) The City shall notify the Franchisee in writing of any breach specifying the nature of the breach. The Franchisee shall have thirty (30) days after the date of such notice to come back into compliance (as set forth in Section 34), unless such cure period is extended in writing by the City Attorney. Should the Franchisee fail or refuse to comply with the notice given by the City, the City may consider the franchise in default and pursue remedies as it determines. If the remedy elected by the City is to forfeit and terminate this franchise, the Franchisee may request an appeal of such decision to the Council of the City of Vestavia Hills which appeal must be filed in writing with the City Clerk no later than ten (10) days after the date of written notice of forfeiture and termination to the Franchisee. The City Council shall set a public hearing on such appeal within thirty days after notice of appeal is received. Nothing herein shall be construed as a waiver or forfeiture of any right or remedy that either party may have concerning or arising out of this Franchise Agreement, including the right to seek judicial redress for any breach or violation of the terms of this Franchise Agreement.

(d) The Franchisee reserves the right to forfeit and terminate this Franchise Agreement and all rights and privileges to the City hereunder for any reason. If the Franchisee exercises that right, it shall be required to submit payment of Gross Revenues until such time that the facilities are removed and otherwise cease providing Services and remove its Facilities from the rights of way at its sole cost and expense.

SECTION 22. REMEDIES AND PENALTIES NOT EXCLUSIVE.

(a) All remedies and penalties under this franchise are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penalty provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee or the City by or pursuant to this Franchise Agreement. A specific waiver of a particular breach of any term,

condition or obligation imposed upon the Franchisee or the City by or pursuant to this Franchise Agreement shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

(b) For any period of performance or cure under this Agreement, the time period within which the Franchisee is to perform or cure, as the case may be, shall be extended, without liability to the Franchisee, for at least as long as the Franchisee's ability to perform or cure is delayed for reasons beyond the Franchisee's control provided that the Franchisee shall employ all commercially reasonable efforts to eliminate or mitigate the impact of said reasons and to thereafter reasonably accelerate, where feasible, its performance or cure.

(c) Prior to taking any adverse action against the Franchisee or this franchise, the City shall provide the Franchisee with such notice and due process, including a reasonable period of time to cure, as is required by applicable law, but in all cases no less than reasonable notice and opportunity to cure.

SECTION 23. CONTINUING OBLIGATION. In the event the Franchisee continues to operate all or any part of the Telecommunications System after the Term of this Franchise Agreement expires or is terminated, and before any renewal of the franchise by the City, then the Franchisee shall continue to comply with all applicable provisions of this franchise throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this franchise.

SECTION 24. LIMITATION ON PRIVILEGES. All rights, authority and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the rights-of-way and other public ways of the City are not to operate in any way so as to be an enhancement of the Franchise's properties or values or to be an asset or item of ownership in any appraisal thereof.

SECTION 25. CONFIDENTIALITY. To the fullest extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information, including maps, submitted to or made available by the Franchisee to the City under this Franchise Agreement, provided that the Franchisee notifies the City of, and clearly labels, the information which the Franchisee deems to be confidential, proprietary information as such. Such confidential, proprietary information shall include, but not be limited to any customer names and lists, financial information, technical information or maps regarding placement of equipment with the exception of any map(s) attached to the Franchise Agreement, or other information clearly identified as "Confidential" pertaining to Services provided to its customers. Confidential, proprietary information disclosed by the Franchisee to the City shall be regarded as confidential and proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify the Franchisee of such request and allow the Franchisee a reasonable opportunity to defend its information from disclosure.

SECTION 26. CAPTIONS. The captions given to various provisions of this Franchise Agreement are for purposes of convenience only and are to have no impact upon the interpretation of any such provisions.

SECTION 27. ENTIRE AGREEMENT. This Franchise Agreement, with its exhibits, comprises the entire agreement between the City and the Franchisee for purposes of this franchise and supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof.

SECTION 28. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. The Franchisee shall, at all times during the Term of its franchise, be subject to the present ordinances, resolutions, rules, regulations, and laws of the City of Vestavia Hills and of the State of Alabama, and to the provisions of any further ordinance, resolution, rule, regulation, or law of the City or of the State of Alabama, so far as they may be applicable.

SECTION 29. ALABAMA LAW GOVERNS. In any controversy or dispute under this franchise, the laws and jurisdiction of the State of Alabama shall apply to the extent such law has not been superseded or preempted.

SECTION 30. NOTICE. Any notice required or permitted under this Franchise Agreement shall be deemed given if sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight courier, in either case, and addressed as follows:

To the City:

Vestavia Hills City Clerk
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, AL 35216

With copies sent to both of the following email addresses:

City Manager Jeffrey D. Downes
jdownes@vhal.org

City Clerk Rebecca Leavings
rleavings@vhal.org

To the Franchisee:

Telepak Networks, Inc.
Alan Jones, Sr. Vice President
1018 Highland Colony Parkway, Suite 400
Ridgeland, Mississippi 39157

With copies to (except for invoices):

Charles L. McBride Jr.
SVP- Legal & General Counsel
1018 Highland Colony Parkway, Suite 700
Ridgeland, Mississippi 39157

or such other address as may be designated in the future in writing by either party.

SECTION 31. EFFECTIVE DATE AND PUBLICATION. After the execution hereof, this franchise shall be published once in a daily newspaper published in the City of Vestavia Hills at the Franchisee's expense, and shall not take effect until such publication or thirty (30) days after the Ordinance authorizing this franchise, whichever is later (the later date being, the "Effective Date").

SECTION 32. MODIFICATION. This Franchise Agreement, including all documents specifically incorporated herein, cannot be changed orally but only by an agreement in writing properly executed by the parties.

SECTION 33. SEVERABILITY. Should any part, term or provision of this Franchise Agreement be held invalid or unenforceable by any court of competent jurisdiction, such part, term, or provision shall be deemed a separate, distinct and independent provision and such holding shall not invalidate or render unenforceable any other provision of this franchise.

SECTION 34. RIGHT TO NOTICE AND CURE. Other provisions herein to the contrary notwithstanding, prior to exercising its right to terminate or revoke this Franchise Agreement as provided herein, the City shall first give written notice to the Franchisee setting out the circumstance or basis on which the City has the right to terminate or revoke this Franchise Agreement, and the Franchisee shall have a period of thirty (30) days after the receipt of the notice within which to cure, correct, or resolve the circumstance or basis, and if the Franchisee is successful in the cure, correction, or resolution thereof, then the City shall not exercise its right to terminate or revoke this Franchise Agreement. If the Franchisee has commenced the cure, correction or resolution within thirty (30) days after its receipt of notice, but additional time is necessary to the completion thereof, then Franchisee shall have an additional thirty (30) days or such additional time upon which the parties can agree, not to be unreasonably withheld by either party, to accomplish the cure, correction, or resolution.

(signatures on the following page)

IN WITNESS WHEREOF, the parties have executed this franchise as of the dates set forth below.

CITY OF VESTAVIA HILLS, ALABAMA, a municipal corporation

By: _____

Printed Name: ~~Weaver~~ Rusty Weaver

Its: Mayor PPro-Temro-Tem

Date: _____

By: _____

Printed Name: Jeffrey D. Downes

Its: ~~Manager~~ City Manager

Date: _____

ATTESTED BY:

Rebecca Leavings
City Clerk

TELEPAK NETWORKS, INC., a corporation

By: _____

Name & Title: Alan Jones, Sr. Vice President

Date: _____

Exhibit 1

Complete Description of the Ownership and Control of the Franchisee as of January 1, 2021

TELEPAK NETWORKS, INC., a Mississippi corporation, is a wholly owned subsidiary of TELAPEX, INC., a Mississippi corporation

TEKLINKS, INC., a Delaware corporation, is the wholly owned subsidiary of TELEPAK NETWORKS, INC., a Mississippi corporation

Exhibit 2

Plans shall be submitted either digitally or by paper in a PDF Adobe format or half size drawings (11" X 17") as requested

RESOLUTION NUMBER 5379

A RESOLUTION APPROVING A NEW PERSONNEL COMPENSATION SCHEDULE FOR CERTAIN NON-CLASSIFIED PERSONNEL OF THE CITY OF VESTAVIA HILLS

WHEREAS, the City of Vestavia Hills classified personnel compensation schedules are regulated through the Personnel Board of Jefferson County; and

WHEREAS, the City of Vestavia Hills Library in the Forest unclassified personnel are regulated through a separate formal compensation schedule; and

WHEREAS, the City Manager is an unclassified employee with compensation regulated through an employment contract; and

WHEREAS, unclassified laborers with the City of Vestavia Hills have historically been regulated on a separate pay schedule; and

WHEREAS, the City Manager, as Appointing Authority of the City, and the Public Services Director have reviewed the employee turnover rate, the current pay scale for unclassified laborers, and the compensation plans of other municipalities and have recommended a revised compensation schedule; and

WHEREAS, said adjustments include the following:

1. Non-Classified Laborers, Grade 8 to Grade 12 w/ 10 Steps; and Non-Classified Crew Leaders, Grade 13 to Grade 15 w/ 10 Steps (Financial impact fiscal 2022, \$10,730.67); and
2. Non-Classified full-time employees are eligible to receive a 5% premium for a job-related certification. Employees must provide proof that the certification is still active or will be subject to having the 5% premium certification removed. (Equivalent to the current classified employee policy); and
3. The new Grade 12 laborer position and the new Grade 15 crew leader position would top out at Step 10; and

WHEREAS, upon review, the Mayor and the City Council find it is in the best public interest to accept the recommendation and revise the compensation plan of the unclassified laborers of the City.

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 administer the new proposed compensation plan for the unclassified laborers of the City immediately; and
2. The Finance Department shall utilize said compensation plan for unclassified laborers as described above and amend it with COLA's or adjustments as reflected in the City's budgets and/or any amendments to this Resolution Number 5379 as with other employee compensation schedule, classified and/or unclassified; and
3. This Resolution Number 5379 shall become effective April 1, 2022.

DONE, ORDERED, ADOPTED and APPROVED this the 28th day of March, 2022.

ATTESTED BY:

Rusty Weaver
Mayor Pro-Tem

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 5380

A RESOLUTION ADOPTING THE DIVISION “G” MULTI-JURISDICTIONAL HAZARD MITIGATION PLAN, IN FULFILLMENT OF THE FEDERAL DISASTER MITIGATION ACT OF 2000 AND THE LOCAL MITIGATION PLAN REQUIREMENTS OF THE 44 C.F.R. SECTION 201.6

WHEREAS, The Federal Disaster Mitigation Act of 2000, (DMA 2000) as administered by the Alabama Emergency Management Agency and the Federal Emergency Management Agency (FEMA) provides Federal assistance to local governments to alleviate suffering and damage from disasters, and broadens existing relief programs to encourage disaster preparedness plans and programs, coordination and responsiveness, insurance coverage, and hazard mitigation measures; and,

WHEREAS, as a prerequisite for Alabama Division “G” counties to continue to qualify for FEMA mitigation grant assistance programs, the DMA 2000 requires the plan to be updated every five years and,

WHEREAS, the Division “G” Multi-Jurisdictional Hazard Mitigation Plan has been updated in accordance with FEMA requirements at 44 C.F.R 201.6; and

WHEREAS, the City of Vestavia Hills understands that the adoption of this plan determines the eligibility for Local, State and Federal grant funding that could become available before, during or after a disaster occurs within their jurisdiction; and

WHEREAS, the City of Vestavia Hills participated in updating, the Division “G” Multi-Jurisdictional Hazard Mitigation Plan; and

WHEREAS, the City of Vestavia Hills is a local unit of government that has afforded the citizens an opportunity to comment and provide input in the plan and actions in the plan; and

WHEREAS, the City of Vestavia Hills has reviewed the plan and affirms that the plan will be updated no less than every five years; and

NOW THEREFORE, BE IT RESOLVED that the Division “G” Multi-Jurisdictional Hazard Mitigation Plan is hereby adopted and is immediately made effective.

ADOPTED and APPROVED this 28th day of March, 2022.

ATTESTED BY:

Rusty Weaver
Mayor Pro-Tem

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 5381

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 February 28, 2020, 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 11th day of April, 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 15th day of April, 2022.

2. That on the 25th day of July, 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 5381 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:

2245 and 2249 Blue Ridge Blvd
Taylor Burton and Donald & Alicia Huey, Owner(s)

More particularly described as follows:

Parcel 1. Commence at the Northeast corner of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 35, Township 18 South, Range 3 West, and run west along the north line of said $\frac{1}{4}$ - $\frac{1}{4}$ Section for 256.34 feet; thence 45 degrees 17 minutes left and Southwesterly for 452.99 feet; thence 90 degrees and 00 minutes left and run Southeasterly for 25.00 feet to the point of beginning of the parcel of land herein described; thence continue Southeasterly along last stated course for 150.00 feet; thence 90 degrees 00 minutes left and run Northeasterly for 100.00 feet; thence 90 degrees 00 minutes right and run Southeasterly for 146.74 feet to a point on the Northwesterly property line of Lot 0, Block 9 or Regent Forest Estates Second Addition as recorded in Map Book 54, Page 73 in the Office of the Judge of Probate of Jefferson County, Alabama, said point being 108.31 feet Northeasterly of Southwesterly corner of said Lot 9, thence 70 degrees 54 minutes right and run Southwesterly for 261.96 feet to the Southwest corner of Lot 8, Block 9 of said Regent Forest Estates, Second Addition; thence 28 degrees 56 minutes left and run Southerly along Westerly property line of Lot 7, Block 9 of said Regent Forest Estates, Second addition for 153.23 feet, thence 138 degrees 02 minutes right run Northwesterly for 346.39 feet thence 90 degrees 00 minutes right and run Northeasterly for 100.00 feet thence 90 degrees 00 minutes left and run Northwesterly for 150.00 feet thence 90 degrees 00 minutes right and run Northeasterly for 150.00 feet to the point of beginning. This parcel of land being Lot 5, Block 1, according to the survey of Regent Forest Estates, Eighth Addition, Jefferson County, Alabama, Map Book 62, Page 22-A.

Parcel 2. parcel of land located in the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 18, Range 3 West, which was formerly known as Lots 1-4, in Block 1, of Regent Forest, 8th Addition, as recorded in Map Book 68, Page 22, in the Office of the Judge of Probate of Jefferson County, Alabama, said subdivision having been vacated by that certain instrument in Real Volume 84, Page 526, in said Probate Office. This parcel of land is as follows: Begin at the Northeast corner of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 18, South Range 2 West; thence turn Southerly an angle of 125 degrees 29 minutes and run a distance of 58.59 feet to a point, which is the Northwest corner of Lot 15, Block 9, in Regent Forest Estates Second Addition, as recorded in Map Book 54, page 73, in the Office of the Probate Judge of Jefferson County, Alabama; thence turn Southwesterly an angle of 108 degrees 20

minutes and run Southwesterly a distance of 500.10 feet along the rear lot lines of Lots 14, 13,12, 11 and 10, Block 9, in aforesaid Regent Forest Estates 2nd Addition subdivision to a point that is the Northwest Corner of Lot 10 , Block 9, in said subdivision ; thence turn an angle to the left of 169 degrees 04 minutes and 30 seconds and run Southwesterly 28.59 feet along the rear lot line of Lot 9, Block 9, in said subdivision to a point ; thence turn an angle to the right of 70 degrees 54 minutes and run Northwesterly 146.74 feet to a point; thence turn an angle to the left of 90 degrees and run Southwesterly 100 feet to a point; thence turn an angle to the right of 90 degrees and run 150 feet to a point on the south boundary line of the Blue Ridge Blvd. Right of Way, then turn an angle to the right of 90 degrees and run Northeasterly along the said South boundary line of Blue Ridge Blvd. a distance of 440. 75 feet to the point of intersection of the said South boundary line of the Southwest $\frac{1}{4}$ of Section 35, Township 18 South, Range 2 West, in Jefferson County, Alabama; then turn an angle to the right and run Eastward along the North line of quarter-quarter section a distance of 296.1 feet to the point of beginning.

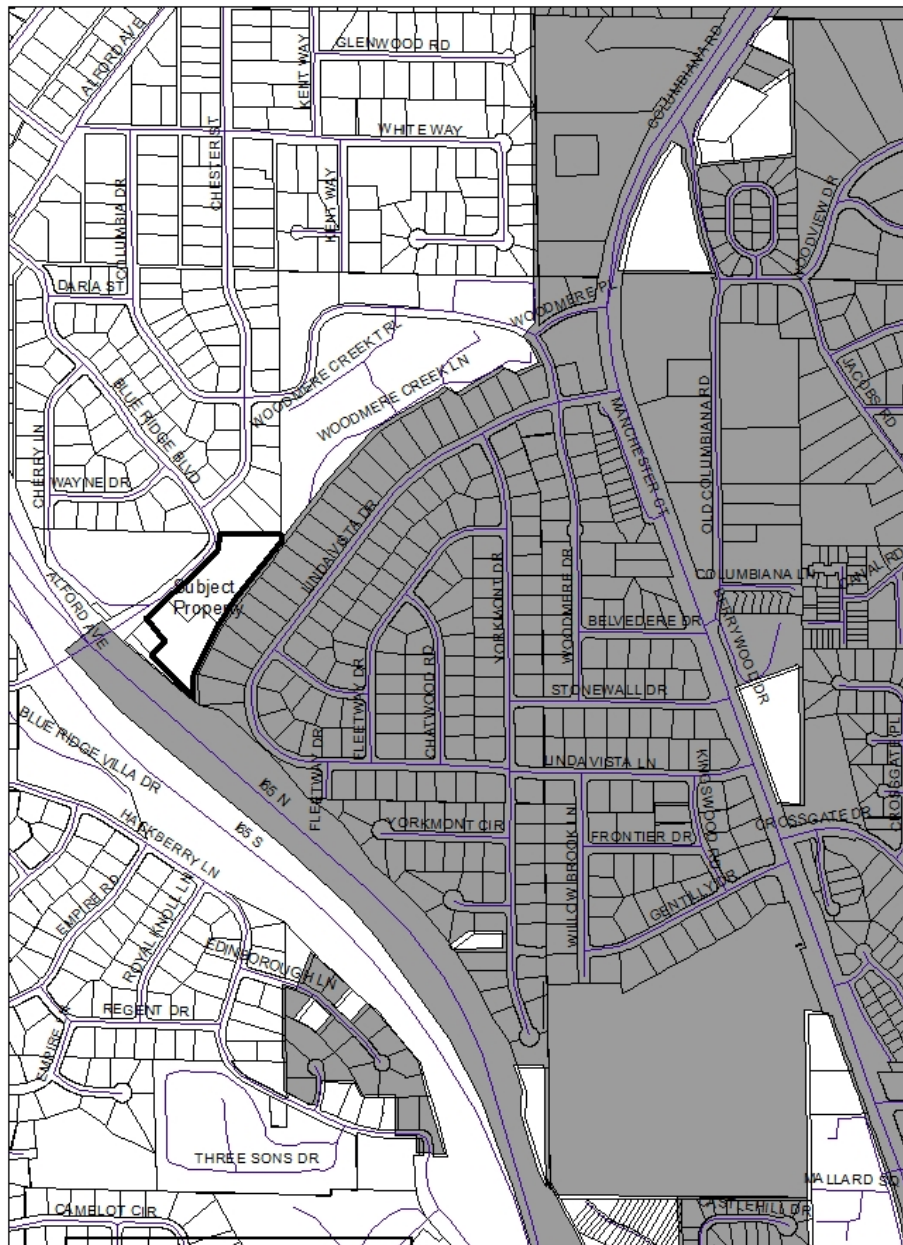
APPROVED and ADOPTED this the 11th day of April, 2022.

Ashley C. Curry
Mayor

ATTESTED BY:

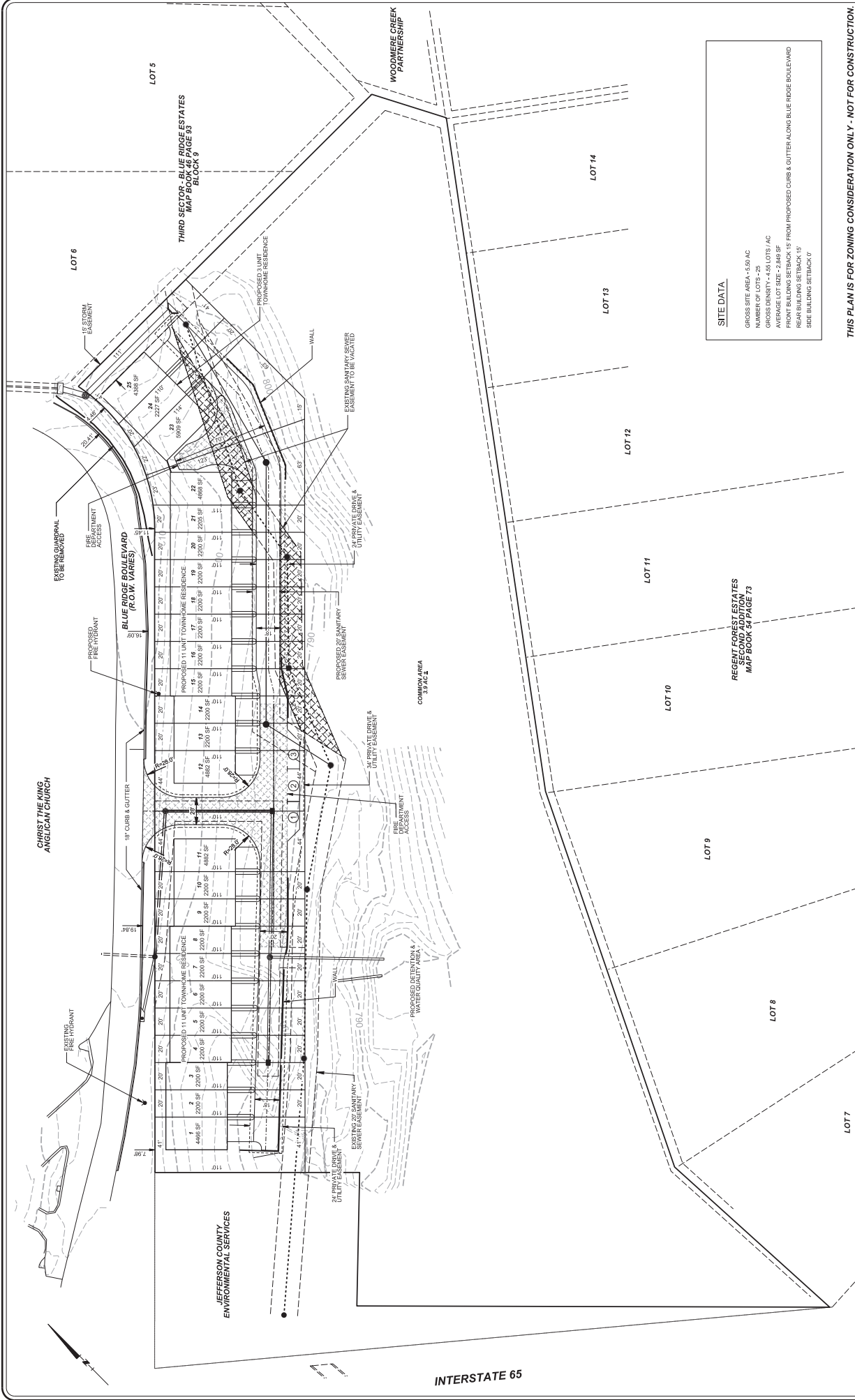
Rebecca Leavings
City Clerk

2245 & 2249 Blue Ridge Blvd



Legend

■ Vestavia_Hills_City_Limits



THIS PLAN IS FOR ZONING CONSIDERATION ONLY - NOT FOR CONSTRUCTION.

No.	Date	By	Checked	Revision Description

Alabama Engineering Company, Inc.
 1214 Alford Avenue, Suite 200
 Hoover, Alabama 35226
 Phone (205) 803-2161
 Fax (205) 803-2162

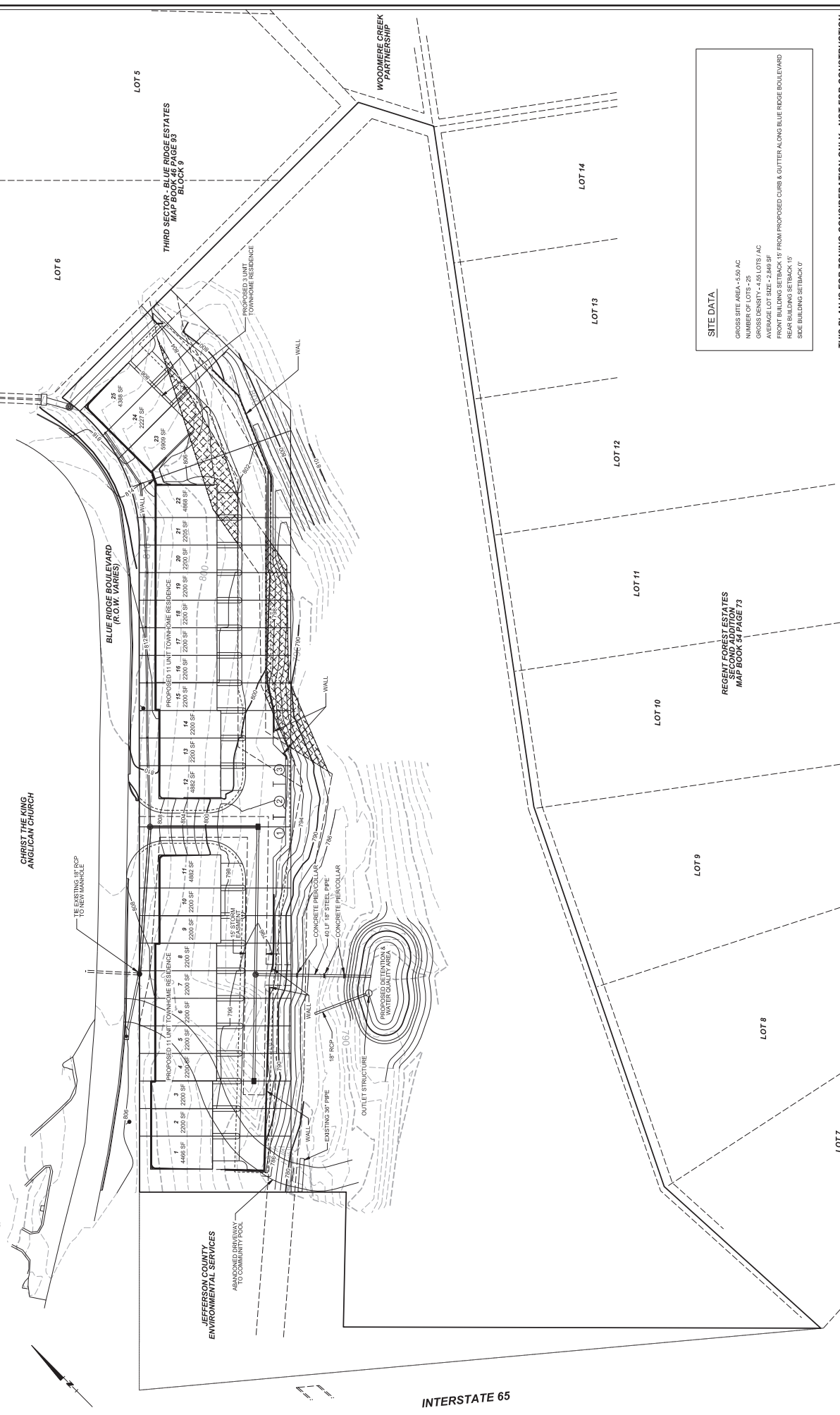
Not valid for construction
 unless signed in the block

Robert W. Emley, IV, PE
 Date

Regent Forest Estates
 MAP BOOK 50 PAGE 73

Rezonning Site Plan
 Blue Ridge Boulevard
 Taylor Burton Company
 Jefferson County, Alabama

Scale: 1" = 40'
 Drawn by: [Name]
 Checked: [Name]
 PPE: [Name]
 File Name: [Name]
 Drawing No.: C10
 Sequence No.: 1 of 2



SITE DATA
 GROSS SITE AREA - 5.59 AC
 NUMBER OF LOTS - 25
 GROSS DENSITY - 4.58 LOTS / AC
 AVERAGE LOT SIZE - 2,246 SF
 FRONT BUILDING SETBACK 15' FROM PROPOSED CURB & GUTTER ALONG BLUE RIDGE BOULEVARD
 REAR BUILDING SETBACK 15'
 SIDE BUILDING SETBACK 0'

THIS PLAN IS FOR ZONING CONSIDERATION ONLY - NOT FOR CONSTRUCTION.

Scale: 1" = 40'
 Date: 3/1/2022
 Drawn by: [Name]
 Checked: [Name]
 Title: [Name]
 Sequence No.: 2 of 2

Resoning Grading & Drainage Plan
 Blue Ridge Boulevard
 Taylor Burton Company
 Jefferson County, Alabama



Not valid for construction unless signed in the block
 Robert W. Emley, IV, PE
 Date: _____

Alabama Engineering Company, Inc.
 1214 Alford Avenue, Suite 200
 Hoover, Alabama 35226
 Phone (205) 803-2161
 Fax (205) 803-2162

No.	Date	By	Checked	Revision Description

INTERSTATE 65

Annexation Committee Petition Review

Property: 2245 & 2249 Blue Ridge Blvd

Owners: Taylor Burton

Date: 5/04/2020

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 _____
Drainage needs updating
5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of _____. Meets city criteria: Yes ___ No ___
Comment: N/A
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 _____
N/A

Property: 2245 & 2249 Blue Ridge Blvd

8. A non-refundable administrative fee of \$100 has been paid to the city. Furthermore, voluntary contributions, including an application fee, of \$ 1200 will be paid to offset costs associated with the annexation. Yes No Comment _____

9. Property is free and clear of hazardous waste, debris and materials. Yes No Comment _____

10. Are there any concerns from city departments? Yes No Comments: _____

11. Information on children: Number in family N/A; Plan to enroll in VH schools Yes No Comments: _____

Other Comments: Dev of 38 Townhomes

George Pierce
Chairman

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: 2245 & 2249 Blue Ridge Blvd

C Brady

2245/2249 Blue Ridge Blvd -- concerns noted; roadway in fair condition, but shoulder improvements are needed to assist with drainage flow; appears to be a clogged or obstructed crossdrain pipe limiting flow of water. Significant drainage way crosses this property; and combined with steepness of grades will make development a challenge. Submitted engineering plans are dated 2015 and will need to be updated to meet current City standards. Geotechnical report for slope stability and a traffic impact analysis will be required for engineering approval of presented development plans.

Police Department:

Date: 3/18/2020

Initials: CW

Comments: No problem.

Fire Department:

Date: 3/20/2020

Initials: R Farrell

Comments: n/p via email

Board of Education:

Date: 3/19/2020

Initials: S Bendale

The single family homes we have non-issue with and they would fall into our accepted ratio plan. The 38 townhomes can be an issue with us and the system. Provided these are priced at a value that deters entry level into Vestavia we may be okay with you his. In large, we are not in favor of mass building projects that could cause added stress on our student population and facilities.

R

PARCEL #: 29 00 35 1 001 013.000
OWNER: HUEY DONALD W
ADDRESS: 3535 GRANDVIEW PKWY STE 550 BIRMINGHAM AL 35243-1..
LOCATION: 2249 BLUE RIDGE BLVD BHAM AL 35226

Baths: **0.0** H/C Sqft: **0**
18-023.0 Bed Rooms: **0** Land Sch: **A114**
 Land: **97,500** Imp: **0** Total: **97,500**
 Acres: **0.000** Sales Info: **05/01/2007** **\$150,000**

<< Prev Next >> [1 / 0 Records] Processing...

Tax Year : 2021 ▼

SUMMARY LAND BUILDINGS SALES PHOTOGRAPHS MAPS

SUMMARY

ASSESSMENT
 PROPERTY CLASS: 2 OVER 65 CODE:
 EXEMPT CODE: DISABILITY CODE:
 MUN CODE: 01 COUNTY HS YEAR: 0
 SCHOOL DIST: EXM OVERRIDE AMT: \$0.00
 OVR ASD VALUE: \$0.00 TOTAL MILLAGE: 50.1

 CLASS USE:
 FOREST ACRES: 0 TAX SALE:
 PREV YEAR VALUE: \$97,500.00 BOE VALUE: 0

VALUE
 LAND VALUE 10% \$0
 LAND VALUE 20% \$97,500
 CURRENT USE VALUE [DEACTIVATED] \$0

 TOTAL MARKET VALUE [APPR. VALUE: \$97,500]: \$97,500
 Assesment Override:
 MARKET VALUE:
 CU VALUE:
 PENALTY:
 ASSESSED VALUE:

TAX INFO

	CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
STATE	2	1	\$19,500	\$126.75	\$0	\$0.00	\$126.75
COUNTY	2	1	\$19,500	\$263.25	\$0	\$0.00	\$263.25
SCHOOL	2	1	\$19,500	\$159.90	\$0	\$0.00	\$159.90
DIST SCHOOL	2	1	\$19,500	\$0.00	\$0	\$0.00	\$0.00
CITY	2	1	\$19,500	\$0.00	\$0	\$0.00	\$0.00
FOREST	2	1	\$0	\$0.00	\$0	\$0.00	\$0.00
SPC SCHOOL1	2	1	\$19,500	\$99.45	\$0	\$0.00	\$99.45
SPC SCHOOL2	2	1	\$19,500	\$327.60	\$0	\$0.00	\$327.60
ASSD. VALUE: \$19,500.00				\$976.95		GRAND TOTAL: \$976.95	

FULLY PAID

DEEDS

INSTRUMENT NUMBER	DATE
200708-15136	05/21/2007
0-0	08/19/1996

PAYMENT INFO

PAY DATE	TAX YEAR	PAID BY	AMOUNT
11/5/2021	2021	TOWNES DEVELOPMENT GROUP LLC	\$976.95
11/20/2020	2020	TOWNES DEVELOPMENT GROUP LLC	\$976.95
10/17/2019	2019	-	\$976.95
11/6/2018	2018	TOWNS DEVELOPMENT GROUP LLC	\$976.95
10/30/2017	2017	TOWNES DEVELOPMENT GROUP	\$976.95
10/24/2016	2016	TOWNES DEVELOPMENT GROUP, LLC.	\$1,045.09
10/14/2015	2015	TOWNES DEVELOPMENT GROUP, LLC	\$976.95
10/8/2014	2014	TOWNES DEVELOPMENT GROUP, LLC	\$991.95
11/7/2013	2013	TOWNES DEVELOPMENT GROUP, LLC	\$991.95

PARCEL #: 29 00 35 1 001 001.004
OWNER: HUEY DONALD W & ALICIA G
ADDRESS: 1216 PERTHSHIRE CT BIRMINGHAM AL 35242-6076
LOCATION: 2245 BLUE RIDGE BLVD BHAM AL 35226

Baths: **0.0** H/C Sqft: **0**
50-028.0 Bed Rooms: **0** Land Sch: **\$156**
 Land: **125,200** Imp: **0** Total: **125,200**
 Acres: **0.000** Sales Info: **05/01/2009 \$120,000**

<< Prev Next >> [1 / 0 Records] Processing...

Tax Year : 2021 ▼

SUMMARY LAND BUILDINGS SALES PHOTOGRAPHS MAPS

SUMMARY

ASSESSMENT
 PROPERTY CLASS: 2 OVER 65 CODE:
 EXEMPT CODE: DISABILITY CODE:
 MUN CODE: 01 COUNTY HS YEAR: 0
 SCHOOL DIST: EXM OVERRIDE AMT: \$0.00
 OVR ASD VALUE: \$0.00 TOTAL MILLAGE: 50.1

 CLASS USE:
 FOREST ACRES: 0 TAX SALE:
 PREV YEAR VALUE: \$125,200.00 BOE VALUE: 0

VALUE
 LAND VALUE 10% \$0
 LAND VALUE 20% \$125,200
 CURRENT USE VALUE [DEACTIVATED] \$0

 TOTAL MARKET VALUE [APPR. VALUE: \$125,200]: \$125,200
 Assesment Override:
 MARKET VALUE:
 CU VALUE:
 PENALTY:
 ASSESSED VALUE:

TAX INFO

	CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
STATE	2	1	\$25,040	\$162.76	\$0	\$0.00	\$162.76
COUNTY	2	1	\$25,040	\$338.04	\$0	\$0.00	\$338.04
SCHOOL	2	1	\$25,040	\$205.33	\$0	\$0.00	\$205.33
DIST SCHOOL	2	1	\$25,040	\$0.00	\$0	\$0.00	\$0.00
CITY	2	1	\$25,040	\$0.00	\$0	\$0.00	\$0.00
FOREST	2	1	\$0	\$0.00	\$0	\$0.00	\$0.00
SPC SCHOOL1	2	1	\$25,040	\$127.70	\$0	\$0.00	\$127.70
SPC SCHOOL2	2	1	\$25,040	\$420.67	\$0	\$0.00	\$420.67
ASSD. VALUE:			\$25,040.00				
				\$1,254.50			
						GRAND TOTAL:	\$1,254.50

FULLY PAID

DEEDS

INSTRUMENT NUMBER	DATE
200906-18431	05/28/2009
9904-5541	03/17/1999

PAYMENT INFO

PAY DATE	TAX YEAR	PAID BY	AMOUNT
11/5/2021	2021	TOWNES DEVELOPMENT GROUP LLC	\$1,254.50
11/20/2020	2020	TOWNES DEVELOPMENT GROUP LLC	\$1,254.50
10/17/2019	2019	-	\$1,254.50
11/6/2018	2018	TOWNS DEVELOPMENT GROUP LLC	\$1,254.50
10/30/2017	2017	TOWNES DEVELOPMENT GROUP	\$1,254.50
10/24/2016	2016	TOWNES DEVELOPMENT GROUP, LLC.	\$1,254.50
10/14/2015	2015	TOWNES DEVELOPMENT GROUP, LLC	\$1,254.50
10/8/2014	2014	TOWNES DEVELOPMENT GROUP, LLC	\$1,269.50
11/7/2013	2013	TOWNES DEVELOPMENT GROUP, LLC	\$1,269.50

STATE OF ALABAMA

Jefferson COUNTY

PETITION FOR ANNEXATION TO THE
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: February 28, 2020

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 Jefferson 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.

Contact:**Taylor Burton****Taylor Burton Company, Inc.****3239 Lorna Road, Suite 108****Birmingham, AL 35216****205-822-7936**

EXHIBIT "A"

LOT: 2 parcels - Metes and bounds
BLOCK: (See attached legal descriptions)
SURVEY:

RECORDED IN MAP BOOK _____, PAGE _____, IN THE _____

PROBATE OFFICE OF Jefferson COUNTY, ALABAMA.

COUNTY ZONING: parcel 1 - RT; parcel 2 - R4

COMPATIBLE CITY ZONING: _____

LEGAL DESCRIPTION (METES AND BOUNDS):

PARCEL #1

Commence at the Northeast corner of the SW 1/4 of the NE 1/4 of Section 35, Township 18 South, Range 3 West, and run west along the north line of said 1/4-1/4 Section for 256.34 feet; thence 45 degrees 17 minutes left and Southwesterly for 452.98 feet; thence 90 degrees and 00 minutes left and run Southwesterly along last stated course for 150.00 feet; thence 90 degrees 00 minutes right and run Southwesterly for 100.00 feet; thence 90 degrees 00 minutes right and run Southwesterly for 146.74 feet to a point on the Northwesterly property line of Lot 9, Block 9 or Regent Forest Estates Second Addition as recorded in Map Book 54, Page 73 in the Office of the Judge of Probate of Jefferson County, Alabama, said point being 108.31 feet Northwesterly of Southwesterly corner of said Lot 9, thence 70 degrees 54 minutes right and run Southwesterly for 261.98 feet to the Southwest corner of Lot 8, Block 9 of said Regent Forest Estates, Second Addition; thence 28 degrees 56 minutes left and run Southwesterly along Westerly property line of Lot 7, Block 9 of said Regent Forest Estates, Second Addition for 153.23 feet; thence 138 degrees 02 minutes right run Northwesterly for 346.39 feet thence 90 degrees 00 minutes right and run Northwesterly for 100.00 feet thence 30 degrees 00 minutes left and run Northwesterly for 150.00 feet thence 90 degrees 00 minutes right and run Northwesterly for 150.00 feet to the point of beginning. This parcel of land being Lot 5, Block 1, according to the survey of Regent Forest Estates, Eighth Addition, Jefferson County, Alabama, Map Book 62, Page 22-A.

PARCEL #2

A parcel of land located in the Southwest 1/4 of the Northeast 1/4 of Section 35, Township 18, Range 3 West, which was formerly known as lots 1-4, in Block 1, of Regent Forest, 8th Addition, as recorded in Map Book 68, Page 22, in the Office of the Judge of Probate of Jefferson County, Alabama, said subdivision having been vacated by that certain instrument in Real Volume 84, Page 526, in said Probate Office. This parcel of land is as follows:
Begin at the Northeast corner of the Southwest 1/4 of the Northeast 1/4 of Section 35, Township 18, South Range 2 West; thence turn Southerly an angle of 125 degrees 29 minutes and run a distance of 59.59 feet to a point, which is the Northwest corner of Lot 15, Block 9, in Regent Forest Estates Second Addition, as recorded in Map Book 54, page 73, in the Office of the Probate Judge of Jefferson County, Alabama; thence turn Southwesterly an angle of 108 degrees 20 minutes and run Southwesterly a distance of 500.10 feet along the rear lot line of Lots 14, 13, 12, 11 and 10, Block 9, in aforesaid Regent Forest Estates 2nd Addition subdivision to a point that is the Northwest Corner of Lot 10, Block 9, in said subdivision; thence turn an angle to the left of 168 degrees 04 minutes and 30 seconds and run Southwesterly 28.59 feet along the rear lot line of Lot 9, Block 9, in said subdivision to a point; thence turn an angle to the right of 70 degrees 54 minutes and run Northwesterly 146.74 feet to a point; thence turn an angle to the right of 90 degrees and run Southwesterly 100 feet to a point; thence turn an angle to the right of 90 degrees and run the right of 90 degrees and run Northwesterly along the Blue Ridge Blvd. Right of Way; then turn an angle to the right of 80 degrees and run Northwesterly along the said South boundary line of Blue Ridge Blvd. a distance of 440.75 feet to the point of intersection of the said South boundary line of the Southwest 1/4 of Section 35, Township 18 South, Range 2 West, in Jefferson County, Alabama; then turn an angle to the right and run Eastward along the North line of quarter-quarter section a distance of 298.1 feet to the point of beginning.

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)

DESCRIPTION OF PROPERTY

<u>David Huey</u>	Lot	Block	Survey	<u>see attached exhibit</u>
<u>Alicia Huey</u>	Lot	Block	Survey	<u>see attached exhibit</u>
<u>Myra Burke</u>	<u>(agent for owners)</u>			

(Use reverse side hereof for additional signatures and property descriptions, if needed).

STATE OF ALABAMA

Jefferson COUNTY

Alicia Huey being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

Alicia Huey
Signature of Certifier

Subscribed and sworn before me this the 28th day of February, 2020.



Leslie W Rully
Notary Public

My commission expires: 2-3-21

RESOLUTION NUMBER 5382

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL FOR ACQUISITION OF RIGHTS-OF-WAY AND TEMPORARY CONSTRUCTION EASEMENTS FOR PROJECT CMAQ-7030(600) MASSEY ROAD

WHEREAS, the City of Vestavia Hills City Council is desirous of certain infrastructure improvements along Massey Road to include, but not limited to sidewalks, stormwater, roadway, etc.; and

WHEREAS, the City has worked with the Alabama Department of Transportation for a grant to assist in the funding of said infrastructure in project CMAQ-7030(600) Massey Road; and

WHEREAS, September 23, 2019, the Mayor and City Council approved and adopted Ordinance Number 2877 accepting a funding grant for CMAQ-7030(600) Massey Road with an 80/20 local match for a total of \$90,941.80 (\$72,753.44 CMAQ funds, \$18,188.36 local match); and

WHEREAS, acquisitions of rights-of-way and temporary construction easements need to be made in order to gain the property needed for planned infrastructure improvements; and

WHEREAS, the City Engineer has obtained a proposal from Tillman Consulting LLC who proposes to manage the project of obtaining said rights-of-way and construction easements needed for an estimated \$61,250 with some amounts to be determined estimated to be covered by a 15% contingency fee for a total of \$70,500. Said proposal is marked as Exhibit A, a copy of which is attached to and incorporated into this Resolution Number 5382 as if written fully therein; and

WHEREAS, the Mayor and City Council feel its in the best public interest to accept said proposal.

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

1. That the City hereby accepts the proposal submitted by Tillman Consulting LLC for acquisition services in an amount estimated at \$61,250 as detailed in the attached Exhibit A; and
2. Said approval shall also include a 15% contingency as noted in the proposal (TBD) for a total expenditure not to exceed \$70,500; and

3. The City Manager is hereby authorized to execute and deliver any and all documents needed in order to secure the services and the acquisition of rights-of-way needed in order to accomplish said infrastructure improvements; and
4. This Resolution Number 5382 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 11th day of April, 2022.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



Tillman Consulting, LLC

404 Montgomery Street Gadsden AL 35901
256-504-5705

Proposal for City of Vestavia Re: Project CMAQ-7030(600) Massey Road

March 10, 2022

Mr. Brady, P.E.

In accordance with your request, I am submitting a proposal on the referenced project. The Proposal is estimated to provide the right of way acquisition services identified as follows:

1. Manage the project beginning with property owner notification and ending with the signing of all agreements or provided to the Project Attorney for closing.
2. If needed, probate court services to include working with Project Attorney based on a negotiated hourly rate or flat fee.
3. Employ and manage the following professionals as needed to complete the project:
 - Real Estate Appraisers
 - Review Appraisers
 - Negotiation Professionals
 - Right of Entry Agreements
 - Offer Letters
 - Agreement to Purchase by the City of Vestavia
 - Furnish Negotiation Log per parcel
 - Furnish Final Negotiation Report
 - Provide recommendations during the negotiation process
 - Request Donations/Waivers when appropriate
4. Coordinate professional services with the project engineer, attorney, and city personnel to ensure that project acquisition is completed in compliance with ALDOT regulations and applicable legal issues.

Order of Process

- Notify property owners by letter regarding the project (letters to be hand delivered if possible)
- Notification of project will provide the names of parties from which property owners should expect contact
- After property owner notification, appraisers to begin contacting property owners by certified mail and/or phone calls
- Appraisers will provide property owners opportunity to accompany the appraiser during the inspection
- Review appraiser to accompany the appraiser during the inspection – with property owner if possible
- Appraisals reviewed as completed
- Review appraiser responds to the appraiser concerning any issues that not addressed in the appraisal report.
- Review Appraiser responds to the appraiser concerning issues that should be addressed

March 10, 2022

Page Two

- The appraiser submits revised report, if needed, to the reviewing appraiser for final approval
- The Review Appraiser approves appraisal report conclusions and then submits to the City for approval. ALDOT will be sent samples of the appraisals or more if they request for guidance.
- The City-approved offer will be presented to the property owner on the approved ALDOT offer letter by the Negotiator
- The Project Manager will present the property owner's response to the City
- Negotiations continue until the Project Manager and the City determine that further negotiations would be futile.
- The proposal includes negotiations for 45 days after the initial contact with the property owner.
- The final negotiation report is submitted to the City Attorney for condemnation filing at the appropriate time
- The Project Manager will continue to be available for consultation and/or recommendations as needed

Project Timeline

- The completed Acquisition Phase is estimated to be submitted to the client within 2 to 3 months +- of authorization to proceed.
- The timeline projections will be provided for the appraisals, review appraisals and negotiations if proposal is accepted.

Special Notes

- A. The proposal is an estimate based on the project maps and the engineer drawings or surveys. The proposal could change if there are changes in the maps as to the number of parcels, property types, change in land size, etc.
- B. ***The relocation services are not included in the Basic Services proposal. However, Tillman Consulting, LLC will provide relocation services, if needed, and invoice for said services based on the hourly rate provided in the proposal or a flat fee.***
- C. The proposal includes services to acquire the project right of way with the variables being the ***hourly or flat fee*** services for relocation and probate court services. The probate court services would include the need for valuation testimony. The hourly rate will be invoiced at the hourly rate for each of the company personnel.
- D. The acquisition provided in the project will be completed in accordance with the Alabama Eminent Domain Code ALDOT policies/procedures and the Uniform Act. The published regulations are not always up to date and guidance will be required from the Project Attorney.
- E. The time requirements are diminutive and will require that the client furnish title work identifying the parcel ownership as soon as possible or the completion date could change.
- F. The time constraints may require that some of the acquisition process be different from the normal order but is necessary to meet the completion dates.
- G. It is recommended the City have a team appointed to handle decisions that have to be made during the acquisition process in order to ensure the project remains on

schedule. During the negotiation stage it is important that decisions for approval be quickly made.

- H. The proposal basic services include partial appraisals and services as identified in **Exhibit A** attached to this proposal. **The basic services does not include full appraisals or any second appraisals on tracts exceeding the acquisition of a set amount.** Projects under the Federal Acquisition Regulations apply the trigger amount for second appraisals for appraisal amounts of \$350,000 +- or complex assignment. It doesn't appear any second appraisals will be necessary and may not apply in the Alabama Code.
- I. The City of Vestavia is responsible of payment for services as per contract to Tillman Consulting, LLC.

In conclusion, my proposal is as follows:

TOTAL BASIC SERVICES

Total with all independent reviews: \$61,250 (1)

Total with reviewer waiver negotiations: TBD (2)

- (1) Includes before and after appraisals of the land and improvements in the taking if any. The independent reviews, negotiations for project. **The attachments provide for the breakdown of the proposal.**
- (2) Includes consultant providing waivers, management and negotiations which is allowed when waivers are appropriate. The utilization of waivers is only allowed when the acquisition is \$10,000 or below.

Sincerely,

T. Mandell Tillman



T. Mandell Tillman, MAI, AI-GRS
State of Alabama License #G00073
State of Georgia License #3343
State of Mississippi License #GA-1357

EXHIBIT A

Massey Road – Vestavia Hills Project

Tract #	Name	Appraisal	Review Appraisal	Donation	Waivers	Negotiations	Relocation
1	Anthony Serra	Omit	Omit	Omit	Omit	Omit	Omit
2	VA Investments, LLC	\$4,000	\$2,000	TBD	\$1,500	\$1,500	-0-
3	Omit						
4	CSH & G, LLC			Yes			
5	Omit	Omit	Omit	Omit	Omit	Omit	Omit
6	Vestavia Professional Assoc, LLC			Yes			
7	Jamie Verell & Daniel Goff	\$4,000	\$2,000	TBD	\$1,500	\$1,500	-0-
8	Rebecca Burbank, Cabana Assoc, Inc.			Yes			
9	Evergreen, LLC			Yes			
10	Chris M. Lane	\$4,000	\$2,000		\$1,500	\$1,500	-0-
11	Trent & Melonee Hatfield	\$4,000	\$2,000	TBD	\$1,500	\$1,500	-0-
12	Melanie Hardee			Yes			
13	Mary W. Smith			Yes			
14	Melodie Ann Taylor			Yes			
15	Alexander & Geetha Vasanthakumar	\$4,000	\$2,000		\$1,500	\$1,500	-0-
16	Nancy J. Handley			Yes			
17	Barbara D. Hill			Yes			
18	Barbara H. Bishop			Yes			
19	Ruby Jacobs Hickey			Yes			
20	Mary E. Knowles			Yes			
21	Rose Marie Tortorici			Yes			
22	Peggy B. Schoel, New Paddy Mou	\$4,000	\$2,000	TBD	\$1,500	\$1,500	-0-
23	Private Mini Storage Realty, LP			Yes			
24	Ten Key, LLC			Yes			
25	Liberty Mortgage Corporation	\$4,000	\$2,000	TBD	\$1,500	\$1,500	-0-

Tract #	Name	Appraisal	Review Appraisal	Donation	Waivers	Negotiations	Relocation
26	DWK Properties, LLC			Yes			
27	Canvasback Productions, Inc.			Yes			
	Sub - Totals	\$28,000	\$14,000		TBD	\$10,500	-0-
	Project Coordination	\$8,750					
	Total Project Cost	\$61,250					

RESOLUTION NUMBER 5383

A RESOLUTION AUTHORIZING THE CITY MANAGER TO OBTAIN CERTAIN PROFESSIONAL SERVICES REGARDING LAND SURVEY, GEOTECHNICAL INVESTIGATION, LANDSCAPE DESIGN, ETC., FOR ALTADENA VALLEY PARK IN PREPARATION OF A MASTER PLAN, GRADING FOR AN ACCESS ROAD AND CONSTRUCTION OF A RESTROOM FACILITY AND PAVILION

WHEREAS, the City is desirous of assembling a master plan for the development of the Altadena Valley Park (“the AVP”); and

WHEREAS, the City has had discussions with Shelby County for partnering on developing a portion of the AVP that’s located in Shelby County; and

WHEREAS, in order to assemble the master plan and plans for partnering with Shelby County, the City needs to obtain some information such as land surveys, geotechnical investigation, landscape design and civil engineering design; and

WHEREAS, the Public Services Director has obtained a proposal for the above described professional services from Engineering Design Group LLC (“EDG”), a copy of which is marked as Exhibit A, attached to and incorporated into this Resolution Number 5383; and

WHEREAS, the Mayor and the City Council feel it is in the best public interest to accept said proposal and obtain the needed information.

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 accept said proposal and to execute any and all documents necessary to secure said needed professional services; and
2. Said funding shall be expensed to the City’s General Fund in an amount estimated at \$55,600 as detailed in the attached Exhibit A, with an additional 15% contingency for a total not to exceed \$63,940; and
3. This Resolution Number 5383 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 11th day of April, 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: March 24, 2022

TO: Jeff Downes
City Manager

From: Brian Davis
Director of Public Services

RE: Altadena Valley Park

As you are aware, we have been working on a master plan for Altadena Valley Park (AVP). We have had discussions with Shelby County about grading for the access road and parking, as well as construction of a restroom facility and pavilion.

In order for the grading and construction, we must first perform a land survey, geotechnical investigation, landscape design, and civil engineering design. The attached proposal from EDG outlines their scope of services.

I am requesting a supplemental appropriation out of the general fund in the amount of \$55,600 which includes a fifteen percent contingency. Please let me know if you have any questions.

CC: Rebecca Leavings



March 24, 2022

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

Attn: Brian Davis-Public Services Director

**Re: Proposal of Professional Services
Altadena Park-Vestavia Hills, AL**

Dear Brian,

Engineering Design Group, LLC is pleased to submit this scope of services related to the above-referenced project. Our scope of services is based on a conceptual layout provided by your Renta Urban Land Design. A copy of this layout is attached to this document as "Exhibit A." Our understanding of the project is that the City of Vestavia Hills plans to construct a new park on land located between the Cahaba River and the Altadena Ridge residential development. The park will be designed and constructed in phases. This document pertains to the first phase of the project. We understand that the first phase will include a new parking area and restroom facility. Access will be provided via Lakeland Trail.

Our scope of services includes land survey, geotechnical investigation, landscape/hardscape design, and civil engineering design of the proposed improvements. We have solicited the services of Renta Urban Land Design for the design of landscape/hardscape elements, and Contour Engineering for geotechnical exploration of the site.

Our scope of services is described in detail on the following pages. Thank you for the opportunity to present this document. We look forward to working with you on this project.

This document is provided with the expectation that it is not being used in a price comparison with other professional services firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

Attachments: Exhibit A-Conceptual Site Plan (By Others), Exhibit B-Geotechnical Consultant Proposal

1.0 Scope of Services

1.1 Boundary and Topographic Survey

Engineering Design Group will perform a Boundary Tie and Topographic Survey for the subject property. The subject property is listed as Tax Parcels 2800334002001.004 and 2800334002001.000 in the office of the Judge of Probate of Jefferson County, Alabama.

Visible encroachments onto and beyond the limits of the surveyed parcel will be noted and shown on the survey. The legal description, as recorded in the office of the Judge of Probate of Jefferson County, will be shown on the survey. Engineering Design Group will not perform an independent title search of the surveyed parcel of land. ALTA/NSPS requirements and procedures will not be utilized during the Boundary Survey.

We will show visible utilities and subsurface utilities as marked by utility companies or as shown on maps. We will coordinate with Alabama One Call requesting all subsurface utilities situated in public right-of-way marked to enable an accurate location and depiction of the subsurface utilities. Alabama One Call does NOT mark any utilities that are within the limits of private property.

Visible improvements will be shown including buildings, walls, fences, sidewalks, curbs, parking areas, and paved areas. Landscaped areas and tree lines will be shown on the survey, individual shrubs and trees will not be shown on survey.

We will perform topographic locations on a portion of the subject property. Contours will be shown at a 1-foot interval and based from USGS datum. Spot elevations will be shown in flat areas. Two benchmarks will be set on site. Visible drainage structures will be shown indicating top and invert elevations as well as type and size of pipes. Visible improvements will be shown including buildings, walls, fences, sidewalks, curbs, parking areas, and paved areas. Landscaped areas and tree lines will be shown on survey, individual shrubs and trees will not be shown on survey.

The topographic locations will extend from the back of existing lots of Altadena Ridge Subdivision and along the North edge of pavement of Lakeland Trail Road. The Topographic Survey will cover approx. 6 acres.

1.2 Geotechnical Investigation

We have solicited the services of Contour Engineering to provide a geotechnical investigation of the site. Their proposal is attached hereto as Exhibit B. The stated fee for their service as shown in Section 2.0 of this proposal does NOT include any markup for coordination and management by Engineering Design Group.

1.3 Civil Construction Documents

We will develop a set of civil construction documents for the site improvements. We will submit the Construction Documents to the City of Vestavia Hills for their review and comment. We will meet with you and any necessary City Officials as-needed to work through any design issues that arise during permitting. The following scope

items reflect what is typically included in our civil engineering design. The Construction Documents will include the following design information, at a minimum:

- a. Phase I Erosion Control Plan-The plan will include initially-required Best Management Practices (BMPs) items for the control of erosion related to site construction activities.
- b. Site Layout Plan-Plan will provide horizontal control for the layout of the parking facility, restroom building, and other permanent site structures.
- c. Site Grading and Drainage Plan-Plan will include grading and drainage associated with the improvements. We have assumed that storm water detention will not be required and that design is therefore excluded from our scope of services.
- d. Access/Driveway Plan/Profile-We will provide plan and profile drawings to the Jefferson County Roads and Transportation Department for the permitting of a new access drive for the parking facility.
- e. Storm Drainage Profiles-We will provide necessary profiles for storm drainage pipes associated with the improvements.
- f. Utility Plan-Plan will include coordination with the project's MEP engineer for any additional site electrical conduit, site water services, or site sanitary sewer drains. It is understood that the new restroom facility will be tied to Jefferson County's sanitary sewer infrastructure, as the majority of the site is within a floodplain (an on-site system's field lines cannot be located within a floodplain). We will investigate the availability of the County's sewer system to serve the project.
- g. Erosion Control Plan-Plan will include the necessary structural BMP devices for the control of sedimentation at the site.
- h. Permitting Services-We will submit final civil construction plans and permit applications to the City of Vestavia Hills for the purpose of obtaining a land disturbance permit. We will also submit plans to the Jefferson County Roads and Transportation Department for the new access to Lakeland Trail.
- i. Notes and Details-We will provide standard notes and details which pertain to the site's specific construction requirements. This will also include standard Waffle House details.

1.4 Landscape/Hardscape Design

We have solicited the services of Renta Urban Land Design for the design of the project's hardscapes. This will include trail improvements, plaza at the restroom pavilion, sidewalks and landscape planting plans. Construction administration for items related to landscape hardscape is also included within this scope of services. The stated fee for their service as shown in Section 2.0 of this proposal does NOT include any markup for coordination and management by Engineering Design Group.

1.5 Alabama Department of Environmental Management NPDES Permit

On September 15, 2020, ADEM adopted the new Alabama Environmental Permitting & Compliance System (AEPACS) for the application and management of National Pollutant Discharge Elimination System Permits. Effective April 1, 2016, ADEM established General Permit No. ALR 100000 for discharges associated with regulated construction activity that will result in land disturbance equal to or greater

than one acre or from construction activities involving less than one acre and which are part of a common plan of development or sale equal to or greater than one acre. Construction site operators/owners seeking coverage under this general permit must submit a Notice of Intent (NOI) in accordance with the permit requirements. Operators/owners of all regulated construction sites must implement and maintain effective erosion and sediment controls in accordance with a Construction Best Management Practices Plan (CBMPP) prepared and certified by a Qualified Credentialed Professional (QCP). This site is located within a Priority Construction Zone. Engineering Design Group will create the CBMPP Plan (to be kept on-site throughout construction). We will submit the CBMPP and NOI through ADEM's AEPACS system and coordinate with the Permittee during the approval process. The application fee associated with the permit is the responsibility of the Owner.

1.6 Best Management Practices (BMP) Inspections

Per the requirements of the ADEM permit, we will perform BMP inspections of erosion control devices within the site. These inspections are required after each $\frac{3}{4}$ " rainfall event, and at least monthly. We will provide a report of our findings, and recommendations for remediation to any noted erosion control deficiencies. Our report will include photographs. We have assumed that the project will take 6 months to construct. Therefore, approximately 10 inspections will be required during the construction phase.

1.7 Construction Administration

We will be available during construction to answer questions or provide clarifications to the project team. We will meet with the Contractor and/or Owner as necessary during construction. This service will be provided at our standard hourly rates. We have provided a budgetary amount for this task item in Section 2.0.

1.8 Additional Services

Any service need that arises and is required but has not been included in our original scope of services will be performed on an hourly basis according to the fee schedule included in this document. We will discuss with the Client any additional service before performing the service and will not proceed with additional work without the Client's approval.

Exclusions

Items specifically **NOT INCLUDED** in this scope of work include: ALTA Survey, Private Utility Locate Coordination, Geotechnical Testing, Off-Site Improvements, Corps of Engineers Permitting, Structural Design of Retaining Walls, Landscape Design, Storm Water Monitoring, Utility Main Extension or Relocation and any Off-Site Improvements other than those included within the scope of services. If any of these items becomes necessary, we will perform those tasks as Additional Services or help you to contract with an entity which provides that service.

Your signature on the following page will serve as our formal notice to proceed with the above-described scope of services.

2.0 Estimate of Compensation for Services:

Engineering Design Group, LLC's fee for the scope of services outlined in Part 1.0 is as follows:

2.1 Boundary and Topographic Survey	\$ 6,900.00 Lump Sum
2.2 Geotechnical Investigation	\$ 6,950.00 Lump Sum
2.3 Civil Construction Documents	\$15,000.00 Lump Sum
2.4 Landscape/Hardscape Design	\$12,500.00 Lump Sum
2.6 ADEM NPDES Permit	\$ 2,500.00 Lump Sum
2.7 BMP Inspections	\$ 2,000.00 Budget Estimate
2.8 Construction Administration	\$ 1,500.00 Budget Estimate
2.9 Additional Services	Hourly Rates as Required
Reimbursables	\$ 1,000.00 Budget

Engineering Design Group, LLC can commence work immediately upon receipt of your written authorization to proceed. If this proposal is acceptable, please authorize Engineering Design Group, LLC to proceed with the above Scope of Services by signing in the appropriate location and returning a copy to Engineering Design Group, LLC.

Sincerely,
Engineering Design Group, LLC


Wade H. Lowery P.E., Alabama License #27002

"This cost proposal is accepted as written and Engineering Design Group LLC is hereby authorized to commence the work as described in the above Scope of Services"

Authorization by: _____

Title: _____

Date: _____

HOURLY RATE SCHEDULE AND REIMBURSABLE EXPENSES

Personnel time for additional services covered under this agreement will be invoiced based on the following Rate Schedule. These Rates are subject to adjustment on January 1st of each year.

Engineering Rate Schedule

- Principal in Charge \$150.00 per hour
- Project Manager \$130.00 per hour
- Senior Design Engineer \$120.00 per hour
- Project Engineer \$105.00 per hour
- Engineering Drafter \$ 85.00 per hour

Surveying Rate Schedule

- PLS \$125.00 per hour
- Field Crew \$145.00 per hour
- Field Crew Construction Layout** \$155.00 per hour
- Senior Drafter \$ 95.00 per hour
- Drafter \$ 85.00 per hour

**Construction Layout requested by the client performed on holidays and weekends will be invoiced at 1.5 times the hourly rate listed above.

Reimbursable Expenses

Expenses incurred for work covered under this contract will be invoiced at cost plus 15 percent. These expenses include, but are not limited to:

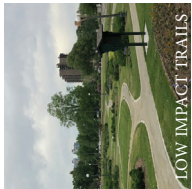
- Printing
- Shipping
- Permitting and Application Fees
- Outside Consultants
- Travel – (Travel will be reimbursed at \$0.58 per mile)

Payment

Services rendered in accordance with this proposal will be invoiced monthly based on work completed. Invoices are due upon receipt and will be considered delinquent if not received within 30 days after receipt. Engineering Design Group LLC may, without legal consequence, suspend services until payment is received.

Client agrees that payment for services rendered shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this agreement, and the "Civil Engineer and Designer Agreement".

ALTADENA VALLEY PARK MASTERPLAN



LOW IMPACT TRAILS



TRAIL SIGNAGE



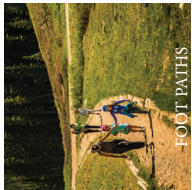
RESTROOM PAVILION



TRAILHEAD & KIOSK



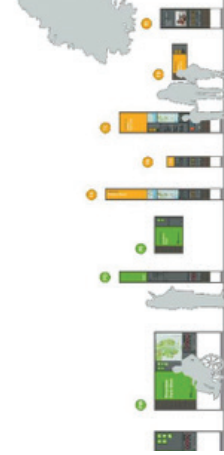
BIKE REPAIR STATION



FOOT PATHS



PLAYGROUND



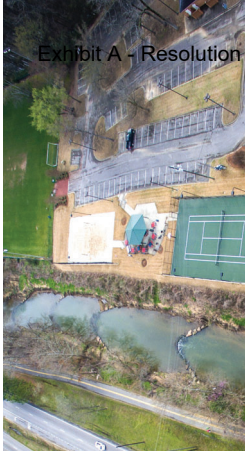
WAYFINDING AND SIGNAGE



LOW IMPACT PARKING AND SITE CIRCULATION



NATURAL SOFT MATERIAL SELECTIONS



RESIDENTIAL SCALE PARKING LOT (PLANTED, LOW DENSITY)

PROPOSED PARKING & TRAILHEAD

9 JEFFERSON
 2 JEFFERSON 60
 24 SHELBY CO.
 ACRES +/-

THIS PLAN IS AN ILLUSTRATION OF THE PROPOSED DESIGN AND IS NOT A CONTRACT DOCUMENT. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

March 22, 2022

Mr. Wade H. Lowery, P.E.
Engineering Design Group, LLC
Via email: wade@edgalabama.com

Re: Proposal for Geotechnical Engineering Services
ALTADENA PARK – PHASE 1
Vestavia Hills, Jefferson County, Alabama
Proposal No: AG22EDG-134

Dear Wade,

Contour Engineering, LLC (Contour) appreciates the opportunity to provide a geotechnical exploration for the referenced project. The following proposal includes a summary of the planned scope of services, an estimated budget, and project schedule.

PROJECT INFORMATION:

The subject site is located off Lakeland Trail in Vestavia Hills, Alabama. The project will involve the construction of a one-story restroom building(s) with slab-on-grade with associated parking and drive areas and a roadway. Grading has not been finalized, however, we have assumed some cuts could be on the order of 5 feet. Maximum column and wall loads are assumed to be 80 kips and 3 to 4 kips per linear foot, respectively.

SCOPE OF SERVICES:

Field and Laboratory Testing:

- A field program will include two (2) soil test borings with Standard Penetration Testing (SPT) to depths ranging from 15 feet, or auger refusal, within building pad area and five (5) parking areas to depths of 10 feet, or auger refusal. In addition, six to seven SPT borings will be drilled along the centerline of the roadway to depths of 10 feet, or auger refusal.
- Laboratory soil classification testing will be performed on representative samples;
- A field engineer will be present during for coordination;

Engineering Analysis and Report:

Upon completion of the field and laboratory testing, a report will be prepared that will include the following:

- Description of existing soil and groundwater conditions including detailed boring records and profiles, and Boring Location Plan;
- A description of the area and site geologic conditions;

- Recommendations for site preparation, excavation and grading, backfilling and compaction;
- On-site soil characteristics and suitability for reuse as structural fill;
- Foundation and slab on grade recommendations available bearing pressures and estimated settlements;
- Seismic Site Classification per the IBC 2018; and
- Pavement recommendations.

FEE AND SCHEDULE:

We can complete the above scope of services for the following fee:

Mobilization and SPT Borings	\$3,800
Field Engineering/Coordination/Stratification	\$1,000
Laboratory Testing (Atterberg/Sieve/Moisture Content)	\$400
Engineering Analysis and Report	<u>\$1,750</u>

Geotechnical Engineering Services **\$6,950***

*The fee assumes permission is granted and the site is accessible to truck mounted drilling equipment. Clearing with a dozer will be an additional \$2,500 for access.

We are prepared to start the field program within 5 business days from receiving signed authorization to proceed. We estimate that the fieldwork will require approximately two days to complete. The report will be completed within 10 working days after completion of the fieldwork.

CLOSING:

Thank you for considering Contour Engineering, LLC for your Geotechnical Engineering consulting needs. Please contact our office if you have any questions.

Sincerely,
Contour Engineering, LLC



Jason T. Ayers, P.E.
Senior Engineer



Contour Engineering, LLC
STANDARD AGREEMENT FOR SERVICES AND GENERAL TERMS

Description of Services Geotechnical Exploration

Project Name and Location Altadena Park – Phase 1 – Vestavia Hills, AL

Proposal No. and Date AG22EDG-134 - March 22, 2022 Budget: See Proposal

FOR PAYMENT OF INVOICES:

Firm _____ Phone No. _____

Address _____

_____ Zip Code _____ FAX No. _____

Attention _____ Title _____

REPORT DISTRIBUTION:

Firm _____ Firm _____ Firm _____

Address _____ Address _____ Address _____

Attn: _____ Attn: _____ Attn: _____

PAYMENT TERMS: Net 30 Days, a late payment charge of 18% per annum, including all cost of collection and attorney fees may be added after 30 days.

PROPOSAL ACCEPTANCE

The Terms and Conditions of this Proposal are:

Accepted this _____ day of _____, 20 _____

Individual, firm or corporate body name

Signature of authorized representative

Name of authorized representative and title



General Terms and Conditions

1. **Scope of Services** – Contour Engineering, LLC (Contour) shall provide the Basic Services and Additional Services set forth herein. Contour is not responsible for the supervision or direction of the actual work of the contractor, or for Site safety. Client agrees that Contour will not be expected to make exhaustive or continuous site visits beyond those established in the proposal or contract, but that construction observation appropriate for the construction stage shall be performed. It is understood that field services provided by Contour will not relieve the contractor of his responsibilities for performing the work in accordance with the plans and specifications. Contour will observe, test, document and alert the contractor and/or client, in a timely manner, when we deem work pertinent to our scope of services is not being performed in accordance with the plans and specifications. Full-time construction observation by our employees does not mean that Contour is observing placement of all materials. Full-time construction observation means that an employee of Contour has been assigned to the project for the time required to fulfill our contractual responsibilities.
2. **Owner's Responsibility** – Client shall grant or obtain free access to the site for all equipment and personnel necessary for Contour to perform the services to be furnished under this Agreement.
3. **Payment of Invoices** – Invoices are due and payable within 30 days of receipt. If client fails to make any payments due Contour for services and expenses within 30 days after receipt of Contour's invoice therefore, the amounts due Contour will be increased at the rate of 1.5% per month. In addition, Contour may after giving seven days written notice to client, suspend services under this Agreement until Contour has been paid in full all amounts due for services, expenses and other related charges. Payments will be credited first to interest then to principal.
4. **Standards of Performance** –The standard of care for all professional engineering and related services performed or furnished by Contour under this Agreement will be the care and skill ordinarily used by members of the profession practicing under similar circumstances at the same time and in the same locality. Contour makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services. Client shall be responsible for, and Contour may rely on, the accuracy and completeness of specifications, requirements, programs, instructions, reports, data, drawings, and other information furnished by Client to Contour pursuant to this Agreement. Contour may use such specifications, requirements, programs, instructions, reports, data, drawings and information in performing or furnishing services under this Agreement. In the event necessary requirements or specifications are not provided before services commence, Contour's Project Manager may set basic requirements for soil density tests and concrete sample fabrication that will be used until such time as they are provided. Inspections performed by Contour relating to the current state general permit are to determine substantial compliance with the Project Drawings. Contour is not responsible to determine that said drawings take into account any applicable federal, state, county, or local requirements.
5. **Disposal of Samples** –Contour may dispose of all stored soil, rock, and asphalt samples 60 or more days after submission of the final report covering those samples. Contour may dispose of stormwater samples immediately upon testing.
6. **Use of Documents** –All Documents are instruments of service in respect to this Project, and Contour shall retain ownership and property interest therein (including the right to reuse at the discretion of Contour) whether or not the Project is completed.
7. **Certificate of Insurance** –Contour shall procure and maintain insurance coverage as it deems to be adequate. Certificates for such policies shall be provided to the owner upon request.
8. **Termination** –Either party upon 30 days written notice in the event of substantial failure by the other party to perform may terminate this Agreement.
9. **Dispute Resolution** –Owner and Contour agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights to litigate.
10. **Indemnification** –To the fullest extent permitted by law, Contour shall indemnify and hold harmless Client, Client's officers, directors, partners, and employees from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Contour or Contour's officers, directors, partners, employees, and Contour's Consultants in the performance and furnishing of Contour's services under this Agreement.

To the fullest extent permitted by law, Client shall indemnify and hold harmless Contour, Contour's officers, directors, partners, employees and Contour's Consultants from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Client or Client's officers, directors, partners, employees, and Client's Consultants with respect to this Agreement or the Project.

To the fullest extent permitted by law, Contour's total liability to Client and anyone claiming by, through or under Client for all costs, losses or damages caused in part by the negligence of Contour and in part by the negligence of Client or any other negligent entity or individual, shall not exceed the percentage share that Contour's negligence bears to the total negligence of Client, Contour and all other negligent entities or individuals.
11. **Successors, Assigns, and Beneficiaries** – Client and Contour each is hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Contour are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of the Agreement.
12. **Limitation of Liability** –In recognition of the relative risks, rewards and benefits of the project to both the Client and Contour, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, Contour's total liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes, shall not exceed \$50,000.00.

TERMS AND CONDITIONS:

1. **CONTRACT** - These Contract Provisions and the accompanying Proposal constitute the full and complete Agreement between the parties and may be changed, amended, added to, superseded, or waived only if both parties specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these Contract Provisions and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these Contract Provisions shall govern.
2. **RIGHT OF ENTRY** - When entry to property is required for the CONSULTANT to perform its services, the Client agrees to obtain legal right-of-entry on the property.
3. **DOCUMENTS** - All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by CONSULTANT are instruments of CONSULTANT's service that shall remain CONSULTANT's property. The Client agrees not to use CONSULTANT-generated documents for marketing purposes, for projects other than the project for which the documents were prepared by CONSULTANT, or for future modifications to this project, without CONSULTANT's express written permission.

Any reuse or distribution to third parties without such express written permission or project-specific adaptation by CONSULTANT will be at the Client's sole risk and without liability to CONSULTANT or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors.

4. **DISPOSAL OF SAMPLES** - CONSULTANT will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.
5. **HAZARDOUS MATERIALS** - The scope of CONSULTANT's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.
6. **CONSTRUCTION PHASE SERVICES** - If CONSULTANT performs any services during the construction phase of the project, CONSULTANT shall not supervise, direct, or have control over Contractor's work. CONSULTANT shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. CONSULTANT does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
7. **STANDARD OF CARE** - CONSULTANT and its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by design professionals providing similar services.
8. **OPINION OF PROBABLE COSTS** - When required as part of its work, CONSULTANT will furnish opinions of probable cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by CONSULTANT hereunder will be made on the basis of CONSULTANT's experience and qualifications and will represent CONSULTANT's judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that CONSULTANT does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
9. **SUSPENSION OF WORK** - The Client may, at any time, by written notice, suspend further work by CONSULTANT. The Client shall remain liable for, and shall promptly pay CONSULTANT for all services rendered to the date of suspension of services, plus suspension charges, which shall include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on Client's behalf.

Client shall pay CONSULTANT pursuant to the rates and charges set forth in the Proposal. CONSULTANT will submit monthly invoices to Client for services rendered and expenses incurred. If Client does not pay invoices within thirty (30) days of submission of invoice, CONSULTANT may, upon written notice to the Client, suspend further work until payments are brought current.

10. **CHANGES OR DELAYS** - Unless the accompanying Proposal provides otherwise, the proposed fees constitute CONSULTANT's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information, or if CONSULTANT's failure to perform is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of CONSULTANT. Temporary work stoppage caused by any of the above may result in additional cost beyond that outlined in the accompanying Proposal.

11. **CONFLICTS OF INTEREST** - This assignment may involve parties with adverse interests to clients with whom CONSULTANT has current or past relationships. It is CONSULTANT policy to make reasonable attempts to identify such relationships prior to acceptance of a professional assignment, but CONSULTANT cannot assure that conflicts or perceived conflicts will not arise, and CONSULTANT does not accept responsibility for such occurrences.
12. **REIMBURSABLE EXPENSES** - CONSULTANT will bill direct non payroll expenses at cost plus 10%. Direct expenses include all reasonable expenses resulting from required responses to subpoenas or court orders related to work under the Contract.
13. **MISCELLANEOUS** - Invalid Terms: In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken. Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Agreement.

Mediation: The Client and CONSULTANT agree to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

CONSULTANT Reliance: CONSULTANT shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

Certifications: CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in CONSULTANT's having to certify, guaranty, or warrant the existence of conditions that CONSULTANT cannot ascertain.

Third Parties: Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or CONSULTANT. CONSULTANT's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against CONSULTANT because of this Agreement or CONSULTANT's performance of services hereunder.

Consequential Damages: Neither the Client nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

14. **OTHER PROVISIONS** - Notwithstanding anything contained in the Agreement to the contrary, the City and Engineering Design Group, LLC agree to add the following terms, provisions and conditions to the said Agreement as Section 15 to said Agreement:

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

INDEPENDENT CONTRACTOR - Engineering Design Group, LLC is an independent contractor for purposes of this Agreement. Nothing contained in the Agreement shall be construed to mean that said Engineering Design Group, LLC is the servant, agent or employee of the City of Vestavia Hills, Alabama.

WORKER'S COMPENSATION - EDG shall carry Worker's Compensation insurance for all of its employees and those of its subcontractors engaged in the work at the site in accordance with the State of Alabama Worker's Compensation Law.

LIABILITY INSURANCE - EDG shall carry Public Liability Insurance with limits of Three Hundred Thousand Dollars (\$300,000.00), per person, and One Million Dollars (\$1,000,000.00), per occurrence, to cover and protect the City and EDG and its subcontractors against claims or injury to or death of one or more than one person because of accidents which may occur or result from operations under the Agreement. The City of Vestavia Hills, Alabama shall be added as "an additional insured" to the general comprehensive liability insurance policy of EDG.

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

PROFESSIONAL ENGINEER - EDG represents, covenants and warrants that it is a licensed professional engineer within the meaning of Title 34-11-1(3), Code of Alabama, 1975, in good standing with the State of Alabama Board of Licensure for Professional Engineers and Land Surveyors.

STANDARD OF CARE AND COMPLIANCE WITH APPLICABLE LAWS – EDG shall perform its professional services in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services at the same time, in the same locality, at the same site and under the same or similar circumstances and conditions. EDG makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder. EDG shall exercise usual and customary professional care in its efforts to comply with the provisions of the labor law and state, federal and local laws, statutes, codes, rules, regulations and ordinances that are applicable to the performance of this Agreement between the City and Engineering Design Group, LLC. It is understood, however, that various laws, statutes, codes, rules, regulations and ordinances are subject to varying and sometimes contradictory interpretation. EDG shall exercise its professional skill and care consistent with the generally accepted standard of care to provide services that comply with such laws, statutes, codes, rules, regulations and ordinances. EDG cannot warrant that all documents issued by it shall comply with said laws, statutes, codes, rules, regulations, and ordinances.

ARBITRATION; MEDIATION; ALTERNATE DISPUTE RESOLUTION - The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (a) the rights and remedies available under such arbitration rules or processes do not afford EDG greater relief (e.g., attorney's fees, damages, etc.) than would be available under otherwise applicable law, (b) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (c) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.

ATTORNEY'S FEES; COURT COSTS; LITIGATION EXPENSES - The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

INDEMNIFICATION; HOLD HARMLESS; RELEASE; WAIVER; LIMITATIONS OF LIABILITY OF REMEDIES - The City shall not and does not indemnify, hold harmless or release EDG or any other person, firm, or legal entity for, from or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against EDG or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of EDG or any person, firm or entity in privity therewith or acting on EDG's behalf. Any limitation or restriction regarding the type, nature, form, amount or extent of any right, remedy, relief or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the Agreement, and void.

GOVERNING LAW - This Agreement shall be governed by the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS - Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. EDG represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

ORDINANCE NUMBER 3083

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF CHILDERSBURG, ALABAMA AND THE CITY OF VESTAVIA HILLS, ALABAMA FOR THE DEVELOPMENT OF A PLAN AND THE PREPARATION OF A CONTRACT FOR THE IMPLEMENTATION OF A COLLABORATIVE USE OF LAND FOR A PUBLIC SAFETY FIRING/TRAINING RANGE BY THE POLICE DEPARTMENTS OF BOTH CITIES.

WITNESSETH THIS ORDINANCE NUMBER 3083 APPROVED AND ADOPTED
by the City Council of the City of Vestavia Hills, Alabama on this the 21st day of March, 2022.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Childersburg, Alabama (“Childersburg”) is a municipal corporation organized, existing and operating pursuant to the laws of the State of Alabama; and

WHEREAS, Childersburg operates the City of Childersburg Police Department (“CPD”) pursuant to the authority of Title 11-43-55, *Code of Alabama, 1975*; and

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

WHEREAS, Vestavia operates the City of Vestavia Hills Police Department (“VHPD”) pursuant to the authority of Title 11-43-55, *Code of Alabama, 1975*; and

WHEREAS, CPD and VHPD wish to collaborate for the development of a Plan and the preparation of a contract for the use of land by CPD and VHPD for a Public Safety Firing/Training Range by both CPD and VHPD; and

WHEREAS, a Memorandum of Understanding (“MOU”) by and between the City of Childersburg, Alabama and the City of Vestavia Hills, Alabama is attached hereto, marked as Exhibit 1 and incorporated into this ordinance by reference as though set out fully herein; and

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

WHEREAS, Title 11-43-43, *Code of Alabama, 1975*, provides that all legislative powers granted to cities shall be exercised by the City Council; and

WHEREAS, Title 11-40-1, *Code of Alabama, 1975*, declares municipalities bodies corporate and gives them the power to contract and be contracted with; provided, however, that the contract is in writing as required by Title 11-47-5, *Code of Alabama, 1975*; that the execution and delivery of the contract shall have first been approved by the City Council, *Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3d 1166 (2011), in the form of an ordinance or resolution, *Van Antwerp, et al v. Board of Commissioners of City of Mobile*, 217 Ala. 201, 115 So. 239 (1928); that the contract be signed by the Mayor as required by Title 11-43-83, *Code of Alabama, 1975*; and that the contract be signed by the City Manager as required by Title 11-43-21(7), *Code of Alabama, 1975*; and

WHEREAS, Title 11-102-1, *Code of Alabama, 1975*, authorizes counties and municipalities to enter into a written contract with any one or more such counties or municipalities for the joint exercise of any power or service. Requirements of such contracts are:

1. the contract must be in writing.
2. the term of the contract must not exceed three (3) years.
3. the contract may be renewed from time to time.
4. the contract must specify the purpose of the contract.
5. the contract must specify the method of termination of the contract.
6. the contract must specify the manner of financing.
7. the governing body of the county (by resolution) and the municipality (by ordinance) must approve the contract.
8. the contract shall not be for levying taxes, zoning or for the collection, transportation, storage or disposal of solid waste; and

WHEREAS, Title 11-102-3, *Code of Alabama, 1975*, regarding joint contracts between municipalities provides as follows:

“No contract entered into pursuant to this chapter shall take effect until the contract has been approved by the governing body of each of the contracting municipalities or counties. Approval by a county governing body shall be by adoption of a resolution and approval by a municipal governing body shall be by adoption of an ordinance of general and permanent operation.”; and

WHEREAS, CPD and VHPD recommend that Childersburg and Vestavia authorize and direct the execution and delivery of the MOU with the firm understanding that whatever plan and

contract is developed and prepared must be subsequently approved by the City Council by the enactment of an ordinance on a subsequent date.

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

1. **RECITALS:** The recitals set forth in the premises above are hereby approved, confirmed and ordained by the enactment of this Ordinance Number 3083.

2. **EXHIBITS:** Exhibit 1 described in the premises above is hereby incorporated into this ordinance by reference as though set out fully herein.

3. **AUTHORIZATION:** Upon approval, adoption and enactment of this Ordinance Number 3083, the Mayor and City Manager are hereby authorized and directed to execute and deliver the MOU marked as Exhibit 1 and any and all other documents and to take whatever action is necessary all in accordance with the terms, provisions and conditions of the MOU attached hereto.

4. **CONSIDERATION BY CITY COUNCIL:** The Vestavia Hills Police Department, upon completion of the development plan and preparation of the contract with the City of Childersburg, shall submit the same to the City Council for consideration.

5. **ULTIMATE APPROVAL BY THE CITY COUNCIL:** The completed plan and contract shall become effective only after approval of the City Council by ordinance enacted at a public meeting after giving the required legal notice.

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

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

ORDAINED, APPROVED, ADOPTED, DONE and ORDERED on this the 11th day of April, 2022.

Ashley C. Curry
Mayor

ATTESTED BY

Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an ordinance duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 11th day of April 2022 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this _____ day of _____, 2022.

Rebecca Leavings, City Clerk

**MEMORANDUM OF UNDERSTANDING
CHILDERSBURG PD & VESTAVIA HILLS PD
PUBLIC SAFETY RANGE PARTNERSHIP**

- 1. Parties:** This Memorandum of Understanding (hereinafter referred to as “MOU”) is entered into between two municipalities pursuant to the authority of Title 11-102-1, et seq., *Code of Alabama, 1975*: the City of Childersburg, Alabama (referred to as “Childersburg”) and the City of Vestavia Hills, Alabama (referred to as “Vestavia Hills”) for the development and implementation of a collaborative use of land for a Public Safety Firing/Training Range located in the City of Childersburg, Shelby County, Alabama (hereinafter referred to as the “range”)
- 2. Purpose:** Childersburg and Vestavia Hills are collaborating in order to utilize the range/training area to train sworn officers, retirees needing qualification, and tactical team members. Vestavia Hills Police Department (“VHPD”) and Childersburg Police Department (“CPD”) may also host in-house (taught by VHPD or CPD members) and external training (taught by outside instructors) open to outside law-enforcement agencies. VHPD and CPD may also host clinics that teach firearms safety to residents of Vestavia Hills, Childersburg or other civilians.
- 3. It is Mutually Agreed Upon and Understood by and Between the Parties That:**

 - A.** For purposes of this MOU the term Executive Officers refers to Chief of the Vestavia Police Department and Chief of Childersburg Police Department or their designees.
 - B.** This MOU may be revised as necessary by mutual consent of the parties, by issuance of a written amendment signed and dated by all parties and approved by the City Councils of the Cities of Childersburg and Vestavia Hills as required by Title 11-102-3, *Code of Alabama, 1975*.
 - C.** This MOU does restrict both parties from participating in similar agreements and/or activities with other public or private entities that would increase use of the range by parties not listed.
 - D.** Each party shall perform its responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any other parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, and volunteers, if any.
 - E.** Each party shall be responsible for maintaining its own insurance coverage, through commercial insurance, self-insurance, or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this MOU.
 - F.** Unless terminated through written notice by one of the parties within 30 calendar days of October 1st of each fiscal year denoted herein, this MOU shall remain in force. Through mutual consent this MOU may be terminated at any time.
 - G.** Concerning shared use, the Childersburg Police Department and the Vestavia Hills Police Department will equally share priority usage of the range. The Training Lieutenant or Training Sergeant of the City of Vestavia Hills Police Department will publish and maintain a real time on-line calendar which will be used by both departments in order to schedule training.
 - H.** The Vestavia Hills Police Department shall reserve any unfilled slots in VHPD training cycles for members of the Childersburg Police Department. These cycles include: Patrol Rifle Certification, APOST Qualifications, Patrol Rifle Qualifications, Low Light Qualifications, Counter Ambush/Officer Survival Training and Active Shooter Training. Any in house training or qualifications conducted by VHPD will be free of charge to Childersburg Police Department when slots are available.

I. If the Vestavia Hills Police Department hosts firearms training through a third party, any unfilled slots shall be first offered to Childersburg Police Department. The Childersburg Police Department would be responsible for any associated fees or tuition.

J. Childersburg and Vestavia Hills will be able to move storage containers and/or build storage sheds on the property of the range.

K. Officers of the Childersburg Police Department and the Vestavia Hills Police Department members will be able to utilize vehicles on the property of the range. All due care will be exercised to prevent damage to grass or concrete or any structure.

L. Officers of the Childersburg Police Department and the Vestavia Hills Police Department will be able to train with small explosive devices at the range. Such devices include but are not limited to: noise-flash diversionary devices (flash-bangs) and door breaching charges.

M. The Police Departments of the Cities of Childersburg and Vestavia Hills shall prepare the following for subsequent consideration by the City Councils of the City of Childersburg and the City of Vestavia Hills:

- (i) development plan for the firing range; and
- (ii) formal agreement for usage of the firing range.

N. When the plan, formal agreement and estimate of cost for the construction of the firearms facilities is completed, it will be presented to the Childersburg City Council and the Vestavia Hills City Council for consideration.

O. The signing of this Memorandum of Understanding does not constitute a formal undertaking, and as such it simply intends that the signatories shall strive to reach, to the best of their abilities, the goals and objectives stated in this MOU.

4. **Signatures.** In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the dates indicated below and certify that they agree to the terms and conditions of this MOU.

City of Childersburg _____ Date _____
Ken Wesson, Mayor

City of Childersburg _____ Date _____
Richard McClelland, Chief of Police

City of Vestavia Hills _____ Date _____
Jeffrey Downes, City Manager

City of Vestavia Hills _____ Date _____
Ashley C. Curry, Mayor

City of Vestavia Hills _____ Date _____
Danny P. Rary, Chief of Police

**MEMORANDUM OF UNDERSTANDING
CHILDERSBURG PD & VESTAVIA HILLS PD
PUBLIC SAFETY RANGE PARTNERSHIP**

1. **Parties:** This Memorandum of Understanding (hereinafter referred to as “MOU”) is entered into between two ~~partners~~ municipalities pursuant to the authority of Title 11-102-1, et seq., *Code of Alabama, 1975*: the City of Childersburg, Alabama (referred to as “Childersburg”) and the City of Vestavia Hills, Alabama (referred to as “Vestavia Hills”) for the development and implementation of a collaborative use of land for a Public Safety Firing/Training Range located at ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX AL~~ in the City of Childersburg, Shelby County, Alabama (hereinafter referred to as the “range”)

2. **Purpose:** ~~The partners~~ Childersburg and Vestavia Hills are collaborating in order to utilize the range/training area to train sworn officers, retirees needing qualification, and tactical team members. Vestavia Hills Police Department (“VHPD”) ~~VHPD~~ and Childersburg Police Department (“CPD”) ~~CPD~~ may also host in-house (taught by VHPD or CPD members) and external training (taught by outside instructors) open to outside law-enforcement agencies. VHPD and CPD may also host clinics that teach firearms safety to residents of Vestavia Hills, Childersburg or other civilians.

3. **It is Mutually Agreed Upon and Understood by and Between the Parties That:**

A. For purposes of this MOU the term Executive Officers refers to Chief of the Vestavia Police Department and Chief of Childersburg Police Department or their designees.

B. This MOU may be revised as necessary by mutual consent of the parties, by issuance of a written amendment signed and dated by all parties and approved by the City Councils of the Cities of Childersburg and Vestavia Hills as required by Title 11-102-3, *Code of Alabama, 1975*.

C. This MOU does restrict both parties from participating in similar agreements and/or activities with other public or private entities that would increase use of the range by parties not listed.

D. Each party shall perform its responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any other parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, and volunteers, if any.

E. Each party shall be responsible for maintaining its own insurance coverage, through commercial insurance, self-insurance, or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this MOU.

F. Unless terminated through written notice by one of the parties within 30 calendar days of October 1st of each fiscal year denoted herein, this MOU shall remain in force. Through mutual consent this MOU may be terminated at any time.

G. Concerning shared use, the Childersburg Police Department and the Vestavia Hills Police Department will equally share priority usage of the range. The Training Lieutenant or Training Sergeant of the City of Vestavia Hills Police Department will publish and maintain a real time on-line calendar which will be used by both departments in order to schedule training.

H. The Vestavia Hills Police Department shall reserve any unfilled slots in VHPD training cycles for members of the Childersburg Police Department. These cycles include: Patrol Rifle Certification, APOST Qualifications, Patrol Rifle Qualifications, Low Light Qualifications, Counter Ambush/Officer Survival Training and Active Shooter Training. Any in house training or

qualifications conducted by VHPD will be free of charge to Childersburg Police Department when slots are available.

I. If the Vestavia Hills Police Department hosts firearms training through a third party, any unfilled slots shall be first offered to Childersburg Police Department. The Childersburg Police Department would be responsible for any associated fees or tuition.

J. Childersburg and Vestavia Hills will be able to move storage containers and/or build storage sheds on the property of the range.

K. Officers of the Childersburg Police Department and the Vestavia Hills Police Department members will be able to utilize vehicles on the property of the range. All due care will be exercised to prevent damage to grass or concrete or any structure.

L. Officers of the Childersburg Police Department and the Vestavia Hills Police Department will be able to train with small explosive devices at the range. Such devices include but are not limited to: noise-flash diversionary devices (flash-bangs) and door breaching charges.

M. The Police Departments of the Cities of Childersburg and Vestavia Hills shall prepare the following for subsequent consideration by the City Councils of the City of Childersburg and the City of Vestavia Hills:

- (i) development plan for the firing range; and
- (ii) formal agreement for usage of the firing range.

N. When the plan, formal agreement and estimate of cost for the construction of the firearms facilities is completed, it will be presented to the Childersburg City Council and the Vestavia Hills City Council for consideration.

O. The signing of this Memorandum of Understanding does not constitute a formal undertaking, and as such it simply intends that the signatories shall strive to reach, to the best of their abilities, the goals and objectives stated in this MOU.

5.4. Signatures. In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the dates indicated below and certify that they agree to the terms and conditions of this MOU.

City of Childersburg _____ Date _____
Ken Wesson, Mayor

City of Childersburg _____ Date _____
Richard McClelland, Chief of Police

City of Vestavia Hills _____ Date _____
Jeffrey Downes, City Manager

City of Vestavia Hills _____ Date _____
Ashley C. Curry, Mayor

City of Vestavia Hills _____ Date _____
Danny P. Rary, Chief of Police

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

February 23, 2022

By Electronic Mail

Captain Sean Richardson
Vestavia Hills Police Department
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Ordinance Number 3083 Approving MOU Between the Cities of Childersburg and Vestavia Hills for Public Safety Firing/Training Range

Dear Captain Richardson:

In connection with the above matter, I am enclosing suggested draft of Ordinance Number 3083. Title 11-102-1, *Code of Alabama, 1975*, allows the Cities of Childersburg and Vestavia Hills to enter into a contract for the joint use of land for a public safety firing/training range by the Police Departments of both cities.

Certain Alabama laws apply to contracts of this nature. They are:

- (a) The City Council is the legislative branch of the municipality and has the management and control of the finances and all of the property belonging to the city.
- (b) All contracts must be approved by the City Council before execution and delivery.
- (c) The Mayor and City Manager must sign all contracts.
- (d) Joint contracts between two municipalities must contain seven elements:
 1. the contract must be in writing.
 2. the term of the contract must not exceed three (3) years.
 3. the contract may be renewed from time to time.

4. the contract must specify the purpose of the contract.
5. the contract must specify the method of termination of the contract.
6. the contract must specify the manner of financing.
7. the governing body of the county (by resolution) and the municipality (by ordinance) must approve the contract.
8. the contract shall not be for levying taxes, zoning or for the collection, transportation, storage or disposal of solid waste.

(e) Title 11-102-3, *Code of Alabama, 1975*, regarding joint contracts between two municipalities provides as follows:

“No contract entered into pursuant to this chapter shall take effect until the contract has been approved by the governing body of each of the contracting municipalities or counties. Approval by a county governing body shall be by adoption of a resolution and approval by a municipal governing body shall be by adoption of an ordinance of general and permanent operation.”

RECOMMENDATIONS

A. I recommend that Ordinance Number 3083 be introduced for a first read at the City Council meeting on March 7, 2022 and that it be considered for approval at the City Council meeting on March 21, 2022.

B. If Ordinance Number 3083 is enacted, then in such event I recommend that the Police Departments of the Cities of Childersburg and Vestavia Hills prepare a plan for the development of the proposed public safety firing/training range and a contract regarding its joint use. Please remember that the contract must contain the subjects set forth in Title 11-102-1, *Code of Alabama, 1975*.

C. Once the plan has been developed and the contract been prepared, I recommend that the same be submitted to the City Council for consideration and final approval by another ordinance at a subsequent date.

D. I have made some changes to the MOU and forward you:

- (i) Redline/blue line draft.
- (ii) Clean copy of final draft.

February 23, 2022

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

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Boone", with a long horizontal flourish extending to the right.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

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

ORDINANCE NUMBER 3095

AN ORDINANCE ADOPTING AND ENACTING SUPPLEMENT IV FOR THE VESTAVIA HILLS CODE OF ORDINANCES, REPUBLISHED 2013 PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; AND PROVIDING WHEN SUCH SUPPLEMENTS AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

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

Section 1. Supplement No. 4 to the Code entitled "Vestavia Hills Code of Ordinances, Republished 2013," is adopted.

Section 2. All Ordinances of a general and permanent nature enacted on or before February 24, 2020, and in conflict with the Ordinances included in the supplement or recognized and continued in force by reference therein, are repealed.

Section 3. The repeal provided for in Section 2 hereof shall not be construed to revive any Ordinance or part thereof that has been repealed by a subsequent Ordinance that is repealed by this Ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Supplement or any Ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a fine of not less than \$1.00 nor more than \$500.00 or by imprisonment at hard labor for not exceeding six months or by both such fine and imprisonment. Each act of violation and each day upon which any such violation shall continue or occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

Section 5. The Ordinances included in this Supplement shall be deemed to be incorporated in the Code, so that reference to the Code includes such Ordinances.

Section 6. Ordinances adopted after February 24, 2020 that amend or refer to Ordinances that have been included in the supplement shall be construed as if they amend or refer to like provisions of the Code.

Section 7. This Ordinance shall become effective upon adoption, approval and publication as required by law.

ADOPTED and APPROVED this 25th day of April, 2022.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 3095 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 25th day of April, 2022 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel Houser this the _____ day of _____, 2022.

Rebecca Leavings
City Clerk