

**ORDINANCE NUMBER 3169**

**AN ORDINANCE AMENDING ORDINANCE NUMBER 2849 AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A LICENSE AGREEMENT WITH JEFFERSON COUNTY AND ROCKY RIDGE FIRE DISTRICT FOR PROPERTY TO BE USED AS A FIRE TRAINING FACILITY**

**WHEREAS**, in 2019, Jefferson County (“Licensor”) and Rocky Ridge Fire District and the City of Vestavia Hills (“Licensees”) entered into a License Agreement wherein the Licensor authorized the Licensees to use the property at 3790 Veona Daniels Road as a fire training facility for a period of fifty (50) years at a rental of One Dollar (\$1.00) per year; and

**WHEREAS**, a second proposed License Agreement was presented for property at 3870 Veona Daniels Road which, when reviewed, was a more suitable property for training purposes which gave the parties the right to use both properties for training purposes; and

**WHEREAS**, a copy of the second License Agreement is marked as Exhibit A, attached to an incorporated into this Ordinance Number 3169 as if written fully therein; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to amend Ordinance Number 2849 and the first License Agreement for the second License Agreement as detailed in the attached Exhibit A.

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

1. The Mayor and City Manager are hereby authorized the execute and deliver a second License Agreement as detailed in the attached Exhibit A; and
2. This Ordinance Number 3169 shall become effective immediately upon adoption and posting/publication as required by Alabama Law.

**ADOPTED and APPROVED** this the 13<sup>th</sup> day of March, 2023.

  
Ashley C. Curry  
Mayor

ATTESTED BY:

  
Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3169 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 13th day of March, 2023, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills New Merkel House, and Vestavia Hills Civics Center  
this the 14<sup>th</sup> day of March, 2023.



Rebecca Leavings  
City Clerk

**LICENSE AGREEMENT**

State of Alabama)

County of Jefferson)

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

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

WHEREAS, Licensees desire to utilize property owned by the County located at 3870 Veona Daniels Road as a fire training facility, construct structures on the property to promote the training of their respective fire departments; and

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

**WITNESSETH:**

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

- (1) Licensor hereby lets and licenses to Licensee, to the extent of its ownership interest and for the limited purpose described below, the surface use of the property described on Exhibit A and depicted on Exhibit B ( herein “the property”) attached hereto.

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

- (7) Licensees hereby acknowledge that this LICENSE is granted to Licensees only and shall not be sold, assigned, transferred in any manner whatsoever, without specific written approval of Licensor.
- (8) The term of this LICENSE shall begin upon execution and end March 1, 2072, or earlier upon Licensees' dissolution, bankruptcy, receivership or vacation of the property. Provided, Licensor and Licensees may extend the term hereof by mutual agreement. Licensor and Licensees may terminate this License, for any reason and with or without cause, upon at least ninety (90) days written notice to the other parties. Upon such termination, Licensees shall immediately vacate the premises, leaving them in good order and repair.
- (9) In consideration for use of the Premises, Licensee agrees to pay the Licensor an annual rent of One and 00/100 Dollar (\$1.00) (the "Rent") for the Premises. Licensee agrees to pay the Rent to the Licensor on or before the 15<sup>th</sup> day of each February for each year that this License is in effect, with the first Rent payment being due on or before February 15, 2023.
- (10) Licensees shall maintain the premises in a condition at all times satisfactory to Licensor (keep the property clean and free of litter, junk, trash and debris and further agrees to control weeds, shrubs, grass and trees in order to keep the property in a neat and tidy appearance at all times).
- (11) Licensees shall provide security for the entire premises as described in Exhibit A.
- (12) Purchase and maintain throughout the term of this license and all extensions hereof comprehensive general public liability insurance, naming the Licensees and Jefferson County, Alabama, Jefferson County Commission and

Commissioners and County employees as named insureds with a company duly authorized and approved to do business in Alabama. Said insurance shall include minimum coverage as follows:

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

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

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

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

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

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

All notices to Licensees will be addressed to:

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

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused this LICENSE AGREEMENT to be executed by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

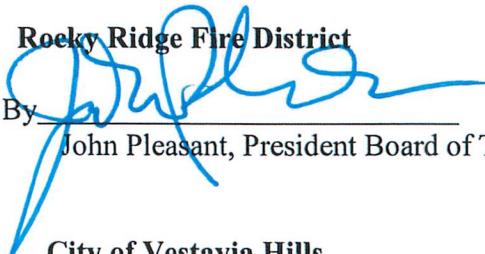
**ATTEST:**

\_\_\_\_\_  
Mildred G. Diliberto, Minute Clerk

**Jefferson County, Alabama**

By \_\_\_\_\_  
James A. Stephens, President  
Jefferson County Commission

**Rocky Ridge Fire District**

By  \_\_\_\_\_  
John Pleasant, President Board of Trustees

**City of Vestavia Hills**

By \_\_\_\_\_  
Ashley C. Curry, Mayor

By \_\_\_\_\_  
Jeff Downs, City Manager



STATE OF ALABAMA)

JEFFERSON COUNTY)

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

Given under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

My Commission expires: \_\_\_\_\_

STATE OF ALABAMA)

JEFFERSON COUNTY)

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

Given under my hand and official seal, this 2 day of March, 2023.

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

**Michael A. Bartlett**

My Commission Expires **December 21, 2025**  
Notary Public, Alabama State at Large  
My Commission Expires December 21, 2025

STATE OF ALABAMA)

JEFFERSON COUNTY)

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

Given under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

My Commission expires: \_\_\_\_\_

STATE OF ALABAMA)

JEFFERSON COUNTY)

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

Given under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

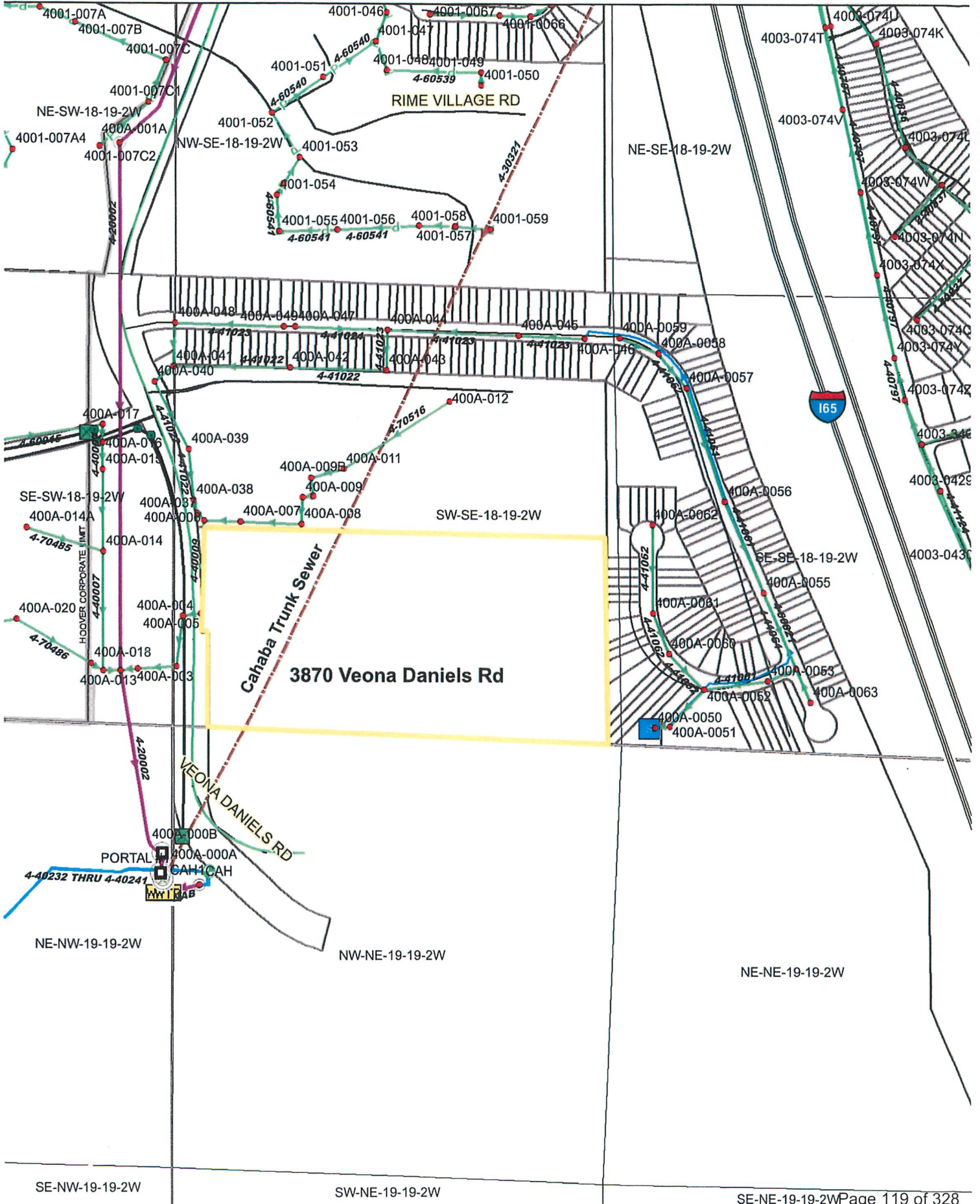
My Commission expires: \_\_\_\_\_

## **EXHIBIT "A"**

**All that part of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 18, Township 19 South, Range 2 West, Jefferson County, Alabama, lying southerly of and abutting that certain property conveyed to the United States of America as described in Real 655 Page 221 and recorded in the Jefferson County Probate Office and lying easterly of and abutting the right-of-way of Veona Daniels Road.**

**Containing approximately 17 acres, more or less.**

# Exhibit "B"





**CITY OF VESTAVIA HILLS  
FIRE DEPARTMENT  
INTER-DEPARTMENT MEMO**

**March 13, 2023**

**To:** Jeff Downes, City Manager

**Cc:** Ryan Farrell, Asst. Fire Chief

**From:** Marvin Green, Fire Chief

**RE:** Ordinance Number 3169 - An Ordinance Amending Ordinance Number 2849 authorizing the Mayor and City Manager to execute and deliver a License Agreement for fire training facility

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**Background:**

In 2019 Vestavia Hills entered into an agreement for use of the property located at 3790 Veona Daniels Road as a fire training facility. As a part of that agreement, Vestavia Hills has used that facility for fire training along with the Rocky Ridge Fire District. Since the initial agreement was executed, Jefferson County has approached Vestavia Hills and the Rocky Ridge Fire District about the use of a larger parcel located at 3870 Veona Daniels Road. This parcel will provide additional opportunities for training. Both parcels have unique attributes which make them valuable for training.

**Recommendation:**

This opportunity will provide additional space for fire training and will benefit Vestavia Hills tremendously. The current budget provides for immediate improvements to the parcel.

**Fiscal Impact:**

None due to approval of previous agreement.

**Attachments:**

1. Ordinance 3169
2. Agreement
3. City Attorney Opinion

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

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

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

March 8, 2023

By Electronic Mail

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

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

Dear Chief Green:

On March 6, 2023, you sent to me via electronic mail a proposed License Agreement by and between Jefferson County, Alabama ("Licensor") and Rocky Ridge Fire District and the City of Vestavia Hills ("Licensees") wherein Licensor grants to Licensees a license to use the real estate at 3870 Veona Daniels Road as a fire training facility for a period of fifty (50) years for and in consideration of One Dollar (\$1.00) per year. You requested that I review the License Agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

**I. FACTS**

In 2019, Jefferson County ("Licensor") and Rocky Ridge Fire District and the City of Vestavia Hills ("Licensees") entered into a License Agreement wherein the Licensor authorized the Licensees to use the property at 3790 Veona Daniels Road as a fire training facility for a period of fifty (50) years at a rental of One Dollar (\$1.00) per year. That License Agreement will remain in full force and effect until it expires on September 30, 2068.

On March 6, 2023, you sent to me a second proposed License Agreement by and among the same parties for the property at 3870 Veona Daniels Road for a period of fifty (50) years at a rental of One Dollar (\$1.00) per year. If it is ultimately approved, then in such event the Vestavia Hills Fire Department will have the right to use the property at 3790 Veona Daniels Road and the property at 3870 Veona Daniels Road for fire training purposes. The differences between the 2019 License Agreement include the following:

- A. The property is for 3870 Veona Daniels Road.

B. The Licensees do not have the authority to improve the existing structure(s) on the property.

C. Section 1 on page 2 includes Exhibit B, which is a map of the property subject to the License Agreement.

D. The use of the property is limited to the use of the surface of the property at Licensees' expense (Section 2 on page 2).

E. Section 3 on page 2 provides that any improvements by the Licensees shall be approved in advance by the County Engineer.

F. Section 8 on page 3 provides that the term of the License Agreement begins March 1, 2023.

G. Section 9 on page 3 provides that the \$1.00 rental payment will be paid by the 15<sup>th</sup> day of February annually.

H. Section 12 refers to the Licensees rather than the Licensee on line 2 on page 4.

I. Section 13 provides that any utilities installed by Licensees shall be subject to the approval of the Director of Environmental Services.

J. Section 15 on page 5 provides that City Manager Jeff Downes shall be the contact person for the City.

K. The documents shall be redated for 2023 on pages 6, 7 and 8 thereof.

## II. THE LICENSE AGREEMENT

Among other things, the License Agreement provides as follows:

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

“(6) Licensor shall not be held liable for any claims for damage which may arise on account of the exercise by the Licensees of the rights herein granted; and Licensees hereby agree to release Licensor and shall defend, indemnify and hold Licensor harmless from all loss, claim, damage and expense of every nature, including attorney's fees, judgments and other legal costs, to which Licensor may be subject on account of the exercise by Licensees, of any of its rights hereunder or on account of any act, errors or omissions by Licensees, its servants, agents, employees or contractors, including any failure to comply with all provisions of this LICENSE.”



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

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

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

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

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

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

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

**III. LEGAL ISSUE**

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

**IV. LEGAL OPINION**

It is my legal opinion that the answer to the legal question is in the affirmative; provided, however, that the City keep the insurance coverages in full force and effect for the next fifty (50) years.

## V. BASIS FOR LEGAL OPINION

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

A. In my opinion, Jefferson County would never make this License Agreement without including the indemnity and insurance requirements. It would not be in the best interest of the citizens of the City of Vestavia Hills or its Fire Department to lose 50 years of the use of the property for fire training purposes for the nominal sum of \$50.00.

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

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

**“§11-93-2. Maximum damages recoverable.** The recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence. Recovery of damages under any judgment or judgments against a governmental entity shall be limited to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. Recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for damage or loss of property arising out of any single occurrence. No governmental entity shall settle or compromise any claim for bodily injury, death or property damage in excess of the amounts hereinabove set forth.”

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

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

**V. CONCLUSION**

If approved, the Vestavia Hills Fire Department will have two parcels of land to use for training purposes (3790 and 3870 Veona Daniels Road) for a period of fifty (50) years. To me, that promotes the health, safety and welfare of the City and its inhabitants.

**VI. MY RECOMMENDATIONS**

I make the following recommendations:

- A. I recommend the License Agreement from a legal standpoint.
- B. I further recommend that if the City Council approves the License Agreement, then in such event the City shall keep, maintain and pay the premiums in order to keep the liability insurance coverages as described in Section (12) in full force and effect for the next 50 years.
- C. Certificates of Insurance should be delivered to the Jefferson County Commission.

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

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

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