

## **ORDINANCE NUMBER 3200**

### **AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER CERTAIN UTILITY AGREEMENTS FOR RELOCATION OF UTILITY FACILITIES ON PUBLIC RIGHT-OF-WAY FOR PROJECT CMAQ-7030(600) MASSEY ROAD**

**WHEREAS**, for several years, the City has worked toward the completion of Project CMAQ-7030(600) Massey Road public improvements (“the Project”); and

**WHEREAS**, following acquisition of additional rights-of-way along Massey Road, the Project requires relocation of utilities along the roadway; and

**WHEREAS**, coordination with said utilities has been completed as a part of the design phase of the Project; and

**WHEREAS**, the various utility companies with known conflicts have provided relocation plans along with a signed Relocation Agreement specific to their scope of work, pursuant to ALDOT requirements; and

**WHEREAS**, execution of the said agreements by the City is required in order to obtain a Utility Certificate for the project; a required prerequisite for ALDOT to begin letting bids on the Project; and

**WHEREAS**, each a copy of each agreement is marked as follows, attached to and incorporated into this Ordinance Number 3200 as if written fully therein:

- Exhibit 1 - Non-Reimbursable Agreement for Relocation of Utility Facilities on Public Right-of-Way - Alabama Power
- Exhibit 2 - Non-Reimbursable Agreement for Relocation of Utility Facilities on Public Right-of-Way - AT&T
- Exhibit 3 - Non-Reimbursable Agreement for Relocation of Utility Facilities on Public Right-of-Way - Spectrum Southeast LLC
- Exhibit 4 - Reimbursable Agreement for Relocation of Utility Facilities on Private or Public Right-of-Way Work to be Done by State Contractor - The Water Works Board of the City of Birmingham
- Exhibit 5 - Reimbursable Agreement for Relocation of Utility Facilities on Private or Public Right-of-Way Work to be Done by State Contractor - Jefferson County Commission; and
- 

**WHEREAS**, the Mayor and the City Council feel it is in the best public interest to authorize the execution of the contracts detailed in the attached exhibits.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver all required relocation agreements as detailed in the above referenced Exhibits 1, 2, 3, 4, and 5 subject to the review and written approval of the City Attorney; and
2. This Ordinance Number 3200 shall become effective immediately following adoption and publishing/posting pursuant to Alabama law.

**DONE, ORDERED, ADOPTED and APPROVED** this the 23<sup>rd</sup> day of October, 2023.

  
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 Number 3200 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 23<sup>rd</sup> day of October, 2023 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the 25<sup>th</sup> day of Oct, 2023.

  
Rebecca Leavings  
City Clerk

**NON-REIMBURSABLE AGREEMENT  
FOR RELOCATION OF UTILITY FACILITIES ON PUBLIC RIGHT-OF-WAY**

PROJECT NUMBER CMAQ-7030(600)  
CITY NUMBER \_\_\_\_\_  
CITY Vestavia Hills

**THIS AGREEMENT** is entered into by and between the CITY of Vestavia Hills, acting by and through its CITY COUNCIL, hereinafter referred to as the CITY, and Alabama Power, hereinafter referred to as the UTILITY.

**WITNESSETH:**

**WHEREAS**, the CITY proposes a project of certain highway improvements in Vestavia Hills CITY, Alabama, said project being designated as Project No. CMAQ-7030(600) and consisting approximately of the following: Roadway Improvements & Sidewalks Along CR-42 (Massey Road) from CR-99 (Columbiana Road) to SR-3 (US-31).; and

**WHEREAS**, the UTILITY is the owner of certain facilities located on public right-of-way at places where they will interfere with the construction of said project unless said facilities are relocated; and

**WHEREAS**, the CITY has determined that the relocation of the facilities referred to is necessitated by the construction of said project and has ordered the UTILITY to relocate same; and

**WHEREAS**, under the laws of Alabama, the UTILITY is required to relocate said facilities at its own expense;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. The UTILITY will relocate its facilities presently located within the right-of-way limits of the above referenced project in accordance with the UTILITY'S plans as approved by the CITY, so as to occasion the least possible interference with the progress of the project. The UTILITY'S plans are transmitted herewith and made a part hereof by reference. The UTILITY will furnish the CITY a copy of its "as built" plans at the completion of the relocation.
2. The UTILITY will conform to the provisions of the latest edition of the State of Alabama Department of Transportation Utility Manual, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such Utility Manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.
3. The UTILITY will conform to the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), latest edition, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

4. Code of Federal Regulations 23 CFR 645 is hereby made a part hereof by reference and will be conformed to by the **UTILITY** as the provisions thereof are applicable hereto.
5. The **UTILITY** will observe and comply with the provisions of all Federal, State and Municipal laws and regulations as the provisions thereof are applicable hereto in the performance of work hereunder, including the Clean Water Act of 1987, the Alabama Nonpoint Source Management Program of 1989, and the regulations of the Environmental Protection Agency (EPA) and the Alabama Department of Environmental Management (ADEM). The **UTILITY** will procure and pay for all licenses and permits that are necessary for its performance of the work.
6. By signing this contract, the **CITY** and **UTILITY** affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
7. Reimbursement for future relocation of the **UTILITY'S** facilities will be in accordance with State law in effect at the time such relocation is made.
8. The **UTILITY** will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability ( in accordance with Alabama and/or Federal law) of the **UTILITY**, its agents, servants, employees or facilities.
9. The **UTILITY** will have a copy of this Agreement on the project site at all times while work is being performed under this Agreement.
10. The **CITY** will furnish the **STATE**, in writing, six (6) weeks prior to the State's project letting date, a "Utility Certification" letter with a time frame for beginning and ending the required relocation work.
11. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the **CITY** to the public right-of-way nor to increase, decrease or modify in any way the rights of the **UTILITY** provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, officials or persons thereunto duly authorized on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

Shane Perkins

BY: Joshua Phillips  
(Signature)

Joshua Phillips  
(Type or Printed Name)

Transmission Line Services Supervisor  
(Type or Printed Title)

600 North 18th Street 12S-0782  
(Address)

Birmingham, Al. 35291  
(Address)

205-257-4830  
(Telephone)

RECOMMENDED FOR APPROVAL:

BY: \_\_\_\_\_  
CITY ENGINEER/ENGINEER-OF-RECORD

BY: \_\_\_\_\_  
REGION ENGINEER

CITY OF \_\_\_\_\_

BY: \_\_\_\_\_  
MAYOR

APPROVED:

BY: \_\_\_\_\_  
STATE LOCAL TRANSPORTATION ENGINEER

DATE: \_\_\_\_\_

Exhibit 2

REVISED 11/18/2014

CITY FORM NO. 1

**NON-REIMBURSABLE AGREEMENT  
FOR RELOCATION OF UTILITY FACILITIES ON PUBLIC RIGHT-OF-WAY**

PROJECT NUMBER     CMAQ-7030(600)  
CITY NUMBER         \_\_\_\_\_   
CITY                   Vestavia Hills

**THIS AGREEMENT** is entered into by and between the CITY of Vestavia Hills, acting by and through its CITY COUNCIL, hereinafter referred to as the CITY, and AT&T, hereinafter referred to as the UTILITY.

**WITNESSETH:**

**WHEREAS**, the CITY proposes a project of certain highway improvements in Vestavia Hills CITY, Alabama, said project being designated as Project No. CMAQ-7030(600) and consisting approximately of the following: Roadway Improvements & Sidewalks Along CR-42 (Massey Road) from CR-99 (Columbiana Road) to SR-3 (US-31). \_\_\_\_\_; and

**WHEREAS**, the UTILITY is the owner of certain facilities located on public right-of-way at places where they will interfere with the construction of said project unless said facilities are relocated; and

**WHEREAS**, the CITY has determined that the relocation of the facilities referred to is necessitated by the construction of said project and has ordered the UTILITY to relocate same; and

**WHEREAS**, under the laws of Alabama, the UTILITY is required to relocate said facilities at its own expense;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. The UTILITY will relocate its facilities presently located within the right-of-way limits of the above referenced project in accordance with the UTILITY'S plans as approved by the CITY, so as to occasion the least possible interference with the progress of the project. The UTILITY'S plans are transmitted herewith and made a part hereof by reference. The UTILITY will furnish the CITY a copy of its "as built" plans at the completion of the relocation.
2. The UTILITY will conform to the provisions of the latest edition of the State of Alabama Department of Transportation Utility Manual, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such Utility Manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.
3. The UTILITY will conform to the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), latest edition, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

4. Code of Federal Regulations 23 CFR 645 is hereby made a part hereof by reference and will be conformed to by the **UTILITY** as the provisions thereof are applicable hereto.
5. The **UTILITY** will observe and comply with the provisions of all Federal, State and Municipal laws and regulations as the provisions thereof are applicable hereto in the performance of work hereunder, including the Clean Water Act of 1987, the Alabama Nonpoint Source Management Program of 1989, and the regulations of the Environmental Protection Agency (EPA) and the Alabama Department of Environmental Management (ADEM). The **UTILITY** will procure and pay for all licenses and permits that are necessary for its performance of the work.
6. By signing this contract, the **CITY** and **UTILITY** affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
7. Reimbursement for future relocation of the **UTILITY'S** facilities will be in accordance with State law in effect at the time such relocation is made.
8. The **UTILITY** will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability ( in accordance with Alabama and/or Federal law) of the **UTILITY**, its agents, servants, employees or facilities.
9. The **UTILITY** will have a copy of this Agreement on the project site at all times while work is being performed under this Agreement.
10. The **CITY** will furnish the **STATE**, in writing, six (6) weeks prior to the State's project letting date, a "Utility Certification" letter with a time frame for beginning and ending the required relocation work.
11. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the **CITY** to the public right-of-way nor to increase, decrease or modify in any way the rights of the **UTILITY** provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, officials or persons thereunto duly authorized on this 5th day of July, 2023.

WITNESS:

AT&T Southeast, dba Bellsouth Telecom

(Legal Name of Utility)

Chandler Russ

BY:

Dennis Russ

(Signature)

DENNIS RUSS

(Type or Printed Name)

MGR OSP PLNG & ENGRG DESIGN • ACCESS - COI

(Type or Printed Title)

1876 Data Dr.

(Address)

Hoover, AL 35244

(Address)

RECOMMENDED FOR APPROVAL:

205-531-1211

(Telephone)

BY:

CITY ENGINEER/ENGINEER-OF-RECORD

BY:

REGION ENGINEER

CITY OF

BY:

MAYOR

APPROVED:

BY:

STATE LOCAL TRANSPORTATION ENGINEER

DATE:



**NON-REIMBURSABLE AGREEMENT  
FOR RELOCATION OF UTILITY FACILITIES ON PUBLIC RIGHT-OF-WAY**

PROJECT NUMBER CMAQ-7030(600)  
CITY NUMBER \_\_\_\_\_  
CITY Vestavia Hills

**THIS AGREEMENT** is entered into by and between the CITY of Vestavia Hills, acting by and through its CITY COUNCIL, hereinafter referred to as the CITY, and Spectrum Southeast LLC, hereinafter referred to as the UTILITY.

**WITNESSETH:**

**WHEREAS**, the CITY proposes a project of certain highway improvements in Vestavia Hills CITY, Alabama, said project being designated as Project No. CMAQ-7030(600) and consisting approximately of the following: Roadway Improvements & Sidewalks Along CR-42 (Massey Road) from CR-99 (Columbiana Road) to SR-3 (US-31). \_\_\_\_\_; and

**WHEREAS**, the UTILITY is the owner of certain facilities located on public right-of-way at places where they will interfere with the construction of said project unless said facilities are relocated; and

**WHEREAS**, the CITY has determined that the relocation of the facilities referred to is necessitated by the construction of said project and has ordered the UTILITY to relocate same; and

**WHEREAS**, under the laws of Alabama, the UTILITY is required to relocate said facilities at its own expense;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. The UTILITY will relocate its facilities presently located within the right-of-way limits of the above referenced project in accordance with the UTILITY'S plans as approved by the CITY, so as to occasion the least possible interference with the progress of the project. The UTILITY'S plans are transmitted herewith and made a part hereof by reference. The UTILITY will furnish the CITY a copy of its "as built" plans at the completion of the relocation.
2. The UTILITY will conform to the provisions of the latest edition of the State of Alabama Department of Transportation Utility Manual, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such Utility Manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.
3. The UTILITY will conform to the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), latest edition, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

4. Code of Federal Regulations 23 CFR 645 is hereby made a part hereof by reference and will be conformed to by the **UTILITY** as the provisions thereof are applicable hereto.
5. The **UTILITY** will observe and comply with the provisions of all Federal, State and Municipal laws and regulations as the provisions thereof are applicable hereto in the performance of work hereunder, including the Clean Water Act of 1987, the Alabama Nonpoint Source Management Program of 1989, and the regulations of the Environmental Protection Agency (EPA) and the Alabama Department of Environmental Management (ADEM). The **UTILITY** will procure and pay for all licenses and permits that are necessary for its performance of the work.
6. By signing this contract, the **CITY** and **UTILITY** affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
7. Reimbursement for future relocation of the **UTILITY'S** facilities will be in accordance with State law in effect at the time such relocation is made.
8. The **UTILITY** will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability ( in accordance with Alabama and/or Federal law) of the **UTILITY**, its agents, servants, employees or facilities.
9. The **UTILITY** will have a copy of this Agreement on the project site at all times while work is being performed under this Agreement.
10. The **CITY** will furnish the **STATE**, in writing, six (6) weeks prior to the State's project letting date, a "Utility Certification" letter with a time frame for beginning and ending the required relocation work.
11. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the **CITY** to the public right-of-way nor to increase, decrease or modify in any way the rights of the **UTILITY** provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, officials or persons thereunto duly authorized on this 21st day of September, 2023.

WITNESS:

Jana Marchant

BY:

Spectrum Southeast, LLC  
By: Charter Communications, Inc., its Managers

\_\_\_\_\_  
(Legal Name of Utility)

[Signature]  
\_\_\_\_\_  
(Signature)

Thom C. Tyrrell  
\_\_\_\_\_  
(Type or Printed Name)

Area Vice President  
\_\_\_\_\_  
(Type or Printed Title)

151 London Parkway  
\_\_\_\_\_  
(Address)

Birmingham, AL 35211  
\_\_\_\_\_  
(Address)

205-573-6715 - Kert Harrell  
\_\_\_\_\_  
(Telephone)

RECOMMENDED FOR APPROVAL:

BY: \_\_\_\_\_  
CITY ENGINEER/ENGINEER-OF-RECORD

BY: \_\_\_\_\_  
REGION ENGINEER

CITY OF \_\_\_\_\_

BY: \_\_\_\_\_  
MAYOR

APPROVED:

BY: \_\_\_\_\_  
STATE LOCAL TRANSPORTATION ENGINEER

DATE: \_\_\_\_\_

**REIMBURSABLE AGREEMENT  
FOR RELOCATION OF UTILITY FACILITIES  
ON PRIVATE OR PUBLIC RIGHT-OF-WAY  
WORK TO BE DONE BY STATE CONTRACTOR**

<input type="checkbox"/>	Private Right-of-Way	PROJECT NUMBER	<u>CMAQ-7030(060)</u>
<input checked="" type="checkbox"/>	Public Right-of-Way	CITY NUMBER	_____
		CITY	_____

**THIS AGREEMENT** is entered into by and between the CITY of Vestavia Hills acting by and through its CITY COUNCIL, hereinafter referred to as the CITY, and The Water Works Board of the City of Birmingham, hereinafter referred to as the UTILITY.

**WITNESSETH:**

**WHEREAS**, the CITY proposes a project of certain highway improvements in Vestavia Hills CITY, Alabama, said project being designated as Project No. CMAQ-7030(060) and consisting approximately of the following: along Massy Road between Columbiana Road (CR-99) and Montgomery Highway (SR-3); and

**WHEREAS**, the UTILITY is the owner of certain facilities located on private or public right-of-way, as applicable, at places where they will interfere with the construction of said project unless said facilities are relocated; and

**WHEREAS**, the CITY has determined that the relocation of the facilities hereinafter referred to is necessitated by the construction of said project and has requested or ordered, as applicable, the UTILITY to relocate same; and

**WHEREAS**, the Alabama Department of Transportation will use Federal funds allocated to the CITY, if available, that are provided to it by the Federal Highway Administration pursuant to 23 CFR 645 to reimburse the CITY'S expenses incurred in adjusting the utilities facilities;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. The UTILITY, not being staffed or equipped to perform the relocation, requests that the relocation work be included in the Alabama Department of Transportation's Highway Construction Contract. The relocation of the facilities will be accomplished in accordance with and as shown by the UTILITY'S reproducible mylar plans, specifications, and estimate transmitted herewith and made a part hereof by reference. The estimated cost of the "In-Kind" relocation is \$ 28,875.00.
  - a. The actual cost of relocation will not be reimbursed to the UTILITY but will be paid directly to the STATE'S contractor by the STATE as a part of its contract. A detailed itemized cost estimate will be transmitted herewith and made a part hereof by reference.
  - b. The total actual cost of relocation, whether the facilities are on private or public right-of-way, shall be adjusted for betterment, if any, as defined and provided for in 23 CFR 645 above noted. Excluding betterment costs, the total estimated cost of relocation is \$ 28,875.00. The total estimated cost including betterment is \$ 28,875.00.
  - c. If an adjustment for betterment is applicable, the CITY shall reimburse the UTILITY based on the percentage ratio of "in-kind" cost and "betterment" cost and being 100.00 percent of the total actual cost of relocation, as "in-kind" and the remaining 0.00 percent thereof shall be for the account of the UTILITY for betterment. If there are changes during construction and/or the actual construction cost percentage becomes substantially different from the construction estimate, the CITY reserves the right to recalculate the percentages at anytime.

2. The **UTILITY** will confirm to the provisions of the latest edition of the State of Alabama Department of Transportation Utility Manual, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such Utility Manual is of record within the Alabama Department of Transportation at the execution of this of this Agreement and is hereby made a part hereof by reference.

3. The **UTILITY** will conform to the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), latest edition, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

4. The **UTILITY** will be notified by the **CITY** Project Engineer, twenty-four (24) hours in advance of the commencement of the facility adjustment by the **STATE** Contractor. The **CITY** Project Engineer shall have final authority in all matters affecting the work of the **STATE'S** Contractor. In the event the **UTILITY** has an Inspector on the project, such Inspector will not issue any instructions to the **STATE'S** Contractor. All instructions to the **STATE'S** Contractor with regard to the work provided for under this agreement will be issued by the **CITY** Project Engineer, after consultation with the **UTILITY** Inspector or Representative if found necessary by the **CITY** Project Engineer.

5. Code of Federal Regulations 23 CFR 645 is hereby made a part hereof by reference and will be conformed to by the **UTILITY** as the provisions thereof are applicable hereto.

6. By signing this contract, the **CITY** and **UTILITY** affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

7. The **UTILITY** will observe and comply with the provisions of all Federal, State and Municipal laws and regulations as the provisions thereof are applicable hereto in the performance of work hereunder, including the Clean Water Act of 1987, the Alabama Nonpoint Source Management Program of 1989, and the regulations of the Environmental Protection Agency (EPA) and the Alabama Department of Environmental Management (ADEM). The **UTILITY** will procure and pay for all licenses and permits that are necessary for its performance of the work.

8. Where the **UTILITY** has a compensable property interest in its existing location (herein referred to as private right-of-way) by reason of holding the fee, an easement or other property interest, evidence of such compensable property interest shall be attached hereto and made a part of this Agreement.

9. If the **UTILITY** is required to move all of its facilities from a portion of its private right-of-way, upon completion of the relocation provided for herein, the **UTILITY** will convey to the **CITY** by Quitclaim Deed the portion of its private right-of-way located within the right-of-way limits of the above referenced project.

10. In the event the **UTILITY** is required to relocate any of its facilities which are located on its private right-of-way to a new location on public right-of-way or if any such facilities are to be retained in place within the public right-of-way due to this project, the following provisions will apply:

a. The cost of relocation will include reimbursement for acquisition of right-of-way by the **UTILITY** to place necessary guy wires and anchors on private lands adjacent to the highway right-of-way and the rights to cut, trim and remove, initially and from time to time as necessary, trees on private lands adjacent to the highway right-of-way which might then or thereafter endanger the facilities of the **UTILITY**.

b. Reimbursement for future relocation of the **UTILITY'S** facilities will be in accordance with **STATE** law in effect at the time such relocation is made; provided, however, the **UTILITY** will be reimbursed for the cost of any future relocation of the facilities, including the cost of acquisition of equivalent private right-of-way if such future relocation is outside the highway right-of-way and such relocation is required by the **CITY**, and provided that the prior relocation from private right-of-way to public right-of-way was without compensation to the **UTILITY** for its compensable property interest in its private right-of-way.

11. The **UTILITY** will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the **UTILITY**, its agents, servants, employees or facilities.

12. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the **CITY** to the public right-of-way nor to increase, decrease or modify in any way the rights of the **UTILITY** provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

13. Paragraph 14 set forth below is applicable to this Agreement only if Federal appropriated funds are available or will be available in the project by which the relocation required by this Agreement is necessitated.

14. In the event any Federal Funds are utilized for this work, the following certification is made: The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

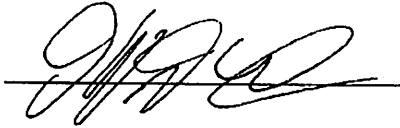
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, officials or persons thereunto duly authorized, and this agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the State Local Transportation Engineer.

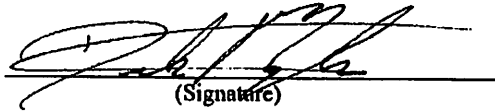
WITNESS:



Birmingham Water Works Board

(Legal Name of Utility)

BY:

  
(Signature)

Derrick Murphy

(Type or Printed Name)

Assistant General Manager

(Type or Printed Title)

3600 First Avenue North

(Address)

Birmingham, AL 35283

(Address)

205-244-4404

(Telephone)

RECOMMENDED FOR APPROVAL:

BY: \_\_\_\_\_  
CITY ENGINEER/ENGINEER-OF-RECORD

BY: \_\_\_\_\_  
REGION ENGINEER

CITY OF \_\_\_\_\_

BY: \_\_\_\_\_  
MAYOR

APPROVED:

BY: \_\_\_\_\_  
STATE LOCAL TRANSPORTATION ENGINEER

DATE: \_\_\_\_\_

Exhibit 5

DocuSign Envelope ID: BA4E4C53-8C4E-4761-B31A-8C5098593FE8

REVISED 11/18/2014

APPROVED BY THE JEFFERSON COUNTY COMMISSION

5/11/2023

CITY FORM NO. 3

Item # 10307, Resolution: 481, Minute Book: 177, Page(s) 362-363

REIMBURSABLE AGREEMENT  
FOR RELOCATION OF UTILITY FACILITIES  
ON PRIVATE OR PUBLIC RIGHT-OF-WAY  
WORK TO BE DONE BY STATE CONTRACTOR

Private Right-of-Way  
 Public Right-of-Way

PROJECT NUMBER CMAQ-7030(600)  
CITY NUMBER \_\_\_\_\_  
CITY \_\_\_\_\_

THIS AGREEMENT is entered into by and between the CITY of Vestavia Hills  
acting by and through its CITY COUNCIL, hereinafter referred to as the CITY, and  
Jefferson County Commission, Jefferson County, AL, hereinafter referred to  
as the UTILITY.

WITNESSETH:

WHEREAS, the CITY proposes a project of certain highway improvements in Vestavia Hills  
CITY, Alabama, said project being designated as Project No. CMAQ-7030(600) and consisting  
approximately of the following: roadway improvements & sidewalks along CR-42 (Massey Road)  
from SR-3 (US-31) to CR-99 (Columbiana Road); and

WHEREAS, the UTILITY is the owner of certain facilities located on private or public right-of-way, as  
applicable, at places where they will interfere with the construction of said project unless said facilities are  
relocated; and

WHEREAS, the CITY has determined that the relocation of the facilities hereinafter referred to is  
necessitated by the construction of said project and has requested or ordered, as applicable, the UTILITY to  
relocate same; and

WHEREAS, the Alabama Department of Transportation will use Federal funds allocated to the CITY,  
if available, that are provided to it by the Federal Highway Administration pursuant to 23 CFR 645 to reimburse  
the CITY'S expenses incurred in adjusting the utilities facilities;

NOW, THEREFORE, the parties hereto agree as follows:

1. The UTILITY, not being staffed or equipped to perform the relocation, requests that the relocation work be included in the Alabama Department of Transportation's Highway Construction Contract. The relocation of the facilities will be accomplished in accordance with and as shown by the UTILITY'S reproducible mylar plans, specifications, and estimate transmitted herewith and made a part hereof by reference. The estimated cost of the "In-Kind" relocation is \$ 22,200.00.
  - a. The actual cost of relocation will not be reimbursed to the UTILITY but will be paid directly to the STATE'S contractor by the STATE as a part of its contract. A detailed itemized cost estimate will be transmitted herewith and made a part hereof by reference.
  - b. The total actual cost of relocation, whether the facilities are on private or public right-of-way, shall be adjusted for betterment, if any, as defined and provided for in 23 CFR 645 above noted. Excluding betterment costs, the total estimated cost of relocation is \$ 22,200.00. The total estimated cost including betterment is \$ 22,200.00.
  - c. If an adjustment for betterment is applicable, the CITY shall reimburse the UTILITY based on the percentage ratio of "in-kind" cost and "betterment" cost and being 100.00 percent of the total actual cost of relocation, as "in-kind" and the remaining 0.00 percent thereof shall be for the account of the UTILITY for betterment. If there are changes during construction and/or the actual construction cost percentage becomes substantially different from the construction estimate, the CITY reserves the right to recalculate the percentages at anytime.



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2. The **UTILITY** will confirm to the provisions of the latest edition of the State of Alabama Department of Transportation Utility Manual, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such Utility Manual is of record within the Alabama Department of Transportation at the execution of this of this Agreement and is hereby made a part hereof by reference.

3. The **UTILITY** will conform to the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), latest edition, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

4. The **UTILITY** will be notified by the **CITY** Project Engineer, twenty-four (24) hours in advance of the commencement of the facility adjustment by the **STATE** Contractor. The **CITY** Project Engineer shall have final authority in all matters affecting the work of the **STATE'S** Contractor. In the event the **UTILITY** has an Inspector on the project, such Inspector will not issue any instructions to the **STATE'S** Contractor. All instructions to the **STATE'S** Contractor with regard to the work provided for under this agreement will be issued by the **CITY** Project Engineer, after consultation with the **UTILITY** Inspector or Representative if found necessary by the **CITY** Project Engineer.

5. Code of Federal Regulations 23 CFR 645 is hereby made a part hereof by reference and will be conformed to by the **UTILITY** as the provisions thereof are applicable hereto.

6. By signing this contract, the **CITY** and **UTILITY** affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

7. The **UTILITY** will observe and comply with the provisions of all Federal, State and Municipal laws and regulations as the provisions thereof are applicable hereto in the performance of work hereunder, including the Clean Water Act of 1987, the Alabama Nonpoint Source Management Program of 1989, and the regulations of the Environmental Protection Agency (EPA) and the Alabama Department of Environmental Management (ADEM). The **UTILITY** will procure and pay for all licenses and permits that are necessary for its performance of the work.

8. Where the **UTILITY** has a compensable property interest in its existing location (herein referred to as private right-of-way) by reason of holding the fee, an easement or other property interest, evidence of such compensable property interest shall be attached hereto and made a part of this Agreement.

9. If the **UTILITY** is required to move all of its facilities from a portion of its private right-of-way, upon completion of the relocation provided for herein, the **UTILITY** will convey to the **CITY** by Quitclaim Deed the portion of its private right-of-way located within the right-of-way limits of the above referenced project.

10. In the event the **UTILITY** is required to relocate any of its facilities which are located on its private right-of-way to a new location on public right-of-way or if any such facilities are to be retained in place within the public right-of-way due to this project, the following provisions will apply:

- a. The cost of relocation will include reimbursement for acquisition of right-of-way by the **UTILITY** to place necessary guy wires and anchors on private lands adjacent to the highway right-of-way and the rights to cut, trim and remove, initially and from time to time as necessary, trees on private lands adjacent to the highway right-of-way which might then or thereafter endanger the facilities of the **UTILITY**.
- b. Reimbursement for future relocation of the **UTILITY'S** facilities will be in accordance with **STATE** law in effect at the time such relocation is made; provided, however, the **UTILITY** will be reimbursed for the cost of any future relocation of the facilities, including the cost of acquisition of equivalent private right-of-way if such future relocation is outside the highway right-of-way and such relocation is required by the **CITY**, and provided that the prior relocation from private right-of-way to public right-of-way was without compensation to the **UTILITY** for its compensable property interest in its private right-of-way.

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11. The **UTILITY** will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the **UTILITY**, its agents, servants, employees or facilities.

12. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the **CITY** to the public right-of-way nor to increase, decrease or modify in any way the rights of the **UTILITY** provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

13. Paragraph 14 set forth below is applicable to this Agreement only if Federal appropriated funds are available or will be available in the project by which the relocation required by this Agreement is necessitated.

14. In the event any Federal Funds are utilized for this work, the following certification is made: The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, officials or persons thereunto duly authorized, and this agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the State Local Transportation Engineer.

WITNESS:

DocuSigned by:  
Mildred E. Diliberto  
308E69DF92A244...

BY:

Jefferson County Commission, Jefferson County, AL

(Legal Name of Utility)  
DocuSigned by:  
James A. Stephens  
0F8588EC1C8C4A4...  
(Signature)

James A. Stephens

(Type or Printed Name)

President

(Type or Printed Title)

716 Richard Arrington Jr. Blvd. N.

(Address)

Birmingham, AL 35203

(Address)

(205) 325-5496

(Telephone)

RECOMMENDED FOR APPROVAL:

BY: \_\_\_\_\_  
CITY ENGINEER/ENGINEER-OF-RECORD

BY: \_\_\_\_\_  
REGION ENGINEER

CITY OF \_\_\_\_\_

BY: \_\_\_\_\_  
MAYOR

APPROVED:

BY: \_\_\_\_\_  
STATE LOCAL TRANSPORTATION ENGINEER

DATE: \_\_\_\_\_

3-13-23

CMAQ-7030(600)  
Jefferson County Environmental Services – Sewer

Construction Cost Estimate

Item	Description	Quantity	Unit Price	Total
645K-500	Manhole Frame and Cover Reset	12	\$ 1,850.00	\$ 22,000.00