

**Vestavia Hills  
City Council Agenda  
November 28, 2016  
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Pastor Kipp McClurg, Associate Pastor of Spiritual Formation at Vestavia Hills United Methodist Church
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
  - a. Oath of Office – James Sturdivant, Municipal Judge
  - b. Implementation of Declaration of Water Emergency
  - c. Park Board Interviews
  - d. Library Board Interviews
6. City Manager’s Report
7. Councilors’ Reports
8. Approval of Minutes – November 14, 2016 (Regular Meeting)

**Old Business**

9. Ordinance Number 2686 – Rezoning – 3200 Ridgely Drive, 4104, 4105, 4109, 4117 and 4101 Crosshaven Drive; Lots 1-6, Holiday’s 1<sup>st</sup> Addition to Cahaba Heights; James T. Pursell, III, Philip Michael, Faye Bragg, Sharon Snyder, Joseph and Jacques Abou-Jaoude and Doug Allen, Owners

**New Business**

10. Resolution Number 4897 - A Resolution Changing The Date Of The December 26, 2016 Council Meeting To December 28, 2016
11. Resolution Number 4898 – A Resolution Changing Signers For Accounts On Deposit At National Bank Of Commerce
12. Resolution Number 4899 - A Resolution Changing Signers For Accounts On Deposit At Pinnacle Bank
13. Resolution Number 4900 – A Resolution To Change Signers For A Court Cash Bond Account On Deposit At Regions Bank
14. Resolution Number 4901 – A Resolution To Change Signers For Accounts On Deposit At Regions Bank

15. Resolution Number 4902 – A Resolution Changing Signers For Accounts On Deposit With SouthPoint Bank
16. Resolution Number 4903 – A Resolution Changing Signers For Accounts On Deposit With Wells Fargo Bank
17. Resolution Number 4904 – A Resolution Changing Signers For Accounts On Deposit With Bank Of New York Mellon
18. Resolution Number 4905 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Turner Food Systems LLC For Concessions To Patrons At City Recreational Facilities

**New Business (Unanimous Consent Requested)**

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

19. Resolution Number 4906 – A Resolution Authorizing The Mayor And City Manager To Appropriate Funding And To Execute And Deliver An Agreement With LED Solutions For Whiteway Lighting In The Right-Of-Way Of Highway 31
20. Citizens Comments
21. Motion For Adjournment

## CITY OF VESTAVIA HILLS

### CITY COUNCIL

### MINUTES

**NOVEMBER 14, 2016**

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM. The Mayor called the meeting to order and the City Clerk called the roll with the following:

**MEMBERS PRESENT:**

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

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Patrick H. Boone, City Attorney  
Rebecca Leavings, City Clerk  
Taneisha Tucker, Library Director  
Dan Rary, Police Chief  
Kevin York, Police Captain  
Jim St. John, Fire Chief  
Terry Ray, Deputy Fire Chief  
Marvin Green, Deputy Fire Chief  
Christopher Brady, City Engineer  
Melvin Turner, Finance Director  
George Sawaya, Asst. City Treasurer

Invocation was given by Rev. Dr. William Brunson, Vestavia Hills United Methodist Church, followed by the Pledge of Allegiance.

### **ANNOUNCEMENTS, GUEST RECOGNITION**

- Mr. Pierce welcomed Ben Chambliss and Mark Macoy representing the Vestavia Hills Chamber of Commerce. He also reminded everyone of the scheduled festivities for “Holiday in the Hills” with a tree lighting on November 29 at City Hall, Breakfast with Santa on December 10 at the Civic Center and the Liberty Park Christmas Parade starting at the Liberty Park Athletic Complex on

- December 11. All scheduling details can be found on the Chamber's website. He invited everyone to attend.
- The Mayor stated that the Council has been receiving applications for upcoming vacancies on the Park and Recreation Board as well as the Library Board. A total of 18 applications were received and the Council will begin interviews on December 2 beginning at 8:30 AM. He indicated that the other interview date will be posted as soon as it is determined.

### **PROCLAMATION**

The Mayor presented a proclamation designating November 17, 2016 as "World Pancreatic Cancer Day." Mr. Downes read the proclamation and the Mayor presented it to Karen Templeton.

### **CITY MANAGER'S REPORT**

- Mr. Downes gave an update on several projects:
  - White way lights are the street lights along Montgomery Highway which illuminate the roadway area. There are 120 fixtures that are a part of the lighting system. There are some special lights near the City Center that are owned and leased from Alabama Power. These are the larger fixtures that are located along Highway 31. The City is continually replacing and/or repairing these lights. When Christmas decorations are added, the repairs are numerous. The City has been studying replacing these old fixtures with LED lighting and allow the energy savings to pay for the new fixtures. He showed a detail of the costs along with budgeted utility costs and repair estimates which total \$125,000. He also included a refund from Alabama Power from a recently discovered error in billing. Two options were presented: (1) Alabama Power doing the upgrade including the fixtures and rewiring at a rate of \$111,000 with a recurring costs from the leasing of \$36,000 annually. (2) If a private contractor were to do the work, it was found that the upgrades could be completed at an estimated cost of \$187,576.20 with recurring annual cost of \$3,185. Estimates were received from 2 of 5 contractors who attended a pre-quote meeting. With the budgeted funds, the refund from Alabama Power, the net cost would be \$16,090 with a payback of 1.5 years. He stated that if the contractor provides a contract with a guaranteed savings, this item could come to the Council soon.
  - The ADA compliant ramp at the Library in the Forest has been under construction. The original contractor failed to complete the construction as required, so the City has called upon the surety to complete the project. The agreement with the surety would be for the City to take the remaining unpaid balance of \$58,000 and match it with funds of \$36,000 from the surety to allow Blackjack Contracting to come in and finish/repair/replace

the ramp as designed at a total cost of \$95,000. The surety has also agreed to pay previous design services and construction administration of another \$42,600. There are no further approvals needed for this, Mr. Downes indicated that he wanted to apprise the Council of the completion of the project.

- The previous Council had conditionally approved proceeding with construction of a pedestrian bridge across Montgomery Highway pending approval of additional funding. Mr. Downes indicated that the City just received notification that the additional funding was granted along with some probably additional CMAQ funding that might also help to offset the costs of the bridge. The project still requires ultimate approval from this Council through the bidding process.
- The County has notified the City that the Sicard Hollow Project will go out for bid December 5.
- Mr. Downes gave appreciation to the City's employees who increased donations to the United Way this year. There are several employees who help to mentor brothers and sisters each month in order to extend caring beyond the city limits.

### **COUNCILORS' REPORTS**

- Mr. Pierce announced that on Monday, November 21, the City Council will have a 6:00 PM work session in the executive conference room.
- Mr. Head stated that the Community Spaces Committee (formerly the Wald Park Committee) will present the plans developed by the Committee relative to proposed upgrades to the City's athletic facilities. A series of community involvement meetings will begin at 6 PM here at City Hall beginning Tuesday, November 15. Subsequent meetings are scheduled for November 22 at 8:30 AM and the last, December 6 beginning at noon. He invited everyone to attend.
- Mrs. Cook stated that the Parks and Recreation will use a new virtual town hall system called "Vestavia Hills Listens." She stated that she and Mr. Pierce had attended a demonstration of the software before it was placed on the City website. There is currently a topic to allow residents to reply to the top three priorities of the City. She indicated that November 20 is the closing date of this topic and asked that everyone get the word out. This unique system will allow the Council to hear what the citizens want to say. This will also be used for the previously discussed Park forums. Questions can be submitted in real time through smart phones.
- Mrs. Cook stated that she, Mr. Weaver and Mayor Curry attended an all-day training session for newly elected officials sponsored by the League of Municipalities, which provided a good bit of information for new officials.
- Mrs. Cook announced the Board of Education's work session is scheduled for Wednesday at 4:30 followed by the 6 PM meeting. She stated that she was recently able to tour the high school as well as the Liberty Park Middle school along with Mr. Pierce, Mayor Curry and Mr. Weaver.

**APPROVAL OF MINUTES**

The minutes of the following meetings were presented for approval: September 15, 2016 (Work Session); October 24, 2016 (Regular Meeting); October 26, 2016 (Work Session); November 7, 2016 (Special Meeting).

**MOTION** Motion to dispense with the reading of the minutes of September 15, 2016 (Work Session); October 24, 2016 (Regular Meeting); October 26, 2016 (Work Session); November 7, 2016 (Special Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Weaver. Roll call vote as follows:

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

**OLD BUSINESS**

**NEW BUSINESS**

**RESOLUTION NUMBER 4896**

**Resolution Number 4896 – Alcohol License For Publix Alabama, LLC D/B/A Publix Alabama 1545 For An 050 – Retail Beer (Off-Premise Only) And 070 – Retail Table Wine (Off Premise Only); David P. Phillips, John A. Attaway, Jr., Jeffrey G. Chamberlain, Executives**

**MOTION** Motion to approve Resolution Number 4896 was by Mrs. Cook and second was by Mr. Pierce.

Mr. Downes stated that this is a new grocery store which plans to open sometime in December and this will approve the off-premise sale of wine and beer. This has been presented to the Police Department for review and the Police Chief found no problems.

Mr. Pierce asked about training of employees.

James Mallory, District Manager of Publix, stated that they have a policy of bi-annual training for all cashiers. The process of training is on-going. He stated that this is the responsible vendor program as well as an in-house training program.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
-----------------	----------------

Mr. Pierce – yes  
Mayor Curry – yes

Mr. Weaver – yes  
Motion carried.

**DISCUSSION OF BWWB DROUGHT STATUS AND POSSIBLE ENACTMENT  
WATER EMERGENCY ORDINANCE NUMBER 2318**

The Mayor explained the Drought Stage 4 as indicated by the Birmingham Water Works Board. He stated that the City's ordinance can go into effect during Stage 3 or 4 and he wanted to ensure that everyone is aware that the BWWB has asked that watering be limited to certain days and knows there are surcharges that the Board will enforce for excess usage.

Mr. Pierce introduced Sonny Jones, Assistant General Manager of Engineering and Maintenance, Birmingham Water Works Board.

Mr. Sonny Jones introduced Darryl Jones, BWWB Assistant General Manager of Operations and Technical Services, and Mac Underwood, BWWB General Manager of Daily Operations. He stated that they were present to answer any questions that the Council might have about the drought situation and the status of water availability.

Darryl Jones gave general information concerning the water supply that is currently available. He gave an overview of the water sources including Lake Purdy, Inland Lake, Smith Lake and other intakes throughout the area. Mr. Jones also detailed the average lake level for Lake Purdy and the current level of the lake. He highlighted the various drought stages up to Stage 3 and 4, where surcharges would begin to be charged if water usage exceeds a certain amount. He stated that they requested that all municipalities within their service areas implement drought ordinances to allow some police power for the enforcement.

Discussion ensued as to whether or not there is any sign of rain in the near future. Mr. Jones stated that there are no indications for any meaningful rainfall anytime soon, even within the next 2 months.

Mayor Curry opened the floor for questions from the public.

Deloye Burrell, Cahaba Heights, asked who individuals in residential areas should contact at the BWWB when they notice others overusing water.

Mr. Jones stated that their drought plan is enforced solely through surcharges. If the City implements the current ordinance, then there would be some policing power that would be exerted by the City and their agents.

Mr. Downes explained the City's current ordinance and the provisions of the ordinance.

Discussion ensued concerning the enforcement by the Police Department, obtaining consensus, the discretion of the officer to issue a warning versus a non-traffic citation, since some residents have automatic irrigation systems and may not be aware of the provisions of this ordinance and penalties set forth in the Ordinance.

The Mayor indicated that there will be officer discretion in the enforcement.

Mrs. Cook asked Mr. Jones if, in the opinion of the BWWB, we are at a level of high-risk in regard to water levels. Mr. Jones explained that the BWWB is doing everything they can to stretch the supplies of water that they do have north of the City. However, there is a finite amount of water and, if the rain stays away for several more months, there may be issues. He stated that this is a crisis.

**MOTION** Motion to authorize the Mayor to implement the provisions of the Ordinance Number 2318 was by Mr. Head. Second was by Mrs. Cook.

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Mayor Curry – yes

Motion carried.

#### **NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)**

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

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regular meeting on November 28, 2016 at 6:00 PM.

- Ordinance Number 2686 – Rezoning – 3200 Ridgely Drive, 4104, 4105, 4109, 4117 and 4101 Crosshaven Drive; Lots 1-6, Holiday's 1<sup>st</sup> Addition to Cahaba Heights; James T. Pursell, III, Philip Michael, Faye Bragg, Sharon Snyder, Joseph and Jacques Abou-Jaoude and Doug Allen, Owners

#### **CITIZEN COMMENTS**

Nancy Delony, 3221 Ridgely Drive, stated that the Commission's approval of the Leaf and Petal development was premature. She spoke in opposition to the redevelopment request.

Donald Harwell, 1357 Willoughby Road, asked the requested zoning of the development. Ms. Leavings stated that the request is for B-1.2.

Deloye Burrell, Cahaba Heights, stated that several residents have asked about residential street lights. He asked about the possibility of lights at intersections.

Mr. Downes stated that would have to be evaluated.

At 7:17 PM, Mr. Pierce made a motion to adjourn; seconded by Mr. Weaver. Meeting adjourned at 7:18 PM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**ORDINANCE NUMBER 2686**

**AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-4 TO VESTAVIA HILLS B-1.2**

**BE IT ORDAINED** by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 (residential district) to Vestavia Hills B-1.2 (business district):

3200 Ridgely Drive, 4104, 4105, 4109, 4117 and 4101 Crosshaven Drive  
Lots 1-6 Holiday's 1<sup>st</sup> Addition to Cahaba Heights  
James T. Purcell, III, Philip Michael, Faye Bragg, Sharon Snyder, Joseph and Jacques  
Abou-Jaoude and Doug Allen, Owner(s)

**BE IT FURTHER ORDAINED**, that said rezoning is contingent upon the following conditions: (1) site must be developed substantially as in plans presented and attached to this Ordinance 2686; (2) architectural stylings must be similar to those presented in application; lots must be re-platted and recorded.

**APPROVED and ADOPTED** this the 28<sup>th</sup> day of November, 2016.

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 # 2686 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 28<sup>th</sup> day of November, 2016 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Rebecca Leavings  
City Clerk



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

Date: SEPTEMBER 8, 2016

- **CASE: P-0916-39**
- **REQUESTED ACTION:** Rezoning from Vestavia Hills R-4 to Vestavia Hills B-1.2
- **ADDRESS/LOCATION:** 4109, 4101, 4105, 4113, 4117 Crosshaven Dr. & 3200 Ridgely Dr.
- **APPLICANT/OWNER:** Joseph & Jacques Abou-Jaudé, Doug Allen, Faye Bragg, Phillip Michael, James T. Purcell, and Sharon Snyder
- **REPRESENTING AGENT:** Jamie Purcell
- **GENERAL DISCUSSION:** Properties in question are on Crosshaven Dr., between Valley Park Dr. and Ridgely Dr. Applicant is seeking rezoning to build a nursery, a restaurant, and a bagel shop. The building would be approx. 6,000 sq. ft. The site plan takes into account ROW acquisition by Jeffco for the Crosshaven Dr. project. As required by the B-1.2 zoning 8' sidewalks will be constructed along Crosshaven Dr.

The bagel shop would be approx. 1,500 SF and have a front setback of 35' at Crosshaven Dr., a front setback of 95' at Ridgely Dr. and a rear setback of 105'. The nursery would be approx. 3,800 SF and have a front setback of 35' at Crosshaven Dr. and a rear setback of 80'. The restaurant would be approx. 4,000 SF. and have a front setback of 40' at Crosshaven Dr., 70' front setback at Valley Park Dr. and a rear setback of 90'.

There are 101 parking spaces required for the project and the project meets that amount. A landscape plan and project examples are attached. The office has received a few letters of opposition due to traffic concerns.

- **CAHABA HEIGHTS COMMUNITY PLAN:** The request is consistent with the Cahaba Heights Community Plan for limited mixed use.
- **STAFF REVIEW AND RECOMMENDATION:**
  1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

**City Planner Recommendation:** No recommendation

2. **City Engineer Review:** Currently reviewing plans.
3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
4. **Building Safety Review:** I have reviewed the application and I have no issues

**MOTION** Mr. Burrell made a motion to recommend rezoning approval of 4109, 4101, 4105, 4113, 4117 Crosshaven Dr. & 3200 Ridgely Dr. from Vestavia Hills R-4 to Vestavia Hills B-1.2 with the following conditions:

- A. Approval be conditioned on the site plan presented;
- B. Architectural stylings must be similar to ones presented in application packet;
- C. Lots must be replatted and recorded.

Second was by Mr. House. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes	Mr. Burrell – yes
Mr. Gilchrist – yes	Mr. Sharp – yes
Mr. House – yes	Mr. Brooks – yes
Mr. Visintainer – yes	
Motion carried	





### Future Land Use

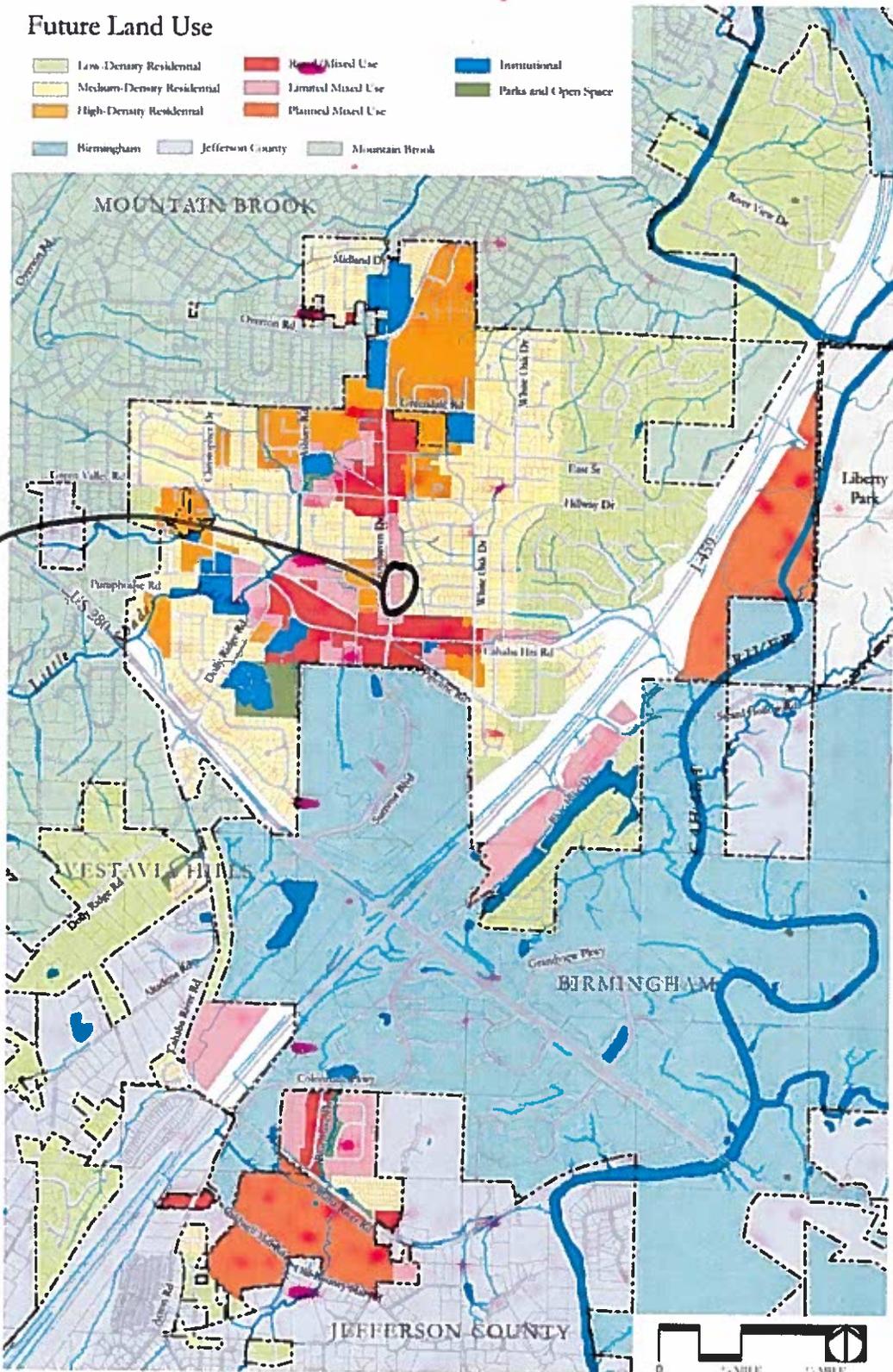


Figure 4: Future Land Use Map

**RESOLUTION NUMBER 4897**

**A RESOLUTION CHANGING THE DATE OF A REGULAR CITY COUNCIL MEETING**

**WHEREAS**, the Vestavia Hills City Council regularly meets the 2<sup>nd</sup> and 4<sup>th</sup> Monday of each month; and

**WHEREAS**, December 26, 2016 is the 4<sup>th</sup> Monday of the month of December; however, the Vestavia Hills City Hall is closed in observance of Christmas Day; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to reschedule said meeting to Wednesday, December 28, 2016 beginning at 6 PM.

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

1. The first regular meeting of the Vestavia Hills City Council scheduled for Monday, December 26, 2016 has been rescheduled to Wednesday, December 28, 2016 beginning at 6 PM; and
2. This Resolution Number 4897 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of November, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 4898**

**A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE NATIONAL BANK OF COMMERCE.**

**BE IT RESOLVED** by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the National Bank of Commerce be, and hereby is, designated as the depository of the City of Vestavia Hills Capital Reserve Fund and the Capital Improvement Fund, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any two (2) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

---

Jeffrey Downes  
City Manager

---

Ashley C. Curry  
Mayor

---

Rebecca Leavings  
City Clerk

---

Melvin Turner, III  
Finance Director/City Treasurer

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as

holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4898 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of November 28, 2016 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of November, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 28<sup>th</sup> day of November, 2016, and that such Resolution is of record in the Minute Book of the City at page \_\_ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Rebecca Leavings  
City Clerk

SEAL

**RESOLUTION NUMBER 4899**

**A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE PINNACLE BANK.**

**BE IT RESOLVED** by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the Pinnacle Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Library Campaign Funding/Donations Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any one (1) of the following [two (2) if any single transaction is in excess of \$1,000], whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

---

Jeffrey Downes  
City Manager

---

Ashley C. Curry  
Mayor

---

Rebecca Leavings  
City Clerk

---

Melvin Turner, III  
Finance Director/City Treasurer

---

Taneisha Young-Tucker  
Library Director

---

Dr. Jimmy Bartlett  
Chair, Vestavia Hills Library Board

---

Jason Gardner  
Vice Chair, Vestavia Hills Library Board

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4899 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of November 28, 2016 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of November, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 28<sup>th</sup> day of November, 2016, and that such Resolution is of record in the Minute Book of the City at page \_\_ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Rebecca Leavings  
City Clerk

SEAL

**RESOLUTION NUMBER 4900**

**A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE REGIONS BANK.**

**BE IT RESOLVED** by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the Regions Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Court Bond Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any one (1) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

---

Jeffrey Downes  
City Manager

---

Ashley C. Curry  
Mayor

---

Rebecca Leavings  
City Clerk

---

Melvin Turner, III  
Finance Director/City Treasurer

---

Joy Moman  
Court Clerk/Magistrate Supervisor

---

Nancy Chadbourne  
Magistrate

---

Shelly Mckown  
Magistrate

---

Julie Tucker  
Magistrate

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4900 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of November 28, 2016 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of November, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 28<sup>th</sup> day of November, 2016, and that such Resolution is of record in the Minute Book of the City at page \_\_ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Rebecca Leavings  
City Clerk

SEAL

**RESOLUTION NUMBER 4901**

**A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE REGIONS BANK.**

**BE IT RESOLVED** by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the Regions Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Court and Corrections Fund, Payroll Account, and General Funds Account and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any two (2) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

---

Jeffrey Downes  
City Manager

---

Ashley C. Curry  
Mayor

---

Rebecca Leavings  
City Clerk

---

Melvin Turner, III  
Finance Director/City Treasurer

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as

holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4901 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of November 28, 2016 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of November, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 28<sup>th</sup> day of November, 2016, and that such Resolution is of record in the Minute Book of the City at page \_\_ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Rebecca Leavings  
City Clerk

SEAL

**RESOLUTION NUMBER 4902**

**A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE SOUTHPOINT BANK.**

**BE IT RESOLVED** by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the SouthPoint Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Contractors Surety Account, Warrant Funds Account and the Emergency Reserve Fund, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any two (2) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

---

Jeffrey Downes  
City Manager

---

Ashley C. Curry  
Mayor

---

Rebecca Leavings  
City Clerk

---

Melvin Turner, III  
Finance Director/City Treasurer

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as

holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4902 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of November 28, 2016 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of November, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 28<sup>th</sup> day of November, 2016, and that such Resolution is of record in the Minute Book of the City at page \_\_ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Rebecca Leavings  
City Clerk

SEAL

**RESOLUTION NUMBER 4903**

**A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE WELLS FARGO BANK.**

**BE IT RESOLVED** by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the Wells Fargo Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Transport Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any two (2) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

---

Jeffrey Downes  
City Manager

---

Ashley C. Curry  
Mayor

---

Rebecca Leavings  
City Clerk

---

Melvin Turner, III  
Finance Director/City Treasurer

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4903 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of November 28, 2016 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of November, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 28<sup>th</sup> day of November, 2016, and that such Resolution is of record in the Minute Book of the City at page \_\_\_ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Rebecca Leavings  
City Clerk

SEAL

**RESOLUTION NUMBER 4904**

**A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE BANK OF NEW YORK MELLON.**

**BE IT RESOLVED** by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the Bank of New York Mellon be, and hereby is, designated as the depository of the City of Vestavia Hills 2013 GOW-QECP Sinking Fund, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any two (2) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

---

Jeffrey Downes  
City Manager

---

Ashley C. Curry  
Mayor

---

Rebecca Leavings  
City Clerk

---

Melvin Turner, III  
Finance Director/City Treasurer

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4904 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of November 28, 2016 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of November, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 28<sup>th</sup> day of November, 2016, and that such Resolution is of record in the Minute Book of the City at page \_\_\_ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Rebecca Leavings  
City Clerk

SEAL

**RESOLUTION NUMBER 4905**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER  
TO EXECUTE AND DELIVER AN AGREEMENT WITH TURNER FOOD  
SYSTEMS, LLC FOR THE SALE OF CONCESSIONS TO PATRONS AT  
CITY RECREATIONAL FACILITIES**

**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 to execute and deliver an agreement with Turner Food Systems, LLC for the sale of concessions to patrons at City Recreational Facilities; and
2. A copy of said agreement is marked as “Exhibit A” attached to and incorporated into this Resolution Number 4905 as if written fully therein; and
3. This Resolution Number 4905 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 28<sup>th</sup> day of November, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

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

**INTEROFFICE MEMO**

**Date:** November 21, 2016

**TO:** Jeff Downes  
City Manager

**From:** Brian Davis  
Public Service Director

**RE:** Parks and Recreation Concession Agreement

The concessions for Parks and Recreation facilities have been outsourced for more than 12 years at most facilities. The current agreement with Turner Food Systems expired this year, and we sent out requests for proposals to many local food vendors and concessionaires.

Turner Food Systems was the only vendor to submit a proposal. Jason Burnett surveyed a few of the vendors that didn't submit, and they declined to submit due to the size of the operation that we currently have (please see attached summary by Jason).

Jason and I met with Trent Turner of Turner Food Systems to discuss the future agreement. Earl Lawson, member of the Parks and Recreation Board put the attached agreement together.

At the November Park Board meeting, the board voted to accept the proposal from Turner Food Systems, and they request that the City Council accept the agreement. There are no expenditures required from the city. We would like this on the next available council agenda for approval.

**CC:** Anne Smyth, President of the Parks and Recreation Board  
Jason Burnett, Parks and Recreation Superintendent

## Executive Summary

### RFP Vestavia Hills Concessionaire

#### Introduction:

For the past three years, Vestavia Hills Parks and Recreation has a contract with Turner Food Systems, LLC (TFS) to provide concession services to all of our athletic facilities for sports programming.

On August 5, 2016, we sent out a Request for Proposal (RFP) to eleven (11) concessionaires (see attachment) for the operation and staffing of the Parks and Recreation Concessions for three years. A sample contract was included for their review. Sealed proposals were to be open at city hall on August 25. Only our current vendor, Turner Food Systems, LLC submitted an RFP. The majority of the eleven companies were not interested and only one said he simply missed the deadline.

An executive summary was provided to the Park Board for their review to be approved at their September 20 meeting. It was decided to table the issue and further discuss the proposal and survey other parties.

The Parks and Recreation Department contacted 17 other municipalities in the metro area (see attachment) to ask who they use for concessions. Seven of them use Turner Food, seven allow the parents to operate concessions, 2 use one of the vendors we asked for an RFP, as well as one more. We also reached out to concessionaires with the Birmingham Barons and the Bruno Event Team, with no leads resulting.

The Park Board held a meeting with all sport boards to gauge interest in each board running the concessions themselves, with no interest on the table from Baseball, Softball, all three Football leagues, Lacrosse, or Soccer.

We met with Turner Food on October 31<sup>st</sup> to discuss some key items we would like to see moving forward...

- Sports should send schedules to P&R and P&R sends that information to Turner Food Systems (TFS). (There should not be direct instructions from sports to TFS)
- TFS agrees to have concession windows open at least 45 minutes prior to first scheduled event.
- Start the process of obtaining information to place the entire Square system in each location to serve as a point of sale system for inventory purposes as well as process credit card transactions.
- If a sport wants special event items to be sold (food trucks, bake sale, etc.), they should make those requests to Parks and Rec at least 2 weeks prior to the event. Parks and Recreation will get that information to TFS. TFS will coordinate with P&R and sports representatives on these events. No more than two weekends per sport per year.
- \$100 fine imposed to TFS if his staff doesn't show up and \$100 fine to Sports if they schedule games but no one shows up. Weather related cancellations should also be run through Jason Burnett and Jim Treest so there is documentation. If concessions are open and there are no games/events, concession worker is to call the P&R maintenance staff to have them verify there is no activity. The same goes for the concession not being open – sport representative should contact park maintenance to have them verify the concession stand is not open. The park maintenance personnel should take a picture and text Jason Burnett, Jim Treest, and Bobby McDaniel.

The Park Board will discuss this item under new business for their November 15 meeting and will send their recommendation to the city council for their November 28 meeting.

## **RFP Summary**

Turner Food Systems, LLC will provide operations of all concessions in the city of Vestavia Hills Parks and Recreation system. Turner Food Systems, LLC will be responsible for making available for purchase items of food and nonalcoholic beverages to the general public participating in or attending recreational activities. In return for this exclusivity, the selected vendor must provide the City with a revenue stream based on activity levels.

The current RFP submitted by Turner Food Systems, LLC continues the current concession and catering management services for the City of Vestavia Hills Parks and Recreation.

Currently, TFS provides the city 15% of gross receipts of zero to \$250,000, 17% for \$250,001 to \$350,000, 19% for \$350,001 to \$450,000, and 20% for \$450,001 and greater. In 2015, the city's cut was \$32,835, in 2014 it was \$44,880, and in 2013 it was \$45,050

In the RFP, TFS would provide the city 10% of gross receipts of zero to \$350,000, 12% for \$350,001 to \$550,000, and 15% for \$550,001 and greater. If this was applied to the past three years of revenue, in 2015 the city's cut would have been \$21,890, in 2014 it would have been \$26,400, and in 2013 it would have been \$26,500.

Basically TFS is attempting to bring to the attention of the Park Board the fact that their revenue has decreased substantially since the LP tournaments have been removed since we are focusing more on recreation baseball there, but their expenses have remained constant. Expanding baseball to Liberty Park has increased their costs (dual staffing of facilities). However, both parties understand though the commission percentage has decreased, the level of service should be elevated.

As far as enhancements, TFS listed and offered to do such things as market the facilities, sell sponsorship's for the facilities, develop a merchandising plan (it will not interfere with the Soccer business model), start using their portable units daily (ex: placing the fully functional BBQ trailer in a spot which can generate daily revenue pretty much year round), provide ATMs at special events, coordinate special events, place a Mini Melts Ice Cream vending machine in the Civic Center and find ways to develop catering.

TFS also mentioned the need to develop a plan to remodel / build Exchange Field since the Health Department will no longer allow that facility to 'piggy-back' off Wald Park. We are looking at expanding food offerings.

The Park Board reserves the right to reject any and all proposals; to waive minor irregularities in any proposal; to request clarification of information submitted; to request additional information from any proposer; and to make the final decision as to the best proposal.

## **Recommendation**

Considering the concessionaire profession/market is so small in the Birmingham area and TFS has always provided us with a professional service/product, my recommendation is to continue our relationship with TFS LLC and obviously continue to improve our offering to the citizens of Vestavia Hills, AL.

Submitted: Jason Burnett (VHPR Superintendent) 11-8-16

## **Concession Agreement For Recreational Facilities in Vestavia Hills, Alabama**

This Concession Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_, by and between Turner Food Systems, LLC, an Alabama corporation, (CONTRACTOR) and the City of Vestavia Hills, an Alabama City (City) through the Parks and Recreation Department and shall be valid through September 30, 2019, subject to annual review by the Parks and Recreation Board as set forth in paragraph 2 (Agreement), below.

### **Recitals**

1. The City wishes to provide items of food, concessions and non-alcoholic beverages to patrons of the following recreational facilities:

- Wald Park
- Exchange Field
- Cahaba Heights Park
- Liberty Park Adult Complex
- Liberty Park Youth Complex
- Liberty Park Soccer/Football Complex
- Sicard Hollow Complex
- Any other facility or complex owned or operated by the City, at its option, during the term of this Concession Agreement

2. The City wishes to enter into an agreement with a professional food services organization to provide those services and products.

3. The City wishes to participate to some extent in the profit stream from such operations.

### **Agreement**

In consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the parties agree as follows.

#### **1. Scope of Services**

CONTRACTOR will provide operations of all concessions at the recreational facilities listed in paragraph 1 (Recitals) above. CONTRACTOR will be responsible for making available for purchase items of food, concessions and nonalcoholic beverages to the general public participating in or attending recreational activities. In return for this exclusivity, the selected vendor must provide the City with a revenue stream based on activity levels.

#### **2. Annual Review & Termination**

This Agreement will be reviewed annually by the City's Parks and Recreation Board. The City may, at its sole option, elect to not renew or terminate this Agreement, at any

time, by providing CONTRACTOR with 30 days' written notice of its intent not to renew or to terminate this Agreement. Notwithstanding the foregoing, the City may terminate the Agreement at any time by providing seven days' written notice to CONTRACTOR for breach of this Agreement by CONTRACTOR.

### 3. Vendor Responsibilities

CONTRACTOR covenants and agrees to the following:

- a) To establish and maintain a specific set of detailed records reflecting the dollar amount of daily gross sales at each facility. These records will be separate and apart from any other accounts. These records shall be submitted monthly by Contractor for review by the Parks and Recreation Board no later than 5:00 pm on the second Monday of each month and will be retained by the Contractor for at least three years for audit purposes;
- b) CONTRACTOR or its designee shall be available at the request of the Parks and Recreation Board with at least 5 days' notice;
- c) CONTRACTOR or its designee must attend all Regular Park Board Meetings;
- d) Employing and training all of Contractors' employees necessary for the successful operation of the concessions operation;
- e) CONTRACTOR must maintain a current business license with the City of Vestavia Hills;
- f) Ordering, purchasing, receiving delivery of, and storing all consumable supplies and products necessary for the operation;
- g) Compliance with all existing laws and regulations relating to the preparation, handling, sale and disposal of food products and concession operations;
- h) Procuring and maintain, at all times the necessary, valid permits and licenses required by any laws and regulations for concessions operations. A copy of the Health Inspection report must be forwarded to the Director Parks and Recreation when obtained;
- i) Maintaining at all times storage, kitchen, service, and retail sales areas in a clean and sanitary condition to the sole satisfaction of the City's Parks and Recreation staff. Cleaning and waste removal from all food service areas to a central collection point outside of each stand shall be the vendor's responsibility. Parks and Recreation staff will do an inspection of cleanliness of all concession sites every three months or as necessary;
- j) Supplying any additional necessary equipment required for the preparation and serving of food and beverages;
- k) Preparation and service of all food, beverages and other items for consumption by the general public along with all necessary condiments;
- l) The City's Parks and Recreation Department will notify CONTRACTOR of any and all events which are scheduled at any of the facilities listed in Paragraph 1 (Recitals), above;
- m) CONTRACTOR agrees to have each necessary concession stand fully operational and open for business at least 45 minutes prior to the first scheduled event at any and all facilities for which CONTRACTOR was notified by the Parks and Recreation Department;

- n) CONTRACTOR shall pay a fine of \$100.00 per occurrence if it is notified of an event by the Parks and Recreation Department and fails to perform as outlined in paragraph 2(m), above;
- o) Prior to ceasing concession operations for weather related conditions or any other reason at any facility, CONTRACTOR agrees to contact the Parks and Recreation Department and secure pre-approval from Parks and Recreation for the closing of operations;
- p) CONTRACTOR agrees the level of services in this agreement and cannot change (i.e. from prepared food to vending machines) without the City's approval.

**3. Exclusivity of Agreement**

CONTRACTOR will have exclusive rights to all concessions contingent upon the following:

- a) The continued, uninterrupted service to all locations, which includes making available, a broad range of food products to satisfy the needs of the public;
- b) The prompt submission of returns and sales reporting documents as required;
- c) Periodically, occasions will arise when fund raising projects are requested by various organizations. These will be coordinated and approved by CONTRACTOR, and the Parks and Recreation Superintendent.

CONTRACTOR shall have the exclusive rights to refer to and/or advertise as the "Official Concessionaire of the City of Vestavia Hills Department of Parks and Recreation" and/or the "Official Food Vendor of the City of Vestavia Hills Department of Parks and Recreation." CONTRACTOR will submit any promotional item or advertisement to the Parks and Recreation Superintendent for approval prior to release to the general public.

- 4. Special Event Items:** CONTRACTOR acknowledges that, from time to time, the various sports organizations may desire special event items to be sold at the event, (i.e. food trucks, bake sales, etc.) CONTRACTOR acknowledges that nothing contained within this Agreement shall prohibit these Special Event Items nor shall the Special Event Items violate the Exclusivity provisions of this Agreement contingent upon the CONTRACTOR being notified of the Special Event Items by the Parks and Recreation Department not to exceed two weekends per sport per year.

**5. Equipment Utilization**

- a. CONTRACTOR may use the existing City owned equipment. The City will retain ownership of the equipment. CONTRACTOR will be responsible for routine maintenance and minor repairs (under \$250.00). Major repairs and/or equipment replacement will be the responsibility of the City unless due to gross neglect.
- b. CONTRACTOR may install additional equipment for use in the fulfillment of this agreement. CONTRACTOR will retain ownership of the additional equipment. CONTRACTOR will be responsible for all routine maintenance and repairs associated with this additional equipment. CONTRACTOR will be responsible for installation and removal of the additional equipment. Equipment that

CONTRACTOR has placed in the facilities will become the property of the city at the end of this agreement should the agreement go full term.

- c. CONTRACTOR may use the existing City owned facilities as the commissary required by the Health Department of Jefferson County, Alabama for concession trailers associated with this agreement.

**6. Approval Rights**

The City of Vestavia Hills will have the following approval rights:

- a) The final approval of all policies and procedures relative to the operation and management of concessions;
- b) Final approval on the quality and retail prices of all products and services;
- c) Final approval of any change in the design, layout and location of all physical facilities and equipment for the operation;
- d) Final approval on which specific products will be sold at particular events in the facilities.

**7. Menu**

CONTRACTOR will provide a list of the items to be sold and the proposed selling price at the time of this Agreement's execution to be approved by the Parks and Recreation Superintendent and at any other time thereafter as requested by the Parks and Recreation Superintendent. CONTRACTOR agrees to modify said list of items to be sold or the proposed selling price at any time as determined feasible by the Parks and Recreation Superintendent.

**8. Existing promotional agreements**

The City currently has a promotional agreement (subject to annual competitive bidding) regarding soft drink sales. In return for exclusive use of said products, the City receives promotional considerations. CONTRACTOR agrees to abide by the terms of this agreement.

**9. Fee**

- a. CONTRACTOR agrees to pay to the City of Vestavia Hills the following percentages of the gross receipts from operations at the recreational facilities as compensation for the rights as the exclusive operator. These fees shall be paid to the Department of Parks and Recreation no later than 5:00 pm on the second Monday of each month:

- (a) 10% of all gross receipts which are within the range of \$0.00 - \$350,000.00 for that calendar year;
- (b) 12% of all gross receipts once the yearly total gross receipts exceed \$350,000.00 and are within the range of \$350,000.01 - \$550,000.00 for that calendar year;
- (c) 15% of all gross receipts once the yearly total gross receipts exceed \$550,000.00 for that calendar year.

- b. CONTRACTOR will also collect and remit to the City the appropriate sales tax on all sales of merchandise sold at the recreational facilities. The sales tax will be

considered completely separate and apart from the above mentioned fee structure.  
This sales tax will be remitted to the City of Vestavia Hills on a monthly basis.

**10. Term of Agreement**

The agreement shall not bind, nor purport to bind, the City of Vestavia Hills for any commitment in excess of the original agreement period stated above. The City of Vestavia Hills shall have the right, at its sole option, to extend the agreement for 2 additional 3 year terms. In the event that the City of Vestavia Hills exercises its options, all terms, conditions, and provisions of the original agreement shall remain the same and apply during the extension period.

**11. Indemnification**

CONTRACTOR agrees, at its own expense and without exception, to indemnify, defend and pay all damages, costs, expenses, including attorney fees, and otherwise hold harmless the City of Vestavia Hills, its employees, agents, servants and Board members from any liability of any nature or kind in regard to the delivery of these services.

**12. Liability and Insurance:**

CONTRACTOR will furnish the evidence showing the following insurance coverage to be in force throughout the term of the agreement: Certificate of Insurance acceptable.

- a) Due to the unique and expansive offerings of products through different points of sale (POS), CONTRACTOR, directly and through its affiliates, maintains several comprehensive policies of liability insurance.
- b) For brick and mortar facilities, the policy is bound by \_\_\_\_\_
- c) The limits of this policy are as follows:

General Aggregate	\$2,000,000
Products and Completed Operations – Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Premises	\$ 100,000
Medical Expense / Any One Person	\$ 5,000

- d) For the fleet vehicles necessary to deliver goods and products to the different park facilities and the point of sale concession trailers, the policy is bound by \_\_\_\_\_
- e) The limits of this policy are as follows:

Comprehensive	Varies by Vehicle
Collision	Varies by Vehicle
Uninsured/Underinsured Motorist	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Property Damage	\$1,000,000
Medical Expense / Any One Person	\$ 5,000

f) For the POS portables, carts, kiosks and fixtures, the policy is bound by \_\_\_\_\_

g) The limits of this policy are as follows:

General Aggregate	\$2,000,000
Products and Completed Operations – Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Premises	\$ 300,000
Medical Expense / Any One Person	\$ 5,000

h) CONTRACTOR will name the Vestavia Hills Parks and Recreation Department and/or the City of Vestavia Hills and/or any other requested entity as a named insured under its policies. Should the Vestavia Hills Parks and Recreation Department deem these coverage amounts insufficient, CONTRACTOR will increase the insurance coverage to meet the required thresholds.

**13. Assignment**

CONTRACTOR shall not sell, assign, transfer or convey this agreement or any portion thereof without the prior written consent of the City of Vestavia Hills.

**14. Conflict of Interest**

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that no person having any such-known conflict of interest shall be employed or conveyed an interest, directly or indirectly, in the Agreement.

**15. Independent Operator**

CONTRACTOR represents itself to be an independent operator offering such services to the general public and shall not represent himself or his employees to be an employee of the City of Vestavia Hills. Therefore, CONTRACTOR assumes all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City of Vestavia Hills, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters. CONTRACTOR shall further understand that the City of Vestavia Hills cannot save and hold-harmless and or indemnify the operator and/or the operator's employees against any liability incurred or arising as a result of any activity of the operator or any activity of the operator's employees performed in connection with the agreement.

**16. Compliance with Laws**

In connection with the furnishing of supplies or performance of work under the agreement, CONTRACTOR agrees to comply with the Fair Labor Standard Act, Equal

Opportunity Employment Act, and all other applicable Federal and State laws, regulations, and executive orders to the extent that the same may be applicable and further agrees to insert the foregoing provision in all sub agreements awarded hereunder.

**17. Invalidation of this Agreement**

If any part of this agreement is rendered invalid for any reason, it shall not invalidate the remainder of the agreement, but the agreement shall remain in full force for the balance of the term.

**18. Effective Date of this Agreement**

This agreement will go into effect on \_\_\_\_\_.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

CONTRACTOR

City of Vestavia Hills

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

SAMPLE

**RESOLUTION NUMBER 4906**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO APPROPRIATE FUNDING AND TO EXECUTE AND DELIVER AN AGREEMENT WITH LED SOLUTIONS FOR WHITEWAY LIGHTING IN THE RIGHT-OF-WAY OF HIGHWAY 31**

**WHEREAS**, the Vestavia Hills Public Services Department researched options to upgrade the lights on the right-of-way of Highway 31; and

**WHEREAS**, the Public Services Director, in a memorandum to the City Manager, indicated said need along with a listing of the expected expenditures, a copy of which is marked as “Exhibit A” attached to and incorporated into this Resolution Number 4906 as if written fully therein; and

**WHEREAS**, the City Manager has reviewed said request and recommended approval; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to approve the request as presented.

**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 to expend an amount not to exceed \$185,000.00 as detailed in the attached “Exhibit A”; and
2. The Mayor and City Manager are hereby authorized to execute and deliver an agreement with LED Solutions to upgrade the lights on the right-of-way of Highway 31; and
3. A copy of said agreement is marked as “Exhibit A” attached to and incorporated into this Resolution Number 4906 as if written fully therein; and
4. This Resolution Number 4906 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 12<sup>th</sup> day of December, 2016.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

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

**INTEROFFICE MEMO**

Date: November 21, 2016

TO: Jeff Downes  
City Manager

From: Brian Davis  
Public Service Director

RE: Whiteway Lighting

As you are well aware, we have been researching options to upgrade the lights on the right of way of Highway 31. There are 120 lights that would be upgraded from 400 watt metal halide to LED. There are also additional wiring that needs to be replaced and upgraded to correct some ongoing maintenance issues.

A request for proposals was sent out September 19, to be received on October 11. A pre-proposal meeting was held on September 28, and five companies attended the meeting. Four of the five companies submitted proposals (2 of them were no-bid). LED Solutions and Innovis Lighting submitted actual numbers with their proposals.

Christopher Brady and I met with both companies and discussed all aspects of their proposals to make sure we were comparing the same things, as well as meeting all the regulations of ALDOT and Alabama Power. Both companies did meet everything that we are looking for in the upgrade.

LED Solutions proposal was about \$20k less than Innovis Lighting. I asked LED Solutions to submit a sample contract that would meet the requirements for a Guaranteed Energy Savings Contract. They have submitted the attached as a sample starting point.

We are still waiting for ALDOT to ensure the type of LED light proposed meets their standards. We would like to place this for a first and second reading of the City Council at the earliest possible time.

***Standard Form of Agreement Between Contractor and Subcontractor***

Agreement made as of the \_\_\_\_ day of \_\_\_\_\_ in the year  
\_\_\_\_\_

BETWEEN the Contractor:  
*(Name, legal status, address, and other information)*

And the Subcontractor:  
*(Name, legal status, address, and other information)*

For the following Project:  
*(Name, location, and detailed description)*

## TABLE OF ARTICLES

1. THE SUBCONTRACT DOCUMENTS
2. MUTUAL RIGHTS AND RESPONSIBILITIES
3. CONTRACTOR
4. SUBCONTRACTOR
5. CHANGES IN THE WORK
6. MEDIATION AND BINDING DISPUTE RESOLUTION
7. TERMINATION, SUSPENSION, OR ASSIGNMENT OF THE SUBCONTRACT
8. THE WORK OF THIS SUBCONTRACT
9. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
10. SUBCONTRACT SUM
11. PROGRESS PAYMENTS
12. FINAL PAYMENT
13. INSURANCE AND BONDS
14. TEMPORARY FACILITIES AND WORKING CONDITIONS
15. MISCELLANEOUS PROVISIONS
16. ENUMERATION OF SUBCONTRACT DOCUMENTS

### ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™-2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

## ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201-2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

## ARTICLE 3 CONTRACTOR

### § 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

### § 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

**§ 3.3 CLAIMS BY THE CONTRACTOR**

*(Paragraph deleted)*

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

- .1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and
- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

**§ 3.4 CONTRACTOR'S REMEDIES**

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

**ARTICLE 4 SUBCONTRACTOR**

**§ 4.1 EXECUTION AND PROGRESS OF THE WORK**

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

Int.

## § 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

## § 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

## § 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

## § 4.5 WARRANTY

The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The

Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § 4.6 INDEMNIFICATION

§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### § 4.7 REMEDIES FOR NONPAYMENT

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within ten days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

#### ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

**ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION**

**§ 6.1 MEDIATION**

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 6.2 BINDING DISPUTE RESOLUTION**

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)*

Arbitration pursuant to Section 6.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

**NOTE:** The Prevailing Party in any action to interpret or enforce this Agreement shall be entitled to an award of attorney fees and costs as determined by the Court

*(Paragraphs deleted)*

**ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT**

**§ 7.1 TERMINATION BY THE SUBCONTRACTOR**

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

**§ 7.2 TERMINATION BY THE CONTRACTOR**

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the

Int. / AIA Document A401™ -- 2007. Copyright © 1915, 1925, 1937, 1951, 1958, 1981, 1983, 1986, 1987, 1972, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:16:42 on 10/01/2014 under Order No.8193071001\_1 which expires on 05/16/2015, and is not for resale.  
User Note:

## ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

### SPECIFICATION SECTIONS:

Provide and install 120 New LED Light fixtures to City owned poles. Remove and replace all faulty wiring and have all lights in working order

## ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

(To Be Determined)

Commencement shall begin after Owner has issued "Limited Notice to Proceed" and Design/Builder has obtained from Local Jurisdictions necessary Site Work Permits/Land Disturbance Permit

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens, and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than Twelve (12) Months after the Owner has issued the "Limited Notice to Proceed".

(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work

Substantial Completion Date

subject to adjustments of this Subcontract Time as provided in the Subcontract Documents. (Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

NONE

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

#### ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of \$184,391.20 ( One Hundred Eighty four Three hundred ninety one and 20 cents ), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:  
(Insert the numbers or other identification of accepted alternates.)

NONE

§ 10.3 Unit prices, if any:

(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
------	-----------------------	-------------------------

NONE

§ 10.4 Allowances included in the Subcontract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
------	-------

NONE

#### ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. (NOTE: Request for Final Payment Must Include Unconditional Lien Releases From Subcontractor, Each Sub-Tier Subcontractor That Performed Work On This Project, and Material Suppliers That Supplied Materials For This Project).

(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

#### ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount (\$200,000)
Performance Bond	

§ 13.2 Coverages, written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:

(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount (\$0.00)	Bond delivery date	Bond form
-----------	----------------------	--------------------	-----------

### § 13.8 PROPERTY INSURANCE

§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

### § 13.9 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

## ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any (\$0.00)
--	-----------------------

§ 14.2 Specific working conditions:

(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

#### ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

§ 15.2 Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof: at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Zero Percent (0) %

§ 15.3 Retainage and any reduction thereto are as follows:

Retainage Shall Be Calculated At A Rate of Ten Percent {10%}. Retention May Be Released With Final Payment to Subcontractor. Subcontractor May Request Release/Payment of Final Retention Prior To Completion Of This Project. Final Retention Release/Payment Will Require Design/Builder's and Owner/Architects Acceptance and Approval of Subcontractor's Scope Of Work Of This Agreement.

§ 15.4 The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7.

#### ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401-2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Design-Builder dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
CONTRACTOR *(Signature)*

\_\_\_\_\_  
SUBCONTRACTOR *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

# WARRANTY

TO:

WARRANTY #

LED Solution guarantees from the date of purchase for 10 years any and all products from failure do to workmanship and installation.

Congratulations LED Solution is proud to offer the strongest product and labor warranty in the industry. Supported by the original manufacture's materials and workmanship warranty and combined with LED Solution labor warranty your product will be covered for TEN years.

Does not cover failure or damage due to accident, misuse, vandalism, force majeure and any damage not covering products, workmanship or installation.

LED Solution LLC.  
3184 Cahaba Heights Road  
Vestavia, AL 35243-5217  
334-799-6495

LED Solution representative.

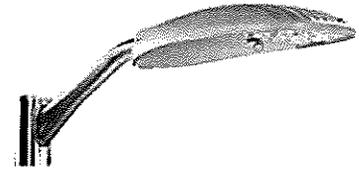
# XSP High Output Series

## XSP2™ High Output LED Street/Area Luminaire – Double Module

### Product Description

Designed from the ground up as a totally optimized LED street and area lighting system, the XSP High Output Series delivers incredible efficiency without sacrificing application performance. Beyond substantial energy savings and reduced maintenance, Cree achieves greater optical control with our NanoOptic® Precision Delivery Grid™ optic when compared to traditional cobra head luminaires. The XSP High Output Series is the better alternative for traditional street and area lighting with quick payback and improved performance.

Applications: Roadway, parking lots, walkways and general area spaces



### Performance Summary

NanoOptic® Precision Delivery Grid™ optic

Made in the U.S.A. of U.S. and imported parts

Initial Delivered Lumens: Up to 18,523

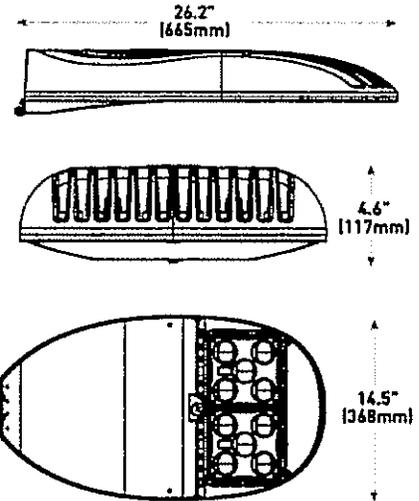
Efficacy: Up to 116 LPW

CRI: Minimum 70 CRI

CCT: 3000K (+/- 300K), 4000K (+/- 300K); 5700K (+/- 500K)

Limited Warranty\*: 10 years on luminaire/10 years on Colorfast DeltaGuard® finish

\* See <http://lighting.cree.com/warranty> for warranty terms



Weight
26 lbs. (11kg)

### Accessories

Field-Installed	
Backlight Control Shield XA-SP2BLS - Provides 1/2 mounting height cutoff	Bird Spikes XA-SP2BRD5PK

### Ordering Information

Example: BXSP2-H0-HT-2ME-165W-40K-UL-SV

Product	Mounting	Optic	Input Power**	CCT	Voltage	Color Options	Controls
BXSP2-H0	HT Horizontal Tenon	2ME* Type II Medium 2LB* Type II Long 3ME* Type III Medium 4ME* Type IV Medium	165W	30K 3000K 40K 4000K 57K 5700K	UL Universal 120-277V LN Universal 347-480V	BK Black BZ Bronze SV Silver	N-09 Unity Label and NEMA® Photocell Receptacle - External wattage label per ANSI C136.15 - 7-pin receptacle per ANSI C136.41 - Factory connected 0-10V dim leads - Photocell and shorting cap by others - Refer to Field Adjustable Output spec sheet for details O9 Field Adjustable Output - Refer to Field Adjustable Output spec sheet for details R NEMA® Photocell Receptacle - 7-pin receptacle per ANSI C136.41 - Factory connected 0-10V dim leads - Photocell and shorting cap by others

\* Available with Backlight Shield when ordered with field-installed accessory (see table above)

\*\* Refer to Electrical Data table for system watts

NOTE: Price adder may apply depending on configuration

Rev. Date: V4 08/23/2016



US: [lighting.cree.com/lighting](http://lighting.cree.com/lighting) T (800) 236-6800 F (262) 504-5415

Canada: [www.cree.com/canada](http://www.cree.com/canada)



T (800) 473-1234 F (800) 890-7507

## XSP2™ High Output LED Street/Area Luminaire – Double Module

### Product Specifications

#### CONSTRUCTION & MATERIALS

- Die cast aluminum housing
- Tool-less entry
- Mounts on 1.25" (32mm) IP, 1.66" (42mm) O.D. or 2" (51mm) IP, 2.375" (60mm) O.D. horizontal tenon (minimum 8" [203mm] in length) and is adjustable +/- 5° to allow for fixture leveling (includes two axis T-level to aid in leveling)
- Luminaire secures with two mounting bolts
- Exclusive Colorfast DeltaGuard® finish features an E-Coat epoxy primer with an ultra-durable powder topcoat, providing excellent resistance to corrosion, ultraviolet degradation and abrasion. Black, bronze and silver are available
- Weight: 24 lbs. (11kg)

#### ELECTRICAL SYSTEM

- **Input Voltage:** 120-277V or 347-480V, 50/60Hz
- **Power Factor:** > 0.9 at full load
- **Total Harmonic Distortion:** < 20% at full load
- Class 1 driver
- Integral 10kV surge suppression protection standard
- When code dictates fusing, a slow blow fuse or type C/D breaker should be used to address inrush current
- Designed with 0-10V dimming capabilities. Controls by others
- **10V Source Current:** 1.0mA

#### REGULATORY & VOLUNTARY QUALIFICATIONS

- cULus Listed
- Suitable for wet locations
- Certified to ANSI C136.31-2001, 3G bridge and overpass vibration standards
- Meets CALTrans 611 Vibration testing
- 10kV surge suppression protection tested in accordance with IEEE/ANSI C62.41.2
- Meets FCC Part 15, Subpart B, Class A standards for conducted and radiated emissions
- Luminaire and finish endurance tested to withstand 5,000 hours of elevated ambient salt fog conditions as defined in ASTM Standard B 117
- Meets Buy American requirements within ARRA
- RoHS compliant. Consult factory for additional details
- Dark Sky Friendly, IDA Approved when ordered with 30K CCT. Please refer to <http://darksky.org/isa/isa-products/> for most current information

Electrical Data*							
Input Power	System Watts 120-480V	Total Current (A)					
		120V	208V	240V	277V	347V	480V
145W	140	1.39	0.79	0.69	0.59	0.47	0.34

\* Electrical data at 25°C (77°F). Actual wattage may differ by +/- 10% when operating between 120-480V +/- 10%

Recommended XSP2™ High Output Series Lumen Maintenance Factors (LMF) <sup>1</sup>						
Ambient	Initial LMF	25K hr Projected <sup>2</sup> LMF	50K hr Projected <sup>2</sup> LMF	75K hr Calculated <sup>3</sup> LMF	100K hr Calculated <sup>3</sup> LMF	
5°C (41°F)	1.04	0.97	0.91	0.85	0.80	
10°C (50°F)	1.03	0.96	0.90	0.84	0.79	
15°C (59°F)	1.02	0.95	0.89	0.83	0.78	
20°C (68°F)	1.01	0.94	0.88	0.82	0.77	
25°C (77°F)	1.00	0.93	0.87	0.81	0.76	

<sup>1</sup>Lumen maintenance values at 4000K and 25°C (77°F) are calculated per TM-21 based on LM-80 data and in-situ luminaire testing

<sup>2</sup>In accordance with IESNA TM-21-11, Projected Values represent interpolated value based on time durations that are within six times (6x) the IESNA LM-80-08 total test duration (in hours) for the device under testing (DUT) i.e. the packaged LED chip

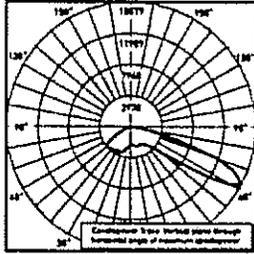
<sup>3</sup>In accordance with IESNA TM-21-11, Calculated Values represent time durations that exceed six times (6x) the IESNA LM-80-08 total test duration (in hours) for the device under testing (DUT) i.e. the packaged LED chip

## XSP2™ High Output LED Street/Area Luminaire – Double Module

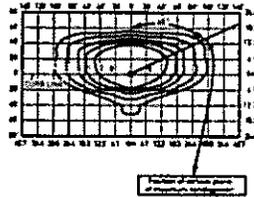
### Photometry

All published luminaire photometric testing performed to IESNA LM-79-08 standards by a NVLAP accredited laboratory. To obtain an IES file specific to your project consult: <http://lighting.cree.com/products/outdoor/street-and-roadway/xsp-high-output-series-1>

#### 2ME



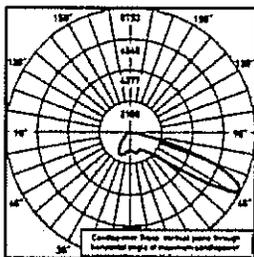
RESTL Test Report #: PL08143-001B  
BXSP2-HO-\*\*-2ME-145W-40K-UL  
Initial Delivered Lumens: 18,122



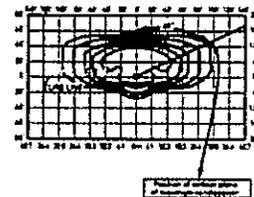
BXSP2-HO-\*\*-2ME-145W-40K-UL  
Mounting Height: 25' (7.6m) A.F.O.  
Initial Delivered Lumens: 17,195  
Initial FC at grade

Type II Medium Distribution					
3000K		4000K		5700K	
Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11
17,195	B3 U0 G3	18,144	B3 U0 G3	18,523	B3 U0 G3

\* Initial delivered lumens at 25°C (77°F). Actual production yield may vary between -10 and +10% of initial delivered lumens.  
\*\* For more information on the IES BUG (Backlight-Uplight-Glare) Rating visit: [www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf](http://www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf). Valid with no tilt.



RESTL Test Report #: PL08142-002A  
BXSP1-HO-\*\*-2ME-100W-40K-UL  
w/XA-SP1BLS  
Initial Delivered Lumens: 8,645

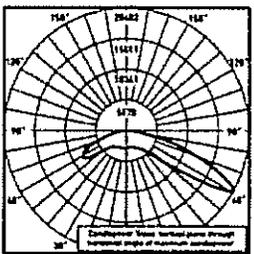


BXSP1-HO-\*\*-2ME-100W-40K-UL  
w/XA-SP1BLS  
Mounting Height: 25' (7.6m) A.F.O.  
Initial Delivered Lumens: 13,605  
Initial FC at grade

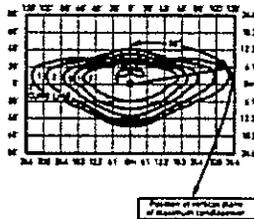
Type II Medium w/BLS Distribution					
3000K		4000K		5700K	
Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11
13,605	B2 U0 G2	14,355	B2 U0 G2	14,656	B2 U0 G2

\* Initial delivered lumens at 25°C (77°F). Actual production yield may vary between -10 and +10% of initial delivered lumens.  
\*\* For more information on the IES BUG (Backlight-Uplight-Glare) Rating visit: [www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf](http://www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf). Valid with no tilt.

#### 2LG



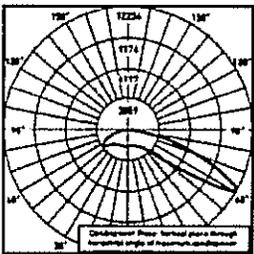
RESTL Test Report #: PL07402-001B  
BXSP2-HO-\*\*-2LG-145W-40K-UL  
Initial Delivered Lumens: 18,305



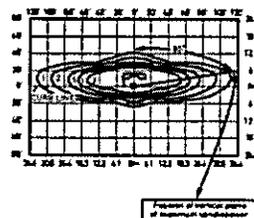
BXSP2-HO-\*\*-2LG-145W-40K-UL  
Mounting Height: 25' (7.6m) A.F.O.  
Initial Delivered Lumens: 18,144  
Initial FC at grade

Type II Long Distribution					
3000K		4000K		5700K	
Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11
17,195	B3 U0 G3	18,144	B3 U0 G3	18,523	B3 U0 G3

\* Initial delivered lumens at 25°C (77°F). Actual production yield may vary between -10 and +10% of initial delivered lumens.  
\*\* For more information on the IES BUG (Backlight-Uplight-Glare) Rating visit: [www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf](http://www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf). Valid with no tilt.



RESTL Test Report #: PL08272-001A  
BXSP1-HO-\*\*-2LG-100W-57K-UL  
w/XA-SP1BLS  
Initial Delivered Lumens: 8,239



BXSP1-HO-\*\*-2LG-100W-57K-UL  
w/XA-SP1BLS  
Mounting Height: 25' (7.6m) A.F.O.  
Initial Delivered Lumens: 13,558  
Initial FC at grade

Type II Long w/BLS Distribution					
3000K		4000K		5700K	
Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11
12,849	B2 U0 G2	13,558	B2 U0 G2	13,841	B2 U0 G2

\* Initial delivered lumens at 25°C (77°F). Actual production yield may vary between -10 and +10% of initial delivered lumens.  
\*\* For more information on the IES BUG (Backlight-Uplight-Glare) Rating visit: [www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf](http://www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf). Valid with no tilt.

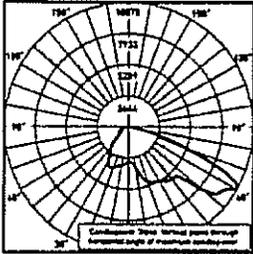


XSP2™ High Output LED Street/Area Luminaire – Double Module

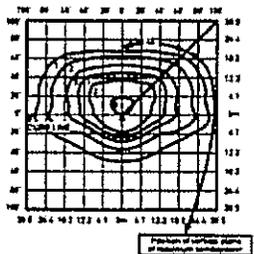
Photometry

All published luminaire photometric testing performed to IESNA LM-79-08 standards by a NVLAP accredited laboratory. To obtain an IES file specific to your project consult: <http://lighting.cree.com/products/outdoor/street-and-roadway/xsp-high-output-series-1>

3ME



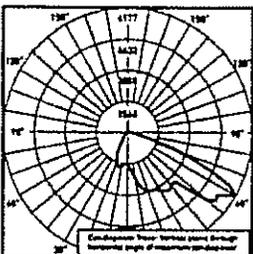
RESTL Test Report #: PL07403-001B  
BXSP2-HO-\*\*-3ME-145W-40K-UL  
Mounting Height: 25' (7.6m) A.F.B.  
Initial Delivered Lumens: 18,408



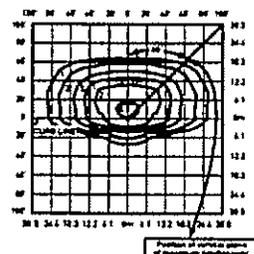
BXSP2-HO-\*\*-3ME-145W-40K-UL  
Mounting Height: 25' (7.6m) A.F.B.  
Initial Delivered Lumens: 18,144  
Initial FC at grade

Type III Medium Distribution					
3000K		4000K		5700K	
Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11
17,195	B3 U0 G3	18,144	B3 U0 G3	18,523	B3 U0 G3

\* Initial delivered lumens at 25°C (77°F). Actual production yield may vary between -10 and +10% of initial delivered lumens.  
\*\* For more information on the IES BUG (Backlight-Uplight-Glare) Rating visit: [www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf](http://www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf). Valid with no tilt



RESTL Test Report #: PLB8274-001A  
BXSP1-HO-\*\*-3ME-100W-40K-UL  
w/XA-SP1BLS  
Initial Delivered Lumens: 8,947

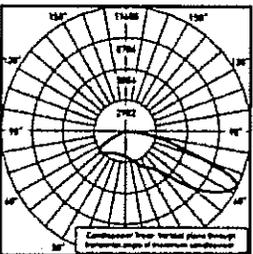


BXSP1-HO-\*\*-3ME-145W-40K-UL  
w/XA-SP2BLS  
Mounting Height: 25' (7.6m) A.F.B.  
Initial Delivered Lumens: 14,355  
Initial FC at grade

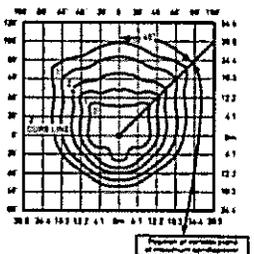
Type III Medium w/BLS Distribution					
3000K		4000K		5700K	
Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11
13,605	B2 U0 G2	14,355	B2 U0 G2	14,454	B2 U0 G2

\* Initial delivered lumens at 25°C (77°F). Actual production yield may vary between -10 and +10% of initial delivered lumens.  
\*\* For more information on the IES BUG (Backlight-Uplight-Glare) Rating visit: [www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf](http://www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf). Valid with no tilt

4ME



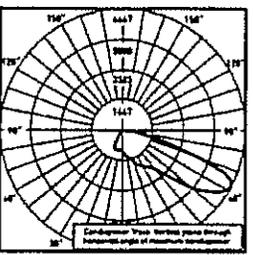
RESTL Test Report #: PL08038-001B  
BXSP2-HO-\*\*-4ME-145W-40K-UL  
Initial Delivered Lumens: 18,487



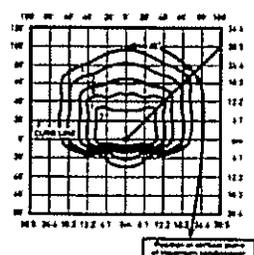
BXSP2-HO-\*\*-4ME-145W-40K-UL  
Mounting Height: 25' (7.6m) A.F.B.  
Initial Delivered Lumens: 18,144  
Initial FC at grade

Type IV Medium Distribution					
3000K		4000K		5700K	
Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11
17,195	B3 U0 G3	18,144	B3 U0 G3	18,523	B3 U0 G3

\* Initial delivered lumens at 25°C (77°F). Actual production yield may vary between -10 and +10% of initial delivered lumens.  
\*\* For more information on the IES BUG (Backlight-Uplight-Glare) Rating visit: [www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf](http://www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf). Valid with no tilt



RESTL Test Report #: PLB8273-001A  
BXSP1-HO-\*\*-4ME-100W-40K-UL  
w/XA-SP1BLS  
Initial Delivered Lumens: 8,443



BXSP1-HO-\*\*-4ME-145W-40K-UL  
w/XA-SP2BLS  
Mounting Height: 25' (7.6m) A.F.B.  
Initial Delivered Lumens: 13,957  
Initial FC at grade

Type IV Medium w/BLS Distribution					
3000K		4000K		5700K	
Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11	Initial Delivered Lumens*	BUG Ratings** Per TM-15-11
13,227	B2 U0 G2	13,957	B2 U0 G2	14,248	B2 U0 G3

\* Initial delivered lumens at 25°C (77°F). Actual production yield may vary between -10 and +10% of initial delivered lumens.  
\*\* For more information on the IES BUG (Backlight-Uplight-Glare) Rating visit: [www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf](http://www.ies.org/PDF/Errata/TM-15-11BugRatingsAddendum.pdf). Valid with no tilt



XSP2™ High Output LED Street/Area Luminaire – Double Module

Luminaire EPA

Horizontal Tenon Mount – Weight: 24 lbs. (11kg)				
Single	2 @ 90°	2 @ 180°	3 @ 90°	4 @ 90°
Tenon Configuration If used with Cree tenons, please add tenon EPA with luminaire EPA				
PD-1H4; PT-1H	PD-2H4(90); PT-2H(90)	PD-2H4(180); PT-2H(180)	PD-3H4(90); PT-3H(90)	PD-4H4(90); PT-4H(90)
0.69	1.14	1.38	1.83	2.28

Tenon EPA

Part Number	EPA
PD Series Tenons	0.09
PT Series Tenons	0.10
WM-2L	0.13
XA-TMDAB	0.19

Tenons and Brackets* (must specify color)	
<b>Square Internal Mount Horizontal Tenons (Aluminum)</b> - Mounts to 4" (102mm) square aluminum or steel poles PD-1H4 – Single      PD-3H4(90) – 90° Triple PD-2H4(90) – 90° Twin      PD-4H4(90) – 90° Quad PD-2H4(180) – 180° Twin	<b>Round External Mount Horizontal Tenons (Aluminum)</b> - Mounts to 2.375"-3" (60-76mm) O.D. round aluminum or steel poles or tenons - Mounts to 3" (76mm), 5" (127mm), or 6" (152mm) square pole with PB-1A* tenon PT-1H – Single      PT-3H(90) – 90° Triple PT-2H(90) – 90° Twin      PT-4H(90) – 90° Quad PT-2H(180) – 180° Twin
<b>Wall Mount Brackets</b> - Mounts to wall or roof WM-2L – Extended Horizontal	<b>Direct Arm Pole Adapter Bracket</b> - Mounts to 3-6" (76-152mm) round or square aluminum or steel poles XA-TMDAB

\* Refer to the [Bracket and Tenons spec sheet](#) for more details  
 \* Specify pole size: 3 (3"), 5 (5"), or 6 (6") for single, double or triple luminaire orientation or 5 (5") or 6 (6") for quad luminaire orientation



## RATE ODL UNMETERED OUTDOOR LIGHTING

By order of the Alabama Public Service Commission dated August 4, 2015 in Docket U-5040.  
The kWh charges shown reflect adjustment pursuant to Rates RSE and CNP for application to monthly bills effective for January 2016 billings.

PAGE 2 of 4	EFFECTIVE DATE September, 2015 Billings	REVISION First
----------------	--	-------------------

### MONTHLY RATE

Controlled Photo Cell (Dusk to Dawn)  
3.6792¢ per kWh

Continuous Burn  
5.3692¢ per kWh

### DETERMINATION OF MONTHLY KWH

Monthly kWh shall be determined in the following manner:

Standard Photo Cell:                      Monthly kWh =  $\frac{\text{Billing Watts} \times 360 \text{ hours}}{1,000}$   
(Dusk to Dawn)

Continuous Burn:                              Monthly kWh =  $\frac{\text{Billing Watts} \times 730 \text{ hours}}{1,000}$

The Company may, at its sole discretion, test and verify monthly actual kWh consumption by installing a kWh meter at the service point. Further, the Company may adjust the kWh applicable for billing following such testing, require the Customer to take service under an applicable, metered rate, or install a device to limit connected load to the billing watts used in the calculation of the monthly kWh. In addition, the testing and verification of the Customer's actual kWh consumption by the Company may determine the lighting application should be under the Continuous Burn rate, referenced in the Monthly Rate section. The Company will notify the Customer of such Continuous Burn applications and subsequent rate or require the customer control the lighting application in a Dusk to Dawn manner.

#### Dusk to Dawn Definition

Annual estimated operating hours for dusk to dawn levels will be based on regional National Weather Service hours for sunrise and sunset times. Dusk to dawn lighting typically turns on and off approximately one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise which is approximately 4,320 hours annually. The 360 hours used in the equation above were calculated by taking the estimated annual dusk to dawn burn hours of 4,320 hours and dividing by 12 months.



## RATE ODL UNMETERED OUTDOOR LIGHTING

By order of the Alabama Public Service Commission dated August 4, 2015 in Docket U-5040.  
The kWh charges shown reflect adjustment pursuant to Rates RSE and CNP for application to monthly bills effective for January 2016 billings.

PAGE 3 of 4	EFFECTIVE DATE September, 2015 Billings	REVISION First
----------------	--	-------------------

### Continuous Burn Definition

Applications of lighting systems that are uncontrolled, require 24-7 operation, or are expected to have annual burn hours reflective of a more continuous use will be deemed Continuous Burn by the Company. The 730 hours used in the equation above were calculated by taking the estimated annual continuous burn hours of 8,760 hours and dividing by 12 months.

### DETERMINATION OF BILLING WATTS

Billing Watts = Total wattage connected for all qualified luminaires including ballast

The Company will calculate the billing watts as the total wattage connected for all qualified lighting installations including ballast. At the option of the Customer or the Company, the billing watts may be determined by test; however, the performance of more than one test within a 12-month period is subject to prior Company approval with the expense being the responsibility of the customer. When the Company determines that the Customer will be responsible for certain wattage testing expenses, the Company will first provide an estimate of such expenses to the Customer.

### ADDITIONAL FACILITIES CHARGE

If a lighting installation requires facilities not covered in this rate, an Additional Facilities Charge will be added to the other monthly charges set forth in this rate. The Additional Facilities Charge will be applied monthly in an amount equal to 2.50% of the estimated cost of any additional facilities utilized, provided, however, that any such charge shall not be less than \$1.00.

Alternatively, the Customer may elect to make a one-time payment toward any applicable Additional Facilities Charge. The one-time payment will reflect the present value of future ownership costs associated with the service point to recover future maintenance costs, property and other taxes (as applicable), administrative and general costs, replacement costs, plus an applicable time value of money allowance.

### PAYMENT

Bills for service rendered hereunder are payable within ten (10) days from the due date and if not paid within such period become delinquent and subject to charges as set forth in Alabama Power Company Rules and Regulations for Electric Service.



## **RATE ODL UNMETERED OUTDOOR LIGHTING**

By order of the Alabama Public Service Commission dated August 4, 2015 in Docket U-5040.  
The kWh charges shown reflect adjustment pursuant to Rates RSE and CNP for application to monthly bills effective for January 2016 billings.

<b>PAGE</b> 4 of 4	<b>EFFECTIVE DATE</b> September, 2015 Billings	<b>REVISION</b> First
-----------------------	---	--------------------------

### **TERM OF CONTRACT**

Service under this rate shall be for an initial period of one (1) year and shall be extended thereafter from month to month until terminated by either Company or Customer.

### **ENERGY COST RECOVERY**

The amount calculated at the above rate will be increased under the provisions of the Company's Rate ECR (Energy Cost Recovery) by applying the effective Energy Cost Recovery factor.

### **RATE STABILIZATION AND EQUALIZATION**

Rate RSE (Rate Stabilization and Equalization Factor) is incorporated in this rate and will be applied to adjust (increase or decrease) kWh charges calculated hereunder.

### **ADJUSTMENT FOR COMMERCIAL OPERATION OF CERTIFICATED NEW PLANT**

Rate CNP (Adjustment for Commercial Operation of Certificated New Plant) is incorporated in this rate and will be applied to increase kWh charges calculated hereunder.

### **GENERAL**

The amount calculated at the above rate is subject to possible tax adjustments as set forth in Rate T (Tax Adjustment) and to rules and regulations approved or prescribed by the Alabama Public Service Commission.



## RATE ODL UNMETERED OUTDOOR LIGHTING

By order of the Alabama Public Service Commission dated August 4, 2015 in Docket U-5040.

The kWh charges shown reflect adjustment pursuant to Rates RSE and CNP for application to monthly bills effective for January 2016 billings.

PAGE	EFFECTIVE DATE	REVISION
1 of 4	September, 2015 Billings	First

### AVAILABILITY

Available in all areas served from the interconnected system of the Company. Service hereunder shall be subject to the additional terms, conditions and adjustments set forth in the rules and regulations approved or prescribed by the Alabama Public Service Commission.

### APPLICABILITY

Applicable only to unmetered outdoor lighting installations where the entire requirements of electric service are for the sole purpose of lighting streets, roadways, highways or common areas, other than individual residential locations and billboard-type applications. Lamp fixtures include mercury vapor (MV), high pressure sodium (HPS), metal halide (MH), light emitting diode (LED), induction, fluorescent, or any other technology lighting systems determined by the Company to satisfy the Character of Service requirements of this rate. Installations shall be made on poles that conform to Company specifications. Service shall not be resold or shared with others.

Service under this rate shall be available only when, in the judgment of the Company, the location of the service point and the lighting installation, including the lamp fixture and the associated facilities, are and will continue to be safely accessible to the Company's personnel and equipment in order to provide and maintain the electric service.

This rate is not available for seasonal or other part-time operation of outdoor luminaires.

### CHARACTER OF SERVICE

Single or three-phase service at the voltage of the available primary distribution lines of the Company (primary), or at the secondary voltage of transformation facilities supplied from the Company's distribution system (secondary). The distribution system shall serve no other electrical loads at this service point except the lighting installations eligible for this rate. The number and location of service points shall be as specified by the Company.

The Customer shall provide (a) Company-approved photoelectric controls with suitable mounting and wiring and (b) a weatherproof enclosure, if needed, for any Company-approved relay.



### Guaranteed Energy Performance

Currently the City owns and operates 120 Cobra head lights. Power is provided by Alabama Power and charged approximately \$28.00 monthly per fixture. New LED Fixtures provided by LED Solution will be charged approximately \$3.67 per month per fixture. We have attached information from Alabama Power on how they are now charging for LED lighting fixtures

	Per Month per fixture @120	Total Power per month	Total Power Annual
Current Power Charge	\$28.00	\$3360.00	\$40,320.00
New LED Power Charge	\$3.67	\$ 440.00	\$ 5,284.80
Savings			\$35,035.20

Based on this table, it shows that with the new rates from Alabama power the City will recoup its investment within 20 years.

# Estimate

**LED Solutions**  
120 Applegate Court  
Pelham, AL 35124 US  
tim@ledsolution.net

ADDRESS  
Brian C Davis  
Vestavia Hills Department of Public  
Services  
1032 Montgomery Highway  
Vestavia Hills, AL 35216

ESTIMATE #            DATE  
1036                    06/06/2016

**P.O. NUMBER**  
Street Lights

ACTIVITY	QTY	RATE	AMOUNT
<b>Installation Labor Cost</b>	120	125.00	15,000.00
Install 120 LED lights on existing poles down HWY 31 in Vestavia Hills			
<b>Services</b>	130	40.00	5,200.00
Police escorts blocking traffic \$40.00 per hour 130 Hours			
<b>Services</b>	1	3,000.00	3,000.00
Rental for a 60' lift			
<b>Services</b>	160	90.00	14,400.00
Repair damaged conduits and re-pull wire to dead pole lights.			
<b>Services</b>	1	6,750.00	6,750.00
Material needed: wire, conduit, fusible links in pole bases, fuses			
<b>Services</b>	900	17.00	15,300.00
Boring contractor to bore under road ways. Required to be licensed, insured, and bonded boring contractor. Pricing 17.00 per foot 900'			
<b>Services</b>	1	4,500.00	4,500.00
Set up fee for boring contractor.			
<b>Services</b>	120	11.00	1,320.00
Disposing of 120 old street lights			
<b>Services</b>	3	450.00	1,350.00
Line locaters			
<b>LED Light Inventory</b>	120	979.76	117,571.20
BXSP2 - HO - HT - 2ME 165W 480V CREE STREET LIGHT			
Price only includes replacing lights and repairing damaged wires. Some pole lights are missing polebase covers and bad transformers for 120 volt, not in quote.			
<b>TOTAL</b>			<b>\$184,391.20</b>