

**Join us! In an effort to enhance meetings during the COVID-19 shutdown, the City Council invites you to join and/or participate in a variety of ways: Via computer Zoom meetings (no app is necessary), telephone, email and/or text! See details on page 3.**

**Vestavia Hills  
City Council Agenda  
December 14, 2020  
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Tom Bell, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. Proclamation – Human Trafficking Awareness Month – January 2021
8. City Manager’s Report
9. Councilors’ Reports
10. Financial Report – Melvin Turner, III, Finance Director
11. Approval Of Minutes – November 16, 2020 (Work Session/Interviews); November 16, 2020 (Work Session) and November 23, 2020 (Regular Meeting)

**Old Business**

12. Resolution Number 5289 – A Resolution Authorizing The City Manager To Execute And Deliver Proposals For Design Services For Improvements Of Columbiana Road And Highway 31 Intersection (*public hearing*)

**New Business**

13. Resolution Number 5290 – A Resolution Appointing A Member To The Vestavia Hills Library Board
14. Resolution Number 5291 – A Resolution Appointing A Member To The Vestavia Hills Parks And Recreation Board
15. Resolution Number 5292 – A Resolution Declaring Certain Personal Property As Surplus And Authorizing The City Manager To Sell/Dispose Of Said Property

16. Resolution Number 5293 – A Resolution Accepting A Bid For Sicard Hollow Sports Complex “SHAC” Athletic Field Resurfacing – Phase I And Authorizing The City Manager To Take All Actions Necessary To Secure Said Construction
17. Ordinance Number 2985 – An Ordinance Authorizing The Settlement Of The Case Of *James J. Odom, Jr. And Carolyn J. Odom, Plaintiffs V. The City Of Vestavia Hills, Alabama; Stone Building, LLC; Williams Blackstock Architects, P.C.; Caprine Engineering, LLC; Et Al And Fictitious Defendants A, B & C, Defendants*, Being Civil Action Number 01-Cv-2020-902589.00 Presently Pending In The Circuit Court For Jefferson County, Alabama; Authorizing And Directing The Mayor And City Manager To Pay The Funds Described Herein And To Take Any Action And Execute And Deliver Any And All Documents Necessary To Effectuate Said Settlement
18. Ordinance Number 2984 – An Ordinance To Acknowledge And Authorize The Receipt Of A Charitable Donation Of Real Estate To The City Of Vestavia Hills, Alabama; To Authorize And Direct The Execution And Delivery Of Department Of Treasury, Internal Revenue Service Forms 8283; And To Thank The Donors For Such A Wonderful Gift (*public hearing*)

#### **New Business (Requesting Unanimous Consent)**

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

19. Ordinance Number 2986 – An Ordinance Appropriating An Additional \$26,750 To The FY2021 Budgeted Funds To Cover Increased Cost Of A New Transport Unit For Vestavia Hills Alberto C. Zaragoza, Jr. Fire Station No. 4 (*public hearing*)
20. Ordinance Number 2987 – An Ordinance Rescinding Ordinance Number 2769 And Amending Chapter 5.5; Article II, Entitled “Erosion And Sediment Control” Of The Vestavia Hills Code Of Ordinances (*public hearing*)
21. Ordinance Number 2988 – An Ordinance Rescinding Ordinance Number 2770 And Amended Section 5.5, Article IV Entitled Stormwater Management Illicit Discharge, Establishing Methods For Controlling The Introduction Of Pollutants Into Municipal Separate Storm Sewer System In Order To Comply With The Requirements Of The National Pollutant Discharge Elimination System (NPDES) Permit Process (*public hearing*)
22. Motion for Adjournment
23. Citizens Comments

## **SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS**

**Due to the COVID-19 “Stay at Home” Order issued by Gov. Ivey, the City Council work sessions and meetings are available via video-conference and teleconference. If you chose not to attend in person, you may still participate. Following are instructions for three options to participate remotely.**

### **COMPUTER PARTICIPATION (*view/participate in real time*)**

To participate in by videoconference, click <https://us02web.zoom.us/j/4555343275>. When the Zoom.us window opens in your browser, click “Allow” so that the page may open to a waiting room. The host will open the meeting and bring all into the meeting room at that time. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, activate the “Raise Hand” feature and unmute yourself by toggling the mute button. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then you may address the Council.

Using the icons on the Zoom screen, you can:

- Mute/unmute your microphone (far left)
- Turn on/off camera (“Start/Stop Video”)
- View Participants – opens a pop-out screen that includes the “Raise Hand” icon that you may use to raise a virtual hand
- Change your screen name displayed in the participant list and video window
- Toggle between “speaker” and “gallery” views – “Speaker view” shows the active speaker; “Gallery view” tiles all of the meeting participants

### **TELEPHONE PARTICIPATION (*view/participate in real time*)**

To participate by telephone, dial 312.626.6799 and enter the meeting ID: 455 534 3275. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, press \*6 on your phone keypad to unmute yourself. Then state your name and wait for the Mayor to recognize you. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then address the Council.

### **TEXT AND/OR EMAIL (*prior to the meeting or in real time*)**

If you do not wish to join the meeting but would like to ask a question or make a statement regarding an item on the agenda, you may email the City Council directly at [City.Council@vhal.org](mailto:City.Council@vhal.org). You may also text your question/statement to City Council at 205.517.1370. Both of these options are available prior to and during each work session and meeting. Be sure to provide your name and address for the record and your comments will be recited to the City Council as the corresponding item is being addressed. Note: As a matter of record, your name and address are required. If identification is not provided, your comment/question will not be presented.

WHEREAS, the City of Vestavia Hills seeks to enhance public welfare, protect public safety, and promote human flourishing for all residents and visitors by declaring that freedom from human trafficking is a fundamental human right; and

WHEREAS, human trafficking is a form of modern-day slavery where victims are forced to work in various forms of exploitation, including debt bondage, forced marriage, labor and commercial sexual exploitation of adults and minors, that are induced through force, fraud or coercion. The City of Vestavia Hills is committed to ensuring that our community is prepared to recognize signs of human trafficking; and

WHEREAS, the risks of human trafficking have increased during the COVID-19 pandemic. Economic turmoil, financial hardship, isolation, and the shuttering of schools and other programs have resulted in increased opportunities for human trafficking particularly online, and resulted in fewer places for victims to turn to report exploitation and fewer chances for the abuse to be recognized; and

WHEREAS, The World Games 2022 is an international sporting event that will bring thousands of athletes and countless tourists and media, to the Birmingham metro area; and

WHEREAS, an increase in tourists seeking entertainment, including commercial sex, increases the potential risk for exploitation and human trafficking; and

WHEREAS, due to its isolating nature, many individuals remain unaware that trafficking is a threat to their neighborhoods, families and children. The first step in eliminating human trafficking in our community is to educate others. We must work diligently to ensure that all front-line industries, educators and first responders are aware of this issue and how to spot it; and

WHEREAS, we will continue our efforts to make the City of Vestavia Hills a TraffickingFree Zone by combating the human trafficking of our children and vulnerable adults and mitigating the associated public safety, economic and health risks to our community in collaboration with the Child Trafficking Solutions Project and other anti-human trafficking organizations by,

Combating labor trafficking, servitude, and commercial sexual exploitation through comprehensive education of our staff, the implementation and enforcement of a zero-tolerance policy against any act which may support human trafficking, and supporting collaborative community-based solutions across a continuum that includes prevention, recovery of victims, and prosecution of perpetrators, and ask all citizens of the City of Vestavia Hills to join us in promoting a shift away from the culture of tolerance toward human trafficking.

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim January 2021

**HUMAN TRAFFICKING AWARENESS MONTH**

and encourage all residents to join us in raising the visibility of this crime and to become more informed about ways to prevent, to recognize and to respond to potential victims of human trafficking in our community.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 14<sup>th</sup> day of December 2020.

  
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## **CITY OF VESTAVIA HILLS**

### **CITY COUNCIL**

### **MINUTES**

### **WORK SESSION**

**NOVEMBER 16, 2020**

The City Council of Vestavia Hills met in special work session on this date at 8:00 AM, following publication and posting pursuant to Alabama law. Due to the COVID-19 pandemic, in coordination with a Proclamation from Governor Ivey and pursuant to Orders from the Alabama State Health Officer, requiring social distancing along with limits of attendees, this meeting was held with a portion of Staff and general public/audience members attending in person following publication pursuant to Alabama law. The Mayor called the work session 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, Councilor  
Paul Head, Councilor  
George Pierce, Councilor

The Mayor called the work session to order and indicated that this work session was for the interview of applicants for upcoming appointments on the Vestavia Hills Parks and Recreation Board and the Library Board.

### **Interviews**

**Library Board:**

- W. Whitney Seals, 1261 Branchwater Ln;
- Gregory Jones, 2032 Crestmont Dr; and
- Lyndsay Gunn, 2701 Ridge Crest Cr;

**Parks and Recreation Board:**

- Karl Julian, 3120 Timberlake Rd;
- Chris Hunsberger, 3312 Castle Crest Dr;
- Nick Madsen, 1804 Arbor Ln;
- Adam Pierce, 1443 Badham Dr;
- Michael "Brent" Von Kanel, 3551 Lakeside Dr;
- Shelley Gentle, 2528 Dolly Ridge Road; and
- John S. Johnson, 3325 Blueberry Lane.

Following the interviews, the Mayor announced that the final appointment would be voted upon on December 14, 2020, at the Council's regular meeting.

At 2:35 PM, the work session adjourned.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CITY OF VESTAVIA HILLS**

**CITY COUNCIL**

**MINUTES**

**WORK SESSION**

**NOVEMBER 16, 2020**

The City Council of Vestavia Hills met in special work session on this date at 5:00 PM, following publication and posting pursuant to Alabama law. Due to the COVID-19 pandemic, in coordination with a Proclamation from Governor Ivey and pursuant to Orders from the Alabama State Health Officer, requiring social distancing along with limits of attendees, this meeting was held with a portion of Staff and general public/audience members attending via Zoom.com following publication pursuant to Alabama law. The Mayor called the work session 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, Councilor  
Paul Head, Councilor  
George Pierce, Councilor

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Patrick H. Boone, City Attorney  
Conrad Garrison, Acting City Clerk  
Dan Rary, Police Chief  
Cinnamon McCulley, Communications Specialist  
Umang Patel, Court Director  
Marvin Green, Fire Chief\*  
*\*via Zoom*

The Mayor called the work session to order.

**EXECUTIVE SESSION**

The Mayor stated that the City Council needed to go into Executive Session for an estimated 30 minutes to discuss current/pending litigation. He indicated that attorney Patrick Boone and Bent Owens were present to attend. He opened the floor for a motion.

**MOTION** Motion to move into Executive Session for an estimated 30 minutes was made by Mrs. Cook, seconded by Mr. Pierce. Roll call vote was, as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes

Mayor Curry – yes

Motion carries.

The Council exited the Chamber at 6:02 PM and entered into Executive Session. At 6:28 PM, the Council re-entered the Chamber and the Mayor called the meeting back to order.

### **REVISION OF EROSION CONTROL ORDINANCES**

Mr. Downes stated that since the soil erosion control ordinances were passed a couple of years ago, the staff found that there have been occurrences of repeated violations by contractors that need to be addressed. He stated that the amendments that will be presented tonight are an attempt to rectify those deficiencies. He stated that the Council has been provided highlights of the proposed changes, and Christopher Brady and Lori Beth Kearley are present to review these proposed changes and answer any questions.

Mr. Brady went over changes to the permit fee when workers are caught working without a permit. The permit fee in these instances would be doubled. He stated the primary changes are in Article 7 requiring staff to provide written notice of violation. If violation is not addressed promptly, it allows the staff to charge the violator in Municipal Court and issue stop work orders.

Discussion ensued, including how the doubled permit fees are calculated. Mr. Brady explained violators would pay the regular permit fee, along with an additional permit fee as a fine. Mr. Downes stated that this replicates practices for enforcing Building Safety permit fees.

Mr. Head cautioned everyone to keep the fines within a reasonable limit.

Mr. Downes stated that is why the new soil erosion control policy copies current Building Safety Department policies.

Mrs. Cook asked what steps will be taken before a contractor is brought into Municipal Court.

Mr. Brady stated that the contractor would be notified verbally followed by a written notice of violation along with photo evidence. He stated that, if the notice goes unrecognized or is not corrected, then the City will issue a stop work order and a summons to court.

Mr. Downes asked Mr. Boone to comment on due process for enforcement of the ordinance.

Mr. Boone gave a background of illicit discharge and the definitions of the City's storm sewer system. He stated that the Jefferson County Health Department put together a legal team that originally drafted these ordinances. Mr. Boone indicated that his review of the statutes leads him to believe that the professional engineers of this City would know better than anyone in the administration and are qualified to answer appeals of this Ordinance. He indicated if anyone wanted to appeal further to the Courts, that this recourse would be available. He stated that the statute says that, if ADEM is involved, the City is hands off because ADEM takes control of those

situations. He stated he recommends taking out the appeal process and leave the decision and the appeal to the professionals.

Mr. Downes stated that ADEM regulated sites would be the responsibility of ADEM to fine a violator. A contractor could be fined by the City Engineer on these other developments and, if needed, the contractor can appeal to the City's municipal court.

Mrs. Cook asked if the terms of the ordinance would sufficiently deter contractors from repeatedly violating the ordinances.

Mr. Brady stated he believes this is sufficient.

### **INTERSECTION IMPROVEMENTS**

Mr. Downes explained that, in the 2020 Strategic Planning Session, the Council asked the City to conduct engineering studies regarding long-term improvements for some major intersections. He read the list of the three intersections which are all multi-jurisdictional intersections. To get some concurrence and to allow the City to move to the next step to obtain collaboration agreements with the other involved jurisdictions, he stated they want to discuss these tonight:

- **Dolly Ridge Road/Rocky Ridge Road Intersection** – Mr. Brady introduce Wade Lowery, EDG, who was the design engineer on this project. This intersection involves two Jefferson County “through roads,” which is a very challenging intersection for the City. Mr. Lowery presented drawings of the design of the intersection improvements for both traffic and pedestrians. Mr. Lowery showed drawings of the new suggested improvements with the addition of a turning lane to allow more traffic to move through. Discussion ensued and Mr. Downes indicated that, once the preliminary numbers are determined, the engineers would bring that information back to City Council as soon as possible.
- **Blue Lake Road/Sicard Hollow Road Intersection** – Jennifer Brown, Sain Associates, presented a PowerPoint presentation. She said they have done survey work along with utility locations. Their final recommendation is a round-a-bout with two different alternatives. After reviewing with City staff and Birmingham Water Works Board, the adjoining property owner, a final, preferred alternative is a round-a-bout. The advantages of this alternative, as opposed to others, is that it reduces the need to obtain additional right-of-way and allows better speed control as cars enter the round-a-bout. Grading has not been analyzed on this drawing. Estimated costs range from \$1.2M to \$1.8M, depending on various factors. Discussion ensued.
- **Columbiana Road/Montgomery Highway (Highway 31) Intersection** – Mr. Brady showed drawings of this intersection and stated that this is the most frequently worked accident location in the city. He stated this was studied earlier through an APPLE study. Referring to an aerial photo, he described the current traffic pattern to and from this intersection. He stated there is much ambiguity about who has the right-of-way and who should yield. Recommended improvements would include signage to show who is able to turn right on red, and limiting where the right on red is allowed. Chief Rary described

that accidents primarily occur because of the two right turn lanes, and stated he has asked ALDOT many times to discontinue right turn on red at this location. Discussion ensued as to the cost of this project, and that they have proposed hiring an engineer to finish the design.

### **RECREATIONAL PROGRAMMING IMPROVEMENTS**

Mr. Davis, Public Services Director, updated the Council regarding proposals for video scoreboards for the pool and the Miracle League Field. He explained that, since they cannot ask Buffalo Rock to supply it, funds need to be raised for the project.

Mr. Davis stated that the city has not had a dynamic tennis program in the past. He stated that the City is looking at getting a tennis professional to oversee a tennis program. Proposals should go out soon to see if that's a possibility.

### **CITIZEN COMMENTS**

None.

At 7:35 PM, Mr. Pierce made a motion to adjourn. The meeting adjourned at 7:36 PM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CITY OF VESTAVIA HILLS**

**CITY COUNCIL**

**MINUTES**

**NOVEMBER 23 2020**

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. Due to the COVID-19 pandemic, in coordination with a Proclamation from Governor Ivey and pursuant to Orders from the Alabama State Health Officer, requiring social distancing along with limits of attendees, this meeting was held with a portion of Staff and general public/audience members attending via Zoom.com following publication pursuant to Alabama law. The Mayor was attending from a remote location so he passed the gavel to the Mayor Pro-Tem who called the meeting to order. The City Clerk called the roll with the following:

**MEMBERS PRESENT:**

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

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Rebecca Leavings, City Clerk  
Jason Hardin, Police Captain  
Marvin Green, Fire Chief\*  
Melvin Turner, Finance Director  
George Sawaya, Asst. Finance Director  
Christopher Brady, City Engineer\*  
Ryan Farrell, Asst. Fire Chief\*  
Umang Patel, Court Director\*  
Cinnamon McCulley, Communications Specialist\*  
*\*present via Zoom or telephone*

Sam Williamson, Vestavia Hills Chaplain, led the invocation followed by the Pledge of Allegiance.

**APPROVAL OF THE AGENDA**

The Mayor Pro Tem opened the floor for a motion to approve the agenda as amended to remove item number 7, a proclamation, from the agenda. He explained this item was disposed of at the last meeting and was mistakenly left on the agenda.

**MOTION** Motion to approve the amended agenda to delete item number 7 was by Mrs. Cook, and seconded by Mr. Pierce. Roll call vote was, as follows:

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

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

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

### **ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION**

- Mr. Pierce recognized Chamber of Commerce Board member, Rachel Patterson, attending via Zoom.
- Mr. Weaver stated that the Planning and Zoning Commission met a couple of weeks ago. One request may be moving forward to the Council at a later date.

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

- Mr. Downes stated that City offices will be closed on Thursday and Friday for the Thanksgiving holidays.
- Mr. Downes reminded everyone that the schedule for sanitation will shift because of the Thanksgiving holiday. He highlighted the changes for the holiday and noted that anyone with questions should check the website.

### **COUNCILOR REPORTS**

- Mrs. Cook reported she attended some meetings at which Daniel Communities introduced Liberty Park residents to proposed changes regarding the Bray development at Liberty Park. She explained that there are more community meetings coming, one being held this evening with one other to follow. She indicated she will likely host a Coffee and Conversation meeting in the near future to allow residents to share thoughts and answer questions concerning the development. She and Councilor Weaver met with Dr. Freeman to have a general discussion regarding school facility planning and how these plans would be critical to evaluating the proposed Bray development. She stated that she is aware that the school system is the utmost priority for our community, so she wants to ensure that she knows all the facts about this project and how it might impact schools. She acknowledged that she is fielding questions and concerns from residents, but, as of today, no applications or agreements have been submitted to the city, so the proposal is at a preliminary stage.

- Mrs. Cook stated she attended the Deck the Heights celebration, one of several merchant celebrations being held in our city. She stated that Katherine McRee, a Cahaba Heights business owner, indicated that many businesses had record-breaking sales on the day of the event.
- Mr. Pierce stated he attended a Chamber Board meeting via Zoom. He commended the City's businesses for their efforts to conduct operations and celebrate safely. He stated that the holidays are an important time for all the City's merchants, and businesses need the public's support. He encouraged everyone to shop local.
- Mr. Weaver reiterated that all annexation and zoning matters--the proposed Bray development, along with a request for annexation that will be heard later this evening--are studied in detail as they progress through a prescribed procedure giving plenty of opportunity for public hearings throughout the process. He stated that, with the way that 2020 has worked out, he is happy that business can continue despite the setbacks and asked everyone to be safe.

### **APPROVAL OF MINUTES**

The Mayor Pro Tem opened the floor for approval of the following minutes November 9, 2020 (Regular Meeting).

**MOTION** Motion to approve the minutes of the November 9, 2020 (Regular Meeting) was by Mrs. Cook and seconded by Mr. Pierce. Roll call vote as follows:

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

### **OLD BUSINESS**

#### **RESOLUTION NUMBER 5285**

**Resolution Number 5276 – Annexation – 90 Day Final – 2810 Five Oaks Lane; Round Too Investments, Owners (*public hearing*)**

**MOTION** Motion to approve Resolution Number 5276 was by Mrs. Cook, and seconded by Mr. Pierce.

Mr. Pierce gave the report of this request, including the facts of the petition and any information that came forward regarding the request. He stated this is a proposal for annexation of 17 lots with an R-2 zoning classification.

Ms. Leavings gave a brief background of annexation process.

Mr. Pierce stated that if Councilors have questions/concerns during this process to ask ahead of time and not wait until the February date to ask questions.

Mrs. Cook stated that she was unable to attend the Committee meeting but she did receive, along with the Council, a thoughtful document composed by residents, which was very well prepared. She stated her review of this document provides a good perspective in the consideration of this development, and she appreciates this information.

The Mayor Pro Tem opened the floor for a public hearing. He stated that the Council did receive the report that Mrs. Cook alluded to and he is asking that this be included into the record from tonight's meeting. He stated this is just the beginning of the process, and sets the date for the public hearing. Mr. Boone stated that this resolution acknowledges, the petition and sets the date for hearing, and that future meetings will be posted and the city will provide notice for public hearings as required by law.

Don Petree, 2809 Five Oaks Lane, stated that he is representing about 45 neighbors, some of whom are present and some who are attending by Zoom. He indicated that they provided this information referred to earlier. He explained that they have met with the developer multiple times and worked with him throughout the process.

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

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

### **RESOLUTION NUMBER 5277**

**Resolution Number 5277 – Annexation – 90 Day Final – 2537 Tyler Road; Lot 3-A McLemores Resurvey, Glenda Mortenson, Owners (*public hearing*)**

**MOTION** Motion to approve Resolution Number 5277 was by Mrs. Cook, and seconded by Mr. Pierce.

Mr. Pierce gave the Annexation Committee report which showed no adverse information.

Glenda Mortenson, owner, was present in regard to this request.

Mr. Weaver stated that the public hearing for each of the following three annexations will include the Resolution and the Ordinance into one public hearing.

The Mayor Pro Tem opened the floor for a public hearing for Resolution Number 5277 and Ordinance Number 2980, the overnight annexation of the same property. There being no one else to further address the Council, the Mayor Pro Tem closed the public hearing and called for the question. Roll call vote was, as follows:

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

Mr. Weaver – yes

**ORDINANCE NUMBER 2980**

**Ordinance Number 2980 – Annexation – Overnight – 2537 Tyler Road; Lot 3-A, McLemores Resurvey; Glenda Mortenson, Owners (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2980 was by Mrs. Cook, and seconded by Mr. Pierce.

The Mayor Pro Tem announced that the public hearing was completed on this request. There being no one else to further address the Council, the Mayor Pro Tem closed the public hearing and called for the question. Roll call vote was, as follows:

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

**RESOLUTION NUMBER 5278**

**Resolution Number 5278 – Annexation – 90 Day Final – 2519 Dolly Ridge Road; Lot 1, Block 2, Dolly Ridge Estates; 2<sup>nd</sup> Add; Earl and Juanita Tew, Owners (*public hearing*)**

**MOTION** Motion to approve Resolution Number 5278 was by Mr. Pierce, and seconded by Mrs. Cook.

Mr. Pierce gave the Annexation Committee meeting report, noting the only adverse information provided by Public Services was that there is some yard debris and a small hole near the septic tank.

Earl Tew, owner, was present via Zoom regarding the annexation request.

Mr. Pierce asked about some debris in the yard and a small hole near the septic tank.

Mr. Tew stated that he will be correcting that as soon as he can get a yard man out to cut the tree up and the septic man to look at the tank.

The Mayor Pro Tem opened the floor for a public hearing for Resolution Number 5278 and Ordinance Number 2981, the overnight annexation of the same property. There being no one else to further address the Council, the Mayor Pro Tem closed the public hearing and called for the question. Roll call vote was as follows:

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

**ORDINANCE NUMBER 2981**

**Ordinance Number 2981 – Annexation – Overnight – 2519 Dolly Ridge Road; Lot 1, Block 2, Dolly Ridge Estates; 2<sup>nd</sup> Add; Earl and Juanita Tew, Owners (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2981 was by Mrs. Cook, and seconded by Mr. Pierce.

The Mayor Pro Tem announced that the public hearing was completed on this request. There being no one else to further address the Council, the Mayor closed the public hearing and called for the question. Roll call vote, was as follows:

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

**RESOLUTION NUMBER 5279**

**Resolution Number 5279 – Annexation – 90 Day Final – 3643 Altadena Drive; Lot 17, Altadena Acres; Marcum and Amanda Mitchell, Owners (*public hearing*)**

**MOTION** Motion to approve Resolution Number 5278 was by Mr. Pierce, and seconded by Mrs. Cook.

Mr. Pierce gave the Annexation Committee report with no adverse information.

Mr. Marcum was present in regard to his request via Zoom.

The Mayor Pro Tem opened the floor for a public hearing for Resolution Number 5279 and Ordinance Number 2982, the overnight annexation of the same property. There being no one else to further address the Council, the Mayor Pro Tem closed the public hearing and called for the question. Roll call vote was as follows:

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

**ORDINANCE NUMBER 2982**

**Ordinance Number 2982 – Annexation – Overnight – 3643 Altadena Drive; Lot 17, Altadena Acres; Marcum and Amanda Mitchell, Owners (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2982 was by Mrs. Cook, and seconded by Mr. Pierce.

The Mayor Pro Tem announced that the public hearing was completed on this request. There being no one else to further address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was, as follows:

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

## **NEW BUSINESS**

### **RESOLUTION NUMBER 5287**

**Resolution Number 5287 – A Resolution Approving Alcohol License For Ellis Food Mart Inc D/B/A Liberty Spirits; Michael Warren Ellis, Executive (public hearing)**

**MOTION** Motion to approve Resolution Number 5287 was by Mrs. Cook, and seconded by Mr. Pierce.

Michael Ellis, executive manager, was present in regard to this request.

Mr. Pierce asked about training of employees.

Mr. Ellis explained that they use the same system as explained at the last meeting with their gas station. He stated they are all thoroughly trained and they scan the license.

Mrs. Cook asked if this business is the same building as the previous license approval.

Mr. Ellis stated that are separate entrances but the checkout connects the spaces.

Mrs. Cook asked about tobacco products.

Mr. Ellis stated that they only sell tobacco on the gas station side.

Mr. Pierce asked about the functionality of the separation.

Mr. Ellis stated that does help with the different businesses.

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

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

**RESOLUTION NUMBER 5288**

**Resolution Number 5288 – A Resolution Approving Alcohol License For Hilltop Liquor Llc  
D/B/A Hilltop Liquor; Junping Zheng, Executive (public hearing)**

**MOTION** Motion to approve Resolution Number 5288 was by Mr. Pierce, and seconded by Mrs. Cook.

Junping Zheng, owner, was present in regard to this request.

Mr. Pierce asked about the location and what measures are taken to ensure no sales to minors of liquor or alcohol.

Ms. Zheng stated that they train every employee as required by law and they check ID of every customer.

Mrs. Cook asked if she is aware that the legal age of tobacco is 21 now and wanted to know how they identify the age.

Ms. Zheng stated the scan the license and ensure that all customers are of legal age.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mayor Curry – yes

Mr. Weaver – yes

**NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)**

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

- Resolution Number 5289 – A Resolution Authorizing The City Manager To Execute And Deliver Proposals For Design Services For Improvements Of Columbiana Road And Highway 31 Intersection (public hearing)

**CITIZEN COMMENTS**

None.

At 6:44 PM, Mrs. Cook made a motion to adjourn. The meeting adjourned at 6:45 PM.

Rusty Weaver  
Mayor Pro Tem

ATTESTED BY:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 5289**

**A RESOLUTION AUTHORIZING THE CITY  
MANAGER TO EXECUTE AND DELIVER  
PROPOSALS FOR DESIGN SERVICES FOR  
IMPROVEMENTS OF COLUMBIANA ROAD AND  
HIGHWAY 31 INTERSECTION**

**WHEREAS**, the City of Vestavia Hills, Alabama, has been working with the Regional Planning Commission of Greater Birmingham's Advanced Planning, Programming, and Logical Engineering (APPLE) program dating back to 2019; and

**WHEREAS**, as part of this study, Sain Associates reviewed the Columbiana Road and Highway 31 intersection and developed some improvement alternatives to help improve the overall safety and operations of this intersection; and

**WHEREAS**, Neel-Schaffer has provided a scope and fee proposal to the City to help in designing the improvements that were recommended in the APPLE study, a copy of which is marked as Exhibit A, attached to and incorporated into this Resolution as if written fully therein. The consultant's services will include: design, permitting assistance and coordination with Jefferson County and ALDOT, and assistance with securing funding for the project partnering with a traffic consultant for traffic signal design modifications for a total not to exceed \$40,970; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept said proposals.

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

1. The City Manager is hereby authorized to execute and delivered the needed proposals for the design services as detailed in said proposal in an amount not to exceed \$40,970; and
2. This Resolution Number 5289 shall become effective immediately upon adoption and approval.

**APPROVED and ADOPTED** this the 23rd day of November, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**Restripe Dual-Right Turn Lane from Columbiana Road to US-31 Southbound  
Vestavia Hills, Alabama**

**Fee Proposal**

<b>Tasks</b>	<b>PM</b>	<b>Engineer</b>	<b>EI/Tech</b>	<b>Clerical</b>
Design Layout / Quantity Calculations / Cost Estimate	2.0	4.0	8.0	0.0
Permitting / Coordination	2.0	4.0	4.0	2.0
Identifying Funding Sources / Preparing Grant Applications	4.0	8.0	8.0	4.0
Total Hours	8.0	16.0	20.0	6.0
Hourly Rates	\$180.00	\$145.00	\$110.00	\$65.00
Total Fee	\$1,440.00	\$2,320.00	\$2,200.00	\$390.00
<b>Grand Total Fee</b>	<b>\$6,350.00</b>			

**Perform Access Management at Gas Station on Northern Corner of  
Columbiana Road and US-31 Intersection  
Vestavia Hills, Alabama**

**Fee Proposal**

<b>Tasks</b>	<b>PM</b>	<b>Engineer</b>	<b>EI/Tech</b>	<b>Clerical</b>
Design Layout / Quantity Calculations / Cost Estimate	8.0	20.0	40.0	0.0
Permitting / Coordination	2.0	4.0	4.0	2.0
Identifying Funding Sources / Preparing Grant Applications	4.0	8.0	8.0	4.0
Total Hours	14.0	32.0	52.0	6.0
Hourly Rates	\$180.00	\$145.00	\$110.00	\$65.00
Total Fee	\$2,520.00	\$4,640.00	\$5,720.00	\$390.00
<b>Grand Total Fee</b>	<b>\$13,270.00</b>			

**Convert One Access of Car Dealership on Columbiana Road to Right-in / Right-out  
Vestavia Hills, Alabama**

**Fee Proposal**

<b>Tasks</b>	<b>PM</b>	<b>Engineer</b>	<b>EI/Tech</b>	<b>Clerical</b>
Design Layout / Quantity Calculations / Cost Estimate	2.0	4.0	8.0	0.0
Permitting / Coordination	2.0	4.0	4.0	2.0
Identifying Funding Sources / Preparing Grant Applications	4.0	8.0	8.0	4.0
Total Hours	8.0	16.0	20.0	6.0
Hourly Rates	\$180.00	\$145.00	\$110.00	\$65.00
Total Fee	\$1,440.00	\$2,320.00	\$2,200.00	\$390.00
<b>Grand Total Fee</b>	<b>\$6,350.00</b>			

December 10, 2020

Mr. Christopher Brady, PE  
City Engineer  
City of Vestavia Hills  
1032 Montgomery Highway  
Vestavia Hills, AL 35216

**REFERENCE: PROFESSIONAL CONSULTING SERVICES AGREEMENT  
IMPROVEMENTS AT US-31 / COLUMBIANA ROAD INTERSECTION**

Dear Mr. Brady:

This Letter Agreement is for Neel-Schaffer, Inc. to provide professional consulting services for the City of Vestavia Hills, Alabama. Services will be focused on proposed improvements at the intersection of US-31 and Columbiana Road as identified in the Advanced Planning Report for Vestavia Hills Traffic Operations APPLE Study (Phase 1) dated June 17, 2019.

Neel-Schaffer's services will include preparing design layouts, calculating quantities, estimating construction costs, assisting the City with permit applications, coordinating with ALDOT and/or Jefferson County, identifying funding sources, and preparing grant applications on behalf of the City for the following proposed improvements:

- Restriping a dual-right turn lane from Columbiana Road to US-31 southbound,
- Performing access management at the gas station on the northern corner of the Columbiana Road / US-31 intersection, and
- Converting one access of the car dealership on Columbiana Road to right-in / right-out.

We propose to provide these services for the hourly rates shown in Exhibit A, "2020 Rate Schedule for Professional Services". Our estimated fee proposal for these improvements is shown in Exhibit B. We will submit monthly invoices based on hours of work performed. Services proposed in this Letter Agreement shall be provided in accordance with Exhibit C, "General Terms and Conditions," which is attached to and made a part of this Letter Agreement.

This Letter Agreement will also allow Neel-Schaffer, Inc. to provide other services to the City of Vestavia Hills in accordance with Exhibit C and at the hourly rates shown in Exhibit A which is attached to and made a part of this Letter Agreement. Prior to proceeding with future requests for services, we will write a letter to you referencing this Letter Agreement and specifying the scope of services and the estimated fee. Upon your acceptance, we will proceed with the services. For example, it is anticipated that the County and/or ALDOT will choose to perform the construction work with their own forces from the design layouts. If bid documents are required, we can prepare those documents for an additional fee.

This Letter consisting of two pages, Exhibit A consisting of one page, Exhibit B consisting of three pages, and Exhibit C consisting of four pages represent the entire agreement between Neel-Schaffer, Inc. and the City of Vestavia Hills. This Letter Agreement may only be modified or amended by a duly executed written document. If the terms and conditions of this Letter Agreement are acceptable, please execute two copies and return one to us. Please contact us with any questions.

We appreciate the opportunity to provide these services and look forward to working with you.

Sincerely,

NEEL-SCHAFFER, INC.



Becky Rogers, P.E., PTP, RSP<sub>1</sub>  
Senior Project Manager

Attachments

ACCEPTED:

CITY OF VESTAVIA HILLS, ALABAMA

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

Date: \_\_\_\_\_

**NEEL-SCHAFFER, INC.  
2020 RATE SCHEDULE FOR PROFESSIONAL SERVICES**

<b>EMPLOYEE CLASSIFICATION</b>	<b>POSITION</b>	<b>HOURLY RATE</b>
P-7, P-8, P-9	Officer, Senior or Engineer Manager/Professional IV/Survey Manager	\$198.00
P-6	Senior Project Manager/Professional III	\$180.00
P-5	Project Manager/Professional II	\$145.00
P-4	Professional I	\$130.00
P-1, P-2, P-3	Professional Intern	\$110.00
T-6	Senior Certified Engineering Technician	\$145.00
T-5	Certified Engineering Technician/Supervisory Technician	\$125.00
T-4	Technician IV/ Inspector IV/ Surveyor IV	\$110.00*
T-3	Technician III/Inspector III//Survey Crew Chief	\$100.00*
T-2	Technician II/Inspector II/Survey Instrument Person	\$85.00*
T-1	Technician I/Inspector I/Survey Assistant	\$75.00*
T-1	Student Intern	\$45.00*
A-4	Senior Administrative	\$80.00
A-3	Senior Clerical	\$75.00*
A-2	Clerical	\$65.00*
A-1	Assistant Clerical	\$50.00*
	Three-Member Survey Party	\$201.00*
	Two-Member Survey Party	\$157.00*
	One-Member Survey Party	\$120.00*

\* Hourly rates indicated for these non-exempt classifications apply to regular time. If overtime work is required to meet client’s schedule, Neel-Schaffer reserves the right to negotiate overtime rates.

“Professional” positions include engineer, architect, geologist, scientist, landscape architect, and planner.

“Technician” positions include engineering, soil, architecture, planning, GIS and information technology.

**REIMBURSABLE EXPENSE SCHEDULE**

<b>EXPENSE</b>	<b>COST</b>
Vehicle Mileage	\$0.575/mile
Traffic Counter/Video Monitor	\$10.00/day

All other expenses, including contract reproduction/printing, travel and subsistence, parking, communications, equipment rental, postage and overnight mail, and supplies will be reimbursed at actual cost. Use State or Federal Rates for mileage, travel and subsistence where necessary and/or required.

**EXHIBIT B**

**Restripe Dual-Right Turn Lane from Columbiana Road to US-31 Southbound  
Vestavia Hills, Alabama**

**Fee Proposal**

<b>Tasks</b>	<b>PM</b>	<b>Engineer</b>	<b>EI/Tech</b>	<b>Clerical</b>
Design Layout / Quantity Calculations / Cost Estimate	2.0	4.0	8.0	0.0
Permitting / Coordination	2.0	4.0	4.0	2.0
Identifying Funding Sources / Preparing Grant Applications	4.0	8.0	8.0	4.0
<b>Total Hours</b>				
	8.0	16.0	20.0	6.0
<b>Hourly Rates</b>				
	\$180.00	\$145.00	\$110.00	\$65.00
<b>Total Fee</b>				
	\$1,440.00	\$2,320.00	\$2,200.00	\$390.00
<b>Subconsultant Fee (Associated Traffic Signal Improvements)</b>				
	\$7,500.00			
<b>Grand Total Fee</b>				
	<b>\$13,850.00</b>			

**Perform Access Management at Gas Station on Northern Corner of  
Columbiana Road and US-31 Intersection  
Vestavia Hills, Alabama**

**Fee Proposal**

<b>Tasks</b>	<b>PM</b>	<b>Engineer</b>	<b>EI/Tech</b>	<b>Clerical</b>
Design Layout / Quantity Calculations / Cost Estimate	8.0	20.0	40.0	0.0
Permitting / Coordination	2.0	4.0	4.0	2.0
Identifying Funding Sources / Preparing Grant Applications	4.0	8.0	8.0	4.0
Total Hours	14.0	32.0	52.0	6.0
Hourly Rates	\$180.00	\$145.00	\$110.00	\$65.00
Total Fee	\$2,520.00	\$4,640.00	\$5,720.00	\$390.00
Subconsultant Fee (Associated Traffic Signal Improvements)	\$7,500.00			
<b>Grand Total Fee</b>	<b>\$20,770.00</b>			

**Convert One Access of Car Dealership on Columbiana Road to Right-in / Right-out  
Vestavia Hills, Alabama**

**Fee Proposal**

<b>Tasks</b>	<b>PM</b>	<b>Engineer</b>	<b>EI/Tech</b>	<b>Clerical</b>
Design Layout / Quantity Calculations / Cost Estimate	2.0	4.0	8.0	0.0
Permitting / Coordination	2.0	4.0	4.0	2.0
Identifying Funding Sources / Preparing Grant Applications	4.0	8.0	8.0	4.0
Total Hours	8.0	16.0	20.0	6.0
Hourly Rates	\$180.00	\$145.00	\$110.00	\$65.00
Total Fee	\$1,440.00	\$2,320.00	\$2,200.00	\$390.00
<b>Grand Total Fee</b>	<b>\$6,350.00</b>			

1. **Relationship between Consultant and Client.** Neel Schaffer, Inc. ("Consultant") shall serve as the Client's professional consultant in those phases of the Project to which this Agreement applies. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other. Consultant shall not be considered to be the agent or fiduciary of the Client.
  2. **Responsibility of Consultant.** Consultant will perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions (the "Standard of Care"). No other representation, warranty or guarantee, express or implied, is included or intended in this Agreement or in any report, opinion, document, or otherwise.
  3. **Responsibility of the Client.** Client shall provide all information and criteria as to its requirements for the Project, including budgetary limitations. Client shall arrange for Consultant to enter upon public and private property and obtain all necessary approvals required from all governmental authorities having jurisdiction over the Project. Client shall give prompt written notice to Consultant whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services.
  4. **Construction Phase Services.** If Consultant's scope of services includes the observation and monitoring of work performed by Client's separate contractors, Consultant shall provide personnel to observe and monitor the work in accordance with the Standard of Care in order to ascertain that it is being performed, in general, in accordance with the plans and specifications. Consultant shall not supervise, direct, or have control over the contractor's work. Consultant shall not have authority over or responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the contractor. Consultant does not guarantee the performance of the construction contract by the contractor and does not assume responsibility for the contractor's failure to furnish and perform its work in accordance with the plans and specifications.
- In the event Consultant's scope of services does not include the observation and monitoring of work performed by Client's separate contractors, the Client assumes all responsibility for construction observation, and Client waives any claims against Consultant arising therefrom.
5. **Designation of Authorized Representatives.** Each party shall designate one or more persons to act with authority on its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the party.
  6. **Ownership of Documents.** All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form prepared by Consultant are instruments of Consultant's service that shall remain Consultant's property. The Client agrees not to use Consultant generated documents for projects other than the project for which the documents were prepared by Consultant, or for future modifications to the Project, without Consultant's express written permission. Any reuse or distribution to third parties without such express written permission or project-specific adaptation by Consultant will be at the Client's sole risk and without liability to Consultant or its employees, subsidiaries, and subconsultants.
  7. **Opinion of Costs.** When required as a part of its scope of services, Consultant will furnish opinions or estimates of construction cost on the basis of Consultant's experience and qualifications, but Consultant does not guarantee the accuracy of such estimates. The parties recognize that Consultant has no control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices.
  8. **Changes or Delays.** In the event new developments or circumstances beyond the control of Consultant require a change in the scope of services or schedule, Consultant shall be entitled to an equitable adjustment to the fee and/or schedule. Such events include, but are not limited to, unreasonable delays caused by Client's failure to provide specified direction or information, delays caused by Client's other contractors or consultants, or if Consultant's failure to perform is due to any act of God, labor shortage, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of Consultant.
  9. **Suspension of Services.** Client may, at any time, by written notice, suspend further services by Consultant. Upon receipt of such notice, Consultant shall take all reasonable steps to mitigate costs allocable to the suspended services. Client, however, shall pay all reasonable and necessary costs associated with such suspension including the cost of assembling documents, personnel and equipment, rescheduling or reassignment costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension. Consultant will not be obligated to provide

the same personnel in the event the period of any suspension exceeds 30 days.

10. **Termination.** This Agreement may be terminated by either party upon 30 days' written to the other party. Upon such termination, Client shall pay Consultant for all services performed up to the date of termination. If Client is the terminating party, Client shall pay Consultant all reasonable cost and expenses incurred by Consultant in effecting the termination, including but not limited to non-cancellable commitments and demobilization costs, if any.
  11. **Indemnification.** Consultant shall indemnify and hold harmless Client from and against those damages and costs (including reasonable attorneys' fees) that Client incurs as a result of third party claims for personal injury or property damage to the extent caused by the negligent acts, errors or omissions of Consultant.
  12. **Legal Proceedings.** In the event Consultant or its employees are required by Client to provide testimony, answer interrogatories, produce documents or otherwise provide information in relation to any litigation, arbitration, proceeding or other inquiry arising out of Consultant's services, where Consultant is not a party to such proceeding, Client will compensate Consultant for its services and reimburse Consultant for all related direct costs incurred in connection with providing such testimony or information. This provision shall not apply in the event Client engages Consultant to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.
  13. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written consent of the other party.
  14. **Insurance.** Consultant agrees to maintain the following insurance coverage with the following limits of insurance during the performance of Consultant's work hereunder:
    - (a) Commercial General Liability insurance with standard ISO coverage and available limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate;
    - (b) Automobile Liability insurance with standard ISO coverage and available combined single limits of \$1,000,000 per accident;
    - (c) Worker's Compensation insurance with limits as required by statute and Employer's Liability insurance with limits of \$1,000,000 per employee
- for bodily injury by accident/\$1,000,000 per employee for bodily injury by disease/\$1,000,000 policy limit for disease; and
- (d) Professional Liability insurance covering Consultant's negligent acts, errors, or omissions in the performance of professional services with available limits of \$1,000,000 per claim and annual aggregate.
- Consultant shall provide evidence of procuring the above insurance coverages by delivering a certificate of insurance to Client prior to the start of Consultant's work and annually upon renewal of coverage. Consultant shall cause Client to be named as an additional insured on Consultant's commercial general liability policy, which shall be primary and noncontributory.
15. **Information Provided by the Client.** Consultant shall be entitled to rely upon, without liability, the accuracy and completeness of any and all information provided by Client, without the obligation of independent verification.
  16. **Consequential Damages.** Neither Client nor Consultant shall be liable to the other or shall make any claim for any special, incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, loss of business or diminution of property value and shall apply regardless of legal theory such damages are alleged including negligence, strict liability, breach of contract and breach of warranty.
  17. **Payment.** Unless agreed to otherwise, Consultant shall submit monthly invoices to the Client. Payment in full shall be due upon receipt of the invoice. Payment of any invoices by the Client shall be taken to mean that the Client is satisfied with the Consultant's services to the date of the payment and is not aware of any deficiencies in those services. If payments are delinquent after 30 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of one percent (1%) per month. If the Client fails to make payments; then Consultant, after giving seven (7) days written notice to the Client, may suspend services until the Client has paid in full all amounts due for services, expenses, and other related charges without recourse to the Client for loss or damage caused by such suspension. The Client waives any and all claims against the Consultant for any such suspension. Payment for Consultant's services is not contingent on any factor, except the Consultant's ability to provide services in a manner consistent with that Standard of Care. Payment of invoices shall not be subject to any discounts, set-offs or back-charges unless

agreed to in writing by both parties. If the Client contests an invoice, the Client may withhold only that portion so contested and shall pay the undisputed portion, after the Client has notified Consultant in writing within 30 days of receiving the invoice and shall identify the specific cause of the disagreement and the amount in dispute.

18. **Force Majeure.** Neither Client nor Consultant shall be liable for any fault or delay caused by any contingency beyond their control, including but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. **Compliance with Laws.** To the extent they apply to its employees or its services, Consultant shall exercise due professional care to comply with all applicable laws, including ordinances of any political subdivisions or governing agencies.
20. **Invalid Terms.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding as if the unenforceable provisions were never included in the Agreement.
21. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state where the services are performed.
22. **Dispute Resolution.** All disputes, controversies or claims, of whatever kind or character, between the Parties, their agents and/or principals, arising out of or in connection with the subject matter of this Agreement shall be litigated in a court of competent jurisdiction.
23. **Additional Services.** Consultant shall be entitled to an equitable adjustment of its fee for services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, Client's schedule, construction schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or other documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond Consultant's control.
24. **Amendment.** This Agreement may only be amended in writing and where such amendment is executed by a duly authorized representatives of each party.
25. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and Consultant hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
26. **Survival of Provisions.** The provisions of this Agreement shall continue to be binding upon the parties hereto notwithstanding termination of this Agreement for any reason.
27. **Nonwaiver.** No waiver by a party of any provision of this Agreement shall be deemed to have been made unless in writing and signed by such party.
28. **Identity of Project Owner.** Within ten (10) days of the entry of this Agreement, Client, if Client is not the Project Owner, shall provide to Consultant the Project Owner's full legal name; Project Owner's physical address; Project Owner's mailing address; and the name, physical address and mailing address of the Client's point of contact with the Owner for the Project.
29. **Conflicting Terms.** In the event that there are multiple agreements with varying or conflicting terms and conditions between Client and Consultant, the terms and conditions contained in this Agreement shall supersede and have precedence over any other conflicting terms and conditions contained in any other written or oral agreement.
30. **Course of Dealing.** Client and Consultant agree that these General Terms and Conditions establish a course of dealing between them and shall apply to this and all other services, projects, agreements or dealings between the them, unless Client or Consultant gives the other written notice of objection to any term or condition before commencement of performance in connection with any other provision of services or projects involving the two of them.
31. **Professional Services in Florida.** In the event any professional services are provided within the state of Florida, it is expressly agreed by the parties that an individual design professional who is an agent or employee of consultant may not be held personally or individually liable for any damages resulting from negligence arising out of consultant's performance of this agreement, as provided in Florida Statutes Section 558.0035, as amended.
32. **Immigration.** By signing this Contract, the contracting parties affirm, for the duration of the Contract, that they

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

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

[The remainder of this page intentionally left blank]

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

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

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

December 11, 2020

By Electronic Mail

City Manager Jeffrey D. Downes  
Vestavia Hills Municipal Center  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Resolution Number 5289 Authorizing the Execution and Delivery of an Agreement By and Between the City of Vestavia Hills and Neel-Schaffer, Inc.

Dear Mr. Downes:

On December 10, 2020, Lori Beth Kearley provided me with a revised draft of the Neel-Schaffer, Inc. Consulting Services Agreement prepared by its attorney. I approve that revised draft from a legal standpoint.

Very truly yours,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: Lori Beth Kearley, P.E. (by e-mail)  
City Clerk Rebecca Leavings (by e-mail)

**RESOLUTION NUMBER 5290**

**APPOINTING A MEMBER TO THE  
VESTAVIA HILLS LIBRARY BOARD**

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

**WHEREAS,** \_\_\_\_\_ is hereby appointed as a member of the  
City of Vestavia Hills Library Board; and

**WHEREAS,** the said appointment shall be effective January 1, 2021 and shall  
expire December 31, 2024.

**APPROVED AND ADOPTED** this the 14<sup>th</sup> day of December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 5291**

**APPOINTING A MEMBER TO THE VESTAVIA HILLS  
PARKS AND RECREATION BOARD**

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

**WHEREAS,** \_\_\_\_\_ is hereby appointed as a member of the City  
of Vestavia Hills Parks and Recreation Board; and

**WHEREAS,** the appointment shall be effective January 1, 2021, and shall expire  
December 31, 2025.

**APPROVED AND ADOPTED** this the 14<sup>th</sup> day of December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 5292**

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

**WITNESSETH THESE RECITALS**

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

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

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

1. The City Manager is hereby authorized to sell or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 5292 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, APPROVED and ADOPTED** on this the 14<sup>th</sup> day of December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**VESTAVIA HILLS FIRE DEPARTMENT**

**MEMORANDUM**

TO: Jeff Downes, City Manager  
FROM: Marvin Green, Fire Chief  
DATE: November 25, 2020  
RE: Surplus Equipment

In anticipation of the new aerial apparatus in February, we have created a need to dispose of a fire engine. I recommend that the 1996 E-One Hurricane, VIN 4EN3AAA86T1005853 with the Vestavia Hills property tag#16027 be deemed as surplus and disposed.

## **RESOLUTION NUMBER 5293**

### **A RESOLUTION ACCEPTING A BID FOR SICARD HOLLOW SPORTS COMPLEX “SHAC” ATHLETIC FIELD RESURFACING – PHASE I AND AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO SECURE SAID CONSTRUCTION**

**WHEREAS**, Invitation to Bids were invited and publically read on December 8, 2020 at 10:30 AM for Sicard Hollow Sports Complex “SHAC” Athletic Field Resurfacing – Phase I with six bids received; and

**WHEREAS**, a copy of the official bid tabulation is marked as Exhibit A and is attached to and incorporated into this Resolution Number 5293 as if written fully therein; and

**WHEREAS**, recommendation was made in a letter dated September 10, 2020 from the Ed Norton, HNP Landscape Architecture, the consultant designer, recommending acceptance of the bid package submitted by SprinTurf LLC in the amount of \$708,270 on the basis of Base Bid acceptance for the removal of the existing synthetic turf, preparation and remedial work on the stone base and installation of new synthetic turf (rejecting Alternative #1), a copy of said letter is marked as Exhibit B and is attached to and incorporated into this Resolution Number 5293 as if written fully therein; and

**WHEREAS**, the City Manager and the Public Services Director have reviewed the bids and have concurred with Mr. Norton’s recommendation; and

**WHEREAS**, the Mayor and the City Council feel it is in the best interest of the public to accept said bid as recommended.

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

1. The bid submitted by SprinTurf LLC is hereby accepted as the base bid (rejecting Alternative #1); and
2. The City Manager is hereby authorized to take all actions necessary in order to secure said construction; and
3. This Resolution number 5293 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 14<sup>th</sup> day of December, 2020.

Ashley C. Curr  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

# BID TABULATION FORM

## CITY OF VESTAVIA HILLS, ALABAMA SHAC - ATHLETIC FIELD RESURFACING - PHASE I

Exhibit A - Resolution No. 5293

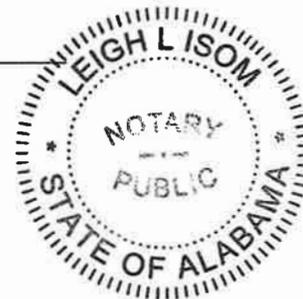
OPENING DATE AND TIME: 8 December 2020 @ 10:30am

ADD #1	BID BOND	BIDDER	BASE BID	ALTERNATE #1
X	X	FIELD TURF USA	\$867,505.00	NO BID
X	X	HELLAS CONSTRUCTION	\$890,000.00	DEDUCT \$5,000.00 \$885,000.00
X	X	SPORTURF	\$796,141.00	NO BID
X	X	SPORTS TURF COMPANY	\$805,000.00	DEDUCT \$43,500.00 \$761,500.00
X	X	SPRINTURF	\$708,270.00	DEDUCT \$83,300.00 \$624,970.00
X	X	WARNER ATHLETIC CONSTRUCTION	\$797,722.00	DEDUCT \$50,000.00 \$747,722.00

STATE OF Alabama COUNTY OF Shelby  
Subscribed and sworn to before me 8<sup>th</sup> day of Dec., 2020.

Notary Public: Leigh L. Isom

My Commission expires: 7.14.2024





8 December 2020

Brian Davis, Director of Public Services  
City of Vestavia Hills  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

Re: Sicard Hollow Sports Complex  
Athletic Field Resurfacing - Phase I

Brian:

Our office has reviewed the Bids received and opened 8 December 2020 for the referenced Project.

Our review of the Bids shows SprinTurf to be the lowest responsible Bidder. Therefore, it is our recommendation that the City accepts the SprinTurf Bid and proceeds with execution of the Contract on the basis of Base Bid acceptance for the removal of the existing synthetic turf, preparation and remedial work on the stone base, and the installation of new synthetic turf.

SprinTurf's Base Bid is below the Project Budget and the City should consider not accepting the deductive alternate and install all new infill for the Project.

Please contact me if you have any questions.

Thank you,  
HNP, LLC

A handwritten signature in black ink, appearing to read "Ed Norton", is written over a light blue horizontal line.

Ed Norton

Enclosure: Bid Tabulation

**ORDINANCE NUMBER 2985**

**AN ORDINANCE AUTHORIZING THE SETTLEMENT OF THE CASE OF JAMES J. ODOM, JR. AND CAROLYN J. ODOM, PLAINTIFFS V. THE CITY OF VESTAVIA HILLS, ALABAMA; STONE BUILDING, LLC; WILLIAMS BLACKSTOCK ARCHITECTS, P.C.; CAPRINE ENGINEERING, LLC; ET AL AND FICTITIOUS DEFENDANTS A, B & C, DEFENDANTS, BEING CIVIL ACTION NUMBER 01-CV-2020-902589.00 PRESENTLY PENDING IN THE CIRCUIT COURT FOR JEFFERSON COUNTY, ALABAMA; AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO PAY THE FUNDS DESCRIBED HEREIN AND TO TAKE ANY ACTION AND EXECUTE AND DELIVER ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE SAID SETTLEMENT.**

**THIS ORDINANCE NUMBER 2985** is approved, adopted and enacted by the City Council of the City of Vestavia Hills, Alabama on this the 14th day of December, 2020.

**WITNESSETH THESE RECITALS:**

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

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

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

**WHEREAS**, Title 11-47-24(b), *Code of Alabama, 1975*, provides that all municipal corporations of the State of Alabama are authorized to contract at governmental expense for policies of liability insurance to protect the City and its employees in the course of their employment; and

**WHEREAS**, Title 11-47-190, *Code of Alabama, 1975*, provides that municipalities may be liable for negligence; and

**WHEREAS**, Title 11-93-2, *Code of Alabama, 1975*, establishes the maximum amount of damages recoverable against governmental entities with a limit of One Hundred Thousand Dollars (\$100,000.00); and

**WHEREAS**, the City approved a construction project in 2019 for the renovation and improvements of the Cahaba Heights Athletic Complex on City property situated at 4401 Dolly Ridge Road in the City of Vestavia Hills, Alabama (the “Project”); and

**WHEREAS**, the City, as owner, engaged the following parties to work on the Project:

Stone Building, LLC as General Contractor,  
Williams Blackstock Architects, P.C. as Architect and  
Caprine Engineering, LLC as Engineer; and

**WHEREAS**, the Plaintiffs, James J. Odom, Jr. and Carolyn J. Odom own the property situated at 2707 Pruett Place, Vestavia Hills, Alabama (the “property”); and

**WHEREAS**, James J. Odom, Jr. and Carolyn J. Odom claim that the work for the Project damaged their property; and

**WHEREAS**, the case of *James J. Odom, Jr. and Carolyn J. Odom v. the City of Vestavia Hills, Alabama, et al*, (hereinafter referred to as “lawsuit”) was filed on July 20, 2020 as civil action number 01-CV-2020-902589.00 in the Circuit Court of Jefferson County, Alabama, and said lawsuit is presently pending; and

**WHEREAS**, James J. Odom, Jr. and Carolyn J. Odom, by and through their attorney of record, has offered to settle the lawsuit for the sum of Twenty-five Thousand Dollars (\$25,000.00), which is an amount less than the deductible on the City’s general comprehensive liability policy; and

**WHEREAS**, if the City of Vestavia Hills, Alabama agrees to pay a total of Six Thousand and No/100 Dollars (\$6,000.00) in settlement of this lawsuit, then in such event the other Defendants will pay the remaining Nineteen Thousand and No/100 Dollars (\$19,000.00) in settlement thereof as follows:

Stone Building, LLC	\$ 6,330.00
Williams Blackstock Architects, P.C.	5,000.00
Caprine Engineering, LLC	<u>7,670.00</u>
Total	\$19,000.00

**WHEREAS**, attorney J. Bentley Owens, III, legal counsel of record representing the City in the lawsuit, and City Attorney Patrick H. Boone, by letter dated December 14, 2020, have recommended that the City accept the Plaintiffs' offer of settlement in the amount of Twenty-five Thousand Dollars (\$25,000.00) and pay a part of that settlement in the amount of Six Thousand Dollars (\$6,000.00); and

**WHEREAS**, a copy of the letter, dated December 14, 2020, from City Attorney Patrick H. Boone and J. Bentley Owens, III is attached hereto, marked as Exhibit A and is incorporated into this ordinance by reference as though set out fully herein.

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

1. The recitals set forth in the premises above are hereby incorporated into this ordinance by reference as though set out fully herein.

2. The City Manager and Mayor are hereby authorized and directed to settle the lawsuit described in the premises above pursuant to the written recommendation of City Attorney Patrick H. Boone and special legal counsel and attorney of record, J. Bentley Owens, III, pursuant to the terms, provisions and conditions hereinafter set forth below.

3. The total amount of settlement to be paid by and/or for and on behalf of the City of Vestavia Hills, Alabama ("City") shall be the sum of Six Thousand Dollars (\$6,000.00).

4. The lawsuit against the City and all Defendants named in the lawsuit shall be dismissed with prejudice.

5. The Plaintiffs shall forever discharge and release all of the named Defendants in the lawsuit from any and all damages arising out of the incident made the basis of this lawsuit and shall make no claim for any attorney fee whatsoever against the Defendants.

6. The Mayor and City Manager are hereby authorized and directed to pay the funds described in section 3 above and to take any action and execute and deliver any and all documents necessary to effectuate said settlement.

7. The settlement authorized herein is a compromise, adjustment and settlement of a doubtful and disputed claim and the payment of the sum recited in section 3 above is not an admission of liability by the City of Vestavia Hills, Alabama or any of its public officials or public employees and the City expressly denies liability.

8. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the

remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

9. The provisions of this Ordinance Number 2985 shall become effective immediately upon the passage, approval and adoption thereof by the City Council of the City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

**ORDAINED, APPROVED, ADOPTED, DONE and ORDERED** on this the 14th day of December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY

Rebecca Leavings  
City Clerk

**CERTIFICATION OF CITY CLERK**

**STATE OF ALABAMA    )**  
**JEFFERSON COUNTY    )**

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an ordinance duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 14th day of December, 2020 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this 14th day of December, 2020.

---

Rebecca Leavings, City Clerk

**EXHIBIT A**

**RECOMMENDATION FOR SETTLEMENT OF LAWSUIT**

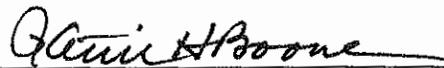
**TO:** City Manager Jeffrey D. Downes

**FROM:** City Attorney Patrick H. Boone and  
Special Legal Counsel J. Bentley Owens, III

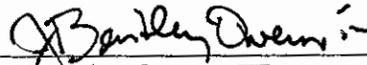
**DATE:** December 14, 2020

**IN RE:** James J. Odom, Jr. and Carolyn J. Odom, Plaintiffs v. the City of Vestavia Hills, Alabama; Stone Building, LLC; Williams Blackstock Architects, P.C.; Caprine Engineering, LLC; and Fictitious Defendants A, B & C, Defendants  
Jefferson County Circuit Court Case No. 01-CV-2020-902589.00

The Plaintiffs, by and through their attorney, have offered to settle the above lawsuit upon payment by the City for Six Thousand Dollars (\$6,000.00). We recommend that the City Council accept the offer of settlement all in accordance with the terms and provisions of Ordinance Number 2985.



Patrick H. Boone  
City Attorney



J. Bentley Owens, III  
Special Legal Counsel

**ORDINANCE NUMBER 2984**

**AN ORDINANCE TO ACKNOWLEDGE AND AUTHORIZE THE RECEIPT OF A CHARITABLE DONATION OF REAL ESTATE TO THE CITY OF VESTAVIA HILLS, ALABAMA; TO AUTHORIZE AND DIRECT THE EXECUTION AND DELIVERY OF DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE FORMS 8283; AND TO THANK THE DONORS FOR SUCH A WONDERFUL GIFT.**

**THIS ORDINANCE NUMBER 2984** is considered, approved, enacted and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 14th day of December, 2020.

**WITNESSETH THESE RECITALS:**

**WHEREAS**, Nall Partnership, Ltd., Wesley L. Burnham, Jr., Peggy Burnham, Jeffery S. Burnham and Stacy Burnham Trepanier are the present owners (“owners”) of approximately 12.82± acres situated in Jefferson County and Shelby County, Alabama, which at one time constituted a part of the Altadena Country Club golf course (the “Property”); and

**WHEREAS**, the Property has an actual value of Three Million Seven Hundred Twenty-five Thousand Dollars (\$3,725,000.00); and

**WHEREAS**, the City of Vestavia Hills, Alabama, a municipal corporation (“City”), is a charitable organization within the meaning of Section 170(c) of the *Internal Revenue Code*; and

**WHEREAS**, the owners of the Property, intend to make a charitable donation of the Property to the City on or before the end of calendar year 2020; and

**WHEREAS**, the owners own the following interests in and to the Property to be donated by them to the City of Vestavia Hills, Alabama:

<u>Name</u>	<u>Ownership Interest</u>	<u>Value of Interest</u>	<u>Exhibit No. IRS Form 8283</u>
Nall Partnership, Ltd.	50 %	\$1,862,500.00	Exhibit 2
Wesley Burnham, Jr.	5 %	186,250.00	Exhibit 3
Peggy Burnham	10 %	372,500.00	Exhibit 4
Jeffery S. Burnham	17.5%	651,875.00	Exhibit 5
Stacy Burnham Trepanier	<u>17.5%</u>	<u>651,875.00</u>	Exhibit 6
	100 %	\$3,725,000.00; and	

**WHEREAS**, the conveyance of the Property by the owners to the City will be made by Statutory Warranty Deed, a copy of which is attached hereto, marked as Exhibit 1 and is incorporated into this ordinance by reference as though set out fully herein; and

**WHEREAS**, the legal description of the Property is more particularly described in the Statutory Warranty Deed marked as Exhibit 1; and

**WHEREAS**, the City Manager is hereby authorized and directed by the City Council to accept the charitable gift of said Property; and

**WHEREAS**, the City Manager and Mayor are hereby authorized and directed to execute and deliver the Department of Treasury Internal Revenue Service Form 8283 to acknowledge a noncash charitable contribution donated by Nall Partnership, Ltd. in the amount of One Million Eight Hundred Sixty-two Thousand Five Hundred Dollars (\$1,862,500.00), a copy of which is attached hereto, marked as Exhibit 2 and is incorporated into this ordinance by reference as though set out fully herein; and

**WHEREAS**, the City Manager and Mayor are hereby authorized and directed to execute and deliver the Department of Treasury Internal Revenue Service Form 8283 to acknowledge a noncash charitable contribution donated by Wesley L. Burnham, Jr. in the amount of One Hundred Eighty-six Thousand Two Hundred Fifty Dollars (\$186,250.00), a copy of which is attached hereto, marked as Exhibit 3 and is incorporated into this ordinance by reference as though set out fully herein; and

**WHEREAS**, the City Manager and Mayor are hereby authorized and directed to execute and deliver the Department of Treasury Internal Revenue Service Form 8283 to acknowledge a noncash charitable contribution donated by Peggy Burnham in the amount of Three Hundred Seventy-two Thousand Five Hundred Dollars (\$372,500.00), a copy of which is attached hereto, marked as Exhibit 4 and is incorporated into this ordinance by reference as though set out fully herein; and

**WHEREAS**, the City Manager and Mayor are hereby authorized and directed to execute and deliver the Department of Treasury Internal Revenue Service Form 8283 to acknowledge a noncash charitable contribution donated by Jeffery Burnham in the amount of Six Hundred Fifty-one Thousand Eight Hundred Seventy-five Dollars (\$651,875.00), a copy of which is attached hereto, marked as Exhibit 5 and is incorporated into this ordinance by reference as though set out fully herein; and

**WHEREAS**, the City Manager and Mayor are hereby authorized and directed to execute and deliver the Department of Treasury Internal Revenue Service Form 8283 to acknowledge a noncash charitable contribution donated by Stacy Burnham Trepanier in the amount of Six Hundred Fifty-one Thousand Eight Hundred Seventy-five Dollars (\$651,875.00), a copy of which is attached hereto, marked as Exhibit 6 and is incorporated into this ordinance by reference as though set out fully herein; and

**WHEREAS**, the delivery of Exhibits 2, 3, 4, 5 and 6 by the City to the owners shall be made concurrently with the delivery of Exhibit 1 by the owners to the City; and

**WHEREAS**, the execution and delivery of the documents referred to as Exhibits 1, 2, 3, 4, 5 and 6 shall be done prior to midnight on December 31, 2020.

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

1. The recitals set forth in the premises above are hereby incorporated into this ordinance by reference as though set out fully herein.

2. The City Manager and Mayor are hereby authorized and directed to accept the duly executed Statutory Warranty Deed marked as Exhibit 1.

3. The City Manager and Mayor are hereby authorized and directed to execute and deliver Exhibits 2, 3, 4, 5 and 6 concurrently with the delivery of Exhibit 1 by the owners to the City.

4. The Statutory Warranty Deed marked as Exhibit 1 shall be filed for record in the offices of the Judge of Probate of Jefferson County and Shelby County, Alabama.

5. The City Council, by the approval, adoption and enactment of this ordinance, thanks the owners, Nall Partnership, Ltd., Wesley L. Burnham, Jr., Peggy Burnham, Jeffery S. Burnham and Stacy Burnham Trepanier for such generous gifts of the Property.

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

7. The provisions of this Ordinance Number 2984 shall become effective immediately upon the passage, approval and adoption thereof by the City Council of the

City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

**ORDAINED, APPROVED, ADOPTED, DONE and ORDERED** on this the 14th day of December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY

Rebecca Leavings  
City Clerk

**CERTIFICATION OF CITY CLERK**

**STATE OF ALABAMA    )**  
**JEFFERSON COUNTY    )**

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an ordinance duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 14th day of December, 2020 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this 14th day of December, 2020.

---

Rebecca Leavings, City Clerk

Send tax notice to:  
City of Vestavia Hills, Alabama  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

This instrument prepared by:  
Stephen R. Monk  
Bradley Arant Boult Cummings LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2104

STATE OF ALABAMA )  
 )  
COUNTIES OF JEFFERSON AND SHELBY )

STATUTORY WARRANTY DEED

**KNOW ALL MEN BY THESE PRESENTS:**

That in consideration of a charitable donation and other good and valuable consideration in hand paid to NALL PARTNERSHIP, LTD., an Alabama limited partnership, and WESLEY L. BURNHAM, JR., a married person, and Peggy Burnham, a married person, Jeffery S. Burnham, a married person and Stacy Burnham Trepanier, a married person (“Grantors”) whose address is 119 Euclid Avenue, Birmingham, Alabama 35213, by CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation (“Grantee”), whose address is 1032 Montgomery Highway, Vestavia Hills, Alabama 35216, the receipt and sufficiency of which are hereby acknowledged, Grantors do hereby grant, bargain, sell, and convey unto Grantee, subject to the matters hereinafter set forth, the real estate (the “Property”) located in Jefferson and Shelby Counties, Alabama, and more particularly described on *Exhibit “A”* attached hereto.

Grantors hereby certify that the Property does not constitute their homestead (as defined by Section 6-10-2, et seq, of the Code of Alabama, 1975).

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever; subject, however, to the exceptions, reservations, and matters shown on Exhibit B attached hereto.

***[SIGNATURES ON FOLLOWING PAGES]***

**EXHIBIT 1**

\_\_\_\_\_  
Wesley L. Burnham, Jr.  
by: Stacy Burnham Trepanier, attorney-in-fact

STATE OF FLORIDA     )  
                                  :  
BAY COUNTY            )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Stacy Burnham Trepanier, attorney-in-fact for Wesley L. Burnham, Jr., whose name is signed to the foregoing Deed and who is known to me, acknowledged before me on this day that, being informed of the contents of said Deed, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 30<sup>th</sup> day of November, 2020.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Peggy Burnham  
by: Stacy Burnham Trepanier, attorney-in-fact

STATE OF FLORIDA     )  
                                  :  
BAY COUNTY            )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Stacy Burnham Trepanier, attorney-in-fact for Peggy Burnham, whose name is signed to the foregoing Deed and who is known to me, acknowledged before me on this day that, being informed of the contents of said Deed, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 30<sup>th</sup> day of November, 2020.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Jeffery S. Burnham  
Jeffery S. Burnham

STATE OF FLORIDA     )  
                                  :  
BAY COUNTY            )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jeffery S. Burnham, whose name is signed to the foregoing Deed and who is known to me, acknowledged before me on this day that, being informed of the contents of said Deed, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 30<sup>th</sup> day of November, 2020.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT A****The Property****(1) ESTATE LOT A**

A parcel of land situated in the NW 1/4 of the NE 1/4 of Section 4, Township 19 South, Range 2 West, Shelby County, Alabama and Part of a Resurvey of Nyosle Property East of Acton Road as recorded in Map Book 168, Page 18 in the Probate Office of Jefferson County, Alabama being more particularly described as follows:

Commence at a 1/2" open pipe at the SW corner of the NW 1/4 of the NE 1/4 of Section 4, Township 19 South, Range 2 West, Shelby County, Alabama ; thence N 00°20'17 " W along the west line of said 1/4-1/4 section a distance of 352.31 feet to a 5/8" rebar capped Hager, said point also being the POINT OF BEGINNING ; thence N 00°04'13" E along the west line of said 1/4-1/4 section a distance of 156.84 feet to a 5/8" rebar; thence N 29°46'38" W leaving said 1/4-1/4 line a distance of 182.12 feet to a 5/8" rebar capped Hager on the southeastern right-of-way of Acton Road, said point also being on a curve to the left having a central angle of 00°21'39 " and a radius of 7689.44 feet, said curve subtended by a chord bearing N 32°52'55 " E and a chord distance of 48.43 feet; thence along the arc of said curve and along said right-of-way a distance of 48.43 feet to a rebar capped EDG; thence N 32°42'05" E along said right-of-way a distance of 52.86 feet to a rebar capped EDG; thence S 56°10 '05" E leaving said right-of-way a distance of 101.05 feet to a 1" Crimp on the western line of Lot 9 of Altadena Valley Country Club Sector as recorded in Map Book 4 Page 71 in the Office of the Judge of Probate in Shelby County, Alabama and Map Book 66 Page 39 in the Office of the Judge of Probate in Jefferson County , Alabama; thence S 00°20'30" E along the west line of Lots 9 and 8 a distance of 257.90 feet to a 1" crimp at the SW corner of Lot 8; thence N 89°59'07" E along the south line of Lot 8 a distance of 203.53 feet to a 5/8" rebar capped Robert Blain at the SE corner of Lot 8; thence S 59°36'04" E along the southwestern line of Lot 7 a distance of 78.08 feet to a 5/8" rebar at the SW corner of Lot 7; thence S 52°35'38" E a distance of 142.92 feet to a point; thence S 42°44 '49" W a distance of 289.61 feet the centerline of a un-named tributary to the Cahaba River as described in instrument number 20020710000318550 in the Office of the Judge of Probate in Shelby County, Alabama; thence N 24°08'01" W along the centerline of said tributary a distance of 140.28 feet to a point; thence N 55°17'52" W along said centerline a distance of 219.60 feet to the POINT OF BEGINNING.

Less and except any property conveyed to Jefferson County, Alabama in Inst. No. 20020508000217420 corrected in Inst. No. 2002071000318550

**(2) O AND I PARCELS A AND B****O AND I PARCEL A**

A parcel of land situated in the SW 1/4 of the SE 1/4 in Section 33, Township 18 South, Range 2 West and the NW 1/4 of the NE 1/4 Section 4, Township 19 South , Range 2 West, Shelby County, Alabama and the NE 1/4 of the NW 1/4 of Section 4, Township 19 South , Range 2 West, Jefferson County, Alabama and part of Nyesle Property east of Acton Road survey as recorded in Map Book 168, Page 18, being more particularly described as follows:

BEGIN at a 1" crimp at the NE corner of Lot 17 of Altadena Valley Country Club Sector as recorded in Map Book 4 Page 71 in the Office of the Judge of Probate in Shelby County, Alabama and Map Book 66 Page 39 in the Office of the Judge of Probate in Jefferson County , Alabama; thence S 42°47'55" W along the northwestern line of Lot 17 a distance of 263.37 feet to a 1" open pipe at the SW corner of Lot 17; thence S 43°16'06 " W along the northwestern line of Lot 16 a distance of 76.33 feet to a 1" open pipe at the SW corner Lot 16; thence S 43°02'14" W along the northwestern line of Lot 15 a distance of 66.63

feet to a 5/8" rebar capped LDW at the SW corner of Lot 15; thence S 43°32'41"W along the northwestern line of Lot 14 a distance of 115.14 feet to a rebar capped EDG at the SW corner of Lot 14; thence S 31°14'26" W along the northwestern line of Lots 13 and 12 a distance of 261.37 feet to a 1" crimp at the SW corner of Lot 12; thence S 31°27'59" W along the northwestern line of Lot 11 a distance of 118.27 feet to a 1" open pipe at the SW corner of Lot 11; thence S 37°37'56" W along the northwestern line of Lot 10 a distance of 117.80 feet to a 1" crimp at the SW corner of Lot 10; thence S 37°19'38" W along the northwestern line of Lot 9 a distance of 89.09 feet to a 1" crimp; thence N 56°10'05" E a distance of 101.05 feet to a rebar capped EDG on the southeastern right-of-way of Acton Road; thence N 57°32'37" W along said right-of-way a distance of 9.98 feet to a rebar capped EDG; thence N 32°09'30" E along said right-of-way a distance of 77.23 feet to a 1/2" rebar; thence N 01°54' 10" W along said right-of-way a distance of 18.78 feet to a 1" crimp ; thence N 33°18'55" E along said right-of-way a distance of 318.67 feet to a rebar capped EDG at the point of curve to the left having a central angle of 09°54'07" and a radius of 1353.32 feet said curve subtended by a chord bearing N 28°21'52 " E and a chord distance of 233.59 feet ; thence along the arc of said curve and along said right-of-way a distance of 233.88 feet to a 1" crimp; thence N 23°24'49 " E along said right-of-way a distance of 141.98 feet to a 3/4" crimp at the point of curve to the right having a central angle of 40°23'15" and a radius of 405.01 feet said curve subtended by a chord bearing N 43°30'25" E and a chord distance of 279.62 feet ; thence along the arc of said curve and along said right-of-way a distance of 285.49 feet to a rebar capped EDG; thence N 63°42'02" E along said right-of-way a distance of 34.08 feet to a rebar capped EDG at the point of curve to the left having a central angle of 19°08'51 " and a radius of 324.93 feet , said curve subtended by a chord bearing N 54°07'37" E and a chord distance of 108.08 feet , thence along the arc of said curve and along said right-of-way a distance of 108.59 feet to a rebar capped EDG at the intersection of said right-of-way and the southwestern right-of-way of Altavista Circle; thence S 32°49'35 " E leaving Acton Road capped EDG at the point of curve to the right having a central angle of 23°07'34" and a radius of 260.44 feet , said curve subtended by a chord bearing S 21°15'48" E and a chord distance of 104.41 feet; thence along the arc of said curve and along said right-of-way a distance of 105.12 feet to the POINT OF BEGINNING.

AND ALSO THE FOLLOWING PARCEL:

O AND I PARCEL B

A parcel of land situated in the SE 1/4 of the SE 1/4 and the SW 1/4 of the SE 1/4 of Section 33, Township 18 South, Range 2 West, Jefferson County, Alabama being more particularly described as follows:

BEGIN at a 1" crimp at the NW corner of Lot 22 of Altadena Valley Country Club Sector as recorded in Map Book 4 Page 71 in the Office of the Judge of Probate in Shelby County, Alabama and Map Book 66 Page 39 in the Office of the Judge of Probate in Jefferson County , Alabama; thence S 31°14'06" W along the northwestern line of Lot 22 a distance of 126.89 feet to a 1" crimp ; thence S 31°28'22" W along the northwestern line of Lots 21,20, and 19 a distance of 356.60 feet to a rebar capped EDG on the northeastern right-of-way of Altavista Circle, said point also being on a curve to the left having a central angle of 15°29'24" and a radius of 310.44 feet, said curve subtended by a chord bearing N 25°04'53" W and a chord distance of 83.67 feet; thence along the arc of said curve and along said right-of-way a distance of 83.93 feet to a rebar capped EDG; thence N 32°49'35" W along said right-of-way a distance of 89.75 feet to a rebar capped EDG at the intersection of said right-of-way and the southeastern right-of-way of Acton Road, said point also being on a curve to the left having a central angle of 17°32'58" and a radius of 324.93 feet, said curve subtended by a chord bearing N 26°32'13" E and a chord distance of 99.14 feet; thence along the arc of said curve leaving Altavista Circle right-of-way and along the southeastern right-of-way of Acton Road a distance of 99.52 feet to a rebar capped EDG; thence N 17°45'46" E along said right-of-way a distance of 45.49 feet to a 1" open pipe at the point of curve to the right having a central angle of 09°58'56" and a radius of 774.14 feet said curve subtended by a chord bearing N 22°42'37" E and a chord distance of 134.70 feet; thence along the arc of said curve and along said right-of-way a distance of 134.87 feet to a 1/2" open pipe; thence N 27°48'27" E along said right-of-way a distance of 229.76 feet to a rebar capped EDG at the point of curve to the right having a central

angle of  $03^{\circ}20'09''$  and a radius of 994.63 feet, said curve subtended by a chord bearing  $N 29^{\circ}28'31'' E$  and a chord distance of 57.90 feet; thence along the arc of said curve and along said right-of-way a distance of 57.91 feet to a  $3/4''$  crimp; thence  $N 31^{\circ}06'17'' E$  along said right-of-way a distance of 174.77 feet to a  $1''$  crimp at the point of curve to the right having a central angle of  $57^{\circ}26'47''$  and a radius of 297.62 feet, said curve subtended by a chord bearing  $N 59^{\circ}49'40'' E$  and a chord distance of 286.06 feet; thence along the arc of said curve and along said right-of-way a distance of 298.40 feet to a  $1''$  crimp; thence  $N 88^{\circ}54'45'' E$  along said right-of-way a distance of 210.37 feet to a rebar capped EDG at the point of non-tangent curve to the right having a central angle of  $06^{\circ}26'15''$  and a radius of 427.46 feet, said curve subtended by a chord bearing  $S 72^{\circ}16'15'' E$  and a chord distance of 48.00 feet; thence along the arc of said curve and along said right-of-way a distance of 48.03 feet to a rebar capped EDG; thence  $S 20^{\circ}56'53'' W$  along said right-of-way a distance of 25.00 feet to a rebar capped EDG; thence  $S 26^{\circ}37'35'' W$  leaving said right-of-way a distance of 90.63 feet to a point; thence  $S 36^{\circ}23'28'' W$  a distance of 220.00 feet to a point; thence  $S 46^{\circ}27'16'' W$  a distance of 55.86 feet to a point; thence  $S 53^{\circ}14'05'' W$  a distance of 353.04 feet to the POINT OF BEGINNING.

## EXHIBIT B

### Title Exceptions

1. Ad valorem taxes for 2021 and subsequent years
2. Title to all minerals and subsurface interests within and underlying the premises which have been previously conveyed or otherwise severed from the surface, together with all mining rights and other rights, privileges and immunities relating thereto, including release of damages, it being the intention of Grantors to convey to Grantee, without warranty, only such mineral and subsurface interests to which Grantor has title, if any.
3. All matters of record in the Office of the Judge of Probate of Jefferson County, Alabama.
4. All matters which would be revealed by an accurate survey or inspection of the Property.



Form **8283**  
 (Rev. November 2019)  
 Department of the Treasury  
 Internal Revenue Service

**Noncash Charitable Contributions**

▶ **Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over \$500 for all contributed property.**  
 ▶ **Go to [www.irs.gov/Form8283](http://www.irs.gov/Form8283) for instructions and the latest information.**

OMB No. 1545-0908

Attachment Sequence No. **155**

Name(s) shown on your income tax return

**Nail Partnership, Ltd.**

Identifying number  
**63-0820108**

Note: Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

**Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities**—List in this section **only** an item (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities and certain other property even if the deduction is more than \$5,000 (see instructions).

**Part I Information on Donated Property**—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description and condition of donated property (For a vehicle, enter the year, make, model, and mileage. For securities and other property, see instructions.)
A	N/A	<input type="checkbox"/>	
B		<input type="checkbox"/>	
C		<input type="checkbox"/>	
D		<input type="checkbox"/>	
E		<input type="checkbox"/>	

Note: If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A						
B						
C						
D						
E						

**Part II Partial Interests and Restricted Use Property**—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

- 2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ N/A  
 If Part II applies to more than one property, attach a separate statement.
- b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ \_\_\_\_\_  
 (2) For any prior tax years ▶ \_\_\_\_\_
- c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):  
 Name of charitable organization (donee) \_\_\_\_\_  
 Address (number, street, and room or suite no.) N/A  
 City or town, state, and ZIP code \_\_\_\_\_
- d For tangible property, enter the place where the property is located or kept ▶ N/A
- e Name of any person, other than the donee organization, having actual possession of the property ▶ N/A

- 3a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? 

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>
- b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? 

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------
- c Is there a restriction limiting the donated property for a particular use? 

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 62299J

Form **8283** (Rev. 11-2019)

Name(s) shown on your income tax return: **Nall Partnership, Ltd.** Identifying number: **63-0820108**

**Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable In Section A)**—Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is generally required for items reportable in Section B. See instructions.

**Part I Information on Donated Property**

4 Check the box that describes the type of property donated.

- a  Art\* (contribution of \$20,000 or more)
- b  Qualified Conservation Contribution
- c  Equipment
- d  Art\* (contribution of less than \$20,000)
- e  Other Real Estate
- f  Securities
- g  Collectibles\*\*
- h  Intellectual Property
- i  Vehicles
- j  Other

\*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

\*\*Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note: In certain cases, you must attach a qualified appraisal of the property. See instructions.

5	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If any tangible personal property or real property was donated, give a brief summary of the overall physical condition of the property at the time of the gift	(c) Appraised fair market value
A	13 Acres +/- in Jefferson and Shelby		
B	Counties, City of Vestavia Hills, Alabama		
C	Legal description attached		
D			

	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	See Instructions	
					(h) Amount claimed as a deduction	(i) Date of contribution
A	Pre 1990	Purchases	\$13,554.50		\$1,862,500.00	September, 2020
B						
C						
D						

**Part II Taxpayer (Donor) Statement**—List each item included in Part I above that the appraisal identifies as having a value of \$500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than \$500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions. ▶

Signature of taxpayer (donor) ▶ *Wallace Nall Jr* Date ▶ 12/4/2020

**Part III Declaration of Appraiser**

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons. Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6895A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).

Sign Here Signature ▶ *Daniel Losh* Title ▶ Director Date ▶ 12/4/2020

Business address (including room or suite no.) 1 Chase Corporate Drive, Suite 415 Identifying number G00129

City or town, state, and ZIP code Birmingham, AL 35244

**Part IV Donee Acknowledgment**—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ▶ September, 2020

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? ▶  Yes  No

Name of charitable organization (donee)	Employer identification number
Address (number, street, and room or suite no.)	City or town, state, and ZIP code
Authorized signature	Title Date

Form **8283**  
 (Rev. November 2019)  
 Department of the Treasury  
 Internal Revenue Service

**Noncash Charitable Contributions**

▶ Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over \$500 for all contributed property.  
 ▶ Go to [www.irs.gov/Form8283](http://www.irs.gov/Form8283) for instructions and the latest information.

OMB No. 1545-0008

Attachment Sequence No. **155**

Name(s) shown on your income tax return  
**Wesley L. Burnham, Jr.**

Identifying number  
**420-40-6691**

Note: Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

**Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities**—List in this section only an item (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities and certain other property even if the deduction is more than \$5,000 (see instructions).

**Part I Information on Donated Property**—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description and condition of donated property (For a vehicle, enter the year, make, model, and mileage. For securities and other property, see instructions.)
A	N/A	<input type="checkbox"/>	
B		<input type="checkbox"/>	
C		<input type="checkbox"/>	
D		<input type="checkbox"/>	
E		<input type="checkbox"/>	

Note: If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A						
B						
C						
D						
E						

**Part II Partial Interests and Restricted Use Property**—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ N/A  
 if Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ \_\_\_\_\_  
 (2) For any prior tax years ▶ \_\_\_\_\_

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):

Name of charitable organization (donee) \_\_\_\_\_

Address (number, street, and room or suite no.) N/A

City or town, state, and ZIP code \_\_\_\_\_

d For tangible property, enter the place where the property is located or kept ▶ N/A

e Name of any person, other than the donee organization, having actual possession of the property ▶ N/A

3a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? . . . . . 

Yes	No

b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? . . . . . 


c Is there a restriction limiting the donated property for a particular use? . . . . . 


For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 62299J

Form **8283** (Rev. 11-2019)

Name(s) shown on your income tax return: **Wesley L. Burnham, Jr.** Identifying number: **420-40-6691**

**Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable in Section A)**—Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is generally required for items reportable in Section B. See instructions.

**Part I Information on Donated Property**

- 4 Check the box that describes the type of property donated.
- a  Art\* (contribution of \$20,000 or more)
  - b  Qualified Conservation Contribution
  - c  Equipment
  - d  Art\* (contribution of less than \$20,000)
  - e  Other Real Estate
  - f  Securities
  - g  Collectibles\*\*
  - h  Intellectual Property
  - i  Other
  - j  Vehicles

\*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

\*\*Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note: In certain cases, you must attach a qualified appraisal of the property. See instructions.

5	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If any tangible personal property or real property was donated, give a brief summary of the overall physical condition of the property at the time of the gift	(c) Appraised fair market value
A	13 Acres +/- in Jefferson and Shelby		
B	Counties, City of Vestavia Hills, Alabama		
C	Legal description attached		
D			

	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	(h) Amount claimed as a deduction	(i) Date of contribution
A	Pre 1990	Purchases	\$ 1,355.45		\$186,250.00	December 14, 2020
B						
C						
D						

**Part II Taxpayer (Donor) Statement**—List each item included in Part I above that the appraisal identifies as having a value of \$500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than \$500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions. ▶

*Stacy Trepanier*

Signature of taxpayer (donor) ▶ Wesley L. Burnham, Jr., by Stacy Burnham Trepanier, attorney-in-fact Date ▶ 12/4/2020

**Part III Declaration of Appraiser**

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).

Sign Here Signature ▶ *Daniel Lusk* Title ▶ Director Date ▶ 12/4/2020

Business address (including room or suite no.): 1 Chase Corporate Drive, Suite 415 Identifying number: G00129

City or town, state, and ZIP code: Birmingham, AL 35244

**Part IV Donee Acknowledgment**—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ▶ December 14, 2020

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? ▶  Yes  No

Name of charitable organization (donee)	Employer identification number
Address (number, street, and room or suite no.)	City or town, state, and ZIP code
Authorized signature	Title
	Date

Form **8283**  
 (Rev. November 2019)  
 Department of the Treasury  
 Internal Revenue Service

**Noncash Charitable Contributions**

▶ Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over \$500 for all contributed property.  
 ▶ Go to [www.irs.gov/Form8283](http://www.irs.gov/Form8283) for instructions and the latest information.

OMB No. 1545-0008

Attachment Sequence No. **155**

Name(s) shown on your income tax return

Peggy Burnham

Identifying number

418-56-7816

Note: Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

**Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities**—List in this section only an item (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities and certain other property even if the deduction is more than \$5,000 (see instructions).

**Part I Information on Donated Property**—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description and condition of donated property (For a vehicle, enter the year, make, model, and mileage. For securities and other property, see instructions.)
A	N/A	<input type="checkbox"/>	
B		<input type="checkbox"/>	
C		<input type="checkbox"/>	
D		<input type="checkbox"/>	
E		<input type="checkbox"/>	

Note: If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A						
B						
C						
D						
E						

**Part II Partial Interests and Restricted Use Property**—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ N/A  
 If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ \_\_\_\_\_  
 (2) For any prior tax years ▶ \_\_\_\_\_

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):

Name of charitable organization (donee)

N/A

Address (number, street, and room or suite no.)

City or town, state, and ZIP code

d For tangible property, enter the place where the property is located or kept ▶ N/A

e Name of any person, other than the donee organization, having actual possession of the property ▶ N/A

3a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? . . . . . 

Yes	No

b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? . . . . . 


c Is there a restriction limiting the donated property for a particular use? . . . . . 


Name(s) shown on your income tax return **Peggy Burnham** Identifying number **418-56-7816**

**Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable in Section A)**—Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is generally required for items reportable in Section B. See instructions.

**Part I Information on Donated Property**

4 Check the box that describes the type of property donated.

- a  Art\* (contribution of \$20,000 or more)
- b  Qualified Conservation Contribution
- c  Equipment
- d  Art\* (contribution of less than \$20,000)
- e  Other Real Estate
- f  Securities
- g  Collectibles\*\*
- h  Intellectual Property
- i  Vehicles
- j  Other

\*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

\*\*Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note: In certain cases, you must attach a qualified appraisal of the property. See instructions.

5	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If any tangible personal property or real property was donated, give a brief summary of the overall physical condition of the property at the time of the gift	(c) Appraised fair market value
A	13 Acres +/- in Jefferson and Shelby		
B	Counties, City of Vestavia Hills, Alabama		
C	Legal description attached		
D			

	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	See Instructions (h) Amount claimed as a deduction	(i) Date of contribution
A	Pre 1990	Purchases	\$ 2,710.90		\$372,500.00	December 14, 2020
B						
C						
D						

**Part II Taxpayer (Donor) Statement**—List each item included in Part I above that the appraisal identifies as having a value of \$500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than \$500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions. ▶

Signature of taxpayer (donor) ▶ *Peggy Burnham*, by *Stacy Burnham Trepanier*, attorney-in-fact Date ▶ *12/4/2020*

**Part III Declaration of Appraiser**

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).

Sign Here Signature ▶ *Paul Leach* Title ▶ Director Date ▶ 12/4/2020

Business address (including room or suite no.) 1 Chase Corporate Drive, Suite 415 Identifying number G00129

City or town, state, and ZIP code Birmingham, AL 35244

**Part IV Donee Acknowledgment**—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ▶ December 14, 2020

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use?  Yes  No

Name of charitable organization (donee)	Employer identification number	
Address (number, street, and room or suite no.)	City or town, state, and ZIP code	
Authorized signature	Title	Date

Form **8283**  
 (Rev. November 2019)  
 Department of the Treasury  
 Internal Revenue Service

**Noncash Charitable Contributions**

▶ Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over \$500 for all contributed property.  
 ▶ Go to [www.irs.gov/Form8283](http://www.irs.gov/Form8283) for instructions and the latest information.

OMB No. 1545-0908

Attachment Sequence No. **155**

Name(s) shown on your income tax return

Jeffery S. Burnham

Identifying number

263-51-2525

**Note:** Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

**Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities**—List in this section **only** an item (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities and certain other property even if the deduction is more than \$5,000 (see instructions).

**Part I Information on Donated Property**—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description and condition of donated property (For a vehicle, enter the year, make, model, and mileage. For securities and other property, see instructions.)
A	N/A	<input type="checkbox"/>	
B		<input type="checkbox"/>	
C		<input type="checkbox"/>	
D		<input type="checkbox"/>	
E		<input type="checkbox"/>	

**Note:** If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A						
B						
C						
D						
E						

**Part II Partial Interests and Restricted Use Property**—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ N/A  
 If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ \_\_\_\_\_  
 (2) For any prior tax years ▶ \_\_\_\_\_

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):

Name of charitable organization (donee)

N/A

Address (number, street, and room or suite no.)

City or town, state, and ZIP code

d For tangible property, enter the place where the property is located or kept ▶ N/A

e Name of any person, other than the donee organization, having actual possession of the property ▶ N/A

3a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? . . . . .

Yes	No

b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? . . . . .

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c Is there a restriction limiting the donated property for a particular use? . . . . .

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For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 62299J

Form **8283** (Rev. 11-2019)

Name(s) shown on your income tax return **Jeffery S. Burnham** Identifying number **263-51-2525**

**Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable in Section A)**—Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is generally required for items reportable in Section B. See instructions.

**Part I Information on Donated Property**

- 4 Check the box that describes the type of property donated.
- a  Art\* (contribution of \$20,000 or more)
  - b  Qualified Conservation Contribution
  - c  Equipment
  - d  Art\* (contribution of less than \$20,000)
  - e  Other Real Estate
  - f  Securities
  - g  Collectibles\*\*
  - h  Intellectual Property
  - i  Other
  - j  Vehicles

\*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

\*\*Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note: In certain cases, you must attach a qualified appraisal of the property. See instructions.

5	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If any tangible personal property or real property was donated, give a brief summary of the overall physical condition of the property at the time of the gift	(c) Appraised fair market value
A	13 Acres +/- in Jefferson and Shelbv		
B	Counties, City of Vestavia Hills. Alabama		
C	Legal description attached		
D			

	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	(h) Amount claimed as a deduction	(i) Date of contribution
A	Pre 1990	Purchases	\$ 4,744.08		\$651,875.00	December 14, 2020
B						
C						
D						

**Part II Taxpayer (Donor) Statement**—List each item included in Part I above that the appraisal identifies as having a value of \$500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than \$500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions. ▶

Signature of taxpayer (donor) ▶ *Jeffery S. Burnham* Date ▶ 12/4/2020

**Part III Declaration of Appraiser**

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).

Sign Here Signature ▶ *Paul Loh* Title ▶ Director Date ▶ 12/4/2020

Business address (including room or suite no.) 1 Chase Corporate Drive, Suite 415 Identifying number G00129

City or town, state, and ZIP code Birmingham, AL 35244

**Part IV Donee Acknowledgment**—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ▶ December 14, 2020

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? ▶  Yes  No

Name of charitable organization (donee)	Employer identification number
Address (number, street, and room or suite no.)	City or town, state, and ZIP code
Authorized signature	Title Date

Form **8283**  
 (Rev. November 2019)  
 Department of the Treasury  
 Internal Revenue Service

**Noncash Charitable Contributions**

▶ Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over \$500 for all contributed property.  
 ▶ Go to [www.irs.gov/Form8283](http://www.irs.gov/Form8283) for instructions and the latest information.

OMB No. 1545-0908  
 Attachment Sequence No. 155

Name(s) shown on your income tax return  
**Stacy Burnham Trepanier**

Identifying number  
**263-51-3282**

**Note:** Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

**Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities**—List in this section **only** an item (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities and certain other property even if the deduction is more than \$5,000 (see instructions).

**Part I Information on Donated Property**—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description and condition of donated property (For a vehicle, enter the year, make, model, and mileage. For securities and other property, see instructions.)
A	N/A	<input type="checkbox"/>	
B		<input type="checkbox"/>	
C		<input type="checkbox"/>	
D		<input type="checkbox"/>	
E		<input type="checkbox"/>	

**Note:** If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A						
B						
C						
D						
E						

**Part II Partial Interests and Restricted Use Property**—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

**2a** Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ N/A  
 If Part II applies to more than one property, attach a separate statement.

**b** Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ \_\_\_\_\_  
 (2) For any prior tax years ▶ \_\_\_\_\_

**c** Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):

Name of charitable organization (donee) N/A

Address (number, street, and room or suite no.) \_\_\_\_\_

City or town, state, and ZIP code \_\_\_\_\_

**d** For tangible property, enter the place where the property is located or kept ▶ N/A

**e** Name of any person, other than the donee organization, having actual possession of the property ▶ N/A

**3a** Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? 

Yes	No

**b** Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? 

--	--

**c** Is there a restriction limiting the donated property for a particular use? 

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Name(s) shown on your income tax return  
**Stacy Bumham Trepanier**

Identifying number  
**263-51-3282**

**Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable in Section A)**—Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is generally required for items reportable in Section B. See instructions.

**Part I Information on Donated Property**

4 Check the box that describes the type of property donated.

- a  Art\* (contribution of \$20,000 or more)    d  Art\* (contribution of less than \$20,000)    g  Collectibles\*\*     Other  
 b  Qualified Conservation Contribution    e  Other Real Estate    h  Intellectual Property  
 c  Equipment    f  Securities    i  Vehicles

\*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

\*\*Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note: In certain cases, you must attach a qualified appraisal of the property. See instructions.

5	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If any tangible personal property or real property was donated, give a brief summary of the overall physical condition of the property at the time of the gift	(c) Appraised fair market value			
A	13 Acres +/- in Jefferson and Shelb					
B	Counties, City of Vestavia Hills, Alabama					
C	Legal description attached					
D	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	(h) Amount claimed as a deduction	(i) Date of contribution
A	Pre 1990	Purchases	\$ 4,744.08	\$651,875.00		December 14, 2020
B						
C						
D						

**Part II Taxpayer (Donor) Statement**—List each item included in Part I above that the appraisal identifies as having a value of \$500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than \$500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions. ▶

Signature of taxpayer (donor) ▶ *Stacy Trepanier* Date ▶ 12/4/2020

**Part III Declaration of Appraiser**

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons. Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).

Sign Here Signature ▶ *David L. L...* Title ▶ Director Date ▶ 12/4/2020

Business address (including room or suite no.)  
 1 Chase Corporate Drive, Suite 415 Identifying number  
 G00129

City or town, state, and ZIP code  
 Birmingham, AL 35244

**Part IV Donee Acknowledgment**—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ▶ December 14, 2020

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? ▶  Yes  No

Name of charitable organization (donee)	Employer identification number
Address (number, street, and room or suite no.)	City or town, state, and ZIP code
Authorized signature	Title
	Date

**ORDINANCE NUMBER 2986**

**AN ORDINANCE APPROPRIATING AN ADDITIONAL \$26,750 TO THE BUDGETED FUNDING FOR A TRANSPORT UNIT FOR VESTAVIA HILLS ALBERTO C. ZARAGOZA, JR., FIRE STATION NO. 4**

**WHEREAS**, the Vestavia Hills Fire Department 2021 Capital Projects budget was requested and approved a smaller, more agile and less expensive transport than the City's current rescue units at purchase price of \$215,000; unit to be housed at Vestavia Hills Alberto C. Zaragoza, Jr., Fire Station No. 4; and

**WHEREAS**, several contributing factors including, but not limited to, changes in the Ford Chassis, trade tariff, COVID uncertainty and manufacturer material shortages resulted in increased costs for the vehicle in the amount of \$26,750; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to amend said item budget line to cover the additional cost of the unit.

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

1. The City Manager is hereby authorized to expend an additional \$26,750 for the purchase of the Transport Unit budgeted on line item 20-52-8600-712 to cover the unforeseen price increase of the new transport unit to be housed at Vestavia Hills Alberto C. Zaragoza, Jr., Fire Station No. 4; and
2. This Ordinance Number 2986 shall become effective immediately upon posting/publication as required by Alabama law.

**DONE, ORDERED, ADOPTED and APPROVED** this the 14<sup>th</sup> day of December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION OF CITY CLERK**

**STATE OF ALABAMA    )**  
**JEFFERSON COUNTY   )**

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an ordinance duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 14th day of December, 2020 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this 14th day of December, 2020.

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Rebecca Leavings, City Clerk



**VESTAVIA HILLS FIRE DEPARTMENT**

**MEMORANDUM**

TO: Jeff Downes, City Manager  
FROM: Marvin Green, Fire Chief  
DATE: November 25, 2020  
RE: FY 2021 Budget Appropriation

In June we began the process to map our needs and budget requests. We established the need for a new transport unit for Vestavia Hills Alberto C. Zaragoza, Jr., Fire Station No. 4. We specified a slightly smaller, more agile and less expensive transport than our current rescue units. We originally requested \$215,000 after consulting several ambulance manufacturers with our specifications.

Unfortunately, the market has changed significantly in the last five months. There have been 6-7% increases in apparatus costs across the ambulance industry. There are several contributing factors including changes in the Ford chassis, trade tariffs, COVID uncertainty, and manufacturers unable to stockpile materials.

We are requesting an additional appropriation of \$26,750 for line item 20-52-8600-712 to cover the unforeseen price increase of the new transport unit that will be placed in service in May.

**ORDINANCE NUMBER 2987**

**AN ORDINANCE RESCINDING ORDINANCE NUMBER 2769 AND AMENDING CHAPTER 5.5; ARTICLE II, ENTITLED “EROSION AND SEDIMENT CONTROL” OF THE VESTAVIA HILLS CODE OF ORDINANCES**

**RECITALS**

**WHEREAS**, on June 11, 2018, the City Council approved and adopted Ordinance Number 2769; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to rescind Ordinance Number 2769 and further amend Chapter 5.5, Article II, Entitled “Erosion and Sediment Control” of the Vestavia Hills Code of Ordinances in its entirety; and

**“WHEREAS**, the sedimentation of streams, lakes and other waters of this state constitutes a major pollution problem; and

**WHEREAS**, sedimentation occurs from the erosion or depositing of soil and other materials into the waters, and control of erosion and sedimentation is deemed vital to the public interest and is necessary to the public health and welfare, and expenditures of funds for an erosion and sedimentation control program shall be deemed to benefit the public health and welfare; and

**WHEREAS**, the purpose of this ordinance is to provide for the creation, administration, control and enforcement of a program to reduce erosion and sedimentation problems pursuant to the National Pollutant Discharge Elimination System (“NPDES”) permit **ALS000017** from Alabama Department of Environmental Management (“ADEM”) for storm water discharges from the Municipal Separate Storm Sewer System of the City of Vestavia Hills (“MS4”), which will permit the development in the City of Vestavia Hills, (“City”) to continue with the least detrimental effects from pollution by sedimentation: and

**WHEREAS**, ADEM, pursuant to the authority delegated to it under the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, has required City to obtain a NPDES permit for storm water discharges from the MS4, effective March 1, 1995 and, therefore, City is subject to the federal storm water laws and regulations contained in 33 U.S.C. ¶ 1342 (P) and 40 C.F.R. 122.26, and is required to adopt a local erosion control ordinance. Act No. 95-775 of the Alabama State Legislature (Code of Alabama 1975, § 11-89C 1-14) and other

provisions of the Code of Alabama 1975 grant the authority to adopt such ordinances to the governing bodies of all Class 1 municipalities within the State of Alabama, to the governing bodies of counties in which Class 1 municipalities are located and to the governing bodies of all other municipalities located within such counties, and where any such other municipality is also located partially within an adjoining county, then the governing body of such adjoining county and which governing bodies are specifically designated in 40 C.F.R. part 122, Appendices F, G, H or I or by ADEM pursuant to the authority delegated to it under the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*; and

**WHEREAS**, it is the purpose of this ordinance to protect and maintain the environment of the City and the short-term and long-term public health, safety and general welfare of the citizens of the City by controlling discharges of pollutants to the City's MS4, thereby, maintaining and improving the quality of the community waters into which the storm water outfalls flow, including, without limitation, the lakes, streams, ponds, wetlands, sinkholes and groundwater of the City; and

**WHEREAS**, this ordinance controls the discharge of certain non-storm water to the MS4 from land on which land-disturbing activities are conducted, to the maximum extent practicable, and provides enforcement procedures and penalties to ensure compliance with such controls; and

**WHEREAS**, it is further the purpose of this ordinance to enable the City to comply with the NPDES permit and applicable regulations (40 C.F.R. ¶ 122.26) for storm water discharges; and

**WHEREAS**, the objectives of this ordinance are to:

- a) Control:
  - i. the contribution of pollutants to the MS4 by storm water discharges associated with land-disturbing activities and
  - ii. the quality of storm water discharged to the MS4 from sites of land-disturbing activity;
- b) Prohibit illicit discharges to the MS4;
- c) Control the discharge to the MS4 of any spills, dumping or disposal of materials other than storm water from sites of land-disturbing activity; and
- d) Carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and noncompliance with land-disturbing activity permits (singular, "Permit" and plural, "Permits").

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA ("CITY COUNCIL") THAT ORDINANCE NUMBER 2769 HEREBY RESCINDED AND THAT CHAPTER 5.5, ARTICLE II ENTITLED "EROSION AND SEDIMENT CONTROL" IS AMENDED IN ITS ENTIRETY, AS FOLLOWS:**

**Article 1  
DEFINITIONS**

**Section 1.01 Definitions.**

For the purposes of this ordinance, the following words and terms shall have the meaning assigned to them in this section.

*Accidental Discharge* - a discharge prohibited by this Article into the MS4 or community water which occurs by chance and without planning or consideration prior to occurrence.

*Adverse Impact* - any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property or to biological productivity, diversity or stability, or which would unreasonably interfere with the enjoyment of life or property.

*Agriculture* - activities undertaken on land for the production of plants, crops, and animals which are useful to man.

*Alabama Department of Environmental Management (herein abbreviated as "ADEM")* - the State of Alabama regulatory agency, created under Code of Alabama 1975, §22-22A-1, et seq., responsible for administering and enforcing the storm water laws of the United States of America and the State of Alabama.

*Applicant* - any person, firm, corporation or governmental agency who executes the necessary forms to procure approval of Best Management Practices Plans from the Official.

*Best Management Practices* (herein abbreviated as "BMP") - activities, prohibitions of practices, maintenance procedures and management practices designed to prevent or reduce the pollution of waters to the MS4. Best Management Practices also include treatment requirements, operating procedures and practices to control facility site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage and construction sites.

*Best Management Practices Plan* - (herein abbreviated as "BMP Plan") - a set of drawings and/or other documents submitted by a person as a prerequisite to obtaining a Permit, which contain all of the information and specifications pertaining to BMP.

*Clean Water Act* - (herein abbreviated as "CWA") - the federal act (33 U.S.C. § 1251 through § 1387) which was formerly referred to as the Federal Water Pollution Control Act and Federal Water Pollution Control Act Amendments of 1972, Public

- Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 6-483 and Public Law 97-117, 33 U.S.C. § 1251-1387.
- Clearing* - the removal of trees and brush from the land, not including the ordinary mowing of grass or the maintenance of previously cleared areas.
- Community Waters* - any or all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells and other bodies of natural or artificial surface or subsurface water into which the MS4 outfalls flow.
- Contour* - a line of equal elevation above a specified datum, usually mean sea level.
- Contour Line* - a line joining points having or representing equal elevations.
- Discharge* - the passing of water or other liquid through an opening or along a pipe, conduit or channel; the rate of flow of water, silt, or other mobile substance which emerges from a pipe, conduit or channel, usually expressed as cubic feet per second, gallons per minute or million gallons per day.
- Drainage* - the removal of surface water from a given area either by gravity or by pumping; commonly applied to surface water and groundwater.
- Drainage Area* - that area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line; the area of a drainage basin or watershed, expressed in acres, square miles or other unit of area.
- Engineer* - a person currently licensed by the Alabama State Board of Registration for Professional Engineers and Land Surveyors to provide engineering services.
- Erosion* - wearing away of lands by running water.
- Erosion Control* - the application of measures to reduce erosion of land surfaces.
- Grading* - any act by which soil is cleared, stripped, stockpiled, excavated, scarified or filled, or any combination thereof.
- Illicit Connection* - any man-made conveyance connecting an illicit discharge directly to the MS4.
- Illicit Discharge* - any discharge that is not composed entirely of storm water, except discharges pursuant to a NPDES permit (other than NPDES Permit ALS000001) and discharges which are specifically excepted from this ordinance.
- Minor Extension* - an addition to an existing utility pipeline or other utility line in which the land disturbed consists of fewer than 7,500 linear feet.
- Municipal Separate Storm Sewer (herein abbreviated as "MS3")* - a conveyance or conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels and storm drains), owned or operated by a city, town or county or other public body (created by, or pursuant to, State law) having jurisdiction over storm water.
- Municipal Separate Storm Sewer System (herein abbreviated as "MS4")* - a system of municipal separate storm sewers, as defined hereinbefore.
- NPDES* - National Pollutant Discharge Elimination System.
- Outfall* - a point source (meaning any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged, but not including return flows from irrigated agriculture or agricultural water runoff) at the point of a discharge to waters of the United States of America.
- Permit* - any permit issued pursuant to this ordinance.

- Permittee* - a person, party, government entity and all others who receive a permit to discharge under the NPDES.
- Pollutant* - includes, but is not limited to, the pollutants specified in Code of Alabama 1975, § 22-22-1(b) (3) and any other effluent characteristics specified in a Permit.
- Pollutant Loading* - the amount of a pollutant entering the MS4.
- Qualified Credentialed Professional* - a Certified Professional in Erosion and Sediment Control ("CPESC") as determined by the Soil and Water Conservation Society ("SWCS") or the International Erosion Control Association ("IECA"). Other registered or certified professionals such as a professional engineer or a landscape architect, registered land surveyor, registered architect, registered geologist, registered forester, Registered Environmental Manager as determined by the National Registry of Environmental Professionals ("NREP"), Certified Professional Soil Scientist ("CPSS") as determined by the American Registry of Certified Professionals in Agronomy, Crops and Soils ("ARCPACS"), who can document the necessary education, training, and professional certification, registration, or credentials acceptable to the Official and can demonstrate proven experience in the field of erosion and sediment control shall be considered a qualified credentialed professional. The qualified credentialed professional must be in good standing with the authority granting the registration. The qualified credentialed professional must be familiar, and have expertise, with current industry standards for erosion and sediment controls and must be able to inspect and assure that nonstructural BMPs or other pollution control devices (silt fences, erosion control fabric, rock check devices, etc.) and erosion control efforts, such as grading, mulching, seeding and growth management, or management strategies have been properly implemented and regularly maintained according to good engineering practices and the requirements of this permit. A professional engineer ("PE") registered in the state of Alabama must certify the design and construction of structural practices such as spill prevention control and counter measures ("SPCC") plan containment structures, dam construction, etc.
- Sediment* - solid material settled from suspension in a liquid that has been transported and deposited from its site of origin by air, water, ice or gravity as a product of erosion and has come to rest on the earth's surface either above or below a water surface, usually, inorganic or organic particles originating from weathering, chemical precipitation, or biological activity.
- Silviculture* - the care and cultivation of forest trees, including site preparation, planting, pruning, thinning and harvesting.
- Site* - any tract, lot or parcel of land or combination of contiguous tracts, lots or parcels of land which are in one ownership, and any combination of tracts, lots and parcels which are contiguous, are owned by two or more parties and are to be developed as a unit, subdivision or project.
- Stabilization* - the prevention of soil movement by any of various vegetative and/or structural means.
- Storm Water* - the excess water running off from the surface of a drainage area during and immediately after a period of rain. It is that portion of the rainfall and resulting surface flow that is in excess of that which can be absorbed through the infiltration capacity of the surface of the basin.
- Storm Water Management* - the incorporation of a variety of activities and equipment

into a plan to address concerns associated with Storm Water for the purpose of preventing pollution, improving water quality, keeping pollutants out of runoff, and the implementation of Best Management Practices.

*Storm Water Management Program* - (herein referred to as "the Management Program" or "the Program") - a program which covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and, where necessary, intergovernmental coordination, to reduce the discharge of pollutants, to the maximum extent practicable, using management practices control techniques and system design and engineering methods and such other provisions which are appropriate.

*Storm Water Permit* - a permit which grants permission to the holder to discharge storm water to the MS4 under the NPDES.

*Stream* - a course of running water usually flowing in a particular direction in a definite channel and discharging into some other course of running water or body of water.

*Structural Controls* - measures incorporated into existing Storm Water drainage systems or newly constructed systems to prevent or minimize the discharge of pollutants for the purpose of maintaining and/or improving water quantity and quality management; quantitative control by a system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by man-made changes to the land; qualitative control by a system of vegetative, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.

*Turbidity* - a condition in water or wastewater caused by the presence of suspended matter, resulting in the scattering and absorption of light rays. A measure of fine suspended matter in liquids.

*Utility* - a business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, water, telephone service and telegraph service.

*Variance* - the modification of the minimum storm water management requirements in situations in which exceptional circumstances, applicable to the site with respect to which the variance is requested, exist so that strict adherence to the provisions of this ordinance would result in unnecessary hardship and the granting of such modification would not result in a condition contrary to the intent of this ordinance.

**Article 2  
ADMINISTRATION**

**Section 2.01**

The municipal engineer for the City, the municipal official or employee who is a qualified credentialed professional, such other municipal official or municipal employee who has had sufficient experience dealing with BMP design to enable them to enforce the provisions of this ordinance, an individual or agency contracted to provide such service, shall be responsible, on behalf of the City (“Official”), to enforce the provisions of this ordinance (whenever the word "Official" is used in this ordinance, it shall include the authorized agent of the Official).

### **Article 3 APPLICATION AND FEES**

#### **Section 3.01 Application.**

- a. Before the commencement of any land-disturbing activity that is not exempted from obtaining a Permit under this ordinance, the owner of the land on which such activity shall be conducted, or his duly authorized agent, must file with the Department of Building Safety an application for the approval of the owner's BMP Plan. The Official must either approve or disapprove the BMP Plan within fourteen (14) days of the day it is filed with the Official. If the BMP Plan is disapproved, the Official must inform the Applicant, in writing, of the reasons for its disapproval. If the Applicant, on one or more occasions, revises the BMP Plan or submits to the Official additional documents or information in connection with the BMP Plan, the Official must make a written response to the Applicant with respect to whether such revised BMP Plan and/or additional documents and information have been approved or disapproved by the Official. All such additional responses must be made by the Official to the Applicant within fourteen (14) days of the day such revised BMP Plan or additional documents or information are submitted to the Official. The land-disturbing activity may not be commenced prior to the issuance of the Permit by the Official. The issuance of the Permit shall not excuse the owner from the need to obtain other required state and local permits or licenses.
- b. The minimum standards for the issuance of a Permit must meet the requirements of this ordinance
- c. Facilities that are covered under an ADEM NPDES permit for storm water discharge associated with construction activities ("ADEM NPDES permit") shall submit an ADEM Notice of Registration (NOR) with their application. The Notice of Intent (NOI) may be provided until the NOR is received from ADEM. Copies of all monitoring data and reports shall be submitted to the City in the same manner as they are submitted to ADEM and in the frequency specified by the City.

#### **Section 3.02 Permit Application Fee.**

Each application for the issuance of a Permit shall be accompanied by a non-refundable fee of four hundred dollars (\$400), for individual single-family residences and one thousand dollars (\$1000), for all other types of land disturbing activities, to help defray the City's cost of processing and reviewing the application and the inspections associated with the application. Sites that are required to have Post-Construction controls as stated in Ordinance Number 2987 will have an additional fee of two thousand dollars (\$2000) to defray the City's cost of processing and reviewing the structure's design and the associated inspection and maintenance BMPs. The applicant must submit three sets of its BMP Plan with its application and fee to the Official.

When work requiring a Land Disturbance Permit is commenced prior to obtaining the permit, the permit applicant shall be required to pay a penalty of one hundred dollars (\$100.00) plus a double permit fee. The payment of the required fee shall not relieve any person from fully complying with all of the requirements of all applicable regulations and codes, nor shall it provide relief from being subject to any of the penalties therein.

**Section 3.03 Post Construction Annual Issuance Fee.**

An annual issuance fee of \$50.00 will be paid to the City to defray the administrative cost of inspecting Post-Construction controls and maintaining inspection records.

**Section 3.04 Data Required on the Application for a Permit.**

- a. All applications for a Permit must include the following information:
  1. name of Applicant;
  2. telephone number and e-mail address of applicant;
  3. address where Applicant, or other person who can furnish information about the land-disturbing activity can be reached;
  4. name, address, telephone number, and e-mail address of the owner of the project, the owner of the property on which the project is to be located and the ground lessee of the property, if any, on which the land-disturbing activity is to be conducted if the applicant is not the owner of the project and such property;
  5. legal description and address, if any, of the property upon which the land-disturbing activity is to be conducted;
  6. names, addresses, telephone numbers, and e-mail addresses of all contractors and subcontractors who shall implement any BMP Plan; provided, however, that if the contractor and the subcontractors have not been selected when the application for a permit is filed, the Applicant shall furnish such information to the Official within five (5) days of the day or days on which the contractor and/or subcontractors are selected;
  7. name, address, telephone number, and e-mail address of the qualified credentialed professional who has approved the BMP Plan application (this is required for all land-disturbing activities except those related to the construction of individual single-family residences);
  8. each application for a Permit must be accompanied by a map or a plot of the land on which the land-disturbing activity will be conducted and any other information that is required under the provisions of Article 5.
- b. The detail of the BMP Plan must be commensurate with the size of the project, severity of the site condition and potential for off-site damage, as provided in Article 5

**Section 3.05 Maintenance of Records.**

Records of compliance with the provisions of the Permit shall be maintained in the office of the owner or the applicant, shall be available to the Contact Person and shall be made available at any time for review by the Official; provided, that if such records are maintained without the State of Alabama and, because of their size, cannot be transmitted to the Official by email, such records must be delivered to the Official (at no expense to the City or the Official) within forty-eight (48) hours of receipt of request for such records.

**Section 3.06 Amended Application; Transfer of Permit.**

- a. A Permit may be amended, without the payment of an additional fee, upon the filing with the Official of an amended or restated Permit application, containing all

changes from the original application; provided, that the holder of the Permit shows to the reasonable satisfaction of the Official that there are no proposed changes which may affect the quantity and/or quality of storm water runoff. If an amended or restated application is filed with the Official with respect to land-disturbing activities for which a Permit has been issued, such existing Permit shall continue in effect, and the holder of the Permit may continue to operate under it unless and until an amended Permit is issued in response to the amended or restated application ("Amended Permit") at which time the original Permit shall expire and all land-disturbing activities must be conducted in accordance with the Amended Permit.

- b. A Permit may be transferred, without the payment of an additional fee, upon the filing with the Official of an application for transfer; provided, that the holder and proposed transferee of the Permit show to the reasonable satisfaction of the Official that, upon or following the transfer, there will be no proposed changes which may affect the quantity and/or quality of storm water runoff. If there is a request for the transfer of a Permit and there are to be one or more changes in the operation of the project which is the source of the land-disturbing activity which may affect the quantity and/or quality of storm water runoff, the new owner or operator of such project must apply to the City for a new Permit prior to his involvement with the operation of such project.

### **Section 3.07 Signatory Requirements.**

- a) All applications and correspondence required by this ordinance to be submitted to the Official shall be signed as follows:
  1. If an application or correspondence is submitted by a corporation, it must be signed by the president of the corporation or by a vice-president of the corporation who is in charge of a principal business function of the corporation, or any other person who performs similar policy-making or decision-making functions for the corporation, or who has been authorized to sign such applications and/or correspondence by a resolution adopted by the board of directors of the corporation. Proof of the authority of the signatory shall be provided to the Official, upon his request.
  2. If an application or correspondence is submitted by a limited liability company, it must be signed by a manager or other person who serves the same or similar function as the president of a corporation.
  3. If an application or correspondence is submitted by a partnership, it must be signed by a general partner of the partnership.
  4. If an application or correspondence is submitted by a sole proprietorship, it must be signed by the proprietor.
  5. If an application or correspondence is submitted by a municipality, the State or the federal government or by any municipal, state or federal agency, it must be signed by either the chief executive officer or a principal executive officer of any such government or by either the chief executive officer, a principal executive officer or a senior executive officer having responsibility for the overall operations of a principal geographic unit of any such governmental agency.
- b) Any person signing any application or correspondence required by this ordinance shall make the following certification: "I certify, under penalty of law,

that this document and all attachments were prepared under my direction or supervision and that I have personally examined, and I am familiar with, the information in this document and such attachments. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and civil penalty.

## **Article 4 EXCLUSION**

### **Section 4.01**

No person may conduct any land-disturbing activity without having obtained a Permit from the Official.

### **Section 4.02**

Land-disturbing activities shall include any land change which may result in soil erosion from water or wind and the movement of sediment to the MS4, including, but not limited to, the clearing, dredging, grading, excavating, transporting and filling of land, except that the term shall not include the following:

- a) Any land change on property about which the owner of the property has submitted information to the Authority proving, to the satisfaction of the Authority, that such property does not drain to the MS4. Such information may be submitted to the Official, who shall promptly deliver it to the Authority, and the determination as to whether such property drains to the MS4 shall be made by the Authority.
- b) Agriculture.
- c) Silviculture.
- d) Such minor land-disturbing activities as home gardens, landscaping on individual residential lots (excluding landscaping performed by, or on behalf of, a developer or builder, who builds a house on any such lot), home repairs, home maintenance work, minor additions to houses, the construction, maintenance or repair of accessory structures and other related activities which result in minor soil erosion. Minor land-disturbing activities typically are considered to result in soil disturbance less than 500 sf, but, in all cases, are subject to the Official's discretion.
- e) Minor land-disturbing activities such as individual connections for utility services and sewer services for single or two-family residences, minor grading for driveways, yard areas and sidewalks, excluding any grading done by, or on behalf of, a developer or builder in connection with the construction of a house. Minor land-disturbing activities typically are considered to result in soil disturbance less than 500 sf, but, in all cases, are subject to the Official's discretion.
- f) Minor maintenance, minor repair, and the minor extension of any existing underground public utility lines, except sewer lines; provided, that the utility company which owns such lines has received approval of a general BMP Plan from the Authority for such maintenance, repair, and extension; and provided further, that any utility company making a minor extension in connection with which the land disturbed consists of more than 1,000 linear feet must give the Official written notice of such extension prior to the commencement of such minor extension.
- g) The construction, repair or rebuilding of railroad tracks.
- h) Minor subsurface exploratory excavations under the direction of soils engineers or engineering geologists.
- i) The opening of individual burial sites in property which has been approved for such use by all necessary governmental authorities.
- j) Digging of water wells or environmental monitoring wells.

The activities referred to in items (b) through (i) above may be undertaken without a Permit; however, the persons conducting these excluded activities shall remain responsible for otherwise conducting such activities in accordance with the provisions of this ordinance and any other applicable law, including the proper control of sedimentation and runoff to the MS4. This ordinance shall apply to such land-disturbing activities that drain to the MS4 if a storm water pollution problem is shown to be caused by such activity following monitoring procedures and complaints.

## **Article 5**

### **BMP APPROVAL REQUIREMENTS**

#### **Section 5.01 General Requirements.**

No land-disturbing activity shall be conducted within the City until a Permit has been issued by the Official allowing such activity pursuant to the provisions of this ordinance. The following are BMP approval requirements:

- (a) Persons conducting land-disturbing activities shall take all reasonable measures referred to, or provided for, in this ordinance to protect all public and private property from damage caused by such activities and to reduce storm water pollution to the maximum extent practicable.

No land-disturbing activities subject to this ordinance shall be undertaken

- (b) except in accordance with the following requirements:
  1. The person(s) proposing to conduct any land-disturbing activity or an agent, contractor or other representative of such person must contact the Official at least five (5) business days before commencement of the land-disturbing activity to advise the Official of the commencement of such land-disturbing activity, unless, for good cause shown, the Official permits such person, contractor, agent or other representative to contact him nearer to the date of the commencement of such land-disturbing activity.
  2. Other than land-clearing activities required to install the appropriate BMP in accordance with BMP Plans, any down slope erosion and sediment control measures, on-site stream channel protection and upslope diversion of drainage required by the BMP Plan shall be in place and functional before any clearing or earth- moving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the workday, but shall be replaced at the end of the workday.
  3. The angle for graded slopes and fills shall be no greater than the angle, which can be retained by vegetative cover or other adequate erosion control devices or structures. Any slope or fill which has been graded shall, within fourteen (14) days of the completion of such grading or the completion of any phase of grading, be planted or otherwise provided with ground cover, materials, devices or structures sufficient to restrain erosion. The BMPs shall remain in place in accordance with the BMP Plan until the graded slope or fill is stabilized.
  4. Adequate protective measures shall be provided for the containment of hazardous substances and any other materials which may pollute the MS4, including petroleum products, lubricants and paint.
  5. All control measures shall be checked, and repaired as necessary, monthly in dry periods and within twenty-four (24) hours after any rainfall at the site of 0.75 inch within a twenty-four (24)-hour period. During prolonged rainfalls, daily checking and, if necessary, repairing shall be done. The Permittee shall maintain written records of such checks and repairs, which records shall be subject to the inspection of the Official at any reasonable time.
  6. The BMP Plan shall show the size of disturbed area and a schedule of the projected starting and completion dates of the land- disturbing activity.

7. A site plan, accompanied by a written description of BMPs which are shown on the site plan and a schedule of implementation during land-disturbing activities and construction shall be furnished to the Official prior to the commencement of any land-disturbing activities.
8. A description of, and procedures for, proper storage, handling and disposal of construction materials stored on-site which could contribute to the pollutant loading to the MS4, shall be furnished to the Official prior to the commencement of any land-disturbing activities.

### **Section 5.02 Design and Performance Standards.**

The following are required for all land-disturbing activities except those related to the construction of individual single-family residences.

All applications for a Permit must contain, or be accompanied by, the materials and information necessary to satisfy the requirements of Sections 5.01 and 5.02 and must be accompanied by a soil erosion and sediment control plan ("Control Plan"). The Control Plan shall be prepared by a Qualified Credentialed Professional and shall include the following:

- (a) The Control Plan shall be accompanied by a map or plot of the property upon which land-disturbing activities are to be conducted, prepared by a registered land surveyor, showing the present contour lines of such property, and the present contour lines of at least the nearest twenty-five (25) feet of the properties immediately adjacent to such property and the existing grades and elevations of all streets which abut such property. Such map or plot shall show all existing drainage facilities and all natural drainage on such property and on such adjacent property.
- (b) All proposed contours, the proposed temporary and permanent disposition of surface water and the proposed drainage structures; provided, however, the Control Plans for utility projects, except sewer projects, shall not be required to show the proposed contours.
- (c) The proposed contours in the map or plot shall be depicted in contour intervals of two (2) or fewer feet; provided, however, the Control Plans for utility projects, except sewer projects, shall not be required to show the proposed contours. All maps, plots and plans submitted shall be on a sheet of paper at least twenty-four (24) inches by thirty-six (36) inches and drawn to a scale of not less than one inch equals 100 feet. Contour intervals of more than two (2) feet and maps, plots or plans which are smaller than the required size may be approved by the Official, upon written request and for good cause shown.
- (d) The Control Plan shall contain a description of the existing site conditions, a description of adjacent topographical features, the information necessary to determine the erosion qualities of the soil on the site, potential problem areas of soil and erosion and sedimentation, soil stabilization specifications, storm water management considerations, a projected time schedule for the commencement and completion of the land-disturbing activity, specifications for BMP Plan maintenance during the project and after the completion of the project, clearing and grading limits, and all other information needed to depict accurately the solutions to potential soil erosion and sedimentation problems to the MS4. The Control Plan shall include the series of BMPs and shall be reviewed by, and subject to the approval of,

- the Official prior to the issuance of the Permit.
- (e) Where appropriate, in the opinion of the qualified credentialed professional who prepares the Control Plan, to the maximum extent practicable, the Control Plan shall include measures to reduce erosion and other adverse impact to MS4 drainage which would result from an increase in the volume of water and the rate of runoff of water during the conduct of land-disturbing activities.
  - (f) Whenever the Official determines that a Control Plan does not comply with this ordinance, he shall notify the applicant in writing of the ways in which the Control Plan does not comply with this ordinance.
  - (g) To the maximum extent practicable, sediment in runoff water must be minimized by using appropriate BMPs.
  - (h) Structural controls shall be designed and maintained as required to minimize erosion and pollution to the maximum extent practicable. All surface water flowing toward the construction area shall, to the maximum extent practicable, either be passed through the site in a protected channel or diverted by using berms, channels or sediment traps, as necessary. Erosion and sediment control measures shall be designed, according to the size and slope of the disturbed areas or drainage areas, to minimize erosion and to control sediment, to the maximum extent practicable. Discharges from sediment basins and traps must be conducted in a manner consistent with good engineering practices. Sediment-laden, or otherwise polluted, water discharged to MS4 must be addressed in a manner consistent with good engineering practices and the requirements of this ordinance.
  - (i) Control measures shall be maintained as an effective barrier to sedimentation and erosion in accordance with the provisions of this ordinance.
  - (j) There shall be no distinctly visible floating scum, oil or other matter contained in the storm water discharge. The storm water discharge to an MS4 must not cause an unnatural color (except dyes or other substances discharged to an MS4 for the purpose of environmental studies and which do not have a harmful effect on the bodies of water within the MS4) or odor in the community waters. The storm water discharge to the MS4 must result in no materials in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life or fish and aquatic life in the community waters.
  - (k) When the land-disturbing activity is finished and stable vegetation or other permanent controls have been established on all remaining exposed soil, the owner of the land where the land- disturbing activity was conducted, or his authorized agent, shall notify the Official of these facts, and request a final inspection. The Official shall then inspect the site within five (5) working days after receipt of the notice, and may require additional measures to stabilize the soil and control erosion and sedimentation. If additional measures are required by the Official, written notice of such additional measures shall be delivered to the owner, and the owner shall continue to be covered by the Permit issued with respect to the land-disturbing activity until a final and complete inspection is made and the Official approves the project as having been satisfactorily completed and delivers to the owner, within ten (10) days of the date of such approval, a certification of completion showing that the requirements of the Permit have been fulfilled. At that time the site and/or the project constructed thereon may come under the operation of other ordinances of the City.

- (l) The Control Plan must be accompanied by a letter of credit, a surety bond or a cash bond, with the City having the right to determine which type of security shall be furnished. A letter of credit, a surety bond or a cash bond (a letter of credit, a surety bond and a cash bond shall be herein collectively referred to as "Security") shall be furnished to the City in accordance with the following provisions:
  1. The Official shall require a letter of credit, a surety bond or a cash bond in such amount as specified herein to assure that the work, if not completed or if not in accordance with the permitted plans and specifications will be corrected to eliminate hazardous conditions, erosion and/or drainage problems. In lieu of a letter of credit or a surety bond required by the City, the owner may file a cash bond with the City in an amount equal to that which would be required in the letter of credit or the surety bond.
  2. The Security shall contain, or have attached to it as an exhibit, a legal description of the site. The Security shall remain in effect for such reasonable period of time as may be required by the Official.
  3. The Security for clearing operations only shall be in the amount of \$2,000 per acre for each acre, or fraction of an acre, disturbed or affected by such operations.
  4. The Security for earthwork or clearing and earthwork operations shall be in the amount of \$5,000 per acre for each acre, or fraction of an acre, disturbed or affected by such operations.
  5. The Security for earthwork or clearing and earthwork operations for an individual single-family residence may be reduced to \$3,000 with proof of completion of either the Jefferson County Erosion Workshop or the Qualified Credentialed Inspector (QCI) certification.
  6. Security equal to double the amounts required in subsections (3) and (4) herein, shall be required where clearing or earthwork is performed in areas designated as floodways, floodplains or areas susceptible to landslides.
  7. Each letter of credit must be issued by a bank which has its principal office in Jefferson County, Alabama.
  8. Each letter of credit must be issued by a bank which is reasonably satisfactory to the City and each surety bond must be issued by a surety company which is qualified to do business in Alabama and which is otherwise reasonably satisfactory to the City.

## **Article 6**

### **MONITORING AND INSPECTION**

#### **Section 6.01**

The Official may periodically monitor the quality of storm water and the concentration of pollutants in storm water discharges from land-disturbing activities permitted to the MS4 pursuant to this ordinance.

#### **Section 6.02 Inspections.**

- (a) The Official, bearing proper identification, may enter and inspect all land-disturbing activities for regular periodic inspections, investigations, monitoring, observations, measurements, enforcement, sampling and testing to verify compliance with the provisions of this ordinance and the specific BMP Plans and Control Plans for such land-disturbing activities. The Official shall notify the owner of such property, his Contact Person or his representative on the construction site prior to inspection, and the inspections shall be conducted at reasonable times. The owner or operator of a construction site with respect to which an NPDES permit has been issued shall provide the Official with the information required in Section 3.01(c) prior to the commencement of the work on the construction site. The Official shall inspect the construction site to confirm the implementation and the maintenance of BMP Plans, otherwise, such site shall be inspected when the Official believes, as a result of complaints or monitoring activity, that land-disturbing activities on the site are causing a substantial pollutant loading which threatens the MS4.
- (b) Upon the refusal by any property owner to allow the Official to enter, or to continue an inspection on, a site on which land-disturbing activities or construction work is being done, the Official shall terminate the inspection or confine the inspection to areas to which no objection is raised. If an agent of the Official was making, or attempting to make, such inspection, the agent shall promptly report to the Official the refusal and the reasons for the refusal, if the reasons are known by the agent. The Official may seek appropriate legal remedies to enable him to make or complete such Inspection, including seeking appropriate legal remedies from any court having jurisdiction over the matter. If the court grants a remedy to the Official, the property owner must reimburse the City all of the costs and expenses incurred by the City in obtaining such remedy, including court costs and reasonable attorneys' fees.
- (c) If the Official has reasonable cause to believe that discharges from the land-disturbing activities to the MS4 may cause an imminent threat to human health or the environment, an inspection of the site may take place at any time and without notice to the owner of the property or a representative on site. The Official shall present proper credentials upon request of the owner or his representative.
- (d) At any time during the conduct of an inspection, or at such other times as the Official may request information from an owner or his representative, the owner or representative may identify areas of its business, material or processes which contain a trade secret and an inspection of which might reveal such trade secret. If the Official has no clear and convincing reason to question such assertion of the owner or his representative, the inspection report shall note that trade secret

information has been omitted. To the extent practicable, the Official shall protect all information which is designated as a trade secret by the owner or his representative.

## **Article 7 ENFORCEMENT AND ABATEMENT**

### **Section 7.01 NPDES Permits for Storm Water Discharge Associated with Construction Activities.**

- a. No enforcement action shall be taken by the City for a violation of the terms of this ordinance if any of the following has occurred:
  1. ADEM has issued a notice of violation with respect to the same alleged violation and is proceeding with an enforcement action with respect to such alleged violation;  
ADEM has issued an administrative order with respect to the same
  2. alleged violation and is proceeding with an enforcement action with respect to such violation; or
  3. ADEM has commenced, and is proceeding with, an enforcement action, or has completed any other type of administrative or civil action, with respect to such alleged violation.
- b. Any determination or resolution made by ADEM with respect to an alleged violation shall be final, and the alleged violation shall not be made the subject of any additional enforcement action by the City; provided, however, that an enforcement action may be pursued by the City for continued or continuing substantial violations, subject to the provisions of Section 7.03(b) and pursuant to the following:
  1. ADEM will provide the Official with access to the ADEM NPDES permits issued with respect to each property within its jurisdiction, including inspections and notification of any enforcement actions taken by ADEM.
  2. The Official will notify ADEM and the permit holder, in writing, when the Official demonstrates that an NPDES permit holder is causing a substantial pollutant loading to the MS4.
  3. The Official may rely on ADEM to regulate, and to take enforcement actions against Permittees until such time as a Permittee is in continuing substantial violation of its NPDES permit and ADEM has failed to respond in a timely manner in accordance with Code of Alabama 1975, § 11-89C-1 et seq. If there is a continuing substantial violation of an ADEM NPDES permit and ADEM fails to respond as stated above, the Permittee shall be subject to this ordinance for that violation.

### **Section 7.02 Immediate Threats to Public Health or Welfare.**

Notwithstanding any other provision in this ordinance to the contrary, in the event of an immediate threat to the public health or welfare, the Official may take all appropriate measures to remove or alleviate such threat.

### **Section 7.03 Notification; Enforcement Remedies.**

- a. Verbal Warning: Whenever the Official finds that any person is in violation of any provision of this ordinance, or any order issued hereunder, the Official or his agent may serve upon such person a verbal warning of violation. This level of warning is intended for minor violations that would not cause significant harm to the environment.
- b. Notification of Violation: Whenever the Official finds that any person is in violation

of any provision of this ordinance, or any order issued hereunder, the Official or his agent may serve upon such person written notice of the violation. Within ten (10) calendar days of the date of such notice, an explanation of the violation and a plan for the satisfactory correction and future prevention thereof, including specific required actions, shall be submitted to the Official. Submission of such plan shall in no way relieve such person in violation of this ordinance of liability for any violations occurring before or after receipt of the notice of violation.

- c. Compliance Order: When the Official finds that any person has violated, or continues to violate, this ordinance, or has not completed remedial measures described in a previously issued Notice of Violation by the date set forth for such completion in the Notice of Violation, he may issue a compliance order to the violator, directing that, within a specified time period, adequate structures and devices be installed, or procedures implemented, and properly operated, or other action be taken, to remedy such violation. Compliance orders may also contain such other requirements as may be reasonably necessary and appropriate to address such violation, including the construction of appropriate structures, installation of devices and self-monitoring and management practices.
- d. Stop Work Order: When the Official finds that any person has violated, or continues to violate, this ordinance or any order issued under this ordinance; the Official may issue a Stop Work Order to such person to cease and desist all operations on the jobsite in violation immediately. The Stop Work Order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the Notice of Violation or Compliance Order issued. Work associated with BMP installation or maintenance may be allowed under Stop Work Order, if specified in the Order. A Stop Work Order can be issued in conjunction with other enforcement actions.
- e. Violation of a Compliance Order or Repeated Unresolved Notices of Violation: The penalty for violation of a Compliance Order or for repeated unresolved Notices of Violation shall be a fine in the amount of \$200 for a single-family residential site and \$400 for all other sites. Said fine shall be paid to the Building Safety Department within 5 working days of issuance. Payment of said fine does not relieve the applicant of obligations to comply with all other provisions of the Ordinance.
- f. Revocation of Permit and Forfeiture of Surety: When the Official finds that any person continues to violate provisions of this Ordinance, even after having been assessed a fine, the Official may officially revoke the Permit. Revocation of the Permit will also result in forfeiture of the associated surety. Said surety will be used to restore the site in such a way to eliminate hazardous conditions, erosion and/or drainage problems.

#### **Section 7.04 Unlawful Acts, Misdemeanor.**

It shall be unlawful for any person to:

- a. violate any provision of this ordinance;
- b. violate the provisions of any Permit issued pursuant to this ordinance; Such person shall be guilty of a misdemeanor; and each day of such violation, failure or refusal to comply with this ordinance shall be deemed a separate offense and punishable accordingly. Any person found to be in violation of any of the provisions of this ordinance shall be punished by a fine of not less than \$100.00 and not more

than \$500.00 and/or up to 180 days in jail.

**Section 7.05 Judicial Proceedings and Relief.**

- a. The Official may initiate proceedings in any court of competent jurisdiction against any person who has, or who, the Official has reason to believe, is about to:
  1. violate any provision of this ordinance;
  2. violate any provision of a Permit;
  3. fail or refuse to comply with any lawful order issued by the Official.
- b. The Official, with the consent of the City Council, may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to public storm water facilities by any person, and may seek injunctive or other equitable relief to enforce compliance with the provisions of this ordinance or to force compliance with any lawful orders of the Official or the Board.

**Article 8  
MISCELLANEOUS**

**Section 8.01 Notices.**

Whenever the City is required or permitted to:

- a. give a notice to any party except a Verbal Warning, such notice must be in writing; or
- b. deliver a document to any party; such notice or document may be delivered by personal delivery, certified mail (return receipt requested), registered mail (return receipt requested) or a generally recognized overnight carrier, to the address of such party which is in the records of the City or is otherwise known to the City.

**Section 8.02 References.**

Whenever an Article or Section is referred to in this ordinance, unless the context clearly indicates the contrary, such reference shall be to an article or section of this ordinance.

**Section 8.03 Severability.**

The provisions of this ordinance are severable. If any part of this ordinance is determined by a court of law to be invalid, unenforceable or unconstitutional, such determination shall not affect any other part of this ordinance.

**Section 8.04 Captions.**

The captions of articles and sections are for the purpose of reference only, and such captions shall not affect the meaning of any provision of this ordinance.

**Section 8.05 Effective Date.**

This ordinance shall be published as required by law and shall become effective on the 1st day of January, 2021.

**DONE, ORDERED, ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 2987 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 December, 2020, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, and Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Rebecca Leavings  
City Clerk

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

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

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

November 13, 2020

By Electronic Transmission

City Manager Jeffrey D. Downes  
Vestavia Hills Municipal Center  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Ordinance Number 2769/Controlling and Regulating Erosion and Sedimentation and  
Ordinance Number 2770/Prohibiting the Discharge of Pollutants in the Municipal Storm  
Water System

Dear Mr. Downes:

On October 30, 2020, I submitted to you my written legal opinion regarding the proposed amendments of Ordinance Number 2769 that controls and regulates erosion and sedimentation. A copy of that opinion is attached hereto.

On November 4, 2020, you requested that I review Ordinance Number 2770 that prohibits the discharge of pollutants into the City storm water system. You pointed out that Section 10.2 of Ordinance Number 2770 provides for an appeal at the City level, while Ordinance Number 2769 does not provide such an appeal.

In addition, you requested my assurance, from a legal standpoint, that both ordinances provide due process for violators and that prosecution in the Municipal Court is an appropriate remedy for violations of the two ordinances.

The purpose of this letter is to provide you with my legal opinions. At the outset, it is necessary to review state law that authorizes the enactment of Ordinance Numbers 2769 and 2770 and some of the important provisions of those two ordinances.

November 13, 2020

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**I. STATE LAW**  
**TITLE 11-89C-1, ET SEQ., CODE OF ALABAMA, 1975**

The Alabama Legislature enacted Act 2014-439 entitled “Storm Water Discharges Into Separate Storm Sewers” and said act is codified at Title 11-89C-1, et seq., *Code of Alabama, 1975* (the “law”). Some of the important provisions of that law are set forth below.

**A. DEFINITIONS:** Title 11-89C-2, *Code of Alabama, 1975*, sets for the following definitions:

1. Title 11-89C-2(5), *Code of Alabama, 1975*, defines “illicit discharge” as follows:

“(5) **ILLICIT DISCHARGE.** Any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges pursuant to an NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting and emergency management activities.”

2. Title 11-89C-2(7), *Code of Alabama, 1975*, defines “municipal separate storm sewer” as follows:

“(7) **MUNICIPAL SEPARATE STORM SEWER.** A conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

(i) Owned or operated by a city, town, county, association, or other public body;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a publicly owned treatment works as defined in 40 C.F.R. Section 122.2.”

**B. MUNICIPAL REQUIREMENTS:** The law requires municipalities in Alabama to do the following things:

1. **To Regulate and Control Storm Water Discharges:** Municipalities are required to enact resolutions or ordinances to specifically regulate and control storm water discharges and eliminate the discharge of pollutants to its municipal separate storm sewers (Title 11-89C-9(a), *Code of Alabama, 1975*). In furtherance of these objectives, a municipality may:

November 13, 2020

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“(2) Prohibit by resolution, ordinance, order, or similar means illicit discharges to its municipal separate storm sewers.

(3) Control by resolution, ordinance, order, or similar means the discharge to its municipal separate storm sewers of spills, dumping, or disposal of materials other than storm water.”

2. **ADEM:** Title 11-89C-9(a), *Code of Alabama, 1975*, reads in pertinent part as follows:

“In establishing these rules and regulations, an individual governing body or public corporation shall, to the fullest extent allowed by applicable storm water laws, primarily rely upon ADEM for the enforcement and permitting of discharges to its municipal separate storm sewers from sites required to have an ADEM NPDES permit, rather than subjecting these sites to double enforcement or permitting.”

3. **Revenue-Raising Measure Powers:** Title 11-89C-9(d), *Code of Alabama, 1975*, reads in pertinent part as follows:

“(d) Any governing body may establish, levy, and impose by resolution or ordinance, any revenue-raising measure within its jurisdiction, including, but not limited to, fees, charges, or assessments, without any referendum unless required by the Constitution of Alabama of 1901, deemed necessary to implement this chapter or to comply with all provisions of storm water law.”

4. **Enforcement:** Title 11-89C-9(e), *Code of Alabama, 1975*, provides as follows:

“(e) Any governing body may establish by resolution or ordinance necessary enforcement measures and procedures for the enforcement of rules, regulations, resolutions, ordinances, or orders through actions before a municipal, district or circuit court of competent jurisdiction, including penalties for violations in accordance with Section 11-45-9.”

November 13, 2020

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Title 11-45-9, *Code of Alabama, 1975*, sets forth the penalties for ordinance violations and reads in pertinent parts as follows:

“(a) Municipal ordinances may provide penalties of fines, imprisonment, hard labor, or one or more of such penalties for violation of ordinances.

(b) Except as otherwise provided in this section, no fine shall exceed five hundred dollars (\$500), and no sentence of imprisonment or hard labor shall exceed six months.”

5. **Civil Remedies:** Title 11-89C-9(f), *Code of Alabama, 1975*, reads as follows:

“(f) Any governing body may institute a civil suit for damages or injunctive relief, except as limited by Section 11-89C-11 and Section 11-89C-12, in any district or circuit court having jurisdiction for a violation of this chapter. Damages may include all costs, expenses, or other losses resulting directly or indirectly from a violation of any rule, regulation, resolution, ordinance, order, or other provision authorized by this chapter, and may include attorney's fees, court costs, and trial expenses.”

6. **Additional Municipal Authority:** Title 11-89C-9(g), *Code of Alabama, 1975*, reads as follows:

“(g) A governing body may do any and all things, whether or not specifically or expressly authorized in this section or chapter, not otherwise prohibited by law, that are necessary and convenient to do individually, and to aid and cooperate with the public corporation or other entity in carrying out the storm water laws and the purposes and intent of this chapter.”

## **II. ORDINANCE NUMBERS 2769 AND 2770**

- A. PREPARED BY:** Storm Water Management Authority (SWMA).
- B. ATTORNEYS THAT PREPARED ORDINANCE NUMBERS 2769 AND 2770:**
1. David Maxie
  2. Wade Merritt
  3. Alton Parker
- C. ENACTMENT OF BOTH ORDINANCES BY THE CITY OF VESTAVIA HILLS:**
1. **Ordinance Number 2769:** June 11, 2018
  2. **Ordinance Number 2770:** June 11, 2018
- D. EFFECTIVE DATE:**
1. **Ordinance Number 2769:** July 1, 2018
  2. **Ordinance Number 2770:** July 1, 2018
- E. PURPOSE:**
1. **Ordinance Number 2769:** To reduce erosion and sedimentation (caused by land disturbance) into the City storm water system (MS4).
  2. **Ordinance Number 2770:** To prevent discharge of pollutants (non-storm water discharges) into the City storm water system (MS4).
- F. ORDINANCES ADMINISTERED BY:**
1. **Ordinance Number 2769:** City Engineer (Section 2)
  2. **Ordinance Number 2770:** City Engineer (Section 2)
- G. ORDINANCES ENFORCEMENT:**
1. **Ordinance Number 2769:** By City Engineer (Section 2)
  2. **Ordinance Number 2770:** By City Engineer (Section 2)

**H. WARNINGS FOR MINOR VIOLATIONS:**

- 1. **Ordinance Number 2769:** Verbal warning (Section 7.03a)
- 2. **Ordinance Number 2770:** Verbal or written (Section 10.1a)

**I. APPEAL:**

- 1. **Ordinance Number 2769:** None
- 2. **Ordinance Number 2770:** Section 10.2 reads as follows:

**“Section 10.2 Appeal Violation.**

Any person receiving a Notice of Violation or Compliance Order may appeal the determination of the City of Vestavia Hills. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation/Compliance Order. Hearing on the appeal before the appropriate authority or his/her designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.”

**J. VIOLATORS MAY BE PROSECUTED IN MUNICIPAL COURT UNDER TITLE 11-45-9, CODE OF ALABAMA, 1975:**

- 1. **Ordinance Number 2769:** Section 10.8
- 2. **Ordinance Number 2770:** Section 7.04

**III. MY RECOMMENDATIONS**

**A. ORDINANCE NUMBER 2769:** I recommend approval of the proposed amendments to Ordinance Number 2769 as submitted to me by redline revision.

**B. ORDINANCE NUMBER 2770:**

1. **Section 10.2:** I recommend that Section 10.2 of Ordinance Number 2770 be amended, so that as amended, said Section 10.2 shall read in words and figures as follows:

**“Section 10.2 Final decision.**

The decision of the City Engineer or their designee shall be final.”

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2. **Section 10.3:** I recommend that the title to Section 10.3 of Ordinance Number 2770 be amended, so that as amended, said title shall read as follows:

**“Section 10.3 Enforcement Measures After Final Decision.”**

C. **BASIS FOR RECOMMENDATIONS:**

1. The two ordinances are very similar. Ordinance Number 2769 prohibits the discharge of “**sedimentation**” into the municipal storm water system, while Ordinance Number 2770 prohibits the discharge of “**pollutants**” (being anything other than storm water) into the said City storm water system.

2. Both ordinances provide that the City Engineer shall administer and enforce the ordinances.

3. In my opinion, our professional civil engineers have the most expertise and knowledge regarding the matters controlled and regulated in the two ordinances.

4. Alabama law at Title 11-89C-9(e), *Code of Alabama, 1975*, provides that municipal courts may be utilized as one of several enforcement measures.

5. The fact that both ordinances provide that violators may receive warning notices gives violators the chance to correct their mistakes before legal action is initiated.

I hope that the above information will satisfy any and all of your concerns. If you have any questions regarding any matters set forth in this legal opinion, please give me a call. In the meantime, I will be prepared to discuss these issues at the Work Session scheduled for next Monday, November 16, 2020.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

Attachment

cc: City Clerk Rebecca Leavings (by e-mail)

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

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

**E-Mail: patrickboone@bellsouth.net**

October 30, 2020

By Electronic Mail

City Manager Jeffrey Downes  
Vestavia Hills Municipal Center  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Ordinance Number 2769 Controlling Erosion and Sedimentation

Dear Mr. Downes:

On October 27, 2020, you sent to me via electronic mail a copy of proposed Ordinance Number 2769 that controls erosion and sedimentation. You requested that I review the ordinance and provide you with my comments. The purpose of this letter is to comply with your request.

**I. LEGAL OPINION**

It is my legal opinion that the proposed ordinance as written meets the requirements of Alabama law.

**II. BASIS FOR LEGAL OPINION**

I base my legal opinion upon the following Alabama legal authorities:

**A. GENERAL LAW:**

1. **Source of Municipal Authority:** The source of municipal authority is the authority that the Alabama Legislature granted by statute. *Scott v. Coachman, as Mayor of the City of Fairfield*, 73 So.3d 607 (2011), and Title 11-45-1, *Code of Alabama*, 1975.

October 30, 2020  
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2. **Ordinances and Resolutions:** Title 11-45-1, *Code of Alabama, 1975*, provides as follows:

“Municipal corporations may from time to time adopt ordinances and resolutions not inconsistent with the laws of the state to carry into effect or discharge the powers and duties conferred by the applicable provisions of this title and any other applicable provisions of law and **to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants of the municipality, and may enforce obedience to such ordinances** (*emphasis added*).”

3. **An Ordinance is a Law:** The Supreme Court of Alabama decided the case of *Tutwiler Drug Co., Inc. v. City of Birmingham*, 418 So.2d 102 in 1982, and held that a municipal ordinance constitutes law provided it is not inconsistent with state law.

B. **SPECIFIC ALABAMA LAW:**

1. **Authority:** Title 11-89C-1, et seq., *Code of Alabama, 1975*, authorizes municipalities to enact ordinances regarding storm water discharges into separate storm sewers.

III. **MY RECOMMENDATION**

I do not have any recommendations for additions, deletions, changes and/or corrections. Therefore, from a legal standpoint, I recommend the ordinance in the form written by Lori Beth Kearley. Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by e-mail)

**ORDINANCE NUMBER 2988**

**AN ORDINANCE RESCINDING ORDINANCE NUMBER 2770 AND AMENDED SECTION 5.5, ARTICLE IV ENTITLED STORMWATER MANAGEMENT ILLICIT DISCHARGE, ESTABLISHING METHODS FOR CONTROLLING THE INTRODUCTION OF POLLUTANTS INTO MUNICIPAL SEPARATE STORM SEWER SYSTEM IN ORDER TO COMPLY WITH THE REQUIREMENTS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT PROCESS**

**STORM WATER MANAGEMENT ILLICIT DISCHARGE**

**RECITALS**

**WHEREAS**, on June 11, 2018, the City Council of the City of Vestavia Hills adopted and approved Ordinance 2770 to establish methods for controlling the introduction of pollutants into municipal separate storm sewer system; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest and rescind Ordinance Number 2770; and

**WHEREAS**, the purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Vestavia Hills through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law.

**WHEREAS**, this ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

**WHEREAS**, this ordinance provides the minimum content for implementing and enforcing a STORM WATER management consistent with the Alabama Department of Environmental Management (ADEM) permit currently issued to the City of Vestavia Hills.

**WHEREAS**, the objectives of this ordinance are:

1. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by STORM WATER discharges by any user

2. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

**NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, THAT ORDINANCE NUMBER 2770 IS RESCINDED AND ORDINANCE 2988 IS APPROVED AND ADOPTED AND SECTION 5.5, ARTICLE IV OF THE VESTAVIA HILLS CODE OF ORDINANCES ENTITLED “STORMWATER MANAGEMENT ILLICIT DISCHARGE,” IS AMENDED, AS FOLLOWS:**

**Section 1  
DEFINITIONS**

For the purposes of this ordinance, the following words and terms shall have the meaning assigned to them in this section.

*Authorized enforcement agency* - employees or designees of the director of the municipal agency designated to enforce this ordinance.

*Best Management Practices (BMPs)* - schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to STORM WATER, receiving waters, or STORM WATER conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

*Clean Water Act.* - The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

*Construction Activity* - Activities subject to NPDES Construction Permits. Currently these include construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

*Hazardous Materials* - Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated,

stored, transported, disposed of, or otherwise managed.

*Illegal Discharge* - Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section X of this ordinance.

*Illicit Connections.* - An illicit connection is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City of Vestavia Hills or,
2. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the City of Vestavia Hills.

*Industrial Activity* - Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

*National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit* - means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*Non-Storm Water Discharge* - Any discharge to the storm drain system that is not composed entirely of storm water.

*Person* - Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

*Pollutant* - Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

*Premises* Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

*Storm Drainage System* - Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal

streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

*Storm Water* - Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

*Storm Water Pollution Prevention Plan* - A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to STORM WATER, STORM WATER Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

*Wastewater* - means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

**Section 2**  
**ADMINISTRATION**

The City of Vestavia Hills shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City of Vestavia Hills may be enforced by the City Engineer or delegated in writing by an official of the City of Vestavia Hills to persons or entities acting in the beneficial interest of or in the employ of the agency.

### Section 3 ILLICIT DISCHARGE PROHIBITIONS

#### Section 3.1 Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

#### Section 3.2 Illegal Discharges Exemptions.

The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

The following discharges are exempt from discharge prohibitions established by this ordinance provided that they have been determined not to be substantial contributor of pollutants by the City or Alabama Department of Environmental Management (ADEM):

- a) Water line flushing;
- b) Landscape irrigation or lawn watering (not consisting or treated, or untreated wastewater unless otherwise authorized);
- c) Diverted stream flows;
- d) Uncontaminated ground water infiltration
- e) Uncontaminated pumped groundwater;
- f) Discharges from potable water sources;
- g) Foundation or footing drains (not including active groundwater dewatering systems);
- h) Air conditioning condensation or drains;
- i) Irrigation water (not consisting or treated, or untreated wastewater unless otherwise authorized);
- j) Rising ground water;
- k) Springs;
- l) Water from crawl space pumps;
- m) Lawn watering runoff;
- n) Individual residential car washing, to include charitable carwashes;
- o) Residential street wash water;
- p) Discharges or flows from firefighting activities (including fire hydrant flushing);
- q) Flows from natural riparian habitat or wetlands;
- r) Dechlorinated swimming pool discharges;
- s) Dye testing is an allowable discharge, but requires a verbal notification to the City of Vestavia Hills prior to the time of the test.

**Section 3.3 Prohibition of Illicit Connections.**

- a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

**Section 4**  
**SUSPENSION OF MS4 ACCESS**

**Section 4.1 Suspension Due to Illicit Discharges in Emergency Situations.**

The City of Vestavia Hills may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City of Vestavia Hills may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

**Section 4.2 Suspension Due to the Detection of Illicit Discharge.**

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Vestavia Hills will notify a violator of the proposed termination of its MS4 access. The violator may petition the City of Vestavia Hills for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City of Vestavia Hills.

**Section 5**  
**INDUSTRIAL, COMMERCIAL OR CONSTRUCTION ACTIVITY DISCHARGES**

Any person subject to an industrial, commercial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Vestavia Hills prior to the allowing of discharges to the MS4.

## **Section 6**

### **MONITORING OF DISCHARGES**

#### **Section 6.1 Applicability.**

This section applies to all facilities that have storm water discharges associated with industrial, commercial, and construction activity.

#### **Section 6.2 Access to Facilities.**

- a) The City of Vestavia Hills shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City of Vestavia Hills.
- b) Facility operators shall allow the City of Vestavia Hills ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- c) The City of Vestavia Hills shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City of Vestavia Hills to conduct monitoring and/or sampling of the facility's storm water discharge.
- d) The City of Vestavia Hills has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure STORM WATER flow and quality shall be calibrated to ensure their accuracy.
- e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City of Vestavia Hills and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- f) Unreasonable delays in allowing the City of Vestavia Hills access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the City of Vestavia Hills reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- g) If the City of Vestavia Hills has been refused access to any part of the premises from which STORM WATER is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City of Vestavia Hills may seek issuance of a search warrant from any court of competent jurisdiction.

**Section 7**  
**REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER  
POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES**

The City of Vestavia Hills will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a STORM WATER pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

**Section 8**  
**WATERCOURSE PROTECTION**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

**Section 9**  
**NOTIFICATION OF SPILLS**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non- hazardous materials, said person shall notify the City of Vestavia Hills in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Vestavia Hills within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

## **Section 10**

### **ENFORCEMENT AND ABATEMENT**

Whenever the City of Vestavia Hills finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the City of Vestavia Hills may enforce the ordinance with escalating procedures.

#### **Section 10.1 Notification; Enforcement Remedies.**

- a) Warning Notice: A warning notice of violation is the lowest level of formal response to a violation. It is a verbal or written response presented to the violator shortly after a violation has been identified and is intended for minor violations that would not cause significant harm to the environment.
- b) Notification of Violation: Whenever the Official finds that any person is in violation of any provision of this ordinance, or any order issued hereunder, the Official or his agent may serve upon such person written notice of the violation requiring the removal of illicit discharges and immediate cessation improper disposal practices within ten (10) calendar days of the date of such notice. Compliance by written notice of violation to the responsible person may require without limitation:
  1. The performance of monitoring, analyses, and reporting;
  2. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
  3. Payment of a fine to cover administrative and remediation costs; and
  4. The implementation of source control or treatment BMPs.
- c) Compliance Order: Whenever abatement of a violation and/or restoration of affected property is not possible within ten (10) days, a compliance order may be issued to the violator. The order shall set forth a deadline within which such remediation or restoration must be completed. Said order shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

#### **Section 10.2 Final Decision.**

The decision of the City Engineer or their designee shall be final.

#### **Section 10.3 Enforcement Measures After Final Decision.**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within **thirty (30) days** of the decision of the municipal authority upholding the decision of the City of Vestavia Hills, then representatives of the City of Vestavia Hills shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

#### **Section 10.4 Cost of Abatement of the Violation.**

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal

authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this ordinance shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of twelve (12) percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

**Section 10.5 Injunctive Relief.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the City of Vestavia Hills may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**Section 10.6 Compensatory Action.**

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the City of Vestavia Hills may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**Section 10.7 Violations Deemed a Public Nuisance.**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

**Section 10.8 Criminal Prosecution.**

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$500 dollars per violation per day and/or imprisonment for a period of time not to exceed one hundred and eighty (180) days.

The City of Vestavia Hills may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

**Section 10.9 Remedies Not Exclusive.**

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Vestavia Hills to seek cumulative remedies.

**Section 11**  
**MISCELLANEOUS**

**Section 11.1 Applicability.**

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Vestavia Hills.

**Section 11.2 Severability.**

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**Section 11.3 Ultimate Responsibility.**

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore, this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

**Section 11.4 Effective Date.**

This ordinance shall be published as required by law and shall become effective the 1<sup>st</sup> day of January, 2021.

**DONE, ORDERED, ADOPTED and APPROVED** this the \_\_\_\_\_ day of  
December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 2988 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 \_\_\_\_\_ day of December, 2020, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, and Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Rebecca Leavings  
City Clerk