



**Vestavia Hills
City Council Agenda
July 24, 2023
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation - Huey Davis, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. City Manager's Report
8. Councilors' Reports
9. Approval Of Minutes - June 26, 2023 (Regular Meeting) and July 10, 2023 (Regular Meeting)

Old Business

10. Public Hearing - Ordinance Number 3183 - Rezoning - 709 Chestnut Street; Lot A, Resurvey of Lots 20 and 21, Block 9, South Bham Heights; Rezone from Vestavia Hills R-2 (medium density residential) to Vestavia Hills O-1 (office park district); Jessica Prier, Owner

New Business

11. Resolution Number 5472 - A Resolution declaring certain personal property as surplus and authorizing the City Manager to sell/dispose of said property

New Business Requesting Unanimous Consent

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

12. Public Hearing - Resolution Number 5462 - A Resolution authorizing the installation of a new support structure for a small cell facility to be located in the right-of-way adjacent to 1663/1671 Crossgate Drive, 2581 Crossgate Place and 1704 Crosswood Lane

13. Public Hearing - Ordinance Number 3185 - An Ordinance authorizing the City Manager to execute and deliver an agreement with Environmental Design Studio to provide landscape architectural services for proposed landscape improvements along the Highway 31 corridor in Vestavia Hills.
14. Public Hearing - Ordinance Number 3186 - An Ordinance Authorizing the Mayor and City Manager to execute and deliver an agreement with Bagby Elevator Company, Inc., for inspection and maintenance services for the City Hall/ VHPD, Civic Center and The Library in the Forest.
15. Citizens Comments
16. Time Of Adjournment

PUBLIC HEARING PROCEDURES

The following procedures shall be followed for every public hearing of the City Council:

- All comments shall be limited to **3 minutes**. A countdown clock will be provided on the video screens.
- Do not duplicate comments made by previous speakers. For example, if traffic is mentioned as an issue, do not readdress that issue.
- All comments shall be directed to the Mayor and/or presiding officer. Do not address the audience or the applicant.
- Each speaker shall identify himself, including full name and address.

SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS

If you prefer not to attend a City Council meeting or work session in person, you may participate remotely:

- **Videoconference:** To participate by videoconference, you may access the meeting via Zoom at <https://us02web.zoom.us/j/5539517181>. When the Zoom.us window opens in your browser, click "Allow" to be placed in a virtual "waiting room." The host will open the meeting and allow all participants to join the meeting 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 "video" 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. Some useful Zoom functions include: microphone Mute/Unmute; Start/Stop Video; and View Participants – opens a pop-out screen that includes the "Raise Hand" icon that you may use to raise a virtual hand.
- **Teleconference:** To participate by telephone, dial 312.626.6799 and enter the meeting ID: 5539517181. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, unmute yourself by pressing *6 on your keypad. 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.

Meetings may be recorded. By participating in the meeting, you are consenting to be recorded.

"Zoom-bombing." Zoom-bombing is a cyber-crime and is punishable by law. In the event of an attendee intruding into any City of Vestavia Hills Zoom meeting, the online broadcast will be terminated immediately. Council and/or board members may be readmitted but online attendees will not. Although Zoom-bombing is not a frequent occurrence, those wishing to make public comment should attend the meeting in person.

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JUNE 26, 2023

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order. The City Clerk called the roll with the following:

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick Boone, City Attorney
Cinnamon McCulley, Asst. City Manager
Rebecca Leavings, City Clerk
Jason Hardin, Asst. Police Chief
Marvin Green, Fire Chief*
Keith Blanton, Building Official*
Melvin Turner, III, Finance Director
Zachary Clifton, Asst. Finance Director
Lori Beth Kearley, Public Works Director
Christopher Brady, City Engineer
Jack Wakefield, City Planner/GIS Administrator
**present virtually via Zoom or telephone*

Don Richards, Vestavia Hills Chaplain, offered the invocation followed by the Pledge of Allegiance.

APPROVAL OF THE AGENDA

The Mayor opened the floor for a motion to approve the agenda. He asked to approve the agenda as presented.

MOTION Motion to approve the agenda as presented was made by Mr. Weaver and seconded by Mrs. Cook. Roll call vote as follows:

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

Mayor Curry – yes

motion carried.

ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION

- Mr. Pierce welcomed Mark Macoy and Ben Chambliss representing the Chamber of Commerce Board.
- Mr. Pierce stated that the under-age-8 girls softball team competed in a state-wide tournament in Gardendale and won the state championship by winning 17 games and experiencing only one loss. He stated he is very proud of his granddaughter who is a player on the team. The Mayor echoed the sentiment as his granddaughter is also a player on that team.
- Mr. Pierce said hello from beautiful Salina, Kansas. He explained that he and his family are traveling out west marking locations off their bucket lists. He encouraged everyone to take a trip out West whenever they get the opportunity.
- Mr. Head stated that the Parks and Recreation Board will continue a work session from last week at the Civic Center, tomorrow, at 7 :30 AM.
- David Silverstein, candidate for Jefferson County Commission, District 5, introduced himself and asked for support in the upcoming special election to be held in July.

CITY MANAGER'S REPORT

- Mr. Downes stated that the City is seeking a master developer to assist in redevelopment of the former Days Inn hotel site. The date for submission is July 10 which is the next Council meeting date. He would like to discuss the responses at the work session on July 17.
- Mr. Downes briefed the Council on The Bray development at Liberty Park. There have been 56 permits for residential homes with an additional 18 that are expected soon. Full construction plans have been submitted for the Medical Properties Trust Co headquarters which will be the largest construction project in the history of the City. The initial phase for infrastructure is wrapping up and the development team is actively seeking partners and tenants to develop the commercial areas of The Bray.
- Tonight's agenda has a first-read item for two sidewalk projects to fill the gaps in the existing sidewalk network. One project involves the participation of Mountain Brook to fill a gap along Poe Drive. Another is to determine feasibility and perform initial survey and design for sidewalks along Oakview Drive adjacent to a new development.
- Mrs. Cook stated she had requested a couple of pressure-washing projects along Highway 31 and those areas are dramatically improved. She complimented the quick response of city crews in getting that accomplished.

COUNCILOR REPORTS

- Mr. Pierce recognized and commended the Chamber of Commerce, their Board and businesses for the I Love America festivities. There was strong turn-out and it was a wonderful experience.
- Mrs. Cook echoed that she also attended the I Love America festivities and talked to people of all ages, from various cities and even from other states, who were there enjoying themselves. She estimates thousands attended this great event.
- Mrs. Cook stated that she attended the Board of Education meeting just prior to this meeting and heard an updated athletic report including recognition of five official state championships and a sixth championship in an unsanctioned sport. Notably, there are a high number of scholastic achievements and participation in non-athletic competitions among school athletes. This speaks well of the students' participation in sports and the willingness of coaches to coordinate and allow both on and off-field extracurricular activities.
- Mrs. Cook applauded the school system for approving a new public participation policy for their hearings and their meetings. Previously there were restrictions that made it difficult for stakeholders to speak at meetings; this is a win for parents and will promote more community engagement.

FINANCIAL REPORTS

The financial reports for month ending May 2023 were presented. Mr. Turner read and explained the balances.

APPROVAL OF MINUTES

The Mayor asked for a motion to approve the minutes of the June 5, 2023, Regular Meeting.

MOTION: Motion to approve the minutes for the June 5, 2023, Regular Meeting. meeting as presented was made by Mr. Weaver and seconded by Mr. Pierce. Roll call vote as follows:

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

OLD BUSINESS

The Mayor explained procedures for all public hearings. Speaker time will be limited to three minutes. A timer will appear on screen monitors in the room to keep everyone apprised of remaining time. Speakers should not duplicate issues. Speakers should only address the Mayor

and/or presiding officer, and not address the audience or petitioner. All speakers shall clearly give their name and address for the record.

RESOLUTION NUMBER 5462

Public Hearing - Resolution Number 5462 - A Resolution authorizing the installation of a new support structure for a small cell facility to be located in the right-of-way adjacent to 1663/1671 Crossgate Drive, 2581 Crossgate Place and 1704 Crosswood Lane

MOTION Motion to approve Resolution Number 5462-A was made by Mrs. Cook and seconded by Mr. Weaver.

The Mayor explained the procedure for a public hearing. He stated public streets are owned by the City and include a public right-of-way in front of homes along the public street. He indicated that, in 2018, the federal government passed legislation that pre-empted any control by the City in the public right-of-way to allow franchise holders to erect utility poles, including small cell poles. By law, the City cannot deny a provider a request to install a pole. He explained that the City can work with providers and property owners to perhaps make small adjustments in pole locations. Crown Castle representatives are in attendance tonight to answer questions.

Patrick Boone, City Attorney, discussed the laws of the State of Alabama and federal law regulating installation of small cell poles installed in municipal right-of-way. Municipalities own all public rights-of-way which are part of the public roads of the City. Most residential rights-of-way are 50' wide. A portion is paved for vehicular traffic and the other parts are reserved for public utilities but are maintained by the individual property owners. A utility's use of the right-of-way is a privilege granted by the governing body. He added that the Alabama Supreme Court has held that cities may require these companies to obtain a franchise to use the right-of-way for their utilities; therefore, small cell companies with a franchise have the right to erect small cell facilities in neighborhoods along public streets. Cities may regulate the fees charged, how the utility must be maintained, and the time taken to approve the permit. Federal law supercedes state law. In 2018, the federal government passed a law granting utility companies the right to place small cell facilities in city rights-of-way, prohibited cities from charging excessive fees, and instituted a "shot clock" or a maximum number of days the city has to take action on the request. In 2021, the state legislature enacted a similar statute that granted small cell providers the right to install small cell facilities in the city right-of-way in keeping with the provisions of existing federal law. Starting in 2018, the Mayor lobbied against passage of this state law to no avail because City leaders judged it was excessive government overreach for the federal government to control city rights-of-way. Regardless of the city's opinion of the law, the law is the law, and the City has no choice but to comply.

Mr. Weaver stated he understands a municipality has 90 days to approve a pole. If not acted upon, is it approved automatically? Mr. Boone stated that is correct. Mr. Weaver stated regardless of what the Council does, the pole is approved if more than 90 days. Mr. Boone agreed.

The Mayor opened the floor for a public hearing.

The following individuals spoke against the installation of a pole in the Crossgate community.

- Val Early III, 1705 Crosswood Lane, asked when the 90-day timer begins to run. Mr. Boone stated it is when the application was submitted. Mr. Early requested an amendment to move the pole request on Crosswood to a different nearby location. He stated that he is not sure what other neighbors think, but he thinks it is a more favorable location. He stated that there are also legal covenants that exist on this property and currently exist on the lots in the subdivision that require all utilities to be located underground. He stated that existing utilities, namely AT&T, have left many unused and broken utility structures and he requests city help in getting those cleaned up or repaired.

Mrs. Cook asked Mr. Boone how covenants might affect the placement of poles. Mr. Boone responded that private covenants do not apply to public streets.

- Tami Jackson, Crown Castle, gave her office phone number, 470-235-6280, and email, tami.jackson@crowncastle.com, and stated that anyone can contact her at any time to request assistance for concerns for their pole locations.
- Mrs. Cook asked if they were familiar with the request that was just made to relocate the pole. She stated that there was one proposed location mentioned that was between two trees, and that foliage might be an issue.
- Mike Isaacs, Construction Manager, Crown Castle, stated that poles must have available power. The chosen location in front of Mr. Early's property has an evergreen nearby to allow some possible shielding from view of residences. He stated that is the first time he has heard of this request. He stated that his intent was to place the pole within the existing evergreens.
- Dak Awad, 1657 Crossgate Drive, asked for an exception to the location in front of his house too because these facilities cause cancer and should not be located across from his home. He asked for this pole location to be moved.
 - Mrs. Cook asked Crown Castle to address health and safety issues.
 - Mrs. Jackson stated that utilities are required to conduct emissions tests on devices and emissions from these devices are far less than the max allowed by the federal government.
- Brian Qingmei, 1671 Crossgate Drive, discussed safety and health concerns regarding small cell technology. The measurement to his home is 25' and if it were to fall down, it will hit his home. He requested to move the pole to the backyard to reduce the chance of problems.
 - Mrs. Cook referred the public to the City's website that provides health and safety information.
- David Harwell, 1803 Catala Road, stated that the City has the ability to control the type of pole that is to be erected. As an example, the pole near his daughter's home is an ugly wood pole and he noticed that, in the description of these, they are metal black poles.
 - Mr. Boone added if there is an existing pole that would allow a co-location, the utility must use that pole. Discussion ensued.

Mr. Weaver asked about the pole materials. Mr. Isaac stated that these are 35' black metal poles. Mr. Weaver asked about, going forward, what type of pole will be installed. Mr. Isaacs stated that depends on the area being considered. Discussion ensued concerning communication of the request to homeowners. He encouraged homeowners to contact Crown Castle prior to these meetings to work some of these issues out.

- June Wikingstad, 1666 Crossgate Drive, asked why Crown Castle wants to put these small cell nodes there as there is no shortage of cell phone coverage. She asked why didn't everyone in the subdivision get a notice? She believes it will devalue her property.
 - The Mayor stated that this is for 5G technology. Underground utilities do not provide 5G access.
- Heather Joe, 2577 Crossgate Place, stated that they pay a lot of money for the lake common area and she is one of the few who received notice of this request. This pole will go near this lake where people tend to congregate; she encouraged everyone to contact Crown Castle to object.
- Marissa Goncalves, 1621 Crossgate Drive stated that she is disappointed with the condescending tone of what is being said.
- Mike Fliegel, 1690 Crossgate Drive, applauded the speakers that have spoken tonight. He stated that the neighborhood opposes this vehemently and that the first pole is the entrance to their neighborhood and could be set back so it is hidden by the trees. Public utilities have trashed their neighborhoods.
- Ritchie Bruce, 1645 Crossgate Drive, stated that he is the President of the HOA. He thanked the Mayor and Council for their passion in serving and asked if there has been a needs assessment of the 5G coverage. If so, he requests printed copies of that assessment.
 - Mr. Isaac stated that the needs assessment was submitted to the City with the application.
 - Mr. Bruce asked who approved fiber optics to be installed ¼ inch below the surface of their street. Christopher Brady and Mr. Downes explained the new technology and showed how the new installation procedure is less less damaging to the pavement than previous methods and avoids the necessity of digging up yards. The city finds this method causes no degradation of pavement and, when the street is repaved, the fiber is removed and reinstalled following the resurfacing.
 - Mrs. Cook asked about the status of Crossgate roads being analyzed for repaving. Mr. Downes explained the process of grading roadways and referred property owners to the city's website. This year, the City has hit the 7-8 mile target set by the Council and spent \$1.6 million for paving. He stated he would be happy to show the HOA president that information and the grades for their subdivision's streets.
- Jean Dillon, 1670 Crossgate Drive, wanted to know what service provider this is being installed to service? She stated that AT&T has already put fiber optic into the ground so they are not needing it in Crossgate.
 - Mr. Isaac stated that they are a neutral open provider and they lease pole space to multiple carriers which avoids having separate poles for each carrier.
- Jack Carlisle, 2804 Crossgate Circle, stated that the Council is going to allow three ugly poles in their neighborhoods. He stated that they are across the street from a new school

and, now, they have graffiti everywhere. These poles will be another new surface for them to paint. He stated that Mr. Boone's comments were "I think" and there might not be enough evidence on the harmful effects.

- Rita Watkins, 2580 Crossgate Place, asked if this is for the benefit of the residents of Crossgate Place or someone else?
 - Tami Jackson stated that poles will allow new and better quality services for the Crossgate neighborhood. She indicated that these new 5G poles increase capacity and coverage, to handle more users at the same time.
- Kimberly Lynch, 1720 Crosswood Lane, asked why the City did not send out literature giving the information regarding this 5G technology and poles? She stated she thinks the city does have input as to what can and cannot be done and the City needs to protect the residents of the City and answer these questions. She showed photos of utility infrastructure that is in disrepair asking what guarantee is there of maintenance of these new poles.
- David Sanderson, 1716 Crosswood Lane, stated there are two types of poles that they use. Does the City have any control over the type of poles and could they find something more aesthetic?
 - Mr. Boone stated the city can change only the height. Mr. Sanderson asked about the monopoles and who has responsibility to maintain them. Mr. Boone stated that a property owner has the responsibility to maintain their property, and the poles belong to Crown Castle; therefore, they have responsibility to maintain their poles.
- Mr. Early, 1705 Crosswood Lane, suggested asked for the decision to be tabled to allow time to get answers. He stated that information has not been made available to residents.

The Mayor asked about the timing of the request. Mr. Boone stated that both federal and state law states that the time limit is 60 days for co-location and 90 days for new poles.

- Mrs. Wikingstad, 1666 Crossgate Drive, said Crossgate does not want Crown Castle to come into their neighborhood.
- Walter Costilow, 1629 Crossgate Drive, stated that it is obvious that there needs to be a delay. Crown Castle has denied them the information needed to determine the feasibility and need of these poles and the City should make them provide the information. He stated that many in the neighborhood did not receive a letter.
- Merissa Goncalves, 1621 Crossgate Drive, stated she is worried about the health risk. She asked where else these poles are located within the City.
 - Mr. Downes stated that the City has a transparency portal that shows the small cell locations with a map showing where every small cell node is located. He stated that some have been co-located and some are new poles.

Mr. Weaver stated that he does not want a situation where the time-clock runs out and the Council did not take action on it. If that becomes the norm, this opportunity for a public hearing is gone. He stated that federal law trumps everything but they do not want to lose the opportunity to talk about it. He asked if there is an opportunity for this to be tabled? He stated he thinks it

would be valuable for the neighborhood to know that Crown Castle has done whatever they can do. He stated that there has been wide discussion as to why the locations are where they are and can it be tabled? Mr. Isaac said Crown Castle has no interest in taking action to force an approval if the Council chooses to postpone the decision.

The Mayor asked the HOA President to gather all of the concerns and send them to the city.

Mrs. Cook stated that the website was created to give information to residents. She understands the concerns and she provided a reference to the website to provide information helpful to the discussion. She appreciates the residents coming to the meeting to express concerns and ask questions.

Mr. Pierce stated that it was a good idea to work through the HOA president. He stated if the President can be the focal point maybe that will resolve these issues before the next meeting. He said if he lived in Crossgate he would ask the question what would be the effect on service if they refuse the poles altogether.

Richie Bruce, 1645 Crossgate Drive, stated that he will work with the neighborhood and submit questions to the city.

- Kang Jianing, 1654 Crossgate Drive, stated that they do not want to waste more time and asked the Council just say no to this issue now.
- Kimberly Lynch, 1720 Crosswood Lane, asked about the meeting notifications. Ms. Leavings explained that notification was provided to all property owners adjacent to the location of the proposed pole.
- June Wikingstad, 1666 Crossgate Drive, asked why the decision and public hearing was scheduled so close to expiration of the 90-day shot clock. She requested more time to discuss the matter and get answers to questions.

Mrs. Leavings answered that this agenda item had to be delayed because of lack of a quorum at an earlier meeting.

There being no one further to address the issue, the Mayor closed the public hearing.

MOTION Motion to postpone this request to the meeting of August 14, 2023 at 6:00 PM so that the questions of the neighborhood can be provided by Crown Castle was by Mrs. Cook and seconded by Mr. Weaver.

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Mayor Curry – yes

motion carried.

Mrs. Cook suggested the questions be gathered in a timely manner and submitted to the Clerk and thanked Mr. Bruce for being the one to gather and submit questions. Ms. Leavings stated that the Council gave notice of the date and time of the next meeting so re-notifications would not be required.

The Mayor encouraged attendees to get their questions to the HOA president promptly so the city can get them answered.

RESOLUTION NUMBER 5464

Public Hearing - Resolution Number 5464 - Annexation - 90 Day - 3512 Valley Circle; Lot 4, Block 2, Dolly Ridge Estates, 2nd Add; David Pace, Owner(s)

MOTION Motion to approve Resolution Number 5464 was made by Mrs. Cook and seconded by Mr. Weaver.

Mr. Pierce gave the annexation report that showed no adverse information for this property. Engineering had noted some cleanup and drainage controls needed to be added which has been remediated.

David Pace was in attendance virtually for this request.

The Mayor opened the floor for a public hearing for this and the overnight annexation of the same property which is the next item. There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

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

ORDINANCE NUMBER 3182

Public Hearing - Ordinance Number 3182 - Annexation - Overnight - 3512 Valley Circle, Lot 4, Block 2, Dolly Ridge Estates, 2nd Addition; David Pace, Owner(s)

MOTION Motion to approve Ordinance Number 3182 was made by Mrs. Cook and seconded by Mr. Weaver.

The Mayor stated that this is the overnight annexation of the same property.

The Mayor called for the question. Roll call vote was as follows:

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

RESOLUTION NUMBER 5465

Public Hearing - Resolution Number 5465 - Annexation - 90 Day - A portion of 2553 Rocky Ridge Road; Taylor Burton

MOTION Motion to approve Resolution Number 5465 was made by Mrs. Cook and seconded by Mr. Weaver.

Mrs. Cook gave the annexation report that showed no adverse information for this property. She mentioned that this request also includes a de-annexation which is the next item on the agenda. She stated that the annexation committee found this would be a net gain for the City.

Taylor Burton and Del Romero were in attendance for this request.

Mr. Burton explained that this is to annex a small vacant portion of property to combine with an existing office building. He stated that the building is an old home which they intend to raze and build a newer one on the front portion. He explained that the de-annexation would be to de-annex the rear part of the parcel to the County to allow the construction of two homes into an existing County development to help to buffer the new office building from that County subdivision.

The Mayor opened the floor for a public hearing for both the annexation and the de-annexation of these properties which are tied to each other for the proposed development. There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

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

RESOLUTION NUMBER 5466

Public Hearing - Resolution Number 5466 - De-Annexation - A Portion of 2551 Rocky Ridge Road; A request for de-annexation of the rear portion of the property to allow construction of two single family residences to join with a Jefferson County subdivision and act as a buffer to allow construction of a new office building on the front of 2551 and 2553 Rocky Ridge Road; Taylor Burton, Owner(s)

MOTION Motion to approve Resolution Number 5466 was made by Mrs. Cook and seconded by Mr. Weaver

Taylor Burton and Del Romero were in attendance for this request.

The Mayor called for the question. Roll call vote was as follows:

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

NEW BUSINESS

RESOLUTION NUMBER 5467

Public Hearing - Resolution Number 5467 - Alcohol License for Acton Mart LLC d/b/a Acton Mart; 2423 Acton Road for an 050 - Retail Beer and an 070 Retail Table Wine license; Ali Mohammed Nasher, Executive

MOTION Motion to approve Resolution Number 5467 was made by Mrs. Cook and seconded by Mr. Weaver.

No one was in attendance regarding this request.

MOTION Motion to postpone to July 10 was made by Mrs. Cook, seconded by Mr. Weaver for Resolution Numbers 5467 and 5468.

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Mayor Curry – yes

motion carried.

RESOLUTION NUMBER 5468

Public Hearing - Resolution Number 5468 - Alcohol License - Vestavia Station LLC d/b/a Vestavia Station; 728 Montgomery Highway for a 050 - Retail Beer (off premises only) and 070 - Retail Table Wine (off premises only) license; Ali Mohammed Nasher, Executive

Request postponed until July 10, 2023.

RESOLUTION NUMBER 5470

Public Hearing - Resolution Number 5470 - Alcohol license for JDHS LLC d/b/a The Palm and Pig; for an 020 - Restaurant Retail Liquor License for a new restaurant at 633 Montgomery Highway; Charles W. Perry, III, William I. Davis and Douglas S. Smith, Executives

MOTION Motion to approve Resolution Number 5470 was made by Mrs. Cook and seconded by Mr. Weaver.

Doug Smith was in attendance for this request. He explained the request is for a new restaurant at the location of the former Backyard Market. He explained his experience and stated that they contract with a certification responsible vendor to do on-site employee training and typically try to hire mature staff for the best result. He stated that they are not open late-night but they do provide live music.

Mr. Pierce asked the opening date. Mr. Smith stated opening would be as soon as possible.

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

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

NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)

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

- Public Hearing - Resolution Number 5469 - A Resolution expressing gratitude to State Representative Mike Shaw and the Jefferson County Community Service Fund for donations to be used for certain upgrades/improvements in the Vestavia Hills Parks and Recreation Department
- Public Hearing - Resolution Number 5471 - A Resolution Approving Funding And Authorizing The City Manager To Take All Actions Necessary To Construct A Sidewalk Project In Cahaba Heights And To Authorize Survey And Engineering Services for Another Proposed Sidewalk Project in Cahaba Heights In Order To Further Pedestrian Connectivity
- Public Hearing - Ordinance Number 3184 - An Ordinance to authorize the City Manager and Director of Parks and Leisure Services to Sign a revised Civic Center Facility Agreement and Deposit Form for Facility Rentals at the Civic Center

CITIZEN COMMENTS

David Harwell, 1803 Catala Road, stated the he does not believe that Crown Castle does enough to answer people's questions. He complained that real estate signage is everywhere and asked the City to clean it up.

There being no further business, Mr. Pierce made a motion to adjourn. The Mayor adjourned the meeting at 8:20 PM.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JULY 10, 2023

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order. The City Clerk called the roll with the following:

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick Boone, City Attorney
Cinnamon McCulley, Asst. City Manager
Rebecca Leavings, City Clerk
Jason Hardin, Asst. Police Chief
Keith Blanton, Building Official*
Umang Patel, Court Director*
Marvin Green, Fire Chief*
Melvin Turner, III, Finance Director
Zachary Clifton, Asst. Finance Director
Lori Beth Kearley, Public Works Director
Sandi Wilson, Program Superintendent, Parks and Recreation

**present virtually via Zoom or telephone*

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

APPROVAL OF THE AGENDA

The Mayor opened the floor for a motion to approve the agenda. He asked to approve the agenda as presented.

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

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes
Mayor Curry – yes

Mr. Weaver – yes
motion carried.

PRESENTATION – JBS MENTAL HEALTH AUTHORITY

Mr. Jim Crego, Executive Director, for the JBS Mental Health Authority addressed the Council and described services provided to the City and the counties of Jefferson, Blount and St. Clair. The crisis center opened to assist law enforcement with individuals with mental health issues and/or addictions. He stated that, since opening, they have helped more than 350 people. Mr. Crego thanked the Council for on-going financial support and requested continued funding for the authority. He added that three of their Board members are Vestavia Hills residents and he is thankful for the City's support.

Mrs. Cook stated that she had a tour of the facility and feels it is a great asset for local law enforcement and provides important treatment to vulnerable individuals.

ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION

- Mrs. Cook reminded everyone of a July 18 special county election to replace Steve Ammons. This is a large district and she encouraged those out of town to vote absentee.
- Mr. Pierce welcomed Marty Martin who was present representing the Chamber of Commerce Board via Zoom.
- Judge Mike Bolin, candidate for Jefferson County Commission, District 5, introduced himself and requested support in the upcoming County election.
 - Mr. Boone stated that Judge Bolin did an absolutely wonderful job in Jefferson County as Probate Judge and, as a Justice on the Supreme Court of Alabama, he excelled again. He stated now the City has another opportunity to benefit from Mike Bolin's experience and he supports him.
- Mayor Curry urged everyone to vote on July 18.

CITY MANAGER'S REPORT

- Mr. Downes showed a tool that the City has tracking cellular usage throughout the City, non of which is personally identifiable. He stated that the Asst. City Manager worked with the Chamber to gauge cell phone usage in the month of June for Wald Park. Thursday of each week was circled and the trend for Thursday visits range from 1200 to 1800 except for on June 21, the date of the I Love America event, when almost 5,000 attendees were shown. The chart shows the number of people are coming and going before and after visiting Wald Park, and the effect on local businesses which was astounding.
 - Mrs. Cook stated that she attended I Love America night and she actually met a family from Tennessee and one from Kentucky who had heard about the event and decided to come. She stated that events like these are a great branding opportunity.

- Mr. Pierce pointed out that the local baseball is over by June so these statistics do not even include those games.
- Mr. Downes stated that the RFQs for the master developer of the former Days Inn property are in. He stated that two were received and will be discussed at the Work Session scheduled for July 17.
- Mr. Downes stated that Christopher Brady and Conrad Garrison showed the proposed sidewalk master plan to the Design Review Board (DRB). He indicated that the DRB did question the width of the sidewalks because in some areas, there are 8' sidewalks. He stated that DRB questioned if 8' sidewalks are actually needed and with that, some study will occur to determine if a change in the zoning code, which requires 8' sidewalks, should occur. He stated that the agenda includes two immediate opportunities for sidewalk construction and design. He stated that these are being considered separately from the master plan and will be discussed later in the meeting.
- Mr. Downes reported Altadena Valley Park site preparation is coming along rapidly and, once completed, Shelby County will construct some restrooms on the property.
- Mr. Downes announced that Wald Park Phase III is still behind schedule but targeting late August for completion.
- Mr. Downes asked Mrs. Kearley to update the Council on the Rocky Ridge sidewalk project.
 - Mrs. Kearley stated that there are some problems with utility relocation which is causing delays. She explained that utilities are now marked and the contractor is about to get started. The State misplaced the contractor's sales tax exemption request and it needs to be resubmitted. To get the project moving the contractor has agreed to absorb the sales tax cost until it is approved. Completion is expected by the end of September and there will be careful planning to minimize traffic impact during the school carpool times.

COUNCILOR REPORTS

- Mr. Weaver stated that the Planning and Zoning Commission will meet next Thursday in regular session with only one request and that is to clean up a past zoning case.
- Mr. Head announced that a Parks and Recreation Board meeting will be held July 18, 2023, beginning at 7:30 AM.

OLD BUSINESS

The Mayor explained procedures for all public hearings. Speaker time will be limited to three minutes. A timer will appear on screen monitors in the room to keep everyone apprised of remaining time. Speakers should not duplicate issues. Speakers should only address the Mayor and/or presiding officer, and not address the audience or petitioner. All speakers shall clearly give their name and address for the record.

RESOLUTION NUMBER 5469

Public Hearing - Resolution Number 5469 - A Resolution expressing gratitude to State Representative Mike Shaw and the Jefferson County Community Service Fund for donations to be used for certain upgrades/improvements in the Vestavia Hills Parks and Recreation Department

MOTION Motion to approve Resolution Number 5469 was made by Mr. Pierce and seconded by Mrs. Cook.

Mr. Downes stated that these two specific projects came up in conversation between Parks Director Jamie Lee and State Rep. Mike Shaw. Funding is for an enhancement to the walking track at Byrd Park and an exercise floor in the Civic Center. Both require Council approval.

Mr. Pierce asked about the work is at Byrd Park. Mr. Downes stated it is to resurface that walking track because a lot of people use that track.

Mrs. Cook stated that she was glad that Rep. Shaw came to the Council to ask their thoughts about these projects.

Laura Woodruff, 2320 Country Ridge Drive, asked about the resurfacing plan and what materials will be used on it because it is a very popular track and wanted to ensure that it will be asphalt. Mr. Downes stated it will be asphalt.

Carol Walker, 2203 Rosewood Drive, stated that she was a member of the original sidewalk committee and participated for a long time. She stated that if the asphalt is milled at the park, the contractor will hit tree roots. She requested that some preliminary work be done to ensure that the track at Byrd Park will last longer by correcting drainage improvements and removing tree roots. Mr. Downes stated the City will address those issues when construction is begun.

The Mayor opened the floor for a public hearing. There being no one further to address the issue, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Mayor Curry – yes

motion carried.

RESOLUTION NUMBER 5471

Public Hearing - Resolution Number 5471 - A Resolution Approving Funding And Authorizing The City Manager To Take All Actions Necessary To Construct A Sidewalk Project In Cahaba Heights And To Authorize Survey And Engineering Services for Another Proposed Sidewalk Project in Cahaba Heights In Order To Further Pedestrian Connectivity

MOTION Motion to approve Resolution Number 5471 was made by Mrs. Cook and seconded by Mr. Pierce.

Mr. Downes explained this is a request to fund a connection from Poe Drive to Overton Road to fill an existing gap in residential sidewalks of the area. A private developer stopped a sidewalk in one location because his development did not meet up to the existing sidewalks. He stated that this will connect to the Mountain Brook sidewalk on Overton. The City of Mountain Brook has agreed to pay \$20,000 of this project. Within this same resolution, there is a request to fund the design for sidewalks along Oakview. He showed a drawing to allow a pedestrian way allowing people to walk to the park to reduce vehicular traffic. For this, the project qualified for an energy efficient Federal grant with an allocation of \$75,000. This request is to fund the design of the sidewalk.

The Mayor opened the floor for a public hearing. There being no one further to address the issue, the Mayor closed the public hearing and called for the question.

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

ORDINANCE NUMBER 3184

Public Hearing - Ordinance Number 3184 - An Ordinance to authorize the City Manager and Director of Parks and Leisure Services to Sign a revised Civic Center Facility Agreement and Deposit Form for Facility Rentals at the Civic Center

MOTION Motion to approve Ordinance Number 3184 was made by Mrs. Cook and seconded by Mr. Pierce.

Mr. Downes stated that this is a collaboration of the board and the staff to enhance the rental of facilities in the Civic Center. This would allow some rentals within the center to not have the requirement to use the City's preferred caterers so families could bring their own party food and to add a cleaning deposit to protect the facility.

Mr. Pierce stated that this is a learning process and he is glad that we are accommodating the public when a facility is needed.

The Mayor opened the floor for a public hearing. There being no one further to address the issue, the Mayor closed the public hearing and called for the question.

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

NEW BUSINESS

RESOLUTION NUMBER 5467

Public Hearing - Resolution Number 5467 - Alcohol License for Acton Mart LLC d/b/a Acton Mart; 2423 Acton Road for an 050 - Retail Beer and an 070 Retail Table Wine license; Ali Mohammed Nasher, Executive

MOTION Motion to approve Resolution Number 5467 was made by Mr. Pierce and seconded by Mrs. Cook.

Ahd Dweekat was in attendance for this request representing the owner.

Mr. Pierce asked what type of training is done to prevent sales to minors. Ms. Dweekat stated that they utilize a point-of-sale system in which a person's identification must be scanned before the sale is made. All employees are required to follow the process. She stated there is also signage in the store.

The Mayor opened the floor for a public hearing. There being no one further to address the issue, the Mayor closed the public hearing and called for the question.

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

RESOLUTION NUMBER 5468

Public Hearing - Resolution Number 5468 - Alcohol License - Vestavia Station LLC d/b/a Vestavia Station; 728 Montgomery Highway for a 050 - Retail Beer (off premises only) and 070 - Retail Table Wine (off premises only) license; Ali Mohammed Nasher, Executive

MOTION Motion to approve Resolution Number 5468 was made by Mrs. Cook and seconded by Mr. Pierce.

Ahd Dweekat was in attendance for this request representing the owner.

Mr. Pierce asked what type of training is done to prevent sales to minors. Ms. Dweekat stated that they utilize a point-of-sale system in which a person's identification must be scanned before the sale is made. All employees are required to follow the process. She stated there is also signage in the store.

The Mayor opened the floor for a public hearing. There being no one further to address the issue, the Mayor closed the public hearing and called for the question.

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

Mayor Curry – yes

motion carried.

NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)

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

- Public Hearing - Ordinance Number 3183 - Rezoning - 709 Chestnut Street; Lot A, Resurvey of Lots 20 and 21, Block 9, South Birmingham Heights; Rezone from Vestavia Hills R-2 (medium density residential) to Vestavia Hills O-1 (office park district); Jessica Prier, Owner
- Public Hearing - Resolution Number 5462 - A Resolution authorizing the installation of a new support structure for a small cell facility to be located in the right-of-way adjacent to 1663/1671 Crossgate Drive, 2581 Crossgate Place and 1704 Crosswood Lane (public hearing scheduled for Monday, August 14, 2023)

CITIZEN COMMENTS

There being no further business, Mrs. Cook made a motion to adjourn. The Mayor adjourned the meeting at 7:02 PM.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



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

July 24, 2023

To: Jeff Downes, City Manager

Cc:

From: Rebecca Leavings, City Clerk

RE: Public Hearing - Ordinance Number 3183 - Rezoning - 709 Chestnut Street; Lot A, Resurvey of Lots 20 and 21, Block 9, South Bham Heights; Rezone from Vestavia Hills R-2 (medium density residential) to Vestavia Hills O-1 (office park district); Jessica Prier, Owner

Background:

Property is located on Chestnut Street. Many of the residential properties along this street have already rezoned to a commercial zoning. This request is to renovate and retrofit the existing residence into an office for an Interior Design business.

Recommendation:

The Planning and Zoning Commission heard this request at their June regular meeting and voted unanimously to recommend rezoning. *See attached certification*

Fiscal Impact:

na

Attachments:

1. Ordinance 3183
2. BDH_LS-PLAN-071823_Thu_Jul_20_2023_at_10-41-21

ORDINANCE NUMBER 3183

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-2 TO VESTAVIA HILLS O-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-2 (medium density residential district) to Vestavia Hills O-1 (office park district):

709 Chestnut Street
Lot A, Resurvey of Lots 20 & 21, Block 9, South Bham Heights
Jessica Prier, Owner(s)

APPROVED and ADOPTED this the 24th day of July, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

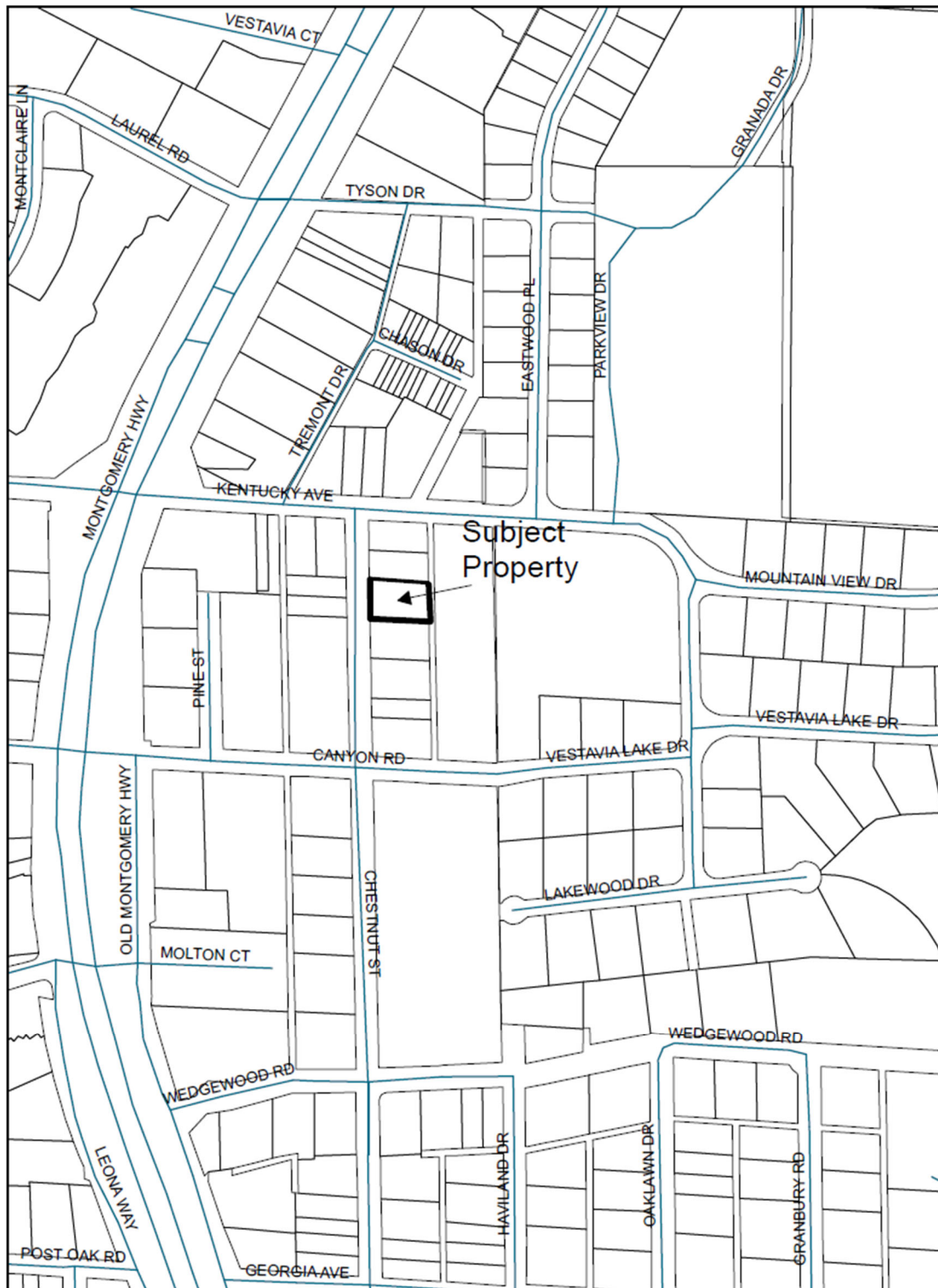
CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 3183 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 24th day of July, 2023 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the _____ day of _____, 2023.

Rebecca Leavings
City Clerk

709 Chestnut Street





City of Vestavia Hills

Planning and Zoning Commission Review and Recommendation



Case Number: RZ-23-7

Owner Name: Jessica and Daniel Prier

Owner Address: 2208 Biltmore Avenue Vestavia AL 35216

Representative:

Rep.

Address:

Project Address: 709 Chestnut Street

Legal Description: Lot A, Resurvey of Lots 20 & 21, Block 9, South Bham Heights

Parcel ID Number: 28 00 30 2 001 003.000

Current Zoning: R-2

Requested Zoning: O-1

Intended Purpose: office

MOTION Mr. Weaver made a motion to recommend Rezoning for 709 Chestnut St. from Vestavia Hills R-2 to Vestavia Hills O-1. Second was by Mr. Romeo. Motion was carried on a roll call; vote as follows:

P&Z Recommendation:

Mr. Farrell – yes

Mr. Larson – yes

Mr. Honeycutt – yes

Mr. Vercher– yes

Motion carried.

Mr. Romeo – yes

Mr. Weaver– yes

Mr. Maloof-yes

Date of P&Z Meeting:

June 8, 2023

Authorized by:

Issued by:

Vestavia Hills Planning and Zoning Commission,

Michael Vercher, Chair

Conrad Garrison, City Planner

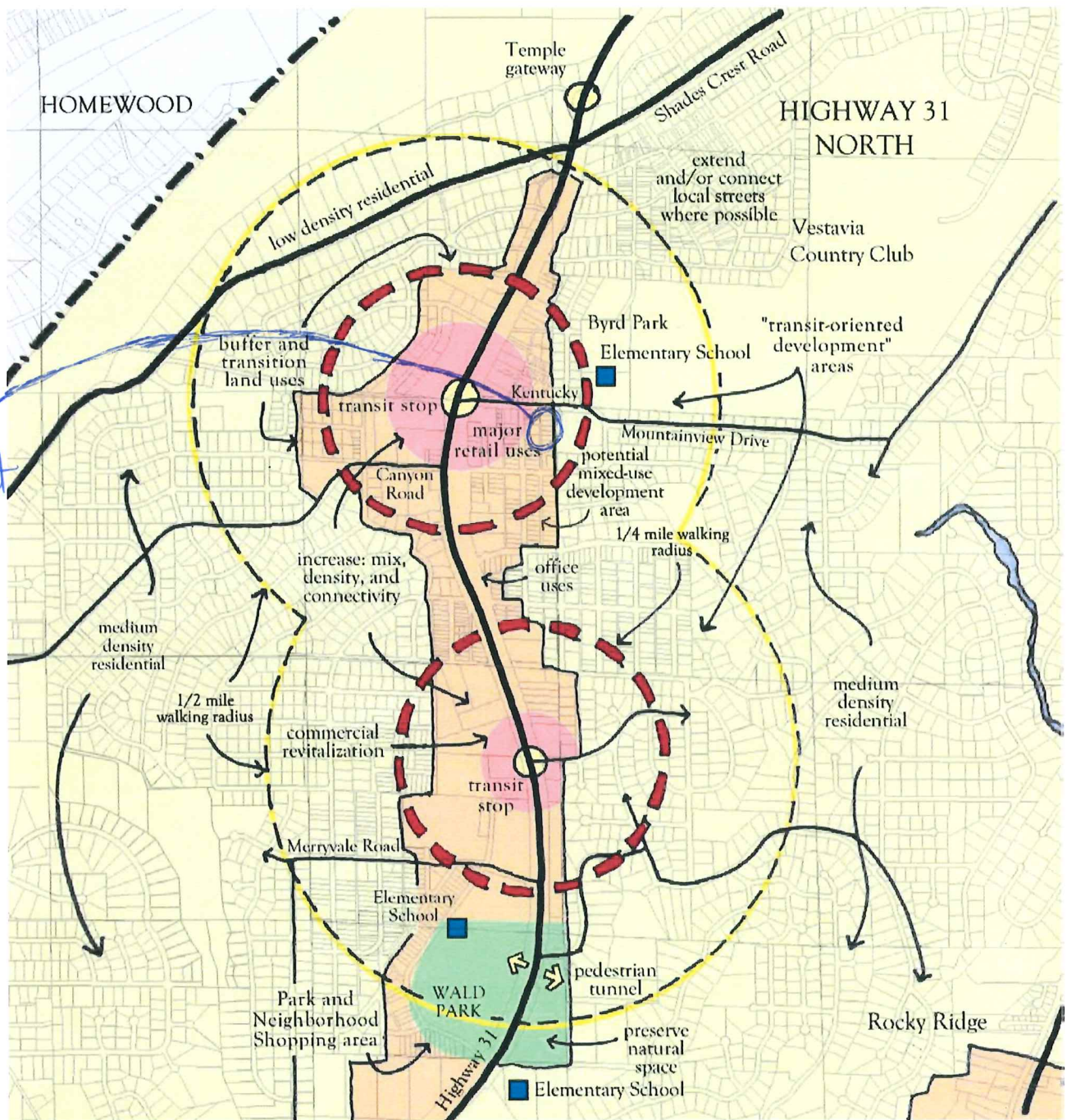


Figure 17: Highway 31 North
Land Use Analysis

- Neighborhood - primarily low / medium density single-family residential areas with higher densities near village center(s). Other uses may include schools, places of worship, recreational areas, and open space.
- Village Center - mixed use centers with highest densities in core areas. Mix of uses should include retail and service businesses, professional offices, high density residential areas, institutions, recreation areas, and public spaces.
- Commercial Core - primarily high density, retail and service business areas with professional offices and multi-family residences on upper floors or on periphery. Other uses may include institutions and public space.
- Gateways and Nodes - Gateways are entryways into the community or village enhanced with consistent signage, landscaping, and other elements. Nodes are sites, such as transit stops, where public spaces, signage, and other public design elements should be considered.

- Professional Offices - primarily professional office uses. Density should vary according to surroundings. Other uses may include retail and services (supporting offices and employees), places of worship, public spaces, and open space.
- Recreation and Open Space - public and private recreation facilities and preserved natural spaces. Recreation facilities may be active, passive or combined. Open spaces are areas preserved in a natural state and may include passive recreational uses.
- Trailheads - Trailheads are public sites along a trail, where bike racks, seating, parking, and public amenities are provided for trail users.
- Schools - School facilities administrated by the Vestavia Hills School System.





(1 of 2) X

Zoning1

PARCELID	2800302001003000
DISTRICT	020
ESN_NUM	62
PROPADD	709 CHESTNUT ST
TAX_TOWNSH	28
SECTION	30
QSECTION	2
BLOCK	001
PARCEL	003000
VH_ZONING	
ZNG_ORD	
ZNG_ORD_DT	
ZNG_ORD2	

Zoom to



City of Vestavia Hills, AL

06/13/2023

RZ-23-7

Rezoning Application

Status: Active

Date Created: Apr 21, 2023

Applicant

Jessica Prier
jessica@birminghamdesignhouse.com
709 Chestnut Street
Vestavia, AL 35126
2059606101

Primary Location

709 CHESTNUT ST
VESTAVIA HILLS, AL 35216

Owner:

Alassippi Land, LLC
2208 Biltmore Avenue Vestavia, AL 35216

Agenda Scheduling Information

Property Information

Subject Property Address

709 Chestnut Street

Tax Parcel ID Number

28 00 30 2 001 003.000

Legal Description

SUB DIVISON1: SOUTH BHAM HTS RE 28-30-2
SUB DIVISON2:

MAP BOOK: 50 PAGE: 19
MAP BOOK: 0 PAGE: 0

PRIMARY BLOCK: 9
PRIMARY LOT: A

SECONDARY BLOCK: 0
SECONDARY LOT: 0

METES AND BOUNDS: LOT A SOUTH BHAM HTS RESUR OF LOTS 20 & 21 BLK 9

Existing Parking Spaces

--

Proposed Parking Spaces

5

Submission Date

04/12/2023

Type of Project

New Non-Residential Development/use

Action Requested:

From Existing Zoning Classification

R-2

To Requested Zoning Classification

O-1

For the Intended Purpose of:

office

Acreage of Subject Property

.34

Acreage of Property to be Disturbed

.05

Setbacks**Front**

--

Back

--

Side

--

Open Space

--

Lot Coverage Percentage

--

Tree Save Plan - I acknowledge that a if this is a new non-residential development or is a residential development in excess of 3 units, that I am required to submit a tree save plan concurrent with this application (excludes PUDs).



Owner Information

Applications must be either submitted by the owner of the property or a representative duly appointed by the owner by way of a notarized letter and/or power of attorney.

Property Owner Name

Jessica and Daniel Prier

Company Name

Alassippi Land LLC

Owner Address City State Zip

2208 Biltmore Avenue Vestavia AL 35216

Owner's Phone Number

2059606101

Email Address of Owner

jessica@birminghamdesignhouse.com

By checking this box, I hereby affirm that I am the representative of the owner duly authorized to represent this petition for rezoning. Simultaneously with this application, I am submitting notarized documentation from the owner which authorizes me to represent this case. If no authorization is provided, this application cannot be processed.

**Owner Representative/Responsible Party**

--

Company Name

--

Contact Email of Responsible Party

--

Mailing Address of Responsible Party

--

Phone No. of Responsible Party

--

Email Address of Responsible Party

--

Project Engineer Information (if applicable)

Name

--

Company

--

Mailing Address

--

Phone Number

--

Email

--

Internal Reviews

City Council Decision, Conditions, Reason for Denial

--

Attachments

- pdf

Rezoning Affidavit.pdf
Uploaded by Jessica Prier on Apr 18, 2023 at 11:14 am
 - pdf

ID100-24x36.pdf
Uploaded by Jessica Prier on Apr 27, 2023 at 4:32 pm
-

PLANT SCHEDULE					
TREES	BOTANICAL NAME	COMMON NAME	SIZE	CONTAINER	REMARKS
1	CHIONANIDUS VIRGINICUS	WHITE FRINGETREE	8" HT.	B&B	MLT
3	MAGNOLIA GRANDIFLORA 'SOUTHERN CHARM'	TEDDY BEAR® SOUTHERN MAGNOLIA	8" HT.	B&B	
9	MAGNOLIA VIRGINIANA 'JIM WILSON'	MOONGLOW® SWEETBAY MAGNOLIA	8" HT.	B&B	MLT
SHRUBS	BOTANICAL NAME	COMMON NAME	CONTAINER	HEIGHT	REMARKS
8	BULGUS 'GREEN MOUNTAIN'	GREEN MOUNTAIN BOXWOOD	B&B	30" MIN.	
12	DISTYLIDEMX 'PRIDE® II'	BLUE CASCADE® DISTYLIDUM	3 GAL.		
13	FOTHERGILLA GARDENI 'BLUE MIST'	BLUE MIST DWARF FOTHERGILLA	3 GAL.		
9	HYDRANGEA PANICULATA 'LIMELIGHT'	LIMELIGHT PANICLE HYDRANGEA	3 GAL.		
41	ALEX CORNUTA 'NEEDLEPOINT'	NEEDLEPOINT CHINESE HOLLY	3 GAL.	30" MIN.	
6	SALVIA YANGLI	RUSSIAN SAGE	1 GAL.		SYN: PEROVSKIA ATRIPLICIFOLIA
GROUND COVERS	BOTANICAL NAME	COMMON NAME	CONTAINER	SPACING	
148 SF	OPHIOPOSSON JAPONICUS	MONDO GRASS	4" POT	12" o.c.	

LANDSCAPE REQUIREMENTS PER VESTAVIA HILLS CODE OF ORDINANCES, APPENDIX A, ARTICLE 9:

BUFFER REQUIREMENTS ON NORTHERN & SOUTHERN PROPERTY LINES:

- 1. 15 FT. BUFFER CLASS A, NO FENCE
- 2. 20 SHRUBS & 9 EVERGREEN UNDERSTORY TREES PER 100 LF.
- 3. EXISTING MATURE VEGETATION CONTRIBUTES TO REQUIREMENTS.

PERIMETER LANDSCAPE REQUIREMENTS, EASTERN PROPERTY LINE:

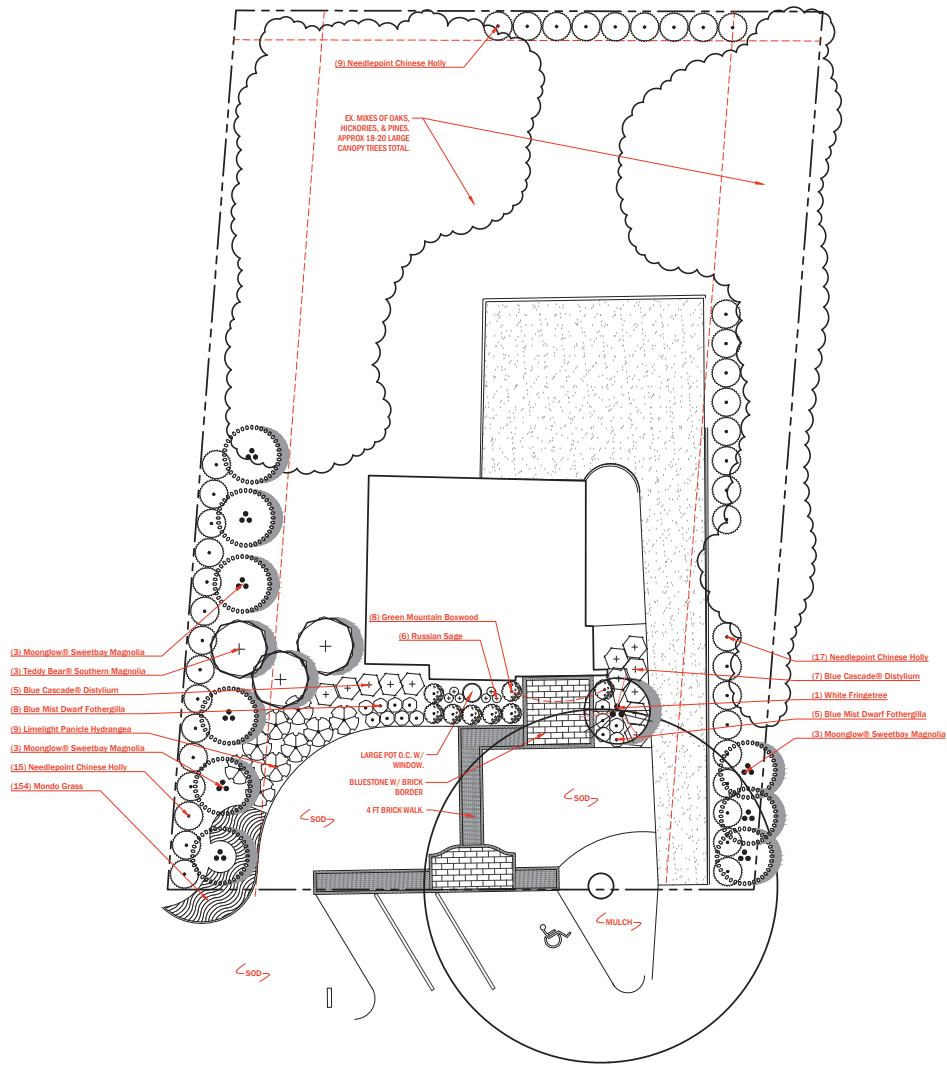
- 1. 3 GAL. @ 3 FT. O.C.
- 2. EXISTING TREES MEET TREE REQUIREMENT

FRONTAGE LANDSCAPE REQUIREMENTS, WESTERN PROPERTY LINE:

- 1. NOT APPLICABLE DUE TO PARKING'S LOCATION OUTSIDE OF PROPERTY LINE.

BUILDING LANDSCAPE REQUIREMENTS:

- 1. 6 FT MIN DEPTH BED BY 18-25 FT OF BLDG.
- 2. 10 HEDGE PLANTS PER 50 LF, 1 UNDERSTORY PER 35 LF.



THIS DRAWING IS PROPERTY OF FORME DESIGN GROUP and may not be reproduced without written permission. ©2023 - All Rights Reserved

4133 N CAHABA DR | BIRMINGHAM, AL 35242-4010

BIRMINGHAM DESIGN HOUSE

700 CHESTNUT STREET
VESTAVIA HILLS, AL 35226

DATE: JULY 18, 2023

REVISION	DATE
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

NORTH:



SCALE: 1" = 10.00'

LANDSCAPE & HARDSCAPE PLAN

L1.0

DRAWN BY: DS



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

July 24, 2023

To: Jeff Downes, City Manager

Cc: Dan Rary, Police Chief
Jason Hardin, Asst. Police Chief
Johnny Evans, Captain

From: Robert Wilson, Forensic Services

RE: Resolution Number 5472 - A Resolution declaring certain personal property as surplus and authorizing the City Manager to sell/dispose of said property

Background:

Please request that the City Council deem the following vehicles as surplus at the next meeting and authorize the City Manager to sell/dispose of said vehicles.

2013 Ford Escape Vin# 1FMCUoF76DUB98504 with 138,958 miles. 2012 Chevrolet Tahoe Vin# 1GN1C2EooCR190916 with 156,238 miles.

Recommendation:

Fiscal Impact:

Attachments:

1. Resolution 5472

RESOLUTION NUMBER 5472

**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 5472 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 24th day of July, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

EXHIBIT A

- 2013 Ford Escape Vin# 1FMCU0F76DUB98504 with 138,958 miles.
- 2012 Chevrolet Tahoe Vin# 1GN1C2E00CR190916 with 156,238 miles

RESOLUTION NUMBER 5462

A RESOLUTION AUTHORIZING THE INSTALLATION OF A NEW SUPPORT STRUCTURE FOR A SMALL CELL FACILITY TO BE LOCATED IN THE RIGHT-OF-WAY ADJACENT TO CERTAIN PROPERTIES IN THE CITY OF VESTAVIA HILLS

WHEREAS, on December 17, 2018, the City Council adopted and approved Ordinance 2814A to adopt regulations for small cell technology facilities (“Nodes”) in the City of Vestavia Hills, Alabama; and

WHEREAS, §2.B.7 recommends that said Nodes shall be collocated when possible, however, when not possible the request shall be recommended by the City Manager and then approved by the City Council following a public hearing; and

WHEREAS, on the 11th day of October, 2022, Acquanetta Love, on behalf of Crown Castle Fiber, LLC, submitted applications for a new support structure to be located in the right-of-way (“ROW”) adjacent to the following properties as detailed in Exhibit A which is attached and incorporated into this Resolution Number 5462 as if written therein; (1) 1663/1671 Crossgate Drive, (2) 2581 Crossgate Place and (3) 1704 Crosswood Lane; and

WHEREAS, a sign was erected on the ROW and the surrounding property owners were notified of the request and contact information on April 21, 2023 and a public hearing to be held on June 12, 2023 regarding said new support request; and

WHEREAS, the City Manager and the City Staff have reviewed the application and recommend approval of said request; and

WHEREAS, the Mayor and the City Council feel it is in the best public interest to accept the recommendation and authorize installation of said new support structure.

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

1. The Mayor and City Council hereby accept the recommendation of the City Manager and authorize the installation of a new support structure to be located in the ROW adjacent to (1) 1663/1671 Crossgate Drive, (2) 2581 Crossgate Place and (3) 1704 Crosswood Lane as detailed in the supporting information marked as Exhibit A, attached to and incorporated into this Resolution 5462 as if written fully therein; and
2. This Resolution shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 14th day of August, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



VESTAVIA HILLS

A LIFE ABOVE

ASHLEY C. CURRY
Mayor

REBECCA LEAVINGS
City Clerk

May 23, 2023

RE: Small Cell Support Structure Request.

Dear Property Owner,

You were recently sent notification of a public hearing concerning a request for a small cell support structure request in your immediate vicinity scheduled for Monday, June 12, 2023. It came to our attention at the Council meeting last night that a majority of our City Councilors will be out of town on June 12, 2023 and therefore, no business can be heard that evening.

Therefore, this letter is being sent today to advise you that the public hearing for the requested small cell support structure was rescheduled and will be held on **Monday, June 26, 2023 in the Council Chambers of City Hall located at 1032 Montgomery Highway. The meeting begins at 6:00 PM.**

I apologize for any inconvenience this rescheduling might cause you. If you have any questions concerning this rescheduling, please advise.

Sincerely,

A handwritten signature in purple ink, appearing to read "Rebecca Leavings".

Rebecca Leavings
City Clerk

VESTAVIA HILLS CITY HALL
1032 Montgomery Highway | Vestavia Hills, AL 35216
P. O. Box 660854 | Vestavia Hills, AL 35266-0854
205.978.0131 | VHAL.ORG

CITY OF VESTAVIA HILLS

**1032 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216**

OFFICIAL NOTICE OF A PUBLIC HEARING

May 15, 2023

This is an OFFICIAL NOTICE to inform you of the time, date and other details of the public hearing which will be held in the Vestavia Hills City Hall on the subject as follows:

TIME/DATE OF HEARING: 6:00 P.M. June 12, 2023 Monday

PLACE OF HEARING: Vestavia Hills City Hall
1032 Montgomery Highway

BOARD: Vestavia Hills City Council

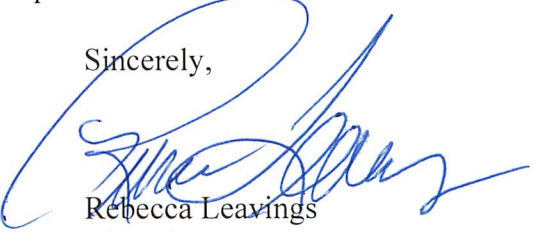
ACTION REQUESTED: Consideration of Installation of 35' Black Metal
Utility Pole with 5'6" embedment to be placed
within the public right-of-way for Node Placement,
Small Cell Wireless Facility

LOCATION OF PROPERTY: ROW adjacent to 1663 & 1671 Crossgate Drive; See
Enclosed Details for location and visual

NAME OF APPLICANT: Crown Castle Fiber LLC

REPRESENTED BY: Acquanetta Love

Sincerely,



Rebecca Leavings
City Clerk

INDIVIDUALS WITH DISABILITIES NEEDING SPECIAL SERVICES TO PARTICIPATE IN APPLICATIONS, ACTIVITIES, PROGRAMS OR SERVICES ARE REQUESTED TO COORDINATE THEIR NEEDS IN ADVANCE, WHEN TIME PERMITS. IF SPECIAL ACCOMMODATIONS ARE REQUIRED, PLEASE CONTACT THE CITY CLERK, (205) 978-0179.

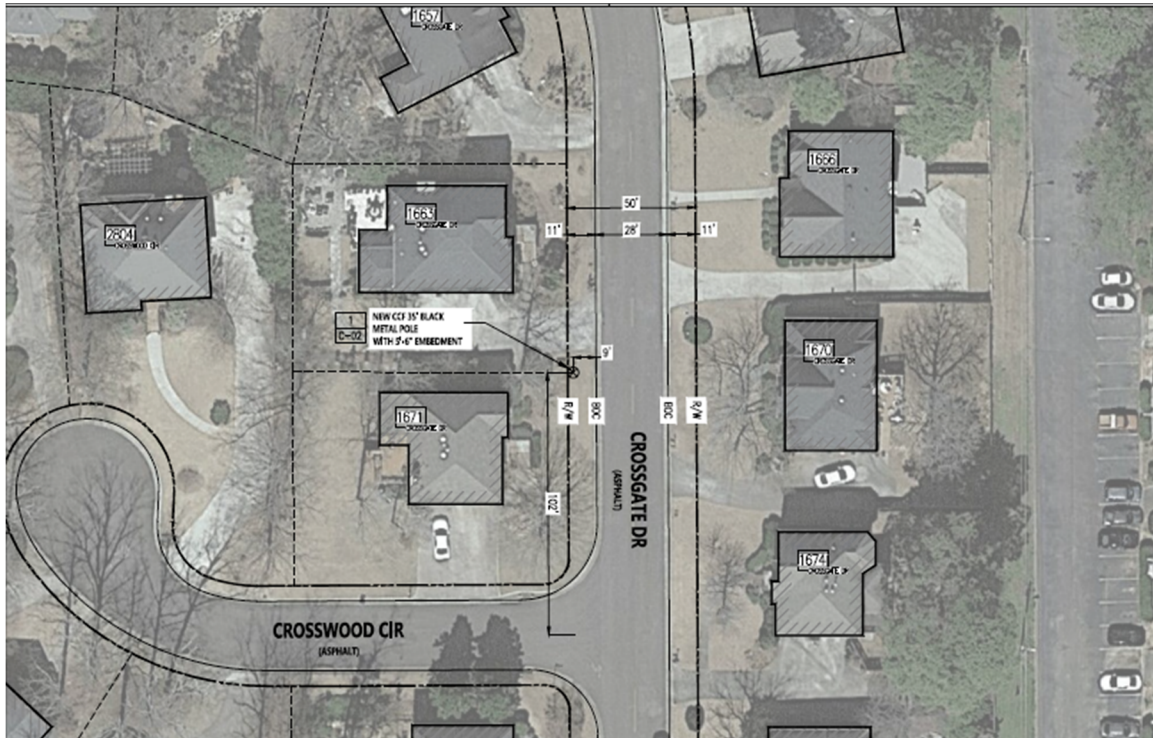
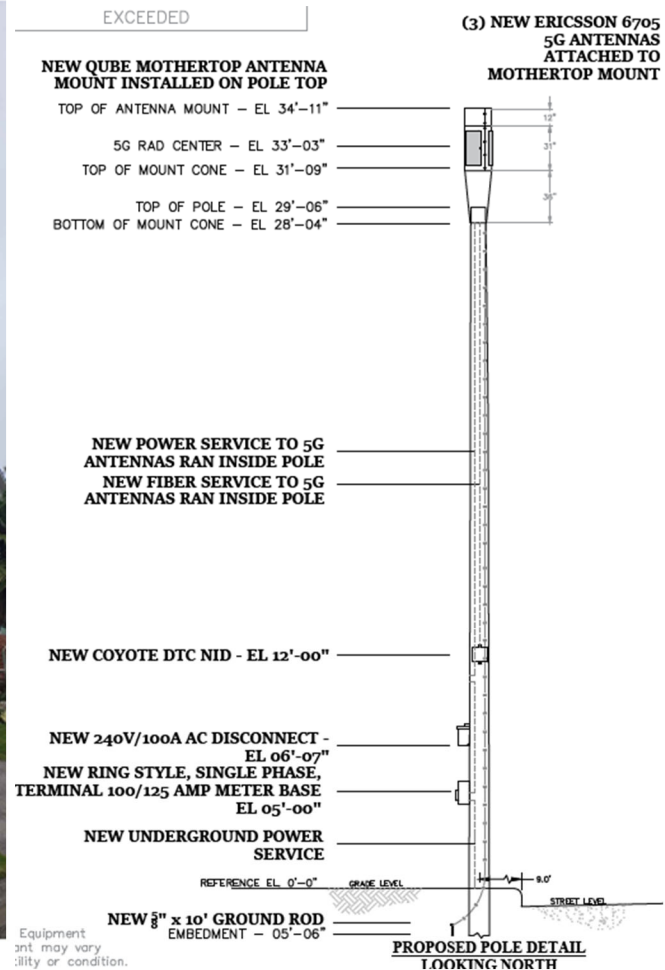


PHOTO SIMULATION





VESTAVIA HILLS
A LIFE ABOVE

ASHLEY C. CURRY
Mayor

REBECCA LEAVINGS
City Clerk

April 21, 2023

RE: Small Cell/Fiber Deployment

Dear Property Owner:

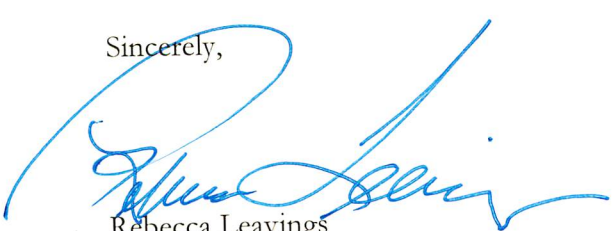
A new technology for cellular phone data and fiber internet is currently being deployed across the USA. Crown Castle, one of the companies deploying this technology, has indicated a need to locate a small micro-site cellular pole in the City of Vestavia Hills right-of-way adjacent/near your property and has submitted application for a 35' metal pole to be erected there. (See attached for location information.)

Small micro-site cellular poles are located in strategic areas which help to offload the larger macro cell towers as the need for cellular data increases in urban areas. Additional information concerning this technology is available on the City of Vestavia Hills website at <https://vhal.org/small-cell-technology>.

Please note that this request has not been approved by the City Council, but City staff is in the process of evaluating this request from Crown Castle and a public hearing on this matter will be held in approximately two months. Please review the included information along with the information on our website. If you need additional information, have questions or would like to discuss any concerns that you may have, please contact me at releavings@vhal.org or call 205.978.0184. If I am unable to assist you, I will share your contact information with a Crown Castle representative and have them contact you directly.

Thank you in advance for your attention to this request.

Sincerely,


Rebecca Leavings
City of Vestavia Hills City Clerk

VESTAVIA HILLS CITY HALL
1032 Montgomery Highway | Vestavia Hills, AL 35216
P. O. Box 660854 | Vestavia Hills, AL 35266-0854
205.978.0131 | VHAL.ORG

CITY OF VESTAVIA HILLS

1032 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216

OFFICIAL NOTICE OF A PUBLIC HEARING

May 15, 2023

This is an OFFICIAL NOTICE to inform you of the time, date and other details of the public hearing which will be held in the Vestavia Hills City Hall on the subject as follows:

TIME/DATE OF HEARING: 6:00 P.M. June 12, 2023 Monday

PLACE OF HEARING: Vestavia Hills City Hall
1032 Montgomery Highway

BOARD: Vestavia Hills City Council

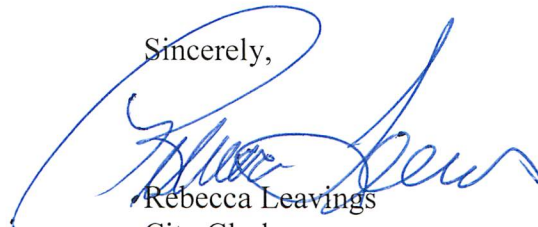
ACTION REQUESTED: Consideration of Installation of 35' Black Metal Utility Pole with 5'6" embedment to be placed within the public right-of-way for Node Placement, Small Cell Wireless Facility

LOCATION OF PROPERTY: ROW adjacent to 2581 Crossgate Place; See Enclosed Details for location and visual

NAME OF APPLICANT: Crown Castle Fiber LLC

REPRESENTED BY: Acquanetta Love

Sincerely,

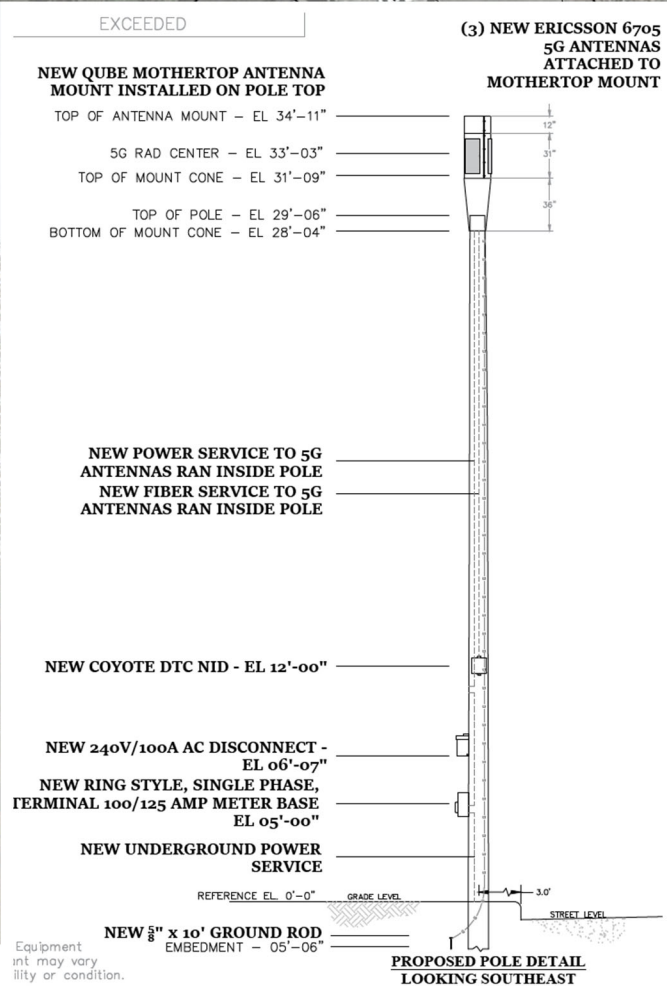


Rebecca Leavings
City Clerk

INDIVIDUALS WITH DISABILITIES NEEDING SPECIAL SERVICES TO PARTICIPATE IN APPLICATIONS, ACTIVITIES, PROGRAMS OR SERVICES ARE REQUESTED TO COORDINATE THEIR NEEDS IN ADVANCE, WHEN TIME PERMITS. IF SPECIAL ACCOMMODATIONS ARE REQUIRED, PLEASE CONTACT THE CITY CLERK, (205) 978-0179.



PHOTO SIMULATION





VESTAVIA HILLS

A LIFE ABOVE

ASHLEY C. CURRY
Mayor

REBECCA LEAVINGS
City Clerk

April 21, 2023

RE: Small Cell/Fiber Deployment

Dear Property Owner:

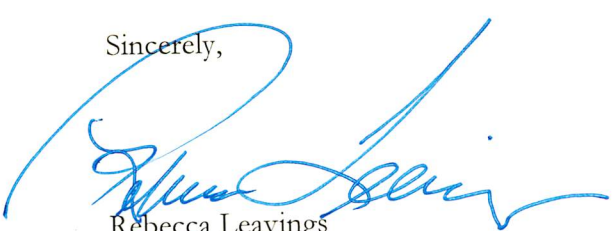
A new technology for cellular phone data and fiber internet is currently being deployed across the USA. Crown Castle, one of the companies deploying this technology, has indicated a need to locate a small micro-site cellular pole in the City of Vestavia Hills right-of-way adjacent/near your property and has submitted application for a 35' metal pole to be erected there. (See attached for location information.)

Small micro-site cellular poles are located in strategic areas which help to offload the larger macro cell towers as the need for cellular data increases in urban areas. Additional information concerning this technology is available on the City of Vestavia Hills website at <https://vhal.org/small-cell-technology>.

Please note that this request has not been approved by the City Council, but City staff is in the process of evaluating this request from Crown Castle and a public hearing on this matter will be held in approximately two months. Please review the included information along with the information on our website. If you need additional information, have questions or would like to discuss any concerns that you may have, please contact me at rleavings@vhal.org or call 205.978.0184. If I am unable to assist you, I will share your contact information with a Crown Castle representative and have them contact you directly.

Thank you in advance for your attention to this request.

Sincerely,


Rebecca Leavings
City of Vestavia Hills City Clerk

VESTAVIA HILLS CITY HALL
1032 Montgomery Highway | Vestavia Hills, AL 35216
P. O. Box 660854 | Vestavia Hills, AL 35266-0854
205.978.0131 | VHAL.ORG

CITY OF VESTAVIA HILLS

1032 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216

OFFICIAL NOTICE OF A PUBLIC HEARING

May 15, 2023

This is an OFFICIAL NOTICE to inform you of the time, date and other details of the public hearing which will be held in the Vestavia Hills City Hall on the subject as follows:

TIME/DATE OF HEARING: 6:00 P.M. June 12, 2023 Monday

PLACE OF HEARING: Vestavia Hills City Hall
1032 Montgomery Highway

BOARD: Vestavia Hills City Council

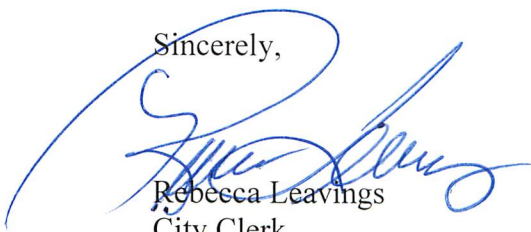
ACTION REQUESTED: Consideration of Installation of 35' Black Metal Utility Pole with 5'6" embedment to be placed within the public right-of-way for Node Placement, Small Cell Wireless Facility

LOCATION OF PROPERTY: ROW adjacent to 1704 Crosswood Ln; See Enclosed Details for location and visual

NAME OF APPLICANT: Crown Castle Fiber LLC

REPRESENTED BY: Acquanetta Love

Sincerely,

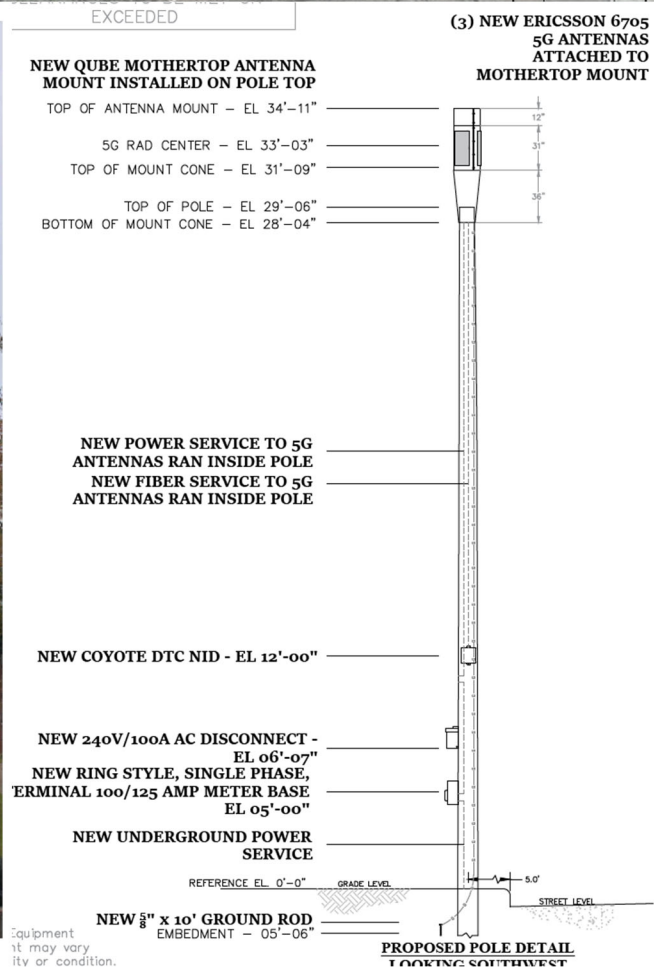


Rebecca Leavings
City Clerk

INDIVIDUALS WITH DISABILITIES NEEDING SPECIAL SERVICES TO PARTICIPATE IN APPLICATIONS, ACTIVITIES, PROGRAMS OR SERVICES ARE REQUESTED TO COORDINATE THEIR NEEDS IN ADVANCE, WHEN TIME PERMITS. IF SPECIAL ACCOMMODATIONS ARE REQUIRED, PLEASE CONTACT THE CITY CLERK, (205) 978-0179.



PHOTO SIMULATION





VESTAVIA HILLS

A LIFE ABOVE

ASHLEY C. CURRY
Mayor

REBECCA LEAVINGS
City Clerk

April 21, 2023

RE: Small Cell/Fiber Deployment

Dear Property Owner:

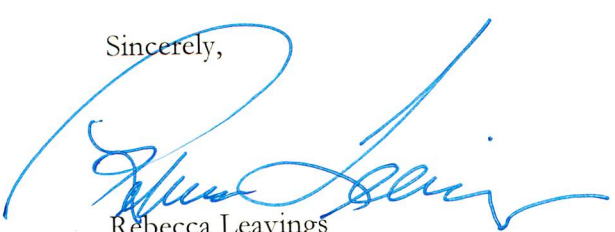
A new technology for cellular phone data and fiber internet is currently being deployed across the USA. Crown Castle, one of the companies deploying this technology, has indicated a need to locate a small micro-site cellular pole in the City of Vestavia Hills right-of-way adjacent/near your property and has submitted application for a 35' metal pole to be erected there. (See attached for location information.)

Small micro-site cellular poles are located in strategic areas which help to offload the larger macro cell towers as the need for cellular data increases in urban areas. Additional information concerning this technology is available on the City of Vestavia Hills website at <https://vhal.org/small-cell-technology>.

Please note that this request has not been approved by the City Council, but City staff is in the process of evaluating this request from Crown Castle and a public hearing on this matter will be held in approximately two months. Please review the included information along with the information on our website. If you need additional information, have questions or would like to discuss any concerns that you may have, please contact me at rleavings@vhal.org or call 205.978.0184. If I am unable to assist you, I will share your contact information with a Crown Castle representative and have them contact you directly.

Thank you in advance for your attention to this request.

Sincerely,


Rebecca Leavings
City of Vestavia Hills City Clerk

VESTAVIA HILLS CITY HALL
1032 Montgomery Highway | Vestavia Hills, AL 35216
P. O. Box 660854 | Vestavia Hills, AL 35266-0854
205.978.0131 | VHAL.ORG



**CITY OF VESTAVIA HILLS
PUBLIC SERVICES
INTER-DEPARTMENT MEMO**

July 24, 2023

To: Jeff Downes, City Manager

Cc:

From: Lori Beth Kearley, Public Services Director

RE: Public Hearing - Ordinance Number 3185 - An Ordinance authorizing the City Manager to execute and deliver an agreement with Environmental Design Studio to provide landscape architectural services for proposed landscape improvements along the Highway 31 corridor in Vestavia Hills.

Background:

The City has received a proposal from Environmental Design Studio for landscape architectural services for proposed landscape improvements for Highway 31 in Vestavia Hills for a total expense of \$118,600.

The scope of the proposal includes design of pedestrian plaza areas, design of highway medians, design of entry gate-way improvements, permitting assistance/coordination and civil engineering support services.

This effort and associated expenditure are important as Highway 31 beautification was identified as a high priority focus area in the City's 2023 Strategic Plan.

Recommendation:

We would like to request that the proposed scope and fee for landscape architectural services be accepted to allow this project to move forward. If approved, the City's standard Agreement for Professional Services will be used for contracting. A copy is included for reference.

Fiscal Impact:

These design services should be expensed to the City's Capital Projects Fund.

Attachments:

1. Ordinance 3185
2. 230623 Vestavia Hills- Highway 31 Improvements
3. FORM CONTRACT for Professional Engineering Services

ORDINANCE NUMBER 3185

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN ENGINEERING AGREEMENT WITH ENGINEERING DESIGN STUDIO FOR LANDSCAPE IMPROVEMENTS OF HIGHWAY 31 TO INCLUDE PEDESTRIAN PLAZA AREAS, MEDIANS, ENTRY GATEWAY IMPROVEMENTS, ASSISTANCE/COORDINATION AND ENGINEERING SUPPORT SERVICES

WHEREAS, the effort of improved landscaping along Highway 31 (Montgomery Highway) was deemed a high priority focus area in the City’s 2023 Strategic Plan; and

WHEREAS, the City’s Public Works Director, in a memorandum dated July 17, 2023 indicates that a proposal from Engineering Design Studio (“EDS”) has proposed to develop plans for design of pedestrian plaza areas, highway medians, entry gateway improvements, permitting assistance/coordination and civil engineering support services at a cost of \$118,600; and

WHEREAS, a copy of said memo and proposal is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3185 as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept said proposal and authorize the Mayor and City Manager to execute and deliver the City’s standard Agreement for Professional Services (“the Agreement”), a copy of which is marked as Exhibit B, attached to and incorporated into this Ordinance Number 3185 as if written fully therein.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver the Agreement and accept the proposal from EDS as set forth in Exhibits A & B, attached; and
2. Said funding shall be expensed to the City’s Capital Projects Fund; and
3. This Ordinance Number 3185 shall be effective immediately upon approval and publishing/posting as required by Alabama Law.

DONE, ORDERED, ADOPTED and APPROVED this the 24th day of July, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



Friday, June 23, 2023

Lori Beth Kearley, P.E.
Department of Public Services
1032 Montgomery Highway
Vestavia Hills, AL 35216
P 205 978 0236

Re: Vestavia Hills- Highway 31 Landscape Improvements

Lori Beth:

Thank you for the opportunity to respond to your request for landscape architecture services. We look forward to working with you on this project.

Please accept this as our proposal for Landscape Architectural Services for the proposed Landscape Improvements for U.S. Highway 31 in Vestavia Hills.

We propose our scope of service to be as follows:

I. Pedestrian Plazas:

1. Pre-Design:

- A. Review of ordinances and DOT policies relative to our scope of work.
- B. Develop base maps utilizing existing surveys and site plans as supplied by the client.
- C. Site visit to determine opportunities and constraints.

2. Schematic Design

- A. Preparation of a Schematic Plan to demonstrate the possible options and opportunities.
- B. Meeting with the city staff for review.

3. Design Development:

- A. Preparation of 75% documents for coordination and review.
- B. Meeting with the city staff for review.

4. **Construction Documents:**
 - A. Preparation of 100% Construction Documents based on review and comment.
 - B. Drawings can be used for bidding and construction.
 - C. Drawings will include planting plan with related specification sections.
5. **Construction Observation:**
 1. Site visit: Two site visits for construction observation.
 2. Preparation of punch-list.
 3. Review of submittals related to scope of work.

II. Highway Medians:

1. **Pre-Design:**
 - A. Review of ordinances and DOT policies relative to our scope of work.
 - B. Develop base maps utilizing existing surveys and site plans as supplied by the client.
 - C. Site visit to determine opportunities and constraints.
 - D. Distillation and classification of median types.
2. **Schematic Design**
 - A. Preparation of a Schematic Plans for each general class or type of median.
 - B. Meeting with the city staff for review.
3. **Design Development:**
 - A. Preparation of plans and sections for use in future improvements.
 - B. Meeting with the city staff for review.
4. **Construction Documents:**
 1. Not a part of this scope.
5. **Construction Observation:**
 1. Not a part of this scope.

III. Entry Gateway Improvements:

1. **Pre-Design:**
 - A. Review of ordinances and DOT policies relative to our scope of work.
 - B. Develop base maps utilizing existing surveys and site plans as supplied by the client.
 - C. Site visit to determine opportunities and constraints.
2. **Schematic Design**
 - A. Preparation of a Schematic Plans to demonstrate the possible options and opportunities for one large sign and one small sign with adjacent plantings at the intersection.
 - B. Preparation of a conceptual site/grading plan for adjacent property so as to determine impact of grading, retaining walls, etc.
 - C. Preparation of schematic design for the smaller entry monument sign

adjacent to Chevron and for the larger entry monument sign adjacent to Issis and Sons.

- D. Preparation of schematic designs to describe and convey proposed upgrades to the Temple Replica. These improvements would include elements such as color, letters, lighting and planting.
- E. Meeting with the city staff for review.
- F. Submittal (1) to ALDOT for review.

3. **Design Development:**

- A. Design efforts to implement and incorporate input from the City.
- B. Preparation of 75% documents for coordination and review.
- C. Meeting with the city staff for review.
- D. Submittal (1) to ALDOT for review.

4. **Construction Documents:**

- A. Preparation of 100% Construction Documents based on review and comment.
- B. Drawings can be used for bidding by the City and construction.
- C. Drawings will include planting plan with related specification sections.
- D. Submittal (1) to ALDOT for approval.

5. **Construction Observation:**

- 1. Site visit: Four site visits for construction observation.
- 2. Preparation of punch-list.
- 3. Review of submittals related to scope of work.

IV. Civil Engineering Services:

- 1. Coordinate as required with the Architect and Owner Coordinate with Vestavia Hills and ALDOT as required
- 2. Preparation of topographic survey (LBYD, Inc. to associate with a registered land surveyor)
- 3. Preparation of the design plans
 - A. Conceptual layout plan
 - B. Conceptual grading plan for Issis & Sons property
 - C. Storm drainage profiles and calculations as required
 - D. Erosion control and sedimentation plan
 - E. Traffic control plan
 - F. Cast-in-place retaining wall design for signage
 - G. Civil details
- 4. Preparation of Alabama Dept. of Transportation permit application
- 5. Site work specifications & front-end document preparation assistance
- 6. Project meetings (up to 3 included)
- 7. Submittals for approval
- 8. Construction administration

- A. Bidding and negotiating (attend one pre-bid and one pre-construction conference)
 - B. Review of shop drawings and submittals
 - C. Site visits (up to 4 included)
 - D. Miscellaneous administration
 - E. Minor revisions to plans due to field conditions
9. Preparation of Alabama Dept. of Environmental Management (ADEM) Notice of Intent (NOI) permit application. It is our understanding that the site is classified by ADEM as a priority construction site and therefore a full Construction Best Management Practices Plan (CBMPP) is required. Our scope of services includes preparation of the permit application, preparation of the CBMPP and submittal of the package to ADEM. The owner should be aware that receiving this permit can be a long lead time item from date of submission and the project schedule should be established with this fact in mind. Note that any permit renewals, termination, and responses to any violation letters will be billed as an additional service upon preparation of the documents.

Exclusions and Clarifications

Services do not include surveying; geotechnical, civil, structural, or electrical engineering; and/or architecture. Specifically excluded is public hearings or presentations. Irrigation design is excluded. This proposal assumes that the plans are for general maintenance of planting and improvements in the US Highway 31 right-of-way and are not subject to extensive review and complicated redesign of existing elements.

Additional Services:

Additional Services consist of any professional services provided which are not specifically described above and as mutually agreed upon between the Client and the Landscape Architect. Additional Services will be billed on an hourly basis per our Schedule of Hourly Rates.

Schedule of Hourly Rates:

Principal:	\$190.00/hr.
Designer II:	\$150.00/hr.
Designer I:	\$135.00/hr.
Draftsman/Intern:	\$95.00/hr.
Administrative/Clerical:	\$75.00/hr.

Client Responsibilities

tel: 205.585-8414 web: www.environmentaldesignstudio.com
1000 Providence Park, Suite 200, Birmingham, AL 35242

The Client will provide full information and program regarding requirements for the project. The Client will furnish computer base documents for the Landscape Architect's use.

Reimbursable expenses such as printing, copies and mileage will be billed at our cost plus a 10% administrative fee. We will invoice for services on a percent complete basis through the completion of the project.

Environmental Design Studio, Inc. proposes to provide services as follows:

Pedestrian Plazas	\$16,600.
Highway Medians	\$7,200.
Entry Gateway Improvements	\$28,000.
ALDOT Permit Applications (Estimated Hourly)	\$1,800
Construction Administration (Estimated Hourly)	\$2,600

Civil Engineering Services:

Partial topographic survey	\$14,400
Construction documents	\$30,720
Dept. of Transportation permit application (Estimated Hourly)	\$4,560
Best Management Practices	\$5,760
Permit application (CBMPP) & NOI BMP Permit terminations (NOT)	\$1,440
Construction administration (Estimated Hourly)	\$5,520

Payment for services is due within 21 days of date of invoice. In the event a payment is more than 15 days late, the client agrees to pay a late fee equivalent to five percent (5%) of the outstanding balance. If payment is more than 30 days past due then the purchaser will be in default of said contract. In the event of default the purchaser agrees to pay all costs of collecting the amount owed to Environmental Design Studio, Inc. under this agreement, including court costs, filing fees, and reasonable attorney fees if the outstanding balance owed exceeds \$500.00 and the debt is referred to collection.

The client agrees that, in no event will Environmental Design Studio, Inc. or any of its officers be liable for any work performed on the project in excess of the proposal amount.

Thank you for the opportunity to provide this proposal. We know that we can be of great service to the project.

Regards,

Environmental Design Studio, Inc.



Duane R. Pritchett, RLA
President, Environmental Design Studio, Inc.

Your signature will authorize us to proceed.

Name:

Title:

Date:

STATE OF ALABAMA
JEFFERSON COUNTY

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

WITNESSETH THIS AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES (“Agreement”), made and entered into on this the ____ day of _____, 2022, by and between the City of Vestavia Hills, Alabama, a municipal corporation, (“City”) and _____ (“Engineer”).

WITNESSETH THESE RECITALS:

WHEREAS, the City is planning to make public improvements by

(“project”), which is a public works project within the meaning of Alabama law set forth at Title 39-2-1(6), *Code of Alabama, 1975*; and

WHEREAS, Alabama law at Title 34-11-10, *Code of Alabama, 1975*, provides as follows:

“§34-11-10. Public works. A state, county or local government agency or authority, or an official or employee thereof, may not engage in the practice of engineering or land surveying involving either public or private property without the project being under the responsible charge of a professional engineer for engineering projects or a professional land surveyor for land surveying projects as provided for the practice of the respective professions by this chapter; provided, that nothing in this chapter shall be held to apply to any public work wherein the expenditure for the complete project of which the work is a part does not exceed \$20,000.00.”; and

WHEREAS, municipalities may employ engineers, architects and superintendents of construction without advertising for competitive bids by virtue of Title 41-16-51(a)(3), *Code of Alabama, 1975*; and

WHEREAS, _____
 (“Engineer”) is willing to perform professional engineering services pursuant to the terms,
 provisions and conditions of this Agreement; and

WHEREAS, the City and Engineer have negotiated the terms, provisions and conditions of this Agreement and wish to reduce their agreement to writing.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That in consideration of the mutual covenants, premises and promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by each of the parties hereto, the City and Engineer mutually agree as follows:

I. SCOPE OF THE WORK

The Engineer shall perform and complete the following engineering services for the City:

II. CONTRACT AMOUNT

The City shall pay to the Engineer for the faithful performance of this Contract and the completion of the work described in section I above in the amount of _____ Dollars (\$_____) as the Contract amount.

III. PAYMENT OF CONTRACT AMOUNT

The City shall pay to the Engineer the contract amount in full upon completion of the work described in section I hereof.

IV. CONTRACT TIME

The contract time shall be _____ (_____) days.

A. The work shall commence on _____, 202__;
provided, however, that the work shall not be commenced by Engineer until after the Engineer has delivered to the City the certificates of insurance policy coverages described in section VI and section VII of this contract.

B. The work shall be completed on or before _____, 202__.

V. INDEMNIFICATION

To the fullest extent permitted by law, Engineer shall indemnify and hold harmless the City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Mayor and other elected public officials and employees, as Owner (hereinafter collectively referred to as the "Indemnitees") from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, related to, or resulting from performance of the Work done by Engineer (losses) to the extent caused by faulty, negligent or defective design and/or other related services, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and is caused in whole or in part by negligent acts or omissions of the Engineer, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss or expense is caused in part, or is alleged but not legally established to have been caused in whole or in part by the negligence or other fault of a party indemnified hereunder. This indemnification

shall extend to all claims, damages, losses and expenses for injury or damage to adjacent or neighboring property, or persons injured thereon, that arise out of, relate to, or result from performance of the Work.

VI. INSURANCE

The Engineer shall purchase and maintain insurance policy coverages with liability limits of not less than as set forth below.

A. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

1. Workers' Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating the Engineer qualifies to pay its own workers' compensation claims.

2. Employer's Liability Insurance limits shall be at least:

- | | | |
|-----|-----------------------------|---------------------------|
| (a) | Bodily Injury by Accident-- | \$1,000,000 each accident |
| (b) | Bodily Injury by Disease-- | \$1,000,000 each employee |

B. COMMERCIAL GENERAL LIABILITY INSURANCE:

1. Commercial General Liability Insurance, written on an ISO Occurrence Form (current edition as of the date of this Contract) or equivalent, shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

<u>Coverage</u>	<u>Limit</u>
(a) General Aggregate	\$2,000,000.00 per project
(b) Products, Completed Operations Aggregate	\$2,000,000 per project
(c) Personal and Advertising Injury	\$1,000,000 per occurrence
(d) Each Occurrence	\$1,000,000

2. Additional Requirements for Commercial General Liability Insurance:

(a) The policy shall name the City, its City Manager, Mayor and other public officials and employees, as Owner, as additional insureds, state that this coverage shall be primary insurance for the additional insureds; and contain no exclusions of the additional insureds relative to job accidents.

(b) The policy must include separate per project aggregate limits.

C. COMMERCIAL BUSINESS AUTOMOBILE LIABILITY INSURANCE:

1. Commercial Business Automobile Liability Insurance which shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000.00 Combined Single Limits for each occurrence.

2. The policy shall name the City, its City Manager, Mayor and other public officials and employees, as Owner, as additional insureds.

D. COMMERCIAL UMBRELLA LIABILITY INSURANCE:

1. Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employer's Liability to satisfy the minimum limits set forth herein.

2. Minimum Combined Primary Commercial General Liability and Commercial/Excess Umbrella Limits of:

(a) \$5,000,000 per occurrence

(b) \$5,000,000 aggregate

3. Additional Requirements for Commercial Umbrella Liability Insurance:

(a) The policy shall name the City, its City Manager, Mayor and other public officials and employees, as Owner, as additional insureds.

(b) The policy must be on an "occurrence" basis.

E. PROFESSIONAL LIABILITY (ERRORS & OMISSIONS): Professional liability (errors & omissions) insurance shall be carried in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. This coverage shall be carried for two (2) years after the last Date of Substantial Completion of the Construction Contract.

VII. ADDITIONAL INSUREDS

The Engineer shall cause all of the insurance policy coverages described in Section IX of the Contract above (except for the Worker's Compensation and Professional Liability (errors & omissions) coverages) to include:

A. The City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Mayor and its elected public officials and employees, as additional insureds for claims caused in whole or in part by the Engineer's negligent acts or omissions during the Engineer's operations and/or performance of the work; and

B. The City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Mayor and its elected public officials and employees, as additional insureds for claims caused in

whole or in part by the Engineer's negligent acts or omissions during the Engineer's completed operations and/or performance of the work; and

C. The insurance policy coverages shall state that these coverages shall be primary insurance for the additional insureds; and

D. Contain no exclusions of the additional insureds relative to job accidents; and

E. The policies must be on an "occurrence" basis; and

F. **CERTIFICATES OF INSURANCE POLICY COVERAGES:** The Engineer shall deliver to the City insurance certificates to evidence that all insurance policies and coverages described in section VI and section VII of this Contract are in full force and effect. Delivery of said certificates by the Engineer to the City shall be made prior to the commencement of the work by the Engineer. In other words, Engineer shall not begin work unless and until the Engineer has delivered the insurance certificates to the City.

VIII. INDEPENDENT CONTRACTOR

The Engineer is an independent contractor for purposes of this agreement. Nothing contained herein shall be construed to mean that said Engineer is the servant, agent or employee of the City.

IX. ASSIGNMENT

This contract shall not be assignable by the Engineer in any respect without having first obtained the written consent of the City evidenced by a properly enacted resolution of the City Council of the City of Vestavia Hills, Alabama.

X. PERMITS, LAWS, CODES AND ORDINANCES

The Engineer shall give all notices required by and comply with all applicable laws, ordinances and codes of the local, state and federal governments.

XI. COMPLIANCE WITH APPLICABLE LAWS

Engineer shall comply with the provisions of any and all state, federal and local laws, statutes, codes, rules, regulations and ordinances that are applicable to the performance of this contract between the City and Engineer, including specifically Ordinance Number 2769, 2770 and 2771 enacted by the City Council of the City of Vestavia Hills, Alabama on June 11, 2018.

XII. PROTECTION OF UNDERGROUND UTILITIES

Engineer shall be responsible for contacting the appropriate utility company for location of any underground services which are in the work area and could be damaged in the course of operations and performance of the work. If the Engineer damages any utility equipment or apparatus during the performance of the work, then in such event the Engineer shall be solely liable for the repair or payment of repair for said damages.

XIII. IMMIGRATION LAW

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

XIV. 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. The Engineer 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.

XV. MISCELLANEOUS:

A. NON WAIVER: The failure of the City (Owner) to insist, in any one or more instances, upon a strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect.

B. WAIVER OF MODIFICATION: Any waiver, alteration or modification of any of the provisions of this agreement or cancellation or replacement of this agreement shall not be valid unless in writing and signed by the parties hereto. This agreement may be amended at any time by written agreement of the parties signatory hereto.

C. NOTICES: Any and all notices required or permitted to be given under this agreement will be sufficient if furnished in writing and sent by Registered Mail to the parties' last known address.

D. GOVERNING LAW: This agreement shall be interpreted, construed and governed to the laws of the State of Alabama.

E. ARTICLE AND SECTION HEADINGS: The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

F. CONSTRUCTION OF TERMS: Any ambiguities of this contract shall be construed fairly and equitably regardless of the participation of either party in drafting this contract. The reference in terms to gender and number shall be modified as may be appropriate.

G. EXECUTION IN COUNTERPARTS: The contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

H. BINDING EFFECT: The contract shall inure to the benefit of, and shall be binding upon City and Engineer and their heirs, successors and assigns.

I. SEVERABILITY: In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

J. ENTIRE AGREEMENT: This written contract contains the entire agreement between the City and the General Engineer.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama, a municipal corporation, and _____, an Alabama *insert identification of entity (i.e. corporation, LLC, etc.)*, have caused this agreement to be executed by their duly authorized officers and their respective seals to be affixed hereto on the date first above written.

OWNER:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

ENGINEER:
Insert name of company _____

By _____
Its _____

ATTESTED:

By _____

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Agreement for Professional Engineering Services, and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 202__.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Agreement for Professional Engineering Services, and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 202__.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

CORPORATE ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that _____ whose name as _____ of _____, an Alabama _____, is signed to the foregoing Agreement for Professional Engineering Services, and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said _____

Given under my hand and official seal, this the _____ day of _____, 202__.

Notary Public

My Commission Expires:

SEAL



**CITY OF VESTAVIA HILLS
PUBLIC SERVICES
INTER-DEPARTMENT MEMO**

July 24, 2023

To: Jeff Downes, City Manager

Cc: Lori Beth Kearley, Public Services Director
Zach Clifton, Asst. Finance Director

From: Mark Gibbs, Chief of Building Maintenance

RE: Public Hearing - Ordinance Number 3186 - An Ordinance
Authorizing the Mayor and City Manager to execute and deliver an
agreement with Bagby Elevator Company, Inc., for inspection and
maintenance services for the City Hall/ VHPD, Civic Center and The
Library in the Forest.

Background:

Inspections and servicing have been conducted on the elevators located at the Municipal Complex, Library in the Forest and the old Civic Center through an existing roll-over contract from 2015.

Recommendation:

This contract will begin a formal agreement with scheduled services to include the Municipal Complex, Library in the Forest and to add the new Civic Center. It will provide for full maintenance for 5 elevators and servicing of 1 lift.

Fiscal Impact:

Maintenance and inspections shall be expensed from the City's General fund as follows: City Hall/ VHPD at 3360.60 per year, Civic Center at 3348.00 per

year and The Library in the Forest at 2589.84 per year; for a period of 3 years.

Attachments:

1. Ordinance 3186
2. Bagby 2023
3. PH Boone Legal Opinion to Lori Beth Kearley May 5, 2023

ORDINANCE NUMBER 3186

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH BAGBY ELEVATOR COMPANY, INC., FOR INSPECTIONS AND SERVICING OF ELEVATORS IN CITY BUILDINGS

WHEREAS, historically the City of Vestavia Hills has utilized Bagby Elevator Company, Inc. (“Bagby Elevator”), to inspect and service elevators at various city buildings; and

WHEREAS, the City’s new Facilities Manager has reviewed the multiple older agreements and has recommended bringing all of the City’s facility elevators into a single inspection and service agreement to include the City Hall, Vestavia Hills Police Department, the Library in the Forest and the new Vestavia Hills Civic Center through a newly negotiated 3-year agreement with Bagby Elevator; and

WHEREAS, a copy of the recommended agreement is marked as Exhibit A and is attached to and incorporated into this Ordinance Number 3186 as if written fully therein; and

WHEREAS, the proposed agreement has been reviewed by the Public Works Director and the City Manager who agree with the Facility Manger and recommend approval; and

WHEREAS, the Mayor and City Manager feel it is in the best public interest to accept said recommendation to bring all facility elevators into the single agreement detailed in Exhibit A.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver an agreement with Bagby Elevator as detailed in the attached Exhibit A; and
2. Said funding pursuant to the agreement shall be derived in the City’s General Fund; and
3. This Ordinance Number 3186 shall become effective immediately upon adoption and publishing/posting pursuant to Alabama law.

DONE, ORDERED, ADOPTED and APPROVED this the 14th day of August, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3186 is a true and correct copy of such 14th day of August, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2023.

Rebecca Leavings
City Clerk

MAINTENANCE AGREEMENTS

City of Vestavia Hills
1973 Merryvale Road
Vestavia Hills, AL 35216
(Hereinafter called Customer, you).

Bagby Elevator Company, Inc. (hereinafter called the Company, Bagby, we) proposes to furnish its maintenance service, as described herein, on the following:

VESTAVIA HILLS CITY HALL – TWO (2) HYDRAULIC PASSENGER ELEVATORS – FULL MAINTENANCE
LIBRARY IN THE FOREST – ONE (1) HYDRAULIC PASSENGER ELEVATOR – FULL MAINTENANCE
LIBRARY IN THE FOREST – ONE (1) PASSENGER LIFT – OIL/GREASE MAINTENANCE
REC CENTER – TWO (2) TAC 20 HYDRAULIC PASSENGER ELEVATORS – FULL MAINTENANCE

FM8 FULL MAINTENANCE COVERAGE

Located at: **Vestavia Hills City Hall – 1032 Montgomery Highway – Vestavia Hills, AL 35216 - \$280.05 MONTHLY**
Library in the Forest – 1221 Montgomery Highway – Vestavia Hills, AL 35216 - \$138.42 MONTHLY
Rec Center – 1090 Montgomery Highway – Vestavia Hills, AL 35216 - \$279.00 MONTHLY

- Under this Contract, Bagby's trained personnel will maintain the elevator equipment as hereinafter described, on the terms and conditions subsequently set forth.
- Bagby will adjust, clean, lubricate, furnish lubricants and hydraulic oil, and when conditions warrant, repair or replace MACHINE, MOTOR, GENERATOR AND CONTROLLER PARTS including:
 - Worms, Gears, Thrusts, Bearings, Brake Magnet Coils, Brake shoes, Brushes, Windings, Commutators, Rotating Elements, Coils, Contacts, Resistors, Magnet Frames, Valves, Pistons, Piston Packing, Pump and other mechanical parts, Hall and Car Button Stations, Hall Lanterns, Position Indicators, Car and Hall Register Lights, Door Guides, Door Hangers, Door Interlocks and Door Operating Equipment.
- Bagby will keep the Guide Rails properly lubricated at all times except where roller guides are used, and when necessary, renew guide shoe gibs or guide rollers in order to assure smooth and quiet operation.
- Bagby will periodically examine all safety devices and governors, and equalize the tension on all hoisting ropes.
- Bagby will renew all wire ropes as often as necessary to maintain an adequate factor of safety, and repair and/or replace conductor cables.
- Bagby will also examine, lubricate, adjust, repair and/or replace the following accessory equipment:
- Bagby will correct any failures which take any Unit out of service as soon as is practicable. However, in the event a Unit is out of service for more than two (2) regular Company workdays from the day we receive notification of the failure, the Customer may request that Bagby credit the Customer in the following month, the amount of the monthly maintenance payment allocable to the Unit, prorated for the period the Unit was out of service beyond such time. The receipt of credits as set forth hereinabove will be Customer's exclusive remedy in the event of a failure taking a Unit out of Service for more than two (2) regular Bagby working days. This provision shall not apply to pre-scheduled repairs, or repairs delayed for any cause excused elsewhere in the Contract.
- The following items of elevator equipment are not included in this contract:

Cab, car doors, car flooring, car lights, emergency lighting, telephones and all related equipment, door frame, sills and hatch doors, A.C. service feeders and disconnect switches, fuses, intercoms, underground or unexposed jack assembly and underground, embedded, or unexposed piping, heat sensors, flex hoses, air conditioning units or any parts and components for same smoke sensors or safety signaling equipment or other instructions or warnings in connection with use by passengers (if applicable), or air conditioning units mounted on or about controllers including the parts and components for same.

- It is mutually agreed that Bagby shall not be under any obligation hereunder to make any renewals, repairs or replacements except those incidental to the normal wear and tear of the elevator equipment and that Bagby is not required under this contract to make renewals, repairs or replacements arising from or involving environmental conditions, power surges, water damage, fire, vandalism, negligence (other than that of Bagby), load tests, obsolescence, accident or misuse of machinery or car, work by others, or other similar or dissimilar causes beyond Bagby's control. Bagby shall not be required to make safety tests, nor to install new attachments on the elevator equipment whether or not recommended or directed by Insurance Companies, or Government, State, Municipal, or other authorities, nor to make any replacements with parts of a different design. If Customer requests and receives services for "non-covered" elevator equipment or work excluded under the Contract, Customer will compensate Bagby at the applicable regular or overtime rate for such work.
- For the customer's elevator equipment, Company will perform an annual no load safety test and once every five years a full load test on any traction elevator (if applicable). Any damage to the equipment or equipment resulting from any such testing is not ordinary wear and tear. Damage, renewals, repairs or replacements resulting or necessitated by same are not covered by Company under this contract.
- The Customer agrees to supply the company with all electrical drawings and wiring schematics, or proprietary equipment relating to the equipment covered by this contract.
- Services under this contract shall be performed during regular working hours on regular working days except as follows:

Emergency call back service between regular inspections during regular working hours
of the elevator trade is provided in this contract.

- If overtime work not included in this contract is requested by Customer covering examinations, repairs, or emergency minor callback services, or if Customer requests that services under this contract be performed at other than regular working hours on regular working days, the Company will absorb the regular time portion of each overtime hour worked (at Bagby's standard billing rates). Travel time in addition to hours on the job will be billable to Customer at these rates. Customer shall pay only the double-time portion of each hour worked at the appropriate overtime billing rate. Hourly labor rates for overtime or regular time are available upon request. The foregoing credit for the regular time portion of work is inapplicable where the work arises from environmental conditions, power surges, water damage, fire, vandalism, negligence, load tests, obsolescence, accident or misuse of machinery or car, work by others, or other similar or dissimilar causes beyond Bagby's control.
- Services will be furnished hereunder for a period of **three (3) years**.
- For the service provided hereunder, Customer shall pay to the Company the sum of **Six Hundred Ninety-Seven & 47/100 dollars, (\$697.47), per month** payable upon presentation of invoice. ~~Customer shall pay an addition to the price herein quoted amount of any tax based on sales made hereunder, imposed by any law enacted after the date of this proposal.~~ The foregoing price shall be adjusted in the following manner as of the anniversary of the commencement date ("Adjustment Date"):

- (1) 25% of the contract price shall be increased or decreased by the percentage of increase or decrease shown by the index of "Wholesale Commodity Prices for Metals and Metal Products" published by the U.S. Department of Labor, Bureau of Statistics, published as of the month within which the yearly adjustment date falls, as compared with the rate on the Commencement Date.
- (2) 75% of the contract price shall be increased or decreased by the percentage of increase or decrease in the straight time hourly rate for elevator examiners, in the locality where the equipment is to be maintained on the yearly adjustment date as compared with the rate on the Commencement Date.

For the purpose of this contract and subsequent adjustments, the straight time hourly rate for elevator examiners shall equal actual hourly rate paid to the elevator examiners plus fringe benefits granted in lieu of, or in addition to, hourly rate increases. Fringe benefits include, but are not limited to, pensions, vacations, paid holidays, group life insurance, hospitalization insurance, F.I.C.A., S.U.I. and Worker's Compensation.

- (3) The adjustment in price resulting from the above price adjustment provisions shall not increase the contract price to more than the maximum price permitted by any applicable, legally issued government regulation in force on the date that the adjustment becomes effective. In the event retroactive pay or fringe increases are incurred, the contract price will be prorated without regard to the yearly adjustment date.
- Payments in the frequency and amount set forth above are due on or before the last day of the month prior to the billing period, beginning on the Commencement Date.

Payment will be made via _____. Where applicable, to enable Bagby to process direct debit payments, Customer agrees to provide a copy of a voided check from Customer's business bank account.

The work shall be performed for the agreed price plus any applicable sales, excise or similar taxes as required by law. ~~In addition to the agreed price, Customer shall pay to Bagby any future applicable tax imposed on Bagby, Bagby's suppliers~~

~~or Customer in performance of the work described.~~

- The Customer shall at all times and at its own cost, maintain comprehensive bodily injury and property damage insurance, including bodily injury and property damage caused by the ownership, use or operation of the equipment described herein.
- The Customer shall not permit persons or firms other than Company to make alterations, additions, adjustments, repairs, or replacements to the equipment covered by this contract. This is a material term of this contract.
- Customer agrees that if any unit is malfunctioning or is in a dangerous condition, then Customer will immediately notify Bagby by using the 24-hour service line. Until the problem is corrected, Customer agrees to remove the unit from service and to take all necessary precautions to prevent access or use of the unit while it is malfunctioning or in a dangerous condition.
- It is agreed that Bagby does not assume possession or control of any part of the Units, that such remains the Customer's solely as owner, lessee, or agent of the owner or lessee, and that the Customer is solely responsible for all requirements imposed by any federal, state or local law, ordinance or regulation. The Customer agrees to give the Company ready access to all areas of the building in which any part of the Units are located and to keep all machine rooms and pit areas free from water, stored materials and excessive debris. The Customer agrees to provide a safe workplace for Company and to remove any waste or hazardous materials in accordance with applicable laws and regulations. The Customer agrees to maintain a maximum temperature of 85 degrees Fahrenheit in the elevator equipment room on all microprocessor controlled elevators.
- Customer agrees to properly post, maintain, and preserve any and all instructions or warnings to passenger in connection with the use of these units.
- Those elevators described in this contract provided with fire fighter service are required by law to be subjected to a test of the special emergency service and a written record kept of the findings. The Customer agrees to be responsible for performing, and keeping a record of, the monthly test of the fire fighter service as required by applicable code.
- If any part delivered hereunder incorporates computer software, the Customer agrees that the transaction is not a sale of such software but merely a license to use such software solely for operating the Unit(s) for which such part was provided. Accepting delivery of such part, the Customer agrees not to copy or let others copy such software for any purpose whatsoever, to keep such software in confidence as a trade secret, and not to transfer possession of such part to others except as a part of a transfer of ownership of the Units(s) in which such part is installed, provided that the Customer informs Bagby of such transfer and the transferee agrees to abide by the above license terms.
- Bagby shall not be held responsible or liable for any loss, damage, detention, or delay caused by accidents, labor troubles, strikes, lockouts, fire, flood, acts of civil or military authorities, or by insurrection or riot, or by any other cause which is unavoidable or beyond its control, or in any event for consequential damages. No work, service or liability on the part of the Company, other than that specifically mentioned herein, is included or intended.
- The Customer understands that Bagby will supply personnel, material, and resources to Customer, the costs of which must be prorated over the course of the contract term. For that reason, in the event of the sale, lease, or other transfer of the ownership of the equipment described herein, or the premises in which it is located, Customer agrees to see that such purchaser is made aware of this Agreement and assumes and agrees to be bound by the terms of the Agreement.
- The Customer hereby appoints the Company as special agent, authorized to act for the Customer in matters concerning elevator maintenance and repair. Specifically, Bagby is authorized to act as a special agent on the Customer's behalf when purchasing parts necessary to honor the maintenance contract. The Customer authorizes Bagby, as special agent for the Customer, to execute, at Bagby's expense, any legal action required to obtain the necessary parts. This contract creates a principal/agent relationship. It is not intended to constitute an employee/independent contractor relationship. The Customer shall retain control of the manner in which the Company may represent the Customer as its agent. Bagby's term as agent is for the duration of the maintenance contract.
- This contract shall constitute the entire agreement with respect to elevator service to be rendered by Bagby to Customer. No agent or employee shall have the authority to waive any clause of this contract. In the event the Customer's acceptance is in the form of a Purchase Order or other kind of document, the provisions, terms, and conditions of this Preventive Maintenance Agreement shall govern in the event of Conflict.
- All prior representations or agreements, whether written or verbal, not incorporated herein are superseded, and no changes in or additions to this agreement will be recognized unless made in writing and signed by both the Mayor and an Executive Officer of Bagby Elevator Company, Inc. Further, any manual changes to this form will not be effective as to Bagby unless initialed in the margin by an Executive Officer of Bagby Elevator Company, Inc.

OIL AND GREASE PROTECTIVE MAINTENANCE COVERAGE

- Bagby shall make **quarterly** inspections of the Elevator(s) above described:

including

Lubricating and cleaning the machine, motor and controller, pump unit, piston, packing head, valves, pipe fittings and drive belts, lubricating the sheave bearings and guides.

- This service does not include power switches, fuses for same, flex hoses, nor power wiring to controller.
- Bagby will also inspect and lubricate the following accessory equipment: Hoistway doors, door hinges, latches, or knobs and other items of accessory equipment not listed above.
- Materials supplied under this contract are limited to lubricating oils and greases only.
- Reports of inspection shall be made by Bagby and any defects disclosed by such inspections shall be listed on a time ticket and a copy of same shall be given to customer; such listing by Bagby shall constitute complete notification to Customer of any such defect.
- Services under this contract shall be performed during regular working hours on regular working days. If overtime work covering inspections is requested by the Customer, Bagby will absorb the hours worked at single time rates, and the Customer will compensate Bagby for overtime hours at Bagby's usual overtime rate.
- Services will be furnished hereunder from _____ (the "Commencement Date") at the price herein named for **three (3) years**.
- For the service provided hereunder, Customer shall pay to Bagby the sum of **Two Hundred Thirty-Two & 20/100 dollars (\$232.20) quarterly**, payable upon presentation of invoice. This price will remain firm for a period of ninety (90) days.
- On an annual basis, the foregoing price shall be adjusted by the percentage of increase or decrease in the straight time hourly rate for elevator examiners in the locality where the equipment is inspected on the anniversary of the Commencement Date as compared with the straight time hourly rate for elevator examiners on the Commencement Date. For the purpose of this contract and subsequent adjustments, the straight time hourly rate for elevator examiners shall equal the actual hourly rate paid to the elevator examiners plus the fringe benefits granted in lieu of, or in addition to, hourly rate increases. Fringe benefits include, but are not limited to pensions, vacations, paid holidays, group life insurance, sickness and accident insurance, hospitalization insurance, F.I.C.A., S.U.I., and Workmen's Compensation. The adjustment in price resulting from the foregoing price adjustment provision shall not increase the contract price to more than the maximum price permitted by any applicable, legally issued, government regulation in force on the date that the adjustment becomes effective. These adjustments shall be made on any semi-anniversary date or anniversary date of this contract to become effective immediately.
- Payments in the frequency and amount set forth above are due on or before the last day of the month prior to the billing period, beginning on the Commencement Date.
- Payment will be made via _____. Where applicable, to enable Bagby to process direct debit payments, Customer agrees to provide a copy of a voided check from Customer's business bank account.
- The work shall be performed for the agreed price plus any applicable sales, excise or similar taxes as required by law. ~~In addition to the agreed price, Customer shall pay to Bagby any future applicable tax imposed on Bagby, Bagby's suppliers or Customer in performance of the work described.~~
- In states requiring notice prior to filing a lien, this notice requirement is hereby complied with.
- **INSURANCE:** The Customer shall at all times and at its own cost, maintain comprehensive bodily injury and property damage insurance, including bodily injury and property damage covering the ownership, use or operation of the equipment described herein and to name Company, its officers, directors and employees as an additional insured under all limits of that policy or policies except worker's compensation.
- The Customer shall not permit persons or firms other than Company to make alterations, additions, adjustments, repairs, or replacements to the equipment covered by this contract. This is a material term of this contract.
- Customer agrees that if any unit is malfunctioning or is in a dangerous condition, then Customer will immediately notify Bagby by using the 24-hour service line. Until the problem is corrected, Customer agrees to remove the unit from service and to take all necessary precautions to prevent access or use of the unit while it is malfunctioning or in a dangerous condition.
- Customer agrees to properly post, maintain, and preserve any and all instructions or warnings to passenger in connection

with the use of these units. Customer shall not allow persons or entities other than those employed by Company to perform work or adjustments to the equipment described herein.

- It is agreed that Bagby does not assume possession or control of any part of the Units, that such remains the Customer's solely as owner, lessee, or agent of the owner or lessee, and that the Customer is solely responsible for all requirements imposed by any federal, state or local law, ordinance or regulation. The Customer agrees to give the Company ready access to all areas of the building in which any part of the Units is located and to keep all machine rooms and pit areas free from water, stored materials and excessive debris. The Customer agrees to provide a safe workplace for Company and to remove any waste or hazardous materials in accordance with applicable laws and regulations. The Customer understands that it is detrimental to the equipment to allow temperatures in excess of 85 degrees Fahrenheit in the elevator equipment room for any microprocessor controlled elevators.
- Those elevators described in this contract provided with fire fighter service are required by law to be subjected to a test of the special emergency service and a written record kept of the findings. The Customer agrees to be responsible for performing, and keeping a record of, the monthly test of the fire fighter service as required by applicable code.
- Bagby shall not be held responsible or be held liable for failure to make an inspection by reason of strikes, lockouts, fire, flood, acts of civil or military authorities, or by insurrection or riot, or by any other cause which is unavoidable or beyond its control.
- This Contract shall constitute the entire agreement with respect to elevator service to be rendered by Bagby to Customer, and all prior representations, whether written or verbal, are merged herein. No agent or employee shall have the authority to waive any clause of this contract. In the event the Customer's acceptance is in the form of a Purchase Order or other kind of document, the provisions, terms, and conditions of this Preventive Maintenance Agreement shall govern in the event of Conflict.
- The Customer understands that Bagby will supply men, material, and resources to my area, the costs of which must be prorated over the course of the contract term. For that reason, in the event of the sale, lease or other transfer of the ownership of the equipment described herein, or the premises in which it is located, Customer agrees to see that such purchaser is made aware of this Agreement and assumes and agrees to be bound by the terms of this agreement.
- All prior representations or agreements, whether written or verbal, not incorporated herein are superseded, and no changes in or additions to this agreement will be recognized unless made in writing and signed by both the Mayor and an Executive Officer of Bagby Elevator Company, Inc. Further, any manual changes to this form will not be effective as to Bagby unless initialed in the margin by an Executive Officer of Bagby Elevator Company, Inc.
- **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.
- **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. Bagby 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.

BAGBY ELEVATOR COMPANY, INC.

BY: 
JAMES HOGAN, DIRECTOR OF SALES
CITY OF VESTAVIA HILLS

BY: _____
(Signature)

(name-typed or printed)

TITLE: _____

The foregoing proposal is hereby accepted at the prices and upon the terms and conditions
therein stated, this _____ day of _____, _____.

The proposal and contract is hereby accepted by Bagby Elevator Company, Inc.:

BY: _____
Hunter M. Bagby, Executive Vice President
DATE: _____

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

May 5, 2023

By Electronic Mail

Lori Beth Kearley, P.E.
Department of Public Services
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Elevator Maintenance Agreement Between Bagby Elevator Company, Inc.
and the City of Vestavia Hills, Alabama

Dear Mrs. Kearley:

On April 27, 2023, you sent to me via electronic mail an Agreement prepared by Bagby Elevator Company, Inc. ("Bagby") wherein Bagby proposed to provide full maintenance elevator protection program services for five (5) elevators situated in three (3) different buildings owned by the City of Vestavia Hills, Alabama ("City"). You requested that I review the proposed Agreement and provide you with my written legal opinion and recommendations. The purpose of this letter is to comply with your request.

Bagby proposes to provide full maintenance protection program covering all parts, labor and materials necessary for premium elevator service on the elevators in the table below.

<u>Location</u>	<u>Elevators</u>	<u>Monthly Charge</u>
Vestavia Hills City Hall	Two (2) hydraulic passenger elevators	\$280.05
Library in the Forest	One (1) hydraulic passenger elevator	138.42
Recreation Center 1090 Montgomery Highway	Two (2) Tac 20 hydraulic passenger elevators	<u>279.00</u>
	Total Monthly Charge	\$697.47

The proposed Agreement is for a period of three (3) years. Therefore, the total contract price amounts to \$25,008.92 (\$697.47 per month x 36 months = \$25,008.92).

I. LEGAL ISSUE ONE

A. LEGAL ISSUE ONE: Is the proposed Agreement subject to the Alabama Competitive Bid Law?

B. LEGAL OPINION: It is my legal opinion that the answer to Legal Question One is in the negative.

C. BASIS FOR LEGAL OPINION: I base my legal opinion upon the Alabama legal authorities cited below:

1. The Alabama Competitive Bid Law at Title 41-16-50(a), Code of Alabama, 1975: The Alabama Competitive Bid Law applicable to municipalities is set forth at Title 41-16-50(a), *Code of Alabama, 1975*, and provides in pertinent part as follows:

"(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars (\$15,000) or more, by or on behalf of any...governing bodies of the municipalities of the state ...shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder."

Title 41-16-51(a)(3), *Code of Alabama, 1975*, provides as follows:

"§41-16-51. Exemptions—Void Contracts—Criminal Penalties.

(a) Competitive bids shall not be required for utility services, the rates for which are fixed by law, regulation, or ordinance, and the competitive bidding requirements of this article shall not apply to:

(3) Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountants, or other individuals possessing a **high degree of professional skill where the personality of the individual plays a decisive part** (*emphasis added*)."

2. **The Alabama Competitive Bid law Applicable to Public Works**

Projects:

(a) **Public Works Project Defined:** Alabama law regarding the letting, execution and administration of public improvements contracts ("public works") by municipalities is set forth in Title 39, Chapters 1 through 5, of the *Code of Alabama, 1975*.

The Alabama Public Works Law regarding public works construction projects provides, among other things, that a public works project is the expenditure of public funds on real estate owned by a municipality or on a structure attached to that real estate. Section 39-2-1(6), *Code of Alabama, 1975*, defines "public works" as:

"(6) PUBLIC WORKS. The construction, installation, **repair** (*emphasis added*), renovation, or **maintenance** (*emphasis added*) of public **buildings** (*emphasis added*), structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, **repaired** (*emphasis added*), renovated, or **maintained** (*emphasis added*) on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise."

(b) **Requirement to Bid Public Works Project:** Alabama law at Title 39-2-2(a), *Code of Alabama, 1975*, requires that contracts be awarded after inviting competitive bids and provides in pertinent part as follows:

"(a) Before entering into any contract for a public works involving an amount in excess of fifty thousand dollars (\$50,000), the awarding authority shall advertise for sealed bids. "

(c) **No Requirement to Bid for Project \$50,000.00 or Less:** The scope of work constituting a "public works project" within the meaning of Act Number 97-225 enacted by the Legislature, effective April 22, 1997 and now codified as Title 39-2-2(b)(1), et seq., *Code of Alabama, 1975*, reads in pertinent part as follows:

"Public works projects involving expenditures of less than \$50,000.000 do not have to be bid."

D. **CONCLUSION:** The work to be performed by Bagby is a public works project because it is the maintenance of a public building (Title 39-2-1(6), *Code of Alabama, 1975*) with a contract price of less than \$50,000.00. Therefore, the Agreement is not subject to the Competitive Bid Law applicable to public works projects (Title 39-2-2(b)(1), *Code of Alabama, 1975*).

The work is also exempt from the Alabama Competitive Bid Law at Title 41-16-50(a), *Code of Alabama, 1975*, because the work is to be performed by an individual possessing a high degree of professional skill where the personality of the individual plays a decisive part (exempted by Title 41-16-51(a)(3), *Code of Alabama, 1975*).

II. LEGAL ISSUE TWO

A. LEGAL ISSUE TWO: May an Alabama municipality legally indemnify and hold harmless a third party or limit the liability of that third party?

B. LEGAL OPINION: It is my legal opinion that the answer to Legal Question Two is in the negative.

C. BASIS FOR LEGAL OPINION: I base my legal opinion upon the Alabama legal authorities cited below.

1. Constitution of Alabama of 1901: Section 94, as amended by Amendments 112 and 558, of the Constitution of Alabama provides as follows:

“The Legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever.”

In my opinion, it would be a violation of Article IV, Section 94(a) of the *Constitution of Alabama* for the City to indemnify a third party for actions, costs, expenses, damages and liabilities.

2. Municipalities in Alabama May Spend Public Funds Only for Public Purposes: Municipalities in Alabama may spend public funds only for public purposes. The Supreme Court of Alabama has interpreted the language of Sections 93 and 94 of the *Constitution of Alabama* to allow appropriations of public funds when the appropriation is used for public purposes. *Alabama Constitution* amend. 93; *Alabama Constitution* amend. 94; *Slawson v. Alabama Forestry Comm’n*, 631 So.2d 953 (Ala.1994). *Opinion of the Justices No. 269*, 384 So.2d 1051 (1980); *Stone v. State*, 251 Ala. 240 (1948).

It is my legal opinion that spending public funds to indemnify a private entity is “not for a public purpose.”

D. CONCLUSION: It is my conclusion that the City, under Alabama law cited above, cannot indemnify and hold harmless Bagby.

E. RECOMMENDATION: I recommend that all language in the Agreement requiring the City to indemnify and hold harmless Bagby, specifically including, but not limited to, the language on pages 3 and 4 be deleted.

III. LEGAL ISSUE THREE

A. LEGAL ISSUE THREE: Is a contract with a municipality required to contain language regarding immigration in compliance with Title 31-13-9(k), *Code of Alabama, 1975*?

B. LEGAL OPINION: It is my legal opinion that the answer to Legal Question Three is in the affirmative.

C. BASIS FOR LEGAL OPINION: I base my legal opinion upon the following statute:

“(k) All contracts or agreements to which the state, a political subdivision, or state-funded entity are a party shall include the following clause: ‘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.’”

D. MY RECOMMENDATION: I recommend that the following language be added to the Agreement:

“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.”

IV. LEGAL ISSUE FOUR

A. LEGAL ISSUE FOUR: Is a contract with a municipality required to contain language regarding boycott in compliance with Title 41-16-5(a)(3) *Code of Alabama, 1975*?

B. LEGAL OPINION: It is my legal opinion that the answer to Legal Question Four is in the affirmative.

C. BASIS FOR LEGAL OPINION: A municipality in Alabama is defined as a governmental entity by Title 41-16-5(a)(3), *Code of Alabama, 1975*. The statute further provides as follows:

“(b) Subject to subsection (c), a governmental entity may not enter into a contract governed by Title 39 or Chapter 16, Title 41, Code of Alabama 1975, with a business entity unless the contract includes a representation that the business entity is not currently engaged in, and an agreement that the business entity 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.

(c) (1) This section does not apply if a business fails to meet the requirements of subsection (b) but offers to provide the goods or services for at least 20 percent less than the lowest certifying business entity.

(2) This section does not apply to contracts with a total potential value of less than fifteen thousand dollars (\$15,000).

D. MY RECOMMENDATION: I recommend that the following language be added to the proposed Agreement:

“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. Bagby 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.”

V. LEGAL ISSUE FIVE

A. LEGAL ISSUE FIVE: May a municipality legally agree to pay liquidated damages?

B. LEGAL OPINION: It is my legal opinion that the answer to Legal Question Five is in the negative.

C. BASIS FOR LEGAL OPINION:

1. Municipalities and counties may exercise only the authority given to them by the Legislature. A municipality derives all of its power from the state and no municipality can legislate beyond what the state has either expressly or impliedly authorized. *Jefferson County v. Johnson*, 333 So.2d 143, 145 (Ala.1976) and *Arrington v. Associated General Contractors*, 403 So.2d 893, 902 (Ala.1981).

2. I have found no statute that authorizes a municipality to voluntarily agree to pay liquidated damages for an alleged breach of contract.

3. Alabama law at Title 11-40-1, *Code of Alabama, 1975*, provides that all municipal organizations are bodies, politic and corporate, and as the case may be, shall sue and be sued, contract and be contracted with.

4. The proposed Agreement provides as follows,

“The Customer does hereby consent to have this agreement construed under and in accordance with the laws of the State of Alabama and to the venue and jurisdiction of any proceeding or lawsuit under this agreement to be in the State Courts in Jefferson County, Alabama.”

5. The Supreme Court of Alabama decided the case of *Ex parte Jackson County Bd. of Educ.*, 4 So.3d 1099, in 2008 and held that the elements of a breach-of-contract claim are (a) a valid contract binding the parties; (b) the plaintiffs’ performance under the contract; (3) the defendant’s non-performance; and (d) resulting damages.

6. I recommend that should either Bagby or the City claim a breach of contract by the other party, then in such event the matter be adjudicated in Jefferson County Courts consistent with the proposal by Bagby.

D. RECOMMENDATION: I recommend that any and all language in the Agreement requiring the City to pay liquidated damages, specifically including, but not limited to, the language on page 3 be deleted.

VI. LEGAL ISSUE SIX

- A. LEGAL ISSUE SIX: Is a municipality required to pay sales taxes?
- B. LEGAL OPINION: It is my legal opinion that municipalities in Alabama are not required to pay sales taxes.
- C. BASIS FOR LEGAL OPINION: I base my legal opinion upon the Alabama legal authorities cited below.

1. Municipalities in Alabama are not legally required to pay sales taxes. Title 40-23-4(a), *Code of Alabama 1975*, reads in pertinent part as follows:

"§40-23-4. Exemptions; Certain Sales.

(a) There are exempted from the provisions of this division and from the computation of the amount of the tax levied, assessed, or payable under this division the following:

(11) The gross proceeds of sales of tangible personal property to the State of Alabama, to the counties within the state and to incorporated municipalities in the State of Alabama.

(15) The gross proceeds of the sale or sales of tangible personal property to county and city school boards, independent school boards, and all educational institutions and agencies of the State of Alabama, the counties within the state, or any incorporated municipalities of the State of Alabama."

D. My RECOMMENDATION:

1. I recommend that all language in the Agreement requiring the City to pay sales taxes be deleted.
2. If the City purchases a part from Bagby that was in stock and Bagby had already paid sales tax on that part when it was purchased, then in such event the sales tax paid should be included in the total purchase price paid by the City.
3. However, should a part not be in Bagby's inventory and need to be ordered, then in such event the part should be purchased using the "materials tax exemption for governmental entities projects" set forth in Title 40-9-14.1, *Code of Alabama, 1975*, a copy of which is attached to this legal opinion.

VII. CONCLUSION

From a legal standpoint, I approve the execution and delivery of the Agreement with Bagby; provided, however, that it is amended consistent with this legal opinion.

Please call me if you have any questions regarding any of the matters set forth in this legal opinion.

Sincerely,

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

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

Attachment

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

(d) No refunds shall be issued to such united appeal fund entity or supported charity, as defined in subsection (b) and (c) and those as defined in Section 40-9-12(c), for any purchases or transactions during a time period in which a certificate of exemption was not in effect regardless of whether such united appeal fund or supported charity falls under the provisions of this section.

(e) The Department of Revenue may make available to the public a record of statutorily exempt entities that have been issued a certificate of exemption. Such listing shall be limited to the entity name, the date of issuance, and the current status of the certificate as either valid or invalid, including the date such certificate of exemption became invalid.

(f) The Department of Revenue may adopt and enforce reasonable rules for the enforcement and administration of this section.

HISTORY:

Acts 2018, No. 18-198, § 1, effective March 12, 2018.

sioner substituted "adopted" for "promulgated" in (a); and substituted "adopt and enforce reasonable rules" for "adopt, promulgate, and enforce reasonable rules and regulations" in (f).

Editor's Notes

In this section as enacted, the Code Commis-

§ 40-9-14.1. Materials tax exemption for governmental entities projects.

(a) For the purposes of this section, the term governmental entity means the State of Alabama and its political subdivisions, including a county, a municipality, an industrial or economic development board or authority, airport authority, and any public water or sewer authority, district, system, or board that otherwise is sales and use tax exempt. A governmental entity shall also include an educational institution of any of the foregoing Alabama political subdivisions including a public college or university, a county or city board of education, and the State Board of Education.

(b)(1) The Department of Revenue shall issue a certificate of exemption to the governmental entity for each tax exempt project.

(2) The Department of Revenue shall grant a certificate of exemption from state and local sales and use taxes to any contractor licensed by the State Licensing Board for General Contractors, or any subcontractor working under the same contract, for the purchase of building materials, construction materials and supplies, and other tangible personal property that becomes part of the structure that is the subject of a written contract for the construction of a building or other project for and on behalf of a governmental entity which is exempt from the payment of sales and use taxes.

(c) The use of a certificate of exemption for the purchase of tangible personal property pursuant to this section shall include only tangible personal property that becomes part of the structure that is the subject of the construction contract. Any contractor or subcontractor purchasing any tangible personal property pursuant to a certificate of exemption shall maintain an accurate cost accounting of the purchase and use of the property in the construction of the project.

(d) A contractor who has an exemption from sales and use tax for the purchase of materials to use on a government project shall file, in a manner as prescribed by the department, reports of all exempt purchases. The reports shall be filed as a prerequisite to renewal of a certificate of exemption.

(e)(1) The department may assess any contractor or subcontractor with state and local sales or use taxes on any item purchased with a certificate of exemption not properly accounted for and reported as required.

(2) Any contractor or subcontractor who intentionally uses a certificate of exemption in violation of this section, in addition to the actual sales or use tax liability due, shall be subject to a civil penalty levied by the department in the amount of not less than two thousand dollars (\$2,000) or two times any state and local sales or use tax due for the property and, based on the contractor's or subcontractor's willful misuse of the certificate of exemption, may be barred from the use of any certificate of exemption on any project for up to two years.

(f) The department may adopt rules to implement this section in order to effectuate the purposes of this section and to provide for accurate accounting and enforcement of this section.

(g) In bidding the work on a tax exempt project, the bid form shall provide for an accounting for the tax savings.

(h) The intent of this section is to lower the administrative cost for the governmental entity, contractor, and subcontractor for public works projects. It is not the intent of this section to change the basis for determining professional services from fair market value, which may include sales and use taxes.

(i)(1) Except as provided for a contract for the construction of a highway, road, or bridge as provided in subdivision (2), this section shall be operative for contracts entered into with governmental entities as defined in subsection (a), not including public water or sewer authorities, districts, systems, or boards that otherwise are sales and use tax exempt, on January 1, 2014, or thereafter, and shall not apply to any contract entered into prior to January 1, 2014. This section shall be operative for contracts entered into with public water or sewer authorities, districts, systems, or boards that otherwise are sales and use tax exempt on January 1, 2019, and thereafter, and shall not apply to any contract entered into with such entities prior to January 1, 2019. In addition, this section shall not apply to any contract change orders or contract extensions, including revised, renegotiated, or altered contracts, when the original contract was entered into prior to January 1, 2014, with a governmental entity. Nor shall this section apply to any contract change orders or contract extensions, including revised, renegotiated, or altered contracts with any public water or sewer authority, district, system, or board that otherwise is sales and use tax exempt, when the original contract was entered into prior to January 1, 2019.

(2) This section shall be operative for any contracts with a governmental entity defined in subsection (a) for the construction of a highway, road, or bridge entered into on or after January 1, 2022, and shall not apply to any contracts for the construction of a highway, road, or bridge entered into prior

to January 1, 2022, nor shall this section apply to any contract change order or contract extensions, including revised, renegotiated, or altered contracts, when the original contract was entered into prior to January 1, 2022.

(j) The Department of Revenue may adopt rules to implement this section.

HISTORY:

Acts 2013, No. 13-205, §§ 1, 2, Oct. 1, 2013; Acts 2018, No. 18-234, § 1, effective June 1, 2018; Acts 2021, No. 21-298, § 2, effective April 27, 2021; Acts 2021, No. 21-372, § 1, effective October 1, 2021.

Effective Dates

Acts 2013, No. 13-205, effective October 1, 2013.

Amendment Notes

The 2018 amendment added "any public water or sewer authority, district, system, or board that otherwise is sales and use tax exempt" in the first sentence of (a); in (i), added "with governmental entities as defined in subsection (a), not including public water or sewer authorities, districts, systems, or boards that other-

wise are sales and use tax exempt, on" in the first sentence, added the second sentence, added "with a governmental entity" in the third sentence, added the second to the last sentence and deleted "after October 1, 2013" at the end; and made a related change.

The 2021 amendment by Acts 2021, No. 21-298, added "airport authority" in the first sentence of (a).

The 2021 amendment by Acts 2021, No. 21-372, deleted "not to include any contract for the construction of any highway, road, or bridge" following "other project" in (b)(2); in (i), added "Except as provided for a contract for the construction of a highway, road, or bridge as provided below" at the beginning and added the last sentence; and redesignated former last sentence of (i) as (j).

RESEARCH REFERENCES AND PRACTICE AIDS

Related Statutes

Acts 2021, No. 21-298, § 1: "Notwithstanding any other provision of law, beginning January 1, 2020, all airport authorities established pursuant to Chapter 3 of Title 4 of the Code of

Alabama 1975, or by local law and contracts entered into by airport authorities on or after January 1, 2020, are exempted from paying any state, county, and municipal sales and use tax."

§ 40-9-14.2. Airport authorities.

Notwithstanding any other provision of law, beginning January 1, 2020, all airport authorities established pursuant to Chapter 3 of Title 4 or by local law and contracts entered into by airport authorities on or after January 1, 2020, are exempted from paying any state, county, and municipal sales and use tax.

HISTORY:

Acts 2021, No. 21-298, § 1, effective April 27, 2021.

§ 40-9-19. Homesteads; generally.

(a)(1) Homesteads, as defined by the Constitution and laws of Alabama, are exempt from all state ad valorem taxes. In no case shall the exemption apply to more than one person or head of the family, nor shall the exemption exceed \$4,000 in assessed value or 160 acres in area for any resident of this state who is not over 65 years of age.

(2) The homesteads of residents of this state, over 65 years of age, or who are retired due to permanent and total disability, regardless of age, or who are blind as defined in Section 1-1-3, regardless of age or whether such person is retired, shall be exempt from all state ad valorem taxes.



CITY OF VESTAVIA HILLS

INTER-DEPARTMENT MEMO

July 24, 2023

To: Jeff Downes, City Manager

Cc:

From:

RE: Citizens Comments

Background:

Recommendation:

Fiscal Impact:

Attachments:

None