Vestavia Hills
City Council Agenda
March 10, 2025
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
   1 Announcement of upcoming vacancy on Vestavia Hills Board of Education. Deadline for application is 5 PM, Monday, April 14, 2025 - Kimberly Cook
7. Proclamation for March 9-15, 2025 as Multiple Sclerosis Awareness Week
8. City Manager’s Report
9. Councilors’ Reports
10. Financial Reports - Zachary Clifton, Deputy Finance Director
11. Approval Of Minutes - February 10, 2024 regular meeting minutes

Old Business (Public Hearing)

New Business

12. Resolution Number 5551 - A Resolution appointing a voting delegate for the Alabama League of Municipalities Annual Business Meeting on May 15, 2025
13. Ordinance Number 3267 - An Ordinance authorizing the Jefferson County Tax Assessor/Tax Collector to assess and collect municipal ad valorem taxes pursuant to Alabama law
14. Ordinance Number 3268 - An Ordinance authorizing the Shelby County Tax Assessor/Tax Collector to assess and collect municipal ad valorem taxes pursuant to Alabama law

New Business Requesting Unanimous Consent (Public Hearing)

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

15. Public Hearing - Resolution Number 5552 - Vacation - A Resolution to vacate a portion of easement located to the rear of 3301 Willis Drive; Lot 8, Resurvey of Lots 5, 6 and 7, Jonas Schab Co. Survey as recorded in Map Book 116 Page 10; Tyler Moore, Owner
16. Public Hearing - Resolution Number 5555 - A Resolution Authorizing a FY 25 Supplemental Appropriation to Fund 11 (Court) to Accommodate the Unanticipated Expense Associated with a Temporary Need Employee
17. Public Hearing - Ordinance Number 3265 - Rezoning - A portion of 4751 Cahaba River Road; A portion of Common Area A, River Grand Subdivision; Rezone from Vestavia Hills R-6 to Vestavia Hills B-2 to be combined with the adjacent commercial lot for expanded parking area; Beau Bevis, owner; Alex Patillo, representing
18. Public Hearing - Ordinance Number 3266 - An Ordinance Granting a Franchise Agreement to Lumos Fiber and Authorizing the Mayor and City Manager to Execute Any and All Documents Associated with the Franchise
19. Public Hearing - Resolution Number 5553 - A Resolution Authorizing the Mayor and City Manager to Execute Any and All Documents that Reallocate Existing Economic Incentives from One Entity - Altera AIP, Vestavia LLC to Two Entities - Altera AIP - Vestavia LLC and AIP Vestavia, LLC *(Resolution Numbers 5553 and 5554 are companion resolutions)*
20. Public Hearing - Resolution Number 5554 - A Resolution Authorizing the Mayor and City Manager to Execute Any and All Documents that Reallocate Existing Economic Incentives from One Entity - Altera AIP, Vestavia LLC to Two Entities - Altera AIP - Vestavia LLC and AIP Vestavia, LLC *(Resolution Numbers 5553 and 5554 are companion resolutions)*
21. Citizens Comments
22. 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.

WHEREAS, multiple sclerosis (MS) is a neurological disease of the central nervous system, affecting over 1 million people in the United States alone; and

WHEREAS, multiple sclerosis generally strikes people in the prime of life, between ages 20 through 50, and the cause and course of the often-debilitating symptoms of MS remain unknown and no cure currently exists; and

WHEREAS, the National Multiple Sclerosis Society is committed to a world free of MS, heightening public knowledge about and insight into the disease; and

WHEREAS, together we have transformed what it means to live with MS and provided global leadership to help achieve our vision of a world free of MS; and

WHEREAS, since 1946 the National Multiple Sclerosis Society has been a driving force of MS research, relentlessly pursuing prevention, treatments and a cure, and have invested more than $1 billion in groundbreaking research; and

WHEREAS, funds raised through the National Multiple Sclerosis Society fuel research on pathways to MS cures and invest in the MS research workforce at the best medical centers, universities and other institutions throughout the U.S. and abroad, leading to many breakthroughs in the treatment of MS; and

WHEREAS, the mission of the National Multiple Sclerosis Society is to cure MS while empowering people affected by MS to live their best lives and one that all Americans and Alabamians should support; and

WHEREAS, the City of Vestavia Hills recognizes the importance of finding the cause and cure of MS and expresses its appreciation for the dedication that the National Multiple Sclerosis Society-Alabama-Mississippi-Louisiana Market has shown toward creating a world free of MS;

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim March 9 – 15, 2025 as

MS AWARENESS WEEK

and encourage all residents of Vestavia Hills to learn more about multiple sclerosis and what they can do to support individuals with MS and their families.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 10th day of March 2025.

Ashley C. Curry, Mayor

Summary
Financial Report
January 2024-2025

1.) Reconciled Cash Balance

The overall reconciled cash balance for the month of January was $66,305,220 which is comprised of the following funds:

General Funds	$56,753,448
Restricted Funds	$9,548,692
Petty Cash	$3,080
Total	**$66,305,220**

2.) The "Financial Overview" for the month and YTD through January is as follows:

Monthly Revenues	$12,384,031	YTD Revenues	$38,552,871
Monthly Expenses	$10,339,312	YTD Expenses	$27,001,045
Monthly Fund Balance	$2,044,719	YTD Fund Balance	$11,551,825

3.) Comparative Fund Balances:

	YTD	Variance
Actual - 2024-2025	$11,551,825	
Budget - 2024-2025	$10,136,836	$1,414,990
Last Year - 2023-2024	$12,853,810	($1,301,984)

Note:
The "Actual Fund Balance" is $1,414,990 more than the "Budgeted Fund Balance" and $1,301,984 less than "Last Year Fund Balance" .

Summary
Financial Report
January 2024-2025

	MTD			YTD			Variance	
	Actual	Budget	Last Year	Actual	Budget	Last Year	Act vs. Bdgt	Act vs LY
REVENUES	12,384,031	12,812,215	13,511,100	38,552,871	37,507,132	38,901,275	1,045,739	(348,404)
EXPENSES	10,339,312	9,777,645	10,036,097	27,001,045	27,370,296	26,047,465	369,251	(953,580)
FUND BALANCE	2,044,719	3,034,570	3,475,003	11,551,825	10,136,836	12,853,810	1,414,990	(1,301,984)
Advalorem - Real	5,122,709	5,440,302	6,181,000	20,851,919	20,569,981	20,495,080	281,938	356,839
Sales Tax	2,833,299	2,577,185	2,522,996	10,291,193	9,406,488	9,421,038	884,705	870,155
Utility Franchise Fees	2,691,849	2,461,021	2,613,474	2,691,952	2,461,138	2,613,543	230,814	78,408
Business License	732,051	1,638,096	1,392,709	880,953	1,853,307	1,569,066	(972,354)	(688,112)
Advalorem - Personal	64,457	44,074	54,189	801,849	729,611	799,120	72,238	2,729

October thru January 2025 (4 months)	2024-2025					
	Actual	Budget Total	Outstanding Bal	% Received	% Outstanding	Verification
Advalorem - Real	20,851,919	21,245,666	(393,747)	98.15%	1.85%	100.00%
Sales Taxes	10,291,193	28,094,201	(17,803,008)	36.63%	63.37%	100.00%
Utility Franchise Fees	2,691,952	2,613,571	78,381	103.00%	-3.00%	100.00%
Business License	880,953	4,374,434	(3,493,481)	20.14%	79.86%	100.00%
Advalorem - Personal	801,849	2,319,009	(1,517,160)	34.58%	65.42%	100.00%

JANUARY	MTD			MTD	
			Variance	Last Year	Act vs LY
Advalorem - Real	5,122,709	5,440,302	(317,593)	6,181,000	(1,058,291)
Sales Taxes	2,833,299	2,577,185	256,114	2,522,996	310,303
Utility Franchise Fees	2,691,849	2,461,021	230,828	2,613,474	78,374
Business License	732,051	1,638,096	(906,045)	1,392,709	(660,658)
Advalorem - Personal	64,457	44,074	20,383	54,189	10,268

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CITY OF VESTAVIA HILLS
MONTHLY CASH REPORT
"RECONCILED BALANCES"

General Funds	Banking Institutions	APR	Jan 2024	Feb 2024	Mar 2024	Apr 2024	May 2024	Jun 2024	Jul 2024	Aug 2024	Sep 2024	Oct 2024	Nov 2024	Dec 2024	Jan 2025
General / Operational Funds	Region Bank	5.04%	11,671,643.22	20,516,193.77	18,608,623.16	15,387,719.81	14,436,292.53	12,801,155.18	9,516,369.01	4,077,735.30	2,844,714.72	1,979,485.71	4,380,644.42	4,836,106.35	24,990,834.56
Enhanced Cash Strategy	Region Bank	5.11%	10,119,135.13	10,121,913.63	10,160,280.52	10,166,247.60	10,223,363.54	10,270,541.52	10,351,509.61	10,418,980.96	10,489,627.78	8,367,221.84	8,499,882.97	8,529,641.86	8,563,732.21
Payroll Fund	Region Bank	0.25%	0.00	0.00	308.91	0.00	0.00	0.00	0.00	0.00	0.00	0.00	24,133.01	24,133.01	24,133.01
Emergency Reserve Fund	PNC Bank	5.37%	18,214,276.83	18,278,166.12	18,358,801.14	20,590,395.90	20,551,408.03	20,661,720.70	20,855,623.62	20,947,224.55	21,071,036.31	21,070,949.87	21,107,572.98	21,230,188.91	21,316,814.11
Court & Corrections Fund	Region Bank	0.25%	97,819.67	117,012.38	281,008.88	140,557.86	89,815.80	113,043.20	132,868.20	114,716.50	112,200.50	137,869.94	98,792.61	91,015.93	143,258.43
American Rescue Plan (COVID-19)	SouthPoint	4.40%	2,763,369.93	2,773,046.62	2,783,428.13	2,793,511.80	2,803,969.87	2,814,127.93	2,824,663.25	1,773,884.08	1,779,878.81	1,785,177.23	1,790,165.28	1,710,094.74	1,714,675.61
Total - Balance			**$42,866,244.78**	**$51,806,332.52**	**$50,192,450.74**	**$49,078,432.97**	**$48,104,849.77**	**$46,660,588.53**	**$43,681,033.69**	**$37,332,541.39**	**$36,297,458.12**	**$33,340,704.59**	**$35,901,191.27**	**$36,421,180.80**	**$56,753,447.93**
Restricted Funds															
Court Cash Bonds	Regions Bank	0.25%	144,166.00	138,606.00	133,766.00	129,371.00	119,416.00	113,621.00	111,646.00	104,646.00	101,421.00	99,551.00	94,182.00	89,272.00	91,082.00
Contractors' Bonds & CDs on Hand	City Clerk's Office	n/a	4,474,038.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42
Contractors' Cash Bonds	SouthPoint	0.25%	673,211.91	675,347.73	647,538.10	659,736.91	630,929.54	601,364.94	609,197.10	585,375.54	594,199.62	593,428.25	573,252.03	578,678.21	582,010.47
Confiscated Funds	SouthPoint	1.25%	290,690.25	58,999.32	59,061.79	59,122.30	59,184.90	59,245.54	59,308.27	59,371.06	59,431.89	59,494.81	59,555.77	61,848.74	69,629.47
2013 GOW - QEBC Sinking Fund	Bank of New York	2.35%	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	2,127,191.68	2,127,191.68	2,127,191.68	2,127,191.68	2,127,191.68
Library Campaign Fund/Donations	Pinnacle	earnings offset fees	464,421.95	0.00	309.20	303.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Lease Escrow Funds	Truist & Robertson		706,734.88	707,755.76	708,848.82	709,908.37	654,497.10	655,560.15	656,660.45	657,763.60	3,967,756.36	3,968,666.45	3,151,303.96	3,152,045.67	2,490,839.60
Total Balance			**$8,665,228.30**	**$7,680,612.12**	**$7,649,427.22**	**$7,658,345.09**	**$7,563,930.85**	**$7,529,694.94**	**$7,536,715.13**	**$7,507,059.51**	**$11,037,938.97**	**$11,036,270.61**	**$10,193,423.86**	**$10,196,974.72**	**$9,548,691.64**
Cash on Hand															
Petty Cash - City Depts.			880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00
Petty Cash - Courts/Jail			600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00
Petty Cash - Library			600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00
Petty Cash - Vehicle Tags			1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
Total - Petty Cash			**$3,080.00**	**$3,080.00**	**$3,080.00**	**$3,080.00**	**$3,080.00**	**$3,080.00**	**$3,080.00**	**$3,080.00**	**$3,080.00**	**$3,080.00**	**$3,080.00**	**$3,080.00**	**$3,080.00**
Grand Total - All Funds			**$51,534,553.08**	**$59,490,024.64**	**$57,844,957.96**	**$56,739,858.06**	**$55,671,860.62**	**$54,193,363.47**	**$51,220,828.82**	**$44,842,680.90**	**$47,338,477.09**	**$44,380,055.20**	**$46,097,695.13**	**$46,621,235.52**	**$66,305,219.57**
Petty Cash Itemization															
City Clerk Dept.	none														
Court Dept.	$600.00														
Finance Dept. & Vehicle Tags	$1,050.00	Tags & City Depts													
Fire Dept.	$100.00	City Depts													
Inspection Dept.	$30.00	City Depts													
Library	$600.00														
Mayor's Office	$200.00	City Depts													
Parks & Leisure Services	$300.00	City Depts													
Police Dept.	$200.00	City Depts													
Public Services	none														
Total	**$3,080.00**														

	MONTH OF JANUARY 2025							YEAR-TO- DATE THROUGH JANUARY 2025						
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
REVENUE SUMMARY	2024-2025	2024-2025	2023-2024	Actual to Budget		Actual to Last Year		2024-2025	2024-2025	2023-2024	Actual to Budget		Actual to Last Year	
	Actual	Budget	Actual	Amount	Percentage	Amount	Percentage	Actual	Budget	Actual	Amount	Percentage	Amount	Percentage
STATE REVENUE	4,403	10,757	26,817	(6,354)	-59.07%	(22,414)	-83.58%	66,339	60,337	71,188	6,002	9.95%	(4,850)	-6.81%
COUNTY REVENUE	5,209,546	5,505,080	6,257,322	(295,534)	-5.37%	(1,047,776)	-16.74%	21,748,190	21,394,552	21,389,306	353,638	1.65%	358,884	1.68%
CITY REVENUE	7,062,854	7,225,278	7,127,389	(162,424)	-2.25%	(64,535)	-0.91%	16,295,169	15,733,144	17,063,329	562,025	3.57%	(768,160)	-4.50%
PARK & RECREATION	107,228	71,100	99,572	36,128	50.81%	7,656	7.69%	443,173	319,099	377,451	124,074	38.88%	65,721	17.41%
TOTAL REVENUE	**12,384,031**	**12,812,215**	**13,511,100**	**(428,184)**		**(1,127,069)**		**38,552,871**	**37,507,132**	**38,901,275**	**1,045,739**		**(348,404)**	
EXPENDITURE SUMMARY														
NON DEPARTMENTAL	6,297,640	5,820,913	6,341,001	(476,726)	-8.19%	43,362	0.68%	10,866,430	10,998,283	11,311,851	131,853	1.20%	445,421	3.94%
CITY COUNCIL	4,323	10,555	4,238	6,232	59.04%	(85)	-2.01%	31,025	38,876	30,371	7,851	20.20%	(654)	-2.15%
MAYOR & ADMINISTRATION	219,630	211,329	164,905	(8,301)	-3.93%	(54,724)	-33.19%	845,239	1,004,805	765,693	159,566	15.88%	(79,547)	-10.39%
CITY CLERK	46,099	45,824	42,202	(275)	-0.60%	(3,897)	-9.23%	211,376	210,113	189,618	(1,263)	-0.60%	(21,759)	-11.47%
MUNICIPAL COMPLEX	28,794	38,822	51,646	10,028	25.83%	22,852	44.25%	135,493	167,178	147,885	31,685	18.95%	12,392	8.38%
INFORMATION SERVICES	58,535	77,019	56,019	18,484	24.00%	(2,517)	-4.49%	239,079	287,437	243,312	48,358	16.82%	4,233	1.74%
POLICE	1,238,205	1,230,642	1,130,468	(7,563)	-0.61%	(107,736)	-9.53%	4,955,433	5,149,648	4,493,452	194,215	3.77%	(461,981)	-10.28%
FIRE	1,181,965	1,149,867	1,111,988	(32,098)	-2.79%	(69,976)	-6.29%	4,686,235	4,749,098	4,322,241	62,863	1.32%	(363,994)	-8.42%
INSPECTION	76,831	71,514	68,377	(5,317)	-7.44%	(8,455)	-12.36%	306,796	298,933	280,602	(7,863)	-2.63%	(26,194)	-9.33%
PUBLIC SERVICES	474,262	465,396	445,714	(8,866)	-1.90%	(28,548)	-6.40%	1,901,486	1,896,409	1,800,663	(5,077)	-0.27%	(100,823)	-5.60%
PUBLIC LIBRARY	257,549	260,075	222,776	2,526	0.97%	(34,773)	-15.61%	1,020,590	1,097,228	939,395	76,638	6.98%	(81,195)	-8.64%
PARKS & LEISURE SERVICES	455,481	395,689	396,762	(59,792)	-15.11%	(58,718)	-14.80%	1,801,862	1,472,288	1,522,383	(329,574)	-22.39%	(279,480)	-18.36%
TOTAL EXPENDITURES	**10,339,312**	**9,777,645**	**10,036,097**	**(561,667)**		**(303,215)**		**27,001,045**	**27,370,296**	**26,047,465**	**369,251**		**(953,580)**	
SURPLUS / (DEFICIT)	**2,044,719**	**3,034,570**	**3,475,003**	**(989,851)**		**(1,430,284)**		**11,551,825**	**10,136,836**	**12,853,810**	**1,414,990**		**(1,301,984)**	

Vestavia Hills
City Council Minutes
February 24, 2025
6:00 PM

1. Call to Order

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 and the City Clerk called the roll with the following:

2. Roll Call

Roll call was as follows:

MEMBERS PRESENT: Mayor Ashley Curry, Mayor Pro-Tem Rusty Weaver, City Councilor Kimberly Cook, City Councilor Paul Head, City Councilor George Pierce

MEMBERS ABSENT: None.

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager; Patrick H. Boone, City Attorney; Cinnamon McCulley, Asst. City Manager; Rebecca Leavings, City Clerk; Shane Ware, Police Chief; Melvin Turner, Finance Director; Zachary Clifton, Asst. Finance Director; Lori Beth Kearley, Public Works Director; Marvin Green*, Fire Chief

**attended via Zoom.*

3. Invocation - Butch Williams, Vestavia Hills Chaplain

4. Pledge Of Allegiance

5. Approval Of The Agenda

The Mayor opened the floor for a motion to approve the agenda as amended.

MOTION: Approve the agenda as presented. Motion By: Rusty Weaver. Seconded By: Kimberly Cook.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.
No: None. Abstain: None. Motion passed.

6. Announcements, Candidates and Guest Recognition

- Mrs. Cook welcomed two Boy Scouts, Liam Williamson, Troop 76, and Kevin Reed, attending via zoom, Troop 4, both troops located in Vestavia Hills.
- Mr. Pierce welcomed Keri Bates and Clabe Dobbs from the Vestavia Hills Chamber of Commerce. Keri Bates is the current president of the Vestavia Hills Chamber of Commerce Board and Clabe Dobbs is immediate past-president of the Board.
- Mr. Weaver announced Vestavia Hills High School will be reopened tomorrow morning after being closed several days due to a sewer line repair.

7. City Manager's Report

- None.

8. Councilors' Reports

- Mr. Pierce attended The Vestavia Hills Chamber of Commerce Board meeting. Viva Vestavia was a huge success and proceeds supported two $2,500 scholarships. This year's Dogwood prayer breakfast will be held in the Vestavia Hills Cvic Center Ballroom for the first time.
- Mayor Curry stated the keynote speakers, this year, will be Gary and Carol Godfrey along with Kerry and Tonja Goode.

9. Financial Reports - Zachary Clifton, Deputy Finance Director

Mr. Clifton presented the financial reports for the month ending December 2024, finalizing the first quarter of FY25. He read and explained the balances.

10. Approval Of Minutes - February 10, 2025 regular meeting minutes

The Mayor announced that the minutes of the February 10, 2025, meeting are being presented for approval. He opened the floor for a motion.

MOTION: Approve the minutes of the regular meeting of February 10, 2025 as amended. Motion By: Kimberly Cook. Seconded By: Rusty Weaver.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.
No: None. Abstain: None. Motion passed.

<u>Old Business (Public Hearing)</u>

11. Public Hearing - Ordinance Number 3263 - Rezoning - 4564 Pine Tree Circle; Lot 32, Topfield Subdivision; Rezone from Vestavia Hills R-1 to Vestavia Hills O-1 for construction of an office building; Andrew Noto, owner

MOTION: Approve Ordinance Number 3263 as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

Mr. Weaver stated that this request came before the Planning and Zoning Commission last month. The request is for the construction of a new office building. The Commission recommended approval based upon the site plans presented. This area is an area of transition from residential to commercial.

Mr. Noto, the owner, was present with regard to the request.

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

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.
No: None. Abstain: None. Motion passed.

12. Public Hearing - Ordinance Number 3264 - An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Rivertree Systems, Inc. For Auditing Services For The City Of Vestavia Hills

MOTION: Approve Ordinance Number 3264 as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

Mr. Downes explained that this is an extension of an existing contract for revenue audit services. Mr. Clifton stated that they audit businesses outside the city limits.

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

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.
No: None. Abstain: None. Motion passed.

<u>New Business</u>

13. Resolution Number 5549 - A Resolution declaring certain personal property as surplus and authorizing the City Manager to sell/dispose of said property

MOTION: Approve Resolution Number 5549 as presented. Motion by: Rusty Weaver. Seconded by: Kimberly Cook.

Mr. Downes stated the city is getting rid of six vehicles that are at the height of their resale value.

Mr. Pierce asked about the sale of big-engine police vehicles because of the power that they contain. Chief Ware stated that the sale of the vehicles has never posed a problem.

There being no further discussion, the Mayor called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul

Head, George Pierce.
No: None. Abstain: None. Motion passed.

14. Resolution Number 5550 - A Resolution reappointing and appointing members to Design Review Board

MOTION: Approve Resolution Number 5550 as presented. Motion by: George Pierce. Seconded by: Kimberly Cook.

The Mayor passed the gavel to Mr. Weaver.

The Mayor recommended the reappointment of Mae Coshatt to the Design Review Board and the new appointment of Philip Kennedy to replace Robert Thompson when he retires in one year. He explained that, previously, these appointments were expiring at the same time, but separating them by one year provides for alternating year appointments.

Mr. Pierce stated he met Mr. Kennedy and was very impressed; he highly recommends the appointment.

There being no further discussion, the Mayor called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.
No: None. Abstain: None. Motion passed.

New Business Requesting Unanimous Consent (Public Hearing)

- None

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

15. Citizens Comments

- None

16. Time Of Adjournment

There being no further business, Mrs. Cook made a motion to adjourn. The Mayor adjourned the meeting at 6:16 PM.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk

RESOLUTION NUMBER 5551

A RESOLUTION DESIGNATING THE MAYOR AS THE CITY OF VESTAVIA HILLS' VOTING DELEGATE FOR THE ANNUAL BUSINESS MEETING TO BE HELD AT THE 2025 ANNUAL COVENTION OF THE LEAGUE OF MUNICIPALITIES IN HUNTSVILLE, ALABAMA

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

1. The Mayor is hereby designated to act as the City of Vestavia Hills' voting delegate for the business meeting of the 2025 League of Municipalities Convention to be held in Huntsville, Alabama; and
2. The Mayor is hereby authorized to complete and submit the authorizing form for said business meeting, a copy of which is marked as Exhibit A, attached to and incorporated into this Resolution Number 5551; and
3. This Resolution Number 5551 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 10th day of March, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

VOTING DELEGATE AUTHORIZATION FORM

The City or Town Council must select the voting delegates, and this form must be completed and returned to the **Alabama League of Municipalities on or before April 30, 2025,** in order for the municipality named below to be eligible to have its designee cast a vote at the **Annual Business Meeting of the League on Friday, May 15, 2025, at 4:00 p.m.**

> **The League Constitution REQUIRES that Voting Delegates and Alternates be Elected Municipal Officials and they must be selected by a vote of the City or Town Council.**
>
> **Deadline to submit completed form is April 30, 2025!**

The Following person(s) is authorized to cast the municipality's vote at the business session of the Annual Convention of the Alabama League of Municipalities on May 15, 2025.

Please print the requested information

1. **Voting Delegate**: ______________________________
   Name
   ____
   Title

2. **1st Alternate Voting Delegate: Votes only in absence of Voting Delegate**
   ____
   Name
   ____
   Title

3. **2nd Alternate Voting Delegate: Votes only in absence of Voting Delegate & 1st Alternate**
   ____
   Name
   ____
   Title

Voted on by the City or Town Council on this the __________ day of ______________________, 2025

Form Completed by: ______________________________ (Please Print) Name ______________________________ Title

______________________________ City/Town ______________________________ Date

Return form to: Alabama League of Municipalities
P.O. Box 1270, Montgomery, Alabama 36102 or by Fax to (334) 263-0200 or Email to
DPascal@almonline.org

CITY OF VESTAVIA HILLS
CITY CLERK
INTER-DEPARTMENT MEMO

March 10, 2025

To: Jeff Downes, City Manager

From: Rebecca Leavings, City Clerk

Cc:

RE: Ordinance Number 3267 - An Ordinance authorizing the Jefferson County Tax Assessor/Tax Collector to assess and collect municipal ad valorem taxes pursuant to Alabama law

---

Background:
Alabama law requires that the County tax assessor/collector assess and collects ad valorem taxes for each city. This ordinance is required annually to appoint the Jefferson County Tax Assessor/Collector to assess and collect municipal taxes within properties in Jefferson County.

Recommendation:
na

Fiscal Impact:
na

Attachments:
1. Ordinance 3267

ORDINANCE NUMBER 3267

AN ORDINANCE TO AMEND ORDINANCE 3209 PROVIDING FOR LEVYING OF MUNICIPAL TAXES FOR THE CITY OF VESTAVIA HILLS, ALABAMA, AND FOR ASSESSMENT AND COLLECTION THEREOF.

WITNESSETH THESE HISTORICAL RECITALS:

WHEREAS, prior to November 15, 1982, the ad valorem tax rate of each One Hundred Dollars ($100.00) of assessed value of property in the City of Vestavia Hills, Jefferson County, Alabama, amounted to Eight and 21/100 Dollars ($8.21), which consisted of the following amounts:

1.	State of Alabama: Sixty-five cents on each One Hundred dollars ($100.00) of assessed value of such property.	$	0.65
2.	Jefferson County: One and 35/100 Dollars on each One Hundred Dollars ($100.00) of the assessed value of such property.		1.35
3.	Jefferson County Schools: Eighty-two cents on each One Hundred Dollars ($100.00) of the assessed value of such property.		0.82
4.	Special School District Tax: Ninety-six cents on each One Hundred Dollars ($100.00) of the assessed value of such property.		0.96
5.	Special District Tax: Fifty-five cents on each One Hundred Dollars ($100.00) of the assessed value of such property.		0.55
6.	Local General Municipal and Special Municipal School Taxes: Three and 88/100 Dollars on each One Hundred Dollars ($100.00) of the assessed value of such property.		3.88
	TOTAL	**$**	**8.21**

and;

WHEREAS, prior to November 15, 1982, the aggregate locally approved millage for general municipal purposes and local school taxes of 38.8 mills (being at the rate of $3.88 per $100.00 of assessed value) consisted of the following:

General Municipal Purposes	10.275
Garbage Collection	10.275
West Elementary - Warrants	3.150
High School and Operations	15.100
TOTAL	**38.800** and;

WHEREAS, all real property in the City of Vestavia Hills, Alabama, has been reappraised; and

WHEREAS, the Tax Assessor of Jefferson County in 1982 certified to the City of Vestavia Hills that total assessed value increased from $42,983,320.00 in 1981 to $63,427,627.00 in 1982; and

WHEREAS, the City of Vestavia Hills, Alabama, pursuant to the authority granted by Constitutional Amendment Number 373 (Lid Bill) of the Constitution of Alabama 1901, adopted Ordinance Number 633 on November 15, 1982, which reduced the ad valorem tax rate by 7.8 mills ($0.78 per $100.00 of assessed value). Following the enactment of Ordinance Number 633, the total millage rate consisted of the following separate taxes:

1.	State of Alabama: Sixty-five cents on each One Hundred dollars ($100.00) of assessed value of such property.	$ 0.65
2.	Jefferson County: One and 35/100 Dollars on each One Hundred Dollars ($100.00) of the assessed value of such property.	1.35
3.	Jefferson County Schools: Eighty-two cents on each One Hundred Dollars ($100.00) of the assess value of such property.	0.82
4.	Special School District Tax: Ninety-six cents on each One Hundred Dollars ($100.00) of the assessed value of such property.	0.96
5.	Special District Tax: Fifty-five cents on each One Hundred Dollars ($100.00) of the assessed value of such property.	0.55

6.	Local General Municipal and Special Municipal School Taxes: Three and 10/100 Dollars on each One Hundred Dollars ($100.00) of the assessed value of such property.		3.10
	TOTAL	**$**	**7.43**

After the adoption of Ordinance Number 633, the aggregate locally approved millage for general municipal purposes and local school district taxes of 31.0 mills (being at the rate of $3.10 per $100.00 of assessed value) consisted of the following:

General Municipal Purposes	0.821
Garbage Collection	0.821
West Elementary - Warrants	0.252
High School and Operations	1.206
TOTAL	**3.100** and;

WHEREAS, the Vestavia Hills Board of Education unanimously adopted a resolution requesting that the ad valorem tax millage for education purposes be returned to the pre-November 15, 1982, rates by reinstating the 3.7 mills (.37 per $100.00 of assessed value) as follows:

West Elementary Warrants from	2.52	to	3.15
High School & Operations from	12.06	to	15.10; and

WHEREAS, said resolution was presented to the City Council on February 4, 1985; and

WHEREAS, a public hearing was held on February 11, 1985, on the issue of whether or not to reinstate the 3.7 mills for the benefit of the Vestavia Hills Board of Education; and

WHEREAS, the Vestavia Hills Board of Education has requested the City Council to return the ad valorem millage tax rates that affect the Vestavia Hills School System to those rates in force and effective immediately prior to the adoption of Ordinance Number 633 on November 15, 1982, by reinstating Thirty-Seven Cents ($0.37) on each One Hundred Dollars ($100.00) of the assessed value of property so that the rates when adjusted will be as follows:

1. The 12.06 High School mills ($1.206 on each $100.00 of assessed value) be adjusted to 15.1 mills ($1.51 on each $100.00 of assessed value).

2. The 2.52 West Elementary mills ($0.252 on each $100.00 of assessed value) be adjusted to 3.15 mills ($0.315 on each $100.00 of assessed value); and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, agreed to approve the request of the Board of Education by reinstating the 3.7 mills ($0.37 per $100.00 of assessed value). The City Council of the City of Vestavia Hills, Alabama, approved and adopted Ordinance Number 744 on February 18, 1985, which said Ordinance provided, among other things, as follows:

1. Reinstatement of 3.7 mills (0.37 on each One Hundred dollars of assessed value).

2. Established that the aggregate local millage for general municipal purposes and local school district tax rates are Three and 47/100 Dollars ($3.47) per One Hundred Dollars ($100.00) of the assessed value of said property.

3. That the $3.47 local millage consists of the following:

(a)	General Municipal Purposes	0.823
(b)	Garbage Collection	0.823
(c)	West Elementary - Warrants	0.315
(d)	High School and Operations	1.510
	TOTAL	**3.470** and;

4. The total ad valorem tax rate of each One Hundred Dollars ($100.00) of assessed value of property in the City of Vestavia Hills, Alabama, shall amount to Seven and 80/100 Dollars ($7.80) and shall consist of the following:

State of Alabama	$	0.65
Jefferson County		1.35
Jefferson County Schools		0.82
Special School District Tax		0.96
Special School District Tax		0.55
General Municipal Purpose Tax		1.96
Special Municipal School Tax		1.51
TOTAL	**$**	**7.80**

WHEREAS, the City Council of the City of Vestavia Hills subsequently desired to return the millage tax rates that affect the General Fund to those rates in force and effective immediately prior to the adoption of Ordinance Number 633 on November 15, 1982, by reinstating (4.1 mills) forty-one cents on each One Hundred Dollars ($100.00) of the assessed value of property so that the rates when adjusted will be as follows:

1. The 8.23 General Fund Mills (0.823 on each $100.00 of assessed value) be adjusted to 10.275 mills (1.0275 on each $100.00 of assessed value).

2. The 8.23 Garbage Collection Fund Mills (0.823 on each $100.00 of assessed value) be adjusted to 10.275 mills (1.0275 on each $100.00 of assessed value).

The total ad valorem tax rate of each One Hundred Dollars ($100.00) of assessed value property in the City of Vestavia Hills, Alabama, shall amount to Eight Dollars and 21 Cents ($8.21) and shall consist of the following:

1.	State of Alabama: Sixty-five cents on each One Hundred dollars ($100.00) of assessed value of such property.	$	0.65
2.	Jefferson County: One and 35/100 Dollars on each One Hundred Dollars ($100.00) of the assessed value of such property.		1.35
3.	Jefferson County Schools: Eighty-two cents on each One Hundred Dollars ($100.00) of the assess value of such property.		0.82
4.	Special School District Tax: Ninety-six cents on each One Hundred Dollars ($100.00) of the assessed value of such property.		0.96
5.	Special District Tax: Fifty-five cents on each One Hundred Dollars ($100.00) of the assessed value of such property.		0.55
6.	Local General Municipal and Special Municipal School Taxes: Three and 88/100 Dollars on each One Hundred Dollars ($100.00) of the assessed value of such property.		3.88
	TOTAL	**$**	**8.21**

WHEREAS, on May 4, 1987, the City Council of the City of Vestavia Hills, Alabama, approved and adopted Ordinance Number 901, which established the ad valorem tax rate of Eight and 21/100 Dollars ($8.21) per One Hundred Dollars ($100.00) of assessed value as shown in the schedule immediately above; and

WHEREAS, a referendum was held in the City of Vestavia Hills, Alabama, on Tuesday, May 8, 1990, at which election the qualified electors of the city voted on the following issue:

**TEN AND ONE-HALF MILL TAX INCREASE
IN VESTAVIA HILLS, ALABAMA,
FOR PUBLIC SCHOOL PURPOSES**

Shall the ad valorem tax presently being levied in the City of Vestavia Hills, Alabama, pursuant to provisions of the Constitution and the laws of the State of Alabama, including the election held in the City on April 28, 1970, at the rate of One Dollar and Fifty-one Cents on each One Hundred Dollars worth of taxable property in the City be increased to the rate of Two Dollars and Fifty-six Cents on each One Hundred Dollars worth of taxable property in the City (an increase of One Dollar and Five Cents on each One Hundred Dollars worth of taxable property, or ten and one-half mills); such additional ten and one-half mill tax to be levied and collected for each year beginning with the levy for the tax year October 1, 1989, to September, 1990 (the tax for which year will be due and payable October 1, 1990) and ending with the levy for the tax October 1, 2016, to September 30, 2017 (the tax for which year will be due and payable October 1, 2017) and to be used by the City Board of Education of the City of Vestavia Hills for public schools purposes?

______________ For Proposed Taxation

______________ Against Proposed Taxation

The majority of the qualified electors voted "For Proposed Taxation". The specific totals were:

For Proposed Taxation	3,097
Against Proposed Taxation	3,065

Following the referendum vote on May 8, 1990, the aggregate ad valorem tax rate on each One Hundred Dollars ($100.00) of assessed value of property in the City of Vestavia Hills, Jefferson County, Alabama, amounted to Nine and 26/100 Dollars ($9.26) and consisted of the following millages:

1.	State of Alabama	$	0.650
2.	Jefferson County		1.350
3.	Jefferson County Schools		0.820
4.	Special School District Tax		0.960

5.	Special School District Tax	0.550
6.	Local General Municipal Purpose Tax	2.055
7.	Special Municipal School Tax	2.560
8.	West Elementary	0.315
	TOTAL $	**9.260**

On August 27, 1991, the voters of the City of Vestavia Hills, Alabama, elected to renew the 8.2 mill Jefferson County School ad valorem tax.

On April 28, 1992, the voters of the City of Vestavia Hills, Alabama, elected to renew the 5.5 mill Special School District ad valorem tax.

On May 3, 1993, the City Council of the City of Vestavia Hills, Alabama, approved and adopted Ordinance Number 1353, levying ad valorem taxes at the rate of $9.26 per $100.00 of assessed value on real and personal property located within the City for the period beginning October 1, 1993, and ending September 30, 1994.

On October 26, 1993, the voters of the City of Vestavia Hills, Alabama, voted in favor of a 9.6 mill increase of the 5.5 mill ad valorem tax (under Section 2 of Amendment 3, sometimes referred to as Amendment Number 3, Three Mill District Tax) to 15.1 mills.

Because of the 9.6 mill increase of the 5.5 mill ad valorem tax to 15.1 mills, the 9.6 mill ad valorem tax authorized by Amendment Number 82 of the Constitution of the State of Alabama was not renewed.

On March 11, 2014, the voters of the City of Vestavia Hills, Alabama, voted in favor of renewing the levy of the said 10.5 mill tax commencing with the tax year for which taxes will become due and payable on October 1, 2018 and for each consecutive tax year thereafter without limit as to time.

WHEREAS, a referendum was held in the City of Vestavia Hills, Alabama, on Tuesday, May 9, 2023, at which election the qualified electors of the city voted on the following issue:

SPECIAL MUNICIPAL TAX ELECTION
9.8 MILL INCREASE IN EXISTING 25.6 MILL SCHOOL TAX
FOR PUBLIC SCHOOL PURPOSES IN THE
CITY OF VESTAVIA HILLS, ALABAMA

MAY 9, 2023

<u>PROPOSITION</u>

Shall the City of Vestavia Hills be authorized to levy and collect, at the rate of 3.54% (or 35.4 mills on each dollar) of the assessed value of taxable property in the City (being an increase of 9.8 mills), the special ad valorem tax authorized at elections held on April 28, 1970, May 8, 1990, and March 11, 2014, and now being levied at the rate of 25.6 mills; said tax at the increased rate of 35.4 mills to be levied and the proceeds thereof used by the Vestavia Hills City Board of Education for public school purposes in the City; said increase to be effective for each tax year of the City commencing with the tax year for which taxes of the City will become due and payable on October 1, 2023, and continuing for each successive tax year thereafter, without limit as to time?

( )	FOR said proposed 9.8 mill increase in existing 25.6 mill tax, resulting in said 3.54% (or 35.4 mills) additional rate of taxation commencing with the tax year for which municipal taxes will become due and payable in the City of Vestavia Hills on October 1, 2023, and for each consecutive tax year thereafter, the proceeds of which shall be used by the Vestavia Hills City Board of Education for public school purposes.
( )	AGAINST said proposed 9.8 mill increase in existing 25.6 mill tax, resulting in said 3.54% (or 35.4 mills) additional rate of taxation commencing with the tax year for which municipal taxes will become due and payable in the City of Vestavia Hills on October 1, 2023, and for each consecutive tax year thereafter, the proceeds of which shall be used by the Vestavia Hills City Board of Education for public school purposes.

______________ For Proposed Increase

______________ Against Proposed Increase

The majority of the qualified electors voted “Against Proposed Taxation”. The specific totals were:

For Proposed Taxation	3,200
Against Proposed Taxation	4,199

Following the referendum vote on May 9, 2023, the aggregate ad valorem tax rate on each One Hundred Dollars ($100.00) of assessed value of property in the City of Vestavia Hills, Jefferson County, Alabama, remained unchanged:

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows:

SECTION ONE - TAX LEVY: Taxes are hereby levied for the City tax year commencing on the first (1st) day of October 2025, on all real and personal property and other properties and franchises in the City of Vestavia Hills, Alabama, subject to taxation by the laws of the State of Alabama, based on the valuation of said property as assessed for County taxation, as shown by the books of assessment for the State and County tax year ending on the 30th day of September, 2026, as follows:

A. A tax for general municipal purposes of Two and 37/100 Dollars ($2.37) on each One Hundred Dollars ($100.00) of the assessed value of such property.

B. A tax for public school purposes of Two and 56/100 Dollars ($2.56) on each One Hundred Dollars ($100.00) of the assessed value of such property.

C. In summary, the aggregate local millage for general municipal purposes and local school district tax rates are Four and 93/100 Dollars ($4.93) per One Hundred Dollars ($100.00) of the assessed value of such property.

D. The local millage, for City accounting purposes, shall be allocated as follows:

General Municipal Purposes	1.0275
Garbage Collection	1.0275
West Elementary - Warrants	.3150
High School and Board Operations	2.5600
TOTAL	**4.9300**

SECTION TWO - SPECIAL DISTRICT TAXES: In addition to the taxes levied in SECTION ONE above, taxes are hereby levied for the City tax year commencing on the 1st day of October, 2025, on all real and personal property and other properties and franchises in the City of Vestavia Hills, Alabama, subject to taxation by the laws of the State of Alabama, based on the valuation of said property as assessed for County taxation, as shown by the books of assessment for the State and County tax year ending on the 30th day of September, 2026, as follows:

A. A further tax of One Dollar and Fifty-one Cents ($1.51) of each One Hundred Dollars ($100.00) of the assessed value of such property, in addition to the above mentioned taxes to be applied exclusively to public school purposes pursuant to the authority conferred by the Constitution and the election held on February 11, 1969; renewed on April 28, 1992, and increased to 15.1 mills on October 26, 1993.

B. A further tax of Eighty-two Cents ($0.82) of each One Hundred Dollars ($100.00) of the assessed value of such property, to be used solely and only for public school purposes pursuant to the Constitution of the State of Alabama.

Should the City Council of Vestavia Hills, Alabama, have no legal authority to provide for the levy, assessment and collection of the said Special School District Taxes as described in this SECTION TWO, then in such event, this SECTION TWO shall be considered as the City's support of the Vestavia Hills Board of Education.

SECTION THREE - TAX BASIS AND WHEN DUE: On and after the 1st day of October, 2025, all municipal taxes due the City of Vestavia Hills, Alabama, shall be based and due on all County assessments of the property within the limits of said County for the preceding year, and shall be due and delinquent at the time when State and County taxes for the preceding year are due and delinquent.

SECTION FOUR - EFFECTIVE DATE AND LIEN: The levy of taxes made herein shall go into force and effect as of October 1, 2025, and shall on said date become a lien on the property subject thereto.

SECTION FIVE - TAX ASSESSOR AND TAX COLLECTOR, AND THEIR COMPENSATION: The Tax Assessor and Tax Collector of Jefferson County, Alabama, shall be considered to be the Tax Assessor and Tax Collector respectively for the City of Vestavia Hills, Alabama, and shall each receive as compensation for this service in assessing and collecting respectively the taxes herein levied, as fee equivalent to one-half of one per centum (1/2 of 1%) of the taxes collected and then remitted to the City of Vestavia Hills, Alabama.

SECTION SIX - CONFLICTS: That all Ordinances, or parts of Ordinances, including Ordinance Number 3209, heretofore, adopted by the City Council of the City of Vestavia Hills, Alabama, in conflict with the provisions hereof are hereby expressly repealed.

SECTION SEVEN - SEVERABILITY: The provisions of this Ordinance are hereby declared severable. Should any provision of this Ordinance be held invalid, the invalidity thereof shall not affect the remaining provisions of this Ordinance.

SECTION EIGHT - INTENT: It is the intent of the City of Vestavia Hills, Alabama, with the passage of this Ordinance Number 3267, that the aggregate local millage for general municipal purposes and local school district tax rates be Four and 93/100 Dollars ($4.93) per One Hundred Dollars ($100.00) of the assessed value of such property and consist of the following:

Special High School Tax and Operations	$	2.560
General Municipal Including Garbage		2.055
West Elementary		.315
TOTAL	**$**	**4.930**

It is the further intent that the aggregate ad valorem tax rate of each One Hundred Dollars ($100.00) of assessed value of property in the City of Vestavia Hills, Jefferson County, Alabama, shall amount to Nine and 26/100 Dollars ($9.26), which shall consist of the following millages:

1.	State of Alabama	$	0.650
2.	Jefferson County		1.350
3.	Jefferson County Schools		0.820
4.	Special School District Tax		1.510
5.	Local General Municipal Purpose Tax		2.055
6.	Special Municipal School Tax		2.560
7.	West Elementary		0.315
	TOTAL	**$**	**9.260**

SECTION NINE - TAX ABATEMENT: Whereas, the City of Vestavia Hills has annexed no parcels of land with tax abatements.

SECTION 10 - EFFECTIVE DATE: This Ordinance shall become effective immediately upon its adoption and approval and is adopted and approved all in accordance with Title 11-51-40, et seq., *Code of Alabama, 1975*.

ADOPTED and APPROVED this the 10th day of March, 2025.

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 # 3267 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 10th day of March, 2025, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkel House and Vestavia Hills Recreational Center this the ______ day of _________, 2025.

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
CITY CLERK
INTER-DEPARTMENT MEMO

March 10, 2025

To: Jeff Downes, City Manager

From: Rebecca Leavings, City Clerk

Cc:

RE: Ordinance Number 3268 - An Ordinance authorizing the Shelby County Tax Assessor/Tax Collector to assess and collect municipal ad valorem taxes pursuant to Alabama law

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Background:
Alabama law requires that the County tax assessor/collector assess and collects ad valorem taxes for each city. This ordinance is required annually to appoint the Shelby County Tax Assessor/Collector to assess and collect municipal taxes within properties in Shelby County.

Recommendation:
na

Fiscal Impact:
na

Attachments:
1. Ordinance 3268

ORDINANCE NUMBER 3268

AN ORDINANCE PROVIDING FOR LEVYING OF MUNICIPAL TAXES FOR THE CITY OF VESTAVIA HILLS, ALABAMA, AND FOR ASSESSMENT AND COLLECTION THEREOF IN SHELBY COUNTY.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows:

SECTION ONE - TAX LEVY: Taxes are levied for the City tax year commencing on the first (1st) day of October, 2025, on all real and personal property and other properties and franchises in the City of Vestavia Hills, Alabama, subject to taxation by the laws of the State of Alabama, based on the valuation of said property as assessed for State taxation as shown by the books of assessment for the State and County tax year ending during the preceding year, as follows:

A. A tax for general municipal purposes of Two and 37/100 Dollars ($2.37) on each One Hundred Dollars ($100.00) of value of such property;

B. A tax for Public School purposes of Two and 56/100 Dollars ($2.56) on each One Hundred Dollars ($100.00) of value of such property;

C. In summary, the aggregate local millage for general Municipal purposes and Municipal School tax rates are Four and 93/100 Dollars ($4.93) per One Hundred ($100.00) of the value of such property;

D. The local millage for the City's accounting purposes shall be allocated as follows:

General Municipal Purposes	1.0275
Garbage Collection	1.0275
West Elementary Warrants	0.3150
High School and Board Operations	2.5600
Total	4.9300

SECTION TWO - SHELBY TAX LEVY: Taxes are hereby levied by the Shelby County Commission §40-7-42, Code of Alabama, 1975 for the City tax year commencing on the first day of October, 2025, on all real and personal property and other properties and franchises in the City of Vestavia Hills, Alabama, subject to taxation by the laws of the State of Alabama, based on the valuation of said property as assessed for County taxation, as shown by the books of assessment for the State and County tax year ending on the 30th day of September, 2026, as follows:

A. A tax of Fifty Cents ($0.50) on each One Hundred Dollars ($100.00) of the value of such property for general fund purposes;

B. A tax of One Dollar and Sixty Cents ($1.60) on each One Hundred Dollars ($100.00) of the value of such property for school districts;

C. A tax of Twenty-five Cents ($0.25) for each One Hundred Dollars ($100.00) of the value of such property for roads and bridges;

D. In summary, the aggregate County millage for general purposes, countywide school taxes, and road and bridges is Two and 35/100 Dollars ($2.35) per One Hundred Dollars ($100.00) of the value of such property.

It is the further intent that the aggregate ad valorem tax rate of each One Hundred Dollars ($100.00) of assessed value of property in the City of Vestavia Hills, Shelby County, Alabama, should amount to Seven and 93/100 Dollars ($7.93) which shall consist of the following millages:

State of Alabama	0.650
Shelby County	0.500
Shelby County School Countywide	1.600
Shelby County Road and Bridge	0.250
General Municipal Purpose Tax	2.055
Special Municipal School Tax	2.560
West Elementary Warrants	0.315
Total	7.930

SECTION THREE - TAX BASIS AND WHEN DUE: On and after the 1st day of October, 2025, all municipal taxes due the City of Vestavia Hills, Alabama, shall be based and due on all County assessments of the property within the limits of said County for the preceding year, and shall be due and delinquent at the time when State and County taxes for the preceding year are due and delinquent.

SECTION FOUR - EFFECTIVE DATE AND LIEN: The levy of taxes made herein shall go into force and effect as of October 1, 2025, and shall on said date become a lien on the property subject thereto.

SECTION FIVE - TAX ASSESSOR AND TAX COLLECTOR, AND THEIR COMPENSATION: The Tax Assessor and Tax Collector of Shelby County, Alabama, shall be considered to be the Tax Assessor and Tax Collector respectively for the City of Vestavia Hills, Alabama, and shall each receive as compensation for this service in assessing and collecting respectively the taxes herein levied, as fee equivalent to one-half of one per centum (1/2 of 1%) of the taxes collected and then remitted to the City of Vestavia Hills, Alabama.

SECTION SIX - CONFLICTS: That all Ordinances, or parts of Ordinances, including Ordinance Number 3210, heretofore, adopted by the City Council of the City of Vestavia Hills, Alabama, in conflict with the provisions hereof are hereby expressly repealed.

SEVERABILITY: The provisions of this Ordinance are hereby declared severable. Should any provision of this Ordinance be held invalid, the invalidity thereof shall not affect the remaining provisions of this Ordinance.

EFFECTIVE DATE: This Ordinance shall become effective immediately upon its adoption and approval.

ADOPTED AND APPROVED this the 10th day of March, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3268 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 10th day of March, 2025, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, and Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the ______ day of _______________, 2025.

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
CITY CLERK
INTER-DEPARTMENT MEMO

March 10, 2025

To: Jeff Downes, City Manager

From: Rebecca Leavings, City Clerk

Cc: Ethan Fisher, City Engineer
Lori Beth Kearley, Public Services Director

RE: Public Hearing - Resolution Number 5552 - Vacation - A Resolution to vacate a portion of easement located to the rear of 3301 Willis Drive; Lot 8, Resurvey of Lots 5, 6 and 7, Jonas Schab Co. Survey as recorded in Map Book 116 Page 10; Tyler Moore, Owner

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Background:
A large 20' easement is noted on resurvey. Owner wishes to vacation most of said easement for reserve field lines for septic tank. Releases were obtained from all utilities, Jefferson County Sewer and the City Engineer.

Recommendation:
Engineering finds no reason not to vacate.

Fiscal Impact:
na

Attachments:

1. Resolution 5552
2. petition

RESOLUTION NUMBER 5552

A RESOLUTION APPROVING AND ASSENTING TO A DECLARATION OF VACATION

WITNESSETH THESE RECITALS

WHEREAS, a Declaration signed by the owners of all the lands abutting the following described sanitary sewer easement situated in the City of Vestavia Hills, Jefferson County, Alabama, vacating said portion of easement, has been duly presented to the City Council of the City of Vestavia Hills, Alabama, for assent and approval of said governing body; and

WHEREAS, a copy of said Declaration with map attached is marked as "Exhibit A", attached hereto and incorporated into this Resolution by reference as though set out fully herein; and

WHEREAS, the above-referenced portion of easement is commonly referred to as "portion of easement" and is more particularly described as follows:

> A legal description of a part of an easement to be vacated in Lot 8 of A Resurvey of Lots 5, 6 $ 7 Jonas Schwab Company Survey, as Recorded in Map Book 116 on Page 10 in the Office of the Judge of Probate, Jefferson County, Alabama, being the South 15 feet of an existing 20-foot easement and more particularly described as follows;
>
> Commence at the Southwest corner of said Lot 8 being a common of Lot 7 and Lot 8; thence run Northwesterly along the common line of said Lots 7 and 8 for a distance of 121.75 feet an iron pin found at the Northwest corner of said Lot 8; thence turn an angle to the right of 180° 00' 00"and run Southeasterly along said common line for a distance of 5.03 feet to the Point of Beginning of said easement vacation; thence continue Southeasterly along said common line for a distance of 15.08 feet to a point; thence turn an angle to the left of 83º 55' 54" and run Easterly 20 feet from and parallel to the North line of said Lot 8 for a distance of 167.62 feet a point on the Southeast Line of said Lot 8; thence turn an angle to the left of 44° 59' 37" and run Northeasterly for a distance of 21.22 feet a point; thence turn an angle to the left of 135° 00' 23" and run West 5 feet from and parallel to the North line of said Lot 8 for a distance of 184.22 feet to the Point of Beginning. Said Part of a 20-foot easement containing 2638.8 Sq. Ft., more or less

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, that the vacation of the hereinabove described portion of easement is assented to and approved and the same is hereby vacated pursuant to the provision of Section 23-4-20 of the Code of Alabama, 1975.

RESOLVED, DONE AND ORDERED, on this the 24th day of March, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION

I, the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 24th day of March, 2025, and that such Resolution is of record in the Minute Book of the City at page _________ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the __________ day of ___________________, 2025.

Rebecca Leavings
City Clerk

City of Vestavia Hills

CITY CLERK/PLANNING AND ZONING DEPARTMENT
1032 Montgomery Highway
Vestavia Hills, AL 35216

DECLARATION OF VACATION OF EASEMENT

STATE OF ALABAMA
JEFFERSON COUNTY

We, the undersigned, constituting all of the owners of all property abutting portion of easement as same appears on the Plat of Lot 8 of a Resurvey of Lots 5, 6, & 6 Jonas Schwab Co. Survey, which Plat is recorded in Plat Book 116, at Page 10, in the Probate Office of Jefferson County, Alabama, do hereby declare that each of said Plats embraced within the boundaries of said portion of easement as the same appears of record on the Plat to be vacated, and said portion of easement is hereby declared vacated. The undersigned do hereby respectfully represent and warrant as follows:

1. This Declaration of Vacation of portion of easement is prepared, executed, delivered and recorded to and in accordance with the provisions of Section 23-4-20 and Section 35-2-54, Code of Alabama, 1975.

2. It is in the best public interest that portion of easement be closed and vacated.

3. Such vacation will not deprive other property owners of a convenient and reasonable means of ingress and egress to their property.

4. Said portion of easement is situated in the City of Vestavia Hills, Jefferson County, Alabama, and appears at 3301 Wills Drive. A copy of the map reflecting the location of portion of easement is attached hereto and incorporated into this Declaration of Vacation as a part hereof.

5. The street address and legal descriptions of all property abutting portion of easement and the names and addresses of the owner of said abutting properties are as follows:

A. Owner's Name: Tyler Moore

Street Address/Legal Description: 3301 Willis Drive; Lot 8, Resurvey of Lots 5, 6 and 7, Jonas Schwab Co. Survey MB 116 PG 10

B.

C. Owner's Name:

Street Address/Legal Description: ;

6. All of the undersigned do hereby declare portion of easement to be vacated and respectfully request the assent of the City Council of the City of Vestavia Hills, Alabama, to said vacation of portion of easement.

SIGNATURES ATTACHED.

OWNER'S SIGNATURE AFFIDAVIT
VACATION OF EASEMENT PETITION

IN WITNESS THEREOF, the undersigned have hereunto set my hand and seal on this the 5 day of February, 2025.

SIGNATURE OF ABUTTING PROPERTY OWNER:

(notary below)

Signed: J. Tyler Moore

Printed name of signer: J. Tyler Moore

STATE OF ALABAMA
JEFFERSON COUNTY

GENERAL ACKNOWLEDGMENT

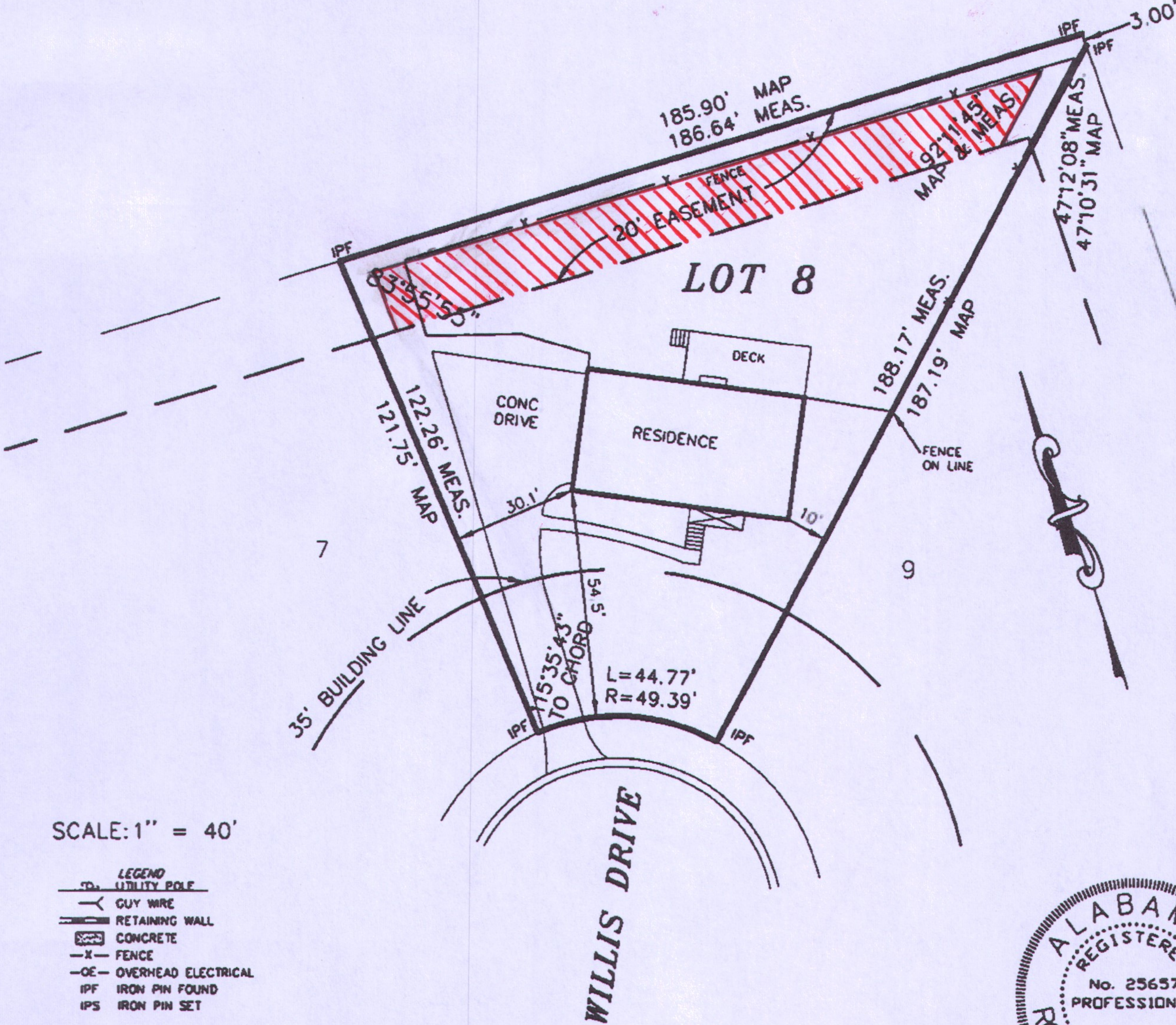
I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that J. Tyler Moore and ____________________, whose names are signed to the foregoing Declaration of Vacation, and who are known to me, acknowledged before me on this day that being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 5 day of February, 2025.

Jessica Sweatt
Notary Public

JESSICA LAUREN SWEATT
NOTARY PUBLIC
ALABAMA STATE AT LARGE

VEAS Number:________________ (administrative use only).



SCALE: 1" = 40'

LEGEND
UTILITY POLE
GUY WIRE
RETAINING WALL
CONCRETE
—X— FENCE
—OE— OVERHEAD ELECTRICAL
IPF IRON PIN FOUND
IPS IRON PIN SET

ALABAMA REGISTERED No. 25657 PROFESSIONAL SURVEYOR ROBERT REYNOLDS

STATE OF ALABAMA
JEFFERSON *COUNTY*

"CLOSING SURVEY"

I, Robert Reynolds, a Registered Surveyor, do here by state that this is a true and correct plat or map of Lot 8*, Block* -*, of* A RESURVEY OF LOTS 5, 6 & 7 JONAS SCHWAB CO. SURVEY*, as recorded in Map Book* 116*, Page* 10 *in the Office of the Judge Of Probate in* Jefferson *County, Alabama. All parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice of Surveying in the State of Alabama to the best of my knowledge, information and belief. The improvements on said premises are as shown. There are no visible encroachments on over or across said lands except as shown. According to my survey this the* 16 th *day of* March*,* 2017.

NOTE: This survey is not transferable to any additional institutions or subsequent owners.

Purchaser: Moore
Address: 3301 Willis Drive

Robert Reynolds
Reg. No. 25657

B111/41

CITY OF VESTAVIA HILLS
DEPARTMENT OF PUBLIC SERVICES
OFFICE OF CITY ENGINEER
INTER-DEPARTMENT MEMO

February 27, 2025

To: Rebecca Leavings, City Clerk

CC: Lori Beth Kearley, Director of Public Services

From: Ethan Fisher, City Engineer

RE: Vacation of Easement

I have reviewed the request for vacation of this easement. The applicant has provided all of the required documentation from the utility providers and there is not drainage infrastructure that the city is aware of.

I hereby provide favorable recommendation for approval for vacation of this easement as outlined in the submitted documents.

Please let me know if questions,

Sincerely,

Ethan Fisher, PE
City Engineer

2 Industrial Park Drive | Pelham, AL 35124

Alabama Power

APC Doc #72299001-001

March 27, 2024

Tyler Moore
3301 Willis Drive
Vestavia Hills, AL 35243

RE: Proposed vacation of the 20-foot wide easement shown on the survey (attached) of the subject property address above and more particularly described as follows: Lot 8, according to the Resurvey of Lots 5, 6 and 7, as recorded in Map Book 16, Page 10, in the Probate Office of Jefferson County, Alabama. Said property lies in the Northwest ¼ of the Southwest ¼ of Section 14, Township 18 South, Range 2 West, City of Vestavia Hills, Alabama in Jefferson County, Alabama.

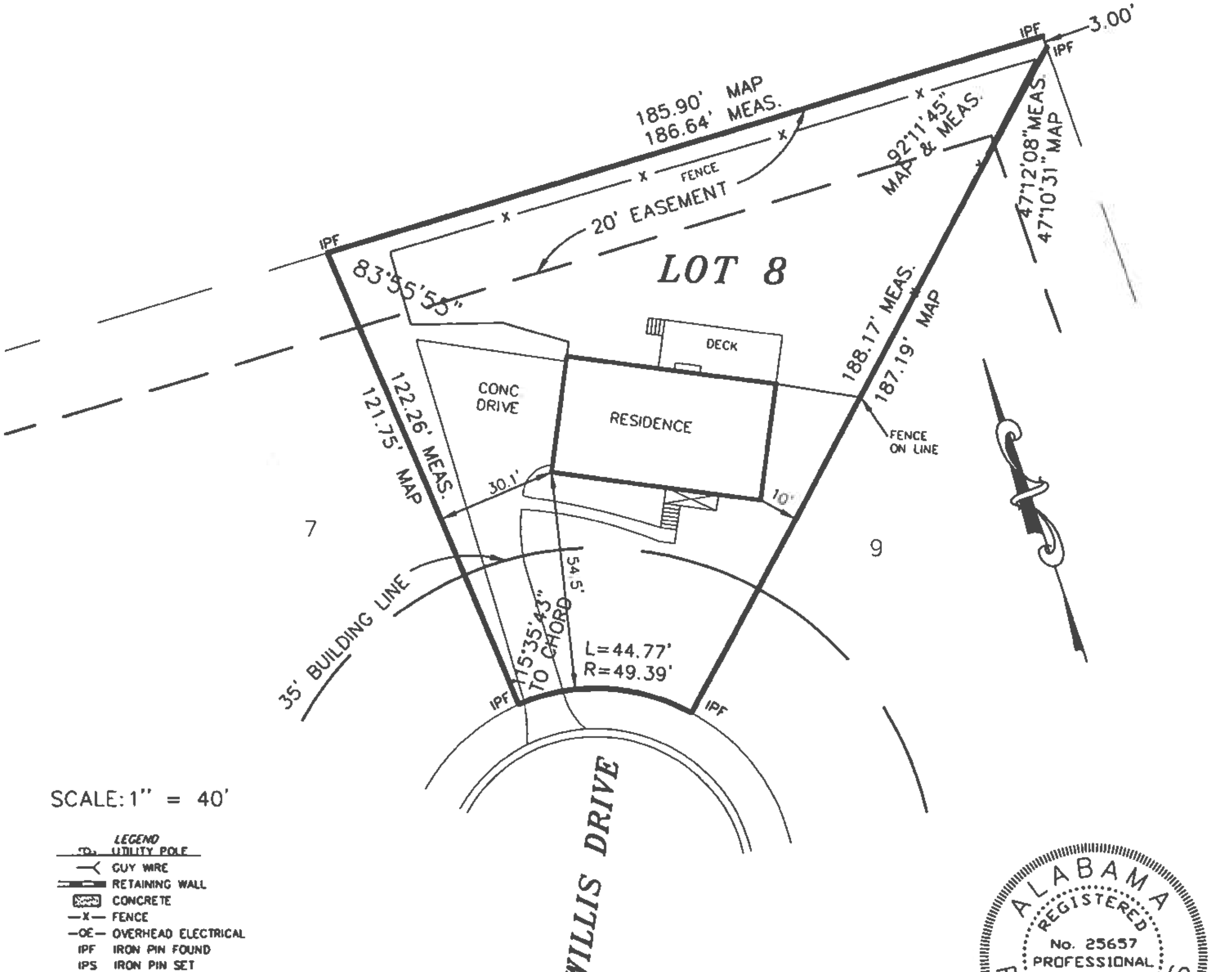
Mr. Moore,

Alabama Power Company presently has no facilities (and makes no claim of any being there) and has no objection to the vacation of above said easement as shown on the Survey mentioned above (and attached).

However, should the need arise in the future for any power line to be installed on the property described above, Alabama Power Company will acquire the necessary rights of way from the owner of record on that date.

Sincerely,

Dean Fritz
Real Estate Specialist
Corporate Real Estate
Alabama Power Company
205-226-1754



STATE OF ALABAMA
JEFFERSON *COUNTY*

"CLOSING SURVEY"

ALABAMA REGISTERED No. 25657 PROFESSIONAL SURVEYOR ROBERT REYNOLDS

I, Robert Reynolds, a Registered Surveyor, do here by state that this is a true and correct plat or map of Lot 8, *Block* -, *of* A RESURVEY OF LOTS 5, 6 & 7 JONAS SCHWAB CO. SURVEY, *as recorded in Map Book* 116, *Page* 10 *in the Office of the Judge Of Probate in* Jefferson *County, Alabama. All parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice of Surveying in the State of Alabama to the best of my knowledge, information and belief. The improvements on said premises are as shown. There are no visible encroachments on over or across said lands except as shown. According to my survey this the* 16 th *day of* March, 2017.

NOTE: This survey is not transferable to any additional institutions or subsequent owners.

Purchaser: Moore
Address: 3301 Willis Drive

Robert Reynolds
Reg. No. 25657

B111/41

January 17, 2024

Tyler Moore
3301 Willis Dr
Vestavia Hills AL

Re: utility easement

BellSouth Telecommunications, LLC d/b/a AT&T Alabama has no objections to your request of, vacating exsting Easement, at the north side of your property located at 3301 Willis Drive Vestavia Alabama, T18S-R2W. This is a rear lot Easement. At&t has no facilities located within this utility Easement.

Sincerely,

Nick Cockrum
810 Kentucky Ave Paducah KY 42003
AT&T East Wireline PMO
SR Specialist-OSP Design Engineer
270-977-1811
nc1003@att.com

September 30, 2024

#618

Tyler Moore
3301 Willis Drive
Vestavia, Alabama 35243

To whom it may concern:

You may present this letter to interested parties as evidence that The Water Works Board of the City of Birmingham has no existing facilities within that portion of a utility easement proposing to be vacated within Lot 8 Resurvey of lots 5-7 Jonas Schwab Co Survey 116/10 as recorded in Probate Court of Jefferson County Alabama, situated in the NW¼ of the SW ¼ of Section 14, Township 18 South, Range 2 West, located in the City of Vestavia Hills, Alabama. Therefore, the Water Board has no objection to the vacation of said easement.

Should you have questions or need additional information, please feel free to contact Ms. Antris Betts, at (205) 244-4262; or you may reach Ms. Betts via email at **antris.betts@bwwb.org**.

Very truly yours,

Douglass W. Stockham, IV
Manager - System Development

AB/sj
D.P. J-410-4
Gradient: SMI

R:\emp SAJ\WAL LTR\2024\Wa ltr NO CONFLICT vacation of utility esmt J-410-4 3301 Willis Dr. 09-30-24.docx

Spire Alabama Inc.
2101 Sixth Avenue North
Birmingham, AL 35203

October 28th, 2024

Tyler Moore
3301 Willis Drive
Vestavia, AL 35243

Re: City of Vestavia

Vacation: 3301 Willis Drive Easement

Tyler Moore,

In response to your email dated 09-19-2024 relative to the above referenced vacation of utility easement.

Please be advised that Spire Alabama Inc. ("Spire") has no facilities located within the area which is requested to be vacated.

Sincerely,

Alex Sammet (Oct 28, 2024 15:24 CDT)

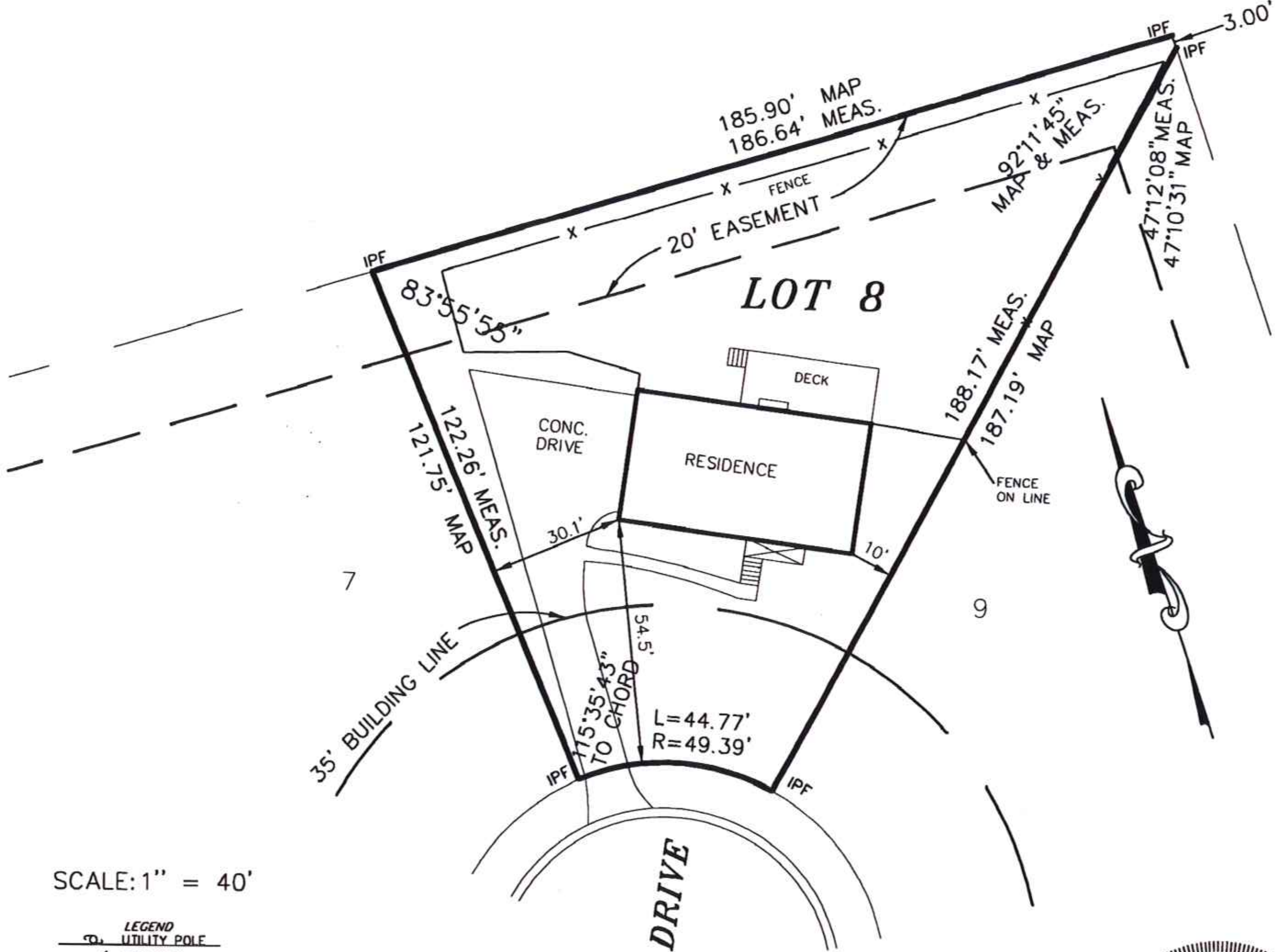
Alex Sammet
Manager of Right of Way & Land Management
Spire Alabama Inc.

TJF: DRC
cc: Tyler Moore

Engineering Approval: EP
EP

Systems Planning Approval: WM
WM

SpireEnergy.com



SCALE: 1" = 40'

LEGEND

- UTILITY POLE
- GUY WIRE
- RETAINING WALL
- CONCRETE
- —X— FENCE
- —OE— OVERHEAD ELECTRICAL
- IPF IRON PIN FOUND
- IPS IRON PIN SET

STATE OF ALABAMA

JEFFERSON *COUNTY*

"CLOSING SURVEY"

ALABAMA REGISTERED No. 25657 PROFESSIONAL SURVEYOR ROBERT REYNOLDS

I, Robert Reynolds, a Registered Surveyor, do here by state that this is a true and correct plat or map of Lot 8 *, Block* – *, of* A RESURVEY OF LOTS 5, 6 & 7 JONAS SCHWAB CO. SURVEY *, as recorded in Map Book* 116 *, Page* 10 *in the Office of the Judge Of Probate in* Jefferson *County, Alabama. All parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice of Surveying in the State of Alabama to the best of my knowledge, information and belief. The improvements on said premises are as shown. There are no visible encroachments on over or across said lands except as shown. According to my survey this the* 16 th *day of* March *,* 2017 *.*

NOTE: This survey is not transferable to any additional institutions or subsequent owners.

Purchaser: Moore

Address: 3301 Willis Drive

Reg. No. 25657

B111/41

Vacate To Be Signed

Final Audit Report 2024-10-28

Created:	2024-10-28
By:	Dorman Chapman (dorman.chapman@spireenergy.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZQgc7x0oW2TykeeLT1mdrNmV5OwHEbeJ

"Vacate To Be Signed" History

Document created by Dorman Chapman (dorman.chapman@spireenergy.com)
2024-10-28 - 7:32:58 PM GMT- IP address: 162.212.120.130

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2024-10-28 - 7:33:57 PM GMT

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2024-10-28 - 7:37:57 PM GMT- IP address: 104.47.51.126

Document approved by Ethan Peters (ethan.peters@spireenergy.com)
Approval Date: 2024-10-28 - 7:40:23 PM GMT - Time Source: server- IP address: 162.212.120.130

Document emailed to Wes Morrissette (wes.morrissette@spireenergy.com) for approval
2024-10-28 - 7:40:26 PM GMT

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2024-10-28 - 8:11:12 PM GMT- IP address: 104.47.57.126

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Approval Date: 2024-10-28 - 8:15:40 PM GMT - Time Source: server- IP address: 63.246.12.132

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2024-10-28 - 8:15:42 PM GMT

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Document e-signed by Alex Sammet (alex.sammet@spireenergy.com)
Signature Date: 2024-10-28 - 8:24:01 PM GMT - Time Source: server- IP address: 75.243.26.199

Agreement completed.
2024-10-28 - 8:24:01 PM GMT

Adobe Acrobat Sign

JEFFERSON COUNTY COMMISSION

JAMES A. "JIMMIE" STEPHENS – PRESIDENT
LASHUNDA SCALES
SHEILA TYSON
Mike Bolin
T. JOE KNIGHT

CAL MARKERT
CHIEF EXECUTIVE OFFICER

DAVID DENARD
Director of Environmental Services Department
SUITE A300
716 Richard Arrington Jr. Blvd. N
Birmingham, Alabama 35203
Telephone (205) 325-5496
Fax (205) 325-5981

MEMORANDUM

TO: Tyler Moore

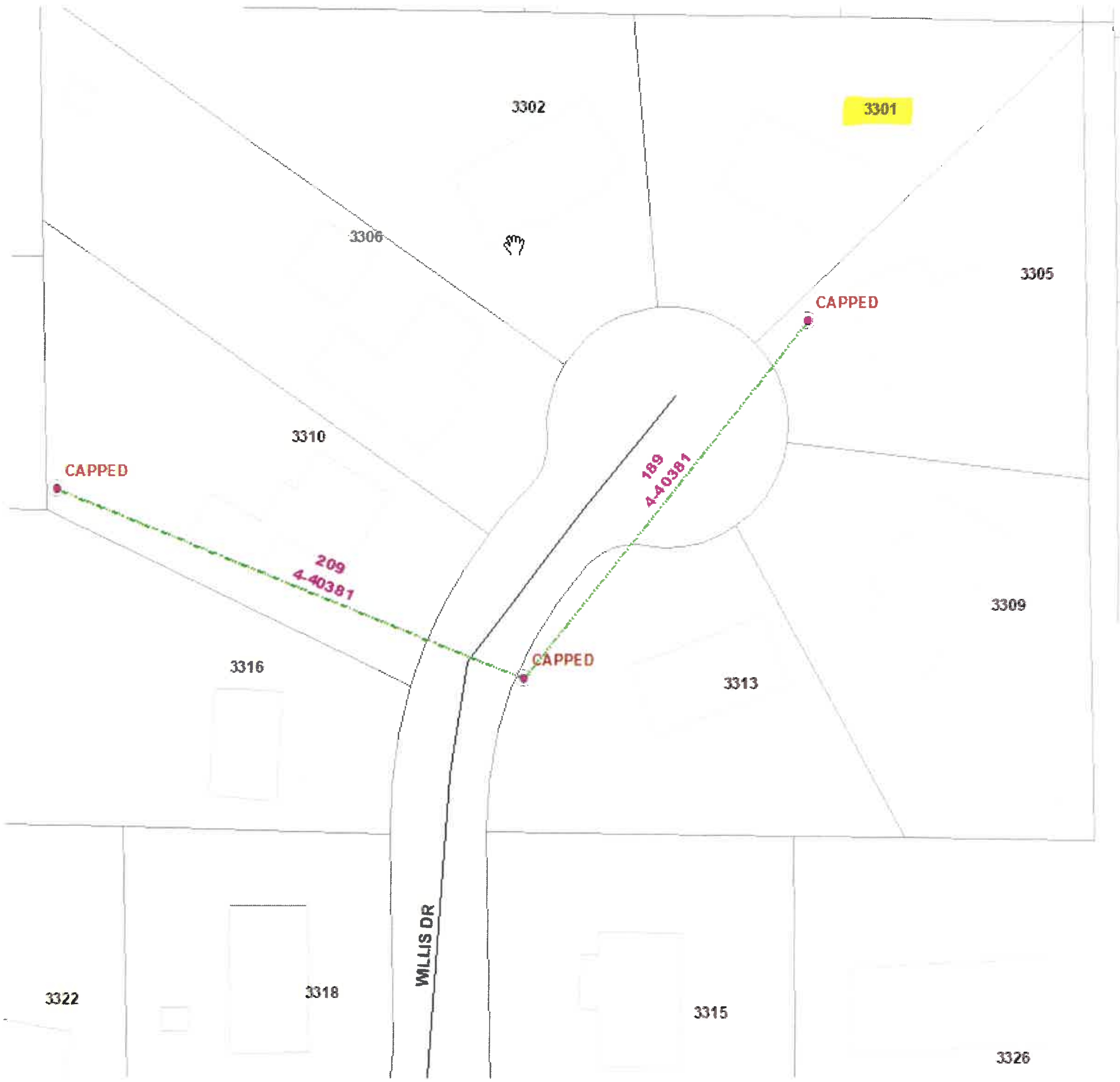
FROM: Emily Kemp, Chief Civil Engineer
Environmental Services Department

DATE: April 26, 2024

RE: Proposed Vacation of Public Utility Easement, City of Vestavia Hills
3301 Willis Drive, Vestavia Hills
Lot 8 - Resurvey of Lots 5 thru 7, Jonas Schwab Co Survey;
Map Book 116, Page 10; NW ¼ -SW ¼- 14-18S-2W; PID 28-00-14-3-025.008

This memo responds to a public utility easement vacation request received for the above referenced property. (said easement is highlighted yellow on attached drawing) It appears, to the best of our knowledge, that no County maintained sanitary sewer exists within this public utility easement. Based on the aforementioned, we have no objection to the vacation of said public easement insofar as sanitary sewers are concerned. This memorandum should not be construed that this department warrants the accuracy of information provided to us by others.

cc: Hubert Chapman, Senior Land Acquisition Agent
Ben Pate, ESD Plans Examiner
File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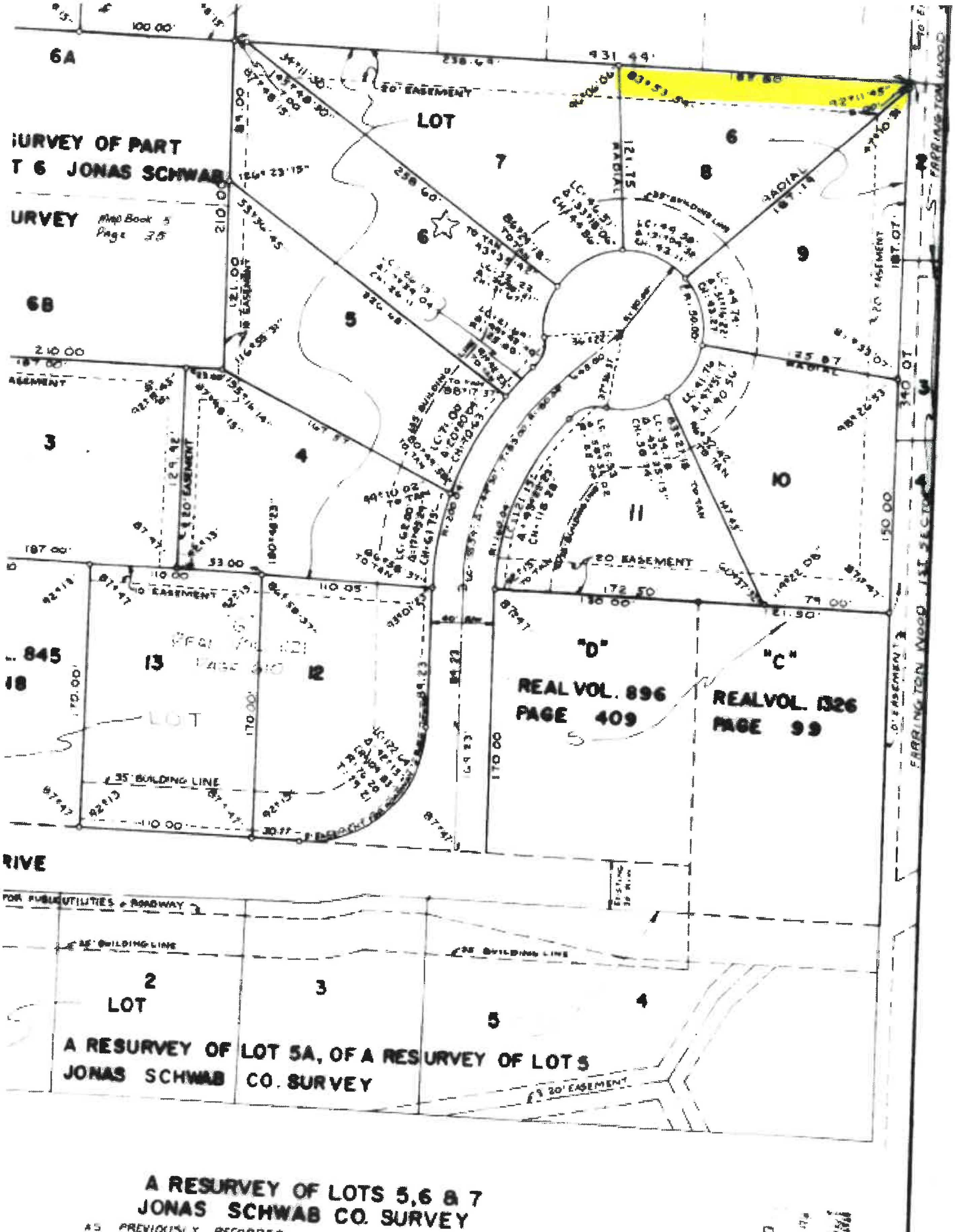

A RESURVEY OF LOTS 5,6 & 7
JONAS SCHWAB CO. SURVEY

AS PREVIOUSLY RECORDED IN MAP BOOK 5 PAGE 35
JEFFERSON COUNTY, ALA SITUATED IN SECTION 14
TOWNSHIP 18 SOUTH, RANGE 2 WEST

SCALE 1"=50'

APRIL 18, 1978

CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO

March 10, 2025

To: Mayor and Council

From: Jeff Downes, City Manager

Cc: Umang Patel, Court Director

RE: Public Hearing - Resolution Number 5555 - A Resolution Authorizing a FY 25 Supplemental Appropriation to Fund 11 (Court) to Accommodate the Unanticipated Expense Associated with a Temporary Need Employee

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Background:
The City of Vestavia Hills employs four employees who serve as magistrates and are instrumental to the effective operation of the Municipal Court. Its Director has been notified that, in addition to the anticipated maternity leave of one magistrate, a second magistrate will require an extended leave period for a personal health condition during a concurrent time frame. The 50% reduction in the workforce requires a short-term resolution. The Personnel Board of Jefferson County allows the appointment of a Temporary Need Employee under these circumstances. Given the relatively small budget of the Municipal Court, a supplemental City Council appropriation is required to fund the Temporary Need Employee.

Recommendation:

It is recommended that the City Council approve this one-time supplement to the FY 2025 Fund 11 budget not to exceed $19,000 to cover the cost of a temporary hire during the term of the absences.

Fiscal Impact:

Attachments:

1. Resolution 5555
2. Part Time Request Memo Mun Ct 3-4-25

RESOLUTION NUMBER 5555

A RESOLUTION FOR A BUDGET APPROPRIATION FOR A TEMPORARY EMPLOYEE FOR THE VESTAVIA HILLS MUNICIPAL COURT

WHEREAS, the Court Director, in anticipation of a possible employee shortage due to unforeseen circumstances, has determined a need for a temporary employee at an expense estimated at $19,000; and

WHEREAS, a memorandum was sent to the City Manager explaining the need and the expected expense, a copy of which is marked as Exhibit A, attached to and incorporated into this Resolution Number 5555; and

WHEREAS, the City Manager is in support of said temporary employee; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to authorize the Courts to retain a temporary employee as described.

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

1. The Court Director is hereby authorized to retain a temporary employee for the courts as described in the attachment; and
2. Said expense for the temporary employee shall not exceed $19,000 and will be expensed to Fund 11, Municipal Court; and
3. This Resolution Number 5555 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 24th day of March, 2025.

Ashley Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

VESTAVIA HILLS MUNICIPAL COURT

MEMORANDUM

TO:	Mr. Downes
FROM:	Umang Patel
DATE:	March 4, 2025
RE:	Part-Time Position

I am requesting approval to hire a part-time employee to help address impending staffing shortages within our department. One of our current employees will be taking time off for the upcoming birth of her child, and another employee is dealing with medical issues that are expected to result in extended leave. With two of the four magistrates' staff out for an extended period, the increased workload and overtime would significantly strain the department, leaving us unable to accommodate any additional leave requests.

This request would require a "Temporary Need Appointment" pursuant to Jefferson County Personnel Board rules and approval. The requested part time position would be classified as a "Magistrate" at a rate of $23.53 an hour and would require a supplemental appropriation of $19,000 for the remainder of FY2025. The anticipated start date would be 4/1/25 until such time employees return to full-time capabilities.

Thank you,

Umang Patel

Umang Patel
Court Director

CITY OF VESTAVIA HILLS
CITY CLERK
INTER-DEPARTMENT MEMO

March 10, 2025

To: Jeff Downes, City Manager

From: Rebecca Leavings, City Clerk

Cc:

RE: Public Hearing - Ordinance Number 3265 - Rezoning - A portion of 4751 Cahaba River Road; A portion of Common Area A, River Grand Subdivision; Rezone from Vestavia Hills R-6 to Vestavia Hills B-2 to be combined with the adjacent commercial lot for expanded parking area; Beau Bevis, owner; Alex Patillo, representing

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Background:
The property was rezoned and originally platted as a part of a large common area for River Grand, but the developers never deeded it to the HOA. The property is being purchased by owners of the adjacent office building and the request is to rezone to incorporate it into the parking area for the office building for additional parking.

Recommendation:
P&Z recommendation to approve rezoning with the condition the properties be combined into a single platted lot.

Fiscal Impact:
na

Attachments:

1. Ordinance 3265

ORDINANCE NUMBER 3265

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-6 TO VESTAVIA HILLS B-2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-6 (zero lot line residential district) to Vestavia Hills B-2 (general business district):

A portion of 4751 Cahaba River Road
A portion of Common Area A of River Grand
Beau Bevis, Owner(s)

More particularly described as follows:

Part of Lot "A" Common Area, River Grand, Map Book 214, Page 46, also being part of that land conveyed to Macon Land Company, LLC in LR 200620, Page 27406 as recorded in the Office of the Judge of Probate, Jefferson County, Alabama being more particularly described as follows: Beginning at the most Westerly corner of said Lot "A", River Grand, said point also being on the Northeast right-of-way line of the Cahaba River Road, run in a Southeasterly direction along the Southwest line of said Lot "A" and along the Northeast right-of-way line of Cahaba River Road for a distance of 156.40 feet to a point; thence left 133°06'55" in a Northwesterly direction for a distance of 91.16 feet to a point on the North line of said Lot "A" , said point also being the Southeast corner of Lot 25, Topfield Subdivision, Map Book 42, Page 72 as recorded in the Office of the Judge of Probate, Jefferson County, Alabama; thence left 82°09’07” in a Westerly direction along the North line of said Lot "A" and along the South line of said Topfield Subdivision for a distance of 115.25 feet to the Point of Beginning. Containing 5204 square feet or 0.119 acres, more or less.

BE IT FURTHER ORDAINANED, said rezoning is conditioned upon the approval and recordation of a plat to incorporate this property into the adjacent commercial building lot, Lot 25, Topfield Subdivision.

APPROVED and ADOPTED this the 24th of March, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

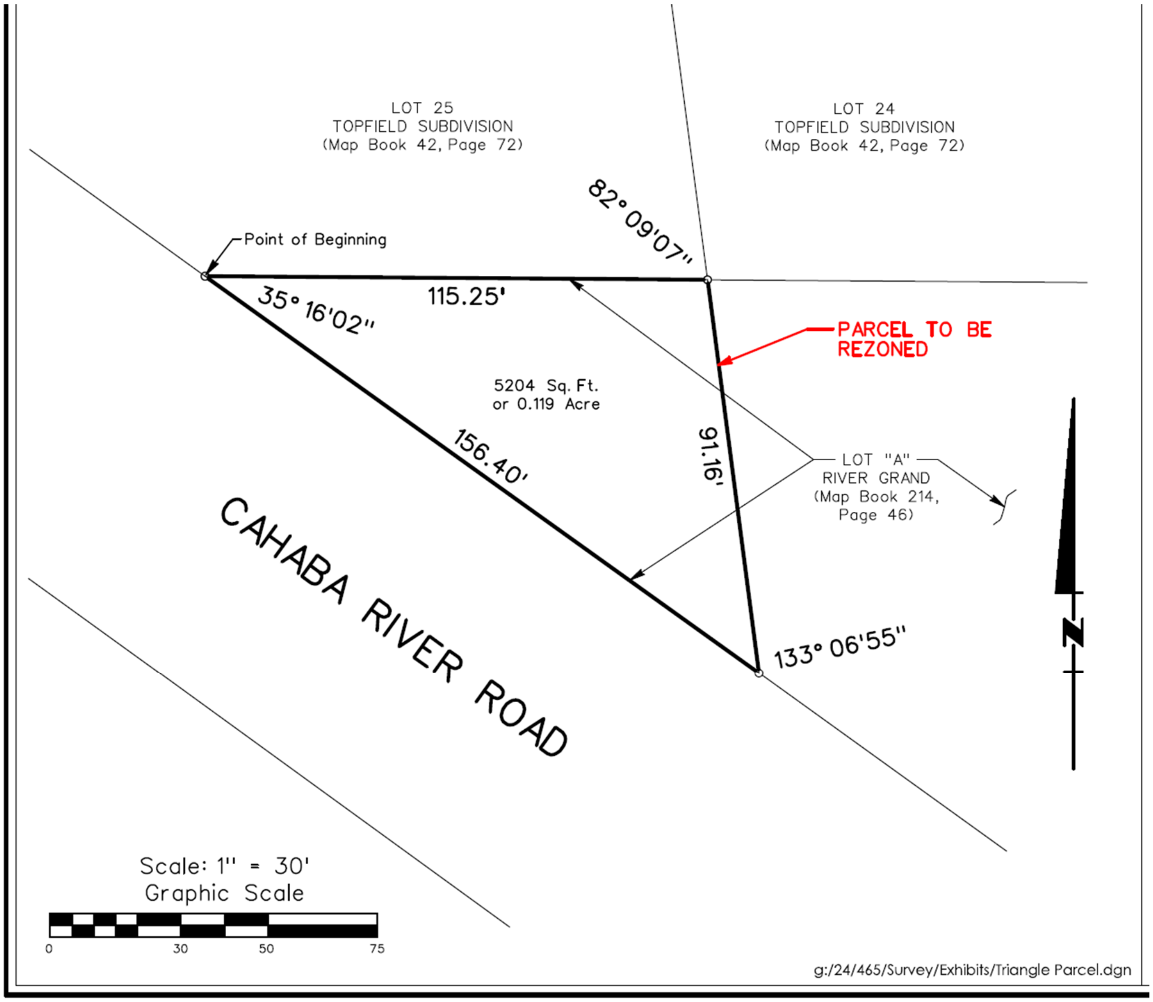
Rebecca Leavings
City Clerk

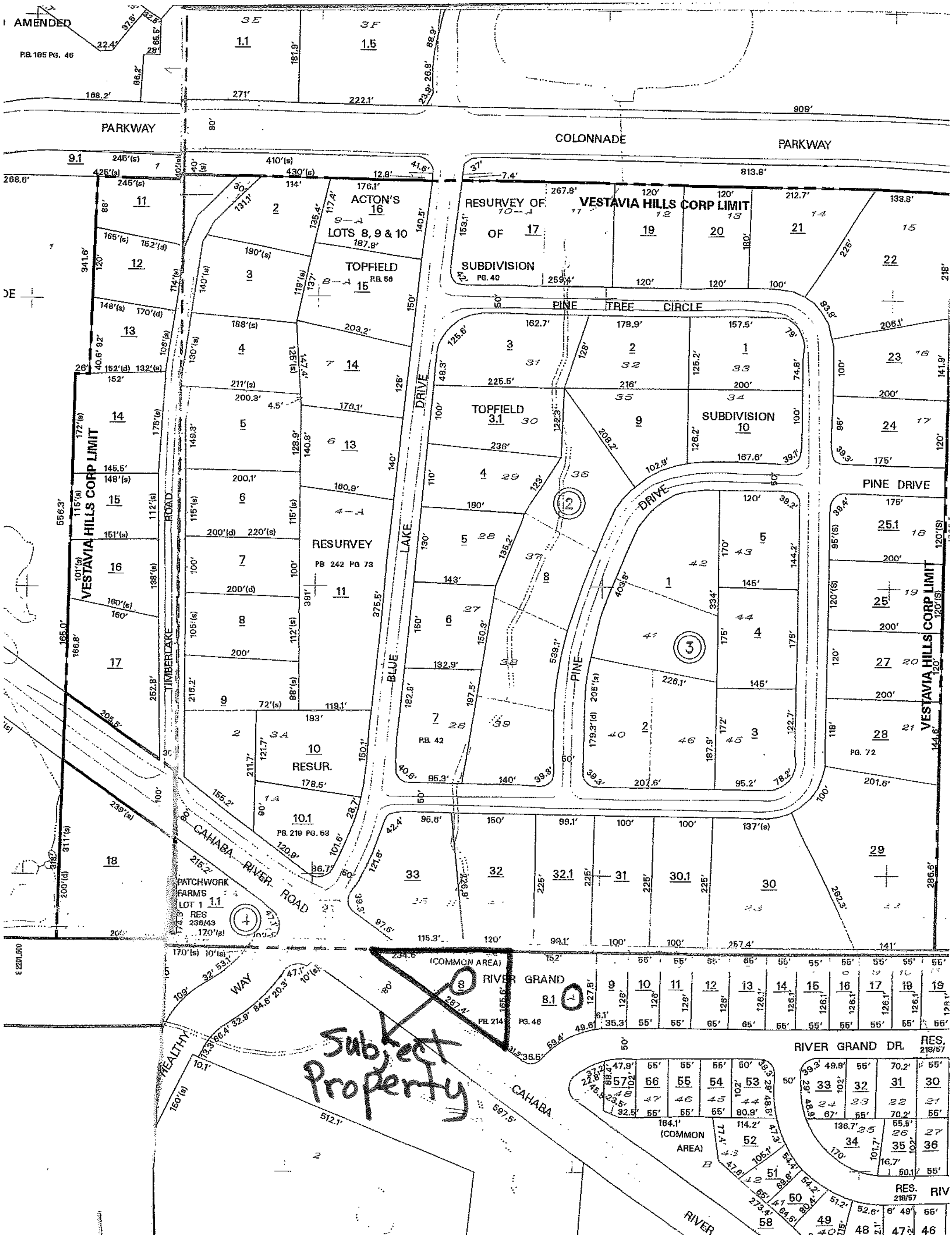
CERTIFICATION:

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 3265 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 March, 2025 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 ______________, 2025.

Rebecca Leavings
City Clerk


LOT 25
TOPFIELD SUBDIVISION
(Map Book 42, Page 72)
LOT 24
TOPFIELD SUBDIVISION
(Map Book 42, Page 72)
82° 09'07"
Point of Beginning
115.25'
35° 16'02"
PARCEL TO BE
REZONED
5204 Sq. Ft.
or 0.119 Acre
156.40'
91.16'
LOT "A"
RIVER GRAND
(Map Book 214,
Page 46)
CAHABA RIVER ROAD
133° 06'55"
N
Scale: 1" = 30'
Graphic Scale
0
30
50
75
g:/24/465/Survey/Exhibits/Triangle Parcel.dgn

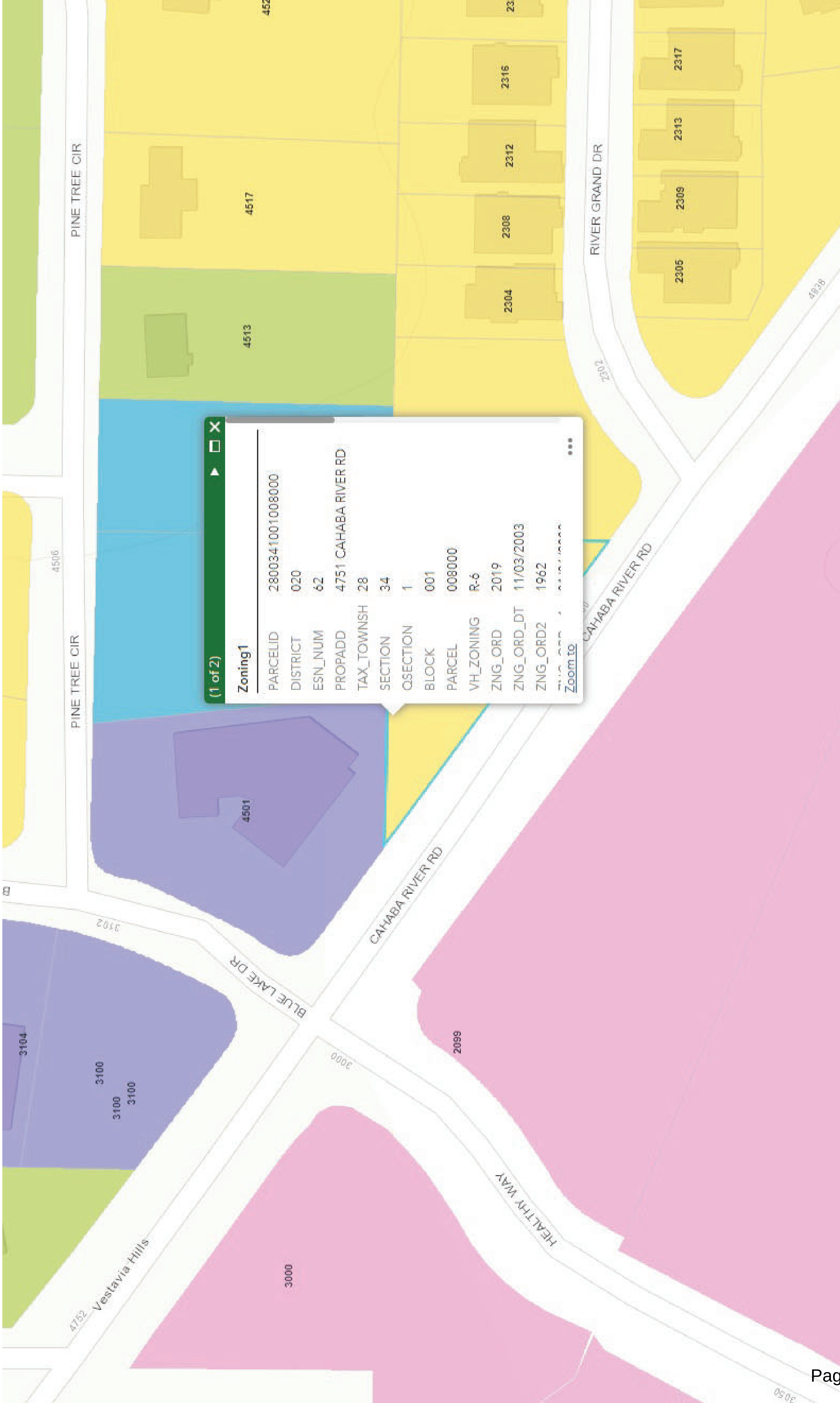

AMENDED
P.B. 165 PG. 46
PARKWAY
COLONNADE
PARKWAY
RESURVEY OF
OF
SUBDIVISION
PG. 40
VESTAVIA HILLS CORP LIMIT
ACTON'S
LOTS 8, 9 & 10
TOPFIELD
P.B. 56
PINE TREE CIRCLE
TOPFIELD
SUBDIVISION
PINE DRIVE
RESURVEY
PB 242 PG 73
BLUE LAKE DRIVE
TIMBERLAKE ROAD
PINE DRIVE
P.B. 42
PG. 72
RESUR.
PB. 219 PG. 63
CAHABA RIVER ROAD
PATCHWORK
FARMS
LOT 1
RES
236/43
(COMMON AREA)
RIVER GRAND
PB. 214
PG. 46
WAY
HEALTHY
Subject
Property
RIVER GRAND DR.
RES.
218/57
(COMMON
AREA)
CAHABA
RIVER
RES.
218/57

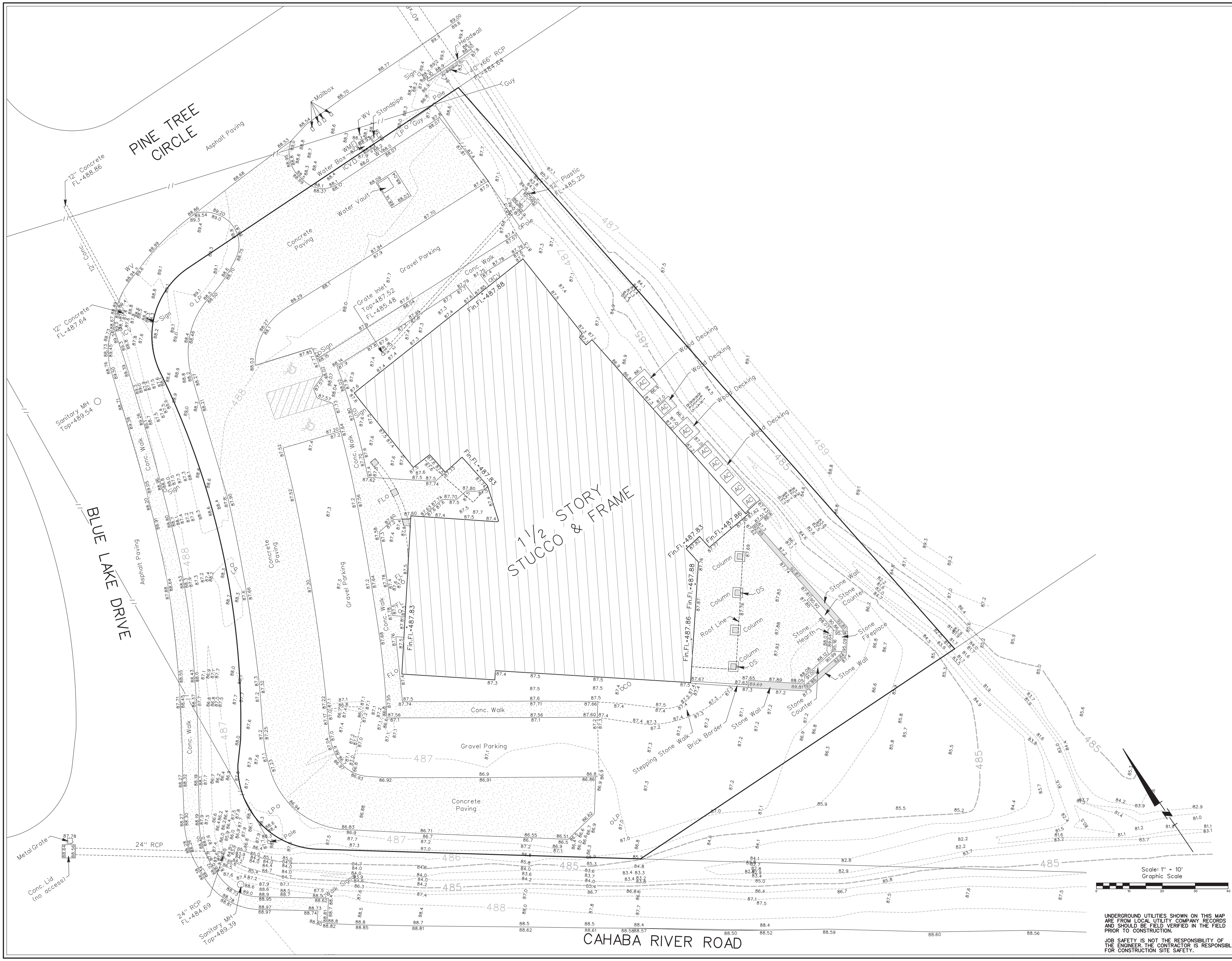
City of Vestavia Hills

Planning and Zoning Commission Review and Recommendation

Case Number:	RZ-25-1	Representative:	
Owner Name:	Beau Bevis	Rep. Address:	1001 22nd St S Bham AL 35205
Owner Address:	4274 Cahaba Heights Court Suite 200, Birmingham, AL 35243		

Project Address:	4751 Cahaba River Road
Legal Description:	Part of Lot "A" Common Area, River Grand, Map Book 214, Page 46, also being part of that land conveyed to Macon Land Company, LLC in LR 200620, Page 27406 as recorded in the Office of the Judge of Probate, Jefferson County, Alabama being more particularly described as follows: Beginning at the most Westerly corner of said Lot "A", River Grand, said point also being on the Northeast right-of-way line of the Cahaba River Road, run in a Southeasterly direction along the Southwest line of said Lot "A" and along the Northeast right-of-way line of Cahaba River Road for a distance of 156.40 feet to a point; thence left 133°06'55" in a Northwesterly direction for a distance of 91.16 feet to a point on the North line of said Lot "A" , said point also being the Southeast corner of Lot 25, Topfield Subdivision, Map Book 42, Page 72 as recorded in the Office of the Judge of Probate, Jefferson County, Alabama; thence left 82°09’07” in a Westerly direction along the North line of said Lot "A" and along the South line of said Topfield Subdivision for a distance of 115.25 feet to the Point of Beginning. Containing 5204 square feet or 0.119 acres, more or less.
Parcel ID Number:	28 00 34 1 001 008.000
Current Zoning:	R-6
Requested Zoning:	B-2
Intended Purpose:	Parking Lot
P&Z Recommendation:	**MOTION** Mr. Romeo made a motion to recommend Rezoning for 4751 Cahaba River Rd. from Vestavia Hills R-6 to Vestavia Hills B-2 conditioned on both lots being combined into one. Second was by Mr. Honeycutt. Motion was carried on a roll call; vote as follows: Mr. Farrell – yes Mr. Romeo – yes Mr. Honeycutt– yes Mr. Maloof – yes Mr. Blakenburg– yes Mr. Sykes– yes Mr. Vercher– yes Motion carried.
Date of P&Z Meeting:	February 13, 2025
Authorized by:	Vestavia Hills Planning and Zoning Commission, Michael Vercher, Chair


PINE TREE CIR
PINE TREE CIR
RIVER GRAND DR
CAHABA RIVER RD
CAHABA RIVER RD
BLUE LAKE DR
HEALTHY WAY
Vestavia Hills
4517
4513
4501
2316
2312
2308
2304
2317
2313
2309
2305
3104
3100
3100
3100
2099
3000
(1 of 2)
Zoning1
PARCELID 2800341001008000
DISTRICT 020
ESN_NUM 62
PROPADD 4751 CAHABA RIVER RD
TAX_TOWNSH 28
SECTION 34
QSECTION 1
BLOCK 001
PARCEL 008000
VH_ZONING R-6
ZNG_ORD 2019
ZNG_ORD_DT 11/03/2003
ZNG_ORD2 1962
Zoom to



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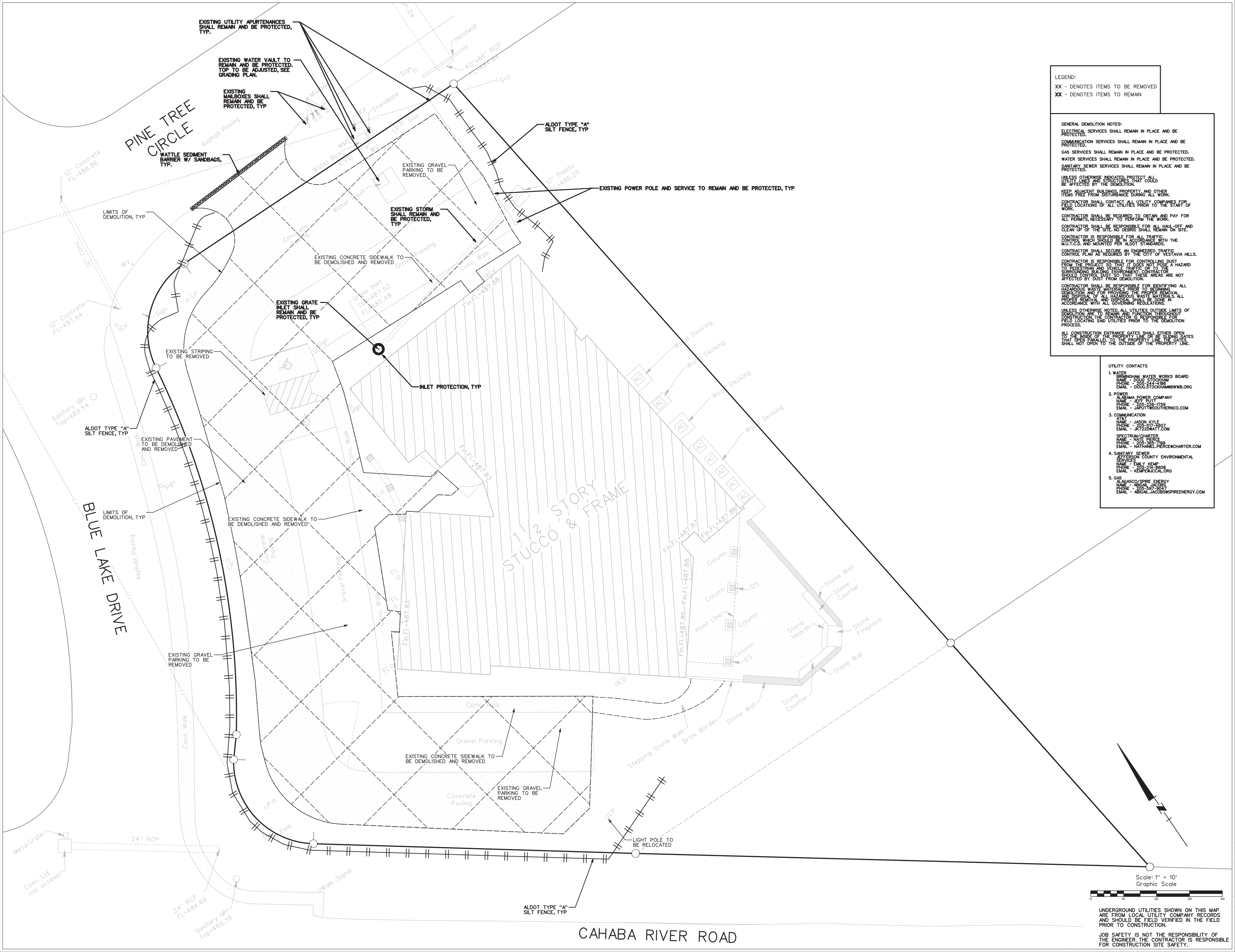
4501 PINE TREE CIRCLE DRAINAGE IMPROVEMENTS VESTAVIA HILLS, ALABAMA

DRAWING SET:
PERMIT SET 11/08/2024
REVISIONS:

EXISTING CONDITION MAP

DRAWN BY: C.B.L.
CHECKED BY: W.S.III/A.F.P.
FILE NAME: 24465-TP1
g:/24/465/Civil/Design/

C1



LEGEND:

XX - DENOTES ITEMS TO BE REMOVED

XX - DENOTES ITEMS TO REMAIN

GENERAL DEMOLITION NOTES:

ELECTRICAL SERVICES SHALL REMAIN IN PLACE AND BE PROTECTED.

COMMUNICATION SERVICES SHALL REMAIN IN PLACE AND BE PROTECTED.

GAS SERVICES SHALL REMAIN IN PLACE AND BE PROTECTED.

WATER SERVICES SHALL REMAIN IN PLACE AND BE PROTECTED.

SANITARY SEWER SERVICES SHALL REMAIN IN PLACE AND BE PROTECTED.

UNLESS OTHERWISE INDICATED, PROTECT ALL UTILITY LINES AND STRUCTURES THAT COULD BE AFFECTED BY THE DEMOLITION.

KEEP ADJACENT BUILDINGS, PROPERTY, AND OTHER ITEMS FREE FROM DISTURBANCE DURING ALL WORK.

CONTRACTOR SHALL CONTACT ALL UTILITY COMPANIES FOR FIELD LOCATIONS OF ALL UTILITIES PRIOR TO THE START OF WORK.

CONTRACTOR SHALL BE REQUIRED TO OBTAIN AND PAY FOR ALL PERMITS, NECESSARY TO PERFORM THE WORK.

CONTRACTOR SHALL BE RESPONSIBLE FOR ALL HAUL-OFF AND CLEAN UP OF THE SITE. NO DEBRIS SHALL REMAIN ON SITE.

CONTRACTOR IS RESPONSIBLE FOR ALL TRAFFIC CONTROL WHICH SHOULD BE IN ACCORDANCE WITH THE M.U.T.C.D. AND MOUNTED PER ALDOT STANDARDS.

CONTRACTOR SHALL SECURE AN ENGINEERED TRAFFIC CONTROL PLAN AS REQUIRED BY THE CITY OF VESTAVIA HILLS.

CONTRACTOR IS RESPONSIBLE FOR CONTROLLING DUST FROM THE PROJECT SO THAT IT DOES NOT POSE A HAZARD TO PEDESTRIAN AND VEHICLE TRAFFIC OR TO THE SURROUNDING BUILDING ENVIRONMENT. CONTRACTOR SHOULD CONTROL DUST SO THAT THESE AREAS ARE NOT AFFECTED BY DUST FROM DEMOLITION.

CONTRACTOR SHALL BE RESPONSIBLE FOR IDENTIFYING ALL HAZARDOUS WASTE MATERIALS PRIOR TO BEGINNING DEMOLITION AND FOR PROVIDING THE PROPER REMOVAL AND DISPOSAL OF ALL HAZARDOUS WASTE MATERIALS. ALL PROPER REMOVAL AND DISPOSAL SHALL BE DONE IN ACCORDANCE WITH ALL GOVERNING REGULATIONS.

UNLESS OTHERWISE NOTED, ALL UTILITIES OUTSIDE LIMITS OF DEMOLITION ARE TO REMAIN AND FUNCTION THROUGHOUT CONSTRUCTION. THE CONTRACTOR IS RESPONSIBLE FOR FIELD LOCATING SAID UTILITIES PRIOR TO THE DEMOLITION PROCESS.

ALL CONSTRUCTION ENTRANCE GATES SHALL EITHER OPEN TO THE INSIDE OF THE PROPERTY LINE OR BE SLIDING GATES THAT OPEN PARALLEL TO THE PROPERTY LINE. THE GATES SHALL NOT OPEN TO THE OUTSIDE OF THE PROPERTY LINE.

UTILITY CONTACTS

1. WATER
   BIRMINGHAM WATER WORKS BOARD
   NAME - DOUG STOCKHAM
   PHONE - 205-244-4186
   EMAIL - DOUG.STOCKHAM@BWWB.ORG
2. POWER
   ALABAMA POWER COMPANY
   NAME - JEFF PUTT
   PHONE - 205-226-1759
   EMAIL - JAPUTT@SOUTHERNCO.COM
3. COMMUNICATION
   AT&T
   NAME - JASON KYLE
   PHONE - 205-517-4607
   EMAIL - JK7220@ATT.COM

   SPECTRUM/CHARTER
   NAME - NATE PIERCE
   PHONE - 205-365-7199
   EMAIL - NATHANIEL.PIERCE@CHARTER.COM
4. SANITARY SEWER
   JEFFERSON COUNTY ENVIRONMENTAL SERVICES
   NAME - EMILY KEMP
   PHONE - 205-214-8608
   EMAIL - KEMPE@JCCAL.ORG
5. GAS
   ALAGASCO/SPIRE ENERGY
   NAME - ABIGAIL JACOBS
   PHONE - 205-597-9047
   EMAIL - ABIGAIL.JACOBS@SPIREENERGY.COM

Scale: 1" = 10'
Graphic Scale

0 10 20 30 40

UNDERGROUND UTILITIES SHOWN ON THIS MAP ARE FROM LOCAL UTILITY COMPANY RECORDS AND SHOULD BE FIELD VERIFIED IN THE FIELD PRIOR TO CONSTRUCTION.

JOB SAFETY IS NOT THE RESPONSIBILITY OF THE ENGINEER. THE CONTRACTOR IS RESPONSIBLE FOR CONSTRUCTION SITE SAFETY.

SCHOEL

BIRMINGHAM
1001 22nd Street South
Birmingham, Alabama 35205
205.323.6166

HUNTSVILLE
101 Washington Street SE
Huntsville, Alabama 35801
256.539.1221

TUSCALOOSA
3600 Watermelon Road, Ste 202
Northport, Alabama 35473
205.323.6166

SCHOEL.COM

ALABAMA LICENSED No. 51195 PROFESSIONAL ENGINEER ALEXANDER F. PATTILLO IV

2025.01.09 16:23:38-06'00'

4501 PINE TREE CIRCLE DRAINAGE IMPROVEMENTS VESTAVIA HILLS, ALABAMA

DRAWING SET:

PERMIT SET 11/08/2024

REVISIONS:

DEMOLITION PLAN

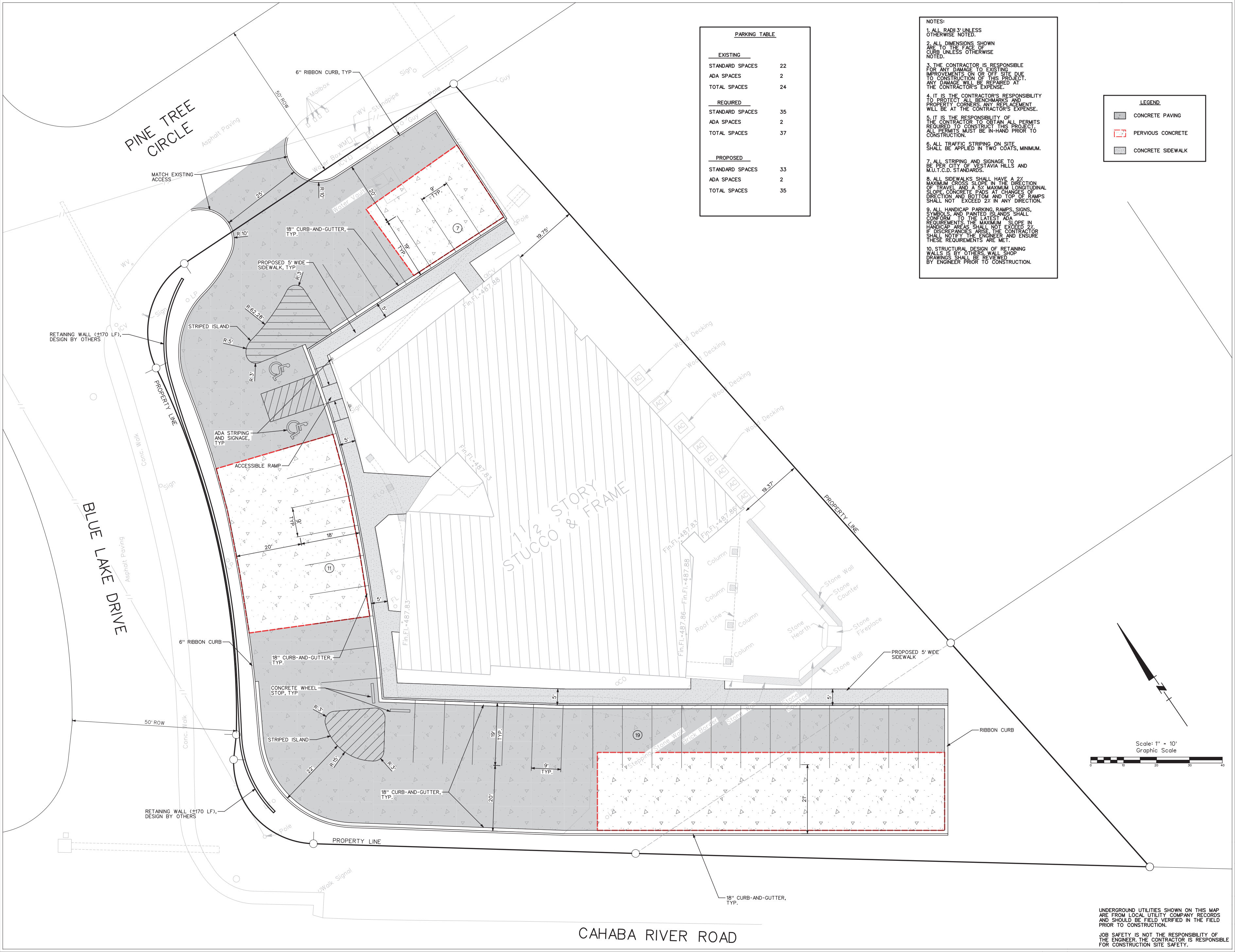
DRAWN BY: C.B.L.

CHECKED BY: W.S.III/A.F.P.

FILE NAME: 24465-DP1

g:/24/465/Civil/Design/

C3



PARKING TABLE

EXISTING	
STANDARD SPACES	22
ADA SPACES	2
TOTAL SPACES	24
REQUIRED	
STANDARD SPACES	35
ADA SPACES	2
TOTAL SPACES	37
PROPOSED	
STANDARD SPACES	33
ADA SPACES	2
TOTAL SPACES	35

NOTES:

1. ALL RADII 3' UNLESS OTHERWISE NOTED.
2. ALL DIMENSIONS SHOWN ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED.
3. THE CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGE TO EXISTING IMPROVEMENTS ON OR OFF SITE DUE TO CONSTRUCTION OF THIS PROJECT. ANY DAMAGE WILL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.
4. IT IS THE CONTRACTOR'S RESPONSIBILITY TO PROTECT ALL BENCHMARKS AND PROPERTY CORNERS. ANY REPLACEMENT WILL BE AT THE CONTRACTOR'S EXPENSE.
5. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN ALL PERMITS REQUIRED TO CONSTRUCT THIS PROJECT. ALL PERMITS MUST BE IN-HAND PRIOR TO CONSTRUCTION.
6. ALL TRAFFIC STRIPING ON SITE SHALL BE APPLIED IN TWO COATS, MINIMUM.
7. ALL STRIPING AND SIGNAGE TO BE PER CITY OF VESTAVIA HILLS AND M.U.T.C.D. STANDARDS.
8. ALL SIDEWALKS SHALL HAVE A 2% MAXIMUM CROSS SLOPE IN THE DIRECTION OF TRAVEL AND A 5% MAXIMUM LONGITUDINAL SLOPE. CONCRETE PADS AT CHANGES OF DIRECTION AND BOTTOM AND TOP OF RAMPS SHALL NOT EXCEED 2% IN ANY DIRECTION.
9. ALL HANDICAP PARKING, RAMPS, SIGNS, SYMBOLS, AND PAINTED ISLANDS SHALL CONFORM TO THE LATEST ADA REQUIREMENTS. THE MAXIMUM SLOPE IN HANDICAP AREAS SHALL NOT EXCEED 2%. IF DISCREPANCIES ARISE, THE CONTRACTOR SHALL NOTIFY THE ENGINEER AND ENSURE THESE REQUIREMENTS ARE MET.
10. STRUCTURAL DESIGN OF RETAINING WALLS IS BY OTHERS. WALL SHOP DRAWINGS SHALL BE REVIEWED BY ENGINEER PRIOR TO CONSTRUCTION.

LEGEND

- CONCRETE PAVING
- PERVIOUS CONCRETE
- CONCRETE SIDEWALK

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2025.01.09 16:23:38-06'00'

4501 PINE TREE CIRCLE DRAINAGE IMPROVEMENTS VESTAVIA HILLS, ALABAMA

DRAWING SET:
PERMIT SET 11/08/2024

REVISIONS:

LAYOUT PLAN

DRAWN BY: C.B.L.
CHECKED BY: W.S.III/A.F.P.
FILE NAME: 24465-LP1
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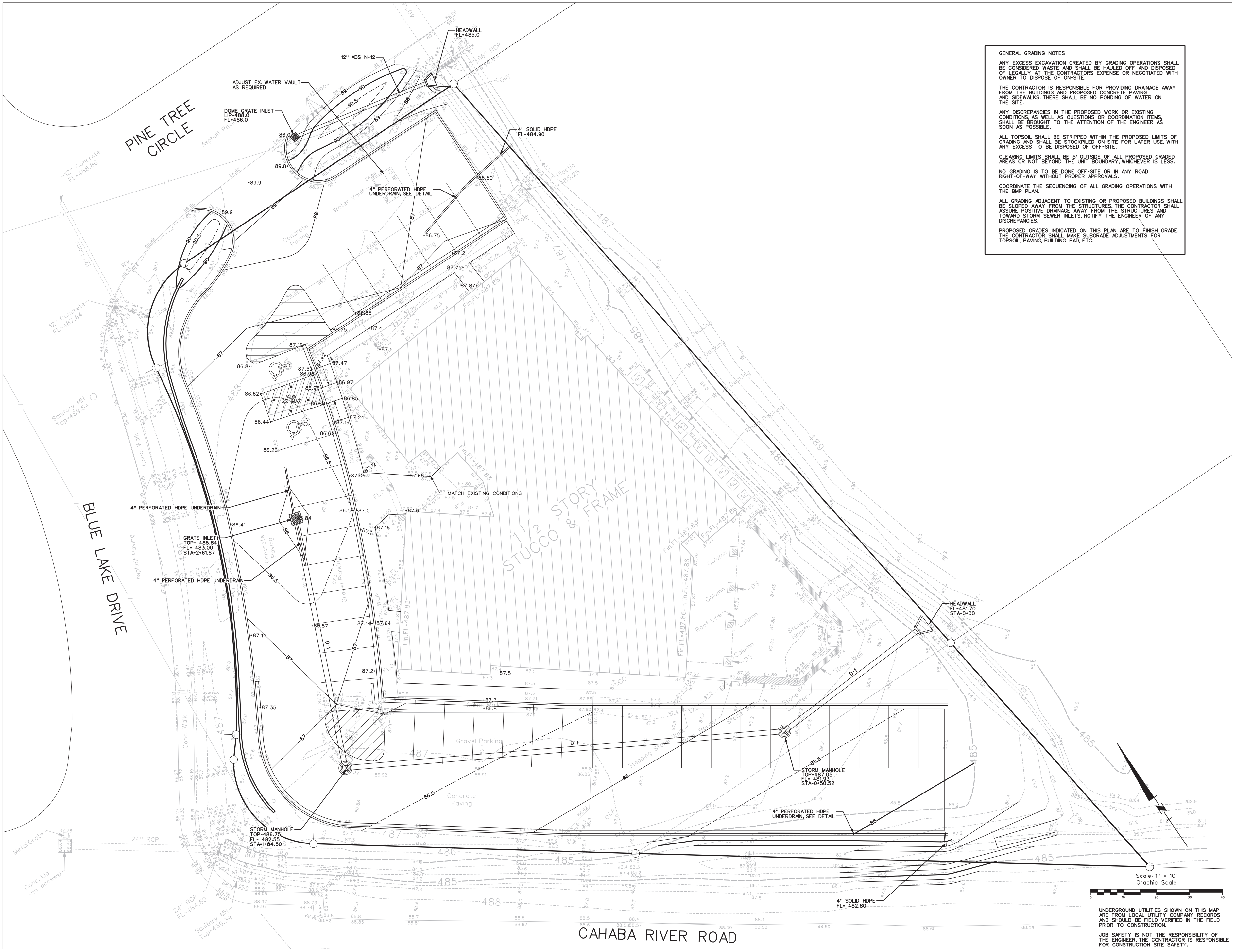

GENERAL GRADING NOTES

ANY EXCESS EXCAVATION CREATED BY GRADING OPERATIONS SHALL BE CONSIDERED WASTE AND SHALL BE HAULED OFF AND DISPOSED OF LEGALLY AT THE CONTRACTORS EXPENSE OR NEGOTIATED WITH OWNER TO DISPOSE OF ON-SITE.

THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING DRAINAGE AWAY FROM THE BUILDINGS AND PROPOSED CONCRETE PAVING AND SIDEWALKS. THERE SHALL BE NO PONDING OF WATER ON THE SITE.

ANY DISCREPANCIES IN THE PROPOSED WORK OR EXISTING CONDITIONS, AS WELL AS QUESTIONS OR COORDINATION ITEMS, SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER AS SOON AS POSSIBLE.

ALL TOPSOIL SHALL BE STRIPPED WITHIN THE PROPOSED LIMITS OF GRADING AND SHALL BE STOCKPILED ON-SITE FOR LATER USE, WITH ANY EXCESS TO BE DISPOSED OF OFF-SITE.

CLEARING LIMITS SHALL BE 5' OUTSIDE OF ALL PROPOSED GRADED AREAS OR NOT BEYOND THE UNIT BOUNDARY, WHICHEVER IS LESS.

NO GRADING IS TO BE DONE OFF-SITE OR IN ANY ROAD RIGHT-OF-WAY WITHOUT PROPER APPROVALS.

COORDINATE THE SEQUENCING OF ALL GRADING OPERATIONS WITH THE BMP PLAN.

ALL GRADING ADJACENT TO EXISTING OR PROPOSED BUILDINGS SHALL BE SLOPED AWAY FROM THE STRUCTURES. THE CONTRACTOR SHALL ASSURE POSITIVE DRAINAGE AWAY FROM THE STRUCTURES AND TOWARD STORM SEWER INLETS. NOTIFY THE ENGINEER OF ANY DISCREPANCIES.

PROPOSED GRADES INDICATED ON THIS PLAN ARE TO FINISH GRADE. THE CONTRACTOR SHALL MAKE SUBGRADE ADJUSTMENTS FOR TOPSOIL, PAVING, BUILDING PAD, ETC.

Scale: 1" = 10'
Graphic Scale

UNDERGROUND UTILITIES SHOWN ON THIS MAP ARE FROM LOCAL UTILITY COMPANY RECORDS AND SHOULD BE FIELD VERIFIED IN THE FIELD PRIOR TO CONSTRUCTION.

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SCHOEL
BIRMINGHAM 1001 22nd Street South Birmingham, Alabama 35205 205.323.6166
HUNTSVILLE 101 Washington Street SE Huntsville, Alabama 35801 256.539.1221
TUSCALOOSA 3600 Watermelon Road, Ste 202 Northport, Alabama 35473 205.323.6166
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ALABAMA LICENSED No. 51195 PROFESSIONAL ENGINEER ALEXANDER F. PATTILLO IV

2025.01.09 16:23:38-06'00'

4501 PINE TREE CIRCLE DRAINAGE IMPROVEMENTS VESTAVIA HILLS, ALABAMA

DRAWING SET:
PERMIT SET 11/08/2024
REVISIONS:

GRADING PLAN

DRAWN BY: C.B.L.
CHECKED BY: W.S.III/A.F.P.
FILE NAME: 24465-GP1
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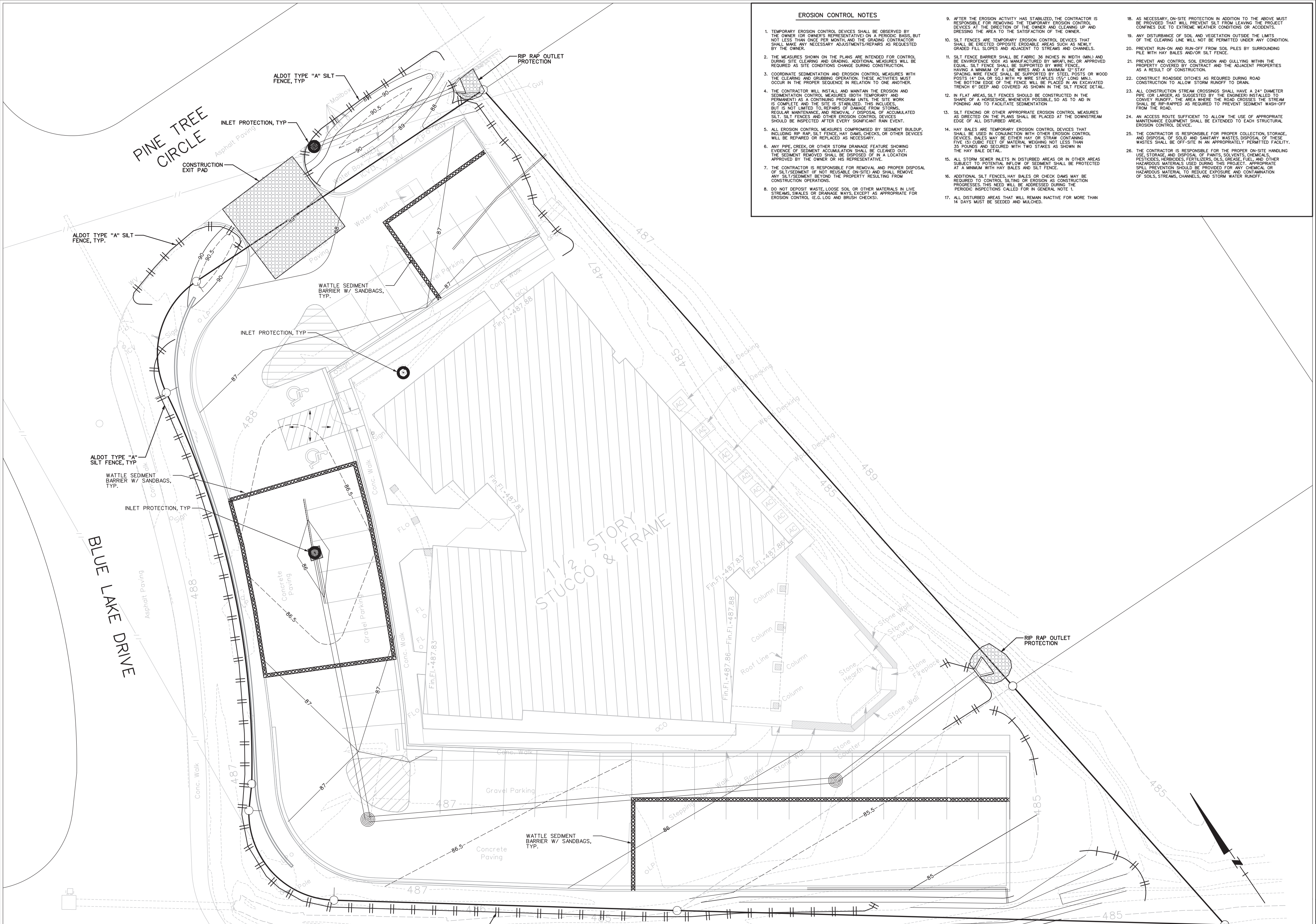

EROSION CONTROL NOTES

1. TEMPORARY EROSION CONTROL DEVICES SHALL BE OBSERVED BY THE OWNER (OR OWNER'S REPRESENTATIVE) ON A PERIODIC BASIS, BUT NOT LESS THAN ONCE PER MONTH, AND THE GRADING CONTRACTOR SHALL MAKE ANY NECESSARY ADJUSTMENTS/REPAIRS AS REQUESTED BY THE OWNER.
2. THE MEASURES SHOWN ON THE PLANS ARE INTENDED FOR CONTROL DURING SITE CLEARING AND GRADING. ADDITIONAL MEASURES WILL BE REQUIRED AS SITE CONDITIONS CHANGE DURING CONSTRUCTION.
3. COORDINATE SEDIMENTATION AND EROSION CONTROL MEASURES WITH THE CLEARING AND GRUBBING OPERATION. THESE ACTIVITIES MUST OCCUR IN THE PROPER SEQUENCE IN RELATION TO ONE ANOTHER.
4. THE CONTRACTOR WILL INSTALL AND MAINTAIN THE EROSION AND SEDIMENTATION CONTROL MEASURES (BOTH TEMPORARY AND PERMANENT) AS A CONTINUING PROGRAM UNTIL THE SITE WORK IS COMPLETE AND THE SITE IS STABILIZED. THIS INCLUDES, BUT IS NOT LIMITED TO, REPAIRS OF DAMAGE FROM STORMS, REGULAR MAINTENANCE, AND REMOVAL / DISPOSAL OF ACCUMULATED SILT. SILT FENCES AND OTHER EROSION CONTROL DEVICES SHOULD BE INSPECTED AFTER EVERY SIGNIFICANT RAIN EVENT.
5. ALL EROSION CONTROL MEASURES COMPROMISED BY SEDIMENT BUILDUP, INCLUDING RIP RAP, SILT FENCE, HAY DAMS, CHECKS, OR OTHER DEVICES WILL BE REPAIRED OR REPLACED AS NECESSARY.
6. ANY PIPE, CREEK, OR OTHER STORM DRAINAGE FEATURE SHOWING EVIDENCE OF SEDIMENT ACCUMULATION SHALL BE CLEANED OUT. THE SEDIMENT REMOVED SHALL BE DISPOSED OF IN A LOCATION APPROVED BY THE OWNER OR HIS REPRESENTATIVE.
7. THE CONTRACTOR IS RESPONSIBLE FOR REMOVAL AND PROPER DISPOSAL OF SILT/SEDIMENT (IF NOT REUSABLE ON-SITE) AND SHALL REMOVE ANY SILT/SEDIMENT BEYOND THE PROPERTY RESULTING FROM CONSTRUCTION OPERATIONS.
8. DO NOT DEPOSIT WASTE, LOOSE SOIL OR OTHER MATERIALS IN LIVE STREAMS, SWALES OR DRAINAGE WAYS, EXCEPT AS APPROPRIATE FOR EROSION CONTROL (E.G. LOG AND BRUSH CHECKS).
9. AFTER THE EROSION ACTIVITY HAS STABILIZED, THE CONTRACTOR IS RESPONSIBLE FOR REMOVING THE TEMPORARY EROSION CONTROL DEVICES AT THE DIRECTION OF THE OWNER AND CLEANING UP AND DRESSING THE AREA TO THE SATISFACTION OF THE OWNER.
10. SILT FENCES ARE TEMPORARY EROSION CONTROL DEVICES THAT SHALL BE ERECTED OPPOSITE ERODABLE AREAS SUCH AS NEWLY GRADED FILL SLOPES AND ADJACENT TO STREAMS AND CHANNELS.
11. SILT FENCE BARRIER SHALL BE FABRIC 36 INCHES IN WIDTH (MIN.) AND BE ENVIROFENCE 100X AS MANUFACTURED BY MIRAFI, INC. OR APPROVED EQUAL. SILT FENCE SHALL BE SUPPORTED BY WIRE FENCE, HAVING A MINIMUM OF 6 LINE WIRES AND A MAXIMUM 12" STAY SPACING. WIRE FENCE SHALL BE SUPPORTED BY STEEL POSTS OR WOOD POSTS (4" DIA. OR SQ.) WITH #9 WIRE STAPLES (1½" LONG MIN.). THE BOTTOM EDGE OF THE FENCE WILL BE PLACED IN AN EXCAVATED TRENCH 6" DEEP AND COVERED AS SHOWN IN THE SILT FENCE DETAIL.
12. IN FLAT AREAS, SILT FENCES SHOULD BE CONSTRUCTED IN THE SHAPE OF A HORSESHOE, WHENEVER POSSIBLE, SO AS TO AID IN PONDING AND TO FACILITATE SEDIMENTATION
13. SILT FENCING OR OTHER APPROPRIATE EROSION CONTROL MEASURES AS DIRECTED ON THE PLANS SHALL BE PLACED AT THE DOWNSTREAM EDGE OF ALL DISTURBED AREAS.
14. HAY BALES ARE TEMPORARY EROSION CONTROL DEVICES THAT SHALL BE USED IN CONJUNCTION WITH OTHER EROSION CONTROL DEVICES. BALES MAY BE EITHER HAY OR STRAW CONTAINING FIVE (5) CUBIC FEET OF MATERIAL WEIGHING NOT LESS THAN 35 POUNDS AND SECURED WITH TWO STAKES AS SHOWN IN THE HAY BALE DETAIL.
15. ALL STORM SEWER INLETS IN DISTURBED AREAS OR IN OTHER AREAS SUBJECT TO POTENTIAL INFLOW OF SEDIMENT SHALL BE PROTECTED AT A MINIMUM WITH HAY BALES AND SILT FENCE.
16. ADDITIONAL SILT FENCES, HAY BALES OR CHECK DAMS MAY BE REQUIRED TO CONTROL SILTING OR EROSION AS CONSTRUCTION PROGRESSES. THIS NEED WILL BE ADDRESSED DURING THE PERIODIC INSPECTIONS CALLED FOR IN GENERAL NOTE 1.
17. ALL DISTURBED AREAS THAT WILL REMAIN INACTIVE FOR MORE THAN 14 DAYS MUST BE SEEDED AND MULCHED.
18. AS NECESSARY, ON-SITE PROTECTION IN ADDITION TO THE ABOVE MUST BE PROVIDED THAT WILL PREVENT SILT FROM LEAVING THE PROJECT CONFINES DUE TO EXTREME WEATHER CONDITIONS OR ACCIDENTS.
19. ANY DISTURBANCE OF SOIL AND VEGETATION OUTSIDE THE LIMITS OF THE CLEARING LINE WILL NOT BE PERMITTED UNDER ANY CONDITION.
20. PREVENT RUN-ON AND RUN-OFF FROM SOIL PILES BY SURROUNDING PILE WITH HAY BALES AND/OR SILT FENCE.
21. PREVENT AND CONTROL SOIL EROSION AND GULLYING WITHIN THE PROPERTY COVERED BY CONTRACT AND THE ADJACENT PROPERTIES AS A RESULT OF CONSTRUCTION.
22. CONSTRUCT ROADSIDE DITCHES AS REQUIRED DURING ROAD CONSTRUCTION TO ALLOW STORM RUNOFF TO DRAIN.
23. ALL CONSTRUCTION STREAM CROSSINGS SHALL HAVE A 24" DIAMETER PIPE (OR LARGER, AS SUGGESTED BY THE ENGINEER) INSTALLED TO CONVEY RUNOFF. THE AREA WHERE THE ROAD CROSSES THE STREAM SHALL BE RIP-RAPPED AS REQUIRED TO PREVENT SEDIMENT WASH-OFF FROM THE ROAD.
24. AN ACCESS ROUTE SUFFICIENT TO ALLOW THE USE OF APPROPRIATE MAINTENANCE EQUIPMENT SHALL BE EXTENDED TO EACH STRUCTURAL EROSION CONTROL DEVICE.
25. THE CONTRACTOR IS RESPONSIBLE FOR PROPER COLLECTION, STORAGE, AND DISPOSAL OF SOLID AND SANITARY WASTES. DISPOSAL OF THESE WASTES SHALL BE OFF-SITE IN AN APPROPRIATELY PERMITTED FACILITY.
26. THE CONTRACTOR IS RESPONSIBLE FOR THE PROPER ON-SITE HANDLING USE, STORAGE, AND DISPOSAL OF PAINTS, SOLVENTS, CHEMICALS, PESTICIDES, HERBICIDES, FERTILIZERS, OILS, GREASE, FUEL, AND OTHER HAZARDOUS MATERIALS USED DURING THIS PROJECT. APPROPRIATE SPILL PREVENTION SHOULD BE PROVIDED FOR ANY CHEMICAL OR HAZARDOUS MATERIAL TO REDUCE EXPOSURE AND CONTAMINATION OF SOILS, STREAMS, CHANNELS, AND STORM WATER RUNOFF.

UNDERGROUND UTILITIES SHOWN ON THIS MAP ARE FROM LOCAL UTILITY COMPANY RECORDS AND SHOULD BE FIELD VERIFIED IN THE FIELD PRIOR TO CONSTRUCTION.

JOB SAFETY IS NOT THE RESPONSIBILITY OF THE ENGINEER. THE CONTRACTOR IS RESPONSIBLE FOR CONSTRUCTION SITE SAFETY.

SCHOEL

2025.01.09 16:23:38-06'00'

4501 PINE TREE CIRCLE DRAINAGE IMPROVEMENTS VESTAVIA HILLS, ALABAMA

DRAWING SET:
PERMIT SET 11/08/2024
REVISIONS:

EROSION & SEDIMENT CONTROL PLAN

DRAWN BY: C.B.L.
CHECKED BY: W.S.III/A.F.P.
FILE NAME: 24465-EC1
g:/24/465/Civil/Design/

C6

CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO

March 10, 2025

To: Mayor and City Council

From: Jeff Downes, City Manager

Cc:

RE: Public Hearing - Ordinance Number 3266 - An Ordinance Granting a Franchise Agreement to Lumos Fiber and Authorizing the Mayor and City Manager to Execute Any and All Documents Associated with the Franchise

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Background:
Lumos Fiber requests a franchise that will allow them to install direct to the home fiber optic infrastructure within the City's rights-of-ways subject to certain terms and conditions.

Recommendation:
Upon consultation with City Attorney Pat Boone and other City staff, I recommend approval of the franchise agreement as it is consistent with our most recent franchise agreements. It supports the City's goals and principles listed below:

•Indemnity Issues in Favor of the City
•Bond Terms to Provide Recourse if Needed
•Appropriate Relocation Requirements

•Appropriate Restoration Requirements
•Appropriate Tree Trimming Regulations
•Removal of Obsolete Infrastructure
•Provision of Dark Fiber
•Consistent Terms on Definition of Gross Revenue

Fiscal Impact:
The City will receive 5% of gross revenues generated by Lumos as a result of the fiber usage.

Attachments:
1. Ordinance 3266
2. PH Boone Letter to City Manager January 22 2025

ORDINANCE NUMBER 3266

AN ORDINANCE GRANTING A FRANCHISE AGREEMENT WITH LUMOS FIBER OF ALABAMA, LLC

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT, by and between the **CITY OF VESTAVIA HILLS, ALABAMA,** a municipal corporation (hereinafter referred to as the "City"), and **LUMOS FIBER OF ALABAMA, LLC,** an Alabama limited liability company, whose address is **4100 Mendenhall Oaks Parkway, Suite 300, High Point, NC 27265** (hereinafter referred to as the "Franchisee").

WHEREAS, the City has and reserves the right to exercise control over the highways, streets, alleys and public places and to require City's consent prior to using such highways, streets, alleys and public places; and

WHEREAS, State law confers to the City certain rights and requirements for franchises and permission to use the public ways of City; and

WHEREAS the Franchisee has requested from the City a franchise to use the streets and public ways of the City to construct, maintain and operate a Telecommunications System (as defined in Section 1 (b) to provide the Services (as defined in Section 1(b); and

WHEREAS the City and the Franchisee have negotiated this Franchise Agreement which is mutually agreeable to both parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, the City and the Franchisee enter into this Franchise Agreement and agree as follows:

SECTION 1. GRANT OF NON-EXCLUSIVE FRANCHISE.

(a) A non-exclusive franchise is hereby granted to the Franchisee to construct, maintain and operate in, over, under, across and through the public rights-of-way of the City, a Telecommunications System to provide the Services within the City and any future additions thereto. The grant of this non-exclusive franchise is for the use by the Franchisee for the purpose of providing the Services, including dark fiber, within the City as a "competitive access provider" which directly connects customers within the City with other businesses, local area networks, a local exchange carrier and interexchange carriers and for such other telecommunications-related services, including, but not limited to local exchange and enhanced services, as may be authorized by the Alabama Public Service Commission ("PSC") or federal law, but excluding Cable Services over a Cable System (as both terms are defined in the Cable Communications Policy Act of 1984, as amended (47 USC §521 *et seq.)* (the "Cable Act"). The Franchisee shall not operate a Cable System or provide Cable Services in the City without first having obtained a separate cable franchise or video services agreement from the City. The Franchisee shall not provide services directly regulated by the PSC unless authorized by the PSC to do so. The Franchisee is permitted to operate a "Telecommunications System," defined as Franchisee's Facilities (as defined in Section 1(d)) within the City consisting of a set of fiber optic cables and associated signal generation, reception and control equipment or other communications equipment and facilities used to provide the Services to subscribers in the City.

(b) As used herein, the term "Telecommunications Service" has the meaning given to it by the Communications Act of 1934, as amended (47 U.S.C. § 153) (the "Communications Act"), but excludes Other Services. The term "Other Services" means "information services," as defined in the Communications Act, as well as other communications services but excluding Cable Service lawfully provided by the Franchisee in addition to and separate from Telecommunications Services, including, without limitation, private network services, broadband services, Internet access services, voice mail, call waiting, call forwarding, conference calling, voice-over-Internet-protocol, dark fiber and distance learning services. The term "Services" means, collectively, Telecommunications Services and Other Services. The Services do not include Cable Services. The Franchisee shall not operate a Cable System or provide Cable Service within the City without first having obtained a separate cable franchise or video services agreement from the City.

(c) This franchise shall continue in full force and effect for an initial term of twenty (20) years (the "Initial Term") beginning on the Effective Date (as defined in Section 31), and the Initial Term of this Franchise Agreement shall be renewed automatically for successive terms of twenty (20) years (the "Renewal Term" and collectively with the Initial Term, the "Term"), on the same terms and conditions set forth herein, provided that statutory authority shall exist for the City to renew this franchise. New terms and conditions may be required by either party for the Renewal Term if the telecommunications and broadband technology and rights-of- way laws change after the Effective Date of this franchise ordinance and such change substantially affects service types, availability, character of service, system technology, franchise fees or the regulatory environment. New terms, provisions, or conditions may also be negotiated by either party for the Renewal Term which are applicable generally to other franchisees for similar services or applicable generally to the industry to clarify the intent of this franchise, which may arise from any unforeseen circumstances or interpretations of this franchise, and/or which are based on the history of performance of the Franchisee. The parties agree to notify the other party as soon as practicable but in no event later than ninety (90) days prior to the renewal date to negotiate new terms and conditions in good faith. Nothing in this Section is intended to expand or contract any rights that the Franchisee may have as a matter of state or federal law to obtain a franchise from City. Any further renewals shall be in accordance with applicable laws.

(d) When used herein, the term "Facilities" shall mean all or any part of a network of fiber optic cables and all related property, including but not limited to, fiber optic wires, wires, telecommunications, amplifiers, electronics, transmission and reception equipment, supporting hardware, conduit, carrier pipe, fiber optic cables, poles, handholes, manholes, repeaters, power sources, and other attachments and appurtenances necessary for the Franchisee's Telecommunications System and located within the City's rights of way. For the purposes of this Franchise Agreement, the term Facilities excludes "microcell" facilities, "small cell facilities," "macro cell" facilities, and other similar wireless facilities, including towers and new base stations and other similar facilities used for the provision of “personal wireless services" as such terms are defined in the Communications Act and in the City's Small Cell Ordinance, as amended.

SECTION 2. GENERAL TERMS. The Franchisee, for the Term of this franchise and for the purposes hereinabove expressed, shall have the privilege to construct, operate and maintain Facilities and to make any and all necessary excavations therefor, in, over, under, across and through all or any of the portions of the streets, alleys, avenues or public ways of the City, and to utilize, with permission of the affected utility companies, their facilities within public rights-of-way for the purpose of installing and operating a Telecommunications System within the City, to be exercised in such manner only, however, as to offer the least interference with the public use of said streets, alleys, avenues and public ways; and the Franchisee shall be subject to and shall comply with all laws and ordinances of the City and shall be further subject to and shall comply with all rules, regulations and other restrictions of the City set forth herein. The granting of this franchise shall not prohibit the City from granting other non-exclusive franchises or otherwise allowing or making other uses of the City's rights-of-way. The granting of this franchise shall in no way interfere with or hinder the use by the City of the rights-of-way for any purpose.

SECTION 3. SCOPE OF FRANCHISE. The franchise hereby granted shall extend to and include all portions of streets, alleys, avenues and other public ways that conform to the General Terms set forth in Section 2, above, as may be necessary to carry out the purpose of this franchise.

SECTION 4. INDEMNIFICATION. (a) The Franchisee hereby agrees to indemnify, defend and hold harmless the City, its Mayor and Council, City Manager, appointed boards and commissions, officials, officers, employees (collectively, the City's Representatives") and insurance carriers, individually and collectively, from all losses, damages, claims, suits, judgments, demands, expenses, subrogation, attorney's fees, costs or actions of any kind and nature (collectively, "Losses") resulting from the Franchisee's or its agent's or contractor's installation, operation, repair or maintenance of the Telecommunications System or provision of the Service within the City. Without limiting the foregoing, it is agreed that the Franchisee shall indemnify, defend and hold harmless the City, its Mayor and Council, City Manager, appointed boards and commissions, officials, officers, employees and insurance carriers, individually and collectively, from all Losses resulting from personal injury to any person (including bodily injury and death), including employees of the Franchisee or of any contractor or subcontractor employed by the Franchisee, or damages to any property, arising out of the acts or omissions of the Franchisee, its contractors, subcontractors, officers, agents and employees while exercising any of the rights or privileges granted by this franchise. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of indemnity in this Section. The terms and provisions of this Section are intended to be for the benefit of the City and the Franchisee and are not intended to be for the benefit of any third party. Notwithstanding the foregoing, the Franchisee shall not be obligated to indemnify the City, its Representative and insurance carriers, individually and collectively, for Losses resulting solely from the negligent or willful misconduct of the City or its Representatives.

(b) The City shall provide the Franchisee with prompt written notice of any claims for which the City or the aforementioned parties seeks indemnification from the Franchisee. The City shall afford the Franchisee the opportunity to participate in and control any compromise, settlement or other resolution or disposition of any such claim or proceeding, and the City will cooperate with reasonable requests of the Franchisee in connection with any such compromise, settlement or resolution or other disposition of such claim or proceeding subject to this Section.

SECTION 5. CITY TAKING PART IN LITIGATION. The Franchisee shall promptly notify the City of any litigation which would affect this franchise. To the extent allowed by applicable law, the City shall have the right to take part, by intervention or otherwise at its option and at its sole cost, in any suit, action, or proceeding instituted by or against the Franchisee in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of the Franchisee to do or not to do anything which, by its franchise, it is obligated or may be required to do or not to do or affecting, such as by foreclosure or lien, the Franchisee's title to any facility. The Franchisee shall not object to the City's exercise of such right.

SECTION 6. BOND. Franchisee shall obtain and maintain, or cause to be obtained and maintained, during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the City Clerk a corporate surety bond in the amount of Fifty Thousand Dollars ($50,000), both to guarantee the timely construction and full activation of the Franchisee's Telecommunications System and to secure the faithful performance of the Franchisee of all its obligations provided under the franchise. Failure to timely obtain, file, assign and/or maintain said bond at all times at the required amount shall constitute a substantial violation of this Franchise Agreement.

The performance bond shall provide that:

(1) There shall be recoverable by the City, jointly and severally from the principal and surety any and all fines and penalties due to the City and any and all damages, losses, costs, and expenses suffered, incurred by or resulting from failure of the Franchisee to: faithfully comply with the provisions of the franchise; comply with all applicable orders, permits and directives of any City agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due to the City which arises from or by reason of the construction, operation, maintenance or repair of the Telecommunications System.

(2) The total amount of the bond shall be forfeited in favor of the City in the event:

(a) The Franchisee abandons its Telecommunications System at any time during the Term of the franchise or extension thereof or ceases operation of the Telecommunications System for a period in excess of six (6) months not due to an Event of Force Majeure (as defined in Section 13(a)); and/or

(b) The Franchisee assigns the franchise without the express written consent of the City, if such consent is required by the terms of this franchise, which consent shall not be unreasonably withheld.

The performance bond required herein shall be in a form satisfactory to the City Attorney. The surety bond shall at all times be maintained at the amount and levels as required in this Section and shall be a continuing obligation for the duration of the Bond Period. If the bond is drawn-down for any reason, the bond shall be renewed to the amounts required by the City.

The City shall notify the Franchisee in writing and allow the Franchisee thirty (30) days to cure, unless such time to cure is extended by the City Attorney, before calling the surety bond.

SECTION 7. <u>INSURANCE REQUIREMENTS</u>. On the Effective Date of this Franchise Agreement, Franchisee shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full Term of the franchise, at the expense of Franchisee, a commercial general liability insurance policy, including coverage for explosion, collapse and underground, written by a company authorized to do business in the State of Alabama with a rating of at least A or higher, including the City as an additional insured as its interest may appear, protecting the City against liability for claims of bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the Telecommunications System by the Franchisee in the following amounts:

(1) Five Million Dollars ($5,000,000) combined single limit per occurrence for bodily injury and for real property damage.

(2) Five Million Dollars ($5,000,000) general aggregate.

The policy must be on an "occurrence" basis.

The Franchisee shall also file with the City Clerk a certificate of insurance for a commercial automobile liability insurance policy written by a company authorized to do business in the State of Alabama with a Best Rating of at least A or higher, covering all owned, non-owned, hired and leased vehicles operated by Franchisee, with a combined single limit of

One Million Dollars ($1,000,000) each accident for bodily injury and property damage.

The Franchisee shall also maintain, and by its acceptance of any franchise granted hereunder, specifically agrees that it will continually maintain throughout the Term of the franchise, workers compensation coverage in compliance with the statutory requirements of the State of Alabama and employers' liability with a limit of One Million Dollars ($1,000,000) each accident/disease/policy limit.

The Franchisee shall maintain, during the course of this Agreement, Commercial Umbrella or Excess Liability Insurance to provide excess coverage above the Commercial Liability, Commercial Automobile Liability and the Employer's Liability coverage of Worker's Compensation with Excess/Umbrella Limits of $5,000,000 per Occurrence and $5,000,000 per Aggregate. The policy must be on an "occurrence" basis.

The commercial general liability and commercial automobile liability insurance and the Commercial Umbrella or Excess Liability insurance policy required pursuant to this Section shall include the City and its Mayor, members of the City Council, City Manager, officers, employees, board members and elected officials as additional insureds as their interests may appear under this Franchise Agreement and shall be kept in full force and effect by the Franchisee during the Term of the franchise and until after the removal or abandonment of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by the Franchisee incident to the maintenance and operation of the Telecommunications System; provided however, that any fiber optic cable and associated conduits, manholes, poles, wires, cables and other facilities which are provided to the City as part of this Franchise Agreement shall not be removed without the written consent of the City. Failure to obtain and maintain continuously the required insurance shall constitute a substantial violation of this Franchise Agreement. Upon receipt of notice from its insurer(s), Franchisee shall use commercially reasonable efforts to provide the City thirty (30) days' prior written notice of cancellation of any coverage required herein and shall promptly obtain replacement coverage as required by this Franchise Agreement.

The Franchisee agrees that should any of its Facilities installed pursuant to this franchise be damaged or destroyed or the network be disrupted or damaged by the City, its agents, employees, contractors or subcontractors, the Franchisee shall repair or replace such facilities at its own expense or with the proceeds of the insurance it maintains and shall waive any right, claim or action for damages or other available remedies which it may have against the City, its agents, employees, contractors or subcontractors. The foregoing sentence shall not extend to intentional, willful, negligent or malicious damage to the Franchisee's Facilities by City employees. The City will endeavor to use its best efforts to avoid damage to the Franchisee's Facilities, provided that the Franchisee participates in Alabama's 811 program.

During construction or maintenance, if the Franchisee or its employees damage or break any lines, cables, ducts, conduit or other facilities located in the City's rights-of-way, notice shall be given promptly to the affected third party and to the City.

SECTION 8. <u>ASSIGNMENT</u>. The Franchisee's interest in this Franchise Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, however no consent shall be required (i) to transfer or assign this Franchise Agreement to any entity that controls, is controlled by, or is under common control with the Franchisee (with "control" meaning ownership of a majority interest or the actual working control and day to day management of Franchisee), (ii) for a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest in Franchisee, in the Agreement, or in the Telecommunications System in order to secure indebtedness, provided, however, that any lender or creditor in such transaction must obtain the City's consent and approval as provided in this Section for any assignment of rights granted by this Franchise Agreement following such lender or creditor's exercise of any rights against the Franchisee upon the Franchisee's default, and (iii) a transfer of this Franchise Agreement in connection with the assignment, transfer or conveyance carried out as a part of a merger, restructuring or sale or transfer of all or substantially all of the assets of the Franchisee. The Franchisee will provide written notice to the City of any of the foregoing transfers for which the City's consent is not required.

(a) Except as set forth above, the rights granted by this Agreement or any interest therein shall not be assigned or transferred to any other unrelated entity without the express written consent of the City. A written copy of any such proposed assignment for which the City's consent is requested must be filed by the Franchisee with the City. The City reserves the right to be reimbursed by the Franchisee for reasonable costs incurred by it in reviewing the request for the City's consent to such assignment or transfer. Any required consent is to be evidenced by an ordinance of the City Council that fully recites the terms and conditions, if any, upon which consent is given. No assignment or transfer of the Franchise Agreement, as allowed hereunder, shall be effective unless and until the vendee or assignee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such assignment or transfer, accepting the terms of this Franchise Agreement and agreeing to perform all the conditions thereof, and the City has approved said transfer in writing, which approval shall not be unreasonably withheld. The City shall take action on such request for approval of transfer within sixty (60) days of filing of all information required by this Section. This Section shall not apply in connection with execution of secured financing agreements made by the Franchisee or other transfers for which consent is not required as set forth above. In making a determination of whether to allow an assignment to an unrelated entity for which the City's consent is required, the City may consider any factors that the City deems necessary to make a determination concerning assignment of the Franchise Agreement, including, but not limited to, the following factors:

(1) Experience of the proposed assignee or transferee (including conducting an investigation of proposed assignee's or transferee's service record in other communities);

(2) Qualifications of the proposed assignee or transferee;

(3) Legal integrity of the proposed assignee or transferee;

(4) Financial ability and stability of the proposed assignee or transferee;

(5) If requested by the City, submittals from the proposed assignee or transferee, regarding changes, if any, it intends to make in the operation and maintenance of the Telecommunications System;

(6) The corporate connection, if any, between the Franchisee, and proposed assignee or transferee and/or between the Franchisee and any holder of a like franchise within the City;

(7) Any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of the Telecommunications System; or

(8) Effect of the proposed action on competition.

A copy of the completed sales or transfer agreement, or a functionally equivalent instrument between the Franchisee and proposed assignee or transferee, shall be provided on a confidential basis to the City Attorney for review, so that the City may review the assumption of obligations of the Franchisee by the assignee with respect to the Telecommunications System. After receipt of the request for approval of a proposed transfer or assignment, the City may, as it deems necessary or appropriate, schedule a public hearing before the City Council on the request. Further, the City Council may review the Franchisee's performance under the terms and conditions of this Franchise Agreement. The Franchisee shall provide reasonably requested assistance to the City Council in connection with any such inquiry and, if requested by the City, shall use its best efforts to secure the cooperation and assistance of persons involved in said action. Should the Franchisee sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under this Franchise Agreement or attempt to do so in violation of the requirements of this Section to obtain prior written consent, the City may revoke this Franchise Agreement for default and the purported sale, transfer, assignment or conveyance shall be null and void.

(b) The Franchisee shall notify any potential lessee of the necessity of obtaining a separate franchise from the City.

(c) A complete description of the ownership and control of the Franchisee as of the Effective Date in Exhibit 1 attached hereto.

SECTION 9. LOCATION AND CONSTRUCTION OF FACILITIES.

(a) Except as provided in Section 11, Facilities maintained or installed by the

Franchisee within the City shall be so located and constructed as not to:

(1) Interfere with usual travel (automotive and/or pedestrian) within the public rights-of-way;

(2) Interfere with the rights or reasonable convenience of property owners who adjoin such public rights-of-way;

(3) Interfere with access to or use of any water or fire hydrant;

(4) Obscure the vision of or interfere with the installation of any traffic control device or traffic or information sign or signal;

(5) Interfere with sight distance established by any ordinance or law;

(6) Obscure the light from any street light;

(7) Cross any water or sewer line except at a ninety degree (90°) angle, except in accordance with a specific permit for such crossing issued by the City;

(8) Damage irrigation, landscaping or trees owned or maintained by the City;

(9) Damage any communications lines owned or maintained by the City.

(b) Placement of Facilities in the paved sidewalk area is prohibited unless authorized by the City.

(c) The City shall have authority to require the Franchisee to remove or relocate any Facility located in violation of this Section at the Franchisee's sole expense. Such relocation or removal shall be completed within ninety (90) days of written notice from the City for temporary removals or relocations. In the event that ninety (90) days is not sufficient, the Franchisee may in writing request an additional thirty (30) days to accomplish the relocation. The notice shall prescribe the area where the Facility is located and any other special conditions deemed necessary by the City. The City shall have authority to require the Franchisee to remove or relocate any Facility located in violation of this Section at the Franchisee's sole expense. Such relocation or removal shall be completed within one hundred and eighty (180) days of written notice from the City for permanent removals or relocations. In the event that one hundred and eighty (180) days is not sufficient, the Franchisee may in writing request an additional thirty (30) days to accomplish the relocation.

(d) Map of Network. Upon request, the Franchisee shall provide the City with its fiber optics location data in digital files in AutoCAD or other industry standard reasonable formats described in Exhibit 2 hereto that are acceptable to the parties. The City shall provide necessary data to serve as the base for the fiber optics location data. Specific data layers that make up the base shall be defined in discussions with the Franchisee. The fiber optics location data shall be returned to the City on the medium and in the format agreed to by the parties.

(e) After construction of new network facilities or extensions of existing network facilities, as a separate requirement, the Franchisee shall develop as built drawings and maps in AutoCAD or other industry standard reasonable formats, as agreed by the parties, and be provided to the City in that format within ninety (90) days of completing construction of the network. A Professional Engineer seal or "P.E. stamp" shall not be required for such drawings.

(f) The Franchisee is under no obligation to build its Facilities to cover the entire City, or to serve any specific persons within the City. The decision of whether to construct its Facilities or what Services to provide is solely within the discretion of the Franchisee.

SECTION 10. WORK IN PUBLIC RIGHT-OF-WAY: RESTORATION OF DAMAGED AREAS.

(a) Whenever the Franchisee excavates or does other work in the public right-of-way, such excavation or other work shall be done in compliance with the laws and regulations of the City in effect at the time of such excavation or other work.

(b) Prior to the erection or installation by the Franchisee of any poles, underground conduits, or fixtures for use in connection with the installation, construction, maintenance or operation of the Telecommunications System, the Franchisee shall obtain any required permits in accordance with City code. If poles are erected by the Franchisee, the City requests that it be granted access privileges to those poles for the City's use.

(c) The Franchisee shall not excavate or do other work in any public right-of-way unless the Franchisee has applied for and received a written permit entitled "Utility Land Disturbance Permit" from the City, or its designee, granting permission for such excavation or other work. The permit shall describe the area where the excavation and/or work is expected to be completed, the method of construction and the contractor performing the work and any other conditions. If directional boring, trenching or other excavation is the method of construction, detailed plans shall be submitted describing how the work will be performed so as not to damage other lines and conduit located in the right-of-way. If the installation utilizes facilities of another entity, the Franchisee shall provide written authorization for use of such facilities prior to a permit being issued. If the excavation or other work requires closure of a street lane or sidewalk, the Franchisee shall, five (5) working days prior to such closure, submit a Traffic Control Plan to the City for approval. In emergencies involving service outages, the Franchisee shall proceed with all necessary operations without first obtaining the permit, but shall obtain the required permit at its earliest opportunity.

(d) The Franchisee shall not open, disturb or encumber, at any one time, any more public rights-of-way than may, in the opinion of the City, be necessary to enable the Franchisee to economically install or repair its Facilities; nor shall the Franchisee permit any public right-of-way to remain open, disturbed or encumbered for a longer period of time than shall, in the opinion of the City, be necessary.

(e) Immediately upon completion of repairs or installation of any Facility, the

Franchisee shall refill and compact any trench or excavation to the standards required by the City and the State of Alabama Department of Transportation's "Standard Specifications of Roads and Structures." Promptly, and in no less than ten (10) business days after the completion of repair or installation, unless otherwise approved by the City, the Franchisee shall restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material or other materials or structure damaged in the course of its work to City standards at the Franchisee's sole expense. In the event excavation or disturbance of special sidewalk pavement areas is necessary, the Franchisee shall restore those areas to their preexisting conditions which restoration shall meet City standards. Failures within an area which has been disturbed, excavated or encumbered by the Franchisee which are discovered within six (6) months of the restoration or replacement specified herein, shall be the responsibility of the Franchisee pursuant to this provision.

(f) If Franchisee fails, neglects or refuses to refill any trench or excavation or to restore or replace any pavement, sidewalk, curb, gutter, grass, landscaping material, or other material or structure or to repair failed materials as specified herein, the City may do all or any part of the work that remains undone at the cost or expense of the Franchisee. Failure of the Franchisee to reimburse the City within thirty (30) days' of the City's presentation of a bill for the reasonable and verifiable costs incurred by the City shall result in denial of any permit request made by the Franchisee until payment is made. City may, at its option, recover such amount from the performance bond required herein.

(g) In any case where a public right-of-way is being excavated, disturbed or encumbered by the Franchisee, the Franchisee shall take all precautions required by law, in particular, the Manual on Uniform Traffic Control Devices, or otherwise necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to give notice and warning to the public of the existence of actual conditions present. Nothing in this Section shall alter or waive any rights enjoyed by the Franchisee or any other party under Alabama's underground damage prevention law (Ala. Code, Title 37, Section 37-15-1, -11).

(h) Any construction project authorized by a specific permit shall be completed within one year from the date that any necessary permits are issued, provided that the City may allow reasonable extension due to weather or Acts of God, or other reasonable circumstances that in the sole discretion of the City justifies an extension of the project target completion date.

SECTION 11. USE OF STREETS.

(a) All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation, unless otherwise agreed by the City. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Franchisee may install its Facilities above ground, provided that, at such time as those telephone or electric utility facilities are required to be placed underground by the City, the Franchisee shall likewise place its Facilities underground without additional cost to the City, unless otherwise agreed by the City. Where not otherwise required to be placed underground by this Franchise Agreement, the Franchisee's

Telecommunications System shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the adjacent property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground, private property and utilities. Franchisee's Telecommunications System and Facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such Facilities shall:

(1) Not endanger or interfere with the health, safety or lives of persons;
(2) Not interfere with any improvements the City, County or State may deem proper to make;
(3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
(4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; or
(5) Not obstruct, hinder or interfere with any gas, electric, traffic control, water or telephone facilities or other utilities located within the City.

(b) Work within Right-of-Way. The closing of any part of a publicly maintained street or right-of-way must be approved by the City Engineer, and may be prohibited during peak travel hours, 7-9 A.M. and 4-6 P.M., Monday through Friday. During repairs or improvements, traffic on streets must be maintained. Where full closing of the street is required, the request for approval must be submitted to the City Engineer at least 10 business days in advance. The notice requirement in this Section may be superseded by the terms and conditions of a subsequent ordinance(s) enacted by the City. All closings are to be protected with signage in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).

(c) Removal of City Property. No City property is to be removed from the right-of-way, including signage on utility poles, without proper permission from the City.

SECTION 12. ACQUISITION OF RIGHT-OF-WAY. In acquiring or widening public rights-of-way, the City shall determine the minimum right-of-way necessary to accommodate paved streets, pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities.

SECTION 13. RELOCATION OF FACILITIES.

Wherever a public right-of-way or other public property is being constructed, paved (whether or not such paving is part of a more extensive improvement project), resurfaced, relocated or otherwise altered or improved (including, but not limited to, the installation of sidewalk, curb, gutter, drainage facilities, water mains, or sewer mains, traffic signals or trees), the Franchisee shall, within ninety (90) days (or such longer period of time as mutually agreed by the parties) after written notice from the City and at no cost (direct or indirect) to the City, remove or relocate any of the Franchisee's facility located within such public right-of-way or public property or perform such work as the City deems necessary for the extension of new facilities. If the Franchisee believes it will be unable to complete the relocation within such ninety (90) day period, the Franchisee shall explain the reasons for its inability in detail, and the City and the Franchisee shall attempt to agree on an alternate schedule, subject, however, to the City's right make a final determination as to such schedule in its reasonable discretion. Nothing in this franchise is intended to eliminate or waive any right the Franchisee may have to reimbursement from a third party under applicable law or the terms of any public funding grant for a project.

Notwithstanding the foregoing, Franchisee shall act promptly and in good faith to remove or relocate its facilities as described in the previous paragraph in the event that exigent circumstances (e.g., flooded roadway) prevent the City from providing Franchisee with ninety (90) days' advance notice of the need for removal or relocation.

Failure of the Franchisee to remove or relocate the Facility to a location approved and permitted by the City within ninety (90) days of the City's written notice (unless otherwise agreed by parties) shall entitle the City to recover liquidated damages from the Franchisee except to the extent said failure is for reasons beyond the Franchisee's control. Any delays in the performance of any obligation of the Franchisee under this Franchise Agreement shall be excused to the extent that such delays are caused by an Event of Force Majeure not within the control of the Franchisee, and any time periods required for performance shall be extended for the period of the Event of Force Majeure. An "Event of Force Majeure" is defined as an act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, pandemic, national emergency, natural disaster, inability to obtain materials or supplies, accident to machinery or equipment, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, or any other cause or occurrence outside the reasonable control of the Franchisee and which by the exercise of due diligence could not be reasonably prevented or overcome. The liquidated damages assessed to the Franchisee, if any, shall be the same as liquidated damages specified in the City's contract with the prime contractor (either as executed at the time of the City's removal or relocation request or which will be executed prior to any construction for the project which requires the relocation or extension of new facilities). If work which requires removal or relocation of Franchisee's facilities is being constructed by a developer, who has submitted a plan which indicates said work will be dedicated to the City, and there is no City contract with a prime to establish the amount of liquidated damages, then the liquidated damages for Franchisee's failure to remove or relocate a facility shall be Two Hundred Fifty Dollars ($250) per diem. If the Franchisee believes it will be unable to complete the relocation within ninety (90) days from receipt of written notice from the City, Franchisee shall explain the reasons for its inability in detail and City and Franchisee shall attempt to agree on an alternate schedule, subject, however, to the City's right make a final determination as to such schedule and subject to the City's right to liquidated damages. Absent an Event of Force Majeure, the Franchisee shall be responsible to the City under the terms of this Franchise Agreement only for the amount of liquidated damages caused by its own failure to remove or relocate the Facility to a location approved by the City within a timeline provided for herein.

The City may collect any such liquidated damages owed by the Franchisee either through the draw-down of the security required in Section 6, or through other means allowed by law. Unless the delay is excused by the City, the City may immediately request payment of any liquidated damages due to the City by the Franchisee.

SECTION 14. TRIMMING OF TREES AND SHRUBBERY. The Franchisee shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Franchisee to the satisfaction of the City.

SECTION 15. CONSTRUCTION STAFFING. During the franchise Term, the Franchisee shall have sufficient full-time supervisors on staff solely to supervise construction plans and the construction practices of its subcontractors. The Franchisee shall provide the means for immediate notification and communication by the City with the supervisor in the field by means of a pager, cellular phone or other similar means of communication during all phases of construction. All construction work or any other work performed by the Franchisee, its employees, agents, its duly licensed contractors and sub-contractors shall be in compliance with the plans and specifications approved by the City, and shall be subject to all applicable ordinances, rules and regulations, including licensing and permitting, as well as any licensing and permitting fees charged to all persons and businesses for construction and street opening.

SECTION 16. FRANCHISE NOT A JOINT VENTURE. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in the manner which would indicate any such relationship with the other.

SECTION 17. FRANCHISEE FEE; CONDITIONS.

(a) As consideration for this franchise, the Franchisee shall pay to the City an amount equal to five percent (5%) of the Gross Revenue (as defined in Section 17(f) from sales of local Telecommunications Services to Subscribers located within the City, collected by the Franchisee.

(b) In consideration of the agreement of the Franchisee to make such franchise fee payments, the City agrees that no additional business license fee shall be imposed upon or required of the Franchisee by the City during the Term of this franchise. This provision shall not exempt the property of the Franchisee from lawful ad valorem taxes and local improvement district assessments. This provision shall also not exempt the Franchisee from conditions, exactions, fees and charges, which are generally applicable during the Franchisee's real property development or use as required by the City's ordinances.

(c) Commencing the month following the month in which the Effective Date of this franchise occurs, the franchise fee shall be paid quarterly on the 20th day of April, July, October and January; such franchise fee shall be paid for Gross Revenues received by the Franchisee for the preceding quarter. The Franchisee shall furnish to the City with each payment of franchise fees required by this Section a written statement, showing the amount of Gross Revenue collected by the Franchisee within the City for the period covered by the payment. Such statement will be accorded confidential treatment to the extent permitted by law. Upon receipt of such payment the City shall issue a receipt to the Franchisee. Nothing herein shall preclude the Franchisee and the City from agreeing to a revised payment schedule.

(d) On or before the first (1st) day of February of each succeeding year, the Franchisee shall submit to the City, a statement of the franchise fee actually due to the City based upon the actual gross revenue for the previous calendar year, together with a check for any amount due from the Franchisee or a statement for any amount due from the City. Such statement will be accorded confidential treatment to the extent permitted by law.

(e) Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. Payment by the Franchisee of any amounts due under this Section shall not be deemed to be a waiver by the Franchisee of any breach of this Agreement by the City occurring prior thereto.

(f) As used in this Section, "Gross Revenue" shall mean all revenues (exclusive of sales tax) collected by the Franchisee from the operation of the Telecommunications System to provide local Telecommunications Services pursuant to this franchise to subscribers within the corporate limits of the City, including, but not limited to: All revenues from installation service charges directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,

(1) All revenues from connection or disconnection fees directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System

(2) All revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid, and penalties, interest or charges for late payment directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,

(3) All revenues from equipment sold or rented to customer upon customer premises directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System,

(4) All revenues from authorized rental of conduit space located within the corporate limits of the City,

(5) All recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts directly related to the provision of local Telecommunications Services to subscribers in the City over the Telecommunications System. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from Gross Revenue, and

(6) The value of any free local Telecommunications Services provided by the Franchisee except (i) any discounted or free services required under this Franchise Agreement; (ii) local Telecommunications Services provided as a credit against non-recurring charges imposed on the Franchisee's customers by a local exchange carrier for converting circuits to the Franchisee.

Notwithstanding the foregoing, Gross Revenue *does not include:* (i) Any tax of general applicability imposed upon the Franchisee; (ii) any regulatory fees or surcharges collected from customers as well as amounts reflecting cost-recovery of regulatory fees and surcharges; (iii) those revenues that the Franchisee receives from another telecommunications service provider and upon which the other telecommunications service provider has paid or will pay a franchise fee to the City; (iv) pass through revenues which are in turn paid to a local exchange carrier for interconnection for long distance service; and (v) revenues that the Franchisee receives from its corporate parent, subsidiary, or affiliate.

(g) Payment of franchise fees under this Section shall in no way limit or inhibit any of the privileges or rights of the City, whether under this franchise or otherwise. Nothing in this Section 17 is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on the Franchisee's business activities under this franchise under applicable law. Except as provided elsewhere in this Franchise Agreement, all payments made by the Franchisee to the City pursuant to this franchise shall be made to the Chief Financial Officer. Nothing in this Franchise Agreement shall be construed to prevent the Franchisee from passing through some or all of the franchise fee to its customers.

(h) Any transactions which have the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by non-collection or non-reporting of Gross Receipts, bartering, or any other means which evade the actual collection of revenues for business pursued by the Franchisee are prohibited and may constitute a default of this Franchise Agreement.

(i) If as a result of such audit or any other review, the City determines that the Franchisee has underpaid its franchise fees by ten percent (I 0%) or more for any twelve (12) month period, then in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable and verifiable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants and other consultants. The City may collect the costs associated with such audit or review either through the draw-down of the security required in Section 6, or through other means as allowed by law.

If as a result of such audit or other review, the City determines that the Franchisee has underpaid its franchise fees for any twelve (12) month period, then the Franchisee shall pay interest on such underpayment at the rate of ten percent (I 0%) interest or prime plus two percent (2%), whichever is greater. The underpayment and interest thereon may be collected by the City through the drawdown of the security required in Section 6, or through other means as allowed by law.

SECTION 18. ADDITIONAL BENEFIT TO THE CITY. In addition to any franchise fee collected pursuant to Section 17 of this Agreement, the Franchisee shall provide fiber and facilities to the City's governmental and institutional facilities as follows; provided however that: (i) the City must, within sixty (60) days of the Effective Date, notify Franchisee in writing of the specific locations where it would request fiber and facilities so that Franchisee can include that information in its pre-construction engineering work, and (ii) the City waives any right to make further requests after that deadline unless Franchisee in the future notifies the City that it is reengineering portions of its deployment in the City:

(a) Within ninety (90) days after the City's written request for the same, Franchisee shall provide to the City without recurring rental, use or maintenance charges (collectively, "Recurring Charges") solely for its noncommercial telecommunications purposes, two (2) dark fiber pairs (four (4) fibers) in all City rights-of-way where Franchisee deploys at least 288 fiber strands ("backbone network"), whether underground or aerial (the "City Fibers") in up to a maximum of IO miles of Franchisee's network (i.e., a total of 40 fiber miles). The City may divide the dark fiber pairs within the backbone network as it determines to best serve the City's facilities, but each division must include at least two (2) fibers. Franchisee shall not be entitled to offset against Gross Revenues the amount of any Recurring Charges associated with the provision of the City Fibers as set forth herein, but Franchisee shall be entitled to offset against Gross Revenues non-recurring installation and non-recurring maintenance costs associated with the City Fibers.

(b) Franchisee shall create a maximum of six (6) splice points at the request of the City among existing Franchisee access points. The City shall have its own handhole for such splice points, so the City's use of and connection to the City Fibers is separate and apart from Franchisee's Telecommunications System. The City shall reimburse Franchisee for Franchisee's costs for any splice points requested by the City beyond six (6). Franchisee shall perform all splicing of City lateral cables to the City Fibers. The City shall provide Franchisee with at least ninety (90) days' prior written notice of the need to splice to the City Fibers.

(c) Franchisee agrees that the cost of any routine maintenance of the City Fibers shall be borne by Franchisee, and Franchisee shall perform such routine maintenance on the maintenance schedule for Franchisee's Telecommunications System. To arrange for non-routine maintenance, the City will provide at least sixty (60) days' prior written notice to

Franchisee that such maintenance is required and will pay or reimburse Franchisee for the cost thereof. Notwithstanding the foregoing, however, the City shall pay only actual incremental labor costs to Franchisee to repair the City's share of dark fibers within any cable that is damaged as the result of any natural disaster or casualty other than normal wear and tear. Nothing in this subsection (c) shall supersede the provisions of this Agreement relating to the relocation of equipment at Franchisee's expense in the event of a City project.

(d) Franchisee acknowledges that the City has the right to connect its own equipment to the City Fibers to be provided hereunder for internal non-commercial municipal purposes, and to make full use at no Recurring Charges to the City of the fibers to be dedicated to the use of the City hereunder.

(e) The City recognizes that Franchisee's agreements, if any, to occupy rights-of-way or for pole attachments may be subject to the control of third parties who may require Franchisee to relocate its cable. In the event of such required relocation by Franchisee that impacts the City Fibers, Franchisee shall provide notice thereof to the City as soon as reasonably possible. Franchisee shall provide replacement dark fibers to the City in any Franchisee replacement cable as soon as reasonably possible.

(f) Franchisee acknowledges and agrees that in connection with the assignment or transfer of Franchisee's interests under this Franchise Agreement, any assignee shall be bound by all of the provisions of this Section 18, including without limitation, the requirement to provide the City Fibers at no Recurring Charges to the City.

SECTION 19. REPORTS AND INVESTIGATIONS.

(a) The Franchisee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Franchisee's Telecommunications System in the City in the context of the permitting process.

(b) The City may, at any time, make inquiries pertaining to the Franchisee's operation of its Telecommunications System within the City. The Franchisee shall respond to such inquiries on a timely basis.

SECTION 20. RESERVATION OF RIGHTS. It is hereby reserved to the Franchisee every right and privilege available to the Franchisee under applicable law, and the Franchisee by its execution of this Franchise Agreement, shall not be deemed in any way to waive, relinquish, release or abrogate any of its lawful rights and privileges. Nothing in this Franchise Agreement is intended to alter, amend, modify or expand the taxes and/or fees that may lawfully be assessed on the Franchisee's business activities under this franchise pursuant to applicable law.

SECTION 21. <u>FORFEITURE AND TERMINATION</u>.

(a) In addition to all other rights and powers of the City, the City reserves the right to forfeit and terminate this franchise and all rights and privileges of the Franchisee in the event of a material or substantial breach of its terms and conditions including, but not limited to, the following:

(1) The appointment of a receiver or trustee in bankruptcy to take over and conduct the business of the Franchisee;
(2) A failure to provide insurance, bonds, certificates of deposit or letters of credit as required herein;
(3) Permitting the use of its Telecommunications System or Facilities in any manner that would avoid the need for a franchise with the City for the business of another person; or
(4) A failure to operate the Telecommunications System for a period of six (6) months not due to an Event of Force Majeure.

(b) The Franchisee shall not be excused by mere economic hardship, nor by nonfeasance or malfeasance of its directors, officers, agents, subcontractors or employees. The foregoing notwithstanding, Franchisee may in its sole discretion terminate this Franchise Agreement upon one hundred and eighty (180) days' written notice to the City.

(c) The City shall notify the Franchisee in writing of any breach specifying the nature of the breach. The Franchisee shall have thirty (30) days after the date of such notice to come back into compliance (as set forth in <u>Section 34</u>), unless such cure period is extended in writing by the City Attorney. Should the Franchisee fail or refuse to comply with the notice given by the City, the City may consider the franchise in default and pursue remedies as it determines. If the remedy elected by the City is to forfeit and terminate this franchise, the Franchisee may request an appeal of such decision to the Council of the City which appeal must be filed in writing with the City Clerk no later than thirty (30) days after the date of written notice of forfeiture and termination to the Franchisee. The City Council shall set a public hearing on such appeal within thirty days after notice of appeal is received. Nothing herein shall be construed as a waiver or forfeiture of any right or remedy that either party may have concerning or arising out of this Franchise Agreement, including the right to seek judicial redress for any breach or violation of the terms of this Franchise Agreement.

(d) The Franchisee reserves the right to forfeit and terminate this Franchise Agreement and all rights and privileges to the City hereunder for any reason. If the Franchisee exercises that right, it shall be required to: (i) submit payment of Gross Revenues until such time that the facilities are removed or abandoned, (ii) otherwise cease providing Services, and (iii) abandon or remove its Facilities from the rights of way at its sole cost and expense.

SECTION 22. <u>REMEDIES AND PENALTIES NOT EXCLUSIVE</u>.

(a) All remedies and penalties under this franchise are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penalty provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee or the City by or pursuant to this Franchise Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee or the City by or pursuant to this Franchise Agreement shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

(b) For any period of performance or cure under this Agreement, the time period within which the Franchisee is to perform or cure, as the case may be, shall be extended, without liability to the Franchisee, for at least as long as the Franchisee's ability to perform or cure is delayed for reasons beyond the Franchisee's control provided that the Franchisee shall employ all commercially reasonable efforts to eliminate or mitigate the impact of said reasons and to thereafter reasonably accelerate, where feasible, its performance or cure.

(c) Prior to taking any adverse action against the Franchisee or this franchise, the City shall provide the Franchisee with such notice and due process, including a reasonable period of time to cure, as is required by applicable law, but in all cases no less than reasonable notice and opportunity to cure.

SECTION 23. <u>CONTINUING OBLIGATION</u>. In the event the Franchisee continues to operate all or any part of the Telecommunications System after the Term of this Franchise Agreement expires or is terminated, and before any renewal of the franchise by the City, then the Franchisee shall continue to comply with all applicable provisions of this franchise throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this franchise.

SECTION 24. <u>LIMITATION ON PRIVILEGES</u>. All rights, authority and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the rights-of-way and other public ways of the City are not to operate in any way so as to be an enhancement of the Franchise's properties or values or to be an asset or item of ownership in any appraisal thereof.

SECTION 25. <u>CONFIDENTIALITY</u>. To the fullest extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information, including maps, submitted to or made available by the Franchisee to the City under this Franchise Agreement, provided that the Franchisee notifies the City of, and clearly labels, the information which the Franchisee deems to be confidential, proprietary information as such. Such confidential, proprietary information shall include, but not be limited to, any customer names and lists, financial information, technical information or maps regarding placement of equipment with the exception of any map(s) attached to the Franchise Agreement, or other information clearly identified as "Confidential" pertaining to Services provided to its customers. Confidential, proprietary information disclosed by the Franchisee to the City shall be regarded as confidential and proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify the Franchisee of such request and allow the Franchisee a reasonable opportunity to defend its information from disclosure. City further agrees to notify Franchisee of any data breach affecting the confidential information of Franchisee, or any loss of such confidential information from any other cause, within seventy-two (72) hours of the discovery of such breach or loss.

SECTION 26. CAPTIONS. The captions given to various provisions of this Franchise Agreement are for purposes of convenience only and are to have no impact upon the interpretation of any such provisions.

SECTION 27. ENTIRE AGREEMENT. This Franchise Agreement, with its exhibits, comprises the entire agreement between the City and the Franchisee for purposes of this franchise and supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof.

SECTION 28. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.

The Franchisee shall, at all times during the Term of its franchise, be subject to the present ordinances, resolutions, rules, regulations, and laws of the City and of the State of Alabama, and to the provisions of any further ordinance, resolution, rule, regulation, or law of the City or of the State of Alabama, so far as they may be applicable.

SECTION 29. ALABAMA LAW GOVERNS. In any controversy or dispute under this franchise, the laws and jurisdiction of the State of Alabama shall apply to the extent such law has not been superseded or preempted.

SECTION 30. NOTICE. Any notice required or permitted under this Franchise Agreement shall be deemed given if sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight courier, in either case, and addressed as follows:

To the City:
Vestavia Hills City Clerk
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, AL 35216

With copies sent to both of the following email addresses:

City Manager
Jeffrey D. Downes
jdownes@vhal.org

To the Franchisee:
Lumos Fiber of Alabama, LLC
Attn: Ronny Poston, VP - OSP
4100 Mendenhall Oaks Parkway, Suite 300, High Point, NC 27265

With copies to (except for invoices):
AJ Brown
Chief Legal Officer & General Counsel
4100 Mendenhall Oaks Parkway, Suite 300,
High Point, NC 27265
aj.brown@lumosfiber.com

City Clerk
Rebecca Leavings
rleavings@vhal.org

or such other address as may be designated in the future in writing by either party.

SECTION 31. EFFECTIVE DATE AND PUBLICATION. After the execution hereof, this franchise shall be published once in a daily newspaper published in the City of Vestavia Hills at the Franchisee's expense, and shall not take effect until such publication or thi1ty (30) days after the Ordinance authorizing this franchise, whichever is later (the later date being, the "Effective Date").

SECTION 32. MODIFICATION. This Franchise Agreement, including all documents specifically incorporated herein, cannot be changed orally but only by an agreement in writing properly executed by the parties.

SECTION 33. SEVERABILITY. Should any part, term or provision of this Franchise Agreement be held invalid or unenforceable by any court of competent jurisdiction, such part, term, or provision shall be deemed a separate, distinct and independent provision and such holding shall not invalidate or render unenforceable any other provision of this franchise.

SECTION 34. RIGHT TO NOTICE AND CURE. Other provisions herein to the contrary notwithstanding, prior to exercising its right to terminate or revoke this Franchise Agreement as provided herein, the City shall first give written notice to the Franchisee setting out the circumstance or basis on which the City has the right to terminate or revoke this Franchise Agreement, and the Franchisee shall have a period of thirty (30) days after the receipt of the notice within which to cure, correct, or resolve the circumstance or basis, and if the Franchisee is successful in the cure, correction, or resolution thereof, then the City shall not exercise its right to terminate or revoke this Franchise Agreement. If the Franchisee has commenced the cure, correction or resolution within thirty (30) days after its receipt of notice, but additional time is necessary to the completion thereof, then Franchisee shall have an additional thirty (30) days or such additional time upon which the parties can agree, not to be unreasonably withheld by either party, to accomplish the cure, correction, or resolution.

(signatures on the following page)

IN WITNESS WHEREOF, the parties have executed this franchise as of the dates set forth below.

CITY OF VESTAVIA HILLS, ALABAMA, a Municipal corporation

By: ________________________________
Printed Name: ________________________
Its: Presiding Officer
Date: ________________________________

By: ________________________________
Printed Name: Jeffrey D. Downes
Its: City Manager
Date: ________________________________

ATTESTED BY:

Rebecca Leavings
City Clerk

LUMOS FIBER OF ALABAMA, LLC, a corporation

By: ________________________________
Printed Name: ________________________
Its: ________________________________
Date: ________________________________

Exhibit 1

Complete Description of the Ownership and Control of the Franchisee as of the Effective Date.

Lumos Fiber of Alabama, LLC, is wholly owned by Gridiron Fiber License, LLC, which is wholly owned by Gridiron Fiber LLC, which is wholly owned by Gridiron Fiber HoldCo, which is wholly owned by EQT.

Exhibit 2

Plans shall be submitted either digitally or by paper in a PDF Adobe format or half size drawings (11” X 17”) as requested.

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

January 22, 2025

By Electronic Mail

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Lumos Fiber of Alabama, LLC

Dear Mr. Downes:

My thoughts following the conference between our two Teams and receipt and consideration of the subsequent revised Agreement are set forth below.

CHRONOLOGY OF NEGOTIATIONS WITH LUMOS

DATE	ACTION
December 9, 2024	Andrew Stevenson of Lumos Fiber of Alabama, LLC sent you a proposed Franchise Agreement by and between the City of Vestavia Hills, Alabama ("City") and Lumos Fiber of Alabama, LLC ("Franchisee") for your consideration for approval. It appears that Andrew Stevenson edited a copy of the Franchise Agreement by and between the City and Telepak Networks, Inc. and Teklinks, Inc. both doing business as C Spire Business. All changes for additions and deletions are delineated in red ink on the proposal.
December 13, 2024	I wrote a legal opinion and, in essence, advised that the Franchise Agreement with Lumos should be consistent with other similar Franchise Agreements on the grounds of equal protection and due process.

DATE	**ACTION**
January 15, 2025	Our Team conferenced (about an hour) with the Lumos Team via zoom and reviewed the proposal, section-by-section. Lumos stated that a ten-year term rather than 20 years "was not a dealbreaker."
January 16, 2025	Lumos Team submitted a revised proposal. 20-year term consistent with Ordinance Number 2884 adopted on November 13, 2019. Ordinance 2884 granted a Franchise Agreement to Level3 Communications for a term of 20 years.
January 17, 2025	I reviewed the revised proposal.

The latest version reflects that Lumos agreed to:

1. Our position regarding indemnity/hold harmless;
2. Providing a bond for the contract term;
3. Restoration work will comply with City requirements; and
4. Provide services to the City.

It appears that the City and Lumos are very close to an agreement. What do you want me to do, if anything?

Sincerely,

Patrick H. Boone

Patrick H. Boone
Attorney for Vestavia Hills

PHB:gp

CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO

March 10, 2025

To: Mayor and City Council

From: Jeff Downes, City Manager

Cc:

RE: Public Hearing - Resolution Number 5553 - A Resolution Authorizing the Mayor and City Manager to Execute Any and All Documents that Reallocate Existing Economic Incentives from One Entity - Altera AIP, Vestavia LLC to Two Entities - Altera AIP - Vestavia LLC and AIP Vestavia, LLC *(Resolution Numbers 5553 and 5554 are companion resolutions)*

Background:
The City Council of the City of Vestavia Hills previously approved economic incentives to Altera AIP, Vestavia LLC that will facilitate the construction of Picklr, an indoor pickleball complex. As the project reaches completion of its construction, the ownership group has requested that the incentives be allocated to two entities rather than one entity. The two entities are Altera AIP, Vestavia, LLC and AIP, LLC. Outside of the incentive split between the two entities, no other terms of the agreement are amended.

Recommendation:
The City's attorney, Heyward Hosch, has drafted the revised agreement.

Fiscal Impact:
There are no financial impacts from the proposed change.

Attachments:
1. Resolution 5553
2. Hosch Email re Division of Incentives 3-4-25

STATE OF ALABAMA

JEFFERSON COUNTY

CERTIFICATE OF CITY CLERK

____

_____________, 2025

____

I, the undersigned, do hereby certify that: (1) I am the duly elected, qualified and acting Clerk of the City of Vestavia Hills, Alabama (the "City"), (2) as City Clerk of the City I have access to all original records of the City and I am duly authorized to make certified copies of its records on its behalf, (3) the attached and following pages constitute a complete, verbatim and compared copy of excerpts from the minutes of a regular meeting of the City Council of the City duly held on March 24, 2025, the original of which is on file and of record in the minute book of the City Council in my custody, (4) the resolution set forth in such excerpts is a complete, verbatim and compared copy of such resolution as introduced and adopted by the City Council on such date, and (5) said resolution is in full force and effect and has not been repealed, amended or changed

IN WITNESS WHEREOF, I have hereunto set my hand as Clerk of the City of Vestavia Hills, Alabama, and have affixed the official seal of the City, on the above date.

____

City Clerk of the City of Vestavia Hills, Alabama

S E A L

201811706v1

EXCERPTS FROM THE MINUTES OF A REGULAR MEETING
OF THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA

Economic Development Agreement
for
Altera AIP-Vestavia, LLC

The City Council of the City of Vestavia Hills, Alabama met in regular public session at City Hall in the City of Vestavia Hills, Alabama, at 6:00 p.m. on March 24, 2025.

The meeting was called to order by the Mayor, and the roll was called with the following results:

Present: Ashley Curry, Mayor
Rusty Weaver, Mayor Pro-Tempore
Kimberly Cook
Paul Head
George Pierce

Absent:

* * *

The Mayor stated that a quorum was present and that the meeting was open for the transaction of business.

* * *

Thereupon, the Mayor stated that the following resolution was first introduced in writing and read by the City Council during the regular meeting of the City Council on Monday, March 10, 2025, whereupon such resolution was introduced by the Mayor and read a second time, as follows:

RESOLUTION NO. 5553

**A RESOLUTION AUTHORIZING AN
ECONOMIC DEVELOPMENT AGREEMENT
BY THE CITY OF VESTAVIA HILLS, ALABAMA
AND
ALTERA AIP-VESTAVIA, LLC**

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

ARTICLE 1

Definitions

For purposes hereof:

Agreement means the Economic Development Agreement by the City and the Beneficiary attached to this Resolution as Exhibit B.

Amendment No. 772 means Section 94.01 of the Constitution of Alabama of 2022, as initially ratified, and amended, as Amendment No. 772 to the Constitution of Alabama of 1901, as amended.

Beneficiary means Altera AIP-Vestavia, LLC.

Bond Counsel means Maynard Nexsen PC.

City means the City of Vestavia Hills, Alabama.

Council means the governing body of the City.

Public Notice means the notice attached to this Resolution as Exhibit A.

Subject Real Property has the meaning set forth in the Agreement.

.ARTICLE 2

Representations

The Council, upon evidence duly presented to and considered by it, has found and determined, and does hereby find, determine and declare as follows:

(a) The delivery and performance of the Agreement by the City will provide for the economic growth and economic development of the City in furtherance of the public interest thereof.

(b) The expenditure of public funds for the purposes specified in the Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(c) The City caused the Public Notice to be published on March ____, 2025 in *The Alabama Messenger,* which newspaper is in circulation in the City.

(d) The aggregate indebtedness of the City (including without limitation the Total City Commitment under the Agreement) which will be outstanding under, and chargeable against the limitation upon indebtedness prescribed by, Amendment No. 772 on the Effective Date of the Agreement will not exceed fifty percent (50%) of the assessed valuation of the taxable property of the City as assessed for state taxation for the tax year ending September 30, 2024.

(e) As determined in the exercise by the City of its general police power, it is necessary, wise and in the best interest of the health, morals, comfort and welfare of the community and the City to provide for the use of the Subject Real Property in accordance with the terms of the Agreement.

ARTICLE 3

Authorizations and Ratifications

(a) The Council approves and authorizes the terms and provisions of, the representations and warranties of the City set forth in, and the obligations and transactions to be undertaken by the City pursuant to, the Agreement, with such changes thereto (by addition or deletion) which (i) do not (individually or in the aggregate) create any additional obligation, or extend or increase any stated obligation, of the City under the Agreement and (ii) the officers of the City conclusively approve by execution and delivery of the Agreement as provided by this Resolution.

(b) The Council authorizes and directs the Mayor, City Manager, Finance Director, and City Clerk of the City to:

(i) execute under seal, register, and attest the Agreement;

(ii) execute, deliver, file and record such certificates, documents and notices with respect to such matters of fact as Bond Counsel determines to be necessary in connection with the Agreement;

(iii) deliver the Agreement when advised by Bond Counsel; and

(iv) effect the performance of the Agreement.

(c) The Council ratifies and confirms all prior action taken, and all certificates, documents, proceedings and public notices delivered or published, by or on behalf of the City in furtherance of the purposes of this Resolution, the Agreement, and the transactions herein authorized.

ARTICLE 4

Effect of Resolution

The Council authorizes this Resolution to take effect immediately and repeals any provision of any resolution, order, ordinance, or proceeding of the City to the extent of any conflict or inconsistency thereof with the provisions of this Resolution.

<u>EXHIBIT A</u>

Legal Notice

201811706v1

LEGAL NOTICE

LEGAL NOTICE OF PROPOSED ECONOMIC DEVELOPMENT ACTION AND RELATED PUBLIC EXPENDITURES BY THE CITY OF VESTAVIA HILLS, ALABAMA

Notice is hereby given that the City Council (the "Council") of the City of Vestavia Hills, Alabama (the "City") will meet in public session at 6:00 p.m. on March 24, 2025 at City Hall in the City of Vestavia Hills, Alabama for the purpose of considering the transaction of business that may properly come before the Council, such business to include, but not be limited to, the authorization by the Council, pursuant to Section 94.01 of the Constitution of Alabama of 2022, of (a) a resolution (the "Altera Resolution") approving an Economic Development Agreement by the City and Altera AIP-Vestavia, LLC ("Altera"), pursuant to which Agreement the City will provide economic incentive payments to Altera, in consideration of the public benefits to accrue to the City from the establishment and operation by Altera of commercial development facilities in the City, in an initial grant of $300,000, and (b) a resolution (the "AIP Resolution") approving an Economic Development Agreement by the City and AIP Vestavia, LLC ("AIP") pursuant to which Agreement the City will provide economic incentive payments to AIP, in consideration of the public benefits to accrue to the City from the establishment and operation by AIP of commercial development facilities in the City, (i) annually in arrears for a period of ten years amounts equal to 50% of net non-educational ad valorem tax proceeds actually received by the City from such facilities, subject to a maximum total amount of $200,000, and (ii) quarterly in arrears for a period of ten years amounts equal to 50% of net sales tax proceeds actually received by the City from such facilities, subject to a maximum total amount of $1,200,000. The City seeks to achieve, by undertaking its obligations pursuant to the Agreement, the Altera Resolution and the AIP Resolution to promote the local economic and industrial development of the City, to increase employment in the City, and to increase the tax and revenue base of the City. The business entities to whom or for whose benefit the City proposes to lend its credit or grant public funds or thing of value are Altera and AIP. All interested persons may examine and review the Altera Resolution and the AIP Resolution, which shall have attached thereto the complete and correct form of the respective agreements, and make copies thereof at personal expense, and obtain further information as to the matters addressed in this notice, before and after the meeting referenced herein, at the office of the City Manager during the published business hours thereof.

Exhibit B

Economic Development Agreement

The Beneficiary of this Agreement may transfer (in whole and not in part) this Agreement only in compliance with the provisions of this Agreement, applicable federal and state securities law, and subject to all defenses and rights of the City at law or in equity.

This Agreement has not been registered under the Securities Act of 1933, as amended, in reliance upon applicable exemptions.

ECONOMIC DEVELOPMENT AGREEMENT

(Altera AIP-Vestavia, LLC)

Effective Date: ____________, 2025

CITY OF VESTAVIA HILLS, ALABAMA

and

ALTERA AIP-VESTAVIA, LLC

This Agreement was prepared by Heyward C. Hosch and Ann W. Todd of Maynard Nexsen PC.

201811706v1

ECONOMIC DEVELOPMENT AGREEMENT

(ALTERA AIP-VESTAVIA, LLC)

This Agreement is made and delivered on the Effective Date by:

Beneficiary: Altera AIP-Vestavia, LLC and successors and assigns thereof

City: City of Vestavia Hills, Alabama

ARTICLE 1

Consideration and Purpose of Agreement; Amendment No. 772

Section 1.01 Consideration and Purpose

The City and the Beneficiary have delivered this Agreement pursuant to the within Amendment No. 772 to provide for the payment by the City to the Beneficiary of the within City Incentive Contribution in consideration of the establishment and operation of the within Development and the public benefits of increased local employment opportunities and public revenues to accrue therefrom.

Section 1.02 Issuance of Agreement Pursuant to Amendment No. 772

The City certifies, declares and recites that this Agreement, and the obligations and undertakings of the City herein, are issued and undertaken under the authority of the within Amendment No. 772 for the provision of funds to be used in furtherance of the power and authority authorized thereunder.

ARTICLE 2

Definitions and Construction of Agreement

Section 2.01 Definitions

For purposes of this Agreement:

Alabama Constitution means the Constitution of Alabama of 2022.

Amendment No. 772 means Section 94.01 of the Constitution of Alabama of 2022, as initially ratified, and amended, as Amendment No. 772 to the Constitution of Alabama of 1901, as amended.

City Incentive Contribution means a contribution in the amount of $300,000 to be made by the City pursuant to Section 4.01.

Date of Commencement means the date on which a Pickleball Facility shall open to the public.

Development means the commercial, entertainment, and retail facilities to be established on the Subject Real Property.

Effective Date means __________________ , 2025.

Existing Operator means collectively:

(a) each Person identified on Appendix II and each Successor thereof; and

(b) each Relocated Operator and each Successor thereof.

Governmental Authority means (i) the United States of America, (ii) the State and any political subdivision (within the meaning of 26 CFR Section 1.103-1) thereof other than the City, and (iii) any agency, board, bureau, commission, court, department, division, instrumentality, or tribunal, or any other organization of competent jurisdiction, established by the United States of America or the State.

Person means any natural person, corporation, general or limited partnership, joint venture, limited liability company, limited liability partnership association, trust, unincorporated organization, or Governmental Authority.

Pickleball Facility means a facility located within the Development for the sport of pickleball.

Pledge means the creation of a security interest, in accordance with Article 9A of Title 7 of the Code of Alabama 1975, in and to the City Incentive Contribution by the Beneficiary for the benefit of a creditor thereof.

Prohibited Use means any activity, conduct, business or trade operation, or other use, which the City determines, (a) contravenes the economic development purposes for which the City is undertaking its obligations and duties hereunder in accordance with its power and authority under Amendment No. 772 for the provision of public funds, or (b) in the exercise of the general police power thereof, is in violation of the zoning ordinances of the City, constitutes a private or public nuisance, or is otherwise injurious to the health, morals, comfort or welfare of the community and the City, including without limitation any such activity which involves any of the following: (i) the distribution, provision, or sale of narcotics and related apparatus or paraphernalia, (ii) the distribution, provision or sale, of tangible personal property by bargain, discount, fire-sale, liquidation, pawn or flea-market, surplus, or thrift operations, (iii) the provision of amusement, entertainment, services, or tangible personal property, of a prurient or salacious nature, (iv) the provision of practices related to the occult and the supernatural, (v) the provision of body-piercing, tattoo, and similar services, and (vi) the provision of services relating to the voluntary termination of human life.

Relocated Operator means any Person who:

(a) on the Effective Date holds a business license or permit from the City for the conduct or operation of any trade, business, vocation, occupation or profession which is located within the City and without the Development, and

(b) after the Effective Date (i) ceases business operations at any location or locations within the City and without the Development and (ii) establishes business operations within the Development in the same line or type of business as that ceased;

provided, however, if the City determines that any Person who would otherwise be a "Relocated Operator" would cease business operations in the City entirely without re-location into the Development the City may determine to that such Person shall not be treated as a "Relocated Operator" for purposes of this Agreement.

State means the State of Alabama.

Subject Real Property means the real property located at 1031 Montgomery Highway in the City and described on Appendix I.

Successor shall mean any Person who succeeds to the rights, titles and interests of an Existing Operator or Relocated Operator, whether by consolidation, merger, acquisition (consensual or by legal process) of a controlling interest in assets, reorganization, reincorporation or conversion to another form of business entity.

Transfer means any assignment, conveyance, sale, or transfer by the Beneficiary of the interests and obligations thereof created and undertaken pursuant to this Agreement as provided in Section 6.01.

Transferee means any Person who shall acquire the interests of the Beneficiary in and to, and succeed to the agreements and obligations of the Beneficiary set forth in, this Agreement as provided in Section 6.01.

Section 2.02 Construction of Agreement

For purposes of this Agreement:

(a) the terms "agree", "shall", and "will" when used in this Agreement with respect to the observance or performance of any agreement, duty or requirement to take, or forebear from taking, any action by the City or the Beneficiary means that such agreement, duty or requirement is imperative and enforceable by available remedies at law or in equity against the Person charged therewith;

(b) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this Agreement as originally executed;

(c) the terms "in this Agreement," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, term or provision;

(d) the Article and Section headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

ARTICLE 3

Representations

Section 3.01 The City

(a) The City delivers this Agreement on the Effective Date pursuant to the authorization hereof by proceedings duly had and taken by the governing body thereof under the authority of Amendment No. 772 and the applicable laws of the State, and having found and determined precedent thereto: (i) no approval of, or filing with, any Governmental Authority is required for the validity, or performance by the City, of this Agreement; (ii) no litigation is pending, or threatened in writing, in which a result adverse to the City would have a material and adverse effect upon the validity, or performance by the City, of this Agreement; and (iii) the delivery and performance of this Agreement by the City will not cause or result in a default or violation under any contractual agreement, or order or ruling of any Governmental Authority, binding upon, or in effect with respect to, the City.

(b) The City recites, certifies and declares that all acts, conditions and things required by the Alabama Constitution and laws of the State to happen, exist and be performed precedent to the authorization, execution and delivery of the Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the amount of the City Incentive Contribution, together with all other indebtedness of the City, are within every debt and other limit prescribed by the Alabama Constitution and laws of the State.

(c) The City has determined, in the exercise of its general police power, that it is necessary, wise and in the best interest of the health, morals, comfort and welfare of the community and the City to provide for the use of the Subject Real Property in accordance with the terms of this Agreement.

Section 3.02 The Beneficiary

The Beneficiary delivers this Agreement on the Effective Date pursuant to due authorization thereof in compliance with the applicable laws of the state of organization of the Beneficiary and having found and determined precedent thereto: (i) the Beneficiary has made all filings and notices, and obtained all approvals or consents of, any Governmental Authority required for the business operations of the Beneficiary in the State and the validity, and performance by the Beneficiary, of this Agreement; (ii) no litigation is pending, or threatened in writing, in which a result adverse to the Beneficiary would have a material and adverse effect upon the validity, or performance by the Beneficiary of, this Agreement; and (iii) the delivery and performance of this Agreement by the Beneficiary will not cause or result in a default or violation under any contractual agreement or order or ruling of any Governmental Authority binding upon, or in effect with respect to, the Beneficiary.

ARTICLE 4

Payment of City Incentive Contribution

Section 4.01 Payment of City Incentive Contribution

The City authorizes, directs and orders the Finance Director of the City to pay to, or at the written direction of, the Beneficiary, within 60 days of the Date of Commencement, the City Incentive Contribution in lawful currency of the United States of America immediately available.

Section 4.02 Payment of the Sales Tax Incentive Amount

(a) The City authorizes, directs and orders the Finance Director of the City to determine the amount of, and to pay to, or at the written direction of, the Beneficiary on each Sales Tax Incentive Payment Date (or the next succeeding business day) which occurs prior to, or on, the Sales Tax Incentive Termination Date, upon presentation to the Finance Director of the Sales Tax Incentive Payment Certificate, in lawful currency of the United States of America immediately available and without interest, the Sales Tax Incentive Amount determined to be due and payable on such date.

(b) The City and the Beneficiary agree that obligation of the City for the payment of any amount of the Sales Tax Incentive Amount on any Sales Tax Incentive Payment Date (i) is contingent and effective only upon receipt of a positive amount of sales tax proceeds from the levy of the Applicable City Sales Tax in the Development for the then immediately preceding Calendar Quarter, (ii) will not exceed the Maximum Sales Tax Incentive Amount, and (iii) is subject to (A) all prior charges upon, and pledges of, the proceeds of the Applicable City Sales Tax, (B) the prior payment, to the extent necessary and provided by the laws of the State, from the Sales Tax Incentive Amount of the reasonable and necessary governmental expenses of operating the City; and (C) the prior payment of the general obligation indebtedness of the City.

Section 4.03 Payment of the Property Tax Incentive Amount

(a) The City authorizes, directs and orders the Finance Director of the City to determine the amount of, and to pay to, or at the written direction of, the Beneficiary on each Property Tax Incentive Payment Date (or the next succeeding business day) which occurs prior to, or on, the Property Tax Incentive Termination Date, upon presentation to the Finance Director of the Property Tax Incentive Payment Certificate, in lawful currency of the United States of America immediately available and without interest, the Property Tax Incentive Amount determined to be due and payable on such date.

(b) The City and the Beneficiary agree that obligation of the City for the payment of any amount of the Property Tax Incentive Amount on any Property Tax Incentive Payment Date (i) is contingent and effective only upon receipt of a positive amount of property tax proceeds from the levy of the Applicable City Property Taxes in the Development for the then immediately preceding Property Tax Year, (ii) will not exceed the Maximum Property Tax Incentive Amount, and (iii) is subject to (A) all prior charges upon, and pledges of, the proceeds of the Applicable City Property Taxes, (B) the prior payment, to the extent necessary and provided by the laws of the State, from the Property Tax Incentive Amount of the reasonable and necessary governmental expenses of operating the City; and (C) the prior payment of the general obligation indebtedness of the City.

ARTICLE 5

Agreements and Obligations of Beneficiary

Section 5.01 Indemnity of City

The Beneficiary covenants and agrees, in consideration of the receipt of the City Incentive Contribution :

(a) to defend, protect, indemnify, and hold harmless the City, its agents, employees, and members of its governing body, from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from any of the following, provided, however, that the foregoing indemnity will not extend to the negligent misconduct of the City, its agents, employees, and members of its governing body: (i) any construction activity performed by Beneficiary, or anyone claiming by through, or under Beneficiary; and (ii) any loss of life, personal injury, or damage to property arising from or in relation to the entry upon, construction, use, operation or occupancy of the Project, including, without limitation, tenants, customers and invitees of the Project or Beneficiary; and

(b) the agreements and covenants in this Section shall survive the termination of this Agreement with respect to events or occurrences happening prior to or upon the termination of this Agreement and shall remain in full force and effect until commencement of an action with respect to any thereof shall be prohibited by law.

Section 5.02 Special Agreement: Use of the Subject Real Property

The Beneficiary covenants and agrees, in consideration of the use of the City Incentive Contribution for the benefit of the Project, and pursuant to the authority of the City under Amendment No. 772 and the general police power of the City:

(a) that the Beneficiary will not, and will not allow or suffer any Person to, use the Subject Real Property (or any part thereof) for any Prohibited Use; and

(b) the agreements and covenants in this Article shall survive the termination of this Agreement and shall remain in full force and effect thereafter.

Section 5.03 No Recourse to Officers, Councilors, Employees of City

The City and the Beneficiary agree that no covenant or agreement contained in this Agreement will operate, or be construed, as a covenant or agreement of any officer, agent, employee, or member of the governing body, of the City in the individual capacity thereof and none of such persons shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the delivery of this Agreement.

ARTICLE 6

Transfer of this Agreement

Section 6.01 Transfer

(a) The City and the Beneficiary agree that the Beneficiary may Transfer this Agreement in accordance with its judgement and only:

(1) in whole and not in part; and

(2) in compliance by the Beneficiary with applicable federal and state securities laws; and

(3) delivery to the City of (i) a written request for approval of the Transfer of this Agreement to a designated Transferee and (ii) this Agreement and (iii) payment, or an agreement acceptable to the City for payment, of the expenses (if any) of the City to be incurred in connection with the requested Transfer; and

(4) the prior consent of the City thereto expressed by resolution of the governing body thereof as provided in Section 6.01(b).

(b) The City shall, upon receipt of a request for Transfer, in sole the discretion of the governing body of the City, adopt a resolution which shall:

(1) consent to the Transfer of this Agreement;

(2) evidence, and provide for, compliance with Amendment No. 772 with respect to the Transferee as Beneficiary; and

(3) authorize the revision of this Agreement to set forth therein the name and address of the Transferee, as Beneficiary; the Maximum Property Tax Incentive Amount less all payments of Property Tax Incentive Payments theretofore made by the City; and the Maximum Sales Tax Incentive Amount less all payments of Sales Tax Incentive Payments theretofore made by the City.

(c) Upon execution by the Transferee of this Agreement as revised, and delivery thereof to the City, the Transferee shall have all interests and obligations of the Beneficiary under such Agreement.

Section 6.02 Pledge

The City and the Beneficiary agree that the Beneficiary may, in its judgement Pledge the interests thereof in and to the City Incentive Contribution to a creditor of the Beneficiary upon written notice thereof to the City Manager.

Section 6.03 Special Agreements

The City and the Beneficiary agree and covenant:

(a) each Transferee who acquires, or succeeds to, the interest of the Beneficiary under this Agreement shall be subject to all defenses and rights of the City at law or in equity then applicable in the premises and to all payments of the City Incentive Contribution theretofore made by the City; and

(b) this Agreement does not constitute a “negotiable instrument” within the meaning, or for the purpose of, Article 3 of the Alabama Uniform Commercial Code; and

(c) a transferee of this Agreement will not have the rights and remedies of a “holder in due course” provided by, Article 3 of the Alabama Uniform Commercial Code; and

(d) this Agreement does not constitute a “financial asset” or a “security” within the meaning or for the purpose of, Article 8 of the Alabama Uniform Commercial Code; and

(e) a transferee of this Agreement will not have the rights or remedies of a “purchaser” or “bona fide purchaser” provided by Article 8 of the Alabama Uniform Commercial Code.

ARTICLE 7

Remedies

The City and the Beneficiary shall have and may exercise all rights and remedies available at law or in equity under the laws of the State for the conservation, enforcement and protection of the respective rights and interests thereof under this Agreement to the extent the exercise thereof does not violate any applicable provision of law in the premises.

ARTICLE 8

Amendment

The City and the Beneficiary agree the definitions, provisions and terms of this Agreement may be amended only by written agreement duly authorized, executed and delivered by the City and the Beneficiary.

ARTICLE 9

Term and Termination of Agreement

The City and the Beneficiary agree that this Agreement, and all agreements, obligations and undertakings herein, will become effective on the Effective Date and will continue in full force and effect thereafter until and including the first to occur of either of the following dates, whereupon this Agreement and all such agreements, obligations and undertakings will forthwith terminate and be discharged, without recourse, the date on which the City shall have paid to the Beneficiary an aggregate amount equal to the City Incentive Contribution.

ARTICLE 10

Provisions of General Application

The City, the Beneficiary and the Registered Owner (each a "party") covenant and agree as follows:

(a) Governing Law: This Agreement is governed by, and will construed in accordance with, the laws of the State of Alabama without regard to principles of conflict of laws.

(b) Binding Effect: This Agreement is enforceable by, and binding upon, the respective successors and assigns of each party.

(c) Counterparts: This Agreement may be executed in several counterparts each of which shall constitute the same agreement.

(d) Enforceability: If any provision herein shall be unenforceable, the remaining provisions hereof will not be affected thereby and will remain in full force and effect.

(e) Notices; Delivery: Any notice given hereunder must be delivered as provided on Appendix V.

(f) No Jury Trial: Each party (i) irrevocably waives, to the extent permitted by law, any right to trial by jury in any action or proceeding under, or related to, this Agreement and (ii) agrees that no Person has represented (by expression or implication) that a party hereto would not seek to enforce such waiver in the event of litigation.

(g) No Joint Venture: This Agreement does not operate, and cannot be construed, to create a joint venture or partnership by or among the parties.

(h) No Other Beneficiaries: This Agreement is solely for the benefit of the parties and the successors and assigns thereof, and any stated third-party Registered Owner, and no other Person has or may enforce any benefit, interest or rights under or by virtue of this Agreement.

(i) Final and Full Contract: This Agreement constitutes the final and full contractual agreement of the parties and replaces and supersedes all prior or other agreements (written or oral) relating to the subject matter hereof.

EXECUTION AND REGISTRATION BY CITY

IN WITNESS WHEREOF, the City has caused this Agreement to be executed under seal and attested in the name of the City on the Effective Date by officers thereof duly authorized thereunto.

CITY OF VESTAVIA HILLS, ALABAMA

By ____
Mayor

By ____
City Manager

S E A L

ATTEST: ________________________________
City Clerk

201811706v1

EXECUTION BY BENEFICIARY

IN WITNESS WHEREOF, the Beneficiary has caused this Agreement to be executed under seal on the Effective Date by an officer or legal representative thereof duly authorized thereunto.

ALTERA AIP-VESTAVIA, LLC

By: ____________________________________

Its ____________________________________

APPENDIX I

Subject Real Property

APPENDIX II

Existing Operators

NO EXISTING OPERATORS

APPENDIX III

Notices

A. Addresses

1. The City

City of Vestavia Hills, Alabama
1032 Montgomery Hwy
Vestavia Hills, AL 35216
Attn: City Manager

2. The Beneficiary

Altera AIP-Vestavia, LLC
____

3. The Registered Owner

To the address thereof on the Registration of Ownership and Address

B. Manner of Delivery

1. United States Postal Service

Delivery may be made by United States certified or registered mail, return receipt requested, postage pre-paid.

2. Private Delivery Service

Delivery may be made by a private delivery service which is accepted by the Internal Revenue Service as set forth on IRS.gov/PDS.

3. Electronic Means

Communication by electronic mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords or authentication keys, or another method or system.

The above Resolution was duly passed and adopted this March 24, 2025.

____

Mayor

SEAL

Attest: ____________________________

City Clerk

201811706v1

After said resolution had been discussed and considered in full by the Council, it was moved by Councilmember ____________and seconded by Councilmember _______________that said resolution be now placed upon its final passage and adopted. The question being put as to the adoption of said motion and the final passage and adoption of said resolution, the roll was called with the following results:

Ayes:

Ashley Curry, Mayor
Rusty Weaver, Mayor Pro-Tempore
Kimberly Cook
Paul Head
George Pierce

Nays:

The Mayor thereupon declared said motion carried and the resolution passed and adopted as introduced and read.

*   *   *

There being no further business to come before the meeting, it was moved and seconded that the meeting be adjourned. Motion carried.

Approval of Minutes:

Each of the undersigned does hereby approve, and waive notice of, the date, time, place and purpose of the meeting of the Vestavia Hills City Council recorded in the above and foregoing minutes thereof and does hereby approve the form and content of the above and foregoing minutes and resolution therein.

____
Mayor

____
Member of Council

____
Member of Council

____
Member of Council

____
Member of Council

<u>S E A L</u>

Attest:______________________________
City Clerk

201811706v1

Jeff Downes

From: Heyward Hosch <hhosch@MaynardNexsen.com>
Sent: Tuesday, March 4, 2025 9:41 AM
To: Rebecca Leavings; Jeff Downes
Subject: [External] Minutes; Resolutions; and Agreements; for Altera / AIP for 03/10 and 03/24
Attachments: Vestavia 2025_ AIP Minutes and Agreement(201811788.1).docx; Vestavia 2025_ Altera-AIP Minutes and Agreement(201811706.1).docx

Jeff and Becky good morning

Attached are the requested documents as approved by me and counsel for Altera / AIP, for 03/10 and 03/24.

Please note the only differences between the attached and the previously approved Altera agreement is the division of the approved incentives between two related entities; the incentives and the terms are unchanged.

Glad to discuss at your convenience.

Please advise of any questions or if anything else is needed.

All the Best

Heyward

Heyward Hosch
Shareholder | Public Finance
P: 205.254.1855 | C: 205.586.6110
hhosch@MaynardNexsen.com | vCard

1901 Sixth Ave N, Suite 1700
Birmingham, AL 35203

MAYNARDNEXSEN

CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO

March 10, 2025

To:

From:

Cc:

RE: Public Hearing - Resolution Number 5554 - A Resolution Authorizing the Mayor and City Manager to Execute Any and All Documents that Reallocate Existing Economic Incentives from One Entity - Altera AIP, Vestavia LLC to Two Entities - Altera AIP - Vestavia LLC and AIP Vestavia, LLC *(Resolution Numbers 5553 and 5554 are companion resolutions)*

Background:

Recommendation:

Fiscal Impact:

Attachments:
1. Resolution 5554
2. Hosch Email re Division of Incentives 3-4-25

STATE OF ALABAMA

JEFFERSON COUNTY

CERTIFICATE OF CITY CLERK

____

__________, 2025

____

I, the undersigned, do hereby certify that: (1) I am the duly elected, qualified and acting Clerk of the City of Vestavia Hills, Alabama (the "City"), (2) as City Clerk of the City I have access to all original records of the City and I am duly authorized to make certified copies of its records on its behalf, (3) the attached and following pages constitute a complete, verbatim and compared copy of excerpts from the minutes of a regular meeting of the City Council of the City duly held on March 24, 2025, the original of which is on file and of record in the minute book of the City Council in my custody, (4) the resolution set forth in such excerpts is a complete, verbatim and compared copy of such resolution as introduced and adopted by the City Council on such date, and (5) said resolution is in full force and effect and has not been repealed, amended or changed

IN WITNESS WHEREOF, I have hereunto set my hand as Clerk of the City of Vestavia Hills, Alabama, and have affixed the official seal of the City, on the above date.

____

City Clerk of the City of Vestavia Hills, Alabama

S E A L

201811788v1

EXCERPTS FROM THE MINUTES OF A REGULAR MEETING
OF THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA

Economic Development Agreement
for
AIP VESTAVIA, LLC

The City Council of the City of Vestavia Hills, Alabama met in regular public session at City Hall in the City of Vestavia Hills, Alabama, at 6:00 p.m. on March 24, 2025.

The meeting was called to order by the Mayor, and the roll was called with the following results:

Present: Ashley Curry, Mayor
Rusty Weaver, Mayor Pro-Tempore
Kimberly Cook
Paul Head
George Pierce

Absent:

* * *

The Mayor stated that a quorum was present and that the meeting was open for the transaction of business.

* * *

Thereupon, the Mayor stated that the following resolution was first introduced in writing and read by the City Council during the regular meeting of the City Council on Monday, March 10, 2025, whereupon such resolution was introduced by the Mayor and read a second time, as follows:

RESOLUTION NO. 5554

**A RESOLUTION AUTHORIZING AN
ECONOMIC DEVELOPMENT AGREEMENT
BY THE CITY OF VESTAVIA HILLS, ALABAMA
AND
AIP VESTAVIA, LLC**

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

ARTICLE 1

Definitions

For purposes hereof:

Agreement means the Economic Development Agreement by the City and the Beneficiary attached to this Resolution as Exhibit B.

Amendment No. 772 means Section 94.01 of the Constitution of Alabama of 2022, as initially ratified, and amended, as Amendment No. 772 to the Constitution of Alabama of 1901, as amended.

Beneficiary means AIP VESTAVIA, LLC .

Bond Counsel means Maynard Nexsen PC.

City means the City of Vestavia Hills, Alabama.

Council means the governing body of the City.

Public Notice means the notice attached to this Resolution as Exhibit A.

Subject Real Property has the meaning set forth in the Agreement.

.ARTICLE 2

Representations

The Council, upon evidence duly presented to and considered by it, has found and determined, and does hereby find, determine and declare as follows:

(a) The delivery and performance of the Agreement by the City will provide for the economic growth and economic development of the City in furtherance of the public interest thereof.

(b) The expenditure of public funds for the purposes specified in the Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(c) The City caused the Public Notice to be published on March _____, 2025 in *The Alabama Messenger,* which newspaper is in circulation in the City.

(d) The aggregate indebtedness of the City (including without limitation the Total City Commitment under the Agreement) which will be outstanding under, and chargeable against the limitation upon indebtedness prescribed by, Amendment No. 772 on the Effective Date of the Agreement will not exceed fifty percent (50%) of the assessed valuation of the taxable property of the City as assessed for state taxation for the tax year ending September 30, 2024.

(e) As determined in the exercise by the City of its general police power, it is necessary, wise and in the best interest of the health, morals, comfort and welfare of the community and the City to provide for the use of the Subject Real Property in accordance with the terms of the Agreement.

ARTICLE 3

Authorizations and Ratifications

(a) The Council approves and authorizes the terms and provisions of, the representations and warranties of the City set forth in, and the obligations and transactions to be undertaken by the City pursuant to, the Agreement, with such changes thereto (by addition or deletion) which (i) do not (individually or in the aggregate) create any additional obligation, or extend or increase any stated obligation, of the City under the Agreement and (ii) the officers of the City conclusively approve by execution and delivery of the Agreement as provided by this Resolution.

(b) The Council authorizes and directs the Mayor, City Manager, Finance Director, and City Clerk of the City to:

(i) execute under seal, register, and attest the Agreement;

(ii) execute, deliver, file and record such certificates, documents and notices with respect to such matters of fact as Bond Counsel determines to be necessary in connection with the Agreement;

(iii) deliver the Agreement when advised by Bond Counsel; and

(iv) effect the performance of the Agreement.

(c) The Council ratifies and confirms all prior action taken, and all certificates, documents, proceedings and public notices delivered or published, by or on behalf of the City in furtherance of the purposes of this Resolution, the Agreement, and the transactions herein authorized.

ARTICLE 4

Effect of Resolution

The Council authorizes this Resolution to take effect immediately and repeals any provision of any resolution, order, ordinance, or proceeding of the City to the extent of any conflict or inconsistency thereof with the provisions of this Resolution.

EXHIBIT A

Legal Notice

LEGAL NOTICE

LEGAL NOTICE OF PROPOSED ECONOMIC DEVELOPMENT ACTION AND RELATED PUBLIC EXPENDITURES BY THE CITY OF VESTAVIA HILLS, ALABAMA

Notice is hereby given that the City Council (the "Council") of the City of Vestavia Hills, Alabama (the "City") will meet in public session at 6:00 p.m. on March 24, 2025 at City Hall in the City of Vestavia Hills, Alabama for the purpose of considering the transaction of business that may properly come before the Council, such business to include, but not be limited to, the authorization by the Council, pursuant to Section 94.01 of the Constitution of Alabama of 2022, of (a) a resolution (the "Altera Resolution") approving an Economic Development Agreement by the City and Altera AIP-Vestavia, LLC ("Altera"), pursuant to which Agreement the City will provide economic incentive payments to Altera, in consideration of the public benefits to accrue to the City from the establishment and operation by Altera of commercial development facilities in the City, in an initial grant of $300,000, and (b) a resolution (the "AIP Resolution") approving an Economic Development Agreement by the City and AIP Vestavia, LLC ("AIP") pursuant to which Agreement the City will provide economic incentive payments to AIP, in consideration of the public benefits to accrue to the City from the establishment and operation by AIP of commercial development facilities in the City, (i) annually in arrears for a period of ten years amounts equal to 50% of net non-educational ad valorem tax proceeds actually received by the City from such facilities, subject to a maximum total amount of $200,000, and (ii) quarterly in arrears for a period of ten years amounts equal to 50% of net sales tax proceeds actually received by the City from such facilities, subject to a maximum total amount of $1,200,000. The City seeks to achieve, by undertaking its obligations pursuant to the Agreement, the Altera Resolution and the AIP Resolution to promote the local economic and industrial development of the City, to increase employment in the City, and to increase the tax and revenue base of the City. The business entities to whom or for whose benefit the City proposes to lend its credit or grant public funds or thing of value are Altera and AIP. All interested persons may examine and review the Altera Resolution and the AIP Resolution, which shall have attached thereto the complete and correct form of the respective agreements, and make copies thereof at personal expense, and obtain further information as to the matters addressed in this notice, before and after the meeting referenced herein, at the office of the City Manager during the published business hours thereof.

201811788v1

Exhibit B

Economic Development Agreement

The Beneficiary of this Agreement may transfer (in whole and not in part) this Agreement only in compliance with the provisions of this Agreement, applicable federal and state securities law, and subject to all defenses and rights of the City at law or in equity.

This Agreement has not been registered under the Securities Act of 1933, as amended, in reliance upon applicable exemptions.

ECONOMIC DEVELOPMENT AGREEMENT

(AIP VESTAVIA, LLC)

Effective Date: ____________, 2025

CITY OF VESTAVIA HILLS, ALABAMA

and

AIP VESTAVIA, LLC

This Agreement was prepared by Heyward C. Hosch and Ann W. Todd of Maynard Nexsen PC.

201811788v1

ECONOMIC DEVELOPMENT AGREEMENT

(AIP VESTAVIA, LLC)

This Agreement is made and delivered on the Effective Date by:

Beneficiary: AIP VESTAVIA, LLC and successors and assigns thereof

City: City of Vestavia Hills, Alabama

ARTICLE 1

Consideration and Purpose of Agreement; Amendment No. 772

Section 1.01 Consideration and Purpose

The City and the Beneficiary have delivered this Agreement pursuant to the within Amendment No. 772 to provide for the payment by the City to the Beneficiary of the within City Incentive Amounts in consideration of the establishment and operation of the within Development and the public benefits of increased local employment opportunities and public revenues to accrue therefrom.

Section 1.02 Issuance of Agreement Pursuant to Amendment No. 772

The City certifies, declares and recites that this Agreement, and the obligations and undertakings of the City herein, are issued and undertaken under the authority of the within Amendment No. 772 for the provision of funds to be used in furtherance of the power and authority authorized thereunder.

ARTICLE 2

Definitions and Construction of Agreement

Section 2.01 Definitions

For purposes of this Agreement:

Alabama Constitution means the Constitution of Alabama of 2022.

Amendment No. 772 means Section 94.01 of the Constitution of Alabama of 2022, as initially ratified, and amended, as Amendment No. 772 to the Constitution of Alabama of 1901, as amended.

Applicable City Property Taxes means the ad valorem taxes levied and collected by the City within the corporate limits thereof for general municipal purposes at the combined rate of 20.55 mills.

Applicable City Sales Tax means the privilege license (sales) tax levied by the City pursuant to Section 16-26 of Article III of Chapter 16 of the Code of Ordinances of the City at rates in effect on the Effective Date.

Applicable Sales Tax Percentage means 46.875%, determined as a fraction (i) the numerator of which is 93.75% (being 100% less 6.25% as the required reserve by Section 16-26 of Article III of Chapter 16 of the Code of Ordinances of the City) and (ii) the denominator of which is 2.

Calendar Quarter means each period of three consecutive calendar months ending on March 31, June 30, September 30, and December 31 in each year.

City Incentive Amounts means collectively the Property Tax Incentive Amount and the Sales Tax Incentive Amount.

Date of Commencement means the date on which a Pickleball Facility shall open to the public.

Development means the commercial, entertainment, and retail facilities to be established on the Subject Real Property.

Effective Date means September___ , 2025.

Existing Operator means collectively:

(a) each Person identified on Appendix II and each Successor thereof; and

(b) each Relocated Operator and each Successor thereof.

Governmental Authority means (i) the United States of America, (ii) the State and any political subdivision (within the meaning of 26 CFR Section 1.103-1) thereof other than the City, and (iii) any agency, board, bureau, commission, court, department, division, instrumentality, or tribunal, or any other organization of competent jurisdiction, established by the United States of America or the State.

Maximum Property Tax Incentive Amount means $200,000.

Maximum Sales Tax Incentive Amount means $1,200,000.

Person means any natural person, corporation, general or limited partnership, joint venture, limited liability company, limited liability partnership association, trust, unincorporated organization, or Governmental Authority.

Pickleball Facility means a facility located within the Development for the sport of pickleball.

Pledge means the creation of a security interest, in accordance with Article 9A of Title 7 of the Code of Alabama 1975, in and to the City Incentive Amounts by the Beneficiary for the benefit of a creditor thereof.

Prohibited Use means any activity, conduct, business or trade operation, or other use, which the City determines, (a) contravenes the economic development purposes for which the City is undertaking its obligations and duties hereunder in accordance with its power and authority under Amendment No. 772 for the provision of public funds, or (b) in the exercise of the general police power thereof, is in violation of the zoning ordinances of the City, constitutes a private or public nuisance, or is otherwise injurious to the health, morals, comfort or welfare of the community and the City, including without limitation any such activity which involves any of the following: (i) the distribution, provision, or sale of narcotics and related apparatus or paraphernalia, (ii) the distribution, provision or sale, of tangible personal property by bargain, discount, fire-sale, liquidation, pawn or flea-market, surplus, or thrift operations, (iii) the provision of amusement, entertainment, services, or tangible personal property, of a prurient or salacious nature, (iv) the provision of practices related to the occult and the supernatural, (v) the provision of body-piercing, tattoo, and similar services, and (vi) the provision of services relating to the voluntary termination of human life.

Property Tax Incentive Amount means, on each Property Tax Incentive Payment Date, an amount equal to 50.00% of the amount the City determines to have been actually received by the City as net proceeds of the Applicable City Property Taxes from the Development during the then immediately preceding Property Tax Year.

Property Tax Incentive Payment Certificate means the Certificate attached hereto as Appendix IV.

Property Tax Incentive Payment Date means that date which occurs prior to, or on, the Property Tax Incentive Termination Date and after the later of (i) February 15 in each year or (ii) ten (10) days after the date of receipt by the City of the Property Tax Incentive Payment Certificate for the then immediately preceding Property Tax Year.

Property Tax Incentive Termination Date means the first to occur of:

(a) the Property Tax Incentive Payment Date on which the City shall have paid the Maximum Property Tax Incentive Amount; or

(b) the tenth (10th) consecutive Property Tax Incentive Payment Date, without regard to whether the total payments of the Property Tax Incentive Amounts theretofore paid, and to be paid on such date, by the City shall equal the Maximum Property Tax Incentive Amount.

Property Tax Year means the period beginning on October 1 in each year and ending on September 30 of the next succeeding year.

Relocated Operator means any Person who:

(a) on the Effective Date holds a business license or permit from the City for the conduct or operation of any trade, business, vocation, occupation or profession which is located within the City and without the Development, and

(b) after the Effective Date (i) ceases business operations at any location or locations within the City and without the Development and (ii) establishes business operations within the Development in the same line or type of business as that ceased;

provided, however, if the City determines that any Person who would otherwise be a "Relocated Operator" would cease business operations in the City entirely without re-location into the Development the City may determine to that such Person shall not be treated as a "Relocated Operator" for purposes of this Agreement.

Sales Tax Incentive Amount means, on each Sales Tax Incentive Payment Date, an amount equal to the Applicable Sales Tax Percentage of the amount the City determines to have been actually received by the City as net proceeds of the Applicable City Sales Tax solely from the Development during the then immediately preceding Calendar Quarter less and except the amount of such proceeds received by the City from (i) each Existing Operator in the Development for such Calendar Quarter and (ii) any increase in the rate of the Applicable City Sales Tax made by the City after the Effective Date.

Sales Tax Incentive Payment Certificate means the Certificate attached hereto as Appendix III.

Sales Tax Incentive Payment Date means that date which occurs prior to, or on, the Sales Tax Incentive Termination Date and after the later of (i) the tenth (10th) day of the second month of a Calendar Quarter or (ii) ten (10) days after the date of receipt by the City of the Sales Tax Incentive Payment Certificate for such Calendar Quarter.

Sales Tax Incentive Termination Date means the first to occur of:

(a) the Sales Tax Incentive Payment Date on which the City shall have paid the Maximum Sales Tax Incentive Amount; or

(b) the fortieth (40th) consecutive Sales Tax Incentive Payment Date, without regard to whether the total payments of the Sales Tax Incentive Amounts theretofore paid, and to be paid on such date, by the City shall equal the Maximum Sales Tax Incentive Amount.

State means the State of Alabama.

Subject Real Property means the real property located at 1031 Montgomery Highway in the City and described on Appendix I.

Successor shall mean any Person who succeeds to the rights, titles and interests of an Existing Operator or Relocated Operator, whether by consolidation, merger, acquisition (consensual or by legal process) of a controlling interest in assets, reorganization, reincorporation or conversion to another form of business entity.

Total City Commitment means, on any date of determination, collectively an aggregate amount equal to:

(a) the Maximum Property Tax Incentive Amount, less all amounts which shall have been paid by the City as Property Tax Incentive Amounts prior to such date; and

(b) the Maximum Sales Tax Incentive Amount, less all amounts which shall have been paid by the City as Sales Tax Incentive Amounts prior to such date.

Transfer means any assignment, conveyance, sale, or transfer by the Beneficiary of the interests and obligations thereof created and undertaken pursuant to this Agreement as provided in Section 6.01.

Transferee means any Person who shall acquire the interests of the Beneficiary in and to, and succeed to the agreements and obligations of the Beneficiary set forth in, this Agreement as provided in Section 6.01.

Section 2.02 Construction of Agreement

For purposes of this Agreement:

(a) the terms "agree", "shall", and "will" when used in this Agreement with respect to the observance or performance of any agreement, duty or requirement to take, or forebear from taking, any action by the City or the Beneficiary means that such agreement, duty or requirement is imperative and enforceable by available remedies at law or in equity against the Person charged therewith;

(b) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this Agreement as originally executed;

(c) the terms "in this Agreement," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, term or provision;

(d) the Article and Section headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

ARTICLE 3

Representations

Section 3.01 The City

(a) The City delivers this Agreement on the Effective Date pursuant to the authorization hereof by proceedings duly had and taken by the governing body thereof under the authority of Amendment No. 772 and the applicable laws of the State, and having found and determined precedent thereto: (i) no approval of, or filing with, any Governmental Authority is required for the validity, or performance by the City, of this Agreement; (ii) no litigation is pending, or threatened in writing, in which a result adverse to the City would have a material and adverse effect upon the validity, or performance by the City, of this Agreement; and (iii) the delivery and performance of this Agreement by the City will not cause or result in a default or violation under any contractual agreement, or order or ruling of any Governmental Authority, binding upon, or in effect with respect to, the City.

(b) The City recites, certifies and declares that all acts, conditions and things required by the Alabama Constitution and laws of the State to happen, exist and be performed precedent to the authorization, execution and delivery of the Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the amount of the Total City Commitment, together with all other indebtedness of the City, are within every debt and other limit prescribed by the Alabama Constitution and laws of the State.

(c) The City has determined, in the exercise of its general police power, that it is necessary, wise and in the best interest of the health, morals, comfort and welfare of the community and the City to provide for the use of the Subject Real Property in accordance with the terms of this Agreement.

Section 3.02 The Beneficiary

The Beneficiary delivers this Agreement on the Effective Date pursuant to due authorization thereof in compliance with the applicable laws of the state of organization of the Beneficiary and having found and determined precedent thereto: (i) the Beneficiary has made all filings and notices, and obtained all approvals or consents of, any Governmental Authority required for the business operations of the Beneficiary in the State and the validity, and performance by the Beneficiary, of this Agreement; (ii) no litigation is pending, or threatened in writing, in which a result adverse to the Beneficiary would have a material and adverse effect upon the validity, or performance by the Beneficiary of, this Agreement; and (iii) the delivery and performance of this Agreement by the Beneficiary will not cause or result in a default or violation under any contractual agreement or order or ruling of any Governmental Authority binding upon, or in effect with respect to, the Beneficiary.

ARTICLE 4

Payment of City Incentive Amounts

Section 4.01 Payment of the Sales Tax Incentive Amount

(a) The City authorizes, directs and orders the Finance Director of the City to determine the amount of, and to pay to, or at the written direction of, the Beneficiary on each Sales Tax Incentive Payment Date (or the next succeeding business day) which occurs prior to, or on, the Sales Tax Incentive Termination Date, upon presentation to the Finance Director of the Sales Tax Incentive Payment Certificate, in lawful currency of the United States of America immediately available and without interest, the Sales Tax Incentive Amount determined to be due and payable on such date.

(b) The City and the Beneficiary agree that obligation of the City for the payment of any amount of the Sales Tax Incentive Amount on any Sales Tax Incentive Payment Date (i) is contingent and effective only upon receipt of a positive amount of sales tax proceeds from the levy of the Applicable City Sales Tax in the Development for the then immediately preceding Calendar Quarter, (ii) will not exceed the Maximum Sales Tax Incentive Amount, and (iii) is subject to (A) all prior charges upon, and pledges of, the proceeds of the Applicable City Sales Tax, (B) the prior payment, to the extent necessary and provided by the laws of the State, from the Sales Tax Incentive Amount of the reasonable and necessary governmental expenses of operating the City; and (C) the prior payment of the general obligation indebtedness of the City.

Section 4.02 Payment of the Property Tax Incentive Amount

(a) The City authorizes, directs and orders the Finance Director of the City to determine the amount of, and to pay to, or at the written direction of, the Beneficiary on each Property Tax Incentive Payment Date (or the next succeeding business day) which occurs prior to, or on, the Property Tax Incentive Termination Date, upon presentation to the Finance Director of the Property Tax Incentive Payment Certificate, in lawful currency of the United States of America immediately available and without interest, the Property Tax Incentive Amount determined to be due and payable on such date.

(b) The City and the Beneficiary agree that obligation of the City for the payment of any amount of the Property Tax Incentive Amount on any Property Tax Incentive Payment Date (i) is contingent and effective only upon receipt of a positive amount of property tax proceeds from the levy of the Applicable City Property Taxes in the Development for the then immediately preceding Property Tax Year, (ii) will not exceed the Maximum Property Tax Incentive Amount, and (iii) is subject to (A) all prior charges upon, and pledges of, the proceeds of the Applicable City Property Taxes, (B) the prior payment, to the extent necessary and provided by the laws of the State, from the Property Tax Incentive Amount of the reasonable and necessary governmental expenses of operating the City; and (C) the prior payment of the general obligation indebtedness of the City.

ARTICLE 5

Agreements and Obligations of Beneficiary

Section 5.01 Indemnity of City

The Beneficiary covenants and agrees, in consideration of the receipt of the City Incentive Amounts:

(a) to defend, protect, indemnify, and hold harmless the City, its agents, employees, and members of its governing body, from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from any of the following, provided, however, that the foregoing indemnity will not extend to the negligent misconduct of the City, its agents, employees, and members of its governing body: (i) any construction activity performed by Beneficiary, or anyone claiming by through, or under Beneficiary; and (ii) any loss of life, personal injury, or damage to property arising from or in relation to the entry upon, construction, use, operation or occupancy of the Project, including, without limitation, tenants, customers and invitees of the Project or Beneficiary; and

(b) the agreements and covenants in this Section shall survive the termination of this Agreement with respect to events or occurrences happening prior to or upon the termination of this Agreement and shall remain in full force and effect until commencement of an action with respect to any thereof shall be prohibited by law.

Section 5.02 Special Agreement: Use of the Subject Real Property

The Beneficiary covenants and agrees, in consideration of the use of the City Incentive Amounts for the benefit of the Project, and pursuant to the authority of the City under Amendment No. 772 and the general police power of the City:

(a) that the Beneficiary will not, and will not allow or suffer any Person to, use the Subject Real Property (or any part thereof) for any Prohibited Use; and

(b) the agreements and covenants in this Article shall survive the termination of this Agreement and shall remain in full force and effect thereafter.

Section 5.03 No Recourse to Officers, Councilors, Employees of City

The City and the Beneficiary agree that no covenant or agreement contained in this Agreement will operate, or be construed, as a covenant or agreement of any officer, agent, employee, or member of the governing body, of the City in the individual capacity thereof and none of such persons shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the delivery of this Agreement.

ARTICLE 6

Transfer of this Agreement

Section 6.01 Transfer

(a) The City and the Beneficiary agree that the Beneficiary may Transfer this Agreement in accordance with its judgement and only:

(1) in whole and not in part; and

(2) in compliance by the Beneficiary with applicable federal and state securities laws; and

(3) delivery to the City of (i) a written request for approval of the Transfer of this Agreement to a designated Transferee and (ii) this Agreement and (iii) payment, or an agreement acceptable to the City for payment, of the expenses (if any) of the City to be incurred in connection with the requested Transfer; and

(4) the prior consent of the City thereto expressed by resolution of the governing body thereof as provided in Section 6.01(b).

(b) The City shall, upon receipt of a request for Transfer, in sole the discretion of the governing body of the City, adopt a resolution which shall:

(1) consent to the Transfer of this Agreement;

(2) evidence, and provide for, compliance with Amendment No. 772 with respect to the Transferee as Beneficiary; and

(3) authorize the revision of this Agreement to set forth therein the name and address of the Transferee, as Beneficiary; the Maximum Property Tax Incentive Amount less all payments of Property Tax Incentive Payments theretofore made by the City; and the Maximum Sales Tax Incentive Amount less all payments of Sales Tax Incentive Payments theretofore made by the City.

(c) Upon execution by the Transferee of this Agreement as revised, and delivery thereof to the City, the Transferee shall have all interests and obligations of the Beneficiary under such Agreement.

Section 6.02 Pledge

The City and the Beneficiary agree that the Beneficiary may, in its judgement Pledge the interests thereof in and to the City Incentive Amounts to a creditor of the Beneficiary upon written notice thereof to the City Manager.

Section 6.03 Special Agreements

The City and the Beneficiary agree and covenant:

(a) each Transferee who acquires, or succeeds to, the interest of the Beneficiary under this Agreement shall be subject to all defenses and rights of the City at law or in equity then applicable in the premises and to all payments of the City Incentive Amounts theretofore made by the City; and

(b) this Agreement does not constitute a "negotiable instrument" within the meaning, or for the purpose of, Article 3 of the Alabama Uniform Commercial Code; and

(c) a transferee of this Agreement will not have the rights and remedies of a "holder in due course" provided by, Article 3 of the Alabama Uniform Commercial Code; and

(d) this Agreement does not constitute a "financial asset" or a "security" within the meaning or for the purpose of, Article 8 of the Alabama Uniform Commercial Code; and

(e) a transferee of this Agreement will not have the rights or remedies of a "purchaser" or "bona fide purchaser" provided by Article 8 of the Alabama Uniform Commercial Code.

ARTICLE 7

Remedies

The City and the Beneficiary shall have and may exercise all rights and remedies available at law or in equity under the laws of the State for the conservation, enforcement and protection of the respective rights and interests thereof under this Agreement to the extent the exercise thereof does not violate any applicable provision of law in the premises.

ARTICLE 8

Amendment

The City and the Beneficiary agree the definitions, provisions and terms of this Agreement may be amended only by written agreement duly authorized, executed and delivered by the City and the Beneficiary.

ARTICLE 9

Term and Termination of Agreement

The City and the Beneficiary agree that this Agreement, and all agreements, obligations and undertakings herein, will become effective on the Effective Date and will continue in full force and effect thereafter until and including the first to occur of either of the following dates, whereupon this Agreement and all such agreements, obligations and undertakings will forthwith terminate and be discharged, without recourse:

(a) the date on which the City shall have paid to the Beneficiary an aggregate amount equal to the Total City Commitment; or

(b) the occurrence of both:

(i) the Property Tax Incentive Termination Date; and

(ii) the Sales Tax Incentive Termination Date.

ARTICLE 10

Provisions of General Application

The City, the Beneficiary and the Registered Owner (each a "party") covenant and agree as follows:

(a) Governing Law: This Agreement is governed by, and will construed in accordance with, the laws of the State of Alabama without regard to principles of conflict of laws.

(b) Binding Effect: This Agreement is enforceable by, and binding upon, the respective successors and assigns of each party.

(c) Counterparts: This Agreement may be executed in several counterparts each of which shall constitute the same agreement.

(d) Enforceability: If any provision herein shall be unenforceable, the remaining provisions hereof will not be affected thereby and will remain in full force and effect.

(e) Notices; Delivery: Any notice given hereunder must be delivered as provided on Appendix V.

(f) No Jury Trial: Each party (i) irrevocably waives, to the extent permitted by law, any right to trial by jury in any action or proceeding under, or related to, this Agreement and (ii) agrees that no Person has represented (by expression or implication) that a party hereto would not seek to enforce such waiver in the event of litigation.

(g) No Joint Venture: This Agreement does not operate, and cannot be construed, to create a joint venture or partnership by or among the parties.

(h) No Other Beneficiaries: This Agreement is solely for the benefit of the parties and the successors and assigns thereof, and any stated third-party Registered Owner, and no other Person has or may enforce any benefit, interest or rights under or by virtue of this Agreement.

(i) Final and Full Contract: This Agreement constitutes the final and full contractual agreement of the parties and replaces and supersedes all prior or other agreements (written or oral) relating to the subject matter hereof.

EXECUTION AND REGISTRATION BY CITY

IN WITNESS WHEREOF, the City has caused this Agreement to be executed under seal and attested in the name of the City on the Effective Date by officers thereof duly authorized thereunto.

CITY OF VESTAVIA HILLS, ALABAMA

By ____
Mayor

By ____
City Manager

S E A L

ATTEST: ______________________________________
City Clerk

201811788v1

EXECUTION BY BENEFICIARY

IN WITNESS WHEREOF, the Beneficiary has caused this Agreement to be executed under seal on the Effective Date by an officer or legal representative thereof duly authorized thereunto.

AIP VESTAVIA, LLC

By: ______________________________

Its ______________________________

APPENDIX I

Subject Real Property

APPENDIX II

Existing Operators

NO EXISTING OPERATORS

APPENDIX III

Request for Payment of Sales Tax Incentive Amount

Request for Payment of Sales Tax Incentive Amount

From: ____________________, as Beneficiary

To: City of Vestavia Hills, Alabama

Date: ______________, 20__

Re: **Economic Development Agreement dated ______________, 2025, by City of Vestavia Hills, Alabama and ___________________**

The undersigned represents to the City:

(1) the undersigned is the Beneficiary under the above Agreement; and

(2) the undersigned is in full compliance with the agreements and covenants thereof under the Agreement and with all applicable ordinances and regulations of the City applicable thereto; and

(3) requests payment to the undersigned by the City of the Sales Tax Incentive Amount as determined by the City as provided in the Agreement, for the following Calendar Quarter:

__________ 1, 20___ through ____________, 30 / 31, 20_____

In Witness Whereof, the undersigned has caused this instrument to be executed in its name, under seal, by an officer thereof duly authorized thereunto.

____
as Beneficiary

By________________________________

Its________________________________

201811788v1

APPENDIX IV

Request for Payment of Property Tax Incentive Amount

Request for Payment of Property Tax Incentive Amount

From: ____________________, as Beneficiary

To: City of Vestavia Hills, Alabama

Date: ______________, 20__

Re: **Economic Development Agreement dated ______________, 2025, by City of Vestavia Hills, Alabama and ___________________**

The undersigned represents to the City:

(1) the undersigned is the Beneficiary under the above Agreement; and

(2) the undersigned is in full compliance with the agreements and covenants thereof under the Agreement and with all applicable ordinances and regulations of the City applicable thereto; and

(3) requests payment to the undersigned by the City of the Property Tax Incentive Amount as determined by the City as provided in the Agreement, for the following Property Tax Year:

October 1, 20___ through September 30, 20___

In Witness Whereof, the undersigned has caused this instrument to be executed in its name, under seal, by an officer thereof duly authorized thereunto.

____
as Beneficiary

By_________________________________

Its_________________________________

201811788v1

APPENDIX V

Notices

A. Addresses

1. The City

City of Vestavia Hills, Alabama
1032 Montgomery Hwy
Vestavia Hills, AL 35216
Attn: City Manager

2. The Beneficiary

AIP VESTAVIA, LLC
____

3. The Registered Owner

To the address thereof on the Registration of Ownership and Address

B. Manner of Delivery

1. United States Postal Service

Delivery may be made by United States certified or registered mail, return receipt requested, postage pre-paid.

2. Private Delivery Service

Delivery may be made by a private delivery service which is accepted by the Internal Revenue Service as set forth on IRS.gov/PDS.

3. Electronic Means

Communication by electronic mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords or authentication keys, or another method or system.

The above Resolution was duly passed and adopted this March 24, 2025.

____

Mayor

SEAL

Attest: ______________________________

City Clerk

201811788v1

After said resolution had been discussed and considered in full by the Council, it was moved by Councilmember ____________and seconded by Councilmember ___________that said resolution be now placed upon its final passage and adopted. The question being put as to the adoption of said motion and the final passage and adoption of said resolution, the roll was called with the following results:

Ayes:

Ashley Curry, Mayor
Rusty Weaver, Mayor Pro-Tempore
Kimberly Cook
Paul Head
George Pierce

Nays:

The Mayor thereupon declared said motion carried and the resolution passed and adopted as introduced and read.

201811788v1

*   *   *

There being no further business to come before the meeting, it was moved and seconded that the meeting be adjourned. Motion carried.

Approval of Minutes:

Each of the undersigned does hereby approve, and waive notice of, the date, time, place and purpose of the meeting of the Vestavia Hills City Council recorded in the above and foregoing minutes thereof and does hereby approve the form and content of the above and foregoing minutes and resolution therein.

____
Mayor

____
Member of Council

____
Member of Council

____
Member of Council

____
Member of Council

S E A L

Attest:________________________________
City Clerk

201811788v1

Jeff Downes

From: Heyward Hosch <hhosch@MaynardNexsen.com>
Sent: Tuesday, March 4, 2025 9:41 AM
To: Rebecca Leavings; Jeff Downes
Subject: [External] Minutes; Resolutions; and Agreements; for Altera / AIP for 03/10 and 03/24
Attachments: Vestavia 2025_ AIP Minutes and Agreement(201811788.1).docx; Vestavia 2025_ Altera-AIP Minutes and Agreement(201811706.1).docx

Jeff and Becky good morning

Attached are the requested documents as approved by me and counsel for Altera / AIP, for 03/10 and 03/24.

Please note the only differences between the attached and the previously approved Altera agreement is the division of the approved incentives between two related entities; the incentives and the terms are unchanged.

Glad to discuss at your convenience.

Please advise of any questions or if anything else is needed.

All the Best

Heyward

Heyward Hosch
Shareholder | Public Finance
P: 205.254.1855 | C: 205.586.6110
hhosch@MaynardNexsen.com | vCard

1901 Sixth Ave N, Suite 1700
Birmingham, AL 35203

MAYNARDNEXSEN

CITY OF VESTAVIA HILLS

INTER-DEPARTMENT MEMO

March 10, 2025

To: Jeff Downes, City Manager

From:

Cc:

RE: Citizens Comments

Background:

Recommendation:

Fiscal Impact:

Attachments:
None