



**Vestavia Hills
City Council Agenda
October 23, 2023
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation - Steve Dedmon, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. City Manager's Report
8. Councilors' Reports
9. Approval Of Minutes - Approval of minutes of October 9, 2023 (Regular Meeting)
10. Financial Reports - Melvin Turner, III, Finance Director

Old Business

11. Public Hearing - Resolution Number 5479 - A Resolution authorizing the City Manager to enter into a public/private partnership with the Cahaba Heights Merchants Association for the purpose of promoting economic development.
12. Public Hearing - Ordinance Number 3200 - An Ordinance Authorizing the Mayor and City Manager to Enter into Multiple Utility Agreements For Relocation of Utility Facilities on Public Right-of-way For Project CMAQ-7030(600) Massey Road

New Business

13. Resolution 5481 - Re-Appointing A Member To The Board Of Zoning Adjustment

New Business Requesting Unanimous Consent

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

14. Citizens Comments
15. Executive Session

16. Time Of Adjournment

PUBLIC HEARING PROCEDURES

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

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

SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS

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

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

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

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



**Vestavia Hills
City Council Minutes
October 9, 2023
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 George Pierce

MEMBERS ABSENT: City Councilor Paul Head

** attended virtually*

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager; Patrick H. Boone, City Attorney; Cinnamon McCulley, Assistant City Manager; Rebecca Leavings, City Clerk; Melvin Turner, III, Finance Director; Zachary Clifton, Asst. Finance Director; Jason Hardin, Interim Police Chief; Christopher Brady, City Engineer; Umang Patel, Court Director; Marvin Green, Fire Chief

3. Invocation - Jim Cartledge, Senior Vestavia Hills Chaplain

4. Pledge Of Allegiance

5. Approval Of The Agenda

MOTION: Approve the agenda as presented. Motion By: Kimberly Cook. Seconded By: George Pierce.

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

6. Announcements, Candidates and Guest Recognition

- Mayor Curry invited members of the Council to join him up front with special guest Carron Rary, wife of former Police Chief Dan Rary. Also present were Tom Hale, President of the Vestavia Hills Police Foundation, and Interim Police Chief Jason Hardin. Chief Hardin and Mr. Hale presented a hand-drawn portrait of Chief Rary to Mrs. Rary, who was attended by her sister, Cori Gray. A number of VHPD personnel were also present to honor Chief Rary.
- The Mayor introduced Ethan Vice representing Congressman Gary Palmer. The Mayor stated that Congressman Palmer had planned to be here tonight but, due to situations occurring overseas, he had been called back to Washington. Mr. Vice presented to Mrs. Rary a flag that was flown over the capital on August 4, 2023, in honor of Chief Rary and memorialized by a certificate of authenticity showing the date and time it was flown in Chief Rary's honor.
- Mr. Pierce welcomed Erin Holt who was participating in the meeting via Zoom representing the Chamber of Commerce.
- Mr. Weaver announced that the regular Planning and Zoning meeting would be held Thursday, October 12, 2023, beginning at 6 PM, in the Council Chambers.
- The Mayor announced upcoming vacancies on the Vestavia Hills Library Board and the Vestavia Hills Parks and Recreation Board. Applications will be posted beginning tomorrow morning. The deadline for application is Monday, November 13, 2023, at 5 PM. The Council will hold public interviews on December 4 and 6, 2023, with times to be determined after closing of applications. He stated that applications can be found online under "Online Services/City Clerk" on the city's website.
- Mayor Curry stated that there are so many citizens of this City who want to give back to the community, including service on these various boards. He stated that one grateful citizen came to City Hall, last week, and gave a base donation of \$25,000 to begin the Vestavia Hills Fire Foundation in gratitude for the services rendered to him by the VHFD on multiple occasions. The Mayor stated that the City's employees are always giving great service to the City. The Council concurred.
- Mayor Curry announced that he will deliver the annual State of the City tomorrow at the luncheon hosted by the Vestavia Hills Chamber of Commerce. He stated he will be proud to report that the City is still on the right course and getting better every year.

7. Proclamation - Domestic Violence Awareness Month - October 2023

The Mayor presented a Proclamation designating October 2023 as "Domestic Violence Awareness Month." Mr. Downes read the Proclamation aloud and the Mayor presented it to Susann Montgomery-Clark, Rod Clark, Meredith Montgomery-Price, Dottie Bailey, and Kathy and Ted Miller, representing the Megan Montgomery Foundation to Prevent Domestic Violence. Mrs. Clark announced a gingerbread house-making event in December at the Vestavia Hills Civic Center. Proceeds will benefit the Megan Montgomery Foundation to help end domestic violence.

8. Proclamation - Fire Prevention Month - October 2023

The Mayor presented a Proclamation designating October 2023 as "Fire Prevention Month." Mr. Downes read the Proclamation aloud and the Mayor presented it to Representatives from the Vestavia Hills Fire Department including Fire Chief Marvin Green, Captain Christopher Vines, Apparatus Operator Eric Tucker, and Fire Medic Jamie Bensko, Engine One, Vestavia Hills Bill F. Towers Fire Station No. One.

9. City Manager's Report

Highway 31 - Pedestrian Bridge Briefing by Gresham, Smith, and Partners (Aesthetic and Branding Components)

Mr. Downes introduced Gresham, Smith, and Partners to provide a briefing on the design for the Highway 31 Pedestrian Bridge, to address the Council's desire for more emphasis on aesthetics and branding.

- Christopher Brady described the agreements that are needed to allow this construction. ALDOT has approved the plans and designs and hopes to let bids in January 2024.
- Edward Alonso, Gresham Smith, serves as project architect. He showed renderings of the bridge design's branding components. The overall design reflects the architecture found in the Library and the Park, which is appropriate as the bridge will connect the two. The layered curves of the arches reflect hills and also provide stability to the bridge. The design features white lettering reading "Vestavia Hills" over the driving lane on each side of the bridge. This mimics the lettering seen at Wald Park.
 - Mrs. Cook stated that she loves the arches reflecting the hills beyond, and that she was the council member who requested more aesthetic features to encompass the "brand" of the city, but, after seeing the renderings, she feels the lettering on the bridge should be left off because it detracts from the beauty of the bridge's architecture. She suggested a logo on the tower might be a better feature.
 - Mr. Pierce stated that the new lower Highway 31 area will be the City's gateway and he, too, feels that the design is cleaner without the lettering. Also, a logo on the tower would be good.
- Jim Teissere, Dewberry Electrical, presented electrical components of the design. Electrical lighting will consist of highly efficient LED lighting to provide a whitewash effect on the tower. Ingrade fixtures will be used to highlight the stonework surfaces. On the south side, there will be sconces on each side of the elevator, on the lower and on the upper levels. There will be downwash lights along the canopy. Along the bridge, there will be light fixtures at each post which can change colors as the city desires certain colors.
 - Mr. Pierce asked if the bridge light would conflict with traffic lights beyond the bridge. Mr. Teissere noted the concern.
- Phillip Graddon, Dewberry Electrical, showed drawings detailing the location of security cameras. The cameras will be tied into the Library's camera system and will feed back to the Desk Sergeant's office. Wiring will be provided to allow a camera to be installed inside of the elevator if the City desires to do so at a later date.

In closing, Mr. Downes summarized the Council concurrence as follows: proceed with plans as presented, but remove the bridge signs reading "Vestavia Hills." This will not impede the January bid letting target.

10. Councilors' Reports

- Mr. Pierce will be attending the monthly Chamber of Commerce luncheon beginning at 11:30 AM, with keynote speaker Mayor Curry delivering the State of the City address.

11. Approval Of Minutes - September 25, 2023 (work session) and September 25, 2023 (regular meeting)

The Mayor indicated that the minutes for the September 25, 2023 work session and regular meeting are presented for approval. He opened the floor for a motion.

MOTION: Approve the September 25, 2023 work session and regular meeting minutes as presented. Motion By: Kimberly Cook. Seconded By: George Pierce.

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

Old Business

12. Public Hearing - Ordinance Number 3196 - An Ordinance Authorizing the Mayor and City Manager to Enter into an Agreement to Share Responsibilities (Joint Services Agreement) with Jefferson County Commission in Order to Share Responsibilities For Improvements to Columbiana Road for Jefferson County Project No. 37-22-004

MOTION: Approve Ordinance Number 3196 as presented. Motion by Kimberly Cook. Seconded by: George Pierce.

Mr. Downes explained that this and the next two items work together to facilitate improvements at Highway 31 and Columbiana Road, and construction of a roundabout at Sicard Hollow Road and Blue Lake Drive, both projects with the assistance of Jefferson County.

The Columbiana road improvements will cost the City \$100,000, with the remainder of the project costs being paid by the County.

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

13. Public Hearing - Resolution Number 5477 - A Resolution Authorizing the City Manager To Enter Into A Signal Operation And Maintenance Agreement With The Alabama Department Of Transportation (ALDOT) Related To The Improvements To The Columbiana Road And Highway 31 Intersection

MOTION: Approve Resolution Number 5477 as presented. Motion by Kimberly Cook. Seconded by: George Pierce.

The Mayor stated that this was the second of the three items discussed in the previous

discussion. He 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, George Pierce. No: None. Abstain: None. Motion passed.

14. Public Hearing - Ordinance Number 3199 - An Ordinance Authorizing the Mayor and City Manager to Enter into an Agreement to Share Responsibilities (Joint Services Agreement) with Jefferson County Commission and the City of Birmingham, Alabama in Order to Share Responsibilities For Improvements to the Blue Lake Drive and Sicard Hollow Road Intersection for Jefferson County Project No. 37-19-400

MOTION: Approve Ordinance Number 3199 as presented. Motion by Kimberly Cook. Seconded by: George Pierce.

The Mayor stated that this is the 3rd item for the construction of a round-a-bout at Sicard Hollow Road.

Mr. Downes explained that these improvements are in cooperation with Jefferson County and the City of Birmingham, but also require the granting of right-of-way from the Birmingham Water Works Board (BWVB). He stated that, assuming BWVB approval of the request will occur soon, this project should bid in December, with 2024 construction. The City is picking up about \$1 million of the expense of these improvements with credit for design and engineering costs already incurred.

Mrs. Cook stated she is very excited about this project because these improvements are needed to make that intersection safe. It is a very dangerous intersection and she has been asking for these improvements for several years.

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

New Business

15. Resolution Number 5480 - A Resolution accepting terms for financing vehicles and/or equipment for FY24

MOTION: Approve Resolution Number 5480 as presented. Motion by George Pierce. Seconded by: Kimberly Cook.

Mr. Downes stated that the budget was adopted and the Finance Dept looked for the most advantageous financing terms. After gathering quotes from different lenders, the Finance Director recommended Pinnacle Bank.

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

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

New Business Requesting Unanimous Consent

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

16. Public Hearing - Resolution Number 5479 - A Resolution authorizing the City Manager to enter into a public/private partnership with the Cahaba Heights Merchants Association for the purpose of promoting economic development.

17. Public Hearing - Ordinance Number 3200 - An Ordinance Authorizing the Mayor and City Manager to Enter into Multiple Utility Agreements For Relocation of Utility Facilities on Public Right-of-way For Project CMAQ-7030(600) Massey Road

18. Citizens Comments

The Mayor opened the floor for Citizen comments.

- None.

19. Time Of Adjournment

There being no further business, Mrs. Cook made a motion to adjourn. The Mayor adjourned the meeting at 7:45 PM

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk

1.) Reconciled Cash Balance

The overall reconciled cash balance for the month of September was \$44,546,764 which is comprised of the following funds:

General Funds	\$35,189,918
Restricted Funds	\$9,353,866
Petty Cash	<u>\$2,980</u>
Total	<u>\$44,546,764</u>

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

Monthly Revenues	\$3,638,580	YTD Revenues	\$65,874,950
Monthly Expenses	<u>\$4,713,718</u>	YTD Expenses	<u>\$61,477,339</u>
Monthly Fund Balance	<u>(\$1,075,138)</u>	YTD Fund Balance	<u>\$4,397,612</u>

3.) Comparative Fund Balances:	<u>YTD</u>	<u>Variance</u>
Actual - 2022-2023	\$4,397,612	
Budget - 2022-2023	\$0	\$4,397,612
Last Year - 2021-2022	\$3,203,615	\$1,193,996

Note:

The "Actual Fund Balance" is \$4,397,612 greater than the "Budgeted Fund Balance" and \$1,193,996 greater than "Last Year Fund Balance".

MTD						YTD			Variance	
		Actual	Budget	Last Year		Actual	Budget	Last Year	Act vs. Bdgt	Act vs LY
REVENUES		3,638,580	3,020,837			65,874,950	58,129,346	56,920,907	7,745,604	8,954,043
EXPENSES		4,713,718	5,670,161			61,477,339	58,129,346	51,378,029	(3,347,993)	(10,099,310)
FUND BALANCE		(1,075,138)	(2,649,324)	0		4,397,612	0	5,542,879	4,397,612	(1,145,267)
Advalorem - Real		0	3,621	2,314		18,955,296	17,311,511	17,139,276	1,643,785	1,816,020
Sales Tax		2,339,843	2,126,408	2,537,877		28,598,997	24,804,732	28,150,124	3,794,265	448,873
Utility Franchise Fees		0	0	0		2,467,092	2,353,277	2,353,374	113,815	113,719
Business License		127,243	91,772	64,313		3,977,285	3,975,640	3,750,238	1,645	227,047
Advalorem - Personal		222,322	163,259	234,742		2,337,117	1,753,590	2,016,972	583,527	320,144
October thru September 2023 (12 months)						2022-2023				
		Actual	Budget Total	Outstanding Bal		% Received	% Outstanding	Verification		
Advalorem - Real		18,955,296	17,311,511	1,643,785		109.50%	-9.50%	100.00%		
Sales Taxes		28,598,997	24,804,732	3,794,265		115.30%	-15.30%	100.00%		
Utility Franchise Fees		2,467,092	2,353,277	113,815		104.84%	-4.84%	100.00%		
Business License		3,977,285	3,975,640	1,645		100.04%	-0.04%	100.00%		
Advalorem - Personal		2,337,117	1,753,590	583,527		133.28%	-33.28%	100.00%		
SEPTEMBER		MTD				MTD				
				Variance		Last Year	Act vs LY			
Advalorem - Real		0	3,621	(3,621)		2,314	(2,314)			
Sales Taxes		2,339,843	2,126,408	213,435		2,537,877	(198,034)			
Utility Franchise Fees		0	0	0		0	0			
Business License		127,243	91,772	35,471		64,313	62,930			
Advalorem - Personal		222,322	163,259	59,063		234,742	(12,420)			

CITY OF VESTAVIA HILLS															
MONTHLY CASH REPORT															
"RECONCILED BALANCES"															
General Funds	Banking Institutions	APR	Sept 2022	Oct 2022	Nov 2022	Dec 2022	Jan 2023	Feb 2023	March 2023	April 2023	May 2023	June 2023	July 2023	August 2023	Sept 2023
General / Operational Funds	Region Bank	4.97%	6,548,022.84	5,565,982.62	4,801,445.10	5,599,579.93	16,459,200.47	24,217,752.68	14,342,621.96	12,018,312.32	11,759,702.36	11,590,713.02	7,066,588.69	5,063,164.63	4,111,462.41
Enhanced Cash Strategy	Region Bank	5.25%	9,968,394.12	9,970,136.53	10,004,892.48	10,033,846.24	10,079,701.89	10,084,683.50	10,163,965.58	10,189,384.32	10,191,577.01	10,204,945.93	10,243,233.98	10,286,223.41	10,311,308.65
Payroll Fund	Region Bank	0.25%	720.93	720.93	720.93	720.93	720.93	720.93	720.93	720.93	5,648.68	5,648.68	5,648.68	6,082.04	6,082.04
Emergency Reserve Fund	Morgan Stanley/Region	2.50%	15,422,957.06	15,401,924.13	15,469,278.74	15,508,437.79	15,585,494.46	15,544,687.62	15,723,723.88	17,600,611.65	17,597,102.85	17,637,280.09	17,714,753.81	17,794,062.04	17,865,878.82
Court & Corrections Fund	Region Bank	0.25%	848,699.37	996,489.37	1,098,973.37	430,062.37	574,310.77	719,529.33	902,593.63	1,043,983.69	411,577.03	123,750.03	139,387.03	81,431.83	84,101.83
American Rescue Plan (COVID-19)	SouthPoint	4.40%	4,464,432.96	4,452,571.95	4,356,508.94	4,358,378.84	4,357,653.60	4,369,028.87	4,341,120.29	4,352,374.03	4,119,174.25	3,551,189.79	2,790,490.26	2,800,937.32	2,811,084.36
Total - Balance			\$37,253,227.28	\$36,387,825.53	\$35,731,819.56	\$35,931,026.10	\$47,057,082.12	\$54,936,402.93	\$45,474,746.27	\$45,205,386.94	\$44,084,782.18	\$43,113,527.54	\$37,960,102.45	\$36,031,901.27	\$35,189,918.11
Restricted Funds															
Court Cash Bonds	Regions Bank	0.25%	109,621.00	116,135.20	122,085.20	127,130.20	141,930.20	141,120.20	139,685.20	139,025.20	145,324.20	147,989.20	147,723.00	151,737.20	155,927.20
Contractors' Bonds & CDs on Hand	City Clerk's Office	n/a	6,519,249.56	6,442,249.56	6,442,249.56	6,442,249.56	6,247,607.06	6,247,607.06	6,247,607.06	6,247,607.06	4,258,644.42	6,314,702.42	6,314,702.42	4,474,038.42	4,474,038.42
Contractors' Cash Bonds	SouthPoint	0.25%	897,645.10	923,093.29	915,459.54	888,154.29	855,033.33	814,694.62	796,919.40	742,683.86	757,009.15	757,967.11	744,330.84	706,333.77	696,630.28
Confiscated Funds	SouthPoint	1.25%	461,950.40	462,440.83	286,473.35	286,777.48	287,081.94	287,357.22	287,662.29	287,957.83	288,263.54	288,559.70	288,866.05	289,172.72	289,469.82
Community Spaces	SouthPoint	1.65%	50.29	50.92	51.53	52.16	52.79	53.36	454.99	455.60	456.23	456.84	457.47	458.11	458.72
2013 GOW - QEBC Sinking Fund	Bank of New York	2.35%	1,682,884.99	1,701,396.09	1,701,396.09	1,701,396.09	1,701,396.09	1,701,396.09	1,701,396.09	1,891,162.76	1,891,162.76	1,891,162.76	1,891,162.76	1,891,162.76	1,891,162.76
Library Campaign Fund/Donations	Pinnacle	earnings offset fees	304,968.90	310,327.13	317,635.51	332,006.02	337,344.68	338,450.14	344,930.72	351,677.17	374,885.75	382,167.51	387,465.56	429,604.48	433,701.36
Lease Escrow Funds	Truist & Robertson		n/a	n/a	n/a	n/a	n/a	n/a	n/a	2,160,736.32	2,162,359.34	1,407,636.58	1,409,264.98	1,410,896.12	1,412,477.26
Total Balance			\$9,976,370.24	\$9,955,693.02	\$9,785,350.78	\$9,777,765.80	\$9,570,446.09	\$9,530,678.69	\$9,518,655.75	\$11,821,305.80	\$9,878,105.39	\$11,190,642.12	\$11,183,973.08	\$9,353,403.58	\$9,353,865.82
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			500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00
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			\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00
Grand Total - All Funds			\$47,232,577.52	\$46,346,498.55	\$45,520,150.34	\$45,711,771.90	\$56,630,508.21	\$64,470,061.62	\$54,996,382.02	\$57,029,672.74	\$53,965,867.57	\$54,307,149.66	\$49,147,055.53	\$45,388,284.85	\$44,546,763.93
Petty Cash Itemization															
City Clerk Dept.	none														
Court Dept.	\$500.00														
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	\$2,980.00														

	MONTH OF SEPTEMBER 2023							YEAR-TO- DATE THROUGH SEPTEMBER 2023						
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
REVENUE SUMMARY	2022-2023	2022-2023	2021-2022	Actual to Budget		Actual to Last Year		2022-2023	2022-2023	2021-2022	Actual to Budget		Actual to Last Year	
	Actual	Budget	Actual	Amount	Percentage	Amount	Percentage	Actual	Budget	Actual	Amount	Percentage	Amount	Percentage
STATE REVENUE	12,323.93	20,672.00	13,047.55	(8,348)	-40.38%	(724)	-5.55%	289,305	221,372	295,030	67,933	30.69%	(5,725)	-1.94%
COUNTY REVENUE	243,452	190,725	251,714	52,727	27.65%	(8,261)	-3.28%	21,693,276	19,476,621	19,557,584	2,216,655	11.38%	2,135,691	10.92%
CITY REVENUE	3,294,245	2,723,499	2,858,172	570,746	20.96%	436,073	15.26%	42,587,060	37,421,053	39,251,935	5,166,007	13.81%	3,335,125	8.50%
PARK & RECREATION	88,558	85,941	14,678	2,617	3.05%	73,881	503.35%	1,305,309	1,010,300	953,969	295,009	29.20%	351,340	36.83%
TOTAL REVENUES	3,638,580	3,020,837	3,137,611	617,743		500,969		65,874,950	58,129,346	60,058,519	7,745,604		5,816,431	
EXPENDITURE SUMMARY														
NON DEPARTMENTAL	1,116,040	1,959,373	2,088,379	843,333	43.04%	972,339	46.56%	20,324,438	17,165,401	19,618,501	(3,159,037)	-18.40%	(705,936)	-3.60%
CITY COUNCIL	4,774	5,883	5,885	1,109	18.85%	1,111	18.87%	81,274	85,241	75,248	3,967	4.65%	(6,026)	-8.01%
MAYOR & ADMINISTRATION	141,636	155,036	125,804	13,400	8.64%	(15,833)	-12.59%	1,861,122	1,893,029	1,594,259	31,907	1.69%	(266,863)	-16.74%
CITY CLERK	39,645	44,608	40,644	4,962	11.12%	999	2.46%	493,645	498,885	446,503	5,240	1.05%	(47,142)	-10.56%
MUNICIPAL COMPLEX	34,714	20,850	21,949	(13,864)	-66.50%	(12,766)	-58.16%	349,052	292,609	289,754	(56,443)	-19.29%	(59,298)	-20.46%
INFORMATION SERVICES	103,011	67,346	47,322	(35,665)	-52.96%	(55,689)	-117.68%	763,882	783,538	587,844	19,656	2.51%	(176,038)	-29.95%
POLICE	1,022,717	1,053,322	953,584	30,605	2.91%	(69,133)	-7.25%	12,329,399	12,187,078	11,177,788	(142,321)	-1.17%	(1,151,611)	-10.30%
FIRE	1,083,219	1,103,189	1,045,830	19,970	1.81%	(37,390)	-3.58%	12,037,319	11,972,393	11,269,085	(64,926)	-0.54%	(768,234)	-6.82%
INSPECTION	65,250	64,359	52,224	(892)	-1.39%	(13,027)	-24.94%	720,766	735,989	558,982	15,223	2.07%	(161,784)	-28.94%
PUBLIC SERVICES	450,378	533,033	888,991	82,656	15.51%	438,613	49.34%	5,316,572	5,477,755	8,677,318	161,183	2.94%	3,360,746	38.73%
PUBLIC LIBRARY	197,928	237,227	206,265	39,299	16.57%	8,337	4.04%	2,772,312	2,809,928	2,559,622	37,616	1.34%	(212,690)	-8.31%
PARKS & LEISURE SERVICES	454,404	425,935	0	(28,469)	-6.68%	(454,404)	#DIV/0!	4,427,560	4,227,501	0	(200,059)	-4.73%	(4,427,560)	#DIV/0!
TOTAL EXPENDITURES	4,713,718	5,670,161	5,476,875	956,444		763,157		61,477,339	58,129,346	56,854,903	(3,347,993)		(4,622,435)	
SURPLUS / (DEFICIT)	(1,075,138)	(2,649,324)	(2,339,263)	1,574,186		1,264,126		4,397,612	0	3,203,615	4,397,612		1,193,996	



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

October 23, 2023

To: Jeff Downes, City Manager

Cc:

From: Cinnamon McCulley, Assistant City Manager

RE: Public Hearing - Resolution Number 5479 - A Resolution authorizing the City Manager to enter into a public/private partnership with the Cahaba Heights Merchants Association for the purpose of promoting economic development.

Background:

Resolution authorizing the City Manager to enter into a public/private partnership with the Cahaba Heights Merchants Association (CHMA), a 501c6, for the purpose of promotion of economic development. Funds not to exceed \$5,000 for the purpose of promoting economic development in the City.

Recommendation:

City Attorney Patrick Boone approved the expenditure of public funds for the promotion of this economic development project.

Fiscal Impact:

This is a budgeted expense for FY2024. Not to exceed \$5,000.

Attachments:

1. Resolution 5479

2. Boone Legal Opinion CHMA 09.21.2023

RESOLUTION NUMBER 5479

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PUBLIC/PRIVATE PARTNERSHIP WITH THE CAHABA HEIGHTS MERCHANTS ASSOCIATION, A 501C6 FOR THE PURPOSE OF PROMOTION OF ECONOMIC DEVELOPMENT PURSUANT TO ARTICLE IV, §94 AS AMENDED BY AMENDMENTS 112 AND 558 OF THE CONSTITUTION OF ALABAMA OF 1901.

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

1. The delivery and performance of the partnership between the Cahaba Heights Merchants Association (CHMA), an Alabama non-profit 501c6 corporation for the purpose of the promotion of economic development in the City, will provide for the economic growth and economic development of the City in furtherance of the public interest thereof pursuant to Article IV, §94, as amended by Amendments 112 and 558 of the Constitution of Alabama of 1901; and
2. The donation and expenditure of public funds in the amount of \$5,000 as requested in the partnership will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities; and
3. The City caused the Public Notice to be published on October 11, 2023 in the *Alabama Messenger*, which newspaper is in circulation in the City.
4. This Resolution Number 5479 shall be effective upon adoption and approval.

ADOPTED and APPROVED this the 23rd day of October, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

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

The City of Vestavia Hills Alabama (the "City") gives notice the governing body of the City will meet in public session at 6:00 p.m. on October 23, 2023 at City Hall at 1032 Montgomery Highway in the City of Vestavia Hills, Alabama, for the purpose of considering such matters as may be properly presented thereto, including the authorization by the City pursuant to Article IV, §94 as amended by Amendments 112 and 558 of the Alabama Constitution of 1901 of the terms, delivery and performance by the City of that certain partnership by the City and the Cahaba Heights Merchants Association (CHMA) pursuant to which partnership the City shall make economic development grant to the CHMA in a donation of \$5,000 in consideration of the public benefits to accrue from the establishment and the operation of economic development in the City by adoption of Resolution Number 5479.

The City seeks to achieve, by undertaking its obligations pursuant to the partnership, to promote the local economic development of the City, by the increase of (i) employment in the City and (ii) the tax and revenue base of the City from increased commercial activity in the City by non-residents.

The business entity to whom or for whose benefit the City propose to lend its credit or grant public funds or thing of value are the CHMA.

In compliance with the Americans with Disabilities Act, interpretive assistance and or other reasonable accommodations will be provided upon request made to the City Clerk of the City at least two business days in advance of the meeting referenced herein.

All interested persons may examine and review the proposed Resolution, make copies thereof at personal expense, and obtain further information about the information and matters addressed in this Notice, at the offices of the City Clerk of the City during normal business hours before and after the meeting herein referenced.

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

September 21, 2023

By Electronic Mail

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

In Re: Cahaba Heights Merchants' Association, Inc.

Dear Mr. Downes:

We met in your office on Monday morning, September 18, 2023. During that meeting, you requested that I provide you with my written legal opinion regarding whether or not the City of Vestavia Hills, Alabama ("City") may donate public funds not to exceed Five Thousand Dollars (\$5,000.00) to Cahaba Heights Merchants' Association, Inc. (CHMA) to be used by CHMA for the purpose of promoting economic development in the City. The purpose of this letter is to comply with your request.

I. ALABAMA LAW
REGARDING THE EXPENDITURE OF PUBLIC FUNDS

A. MUNICIPALITIES IN ALABAMA ARE REQUIRED TO SPEND PUBLIC FUNDS SOLELY FOR PUBLIC PURPOSES:

1. **Constitution of Alabama:** Article IV §94, as amended by Amendments 112 and 558.
2. **Supreme Court of Alabama:** *Slawson v. Alabama Forestry Commission*, 631 So.2d 953 (Ala.1994).

B. DEFINITION OF "PUBLIC PURPOSE": In 1980, the Supreme Court of Alabama held that the paramount test of whether a proposed appropriation is for a proper "public purpose" is whether the expenditure confers direct public benefits of reasonably general character, i.e., to significant parts of public, as distinguished from remote and theoretical benefits. *Opinion of Justices*, 384 So.2d 1051. The Court went on to write, a public purpose "has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, the general welfare of the community...."

C. THE CITY COUNCIL DETERMINES WHETHER OR NOT AN EXPENDITURE OF PUBLIC FUNDS IS FOR A "PUBLIC PURPOSE": The City Council is the legislative body of the City (Title 11-43-43, *Code of Alabama, 1975*) and has the management and control of the finances and all of the property, real and personal, belonging to the City (Title 11-43-56, *Code of Alabama, 1975*). The question of whether or not an appropriation is for a public purpose is a legislative decision (*Opinion of the Justices No. 269, 384 So.2d 1051 (1980)*).

The Supreme Court is not given the power to review the wisdom or unwisdom or the rightness or wrongness of laws passed by the governing bodies of municipalities. *Guarisco v. City of Daphne*, 825 So.2d 750; *City of Attalla*, 889 So.2d 559. A Court cannot substitute its judgment for that of a municipality, absent proof of unfair dealing, fraud or bad faith. *Ex Parte City of Birmingham*, 624 So.2d 1018, 1021 (1993).

D. AMENDMENT TO THE CONSTITUTION OF ALABAMA, 1901: On April 6, 2004, the Legislature of the State of Alabama enacted Act 2004-094 to propose an amendment to the *Constitution of Alabama of 1901*. The proposed constitutional amendment appeared as Amendment Number 3 on the ballot for the statewide referendum conducted during the National Election on November 11, 2004. Voters approved the constitutional amendment as follows:

<u>Jurisdiction</u>	<u>For</u>	<u>Against</u>
Voters Statewide	727,630	584,014
Jefferson County	124,306	97,631
City of Vestavia Hills	6,813	4,691

The constitutional amendment was, therefore, ratified and brought forward as Article IV, §94.01, which reads in pertinent part as follows:

“(a) The governing body of any county, and the governing body of any municipality located therein, for which a local constitutional amendment has not been adopted authorizing any of the following, shall have full and continuing power to do any of the following:

(3) Lend its credit to or grant public funds and things of value in aid of or to any individual, firm, corporation, or other business entity, public or private, for the purpose of promoting the economic and industrial development of the county or the municipality.

(c) Neither the county nor any municipality located therein shall lend its credit to or grant any public funds or thing of value to or in aid of any private entity under the authority of this amendment unless prior thereto both of the following are satisfied:

(1) The action proposed to be taken by the county or municipality is approved at a public meeting of the governing body of the county or municipality, as the case may be, by a resolution containing a determination by the governing body that the expenditure of public funds for the purpose specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(2) At least seven days prior to the public meeting, a notice is published in the newspaper having the largest circulation in the county or municipality, as the case may be, describing in reasonable detail the action proposed to be taken, a description of the public benefits sought to be achieved by the action, and identifying each individual, firm, corporation, or other business entity to whom or for whose benefit the county or the municipality proposes to lend its credit or grant public funds or thing of value.

For purposes of the foregoing, any sale, lease, or other disposition of property for a price equal to the fair market value thereof shall not constitute the lending of credit or a grant of public funds or thing of value in aid of a private entity."

II. FACTS

Records at the Jefferson County Courthouse reflect that Cahaba Heights Merchants' Association, Inc. (CHMA) was incorporated as an Alabama nonprofit corporation on March 22, 2018 with its Articles of Incorporation having been filed in the office of the Jefferson County Probate Court on March 22, 2018 and recorded at Inst. #2018028596, Pages 1-6.

Article Three of the Articles of Incorporation reads as follows:

"ARTICLE THREE

Purposes. The corporation is organized exclusively for actions of individuals with common business interests in the manner of a business league within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended (the 'Code') or any corresponding provisions of any future United States Internal Revenue Law, and the regulations promulgated thereunder, including, without limiting the generality of the foregoing, to engage in any lawful purpose."

It is my understanding that CHMA has qualified as a tax-exempt organization pursuant to the *Internal Revenue Code* at 26 USC §501(c)(6), which reads as follows:

"§501. Exemption from tax on corporations, certain trusts, etc.

(a) **Exemption from taxation.**—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 and 503....

(c) **List of exempt organizations.**—The following organizations are referred to in subsection (a):

(6) Business leagues, chambers of commerce, real estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.”

III. LEGAL ISSUE

May the City legally donate public funds not to exceed the sum of Five Thousand Dollars (\$5,000.00) to CHMA for the promotion of economic development in the City?

IV. LEGAL OPINION

It is my legal opinion that the answer to the legal question is in the affirmative.

V. BASIS FOR LEGAL OPINION

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

A. **CONSTITUTION OF ALABAMA OF 1901:** Article IV, §94.01.

B. **SUPREME COURT OF ALABAMA:**

1. *Kenamer v. City of Guntersville*, 315 So.3d 1090 (Ala.2020).

2. *Slawson v. Alabama Forestry Commission*, 631 So.2d 953 (Ala.1994).

C. **OPINIONS OF THE ALABAMA ATTORNEY GENERAL:**

1. Opinion Number 2007-122 dated August 6, 2007 to the City of Eufaula.

2. Opinion Number 2009-086 dated June 29, 2009 to the Town of Magnolia Springs.

3. Opinion Number 2014-094 dated September 9, 2014 to the City of Roanoke.

VI. MY RECOMMENDATIONS

A. I recommend that City Clerk Rebecca Leavings prepare a simple resolution wherein the City Council finds and determines that the donation of public funds not exceeding Five Thousand Dollars (\$5,000.00) donated to CHMA for the purpose of the promotion of economic development in City is a public purpose, and authorizing and directing the payment to CHMA.

B. I recommend publication of a copy of the resolution at least seven (7) days prior to the public meeting for consideration of approval thereof in the newspaper as required by Article IV, §94.01 of the *Constitution of Alabama of 1901*.

VII. CONCLUSION

The vote on Amendment 772 on November 11, 2004 shows that the overwhelming majority of the citizenry in the City favor the use of public funds for the promotion of economic development.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Boone".

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

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



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

October 23, 2023

To: Jeff Downes, City Manager

Cc: Christopher Brady, City Engineer
Rebecca Leavings, City Clerk

From: Lori Beth Kearley, Public Services Director

RE: Public Hearing - Ordinance Number 3200 - An Ordinance
Authorizing the Mayor and City Manager to Enter into Multiple
Utility Agreements For Relocation of Utility Facilities on Public
Right-of-way For Project CMAQ-7030(600) Massey Road

Background:

Certain utility relocations within the City's right-of-way are required in order to construct roadway and sidewalk improvements along Massey Road as part of Project CMAQ-7030(600).

Coordination with each utility company that has known facilities along Massey Road has been completed as part of the design phase of the project.

The utility companies that have known conflicts with the proposed infrastructure improvements have provided relocation plans along with a signed Relocation Agreement specific to their work that is pursuant to ALDOT requirements.

Execution of the Agreements by the City is required in order to obtain a Utility

Certificate for the project, which is required in order for ALDOT to let the project to bid.

We are requesting that the City Council authorize the Mayor and City Manager to execute and deliver any all documents needed in order to allow the utility relocations required in order to accomplish said infrastructure improvements.

Exhibit 1 - Non-Reimbursable Agreement for Relocation of Utility Facilities on Public Right-of-Way - Alabama Power

Exhibit 2 - Non-Reimbursable Agreement for Relocation of Utility Facilities on Public Right-of-Way - AT&T

Exhibit 3 - Non-Reimbursable Agreement for Relocation of Utility Facilities on Public Right-of-Way - Spectrum Southeast LLC

Exhibit 4 - Reimbursable Agreement for Relocation of Utility Facilities on Private or Public Right-of-Way Work to be Done by State Contractor - The Water Works Board of the City of Birmingham

Exhibit 5 - Reimbursable Agreement for Relocation of Utility Facilities on Private or Public Right-of-Way Work to be Done by State Contractor - Jefferson County Commission

Recommendation:

The ALDOT standard utility agreements have been reviewed by Engineering, and we recommend execution of the documents subject to City Attorney's review and approval of the terms.

Fiscal Impact:

Costs associated with utility relocations have already been approved in the City's Capital Fund in the FY24 budget.

Attachments:

1. Ordinance 3200
2. Massey Road - Utility Agreements
3. PH Boone Legal Opinion to City Manager October 23, 2023

ORDINANCE NUMBER 3200

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

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

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

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

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

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

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

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

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

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

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

DONE, ORDERED, ADOPTED and APPROVED this the 23rd day of October, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3200 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 23rd day of October, 2023 as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk

REVISED 11/18/2014

CITY FORM NO. 1

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

PROJECT NUMBER CMAQ-7030(600)
CITY NUMBER _____
CITY Vestavia Hills

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

WITNESSETH:

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

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

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

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

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

WITNESS:

Shane Perkins

BY:

(Legal Name of Utility)

Joshua Phillips
(Signature)

Joshua Phillips
(Type or Printed Name)

Transmission Line Services Supervisor
(Type or Printed Title)

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

Birmingham, Al. 35291
(Address)

205-257-4830
(Telephone)

RECOMMENDED FOR APPROVAL:

BY: _____
CITY ENGINEER/ENGINEER-OF-RECORD

BY: _____
REGION ENGINEER

CITY OF _____

BY: _____
MAYOR

APPROVED:

BY: _____
STATE LOCAL TRANSPORTATION ENGINEER

DATE: _____

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

PROJECT NUMBER CMAQ-7030(600)
CITY NUMBER _____
CITY Vestavia Hills

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

WITNESSETH:

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

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

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

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

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

WITNESS:

AT&T Southeast, dba Bellsouth Telecom

(Legal Name of Utility)

Chandler Russ

BY:

Dennis Russ

(Signature)

DENNIS RUSS

(Type or Printed Name)

MGR OSP PLNG & ENGRG DESIGN • ACCESS - COI

(Type or Printed Title)

1876 Data Dr.

(Address)

Hoover, AL 35244

(Address)

205-531-1211

(Telephone)

RECOMMENDED FOR APPROVAL:

BY:

CITY ENGINEER/ENGINEER-OF-RECORD

BY:

REGION ENGINEER

CITY OF

BY:

MAYOR

APPROVED:

BY:

STATE LOCAL TRANSPORTATION ENGINEER

DATE:

REVISED 11/18/2014

CITY FORM NO. 1

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

PROJECT NUMBER CMAQ-7030(600)
CITY NUMBER _____
CITY Vestavia Hills

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

WITNESSETH:

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

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

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

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

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

WITNESS:

Susan Marchant

BY:

Spectrum Southeast, LLC

By: Charter Communications, Inc., its Managers

(Legal Name of Utility)

Thom C. Tyrrell

(Signature)

Thom C. Tyrrell

(Type or Printed Name)

Area Vice President

(Type or Printed Title)

151 London Parkway

(Address)

Birmingham, AL 35211

(Address)

RECOMMENDED FOR APPROVAL:

205-573-6715 - Kert Harrell

(Telephone)

BY:

CITY ENGINEER/ENGINEER-OF-RECORD

BY:

REGION ENGINEER

CITY OF

BY:

MAYOR

APPROVED:

BY:

STATE LOCAL TRANSPORTATION ENGINEER

DATE:

REVISED 11/18/2014

CITY FORM NO. 3

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

☐ Private Right-of-Way ☒ Public Right-of-Way	PROJECT NUMBER CITY NUMBER CITY	<u>CMAQ-7030(060)</u> _____ _____
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THIS AGREEMENT is entered into by and between the **CITY** of Vestavia Hills acting by and through its **CITY COUNCIL**, hereinafter referred to as the **CITY**, and The Water Works Board of the City of Birmingham, hereinafter referred to as the **UTILITY**.

WITNESSETH:

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

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. The **UTILITY**, not being staffed or equipped to perform the relocation, requests that the relocation work be included in the Alabama Department of Transportation's Highway Construction Contract. The relocation of the facilities will be accomplished in accordance with and as shown by the **UTILITY'S** reproducible mylar plans, specifications, and estimate transmitted herewith and made a part hereof by reference. The estimated cost of the "In-Kind" relocation is \$ 28,875.00.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

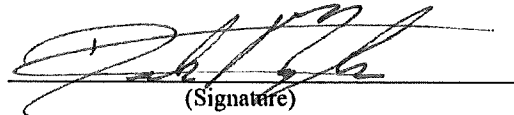
WITNESS:



BY:

Birmingham Water Works Board

(Legal Name of Utility)


(Signature)

Derrick Murphy

(Type or Printed Name)

Assistant General Manager

(Type or Printed Title)

3600 First Avenue North

(Address)

Birmingham, AL 35283

(Address)

205-244-4404

(Telephone)

RECOMMENDED FOR APPROVAL:

BY:

CITY ENGINEER/ENGINEER-OF-RECORD

BY:

REGION ENGINEER

CITY OF

BY:

MAYOR

APPROVED:

BY:

STATE LOCAL TRANSPORTATION ENGINEER

DATE:

APPROVED BY THE JEFFERSON COUNTY COMMISSION

REVISED 11/18/2014

5/11/2023

CITY FORM NO. 3

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

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

☐ Private Right-of-Way	PROJECT NUMBER	<u>CMAQ-7030(600)</u>
☒ Public Right-of-Way	CITY NUMBER	_____
	CITY	_____

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

WITNESSETH:

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

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. The **UTILITY**, not being staffed or equipped to perform the relocation, requests that the relocation
work be included in the Alabama Department of Transportation's Highway Construction Contract. The relocation
of the facilities will be accomplished in accordance with and as shown by the **UTILITY'S** reproducible mylar
plans, specifications, and estimate transmitted herewith and made a part hereof by reference. The estimated cost
of the "In-Kind" relocation is \$ 22,200.00.

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

REVISED 11/18/2014

CITY FORM NO. 3

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

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

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

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

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

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

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

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

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

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

REVISED 11/18/2014

CITY FORM NO. 3

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

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

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

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

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

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

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

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

REVISED 11/18/2014

CITY FORM NO. 3

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

WITNESS:

DocuSigned by:
Mildred G. Diliberto
308EC9DF92A2444...

BY:

Jefferson County Commission, Jefferson County, AL

(Legal Name of Utility)
DocuSigned by:
James A. Stephens
0EB888FC1C8C484...
(Signature)

James A. Stephens

(Type or Printed Name)

President

(Type or Printed Title)

716 Richard Arrington Jr. Blvd. N.

(Address)

Birmingham, AL 35203

(Address)

(205) 325-5496

(Telephone)

RECOMMENDED FOR APPROVAL:

BY: _____
CITY ENGINEER/ENGINEER-OF-RECORD

BY: _____
REGION ENGINEER

CITY OF _____

BY: _____
MAYOR

APPROVED:

BY: _____
STATE LOCAL TRANSPORTATION ENGINEER

DATE: _____

3-13-23

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

Construction Cost Estimate

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

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
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E-Mail: patrickboone@bellsouth.net

October 23, 2023

By Electronic Mail

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

In Re: Massey Road Project
Ordinance Number 3200
Five Agreements With Utility Companies

Dear Mr. Downes:

I have reviewed Ordinance Number 3200 approving the five separate Agreements with utility companies and authorizing the execution and delivery thereof. In my legal opinion, the five contracts meet the requirements of Alabama law. Therefore, I approve them from a legal standpoint.

Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by e-mail)
Court Director Umang Patel (by e-mail)
Director of Public Services Lori Beth Kearley (by e-mail)



**CITY OF VESTAVIA HILLS
MUNICIPAL COURT
INTER-DEPARTMENT MEMO**

October 23, 2023

To: Jeff Downes, City Manager

Cc: Jeff Downes, City Manager

From: Umang Patel, Court Director

RE: Resolution 5481 - Re-Appointing A Member To The Board Of
Zoning Adjustment

Background:

Resolution to reappoint Stvene Greer to the Board of Zoning Adjustment

Recommendation:

Mayor Curry has approved said recommendation.

Fiscal Impact:

Attachments:

1. Resolution 5481

RESOLUTION NUMBER 5481

A RESOLUTION RE-APPOINTING A REGULAR MEMBER TO THE VESTAVIA HILLS BOARD OF ZONING ADJUSTMENT

WHEREAS, the appointments of Stephen Greer (Regular Member) has expired on the Vestavia Hills Board of Zoning Adjustment; and

WHEREAS, after advertisements of said vacancy and contact with possible new members, the Mayor has issued a Memorandum detailing his recommendation to Re-appoint Stephen Greer as a regular member of the Board;

WHEREAS, the Council agrees it is in the best public interest to accept the Mayor's recommendation.

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

1. Stephen Greer is hereby re-appointment as a Regular Member of the Board
2. Appointments are effective immediately upon adoption and shall expire October 31, 2026

ADOPTED and APPROVED this the 23rd day of October, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



VESTAVIA HILLS

MEMORANDUM

TO: Rebecca Leavings, City Clerk

FROM: Ashley C. Curry, Mayor

DATE: October 12, 2023

RE: Appointments to the Board of Zoning Adjustment

Stephen Greer's term on the Board of Zoning Adjustment will expire on October 31, 2023.

I would like to recommend Stephen Greer be reappointed for a three-year term ending on October 31, 2026.

Thank you.

A handwritten signature in blue ink, appearing to be "AC", is written next to the "Thank you." text.



CITY OF VESTAVIA HILLS

INTER-DEPARTMENT MEMO

October 23, 2023

To: Jeff Downes, City Manager

Cc:

From:

RE: Citizens Comments

Background:

Recommendation:

Fiscal Impact:

Attachments:

None