



**Vestavia Hills
City Council Agenda
February 12, 2024
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation - Chaplain David Phillips
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. Proclamation for Arbor Week 2024
8. City Manager's Report
9. Councilors' Reports
10. Approval Of Minutes - January 22, 2024 Regular Meeting

Old Business (Public Hearing)

11. Public Hearing - Resolution Number 5462 - A Resolution authorizing the installation of a new support structure for a small cell facility to be located in the right-of-way adjacent to 1663/71 Crossgate Drive, 2581 Crossgate Place, and 1704 Crosswood Lane
12. Public Hearing - Vacation - Resolution Number 5498 - Sanitary Sewer Easements - 3345 Endeavor Lane; Lot 1, Bray Town Center, Phase II; Vacation of small stubouts for sanitary sewer purposes that are no longer needed for development
13. Public Hearing - Resolution Number 5499 - Vacation - Sanitary Sewer Easement - 3389 Endeavor Lane; Lot 2, Bray Town Center, Phase II; Vacation of small stubout for sanitary sewer purposes that is no longer needed for development

New Business

14. Resolution Number 5500 - Declaring Certain Personal Property As Surplus And Directing The City Manager To Sell And/Or Dispose Of Said Property

New Business Requesting Unanimous Consent (Public Hearing)

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

15. Public Hearing - Ordinance Number 3207 - An Ordinance to accept a proposal from Coca-Cola Bottling Company to become the concessions/vending provider for a period of three years at all Vestavia Hills Parks and Leisure Facilities. Acceptance will authorize the Mayor and City Manager to do all actions necessary to secure Coca-Cola as the vendor.
16. Citizens Comments
17. 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, the economic and aesthetic welfare of the people of Alabama is largely dependent on the trees and forests of the State; and

WHEREAS, everyone in the City of Vestavia Hills benefits either directly or indirectly from trees and forests; and

WHEREAS, trees provide jobs, products, habitat for wildlife, and recreational opportunities; and

WHEREAS, trees are an invaluable physical and psychological addition to the city, as they provide shade, cool the air, reduce noise levels and glare; and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, beautify our community; and improve personal health and well-being; and

WHEREAS, the management of trees through planning, planting, maintenance, timely removal and replacement increases their benefit to our city for both present and future generations; and

WHEREAS, the City of Vestavia Hills has been recognized by the Arbor Day Foundation as a member of the Tree City USA community for 30 years; and

WHEREAS, the Keep Vestavia Hills Beautiful organization, an affiliate of Keep America Beautiful, has committed to integrate into its purpose promoting, planting and caring for community trees as well as engaging in other activities which ensure that trees are considered in community aesthetics.

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 the week of February 19 - 25, 2024 as

ARBOR WEEK

and encourage all residents to participate in tree planting activities during this week.

IN WITNESS WHEREOF, I have
hereunto set my hand and caused the Seal
of the City of Vestavia Hills to be affixed
this the 12th day of February 2024.

Ashley C. Curry
Mayor



**Vestavia Hills
City Council Minutes
January 22, 2024
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 Pro-Tem 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 Pro-Tem Rusty Weaver, City Councilor Kimberly Cook, City Councilor Paul Head, City Councilor George Pierce

MEMBERS ABSENT: Mayor Ashley Curry

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, III, Finance Director; Zachary Clifton, Asst. Finance Director; Jamie Lee, Director of Parks and Leisure Services; Christopher Brady, City Engineer

**attend via Zoom*

3. Invocation - Chaplain Butch Williams

4. Pledge Of Allegiance

5. Presentation by Vestavia Hills Chaplain Program

Butch Williams, Vestavia Hills Champlain, gave a brief background of the Vestavia Hills Chaplain's program here in the City and how it was conceived and developed. He stated that this program was patterned after various other cities to minister to all City departments. He introduced two of the original chaplains of the program, DeWitt Thomason "Tom" Bell and Ronald "Ron" Higey. Mr. Williams explained that these two chaplains have helped to make the program what it is today. Today, all the chaplains have gathered here to honor these two

men as they transition into Chaplain Emeritus status.

gathered her
Emeritus.

Mr. Weaver stated that these individuals play a crucial part in the City. He presented a Certificate of Recognition to Chaplain Higey and Chaplain Bell and thanked them for their years of service.

Mr. Weaver s
Certificate of
years of servi

6. Certificates of Recognition for Parks & Recreation Fall Sports

Jamie Lee, Director of Parks and Leisure Services, presented a Certificate of Recognition for several Parks and Recreation Fall Sports teams who had achieved the top recognition possible in their category. He presented certificates to:

- Vestavia Hills 3rd Grade Flag Football Team for their success in winning the 2023 Jefferson-Shelby Youth Football Championship under the leadership of Coach Bryant Cross;
- Vestavia Hills 6th Grade Red Flag Football Team for their success in winning the 2023 Jefferson-Shelby Youth Football League American League Championship under the leadership of Coach Nick Sewell;
- Vestavia Hills 6th Grade Blue Flag Football Team for their success in winning the 2023 Jefferson-Shelby Youth Football League National League Championship under the leadership of Coach Clint Johnston; and
- Vestavia Hills 8U Flag Football Team for their success in winning the 2023 Alabama Recreation and Parks Association State Championship under the leadership of Coach Chris Brewer and Coach John Mark Rives.

7. Approval Of The Agenda

MOTION: Approve the agenda as presented.

Motion By: Kimberly Cook. Seconded By: George Pierce.

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

8. Announcements, Candidates and Guest Recognition

- Mr. Pierce welcomed Chamber members Taylor Burton and Clabe Dobbs to the meeting. He explained that they were present representing the Chamber.
 - Mr. Dobbs announced that the Chamber of Commerce is excited about starting a new year of Chamber activities. He explained that the kickoff for 2024 will be Viva Vestavia which will be held tomorrow evening in the grand ballroom of the Civic Center. He stated he believes that this is the 21st annual Viva Vestavia event and invited everyone to attend. Tickets are available at the Chamber office.
- Mr. Weaver stated that the Mayor, Mr. Pierce, Mr. Head and he all attended a fundraising Lead-Off dinner for the Vestavia Hills High School Baseball team last Thursday evening. The dinner included an unofficial unveiling of the Vestavia Hills Sports Hall of Fame at the Civic Center. He thanked Mrs. McCulley for her efforts in coordinating the event and displays. The event hosted 340 to 350 guests, many whom had not yet visited the Civic Center. It was a great event.

9. City Manager's Report

- No Report.

10. Councilors' Reports

- Mrs. Cook attended the PTO Council meeting last week. In March, the Superintendent will present an updated demographer's report to update them on expected attendance levels which is an important piece of information for master planning. In April, the Board will review finances and discuss their master plan for the system.
- Mr. Pierce attended the annual retreat for the Chamber and is excited about what all the committees will be doing. He reminded the Council that Viva Vestavia, is tomorrow night. He challenged the Chamber to work with Mrs. McCulley to maintain a strong connection to the City.

11. Financial Reports - Zachary Clifton, Deputy Finance Director

Zachary Clifton, Asst. Finance Director, gave the report for the December 2023-2024 financial reports. He read and explained the balances.

12. Approval Of Minutes - January 8, 2023 Work Session Minutes and January 8, 2023 Regular Meeting Minutes

MOTION: Approve the minutes of January 8, 2024 work session and January 8, 2024 regular meeting as presented.

Motion By: Kimberly Cook. Seconded By: George Pierce.

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

Old Business (Public Hearing)

13. Public Hearing - Ordinance Number 3205 - Rezoning - 4525 Pine Tree Circle; Lot 22, Topfield Subdivision; Rezone from Vestavia Hills R-1 (low-density residential) to Vestavia Hills B-2 (business district) for operation of a short-term rental facility with conditions; Charlotte Dyer, owner; Delaine Crim, representing

MOTION: Approve Ordinance Number 3205 as presented. Motion by: Kimberly Cook. Seconded by: Paul Head.

Mr. Weaver stated that this request came before the Planning and Zoning Commission at its regular meeting in December 2023. The area where the property is located is transitioning from residential to commercial. This is a request for a short-term rental business with conditions as follows: (1) said zoning is limited solely for the use of a short-term rental business; and (2) that short-term rental shall be limited to the existing home only. RVs buses, trailers, tent camping is prohibited; and (3) said zoning shall not become effective until a Certificate of Occupancy is approved by the Fire Marshal, the Building Safety Official and the Zoning Official following required property and building improvements as mandated in the approved Codes of the City. He explained that this request is coming to the Council

with a recommendation for approval with the cited conditions by the Commission.

the Council with

No one was present to represent this request.

No one was pr

The Mayor Pro-Tem opened the floor for a public hearing.

The Mayor Pro

Joe Allred, 2236 River Grand Drive, stated that this backs up to his property, and he is Joe Allred, 2236 River Grand Drive, stated that this backs up to his property, and he is concerned it might have a detrimental impact on his property's value. He stated that this is an empty home and stays empty except for times when it is rented. There are old buses parked in the rear of the property. He would rather see an office building come to that property which has definite hours of operation and no noise at all hours of the night from outdoor entertaining that might come with a rental property.

from cookouts.

Mr. Weaver stated that City staff members have reviewed this request and this would operate like any other business in the area. It will no longer be residential, and conditions will be enforced on the property as written into the Ordinance. All of these concerns should be addressed with the conditions of the zoning.

because of the
these concerns

Mr. Downes stated the noise ordinance would still apply and, if there is noise after 10 PM, VHPD will take care of it if notified.

Mr. Downes st
PM the VHPD v

There being no one further to address the Council on this issue, the Mayor Pro-Tem closed the public hearing and called for the question.

There being no
hearing and call

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

VOTE: Roll ca
Pierce. No: No

14. Public Hearing - Ordinance Number 3206 - Rezoning - 1929 Canyon Road; Lot 12, Block 3, Southridge 2nd Addition to Vestavia Hills; Rezone from Vestavia Hills Inst (institutional district) to Vestavia Hills O-1 (office park district) with conditions; Greater Birmingham Area Friends Chapter of National Ambucs, Inc.: Sean Hufnagel, representing

MOTION: Approve Ordinance 3216 as presented. Motion by: Kimberly Cook. Seconded by: Paul Head.

Mr. Weaver: This came before the Planning and Zoning Commission in December and was recommended for approval with the following conditions: (1) said zoning is limited solely to the use professional office only as defined in the Vestavia Hills Zoning Code, as amended; and (2) that the use of drive-thrus are prohibited; and (3) if the existing building on the property were demolished or destroyed for any reason, any new building shall be limited to two stories and shall be built in a residential style as approved by the City's Design Review Board.

No one was present to represent this request.

The Mayor Pro-Tem opened the floor for a public hearing.

David Harwell, 1803 Catala Road, stated that he understands that a landscape architect is purchasing this property. The property has not been maintained in the last couple of years and he hopes they will fix it up to show what they can do for their clients. This is his only

concern given the conditions of the rezoning.

their clients. H

Mrs. Cook stated that a landscaping plan was presented with the zoning request and it Mrs. Cook stated suggests that the applicant plans to re-landscape the property with new trees and shrubs. suggest that th

There being no one to further address the Council on this issue, the Mayor Pro-Tem closed There being no hearing and call the public hearing and called for the question.

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

New Business

New Business Requesting Unanimous Consent

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

- 15. Public Hearing - Resolution Number 5462 - A Resolution authorizing the installation of a new support structure for a small cell facility to be located in the right-of-way adjacent to 1663/71 Crossgate Drive, 2581 Crossgate Place, and 1704 Crosswood Lane**
- 16. Public Hearing - Vacation - Resolution Number 5498 - Sanitary Sewer Easements - 3345 Endeavor Lane; Lot 1, Bray Town Center, Phase II; Vacation of small stubouts for sanitary sewer purposes that are no longer needed for development**
- 17. Public Hearing - Resolution Number 5499 - Vacation - Sanitary Sewer Easement - 3389 Endeavor Lane; Lot 2, Bray Town Center, Phase II; Vacation of small stubout for sanitary sewer purposes that is no longer needed for development**
- 18. Public Hearing - Ordinance Number 3207 - An Ordinance to accept a proposal from Coca-Cola Bottling Company to become the concessions/vending provider for a period of three years at all Vestavia Hills Parks and Leisure Facilities. Acceptance will authorize the Mayor and City Manager to do all actions necessary to secure Coca-Cola as the vendor.**
- 19. Citizens Comments**
 - Mrs. Cook stated that she has reviewed the landscaping plan that was submitting in the rezoning request for Ordinance 3206 and indicated it shows all new plantings and no pine trees so it is a new landscaping plan for the property.

20. Time Of Adjournment

There being no further business, Head made a motion to adjourn. The Mayor Pro-Tem adjourned the meeting at 6:35.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk



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

February 12, 2024

To: Jeff Downes, City Manager

Cc: Cinnamon McCulley, Assistant City Manager

From: Rebecca Leavings, City Clerk

RE: Public Hearing - Resolution Number 5462 - A Resolution authorizing the installation of a new support structure for a small cell facility to be located in the right-of-way adjacent to 1663/71 Crossgate Drive, 2581 Crossgate Place, and 1704 Crosswood Lane

Background:

This Resolution was presented to the City Council in June 2023 and was postponed pending an opinion from the Alabama Attorney General. That opinion has been received and the petitioner wishes to move forward with another public hearing by the City Council for three small cell facilities.

Recommendation:

n/a

Fiscal Impact:

n/a

Attachments:

1. Resolution 5462
2. 2024 Agenda exhibit

3. 2024 agenda exhibit 2
4. 2024 Notification
5. 2024 AG opinion concerning small cell facilities

RESOLUTION NUMBER 5462

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

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

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

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

WHEREAS, a sign was erected on the ROW and the surrounding property owners were notified of the request and contact information on in January 2024 and a public hearing to be held on February 12, 2024 regarding said new support request; and

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

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

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

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

DONE, ORDERED, ADOPTED and APPROVED this the 12th day of February, 2024.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

1032 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216

OFFICIAL NOTICE OF A PUBLIC HEARING

January 4, 2024

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

TIME/DATE OF HEARING: 6:00 P.M. February 12, 2024 Monday

PLACE OF HEARING: Vestavia Hills City Hall
1032 Montgomery Highway

BOARD: Vestavia Hills City Council

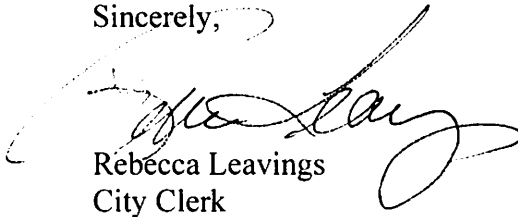
ACTION REQUESTED: Consideration of Installation of 35' Black Metal Utility Pole with 5'6" embedment to be placed within the public right-of-way for Node Placement, Small Cell Wireless Facility

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

NAME OF APPLICANT: Crown Castle Fiber LLC

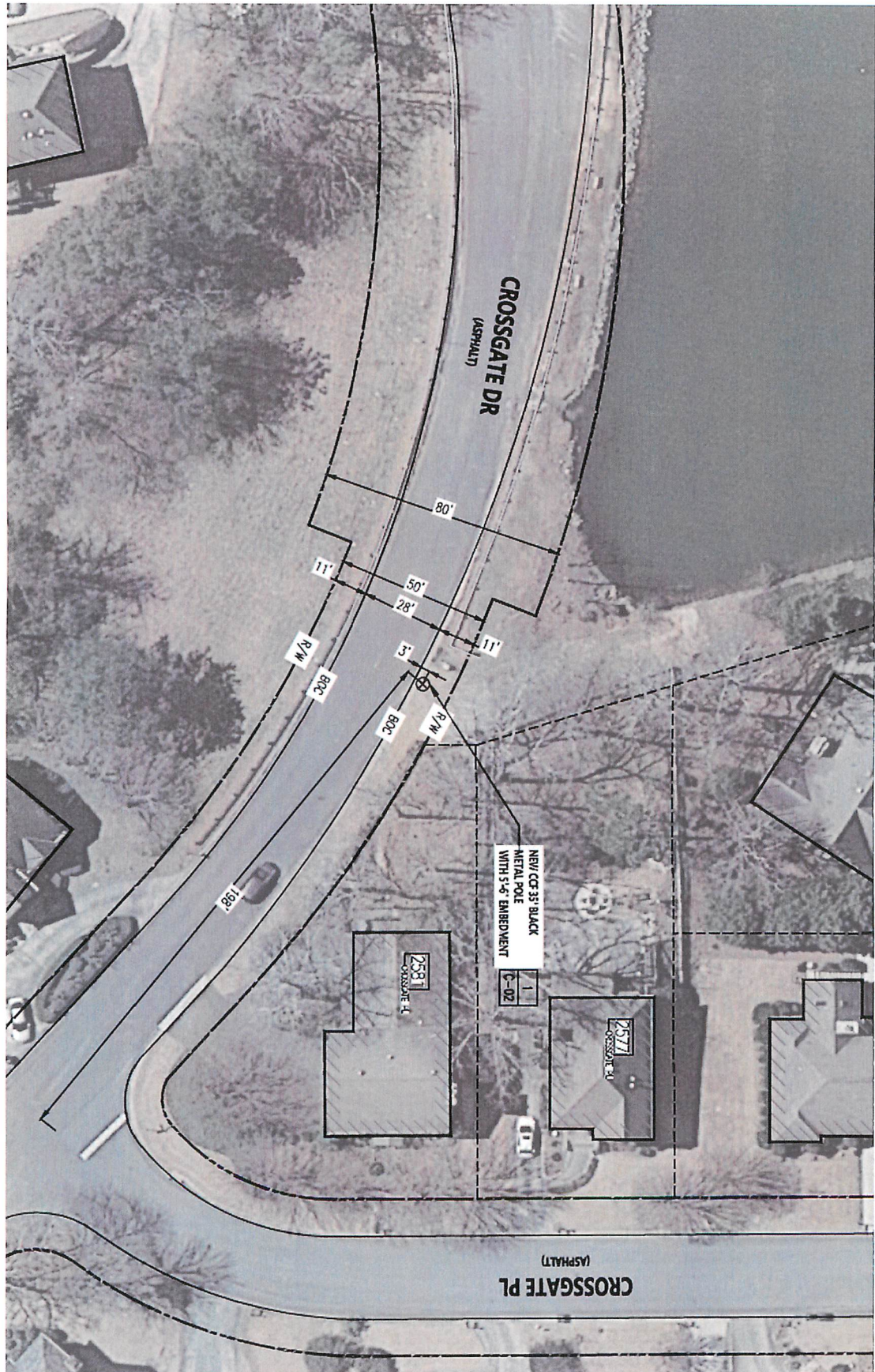
REPRESENTED BY: Acquanetta Love

Sincerely,



Rebecca Leavings
City Clerk

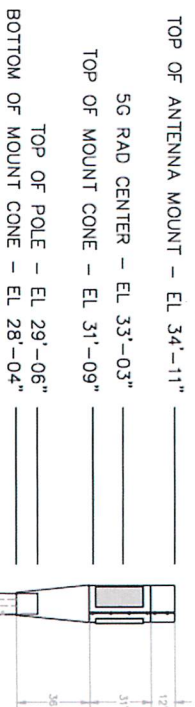
INDIVIDUALS WITH DISABILITIES NEEDING SPECIAL SERVICES TO PARTICIPATE IN APPLICATIONS, ACTIVITIES, PROGRAMS OR SERVICES ARE REQUESTED TO COORDINATE THEIR NEEDS IN ADVANCE, WHEN TIME PERMITS. IF SPECIAL ACCOMMODATIONS ARE REQUIRED, PLEASE CONTACT THE CITY CLERK, (205) 978-0179.



CLEARANCES TO BE MET OR
EXCEEDED

**NEW QUBE MOTHERTOP ANTENNA
MOUNT INSTALLED ON POLE TOP**

**(3) NEW ERICSSON 6705
5G ANTENNAS
ATTACHED TO
MOTHERTOP MOUNT**



NEW POWER SERVICE TO 5G
ANTENNAS RAN INSIDE POLE
NEW FIBER SERVICE TO 5G
ANTENNAS RAN INSIDE POLE

NEW COYOTE DTC NID - EL. 12'-00"

NEW 240V/100A AC DISCONNECT -
EL. 06'-07"
NEW RING STYLE, SINGLE PHASE,
4-TERMINAL 100/125 AMP METER BASE
EL. 05'-00"

NEW UNDERGROUND POWER
SERVICE

NEW 8" x 10' GROUND ROD
EMBEDMENT - 05'-06"

REFERENCE EL. 0'-0"

GRADE LEVEL

3.0'

STREET LEVEL

PROPOSED POLE DETAIL



PHOTO SIMULATION

Note: Equipment
quantities may vary
per utility or manufacturer

CITY OF VESTAVIA HILLS

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

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BOARD: Vestavia Hills City Council

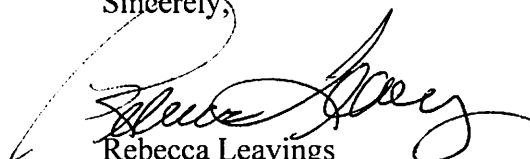
ACTION REQUESTED: Consideration of Installation of 35' Black Metal Utility Pole with 5'6" embedment to be placed within the public right-of-way for Node Placement, Small Cell Wireless Facility

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

NAME OF APPLICANT: Crown Castle Fiber LLC

REPRESENTED BY: Acquanetta Love

Sincerely,


Rebecca Leavings
City Clerk

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

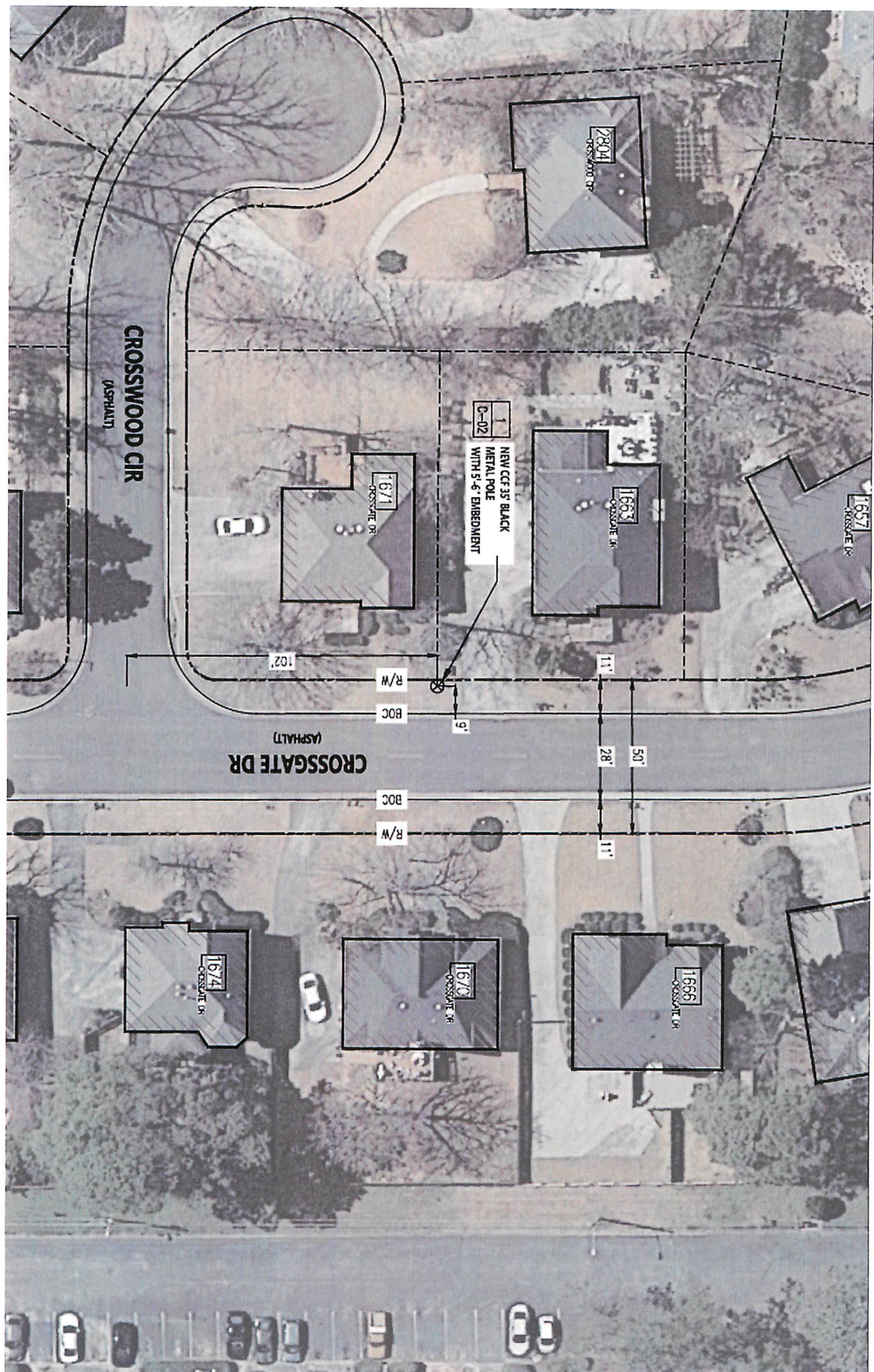
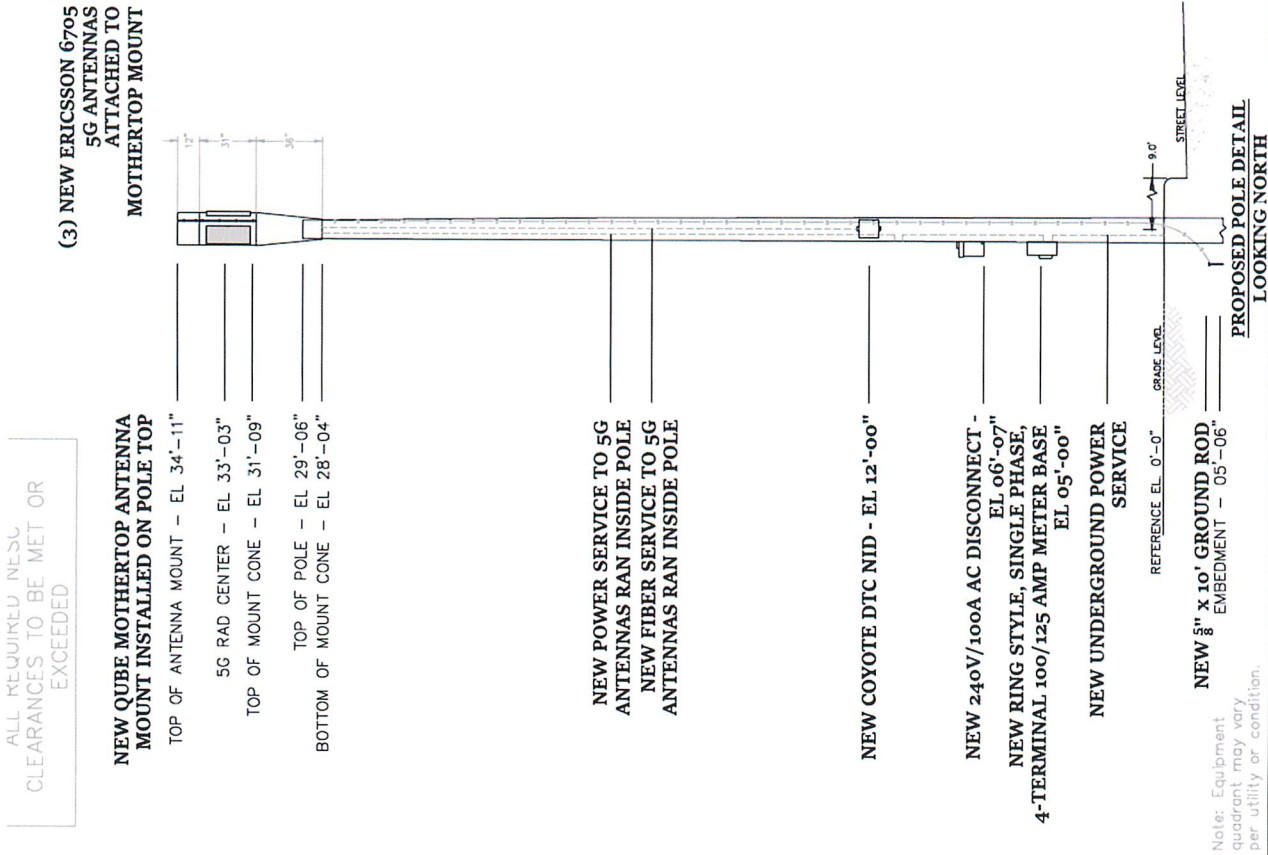




PHOTO SIMULATION



CITY OF VESTAVIA HILLS

1032 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216

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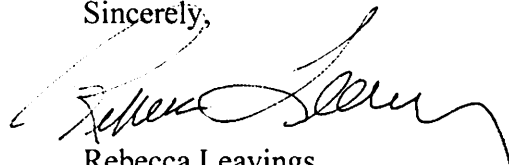
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LOCATION OF PROPERTY: ROW adjacent to 1704 Crosswood Ln; See Enclosed Details for location and visual

NAME OF APPLICANT: Crown Castle Fiber LLC

REPRESENTED BY: Acquanetta Love

Sincerely,



Rebecca Leavings
City Clerk

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

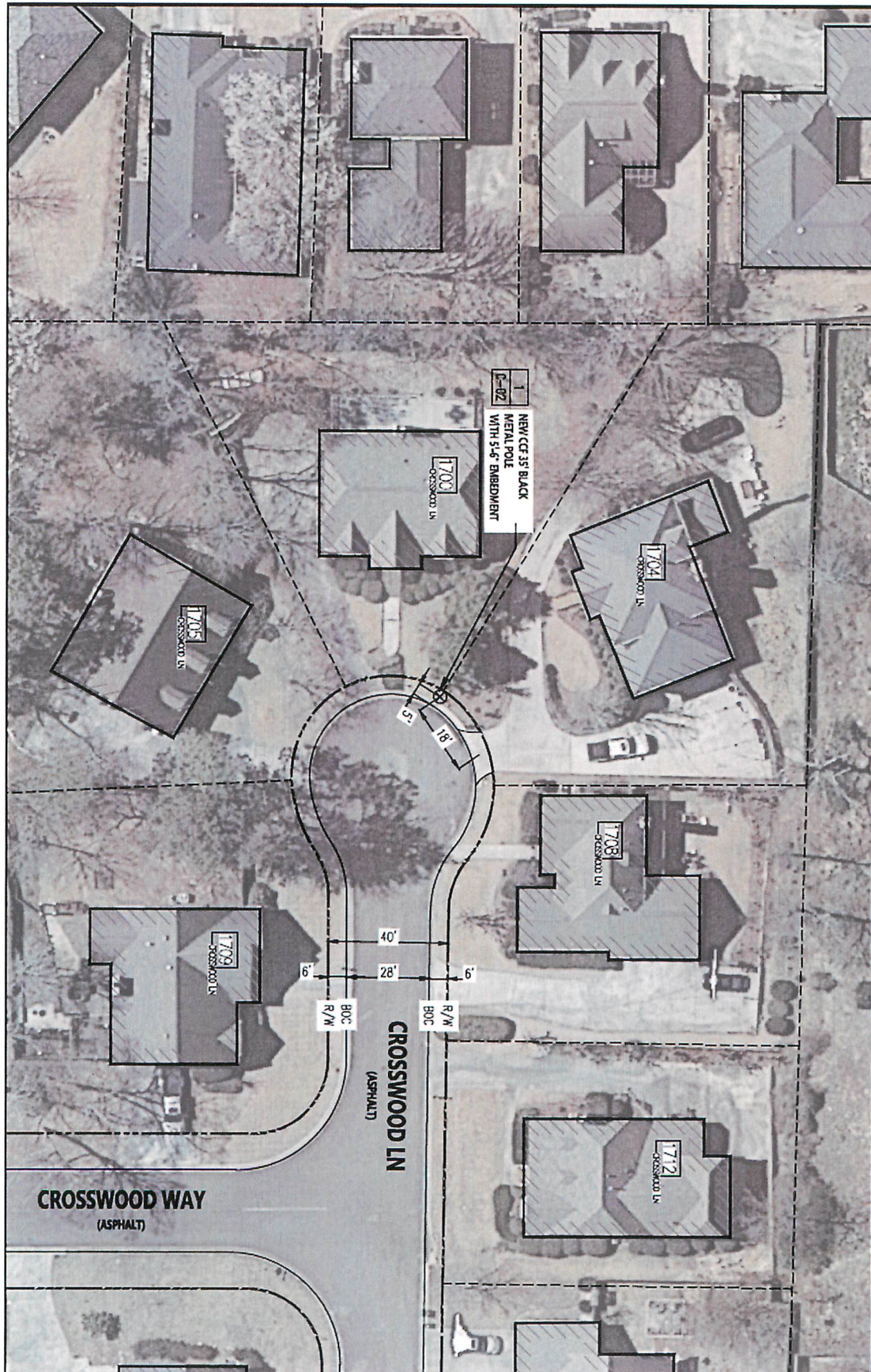




PHOTO SIMULATION

CLEARANCES TO BE MET OR EXCEEDED

(3) NEW ERICSSON 6705
5G ANTENNAS
ATTACHED TO
MOTHERTOP MOUNT

NEW QUBE MOTHERTOP ANTENNA
MOUNT INSTALLED ON POLE TOP

TOP OF ANTENNA MOUNT - EL 34'-11"

5G RAD CENTER - EL 33'-03"

TOP OF MOUNT CONE - EL 31'-09"

TOP OF POLE - EL 29'-06"

BOTTOM OF MOUNT CONE - EL 28'-04"

NEW POWER SERVICE TO 5G
ANTENNAS RAN INSIDE POLE
NEW FIBER SERVICE TO 5G
ANTENNAS RAN INSIDE POLE

NEW COYOTE DTC NID - EL 12'-00"

NEW 240V/100A AC DISCONNECT -
EL 06'-07"

NEW RING STYLE, SINGLE PHASE,
4-TERMINAL 100/125 AMP METER BASE
EL 05'-00"

NEW UNDERGROUND POWER
SERVICE

REFERENCE EL 0'-0"

GRADE LEVEL

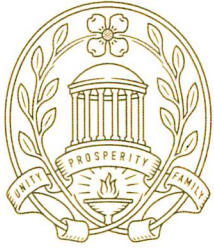
5.0'

STREET LEVEL

NEW 5/8" x 10' GROUND ROD
EMBEDMENT - 05'-06"

Note: Equipment
dimensions may vary
per utility or condition.

PROPOSED POLE DETAIL
LOOKING SOUTHWEST



VESTAVIA HILLS

A LIFE ABOVE

ASHLEY C. CURRY
Mayor

REBECCA LEAVINGS
City Clerk

April 21, 2023

RE: Small Cell/Fiber Deployment

Dear Property Owner:

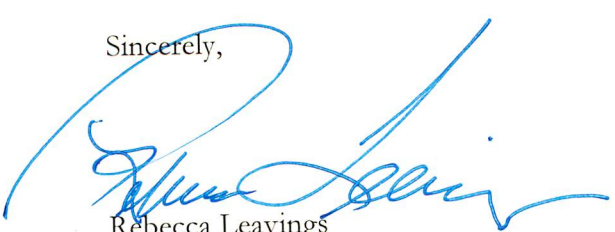
A new technology for cellular phone data and fiber internet is currently being deployed across the USA. Crown Castle, one of the companies deploying this technology, has indicated a need to locate a small micro-site cellular pole in the City of Vestavia Hills right-of-way adjacent/near your property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

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

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

Thank you in advance for your attention to this request.

Sincerely,


Rebecca Leavings
City of Vestavia Hills City Clerk

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



**STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL**

STEVE MARSHALL
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
ALABAMAAG.GOV

December 27, 2023

Honorable Jeffrey D. Downes
City Manager, City of Vestavia Hills
Post Office Box 660854
Vestavia Hills, Alabama 35266-0854

**Municipalities – Right of Way –
Telecommunications – Jefferson County**

Section 37-17-2 of the Code of Alabama does not allow a city to deny a wireless provider the right to place Small Wireless Facilities in the city's rights-of-way if the wireless provider meets the city's permitting and fee requirements and any other requirements adopted by the city that are not in conflict with the state law or any final order of the FCC (Federal Communications Commission).

The City's requirements for small wireless facilities must also be in writing, generally applicable, and adopted in advance.

The City may not determine the exact location for the installation or placement of a new or replacement pole.

The wireless infrastructure provider, the wireless provider, or the wireless service provider is allowed to determine the exact location for the installation of a new or replacement pole.

Act 2021-5 allows the City to require a pole to be decorative to fit aesthetically within the neighborhood if the requirement is reasonable, in writing, and adopted in advance. The City may not require underground placement and thus preclude pole placement.

Dear Mr. Downes:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Vestavia Hills ("City").

QUESTIONS ONE, TWO, & THREE

(1) Does Act 2021-5 allow the City to reject small cell facilities from being placed in the City rights-of-way and what conditions are valid reasons for such denial?

(2) Does the Act allow the City to determine the exact location for the installation of a new or replacement pole on a City right-of-way?

(3) Does the Act allow the wireless infrastructure provider, the wireless provider, or the wireless service provider to determine the exact location for the installation of a new or replacement pole on a City right-of-way?

FACTS AND ANALYSIS

Your request refers to section 220 of the Constitution of Alabama and section 11-49-1 of the Code of Alabama which provide that consent of a municipality is required before any public or private entity may the use of streets or public property. ALA. CONST. art. XII, § 220; ALA. CODE § 11-49-1(a) (Supp. 2022). Section 220 of the Constitution states as follows:

No person, firm, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys, or public places of any city, town, or village for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of such city, town, or village.

ALA. CONST. art. XII, § 220.

Section 11-49-1(a) of the Code states as follows:

(a) No person, firm, association, or corporation shall be authorized to use the streets, avenues, alleys, and other public places of cities or towns for the construction or operation of any public utility or private enterprise without first obtaining the consent of the proper authorities of the city or town.

ALA. CODE § 11-49-1(a) (Supp. 2022).

Your request also references section 11-43-62 of the Code that states as follows:

The council shall regulate the use of the streets for the erection of telegraph, telephone, electric, and all other systems of wires and conduits and may require the same to be placed underground if deemed necessary for the public convenience and safety and generally to control and regulate the use of the streets for any and all purposes.

The council may sell or lease in such manner as it may deem advisable any franchise which it has power to grant, and the moneys received therefor shall be paid into the city treasury.

ALA. CODE § 11-43-62 (2008).

The provisions cited above require consent of a municipality before any public or private entity may use the street or public property. Act 2021-5 was enacted to allow wireless service providers to install small wireless facilities on the right-of-way and to set forth the conditions for allowing the installation. 2021 Ala. Acts No. 2021-5. The stated purpose of the Act is as follows:

(1) establish a procedure to authorize wireless providers to collocate, mount, or install small wireless facilities on existing poles on the right-of-way of the state or any agency, county, or municipality thereof; (2) to exempt small wireless facilities from certain zoning review and approval procedures; (3) to establish a procedure for the permitting of the development of small wireless facilities and poles in the rights-of-way of the state; and (4) to establish rates and fees for all permits for small wireless facilities.

2021 Ala. Acts No. 2021-5.

The Act is codified in sections 37-17-1 through 37-17-12 of the Code. ALA. CODE §§ 37-17-1 through 37-17-12 (Supp. 2022). A “Small Wireless Facility” is specifically defined in section 37-17-1(14) of the Code, and it must meet several conditions set forth therein. ALA. CODE § 37-17-1(14) (Supp. 2022). Section 37-17-3 of the Code sets the fees that an authority may charge for a small wireless facility. ALA. CODE § 37-17-3 (Supp. 2022). An “Authority” is defined as “[t]he state or any agency, county, *municipality*, district, or instrumentality thereof.” ALA. CODE § 37-17-1(5) (Supp. 2022) (emphasis added).

Section 37-17-2(a) and (c) of the Code states as follows:

(a) An *authority may not deny* a wireless provider the right, as a permitted use *subject to Section 37-17-3 and the authority's requirements not in conflict with this chapter or a then-existing final order of the Federal Communications Commission (FCC)*, to do either of the following:

(1) Collocate, mount, or install small wireless facilities on or adjacent to existing, new, or replacement poles in the right-of-way.

(2) Install, modify, or replace its own poles, or, with the permission of the owner, a third party's poles, associated with a small wireless facility, along, across, upon, and under the right-of-way controlled by the authority.

* * *

(c) The small wireless facilities and associated poles ***shall be installed and maintained in accordance with the authority's requirements not in conflict with this chapter or a then-existing final order of the FCC*** and as not to obstruct or hinder the usual travel and public safety on the right-of-way and adjacent roads and bridges or obstruct the legal use of the right-of-way by utilities.

ALA. CODE § 37-17-2(a) & (c) (Supp. 2022) (emphasis added).

We note that legislative acts are presumed to be valid and constitutional. *McInnish v. Riley*, 925 So. 2d 174, 178 (Ala. 2005). When interpreting a statute, the words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997).

The plain language of section 37-17-2 of the Code does not allow a City to deny a wireless provider the right to place Small Wireless Facilities in the City's rights-of-way if the wireless provider meets the City's permitting and fee requirements and any other requirements adopted by the City that are not in conflict with the state law or any final order of the FCC.

Based upon the language of the act, the City's permitting and fee requirements cannot conflict with the provisions set forth in section 37-17-3 of the Code or the final rulings of the FCC. The FCC issued a Declaratory Ruling and Third Report and Order on September 26, 2018, entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," pursuant to the Telecommunications Act of 1966, codified at 47 U.S.C. §§151, *et seq.* The FCC ruling became effective January 14, 2019, and is codified at 83 Fed. Reg. 51867 (2018).

Section 37-17-3(a) and (d) of the Code states:

(a) Subject to the limitations established in this chapter, small wireless facilities and associated poles are ***not subject to zoning review or approval*** if they are located in the right-of-way under the control of an authority and otherwise comply with this chapter and a then-existing final order of the Federal Communications Commission.

(d) An authority ***shall approve*** an application ***if it complies with the authority's requirements*** for deploying small wireless facilities and associated poles in the right-of-way that are ***written, generally applicable, and adopted in advance.***

ALA. CODE § 37-17-3(a) & (d) (Supp. 2022) (emphasis added).

The plain language of section 37-17-3 of the Code provides that an authority shall approve an application that complies with the authority's requirements for small wireless facilities that are written, generally applicable, and adopted in advance. Thus, the City's requirements for small wireless facilities must be in writing, generally applicable, and adopted in advance.

Section 37-17-10(b) of the Code also states as follows:

(b) Except as it relates to small wireless facilities ***subject to the permit and fee requirements established pursuant to this chapter***, and except as it relates to any activities of an electric provider, and except as it relates to regulations or requirements on communications service specifically established by the constitution or by state law, local law enacted by the Legislature, or federal law, ***an authority may not otherwise adopt or enforce regulations or requirements on the placement, operation, or maintenance of communications facilities*** by a communications service provider authorized to be in the rights-of-way; or otherwise impose or collect any additional or separate tax, fee, or charge for any service existing on July 1, 2021, or for the provision of additional communications services provided by a communications service provider that is authorized to be in the rights-of-way.

ALA. CODE § 37-17-10(b) (Supp. 2022) (emphasis added).

Pursuant to section 37-17-10(b) of the Code an authority is allowed to enforce regulations or requirements set by the constitution, by state law, by local law enacted by the Legislature, or federal law. Section 37-17-10(b) of the Code, however, specifically prohibits an authority from adopting or enforcing regulations or requirements on the placement, operation, or maintenance of

communication facilities by a communications service provider authorized to be in the rights-of-way.

With respect to who has the authority to determine the exact location of a new or replacement pole, it is noted that section 37-17-10(b) of the Code prohibits an Authority from adopting regulations or requirements as to the placement of facilities; thus, the City may not determine the exact location for the installation or placement of a new or replacement pole. The wireless infrastructure provider, the wireless provider, or the wireless service provider (as defined in section 37-17-1 of the Code) is allowed to determine the exact location for the installation of a new or replacement pole.

CONCLUSION

Section 37-17-2 of the Code does not allow a city to deny a wireless provider the right to place Small Wireless Facilities in the city's rights-of-way if the wireless provider meets the city's permitting and fee requirements and any other requirements adopted by the city that are not in conflict with the state law or any final order of the FCC (Federal Communications Commission). The city's requirements for small wireless facilities must also be in writing, generally applicable, and adopted in advance.

The City may not determine the exact location for the installation or placement of a new or replacement pole. The wireless infrastructure provider, the wireless provider, or the wireless service provider is allowed to determine the exact location for the installation of a new or replacement pole.

QUESTION FOUR

(4) If a new pole is installed on the City right-of-way, does the Act allow the City to require that the pole be a decorative pole to fit aesthetically with the neighborhood? If so, does the Act further preclude pole placement if the neighborhood has underground utilities and the small cell facility cannot be placed underground due to technical limitations?

FACTS AND ANALYSIS

As stated above, section 37-17-3 of the Code provides that an Authority may require a wireless provider to meet requirements that are written, generally applicable, and adopted in advance. Section 37-17-10(b) of the Code also states that “an authority may not otherwise adopt or enforce regulations or requirements on the *placement, operation, or maintenance* of communications facilities.” ALA. CODE § 37-17-10(b) (Supp. 2022) (emphasis added). This language does not prohibit an authority from adopting and enforcing regulations on the *design* of communication facilities; it only prohibits regulations on the placement, operation, and maintenance. Thus, the City may require a pole to be decorative to fit aesthetically within the neighborhood if the requirement is in writing and adopted in advance. Furthermore, any requirements by the City for the design cannot be in conflict with the final rulings of the FCC.

The Attorney General does not interpret federal law and cannot determine whether local requirements are in conflict with federal law but offers the following for informational purposes. The FCC has issued a ruling with regard to underground requirements which states:

33. *Undergrounding requirements.* The Commission understands that some local jurisdictions have adopted undergrounding provisions that require infrastructure to be deployed below ground based, at least in some circumstances, on the locality's aesthetic concerns. A number of providers have complained that these types of requirements amount to an effective prohibition. In addressing this issue, the Commission first reiterates that while undergrounding requirements may well be permissible under state law as a general matter, any local authority to impose undergrounding requirements under state law does not remove the imposition of such undergrounding requirements from the provisions of Section 253. In this sense, the Commission notes that a requirement that *all* wireless facilities be deployed underground would amount to an effective prohibition given the propagation characteristics of wireless signals. Thus, undergrounding requirements can amount to effective prohibitions by materially inhibiting the deployment of wireless service.

83 Fed. Reg. 51867, at 51872 (2018). The federal courts have ruled that an ordinance requiring all facilities to be underground is preempted by the FCC's orders. *Crown Castle Fiber, L.L.C. v. City of Pasadena, Texas*, No. 22-20454, 2023 WL 4994300, at 8 (5th Cir. Aug. 4, 2023); *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied sub nom. City of Portland, Or. v. FCC*, 141 S. Ct. 2855 (2021). Thus, based upon case law, the FCC ruling prohibits regulations that require that all facilities must be placed underground.

The FCC also issued a ruling with regard to aesthetics which states:

29. *Aesthetics*. The Commission sought comment on whether deployment restrictions based on aesthetic or similar factors are widespread and, if so, how Sections 253 and 332(c)(7) should be applied to them. The Commission provides guidance on whether and in what circumstances aesthetic requirements violate the Act. This will help localities develop and implement lawful rules, enable providers to comply with these requirements, and facilitate the resolution of disputes. The Commission concludes that aesthetics requirements are ***not preempted if*** they are (1) ***reasonable***, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and ***published in advance***.

83 Fed. Reg. 51867, at 51871 (2018) (emphasis added).

The Ninth Circuit Court reviewed the FCC's aesthetic requirement conclusions as set forth above and held: (1) the requirement that aesthetics requirements be "reasonable" was not unduly vague, (2) the requirement that they be no more burdensome than those applied to other types of infrastructure deployments exceeded the scope of the FCC's authority, and (3) the requirement that aesthetic requirements be "objective" was unduly vague. *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied sub nom. City of Portland, Or. v. FCC*, 141 S. Ct. 2855 (2021). Thus, based upon this decision, the FCC ruling provides that aesthetic requirements adopted by an Authority must be reasonable and published in advance.

Again, the Attorney General does not make determinations as to whether actions or requirements are reasonable or in compliance with federal law. It is the opinion of the Attorney General that the Act allows the City to require a pole to be decorative to fit aesthetically within the neighborhood if the requirement is reasonable, in writing, and adopted in advance. The Attorney General, however,

Honorable Jeffrey D. Downes
Page 10

does not make determinations as whether regulations are reasonable. Furthermore, the City may not require underground placement and thus preclude pole placement.

CONCLUSION

Act 2021-5 allows the City to require a pole to be decorative to fit aesthetically within the neighborhood if the requirement is reasonable, in writing, and adopted in advance. The City may not require underground placement and thus preclude pole placement.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

STEVE MARSHALL
Attorney General

By:

A handwritten signature in black ink, appearing to read "Ben Baxley", written over the printed name.

BEN BAXLEY
Chief, Opinions Division

SM/BFS/as
3475107/239007



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

February 12, 2024

To: Jeff Downes, City Manager

Cc: Lori Beth Kearley, Public Services Director
Christopher Brady, City Engineer

From: Rebecca Leavings, City Clerk

RE: Public Hearing - Vacation - Resolution Number 5498 - Sanitary
Sewer Easements - 3345 Endeavor Lane; Lot 1, Bray Town Center,
Phase II; Vacation of small stubouts for sanitary sewer purposes
that are no longer needed for development

Background:

Public Hearing - Vacation - Sanitary Sewer Easement - 3345 Endeavor Lane;
Lot 1, Bray Town Center, Phase II; Vacation of small stubouts for sanitary
sewer purposes that are no longer needed for development

Recommendation:

Enviro Services have release said easements. Engineering Dept has
concurred with said recommendation.

Fiscal Impact:

na

Attachments:

1. Resolution 5498

2. 2024-01-17 - Memo for Council to Support Vacation of Easement -
3345 Endeavor Lane

RESOLUTION NUMBER 5498

**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 sanitary sewer 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 sanitary sewer easements are commonly referred to as “sanitary sewer easement” and is more particularly described as follows:

Sewer Easement No. 1 - Being a part of Lot 2, Bray Town Center Phase II, as recorded in Map Book 261, Page 60 in the Office of the Judge of Probate of Jefferson County, Alabama, situated in the N.E. 1/4 of the N.E. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a Southeasterly corner of Lot 2 of the aforementioned Bray Town Center Phase II, said point lying on the Northerly right-of-way line of Brayfield Lane; thence in a Northwesterly direction along the Northerly right-of-way line of Brayfield Lane a distance of 43.56 feet to the P.C. (point of curve) of a curve to the left having a radius of 810.00 feet and a central angle of 10°19'24"; thence in a Northwesterly and westerly direction along the arc of said curve and along the Northerly right-of-way line of Brayfield Lane a distance of 145.94 feet to the Point of Beginning, said point being the P.C.C. (point of compound curve) of a curve to the left having a radius of 810.00 feet and a central angle of 1°25'35"; thence continue in a Westerly direction along the arc of said curve and along the Northerly right-of-way line of Brayfield Lane a distance of 20.16 feet to a point; thence 98°04'11" to the right (angle measured to tangent) in a Northerly direction a distance of 28.53 feet to a point; thence 90°00' to the right in an Easterly direction a distance of 20.00 feet to a point; thence 90°00' to the right in a Southerly direction a distance of 25.95 feet to the Point of Beginning. Containing 555 square feet, more or less.

Sewer Easement No. 3 - Being a part of Lot 2, Bray Town Center Phase II, as recorded in Map Book 261, Page 60 in the Office of the Judge of Probate of Jefferson County, Alabama, situated in the N.W. 1/4 of the N.E. 1/4 of

Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a Northwesterly corner of Lot 2 of the aforementioned Bray Town Center Phase II, said point lying on the Easterly right-of-way line of Iron Drive; thence in a Southerly direction along the Easterly right-of-way line of Iron Drive a distance of 103.14 feet to the Point of Beginning; thence continue in a Southerly direction along the Easterly right-of-way line of Iron Drive a distance of 20.00 feet to a point; thence 90°56'02" to the left in an Easterly direction a distance of 12.69 feet to a point; thence 90°00' to the left in a Northerly direction a distance of 20.00 feet to a point; thence 90°00' to the left in a Westerly direction a distance of 12.37 feet to the Point of Beginning. Containing 251 square feet, 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 sanitary sewer 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 12th day of February, 2024.

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 12th day of February, 2024, 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 _____, 2024.

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 Vacate sanitary sewer easement as same appears on the Plat of Bray Town Center Phase II, which Plat is recorded in Plat Book 261, at Page 60, in the Probate Office of Jefferson County, Alabama, do hereby declare that each of said Plats embraced within the boundaries of said Vacate sanitary sewer easement as the same appears of record on the Plat to be vacated, and said Vacate sanitary sewer easement is hereby declared vacated. The undersigned do hereby respectfully represent and warrant as follows:

1. This Declaration of Vacation of Vacate sanitary sewer 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 Vacate sanitary sewer 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 Vacate sanitary sewer easement is situated in the City of Vestavia Hills, Jefferson County, Alabama, and appears at 3389 Endeavor Ln. A copy of the map reflecting the location of Vacate sanitary sewer 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 Vacate sanitary sewer easement and the names and addresses of the owner of said abutting properties are as follows:

A. Owner's Name: Liberty Park AL Residences, LLC

Street Address/Legal Description: 3345 Endeavor Ln; Lot 1, Bray Town Center Phase II (MB 261 Pg 60)

B. Owner's Name: Liberty Park AL Residences, LLC

Street Address/Legal Description: 3345 Endeavor Ln; Lot 1, Bray Town Center Phase II

C. Owner's Name:

Street Address/Legal Description: ;

C. Owner's Name:

Street Address/Legal Description: ;

6. All of the undersigned do hereby declare Vacate sanitary sewer easement to be vacated and respectfully request the assent of the City Council of the City of Vestavia Hills, Alabama, to said vacation of Vacate sanitary sewer 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
15th day of January, 2024.

SIGNATURE OF ABUTTING PROPERTY OWNER:

Signed:  (notary below)

Printed name of signer: Liberty Park AL Residences, LLC, Liberty Park Residences Holdings LLC, LIV Liberty Park Partners, LLC,
LIV Development Fund I GP, LLC

**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 Jason Wilton Bailey with whom I am personally acquainted and who upon his oath acknowledged himself to be the authorized signatory of LIV Development Fund I GP, LLC, a Delaware limited liability company, which is the manager of LIV Liberty Park Partners, LLC, an Alabama limited liability company, which is the manager of Liberty Park Residences Holdings, LLC, a Delaware limited liability company, which is the sole member of Liberty Park AL Residences, LLC, a Delaware limited liability company, and that he is such authorized signatory being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by the said Manager, as such authorized signatory.

Given under my hand and official seal, this the 5th day of January,
2024.


Notary Public

VEAS Number: _____ (administrative use only).



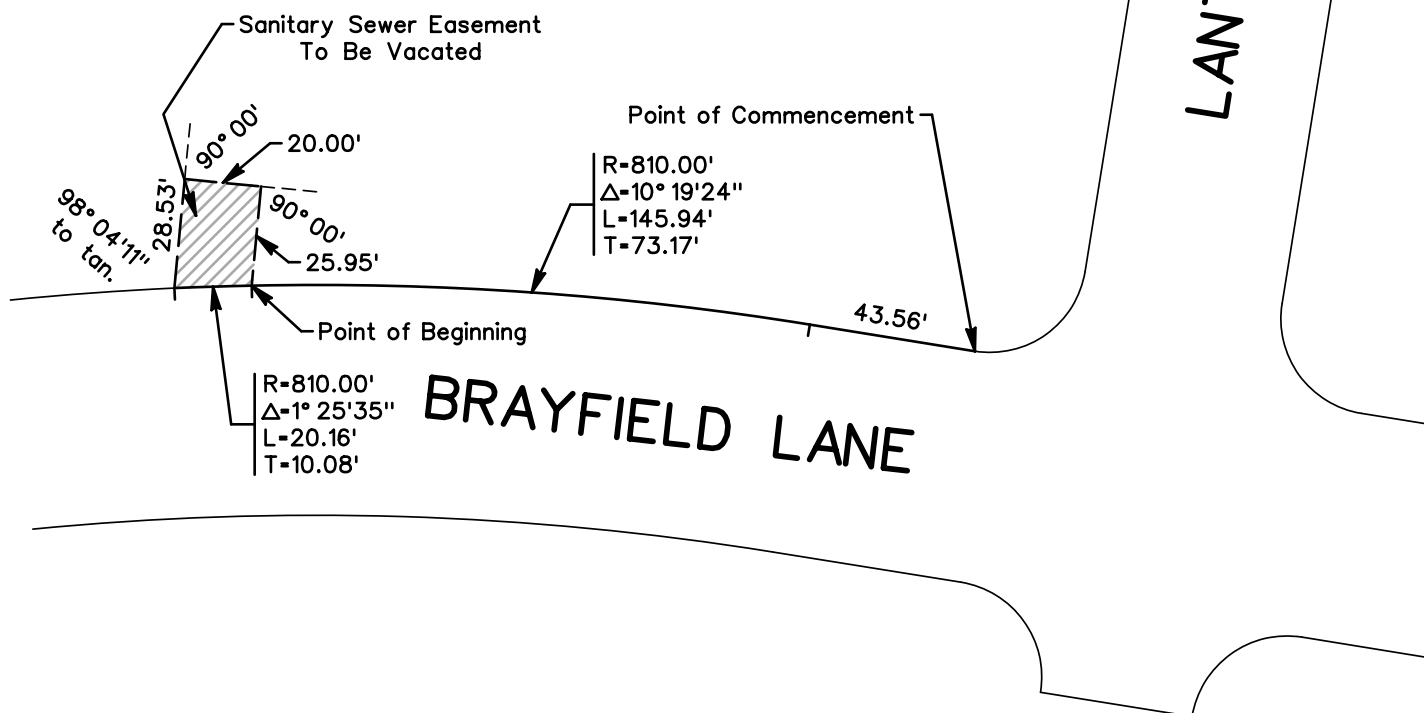


Scale: 1" = 50'
Graphic Scale



LOT 2
BRAY TOWN CENTER
PHASE II
(Map Book 261, Page 60)

LANERN WAY



g:/LIB/22/399/Survey/Exhibits/Sanitary Sewer Vacation Exhibit.dgn

EASEMENT VACATION EXHIBIT #1

DATE: DECEMBER 21, 2023



BIRMINGHAM

1001 22nd Street South
Birmingham, Alabama 35205
205.323.6166

HUNTSVILLE

7500 Memorial Pkwy SW, Ste 209
Huntsville, Alabama 35802
256.539.1221

TUSCALOOSA

3600 Watermelon Road, Ste 202
Northport, Alabama 35473
205.323.6166

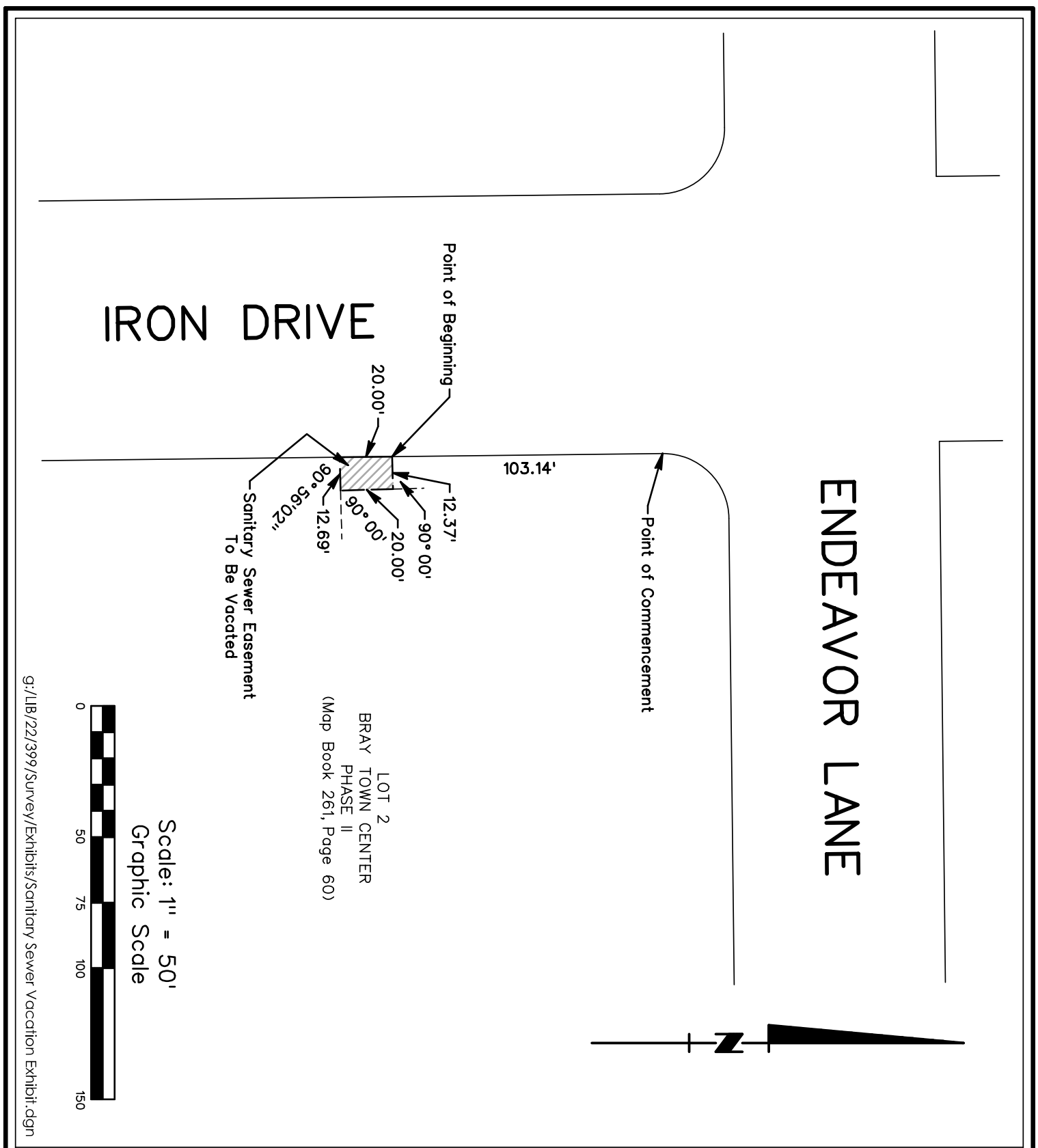
SCHOEL.COM

LEGAL DESCRIPTION
SANITARY SEWER EASEMENT #1

Being a part of Lot 2, Bray Town Center Phase II, as recorded in Map Book 261, Page 60 in the Office of the Judge of Probate of Jefferson County, Alabama, situated in the N.E. 1/4 of the N.E. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a Southeasterly corner of Lot 2 of the aforementioned Bray Town Center Phase II, said point lying on the Northerly right-of-way line of Brayfield Lane; thence in a Northwesterly direction along the Northerly right-of-way line of Brayfield Lane a distance of 43.56 feet to the P.C. (point of curve) of a curve to the left having a radius of 810.00 feet and a central angle of $10^{\circ}19'24''$; thence in a Northwesterly and westerly direction along the arc of said curve and along the Northerly right-of-way line of Brayfield Lane a distance of 145.94 feet to the Point of Beginning, said point being the P.C.C. (point of compound curve) of a curve to the left having a radius of 810.00 feet and a central angle of $1^{\circ}25'35''$; thence continue in a Westerly direction along the arc of said curve and along the Northerly right-of-way line of Brayfield Lane a distance of 20.16 feet to a point; thence $98^{\circ}04'11''$ to the right (angle measured to tangent) in a Northerly direction a distance of 28.53 feet to a point; thence $90^{\circ}00'$ to the right in an Easterly direction a distance of 20.00 feet to a point; thence $90^{\circ}00'$ to the right in a Southerly direction a distance of 25.95 feet to the Point of Beginning.

Containing 555 square feet, more or less.



g:/LIB/22/399/Survey/Exhibits/Sanitary Sewer Vacation Exhibit.dgn



Scale: 1" = 50'
Graphic Scale



EASEMENT VACATION EXHIBIT #3

DATE: DECEMBER 21, 2023



BIRMINGHAM 1001 22nd Street South Birmingham, Alabama 35205 205.323.6166	HUNTSVILLE 7500 Memorial Pkwy SW, Ste 209 Huntsville, Alabama 35802 256.539.1221	TUSCALOOSA 3600 Watermelon Road, Ste 202 Northport, Alabama 35473 205.323.6166
SCHOEL.COM		

LEGAL DESCRIPTION
SANITARY SEWER EASEMENT #3

Being a part of Lot 2, Bray Town Center Phase II, as recorded in Map Book 261, Page 60 in the Office of the Judge of Probate of Jefferson County, Alabama, situated in the N.W. 1/4 of the N.E. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a Northwesterly corner of Lot 2 of the aforementioned Bray Town Center Phase II, said point lying on the Easterly right-of-way line of Iron Drive; thence in a Southerly direction along the Easterly right-of-way line of Iron Drive a distance of 103.14 feet to the Point of Beginning; thence continue in a Southerly direction along the Easterly right-of-way line of Iron Drive a distance of 20.00 feet to a point; thence 90°56'02" to the left in an Easterly direction a distance of 12.69 feet to a point; thence 90°00' to the left in a Northerly direction a distance of 20.00 feet to a point; thence 90°00' to the left in a Westerly direction a distance of 12.37 feet to the Point of Beginning.

Containing 251 square feet, more or less.

Enviro Services, LLC
1000 Urban Center Drive, Suite 235
Vestavia Hills, Alabama 35242
(205) 945-6462

January 11, 2024

Mr. Christopher Brady, PE, CFM
City Engineer/Deputy Director
City of Vestavia Hills Public Service Department
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

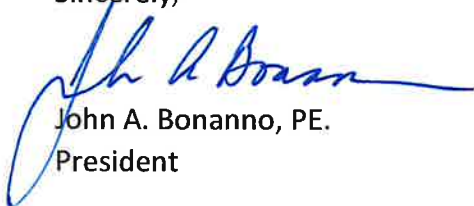
RE: Abandonment of Sewer Easements
Lot 1 and Lot 2 Bray Town Center Phase II

Dear Christopher:

Enviro Services has reviewed the engineering drawings for the proposed multi-family developments on Lot 1 and Lot 2 as shown on the Final Plat for Bray Town Center Phase II. Based on the sanitary sewer layout and building configuration shown on the engineering drawings, Enviro Services approves the removal the three sewer lines and abandonment of the associated easements granted to Enviro Services as shown on the Resurvey of Lots 1 and 2 the Bray Town Center Phase II prepared by Schoel.

If you have any further questions, please feel free to contact me at (770) 367-9552.

Sincerely,



John A. Bonanno, PE.
President

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

January 17, 2024

To: Rebecca Leavings, City Clerk

Cc: Lori Beth Kearly, Director of Public Services
Christopher Brady, City Engineer

From: Ethan Fisher, City Engineer

RE: 3345 Endeavor Lane Lot 1, Bay Town Center, Phase II - Easement Vacation

I have reviewed the request for the vacation of the sanitary sewer easements located on 3345 Endeavor Lane. There are existing sewer manholes and sewer mains that are not in use and will be removed along with this vacation to support the development on this property.

I hereby provide favorable recommendation for approval of the vacation of these sanitary sewer easements.

Please let me know if questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ethan Fisher".

Ethan Fisher, PE

City Engineer



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

February 12, 2024

To: Jeff Downes, City Manager

Cc: Lori Beth Kearley, Public Services Director
Christopher Brady, City Engineer

From: Rebecca Leavings, City Clerk

RE: Public Hearing - Resolution Number 5499 - Vacation - Sanitary
Sewer Easement - 3389 Endeavor Lane; Lot 2, Bray Town Center,
Phase II; Vacation of small stubout for sanitary sewer purposes
that is no longer needed for development

Background:

Sewer Easement "stubouts" were reserved in former surveys. The Bray Town Center Phase II is now being platted for development and the reserved easements are deemed not needed. This is a request to vacate said easement stubs.

Recommendation:

Enviro Services has release said easements and, following review, the City's Engineering Department concur on that recommendation.

Fiscal Impact:

NA

Attachments:

1. Resolution 5499
2. 2024-01-17 - Memo for Council to Support Vacation of Easement 3389
Endeavor Lane

RESOLUTION NUMBER 5499

**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 sanitary sewer 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 sanitary sewer easement is commonly referred to as “sanitary sewer easement” and is more particularly described as follows:

Sewer Easement No. 2 - Being a part of Lot 1, Bray Town Center Phase II, as recorded in Map Book 261, Page 60 in the Office of the Judge of Probate of Jefferson County, Alabama, situated in the N.W. 1/4 of the N.E. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a Southeasterly corner of Lot 1 of the aforementioned Bray Town Center Phase II, said point lying on the Westerly right-of-way line of Iron Drive, said point lying on a curve to the right having a radius of 409.50 feet and a central angle of 15°30'11”; thence in a Northwesterly and Northerly direction along the Westerly right-of-way line of Iron Drive a distance of 110.80 feet to the P.T. (point of tangent) of said curve; thence tangent to said curve in a Northerly direction along the Westerly right-of-way line of Iron Drive a distance of 76.60 feet to the Point of Beginning; thence continue in a Northerly direction along the Westerly right-of-way line of Iron Drive a distance of 24.08 feet to a point; thence 123°50'42” to the left in a Southwesterly direction a distance of 26.53 feet to a point; thence 90°00’ to the left in a Southeasterly direction a distance of 20.00 feet to a point; thence 90°00’ to the right in a Northeasterly direction a distance of 13.12 feet to the Point of Beginning. Containing 396 square feet, 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 sanitary sewer 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 12th day of February, 2024.

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 12th day of February, 2024, 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 _____, 2024.

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 Sanitary Sewer Easement as same appears on the Plat of Bray Town Center Phase II, which Plat is recorded in Plat Book 261, at Page 60, in the Probate Office of Jefferson County, Alabama, do hereby declare that each of said Plats embraced within the boundaries of said Sanitary Sewer Easement as the same appears of record on the Plat to be vacated, and said Sanitary Sewer Easement is hereby declared vacated. The undersigned do hereby respectfully represent and warrant as follows:

1. This Declaration of Vacation of Sanitary Sewer 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 Sanitary Sewer 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 Sanitary Sewer Easement is situated in the City of Vestavia Hills, Jefferson County, Alabama, and appears at 3345 Endeavor Ln. A copy of the map reflecting the location of Sanitary Sewer 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 Sanitary Sewer Easement and the names and addresses of the owner of said abutting properties are as follows:

A. Owner's Name: Filmont Residences

Street Address/Legal Description: 3389 Endeavor Ln; Lot 2, Bray Town Center Phase II (MB 261 Pg 60)

B. Owner's Name:

Street Address/Legal Description: ;

C. Owner's Name:

Street Address/Legal Description: ;

C. Owner's Name:

Street Address/Legal Description: ;

6. All of the undersigned do hereby declare Sanitary Sewer Easement to be vacated and respectfully request the assent of the City Council of the City of Vestavia Hills, Alabama, to said vacation of Sanitary Sewer 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
12th day of January, 2024.

SIGNATURE OF ABUTTING PROPERTY OWNER:

Signed:  (notary below)

Printed name of signer: Liberty Park AL Residences, LLC, Liberty Park Residences Holdings LLC, LIV Liberty Park Partners, LLC,
LIV Development Fund I GP, LLC

**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 Jason Wilton Bailey with whom I am personally acquainted and who upon his oath acknowledged himself to be the authorized signatory of LIV Development Fund I GP, LLC, a Delaware limited liability company, which is the manager of LIV Liberty Park Partners, LLC, an Alabama limited liability company, which is the manager of Liberty Park Residences Holdings, LLC, a Delaware limited liability company, which is the sole member of Liberty Park AL Residences, LLC, a Delaware limited liability company, and that he is such authorized signatory being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by the said Manager, as such authorized signatory.

Given under my hand and official seal, this the 5th day of January,
2024.


Notary Public

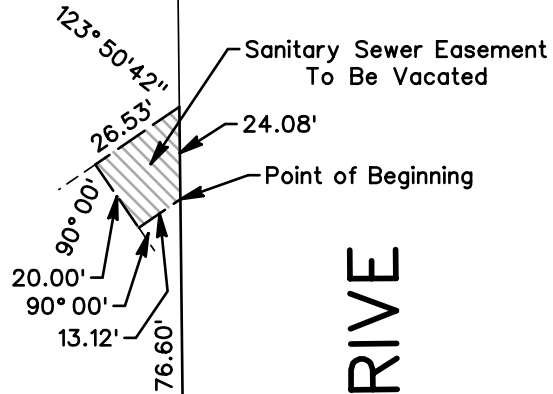
VEAS Number: _____ (administrative use only).



Scale: 1" = 50'
Graphic Scale



LOT 1
BRAY TOWN CENTER
PHASE II
(Map Book 261, Page 60)



R=409.50'
Δ=15° 30' 11"
L=110.80'
T=55.74'

Point of Commencement

IRON DRIVE

BRAYFIELD LANE

g:/LIB/22/399/Survey/Exhibits/Sanitary Sewer Vacation Exhibit.dgn

EASEMENT VACATION EXHIBIT #2

DATE: DECEMBER 21, 2023



BIRMINGHAM
1001 22nd Street South
Birmingham, Alabama 35205
205.323.6166

HUNTSVILLE
7500 Memorial Pkwy SW, Ste 209
Huntsville, Alabama 35802
256.539.1221

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

SCHOEL.COM

LEGAL DESCRIPTION
SANITARY SEWER EASEMENT #2

Being a part of Lot 1, Bray Town Center Phase II, as recorded in Map Book 261, Page 60 in the Office of the Judge of Probate of Jefferson County, Alabama, situated in the N.W. 1/4 of the N.E. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

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Containing 396 square feet, more or less.

Enviro Services, LLC
1000 Urban Center Drive, Suite 235
Vestavia Hills, Alabama 35242
(205) 945-6462

January 11, 2024

Mr. Christopher Brady, PE, CFM
City Engineer/Deputy Director
City of Vestavia Hills Public Service Department
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

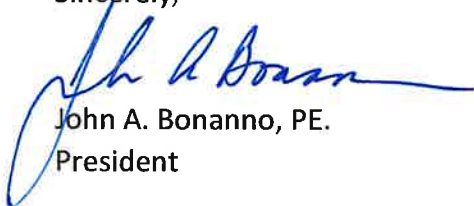
RE: Abandonment of Sewer Easements
Lot 1 and Lot 2 Bray Town Center Phase II

Dear Christopher:

Enviro Services has reviewed the engineering drawings for the proposed multi-family developments on Lot 1 and Lot 2 as shown on the Final Plat for Bray Town Center Phase II. Based on the sanitary sewer layout and building configuration shown on the engineering drawings, Enviro Services approves the removal the three sewer lines and abandonment of the associated easements granted to Enviro Services as shown on the Resurvey of Lots 1 and 2 the Bray Town Center Phase II prepared by Schoel.

If you have any further questions, please feel free to contact me at (770) 367-9552.

Sincerely,



John A. Bonanno, PE.
President

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

January 17, 2024

To: Rebecca Leavings, City Clerk

Cc: Lori Beth Kearly, Director of Public Services
Christopher Brady, City Engineer

From: Ethan Fisher, City Engineer

RE: 3389 Endeavor Lane Lot 2, Bay Town Center, Phase II - Easement Vacation

I have reviewed the request for the vacation of the sanitary sewer easements located on 3389 Endeavor Lane. There is an existing sewer manhole and sewer main that is not in use and will be removed along with this vacation to support the development on this property.

I hereby provide favorable recommendation for approval of the vacation of this sanitary sewer easement.

Please let me know if questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ethan Fisher".

Ethan Fisher, PE

City Engineer



CITY OF VESTAVIA HILLS LIBRARY IN THE FOREST INTER-DEPARTMENT MEMO

February 12, 2024

To: Jeff Downes, City Manager

Cc: Taneisha Tucker, Library Director

From: Daniel Tackett, Asst. Library Director

RE: Resolution Number 5500 - Declaring Certain Personal Property As Surplus And Directing The City Manager To Sell And/Or Dispose Of Said Property

Background:

This memo requests that the Vestavia Hills City Council adopt a resolution declaring the following Library technology and furniture as surplus at the February 12, 2024 City Council meeting.

- 6 – Dell Optiplex 380 Computers – 2010
- 5 – Dell Optiplex 3040 Computers – 2017
- 11 – Dell Optiplex 3050 Computers – 2018
- 11 – Dell Optiplex 3020 Computers – 2015
- 8 – Dell Optiplex 7020 Computers – 2014
- 4 – Dell Optiplex 7060 Computers – 2019
- 15 – Apple Imac 27inch Computers – 2015
- 1 – Canon Pixma Pro 9000 Printer – 2010
- 1 – Jamex Coin Op #6552 – 2011
- 1 – Dell 22inch Monitor – 2012
- 7 – LG Flatron 22inch Monitors – 2010
- 8 – Bookcarts – 2010

- 3 – Small Round Tables – 2010
- 2 – Small Rectangular Tables – 2010
- 2 – Small Lamps – 2010

Recommendation:

N/A

Fiscal Impact:

N/A

Attachments:

1. Resolution 5500

RESOLUTION NUMBER 5500

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

WITNESSETH THESE RECITALS

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

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

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

1. The City Manager is hereby authorized to sell or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 5500 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 12th day of February, 2024.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

EXHIBIT A

- 6 – Dell Optiplex 380 Computers – 2010
- 5 – Dell Optiplex 3040 Computers – 2017
- 11 – Dell Optiplex 3050 Computers – 2018
- 11 – Dell Optiplex 3020 Computers – 2015
- 8 – Dell Optiplex 7020 Computers – 2014
- 4 – Dell Optiplex 7060 Computers – 2019
- 15 – Apple IMac 27inch Computers – 2015
- 1 – Canon Pixma Pro 9000 Printer – 2010
- 1 – Jamex Coin Op #6552 – 2011
- 1 – Dell 22inch Monitor – 2012
- 7 – LG Flatron 22inch Monitors – 2010
- 8 – Bookcarts – 2010
- 3 – Small Round Tables – 2010
- 2 – Small Rectangular Tables – 2010
- 2 – Small Lamps – 2010



**CITY OF VESTAVIA HILLS
PARKS & RECREATION
INTER-DEPARTMENT MEMO**

February 12, 2024

To: Jeff Downes, City Manager

Cc:

From: Jamie Lee, Parks and Leisure Services Director

RE: Public Hearing - Ordinance Number 3207 - An Ordinance to accept a proposal from Coca-Cola Bottling Company to become the concessions/vending provider for a period of three years at all Vestavia Hills Parks and Leisure Facilities. Acceptance will authorize the Mayor and City Manager to do all actions necessary to secure Coca-Cola as the vendor.

Background:

The ordinance would allow the Mayor and City Manager to sign a contract with Coca-Cola to be the beverage provider for concessions in all Parks and Leisure Services Facilities. All contract details were presented at the January 8th work session. This contract would be for a three-year period with the option to renew.

Recommendation:

This proposal was unanimously recommended by the Park Board.

Fiscal Impact:

See attached proposed contract

Attachments:

1. Ordinance 3207
2. Coca-Cola Agreement - 2024

ORDINANCE NUMBER 3207

AN ORDINANCE TO ACCEPT A PROPOSAL FROM COCA-COLA BOTTLING COMPANY TO BECOME THE CONCESSIONS/VENDING PROVIDER FOR A PERIOD OF THREE YEARS AT ALL VESTAVIA HILLS PARKS AND LEISURE FACILITIES AND AUTHORIZING THE MAYOR AND CITY MANAGER TO TAKE ALL ACTIONS, INCLUDING EXECUTING AN AGREEMENT TO SECURE SAID SERVICES.

WHEREAS, the Parks and Leisure Services Department for the City of Vestavia Hills, Alabama, invited proposals for providing concession/vendor services for all City parks and recreation facilities; and

WHEREAS, two proposals were received and reviewed by the Director and the Parks and Recreation Board; and

WHEREAS, the Parks and Recreation Board, at its regular meeting of January 16, 2024, voted to recommend approval of the proposal submitted by Coca-Cola Bottling Services along with an agreement as detailed in Exhibit A, attached to and incorporated into this Ordinance number 3207; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the Board's recommendation.

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

1. The proposal by the Coca-Cola Bottling Company as presented shall be accepted by the City as the official concessions/vending provider for the City's Parks and Leisure Services facilities; and
2. The Mayor and City Manager are hereby authorized to execute and deliver said agreement as detailed in the attached Exhibit A and also to perform any other action as might be required in order to secure said services; and
3. This Ordinance Number 3207 shall become effective immediately upon adoption and approval following posting/publication as required by Alabama law.

DONE, ORDERED, ADOPTED and APPROVED this the 26th day of February, 2024.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

BEVERAGE AGREEMENT

Parties:

BOTTLER:

Coca-Cola Bottling Company United - Central, LLC
d/b/a Birmingham Coca-Cola Bottling Company

ACCOUNT:

City of Vestavia Hills Parks and Leisure Services, on
behalf of Vestavia Hills Parks and Recreation

The parties hereto are entering into this agreement (the “**Agreement**”) because Account wishes to grant to Bottler, and Bottler wishes to obtain, the exclusive rights set forth herein. Account represents and warrants that it has full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein and that all requirements of the applicable public procurement laws are satisfied. In consideration of the premises and the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All defined terms used in this Agreement and not otherwise defined will have the meanings set forth below:

- (a) “**Agreement Year**” means each twelve-month period during the Term beginning on the Effective Date (as defined in Section 2).
- (b) “**Beverages**” means all non-alcoholic beverages (i.e. anything consumed by drinking), whether or not such beverages (i) contain nutritive, food, or dairy ingredients, OR (ii) are in a frozen form. This definition applies without regard to the beverage's labeling or marketing. Powders, syrups, grounds (such as for coffee), herbs (such as for tea), concentrates, K-Cups® pods and all other beverage bases from which Beverages can be made, and brands and products of water purification and beverage making systems (e.g. Brita®, Soda Stream®, Keurig®) are deemed to be included in this definition. For the avoidance of doubt, “flavor enhancers”, “liquid water enhancers”, and non-alcoholic beverages sold as “shots” or “supplements” are considered Beverages.
- (c) “**Competitive Products**” means all Beverages which are not Products.
- (d) “**Concessionaire**” means any current or future third-party food or beverage service provider under agreement with Account at the Facility that directly or indirectly relate to the sale or service of Beverages.
- (e) “**Facility**” or “**Facilities**” means the entire premises of all locations owned or controlled by Vestavia Hills Parks and Recreation, as set forth in **Exhibit A**, including all currently existing and future buildings, and includes, without limitation, the grounds, parking lots, all vending and concession areas, sidelines, benches and locker rooms, branded and unbranded food service outlets and dining facilities.
- (f) “**Freestyle**” means a fountain dispenser that combines ingredients (microdosed beverage components, beverage mixes and flavors stored in cartridges and nutritive and non-nutritive sweeteners stored in bag-in-boxes and/or cartridges) to create a wide variety of branded fountain beverages.
- (g) “**Products**” means Beverages purchased, or available for purchase directly from Bottler or sold through vending machines owned and stocked exclusively by Bottler.
- (h) “**Snacks**” means all snacks and prepackaged foods made available at the Facility.
- (i) “**Unattended Retail Services**” the provision and sale of Beverages, fresh brewed beverage(s), prepackaged food, snacks, and/or sundries through self-service kiosks, which permit sales directly to the consumer at the Facility without person-to-person interaction.

2. **Term.** This Agreement shall be in effect for a period of three (3) year(s) beginning January 1, 2024 (the “**Effective Date**”) with the option to renew for up to three (3) successive three (3) year periods, (each a “**Renewal Term**”). As used herein, the capitalized word “Term” shall mean the time period beginning January 1, 2024 and ending December 31, 2035, including each Renewal Term, but in no event shall the Term extend beyond any limitation in any applicable public bid law. If the Effective Date referenced in the foregoing sentence is blank, such term shall mean the last signature date of this Agreement.

3. **Advertising Rights.**

- (a) Account hereby grants to Bottler the exclusive right to advertise Beverages and specifically Products (i) at the Facility and (ii) in connection with the Facility. No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere at the Facility.
- (b) Bottler will have the exclusive right to advertise the Products as the “official” or “exclusive” soft drink, sports drink, water, tea, energy drink and/or juice or juice drink, etc. of the Facility.
- (c) Account hereby grants to Bottler a royalty-free license, exclusive for Beverages, to use the trademarks, logos and other intellectual property of the Account and Facility (“**Account Marks**”) in connection with the promotion of Products. Such promotion may occur in advertising (TV, radio, print, social media and/or other electronic means), packaging, vessels, promotional materials, and point of sale materials for Products and may be in connection with the marks and logos of Bottler’s other accounts.
- (d) Account agrees that Bottler’s advertising shall be positioned at all times in such a manner that the advertising message is in no way obscured (electronically or otherwise) and is clearly visible to the general public. The Products shall be prominently listed on any menu boards located at the Facility and all equipment dispensing Products shall be prominently identified with the trademarks/logos corresponding to such Products.
- (e) Account further agrees that only Products will be dispensed in Bottler’s equipment and that no other trademarked Beverage-dispensing equipment, coolers or containers will be permitted at the Facilities.
- (f) Account will not enter into any agreement or relationship whereby any Competitive Products are associated in any manner with Account, the Facility, or any of the Account Marks in any advertising or promotional activity of any kind.

4. **Product Rights.**

- (a) Except only with respect to Concessionaires, Account hereby grants to Bottler the exclusive right to sell, serve, distribute or otherwise make available Beverages and Snacks at the Facility. Account and/or its Concessionaires shall purchase all Beverages (and cups, lids and carbon dioxide, if applicable) and Snacks directly from Bottler. Notwithstanding anything in this Agreement to the contrary, no Competitive Products may be sold, dispensed, sampled, served, or otherwise made available anywhere at the Facility. Account agrees not to sell or distribute, directly or indirectly, any Products purchased hereunder outside of the Facility.
- (b) Account agrees to offer only 20oz packaged Products, 18.5oz Gold Peak Tea and 16oz Body Armor at all athletic venues, tournaments and any other events where concessions are sold, and to cause Products to be hawked in stands at all sporting events and during all events when any items of any make or description are hawked at the Facility.
- (c) Account hereby grants to Bottler the exclusive Beverage and Snack vending rights at the Facility and exclusive rights to provide Unattended Retail Services at the Facility.

5. **Consideration.** In consideration of the rights and benefits granted to Bottler hereunder, Bottler agrees to provide Account with the specific items set forth in **Exhibit B** (collectively “**Consideration**”).
6. **Pricing.** Account shall be entitled to purchase bottle/can Products (and cups, lids and carbon dioxide, if applicable) in accordance with the then current trade prices. Thereafter, prices are subject to change each Agreement Year. Price increases generally occur automatically on January 1st of each Agreement Year. However, in the event of an increase in a component of Bottler’s cost of goods, manufacture or delivery, or increases in taxes, deposits or other government related fees, Bottler may further increase prices to cover such increased costs at other times during the Agreement Year; in which case Bottler will provide thirty (30) days’ written notice to Account prior to such price changes taking effect.
7. **Equipment.** During the Term, Bottler will loan to Account, subject to the terms of Bottler’s Equipment Placement Addendum (“**EPA**”) attached hereto as **Exhibit C**, at no cost, the Beverage dispensing equipment reasonably required and as mutually agreed upon to dispense Products at the Facility (“**Equipment**”). Account agrees that Bottler shall have the right to place a quantity of Beverage vending machines, coolers or other Equipment, determined by Bottler in its discretion, in mutually agreed upon locations at the Facility. Upon thirty (30) days’ notice from Bottler, Bottler shall have the right to remove any Equipment, in its discretion, and Account shall provide immediate physical access to Bottler for the removal of such Equipment. The Equipment will not include Freestyle equipment. Account hereby agrees to the terms of the EPA set forth in **Exhibit C**.
8. **Concessionaire.** In the event Account employs a Concessionaire, Account will cause Concessionaire to purchase from Bottler all requirements for Beverages (and cups, lids and carbon dioxide, if applicable). Such purchases will be made at prices and on terms set forth in Bottler’s existing agreement with Concessionaire, if any. If no agreement exists between Concessionaire and Bottler, such purchases will be made at prices and on terms set forth in this Agreement. Notwithstanding anything herein to the contrary, Bottler shall not pay to Account any Consideration for a purchase of Products by a Concessionaire to the extent that Bottler is required to pay the Concessionaire any funding duplicative of the Consideration for the same purchase of Products pursuant to an existing agreement between the Concessionaire and Bottler. In the event of a default in any of Concessionaire’s obligations owing to Bottler, Account will use commercially reasonable efforts to cause Concessionaire to cure such default.
9. **Termination.** If any of the following events occur during the Term of this Agreement, Bottler may (in addition to any other remedies available) terminate this Agreement immediately upon notice to Account: (a) Account breaches any of its obligations set forth in this Agreement and fails to cure such breach within 30 days’ written notice thereof; (b) any federal, state or local law, rule, regulation or order prohibits, restricts or in any manner interferes with the sale or advertising of Beverages; (c) Account files a petition under any bankruptcy law or becomes insolvent or makes any general assignment for benefit of creditors; or (d) Account’s full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein has expired or been revoked. In the event of any termination of this Agreement, Account shall (i) provide immediate physical access to Bottler for the removal of any Equipment and Scoreboards, (ii) pay to Bottler a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to Bottler the unearned portion of any Consideration.
10. **Right to Off-Set and Withhold.** In the event Account or Concessionaire fails to pay Bottler any invoice due for Products received, transshipment charges or upon any other basis, Bottler shall have the right to deduct the amount of such unpaid invoice, transshipment charge or other charge from any Consideration otherwise due from Bottler to Account. Bottler shall have the right to withhold and not pay further any amounts which may become payable to Account pursuant to this Agreement if: (i) Account has failed to perform its obligations hereunder, (ii) Bottler’s rights hereunder

have been lost, limited or restricted, or (iii) there exists a bona fide dispute between the parties. Nothing in this section shall operate to restrict any of Bottler's other remedies in the event of a material breach by Account.

11. Adjustment. If (i) any of the rights granted to Bottler herein are materially restricted or limited during the Term, including as a result of a Force Majeure Event (as defined in Section 14), or (ii) if any material component of the Facility is closed, or substantially closed, to customers for a period of thirty (30) consecutive days, or (iii) if the volume of Products sold to the Account decreases for any reason in any twelve month period by ten percent (10%) or more over the prior twelve month period, then in addition to any other remedies available to Bottler, Bottler may elect to adjust any Consideration to fairly reflect the decreased value of rights granted to Bottler hereunder (and Account will pay to Bottler a refund of any prepaid amounts in excess of such reduced Consideration and a pro rata refund of the costs of refurbishing and installing the Equipment).

12. Notices. Any notice or other communication under this Agreement must be in writing and must be sent by registered mail or by an overnight courier service (such as Federal Express) that provides a confirming receipt. Notice is considered duly given when it is properly addressed and deposited (postage prepaid) in the mail or delivered to the courier. Unless otherwise designated by the parties, notice must be sent to the following addresses:

If to Bottler:

Coca-Cola Bottling Company United – Central, LLC
d/b/a Birmingham Coca-Cola Bottling Company
4600 East Lake Boulevard
Birmingham, AL 35217

If to Account:

City of Vestavia Hills Parks and Leisure Services, on
behalf of Vestavia Hills Parks and Recreation
1973 Merryvale Rd
Vestavia Hills, AL 35216

With a copy to:

Coca-Cola Bottling Company United, Inc.
4600 East Lake Boulevard
Birmingham, AL 35217
Attn: General Counsel

13. Force Majeure. The failure of a party to comply with the terms and conditions hereof because of an act of God, strike, labor troubles, war, fire, earthquake, hurricane, tornado, epidemic, act of terror or public enemies, action of federal, state or local governmental authorities, or for any reason beyond the reasonable control of such party ("**Force Majeure Event**"), will not be deemed a breach of this Agreement. Such party will resume full performance of and compliance with the terms and conditions hereof promptly upon removal of any such Force Majeure Event.

14. Claims. In no event will Bottler accept any audits of, or claims of discrepancies or errors in, pricing, rebates, commissions, funding, discounts, or other Consideration provided under this Agreement ("**Claims**") more than forty-five (45) days from the date of invoice, commission report, check or other applicable documentation. In order to submit a Claim, Account shall provide Bottler a detailed, written request specifying the particular price, commission, funding, product, amount in dispute and reason for dispute, along with a true copy of the original invoice, commission report, check or other applicable documentation. Bottler will review each Claim in good faith and provide responses to each Claim submitted in accordance with this Section. Bottler will work directly with the Account to resolve any Claims or audit issues but will not interact with third-party auditors or contractors. Any audits requested by Account shall take place during normal business hours and shall be conducted at Bottler's place of business.

15. Miscellaneous. This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without reference to its conflict of law rules. Each of the parties hereto agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable

laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder. If any portion of this Agreement is severed, that is, held indefinite, invalid, or otherwise unenforceable, the rest of this Agreement continues in full force. But if the severance of a provision affects a party's rights, the severance does not deprive that party of its available remedies, including the right to terminate this Agreement. Account shall not obtain, by this Agreement, any right, title or interest in the trademarks of The Coca-Cola Company or Bottler, nor shall this Agreement give Account the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of Bottler or The Coca-Cola Company. During the Term, and for a one (1) year period thereafter, the parties shall keep the terms of this Agreement confidential, subject to applicable laws. **EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES.** This waiver applies to any action or legal proceeding, whether arising in contract, tort or otherwise. This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral. In the event of a conflict between the provisions of this Agreement and a provision in any other document including any "click through" or other online terms and conditions referenced in any such documents or in a website (collectively, "**Supplemental Terms**"), the provisions of this Agreement shall control. No Supplemental Terms shall modify, amend or supplement the terms of this Agreement, even if such Supplemental Terms are accepted or acknowledged by a party after the execution of this Agreement. Account may not assign this Agreement without the prior written consent of the Bottler. All amendments to or waivers of this Agreement must be in writing signed by all the parties. Bottler's delay or failure to exercise any of its rights hereunder will not operate as a waiver thereof. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BOTTLER

By: _____

Printed Name: _____

Title: _____

Date: _____

ACCOUNT

By: _____

Printed Name: _____

Title: _____

Date: _____

Exhibits Attached:

Exhibit A – Facility Locations

Exhibit B – Consideration

Exhibit C – Equipment Placement Addendum

Exhibit D – Fundraiser Terms and Conditions

EXHIBIT A
FACILITY LOCATIONS

Cahaba Heights Park

Liberty Park Sports Complex

Miracle League Field

Sacred Hollow Athletic Complex

Wald Park

Vestavia Hills Civic Center

Aquatic Complex

Splash Pad

EXHIBIT B
CONSIDERATION

1. **Annual Marketing Fees.** Bottler agrees to pay Account Ten Thousand Dollars (\$10,000) each Agreement Year of the Term (the “**Annual Marketing Fees**”). The first installment shall be payable within sixty (60) days after the date this Agreement is fully executed, and subsequent installments shall be due on or about the anniversary date of the Effective Date in each Agreement Year remaining in the Term. The Annual Marketing Fees shall be deemed earned pro rata on a daily basis over the Agreement Year for which they are paid.
2. **Commissions.** Bottler agrees to pay Account a monthly commission based on the commission rates and initial vend prices set forth below. All taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any, may be deducted from funds collected before calculating commissions. Commissions shall not be payable on any sales from vending machines not filled and serviced exclusively by Bottler. Bottler may adjust the vend prices and/or commission rates to recover its costs, including cost of goods, to implement cash discounts, or as it otherwise deems necessary or desirable, in its sole discretion. Commissions will be paid each month following the month in which they are earned, with an accounting of all sales and monies in a form reasonably satisfactory to the Account and shall become immediate property of Account.

Product	Vend Rate	Commission
20oz Bottled Carbonated	\$2.25	25%
20oz Dasani Water	\$2.25	25%
12oz Cans	\$1.00	25%
20oz PowerAde	\$2.25	25%
10oz MM Juice	\$2.00	25%
20oz Vitamin Water	\$2.00	25%
Chips	\$1.50	15%
Crackers	\$1.00	15%
Candy	\$1.50	15%
Pastry	\$1.50	15%

3. **Rebates.** Bottler agrees to pay Account rebates in the amounts set forth below for each converted case of Product purchased and paid for by Account for sale at the Facility, including Coca-Cola Fundraisers (the “**Rebates**”). The Rebates shall be paid to each qualifying Facility location annually, in arrears, within sixty (60) days after the end of each applicable Agreement Year in which the Rebates were earned and will be based on Bottler’s case sales records. Rebates shall not be earned on sales of Products through Bottler’s full-service vending machines. As used herein, a “converted case” is measured by 24-count. Regardless of the case configurations in which Products are sold, they are translated to the converted case equivalent for purposes of calculating Rebates.

Product	Rebate Amount
20oz Bottles	\$2.00/converted case
18.5oz Gold Peak Tea	\$2.00/converted case
16oz Body Armor	\$2.00/converted case

4. **Scoreboard(s).** Bottler agrees to provide Account with scoreboard(s) or scoreboard funding on the terms and conditions set forth below:
 - (a) Bottler shall pay the cost of purchasing and installing thirty (30) scoreboard(s) (the “**Scoreboard(s)**”), up to Two Hundred Thousand Dollars (\$200,000) (“**Scoreboard Funding**”) in accordance with the schedule below:

Scoreboard(s)	Purchase and Installation
Seventeen (17) Baseball/Softball Scoreboards	Purchase in 2023 and install in 2024
Nine (9) Football/Soccer/Lacrosse Scoreboards	Purchase in 2023 and install in 2024
Four (4) Basketball Scoreboards	Purchase in 2023 and install in 2024

The Scoreboard(s) shall be installed at the Facility locations specified by Account in accordance with applicable building and electrical codes. **THE PROVISION OF THE SCOREBOARD(S) IS ON AN “AS IS” BASIS. BOTTLER HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY AND FITNESS FOR INTENDED USE, AND BOTTLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES.**

- (b) Bottler shall be entitled to premiere and exclusive Beverage advertising rights on the Scoreboard(s) and at the Facility, and Account will not grant advertising rights at the Facility with respect to any Competitive Products.
- (c) Bottler shall provide Scoreboard service and repair during the Term of this Agreement. Account shall operate the Scoreboard(s) in good condition and during the Term of this Agreement at Account’s expense and allow access by Bottler’s personnel to change the promotional message on the Scoreboard(s), such changes to be in Bottler’s sole discretion and at Bottler’s expense and subject to Account approval of content, not to be unreasonably withheld.
- (d) Account shall pay all costs of operating the Scoreboard(s) including, but not limited to, all utility charges.
- (e) To the extent permitted by the laws of Alabama, Account shall indemnify, defend, and hold Bottler and Bottler’s officers, agents, employees, directors, shareholders, affiliates, successors, and assigns harmless from all losses, damages, claims, suits, proceedings, damages and liabilities of any nature, and all costs and expenses, including reasonable attorneys’ fees, resulting from any and all claims, demands, or rights of action that may be asserted at any time against Bottler which are caused by or result from Account’s possession, use, or operation of the Scoreboard(s).
- (f) Account shall maintain the following insurance:
 - (i) All risk property insurance in an amount equal to the replacement cost of the Scoreboard(s), and general liability insurance in the amount of \$2,000,000 per occurrence, including contractual liability for this Agreement and name the Bottler as additional insured, or the maximum insurance coverages for property damage and personal injury which are permitted by law. Certificates of Insurance confirming the existence of such coverages shall be provided to Bottler annually and Account will provide Bottler with thirty (30) days’ prior written notice of cancelation, non-renewal or material change of such insurance.
- (g) The Scoreboard(s) shall be the property of the Bottler. During the Term and upon expiration or termination of this Agreement, Bottler shall retain ownership of the Scoreboard(s).

5. In-kind Marketing Support. Each Agreement Year, Bottler agrees to make available to Account in-kind marketing support for mutually agreed marketing activities, such as menu boards, banners, trash barrels (when available) or other items, with an aggregate estimated retail value of up to Two Thousand Dollars (\$2,000), as determined in good faith by Bottler (“**In-kind Marketing Support**”). Account understands and acknowledges that it will not receive cash in lieu of In-kind Marketing Support.

6. Complimentary Product. Each Agreement Year, Bottler shall make available to Account standard physical cases of complimentary Products for tournaments consisting of 12oz cans and .5L Dasani with an aggregate estimated retail value of Two Thousand Dollars (\$2,000), as determined in good faith by Bottler. Such complimentary Products will be

provided to Account upon reasonable advance request. Account must request all available complimentary Products during the course of each Agreement Year. If Account does not request all available complimentary Products by the end of each Agreement Year, then any complimentary Products remaining at the end of each Agreement Year shall be forfeited by Account and retained by Bottler with no further obligation. Complimentary Products are not to be resold.

7. **Fundraisers.** Account may participate in Coca-Cola truckload fundraiser sales each Agreement Year. Account's participation in any truckload fundraiser sales shall be subject to the terms and conditions set forth in **Exhibit D** hereto.

8. **Event Trailers.**

(a) In connection with this Agreement, Account may have the opportunity to use a trailer supplied by Bottler for concession sales of Products at Account events. ("**Event Trailer**"). Bottler shall not be liable to Account for any claims based on or arising out of injury to person or property in any way relating to Account's use of an Event Trailer, except such claims as might arise solely out of Bottler's gross negligence or willful misconduct. In no event and under no circumstances shall Bottler be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of Product, or consequential, special or incidental damages in any way relating to Account's use of an Event Trailer.

(b) To the extent permitted by the laws of Alabama, Account shall indemnify, defend and hold Bottler, its parent companies and each of their respective officers, agents, employees, directors, shareholders, affiliates, successors, and assigns harmless from all losses, damages, claims, suits, proceedings, and liabilities of whatever nature, and all resulting costs and expenses, including reasonable attorneys' fees, arising from or related to any bodily injury or death of any person or damage to real or personal property caused by any act or omission of Account, its personnel or agents in connection with Account's use of an Event Trailer.

EXHIBIT C
EQUIPMENT PLACEMENT ADDENDUM

During the Term of the Agreement, Bottler may provide to Account Equipment (as defined below), subject to the terms of this Equipment Placement Addendum ("EPA"). The terms of this EPA shall apply to each piece of Equipment commencing on its date of installation at any Account Location ("Commencement Date"). THE TERMS OF THIS EPA WILL CONTINUE IN EFFECT WITH RESPECT TO EACH PIECE OF EQUIPMENT UNTIL THE EQUIPMENT HAS BEEN RETURNED TO BOTTLER AND WILL SURVIVE THE EXPIRATION OR TERMINATION OF ANY AGREEMENT INTO WHICH THIS EXHIBIT IS INCORPORATED. Any term capitalized, and not otherwise defined herein, shall have the meaning given in the Agreement.

1. Installation and Use Restrictions. Bottler may, from time to time, deliver and install **Equipment** (which term encompasses all equipment provided by Bottler at any time, including, without limitation, vending machines, coolers, fountain equipment, racks and/or any replacement parts, replacements, additions or accessories) reasonably required and as mutually agreed upon to dispense the Bottler's Products. Account shall use the Equipment only at the particular location to which such Equipment is actually delivered unless otherwise agreed by Bottler. At all times during the term of this Agreement, Account shall maintain records of the location of all Equipment and promptly provide copies of such records to Bottler upon request. The Agreement and this EPA, in addition to any additional documents and/or records by and/or between the parties describing the Equipment and the location(s) where such Equipment is placed, shall be maintained by Bottler and shall constitute the official book of record pertaining to the Equipment. Account hereby agrees that: (i) no logo, trademark, advertisement, or other indication of Bottler's ownership of the Equipment shall be obstructed, defaced, or removed, and no other logo, trademark, or advertisement shall be attached to the Equipment; (ii) the Equipment shall not be obstructed, moved, or removed without the prior written consent of Bottler; (iii) the Equipment shall not be sold, reassigned, loaned, leased, or rented to any other party except as authorized by Bottler; in which case, Account shall remain fully responsible for the Equipment as per the terms of this Agreement; (iv) no racks, merchandise, or any other objects shall be placed on top of or attached to the Equipment unless expressly authorized by Bottler; and (v) Account will not attach the Equipment, or allow the Equipment to be attached, in such a manner as to become part of the realty as a fixture or otherwise, and that the Equipment will be maintained so that it may be easily removed without damage to buildings or realty.
2. Operation. In consideration of the provision of the Equipment by the Bottler to Account pursuant to the Agreement, Account agrees to purchase from Bottler and store in, or sell through, the Equipment only products supplied by Bottler. In Bottler's sole discretion, a review of Account's product purchase volume and Equipment usage may justify ongoing Equipment placement or Equipment removal. Removal of any piece of Equipment will not affect the term of any agreement between the parties, and this EPA shall survive with respect to any Equipment remaining in Account's possession.
 - a. If Bottler is providing full-service vending, Account agrees to permit Bottler to place the vending Equipment on Account's premises. Bottler shall stock such vending Equipment and shall collect all vending proceeds from the sale of beverages. If Bottler has agreed to pay Account a commission on sales through the Equipment, all taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any, may be deducted from funds collected before calculating any commissions due to Account.
 - b. Bottler hereby loans the Equipment to Account; however, during the term of this Agreement, Bottler reserves the right, upon prior notice to Account, to lease or rent the Equipment to the Account and, upon commencement of the lease or rental program, Account agrees to pay a monthly rental/lease amount. Bottler may change the rental/lease rate charged under this Agreement by sending notice of such change to Account at its present address. Account may terminate this Agreement as set forth herein if it objects to such change.
 - c. If the Equipment includes a fountain beverage dispenser, Account agrees to permit Bottler to install the fountain Equipment on Account's premises. Account agrees such fountain Equipment will be used only for the purpose of dispensing fountain beverage products of The Coca-Cola Company ("**Company**"), such as Coca-Cola® classic (or Coke®), diet Coke® and Sprite®, and other fountain products distributed by Bottler with the understanding that no product of PepsiCo, Inc. or of an affiliate thereof may be dispensed. Account further agrees not to dispense any product whose pungency could affect the normal taste or quality of the Company's fountain beverage products.
3. Ownership. Bottler is and, at all times, shall remain, the exclusive owner of the Equipment. Account shall protect Bottler's title and keep the Equipment free from all claims, liens, and encumbrances arising from the actions or inactions of Account. Account's obligation under this paragraph remains until such time as Bottler or Bottler's designee picks up the Equipment. Account authorizes Bottler to execute and file any additional instruments in all jurisdictions where it deems it necessary to perfect and maintain Bottler's interest in the Equipment. Bottler shall have the right, during Account's regular business hours, to inspect the Equipment at Account's premises or wherever the Equipment may be located and to review all records that reasonably relate to the Equipment upon reasonable notice to Account. Account shall promptly notify Bottler of all details arising out of any alleged encumbrances thereon or any accident allegedly resulting from the use or operation thereof.
4. Service and Repair. Account shall take reasonable care of the Equipment. Bottler agrees to provide reasonable service and repair for the Equipment during the term hereof. Account shall allow Bottler to enter its premises for the purpose of inspection or performance of such service and repair, or necessary replacement or return or removal of the Equipment. In the event additional service and repair is requested by Account or reasonably necessary as a result of Account's negligence or willful misconduct, Bottler may bill Account its standard rate per service call. All service and repair calls must be exclusively handled or authorized by Bottler. Account's sole recourse against Bottler with

respect to service and repair provided by Bottler or its agents to the Equipment is that Bottler will correct any defective workmanship at no additional charge to Account, provided that Bottler is given prompt notification of any defective workmanship. Account shall promptly notify Bottler of any Equipment malfunction and take reasonable steps to mitigate any risk of injury to person or property arising from such malfunction. For example, if a piece of Equipment is not cooling properly, Account will unplug that piece of Equipment until it is repaired or replaced by Bottler.

5. Disclaimer of Warranties; Liability and Costs. Account acknowledges that Bottler is not the manufacturer of the Equipment. BOTTLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES AS TO THE FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, CONSTRUCTION, CONDITION, SPECIFICATIONS, OR PERFORMANCE OF THE EQUIPMENT. Account accepts no warranties and expressly waives any implied warranties as to the fitness for a particular purpose, merchantability, design, construction, condition, specification, or performance of the Equipment. Except to the extent attributable to the gross negligence or willful misconduct of Bottler, Account hereby assumes liability for any and all damage to (normal wear and tear excepted), or loss of, the Equipment from the time the Equipment is delivered to Account until returned to or removed and accepted by Bottler. Account assumes responsibility to report any damage to, or loss of, Equipment to Bottler immediately. To the extent any payment is due from Bottler to Account under the Agreement or otherwise, Bottler may deduct from such payment the cost of repair or replacement of Equipment due to damages for which Account is responsible hereunder. All taxes, licenses, charges, or other fees which may be imposed on Account's sales of products through the Equipment or in connection with this Agreement by any taxing authority, shall be borne by Account.
6. Exculpation; Indemnity. **CUSTOMER ACKNOWLEDGES THAT INSTALLATION, USE, OR OPERATION OF EQUIPMENT CARRIES INHERENT RISKS INCLUDING BUT NOT LIMITED TO FLOODING AND DAMAGE TO FIXTURES AND OTHER PROPERTY.** Bottler shall not be liable to Account for any claims based on or arising out of injury to person or property in any way relating to the installation, use, repair, or operation of the Equipment, except such claims as might arise solely out of Bottler's gross negligence or willful misconduct. In no event and under no circumstances shall Bottler be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of product, or consequential, special or incidental damages in any way relating to the installation, use, repair, or operation of the Equipment. To the extent permitted by the laws of Alabama, Account shall indemnify and hold Bottler and Bottler's officers, agents, employees, directors, shareholders, affiliates, successors, and assigns (hereinafter the "**Indemnified Parties**") harmless from all losses, damages, claims, suits, proceedings, damages and liabilities of whatever nature, and all costs and expenses, including Indemnified Parties' reasonable attorneys' fees resulting from any and all claims, demands, or rights of action that may be asserted at any time against Bottler which are caused by or result from Account's negligence or willful misconduct in the possession, use or operation of the Equipment or due to Account's breach of any provision of this EPA. Account represents and warrants that plumbing and electrical service on the property is proper and adequate for the installation and use of the Equipment, and Account will not use extension cords or other electrical connections not expressly approved by Bottler. Account agrees to indemnify and hold harmless Bottler from any damages arising out of Account's plumbing or electrical hook-up or service. Notwithstanding anything herein to the contrary, the provisions of this section will survive termination of the Agreement.
7. Termination or Expiration. Upon termination or expiration of the Agreement, Account shall promptly return all Equipment to Bottler.
8. Remedies. In the event of Account's breach of this EPA, Bottler shall have the immediate right to exercise any one or more of the following remedies: (w) to terminate the Agreement; (x) to declare the entire amount of any rent immediately due and payable, without notice to or demand of Account; (y) to take possession of any or all of the Equipment without demand or notice wherever the same may be located, without any court order or other process of law; or (z) to pursue any other remedy at law or in equity. If the Equipment is not made accessible by Account, then Account shall pay all costs and expenses relating to the removal of the Equipment, including reasonable attorneys' fees incurred by Bottler in enforcing its rights hereunder by litigation or otherwise. If this EPA is terminated with respect to any piece of Equipment for any reason prior to one year from the commencement date hereof, then Account shall pay Bottler all costs and expenses for installation, removal and refurbishment of the Equipment. All rights and remedies provided herein may be exercised exclusively, concurrently, or cumulatively with any other right or remedy hereunder, or as otherwise provided by law.
9. Casters (if applicable). If Account requests, at any time during the term of the Agreement, that Bottler provide the Equipment equipped with casters, the following provisions shall apply. Account represents and warrants that the Equipment is required by a governmental authority pursuant to applicable health, safety, sanitary or other applicable codes or ordinances, or the Account desires the Equipment to be equipped with casters to permit the efficient and thorough cleaning of the Equipment and surrounding areas. Account recognizes and acknowledges that the casters provided on the Equipment are not designed or intended to allow for the movement of the Equipment beyond the minimal distances required for cleaning of the immediate area and are not designed for movement from room to room or other similar distances. Account agrees that it shall not, and shall not permit its employees, agents, or subcontractors to use the casters to move the Equipment beyond the short distances necessary to adequately clean and maintain the Equipment and immediately surrounding areas. Account agrees not to otherwise move or displace the Equipment from the area in which it was placed by Bottler. Any violation of this section by Account shall constitute a breach of this EPA.
10. Miscellaneous. To the extent that any of the terms of this EPA conflict with the terms set forth in any other agreement between the parties (and the effect of such conflict diminishes the rights of Bottler under this EPA), the terms of this EPA will control; provided further that removal of any Equipment will not affect the terms of any other agreement between the parties.

EXHIBIT D
FUNDRAISER TERMS AND CONDITIONS

During the Term of this Agreement, Account may have the opportunity to conduct truckload fundraiser sales (each, a **"Fundraiser"**) from time to time in which Account will promote the sale of Bottler's Products to interested groups and individuals that may order Products for in-person delivery. The pricing and selection of Products, location, and date of each Fundraiser shall be mutually agreed upon by Account and Bottler. These terms and conditions shall apply to any and all Fundraisers conducted by Account.

All proceeds from Fundraiser sales shall be remitted to Bottler. Bottler shall apply the proceeds to satisfy in full all (i) Bottler's costs for the Products delivered through the Fundraiser, (ii) applicable sales taxes, and (iii) Bottler's administrative costs associated with the Fundraiser (collectively, **"Fundraiser Costs"**). In the event of any chargebacks, refunds, or cancellations, the amount of the reversed charge and any resulting payment network fees incurred by Bottler shall be deducted from the Fundraiser proceeds. If the Fundraiser proceeds collected are insufficient to satisfy the Fundraiser Costs, Account agrees to pay the deficiency amount to Bottler.

For each Fundraiser, Bottler's administrative costs are generally estimated to include (a) 4% of gross proceeds for payment card and gateway fees (plus actual fee amounts for any cancelled orders), and (b) a flat fee of \$0.50 per order for use of the Fundraiser's e-commerce website. Account may obtain the specific administrative cost estimates for its Fundraiser from Bottler.

After satisfying the Fundraiser Costs, Bottler will remit all remaining proceeds from the Fundraiser to Account via check (**"Proceeds Check"**). Should any chargebacks, refunds, or cancellations occur after Bottler has delivered the Proceeds Check to Account, Account agrees to pay Bottler the amount of the reversed charge and any resulting payment network fees incurred by Bottler.

Unless otherwise agreed in writing by both parties, Account authorizes and directs Bottler to make the Proceeds Check payable to the Account's name set forth in the Agreement and to deliver the Proceeds Check to Account's notice address set forth in the Agreement. Account releases and forever discharges the Indemnified Parties (defined below) from any and all claims arising from the Proceed Check recipient's use, misuse, or possession of the Proceeds Check. Bottler shall not be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of Products, or consequential, special, or incidental damages in any way relating to a Fundraiser.

To the extent permitted by the laws of Alabama, Account shall indemnify, defend, and hold Bottler, its parent companies, and each of their respective officers, agents, employees, directors, shareholders, affiliates, successors, and assigns (collectively, **"Indemnified Parties"**) harmless from all losses, damages, claims, suits, proceedings, and liabilities of whatever nature, and all resulting costs and expenses, including reasonable attorneys' fees, arising from or related to: (i) any act or omission of Account, its personnel, members, volunteers, or agents in connection with a Fundraiser; and/or (ii) any bodily injury or death of any person or damage to real or personal property caused by any act or omission of Account, its personnel, members, volunteers, or agents in connection with a Fundraiser.



CITY OF VESTAVIA HILLS

INTER-DEPARTMENT MEMO

February 12, 2024

To: Jeff Downes, City Manager

Cc:

From:

RE: Citizens Comments

Background:

Recommendation:

Fiscal Impact:

Attachments:

None