



**Vestavia Hills
City Council Agenda
October 9, 2023
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation - David Phillips, Senior Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. Proclamation - Domestic Violence Awareness Month - October 2023
8. Proclamation - Fire Prevention Month - October 2023
9. City Manager's Report
 - Highway 31 - Pedestrian Bridge Briefing by Gresham, Smith, and Partners (Aesthetic and Branding Components)
10. Councilors' Reports
 - Announcement of Upcoming Vacancy on the Vestavia Hills Parks and Recreation Board
 - Announcement of Upcoming Vacancy on the Vestavia Hills Library Board
11. Approval Of Minutes - September 25, 2023 (work session) and September 25, 2023 (regular meeting)

Old Business

12. Public Hearing - Ordinance Number 3196 - An Ordinance Authorizing the Mayor and City Manager to Enter into an Agreement to Share Responsibilities (Joint Services Agreement) with Jefferson County Commission in Order to Share Responsibilities For Improvements to Columbiana Road for Jefferson County Project No. 37-22-004
13. Public Hearing - Resolution Number 5477 - A Resolution Authorizing the City Manager To Enter Into A Signal Operation And Maintenance Agreement With The Alabama Department Of Transportation (ALDOT) Related To The Improvements To The Columbiana Road And Highway 31 Intersection

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

New Business

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

New Business Requesting Unanimous Consent

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

16. Public Hearing - Resolution Number 5479 - A Resolution authorizing the City Manager to enter into a public/private partnership with the Cahaba Heights Merchants Association for the purpose of promoting economic development.
17. Public Hearing - Ordinance Number 3200 - An Ordinance Authorizing the Mayor and City Manager to Enter into Multiple Utility Agreements For Relocation of Utility Facilities on Public Right-of-way For Project CMAQ-7030(600) Massey Road
18. Citizens Comments
19. 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, one in every four women and one of every seven men will experience domestic violence during her or his lifetime; and

WHEREAS, victims and survivors ought to have the support needed to find dignity, compassion, healing and excellence in service coordination and provision required to address crimes committed against them; and

WHEREAS, offenders who perpetrate interpersonal violence should be punished to the full extent of the law; and

WHEREAS, early intervention of relationship violence with healthy relationship education is an effective path to prevention; and

WHEREAS, powerful partnerships exist locally between the City of Vestavia Hills, One Place Metro Alabama Family Justice Center, the YWCA of Central Alabama, the Megan Montgomery Foundation to Prevent Domestic Violence and other community organizations addressing domestic violence; and

WHEREAS, the President of the United States and Congress as well as other federal, state and local agencies have expressed a commitment to eliminating domestic violence both nationally and internationally; and

WHEREAS, in recognition of the pain and perseverance of all victims and survivors of domestic violence and the important work done by domestic violence programs and victims' service providers and our residents' mutual responsibility for the health and well-being of our neighbors.

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 October 2023 as

DOMESTIC VIOLENCE AWARENESS MONTH

and I urge all residents of Vestavia Hills to actively participate in the scheduled activities and programs sponsored by One Place Family Justice Center, the Megan Montgomery Foundation, the YWCA of Central Alabama, its partners and all other community organizations that work toward the elimination of interpersonal and institutional violence.

IN WITNESS WHEREOF, I have
hereunto set my hand and caused the Seal
of the City of Vestavia Hills to be affixed
this the 9th day of October 2023.

Ashley C. Curry
Mayor

WHEREAS, the City of Vestavia Hills, Alabama is committed to ensuring the safety and security of all those living in and visiting Vestavia Hills; and

WHEREAS, the first responders of Vestavia Hills are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and

WHEREAS, cooking is the leading cause of home fires in the United States and two of every five home fires start in the kitchen with 31% of these fires resulting from unattended cooking; and

WHEREAS, residents should turn pot handles towards the back of the stove; keep a lid nearby when cooking; keep a three-foot kid-free zone around the stove, oven and other things that get hot; watch what they heat and set a timer to remind them that they are cooking; and

WHEREAS, Fire Prevention Week is the perfect time to educate and talk to your family about fire safety as well as a good time for testing alarms, changing the batteries or upgrading alarms that are 10-years old, learning how to use a fire extinguisher and for escape route planning and practicing; and

WHEREAS, the 2023 Fire Prevention Month theme, *“Cooking Safety Starts with You. Pay attention to fire prevention”* effectively serves to remind us to stay alert and use caution when cooking to reduce the risk of kitchen fires.

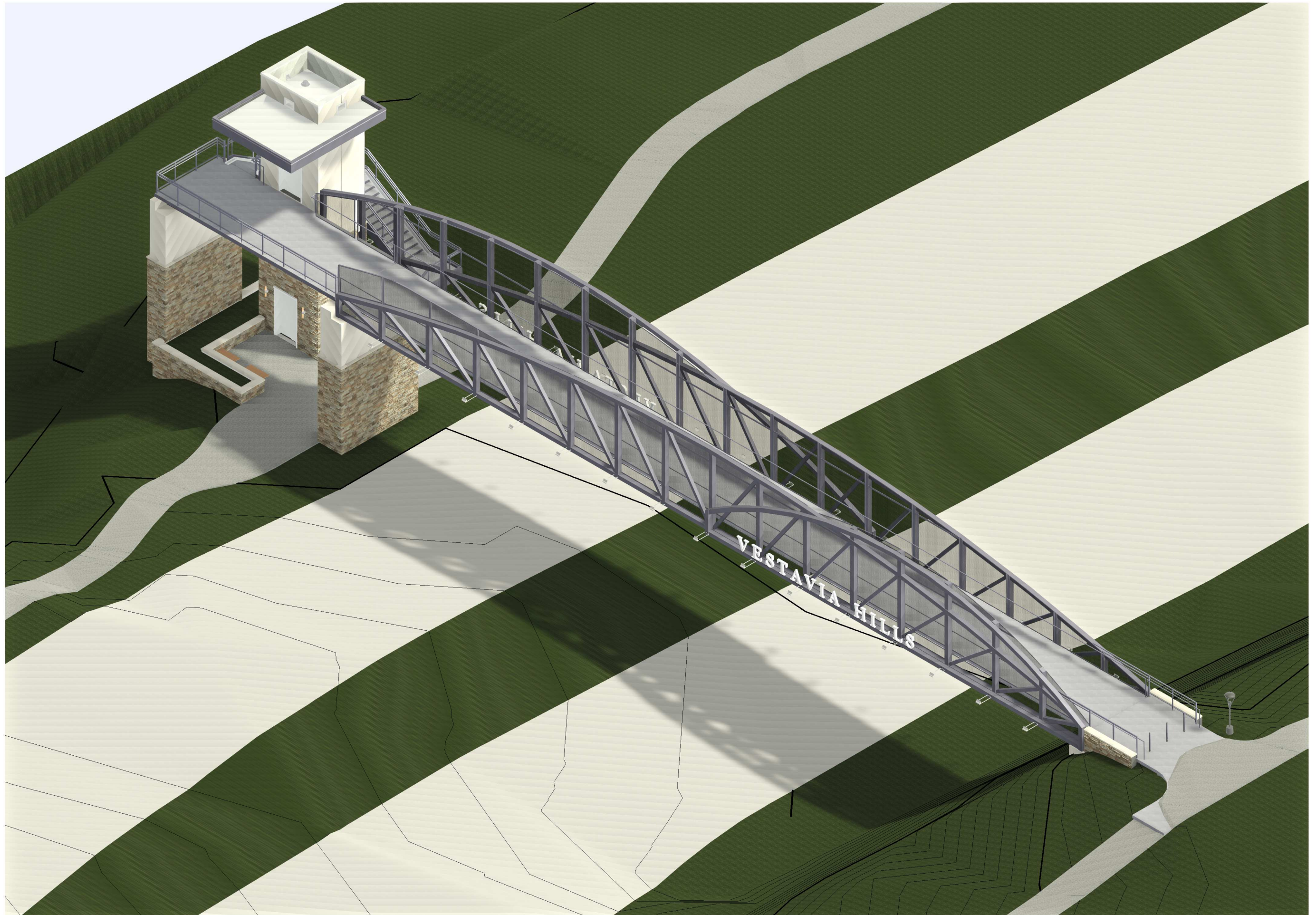
NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim October 8th – 14th, 2023 as Fire Prevention Week and October 2023 as

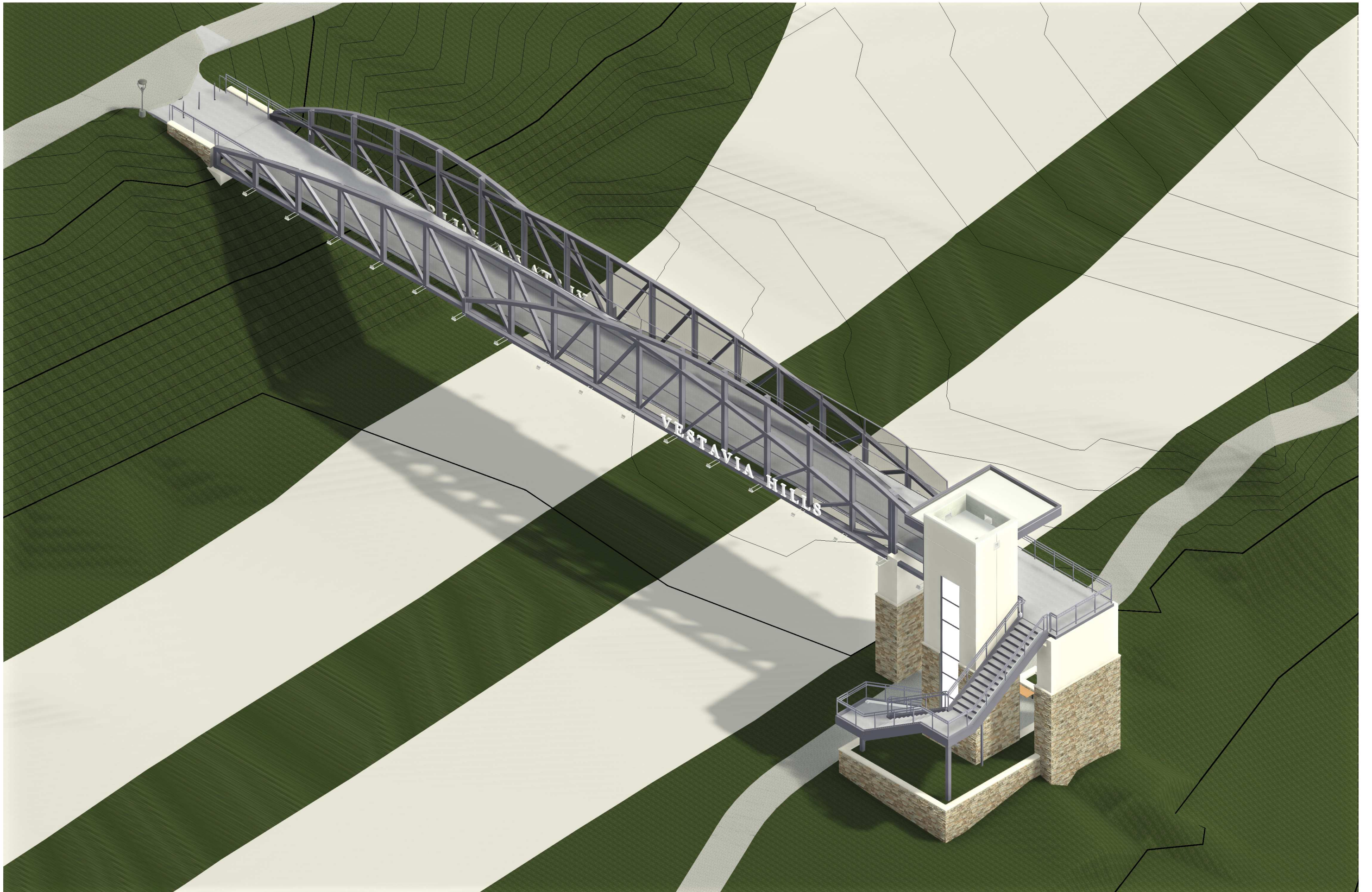
FIRE PREVENTION MONTH

throughout our community and I urge all citizens of Vestavia Hills to check their kitchens for fire hazards and use safe cooking practices during Fire Prevention Week 2023, and to support the many public safety activities and efforts of the Vestavia Hills Fire Department.

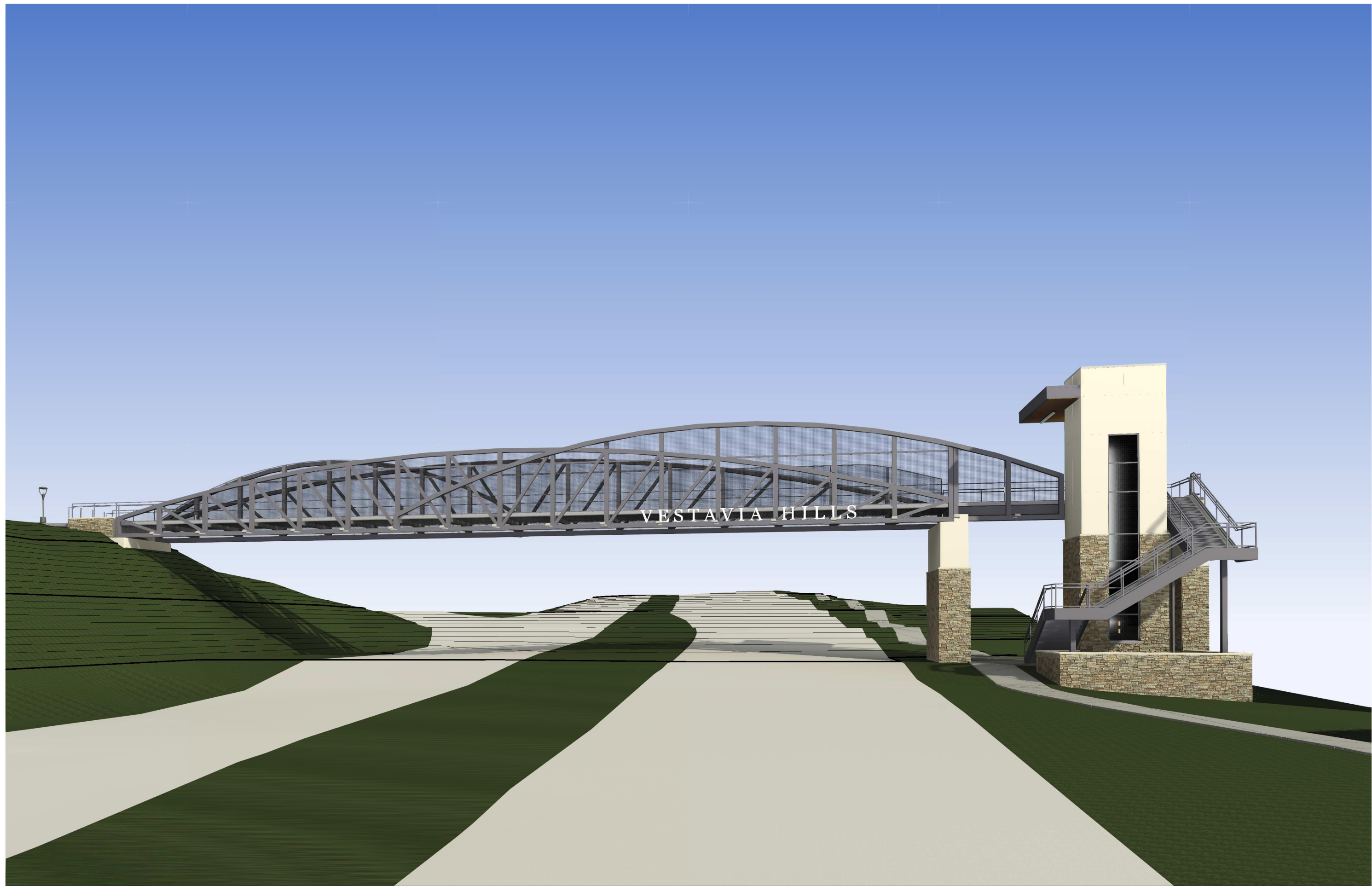
IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 9th day of October 2023.

Ashley C. Curry
Mayor





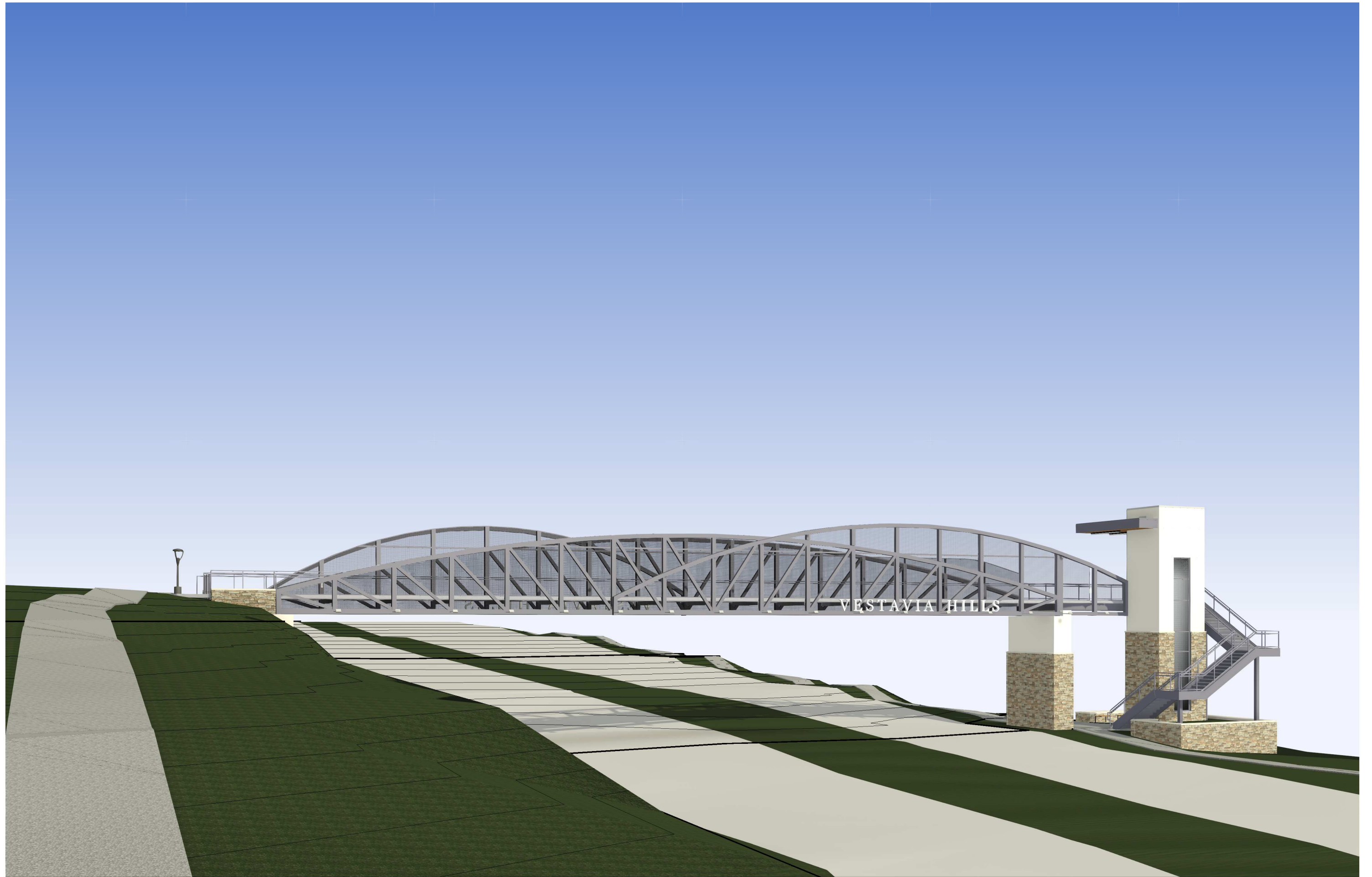


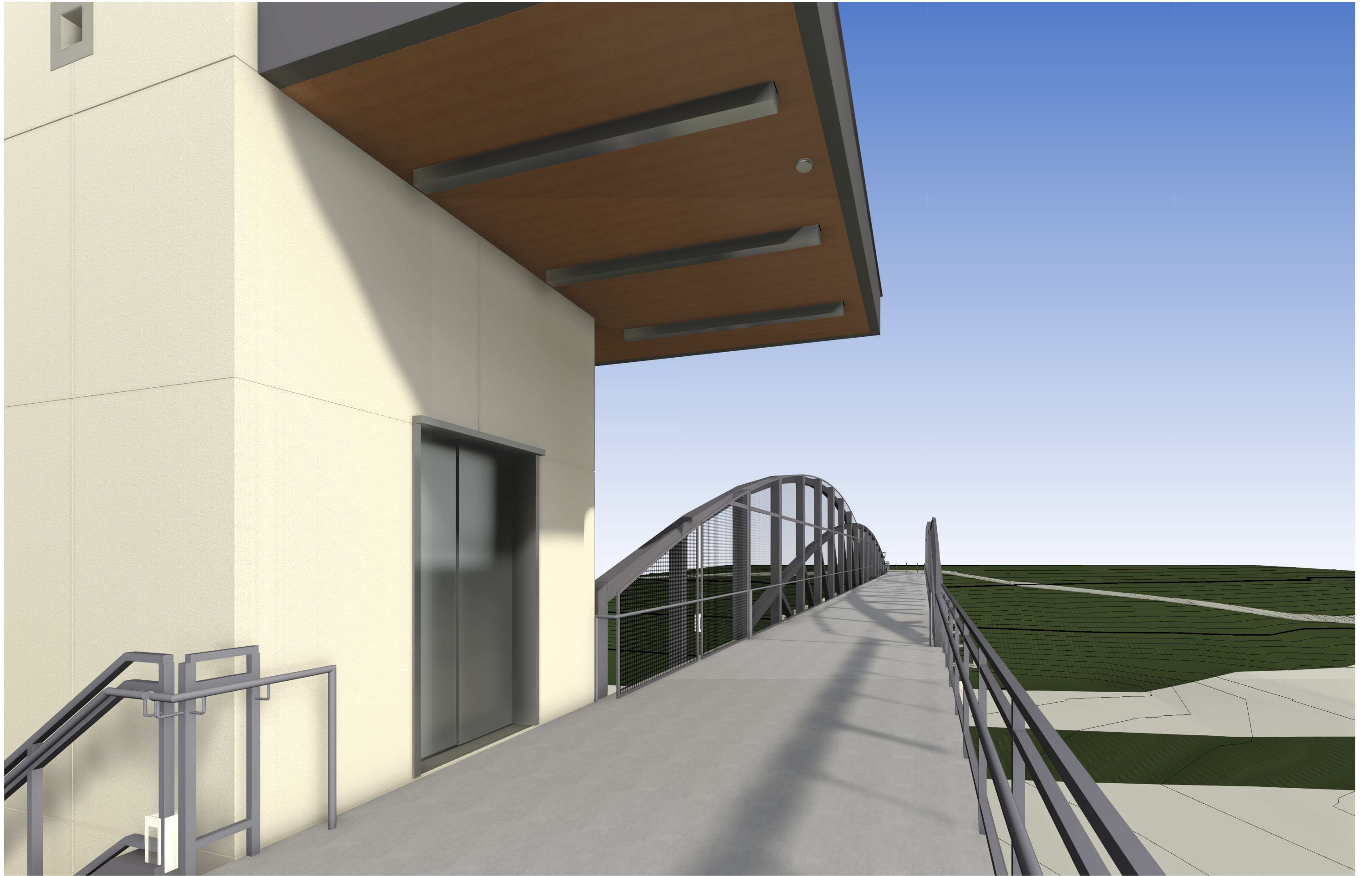




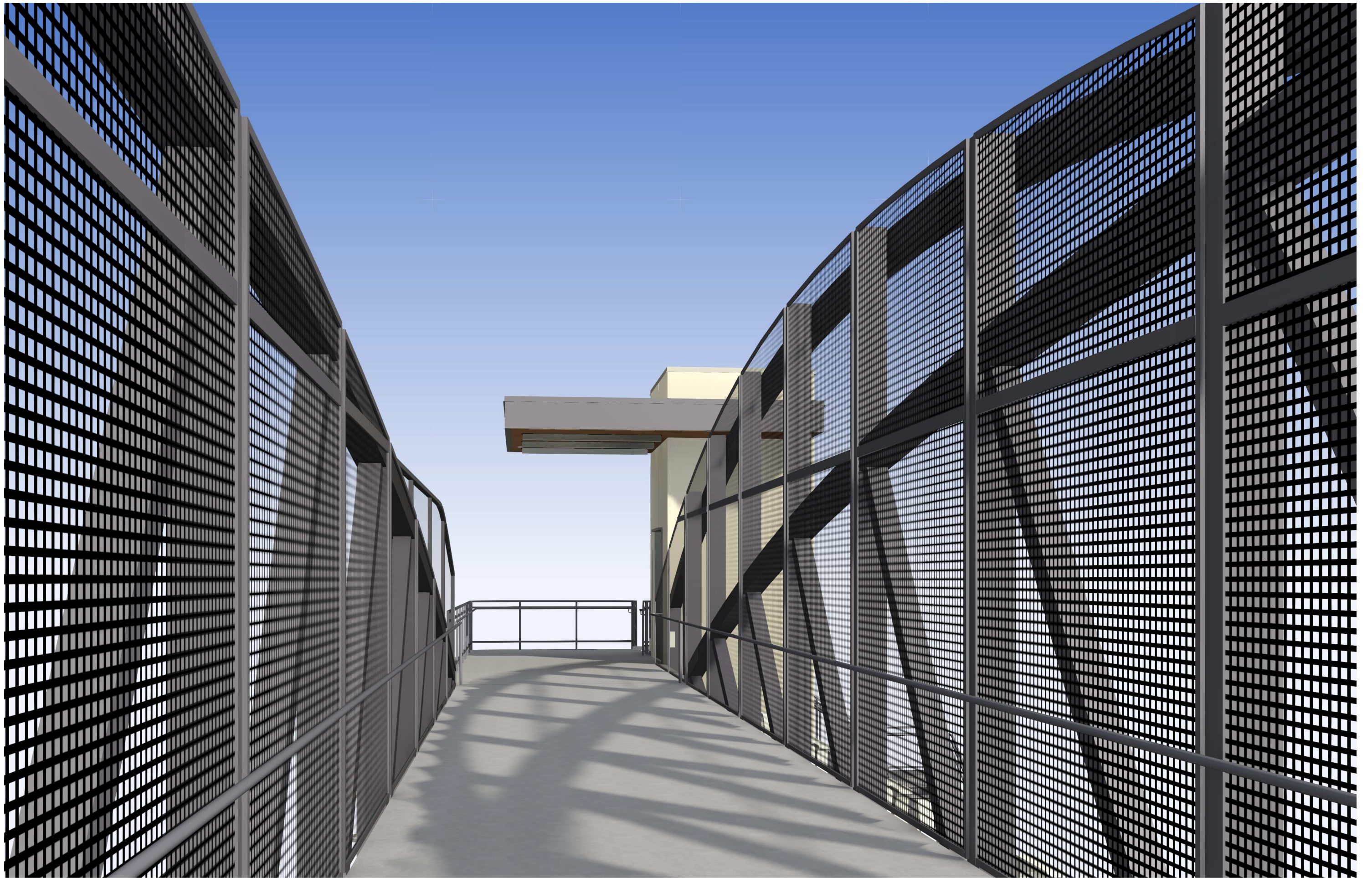














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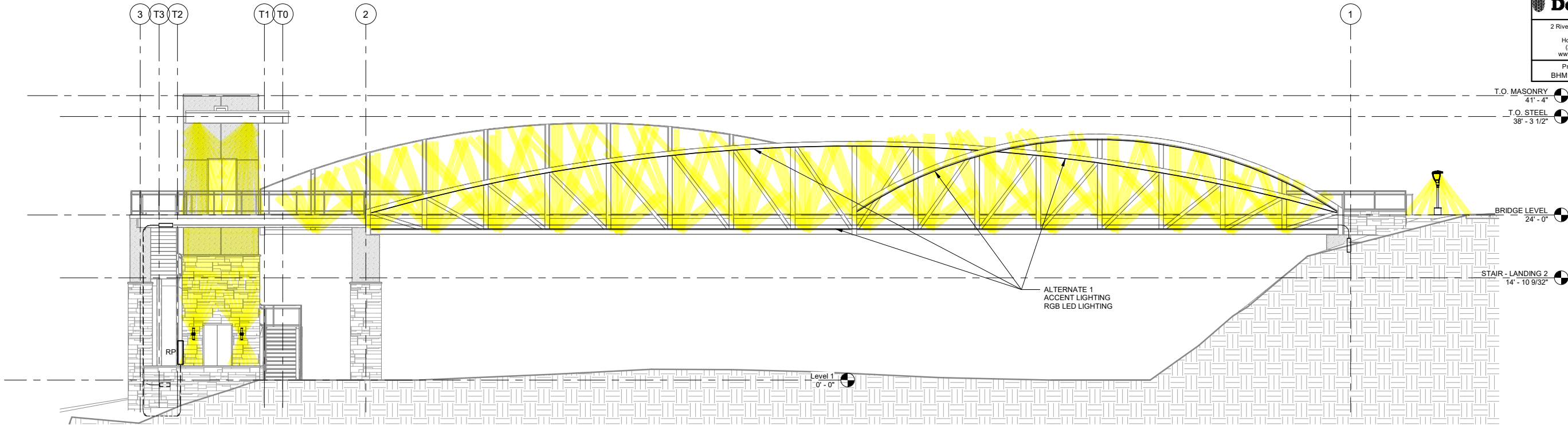
ELECTRICAL ELEVATIONS

REFERENCE PROJECT NO	FISCAL YEAR	SHEET NO
HPP-TAPBH-CMAQ-A104(916)	2024	24FF

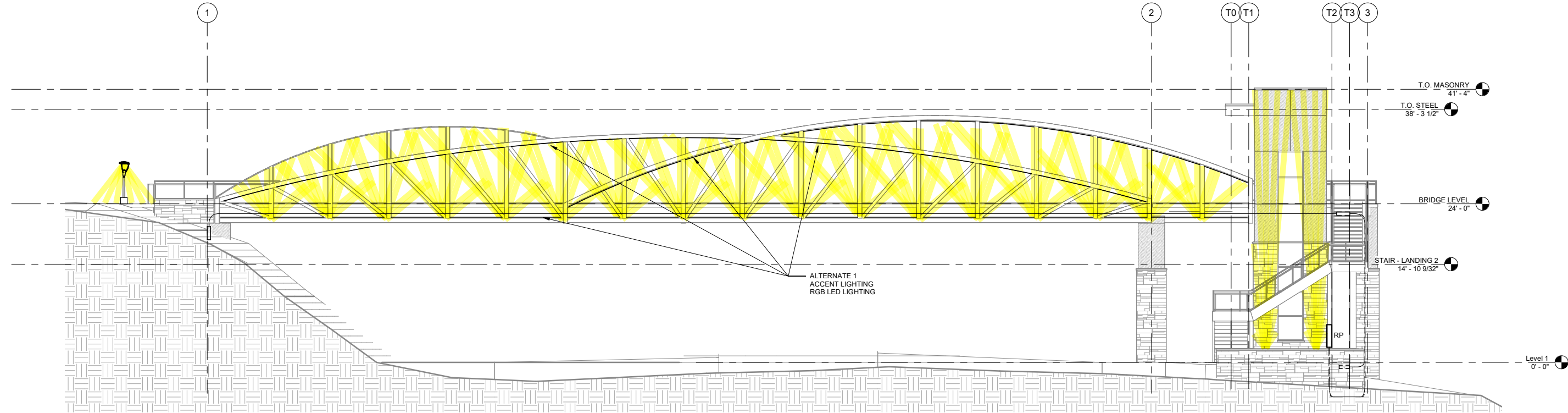


2 Riverchase Office Plaza
Suite 205
Hoover, AL 35244
(205) 988-2069
www.dewberry.com

Project Number :
BHM18026-50152877



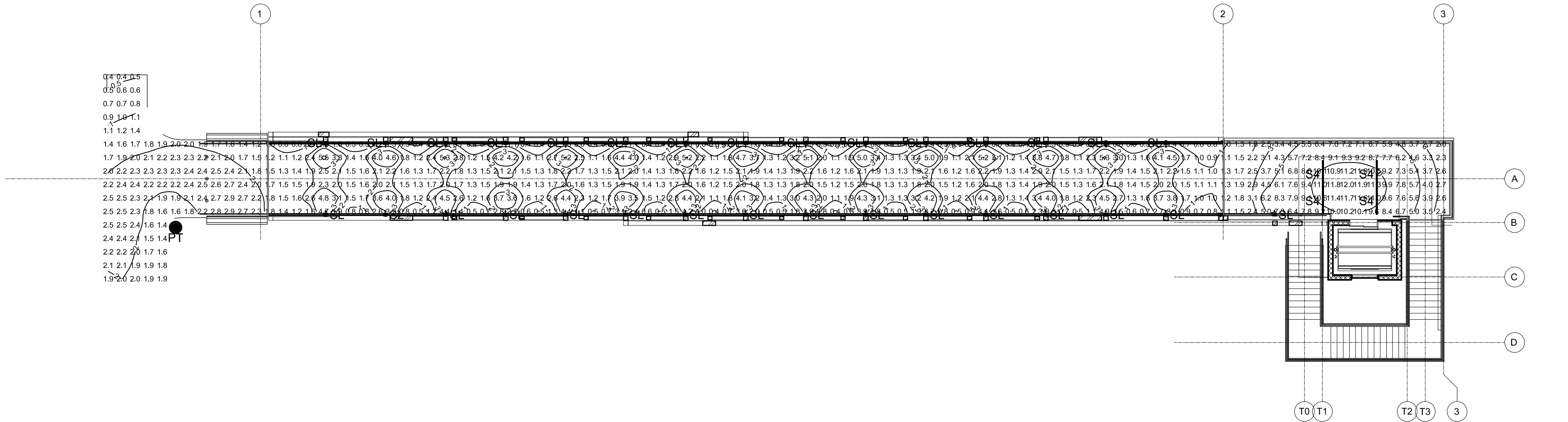
① NORTH ELEVATION
1/8" = 1'-0"



② SOUTH ELEVATION
1/8" = 1'-0"

RESPONSIBLE PE: PHILLIP GRAYDON	SUPERVISOR: JAMES TEISSERE	DESIGNER: PAUL WILLIAMSON	PLAN SUBMITTAL	 ALABAMA DEPARTMENT OF TRANSPORTATION GRESHAM SMITH		SHEET TITLE	ROUTE
DATE 08/25/2023	DATE 08/25/2023	DATE 08/25/2023	FBC			ELECTRICAL ELEVATIONS	US-31

VESTAVIA HILLS PEDESTRIAN BRIDGE WALKWAY PHOTOMETRICS



S4	LED Linear GmhH ADONIS TC White HYDRA HD15 W840 IP67 1264 LED Linear Lab test report no. DB220019_118 lamp(s): Adonis TC HD15 W830 candela file ADONIS_TC_White_HYDRA_HD15_W840_IP67_1264.lux 1 lamp(s) per luminaire, 1309 initial lumens per lamp Light Loss Factor = 1.000, watts per luminaire = 19 number locations= 4, number luminaires= 4 kw all locations= 0.1 Occurrences: 4 at mounting height 10 ft	Bridge Walkway 500 points at z=0, sp 2ft by 2ft HORIZONTAL FOOTCANDLES Average 1.6 Maximum 5.5 Minimum 0.3 Avg/Min 6.10 Max/Min 18.33 Coef Var 0.56 UniGrad 7.78
	WE-EF 133-0359 WE-EF test report no. LM 1719 lamp(s): LED-66W/840-4000K candela file 133-0359.lux 6 lamp(s) per luminaire, photometry is absolute Light Loss Factor = 1.000, watts per luminaire = 3 number locations= 31, number luminaires= 31 kw all locations= 0.2 Occurrences: 31 at mounting height 1.8 ft	Bridge Elevator 90 points at z=0, sp 2ft by 2ft HORIZONTAL FOOTCANDLES Average 6.8 Maximum 12.0 Minimum 1.8 Avg/Min 3.79 Max/Min 6.67 Coef Var 0.44 UniGrad 2.08
PT	GARDCO PPT-196L-650-WW-G2-L-UNV SIGNIFY Lighting San Marcos test report no. Scaled From LRPS32108BB lamp(s): (1) Comfort Light Engine DRIVEN AT 650mA candela file PPT-196L-650-WW-G2-L-UNV.lux 1 lamp(s) per luminaire, photometry is absolute Light Loss Factor = 1.000, watts per luminaire = 30 mounting height= 10 ft number locations= 1, number luminaires= 1 kw all locations= 0.0	









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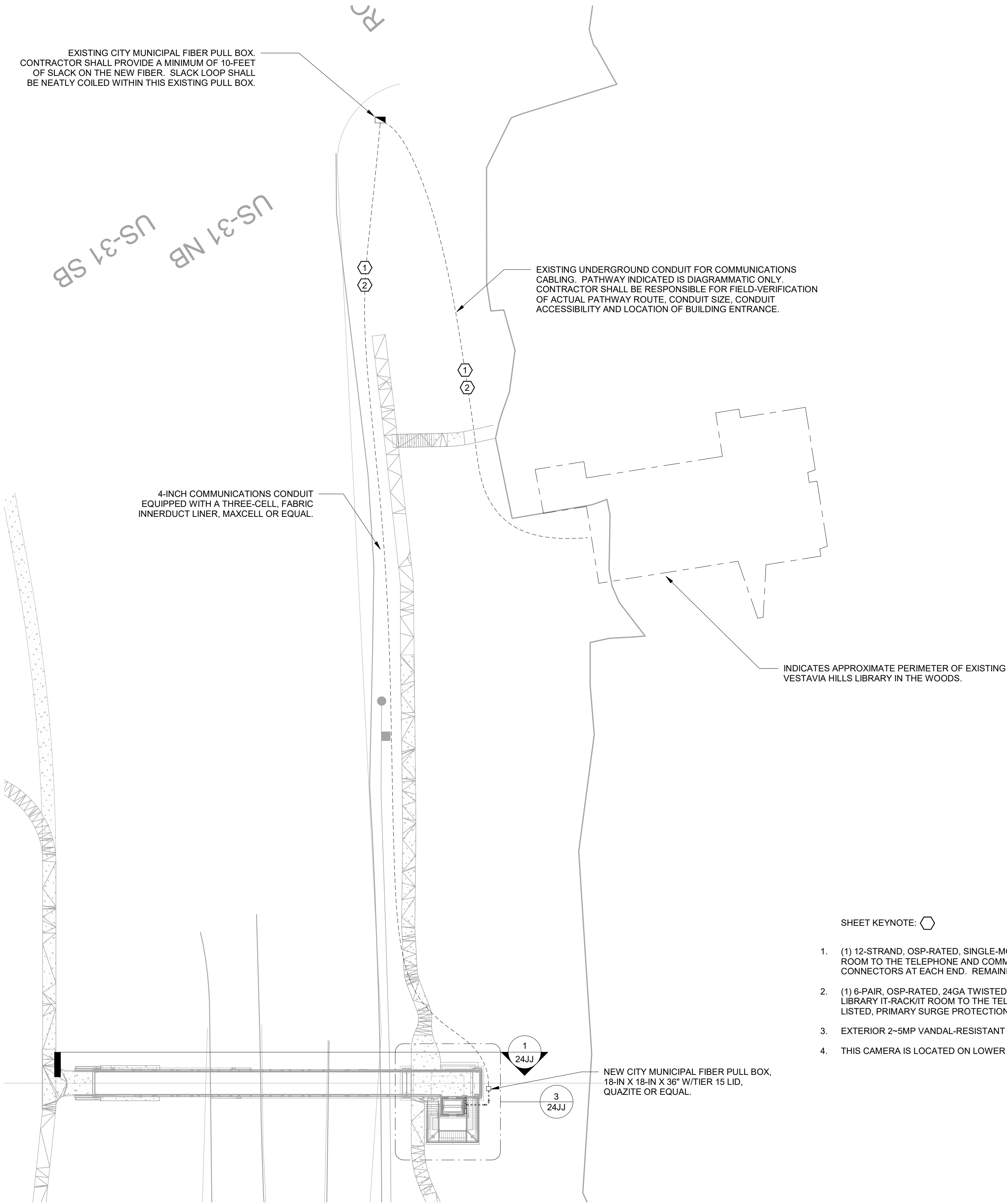
SECURITY PLANS

REFERENCE PROJECT NO	FISCAL YEAR	SHEET NO
HPP-TAPBH- CMAQ-A104(916)	2024	24II

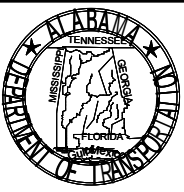


2 Riverchase Office Plaza
Suite 205
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Project Number :
BHM18026-50152877



① SECURITY - BRIDGE LEVEL
1" = 30'-0"

RESPONSIBLE PE: Approver	SUPERVISOR: Checker	DESIGNER: Author	PLAN SUBMITTAL	 ALABAMA DEPARTMENT OF TRANSPORTATION GRESHAM SMITH	SHEET TITLE SECURITY PLANS	ROUTE US-31
DATE 08/25/2023	DATE 08/25/2023	DATE 08/25/2023	FBC			

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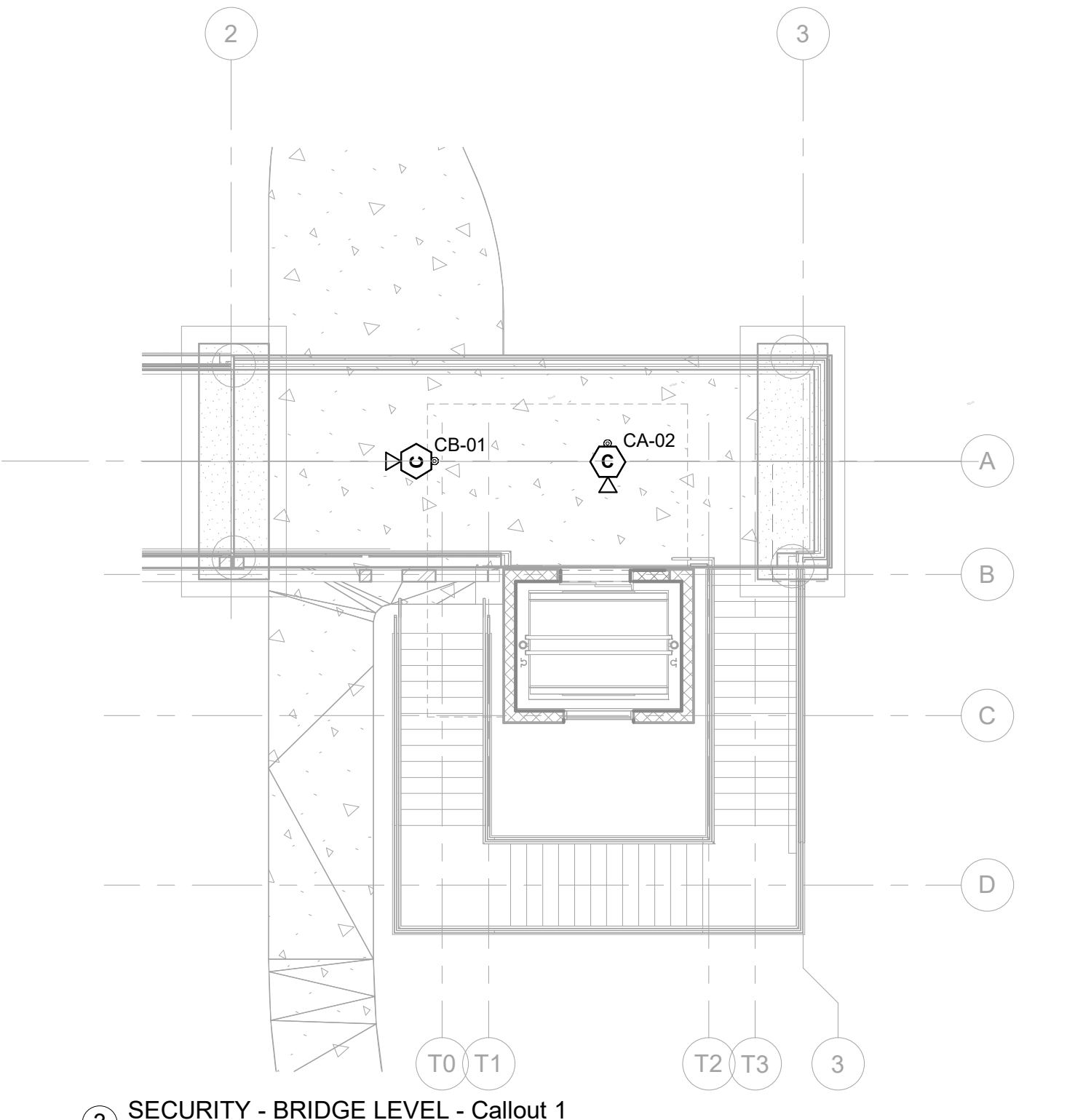
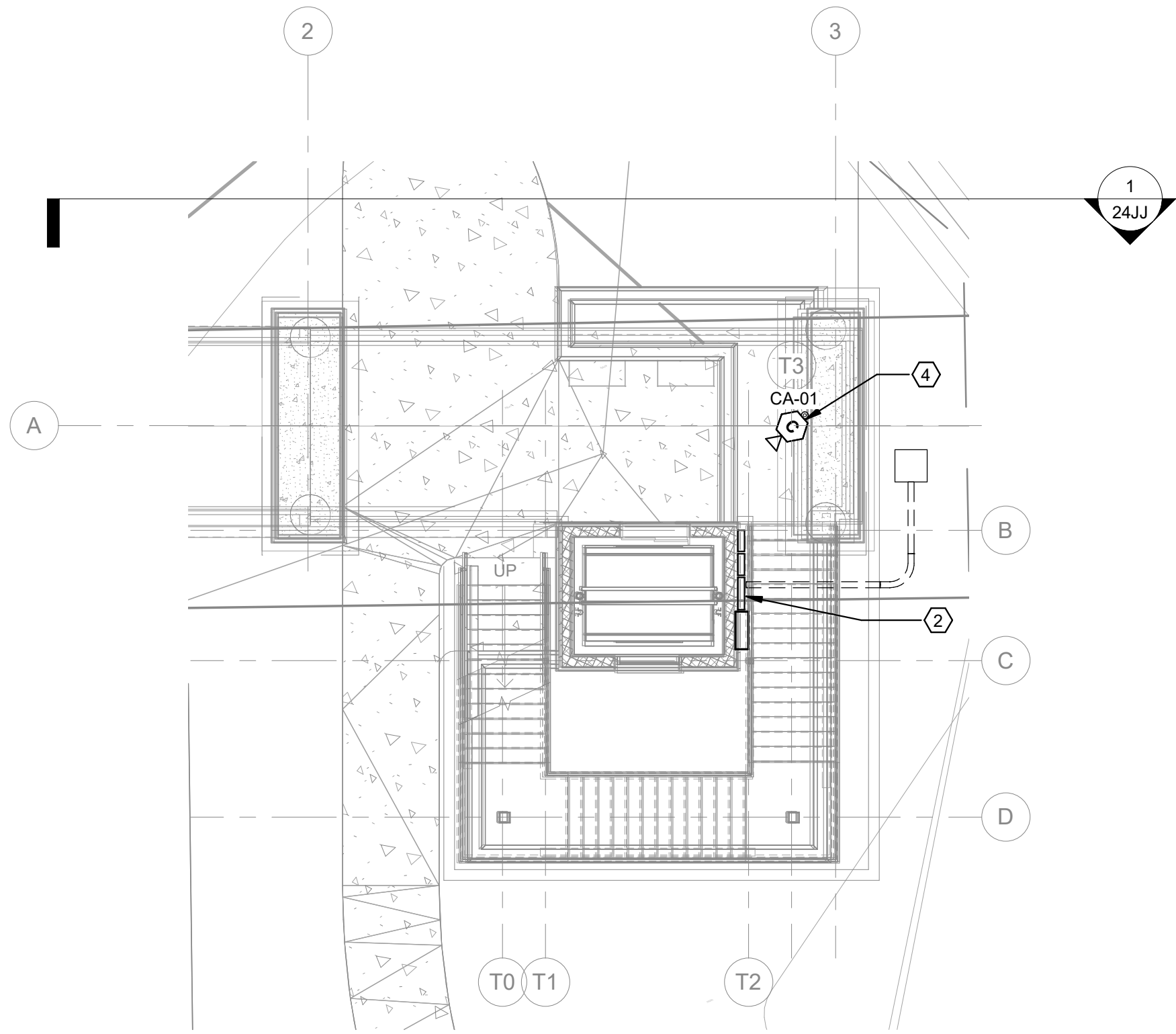
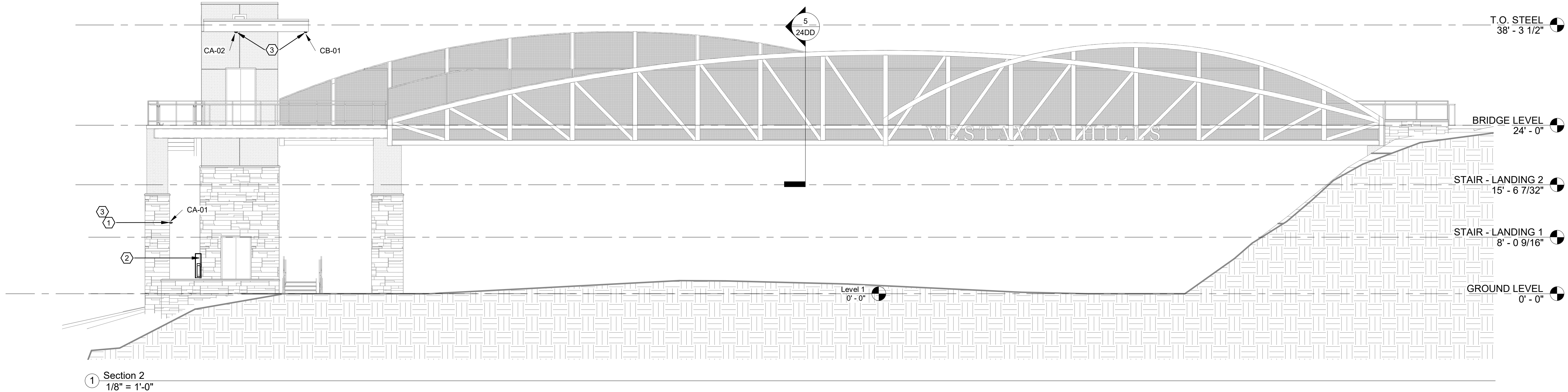
SECURITY ELEVATIONS

REFERENCE PROJECT NO	FISCAL YEAR	SHEET NO
HPP-TAPBH-CMAQ-A104(916)	2024	24JJ



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SHEET KEYNOTE: 

- THIS CAMERA SHALL BE MOUNTED AT 10-FT AFF.
- 24-IN X 18-IN X 8-IN, NEMA-RATED TELEPHONE AND COMMUNICATION ENCLOSURE W/DIN RAIL MOUNT(S), INDUSTRIAL HARDENED POE SWITCH, 120V POWER, SURGE PROTECTORS FOR CAT6 CAMERA CABLES AND TELEPHONE CABLE TERMINATIONS WITH PRIMARY (LIGHTNING) SURGE PROTECTORS. COORDINATE INSTALLATION WITH ALL TRADES. PAINT CABINET TO COORDINATE WITH STONE FACADE. CONFIRM COLOR WITH ARCHITECT.
- EXTERIOR 2-5MP VANDAL-RESISTANT DOME CAMERA WITH IR.
- THIS CAMERA IS LOCATED ON LOWER LEVEL AT 10-FT AFF.

RESPONSIBLE PE: Approver

SUPERVISOR: Checker

DESIGNER: Author

PLAN SUBMITTAL



ALABAMA DEPARTMENT
OF TRANSPORTATION
GRESHAM SMITH

SHEET TITLE

SECURITY ELEVATIONS

ROUTE

US-31

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

WORK SESSION

SEPTEMBER 25, 2023

The City Council of Vestavia Hills met in a special work session on this date at 5:00 PM, following publication and posting pursuant to Alabama law. Mayor Curry called the work session to order and the roll was checked with the following:

MEMBERS PRESENT:

Mayor Ashley C. Curry
Kimberly Cook, Councilor
George Pierce, Councilor
Paul J. Head, Councilor*

MEMBERS ABSENT:

Rusty Weaver, Mayor Pro-Tem

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick Boone, City Attorney
Cinnamon McCulley, Asst. City Manager
Rebecca Leavings, City Clerk
Christopher Brady, City Engineer
Jason Hardin, Interim Police Chief
Marvin Green, Fire Chief
Melvin Turner, Finance Director
Taneisha Tucker, Library Director
Daniel Tackett, Asst. Library Director
Jamie Lee, Director, Parks & Leisure Services
Umang Patel, Court Director*

**arrived at 5:12 pm.*

MINE RECLAMATION PROJECT AND MASTGER PLAN CONCEPTS

Mr. Downes explained that the City has partnered a few times with the Mine Reclamation Project team including the splash pad, the pickle ball courts and the dog park. It has come to the city's attention there are additional funds that might be used to address some land safety issues that exist near the complex. The idea is to take down a highwall and mitigate the property grade to make it a safer situation and reclaim some of the area for future use. The highwall area, which is part of the Liberty Park Joint Venture property, is being studied for the location of some additional playing fields, a police training facility and a new

smaller library. The City could trade a smaller parcel of property located along Sicard Hollow Road for the highwall area on which the city could construct playing fields, and the other structures mentioned. He showed a draft master plan of the area design following mass grading of the project. He stated that the mass grading would be done at no cost to the City and, hopefully, additional dollars can be obtained for other useful projects.

Chris Eckroate, Caprine Engineering, explained concepts of what might be constructed on the property if the City were able to obtain it. He explained how the City might also provide an access roadway to the rear of the SHAC property to access this area.

Discussion ensued relative to environmental issues and safeguards.

CITYWIDE INSURANCE RENEWAL

Mr. Downes stated that over the past nine years the City has been insured through a risk retention group that has kept the premiums to a minimum with a \$250,000 self-retention per claim with limits of liability to \$6 million. The company has had some recent significant losses due to law enforcement liability. As a result, the insurer gave notice that minimum self-insured retention will have to be raised to \$1 million per claim. This is not affordable and not a good way to manage the city's risk. So, the City went to the marketplace to find a new insurance plan. Travelers has higher premiums, but allows the City to keep the current \$250,000 self-retention and \$6 million liability limits. However, such a change will require the City to strengthen policies and get the non-city sports boards to obtain their own insurance and indemnify the City rather than vice versa.

UPDATE OF NEW ACTION CENTER IMPLEMENTATION

Cinnamon McCulley stated that the City's Action Center's mobile app has not been living up to function expectations, so the City is changing to a new software and app, GoGov, to be branded as Vestavia Hills Connect. She stated that this provides "applets" and the ability to safely link residents to all departments of the City and our website. It allows text notification to be sent in emergency situations, and easier citizen access, including mapping of the location of complaints, and new reporting functions such as building maintenance requests. The City anticipates this will go live sometime in October.

SEASONAL ECONOMIC DEVELOPMENT PROJECT

Mrs. McCulley announced a proposed Christmas pop-up bar to be set up at El ZunZun in Cahaba Heights. She stated that this has been done in downtown Birmingham. A tent will be erected between Leaf N Petal and El ZunZun to cover the patio. She is working with the Chamber to provide several other economic development drivers like this for the City. The request is for the City to donate \$5,000 toward these efforts to assist in offsetting the expenses of the activity which will increase economic activity in the area.

Mr. Downes stated that the funds are already budgeted but the Council will have to declare it a public purpose, and this will be forthcoming at a future meeting.

There being no further business, the work session adjourned at 5:57 PM.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



**Vestavia Hills
City Council Minutes
September 25, 2023
6:00 PM**

1. Call to Order

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

2. Roll Call

Members Present: Mayor Ashley C. Curry; Councillor Kimberly Cook, Councillor Paul Head, Councillor George Pierce

Members Absent: Mayor Pro-Tem Rusty Weaver

Other Officials Present: Jeff Downes, City Manager; Bent Owens, Acting City Attorney; Cinnamon McCulley, Asst. City Manager; Rebecca Leavings, City Clerk; Jason Hardin, Interim Police Chief; Marvin Green, Fire Chief; Ryan Farrell, Asst. Fire Chief*; Jamie Lee, Director of Parks and Leisure Services; Melvin Turner, III, Finance Director; Zachary Clifton, Asst. Finance Director; Christopher Brady, City Engineer; Taneisha Tucker, Library Director; Umang Patel, Court Director*
**present virtually via Zoom or telephone*

3. Invocation - Jim Cartledge, Vestavia Hills Chaplain

Vestavia Hills City Chaplain Jim Cartledge led the invocation.

4. Pledge Of Allegiance

The Pledge of Allegiance followed the invocation.

5. Approval Of The Agenda

The Mayor opened the floor for a motion of the agenda as presented.

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

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

6. Announcements, Candidates and Guest Recognition

- Mr. Pierce welcomed Donny Dobbins who was present representing the Vestavia Hills Chamber of Commerce Board.
- Mr. Pierce recognized Katherine McRee and indicated that she had an announcement on behalf of the Cahaba Heights Merchants Association.
 - Mrs. McRee stated that the Alabama Retailers Association awarded one of the Alabama Retailer of the Year awards in the Gold Division to Clover and Bee. She stated that there were over 89 businesses nominated in this category making it a prestigious award. She stated that several other businesses, including her own business, had been previously awarded this by the Alabama Retailers Association.

7. Proclamation - October 2023 Down Syndrome Awareness Month

The Mayor presented a Proclamation designating October 2023 as "Down Syndrome Awareness Month." Mr. Downes read the Proclamation and the Mayor presented it to: Missy Haughery - Executive Director, Down Syndrome Alabama. Also attending were: Andrew Whatley, Joshua Maners, John Haughery, Nage Gorham, Vaughan Rainer, Brantley Kate Moellinger and Chambers Thornton.

8. City Manager's Report

- Mr. Downes indicated he wanted to take a few moments to highlight some good things that the City has accomplished.
 - He thanked Christopher Brady for being project manager for an important street repair on Cahaba Heights Road. The project scope changed significantly as problems were encountered and adaptations made. It was also challenging to locate a paving company that was available. However, the roadway opened Saturday morning which was ahead of schedule. He stated that the VHPD managed detours and traffic flow to accommodate the businesses in the area. Together, they achieved what needed to be done and all deserve lots of credit.
 - Mr. Downes thanked Jamie Lee for coordinating with the principal at East Elementary School to get the new walking track installed in Byrd Park in a seamless manner and not interrupting school activities. Residents are so thankful for the walkway being done expediently.
 - Mr. Downes thanked the finance department for making significant changes in the investment of public funds. Significant restructuring of investments resulted in income from investments doubling from previous years. He thanked the financial team for their good work.
 - Mr. Downes also thanked City Staff for improvements in providing regular performance reviews. The new system benefits employees.
 - Mrs. Cook stated that the exceptional services provided by City Staff make the elected leaders look good.
 - Mr. Pierce stated that the repairs were commendable on Cahaba Heights Road.

9. Councilors' Reports

- Mrs. Cook stated she attended the school board meeting earlier this afternoon. She stated that they recognized 14 students who are national merit scholars, far more than the state average. A presentation noted that 74% of high school seniors take college credit courses prior to graduation, with 86% of the students taking AP exams attaining a 3 or better, which goes toward college credit. Also, high ACT scores act as a benchmark for the state evaluations. VH students scored higher than the national average in every category. She stated that she is very proud of our students and their accomplishments.
- Mr. Pierce stated he attended the Chamber Board meeting. He stated that a Trick or Treat event will be held on October 28 at Wald Park, with several vendors and a costume contest.
- Mr. Pierce reminded everyone that the Chamber will be hosting an elected officials' reception at 5:30 PM, tomorrow night, at Leaf and Petal.
- Mayor Curry stated that within the last 30 days, a generous, anonymous donor made a contribution to establish a Vestavia Hills Fire Fighters Foundation in honor of the care that he has received from the VHFD.

10. Financial Reports - Melvin Turner, III, Finance Director

Mr. Turner presented the financial reports for the month ending August 31, 2023. He read and explained the balances. Today, \$1.8 million was received in ad valorem taxes that are not reflected in these reports as the deadline for the reports was last week.

11. Approval Of Minutes

August 21, 2023 Council Work Session

MOTION: Approve the minutes of the August 21, 2023 Council Work Session as presented. Motion By: Kimberly Cook. Seconded By: George Pierce.

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

September 11, 2023 Regular Meeting

MOTION: Approve the minutes of the September 11, 2023 Council Regular Meeting as presented. Motion By: Kimberly Cook. Seconded By: George Pierce.

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

Old Business

12. Public Hearing - Ordinance Number 3189 - Annexation - 90 day final - 3512 Valley Circle; Lot 4, Block 2, Dolly Ridge Estates, 2nd Add; David Pace, Owner

MOTION: Approved Ordinance Number 3189 as presented. Motion by George Pierce. Seconded by Kimberly Cook."

"

Mr. Pierce stated this is a 90-day final approval of an annexation already approved a

few months ago. There have been no stated issues with this annexation.

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

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

13. Public Hearing - Ordinance Number 3190 - Rezoning - 3512 Valley Circle; Lot 4, Block 2, Dolly Ridge Estates, 2nd Add; Rezone from Jefferson County E-2 to Vestavia Hills R-1; David Pace, Owner

MOTION: Approve Ordinance Number 3190 as presented. Motion by: Kimberly Cook. Seconded by: George Pierce.

Mr. Pierce, in Mr. Weaver's absence, gave the report from Planning and Zoning. The Commission heard this request and gave it a positive recommendation for compatible zoning for annexation.

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

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

14. Public Hearing - Ordinance Number 3192 - Rezoning - Portion of 2551 and 2553 Rocky Ridge Road; Rezone from Jefferson County R-G (garden homes) and Court Ordered Vestavia Hills O-1 (office park district) to Vestavia Hills O-1 (office park district) for construction of an office building; Taylor Burton, Owner

MOTION: Approve Ordinance Number 3192 as presented. Motion By: George Pierce. Seconded By: Kimberly Cook.

Mr. Pierce, on behalf of Mr. Weaver, indicated that the Planning and Zoning Commission considered this request for construction of a new office building and unanimously recommended approval.

Taylor Burton and his staff were present in regard to this request.

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

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

15. Public Hearing - Ordinance Number 3191 - Annexation - 90-day final - Portion of 2553 Rocky Ridge Road; Taylor Burton, Owner

MOTION: Approve Ordinance Number 3191 as presented.. Motion By: George Pierce. Seconded By: Kimberly Cook.

Mr. Pierce stated that this is the 90-day final annexation of this property which was rezoned in the previous Ordinance for construction of an office building. No issues were found with this annexation.

Taylor Burton and staff were present.

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

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

New Business

16. Resolution Number 5476 - A Resolution declaring certain personal property as surplus and authorizing the City Manager to sell/dispose of said property

MOTION: Approve Resolution Number 5476 as presented. Motion By: Kimberly Cook. Seconded By: George Pierce.

Mr. Downes explained that this provides for the sale of older IT equipment that is no longer needed for City purposes.

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

17. Ordinance Number 3197 - An Ordinance authorizing the Mayor and City Manager to execute and deliver an agreement with SAP Concur, for a cloud based employee reimbursement program and credit card reconciliation program.

MOTION: Approve Ordinance Number 3197 as presented.. Motion By: Kimberly Cook. Seconded By: George Pierce.

Mr. Downes stated the funding of this software will help with reconciling credit card statements and reimbursement of City expenses for City employees.

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

18. Resolution Number 5478 - A Resolution Accepting a Bid for Two Fire Department Staff Vehicles

MOTION: Approve Resolution Number 5478 as presented.. Motion By: George Pierce. Seconded By: Paul Head.

Mr. Downes stated that vehicles are normally purchased from the state's bid list. However, these two pickups were needed but weren't on any of the available lists so they were bid out through the competitive bid process. The recommendation was to accept the lowest bidder. Funding is in the FY24 budget.

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

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

New Business Requesting Unanimous Consent

19. Public Hearing - Ordinance Number 3195 - An Ordinance Authorizing the Mayor and City Manager to opt into a Fuel Cost Savings Rebate as Offered by the Cahaba Solid Waste Disposal Authority

The Mayor indicated that Ordinance Number 3195 requires unanimous consent for immediate consideration and action. He opened the floor for a motion.

MOTION: Unanimous consent for the immediate consideration and action of Ordinance Number 3195. Motion By: Kimberly Cook. Seconded By: Paul Head.

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

MOTION: Approve Ordinance Number 3195 as presented. Motion By: Kimberly Cook. Seconded By: Paul Head.

Mr. Downes explained that the Cahaba Waste Authority can do several things within its power and one such duty would be to use municipal tax-free rates for fuel to pass through to the contractor. This results in a rebate to the City for the vehicles that run Vestavia Hills routes. He stated that the estimated savings from these rebates is about \$67,000 if the City opts into the program by adoption of this Ordinance.

Mr. Owens stated that Mr. Boone has reviewed it and feels that it does meet the requirements of state law.

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

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

20. Public Hearing - Ordinance Number 3198 - An Ordinance Authorizing and Directing the Approval and Acceptance of an Offer by Gresham Smith Dated August 23, 2023, Proposing to Provide Additional Design Services for Pedestrian Bridge Branding, Decorative Lighting, Security and Additional Utility Coordination Services; To Authorize and Direct that the Mayor and City Manager Execute and Deliver the Fourth Supplemental Agreement By and Between the City of Vestavia Hills, Alabama ("City"), as "Owner," and Gresham Smith, As "Architect/Engineer," A Copy of Which is Attached Hereto, Marked as Exhibit One and Incorporated into this Ordinance Number 3198 Verbatim as Though Set Out Fully Herein; And to Authorize and Direct the City Manager to Take Such Other, Further and Additional Actions Necessary for Gresham Smith to Commence With the Professional Design,

Engineering and Architectural Services.

The Mayor indicated that the next item requires unanimous consent for immediate consideration and action. He opened the floor for a motion.

MOTION: Unanimous consent for the immediate consideration and action of Ordinance Number 3198. Motion By: Kimberly Cook. Seconded By: Paul Head.

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

MOTION: Approve Ordinance Number 3198 as presented. Motion By: Kimberly Cook. Seconded By: Paul Head.

Mr. Downes stated that this Ordinance and funding is for the required additional designs to achieve the final steps to the pedestrian bridge for renderings of the hopeful final designs. He added that this does allocate a small amount for utility relocations.

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

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

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

21. **Public Hearing - Ordinance Number 3196 - An Ordinance Authorizing the Mayor and City Manager to Enter into an Agreement to Share Responsibilities (Joint Services Agreement) with Jefferson County Commission in Order to Share Responsibilities For Improvements to Columbiana Road for Jefferson County Project No. 37-22-004**
22. **Public Hearing - Resolution Number 5477 - A Resolution Authorizing the City Manager To Enter Into A Signal Operation And Maintenance Agreement With The Alabama Department Of Transportation (ALDOT) Related To The Improvements To The Columbiana Road And Highway 31 Intersection**
23. **Public Hearing - Ordinance Number 3199 - An Ordinance Authorizing the Mayor and City Manager to Enter into an Agreement to Share Responsibilities (Joint Services Agreement) with Jefferson County Commission and the City of Birmingham, Alabama in Order to Share Responsibilities For Improvements to the Blue Lake Drive and Sicard Hollow Road Intersection for Jefferson County Project No. 37-19-400**
24. **Citizens Comments**
 - None

25 Time Of Adjournment

There being no further business, Mr. Pierce made a motion to adjourn. Mrs. Cook moved

to adjourn the meeting at 6:25 PM.

C. Curry, Mayor
ATTESTED BY:

Ashley

Rebecca Leavings
City Clerk



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

October 9, 2023

To: Jeff Downes, City Manager

From: Lori Beth Kearley, Public Services Director

Cc: Ethan Fisher, City Engineer
Rebecca Leavings, City Clerk

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

Background:

The intersection of Columbiana Road and US-31 was studied through the Regional Planning Commission of Greater Birmingham's Advanced Planning, Programming, and Logical Engineering (APPLE) program back in 2019. As part of this study, Sain Associates reviewed this intersection and developed some improvement alternatives to help improve the overall safety and operations of this intersection.

Following that effort, the City of Vestavia Hills engaged Neel-Schaffer, Inc. to provide engineering design services for the roadway improvement

recommendations that Sain Associates presented as part of the APPLE study conclusion.

Columbiana Road is a Jefferson County Thru Road per "Thru Road Agreement" dated December 5, 2017.

Based on the construction plans prepared by Neel-Schaffer, the estimated construction cost estimate for the Project is \$310,000. We are seeking the City Council's approval of a Joint Services Agreement between the City and Jefferson County in order to complete the construction of the roadway improvements, with a City contribution of \$100,000 toward the overall construction cost of the project. The County will fund the remaining construction costs.

Recommendation:

I recommend that the City of Vestavia Hills enter into this Joint Services Agreement with Jefferson County in order to allow this intersection improvement project to be constructed.

Fiscal Impact:

The City's \$100,000 contribution toward the construction of the project is budgeted in the approved FY24 budget's Capital Fund.

Attachments:

1. Ordinance Number 3196
2. 37-22-004_IGA-Vestavia
3. Exhibit A
4. PH Boone Legal Opinion to City Manager September 6 2023

ORDINANCE NUMBER 3196

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO ENTER INTO AN AGREEMENT TO SHARE RESPONSIBILITIES (JOINT SERVICES AGREEMENT) WITH JEFFERSON COUNTY COMMISSION IN ORDER TO SHARE RESPONSIBILITIES FOR IMPROVEMENTS TO COLUMBIANA ROAD FOR JEFFERSON COUNTY PROJECT NO. 37-22-004

WHEREAS, In 2019, the intersection of Columbiana Road and US-31 was studied through the Regional Planning Commission of Greater Birmingham's Advanced Planning, Programming, and Logical Engineering (APPLE) program; and

WHEREAS, As part of this study, Sain Associates reviewed this intersection and developed some improvement alternatives to help improve the overall safety and operations of this intersection; and

WHEREAS, the City of Vestavia Hills, in follow-up to that effort, engaged Neel-Schaffer, Inc., to provide engineering design services for the roadway improvement recommendations that Sain Associates presented as part of the APPLE study conclusion; and

WHEREAS, Columbiana Road is a Jefferson County thru road per "Thru Road Agreement" dated December 5, 2017; and

WHEREAS, Based on the construction plans prepared by Neel-Schaffer, the estimated construction cost estimate for the Project is \$310,000 and

WHEREAS, A proposed an Agreement to Share Responsibilities (Joint Services Agreement) ("the Agreement"), a copy of which is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3196 as if written fully therein, was presented to the City Engineering Department; and

WHEREAS, with said agreement, Jefferson County will fund the overall project costs with the exception of the City match of \$100,000; and

WHEREAS, The City's Engineering Department has reviewed the Agreement and recommend approval; and

WHEREAS, the Mayor and the City Council finds that accepting the Agreement and funding said improvements is in the best public interest.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver said Joint Services Agreement as detailed in Exhibit A, attached; and
2. Said \$100,000 City contribution has been budgeted in the City's Capital Fund budget for FY24; and
3. This Ordinance Number 3196 shall become effective upon adoption and publishing/posting as required by Alabama law.

DONE, ORDERED, ADOPTED and APPROVED this the 10th day of October, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3196 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 10th day of October, 2023, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk

**JEFFERSON COUNTY)
STATE OF ALABAMA)**

**AGREEMENT
TO
SHARE RESPONSIBILITIES
(Joint Services Agreement)**

Jefferson County Project #37-22-004
Improvements to Columbiana Road

JEFFERSON COUNTY, ALABAMA (County) and the CITY OF VESTAVIA HILLS, ALABAMA (Vestavia), (Collectively, the “Parties”) enter into this agreement on the _____ day of _____, 2023.

WHEREAS, the County, and Vestavia, desire to make certain improvements to Columbiana Road as shown in the attached Exhibit A (the “Project”); and

WHEREAS, the County entered into an agreement with Vestavia for maintenance of roads and portions of roads located in the City limits of Vestavia as of December 5, 2017 (Minute Book: 171, Pages: 502-505) (“Thru Road Agreement”); and

WHEREAS, Columbiana Road is one of the aforementioned roads; and

WHEREAS, Vestavia solicited and contracted a for preliminary engineering services to be provided by a qualified engineering firm; and

WHEREAS, the estimated construction cost of the Project is \$310,000; and

WHEREAS, Vestavia shall contribute \$100,000 towards the construction of the Project; and

WHEREAS, the Parties have determined that the Project provides a benefit to the traveling public by allowing for the efficient flow of traffic through the Parties’ jurisdictions; and

WHEREAS, the Parties desire to establish their agreement herewith; and

WHEREAS, the Alabama Legislature adopted Alabama Code §41-16-50(b) which provides in pertinent part, that:

(b) The governing bodies of two or more contracting agencies, as enumerated in subsection (a), or the governing bodies of two or more counties, or the governing bodies of two or more city or county boards of education, may provide, by joint agreement, for the purchase of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property for use by their respective agencies. The agreement shall be entered into by similar ordinances, in the case of municipalities, or resolutions, in the case of other contracting agencies, adopted by each of the participating governing bodies, which shall set forth the categories of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of the agreement. Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency. The contracting agencies entering into a joint agreement, as herein permitted, may designate a joint purchasing or bidding agent, and the agent shall comply with this article. Purchases, contracts, or agreements made pursuant to a joint purchasing or bidding agreement shall be subject to all terms and conditions of this article.

; and

WHEREAS, the Alabama Legislature adopted Alabama Code §11-102-1 which provides that:

Except as otherwise provided in this chapter or as otherwise prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. For purposes of this chapter, it is sufficient if each of the contracting entities has the authority to exercise or perform the power or service which is the subject of the contract regardless of the manner in which the power or service shall be exercised or performed, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities.

; and

WHEREAS, all parties find that it is in the public interest that the Parties enter into a joint purchasing/service agreement in accordance with Alabama Code §41-16-50(b) and §11-102-1, *et seq.*, in order to authorize the County to engage in the purchase of certain services and materials through the competitive bid process for use by the Parties, i.e. in order for the County and Vestavia to make certain improvements to Columbiana Road.

IN CONSIDERATION OF THE PREMISES stated herein the Parties mutually agree as follows:

- I. **PURPOSE:** The Parties agree to jointly undertake to provide for the following improvements to Columbiana Road (Project): mill, overlay, striping, access management, signing, and signal modification within the limits of the Project, as shown in the attached Exhibit A.
- II. **BIDDING:** The parties have authorized this Agreement pursuant to similar ordinances passed by Vestavia and similar resolutions passed by the County, adopted by the governing body of each party, which sets forth the categories of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of this agreement. The Parties agree to the following:
 - a. County is designated as the joint purchasing or bidding agent and will advertise and accept bids for the construction of the Project.
 - b. County will determine the low bidder and enter into a separate agreement with the contractor for the construction of the Project.
 - c. County will invoice Vestavia for \$100,000.00 for their respective share of the construction costs of the Project.
 - d. Each Parties' share of expenditures for purchases under this agreement shall be appropriated and paid in the manner set forth in this agreement and in the same manner as for other expenses of the entity.
 - e. This agreement shall be subject to all terms and conditions of the applicable Alabama Bid Laws.
 - f. Should the bid amounts received for the Project exceed the total amounts budgeted by the County or Vestavia, this Agreement may be terminated by the County or Vestavia prior to the execution of the construction contract without penalty or further obligation by any Party.
- III. **TERM:** The duration of this contract shall not exceed three years from the date of its final execution or end of the Project, whichever first occurs.
- IV. **IMPLEMENTATION:** The Parties agree as follows:
 - a. **Management of the Project:** County will assume responsibility for the management of the Project. The Project shall include mill, overlay, striping, access management, signing, and signal modification within the limits of the Project, as shown in the attached Exhibit A. The County will provide Construction, Engineering & Inspection during the construction phase of the Project.

- b. Cost and Payment: The County will invoice Vestavia for its portion of the Project costs upon award of the construction contract, with the invoice to be paid within 30 days of receipt.
- c. Permitting: The qualified engineering firm contracted by Vestavia to perform preliminary engineering services for the Project shall be responsible for acquiring all necessary permits for construction of the Project.
- d. Future Liability: The Parties expressly agree that the County does not assume any risk or future liability, or any future responsibility for any portion of the Project located within the municipality of Vestavia Hills that is not covered by other agreement(s).
- e. Incurring Debt: Except as expressly provided in this agreement, no Party to the contract shall have any power to incur any debt which shall become the responsibility of any other contracting Party.
- f. Relationship of Parties: Except as specifically provided in this agreement, the execution of this agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the parties the relationship of principal or agent or of partnership or of joint venture.
- g. Jurisdictional Authority: Except as otherwise provided by law and as limited by this agreement between the Parties, any entity which contracts to perform or exercise any service or power pursuant to this chapter shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the contract.
- h. Authorizations: Each Party to this agreement shall adopt all ordinances, resolutions, or policies necessary to authorize the other contracting entities to carry out their contractual duties and responsibilities. Each of the Parties hereto does represent and warrant that it has taken all necessary action for the approval of this Agreement and the signature of its representative below has been duly authorized and is binding upon such Party. An executed copy of the Agreement shall be filed at the administrative offices of each Party.

V. TERMINATION:

- a. Should the bid amounts received for the Project exceed the total amounts budgeted by the County, this Agreement may be terminated by the County prior to the execution of the construction contract without penalty or further obligation by any Party.
- b. Upon termination, all unused materials purchased by the County under this agreement shall be returned to the County within 30 days of termination.

VI. MISCELLANEOUS PROVISIONS:

- a. Immigration Law Compliance: By signing this Agreement, the Parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or

- knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting Party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
- b. Non-Discrimination: During the performance of this contract the Parties agree as follows:
- i. The Parties will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. The Parties will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Parties agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - ii. In the event of a Parties' noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further municipal contracts with the other Party.
- c. Boycotting Activities: By signing this contract, the Parties represent and agree that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.
- VII. SEVERABILITY: If any provision of this agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid.
- VIII. GOVERNING LAW: This agreement shall be governed by and construed in accordance with the laws of the State of Alabama. The Parties agree that jurisdiction and venue over all disputes arising under the Agreement shall be the Circuit Court of Jefferson County, Alabama, Birmingham Division.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as reflected below.

JEFFERSON COUNTY, ALABAMA

Date

James A. (Jimmie) Stephens, President
Jefferson County Commission

ATTEST:

Millie Diliberto, Minute Clerk

CITY OF VESTAVIA HILLS, ALABAMA

Date

Ashley Curry, Mayor

ATTEST:

City Clerk

Date

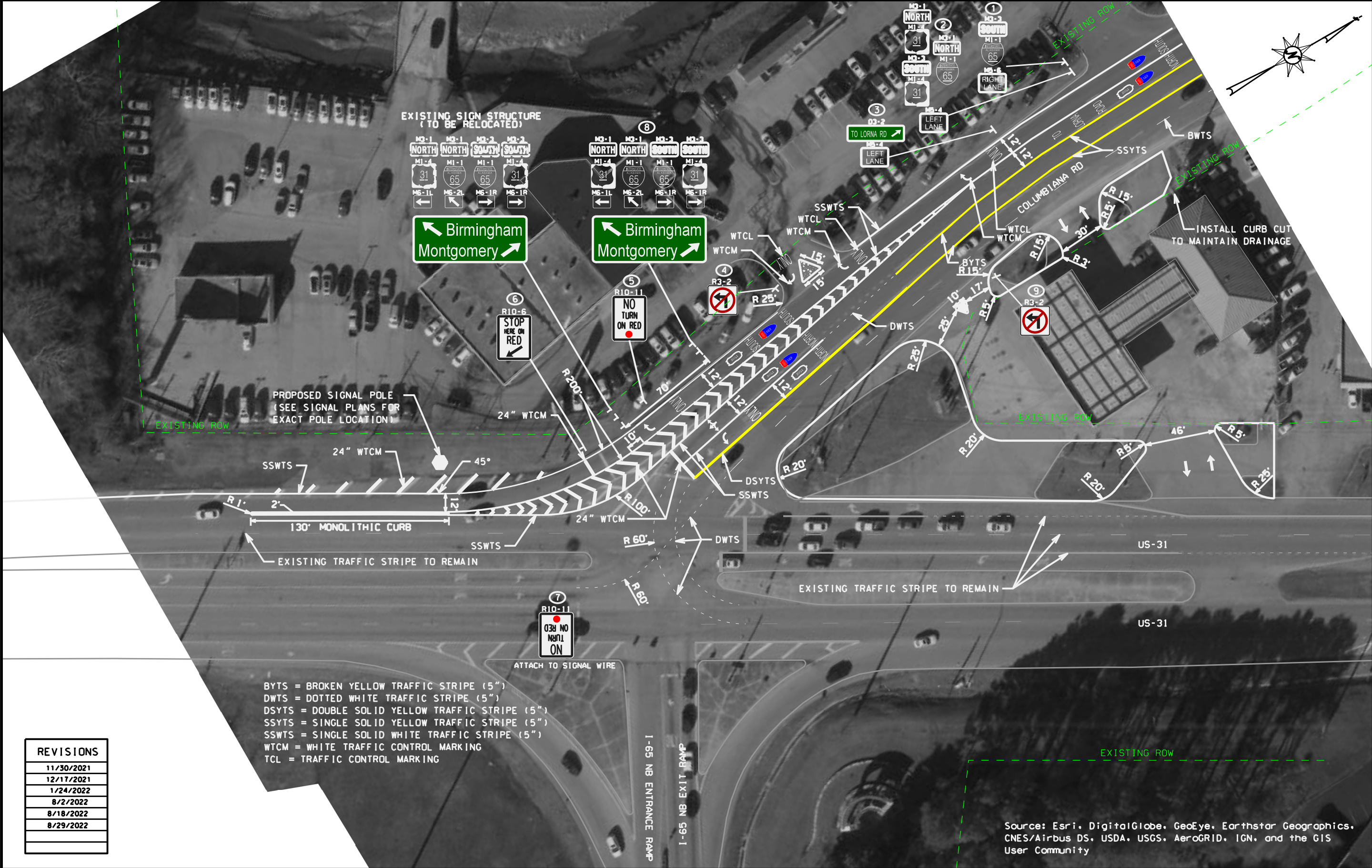
Jeff Downes, City Manager

ATTEST:

City Clerk

EXHIBIT A

REFERENCE PROJECT NO	FISCAL YEAR	SHEET NO
X	2021	4

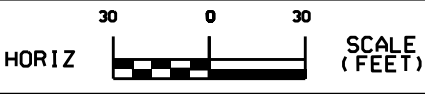


REVISIONS
11/30/2021
12/17/2021
1/24/2022
8/2/2022
8/18/2022
8/29/2022

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

RESPONSIBLE PE:	SUPERVISOR:	DESIGNER:	PLAN SUBMITTAL
DATE:	DATE:	DATE:	

ALABAMA DEPARTMENT OF TRANSPORTATION
US-31 at Columbiana Rd
Vestavia Hills, Alabama



SHEET TITLE	ROUTE
PLAN SHEET	US-31

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

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

E-Mail: patrickboone@bellsouth.net

September 6, 2023

By Electronic Mail

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

In Re: Agreement Between Jefferson County and the City of Vestavia Hills
Regarding Columbiana Road

Dear Mr. Downes:

On August 29, 2023, you sent to me via electronic mail an Agreement to Share Responsibilities (Joint Services Agreement) by and between Jefferson County, Alabama ("County") and the City of Vestavia Hills ("City") with a request that I review the Agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. FACTS

The County has prepared and submitted the Joint Services Agreement providing shared responsibilities between the County and the City. The estimated construction cost of the project is \$310,000.00. The Agreement further provides that Vestavia Hills shall contribute \$100,000.00 toward the construction of the project. The County will bid and manage the project.

II. LEGAL OPINION

It is my legal opinion that the Agreement meets the requirements of Alabama law.

III. BASIS FOR LEGAL OPINION

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

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

B. COUNTIES AND MUNICIPALITIES ARE AUTHORIZED TO ENTER INTO CONTRACTS FOR JOINT EXERCISE OF POWER OR SERVICE: Title 41-16-50(b) and Title 11-102-1, *Code of Alabama, 1975*, authorize a city and county to enter into a contract for the purchase of labor, services or work.

C. MUNICIPALITIES MAY CONSTRUCT, RECONSTRUCT AND IMPROVE PUBLIC STREETS: Municipalities have the authority and power to construct, reconstruct and improve public streets pursuant to Title 11-48-4, *Code of Alabama, 1975*, and *Hamrick v. City of Albertville*, 228 Ala. 666 (1934) and *Martin v. Reed*, 480 So.2d 1180.

D. MUNICIPALITIES HAVE A DUTY TO MAINTAIN PUBLIC STREETS AND ROADS: Municipalities in Alabama have a duty to maintain public streets and roads (*Blair v. Fulmer*, 583 So.2d 1307, 1310 (1991) and *Lybrand v. Town of Pell City*, 260 Ala. 534, 538 (1954)).

E. PUBLIC WORKS LAW: The County will advertise for competitive bids and award the construction contract pursuant to the Alabama Public Works Law at Title 39-2-1, et seq., *Code of Alabama, 1975*. I do want to point out that the Alabama Legislature enacted Act No. 2023-497 to amend Title 39-2-2(a)(1), *Code of Alabama, 1975*, to increase the bid threshold from \$50,000.00 to \$100,000.00 effective September 1, 2023.

IV. MY RECOMMENDATIONS

I have no recommendations for changes, additions, deletions and/or corrections. Therefore, I approve the Agreement from a legal standpoint and recommend its approval, execution and delivery.

My files reflect that the City has entered into similar agreements with the County in 2017, 2019 and 2020. Please call me if you have any questions regarding any of the matters set forth in this legal opinion.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

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



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

October 9, 2023

To: Jeff Downes, City Manager

From: Ethan Fisher, City Engineer

Cc: Lori Beth Kearley, Public Services Director
Rebecca Leavings, City Clerk

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

Background:

The intersection of Columbiana Road and US-31 was studied through the Regional Planning Commission of Greater Birmingham's Advanced Planning, Programming, and Logical Engineering (APPLE) program back in 2019. As part of this study, Sain Associates reviewed this intersection and developed some improvement alternatives to help improve the overall safety and operations of this intersection.

Following that effort, the City of Vestavia Hills engaged Neel-Schaffer, Inc. to provide engineering design services for the roadway improvement recommendations that Sain Associates presented as part of the APPLE study

conclusion.

The construction plans prepared by Neel-Schafer will include upgrades from the existing inductive-loop traffic detectors to a camera system to align with the RTOP initiative in the region in addition to some other operational and equipment modifications. We are seeking the City Council's approval of a Signal Operation and Maintenance Agreement between the City and the Alabama Department of Transportation related to the Columbiana Road and Highway 31 intersection improvements, to allow these modifications and upgrades to be made. These items do not affect City's financial contribution toward the project construction cost.

Recommendation:

I recommend that the City of Vestavia Hills enter into this Signal Operation and Maintenance Agreement with the Alabama Department of Transportation in order to allow this intersection improvement project to be constructed.

Fiscal Impact:

The City's \$100,000 cost contribution toward the construction of the project, including the signal modifications and upgrades, is budgeted in the approved FY24 budget's Capital Fund

Attachments:

1. Resolution 5477
2. ALDOT Signal Operation and Maintenance Agreement
3. PH Boone Legal Opinion to City Manager October 9, 2023

RESOLUTION NUMBER 5477

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SIGNAL MAINTENANCE AGREEMENT WITH THE ALABAMA DEPARTMENT OF TRANSPORTATION (ALDOT) RELATED TO THE IMPROVEMENTS TO THE COLUMBIANA ROAD AND HIGHWAY 31 INTERSECTION

WHEREAS, the intersection of Columbiana Road and US-31 was studied through the Regional Planning Commission of Greater Birmingham’s Advanced Planning, Programming, and Logical Engineering (APPLE) program back in 2019. As part of this study, Sain Associates reviewed this intersection and developed some improvement alternatives to help improve the overall safety and operations of this intersection; and

WHEREAS, following that effort, the City of Vestavia Hills engaged Neel-Schaffer, Inc. to provide engineering design services for the roadway improvement recommendations that Sain Associates presented as part of the APPLE study conclusion; and

WHEREAS, the construction plans prepared by Neel-Schaffer include upgrades from the existing inductive-loop traffic detectors to a camera system to align with the RTOP initiative in the region; and

WHEREAS, a Signal Maintenance Agreement (“the Agreement”) between the City and the Alabama Department of Transportation related to the Columbiana Road and Highway 31 intersection improvements, including the upgrade, operation, and maintenance of the signals. These items are included within the existing approved project budget. A copy of said Agreement is marked as Exhibit 1, attached to and incorporated into this Resolution Number 5477 as if written fully therein; and

WHEREAS, the Professional Engineer and the Public Works Director have reviewed the Agreement and recommends approval and execution by the City Manager; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to authorize the City Manager to execute and deliver the Agreement.

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

1. The City Manager is hereby authorized to execute and deliver the attached Signal Maintenance Agreement; and

2. The City's \$100,000 cost contribution toward the construction of the project, including the signal upgrades, is budgeted in the approved FY24 budget's Capital Fund; and
3. This Resolution Number 5477 shall become effective immediately upon approval and adoption.

ADOPTED and APPROVED this the 10th day of October, 2024.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Resolution Number 5477 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 10th day of October, 2023, as same appears in the official records of said City.

Rebecca Leavings
City Clerk

Region Tracking Number: _____ Project Number: _____

Region: ECR - Birmingham Area County: Jefferson

STATE OF ALABAMA acting by and through the
ALABAMA DEPARTMENT OF TRANSPORTATION: AGREEMENT for the
INSTALLATION and/or OPERATION and/or MAINTENANCE OF TRAFFIC CONTROL SIGNALS and/or
ROADWAY LIGHTING

This Agreement, in accordance with resolution number _____ dated (or minutes dated) _____ attached hereto and made part of this Agreement, is made and entered into by and between the Alabama Department of Transportation (herein referred to as STATE) and the City of Vestavia Hills (herein referred to as **MAINTAINING AGENCY**) for the accomplishment of the following work as hereinafter indicated by the alphabetic letter of "X" marked in the check-boxes below, to wit:

	(A) New Installation	(B) Equipment Upgrade	(C) Complete Removal	(D) Operation	(E) Maintenance
Traffic Control Signal:	☐	☒	☐	☒	☒
Intersection Flashing Signal/Beacon:	☐	☐	☐	☐	☐
Roadway Lighting:	☐	☐	☐	☐	☐
Other: _____	☐	☐	☐	☐	☐

The accomplishment of the work indicated by the alphabetic letter of "X" marked in the check-box(es) above and hereinafter signified by the use of the corresponding alphabetic letter A, B, C, D, and/or E as applicable, will be at the following location(s): {Example: AL-3/US-31 @ Main Street [A, D, & E] denotes the installation, operation, and maintenance of the equipment installed} **NOTE** – if more space is needed, please use continuation sheets.

State Route 3 (U.S. Highway 31) at the I-65 Northbound Ramps/Columbiana Road [B, D & E]

- For the purposes of this Agreement, "equipment and/or associated hardware" shall refer to the equipment and/or associated hardware used to install, upgrade, maintain, and/or operate traffic control signals, intersection flashing signals/beacons, roadway lighting, and/or other as specified in the chart above.
- In the event the work to be accomplished above is identified by (A) and/or (B), the ☐ STATE ☒ MAINTAINING AGENCY will furnish and the ☐ STATE ☒ MAINTAINING AGENCY will install the equipment and/or associated

hardware utilized in the accomplishment of the work. In the event the STATE contributes funds to the work and the MAINTAINING AGENCY will be credited or debited for under-runs or overruns respectively, the “**Exhibit O**” is attached to and made part of this Agreement.

3. The equipment and/or associated hardware shall be installed in accordance with the applicable portions of the:
 - A. Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), current ALDOT approved edition.
 - B. State of Alabama Project Details and Special and Standard Highway Drawings, current year version.
 - C. National Electrical Code, current edition.
 - D. Alabama Department of Transportation (ALDOT) Standard Specifications for Highway Construction, current edition and applicable special provisions.
 - E. Code of Alabama, 1975 (as Amended) with specific reference to:
 - (1) §23-1-113, Municipal Connecting Link Roads – Stipulations and Conditions [specifically sub-paragraphs (6) and (7)].
 - (2) §32-5A-32, Traffic – Control signal legend.
 - (3) §32-5A-33, Pedestrian – Control signals.
 - (4) §32-5A-34, Flashing signals.
 - (5) §32-5A-35, Lane – Direction – Control signals.
4. The STATE shall determine the quantity of the equipment and/or associated hardware to be utilized in the accomplishment of the work identified by (A) and/or (B) above. In the event the MAINTAINING AGENCY furnishes the equipment and/or associated hardware to be utilized in the accomplishment of the work identified by (A) and/or (B) above, the MAINTAINING AGENCY shall ascertain that the type and quality of the equipment and/or associated hardware is in accordance with the STATE’s Materials, Sources, and Devices with Special Acceptance Requirements (APL) as maintained by the STATE’s Bureau of Materials and Tests.
5. It is the sole responsibility of the MAINTAINING AGENCY to locate and/or relocate any and all utilities in conflict with the installation, upgrade, and/or maintenance of equipment and associated hardware prior to commencing work to install, upgrade, and/or maintain equipment and associated hardware. The MAINTAINING AGENCY will locate and/or relocate such utilities in accordance with all applicable Federal and State laws, regulations, and procedures. Associated utility costs will be at the sole expense of the MAINTAINING AGENCY. In the event utilities are damaged during the installation, upgrade, and/or maintenance of equipment and associated hardware due to failure of the MAINTAINING AGENCY to relocate and/or relocate such utilities, the MAINTAINING AGENCY shall be responsible for providing the funding to pay for any and all associated costs to repair the utilities.
6. Title to any and all equipment and/or associated hardware furnished by the STATE shall remain in the STATE and the STATE is deemed to be the sole owner of such equipment and/or hardware.
7. The equipment and/or associated hardware shall be operated and maintained at the sole expense of the MAINTAINING AGENCY. The MAINTAINING AGENCY agrees to provide electrical energy on a continuing basis as required, beginning at the time of the initial electrical service connection during the construction of the system. The MAINTAINING AGENCY agrees further to maintain the equipment and/or associated hardware in a good state of repair at all times, as required in

accordance with the applicable documents: Manual on Uniform Traffic Control Devices for Streets and Highways and the Alabama Department of Transportation Standard Specifications for Highway Construction and applicable special provisions. Any traffic control signal equipment and/or associated hardware must also be maintained in accordance with any traffic signal operating plan of the STATE which is in effect at the applicable time of the maintenance. If a malfunction of the equipment and/or associated hardware should ever occur, the MAINTAINING AGENCY shall make or cause to be made any repairs immediately. If a malfunction presents a potential hazard to the motoring public and the MAINTAINING AGENCY is unable to repair the equipment and/or associated hardware in a timely manner as determined by the STATE, the MAINTAINING AGENCY agrees that the STATE reserves the right to and may repair the equipment and/or associated hardware, and invoice the MAINTAINING AGENCY for all costs incurred. The MAINTAINING AGENCY agrees to pay the STATE all such costs incurred by the STATE promptly upon receipt of the invoice from the STATE.

- 7a. In instances where ALDOT maintains a fiber-optic trunk line that is used in conjunction with a closed-loop signal system, the MAINTAINING AGENCY shall maintain the fiber-optic cable from the splice point in the trunk line out to the traffic control equipment.
- 8a. Installation requests made by the MAINTAINING AGENCY and identified on page one as “(A) New Installation” with “Traffic Control Signal” marked must follow the Traffic Signal Warrant and Justification procedure as identified in the Alabama Department of Transportation Traffic Signal Design Guide and Timing Manual, latest edition. For any warrant study/analysis which does not satisfy a traffic signal warrant or warrants, the MAINTAINING AGENCY agrees to accept any and all responsibility for any damage or injury that may be caused by or related to the installation, location, operation, sequencing, and/or maintenance of the equipment and/or associated hardware and shall defend, indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, and its agents, servants, employees, in their official or individual capacities and/or facilities from and against all claims, damages, losses and expenses, including but not limited to attorney’s fees, arising out of or resulting from the installation, operation, and maintenance of the equipment and/or associated hardware, or any claim, damage, loss, or expense to the person or property caused. A copy of the warrant study/analysis shall be attached to and made part of this Agreement.
- 8b. Check one:

The ☒ CITY (Incorporated Municipality)

Subject to the limitations on damages applicable to municipal corporations under Alabama Code § 11-47-190(1975), the CITY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorney’s fees arising out of, connected with, resulting from, or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction or tangible property (other than the work itself), including loss of use therefrom, and including but not limited

to attorney's fees, caused by the willful, negligent, careless, or unskillful acts of the CITY, its agents, servants, representatives, or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation, or reimbursement by the CITY, its agents, servants, representatives, or employees, or anyone for whose acts the CITY may be liable.

The ☐ COUNTY (County Government or Agency)

The COUNTY shall be responsible at all times for all of the work performed under this agreement and, as provided in Alabama Code § 11-93-2(1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees.

For all claims not subject to Alabama Code § 11-93-2(1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against any and all damages, claims, loss, liabilities, attorney's fees or expense whatsoever, or any amount paid in compromise thereof arising out of, connected with, or related to (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the COUNTY pursuant to the terms of this Agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its officers, officials, agents, servants, and employees.

The term "hold harmless" includes the obligation of the MAINTAINING AGENCY to pay damages on behalf of the State of Alabama, the Alabama Department of Transportation, and its agents, servants, and/or employees.

9. Complete removal of the equipment and/or associated hardware, hereinabove identified by (C), will be at the sole expense of the ☐ STATE ☐ MAINTAINING AGENCY.
10. The STATE reserves the right to demand the removal of the equipment and/or associated hardware should the STATE determine that the signal is no longer required or deem its condition or operation hazardous. Further, the STATE shall have the right to remove the equipment and/or associated hardware should the MAINTAINING AGENCY fail to do so upon demand by the STATE. The MAINTAINING AGENCY agrees to reimburse the STATE for its costs associated with the removal. Any equipment and/or associated hardware which is deemed by the STATE to be non-uniform or obsolete will be removed and disposed of by the MAINTAINING AGENCY. None of the non-uniform or obsolete equipment and/or associated hardware which has been removed shall be reused on the STATE highway system.
11. If future traffic conditions require changes and/or adjustments to said equipment and/or associated hardware (other than ordinary timing), the MAINTAINING AGENCY shall obtain the approval of the STATE before such changes are implemented and the STATE shall make a determination on whether a new Agreement is required to be submitted for the UPGRADING, OPERATION, and MAINTENANCE of the new equipment and/or associated hardware. All such changes shall be at the sole cost and expense of the MAINTAINING AGENCY.

12. At such time as a warrant study is conducted on an existing signalized intersection and the results differ from the previous warrant study conducted at that signalized intersection, a new Agreement for Installation and/or Operation and/or Maintenance of Traffic Control Signals and/or Roadway Lighting shall be executed with the MAINTAINING AGENCY.

13. In the event Federal funds are utilized in the accomplishment of the work hereinbefore described, "**Exhibit M**" is attached to and made a part of this Agreement.

14. FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be construed as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this Agreement shall contravene any statute or Constitutional Provision or Amendment, then the conflicting provision in this Agreement shall be deemed null and void.

For any and all disputes arising under the terms of this Agreement, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative Hearings or where appropriate, private mediators.

15. The type and number of signal & pedestrian heads per intersection or roadway lighting hardware are as follows: {Example: 5 – 3 sec, 12", red ball, yellow/green left arrow. OPTION: If plans are available to convey information below, just enter "**SEE ATTACHED PLANS**".} **NOTE** – If more space is needed, please use continuation sheets.

see attached plans

TYPE OF SIGNAL		CONTROLLER	
☒ Traffic Control	☐ Pedestrian Control	Make:	Model #:
☐ Flashing	☐ Lane Control	☐ Fixed Time	☐ Two Phase
☐ School Flasher	☐ Railroad Crossing	☐ Semi Actuated	☐ Four Phase
☐ Other: _____		☒ Full Actuated	☒ Eight Phase
_____		☐ Other: _____	
_____		SYSTEM ☒ YES ☐ NO	

16. In the event the work to be accomplished is identified by (A), (B), and/or (C) and [1] in part or wholly constitutes an interconnected, coordinated, fixed time relationship, signal control operation between two or more intersections (herein referred to as a SYSTEM and hereinabove indicated by the SYSTEM check-box for YES marked in the controller box above), [2] is located within the limits of a SYSTEM, or [3] is within close proximity as to adjoin a SYSTEM, the ☐ STATE ☒ MAINTAINING AGENCY shall substantiate the work identified by (A), (B), and/or (C) to be SYSTEM compatible.
17. By entering into this agreement, the MAINTAINING AGENCY is not an agent of the State, its officers, employees, agents or assigns. The MAINTAINING AGENCY is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.
18. By signing this contract, the contracting parties affirm, for the duration of this agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of this agreement and shall be responsible for all damages resulting there from.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Region Engineer.

(Seal of MAINTAINING AGENCY)

City of Vestavia Hills

Legal Name of MAINTAINING AGENCY

Attest: _____
(Seal or notary signature)

By: _____
Authorized Signature for MAINTAINING AGENCY

Agreement Recommended for approval:

By: _____
Area Traffic Engineer Signature

STATE OF ALABAMA acting by and through the ALABAMA DEPARTMENT OF TRANSPORTATION

The within and foregoing Agreement is hereby approved on this _____ day
of _____, 20_____.

APPROVED:

RECORDED:

By: _____
Region Engineer Signature

By: _____
State Traffic Engineer Signature

Date: _____
(Added to Archive)

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

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

E-Mail: patrickboone@bellsouth.net

October 9, 2023

By Electronic Mail

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

In Re: Resolution Number 5477 Approving Agreement with ALDOT

Dear Mr. Downes:

The City Council will consider approval of Resolution Number 5477 at its meeting beginning at 6:00 p.m. tonight. The resolution, if approved, will authorize you to execute and deliver for and on behalf of the City an Agreement with the Alabama Department of Transportation (ALDOT) for the installation of traffic control signals at the intersection of U.S. Highway 31 and Columbiana Road. You have requested that I review the Agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. FACTS

The Agreement in sections 8(a) and 8(b) requires the City to defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation and its agents, servants and employees from liability for any damage, loss, expense, bodily injury or death caused by the actions by the City or any of its employees resulting from the installation, operation and maintenance of the equipment.

**II. GENERAL OPINION REGARDING
INDEMNITY AND HOLD HARMLESS REQUIREMENTS**

I have written numerous legal opinions opining that municipalities cannot spend public funds to indemnify and hold harmless third parties. I based my legal opinions upon the following Alabama legal authorities:

A. CONSTITUTION OF ALABAMA: Article IV, Section 94, as amended by Amendments 112 and 558, provides that a city cannot lend its credit or grant public money or thing of value to a private party.

B. **SUPREME COURT OF ALABAMA:** The Supreme Court of Alabama decided the case of *Slawson v. Alabama Forestry Commission*, 631 So.2d 953, in 1994 and held that governing bodies may spend public funds only for public purposes.

It is my legal opinion that using public funds to indemnify and hold harmless private parties violates the *Constitution of Alabama* and the *Slawson* decision.

III. MY LEGAL OPINION REGARDING THE AGREEMENT WITH ALDOT

I approve sections 8(a) and 8(b) of the Agreement simply because the State of Alabama and its agencies are immune from liability and their employees have discretionary immunity and state-agent immunity. My opinion is supported by the following legal authorities:

A. **THE STATE OF ALABAMA AND ITS AGENCIES ARE IMMUNE FROM LAWSUITS:**

1. **Constitution of Alabama:** Article IV, Section 14.

2. **Supreme Court of Alabama:**

(a) *Phillips v. Thomas*, 555 So.2d 18 (1989).

(b) *Barnes v. Dale*, 530 So.2d 770 (1988).

B. **ALDOT HAS ABSOLUTE IMMUNITY FROM LAWSUITS:** ALDOT, as a state agency, is absolutely immune from suit. *Ex parte Alabama Dep't of Transp.*, 978 So.2d 718, 721 (Ala.2007).

C. **EMPLOYEES OF THE STATE OF ALABAMA HAVE DISCRETIONARY FUNCTION IMMUNITY:** The Supreme Court of Alabama has ruled that employees of the State of Alabama have discretionary immunity (*Ex parte Cranman*, 792 So.2d 392 (Ala.2000)).

D. **EMPLOYEES OF THE STATE OF ALABAMA HAVE STATE AGENT IMMUNITY:** Title 36-1-12, *Code of Alabama*, 1975.

IV. CONCLUSION

From a legal standpoint, I approve Resolution Number 5477 and the Agreement with ALDOT.

October 9, 2023

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

Very truly yours,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

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



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

October 9, 2023

To: Jeff Downes, City Manager

From: Lori Beth Kearley, Public Services Director

Cc: Rebecca Leavings, City Clerk

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

Background:

The intersection of Blue Lake Drive and Sicard Hollow Road was studied through the Regional Planning Commission of Greater Birmingham's Advanced Planning, Programming, and Logical Engineering (APPLE) program back in 2019. As part of this study, Sain Associates reviewed this intersection and determined that a roundabout design would help to improve the overall safety and operations of this intersection.

The City entered into an agreement with Sain Associates in April 2020 to perform further engineering and surveying due diligence to develop a

conceptual layout of the roundabout and determine potential right-of-way and utility impacts.

Following that effort, the City entered into another agreement with Sain Associates in June 2022 to complete the intersection design and provide construction documents. These design and coordination services will carry the project through design to the project bid.

The total sum of both Sain design contract amounts is \$269,650.

The project traverses through three jurisdictions: City of Vestavia Hills, Jefferson County, and City of Birmingham.

Based on the construction plans prepared by Sain Associates, the estimated construction cost estimate for the Project is \$2,000,000. We are seeking the City Council's approval of a Joint Services Agreement with Jefferson County that outlines a 50% equal cost share of the total combined costs of Engineering and Construction, of which the City has already encumbered \$269,650. The County will bid the project and will invoice Vestavia Hills for their respective share of the construction costs.

Recommendation:

I recommend that the City of Vestavia Hills enter into this Joint Services Agreement with Jefferson County in order to allow this intersection improvement project to be constructed.

Fiscal Impact:

The City's contribution toward the construction of the project is budgeted in approved FY24 budget's Capital Fund.

Attachments:

1. Ordinance 3199
2. 37-19-400 Joint Service Agreement
3. PH Boone Legal Opinion to City Manager September 19, 2023

ORDINANCE NUMBER 3199

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A JOINT SERVICES AGREEMENT WITH JEFFERSON COUNTY AND THE CITY OF BIRMINGHAM IN ORDER TO SHARE RESPONSIBILITIES FOR IMPROVEMENTS TO THE BLUE LAKE DRIVE AND SICARD HOLLOW ROAD INTERSECTION FOR JEFFERSON COUNTY PROJECT NO. 37-19-400

WHEREAS, in 2019, the intersection of Blue Lake Drive and Sicard Hollow Road was studied through the Regional Planning Commission of Greater Birmingham's Advanced Planning, Programming, and Logical Engineering (APPLE) program; and

WHEREAS, as part of this study, Sain Associates reviewed this intersection and determined that a roundabout design would help to improve the overall safety and operations of this intersection; and

WHEREAS, in April 2020, the City entered into an agreement with Sain Associates to perform further engineering and surveying due diligence to develop a conceptual layout of the roundabout and determine potential right-of-way and utility impacts; and

WHEREAS, following that effort, the City entered into another agreement with Sain Associates in June 2022 to complete the intersection design and provide construction documents. These design and coordination services will carry the project through design to the project bid; and

WHEREAS, the total sum of both Sain design contract amounts is \$269,650 and

WHEREAS, the project traverses through three jurisdictions: City of Vestavia Hills, Jefferson County, and City of Birmingham which would require that all entities join together to approve said improvements; and

WHEREAS, based on the construction plans prepared by Sain Associates, the estimated construction cost estimate for the Project is \$2,000,000; and

WHEREAS, the City's Engineering Department has reviewed a proposed Joint Services Agreement ("the Agreement") with the City of Birmingham, and Jefferson County that outlines a 50% equal cost share of the total combined costs of Engineering and Construction between Jefferson County and the City of Vestavia Hills, of which the City has already encumbered \$269,650; and

WHEREAS, Jefferson County will be the responsible party to bid the project and will invoice Vestavia Hills for their respective share of the construction costs; and

WHEREAS, a copy of the Agreement is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3199 as if written fully therein; and

WHEREAS, the City's Public Works Director has reviewed the Agreement along with the City Manager and City Attorney and recommend acceptance of said agreement; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the recommendation of the Public Works Director and authorize the Agreement.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver the Joint Services agreement as authorized in the attached Exhibit A; and
2. The City Manager is hereby authorized to execute and deliver any subsequent documents needed to secure said construction plans, bidding, etc., for a project cost of \$2,000,000; and
3. Jefferson County will be the responsible party to bid said project and invoice the City of Vestavia Hills its pro-rata share of said expense of improvement; and
4. This Ordinance Number 3199 shall become effective immediately upon adoption and publishing/posting as required by Alabama law.

ADOPTED and APPROVED this the 10th day of October, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3199 a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 10th day of October, 2023 as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk

JEFFERSON COUNTY)
STATE OF ALABAMA)

AGREEMENT
TO
SHARE RESPONSIBILITIES
(Joint Services Agreement)

Jefferson County Project #37-19-400

Blue Lake Drive and Sicard Hollow Road Intersection Improvement

JEFFERSON COUNTY, ALABAMA (County), the CITY OF BIRMINGHAM, ALABAMA (Birmingham) and the CITY OF VESTAVIA HILLS, ALABAMA (Vestavia), (Collectively, the “Parties”) enter into this agreement on the _____ day of _____, 202__.

WHEREAS, the County, Birmingham, and Vestavia, desire to make certain improvements to the intersection of Blue Lake Drive, Cahaba Heights Road, and Sicard Hollow Road to include construction of a roundabout, installation of roadway lighting, drainage structures, and associated roadway reconfiguration as shown in the attached Exhibit A (the “Project”); and

WHEREAS, the Project traverses through the three jurisdictions: County, Birmingham and Vestavia; and

WHEREAS, Vestavia solicited and contracted for preliminary engineering services to be provided by a qualified engineering firm; and

WHEREAS, the cost for said preliminary engineering services is \$269,650; and

WHEREAS, the total cost of the Project is expected to exceed \$2,000,000; and

WHEREAS, the County and Vestavia desire to divide the total combined costs of Preliminary Engineering and Construction costs equally at 50% each; and

WHEREAS, Birmingham is agreeable to and desirous of the improvements to be made at Sicard Hollow Road; and

WHEREAS, the Parties have determined that the Project provides a benefit to the traveling public by allowing for the efficient flow of traffic through all three jurisdictions; and

WHEREAS, the Parties desire to establish their agreement herewith; and

WHEREAS, the Alabama Legislature adopted Alabama Code §41-16-50(b) which provides in pertinent part, that:

(b) The governing bodies of two or more contracting agencies, as enumerated in subsection (a), or the governing bodies of two or more counties, or the governing bodies of two or more city or county boards of education, may provide, by joint agreement, for the purchase of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property for use by their respective agencies. The agreement shall be entered into by similar ordinances, in the case of municipalities, or resolutions, in the case of other contracting agencies, adopted by each of the participating governing bodies, which shall set forth the categories of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of the agreement. Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency. The contracting agencies entering into a joint agreement, as herein permitted, may designate a joint purchasing or bidding agent, and the agent shall comply with this article. Purchases, contracts, or agreements made pursuant to a joint purchasing or bidding agreement shall be subject to all terms and conditions of this article.

; and

WHEREAS, the Alabama Legislature adopted Alabama Code §11-102-1 which provides that:

Except as otherwise provided in this chapter or as otherwise prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. For purposes of this chapter, it is sufficient if each of the contracting entities has the authority to exercise or perform the power or service which is the subject of the contract regardless of the manner in which the power or service shall be exercised or performed, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities.

; and

WHEREAS, all parties find that it is in the public interest that the parties enter into a joint purchasing/service agreement in accordance with Alabama Code §41-16-50(b) and §11-102-1, *et seq.*, in order to authorize County to engage in the purchase of certain services and materials through the competitive bid process for use by the Parties, i.e. in order for County, Birmingham and Vestavia to make certain improvements to the intersection of Blue Lake Drive, Cahaba Heights Road, and Sicard Hollow Road.

IN CONSIDERATION OF THE PREMISES stated herein the Parties mutually agree as follows:

- I. **PURPOSE:** The Parties agree to jointly undertake to provide for the following improvements to the intersection of Blue Lake Drive, Cahaba Heights Road, and Sicard Hollow Road (Project): construct roundabout with associated roadway realignment and widening, drainage, resurfacing, and lighting necessitated by the roundabout installation, as shown in the attached Exhibit A.
- II. **BIDDING:** The parties have authorized this agreement pursuant to similar ordinances passed by Birmingham and Vestavia and a similar resolution passed by the County, adopted by the governing body of each party, which sets forth the categories of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of this agreement. The Parties agree to the following:
 - a. County is designated as the joint purchasing or bidding agent and will advertise and accept bids for the construction of the Project.
 - b. County will determine the low bidder and enter into a separate Agreement with the contractor for the construction of the Project.
 - c. County will invoice Vestavia for their respective share of the construction costs, accounting for the Preliminary Engineering costs paid by Vestavia to the qualified engineering firm.
 - d. Each Parties' share of expenditures for purchases under this agreement shall be appropriated and paid in the manner set forth in this agreement and in the same manner as for other expenses of the entity.
 - e. All advertising costs incurred by the County on behalf of the joint purchasing agreement shall be included in the total combined cost of the project.
 - f. Any permitting costs associated with the project incurred by either the County or Vestavia shall be included in the total combined cost of the project.
 - g. This agreement shall be subject to all terms and conditions of the applicable Alabama Bid Laws.

- h. Should the bid amounts received for the Project exceed the total amounts budgeted by the County or Vestavia, this Agreement may be terminated by the County or Vestavia prior to the execution of the construction contract without penalty or further obligation by any Party.
- III. TERM: The duration of this contract shall not exceed three years from the date of its final execution or end of the Project, whichever first occurs.
- IV. IMPLEMENTATION: The Parties agree as follows:
- a. Management of the Project: The County will assume responsibility for the management of the Project. The Project shall include construction of a roundabout, installation of roadway lighting, drainage structures, and associated roadway configuration to tie to the roundabout as shown in the attached Exhibit A. The County will provide Construction, Engineering & Inspection during the construction phase of the Project. 10% of the total bid price shall be included in the total combined cost of the Project for Construction, Engineering & Inspection services.
 - b. Cost and Payment: The County and Vestavia will split the total cost of the Project equally at 50%. The County will invoice Vestavia for its portion of the cost upon award of the construction contract, with the invoice to be paid within 30 days of receipt. Vestavia acknowledges and agrees that any overrun in costs of the Project shall be born equally by Vestavia and the County. If final costs are less than initially invoiced and paid, a refund will be issued to Vestavia accordingly.
 - c. Future Liability: The Parties expressly agree that the County does not assume any risk or future liability, or any future responsibility for any portion of the Project, including lighting, located within the municipalities of Birmingham or Vestavia Hills.
 - d. Future Maintenance: The Parties expressly agree that the County shall have jurisdictional authority and responsibility for the maintenance and operation of the roundabout constructed within the Project, limits bounded to the back of radius of the approach lanes of Blue Lake Drive, Sicard Hollow Road, and Cahaba Heights Road as shown in the attached Exhibit B.
 - e. Lighting: Each Party shall enter into an agreement with Alabama Power for electrical service for roadway lighting facilities that are to be located within each of the Parties' jurisdiction respectively, as shown in the attached Exhibit C.
 - f. Incurring Debt: Except as expressly provided in this agreement, no party to the contract shall have any power to incur any debt which shall become the responsibility of any other contracting party.
 - g. Relationship of the Parties: Except as specifically provided in this agreement, the execution of this agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the parties the relationship of principal or agent or of partnership or of joint venture.

- h. Jurisdictional Authority: Except as otherwise provided by law and as limited by this agreement between the Parties, any entity which contracts to perform or exercise any service or power pursuant to this chapter shall have the full power and authority to act within the jurisdiction of all contracting Parties to the extent necessary to carry out the purposes of the contract.
- i. Authorizations: Each Party to this agreement shall adopt all ordinances, resolutions, or policies necessary to authorize the other contracting entities to carry out their contractual duties and responsibilities. Each of the Parties hereto does represent and warrant that it has taken all necessary action for the approval of this Agreement and the signature of its representative below has been duly authorized and is binding upon such Party. An executed copy of this Agreement shall be filed at the administrative offices of each Party.

V. TERMINATION:

- a. Should the bid amounts received for the Project exceed the total amounts budgeted by the County or Vestavia, this Agreement may be terminated by the County or Vestavia prior to the execution of the construction contract without penalty or further obligation by any Party.
- b. Upon termination, all unused materials purchased by the County under this agreement shall be returned to the County within 30 days of termination.

VI. MISCELLANEOUS PROVISIONS:

- a. Immigration Law Compliance: By signing this Agreement, the Parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting Party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
- b. Non-Discrimination: During the performance of this contract the Parties agree as follows:
 - i. The Parties will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. The Parties will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Parties agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- ii. In the event of a Parties' noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further municipal contracts with the other Party.
 - c. Boycotting Activities: By signing this contract, the Parties represent and agree that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.
- VII. SEVERABILITY: If any provision of this agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid.
- VIII. GOVERNING LAW: This agreement shall be governed by and construed in accordance with the laws of the State of Alabama. The parties agree that jurisdiction and venue over all disputes arising under this Agreement shall be the Circuit Court of Jefferson County, Alabama, Birmingham Division.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as reflected below.

JEFFERSON COUNTY, ALABAMA

Date

BY: _____
James A. (Jimmie) Stephens, President
Jefferson County Commission

ATTEST:

BY: _____
Millie Diliberto, Minute Clerk

CITY OF BIRMINGHAM, ALABAMA

Date

BY: _____
Randall L. Woodfin, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT:

Assistant City Attorney / Date

CITY OF VESTAVIA HILLS, ALABAMA

Date

BY: _____
Ashley Curry, Mayor

ATTEST:

City Clerk

Date

BY: _____
Jeff Downes, City Manager

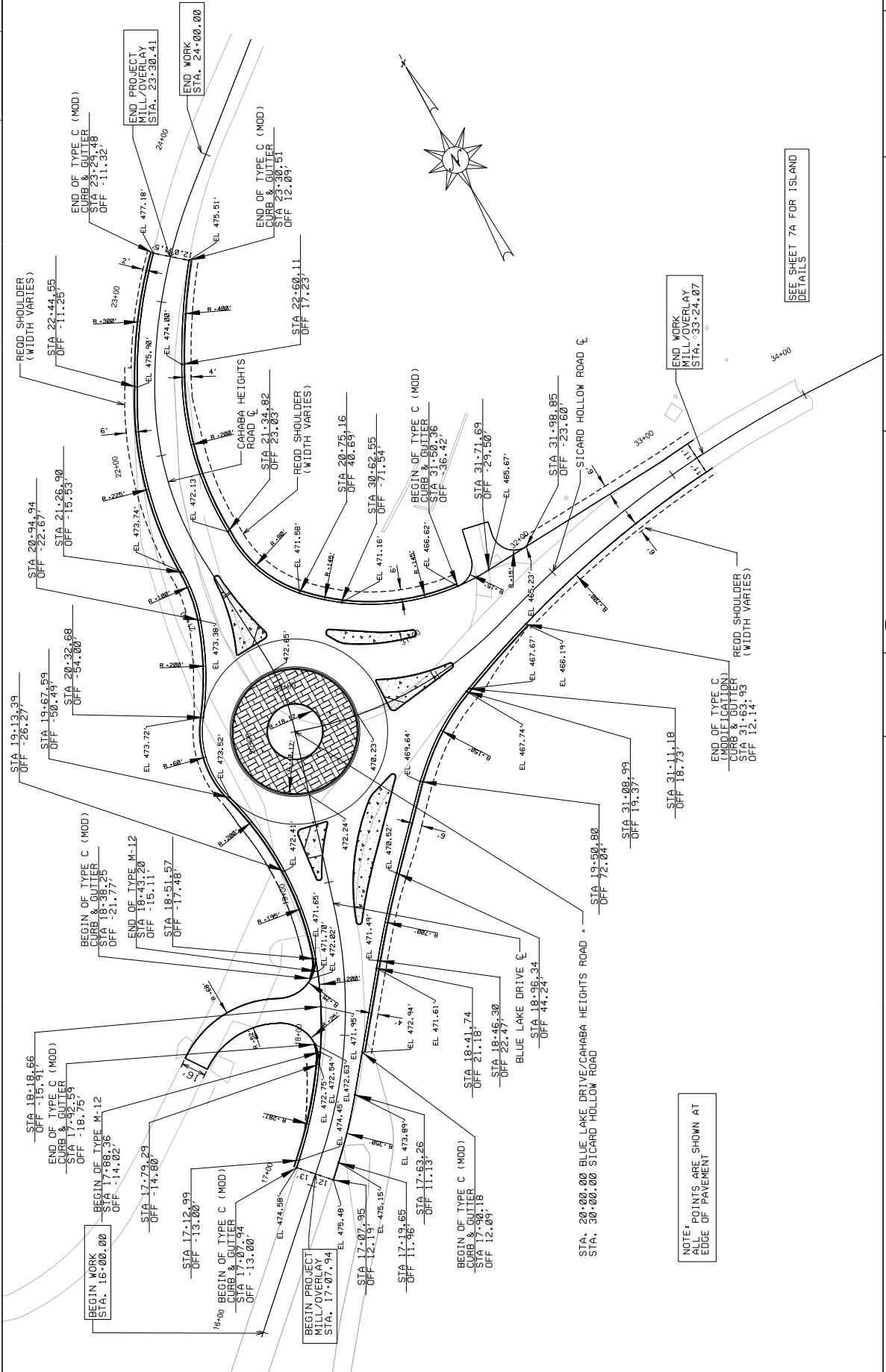
ATTEST:

City Clerk

Exhibit A

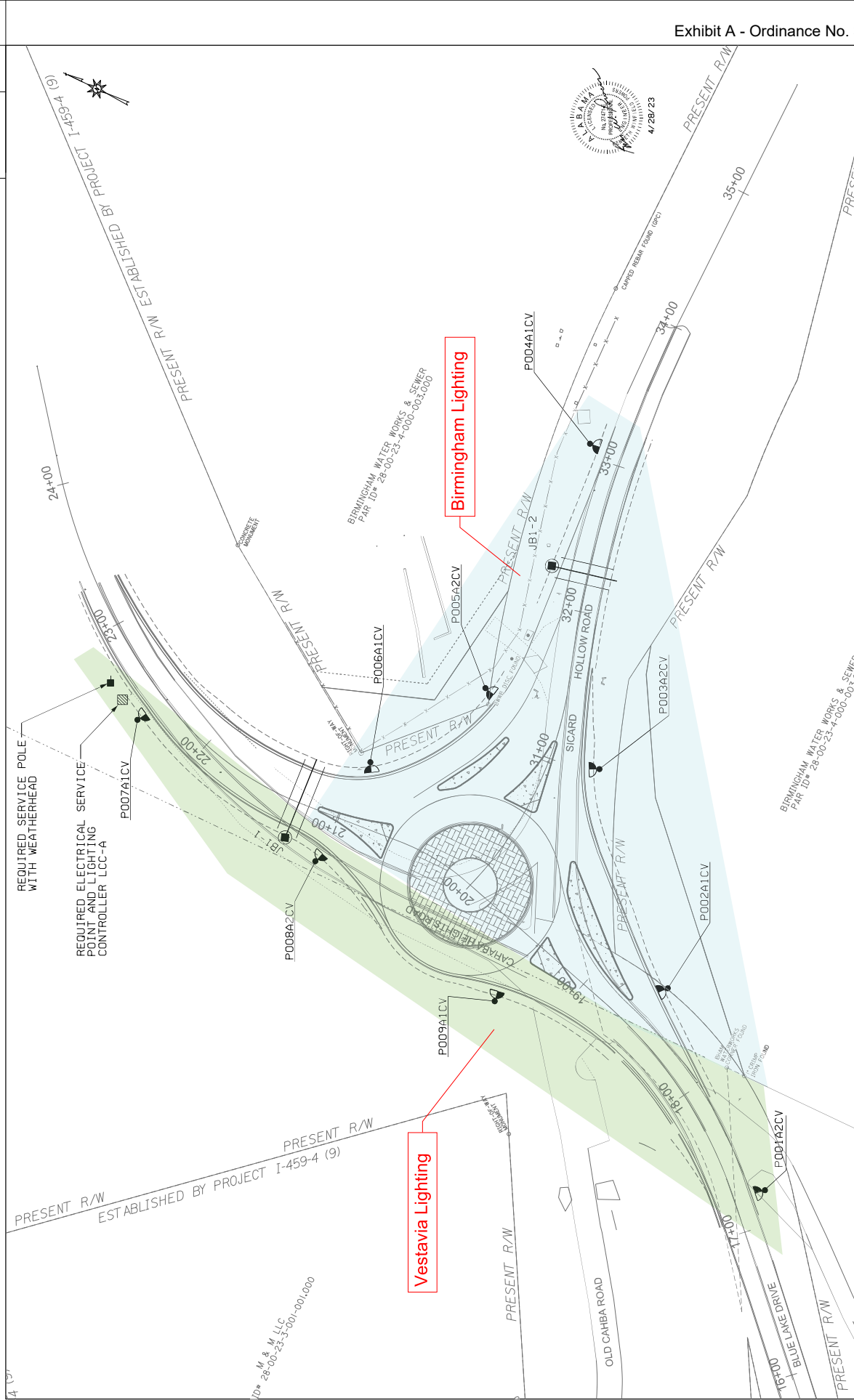
REFERENCE PROJECT NO	FISCAL YEAR	SHEET NO
37-19-400	2023	7

Exhibit A - Ordinance No. 3



PLAN SUBMITTAL	JEFFERSON COUNTY COMMISSION	HORIZ	SCALE (FEET)	SHEET TITLE	ROUTE
100%		30 0 30		PAVING LAYOUT SHEET	BLU LAKE/ SICARD HOLLOW

Exhibit C



SHEET NO.	3199	FISCAL YEAR	2023	REFERENCE PROJECT NO.	37-19-400	253
SHEET TITLE	REQUIRED LUMINAIRE ASSEMBLY LAYOUT	SCALE (FEET)	HORIZ	JEFFERSON COUNTY COMMISSION	PLAN SUBMITTAL	100%
ROUTE	BLUE LAKE/SICARD HOLLOW	PROJECT	18400 - Roundabout Lighting - Blue Lake Drive/Project Design/Plan Assembly/253.LTS	PROJECT	18400 - Roundabout Lighting - Blue Lake Drive/Project Design/Plan Assembly/253.LTS	18400 - Roundabout Lighting - Blue Lake Drive/Project Design/Plan Assembly/253.LTS
DATE	4/28/23	USER	ra_coburn@jcc.com	28-JPR-2023 15:59	Plot Scale: 30.000000/1000000	**SCOUT/AB/ES** **SPRINT/AB/ES**

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

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

E-Mail: patrickboone@bellsouth.net

September 19, 2023

By Electronic Mail

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

In Re: Agreement Between Jefferson County, City of Birmingham and the City of Vestavia Hills
Regarding Blue Lake Drive, Cahaba Heights Road and Sicard Hollow Road

Dear Mr. Downes:

On September 19, 2023, you sent to me via electronic mail an Agreement to Share Responsibilities (Joint Services Agreement) by and between Jefferson County, Alabama ("County"), the City of Birmingham, Alabama ("Birmingham") and the City of Vestavia Hills ("Vestavia") with a request that I review the Agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. FACTS

The County has prepared and submitted the Joint Services Agreement providing shared responsibilities between the County, Birmingham and Vestavia to design and construct a roundabout and other improvements at the intersection of Blue Lake Drive, Cahaba Heights Road and Sicard Hollow Road. The estimated construction cost of the project is \$2,000,000.00. The Agreement further provides that Vestavia Hills shall contribute fifty percent (50%) toward the construction of the project with the County paying the remaining fifty percent (50%). The County will bid and manage the project.

II. LEGAL OPINION

It is my legal opinion that the Agreement meets the requirements of Alabama law.

III. BASIS FOR LEGAL OPINION

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

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

B. **COUNTIES AND MUNICIPALITIES ARE AUTHORIZED TO ENTER INTO CONTRACTS FOR JOINT EXERCISE OF POWER OR SERVICE:** Title 41-16-50(b) and Title 11-102-1, *Code of Alabama, 1975*, authorize a city and county to enter into a contract for the purchase of labor, services or work.

C. **MUNICIPALITIES MAY CONSTRUCT, RECONSTRUCT AND IMPROVE PUBLIC STREETS:** Municipalities have the authority and power to construct, reconstruct and improve public streets pursuant to Title 11-48-4, *Code of Alabama, 1975*, and *Hamrick v. City of Albertville*, 228 Ala. 666 (1934) and *Martin v. Reed*, 480 So.2d 1180.

D. **MUNICIPALITIES HAVE A DUTY TO MAINTAIN PUBLIC STREETS AND ROADS:** Municipalities in Alabama have a duty to maintain public streets and roads (*Blair v. Fulmer*, 583 So.2d 1307, 1310 (1991) and *Lybrand v. Town of Pell City*, 260 Ala. 534, 538 (1954).

E. **PUBLIC WORKS LAW:** The County will advertise for competitive bids and award the construction contract pursuant to the Alabama Public Works Law at Title 39-2-1, et seq., *Code of Alabama, 1975*. I do want to point out that the Alabama Legislature enacted Act No. 2023-497 to amend Title 39-2-2(a)(1), *Code of Alabama, 1975*, to increase the bid threshold from \$50,000.00 to \$100,000.00 effective September 1, 2023.

IV. MY RECOMMENDATIONS

I have no recommendations for changes, additions, deletions and/or corrections. Therefore, I approve the Agreement from a legal standpoint and recommend its approval, execution and delivery.

My files reflect that the City has entered into similar agreements with the County in 2017, 2019 and 2020. The Vestavia Hills City Council will soon consider approval of a similar joint construction project with the County for \$310,000.00.

September 19, 2023
Page 3

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

Sincerely,

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

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

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



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

October 9, 2023

To: Jeff Downes, City Manager

From: Zach Clifton, Asst. Finance Director

Cc: Melvin Turner, III, Finance Director

RE: Resolution Number 5480 - A Resolution accepting terms for financing vehicles and/or equipment for FY24

Background:

The City of Vestavia Hills ("Governmental Entity") has previously determined to undertake a project for the purchase of various vehicles & equipment (the "Project") and the Officer of the Governmental Entity responsible for financial affairs of the Governmental Entity (the "Finance Officer") has now presented a proposal for the financing of such Project.

Recommendation:

The Finance Officer recommends the financing terms from Pinnacle Banc as attached.

Fiscal Impact:

Budgeted in FY 2024

Attachments:

1. Resolution 5480
2. SummaryofProposals-FY2024
3. Pinnacle Bk -VH Commitment Sheet

RESOLUTION NUMBER 5480

A RESOLUTION APPROVING FINANCING TERMS FOR CITY VEHICLES AND/OR EQUIPMENT THROUGH PINNACLE BANC VH

WHEREAS, The City of Vestavia Hills (“Governmental Entity”) has previously determined to undertake a project for the purchase of various vehicles & equipment (the “Project”) and the Officer of the Governmental Entity responsible for financial affairs of the Governmental Entity (the “Finance Officer”) has now presented a proposal for the financing of such Project.

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

1. The Governmental Entity hereby determines to finance the Project through Pinnacle Banc VH (“Pinnacle Banc VH”), in accordance with the proposals obtained by the Finance Officer as detailed in Exhibits attached to and incorporated into this Resolution Number 5480 as though written fully therein; and
2. All financing contracts and all related documents for the closing of the financing (the “Financing Documents”) shall be consistent with the foregoing terms. All officers and employees of the Governmental Entity are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Project Fund Agreement as Regions may request.
3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer’s satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Governmental Entity officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer’s release of any Financing Document for delivery constituting conclusive evidence of such officer’s final approval of the document’s final form.

4. The Governmental Entity shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations under the Financing Documents. The Governmental Entity hereby designates its obligations to make principal and interest payments under the Financing Documents as “qualified tax-exempt obligations” for the purpose of Internal Revenue Code Section 265(b)(3).
5. The Governmental Entity intends that the adoption of this resolution will be a declaration of the Governmental Entity’s official intent to reimburse expenditures for the Project that is to be financed from the proceeds of the Regions financing described above. The Governmental Entity intends that funds that have been advanced, or that may be advanced, from the Governmental Entity’s general fund, or any other Governmental Entity fund related to the Project, for Project costs may be reimbursed from the financing proceeds.
6. The officers of the Governmental Entity and any person or persons designated and authorized by any officer of the Governmental Entity to act in the name and on behalf of the Governmental Entity, or any one or more of them, are authorized to do and perform or cause to be done and performed in the name and on behalf of the Governmental Entity such other acts, to pay or cause to be paid on behalf of the Governmental Entity such related costs and expenses, and to execute and deliver or cause to be executed and delivered in the name and on behalf of the Governmental Entity such other notices, requests, demands, directions, consents, approvals, orders, applications, certificates, agreements, further assurances, or other instruments or communications, under the corporate seal of the Governmental Entity, or otherwise, as they or any of them may deem necessary, advisable, or appropriate in order to (a) complete the plan of financing contemplated by the Financing Documents, (b) carry into effect the intent of the provisions of this resolution and the Financing Documents, and (c) demonstrate the validity of the Financing Documents, the absence of any pending or threatened litigation with respect to the Financing Documents and the plan of financing contemplated by the Financing Documents, and the exemption of interest on the interest payment obligations under the Financing Documents from federal and State of Alabama income taxation.

7. All prior actions of Governmental Entity officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict.

This resolution shall take effect immediately.

ADOPTED and APPROVED this the 10th day of October, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

SEAL

CITY OF VESTAVIA HILLS
VEHICLES and EQUIPMENT
"LEASE/PURCHASE PROPOSALS"
FISCAL 2023-2024

[illegible]

DISCUSSION TERMS & CONDITIONS

Presented by: PINNACLE BANK

To: City of Vestavia

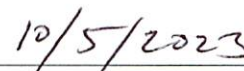
October 4, 2023

Based upon our discussion, we are pleased to present the following Term Sheet as an outline of a credit facility for your consideration. This presentation is a working outline intended to facilitate our further discussions. This Term Sheet is a non-binding proposal only and is not an offer or commitment to lend. Further due diligence is required. The contents of this Term Sheet necessarily remain subject to possible modification, and all terms and provisions contained in this Term Sheet, whether or not later modified, are subject to all of the Bank's usual and customary approval requirements. This term sheet is good for 14 days.

Purpose:	Purchase equipment
Borrower:	City of Vestavia
Loan Terms:	Tax -free: \$1,695,106 for 5 years at 4.25%, principal and interest quarterly \$467,078 for 7 years at 4.50%, principal and interest quarterly
Loan Security:	Unsecured
Guarantors:	None
Loan Costs:	\$350 per loan
Prepayment Provision:	n/a
Other requirements:	None

This Term Sheet is not an offer or a commitment to lend. These terms are for discussion purposes only and remain subject to modification. Upon tentative agreement reached between the borrowers and Pinnacle Bank and initiated by the borrower, a final credit offering will be rendered for final approval. This term sheet is good for 14 days.


Authorized official


Date


Authorized official of Bank


Date



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

October 9, 2023

To: Jeff Downes, City Manager

From: Cinnamon McCulley, Assistant City Manager

Cc:

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

Background:

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

Recommendation:

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

Fiscal Impact:

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

Attachments:

1. Resolution 5479
2. Boone Legal Opinion CHMA 09.21.2023

RESOLUTION NUMBER 5479

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

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

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

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

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

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

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

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

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

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

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

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

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

E-Mail: patrickboone@bellsouth.net

September 21, 2023

By Electronic Mail

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

In Re: Cahaba Heights Merchants' Association, Inc.

Dear Mr. Downes:

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

I. ALABAMA LAW
REGARDING THE EXPENDITURE OF PUBLIC FUNDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. FACTS

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

Article Three of the Articles of Incorporation reads as follows:

"ARTICLE THREE

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

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

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

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

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

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

III. LEGAL ISSUE

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

IV. LEGAL OPINION

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

V. BASIS FOR LEGAL OPINION

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

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

B. **SUPREME COURT OF ALABAMA:**

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

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

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

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

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

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

VI. MY RECOMMENDATIONS

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

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

VII. CONCLUSION

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Boone", written in a cursive style.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

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



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

October 9, 2023

To: Jeff Downes, City Manager

From: Lori Beth Kearley, Public Services Director

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

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

Background:

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

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

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

Execution of the Agreements by the City is required in order to obtain a Utility Certificate for the project, which is required in order for ALDOT to let the project to bid.

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

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

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

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

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

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

Recommendation:

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

Fiscal Impact:

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

Attachments:

1. Ordinance 3200
2. Massey Road - Utility Agreements

ORDINANCE NUMBER 3200

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

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

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

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

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

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

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

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

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

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

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

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

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

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

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

Rebecca Leavings
City Clerk

REVISED 11/18/2014

CITY FORM NO. 1

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

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

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

WITNESSETH:

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

_____ ; and

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

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

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

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

WITNESS:

Shane Perkins

BY:

(Legal Name of Utility)

Joshua Phillips
(Signature)

Joshua Phillips
(Type or Printed Name)

Transmission Line Services Supervisor
(Type or Printed Title)

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

Birmingham, Al. 35291
(Address)

205-257-4830
(Telephone)

RECOMMENDED FOR APPROVAL:

BY: _____
CITY ENGINEER/ENGINEER-OF-RECORD

BY: _____
REGION ENGINEER

CITY OF _____

BY: _____
MAYOR

APPROVED:

BY: _____
STATE LOCAL TRANSPORTATION ENGINEER

DATE: _____

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

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

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

WITNESS:

AT&T Southeast, dba Bellsouth Telecom

(Legal Name of Utility)

Chandler Russ

BY:

Dennis Russ

(Signature)

DENNIS RUSS

(Type or Printed Name)

MGR OSP PLNG & ENGRG DESIGN • ACCESS - COI

(Type or Printed Title)

1876 Data Dr.

(Address)

Hoover, AL 35244

(Address)

RECOMMENDED FOR APPROVAL:

205-531-1211

(Telephone)

BY:

CITY ENGINEER/ENGINEER-OF-RECORD

BY:

REGION ENGINEER

CITY OF

BY:

MAYOR

APPROVED:

BY:

STATE LOCAL TRANSPORTATION ENGINEER

DATE:

REVISED 11/18/2014

CITY FORM NO. 1

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

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

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

WITNESSETH:

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

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

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

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

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

WITNESS:

Susan Marchant

BY:

Spectrum Southeast, LLC
By: Charter Communications, Inc., its Managers

(Legal Name of Utility)

[Signature]
(Signature)

Thom C. Tyrrell

(Type or Printed Name)

Area Vice President

(Type or Printed Title)

151 London Parkway

(Address)

Birmingham, AL 35211

(Address)

RECOMMENDED FOR APPROVAL:

205-573-6715 - Kert Harrell

(Telephone)

BY:

CITY ENGINEER/ENGINEER-OF-RECORD

BY:

REGION ENGINEER

CITY OF _____

BY:

MAYOR

APPROVED:

BY:

STATE LOCAL TRANSPORTATION ENGINEER

DATE: _____

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

☐ Private Right-of-Way	PROJECT NUMBER	<u>CMAQ-7030(060)</u>
☒ Public Right-of-Way	CITY NUMBER	_____
	CITY	_____

THIS AGREEMENT is entered into by and between the **CITY** of Vestavia Hills acting by and through its **CITY COUNCIL**, hereinafter referred to as the **CITY**, and The Water Works Board of the City of Birmingham, hereinafter referred to as the **UTILITY**.

WITNESSETH:

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

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WITNESS:



Birmingham Water Works Board

(Legal Name of Utility)

BY:


(Signature)

Derrick Murphy

(Type or Printed Name)

Assistant General Manager

(Type or Printed Title)

3600 First Avenue North

(Address)

Birmingham, AL 35283

(Address)

205-244-4404

(Telephone)

RECOMMENDED FOR APPROVAL:

BY:

CITY ENGINEER/ENGINEER-OF-RECORD

BY:

REGION ENGINEER

CITY OF _____

BY:

MAYOR

APPROVED:

BY:

STATE LOCAL TRANSPORTATION ENGINEER

DATE:

APPROVED BY THE JEFFERSON COUNTY COMMISSION

REVISED 11/18/2014

5/11/2023

CITY FORM NO. 3

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

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

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

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

WITNESSETH:

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

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WITNESS:

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

BY:

Jefferson County Commission, Jefferson County, /

(Legal Name of Utility)
DocuSigned by:
James A. Stephens
0EB868FC1C8C484...
(Signature)

James A. Stephens

(Type or Printed Name)

President

(Type or Printed Title)

716 Richard Arrington Jr. Blvd. N.

(Address)

Birmingham, AL 35203

(Address)

(205) 325-5496

(Telephone)

RECOMMENDED FOR APPROVAL:

BY: _____
CITY ENGINEER/ENGINEER-OF-RECORD

BY: _____
REGION ENGINEER

CITY OF _____

BY: _____
MAYOR

APPROVED:

BY: _____
STATE LOCAL TRANSPORTATION ENGINEER

DATE: _____

3-13-23

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

Construction Cost Estimate

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



CITY OF VESTAVIA HILLS

INTER-DEPARTMENT MEMO

October 9, 2023

To: Jeff Downes, City Manager

From:

Cc:

RE: Citizens Comments

Background:

Recommendation:

Fiscal Impact:

Attachments:

None