



OPELIKA CITY COUNCIL
“ REGULAR MEETING AGENDA “
204 South 7th Street
December 3, 2019
TIME: 7:00 PM

1. CALL TO ORDER
2. ROLL CALL
 1. Patricia Jones, Tiffany Gibson-Pitts, Dozier Smith T, David Canon, Eddie Smith
3. INVOCATION
 1. Pastor Tom Tippet from the Lee Co, Ministerial Association.
4. PLEDGE OF ALLEGIANCE
 1. Tristen Hodge and Maggie Puckett from West Forest School.
5. READING OF MINUTES
 1. Minutes from the 11-18-19 city council meeting.
6. UNFINISHED BUSINESS
7. REMARKS BY THE MAYOR
 1. Recognize the Police Officer of the 4th Quarter 2019.
 2. Recognize the 2019 Firefighter of the Year and runner ups.
8. CITIZEN COMMUNICATIONS (Limit comments to five minutes or less)
9. REPORT OF DISBURSEMENTS
10. COMMITTEE REPORTS
11. GENERAL BUSINESS
 1. Request 2019 Victorian Front Porch Tour, street closures.
 2. Request from Mama Mocha Coffee, Longest Table event on Dec. 8th.
 3. Revised request from Main Street, Christmas in a Railroad Town on 12-13-19.
 4. Tru Blu Sports Bar request Lounge Retail Liquor Class I & on Premise Beer license.
 5. Public Hearing - Weed Abatement Assessment - 100 Cottage Ct
 6. Public Hearing - Weed Abatement Assessment - 101 Cottage Ct.
 7. Public Hearing - Weed Abatement Assessment - 102 Cottage Ct.
 8. Public Hearing - Weed Abatement Assessment - 103 Cottage Ct.
 9. Public Hearing - Weed Abatement Assessment - 104 Cottage Ct.
 10. Public Hearing - Weed Abatement Assessment - 106 Cottage Ct.
 11. Public Hearing - Weed Abatement Assessment - 108 Cottage Ct.
 12. Public Hearing, Amend Zoning Ord & Map: Rezone 105.6 Acres, 3800 Block Birmingham Hwy.

12. AWARDING OF BIDS

1. Carver-Clanton TAPAA-TA17(922) Project - ENG
2. Geneva Street Improvements - ENG

13. RESOLUTIONS

1. Expense reports from various departments.
2. Designate City Personal Property as Surplus & Authorize Disposal
3. Weed Abatement Assessment - 100 Cottage Ct.
4. Weed Abatement Assessment - 101 Cottage Ct.
5. Weed Abatement Assessment - 102 Cottage Ct.
6. Weed Abatement Assessment - 103 Cottage Ct.
7. Weed Abatement Assessment - 104 Cottage Ct.
8. Weed Abatement Assessment - 106 Cottage Ct.
9. Weed Abatement Assessment - 108 Cottage Ct.
10. ALDOT Agreement for Columbus Parkway Roundabout Project
11. ALDOT Agreement for Pepperell Pkwy MPO Project
12. License Agreement, Right of Way Encroachment, with One Voice Coalition
13. Mando Tax Abatement
14. Contract for Career Firefighter Cancer Supplemental Insurance Coverage with Chubb Insurance Company
15. Authorize purchase agreement, GO Warrants Series 2019-A and 2019-B.
16. Initiate public process, amend zoning ord., PUD at Capps Landing.
17. Refund of sewer fees.

14. ORDINANCES

1. Amend Zoning Ord & Map: Rezone 105.6 Acres, 3800 Block Birmingham Hwy. - 1st Reading.
2. Amend City Code, Add Chapter 4.5 Entitled "Art and Culture" - 1st Reading.

15. APPOINTMENTS

16. ADJOURN

1. Character Trait of the Month - Compassion, feeling of sympathy or sorrow for another.

"In compliance with the Americans with Disabilities Act, the City of Opelika will make reasonable arrangements to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the ADA Coordinator 72 hours prior to the meeting at (334)705-2083."



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

CM MINUTES (ID # 3866)

Meeting: 12/03/19 07:00 PM
Department: City Clerk
Category: CM Minutes
Prepared By: Robert Shuman
Initiator: Robert Shuman
Sponsors:

DOC ID: 3866

Minutes from the 11-18-19 city council meeting.



OPELIKA CITY COUNCIL “ REGULAR MEETING MINUTES “

204 South 7th Street

November 18, 2019

TIME: 7:00 PM

1. Call to Order

President Smith called the council meeting to order and asked Mr. Shuman to call the roll.

2. Roll Call

Mr. Shuman called the roll and all city council members were present.

1. Patricia Jones, Tiffany Gibson-Pitts, Dozier Smith T, David Canon, Eddie Smith

3. Invocation

Councilman Smith T gave the invocation.

4. Pledge of Allegiance

Brelyn Ware lead the Pledge of Allegiance. Serra was not present.

1. Serra Phatsadavong and Brelyn Ware from Carver Primary School.

5. Reading of Minutes

1. Minutes from the 11-05-19 city council meeting.

RESULT: APPROVED [UNANIMOUS]

MOVER: Dozier Smith T, Council Member

SECONDER: Tiffany Gibson-Pitts, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

6. Unfinished Business

7. Remarks By the Mayor

1. Nomination to the Historic Preservation Commission.

Mayor Fuller nominated Rush Denson for appointment to the Historic Preservation Commission.

2. October 2019 Monthly Building Report

Mayor Fuller called on Joey Motley, City Administrator, who gave a summary of the October Building Permit report.

3. Proclamation for Epilepsy Awareness Month.

Mayor Fuller presented a proclamation declaring November as Epilepsy awareness month.

8. Citizen Communications

(Limit comments to five minutes or less). No one came forward to speak.

9. Report of Disbursements

10. Committee Reports

11. General Business

12. Awarding of Bids

1. Bids 356-19 Repair Voltage Regulators - OPS

RESULT: APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

2. Bids 357-19 One (1) 2020 F550 Cab and Chassis with Aerial Device - OPS

RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

13. Resolutions

1. Resolution 358-19 Expense reports from various departments.

RESULT: APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

2. Resolution 359-19 Designate City Personal Property Surplus & Authorize Disposal

RESULT: APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

3. Resolution 360-19 Purchase - (2) Zero Turn Mowers - State Contr #T225 - P/W

RESULT: APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

4. Resolution 361-19 Purchase - (1) 2019 Ford F150 Supercab - State Contr #T191A - PW

RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

5. Resolution 362-19 Purchase - (624) Toter 96 Gal EVR II Carts - Sourcewell Contr #041217-WQI - OES

RESULT: APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

6. Resolution 363-19 Purchase - (1) Kubota Tractor - Sourcewell Contr #021815-KBA - PW

RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

7. Resolution 364-19 Purchase - (1) 2019 Pac-Mac Knuckleboom - Sourcewell Contr #081716-KTC - OES

RESULT: APPROVED [UNANIMOUS]

MOVER: Patricia Jones, President Pro-Tem

SECONDER: Tiffany Gibson-Pitts, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

8. Resolution 365-19 Purchase - Liveaction Software & Maint 3-Yr Contract - Nat IPA
Contr #2018011-01 - IT

RESULT: APPROVED [UNANIMOUS]

MOVER: Dozier Smith T, Council Member

SECONDER: Patricia Jones, President Pro-Tem

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

9. Resolution 366-19 Special Use Permit with Verizon at 269 Lee Road 711.

RESULT: APPROVED [UNANIMOUS]

MOVER: David Canon, Council Member

SECONDER: Patricia Jones, President Pro-Tem

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

10. Resolution 367-19 Designate person for EMMA reporting requirements.

RESULT: APPROVED [UNANIMOUS]

MOVER: David Canon, Council Member

SECONDER: Dozier Smith T, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

11. Resolution 368-19 Contract for Vision Care Insurance with Vsp Vision Care - H/R.

RESULT: APPROVED [UNANIMOUS]

MOVER: Patricia Jones, President Pro-Tem

SECONDER: David Canon, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

14. Ordinances

1. Ordinance 026-19-ORD Amend City Code, Section 16-369, parking regulations for disabled - 1st Reading.

This ordinance was introduced by Mr. Canon. Then Mr. Smith T made the motion to suspend the rules and was seconded by Ms. Pitts. The following vote was recorded:

Ayes Jones, Pitts, Smith T, Canon, Smith.

Nayes None.

RESULT: FIRST READING AND APPROVED [UNANIMOUS]

MOVER: Dozier Smith T, Council Member

SECONDER: David Canon, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

15. Appointments

1. Vacant position on the Historic Preservation Commission. Term end 8-19-20.

Mr. Smith T made the motion to appoint Rush Denson to the Historic Preservation Commission and was seconded by Ms. Pitts. The following vote was recorded:

Ayes Jones, Pitts, Smith T, Canon, Smith.

Nayes None.

16. Adjourn

The City Council meeting minutes of November 18, 2019 are hereby adopted and approved this the _____ day of _____, 2019.

/s/

President of City Council
City of Opelika, Alabama

ATTEST:

/s/

R. G. "Bob" Shuman, CMC
City Clerk - Treasurer

1. Character Trait of the Month - Gratitude, the feeling of being thankful or grateful. President Smith reminded all present of the Character Trait of the Month.
 2. Motion to adjourn.
- Council meeting ended 7:26 pm.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3848)

Meeting: 12/03/19 07:00 PM
Department: City Clerk
Category: Request / Temp Street Closure
Prepared By: Robert Shuman
Initiator: Robert Shuman
Sponsors:
DOC ID: 3848

Request 2019 Victorian Front Porch Tour, street closures.

Shuman, Robert

From: Roger Bell <roger.bell@myops.net>
Sent: Monday, November 18, 2019 2:41 PM
To: Shuman, Robert
Cc: Arrington, Barbara
Subject: 2019 Victorian Front Porch Tour / street closure & barricades
Attachments: Victorian Front Porch Tour - 2019 - Barrier Locations.doc

Dear Bob,

Attached you will find the **Barrier Locations for the 2019 Victorian Front Porch Tour**.

Please submit to the Opelika City Council for their approval for the closing of the streets for the 2019 Victorian Front Porch Tour. This will be our 26th year.

The 2019 tour will be December 11 through December 15, 2019

Driving Tour: December 11,12,13 and 15th - 2019 - 5:00 pm till 10:00 pm.

Walking Tour: December 14 2019 - 6:00 till 9:00 PM

Thank you so much for all you do!!!

Best regards!

Roger Bell

VFPT Director
 334-728-2925
roger.bell@myops.net

Attachment: CM 12-03-19, stree closur for 2019 Victorian Front Porch Tour. (3848 : Request 2019 Victorian Front Porch Tour, street closures.)

Barrier Locations

Opelika Victorian Front Porch Tour-2019 Walking Tour - Saturday – December 14, 2019

2nd Avenue - North 8th Street & North 9th Street Close off Traffic during Walking Tour

3rd Avenue - North 7th Street & North 9th Street

4th Avenue – North 7th Street & North 10th Street

North 7th Street and end of Ingram Court

5th Avenue – North 7th & North 10th Street

6th Avenue – North 7th & North 10th Street

7th Avenue – North 9th Street

7th Avenue – North 8th Street and 7th Avenue



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3860)

Meeting: 12/03/19 07:00 PM
Department: City Clerk
Category: Request / Temp Street Closure
Prepared By: Robert Shuman
Initiator: Robert Shuman
Sponsors:
DOC ID: 3860

Request from Mama Mocha Coffee, Longest Table event on Dec. 8th.

Shuman, Robert

From: Sarah Barnett <mochamamasarah@gmail.com>
Sent: Tuesday, November 19, 2019 4:55 PM
To: tiffanygpitts; Carla Nelson; Shuman, Robert; msmillak@gmail.com; bs4000@gmail.com; Fuller, Gary; McGinnis, Rosanna; Raven Harvis; Taylor Gill; Taylor Gill
Subject: Opelika: the longest table

Hey everyone,

The city clerk told me I needed to write out the details and send this to ken - and then ken sends it back to Mr. Shuman to ensure Main Street is ok with this event, then it goes to be approved by city council on Dec 3.

We'd like to have the first gathering on Dec 8, a Sunday. In the afternoon from 3-5pm. For safety reasons, it would be good to have the road blockaded from 2pm - 6pm. The area we'd like to have for the event is in the street, on 1st ave between 7th and 8th street- just the one block.

We'll be serving red beans and rice and drinks - for free- to anyone who would want to come and eat as a community and talk. No agenda, no money involved, no businesses being promoted (aside from all that will be open on the block then). We want people from Opelika to come and talk about their experiences in Opelika and how we can help each other, or just meet someone you may not have met otherwise.

This will be a first event, with the intention of having a larger one in the spring after we get an idea of how organization feels and what needs to happen to make it bigger and better.

Many people have offered tables/chairs. We also have a crew of people who are ready and willing to help set up/tear down. My husband and I will be making red beans and rice in a huge pot and serving bowls. (hoping to do a practice run of making that kind of volume in the next week or so! ha!) We can use cups and get lemonade/tea/cokes from mama mochas as well as bowls and forks/knives.

I would expect this first event to bring around a hundred people or less. We will focus on getting even more people to the event in the spring when we can hyper promote it through the city.

If there are any questions, concerns or suggestions I am open to them! This is such a great movement and it's something that I think would serve Opelika greatly and would be perfect on 1st ave.

so if all goes to plan here - ken will send this to Mr. Shuman with approval and I'll see the council on Dec 3 to answer any questions.

a few people from the city have recommended that we wait and do the event in Q1 of 2020 in order to have more promotional time. (as we would technically need to wait to promote until after the 3rd and its finalized- which gives us 5 days until the actual event to let people know)

I would like to hear thoughts from all of you on this. I really want to push and get it done, but I want to use wisdom as well in coordinating this kind of thing with the city's schedule. The other option would be to have it somewhere in which we would not need to close a road- like the city library? somehow? Just throwing some options out there. Look forward to hearing any suggestions and thoughts.

Attachment: CM 12-03-19, Request from Mama Mocha's, The Longest Table on Sunday Dec. 8th. (3860 : Request from Mama Mocha Coffee,

Very excited about it all,

--

Sarah Barnett Gill

Mama Mocha's Coffee Roastery, LLC
Mama Mocha's Coffee Emporium, LLC
256.452.3534
414 S. Gay Street
Auburn, AI 36830
www.MamaMocha.com

Attachment: CM 12-03-19, Request from Mama Mocha's, The Longest Table on Sunday Dec. 8th. (3860 : Request from Mama Mocha Coffee,



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3873)

Meeting: 12/03/19 07:00 PM
Department: City Clerk
Category: Request / Temp Street Closure
Prepared By: Robert Shuman
Initiator: Robert Shuman
Sponsors:

DOC ID: 3873

Revised request from Main Street, Christmas in a Railroad Town on 12-13-19.



November 26, 2019

TO: Opelika City Council
FROM: Opelika Main Street, Ken Ward
RE: Street Closure Request

Please find below our street closure request for the 2019 Christmas In A Railroad Town event.

Christmas In A Railroad Town: This event is Friday, December 13, 2019 -5-8pm. The request is to block South Railroad Avenue between 9th Street and 7th Street. This area will need to be closed from 2:00 PM to 9:00 PM. We would also like to request closure of 8th Street from N Railroad Avenue to Avenue A, 9th Street from N. Railroad to Avenue B from 3:00 pm until 9:00 pm and Avenue A from 8th Street to 9th Street from 3:00 pm to 9:00 pm. At this annual holiday event Main Street will have a train, bands, petting zoo, children's activities and vendors in the closed areas.

Please feel free to reach out with any questions/concerns by emailing director@opelikamainstreet.org or by calling 334-391-8146.



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/03/19 07:00 PM
Department: Purchasing and Revenue
Category: Business & Alcohol License
Prepared By: Martha Wright

Initiator: Lillie Finley

Sponsors:

GENERAL BUSINESS (ID # 3851)

DOC ID: 3851

Tru Blu Sports Bar request Lounge Retail Liquor Class I & on Premise Beer license.



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 12/03/19 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:

GENERAL BUSINESS (ID # 3831)

DOC ID: 3831

Public Hearing - Weed Abatement Assessment - 100 Cottage Ct

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
100 Cottage Ct.
Opelika Al. 36801
Parcel # 03-09-30-0-000-113.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>30.0</u>	
Certified mail:	<u>8.10</u>	(all postage contained on 1 invoice only)
Misc.	<u> </u>	
Total	<u>38.10</u>	

Attachment: WEED INVOICE 100 Cottage Ct (3831 : Public Hearing - Weed Abatement Assessment - 100 Cottage Ct)

To: **Land Holding LLC**
10851 Mastin St. Suite 300
Overland Park, Kansas 66210

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 100 Cottage Ct., Parcel 03-09-30-0-000-113.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 100 Cottage Ct., Parcel No. 113.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$38.10.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 3rd day of December, 2019.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 15th day of November, 2019.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Purchasing-Revenue Manger
 Guy. F. Gunter, III – City Attorney



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3833)

Meeting: 12/03/19 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:

DOC ID: 3833

Public Hearing - Weed Abatement Assessment - 101 Cottage Ct.

WEED ABATEMENT INVOICE

Date: 11/15/2019

To: Land Holding LLC
 10851 Mastin St. Suite 300
 Overland Park, Kansas 66210

Property Address:
 101 Cottage Ct
 Opelika Al. 36801
 Parcel # 03-09-30-0-000-112.000

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 25.00

Certified mail: _____

Misc. _____

Total 25.00

Attachment: WEED INVOICE 101 Cottage Ct. (3833 : Public Hearing - Weed Abatement Assessment - 101 Cottage Ct.)

To: **Land Holding LLC**
10851 Mastin St. Suite 300
Overland Park, Kansas 66210

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 101 Cottage Ct., Parcel 03-09-30-0-000-112.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 101 Cottage Ct., Parcel No. 112.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$25.00.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 3rd day of December, 2019.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 15th day of November, 2019.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Purchasing-Revenue Manager
 Guy. F. Gunter, III – City Attorney

Attachment: Weeds, NPH-Resolution, cost to abate, 101 Cottage Ct. (3833 : Public Hearing - Weed Abatement Assessment - 101 Cottage Ct.)



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3835)

Meeting: 12/03/19 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:
DOC ID: 3835

Public Hearing - Weed Abatement Assessment - 102 Cottage Ct.

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
102 Cottage Ct.
Opelika Al. 36801
Parcel # 03-09-30-0-000-114.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 37.50

Certified mail: _____

Misc. _____

Total 37.50

Attachment: WEED INVOICE - 102 Cottage Ct (3835 : Public Hearing - Weed Abatement Assessment - 102 Cottage Ct.)

To: **Land Holding LLC**
10851 Mastin St. Suite 300
Overland Park, Kansas 66210

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 102 Cottage Ct., Parcel 03-09-30-0-000-114.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 102 Cottage Ct., Parcel No. 114.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$37.50.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 3rd day of December, 2019.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 15th day of November, 2019.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Purchasing-Revenue Manger
 Guy. F. Gunter, III – City Attorney



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3837)

Meeting: 12/03/19 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:
DOC ID: 3837

Public Hearing - Weed Abatement Assessment - 103 Cottage Ct.

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
103 Cottage Ct.
Opelika Al. 36801
Parcel # 03-09-30-0-000-111.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 111.00

Certified mail: _____

Misc. _____

Total 111.0

Attachment: WEED INVOICE - 103 Cottage Ct. (3837 : Public Hearing - Weed Abatement Assessment - 103 Cottage Ct.)

To: **Land Holding LLC**
10851 Mastin St. Suite 300
Overland Park, Kansas 66210

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 103 Cottage Ct., Parcel 03-09-30-0-000-111.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 103 Cottage Ct., Parcel No.111.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$111.00.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 3rd day of December, 2019.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 15th day of November, 2019.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Purchasing-Revenue Manager
 Guy. F. Gunter, III – City Attorney



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3839)

Meeting: 12/03/19 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:
DOC ID: 3839

Public Hearing - Weed Abatement Assessment - 104 Cottage Ct.

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
104 Cottage Ct
Opelika Al. 36801
Parcel # 03-09-30-0-000-115.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 72.10

Certified mail: _____

Misc. _____

Total 72.10

Attachment: WEED INVOICE - 104 Cottage Ct (3839 : Public Hearing - Weed Abatement Assessment - 104 Cottage Ct.)

To: **Land Holding LLC**
10851 Mastin St. Suite 300
Overland Park, Kansas 66210

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 104 Cottage Ct., Parcel 03-09-30-0-000-115.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 104 cottage Ct., Parcel No. 115.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$72.10.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 3rd day of December, 2019.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 15th day of November, 2019.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Purchasing-Revenue Manger
 Guy. F. Gunter, III – City Attorney



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3841)

Meeting: 12/03/19 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:
DOC ID: 3841

Public Hearing - Weed Abatement Assessment - 106 Cottage Ct.

WEED ABATEMENT INVOICE

Date: 11/15/2019

To: Land Holding LLC
 10851 Mastin St. Suite 300
 Overland Park, Kansas 66210

Property Address:
 106 Cottage Ct.
 Opelika Al. 36801
 Parcel # 03-09-30-0-000-116.000

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 72.00

Certified mail: _____

Misc. _____

Total 72.00

Attachment: WEED INVOICE - 106 Cottage Ct. (3841 : Public Hearing - Weed Abatement Assessment - 106 Cottage Ct.)

To: **Land Holding LLC**
10851 Mastin St. Suite 300
Overland Park, Kansas 66210

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 106 Cottage Ct., Parcel 03-09-30-0-000-116.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 106 Cottage Ct., Parcel No.116.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$72.00.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 3rd day of December, 2019.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 15th day of November, 2019.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Purchasing-Revenue Manger
 Guy. F. Gunter, III – City Attorney



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3843)

Meeting: 12/03/19 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:

DOC ID: 3843

Public Hearing - Weed Abatement Assessment - 108 Cottage Ct.

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
108 Cottage Ct.
Opelika Al. 36801
Parcel # 03-09-30-0-000-117.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 90.00

Certified mail: _____

Misc. _____

Total 90.00

Attachment: WEED INVOICE - 108 Cottage Ct. (3843 : Public Hearing - Weed Abatement Assessment - 108 Cottage Ct.)

To: **Land Holding LLC**
10851 Mastin St. Suite 300
Overland Park, Kansas 66210

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 108 Cottage Ct., Parcel 03-09-30-0-000-117.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 108 Cottage Ct., Parcel No. 117.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$90.00.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 3rd day of December, 2019.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 15th day of November, 2019.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Purchasing-Revenue Manger
 Guy. F. Gunter, III – City Attorney



City Council

204 South 7th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 3807)

Meeting: 12/03/19 07:00 PM

Department: Planning

Category: Zoning

Prepared By: Marty Ogren

Initiator: Charles Mosley

Sponsors:

DOC ID: 3807

Public Hearing, Amend Zoning Ord & Map: Rezone 105.6 Acres, 3800 Block Birmingham Hwy.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of Opelika will hold a Public Hearing on Tuesday, December 3, 2019, at 7:00 p.m. in the City Council Chambers of the Municipal Building, 204 S. 7th Street, Opelika, Lee County, Alabama.

PURPOSE

The purpose of said Public Hearing will be to consider the adoption of an ordinance to amend Ordinance Number 124-91 (entitled “Zoning Ordinance of the City of Opelika”) adopted on September 17, 1991. At said Public Hearing all who desire to be heard shall have the opportunity to speak for or in opposition to the adoption of the following ordinance:

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE ZONING ORDINANCE AND ZONING MAP OF THE CITY OF OPELIKA

BE IT ORDAINED by the City Council (the “City Council”) of the City of Opelika, Alabama (the “City”) as follows:

Section 1. That Ordinance 124-91 entitled “Zoning Ordinance City of Opelika, Alabama”, adopted on September 17, 1991, and the Zoning Map of the City of Opelika provided for and referred to therein, as previously amended and/or modified, be and the same is hereby amended by rezoning or redistricting the parcel of land hereinafter in this section described, so as to change such parcel from one class of district to another class of district as follows, to-wit:

From a R-5 District (High Density Residential District) to M-2, GC-P District (Industrial, Gateway Corridor Primary Overlay District), the parcel of land hereinafter described:

Commencing at the southeast corner of Section 10, Township 19 North, Range 26 East, in Opelika, Lee County, Alabama; thence west, 1744.30 feet, thence North, 2695.40 feet to the northwesterly right-of-way line of Veteran's Parkway and the true point of beginning of the parcel of land herein described; thence, along said right-of-way line, South 59 degrees 15 minutes 38 seconds West, 1268.08 feet; thence southwesterly along a curve concave southeasterly and having a radius of 1220.92 feet, a length of 768.23 feet, and a chord of South 41 degrees 14 minutes 13 seconds West, 755.61 feet to the northeasterly right-of-way line of U.S. Highway 280; thence, along said right-of-way line, South 64 degrees 41 minutes 30 seconds West, 147.87 feet; thence North 72 degrees 39 minutes 07 seconds West, 515.17 feet; thence northwesterly along a curve concave northeasterly and having a radius of 3694.72 feet, a length of 1326.84 feet and a chord of North 62 degrees 35 minutes 05 seconds West, 1319.72 feet; thence North 52 degrees 15 minutes 48 seconds West, 764.14 feet; thence North 36 degrees 58 minutes 54 seconds East, 241.71 feet to the southeasterly right-of-way line of Waverly Parkway; thence North 83 degrees 54 minutes 22 seconds East, 321.43 feet; thence North 6 degrees 04 minutes 17 seconds West, 50.00 feet; thence Northeasterly along a curve concave northwesterly and having a radius of 7734.92 feet, a length of 661.75 feet and a chord of North 81 degrees 31 minutes 45 seconds East, 661.54 feet; thence North 79 degrees 18 minutes 31 seconds East, 330.58 feet; thence northeasterly along a curve concave northwesterly and having a radius of 5740.85 feet; a length of 1657.17 feet and a chord of North 71 degrees 03 minutes 07 seconds East, 1651.42 feet; thence North 62 degrees 47 minutes 36 seconds East, 68.80 feet; thence, along the southwesterly margin of an abandoned railroad right-of-way, South 50 degrees 11 seconds East, 405.18 feet; thence South 53 degrees 57 minutes 00 seconds East, 181.20 feet; thence South 47 degrees 02 minutes 00 seconds East, 289.20 feet; thence South 34 degrees 26 minutes 00 seconds East, 410.00 feet; thence South 22 degrees 52 minutes 00 seconds East, 59.62 feet to the true point of beginning; said parcel of land lying in Sections 9 & 10, Township 19 North, Range 26 East, in Opelika, Lee County, Alabama, and containing 105.674 acres; Being further shown as Parcel C on that certain plat of survey prepared by David Miller, Alabama Reg. No. 6259, dated May 10, 2004, and entitled "Boundary Survey of Perryman Hill Place for Lucinda Samford Cannon and William J. Samford, Jr."

The above-described property is located at 3800 Birmingham Highway, Opelika, Alabama.

Section 2. Any ordinance or part thereof in conflict with provisions of this Ordinance be and the same are hereby repealed.

Section 3. This Ordinance shall be published in a newspaper of general circulation in the City of Opelika, Lee County, Alabama.

All interested persons are invited to attend the public hearing and be heard. Written comments concerning the above matter may be mailed to the City Clerk at P.O. Box 390, Opelika, AL 36803 at any time prior to the public hearing and may be further submitted to the City Council at the meeting and the public hearing.

Please contact Kevin Rice, the City's ADA Coordinator, at 334-705-2083 two (2) working days prior to the meeting if you require special accommodations due to any disability.

WITNESS my hand this the ____day of November, 2019.

CITY CLERK OF THE CITY OF OPELIKA, ALABAMA

TO: PUBLISHER
Opelika-Auburn News
P.O. Box 2208
Opelika, Alabama 36803

Please publish the foregoing Notice one (1) time in the November ____, 2019 issue of your paper.

CITY CLERK

The applicant is requesting rezoning 105.6 acres from R-5 to M-2, GC-P zoning district. The OIDA desires to purchase the property if the rezoning is approved. The authority purchases property for future growth in technology and manufacturing industries. They have not noted what the property will be used for at this time. While there is no M-2 zoning in this immediate area, the location of this property supports increased development potential and the associated zoning. The property is bound on three sides by Birmingham Highway, Waverly Parkway and Veterans Parkway. These streets have significant traffic and create a boundary between this property and most others. The only adjacent property is the R-5 zoned property to the north. At the October 22nd meeting, the Planning Commission voted 5 to 0 (one abstain) to send a positive recommendation to CC to rezone the property.

City of Opelika Planning Commission Report

Action Requested: Rezoning: 105.6 acres located at 3800 Birmingham Highway, from R-5 to M-2, GC-P

Property Owner(s): Cannon Timber and Land, LLC. (property owner)
Opelika Industrial Development Authority

Current Zoning: R-5

Proposed Zoning: M-2, GC-P (Public Manufacturing, Gateway Corridor Overlay - Primary)

Existing Land Use: Undeveloped

Surrounding Zoning Districts

And Land Uses:	North	R-5	Single-family homes
	South	C-2, GC	Vacant
	East	R-5	Vacant
	West	R-1, R-2, R-3	Single-family homes

Rezoning

Opelika Industrial Development Authority is requesting rezoning 105.6 acres from R-5 to M-2, GC-P. The OIDA desires to purchase the 105.6 acres if the rezoning is approved. The authority purchases property for future growth in technology and manufacturing industries. They have not noted what the property will be used for at this time.

While there is no M-2 zoning in this immediate area, the location of this property supports increased development potential and the associated zoning. The property is bound on three sides by Birmingham Highway, Waverly Parkway and Veterans Parkway. All of these streets have significant traffic and create a boundary between this property and most others. The only adjacent property is the R-5 zoned property to the north.

Staff believes rezoning to M-2, GC-P zone is appropriate for this property due to its location on Birmingham Highway and the fact that the property is bound by three streets.

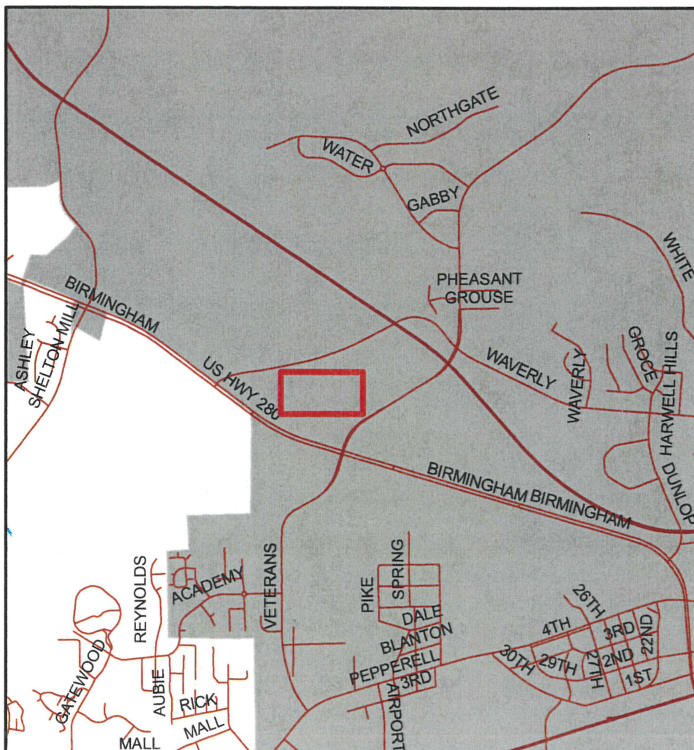
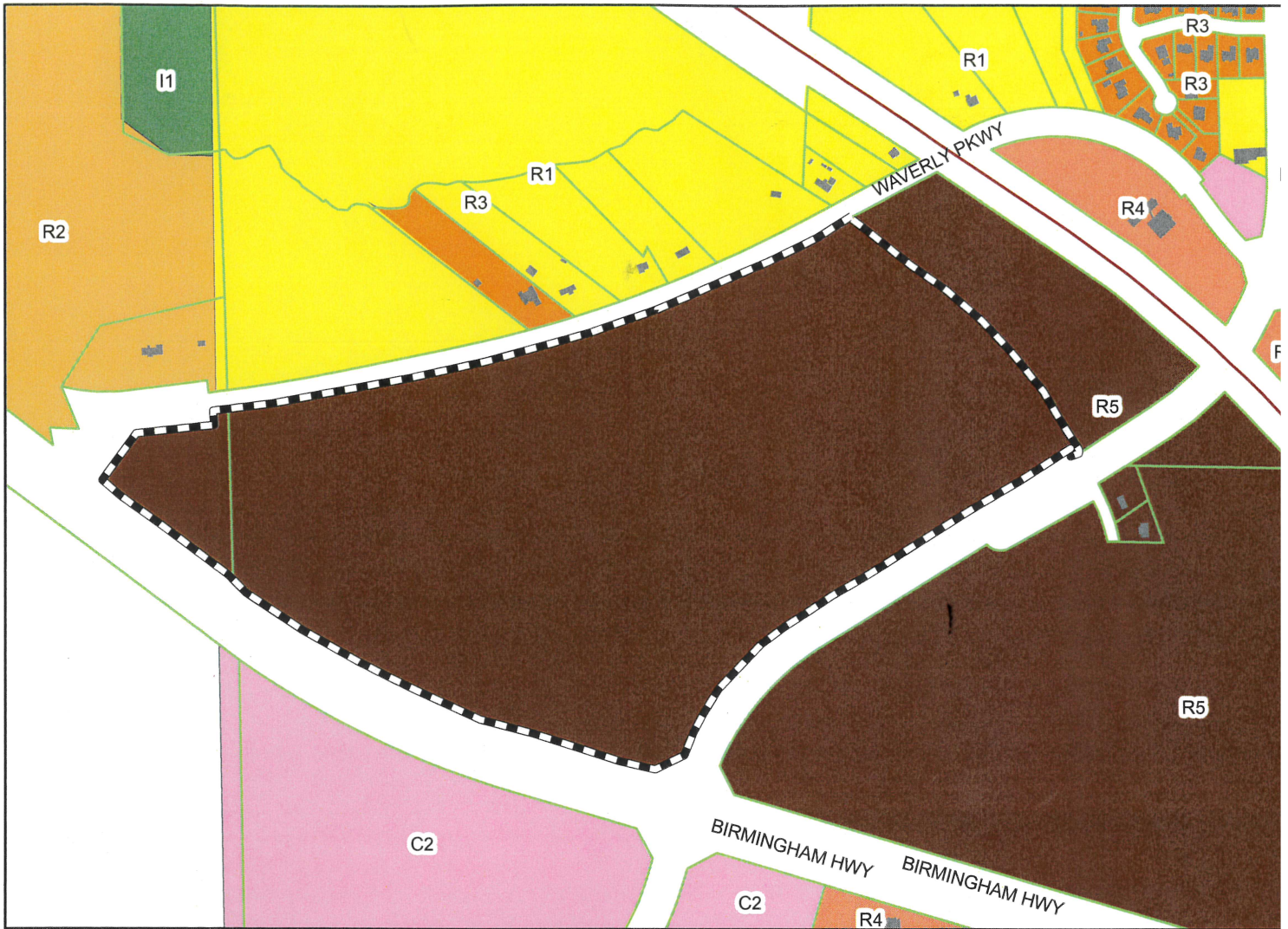
Staff Recommendation

Planning Staff recommends Planning Commission send a positive recommendation to the City Council to rezone the property from R-5 to M-2.

At the October 22nd meeting, the Planning Commission voted 5 to 0 (one abstain) to send a positive recommendation to the City Council to rezone the 105.6 acres from R-5 to M-2, GC-P.

This is a request to advertise for a City Council public hearing to rezone the property.

CANNON TIMBER & LAND REZONING 3800 BLOCK BIRMINGHAM HIGHWAY R-5 TO M-2,GC-P



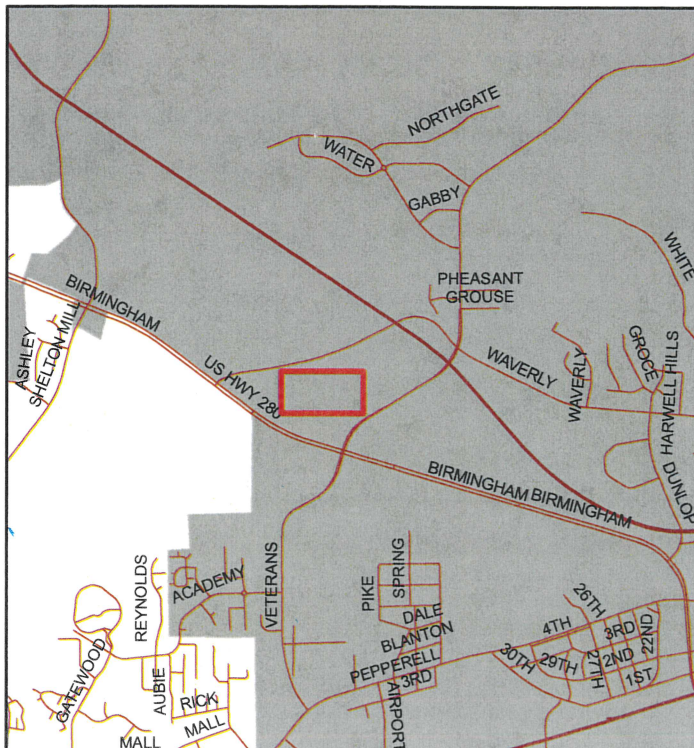
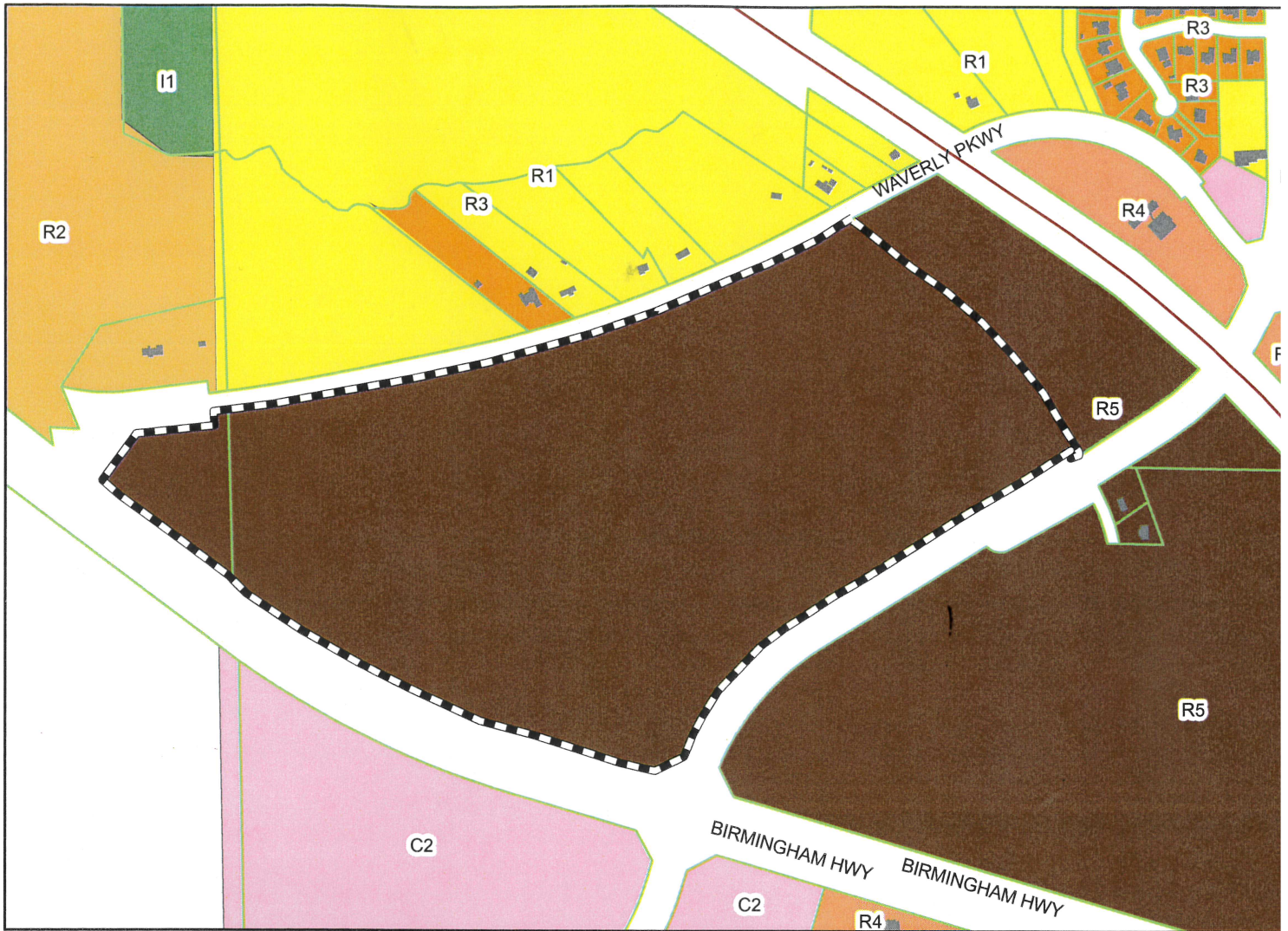
The applicant is requesting rezoning 105.6 acre
The undeveloped property is accessed from Waverly
Parkway, Birmingham Highway, and Veteran
Parkway.



Subject Property

The City of Opelika does not guarantee this map to be free from
errors or inaccuracies. The City of Opelika, Alabama disclaims any
responsibility or liability for interpretations from this map or
decisions based thereon. The information contained on this map is
a general representation only and is not to be used for

CANNON TIMBER & LAND REZONING 3800 BLOCK BIRMINGHAM HIGHWAY R-5 TO M-2,GC-P



The applicant is requesting rezoning 105.6 acre
The undeveloped property is accessed from Wavei
Parkway, Birmingham Highway, and Veterar
Parkway.



Subject Property

The City of Opelika does not guarantee this map to be free from errors or inaccuracies. The City of Opelika, Alabama disclaims any responsibility or liability for interpretations from this map or decisions based thereon. The information contained on this map is a general representation only and is not to be used



City Council

204 South 7Th Street
Opelika, AL

SCHEDULED

BIDS 369-19

Meeting: 12/03/19 07:00 PM
Department: Purchasing and Revenue
Category: Bid
Prepared By: Angela Norrell
Initiator: Lillie Finley
Sponsors:
DOC ID: 3862

Carver-Clanton TAPAA-TA17(922) Project - ENG

RESOLUTION NO. _____

WHEREAS, the Purchasing Department opened sealed bids for a contract for the Carver-Clanton Project for the Engineering Department; and

WHEREAS, Triple J Construction, LLC submitted the low bid meeting specifications; and

WHEREAS, this is ALDOT/Federal Aid Project - No. TAPAA-TA17(922); and

WHEREAS, funding for the project will come from the Unassigned fund, which will be reimbursed 80% (\$162,204.80) by ALDOT;

NOW, THEREFORE, BE IT RESOLVED by the City of Opelika, Alabama as follows:

1. That the bid be awarded to Triple J Construction, LLC on their low bid meeting specifications.
2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to Triple J Construction, LLC in the amount of \$202,756.00.
3. That the Controller be authorized to adjust the budget as necessary for this contract.
4. That the Mayor is hereby authorized to sign all documents pertaining to this contract.

APPROVED AND ADOPTED this the _____ day of _____, 2019.

C.E. "Eddie" Smith, Jr.
President of the City Council
City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC

Bids 369-19

Meeting of December 3, 2019

City Clerk - Treasurer

FACT SHEET

SUBJECT: Sealed Bid – Bid #20001 – We are asking the Council to approve a contract for the Carver-Clanton Project

FACTS:

- Bid opening date – 11/12/19
- User Department – Engineering
- The bid was mailed to 12 vendors
- 3 bids were received
- Budgeted contract
- Bid tabulation sheet attached

RECOMMENDATION:

- **Recommend the contract be awarded to Triple J Construction, LLC on their low bid meeting specifications in the amount of \$202,756.00.**

[illegible]



City Council

204 South 7Th Street
Opelika, AL

SCHEDULED

BIDS 370-19

Meeting: 12/03/19 07:00 PM
Department: Purchasing and Revenue
Category: Bid
Prepared By: Angela Norrell
Initiator: Angela Norrell
Sponsors:
DOC ID: 3872

Geneva Street Improvements - ENG

RESOLUTION NO. _____

WHEREAS, the Purchasing Department opened sealed bids for a contract for Geneva Street Improvements for the Engineering Department; and

WHEREAS, Robinson Paving Co. submitted the lowest bid meeting specifications; and

WHEREAS, funding for the project will come from Unassigned funds, which will be reimbursed in the amount of \$476,000.00 by the Opelika Utilities Board;

NOW, THEREFORE, BE IT RESOLVED by the City of Opelika, Alabama as follows:

1. That the contract be awarded to Robinson Paving Co. on their low bid meeting specifications.
2. That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to Robinson Paving Co. in the amount of \$2,276,319.00.
3. That the Controller be authorized to adjust the budget as necessary for this contract.
4. That the Mayor is hereby authorized to sign all documents pertaining to this contract.

APPROVED AND ADOPTED this the _____ day of _____, 2019.

C.E. "Eddie" Smith, Jr.
President of the City Council
City of Opelika, Alabama

ATTEST:

Bids 370-19

Meeting of December 3, 2019

Robert G. Shuman, CMC
City Clerk - Treasurer

FACT SHEET

SUBJECT: Sealed Bid – Bid #20002 – We are asking the Council to approve a contract for Geneva Street Improvements

FACTS:

- Bid opening date – 11/26/19
- User Department – Engineering
- The bid was mailed to 12 vendors
- 2 bids were received
- Bid tabulation sheet attached

RECOMMENDATION:

- **Recommend the contract be awarded to Robinson Paving Co. on their low bid meeting specifications in the amount of \$2,276,319.00.**

[illegible]

RESOLUTION NO. 371-19

Expense reports from various departments.

RESOLUTION NO. _____

BE IT RESOLVED, by the City Council of the City of Opelika, Alabama, as follows:

-) That the following employee(s) were required by the City of Opelika to travel on City business and/or attend a training session, meeting or conference.

Employee	Department	\$ Amount
-----	-----	-----
Russell A. Jones	Accounting	182.12
Patricia A. Jones	City Council	1,682.00

-) That attached is an expense report(s) prepared, dated and signed by the City employee or official covering the various expenses incurred on said trip and reviewed/approved by the City's accounting department and City official.
- 3) That the Opelika City Council hereby approves the attached expense reports for reimbursement to said City employee or official.
- 4) That the Mayor and/or appropriate City official is hereby directed and authorized to take the necessary steps so a check(s) can be prepared covering the attached expense report(s).
- 5) That the City Treasurer is authorized to sign said check(s) so it can be delivered to the appropriate City employee or official.

ADOPTED and APPROVED this the ____ day of _____, 2019.

C. E. "Eddie" Smith, Jr.
President of the City Council
City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC
City Clerk - City Treasurer

RESOLUTION NO. 372-19

Designate City Personal Property as Surplus & Authorize Disposal

RESOLUTION NO. _____

WHEREAS, the City of Opelika, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

WHEREAS, Section 11-43-56 of the Alabama Code of 1975 authorizes the Municipal Governing body to dispose of unneeded personal property;

NOW, THEREFORE, BE IT RESOLVED by the City of Opelika, Alabama as follows:

SECTION 1. That the following personal property owned by the City of Opelika, Alabama, is no longer needed for public or municipal purposes:

No.	Qty.	Unit	Item Description	Fixed Asset
1.	1	Lot	Automotive Bulbs & Flashers	NA
2.	1	Lot	Automotive Filters	NA
3.	1	Lot	Automotive Transmission Fluids	NA
4.	1	Lot	Floor Cleaning & Polishing Compounds	NA

SECTION 2. That the Mayor is hereby authorized and directed to dispose of the personal property owned by the City of Opelika, Alabama, described in Section 1 above. If any such property has marketable value, the Mayor shall receive bids or quotations for such property and shall sell the same to the highest bidder. If the property has no marketable value, the Mayor may dispose of such property in the most economical and feasible manner available to him.

APPROVED AND ADOPTED this the _____ day of _____, 2019.

C.E. “Eddie” Smith, Jr.

President of the City Council
City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC

City Clerk - Treasurer

RESOLUTION NO. 373-19

Weed Abatement Assessment - 100 Cottage Ct.

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
100 Cottage Ct, Parcel No. 113.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 100 Cottage Ct., parcel no. 113.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 100 Cottage Ct., a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 3rd day of December, 2019 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika as

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$38.10 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 100 Cottage Ct. Parcel no. 113.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-03-09-30-0-000-113.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 3rd day of December, 2019.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
100 Cottage Ct.
Opelika Al. 36801
Parcel # 03-09-30-0-000-113.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>30.0</u>	
Certified mail:	<u>8.10</u>	(all postage contained on 1 invoice only)
Misc.	<u> </u>	
Total	<u>38.10</u>	

Attachment: WEED INVOICE 100 Cottage Ct (373-19 : Weed Abatement Assessment - 100 Cottage Ct.)

RESOLUTION NO. 374-19

Weed Abatement Assessment - 101 Cottage Ct.

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
101 Cottage Ct., Parcel No. 112.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 101 Cottage Ct., parcel no. 112.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 101 Cottage Ct., a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 3rd day of December, 2019 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of

receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika as

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$25.00 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 101 Cottage Ct., Parcel no. 112.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-03-09-30-0-000-112.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner shall add the amount of the lien to the ad valorem tax bill on the property and

shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 3rd day of December, 2019.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE

Date: 11/15/2019

To: Land Holding LLC
 10851 Mastin St. Suite 300
 Overland Park, Kansas 66210

Property Address:
 101 Cottage Ct
 Opelika Al. 36801
 Parcel # 03-09-30-0-000-112.000

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 25.00

Certified mail: _____

Misc. _____

Total 25.00

Attachment: WEED INVOICE 101 Cottage Ct. (374-19 : Weed Abatement Assessment - 101 Cottage Ct.)

RESOLUTION NO. 375-19

Weed Abatement Assessment - 102 Cottage Ct

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
102 Cottage Ct., Parcel No. 114.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 102 Cottage Ct., parcel no. 114.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 102 Cottage Ct., a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 3rd day of December, 2019 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika as

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$37.50 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 102 Cottage Ct., Parcel no.114.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-03-09-30-0-000-114.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 3rd day of December, 2019.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
102 Cottage Ct.
Opelika Al. 36801
Parcel # 03-09-30-0-000-114.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 37.50

Certified mail: _____

Misc. _____

Total 37.50

Attachment: WEED INVOICE - 102 Cottage Ct (375-19 : Weed Abatement Assessment - 102 Cottage Ct)

RESOLUTION NO. 376-19

Weed Abatement Assessment - 103 Cottage Ct.

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
103 Cottage Ct., Parcel No. 111.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 103 Cottage Ct., parcel no. 111.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 103 Cottage Ct., a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 3rd day of December, 2019 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika as

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$111.00 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 103 Cottage Ct., Parcel no. 111.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-03-09-30-0-000-111.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 3rd day of December, 2019.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
103 Cottage Ct.
Opelika Al. 36801
Parcel # 03-09-30-0-000-111.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 111.00

Certified mail: _____

Misc. _____

Total 111.0

Attachment: WEED INVOICE - 103 Cottage Ct. (376-19 : Weed Abatement Assessment - 103 Cottage Ct.)

RESOLUTION NO. 377-19

Weed Abatement Assessment - 104 Cottage Ct.

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
104 Cottage Ct., Parcel No. 115.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 104 Cottage Ct., parcel no. 115.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 104 Cottage Ct., a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 3rd day of December, 2019 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika as

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$72.10 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 104 Cottage Ct., Parcel no.115.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-03-09-30-0-000-115.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 3rd day of December, 2019.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
104 Cottage Ct
Opelika Al. 36801
Parcel # 03-09-30-0-000-115.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 72.10

Certified mail: _____

Misc. _____

Total 72.10

Attachment: WEED INVOICE - 104 Cottage Ct (377-19 : Weed Abatement Assessment - 104 Cottage Ct.)

RESOLUTION NO. 378-19

Weed Abatement Assessment - 106 Cottage Ct.

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
106 Cottage Ct., Parcel No. 116.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 106 Cottage Ct., parcel no. 116.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 106 Cottage Ct., a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 3rd day of December, 2019 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika as

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$72.00 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 106 Cottage Ct., Parcel no. 116.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-03-09-30-0-000-116.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 3rd day of December, 2019.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
106 Cottage Ct.
Opelika Al. 36801
Parcel # 03-09-30-0-000-116.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 72.00

Certified mail: _____

Misc. _____

Total 72.00

Attachment: WEED INVOICE - 106 Cottage Ct. (378-19 : Weed Abatement Assessment - 106 Cottage Ct.)

RESOLUTION NO. 379-19

Weed Abatement Assessment - 108 Cottage Ct.

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
108 Cottage Ct., Parcel No.117.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 108 Cottage Ct., parcel no. 117.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 108 Cottage Ct., a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 3rd day of December, 2019 at 7:00 p.m. in the City Council Chambers in the

Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City

Council to hear and determine any objections or defenses which may be raised by any of the property

owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of

receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika as

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$90.00 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 108 Cottage Ct., Parcel no. 117.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-03-09-30-0-000-117.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner shall add the amount of the lien to the ad valorem tax bill on the property and

shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the 3rd day of December, 2019.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE

Date: 11/15/2019

**To: Land Holding LLC
10851 Mastin St. Suite 300
Overland Park, Kansas 66210**

**Property Address:
108 Cottage Ct.
Opelika Al. 36801
Parcel # 03-09-30-0-000-117.000**

On October 10, 2019 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement: 90.00

Certified mail: _____

Misc. _____

Total 90.00

Attachment: WEED INVOICE - 108 Cottage Ct. (379-19 : Weed Abatement Assessment - 108 Cottage Ct.)

RESOLUTION NO. 380-19

ALDOT Agreement for Columbus Parkway Roundabout Project

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING AGREEMENT FOR A FEDERALLY FUNDED
PROJECT BETWEEN THE STATE OF ALABAMA AND THE CITY OF OPELIKA,
ALABAMA**

WHEREAS, the City of Opelika, Alabama, is desirous of constructing or improving, by force account, by contract, or both a section of road included in the City of Opelika road system and described as follows: Columbus Parkway from the extents of the intersection of South 7th Street/McCoy Street, though the extents of South 4th Street, including the intersection of South 6th Street and all roadway in between.

WHEREAS, the State of Alabama, acting by and through the Alabama Department of Transportation (hereinafter referred to as the “State”), and the City of Opelika, Alabama, a municipal corporation (hereinafter referred to as the “City”) desire to enter into an agreement relating to a Highway Safety Improvement Program (HSIP) project with partial funding by the Federal Highway Administration for the intersection improvement project on Columbus Parkway at 4th Street, 6th Street and 7th Street (the “Project”); and

WHEREAS, a proposed Agreement for Construction for Project HSIP-4119 (the “Agreement”) has been prepared and submitted to the City Council for approval, and the Council has determined that it is now in the best interest of the City and its citizens to approve said Agreement.

WHEREAS, the proposed Agreement has an approved budget of \$1,983,000.00 where the Federal share of this cost will be 90% or \$1,784,700 and the 10% City share will be \$198,300.

WHEREAS, this funding is to provide for the Preliminary Engineering (PE), Right-of-Way acquisition (RW), Utility relocation (UT), and Construction (CN) for the project; and

WHEREAS, the City agrees to all of the provisions of the City-wide Agreement to be

executed between the State and the City covering preliminary engineering by State forces and equipment on the Project; and

WHEREAS, the City intends to apply for Federal Aid funds for the construction of the above referenced Project; and

WHEREAS, the City agrees to all of the provisions of any agreement which has been executed or will be executed covering the construction of the Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, as follows:

1. That the proposed Agreement to be entered into between the State and the City, a copy of which is attached hereto and marked Exhibit "A", be and the same is hereby approved, authorized, ratified, and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve, which approval shall be conclusively evidenced by the execution and delivery of said Agreement. The City agrees to all of the provisions of the Agreement and to all of the provisions of any agreement which has been executed or will be executed covering the construction of the Project.
2. That the Mayor is hereby authorized and directed to execute and deliver said Agreement in the name and on behalf of the City and the City Clerk is hereby authorized to attest the same and to affix the seal of the City thereto.
3. That any officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal of the City or otherwise, as they or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Agreement.
4. The City's share of the project, i.e. estimated to be \$198,300, shall be paid from the Unassigned Fund Balance.
5. That this Resolution shall take effect upon its passage and adoption by the City Council.
6. That Resolution No. 314-18, adopted on November 20, 2018, is hereby repealed and this Resolution is substituted in lieu thereof.

BE IT FURTHER RESOLVED that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

ADOPTED AND APPROVED this the _____ day of _____, 2019.

 PRESIDENT OF THE CITY COUNCIL OF THE
 CITY OF OPELIKA

ATTEST:

 CITY CLERK

CERTIFICATE

I, the undersigned qualified and acting Clerk of the City of Opelika, do hereby certify that the above and foregoing is a true and correct copy of a resolution passed and adopted by the City Council of the City of Opelika, Alabama, at a regular meeting of such Council held on the _____ day of _____, 2019, and such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of

the City on this the ____ day of _____, 2019.

CITY CLERK

**PRELIMINARY ENGINEERING, RIGHT - OF - WAY,
UTILITY, AND CONSTRUCTION
AGREEMENT
FOR A
FEDERAL AID
PROJECT**

**BETWEEN THE STATE OF ALABAMA
AND
CITY OF OPELIKA
Lee County**

**Project No. HSIP-4119()
CPMS Ref# 100069300, 100069306, 100069307, and 100069301**

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Opelika, Alabama, hereinafter referred to as the CITY.

WHEREAS, the STATE and the CITY desire to cooperate in the preliminary engineering, right-of-way acquisition, utility, and construction of intersection improvements on Columbus Parkway at 4th St., 6th St., and 7th St.

NOW, THEREFORE, it is mutually agreed between the STATE and the CITY as follows:

PART TWO (2): FUNDING PROVISIONS

- A. **Project Funding:** Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. Cost for the project will be financed, when eligible for Federal participation, on the basis of 90 percent Federal funds and 10 percent CITY funds. Any deficiency in Federal Aid or overrun in costs will be borne by the CITY from CITY funds unless approved in writing by the STATE. In the event of an underrun in construction costs, the amount of Federal Aid funds will be the amount stated below, or 90% of eligible costs, whichever is less.
- B. The estimated cost and participation by the various parties is as follows:

PRELIMINARY ENGINEERING

FUNDING SOURCE	ESTIMATED COSTS
Federal Funds	\$ 151,200.00
City Funds	\$ 16,800.00

TOTAL (Incl Indirect Cost)	\$ 168,000.00

RIGHT-OF-WAY

FUNDING SOURCE	ESTIMATED COSTS
Federal HSIP Funds	\$ 256,500.00
City Funds	\$ 28,500.00

TOTAL (Incl Indirect Cost)	\$ 285,000.00

UTILITY

FUNDING SOURCE	ESTIMATED COSTS
Federal HSIP Funds	\$ 288,000.00
City Funds	\$ 32,000.00

TOTAL (Incl CE&I and Indirect Cost)	\$ 320,000.00

CONSTRUCTION

FUNDING SOURCE	ESTIMATED COSTS
Federal HSIP Funds	\$ 1,089,000.00
City Funds	\$ 121,000.00

TOTAL (Incl CE&I and Indirect Cost)	\$ 1,210,000.00

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the CITY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the CITY relating to this project which is determined to be ineligible for reimbursement by the FHWA or in excess of the limiting amounts previously stated will not be an eligible cost to the project and will be borne and paid by the CITY.

- C. **Time Limit:** This project will commence upon written authorization to proceed from the STATE directed to the CITY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Board and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

- A. The CITY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will be an eligible cost to the Project. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the CITY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the CITY. In cases where property is leased or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the CITY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property acquired shall be in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the CITY from the sale or lease of property.

- B. The CITY will adjust and/or relocate all Utilities in conflict with the project improvements. Associated Utility costs will be an eligible cost to the project.

The CITY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures.

- C. The CITY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with CITY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will be an eligible cost to the project.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the CITY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All cost for which the CITY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the CITY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The CITY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the CITY and approved by the STATE. The plans, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the CITY that failure of the CITY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal funding and the refund of any federal funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with

the Guidelines for Operations for ***Procedures for Processing State and Industrial Access Funded County and City Projects***, and attached hereto as a part of this Agreement prior to the CITY letting the contract.

- D. The CITY will furnish all construction engineering for the project with CITY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost to the project.
- E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The CITY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

- A. The CITY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the CITY to proceed.
- B. Associated Construction cost will be an eligible cost to the project.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids, and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the CITY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The CITY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the CITY, the CITY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The CITY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement. The CITY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the CITY will provide all bids to the STATE with a recommendation for award. The CITY shall not award the contract until it has received written approval from the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including State competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

- C. If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The CITY will be the permittee of record with ADEM for the permit. The CITY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The CITY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The CITY will secure all permits and licenses of every nature and description applicable to the project in any manner, and will conform to and comply with the requirements of any such permit or license, and with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

- D. The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation and the project will be built in accordance with the approved plans.

- E. Subject to the limitations on damages applicable to municipal corporations under Ala. 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 attorneys' 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 of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the 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.
- F. The CITY 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 CITY, its agents, servants, employees or facilities.
- G. Upon completion and acceptance of this project by the State, the CITY will assume full ownership and responsibility for the project work and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

PART FIVE (5): ACCOUNTING PROVISIONS

- A. The CITY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The CITY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- B. The CITY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.
- C. The CITY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

The CITY will report to the STATE the progress of the project in such manner as the STATE may require. The CITY will also provide the STATE any information requested by the STATE regarding the project. The CITY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

The CITY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives,

to inspect, at any time, vehicles and equipment utilized or used in performance of the project; any and all data and records which in any way relate to the project or to the accomplishment of the project. The CITY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the CITY will give its full cooperation to those persons or their authorized representatives, as applicable.

The CITY will comply with all audit requirements set forth in the Federal Office of Management and Budget (OMB) circular A-128 or A-133 whichever is applicable.

- D. The CITY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.
- E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.
- F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the CITY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

- A. By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- B. It is agreed that the terms and commitments contained in this agreement shall not be constituted 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 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in this agreement shall be deemed null and void.
- C. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- D. No member, officer, or employee of the CITY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.
- F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
- G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.
- H. **Exhibits A, E, H, M, and N** are hereby attached to and made a part of this Agreement.

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

ATTEST:

By: 
City Clerk (Signature)

R.G. Shuman

Type Name of Clerk

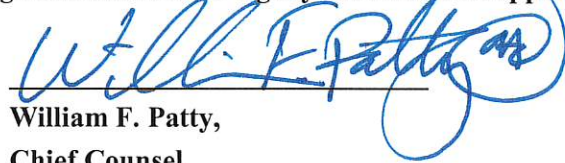
(AFFIX SEAL)

By: 
City of Opelika, Alabama
As Mayor (Signature)

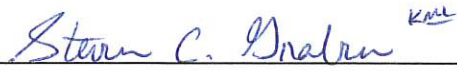
Gary Fuller

Type Name of Mayor

This agreement has been legally reviewed and approved as to form and content.

By: 
William F. Patty,
Chief Counsel

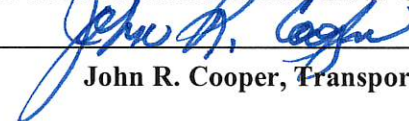
RECOMMENDED FOR APPROVAL:


Steven C. Graben, P.E.
South East Region Engineer


D.E. (Ed) Phillips, P.E.
State Local Transportation Engineer


Don T. Arkle, P. E.
Chief Engineer

STATE OF ALABAMA, ACTING BY AND THROUGH
THE ALABAMA DEPARTMENT OF TRANSPORTATION


John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND
SIGNED BY THE GOVERNOR ON THIS 25 DAY OF January, 2019.


KAY IVEY

GOVERNOR, STATE OF ALABAMA

RESOLUTION NO. 314-18**RESOLUTION AUTHORIZING AGREEMENT FOR A TRANSPORTATION
ALTERNATIVES PROJECT BETWEEN THE STATE OF ALABAMA AND THE CITY
OF OPELIKA, ALABAMA**

WHEREAS, the State of Alabama, acting by and through the Alabama Department of Transportation (hereinafter referred to as the "State"), and the City of Opelika, Alabama, a municipal corporation (hereinafter referred to as the "City") desire to enter into an agreement relating to a Highway Safety Improvement Program (HSIP) project with partial funding by the Federal Highway Administration for the intersection improvement project on Columbus Parkway at 4th Street, 6th Street and 7th Street; and

WHEREAS, a proposed Agreement for Construction for Project HSIP-4119 (the "Agreement") has been prepared and submitted to the City Council for approval, and the Council has determined that it is now in the best interest of the City and its citizens to approve said Agreement.

WHEREAS, the proposed Agreement has an approved budget of \$1,983,000.00 where the Federal share of this cost will be 90% or \$1,784,700 and the 10% City share will be \$198,300.

WHEREAS, this funding is to provide for the Preliminary Engineering (PE), Right-of-Way acquisition (RW), Utility relocation (UT), and Construction (CN) for the project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, as follows:

1. That the proposed Agreement to be entered into between the State and the City, a copy of which is attached hereto and marked Exhibit "A", be and the same is hereby approved, authorized, ratified, and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve, which approval shall be conclusively evidenced by the execution and delivery of said Agreement.
2. That the Mayor is hereby authorized and directed to execute and deliver said Agreement in the name and on behalf of the City and the City Clerk is hereby authorized to attest the same and to affix the seal of the City thereto.
3. That any officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal of the City or otherwise, as they or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Agreement.

4. The City's share of the project, i.e. \$198,300 shall be paid from the Unassigned Fund Balance.

5. That this Resolution shall take effect upon its passage and adoption by the City Council.

BE IT FURTHER RESOLVED that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

ADOPTED AND APPROVED this the 20th day of November, 2018.



 PRESIDENT OF THE CITY COUNCIL OF THE
 CITY OF OPELIKA

ATTEST:



 CITY CLERK

CERTIFICATE

I, the undersigned qualified and acting Clerk of the City of Opelika, do hereby certify that the above and foregoing is a true and correct copy of a resolution passed and adopted by the City Council of the City of Opelika, Alabama, at a regular meeting of such Council held on the 20th day of November, 2018, and such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the 21st day of November, 2018.



 CITY CLERK

STD CONTRACT EXHIBITS

REV. 9/19/16

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

STD CONTRACT EXHIBITS

REV. 9/19/16

EXHIBIT E

TERMINATION OR ABANDONMENT

- a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.
- b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CITY upon an equitable basis. The value of the work performed by the CITY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:
 - 1. The ratio of the amount of work performed by the CITY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.
 - 2. The amount of the expense to which the CITY is put in performing the work to be terminated in proportion to the amount of expense to which the CITY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CITY prior to the termination, no consideration will be given to profit, which the CITY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CITY, the value of the work performed by the CITY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

- a. This contract shall be binding upon the successors and assigns of the respective parties hereto.
- b. Should the AGREEMENT be terminated due to default by CITY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

STD CONTRACT EXHIBITS

REV. 9/19/16

EXHIBIT H

Page 1

EQUAL RIGHTS PROVISIONS

During the performance of this contract, the CITY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

STD CONTRACT EXHIBITS
REV. 9/19/16

EXHIBIT H

Page 2

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CITY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. Solicitations

In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the CITY of the CITY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. Information and Reports

The CITY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

STD CONTRACT EXHIBITS
REV. 9/19/16

EXHIBIT H

Page 3

records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the CITY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the CITY under contract until the CITY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The CITY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The CITY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CITY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the CITY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the CITY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

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The CITY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not 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. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.
3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CITY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The CITY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The CITY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

- a. The CITY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

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- b. The CITY, in accordance with the status of CITY as an independent contractor, covenants and agrees that the conduct of CITY will be consistent with such status, that CITY will neither hold CITY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CITY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of CITY.

CITYS' CERTIFICATIONS

The CITY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CITY. The CITY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CITY at the time of execution of the AGREEMENT. The CITY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CITY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CITY agrees that a meal allowance shall be limited to CITY employees while in travel status only and only when used in lieu of a per diem rate.

The CITY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CITY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

STD CONTRACT EXHIBITS
REV. 9/19/16

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal 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.
- b. 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 Federal 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, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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 a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

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EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted 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 of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CITY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CITY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CITY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION**

**SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL
ACCESS FUNDED COUNTY AND CITY PROJECTS**

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an inplace annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

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Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL:


BUREAU CHIEF/REGION ENGINEER

APPROVAL:


CHIEF ENGINEER

APPROVAL:


TRANSPORTATION DIRECTOR

NOVEMBER 1, 2017

DATE

1-20

Rev. 10/2017

RESOLUTION NO. 381-19

ALDOT Agreement for Pepperell Pkwy MPO Project

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING AGREEMENT FOR A FEDERALLY FUNDED
PROJECT BETWEEN THE STATE OF ALABAMA AND THE CITY OF OPELIKA,
ALABAMA**

WHEREAS, the City of Opelika, Alabama, is desirous of constructing or improving, by force account, by contract, or both a section of road included in the City of Opelika road system and described as follows: Pepperell Parkway from the extents of the intersection of Lowndes Street to West End Court (Five Points) and all roadway in between.

WHEREAS, the State of Alabama, acting by and through the Alabama Department of Transportation (hereinafter referred to as the “State”), and the City of Opelika, Alabama, a municipal corporation (hereinafter referred to as the “City”) desire to enter into an agreement relating to an Opelika/Auburn are Metropolitan Planning Organization (MPO) project with partial funding by the Federal Highway Administration for the improvements to Pepperell Parkway from Lowndes Street to West End Court (Five Points) and

WHEREAS, a proposed Agreement for Preliminary Engineering (PE) for Project STPOA-4118 (the “Agreement”) has been prepared and submitted to the City Council for approval, and the Council has determined that it is now in the best interest of the City and its citizens to approve said Agreement.

WHEREAS, the proposed Agreement has an approved budget of \$252,000 where the Federal share of this cost will be 80% or \$201,600 and the 20% City share will be \$50,400.

WHEREAS, the City agrees to all of the provisions of the City-wide Agreement to be executed between the State and the City covering preliminary engineering by State forces and equipment on the Project; and

WHEREAS, the City intends to apply for Federal Aid funds for the construction of the above referenced Project; and

WHEREAS, the City agrees to all of the provisions of any agreement which has been executed or will be executed covering the construction of the Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, as follows:

1. That the proposed Agreement to be entered into between the State and the City, a copy of which is attached hereto and marked Exhibit "A", be and the same is hereby approved, authorized, ratified, and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve, which approval shall be conclusively evidenced by the execution and delivery of said Agreement.

2. That the Mayor is hereby authorized and directed to execute and deliver said Agreement in the name and on behalf of the City and the City Clerk is hereby authorized to attest the same and to affix the seal of the City thereto.

3. That any officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other

communications under the seal of the City or otherwise, as they or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Agreement.

4. The City's share of the project, i.e. \$50,400 shall be paid from the Unassigned Fund Balance.

5. That this Resolution shall take effect upon its passage and adoption by the City Council.

BE IT FURTHER RESOLVED that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

ADOPTED AND APPROVED this the _____ day of _____, 2019.

PRESIDENT OF THE CITY COUNCIL OF THE
CITY OF OPELIKA

ATTEST:

CITY CLERK

CERTIFICATE

I, the undersigned qualified and acting Clerk of the City of Opelika, do hereby certify that the above and foregoing is a true and correct copy of a resolution passed and adopted by the City Council of the City of Opelika, Alabama, at a regular meeting of such Council held on the ____ day of _____, 2019, and such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the ____ day of _____, 2019.

CITY CLERK

**PRELIMINARY ENGINEERING
AGREEMENT
FOR A
FEDERAL AID
PROJECT**

**BETWEEN THE STATE OF ALABAMA
AND
CITY OF OPELIKA
Lee County**

**Project No. STPOA-4118()
CPMS Ref# 100068459**

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Opelika, Alabama (FEIN 63-6001334), hereinafter referred to as the CITY.

WHEREAS, the STATE and the CITY desire to cooperate in the improvements to Pepperell Parkway from Lowndes Street to West End Court (Five Points).

NOW, THEREFORE, it is mutually agreed between the STATE and the CITY as follows:

PART TWO (2): FUNDING PROVISIONS

- A. **Project Funding:** Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. Cost for the project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. Any deficiency in Federal Aid or overrun in costs will be borne by the CITY from CITY funds unless approved in writing by the STATE. In the event of an underrun in construction costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible costs, whichever is less.
- B. The estimated cost and participation by the various parties is as follows:

FUNDING SOURCE	ESTIMATED COSTS
FA STP Funds (Auburn-Opelika Dedicated)	\$ 201,600.00
City Funds	\$ 50,400.00

TOTAL (Incl Indirect Cost)	\$ 252,000.00

It is further understood that this is a cost reimbursement program and no Federal funds will be provided to the CITY prior to accomplishment of the work for which it is requested. Furthermore, no Federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the CITY relating to this project which is determined to be ineligible for reimbursement by the FHWA or in excess of the limiting amounts previously stated will not be an eligible cost to the project and will be borne and paid by the CITY.

- C. **Time Limit:** This project will commence upon written authorization to proceed from the STATE directed to the CITY. The CITY shall commence eligible activities in accordance with the scope of work approved by the STATE within two (2) years from the date of execution of this agreement. If this stipulation is not met, the STATE may notify the CITY in writing that the project is terminated and the encumbrance of funds rescinded.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Board and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

- A. The CITY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost to the Project. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the CITY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the CITY. In cases where property is leased or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the CITY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property acquired shall be in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.

Acquisition of real property by the CITY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the CITY from the sale or lease of property.

- B. The CITY will adjust and/or relocate all Utilities in conflict with the project improvements. Associated Utility costs will not be an eligible cost to the project.

The CITY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures.

- C. The CITY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with CITY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will be an eligible cost to the project.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the CITY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All cost for which the CITY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the CITY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The CITY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the CITY and approved by the STATE. The plans, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the CITY that failure of the CITY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of Federal funding and the refund of any Federal funds previously received on the project.

Projects containing Industrial Access funds shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for *Procedures for Processing State and Industrial Access Funded County and City Projects*, and attached hereto as a part of this Agreement prior to the CITY letting the contract.

- D. The CITY will furnish all construction engineering for the project with CITY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State.
- E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The CITY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

- A. The CITY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the CITY to proceed.
- B. This project will be let to contract by the CITY. Associated Construction cost will not be an eligible cost to the project.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids, and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the CITY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The CITY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the CITY, the CITY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The CITY will, when authorized by the STATE,

solicit bids and make awards for construction and/or services pursuant to this agreement. The CITY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the CITY will provide all bids to the STATE with a recommendation for award. The CITY shall not award the contract until it has received written approval from the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

- C. If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The CITY will be the permittee of record with ADEM for the permit. The COUNTY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The CITY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The CITY will secure all permits and license or every nature and description applicable to the project in any manner, and will conform to and comply with the requirements of any such permit or license, and with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

- D. The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meet the standards of the Alabama Department of Transportation and the project will be built in accordance with the approved plans.
- E. Subject to the limitations on damages applicable to municipal corporations under Ala. 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 attorneys' 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 of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the 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.
- F. The CITY 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 CITY, its agents, servants, employees or facilities.
- G. Upon completion and acceptance of this project by the State, the CITY will assume full ownership and responsibility for the project work and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

PART FIVE (5): ACCOUNTING PROVISIONS

- A. The CITY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The CITY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- B. The CITY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.
- C. The CITY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

The CITY will report to the STATE the progress of the project in such manner as the STATE may require. The CITY will also provide the STATE any information requested by the STATE regarding the project. The CITY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

The CITY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project; any and all data and records which in any way relate to the project or to the accomplishment of the project. The CITY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the CITY will give its full cooperation to those persons or their authorized representatives, as applicable.

The CITY will comply with all audit requirements set forth in the Federal Office of Management and Budget (OMB) circular A-128 or A-133 whichever is applicable.

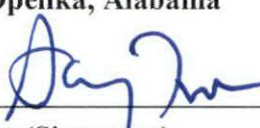
- D. The CITY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.
- E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.
- F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the CITY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

- A. By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- B. It is agreed that the terms and commitments contained in this agreement shall not be constituted 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 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in this agreement shall be deemed null and void.
- C. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- D. No member, officer, or employee of the CITY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.
- F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
- G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.
- H. Exhibits A, E, H, M, and N are hereby attached to and made a part of this Agreement.

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

ATTEST:

	City of Opelika, Alabama
By: <u></u>	By: <u></u>
City Clerk (Signature)	As Mayor (Signature)
<u>R. G. Shuman</u>	<u>Gary Fuller</u>
Type Name of Clerk	Type Name of Mayor
(AFFIX SEAL)	

This agreement has been legally reviewed and approved as to form and content.

By: _____
William F. Patty,
Chief Counsel

RECOMMENDED FOR APPROVAL:

Steven C. Graben, P.E.
Southeast Region Engineer

D.E. (Ed) Phillips, P.E.
State Local Transportation Engineer

Don T. Arkle, P. E.
Chief Engineer

STATE OF ALABAMA, ACTING BY AND THROUGH
THE ALABAMA DEPARTMENT OF TRANSPORTATION

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND
SIGNED BY THE GOVERNOR ON THIS _____ DAY OF _____, 20_____.

KAY IVEY
GOVERNOR, STATE OF ALABAMA

STD CONTRACT EXHIBITS

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EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

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EXHIBIT E**TERMINATION OR ABANDONMENT**

- a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.
- b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CITY upon an equitable basis. The value of the work performed by the CITY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:
 - 1. The ratio of the amount of work performed by the CITY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.
 - 2. The amount of the expense to which the CITY is put in performing the work to be terminated in proportion to the amount of expense to which the CITY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CITY prior to the termination, no consideration will be given to profit, which the CITY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CITY, the value of the work performed by the CITY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

- a. This contract shall be binding upon the successors and assigns of the respective parties hereto.
- b. Should the AGREEMENT be terminated due to default by CITY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

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EXHIBIT H

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EQUAL RIGHTS PROVISIONS

During the performance of this contract, the CITY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

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EXHIBIT H

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- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CITY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. **Solicitations**

In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the CITY of the CITY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. **Information and Reports**

The CITY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

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records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the CITY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the CITY under contract until the CITY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The CITY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The CITY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CITY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the CITY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the CITY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

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The CITY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not 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. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.
3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CITY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The CITY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The CITY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

- a. The CITY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

STD CONTRACT EXHIBITS**REV. 9/19/16****EXHIBIT H****Page 5**

- b. The CITY, in accordance with the status of CITY as an independent contractor, covenants and agrees that the conduct of CITY will be consistent with such status, that CITY will neither hold CITY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CITY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of CITY.

CITYS' CERTIFICATIONS

The CITY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CITY. The CITY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CITY at the time of execution of the AGREEMENT. The CITY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CITY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CITY agrees that a meal allowance shall be limited to CITY employees while in travel status only and only when used in lieu of a per diem rate.

The CITY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CITY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

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EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal 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.
- b. 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 Federal 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, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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 a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

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EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted 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 of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CITY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CITY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CITY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION**

**SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL
ACCESS FUNDED COUNTY AND CITY PROJECTS**

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an inplace annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

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Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL:


BUREAU CHIEF/REGION ENGINEER

APPROVAL:


CHIEF ENGINEER

APPROVAL:


TRANSPORTATION DIRECTOR

NOVEMBER 1, 2017

DATE

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RESOLUTION NO. 382-19

License Agreement, Right of Way Encroachment, with One Voice Coalition**RESOLUTION NO. _____**

**RESOLUTION APPROVING RIGHT-OF-WAY ENCROACHMENT
LICENSE AGREEMENT WITH ONE VOICE SHELTER COALITION**

WHEREAS, ONE VOICE SHELTER COALITION, an Alabama nonprofit corporation (hereinafter referred to as “Licensee”) is the owner of a parcel of land containing 0.52 acres, located at 801 Morris Avenue, which fronts on the following streets: Morris Avenue and Rocky Brook Road; and

WHEREAS, Licensee has requested permission of the City to construct, use and maintain five parking spaces which protrude into the rights-of-way of public streets; and

WHEREAS, the parking spaces do not in any manner detract from the effectiveness of official traffic control devices or constitute a traffic hazard; and

WHEREAS, a Right-Of-Way Encroachment License Agreement (hereinafter referred to as the “License Agreement”) has been prepared and submitted to the City Council for approval and the City Council has determined that it is now in the best interest of the City and its citizens to approve said License Agreement; and

WHEREAS, the City Council is willing to grant Licensee a license to construct, use and maintain said parking spaces, subject to the covenants and conditions contained in said License Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika,

Alabama, as follows:

1. That the proposed Right-Of-Way Encroachment License Agreement to be entered into between the City, as Licensor, and ONE VOICE SHELTER COALITION, as Licensee, a copy of which is attached hereto as Exhibit "A", is hereby approved, authorized, ratified and confirmed.

2. That the Mayor is hereby authorized and directed to execute and deliver said License Agreement on behalf of the City, and the City Clerk is hereby authorized to attest the same.

3. That this Resolution shall take effect upon its passage and adoption by the City Council.

ADOPTED AND APPROVED this the _____ day of _____, 2019.

 PRESIDENT OF THE CITY COUNCIL OF THE
 CITY OF OPELIKA, ALABAMA

ATTEST:

CITY CLERK

**STATE OF ALABAMA
COUNTY OF LEE**

RIGHT-OF-WAY ENCROACHMENT LICENSE AGREEMENT

THIS RIGHT-OF-WAY ENCROACHMENT LICENSE AGREEMENT (hereinafter the “Agreement”) is made and entered into at Opelika, Alabama this the ____ day of December, 2019, by and between **THE CITY OF OPELIKA, ALABAMA**, a municipal corporation (hereinafter the “City”) and **ONE VOICE SHELTER COALITION**, an Alabama nonprofit corporation (hereinafter the “Licensee”).

RECITALS:

WHEREAS, Licensee is the record title holder and responsible for the maintenance of a parcel of land containing 0.52 acres, located at 801 Morris Avenue, which fronts along the following streets: Morris Avenue and Rocky Brook Road; and

WHEREAS, the City is the owner of the rights-of-way adjacent to the area identified as the Licensee’s property; and

WHEREAS, at the March 26, 2019 meeting of the Opelika Planning Commission (the “Planning Commission”), the Planning Commission approved a conditional use application submitted by Licensee for a transitional housing facility for women on the Licensee’s property located at the intersection of Morris Avenue and Rocky Brook Road; and

WHEREAS, the transitional facility will have fifteen (15) rooms available for women who may be homeless or experiencing financial insecurity; and

WHEREAS, on November 19, 2019, the Planning Commission approved the Licensee’s amended conditional use application to allow five (5) parking spaces on the public rights-of-way; and

WHEREAS, Licensee desires to utilize a portion of the City rights-of-way for the construction, use and maintenance of five (5) parking spaces in certain sections of the City rights-of-way. The portion of the City rights-of-way to be used by Licensee is depicted on Exhibit “A”, which is attached hereto and incorporated into this Agreement by this reference (hereinafter the “Encroachment Areas”); and

WHEREAS, the parking spaces protruding into the public rights-of-way will not in any manner detract from the effectiveness of official traffic control devices or constitute a traffic hazard; and

WHEREAS, the City has agreed to grant to Licensee a temporary and non-exclusive license and privilege to use the Encroachment Areas described above for the use, construction and maintenance of the five protruding parking spaces, all in accordance with and subject to the terms, conditions and limitations of this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the parties agrees as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Agreement in their entirety.
2. **Grant of License.** The City hereby grants to Licensee a temporary and non-exclusive license, privilege and permission to use the Encroachment Areas described above for the construction, use and maintenance of the five (5) encroaching parking spaces (hereinafter the “License”), subject, however, to the terms, conditions and limitations of this Agreement. The License herein granted shall be subject to all existing utility easements, if any, located within the City rights-of-way, or any other easements, conditions, covenants or restrictions of record. The

Licensee agrees that it will not expand or enlarge the proposed parking spaces without the written consent of the City.

3. **Term.** This Agreement and the License granted to Licensee hereunder shall commence as of the date of this Agreement and shall continue until terminated in accordance with the terms of this Agreement.

4. **Consideration.** The consideration to be paid by Licensee to the City for the privilege granted by this Agreement shall be One Dollar (\$1.00), the receipt of which is hereby acknowledged by the City.

5. **No Interest in Land.** The Licensee hereby acknowledges title of the City to the public rights-of-way described above and agrees never to assail, resist or deny such title. Licensee understands, acknowledges and agrees that this Agreement does not create an interest or estate in Licensee's favor in the City rights-of-way. The City retains legal possession of the full boundaries of its rights-of-way, and this Agreement merely grants to Licensee a privilege and license to use the Encroachment Areas described above throughout the term of this Agreement.

6. **No Vested Rights.** Notwithstanding any expenditure of money, time and/or labor by Licensee on or within the Encroachment Areas, this Agreement shall in no event be construed to create an assignment coupled with an interest or any vested rights in favor of Licensee. Licensee shall expend any time, money or labor on or in the Encroachment Areas at Licensee's own risk and peril.

7. **Maintenance.** As an important condition of the City's agreeing to this License, Licensee agrees that the parking spaces described herein shall be maintained at all times in a safe, neat, sightly, and good physical condition in accordance with all requirements of the City's

ordinances and building codes. During the term of this Agreement, Licensee shall, at Licensee's sole cost and expense, maintain the Encroachment Areas and the parking spaces thereon in good condition and in compliance with any applicable requirements of law. The City shall be the sole judge of the quality of the maintenance and, upon written notice of the City stating in general terms how and in what manner maintenance is required, Licensee shall be required to perform such maintenance. If Licensee shall fail to do so, then the City shall have the right to perform such maintenance, the full and complete cost of which shall be borne by Licensee. Licensee covenants and agrees to reimburse the City its full cost and expense for such maintenance.

8. **Compliance With Law.** Licensee shall adhere to and comply with all ordinances, laws, rules and regulations that may pertain to or apply to the Encroachment Areas and the Licensee's use thereof. Licensee agrees and warrants that it shall procure any licenses, permits or permission as required by law, if any, to conduct or engage in the use of the Encroachment Areas described herein. Licensee shall perform under this Agreement in accordance with all applicable legal requirements.

9. **Indemnification.** To the fullest extent permitted by law, Licensee agrees to indemnify, defend and hold harmless the CITY, its officers, agents, servants, employees, boards and commissions from and against any and all claims, losses, damage or liability (including reasonable attorney's fees) whatsoever arising out of the use of the Encroachment Areas and the maintenance of the five parking spaces, including, but not limited to all claims, demands, damages and liabilities arising directly or indirectly from personal injury, including death and property damages caused by the use and maintenance of said parking spaces. In the event of any action against the City, its officers, agents, servants, employees, boards or commissions covered by the foregoing duty to indemnify, defend and hold harmless, such actions shall be defended by

legal counsel of the City's choosing. The provisions of this paragraph shall survive any termination and/or expiration of this Agreement.

10. **Termination.** This Agreement and the License herein granted to Licensee may be terminated by either party for any reason or no reason upon giving ninety (90) days written notice. In addition, this Agreement may be terminated by the City upon five (5) day written notice to Licensee of a breach of any term or condition of this Agreement.

11. **Removal of Encroachments upon Termination.** At such time as this Agreement and License herein granted to Licensee is terminated, Licensee shall, at the option of the City, remove, at the Licensee's sole cost and expense, any and all encroachments or improvements on or maintained by Licensee in the City's rights-of-way.

12. **Breach and Limitation of Damages.** If either party violates or breaches any term of this Agreement, such violation or breach shall be deemed to constitute a default and the other party shall have the right to seek such administrative, contractual or legal remedies as may be suitable for such violation or breach; provided, however, that in no event shall the City be liable to Licensee for monetary damages of any kind relating to or arising from any breach of this Agreement, and that no action of any kind shall be commenced by Licensee against the City for monetary damages. In the event any legal action is brought by the City for the enforcement of any obligations of Licensee relating to or arising from this Agreement and the City is the prevailing party in such action, the City shall be entitled to recover from Licensee reasonable attorney's fees.

13. **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:

To the City:
 Mayor
 City of Opelika
 P.O. Box 390
 Opelika, AL 36803

To the Licensee:
 Jean Causey
 433 Lee Road 433
 Auburn, AL 36830

Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been given on the third business day following the mailing. Notices personally delivered shall be deemed to have been given upon delivery.

14. **No Joint Venture or Partnership.** This Agreement shall not be construed so as to create a joint venture, partnership, employment or other agency relationship between the parties hereto.

15. **No Personal Liability.** No official, officer, agent or employee of the City shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of their execution, approval or attempted execution of this Agreement.

16. **Severability.** The terms of this Agreement shall be severable. In the event any of the terms or provisions of this Agreement are deemed to be void or otherwise unenforceable, for any reason, the remainder of this Agreement shall remain in full force and effect.

17. **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of Alabama. The venue for the resolution of any disputes or the enforcement of any rights arising out of or in connection with this License Agreement shall be in the Circuit Court of Lee County, Alabama.

18. **References in Agreement.** All references in this Agreement to the singular shall include the plural where applicable, and all references to the masculine shall include the feminine and vice versa. If either reference shall be declared invalid, such decision shall not affect the validity of any remaining portion that shall remain in full force and effect.

19. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

21. **Binding Agreement on the Parties.** This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns.

22. **Assignment.** This Agreement and the obligations herein may not be assigned without the express written consent of each of the parties hereto.

23. **Entire Agreement.** This Agreement and its exhibits constitute the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.

24. **Modification.** This Agreement may be changed, modified or amended only by a duly authorized written instrument executed by the parties hereto. Each party agrees that no representations or warranties shall be binding upon the other party unless expressed in writing herein or in a duly authorized and executed amendment hereof.

IN WITNESS WHEREOF, the parties have hereunto have caused this Agreement to be executed as of this the ____ day of _____, 2019.

THE CITY OF OPELIKA, ALABAMA

By: _____
GARY FULLER, ITS MAYOR

ATTEST:

CITY CLERK

STATE OF ALABAMA
 COUNTY OF LEE

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that GARY FULLER and ROBERT G. SHUMAN, whose names as Mayor and City Clerk respectively, of the City of Opelika, Alabama, are signed to the foregoing instrument, and who are known to me, acknowledged before me this day, that, being informed of the contents of said instrument they, as such officers and with full authority, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office this the ____ day of _____, 2019.

 NOTARY PUBLIC
 MY COMMISSION EXPIRES:_____

ONE VOICE SHELTER COALITION

BY:_____
JEAN CAUSEY,
ITS PRESIDENT

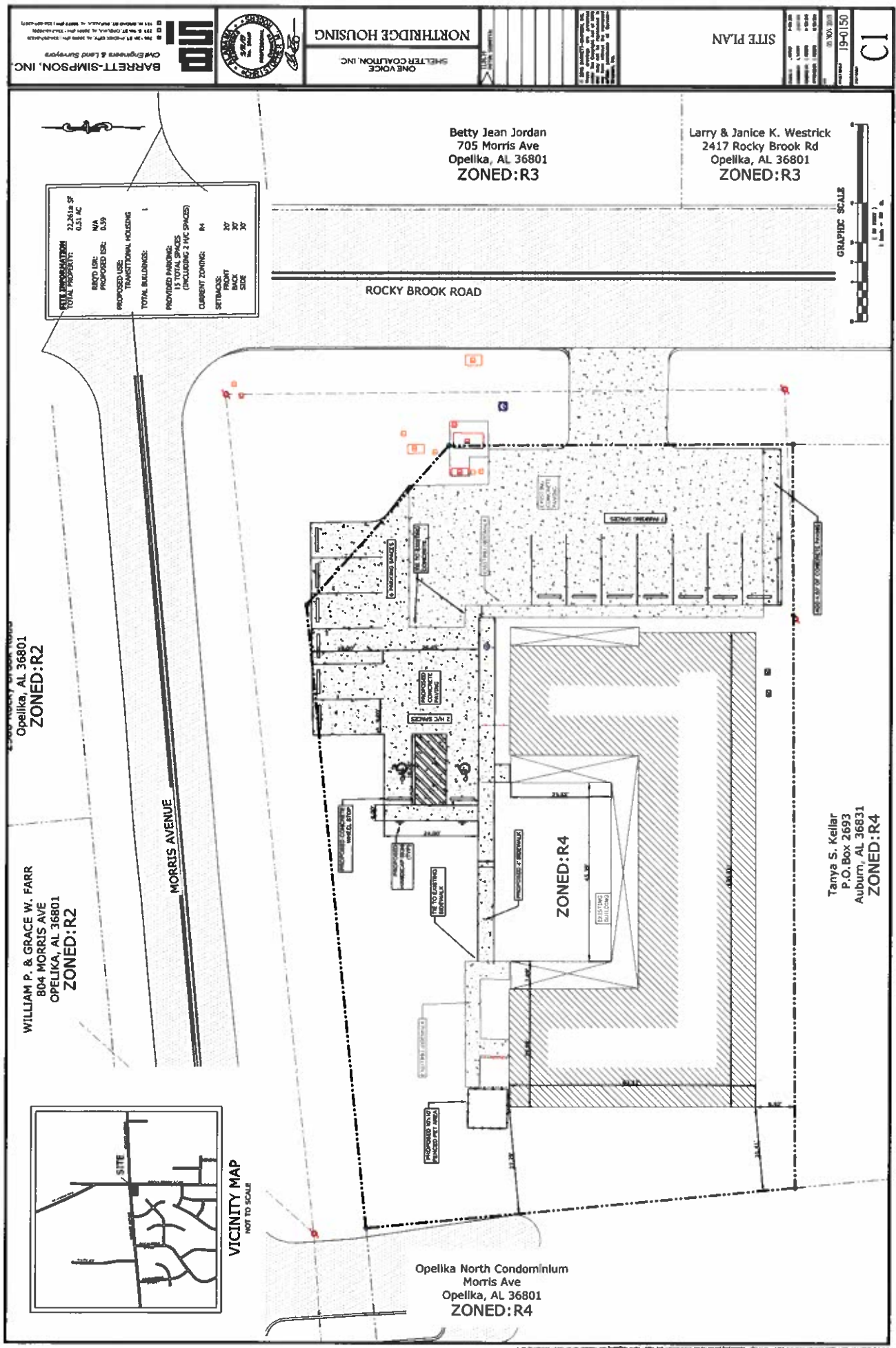
STATE OF ALABAMA
 COUNTY OF LEE

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that JEAN CAUSEY, whose name as President of ONE VOICE SHELTER COALITION, is signed to the foregoing instrument, and who is known to me, acknowledged before me this day, that, being informed of the contents of said instrument he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office this the ____ day of _____, 2019.

 NOTARY PUBLIC
 MY COMMISSION EXPIRES:_____

EXHIBIT "A"



RESOLUTION NO. 383-19

Mando Tax Abatement

RESOLUTION NO. _____

**RESOLUTION APPROVING CERTAIN TAX ABATEMENTS AND
EXEMPTIONS FOR MANDO AMERICA CORPORATION**

WHEREAS, Mando America Corporation (the “Company”) operates an industrial facility (“the Facility”) in the Northeast Industrial Park within the corporate limits of the City of Opelika (the “City”); and

WHEREAS, the Company has announced plans for a major addition (the “Project”) to its existing Facility located at 4201 Northpark Drive, Opelika, Alabama, within the jurisdiction of the City; and

WHEREAS, the Project, involving a building expansion, the purchase and acquisition of new manufacturing machinery and the acquisition of other personal property, will involve a capital investment of approximately nine million eight hundred twenty thousand and five hundred dollars (\$9,820,500.00); and

WHEREAS, the Project is estimated to be placed in service by December 31, 2020; and

WHEREAS, the Project will be operated by the Company as an “industrial or research enterprise” as defined under Alabama Code §40-9B-3(a)(10); and

WHEREAS, the Project is expected to result in the creation of approximately three (3) new jobs; and

WHEREAS, the Company's NAICS Code 336330 meets the qualifications of an industrial or research enterprise in accordance with §40-9B-3(6), *Code of Alabama*, as amended; and

WHEREAS, pursuant to the Tax Incentive Reform Act of 1992 (Section 40-9B-1, et seq, *Code of Alabama*, 1975) (the "Act"), the Company has requested from the City the abatement of (a) all state and local non-education ad valorem taxes (property taxes); and (b) all construction related transaction taxes (sales and use taxes), except those construction related transaction taxes levied for educational purposes or for capital improvements for education; and

WHEREAS, the Company has requested that the abatement of state and local non-educational property taxes be extended for a period of ten (10) years in accordance with the Act; and

WHEREAS, pursuant to Article IV of Chapter 51 of Title 11, *Code of Alabama*, the Company has requested from the City a complete exemption of non-educational City ad valorem taxes for the new machinery, equipment and other new personal property to be acquired and installed in the Facility (the "Project"); and

WHEREAS, the City has considered the request of the Company and the completed application (copy attached) filed by the Company in connection with its request; and

WHEREAS, the City has found the information contained in the Company's application to be sufficient to permit the City to make a reasonable cost/benefit analysis of the proposed Project and to determine the economic benefits to the community; and

WHEREAS, the Project will involve a capital investment of approximately nine million eight hundred twenty thousand five hundred dollars (\$9,820,500.00); and

WHEREAS, the City Council has been furnished a copy of a Tax Abatement Agreement between the City and the Company and the City Council has determined that the general terms of such Agreement are acceptable to the City in principle; and

WHEREAS, the Company is duly qualified to do business in the State of Alabama and has power to enter into and to perform and observe the agreements and covenants on its part contained in the Tax Abatement Agreement; and

WHEREAS, the City represents and warrants to the Company that it has the power under the Constitution and the laws of the State of Alabama (including particularly the provisions of the Act) to carry out the provisions of the Tax Abatement Agreement; and

WHEREAS, the City wishes to secure the numerous and significant benefits to the City, its business community and residents that will likely result from the expanded use of the Facility due to the building expansion and the installation of said new manufacturing machinery and other new personal property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama as follows:

1. Approval is hereby given to the application of the Company and abatement is hereby authorized of (1) all state and local non-educational property taxes for a period of ten (10) years; and (2) all construction related transactions (sales and use) taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, as the same may apply to the fullest extent permitted by the Act. The period of abatement for the non-educational property taxes shall extend for a period of ten (10) years measured as provided in Section 40-9B-3(a)12 of the Act.

2. In addition, pursuant to Title 11, Article 4 of Chapter 51, *Code of Alabama*, the City agrees to grant to the Company a complete exemption for non-educational City ad valorem taxes for a period of fifteen (15) years.

3. The abatements and exemptions granted herein do not include any ad valorem taxes earmarked for city and county schools and school district purposes. The tax abatements and exemptions for ad valorem taxes under paragraphs 1 and 2 shall not exceed the maximum abatement allowed by state law.

4. The Mayor and the City Clerk are hereby authorized and directed to execute the Tax Abatement Agreement with the Company and such other ancillary documents and agreements as may be necessary to provide the abatements and exemptions granted in paragraphs 1 and 2 above.

5. A certified copy of this resolution, with Application and Abatement Agreement, shall be forwarded to the Company to deliver to the appropriate taxing authorities and to the Alabama Department of Revenue in accordance with the Act.

6. The officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or caused to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances, or other instruments or other communications under the seal of the City, or otherwise, as they or any of them deem necessary

or advisable or appropriate in order to carry into effect the intent of the provisions of this resolution.

7. This resolution shall take effect upon passage and adoption by the City Council.

ADOPTED AND APPROVED this the _____ day of _____, 2019.

PRESIDENT OF THE CITY COUNCIL OF THE
CITY OF OPELIKA, ALABAMA

ATTEST:

CITY CLERK

RESOLUTION NO. 384-19

Contract for Career Firefighter Cancer Supplemental Insurance Coverage with Chubb Insurance Company

RESOLUTION NO. _____

**RESOLUTION APPROVING CONTRACT FOR CAREER FIREFIGHTER CANCER
SUPPLEMENTAL INSURANCE COVERAGE WITH CHUBB INSURANCE
COMPANY**

WHEREAS, Act No. 2019-361, effective January 1, 2020, requires local governments to provide career firefighters with statutory cancer supplemental insurance (critical illness and long-term disability); and

WHEREAS, CHUBB Insurance Company, acting through Cobbs Allen as broker, offers standard statutory cancer coverage for career firefighters; and

WHEREAS, the annual premium for standard statutory coverage is \$186.48 per covered employee; and

WHEREAS, a proposal for statutory cancer coverage, a copy of which is attached hereto and incorporated herein by reference as Exhibit “A”, has been prepared by CHUBB Insurance Company and submitted to the City Council for approval; and

WHEREAS, the City of Opelika (the “City”) desires to contract with CHUBB Insurance Company for standard statutory cancer coverage for career firefighters; and

WHEREAS, the total annual premium for said supplemental insurance, estimated to be approximately \$13,000, is not budgeted and will be paid from the Unassigned Fund Balance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika,

Alabama, as follows:

1. That the Mayor is hereby authorized to apply to CHUBB Insurance Company, through Cobbs Allen as broker, for standard statutory cancer coverage for all career firefighters.

2. That the Mayor is hereby authorized to act on behalf of the City and to enter into a contract with CHUBB Insurance Company for standard statutory cancer supplemental coverage for career firefighters.

3. That the total annual premium to be paid by the City, estimated to be approximately \$13,000, is not budgeted and shall be paid from the Unassigned Fund Balance. The Controller is hereby authorized and directed to make the appropriate budget adjustments necessary to carry out the transactions contemplated by this Resolution.

4. That the officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal of the City or otherwise, as they or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution.

5. That the Purchasing/Revenue Manager is hereby authorized and directed to issue appropriate purchase orders to CHUBB Insurance Company (Cobb Allen) for the premiums outlined above.

6. That this Resolution shall take effect upon its passage and adoption by the City

Council.

ADOPTED AND APPROVED this the _____ day of _____, 2019.

PRESIDENT OF THE CITY COUNCIL
OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK

Alabama Firefighter Cancer Solution

CHUBB®

Alabama Firefighter
Cancer Solution Designed for:
City of Opelika

Accident & Health

Schedule of Benefits

Chubb Accident & Health is pleased to offer a proposal for cancer insurance underwritten by ACE American Insurance Company. This proposal is valid until the earlier of the proposed effective date or 90 days after the date it is issued. If by that date you have not accepted the terms we have offered in this proposal, it will no longer be valid. If you accept the terms of this proposal, coverage is subject to Chubb's determination that trade or economic sanctions or regulations do not prohibit us from binding coverage.

The U.S. Foreign Account Tax Compliance Act, commonly known as "FATCA", became the law in the U.S. in March of 2010 and becomes effective July 1, 2014. Pursuant to FATCA, brokers, producers, agents and/or clients may need to obtain withholding certificates from insurance companies. For information on how to obtain the applicable withholding certificate from Chubb U.S. insurance companies, please go to <https://www2.chubb.com/us-en/tax-information-reporting-withholding.aspx>.

Date Issued November 22, 2019
Proposed Effective Date January 1, 2020 to January 1, 2021

Eligibility

- Class 1: All active Career Firefighters who have served for 12 months as of the policy effective date
 Class 2: All Certified Volunteer Firefighters who have served for 12 months as of the policy effective date
 Class 3: All Non-Certified Volunteer Firefighters who have served for 12 months as of the policy effective date

A person may be insured only under one Class of Eligible Persons even though he or she may be eligible under more than one class.

Exposure

Number of Career Firefighters: 65

Standard Statutory Cancer Coverage: ☒ or Enhanced Cancer Coverage: ☒
 Death Benefit (optional only with the selection of one of the coverages listed above): ☐

Number of Certified Volunteer Firefighters: 0

Standard Statutory Cancer Coverage: ☐ or Enhanced Cancer Coverage: ☐
 Death Benefit (optional only with the selection of one of the coverages listed above): ☐

Number of Non-Certified Volunteer Firefighters: 0

Standard Statutory Cancer Coverage: ☐ or Enhanced Cancer Coverage: ☐
 Death Benefit (optional only with the selection of one of the coverages listed above): ☐

Annual Premium

\$11,960 @ 10% commission - Standard Cancer Coverage (Lump Sum Cancer Benefits and Disability Benefit)

Optional Standard Covered Cancer Death Benefit

\$3,770 @ 10% commission

\$12,675 @ 10% commission - Enhanced Cancer Coverage (Lump Sum Cancer Benefits and Disability Benefit)

Optional Enhanced Covered Cancer Death Benefit

\$4,160 @ 10% commission

Rate Guarantee 1 year

Statutory Plan Benefits

Class 1

Lump Sum Cancer Benefits

Early Stage Cancer Benefit:	\$6,250
Advanced Cancer Benefit:	\$25,000
Lifetime Maximum for Lump Sum Cancer Benefits:	\$50,000

Disability Benefit

Monthly Benefit Amount:	\$3,000, minus Other Income Benefits
Benefit Waiting Period:	6 months from the date of the Total Disability
Maximum Benefit Period:	36 months

Class 2

Lump Sum Cancer Benefits

Early Stage Cancer Benefit:	\$6,250
Advanced Cancer Benefit:	\$25,000
Lifetime Maximum for Lump Sum Cancer Benefits:	\$50,000

Disability Benefit

Monthly Benefit Amount:	\$3,000, minus Other Income Benefits
Benefit Waiting Period:	6 months from the date of the Total Disability
Maximum Benefit Period:	36 months

Class 3

Lump Sum Cancer Benefits

Early Stage Cancer Benefit:	\$6,250
Advanced Cancer Benefit:	\$25,000
Lifetime Maximum for Lump Sum Cancer Benefits:	\$50,000

Disability Benefit

Monthly Benefit Amount:	\$1,500, minus Other Income Benefits
Benefit Waiting Period:	6 months from the date of the Total Disability
Maximum Benefit Period:	36 months

Optional Plan Benefits – available to any class of firefighter

Cancer Death Benefit

Principal Sum:	\$75,000
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Enhanced Covered Cancer Benefit

Lump Sum Cancer Benefits and Disability Benefits are extended to include any type of cancer that was Diagnosed after the Policy Effective Date.

This information is a brief description of the important features of the proposed insurance plan underwritten by ACE American Insurance Company. It is not a contract of insurance. Coverage may not be available in all states or certain terms may be different if required by state law. Chubb NA is the U.S.-based operating division of the Chubb Group of Companies, headed by Chubb Ltd. (NYSE:CB) Insurance products and services are provided by Chubb Insurance underwriting companies and not by the parent company itself.

IMPORTANT NOTICE

THE FORM AND RATE FILING SUPPORTING THIS OFFERING IS PENDING APPROVAL WITH THE ALABAMA OFFICE OF INSURANCE REGULATION. WE MAY NOT ISSUE THIS FORM UNTIL WE RECEIVE THAT APPROVAL. HOWEVER, IN NO EVENT WILL THE TERMS OF COVERAGE BE MORE RESTRICTIVE NOR WILL THE PREMIUMS PRESENTED BE MORE THAN THOSE EXPRESSED IN THIS PROPOSAL.

Terms & Conditions

Who Is Eligible For Insurance?

An individual in one of the eligible classes shown in the *Schedule of Benefits* is eligible for coverage.

When Does Coverage Go Into Effect?

Insurance for an eligible individual is effective on the latest of the Policy Effective Date or the date he or she becomes eligible.

Coverage for an eligible individual who is not in Active Service on the date insurance would otherwise be effective will not go into effect until he or she returns to Active service.

When Does Coverage Terminate?

An insured individual's coverage will end on the earliest of the date the policy terminates; the period ends for which premium is paid; or the date he or she is no longer eligible.

Benefits & Features

Lump Sum Cancer Benefits

If an Insured is Diagnosed with Early Stage Cancer or Advanced Cancer, We will pay the applicable lump sum amount shown in the Schedule of Benefits for that Covered Cancer, subject to the following conditions:

1. the Insured must satisfy the Eligibility Waiting Period shown in the Schedule of Benefits.

Lump Sum Cancer Benefits are subject to the Lifetime Maximum shown in the Schedule of Benefits. Any Insured who is simultaneously a member of more than one fire department at the time of Diagnosis may only receive Cancer Benefits from one fire department.

Disability Benefits

We will pay the Disability Benefit shown in the Schedule of Benefits if the Insured is Totally Disabled as a direct result of, and from no other cause but, a Covered Cancer that is Diagnosed while covered under this Policy. Disability Benefits will begin when:

1. the applicable Benefit Waiting Period shown in the Schedule of Benefits for this benefit is satisfied;
2. the Insured is under the Appropriate Care of a Doctor; and
3. the Insured provides satisfactory proof of Total Disability to Us.

We will require continued proof of the Insured's Total Disability from time to time at least once a quarter at the Insured's expense, in order for benefits to continue.

Benefit Payments will end on the first of the following dates:

1. the date the Insured departs from employment as a firefighter or retires; or
2. the date the Insured dies; or
3. the date the Insured is no longer Totally Disabled; or
4. the date the Maximum Benefit Period for this benefit ends; or
5. the date the Insured fails to submit satisfactory proof of continuing Total Disability.

Appropriate Care means the determination of an accurate and medically supported Diagnosis of the Insured's Total Disability, or ongoing medical treatment and care of the Insured's Total Disability by a Physician that conforms to generally-accepted medical standards, including frequency of treatment and care.

Benefit Waiting Period means the period of time the Insured must be continuously Totally Disabled before Disability Benefits may be payable. The Benefit Waiting Period is shown in the Schedule of Benefits.

Other Income Benefits means any other disability benefits actually paid to the Insured, from any source other than insurance separately purchased by the Insured. Other Income Benefits include benefits paid under:

1. any Workers' Compensation, occupational disease, unemployment compensation law or similar state or federal law, including all permanent as well as temporary disability benefits. This includes any damages, compromises or settlement

paid in place of such benefits, whether or not liability is admitted. If paid as a lump sum, We will prorate these benefits over the period for which the sum is given. If no time is stated, the lump sum will be prorated over a five-year period. If no specific allocation of a lump sum is made, then the total sum will be an Other Income Benefit.

2. any Social Security or retirement benefits the Insured receives or any third party receives (or is assumed to receive) on the Insured's behalf or for the Insured's dependents; or, if applicable, that the Insured's dependents receive (or are assumed to receive) because of the Insured's entitlement to such benefits.
3. any proceeds payable under any group insurance or similar plan, provided the insurance was not separately purchased by the Insured. If there is other insurance that applies to the same claim for disability, and contains the same or similar provision for reduction because of other insurance, We will pay our pro rata share of the total claim.

Pro rata share means the proportion of the total benefit that the amount payable under one policy, without other insurance, bears to the total benefits under all such policies.

Total Disability or Totally Disabled means that the Insured, as a direct result of a Covered Cancer, is unable to perform the substantial and material duties of his or her occupation as a firefighter for a period of at least six (6) months. After the initial Benefit Waiting Period, total disability means the Insured's inability to perform the duties of his or her occupation as a firefighter.

Successive Periods of Disability – Once the Insured is Totally Disabled under the Policy, separate periods of Total Disability resulting from the same or related causes are a continuous period of Total Disability unless the Insured returns to work as a firefighter for at least 6 months between periods of Total Disability. Only one Benefit Waiting Period and Maximum Benefit Period apply to any one period of continuous Total Disability.

A period of Total Disability is not continuous if separate periods of Total Disability result from unrelated causes, or the Insured's later Total Disability occurs after the Insured's coverage under the Policy ends. This provision will not apply if the Insured is eligible for coverage under a plan that replaces the Policy.

Reduction in Disability Benefits – The amount of the Insured's Disability Benefits will be reduced by the amount of any Other Income Benefits paid on account of the Insured's Total Disability.

Not Covered – No payment will be made for any Total Disability for which benefits are payable under any Workers' Compensation, occupational disease, unemployment compensation law or similar state or federal law, including all permanent as well as temporary disability benefits. This includes any damages, compromises or settlements paid in place of such benefits, whether or not liability is admitted.

Continuation of Insurance Benefits

If after at least one year as a Career Firefighter, Certified Volunteer or Non-Certified Volunteer for the Policyholder, the Insured departs from employment, ceases to be a volunteer, or retires, and if an Insured's insurance ends because his or her employment ends, he or she ceases to be a volunteer, or he or she retires, the Insured may apply to continue this insurance.

The Insured must apply for continuation within 31 days after his or her coverage under the Policy ends. The Insured is responsible for all payment of premiums in order to continue coverage. Premiums will be based on the table of rates in force at that time for such policies based on the Insured's age and class of risk and will not exceed the current amounts charged to active firefighters. The Insured will not be required to provide evidence of insurability.

If the Insured is Diagnosed with a Covered Cancer within the initial 31 days after his or her coverage under the Policy ends, We will pay benefits under this Policy. After the initial 31 day period, no additional benefits are payable under this Policy.

Cancer Death Benefit (optional)

If a firefighter dies as the direct result of a Covered Cancer or treatment of a Covered Cancer while covered under this Policy, We will pay the Principal Sum shown in the Schedule of Benefits. In order for benefits to be payable, the Diagnosis of Covered Cancer must occur while covered under this Policy.

Enhanced Covered Cancer Benefit (optional)

Lump Sum Cancer Benefits and Disability Benefits are extended to include any type of cancer that is Diagnosed after the Policy Effective Date.

Definitions

Please note, certain words used in this document have specific meanings. These terms will be capitalized throughout the document. The definition of any word, if not defined in the text where it is used, may be found either in this Definitions section or in the Schedule of Benefits.

Active Service

“Active Service” means a Insured is either 1) if an employee, actively at work performing all regular duties on a full-time or part-time basis either at his or her employer’s place of business or someplace the employer requires him or her to be; 2) employed, but on a scheduled holiday, vacation day, or period of approved paid leave of absence; or 3) if a volunteer, able to engage in substantially all of the usual activities of a person in good health of like age and sex and not confined in a Hospital or rehabilitation or rest facility.

Advanced Cancer

“Advanced Cancer” means a Diagnosis of Covered Cancer for which there are one or more malignant tumors characterized by the uncontrollable and abnormal growth and spread of malignant cells with invasion of normal tissue, and any one of the following apply:

1. Surgery, radiotherapy, or chemotherapy is Medically Necessary; or
2. There is Metastasis; or
3. The Insured has terminal cancer, is expected to die within 24 months or less from the date of Diagnosis, and will not benefit from, or has exhausted, curative therapy.

Carcinoma in Situ

“Carcinoma in Situ” means a Covered Cancer in which the tumor or cells still lie within the tissue of origin without having invaded neighboring tissue or regional lymph nodes. This definition does not include non-melanoma skin cancers, pre-malignant lesions (intraepithelial neoplasia, for example), or benign tumors or polyps.

Career Firefighter

“Career Firefighter” means any person employed with the state, a county or municipal government, an airport authority, or a fire district who has obtained certification as a firefighter through and as defined by the Alabama Firefighters’ Personnel Standards and Education Commission, or a firefighter employed by the Alabama Forestry Commission who has been certified by the State Forester as having met the wild land firefighter training standard of the National Wildfire Coordinating Group, and is offered typical employment benefits, including health insurance coverage.

Certified Volunteer Firefighter

“Certified Volunteer Firefighter” means any person who is an active member of a volunteer or combination career and volunteer fire department, as recognized by the Alabama Forestry Commission, and who has obtained certification as a volunteer firefighter through and as defined by the Alabama Firefighters’ Personnel Standards and Education Commission, who may or may not receive remuneration for firefighting activities, but is not offered typical employment benefits, including health insurance coverage. A Certified Volunteer must have completed a medical physical and physical statement as required for certification by the Alabama Firefighters’ Personnel Standards and Education Commission in order to be eligible for coverage under this Policy.

Covered Cancer

“Covered Cancer” means a Cancer that was Diagnosed after the Policy Effective Date. Covered Cancer includes only the following types of cancer: bladder, blood, brain, breast, cervical, esophageal, intestinal, kidney, lymphatic, lung, prostate, rectum, respiratory tract, skin, testicular, and thyroid cancer; leukemia; multiple myeloma; Hodgkin’s lymphoma or non-Hodgkin’s lymphoma. If the required premium is paid, Covered Cancer includes any Cancer that was Diagnosed after the Policy Effective Date.

A Doctor certified as an Oncologist must confirm the Diagnosis of Cancer in writing.

Covered Loss(es)

“Covered Loss” or “Covered Losses” means a condition or disability covered under the Policy.

Diagnosed, Diagnosis

“Diagnosed, Diagnosis” means the definitive establishment of a Cancer through the use of clinical or laboratory findings. The Diagnosis must be made by a Physician who is a board certified specialist where required in the Policy. Any type of medically appropriate Diagnosis will be accepted. For a pathological Diagnosis, the date of Diagnosis for Cancer is the date the tissue specimen, blood samples or titer(s) are taken upon which the Diagnosis of Cancer is based.

Doctor

“Doctor” means a licensed health care provider acting within the scope of his or her license and rendering care or treatment to an Insured that is appropriate for the conditions and locality. It will not include an Insured or a member of the Insured’s Immediate Family or household.

Early Stage Cancer

“Early Stage Cancer” means a Diagnosis of Covered Cancer for which any one of the following apply:

1. There is Carcinoma in Situ such that surgery, radiotherapy, or chemotherapy has been determined to be Medically Necessary; or
2. There are malignant tumors which are treated by endoscopic procedures alone; or
3. There are malignant melanomas; or
4. There is a tumor of the prostate, provided that it is treated with radical prostatectomy or external beam therapy.

Insured

“Insured” means a person in a Class of Eligible Persons for whom the required premium is paid making insurance in effect for that person.

Lifetime Maximum for Lump Sum Cancer Benefits

“Lifetime Maximum for Lump Sum Cancer Benefits” means the combined maximum amount payable to an Insured during his or her lifetime for Lump Sum Cancer Benefits.

Medically Necessary

“Medically Necessary” means a treatment, service or supply that is: 1) required to treat a Covered Cancer; prescribed or ordered by a Doctor or furnished by a Hospital; 3) performed in the least costly setting required by the Insured’s condition; and 4) consistent with the medical and surgical practices prevailing in the area for treatment of the condition at the time rendered. A service or supply may not be Medically Necessary if a less intensive or more appropriate diagnostic or treatment alternative could have been used. We may consider the cost of the alternative to be the Covered Expense. The fact that a Doctor may prescribe, authorize, or direct a service does not of itself make it Medically Necessary or covered by the Policy.

Metastasis

“Metastasis” means a Covered Cancer for which secondary malignant growths have spread to a different part of the body from the tissue in which the Cancer originated. This definition does not include “locally advanced cancer” that has spread to nearby tissues or lymph nodes but not throughout the body.

Non-Certified Volunteer Firefighter

“Non-Certified Volunteer Firefighter” means any person who is an active member of a volunteer or combination career and volunteer fire department, as recognized by the Alabama Forestry Commission, and who has not obtained certification as a volunteer firefighter through and as defined by the Alabama Firefighters’ Personnel Standards and Education Commission, who may or may not receive remuneration for firefighting activities, but is not eligible for typical employment benefits,

including health insurance coverage. A Non-Certified Volunteer must have completed a medical physical and physical statement as required for certification by the Alabama Firefighters' Personnel Standards and Education Commission in order to be eligible for coverage under this Policy.

Pre-existing Condition

"Pre-existing Condition" means any illness, disease or other condition of the Insured, prior to the date the Insured's coverage became effective under this Policy:

1. first manifested itself, worsened, became acute or exhibited symptoms that would have caused an ordinarily prudent person to seek Diagnosis, care or treatment; or
2. required taking prescribed drugs or medicines, unless the condition for which the prescribed drug or medicine is taken remains controlled without any change in the required prescription; or
3. was treated by a Doctor or treatment had been recommended by a Doctor.

We, Our, Us

"We," "Our," "Us" means the insurance company underwriting this insurance or its authorized agent.

Exclusions

We will only pay benefits for a Covered Cancer. We will not pay benefits for:

- any illness, sickness or disease except for a Covered Cancer Diagnosed while coverage under this Policy is in force.
- any other disease or incapacity that has been caused, complicated, worsened or affected by, or as a result of, Covered Cancer.
- a Covered Cancer or treatment of a Covered Cancer that is Diagnosed prior to the Effective Date of an Insured's coverage, or during an Insured's Eligibility Waiting Period.
- any Covered Cancer unless the Insured has satisfied the Eligibility Waiting Period shown in the Schedule of Benefits.
- medical expenses for which the Insured receives benefits under any Worker's Compensation Act, as an alternative to coverage under this Policy.

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit Us from providing insurance, including, but not limited to, the payment of claims.

About Chubb

In January 2016, ACE Limited acquired The Chubb Corporation and adopted the renowned Chubb name globally. Chubb is the world's largest publicly traded property and casualty insurer. With operations in 54 countries, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance and life insurance to a diverse group of clients.

Chubb N.A. Accident & Health, a U.S.-based marketing division of the Chubb Group of Companies, is headquartered in Philadelphia, Pennsylvania. We are committed to a market-driven philosophy—responding to the special needs of our customers with insurance solutions that provide stability in an ever-changing market. Our superior underwriting expertise and solid financial strength provide the competitive advantage we need to distinguish ourselves in that marketplace. We offer innovative solutions by partnering with other Chubb businesses and teaming with specialty producers to provide a full range of global products and services.

We recognize that serious injuries can have a devastating impact on individuals and the families that survive them. That is why Chubb Accident & Health's corporate accident and sickness portfolio includes a breadth of products flexible enough to meet the needs of small, mid-size, and large Fortune 1000 companies with multinational employee populations around the world. These programs are available on an occupational, non-occupational, or 24-hour basis and may be packaged and administered as a single program. They can help to provide the critical financial security and resources necessary to deal with catastrophic loss.

For more information about our products and services, please visit www.chubb.com/accident

Chubb Strength

When you choose Chubb, you're relying on one of the strongest carriers in the market: a specialty Accident & Health carrier with the experience and financial strength to offer rich options, broad coverages and high benefit limits at competitive rates.

CHUBB®

Letter of Intent

It is our intention to accept the proposal of the Cancer Insurance Policy offered by ACE American Insurance Company, a member insurer of the Chubb Group of Insurance Companies.

Signature: _____

Title: _____

Company: _____

Date: _____

Effective Date of Coverage: _____

Firefighters:

Number of Career Firefighters (who have served for 12 months as of the policy effective date):

Standard Statutory Cancer Coverage: ☐ or Enhanced Cancer Coverage: ☐

Death Benefit (optional only with the selection of one of the coverages listed above): ☐

Number of Certified Volunteer Firefighters (who have served for 12 months as of the policy effective date): 0

Standard Statutory Cancer Coverage: ☐ or Enhanced Cancer Coverage: ☐

Death Benefit (optional only with the selection of one of the coverages listed above): ☐

Number of Non-Certified Volunteer Firefighters (who have served for 12 months as of the policy effective date): 0

Standard Statutory Cancer Coverage: ☐ or Enhanced Cancer Coverage: ☐

Death Benefit (optional only with the selection of one of the coverages listed above): ☐

This information is a brief description of the important features of the insurance plan underwritten by ACE American Insurance Company. It is not a contract of insurance and may be subject to change based on the underwriting requirements of the company. Coverage may not be available in all states or certain terms may be different where required by state law.

Chubb is the marketing name used to refer to subsidiaries of Chubb Limited providing insurance and related services. For a list of these subsidiaries, please visit our website at www.chubb.com. Insurance provided by U.S. based Chubb underwriting companies.

RESOLUTION NO. 385-19

Authorize purchase agreement, GO Warrants Series 2019-A and 2019-B.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING
THE EXECUTION OF A WARRANT PURCHASE AGREEMENT
IN CONNECTION WITH THE ISSUANCE OF
GENERAL OBLIGATION WARRANTS, SERIES 2019-A
AND
GENERAL OBLIGATION TAXABLE WARRANTS, SERIES 2019-B
BY THE CITY OF OPELIKA, ALABAMA**

Whereas, the City of Opelika, Alabama (the “City”), acting by and through its governing body, the City Council (the “Council”), has heretofore designated The Frazer Lanier Company, Incorporated (“Frazer Lanier”) as underwriter of the City’s General Obligation Warrants, Series 2019-A and General Obligation Taxable Warrants, Series 2019-B (collectively, the “Series 2019 Warrants”), for the purpose of partially refunding and retiring the City’s General Obligation Warrants, Series 2010-A and General Obligation Warrants, Series 2011, and

Whereas, due to the unpredictable nature of the bond market and the need for the City to access the market without delay, the Council finds it in order to delegate to the Mayor the responsibility and the authority to enter into one or more warrant purchase agreement(s) to lock in the rates and terms of the Series 2019 Warrants;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OPELIKA, ALABAMA, as follows:

1. The issuance of the Series 2019 Warrants is approved and preparation of the documentation and performance of the actions necessary for the consummation of the transactions herein described are authorized.

2. The Mayor is hereby authorized to execute one or more warrant purchase agreement(s) between the City and Frazer Lanier and any other document deemed necessary to facilitate the sale of the Series 2019 Warrants.

APPROVED AND ADOPTED this _____ day of _____, 2019.

CITY OF OPELIKA, ALABAMA

By: Eddie Smith
President City Council
Opelika, Alabama

ATTEST:

R. G. Shuman
City Clerk

RESOLUTION NO. 386-19

Initiate public process, amend zoning ord., PUD at Capps Landing.

RESOLUTION NO. _____

**RESOLUTION TO INITIATE A PUBLIC PROCESS FOR CONSIDERATION OF A
ZONING ORDINANCE AMENDMENT TO PERMIT A PLANNED UNIT
DEVELOPMENT ENTITLED “CAPPS LANDING ENTERTAINMENT DISTRICT
PUD”**

WHEREAS, Broad Metro, LLC (the “applicant”) heretofore submitted an application (the “zoning application”) for a planned unit development entitled “CAPPS LANDING ENTERTAINMENT DISTRICT PUD” (the “Development”); and

WHEREAS, the applicant is requesting the rezoning of 32.45 acres from C-2, GC-P (Office/Retail, Gateway Corridor Primary District) to a planned unit development (PUD); and

WHEREAS, the proposed Development is contiguous to both Gateway Drive and I-85; and

WHEREAS, at its regular meeting on August 17, 2019, the Opelika Planning Commission considered said zoning application; and

WHEREAS, after holding a public hearing, the Planning Commission sent a report to the City Council recommending approval of the zoning application, subject to certain requirements, conditions and modifications as imposed by the Planning Commission; and

WHEREAS, on September 17, 2019, the City Council approved Resolution No. 281-19 denying the zoning application; and

WHEREAS, the City Council has recently received additional information from the

applicant concerning the proposed Development, including the following matters: (1) the truck fueling station area will have only six (6) stall/spaces for truck fueling and ten (10) parking stalls for truck parking; (2) the proposed freestanding sign will conform to maximum area and height requirements; (3) the applicant is willing to partner with the City to make infrastructure improvements to Gateway Drive and other infrastructure to mitigate traffic congestion; and (4) applicant will provide 24-hour security monitoring truck parking ensuring that trucks are parked in the stall/space for a maximum of one (1) hour; and

WHEREAS, Section V of the Zoning Ordinance provides that a change to zoning may be initiated by resolution of the City Council; and

WHEREAS, in consideration of the matters set forth above, the City Council does hereby find and determine that the public necessity, convenience, general welfare and good zoning practice requires public consideration of the advisability of the amendment to the City's Zoning Ordinance to allow the PUD within the specified zoning district; and

WHEREAS, the City Council believes that initiation of a zoning ordinance amendment, for further debate and consideration within a public hearing process is advisable.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama (the "City"), as follows:

1. That the City Council hereby initiates an amendment of the zoning ordinance for the planned unit development which is contiguous to both Gateway Drive and I-85 and entitled "CAPPS LANDING ENTERTAINMENT DISTRICT PUD".

2. That this matter is hereby referred to the Planning Commission for its recommendations and for an advertised public hearing. Based on input received during the public

hearing process, and the Planning Commission's own deliberations, the Planning Commission should report back to the Council its specific recommendations.

ADOPTED AND APPROVED this the _____ day of _____, 2019.

PRESIDENT OF THE CITY COUNCIL
OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK

RESOLUTION NO. 387-19

Refund of sewer fees.

Resolution No. _____

WHEREAS, a petition by Mary Couch located at 3100 King Avenue, Opelika, Alabama has been presented to the City of Opelika for refund of sewer service fees overpaid in the amount of \$987.22; and

WHEREAS, the petition has been validated by the Public Works Department for the City of Opelika, Alabama, and

WHEREAS, the amount of refund was verified by the Opelika Utility Board,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, as follows:

- 1) That the petitioner be and the same is entitled to a refund in said amount; and
- 2) That the Public Works Director is hereby authorized to process the necessary paperwork so said refund check for overpayment of sewer fees in the amount of \$987.22 to Mary Couch located at 3100 King Avenue, Opelika, Alabama can be prepared.
- 3) That the Clerk of the City of Opelika is hereby authorized to sign and mail said refund check.

APPROVED and ADOPTED this the _____ day of _____, 2019.

C. E. "Eddie" Smith, Jr.

President of the City Council

City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC

City Clerk - Treasurer

ORDINANCE NO. 027-19-ORD

Amend Zoning Ord & Map: Rezone 105.6 Acres, 3800 Block Birmingham Hwy. - 1st Reading.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE ZONING
ORDINANCE AND ZONING MAP OF THE CITY OF OPELIKA

BE IT ORDAINED by the City Council (the “City Council”) of the City of Opelika, Alabama (the “City”) as follows:

Section 1. That Ordinance 124-91 entitled “Zoning Ordinance City of Opelika, Alabama”, adopted on September 17, 1991, and the Zoning Map of the City of Opelika provided for and referred to therein, as previously amended and/or modified, be and the same is hereby amended by rezoning or redistricting the parcel of land hereinafter in this section described, so as to change such parcel from one class of district to another class of district as follows, to-wit:

From a R-5 District (High Density Residential District) to M-2, GC-P District (Industrial, Gateway Corridor Primary Overlay District), the parcel of land hereinafter described:

Commencing at the southeast corner of Section 10, Township 19 North, Range 26 East, in Opelika, Lee County, Alabama; thence west, 1744.30 feet, thence North, 2695.40 feet to the northwesterly right-of-way line of Veteran’s Parkway and the true point of beginning of the parcel of land herein described; thence, along said right-of-way line, South 59 degrees 15 minutes 38 seconds West, 1268.08 feet; thence southwesterly along a curve concave southeasterly and having a radius of 1220.92 feet, a length of 768.23 feet, and a chord of South 41 degrees 14 minutes 13 seconds West, 755.61 feet to the northeasterly right-of-way line of U.S. Highway 280; thence, along said right-of-way line, South 64 degrees 41 minutes 30 seconds West, 147.87 feet; thence North 72 degrees 39 minutes 07 seconds West, 515.17 feet; thence northwesterly along a curve concave northeasterly and having a radius of 3694.72 feet, a length of 1326.84 feet and a chord of North 62 degrees 35 minutes 05 seconds West, 1319.72 feet; thence North 52 degrees 15 minutes 48 seconds West, 764.14 feet; thence North 36 degrees 58 minutes 54 seconds East, 241.71 feet to the southeasterly right-of-way line of Waverly Parkway; thence North 83 degrees 54 minutes 22 seconds East, 321.43 feet; thence North 6 degrees 04 minutes 17 seconds

West, 50.00 feet; thence Northeasterly along a curve concave northwesterly and having a radius of 7734.92 feet, a length of 661.75 feet and a chord of North 81 degrees 31 minutes 45 seconds East, 661.54 feet; thence North 79 degrees 18 minutes 31 seconds East, 330.58 feet; thence northeasterly along a curve concave northwesterly and having a radius of 5740.85 feet; a length of 1657.17 feet and a chord of North 71 degrees 03 minutes 07 seconds East, 1651.42 feet; thence North 62 degrees 47 minutes 36 seconds East, 68.80 feet; thence, along the southwesterly margin of an abandoned railroad right-of-way, South 50 degrees 11 seconds East, 405.18 feet; thence South 53 degrees 57 minutes 00 seconds East, 181.20 feet; thence South 47 degrees 02 minutes 00 seconds East, 289.20 feet; thence South 34 degrees 26 minutes 00 seconds East, 410.00 feet; thence South 22 degrees 52 minutes 00 seconds East, 59.62 feet to the true point of beginning; said parcel of land lying in Sections 9 & 10, Township 19 North, Range 26 East, in Opelika, Lee County, Alabama, and containing 105.674 acres; Being further shown as Parcel C on that certain plat of survey prepared by David Miller, Alabama Reg. No. 6259, dated May 10, 2004, and entitled "Boundary Survey of Perryman Hill Place for Lucinda Samford Cannon and William J. Samford, Jr."

The above-described property is located at 3800 Birmingham Highway, Opelika, Alabama.

Section 2. Any ordinance or part thereof in conflict with provisions of this Ordinance be and the same are hereby repealed.

Section 3. This Ordinance shall be published in a newspaper of general circulation in the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the ____ day of _____, 2019.

PRESIDENT OF THE CITY COUNCIL OF THE
CITY OF OPELIKA, ALABAMA

ATTEST:

CITY CLERK

TRANSMITTED TO MAYOR on this the ____ day of _____, 2019.

CITY CLERK

ACTION BY MAYOR

APPROVED this the ____ day of _____, 2019.

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. (ID # 3864)

Amend City Code, Add Chapter 4.5 Entitled "Art and Culture" - 1St Reading.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE *CODE OF ORDINANCES* OF THE CITY OF OPELIKA, ALABAMA, BY ADDING A NEW CHAPTER 4.5 ENTITLED “ART AND CULTURE” ALLOWING FOR THE CREATION OF ART MURALS ON PRIVATE PROPERTY; REGULATING ART MURALS ON PRIVATE BUILDINGS; PROVIDING FOR PERMIT PROCESS; PROVIDING FOR AN APPLICATION AND APPROVAL PROCESS; PROVIDING FOR VIOLATIONS AND ENFORCEMENT PROCESS; PROHIBITING GRAFFITI; PROHIBITING THE POSSESSION OF GRAFFITI IMPLEMENTS NEAR SCHOOLS BY MINORS; PROHIBITING THE POSSESSION OF GRAFFITI IMPLEMENTS IN PUBLIC PLACES; PROVIDING GRAFFITI ABATEMENT PROCEDURES; CONTAINING A REPEALER PROVISION AND SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE

WHEREAS, art murals have purposes distinct from signs and confer different benefits;
and

WHEREAS, such purposes include improved aesthetics, avenues for original artistic expression, public access to original works of art, community participation in the creation of original works of art and community-building through the presence of and identification with original works of art; and

WHEREAS, murals can increase community identity and foster a sense of place if they are located in a manner visible to pedestrians; and

WHEREAS, the City Council desires to establish guidelines for the placement of murals on private buildings.

NOW, THEREFORE, BE IT ORDAINED by the City Council (the “Council”) of the City of Opelika, Alabama (the “City”) as follows:

Section 1. **Amendment.** That the *Code of Ordinances* (the “Code”) of the City of Opelika, Alabama, is hereby amended by adding a new chapter to be numbered Chapter 4.5, which chapter shall read as follows:

Chapter 4.5 ARTS AND CULTURE

Article 1. Mural Regulations

Sec. 4.5-1 PURPOSE

The purpose of this chapter is to allow for murals on a content-neutral basis while maintaining specific standards with regard to the location, size, quantity and installation.

Sec. 4.5-2 FINDINGS

The City of Opelika hereby finds that:

- A. Murals comprise a unique medium of expression which serves the public interest.
- B. Murals have purposes distinct from signs and confer different benefits. Such purposes and benefits include: improved aesthetics; avenues for original artistic expression; public access to original works of art; community participation in the creation of original works of art; community building through the presence of and identification with original works of art; and a reduction in the incidence of graffiti and other crime.
- C. Murals can increase community identity and foster a sense of place and enclosure if they are located at heights and scales visible to pedestrians.

Sec. 4.5-3 DEFINITIONS

The following words, terms and phrases when used in this chapter shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

“**ADULT CONTENT**” shall mean any drawing, picture, pictorial representation or image that depicts or describes sexual conduct, breast nudity or genital nudity in a way that is patently offensive applying contemporary community standards. As used in this section, the following words, terms and phrases shall have the meanings respectively assessed to them in §13A-12-200.1 of the *Code of Alabama*: breast nudity, genital nudity and sexual conduct.

“**ALTERATION**” shall mean any change to a permitted mural, including but not limited to any change to the image(s), materials, colors or size of the mural. “Alteration” does not include maintenance or repair of a permitted mural.

“HISTORIC DISTRICT” shall mean a historic district locally designated by the City Council of the City of Opelika.

“MURAL” shall mean a work of visual art which is tiled or painted directly upon, or affixed directly to a fence, wall or an exterior wall of a building and exceeds the maximum size of wall sign allowed in a sign district. Visual art that is intended to communicate an informational message is not considered a mural and is regulated under the sign code.

“PERMITTED MURAL” shall mean a mural for which a permit has been issued by the City of Opelika pursuant to this chapter.

“PLANNING DIRECTOR” shall mean The Opelika Planning Director or his or her designee. For the ease of reference in this chapter, the Planning Director shall be referred to by the term “Director.”

Sec. 4.5-4 PROHIBITED MURALS

Murals that include any of the following are prohibited and are nuisances. A mural shall not depict, include or contain:

1. Electrical or mechanical components; or
2. Changing images or moving parts.
3. Adult content or content that is obscene as defined in §13A-12-200.1 of the *Code of Alabama*
4. Material harmful to minors.
5. Gang symbols or an unreasonable act, utterance, gesture or display that creates a clear and present danger of a breach of peace or imminent threat of violence.
6. Any contemporary commercial message except commercial messages may be allowed under the requirements of Section 4.5-.7(D) Historic Design Criteria.
7. Any licensed, copyrighted, or trademarked characters or likenesses unless the applicant has permission from the holder or owner of the license, copyright or trademark.
8. Murals on sites developed as single-family homes, duplexes or multi-family buildings with five or less dwelling units.
9. Murals within the following zoning districts: R-1, R-1A, R-2, R-3 and R-4, as described in the Zoning Ordinance. Murals shall only be permitted within the following zoning districts: R-4M, R-5, R-5M, C-1, C-2, C-3, M-1, M-2, Planned Unit Developments and Planned Residential Districts. Murals outside these authorized zoning districts shall be in violation of this chapter.
10. Mechanically produced or computer-generated print or images, including but not limited to digitally printed vinyl.

Sec. 4.5-5 EXEMPT MURALS

- A. A mural that is not visible from the public right-of-way and not visible from public property is allowed without a mural permit.
- B. A mural or public work of art may be allowed in a vacant storefront or window without permit provided it does not contain any elements listed in Section 4.5-4.
- C. Temporary writings, drawings, figures or marks of paint that are easily removable chalk or water-soluble markings on public or private structures shall be exempt from these regulations.

Sec. 4.5-6 MURAL PERMIT APPLICATION

A. The Director or designee shall be responsible for the approval of all mural permits. The Director or designee may approve, approve with modifications or deny a permit application upon a finding that the application does not meet the application criteria set forth in Section 4.5-7.

- B. An application for a mural permit must contain the following information:
 1. Proof of ownership of the property where the mural will be located either through the Revenue Commissioner's website information or other relevant act of transfer documentation or written confirmation from the legal owners of the property that the applicant has their permission to erect the mural.
 2. A site plan drawn to scale that shows the location of existing structures and where the mural is to be installed, location of property lines, abutting right-of-way, names of streets, information of other murals on abutting properties and north arrow.
 3. A map (e.g. tax map or aerial map) that shows the existing land use on-site and the surrounding land uses within three-hundred feet (300') of the site.
 4. A color image of the proposed mural with dimensions drawn to scale.
 5. A building elevation depicted to scale showing the proposed building area where the mural is to be installed. Information detailing the existing building materials and architectural features, as well as proposed mural materials, construction size, and depth.
 6. Information regarding the expected life span of the mural and maintenance plan for the life of the mural. The maintenance plan shall specify the frequency of maintenance and provisions to address fading and vandalism

(i.e. durable exterior paints, cleanable surfaces, and/or other measures that will discourage vandalism or facilitate easier and cheaper repair of the mural if needed).

7. A short narrative describing the primary artist(s) qualifications.

Sec. 4.5-7 MURAL DESIGN CRITERIA

All murals permitted under this section shall follow the design guidelines within this section.

A. The Mural is compatible with the aesthetic appearance of adjacent buildings and the surrounding community character. In evaluating this criterion, the following are examples of factors that can be used to measure compatibility and community character.

1. The mural is harmonious with or integrates aspects of special architectural and design features of surrounding buildings or the larger neighborhood.
2. The mural may reflect the diversity of the world.
3. The mural may reflect historic, cultural, or natural heritage.
4. The mural respects the original character of the building and surrounding buildings

B. The mural will enhance the building appearance and overall visual attractiveness of the City. The overall objective is for viewers of all ages to experience a sensation of engagement, humor, wonder or delight, or all of these emotions.

In evaluating this criterion, the following are examples of factors that can be used to measure appearance and attractiveness.

1. The mural will not adversely dominate the building or surrounding area.
2. The mural will not create traffic or safety hazards.
3. The mural is harmonious with the scale, color, details, materials, and proportion of the building.

C. General Design Criteria - All murals shall comply with the following general design criteria.

1. The mural shall not be allowed on the primary facade of a building except those described in Section 4.5-5(B).
2. The mural shall not extend more than 6 inches from the plane of the wall upon which it is tiled or painted or to which it is affixed, unless approved by the Director.

3. The mural shall not extend beyond the wall height of the building.
4. Only one mural permit may be obtained per wall. Where a wall is divided by a recessed or projecting architectural feature such as vertical or horizontal trim, bands or pilasters; each section may be considered a separate wall allowing a distinct mural on that wall.
5. The mural face must be predominantly pictorial with text limited to no more than 15% of mural face.
6. Murals may have up to 5% of the area or two square feet, whichever is less, dedicated to the artists name and/or sponsor.

D. Historic Design Criteria - This section is specific to those murals located within a locally designated historic district.

1. Any mural in a locally designated historic district shall either be located on a site pre-designated by the Opelika Historic Preservation Commission or shall require approval of a Certificate of Appropriateness from the HPC.
2. Murals shall not be painted on unpainted brick.
3. Murals that are not directly painted on the building wall may be attached to unpainted brick provided that the method of attachment has been demonstrated that it will not damage the building material.
 - a. Bolts or similar attachments to brick walls shall occur in the mortar between bricks and not directly to the brick.
4. Murals shall not be applied on or obscure architectural features such as: windows, doors, pilasters, cornices, window, door or other building trim, feature bands, and other recessed or projecting features.

5. Any lighting for murals in the historic district shall comply with lighting standards for the district.

6. Murals in historic districts may replicate painted historic signs that previously existed on the proposed site. Such historic mural shall only be permitted if historic documentation is provided to support the existences of the mural.

Sec. 4.5-8 MURAL PERMIT CRITERIA

No person may commence mural installation on a site without first obtaining a mural permit. Murals without a mural permit are considered graffiti and are regulated by Article II of Chapter 4.5. Use of murals does not affect the amount or type of signage otherwise allowed by the sign regulations of the Zoning Ordinance. For approval, a mural permit application must meet the following criteria.

- A. The mural shall comply with the design standards found in Section 4.5-7.
- B. Devices that illuminate a mural shall be placed and shielded so that the direct light rays reflecting from such devices or from the mural itself shall not be cast into the eyes of any passing motorist.
- C. Murals shall be installed for durability and maintained for the life of the mural or until the mural is removed. Murals shall consist of materials that have proven performance for withstanding the humid climate.
- D. The Mural shall use materials, coatings, or other protective techniques that will be resistive to vandalism and graffiti.
- E. The creator/artist is under contract or other obligation to complete the Mural.
- F. The Mural is an original work of art.
- G. The mural shall be created directly by or under the direction of a qualified artist.

A qualified artist is required to meet at least one of the following criteria:

- 1. An art educator or artist with education/training in large format public art installations.
 - 2. An individual or group individuals with documented experience with large format public art installations.
- H. If a mural installation includes any changes to a building that would otherwise require Design Review as described in Section 4.5-7D those changes must be approved through the Design Review process simultaneous with approval of the Mural Permit. Murals may not otherwise result in the site property or structure becoming out of compliance with other land use

code provisions, prior land use approvals, or prior conditions of approval governing the building or property on which the mural is to be located.

In applying the above criteria, the Director shall make his or her decision in accordance with applicable constitutional requirements.

Sec. 4.5-9 PERMIT FEES

Upon approval of an application for a mural permit, a one-time fee of fifty dollars (\$50.00) shall be paid.

Sec. 4.5-10 STRUCTURAL REVIEW

Murals with any element that weighs more than 7 pounds per square foot or in total weigh more than 400 pounds require structural review.

Sec. 4.5-11 SUSPENSION OR REVOCATION

A. The Director may suspend or revoke a permit issued under the provisions of Chapter 4.5. The Director will inform the permit holder of the suspension or revocation in writing. Permits may be suspended or revoked upon a finding that:

1. The permit was issued on the basis of incorrect information supplied by the applicant; or
2. The permit is issued in violation of any provisions of Chapter 4.5.

Sec. 4.5-12 INSPECTIONS AND EXPIRATION OF PERMIT

A. Inspections: The Director will conduct inspection of murals for which a permit has been issued. The permit holder must notify the Director when the work is ready for inspection.

The inspection shall verify that the mural is in conformance with the application and in conformance with the provisions of this Chapter. Structural inspections shall be completed in conjunction with any required building or structural permits and shall verify the applicable requirements from the applicable codes. The inspector shall take at least one photo to be kept on file to document the site, mural size, mural location and mural image consistency.

The Director may conduct inspections whenever it is necessary to enforce any provision of the City Code, to determine compliance with the City Code, or whenever the Director has reasonable cause to believe there exists any violation of the City Code.

B. Expiration of Permit: If inspection approval has not been obtained by the applicant within twelve (12) months of issuance of a mural permit, the permit is void, and no further work on the mural may be done at the premises until a new permit has been secured and a new fee paid.

C. Extensions of Permit: The Director may extend a permit for one period of twelve (12) months upon finding the following criteria have been met.

1. The request for an extension is made in writing prior to expiration of the original approval.
2. There are special or unusual circumstances that exist which warrant an extension.
3. No material changes of surrounding land uses or zoning has occurred.

The Director may deny the request for an extension of the mural permit if new land use regulations have been adopted that affect the applicant's proposal.

Sec. 4.5-13 MAINTENANCE AND REPAIR OF A PERMITTED MURAL

A. Maintenance. It shall be the responsibility of the property owner or the responsible party to ensure that the mural is maintained in good condition, free from graffiti, and free from chipped, peeled, torn or faded paint or materials. Failure to properly maintain the mural, including removal of graffiti, will subject the mural to abatement or removal by the Department of Public Works.

B. Damage and Restoration. In the event that a mural is damaged, vandalized, removed, altered or destroyed, including graffiti abatement, the property owner or the responsible party, in consultation with the mural artist, shall be responsible for restoring the mural to the original condition, at the property owner's expense, within thirty (30) days from the date a notice is sent to the property owner or the responsible party, remove the mural in its entirety in accordance with the provisions of Section 4.5-32.

Sec. 4.5-14 ALTERATIONS TO A PERMITTED MURAL

Alterations of the mural must be approved by obtaining a new permit through the process described in Section 4.5-6 of this Chapter.

Sec. 4.5-15 REMOVAL OF A PERMITTED MURAL

Prior to removal of a mural the property owner must notify the Planning Department at least 30 days prior to its removal with a letter stating the intent to remove the mural. Any associated materials that were used to affix or secure the mural to the wall must be removed at the time of the removal of the mural or incorporated into a new mural application. This includes, but is not limited to mounting hardware or brackets, caulk or grout, and adhesives or glues.

Sec. 4.5-16 ENFORCEMENT

A. Violations and Penalties: It shall be unlawful for any person to violate any provision of, or fail to comply with, any requirement of this article. Any person that has violated, or continues to violate, any provision of this article shall, upon conviction, be subject to a fine of not greater than \$500.00 and/or imprisonment for a period of time not to exceed six (6) months for each violation. Each act of violation and/or day upon which any violations shall occur or continue to occur shall constitute a separate offense.

B. Abatement Proceedings: Any unapproved mural is considered graffiti. The City may institute abatement and cost recovery proceedings for the removal of the graffiti as described in Section 4.5-32 of the City Code.

C. Injunctive Relief and Civil Remedies.

- 1 If a person has violated or continues to violate the provisions of this article, the City may petition the appropriate court for a preliminary and/or permanent injunction restraining the person from activities which would create violations of this article or compelling the person to perform corrective action and/or remediation of any violation.
- 2 The City may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused by an unauthorized mural or resulting from any violation of this article, including costs incurred for corrective action and remediation, and may seek other equitable relief to enforce compliance with the provisions of this article or force compliance with any lawful orders of the Director.
- 3 Damages sought by the City shall include any and all costs of such action including attorney's fees, trial expenses, court costs and damages to any public properties.

D. Responsibility for enforcement: The regulations of this article may be enforced by the Director pursuant to the provisions of this chapter.

Sec. 4.5-17 APPEALS

All denials, suspensions, revocations, rulings, decisions or interpretations of the Director shall be final and binding upon all parties thereto unless properly appealed to the City Council. Any person receiving a notice of an adverse decision, including a notice of permit application denial, notice of permit revocation or notice of violation, and wishing to appeal the same shall file a written notice in the Office of the City Clerk within ten (10) days from the date of the notice. The hearing on the appeal to the City Council shall be held within thirty (30) days from the date of the filing of the notice of appeal. The decision of the City Council shall be final.

ARTICLE II GRAFFITI

Sec. 4.5-26 PURPOSE AND INTENT

The City Council (the "Council") is enacting this article to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The Council is authorized to enact this article pursuant to its police powers.

The Council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless the City acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the City.

The Council intends, through the adoption of this article, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The Council does not intend for this article to conflict with any existing anti-graffiti state laws.

Sec. 4.5-27 DEFINITIONS

For the purposes of this article, the following words shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

- a. **Aerosol paint container** shall mean any aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property.
- b. **Broad-tipped marker** shall mean any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth ($1/4^{\text{th}}$) of an inch, containing ink or other pigmented liquid that is not water soluble.
- c. **Etching equipment** shall mean any tool, device or substance that can be used to make permanent marks on any natural or man-made surface.
- d. **Graffiti** shall mean any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the Council. Any unapproved mural is considered graffiti. For the purpose of this article, graffiti shall include drawings, writings, markings or inscriptions regardless of the content or the nature of materials used in the commission of the act. However, it shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings on public or private sidewalks, streets or other paved surfaces which are used in connection with traditional children's activities, such as drawings, or bases for stickball, kickball, handball, hopscotch or similar activities, nor shall it be construed to prohibit temporary, easily removable chalk or public purpose or activity.
- e. **Graffiti implement** shall mean an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

- f. **Paint stick or graffiti stick** shall mean any device containing a solid form of paint, chalk, wax, epoxy or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth (1/8th) of an inch in width.
- g. **Person** shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.

Sec. 4.5-28 PROHIBITED ACTS

A. **Defacement.** It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any City-owned property or, without the permission of the owner or occupant, on any non-City-owned property.

B. **Possession of Graffiti Implements.**

1. **By Minors at or Near School Facilities.** It shall be unlawful for any person under the age of nineteen (19) years to possess any graffiti implement while on any school property, grounds, facilities, buildings or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property. The provisions of this section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers. The burden of proof in any prosecution for violation of this section shall be upon the minor student to establish the need to possess a broad-tipped marker.
2. **In Designated Public Places.** It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by the City or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain or similar types of infrastructure unless otherwise authorized by the City.

Sec. 4.5-29 PENALTIES

A. **Fines and Imprisonment.** Any person violating this article shall, upon conviction, be punished by a fine of two hundred and fifty dollars (\$250.00) for the first offense; and five hundred dollars (\$500.00) for each subsequent offense, or by imprisonment for a term not to exceed sixty (60) days, or by both fine and imprisonment at the discretion of the court.

B. **Restitution.** In addition to any punishment specified in this section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. In the case

of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make the restitution.

C. Community Service. In lieu of, or as part of, the penalties specified in this section, a minor or adult may be required to perform community service at the discretion of the court.

Sec. 4.5-30 GRAFFITI AS NUISANCE

A. The existence of graffiti on public or private property in violation of this Ordinance is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Ordinance.

B. It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti.

Sec. 4.5-31 REMOVAL OF GRAFFITI BY PERPETRATOR

Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the City or private owner of the property involved. Such removal shall be done in a manner prescribed by the Chief of Police, the Director of Public Works, the Planning Director or any additional City department head, as authorized by the Mayor. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this article. Where graffiti is applied by an unemancipated minor, the parents or legal guardian shall also be responsible for such removal or for the payment for the removal.

Sec. 4.5-32 REMOVAL OF GRAFFITI BY PROPERTY OWNER OR CITY

If graffiti is not removed by the perpetrator according to Section 4.5-31, graffiti shall be removed pursuant to the following provisions:

- a. Property Owner Responsibility. It is unlawful for any person who is the owner or who has primary responsibility for control of property or for repair or maintenance of property in the City to permit property that is defaced with graffiti to remain defaced for a period of thirty (30) days after service by first class mail of notice of the defacement. The notice shall contain the following information:
 1. The street address and legal description of the property sufficient for identification of the property;
 2. A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;
 3. A statement that the graffiti must be removed within thirty (30) days after receipt of the notice and that if the graffiti is not abated within that time, the City will declare the property to be a public nuisance, subject to the abatement procedures in City Code Section 4.5-32(a); and

4. An information sheet identifying any graffiti removal assistance programs available through the City and private graffiti removal contractors.
- b. **Exceptions to Property Owner Responsibility.** The removal requirements of subsection (a) above shall not apply if the property owner or responsible party can demonstrate that the property owner or responsible party lacks the financial ability to remove the defacing graffiti.
- c. **Right of City to Remove.**
 1. **Use of Public Funds.** Whenever the City becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the City shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the Mayor, or the designee of the Mayor, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.
 2. **Right of Entry on Private Property.** Prior to entering upon private property or property owned by a public entity other than the City for the purpose of graffiti removal, the City shall attempt to secure the consent of the property owner or responsible party and a release of the City from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this Ordinance, or if the City has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the City and consistent with the terms of this section, the City shall commence abatement and cost recovery provisions specified below.
- d. **Abatement and Cost Recovery Proceedings**
 1. **Notice of Due Process Hearing.** The City Administrator or the designee of the City Administrator serving as the Hearing Officer, shall provide the property owner of record and the party responsible for the maintenance of the property, if a person different than the owner, not less than forty-eight (48) hours notice of the City's intent to hold a due process hearing at which the property owner or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance. Notice shall be served in the same manner as a summons in a civil action in accordance with Rule 4 of the Civil Rules of Procedure. If the owner of record cannot be found after a diligent search, the notice may

be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in the City of Opelika.

2. **Determination of Hearing Officer.** The determination of the Hearing Officer after the due process hearing shall be final and not appealable. If, after the due process hearing, regardless of the attendance of the property owner or the responsible party or their respective agents, the Hearing Officer determines that the property contains graffiti viewable from a public or quasi-public place, the Hearing Officer shall give written notice in an eradication order that, unless the graffiti is removed within ten (10) days, the City shall enter upon the property, cause the removal, painting over (in such color as shall meet with the approval of the Hearing Officer), or such other eradication thereof as the Hearing Officer determines appropriate, and shall provide the property owner and the responsible party thereafter with an accounting of the costs of the eradication effort on a full cost recovery basis.
3. **Eradication Effort.** Not sooner than the time specified in the order of the Hearing Officer, the Director of Public Works or his designee, shall implement the eradication order and shall provide an accounting to the property owner and the responsible party of the costs thereof.
4. **Cost Hearing.** The property owner or responsible party may request a cost hearing before the Hearing Officer on the eradication accounting, and appropriate due process must be extended to the property owner or responsible party. If following the cost hearing or, if no hearing is requested, after the implementation of the eradication order, the Hearing Officer determines that all or a portion of the costs are appropriately chargeable to the eradication effort, the total amount set forth in the eradication accounting, or an amount thereof determined as appropriate by the Hearing Officer, shall be due and payable by the property owner or responsible party within thirty (30) days. Any amount of eradication charges assessed by the Hearing Officer that are less than the total amount set forth in the eradication accounting shall be explained by written letter from the Hearing Officer to the City Council.
5. **Lien.** As to such property, where the responsible party is the property owner, if all or any portion of the assessed eradication charges remain unpaid for thirty (30) days, the portion thereof that remains unpaid shall constitute a lien on the property that was the subject of the eradication effort. The Director of Public Works shall present a lien resolution to the City Council, and upon passage and adoption thereof, shall cause a certified copy of the Lien to be recorded with the Purchasing/Revenue Officer.

Sec. 4.5-33 SEVERABILITY

Severability is intended throughout and within the provisions of this article. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

Section 2. **Full Force and Effect.** With the exception of the amendment made herein, all other sections and portions the Code shall remain in full force and effect.

Section 3. **Severability Clause.** If any section, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, said holding shall not affect the remaining portions of this ordinance.

Section 4. **Repealer Clause.** All former ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance are repealed.

Section 5. **Effective Date.** This ordinance shall become effective and enforced immediately upon its passage and publication as required by law. Chapter 4.5, as added herein, shall be codified in the *Code of Ordinances* of the City of Opelika, Alabama.

Section 6. **Publication.** The City Clerk of the City of Opelika, Alabama is hereby authorized and directed to cause this Ordinance to be published one (1) time in a newspaper of general circulation published in the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the ____ day of _____, 2019.

PRESIDENT OF THE CITY COUNCIL OF THE
CITY OF OPELIKA, ALABAMA

ATTEST:

CITY CLERK

TRANSMITTED TO MAYOR on this the ____ day of _____, 2019.

CITY CLERK

ACTION BY MAYOR

APPROVED this the ____ day of _____, 2019.

MAYOR

ATTEST:

CITY CLERK