

**CULLMAN CITY COUNCIL  
REGULAR MEETING  
March 8<sup>th</sup>, 2010**

Mayor Townson, Council President Gudger, Council Member Page, Council Member Cook, Council Member Hollingsworth and Council Member Folsom met with Mr. Jerry Sellers, EMS and Mrs. Susan Copeland, CRMC, in the Council Chambers at 6:00 pm to discuss the Emergency ALS Services. Fire Chief Reinhardt and Fire Fighter Greg Smith were present to discuss the possibility of the Fire Department EMT's providing medical services.

Attorney Roy Williams and Accountant Wes Moore were present to discuss the draft of a written policy for debt policy as requested from the bonding agencies. No action will be taken on this tonight.

Trent Moore from the Cullman Times was present in the pre-council meeting.

The Cullman City Council met in regular session on March 8<sup>th</sup>, 2009 at 7:00 o'clock p.m. in the Lucille N. Galin Auditorium. Council President Garlan Gudger called the meeting to order and Police Chief Culpepper presented the invocation.

A roll call by the City Clerk reflected the following. Present - Mayor Max A. Townson, President Garlan E. Gudger, Jr., Council Member Andy Page, Council Member Johnny Cook and Council Member Jenny Folsom and Council Member Clint Hollingsworth. Also present were City Attorney Roy Williams and City Clerk Ruth W. Rose. Absent - None.

Council Member Cook made a motion to suspend the rules in order to consider the minutes from the meeting on February 22<sup>nd</sup>, 2010. Council Member Page seconded the motion and motion carried on roll call vote. Council Member Page: Aye, Council Member Cook: Aye. Council President Gudger: Aye. Council Member Folsom: Aye. Council Member Hollingsworth: Aye. Nays: None.

Council Member Cook then moved to approve the minutes as written for February 22<sup>nd</sup>, 2010 and Council Member Folsom seconded the motion. Motion was approved by a voice vote. Ayes: All Nays: None.

**ADDITIONS/DELETIONS TO AGENDA**

Council Member Folsom made a motion to add the \$3,000 request from the Festhalle Committee that was tabled on February 22, 2010. This will be added as item #5 under Roman Numeral IX. Council Member Cook seconded the motion and motion carried on a voice vote. Ayes: All. Nays: None.

Council President Gudger asked Junior Heaton, Water and Sewer Superintendent, to present his late request. Mr. Heaton asked to add the resolution to award the water materials bid that was opened on Friday, March 5<sup>th</sup> to G & C Water Works of Atwood, TN. Prices are going up daily and the materials are needed for stock. Council Member Cook made a motion to add this request

under Roman Numeral X, item #10. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

### **REPORTS OF STANDING COMMITTEES**

Council Member Andy Page - Police Committee - Announced a public open house for the new police department building located at 601 2<sup>nd</sup> Avenue NE will be held on Sunday, March 21<sup>st</sup>, 2010 at 3:00 p.m. Everyone is invited to attend.

Council President Garlan Gudger - Fire Committee - No Report.

Council Member Johnny Cook - Sanitation Committee - No Report.

Council Member Clint Hollingsworth - Street Committee - No Report.

Council Member Jenny Folsom - Finance Committee - No Report.

### **REPORTS OF OFFICERS**

Mayor Max A. Townson - No Report.

### **COMMENTS FROM ANYONE NOT ON THE AGENDA**

Council Member Folsom wanted to acknowledge the Boy Scout Troop that was present tonight. President Gudger thanked them for attending and asked them to give their troop number. Council Member Cook welcomed them and asked them to feel free to make any comments.

### **PETITIONS, APPLICATIONS, COMPLAINTS, APPEALS & COMMUNICATIONS**

Mr. Tom Beason, 5738 County Road 703, Cullman, AL was present to ask for support in the upcoming State Senate election. He is a graduate of Cullman High School and St. Bernard College. Mr. Beason gave an overview of his concerns and qualifications.

Mr. George Mann had requested to be listed on the agenda but he is not present tonight.

Council Member Page made a motion to approve the request from Daniel Hunt, IT Manager, for a new ID card printer in the amount of \$1,700.00. Council Member Cook seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

A motion to approve a request from Ruth Rose, City Clerk, for a new printer for payroll checks was made by Council Member Hollingsworth. The estimated amount for the printer was \$750.00. Council Member Folsom seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Folsom made a motion to approve the request for a \$3,000 appropriation to the Festhalle Committee. The Cullman County Commission have made their \$3,000 contribution

and the main usage for these funds will be for advertisements. Mr. Arnold Caylor, the Chairman of the Committee was present and explained the need for the additional funding. Council Member Cook seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

**RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS**

Council Member Cook made a motion to approve the following resolution which awards a bid for an airport hangar. The following resolution was read:

**RESOLUTION 2010-43  
RESOLUTION AWARDING BID FOR  
CULLMAN REGIONAL AIRPORT  
HANGER PROJECT**

WHEREAS, bids were opened on March 2<sup>nd</sup>, 2010 at 2:00 p.m., for a 100 X 100 Hangar for Aircraft; and

WHEREAS, the following 9 bids were received:

Jerry Tidwell Construction	\$322,237.88
NW Bama Builders	353,272.00
Joiner Construction	356,618.00
Reidco Contracting	375,222.34
G.A. Clanton Construction	381,274.00
Civicon	413,722.00
Parallax Building Systems	418,617.30
Craft & Associates	424,973.00
Webb Builders	480,980.00

WHEREAS, the recommendation from the Project Engineer for Garver, Ryan S. Reed is to accept the bid from Jerry Tidwell Construction which meets all specifications and is in compliance with the bid requirements.

BE IT RESOLVED by the City Council of the City of Cullman, Alabama that the contract be awarded to Jerry Tidwell Construction.

ADOPTED this the 8<sup>th</sup> day of March, 2010.

/s/ Garlan E. Gudger, Jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

Transmitted to the Mayor this the 8<sup>th</sup> day of March , 2010.

/s/ Ruth W. Rose  
City Clerk

APPROVED by the Mayor this the 8<sup>th</sup> day of March, 2010.

/s/ Max A. Townson  
Mayor

Council Member Folsom seconded the motion and the resolution was approved by a voice vote.  
Ayes: All. Nays: None.

Council Member Folsom made a motion to adopt the following resolution which will allow St. John and Associates to proceed with a bridge study on the Eva Road Bridge. Mayor Townson explained this bridge is very dangerous and has a large volume of traffic to the high school and to Cullman Regional Medical Center. In order to apply for federal stimulus funds the engineering work must be completed. The following resolution was read:

**RESOLUTION NO. 2010-44  
RESOLUTION AUTHORIZING CONTRACT FOR PROFESSIONAL  
SERVICES FOR EVA ROAD BRIDGE REPLACEMENT  
LOCATED ON EVA ROAD**

WHEREAS, St. John and Associates has presented the attached proposal to provide professional services related to replacing the bridge on Eva Road hereafter referred to as the "Project"

WHEREAS, the City has considered the scope of work included in the proposal to include:

Civil Engineering	St. John & Associates	\$ 8,500.00
Bridge Engineering	AECOM Birmingham	8,000.00
Surveying	Conn Surveyors	3,500.00

WHEREAS, the City Council finds that it is in the best interest of the City to proceed with the work set out in the proposal and pursue funding for the project.

THEREFORE, BE IT RESOLVED by the Cullman City Council that the Mayor is hereby

authorized to execute an agreement with St. John and Associates for and on behalf of the City of Cullman to perform the services related to the Project as set out in the proposed agreement for services.

ADOPTED this the 8<sup>th</sup> day of March, 2010.

/s/ Garlan E. Gudger, Jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

Transmitted to the Mayor this the 8<sup>th</sup> day of March, 2010.

/s/ Ruth W. Rose  
City Clerk

APPROVED by the Mayor this the 8<sup>th</sup> day of March, 2010.

/s/ Max A. Townson  
Mayor

Council Member Page seconded the motion to adopt the resolution and the motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Cook made a motion to table the following resolution:

**Resolution 2010-45**  
**RESOLUTION AUTHORIZING MAYOR TO ENTER AGREEMENT**  
**FOR SERVICES WITH APEL MACHINE & SUPPLY COMPANY, INC.**  
**AND BERKLEY REGIONAL INSURANCE COMPANY FOR MANN DRIVE**  
**SEWER PROJECT THAT WAS NOT COMPLETED BY GILCO**

WHEREAS, Apel Machine & Supply Company, Inc. has presented the attached proposal to provide services related to completing the sewer project on Mann Drive referred to as the "Project"; and

WHEREAS, the City has considered the scope of work which consists of completing the original contract within a 270 day period by the completion contractor ; and

WHEREAS, the City Council finds that it is in the best interest of the City to proceed with the work set out in the proposal ; now

THEREFORE, BE IT RESOLVED by the Cullman City Council that the Mayor is hereby authorized to sign an agreement with Apel Machine & Supply Company, Inc. And Berkley Regional Insurance Company for and on behalf of the City of Cullman to perform the services related to the Project as set out in the original agreement for services.

ADOPTED this the — day of March, 2010.

\_\_\_\_\_  
President of the City Council

ATTEST:

\_\_\_\_\_  
City Clerk

Transmitted to the Mayor this the — day of March, 2010.

\_\_\_\_\_  
City Clerk

APPROVED by the Mayor this the — day of March, 2010.

\_\_\_\_\_  
Mayor

Mann Drive – Sanitary Sewer Tender Agreement

#### TENDER AGREEMENT

**THIS TENDER AGREEMENT** (hereinafter “Agreement”) made this 8<sup>th</sup> day of March, 2010 by and among The City of Cullman, AL (hereinafter “Owner”), Apel Machine & Supply Company, Inc. (hereinafter “Completion Contractor”) and Berkley Regional Insurance Company (hereinafter “Surety”).

**WHEREAS**, on or about August 1, 2007, Owner entered into a contract with Gilco Contracting, Inc. (“Gilco”) for Contract No. CUEC-2603, CWSRF Project No. CS010260-06, Mann Drive - Sanitary Sewer Improvements (hereinafter “The Original Contract”), which is made a part hereof by reference together with all documents and plans referred to therein; and,

**WHEREAS**, Surety, on behalf of Gilco, as principal, executed and delivered to Owner a performance bond #0119328 (hereinafter the Gilco Performance Bond”) and a labor and material

payment bond #0119328 (hereinafter the “Gilco Payment Bond”) in favor of Owner, as Obligee, in connection with The Original Contract; and,

**WHEREAS**, Gilco has ceased doing business and is now defunct, and Gilco is in default of its obligations under The Original Contract, the Gilco Performance Bond and the Gilco Payment Bond; and,

**WHEREAS**, Owner has called upon Surety, as the performance bond surety, to satisfy its obligations to Owner under the Gilco Performance Bond; and,

**WHEREAS**, Owner and Surety have agreed to a complete and final resolution of the obligations of Surety under the Gilco Performance Bond pursuant to which Surety has procured and hereby tenders Completion Contractor to Owner to perform The Original Contract; and

**WHEREAS**, Owner accepts Completion Contractor to perform The Original Contract; and,

**WHEREAS**, Completion Contractor has agreed to fully and faithfully perform and complete and to assume the obligations of The Original Contract and of Surety under the Gilco Performance Bond by agreeing to enter into this Agreement with Owner and Surety; and,

**WHEREAS**, Owner and Completion Contractor agree to modify the terms of The Original Contract to reflect that (i) the new contract price is the Completion Contract Price set forth in Paragraph 4 below, subject to adjustments for increases or decreases for actual quantities and for any change orders hereafter executed by Owner and Completion Contractor, (ii) Owner and Completion Contractor are bound by the Schedule of Items and Line Item Values set forth in Exhibit ‘A’ attached hereto, and (iii) the time for completion of The Original Contract is extended as provided in Paragraph 5 hereof.

**NOW THEREFORE**, in consideration of the promises made herein and other good and valuable consideration, Owner, Completion Contractor and Surety hereby mutually agree as follows:

**1. Precatory Clauses:**

The precatory (Whereas) clauses above are made part of this Agreement as if fully set forth herein.

**2. Original Contract Accounting:**

Owner and Surety acknowledge and agree that as of the date of this Agreement:

- (a) The present authorized amount of The Original Contract, including all approved change orders to date, and subject to adjustment for final quantities, is \$6,953,825.00;
- (b) Gilco was paid \$5,624,067.65 under The Original Contract;
- (c) The amount of The Original Contract and the amount paid to Gilco include stored materials and equipment, in the amount of \$272,542.80;
- (d) Owner has withheld retainage of \$173,845.63 on The Original Contract;
- (e) Work has been performed for which payment has been earned under The Original Contract in the amount of \$107,715.02 (“Prior Earned Payment”) for which Owner has withheld payment;
- (f) The “Unpaid Contract Price” (consisting of the present authorized amount of The Original Contract, less cash payments to Gilco to date) is \$1,329,757.35; and
- (g) The “Remaining Contract Value” (consisting of the unearned portion of the present authorized amount of The Original Contract) is \$1,048,196.70.

**3. Performance of Contract:**

Completion Contractor hereby agrees to fully and faithfully perform and complete all work identified in The Original Contract and all change orders to The Original Contract approved to the date of this Agreement. The Original Contract, for purposes of this Agreement, shall be deemed to include the Contract, the Schedule of Items (excluding the Line Item Values) attached hereto as Exhibit "B", all The Original Contract documents, plans, and specifications, all obligations, conditions, warranties and guarantees contained therein, as well as all laws, rules and regulations of Federal, State and Municipal authorities having authority over the work to be performed under The Original Contract.

**4. Completion Contract Price:**

Completion Contractor agrees to perform all of the remaining work required by The Original Contract and change orders approved to date. Owner agrees to pay Completion Contractor for such performance in accordance with the payment provisions of The Original Contract at the firm unit prices set forth in Exhibit A hereto (the "Completion Contract Price", presently totaling \$ 808,460.78, based on the estimated quantities and firm unit prices set forth in Exhibit A). The Completion Contract Price is subject to adjustment solely as provided in the adjustment terms of The Original Contract, including adjustment for such matters as increases or decreases in actual quantities and change orders according to the terms of the Original Contract. No adjustment shall be made for any insufficiency or deficiency in quality or quantity of stored materials, which shall be provided to Completion Contractor "as-is" at no cost to Completion Contractor in accordance with Paragraph 12.

**5. Time for the Performance of the Work:**

Owner agrees that the time for performance of The Original Contract is hereby extended to the Completion Date as defined herein. Completion Contractor agrees to complete all work in accordance with the terms and conditions of The Original Contract within 270 (two-hundred seventy) continuous calendar days from the issuance of a Notice to Proceed (the "Completion Date"). Time is of the essence. Owner acknowledges that all issues pertaining to delays and liquidated damages for delays through the Completion Date are subsumed by this Agreement. Subject to time extensions that may hereafter be allowed as provided under the terms of The Original Contract and this Agreement with respect to the work to be performed by Completion Contractor hereunder, if Completion Contractor fails to achieve full completion and acceptance of all work in accordance with The Original Contract by the Completion Date, Completion Contractor shall be liable to and shall pay to Owner liquidated damages as specified in The Original Contract.

**6. Responsibility for Existing Work:**

Completion Contractor shall be responsible to Owner for all work performed by it or by Gilco. This responsibility includes all work necessary to correct latent defects in the work performed by Gilco. Separate consideration will be paid by Surety to Completion Contractor for assumption of this responsibility, as set forth in Paragraph 10.

**7. Progress Payments:**

Owner agrees to pay Completion Contractor the Completion Contract Price (subject to adjustment for such matters as increases or decreases in actual quantities and for change orders) in accordance with the terms of The Original Contract. Completion Contractor agrees to look solely to Owner for

the payment of the Completion Contract Price and hereby releases and forever discharges Surety from any obligations to pay same.

**8. Completion Contractor's Assumption of Contract Obligations:**

Completion Contractor acknowledges and agrees that from and after the date of this Agreement, it and its surety assume all obligations to Owner of Gilco and Surety under The Original Contract and the Gilco Performance Bond. Completion Contractor hereby accepts assignment of, and assumes responsibility for, the following Gilco subcontracts, which have been ratified and are hereby assigned to Completion Contractor by Surety: R. B. Atkins & Associates, Inc. and Southern Industrial Construction Company. Copies of the ratified subcontracts shall be provided to Completion Contractor by Surety. Completion Contractor also accepts assignment of the ratified Birmingham Powder subcontract, which has been paid up currently, and which is in effect for blasting. Additional blasting is not contemplated, but in the event blasting becomes necessary, surety will be notified immediately and prior to incurring blasting costs. Surety will reimburse Completion Contractor directly for reasonable and necessary blasting costs, upon proof of payment for same in conjunction with the work of this Agreement.

**9. Surety's Interim Statement of Accounts with Owner:**

Owner shall retain for its use in completing the Project the Unpaid Contract Price, in the present amount of \$1,329,757.35 (which amount includes \$281,560.65 in unpaid retainage and Prior Earned Payment, and which amount has not been adjusted to reflect final actual quantities). The Unpaid Contract Price, after final quantity adjustments, shall be accounted to Surety's obligations under the Gilco Performance Bond. Final accounting shall take place upon completion of the work by Completion Contractor, as set forth in Paragraph 11.

**10. Surety's Payment to Completion Contractor:**

Simultaneous with the execution of this Agreement the Surety will pay Completion Contractor the liquidated amounts of \$25,000.00 for corrective work for identified Gilco defects, \$100,000.00 for assumption of responsibility for all work performed by Gilco including any unidentified or unknown deficiencies in that work, and \$8,000.00 for payment and performance bond premium. In addition, Surety will pay \$3,175.93 to Completion Contractor for accrued subcontractor retention of R.B. Atkins & Associates, Inc. (\$1,090.00) and Southern Industrial Construction Company (\$2,085.93). Completion Contractor shall be responsible for paying such amounts to R.B. Atkins and Southern Industrial Construction in accordance with their ratified subcontracts and shall indemnify and hold Surety harmless against any failure to make payment of same.

**11. Surety's Final Settlement With Owner at Project Completion:**

Upon completion of all work under The Original Contract and this Agreement, the Owner shall advise the Surety of the final quantities approved for payment. An accounting shall be made of The Original Contract value, as adjusted for final quantities, and Payments by Owner, including payments to Completion Contractor. Surety shall reimburse the Owner for net overruns, or Owner shall reimburse the Surety for net under runs. Such payment shall operate as final settlement of all accounts between Surety and Owner.

**12. Stored Materials and Equipment:**

All materials and equipment, including but not limited to those identified in the bidding process, which are stored on site, or which are under the Owner's control, shall be made available free of charge to Completion Contractor for use in the performance of the work under this Agreement. All such materials and equipment shall be provided to and shall become the responsibility of the Completion Contractor for 1) use in the completion of the contract; 2) use elsewhere at the Contractor's option, or 3) removal from the site and proper disposal. Any such materials and equipment have been paid for by the Original Contractor, or will have been paid for by the Surety, prior to the execution of this Agreement. Completion Contractor has been afforded the opportunity, prior to bidding, to inspect and evaluate such materials and equipment, and no representations have been made to Completion Contractor, express or implied, in any of the Original Contract Documents or Re-Bid Documents regarding the quantity, quality, contract suitability, usefulness or any other aspect of same. Completion Contractor has agreed to be totally responsible for the verification of these materials and equipment. No quantity adjustment or additional compensation shall be paid in the event of any insufficiency or deficiency.

**13. Acknowledgement by Owner of Full Performance by Surety:**

In consideration of the mutual promises and payments made by the parties hereunder, the sufficiency of all of said consideration being stipulated, Owner agrees that the Surety shall be deemed to have fully performed all obligations under The Original Contract and the Gilco Performance Bond, subject only to final settlement of accounts for overruns or under runs as provided in Paragraph 11. Hereafter, Owner shall look solely to the Completion Contractor and its surety for the completion of all work remaining under The Original Contract.

**14. Completion Contractor Release:**

For and in consideration of the payments and mutual promises made by the parties hereto, the sufficiency of all of said consideration being stipulated, Completion Contractor, for itself, its successors and assigns, does, by these presents, hereby unconditionally release, acquit and forever discharge Surety, its agents, successors and assigns, from any and all claims, demands, rights, obligations and/or causes of action of whatever kind or nature, whether known or unknown, including, without limitation, claims under or arising out of The Original Contract, the Gilco Performance Bond and the Gilco Payment Bond and this Agreement.

**15. Continuing Obligation of Surety to Unpaid Subcontractors and Suppliers of Gilco:**

Notwithstanding any general language to the contrary, it is specifically agreed that nothing contained herein shall release Surety from any obligations it may have under the Gilco Payment Bond only for the payment of outstanding and unpaid amounts (if any) properly due under the Gilco Payment Bond to subcontractors and suppliers for labor and/or material to Gilco in the performance of The Original Contract prior to the date hereof. Nothing herein contained shall be deemed a waiver of the amount of the Gilco Payment Bond or of Surety's rights or defenses under the Gilco Payment Bond as to any party, nor shall it be deemed an admission by Surety that any labor or materials or supplies were provided by any person or entity in connection with The Original Contract. Provided, however,

Surety's obligation recited in this Paragraph 15 shall not extend to the accrued subcontractor retention of R.B. Atkins & Associates, Inc. and Southern Industrial Construction Co., which amounts shall be paid by Completion Contractor under the ratified and assigned subcontracts.

**16. Owner's Assignment of Rights Against Gilco to Surety; Surety's Release of Claims Against Owner:**

In further consideration of the mutual promises contained in this Agreement, Owner does, for itself, its successors and assigns, hereby assign to Surety all right title and interest (including, but not limited to, any security interest and all rights of offset, recoupment or other similar remedy) that it has in and to any and all claims or causes of action against Gilco, its successors and assigns, or any principal of Gilco arising out of or in any way related to The Original Contract.

In further consideration of the mutual promises contained in this Agreement, Surety, for itself, Gilco and their successors and assigns, does hereby release Owner for any and all claims for change orders, extra work, differing site conditions, delay, interference or other claims for additional compensation under The Original Contract.

**17. Owner Cooperation with Surety:**

Owner agrees to cooperate with Surety in any action brought by or against Surety involving Gilco, its successors and assigns or any indemnitor of Surety in connection with The Original Contract or any bond issued by Surety in connection with The Original Contract or any other contract between Owner and Gilco.

**18. Contract Bond and Insurance Certificates Required of Completion Contractor:**

Simultaneous with the execution of this Agreement, Completion Contractor shall deliver to Owner a performance bond and a labor and material payment bond executed by a surety company acceptable to Owner, in the form required by The Original Contract and in the amount of the Completion Contract Price, and shall deliver all other Certificates of Insurance and Certifications required by The Original Contract.

**19. Notice to Proceed to Completion Contractor:**

The parties hereto agree that Owner shall, after receipt of the bonds and certificates of insurance required by Paragraph 18 hereof, issue the notice to proceed hereunder to Completion Contractor in accordance with The Original Contract. The parties further agree that, from and after the date of this Agreement, Completion Contractor shall be responsible for the performance of The Original Contract and that Owner shall look solely to Completion Contractor or its surety for the performance of The Original Contract.

**20. No Modification:**

This Agreement may not be modified unless in writing and executed by the parties hereto.

**21. Choice of Law:**

This Agreement and any dispute of any nature, any claim or any suit arising out of either this Agreement or The Original Contract shall be governed by the laws of the State of Alabama in every respect.

**22. Construction and Interpretation of Agreement:**

The language in all parts of this Agreement shall in all cases be construed simply, as a whole, and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation and that each party has been given the opportunity to independently review this Agreement with legal counsel. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, it shall not be construed strictly for or against any party.

Executed on the date set forth herein:

**The City of Cullman, Alabama**

By: \_\_\_\_\_

Max A. Townson, Mayor

**Apel Machine & Supply Company, Inc.**

By: \_\_\_\_\_

**Berkley Regional Insurance Company**

By: \_\_\_\_\_

Council Member Folsom seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: none. The resolution will be tabled until the next meeting.

Council Member Folsom made a motion to adopt the following resolution which is an agreement with ALDOT to maintain the service road used by Yutaka and Royal Technologies:

**RESOLUTION 2010-46**

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER A MAINTENANCE AGREEMENT WITH ALABAMA DEPARTMENT OF TRANSPORTATION FOR THE ACCESS ROAD FOR ROYAL TECHNOLOGY**

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

1. The City of Cullman enter into a maintenance agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

East Service Road from Intersection of AL 69 and AL 157 to where the existing road ends and West side of intersection of AL 69 and AL 157 to the intersection of US 278 and AL 157 in the City of Cullman; which Agreement is before this council.

2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf;

3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

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.

Passed, adopted and approved this the 8<sup>TH</sup> day of March, 2010.

/s/ Garlan E. Gudger, Jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

APPROVED by the Mayor this the 8<sup>th</sup> day of March, 2010.

/s/ Max A. Townson  
Mayor

I, the undersigned qualified and acting clerk of the City of Cullman of Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 8<sup>th</sup> day of March, 2010, and that 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 of Cullman on the 8<sup>th</sup> day of March, 2010.

/s/RuthW.Rose  
City Clerk

Council Member Hollingsworth seconded the motion and the resolution was approved by a voice vote. Ayes: All. Nays: None.

Council Member Page made a motion to adopt the following resolution awarding tree services to Michael's Tree Service:

**RESOLUTION NO. 2010-47**  
**Tree Services on Stadium Drive Area**  
**Bid Award**

WHEREAS, price estimates were taken on March 4<sup>th</sup>, 2010 for Tree Services located on the Stadium Drive Area for the City of Cullman Arborist Department, and

WHEREAS, the following estimates were opened from 3 vendors:

Colburn's Tree Service	Cullman	\$9,800.00
Michael's Tree Service	Addison	8,750.00
Newman's Tree Service	Cullman	10,000.00

WHEREAS, the recommendation from Darrell Johns, Arborist for the City of Cullman is to award the job to Michael's Tree Service, the lowest estimate.

BE IT RESOLVED by the City Council of the City of Cullman, Alabama that the job for the tree service be awarded to Michael's Tree Service of Addison, AL at this time.

ADOPTED this the 8<sup>th</sup> day of March, 2010.

/s/ Garlan E. Gudger, Jr.

President of the City Council

ATTEST:

/s/ Ruth W. Rose

City Clerk

APPROVED by the Mayor this the 8<sup>th</sup> day of March, 2010.

/s/ Max A. Townson

Mayor

Council Member Folsom made a motion to suspend the rules in order to adopt an Ordinance on the first reading to amend the business licenses. Council Member Page seconded the motion and the clerk polled the council. Council Member Page: Aye. Council Member Cook: Aye. Council President Gudger: Aye. Council Member Folsom: Aye. Council Member Hollingsworth: Aye.

Council Member Folsom made a motion to adopt the following ordinance:

**ORDINANCE NO. 2010-07**

**AN ORDINANCE TO AMEND ORDINANCE NO. 2010-02**

**TO PRESCRIBE AND ESTABLISH LICENSE FOR THE PRIVILEGE OF ENGAGING  
IN OR CARRYING ON BUSINESS OCCUPATIONS, VOCATIONS, AND  
PROFESSIONS WITHIN**

**THE CITY OF CULLMAN, ALABAMA**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CULLMAN AS FOLLOWS:

## **SECTION I:**

Section 3 Definitions is hereby amended by adding the following definition. The City Council of the City of Cullman, Alabama, hereby adopts the following paragraphs to be added to Section 3. Definitions in Ordinance No. 2010-02.

### Section 3. 15(A)

Street Vendor - a person or business who transfers person or real property to another for consideration at a location within the City of Cullman which does not have located thereon a building, public restroom, or on public property such as itinerant businesses using temporary facilities, no restrooms, parking. Street vendors shall not include yard sales/garage sales approved by the license department of the City nor does it include special events/craft shows approved by the Council as exempt and licensed by the license department of the City of Cullman.

## **SECTION II:**

Section 4. License Terms and Requirements is hereby amended by adding Paragraph G. The City Council of the City of Cullman, Alabama hereby adopts the following paragraph G to be added to Section 4 in Ordinance No. 2010-02:

### Section 4. G. Zoning.

Any first time licensee or transient merchant shall, before a license is issued by the City, obtain approval of the Building Official of the City of Cullman that such business is located or to be located in a properly zoned address within the City of Cullman.

## **SECTION III.**

Section 16. Refunds. Is hereby deleted in its entirety. The City Council of the City of Cullman, Alabama, hereby adopts the following paragraph to replace Section 16. Refunds. In Ordinance No. 2010-02.

### SECTION 16. REFUNDS.

- A. Any refund due discovered by audit of the City or any application for business license tax erroneously paid shall be refunded to the person or business due said refund within seven business days of its discovery without petition for refund.
  
- B. Any person or business (taxpayer) may file a petition for refund of any overpayment of said person or business whom believes they have erroneously paid to the City as long as the petition is received by the City Clerk within two years from the date of payment of the business license tax which is subject to the petition.
  
- C. Refunds of overpayment of business license tax erroneously paid either by paragraph A or B above shall be refunded only if all current and previous taxes that are due the City by the person or business at the time of the refund or petition have been paid in full.

#### **SECTION IV.**

Section 19 Schedule C CONTRACTORS AND SUBCONTRACTORS shall be deleted in its entirety. The City Council of the City of Cullman, Alabama, hereby adopts the following paragraph to replace Section 19 Schedule C in Ordinance No. 2010-02:

#### **SCHEDULE C.**

##### **CONTRACTORS AND SUBCONTRACTORS**

First \$10,000 of contract ----- \$100.00 plus 1/10 of 1 percent above \$10,000.00.

- A. No permits for work of any kind for which a license is required shall be issued to a contractor, owner, or any authorized agent until all license taxes have been paid, unless herein otherwise provided.
  
- B. All general contractors shall upon request furnish the building inspector or the license officer with a full and complete list showing the names, addresses, and license numbers of all subcontractors to whom any work has been let or sub-let to be done, and will not allow any work to be done by such sub-contractor until required licenses due by said subcontractor have been paid. If all subcontracts have not been closed or awarded at the time application is made for a permit by the general contractor or by the owner, the general contractor or the owner shall not allow any

work to proceed by any subcontractor until such subcontractor has exhibited to him his city license for the work to be done on the job, unless he is certified by the license department or by the building inspector as having paid the city license due. In the event that no general contract has been let by the owner, then the owner shall be subject to all the provisions herein required of general contractors.

- C. Contractors engaged solely in the demolition of buildings declared sub-standard under the ordinances and codes of the City of Cullman.
- D. A builder constructing houses on lots owned by himself to sell or rent shall pay \$100.00 plus 1/5 of 1% of the cost of the house and lot when completed.
- E. Contractors shall provide the City of Cullman a copy of general liability insurance before a license or permit shall be issued in a minimum amount of \$50,000.00 in coverage.
- F. Any contractor or subcontractor who in the year 2010 was working on a construction project which was physically underway prior to January 1, 2010, may renew his license without the insurance requirement which will be honored by the City only for the job or jobs for which the permits were issued prior to January 1, 2010, and that particular location only.

## **SECTION V:**

Section 19 Schedule P Professional is hereby deleted in its entirety. The City Council of the City of Cullman, Alabama, hereby adopts the following paragraph to replace Section 19 Schedule P Professional in Ordinance 2010-02:

Section 19 Schedule P Professional.  
\$150.00 plus 1/5 of 1% of the gross receipts above \$25,000.00.

## **SECTION VI:**

Section 19 Schedule R Merchant Retail, Restaurants, Rental, or Leasing is hereby deleted in its entirety. The City Council of the City of Cullman, Alabama, hereby adopts the following paragraph to replace Section 19 Schedule R Merchant Retail, Restaurants, Rental, or Leasing in Ordinance 2010-02:

Section 19 Schedule R

Merchant Retail, Restaurants, Rental, Leasing or Service

\$100.00 plus 1/6 of 1% of gross receipts above \$10,000.00.

MOBILE HOMES, RECREATIONAL VEHICLES, TRAILERS, OR BOATS

\$100.00 plus 1/6 of 1% of gross receipts above \$10,000.00.

BEAUTY SALON, BARBERSHOP, SKATING RINK, BOWLING ALLEY, OR  
DANCE HALL

\$100.00 plus 1/6 of 1% of gross receipts above \$10,000.00.

**SECTION VII:**

Section 19 Schedule W Merchant Wholesale is hereby deleted in its entirety. The City Council of the City of Cullman, Alabama, hereby adopts the following paragraph to replace Section 19 Schedule W Merchant in Ordinance 2010-02:

SCHEDULE W

MERCHANT WHOLESALE, LANDSCAPER, JANITORIAL, CARPET  
CLEANING, PRESSURE WASHING

First \$50,000.00-----\$100.00

All over \$50,000.00-----\$100.00 plus 1/10 of 1% of gross receipts

**SECTION VIII:**

Section 20. City of Cullman License Classification Schedule.

1. The following NAICS codes descriptions and rate scheduled are deleted from Section 20 Classification Schedule in Ordinance No. 2010-02:

<i>NAICS Code</i>	<i>Description</i>	<i>Rate</i>	<i>Schedule</i>
441311	Automobile tires, tubes, batteries - itinerants		I
238991	Glass and glazing itinerant		I
812333	Itinerant liner and uniform supply		I
444191	Itinerant lumber and building materials dealer		I
488420	Motor vehicle towing itinerant		I
812990	Personal services - misc.		P
541922	Itinerant photography		I
611699	Schools (misc., kindergarten)		K
611610	Arts-fine arts school & arts & crafts exhibits		P
812331	Laundry - linen service		R
611699	Service (technical, computer, sports, business)		R
561740	Carpet & Upholstery Cleaning		C
561720	Janitorial Services		C
561730	Landscaping		C
561731	Lawncare (mowing only)		C
561790	Pressure Washing		C

2. The following NAICS codes description and rate schedules are added to Section 20 Classification and Schedules in Ordinance No. 2010-02:

<i>NAICS Code</i>	<i>Description</i>	<i>Rate</i>	<i>Schedule</i>
611610	Arts-fine arts schools & arts & crafts exhibits		P,F
624411	Kindergarten		K
812331	Laundry - linen service, uniform supply		R

611699	Misc. service (technical, computer, sports, business)	R
454391	Vendors (per day)	I
812991	Service	R
561740	Carpet & Upholstery Cleaning	W
561720	Janitorial Services	W
561730	Landscaping	W
561731	Lawn Care (mowing only)	W
561790	Pressure Washing	W

## **SECTION IX:**

This Ordinance shall be published once a week for two consecutive weeks up on its final passage in a newspaper with general circulation within the City of Cullman, Alabama, the first publication of said Ordinance being verbatim and the second publication either verbatim or a synopsis with the last publication being at least fifteen days prior to the Ordinance taking effect.

## **SECTION X:**

Severability: Each and every provision of this Ordinance is hereby declared to be an independent provision and that holding of any provision hereof to be void and invalid for any reason shall not affect any other provision hereof and it is hereby declared that the other provisions of this Ordinance would have been enacted regardless of any provision which might have been held valid.

## **SECTION XI:**

This Ordinance shall take effect March 8<sup>th</sup>, 2010, after its passage and publication.

All other sections of said Ordinance shall remain in full force and effect.

ADOPTED this the 8<sup>th</sup> day of March, 2010.

/s/ Garlan E. Gudger, Jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

Transmitted to the Mayor this the 8<sup>th</sup> day of March, 2010.

/s/ Ruth W. Rose  
City Clerk

APPROVED by the Mayor this the 8<sup>th</sup> day of March, 2010.

/s/ Max A. Townson  
Mayor

Council Member Page seconded the motion and a voice vote of the council adopted the ordinance. Council Member Page: Aye. Council Member Cook: Nay. Council President Gudger: Aye. Council Member Folsom: Aye. Council Member Hollingsworth: Nay. The final vote was 3 to 2 in favor of adopting Ordinance 2010-07.

President Gudger read the following resolution:

**RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF CULLMAN, ALABAMA TRANSFERRING  
THE FESTHALLE MARKET PLATZ PROPERTY CONTROL  
TO THE EXISTING PARKS AND RECREATION BOARD  
OF THE CITY OF CULLMAN**

WHEREAS, the City Council in order to streamline and reduce duplicate administration and maintenance for a single building which is used for recreational, economic, agricultural, and public purposes; and

WHEREAS, the Festhalle Market Platz employee's functions are related closer to the functions of the Park and Recreation Department than to other departments within the City; and

WHEREAS, the employees managing the Festhalle Market Platz have been transferred to the Park and Recreation Department so as to fully utilize their talents year round;

BE IT RESOLVED BY THE CITY COUNCIL in accordance with Title 11-86-3, Code of Alabama, as follows:

#### SECTION I

The Festhalle Market Platz building and equipment are hereby assigned for recreational, agricultural, economic and other public purposes to the control of the Park and Recreation Board of the City of Cullman until further resolution to the contrary.

#### SECTION II

The Festhalle Market Platz committee shall continue their current functions and report to the City of Cullman Park and Recreation Board of the City of Cullman.

ADOPTED this the 8<sup>th</sup> day of March, 2010.

/s/ Garlan E. Gudger, jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

Transmitted to the Mayor this the 8<sup>th</sup> day of March, 2010.

/s/ Ruth W. Rose  
City Clerk

APPROVED by the Mayor this the 8<sup>th</sup> day of March, 2010.

/s/ Max A. Townson

Mayor

Council Member Folsom made a motion to adopt the resolution and Council Member Cook seconded the motion. President Gudger asked Mr. Rick Fulmer to give his comments regarding the changes. Mr. Fulmer agrees this will be a better working arrangement for all involved. The resolution was passed by a voice vote. Ayes: All. Nays: None.

President Gudger asked Neal Morrison, NARCOG Director, to come to the podium. Mr. Morrison read the following resolution:

**RESOLUTION 2010-49**

**A RESOLUTION OF SUPPORT**

**ALABAMA COMMUNITIES OF EXCELLENCE**

**WHEREAS**, the City of Cullman is aware of the Alabama Communities of Excellence (ACE) program; and

**WHEREAS**, ACE consists of partners working together to provide Alabama communities with the community development programs and tools needed to ensure their long term success; and

**WHEREAS**, ACE, provides technical assistance to selected communities in order to strengthen their long term economic success; and

**WHEREAS**, ACE targets communities with populations ranging from 2,000 to 18,000 and consists of a comprehensive three (3) phase process including Phase I: Assessment, Phase 2: Leadership Development and Strategic Planning, and Phase 3: Implementation and Comprehensive Planning; and

**WHEREAS**, the City of Cullman understands that all three phases must be completed to be designated as an *Alabama Community of Excellence*; and

**WHEREAS**, the City of Cullman desires to be selected as one of the ACE 2010 Class and pledges its commitment to the ACE program and has the necessary capacity to support the ACE program.

**NOW THEREFORE, BE IT RESOLVED** that this resolution of support is hereby formally adopted by the City Council of the City of Cullman.

**ADOPTED** this 8<sup>th</sup> day of March, 2010.

/s/ Garlan E. Gudger, Jr.,  
President of City Council

ATTEST

/s/ Ruth W. Rose,  
City Clerk

**APPROVED** this 8<sup>th</sup> day of March, 2010.

/s/ Max A. Townson,  
Mayor, City of Cullman

Council Member Cook seconded the motion to adopt the above resolution and the motion was approved by a voice vote. Ayes: All. Nays: None.

President Gudger stated next on the agenda is several board appointments. Mayor Townson reappointed Mr. Steve Cummings to the planning Commission for another 6 year term that will expire on January 1, 2016.

Council Member Cook made a motion to reappoint Mr. David Speegle to the Construction Board of Adjustments & Appeals Board for another 3 year term. (2/26/2013). Council Member Folsom seconded the motion and the motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Cook made a motion to appoint Mr. Frank Fagg to the position held by the late Mr. Phil Weissend on the Construction Board of Adjustments and Appeals for a 3 year term to expire on February 26, 2013. President Gudger asked Mr. Fagg if he would accept the nomination and he accepted. Council Member Folsom seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Folsom made a motion to reappoint Mr. Perry Warren to the Downtown Redevelopment Authority for another 6 year term. The term will expire on February 24, 2016. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Page made a motion to reappoint Mrs. Judy Williamson for another 6 year term to the Downtown Redevelopment Authority. Her term will expire on February 24, 2016. Council Member Folsom seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Mr. Clayton Ingram was reappointed to another 6 year term on the Medical Clinic Board #3 by a motion made by Council Member Page. Council Member Hollingsworth seconded the motion and the motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Cook made a motion to reappoint Mrs. Helen Marie Dahlke to another 3 year term on the Tree Commission. Council Member Folsom seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Mr. Curt Thomas was reappointed to another 3 year term to the Tree Commission by a motion made by Council Member Folsom. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Cook made a motion to reappoint Mr. Ed Henke to the Zoning Board of Adjustments for another 3 year term. Council Member Folsom seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Folsom made a motion to reappoint Mr. Austin Hall to another 3 year term as a Supernumery Member of the Zoning Board. Council Member Page seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Page made a motion to reappoint Mr. Don Hewitt to another 3 year term as a Supernumery Member of the Zoning Board. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Folsom made a motion to recommend Dean Green as a Library Board Member to the Cullman County Commission. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Cook made a motion to adopt the following resolution to award a bid to G. & C. Waterworks of Atwood, TN for water materials:

**RESOLUTION NO. 2010-50**  
**AWARDING OF BID FOR**  
**WATER MATERIALS**

WHEREAS, bids were opened on Friday, March 5<sup>th</sup>, 2010 for Stock Materials for the Water Department, and

WHEREAS, the following 7 vendors submitted bids for Water Department Materials which are used for daily routine maintenance of water lines:

G. & C. Water Works	Atwood, TN	\$53,078.45
Ferguson Water Works	Bessemer, AL	53,433.63

H. D. Supply	Birmingham, AL	53,996.65
Summitt Pipe & Supply	Northport, AL	54,812.80
Eagle Wholesale Supply, Inc.	Athens, AL	55,136.64
Vellano Bros., Inc.	Lincoln, AL	57,456.84
Consolidated Pipe & Supply	Birmingham, AL	60,039.44

WHEREAS, the recommendation from the Water Department Supervisor, Junior Heaton, is to award the bid to the lowest bidder, G. & C. Water Works.

BE IT RESOLVED by the City Council of the City of Cullman, Alabama that the contract be awarded to G. & C. Water Works of Atwood, TN at this time.

ADOPTED this the 8<sup>th</sup> day of March, 2010.

/s/ Garlan E. Gudger, Jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

APPROVED by the Mayor this the 8<sup>th</sup> day of March, 2010.

/s/ Max A. Townson  
Mayor

Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

Council Member Hollingsworth made a motion to adjourn at 7:35 p.m. and Council Member Cook seconded the motion. The meeting was adjourned by a voice vote. Ayes: All. Nays: None.