

**CULLMAN CITY COUNCIL
REGULAR MEETING
July 8th, 2011**

President Gudger called the Cullman City Council Meeting to order at 12:15 p.m. on Friday, July 8th, 2011. Fire Chief Reinhardt, presented the invocation.

A roll call by Mr. Wesley Moore reflected the following. Present - Mayor Max A. Townson, President Garlan E. Gudger, Jr, Council Member Andy Page, Council Member Johnny Cook, Council Member Clint Hollingsworth and Council Member Jenny Folsom. Also present were City Attorney Roy Williams and Accountant Wesley Moore. Absent: City Clerk/Treasurer Ruth W. Rose.

President Gudger asked the Council to consider the minutes from June 27th, 2011. Council Member Cook made a motion to suspend the rules. Council Member Hollingsworth seconded the motion and the motion was approved by a voice vote. Mr. Wesley Moore polled the Council Members: President Gudger: Aye. Council Member Cook: Aye. Council Member Page: Aye. Council Member Folsom: Aye. Council Member Hollingsworth: Aye. Nays: None.

Council Member Cook made a motion to approve the minutes of June 27th, 2011 as written. Council Member Page seconded the motion and the motion to approve the minutes as written. The motion to approve was done by a voice vote. Ayes: All. Nays: None.

ADDITIONS/DELETIONS TO AGENDA

Council Member Cook made a motion to add item #4 under Roman Numeral VII to authorize the Mayor to sign a noise permit for Johnathon and Justin Heaton on Saturday, August 6th from 4:00 p.m. to 9:30 p.m. for a retirement party for their parents, Mr. & Mrs. Junior Heaton, at the Festhalle Market Platz. Council Member Hollingsworth seconded the motion and the motion to approve was held by a voice vote. Ayes: All. Nays: None.

Council Member Folsom made a motion to add item #8 under Roman Numeral VII to authorize the Mayor to sign a memorandum of agreement. Council Member Cook seconded the motion and the motion to approve was held by a voice vote. Ayes: All. Nays: None.

REPORTS OF STANDING COMMITTEES

Council Member Andy Page - Police Committee - No Report.

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.

SPECIAL COMMITTEE REPORTS

None

REPORTS OF OFFICERS

Mayor Max A. Townson - No Report.

COMMENTS FROM ANYONE NOT ON THE AGENDA

None

PETITIONS, APPLICATIONS, COMPLAINTS, APPEALS & COMMUNICATIONS

Council Member Cook made a motion to approve the request from the Water and Building Departments to install a Controlled Access Door System in their building to increase security for the amount of \$7,984 from Sharp Communications of Cullman. Council Member Page seconded the motion. Ayes: All. Nays: None.

Council Member Page made a motion to approve the request from the Building Department to purchase a desktop computer from Dell on state bid in the amount of \$1,486. Council Member Folsom seconded the motion. Ayes: All. Nays: None.

Council Member Cook made a motion to approve the request from Mr. John Hunt, Director of Parks & Recreation, to close Field of Miracles Drive from Ingle Park to Jacks Restaurant for the State Swim Meet on July 28th through 30th. Council Member Hollingsworth seconded the motion. Ayes: All. Nays: None.

Council Member Folsom made a motion to approve the request from Mr. Johnathon Heaton and Mr. Justin Heaton and to authorize the Mayor to sign a noise permit for a retirement party for their parents on August 6th during the hours of 4:00 p.m. until 9:30 p.m. at the Festhalle Market Platz. Council Member Cook seconded the motion. Ayes: All. Nays: None.

RESOLUTIONS, ORDINANCES, ORDERS & OTHER BUSINESS

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

**RESOLUTION NO. 2011-117
RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 FOR
CIVIC CENTER CONTRACT WITH PLATINUM CONSTRUCTION**

WHEREAS, Frank Fagg, Architect for F & O Architects has requested a change in the scope of work for the contractor Platinum Construction; and

WHEREAS, the City has considered the request for additional water tests on the HVAC units at the Civic Center; and

WHEREAS, the City Council finds that it is in the best interest of the City to modify the contract in the amount of \$750.

THEREFORE, BE IT RESOLVED by the Cullman City Council that the Mayor is hereby authorized to execute a change order for the project.

ADOPTED this the 8th day of July, 2011.

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

ATTEST:

/s/ Ruth W. Rose
City Clerk

Transmitted to the Mayor this the 8th day of July, 2011.

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 8th day of July, 2011.

/s/ Max A. Townson
Mayor

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

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

**RESOLUTION NO. 2011-118
RESOLUTION FOR DEBRIS REMOVAL UNDER THE
CLEAN SWEEP PROGRAM, RIGHT OF WAY CLEANING,
AND FEMA DISASTER ASSISTANCE POLICY**

WHEREAS, on April 27, 2011, the City of Cullman was devastated by numerous tornados within which caused tremendous and overwhelming devastation to public and private property; and

WHEREAS, the City of Cullman has a legal responsibility to remove the debris from public and private property to promote public health and safety and to ensure the economic recovery of the community,

WHEREAS, due to the severity and extent of the damage resulting from the April 27, 2011, tornados, the City of Cullman is unable to perform or contract to perform work in a timely manner; and

WHEREAS, the State of Alabama has agreed to pay the matching funds through Operation Clean Sweep and Right-Of-Way Cleanup; and

WHEREAS, the City of Cullman is uncertain as to its ability to fund Operation Clean Sweep and Right-Of-Way Cleanup for an extended time and wish to reserve its right to terminate the program through the Corp of Engineers with reasonable notice.

WHEREAS, the City Council of the City of Cullman held a public hearing regarding the needs of its citizens in order to preserve and protect property, public health and safety and to ensure the economic recovery of the community has determined a need to participate in the Clean Sweep Program so long as the City can afford the matching funds under the Program.

THEREFORE, IT IS RESOLVED AS FOLLOWS:

1. Removal of residential April 27, 2011 tornado-caused debris from private property is necessary and in the public interest to eliminate immediate threats to life, public health, and safety as determined by the State of Alabama Department of Public Health as transmitted in a letter to Michael Byrne dated May 11, 2011, which declared a Public Health Nuisance emergency (Attachment A).
2. The City Council certifies that under our local code authority and that provided to local jurisdictions by the laws of the State of Alabama as set out in the opinion of the State of Alabama Attorney General as transmitted in a letter to Michael Byrne FEMA, Federal Coordinating Officer (FCO), dated May 12, 2011 (Attachment B), that we have the legal responsibility, duty, and authority to remove debris from private property.
3. Based upon paragraphs 1 and 2 above, the City Council has determined to exercise these authorities to enter onto private property and clean right-of ways in order to abate the declared public health nuisance and safety emergency by removal of the tornado-generated debris until a time thereafter which the City can manage the debris removal on public property and Clean Sweep.
4. The City Council certifies that before we initiate removal, we shall have satisfied all the legal processes and received all legal permissions to carry out these actions of debris removal on right-of-ways and private property through the use of Rights of Entry with indemnity clauses signed by the property owner or use of our City of Cullman code process of Condemnation or Nuisance Abatement.
5. There may be circumstances where, because of the immediate urgency of the situation, the procedures of obtaining a Right of Entry or pursuing a condemnation proceeding as set out in paragraph 4 above, may be too time consuming. The City Council will then act under the auspices of the attached opinion from the State of Alabama Attorney General as transmitted in a letter to Michael Byrne, FEMA FCO dated May 12, 2011 (Attachment B) and the attached Declaration of Public Health Nuisance from the State of Alabama Department of Public Health as transmitted in a letter to Michael Byrne dated May 11, 2011 (Attachment A) which confirms the legal basis under Alabama law for the City of Cullman to proceed to remove the debris on these private properties utilizing its police power. The City Council certifies that it has a process to determine which properties will require this process to

protect the public safety. In these circumstances, a reasonable waiting period will be required for public notification before private property debris removal will commence.

6. The City Council will recognize and be mindful of all laws and regulations that concern historic preservation and environmental protection.
7. In the unusual circumstance that the City desires to remove solitary standing walls as debris, the City Council will certify that:
 - a. Local and Alabama law conclude that such solitary standing walls are defined as debris;
 - b. that the City has obtained a Right of Entry to the subject property that includes specific permission to remove the standing wall and that states that if there was insurance, the adjuster has inspected the property;
 - c. that the solitary wall has no historic significance; and
 - d. that the work necessary to remove the wall will not involve any additional contracting, equipment, or any other change in the contract scope of work.
8. As required by Section 40(b) of the Stafford Act (42 U.S.C. 5173(b)), the City of Council of the City of Cullman hereby agrees that it shall indemnify and hold harmless the Federal Government and its respective employees, agents, contractors, and subcontractors from any claims arising from debris removal. The City of Cullman hereby acknowledges that in accordance with Section 304 of the Stafford Act (42 U.S.C. § 5148), the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.
9. As required, in order to avoid duplication of benefits pursuant to Section 312 of the Stafford Act (42 U.S.C. § 5155) the City of Cullman will obtain from private property owners information and documentation relating to insurance coverage, proceeds, and settlements and provide this to the State and the FCO.
10. The City of Cullman reserves the right to cancel this Agreement with the Corp of Engineers and its sub-contractors under the FEMA programs with seven days written notice to Director of Alabama EMA or through any appropriate representative of the Corp of Engineers.

ADOPTED this the 8th day of July, 2011.

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

ATTEST:

/s/ Ruth W. Rose
City Clerk

Transmitted to the Mayor this the 8th day of July, 2011.

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 8th day of July, 2011.

/s/ Max A. Townson
Mayor

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:

**RESOLUTION 2011-119
RESOLUTION AUTHORIZING CHANGE
OF REGULAR SCHEDULED MEETING DATES**

WHEREAS, The City of Cullman has scheduled meeting dates of the second and fourth Monday of each month; and

WHEREAS, It has been determined that the Council Members will be attending the Electric Cities of Alabama's meeting on July 11th, 2011 and not present for the regularly scheduled council meeting. Therefore, the council meeting today on July 8th, 2011 will be the first regular city council meeting for the month of July.

WHEREAS, It has been determined that the Council Members will be attending a Cullman Jefferson Gas Board meeting in Memphis, Tennessee on July 25th, 2011 and not present for the regularly scheduled council meeting. Therefore, the second regular city council meeting for the month of July will be on July 27th at 5:30 p.m at the Lucille N. Galin Auditorium in City Hall.

THEREFORE, BE IT RESOLVED by the City Council of the City of Cullman that the dates be hereby amended.

ADOPTED this 8th day of July, 2011.

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

Attest:

/s/ Ruth W. Rose
City Clerk

APPROVED this 8th day of July 2011.

/s/ Max A. Townson

Mayor

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

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

RESOLUTION 2011-120
A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR A
GRANT THROUGH THE EMERGENCY WATERSHED PROTECTION PROGRAM

WHEREAS, the City of Cullman is in the process of removing debris left from the tornadoes on April 27th, 2011.

WHEREAS, the City Council of the City of Cullman believes that it is in the best interest of the City to apply for a grant with the Emergency Watershed Protection Program to cleanup debris in the water channels to prevent a natural disaster such as a flood.

NOW THEREFORE, BE IT RESOLVED by the City Council for the City of Cullman that Mayor Max A. Townson is hereby authorized to apply for a grant through the Emergency Watershed Protection Program.

ADOPTED this 8th day of July, 2011.

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

Attest:

/s/ Ruth W. Rose
City Clerk

APPROVED this 8th day of July 2011.

/s/ Max A. Townson
Mayor

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

Council Member Cook to suspend the rules, and Council Member Folsom seconded the motion. Mr. Wesley Moore polled the Council Members: President Gudger: Aye. Council Member Cook: Aye. Council Member Page: Aye. Council Member Folsom: Aye. Council Member Hollingsworth: Aye. Nays: None.:

Council Member Cook made a motion to adopt the following resolution.

RESOLUTION 2011-121
A RESOLUTION APPROVING THE RESTATED CERTIFICATE OF
INCORPORATION AND DEVELOPMENT AREA OF THE CITY OF

CULLMAN DOWNTOWN REDEVELOPMENT AUTHORITY

BE IT RESOLVED BY THE CITY COUNCIL (THE “COUNCIL”) OF THE CITY OF CULLMAN, ALABAMA (THE “CITY”), AS FOLLOWS:

Section 1. The Council has heretofore found and determined, and does hereby find, determine and declare, as follows:

(a) Pursuant to Chapter 54A of Title 11 of the Code of Alabama 1975 (the “Enabling Law”), The City of Cullman Downtown Redevelopment Authority (the “Authority”) has been heretofore incorporated by authorization of the Council by resolution duly adopted thereby on February 10, 1986, and the Certificate of Incorporation thereof, together with all amendments thereto, is recorded in Book 17 at Page 774 et seq. (Fiche 38 at Frame E11) and Book 39 at Page 548 et seq. in the Office of the Judge of Probate of Cullman County, Alabama;

(b) Pursuant to Section 11-54A-25 of the Enabling Law, the Authority has requested the Council to approve the Restated Certificate of Incorporation thereof attached hereto as Exhibit A (the “Restated Authority Certificate of Incorporation”) in order that the Authority may reincorporate under the provisions of the Enabling Law as amended by Act No. 2004-630 of the 2004 Regular Session of the Alabama Legislature;

(c) Pursuant to Section 11-54A-9(b) of the Enabling Law, the Authority has requested the Council to approve and confirm the “development area” (as defined in the Enabling Law) of the Authority, as set forth on Exhibit B hereto (the “Development Area”), for all purposes of the Enabling Law;

(d) It is necessary, desirable, and in the best interests of the City, the Authority and the taxpayers and citizens of the City that the Council approve the Restated Authority Certificate of Incorporation and approve and confirm the Development Area as requested by the Authority.

Section 2. The Council does hereby adopt, approve, authorize, direct, ratify and confirm the following:

(a) the incorporation of the Authority;

(b) the reincorporation of the Authority under Chapter 54A of Title 11 of the Code of Alabama 1975, as amended by Act No. 2004-630 of the 2004 Regular Session of the Alabama

Legislature;

(c) the provisions and recordation of the Restated Authority Certificate of Incorporation;

(d) the Development Area.

Section 3. The officers of the Municipality are hereby authorized and directed to take all actions and deliver such documents and instruments as may be required by law or necessary or desirable to carry out and effect the purposes of this resolution.

Section 4. This resolution shall take effect upon publication as provided by law.

Duly passed and adopted this 8th day of July, 2011.

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

Attest:

/s/ Ruth W. Rose

City Clerk

Transmitted to the Mayor for approval on the 8th day of July, 2011.

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 8th day of July, 2011.
/s/ Max A. Townson
Mayor

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

Council Member Cook made a motion to adopt the following resolution based on Mr. Heyward Hosch stating that the City is in no way liability to pay the bonds or any expense related to this project:

RESOLUTION NO. 2011 - 122
A RESOLUTION APPROVING A PROJECT OF THE CITY OF
CULLMAN DOWNTOWN REDEVELOPMENT AUTHORITY
FOR BENEDICTINE SISTERS OF CULLMAN, INC.

BE IT RESOLVED BY THE CITY COUNCIL (THE "COUNCIL") OF THE CITY OF CULLMAN, ALABAMA, (THE "CITY") AS FOLLOWS:

1. The Council has heretofore, upon evidence duly presented to and considered by it, found and determined, and does hereby find, determine and declare that:
 - (a) Pursuant to Chapter 54A of Title 11 of the Code of Alabama 1975 (the "Enabling Law"), The City of Cullman Downtown Redevelopment Authority (the "Authority") has been heretofore incorporated by authorization of the Council;
 - (b) Pursuant to the Enabling Law, the Authority proposes to issue its \$8,400,000 principal amount Special Project Revenue Bond (Benedictine Sisters Monastery/Retreat Center Project), to be dated the date of issuance (the "Bond"), pursuant to Financing and Lease Agreement dated the date of delivery (the "Agreement"), among the Benedictine Sisters of Cullman, Inc., as bondholder, the Authority, and Benedictine Sisters of Cullman, Inc., as user (the "User"), to finance the acquisition and construction of capital improvements of buildings, fixtures and personal property (the "Project") to the facilities of the User located at 916 Convent Road within the corporate limits of the City and the development area of the Authority for use by the User as a Monastery and a Retreat Center for persons of all faiths;
 - (c) Pursuant to the Agreement, the User shall make payments for the account of the Authority at times and in amounts sufficient to pay the principal of and interest on the Bond when due;
 - (d) The Bond cannot and will not create an obligation (whether direct, indirect, or contingent) of the City or Cullman County or the State of Alabama.

2. For purposes of the Certificate of Incorporation of the Authority, the City does hereby consent to the acquisition and financing of the Project by the Authority and to the location and nature of the Project as described hereinabove.
3. The officers of the City are hereby authorized and directed to take all actions and deliver such documents and instruments as may be required by law or necessary or desirable to carry out and effect the purposes of this resolution.
4. Any prior actions taken or instruments executed by any officer of the City in connection with the transactions herein authorized and approved are hereby ratified and confirmed.
5. This resolution shall take effect immediately and all ordinances, resolutions, orders, or parts thereof in conflict or inconsistent with any provision herein hereby are, to the extent of such conflict or inconsistency, repealed.

Section 4. This resolution shall take effect upon publication as provided by law.

Duly passed and adopted this 8th day of July, 2011.

/s/ Garlan E. Gudger, Jr.

President of the City Council

Attest:

/s/ Ruth W. Rose

City Clerk

Transmitted to the Mayor for approval on the 8th day of July, 2011.

/s/ Ruth W. Rose

City Clerk

APPROVED by the Mayor this the 8th day of July, 2011.

/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 memorandum of agreement:

MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF ALABAMA AND
THE CULLMAN CITY COUNCIL
REGARDING REMOVAL AND DISPOSAL OF DEBRIS

This Memorandum of 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 ALDOT; and the Cullman City Council, hereinafter to as MUNICIPALITY; and

WHEREAS, ALDOT has control of and responsibility for maintenance and upkeep of the right of way on state roads; and

WHEREAS, in April of 2011, numerous tornadoes and storms passed over several Alabama counties causing extensive property damage; and

WHEREAS, after a first pass by ALDOT to remove storm debris from the right of way on state roads there is storm debris from private property that has been placed on state right of way.

NOW, THEREFORE, the parties hereto agree as follows:

1. ALDOT authorizes the MUNICIPALITY, its agent or its contractor to enter upon the state right of way at its discretion in order to arrange, order, gather, or otherwise marshal debris caused by or related to April 2011 storms and remove and dispose of the debris placed thereon by owners of private property.

IN WITNESS WHEREOF, the parties have executed this Agreement on th date indicated above, and each of the undersigned personally represent and warrant that they have the full right, power and authority to execute this Agreement on behalf of the respective parties.

ATTEST:

CULLMAN, ALABAMA

/s/ Ruth W. Rose

/s/ Garlan E. Gudger, Jr.

City Clerk

President of the City Council

APPROVED AS TO FORM:

/s/ Jim R. Ippolito, Jr.

Chief Counsel

Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

/s/ D.W. Vaughn, Chief Engineer

Alabama Department of Transportation

APPROVED:

/s/ John R. Cooper, Director

Alabama Department of Transportation

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

Council Member Cook made a motion to adjourn. Council Member Hollingsworth seconded the motion and the meeting was adjourned at 11:55 a.m. by a voice vote. Ayes: All. Nays: None.