

STATE OF ALABAMA)(
 :
 COUNTY OF BALDWIN)(

The City Council, City of Fairhope, met in regular session at 6:00 p.m., Fairhope Municipal Complex Council Chamber, 161 North Section Street, Fairhope, Alabama 36532, on Monday, 22 April, 2013.

Present were Council President Jack Burrell, Councilmembers: Rich Mueller, Diana Brewer, Michael A. Ford, and Kevin Boone, Mayor Timothy M. Kant, City Attorney Marion E. Wynne, and City Clerk Lisa A. Hanks.

Council President Burrell stated there was a need to add on an agenda item after Agenda Item Number 14; a Resolution Authorizing Mayor Kant to submit a Transportation Enhancement Program Grant to ALDOT for ADA compliant enhancements and sign all documents on behalf of the City.

Councilmember Boone moved to add on the above mentioned item **not** on the printed agenda. Seconded by Councilmember Ford, motion passed unanimously by voice vote.

There being a quorum present, Council President Burrell called the meeting to order. The invocation was given by Reverend Michael Davis, pastor of Twin Beech AME Zion Church, and the Pledge of Allegiance was recited. Councilmember Brewer moved to approve minutes of the 8 April 2013, regular meeting; minutes of the 8 April 2013, work session; and minutes of the 8 April 2013, agenda meeting. Seconded by Councilmember Mueller, motion passed unanimously by voice vote.

Mayor Kant addressed the City Council regarding the following items:

1. Recognized April 30, 2013 as Volunteer Appreciation and mentioned the Welcome Center volunteers who work 60 hours per week.
2. Announced this Saturday is "Earth Day" and the event is at the park near the Municipal Pier. He passed around a poster by Byleigh Johnson that stated "Anti-Littering Rocks" which won the competition from the 5th Graders.

Jill Cabaniss, Finance Director, addressed the City Council and presented a Summary Financial Report six month ended March 31, 2013. The General Fund had a cash balance of \$11,502,035 and the Utility Funds had a cash balance of \$23,782,031 for a total cash balance of \$35,284,066. The excess revenue over expenditures was \$1,593,287.

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The following individuals spoke during Public Participation:

1. Mike Odom, The Fairhope Courier at 325 Fairhope Avenue, addressed the City Council regarding Agenda Item Number 7, an ordinance to approve and adopt Police General Order (“PGO”) 3.400 Police Department Discipline. Mr. Odom read the following from his e-mail sent to Mayor Kant previously:

I’m writing because the argument the Mayor and Chief Petties gave as the reason for the change—that state law requires it because the hearing officer’s decision must be final—does not seem to be supported by the statute, as I read it.

Sections 11-43-230 e and f, which are boldfaced below, indicate that appeals to the Personnel Board, as a post disciplinary hearing and as one affording greater due process rights to the police employees, are explicitly contemplated and allowed by the statute.

I’m not sure which section of the statute you rest your argument upon, or the argument that personnel attorney Paul Myrick may have given in support of the proposed change as being required by state law.

For a follow-up story, please let me know why appeals to the Personnel Board from hearing officer decisions are not allowed by state law, or which statutory section prohibits such post disciplinary reviews by a hearing officer.

Mr. Odom said he wanted to get this on the record and wanted to know what law we are talking about that prohibits these hearings and why they shouldn’t be allowed.

Councilmember Mueller addressed the City Council regarding Committees and invited participation of citizens for the Fairhope Environmental Advisory Board. He said the application could be gained from the City’s website or the Clerk’s office.

Councilmember Brewer addressed the City Council and recognized Jon Cardwell as the new Fairhope High School principal; Mr. Cardwell had been serving as the interim principal.

Councilmember Ford addressed the City Council and commented he was glad to see Councilmember Boone back. He also announced that the Recycling Committee will be meeting this coming week and volunteers are always needed, but participation has been good.

Councilmember Boone addressed the City Council and stated it was good to be back and thankful that the good Lord had his hand on him during the problems he encountered. He appreciated all of the prayers, best wishes and cards he received.

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Council President Burrell addressed the City Council and he too commented he was glad Councilmember Boone was back. Several Boys Scouts, from Troop 87 from Christ the King Church, are here tonight working on their *Citizenship in the Community* merit badge. Mayor Kant welcomed and shook hands with each of the following Boy Scouts: Mac Hirsh, Joseph Conwell, Morgan Cunningham, Taylor Hartley, Joshua Devericks, Jacob Devericks, Nathan Vincent, and Liam Ayres.

Councilmember Boone moved to appoint Cathy Slagle, Troy Strunk, and John Avent as members, to move Ray Clark from an alternate member to a member, and to appoint E. Richard Schneider as an alternate member to the Board of Adjustments and Appeals for a three-year term. The term will expire in April 2016.

Councilmember Boone moved for final adoption of Ordinance No. 1492, an ordinance to Approve and Adopt Police General Order (“PGO”) 3.400 Police Department Discipline. (Introduced at the April 8, 2013 City Council Meeting). The motion was seconded by Councilmember Mueller. Council President Burrell stated he worked on this issue a great deal today and there is no ordinance in place at this time. This is nothing out of the ordinary, the Mayor can accept or decline discipline and this follows state law. These are checks and balances on the Chief himself. He said the Executive Powers are granted by the State of Alabama.

Paul Myrick, 6708 Beaver Creek Drive, stated he is employment counsel for the City of Fairhope as needed. Mr. Myrick said that if the Mayor and a Councilmember may have suggested that the law prohibited, two bites of the apple as it were, a follow-up hearing. Mr. Myrick said it is certainly is not prohibited. It is permissible to have a double hearing, but it is unprecedented. He does not know of any other Municipality that affords a full pre-disciplinary hearing which is required by statute for law enforcement officers. That then turns around and allows a second full due process hearing, post termination, for a police officer; and that would certainly be something no other employee of the City of Fairhope has. The pre-disciplinary procedure also exceeds what other employees have, but that is mandated by statute applicable to only law enforcement officers. He said this would be duplicative, an expense to the City, and unprecedented to any other Municipality that he deals with. Mike Odom stated the difference is the Review Officer hearing is not open to the public and the Personnel Board is an open meeting. Mayor Kant asked Mr. Myrick if he knew what procedure Daphne and Foley used. Mr. Myrick replied that Foley uses a pre-disciplinary hearing with the Mayor as the Review Officer; and does not have a post hearing.

Council President Burrell commented that the Review Officer is a nominated by the Chief and the Mayor who is then approved and adopted by the City Council. The checks and balances beyond other Cities in Alabama. Mayor Kant stated that the Police General Orders are not an ordinance at this time; and was changed by each new Chief of Police. After further discussion, motion for final adoption passed by the following votes: AYE – Burrell, Mueller, Brewer, Ford, and Boone. NAY – None.

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Councilmember Ford introduced in writing an Ordinance to Repeal Sections 3-1 through 3-5 in the Fairhope Code of Ordinances that Establish the Fairhope Airport Board; to Repeal Ordinance No. 681 and Ordinance No. 743; and to Amend Ordinance No. 920 removing the Name of Fairhope Airport Board. Council President Burrell commented this is in no way to dissolve the Airport Authority. Due to no motion for immediate consideration, this ordinance will layover until the May 13, 2013 City Council meeting.

Councilmember Brewer introduced in writing, and moved for the adoption of the following resolution, a resolution Authorizing Mayor Timothy M. Kant to sign the Municipal Water Pollution Prevention Program (MWPP) Report for 2012. Seconded by Councilmember Boone, motion passed unanimously by voice vote.

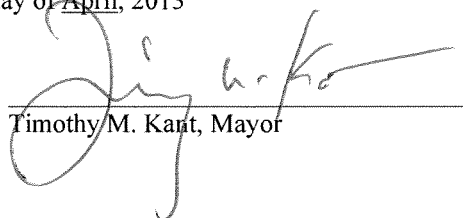
RESOLUTION NO. 2074-13

**MUNICIPAL WATER POLLUTION PREVENTION (MWPP) PROGRAM
ATTACHMENT 1**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRHOPE, ALABAMA, that Mayor Timothy M. Kant is hereby authorized to inform the Department of Environmental Management that the following actions were taken by the City Council of the City of Fairhope, Alabama.

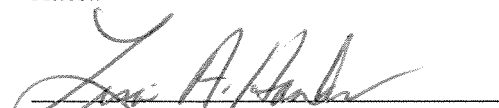
1. Reviewed the MWPP Annual Report which is attached to the resolution.
2. Set forth the following actions and schedule necessary to maintain effluent requirement contained in the NPDES Permit, and to prevent the bypass and overflow of raw sewage within the collection system or at the treatment plant:
 - (a) Complete the current wastewater treatment plant upgrades needed for regulatory compliance and to accommodate future growth.
 - (b) Continue to perform O & M requirements to the treatment and collection system and complete repairs when discovered.
 - (c) Continue to provide training opportunities for the operations staff to assist them with maintaining certification and knowledge of current methods and technologies.

Adopted this 22nd day of April, 2013



Timothy M. Kant, Mayor

Attest:



Lisa A. Hanks, MMC
City Clerk

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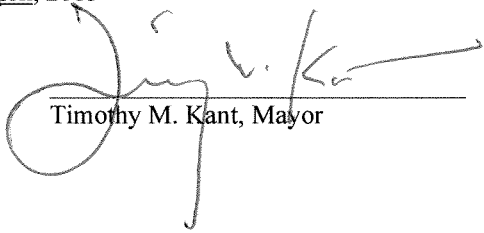
Councilmember Brewer introduced in writing, and moved for the adoption of the following resolution, a resolution to Purchase twenty-four (24) Ductile Iron Poles for the Electric Department with an approximate cost of \$27,756.00. Seconded by Councilmember Mueller, motion passed unanimously by voice vote.

RESOLUTION NO. 2075-13

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA, as follows:

[1] That the City of Fairhope has voted to purchase twenty-four (24) Ductile Iron Poles for the Electric Department and authorizes procurement without formal bid based on the option allowed by the Code of Alabama 1975, Section 41-16-51(b)(7). The cost will be approximately \$27,756.00.

Adopted on this 22nd day of April, 2013



Timothy M. Kant, Mayor

Attest:



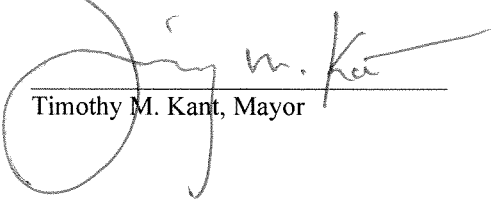
Lisa A. Hanks, MMC
City Clerk

Councilmember Boone introduced in writing, and moved for the adoption of the following resolution, a resolution Authorizing Mayor Timothy M. Kant to execute an extension of the Contract with Pittman Tractor Company, Inc. for Disaster Debris Removal and Disposal. Seconded by Councilmember Ford, motion passed unanimously by voice vote.

RESOLUTION NO. 2076-13


BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA, that Mayor Timothy M. Kant is hereby authorized to execute an extension of the Contract with Pittman Tractor Company, Inc. for Disaster Debris Removal and Disposal (Bid Number 009-12) for an additional one year as per the terms and conditions of the original contract, as needed after disaster, based on per unit cost as specified in Bid Tabulation.

Adopted on this 22nd day of April, 2013



Timothy M. Kant, Mayor

Attest:



Lisa A. Hanks, MMC
City Clerk

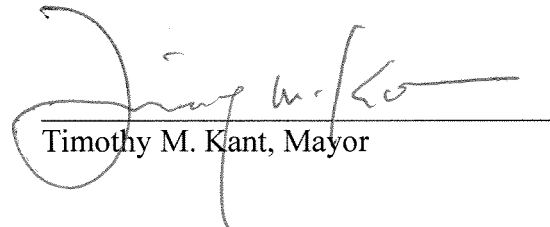
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Councilmember Brewer introduced in writing, and moved for the adoption of the following resolution, a resolution Authorizing Mayor Timothy M. Kant to negotiate fees for Engineering Services for the REC002-13 New Soccer Complex Project with Preble-Rish, L.L.C. Seconded by Councilmember Ford, motion passed unanimously by voice vote.

RESOLUTION NO. 2077-13


BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA, that Mayor Timothy M. Kant is hereby authorized to negotiate fees for RFQ No. PS010-13 for Engineering Services for REC002-13, New Soccer Complex Project, with Preble-Rish, LLC.

DULY ADOPTED THIS 22ND DAY OF APRIL, 2013



Timothy M. Kant, Mayor

Attest:



Lisa A. Hanks, MMC
City Clerk

Councilmember Boone introduced in writing, and moved for the adoption of the following resolution, a resolution Authorizing Mayor Timothy M. Kant to execute an Agreement between the City of Fairhope and the State of Alabama, acting by and through the Alabama Department of Transportation, for the improvements to the U.S. Highway 98 and County Road 48 intersection in Fairhope. Seconded by Councilmember Brewer, motion passed unanimously by voice vote.

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RESOLUTION NO. 2078-13

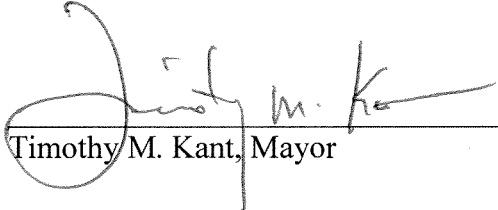
WHEREAS, The City of Fairhope shall enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for the traffic signal upgrades by upgrading to mast arm signal poles and video detection at the intersection at U.S. Highway 98 at County Road 48 in Fairhope, Alabama;

WHEREAS, This Agreement requires participation by the City of Fairhope and the State of Alabama in funding the intersection improvement's cost. The total estimated cost for the improvements at this location is \$140,000.00 with 50% funded by the State of Alabama and 50% funded by the City of Fairhope; and

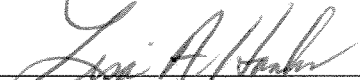
WHEREAS, In the event the final cost for the intersection improvements is less than the total estimated cost, the State of Alabama and the City of Fairhope will share in the cost under run at the above-mentioned funding ratio. In the event the final installation cost exceeds the total estimated cost, the State of Alabama and the City of Fairhope will share in the cost overrun at the above-mentioned funding ration.

BE IT RESOLVED, by the City Council of Fairhope, Alabama that Mayor Timothy M. Kant is hereby authorized to execute an Agreement between the City of Fairhope and the State of Alabama, acting by and through the Alabama Department of Transportation for the improvements to the U.S. Highway 98 and County Road 48 intersection in Fairhope, Alabama.

Adopted and Approved this 22nd day of April, 2013


 Timothy M. Kant, Mayor

Attest:


 Lisa A. Hanks, MMC
 City Clerk

Councilmember Ford moved to approve the position of a full-time Snack Bar Attendant at the Golf Course with a Pay Grade 14 for the Quail Creek Golf Department. Seconded by Councilmember Boone, motion passed unanimously by voice vote.

22 April 2013

Councilmember Brewer introduced in writing, and moved for the adoption of the following resolution, a resolution Authorizing the submission of a Transportation Enhancement Grant to ALDOT requesting funds to provide ADA compliant enhancements to the City's pedestrian facilities; and authorizing Mayor Timothy M. Kant to sign all required grant application documents on behalf of the City. Seconded by Councilmember Mueller, motion passed unanimously by voice vote.

RESOLUTION NO. 2079-13

**AUTHORIZING THE SUBMISSION OF AN
FY 2013 TRANSPORTATION ENHANCEMENT PROGRAM GRANT
TO THE ALABAMA DEPARTMENT OF TRANSPORTATION
TO IMPROVE ADA ACCESSIBILITY OF PEDESTRIAN FACILITIES
THROUGHOUT THE CITY OF FAIRHOPE, ALABAMA**

WHEREAS, the Alabama Department of Transportation (ALDOT) is accepting applications from municipal governments for Transportation Enhancement (TE) Program Grants; and

WHEREAS, the City of Fairhope has identified the need to make ADA accessibility improvements to pedestrian facilities throughout the City; and

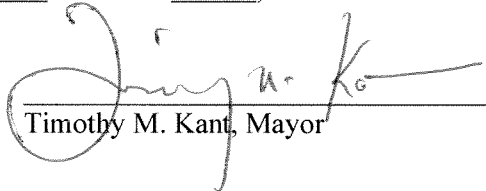
WHEREAS, if funded, the grant will pay 80% of the construction costs, which are estimated at \$100,000.00, and the City of Fairhope will be responsible for providing 20% of the construction costs and 100% of professional engineering fees, if funded; and

WHEREAS, the City's Public Works Department will provide oversight of the project;

NOW THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, that by this Resolution the City of Fairhope authorizes submission of a TE Grant to ALDOT requesting funds to provide ADA compliant enhancements to the City's pedestrian facilities.

BE IT FURTHER RESOLVED that the City Council authorizes Mayor Timothy M. Kant to sign all required grant application documents on behalf of the City.

DULY ADOPTED THIS 22ND DAY OF APRIL, 2013



Timothy M. Kant, Mayor

Attest:



Lisa A. Hanks, MMC
City Clerk

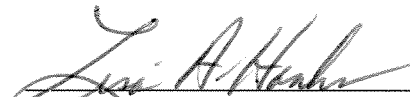
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Councilmember Boone moved to adjourn the meeting. Seconded by Councilmember Mueller, motion passed unanimously by voice vote.

There being no further business to come before the City Council, the meeting was duly adjourned at 6:55 p.m.



Jack Burrell, Council President



Lisa A. Hanks, MMC
City Clerk