



CITY COUNCIL WORK SESSION AGENDA

Pelham Police & Court Building

August 15, 2022 – 5:00 p.m.

**BY GENERAL CONSENT OF THE COUNCIL, AGENDA ITEMS
MAY BE ADDED, REMOVED OR CONSIDERED OUT OF ORDER**

Proper notice of the regular work session of the Pelham City Council was given in advance of such public meeting and the notice remained posted throughout the scheduled meeting.

- A. Call to Order
- B. Record of Attendance
- C. Approval of the August 1, 2022 Regular Work Session Minutes
- D. Executive Session
- E. Request(s) to Address the City Council
 - 1. Lisa Ripp, Community Engagement Liaison, Grace Klein Community Food Rescue
- F. Old Business – None
- G. New Business
 - 1. Update – FY2022 Street Resurfacing Project
 - 2. Discussion – Fire Department Location Study
- H. Review of the August 15, 2022 City Council Agenda
- I. Adjournment

THE COUNCIL WORK SESSION IS OPEN TO THE PUBLIC BUT IS NOT A PUBLIC HEARING



CITY COUNCIL WORK SESSION MINUTES

Pelham Police & Court Building
August 1, 2022 – 5:30 p.m.

Proper notice of the regularly scheduled work session of the Pelham City Council was given in advance of such public meeting and the notice remained posted throughout the scheduled meeting.

Members of the Pelham City Council met on Monday, August 1, 2022, at 5:30 p.m. The regular work session was held in the Pelham Police & Court Building and was open to the public.

Call to Order

The work session was called to order by Council President Mercer at 5:30 p.m.

Record of Attendance

The following elected officials were present:

Council President Maurice Mercer
Councilmember Larry Palmer
Councilmember Rick Wash
Councilmember Mildred Lanier
Mayor Gary Waters

The following elected official(s) were not present:

Councilmember David Coram

The city clerk/treasurer recorded the attendance of all elected officials and announced a quorum was present. Councilmember Coram and City Manager Gretchen DiFante were not present. City Attorney Josh Arnold was present.

Media Present: None

Others Present: City department heads, city employees, and members of the public.

Approval of Minutes

A motion was made by Councilmember Wash to approve the July 18, 2022 Regular Work Session Minutes.

The motion was seconded by Councilmember Lanier.

There being no further discussion the motion passed unanimously by voice vote of those members present.

Executive Session

Council President Mercer stated for the record the purpose of the Executive Session is to discuss the legal ramifications of and legal options for pending litigation, controversies not yet being litigated, but imminently likely to be litigated if the governmental body pursues a proposed course of action under Section 36-25A-7(3)(a), Code of Alabama 1975, as amended.

City Attorney Josh Arnold stated the purpose of tonight's Executive Session is appropriate under Section 36-25A-7(3) (a) Code of Alabama 1975, as amended.

A motion was made by Councilmember Lanier to enter into an Executive Session of the city council for the stated purpose. Said motion was seconded by Councilmember Palmer. Council President Mercer asked the city clerk/treasurer for a roll call vote. The vote to adopt said motion was recorded as follows:

Maurice Mercer, Council President	<u>Yes</u>
David Coram, Council Member	<u>Not Present</u>
Larry Palmer, Council Member	<u>Yes</u>
Rick Wash, Council Member	<u>Yes</u>
Mildred Lanier, Council Member	<u>Yes</u>

Council President Mercer asked the members of the city council, Mayor Waters, City Attorney Josh Arnold, Pelham Board of Education President Rick Rhoades, Pelham Board of Education Superintendent Dr. Chuck Ledbetter, Lt. Mike Williams, Communications Manager Ainsley Allison and City Clerk/Treasurer Tom Seale to attend the Executive Session. Council President Mercer stated he expected the city council to return from the Executive Session in approximately 20 minutes. The city council went into Executive Session at 5:32 p.m.

Councilmember Palmer moved to adjourn the Executive Session. Said motion was seconded by Councilmember Lanier. The motion passed unanimously by voice vote of those members present and the Executive Session was adjourned at 6:00 p.m.

Council President Mercer called the work session back to order at 6:03 p.m.

Request to Address the City Council – None

Old Business – None

New Business

1. Discussion – Rescheduling the September 5, 2022 Work Session and Council Meeting due to the observance of Labor Day

Council President Mercer led the discussion in rescheduling the September 5, 2022 Work Session and Council Meeting due to the observance of Labor Day. It was the consensus of the city council to move the meeting date tentatively to Tuesday, September 6, 2022. Further discussion will follow on August 15, 2022.

2. Finalize dates for FY2023 Budget Council/Staff Work Sessions

Council President Mercer discussed the dates for the FY2023 Budget Council/Staff Work Sessions. The city council confirmed the dates on their calendars.

New Employee Introductions – None

Employee Promotions – None

Employee Recognitions – None

Review of August 1, 2022 Council Agenda

Council President Mercer reviewed the August 1, 2022 city council agenda.

E. Consent Agenda

A consent agenda is presented by the presiding officer at the beginning of a council meeting. Items presented on the consent agenda are considered routine and/or non-controversial and are organized apart from the rest of the agenda and are adopted by general consent and vote by the city council without debate. Items may be removed from the consent agenda on the request of any one member. Removed items may be taken up either immediately after the consent agenda is approved or placed later on the agenda at the discretion of the presiding officer and City Council.

1. Approval of the August 1, 2022 City Council Agenda
2. Approval of the July 18, 2022 Regular Council Meeting Minutes
3. Approval of non-budgeted expenses from restricted fund accounts: None
4. **Resolution 2022-08-01-01** for consideration to amend the FY2022 Public Works Budget in the amount of \$36,500.00 for storm water sewer repairs on Ryecroft Circle previously approved by Resolution 2022-07-18-02

Director of Development Services & Public Works Andre` Bittas noted a blockage on Ryecroft Circle is causing a backup during heavy rain events. He stated the blockage cannot be removed without replacing the storm water culvert, which will require excavating the area. He requested the city council amend the FY2023 Public Works Budget in the amount of \$36,500.00 so the project can move forward. Mr. Bittas noted the city council previously approved the project by adopting Resolution 2022-07-18-02.

F. Public Hearing(s) – None

G. Mayor's Comments

- H. Proclamation(s) by the Mayor and Others – None
- I. Report of the City Manager – None
- J. Report of the City Attorney – None
- K. Request(s) to Address the Council – None
- L. Old Business / Resolutions / Ordinances / Orders and Other Business – None
- M. New Business / Resolutions / Ordinances / Orders and Other Business – None

(End of August 1, 2022 Agenda Review)

Adjournment

A motion to adjourn the work session was made by Councilmember Wash and seconded by Councilmember Lanier. The motion passed unanimously by voice vote of those members present, and the work session was adjourned at 6:09 p.m.

Respectfully submitted this 1st day of August 2022.

Tom Seale, MMC, City Clerk/Treasurer

Maurice Mercer, President of the Council

[SEAL]



CITY COUNCIL MEETING AGENDA

Pelham Police & Court Building

August 15, 2022 – 7:00 p.m.

BY GENERAL CONSENT OF THE COUNCIL, AGENDA ITEMS MAY BE ADDED, REMOVED OR CONSIDERED OUT OF ORDER

Proper notice of the regular scheduled meeting of the Pelham City Council was given in advance of such public meeting and the notice remained posted throughout the scheduled meeting.

- A. Call to Order
- B. Invocation
- C. Pledge of Allegiance
- D. Record of Attendance
- E. Consent Agenda

A consent agenda is presented by the presiding officer at the beginning of a council meeting. Items presented on the consent agenda are considered routine and/or non-controversial and are organized apart from the rest of the agenda and are adopted by general consent and vote by the city council without debate. Items may be removed from the consent agenda on the request of any one member. Removed items may be taken up either immediately after the consent agenda is approved or placed later on the agenda at the discretion of the presiding officer and City Council.

- 1. Approval of the August 15, 2022 City Council Agenda
- 2. Approval of the August 1, 2022 Regular Council Meeting Minutes
- 3. Approval of non-budgeted expenses from restricted fund accounts: None
- 4. **Resolution 2022-08-15-01** for consideration to enter into an purchase and maintenance agreement for software and equipment for the Pelham Racquet Club
- 5. **Resolution 2022-08-15-02** for consideration to approve a public works project to install new electrical equipment at the Street Department's Pole Barn
- 6. **Resolution 2022-08-15-03** for consideration to declare repairs to the baseball field lights at City Park as a public works project and further authorize and approve said repairs

7. **Resolution 2022-08-15-04** accepting responsibility for paying only the electric service for five (5) LED streetlights in Simms Landing, Phase 2
8. **Resolution 2022-08-15-05** accepting the most responsive and responsible from Takco Construction for the Oak Mountain Trail infrastructure improvements and amending the budget for said project
9. **Resolution 2022-08-15-06** authorizing a professional services agreement with AECOM to assist the city in the preparation of a grant application for the Railroad Crossing Elimination Grant Program (RCE)

F. Public Hearing(s)

To consider proposed amendments to Articles XXI (Corridor Overlay District) and Article XV (B-2 General Business District)

G. Mayor's Report/Comments

H. Proclamation(s) and Resolution(s) by the Mayor and Others – None

I. Report of the City Manager

J. Report of the City Attorney

K. Request(s) to Address the Council – None

L. Old Business / Resolutions / Ordinances / Orders and Other Business – None

M. New Business / Resolutions / Ordinances / Orders and Other Business

1. Ordinance No. 135-251 to amend Article XXI (Corridor Overlay District)
2. Ordinance No. 135-252 to amend Article XV (B-2 General Business District)

N. Public Comments

Public comments are limited to three (3) minutes per speaker. Individuals wishing to address the City Council may after being recognized approach the podium and state their name and physical address prior to making their comments in a respectful manner.

O. City Council Comments

P. Public Announcements

1. The Pelham City Council will hold special work sessions to discuss the FY2023 operating and capital budgets at the Police & Court Building in the Courtroom at the following date and time.
 - Wednesday, August 17, 2022: 2:00 p.m. until 8:00 p.m.

2. The Pelham City Council is accepting letters of interest and resumes through Wednesday, August 24, 2022 at 5:00 p.m. from those citizens who would like to be considered for an appointment to one of the following municipal boards: Pelham Storm Water Board, Pelham Planning Commission, Pelham Board of Adjustments, Pelham Zoning Board of Adjustments, Pelham Parks & Recreation Advisory Board and Pelham Public Library Board. Please submit your application (available online) and resume to Pelham City Clerk/Treasurer Tom Seale at Pelham City or email tom@pelhamalabama.gov prior to the deadline.
3. Pelham City Offices will be closed Monday, September 5, 2022 in observance of Labor Day.
4. The regular scheduled September 5, 2022 work session and council meeting has been moved to September 6, 2022 due to the Labor Day holiday.

Q. Adjournment

THE COUNCIL MEETING IS OPEN TO THE PUBLIC BUT IS NOT A PUBLIC HEARING



CITY COUNCIL MEETING MINUTES

Pelham Police & Court Building

August 1, 2022 – 6:30 p.m.

Proper notice of the regularly scheduled meeting of the Pelham City Council was given in advance of such public meeting and the notice remained posted throughout the scheduled meeting.

Date: August 1, 2022
Time: 6:30 p.m.
Place: Pelham Senior Center
Present: Council President Maurice Mercer
Councilmember Larry Palmer
Councilmember Rick Wash
Councilmember Mildred Lanier
Mayor Gary Waters

Not Present: Councilmember David Coram

CALL TO ORDER, INVOCATION AND PLEDGE OF ALLEGIANCE

Council President Mercer called the meeting to order at 6:30 p.m. Councilmember Wash led the invocation. The Pledge of Allegiance was led by Councilmember Palmer.

RECORD OF ATTENDANCE

The city clerk/treasurer recorded the attendance of the elected officials and announced a quorum was present. Councilmember Coram was not present.

City Manager Gretchen DiFante was not present. City Attorney Josh Arnold was present.

CONSENT AGENDA

A consent agenda is presented by the presiding officer at the beginning of a council meeting. Items presented on the consent agenda are considered routine and/or non-controversial, are organized apart from the rest of the agenda and are adopted by general consent and vote by the city council without debate. Items may be removed from the consent agenda on the request of any one member. Removed items may be considered either immediately after the consent agenda is approved or placed later on the agenda at the discretion of the presiding officer and City Council.

1. Approval of the August 1, 2022 City Council Agenda
2. Approval of the July 18, 2022 Regular City Council Meeting Minutes
3. Approval of non-budgeted expenses from restricted fund account(s): None
4. **Resolution 2022-08-01-01** for consideration to amend the FY2022 Public Works Budget in the amount of \$36,500.00 for storm water sewer repairs on Rycroft Circle previously approved by Resolution 2022-07-18-02

Council President Mercer stated the complete text of the agenda, minutes, ordinance(s) and each resolution are available at Pelham City Hall and online at www.pelhamalabama.gov.

Councilmember Wash moved to adopt the Consent Agenda as presented by Council President Mercer. Councilmember Lanier seconded the motion.

Council President Mercer asked the city clerk/treasurer for a roll call vote. The vote to adopt said Consent Agenda was recorded as follows:

Maurice Mercer, Council President	<u>Yes</u>
David Coram, Council Member	<u>Not Present</u>
Larry Palmer, Council Member	<u>Yes</u>
Rick Wash, Council Member	<u>Yes</u>
Mildred Lanier, Council Member	<u>Yes</u>

The motion to adopt the Consent Agenda passed unanimously by roll call vote of those members present and the council president declared the same passed and adopted.

PUBLIC HEARING(S) – None

MAYOR'S REPORT/COMMENTS

Mayor Waters noted the difficulty the city has had for several years with blocked railroad crossings. He explained the procedures and processes railroads use to assemble trains. He updated the city council on the railroad crossing closure at Lee Street and Shelby County Highway 52 W. He explained the closure today was to repair the rough railroad crossing at this location. He stated neither the city nor CSX was notified by the contractor, as required, the crossing would be closed through Friday. He said the unannounced closure has been addressed with CSX and the contractor.

PROCLAMATION(S) BY THE MAYOR AND OTHERS – None

REPORT OF THE CITY MANAGER – None

REPORT OF THE CITY ATTORNEY – None

REQUEST(S) TO ADDRESS THE COUNCIL – None

OLD BUSINESS / RESOLUTIONS / ORDINANCES / ORDERS and OTHER BUSINESS – None

NEW BUSINESS / RESOLUTIONS / ORDINANCES / ORDERS and OTHER BUSINESS – None

PUBLIC COMMENTS

Public comments are limited to three (3) minutes per speaker. Individuals wishing to address the City Council may after being recognized approach the podium and state their name and physical address prior to making their comments in a respectful manner.

- Daryl McIntosh, 2505 Chandabrook Circle, Pelham, AL 35124, addressed the city council regarding his recent water and sewer billing.

COUNCIL COMMENTS

Councilmember Palmer thanked those present for attending tonight's city council work session and council meeting. He asked everyone in attendance to be mindful of the extreme summer heat.

Councilmember Wash echoed the comments of Councilmember Palmer.

Councilmember Lanier reminded everyone the American Legion U19 Regional Baseball Tournament begins tomorrow at Pelham High School.

PUBLIC ANNOUNCEMENTS

1. Pelham Parks & Recreation Activities – August 2022
 - a. Fall Youth Sports – Baseball, T-Ball, Softball and Volleyball registration online or at the Pelham Recreation Center. Registration closes August 10.

- b. Celebrate the "Dog Days of Summer" - National Dog Day, Friday, August 26, 5:30 p.m. until 7:30 p.m. at the Pelham Dog Park. No registration is required.

For additional information regarding the Parks & Recreation events, call 205-620-6426.

- 2. The Pelham City Council is accepting letters of interest and resumes through Wednesday, August 24, 2022 at 5:00 p.m. from those citizens who would like to be considered for an appointment to one of the following municipal boards: Pelham Storm Water Board, Pelham Planning Commission, Pelham Board of Adjustments, Pelham Zoning Board of Adjustments, Pelham Parks & Recreation Advisory Board and Pelham Public Library Board. Please submit your application (available online) and resume to Pelham City Clerk/Treasurer Tom Seale at Pelham City Hall or email tom@pelhamalabama.gov prior to the deadline.

ADJOURNMENT

With no other business before the council, Councilmember Lanier moved to adjourn the council meeting and Councilmember Wash seconded the motion. By voice vote, the motion passed unanimously by those members present and the meeting was adjourned at 6:43 p.m.

Respectfully submitted this 1st of August 2022.

Tom Seale, MMC, City Clerk/Treasurer

Maurice Mercer, Council President

[SEAL]

RESOLUTION 2022-08-15-01

Authorizing Agreements for New Software at the Pelham Racquet Club

WHEREAS, the Pelham City Council has determined it serves a public purpose for the City of Pelham to enter into Agreements to provide new software at the Pelham Racquet Club.

NOW, THEREFORE, BE IT RESOLVED by the Pelham City Council to authorize the Mayor, on behalf of the city, to enter into an Agreement with Technology Training Associations and a Licensing Agreement with Jonas Club Management Software for management software, as specified in said Agreements, in an amount not to exceed \$44,670.00 for the Pelham Racquet Club.

BE IT FURTHER RESOLVED said Agreements have undergone a final review by the city attorney and shall become a permanent part of this Resolution.

THEREUPON _____, a councilmember, moved and _____, a councilmember, seconded the motion that Resolution 2022-08-15-01 be given vote, and said resolution passed by majority vote of the Council present, and the President of the Council declared the same passed and adopted.

ADOPTED this 15th day of August 2022.

Maurice Mercer, President of the Council

[SEAL]

ATTEST

Tom Seale, MMC, City Clerk/Treasurer

I, the undersigned City Clerk/Treasurer of the City of Pelham, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council of the City named herein, at a regular meeting of such Council held on the 15th day of August 2022 and that such Resolution is on file in the office of the City Clerk/Treasurer and that no action has been taken to rescind or modify said Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 15th day of August 2022.

Tom Seale, MMC, City Clerk/Treasurer

[SEAL]



Pelham

A path apart.

MEMORANDUM

TO: Gretchen DiFante

FROM: Chaney Mills

CC: Tom Seale

DATE: 8/5/22

SUBJECT: Jonas software contract

Gretchen,

Pelham Racquet Club has made a decision on new software and we are requesting the City of Pelham enter into a contract with Jonas. We would like to get this on the next available agenda at your convenience. The proposal is following this memo. I have also attached a summary of the charges in the proposal. This is a budgeted item and has been reviewed by Josh Arnold, Dell Ann Holly and Matt Griffin.

Dell Ann Holly and Matt Griffin were on all of the demos and calls for this software and feel comfortable with this as our selection. This software will give us so many options such as online payments, scheduling and providing a better count of activity at Pelham Racquet Club.

Please let me know if you need any further information.

Thanks,

Chaney Mills

Proposal Breakdown

\$17,445 One time payment (includes software, installation, training, conversion)

\$625 One time per year SQL License Fee

\$10,800 Annually (Software enhancements and support)

\$9,000 (Online Hosting Fees)

\$500 per month (Cloud hosting)

\$5,800 One time payment (Clubhouse online – for customer to access their account)

\$44,670.00 Total for FY2022



~~Jonas~~ Preferred System Supplier

August 8, 2022

Chaney Mills
Pelham Racquet Club
100 Racquet Club Parkway
Pelham, AL 35124

Dear Chaney Mills,

Thank you for your interest in Jonas Club Management Software, the industry leading software and service provider. We are pleased to present you with the following proposal.

We offer 3 purchase options which are:

Subscription - Minimal upfront software fee. Professional Services paid in 50% deposit and 50% on installation. Website (1x fee) paid up front.

Lease to own - this is takes the outright purchase amount financed over the desired terms (12 - 60 months). We use 3rd party financing.

Outright purchase - still our most popular option, this is the total upfront cost (software, implementation, hardware, data conversion). This does not include the annual or quarterly website fee.

This proposal is for a Subscription "SaaS" agreement. Other purchase options available upon request.

In order to best serve you during the implementation, we request a lead time of 90 days for scheduling purposes, but we can often times meet your scheduling and "go live" requirements in less time.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Brady Dick
V.P. of Sales
Technology Training Associates
800-474-2582



TTA Preferred System Supplier

PROPOSAL/AGREEMENT SUMMARY

August 8, 2022

Chaney Mills
Pelham Racquet Club
100 Racquet Club Parkway
Pelham, AL 35124

<u>Description</u>	<u>HOURS</u>	<u>TOTAL</u>
Software Subscription - No Upfront Software Cost		\$0
Fee for Selected Hardware		\$0
Fee for Cloud Server Setup		\$2,650
Fee for Hardware Installation and Configuration	0	\$0
Fee for Software Implementation and Training	92	\$13,800
Fee for Data Conversion and Fast Setup		\$995

	Sub Total	\$17,445
Client is Responsible for State and Local Taxes		\$0
(Proposal is valid for a period of 30 days) > TOTAL		\$17,445
Required Deposit with Agreement		\$ 8,723

Cloud Hosting - Monthly	\$500
1x SQL License Fee:	\$625
Monthly Support & Enhancement Fee:	\$10,800
1x Set-up of ClubHouse Online:	\$5,800
Annual Hosting Fee of ClubHouse Online:	\$9,000

TERMS & CONDITIONS

Deposit 50% due with signed agreement payable to: Technology Training Associates, Inc.

Balance due upon delivery of software to client site.

Fees for Support & Enhancements as presented on "Software" page are not included in Totals and are due to Gary Jonas U.S. upon activation of software at client site.

A finance charge of 1.5% per month will be applied to all accounts more than 30 days past due. Hours estimated to install and implement each software module are presented on "Software" page.

Additional Onsite and/or Online service will be billed as incurred (line charges are included).

Transportation, lodging and meal expense will be billed and due as incurred.

Additional approved supplies and shipping will be billed and due as incurred.

Network cabling is not included.

Hardware warranties are as provided by manufacturer.

Technology updates, seminar notices and other pertinent information will be sent via mail and/or email.

Client will not solicit nor procure the services of any TTA employee in any manner outside of his or her employment with TTA. Any unapproved procurement shall obligate Client to immediately pay to TTA a fee in the amount equal to one year's salary of the employee.

Approved: _____

Date: _____



Pelham Racquet Club
August 8, 2022

SOFTWARE

<u>Description of Software Modules</u>	<u>Qty.</u>	<u>Software License Fee</u>	<u>Expected Training Hours</u>
<u>Software Modules:</u>			
<u>Jonas System Administration & Accounting Modules</u>	.		
Global User License License (Each User)	4	\$675	0
Business Intelligence	1	\$405	3
General Ledger (Skeleton Version)	1	\$405	3
Accounts Payable (Skeleton Version)	1	\$405	3
<u>Jonas Membership and Supporting Modules</u>	.		
Club Membership & Receivables	1	\$2,295	16
Club - PAP Bank Interface	1	\$405	1
Club - PAP Credit Card Interface	1	\$405	1
CRM & Document Management (Bundle)	1	\$1,215	5
<u>Jonas Point of Sale & Supporting Modules</u>	.		
Point of Sale (each)	3	\$810	36
POS - Inventory (Retail Proshop)	1	\$540	5
Club Credit Module	1	\$675	3
POS - Online Credit Card Verification Interface (Elavon & Shift 4)	1	\$540	1
<u>Jonas Activity Management and Other Modules</u>	.		
Court Booking - Unlimited Users	1	\$675	6
Class Scheduling - Unlimited Users	1	\$675	4
Appointment Booking (Lessons) - Unlimited Users	1	\$675	5

No Fee For Software - Subscription \$0

Total Software - Annual \$10,800

Software Training

ESTIMATED TRAINING/IMPLEMENTATION HOURS 92 \$0
\$13,800
\$0

Total Training/Implementation Hours 92 \$13,800

Jonas Support and Enhancement Fees

Total Annual S&E Fees \$10,800



PELHAM RACQUET CLUB
August 8, 2022

WEBSITE

Description of Software Modules

<u>QTY.</u>	<u>SOFTWARE LICENSE FEE</u>	<u>SET-UP & TRAINING</u>	<u>ANNUAL FEES</u>
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ClubHouse Online Modules:

JONAS ACTIVITY MANAGEMENT AND OTHER MODULES

ClubHouse Online Starter Package	1	\$2,250	Included	\$3,000
Online Member Statements	1	\$500	Included	\$900
Online Payments	1	\$300	Included	\$600
Online Roster / Member Directory	1	\$500	Included	\$900
Online Court Booking	1	\$500	Included	\$900
Online Class Scheduling	1	\$500	Included	\$900
Online Appointment/Lessons Booking	1	\$500	Included	\$900
ClubHouse Online Email Marketing	1	\$750	Included	\$900

Selected Software \$5,800

Total Set-up Cost Web Applications \$5,800

ClubHouse Online Hosting & Support Fees

Billed Annually \$ 9,000

**Reference ClubHouse Online Agreement*



Pelham Racquet Club
August 8, 2022

SUMMARY of COSTS and TERMS OF PAYMENT

<u>Description</u>	<u>HOURS</u>	<u>Total</u>
Software Subscription - No Upfront Software Cost		\$0
FEE FOR SELECTED HARDWARE		\$0
FEE FOR CLOUD SERVER SETUP		\$2,650
FEE FOR SYSTEM INSTALLATION AND CONFIGURATION	0	\$0
FEE FOR TRAINING AND IMPLEMENTATION	92	\$13,800
FEE FOR DATA CONVERSION AND FAST SETUP		\$995
	Sub Total	\$17,445

Client is responsible for State & Local Taxes

\$

(Proposal is valid for a period of 30 days) -----> TOTAL

\$17,445

Required Deposit with Agreement

\$ **8,723**

Cloud Hosting - Monthly

1x Fee for SQL License

Fees for Annual Software Enhancements and Support are due and Payable to:

Jonas Software USA, LLC

Upon Activation of Software at Client Site

\$500

\$625

\$10,800

Fees for ClubHouse Online are Invoiced by Jonas Software:

\$5,800

ClubHouse Online Hosting fees are Invoiced by Jonas Software upon "live" date:

\$9,000

A finance charge of 1.5% per month will be applied to all accounts more than 30 days past due.

Hours ESTIMATED to install and implement each software module are presented on "Software" page.
Additional Onsite and/or Online service will be billed as incurred (line charges are included).

Transportation, lodging and meal expenses will be billed and due as incurred.

Additional approved supplies and shipping will be billed and due as incurred.

Travel time over 4 hours will be billed at 25% of prevailing rate for all travel hours incurred.

Online training rate is \$150 per hour for all modules and will be billed as incurred.
(line charges are included)

Cabling is not included.

WARRANTIES ARE AS PROVIDED BY MANUFACTURER

Approved: _____

DATE: _____



ORDER FORM TO MASTER SERVICES AGREEMENT

1. Customer Information	
Customer: Pelham Racquet Club	Contact: Chaney Mills
Address: 100 Racquet Club Parkway Pelham, AL 35124	Phone: (205) 621-3380
	Email: cmills@pelhamalabama.gov
2. Subscription Services	
Services:	(4) Global User License License Skeleton General Ledger Skeleton Accounts Payable Club - Membership & Receivables [indicate number of companies/clubs] Club - PAP Bank Interface Club - PAP Credit Card Interface CRM & Document Management (Bundle) Business Intelligence (3) Point of Sale - Licenses POS - Inventory [Indicate # of areas required] POS - Online Credit Card Verification Interface Class Scheduling - Unlimited Users Appointment Booking - Unlimited Users Court Booking - Unlimited Users
3. Subscription Services Fee and Initial Term	
Subscription Services Fee for Initial Service Term: \$10800, payable in advance, subject to the terms of Section 5 (Payment Terms)	Initial Service Term: One Year
4. Currency	
Specify currency: USD	
5. Additional Payment Terms	
N/A	
6. Professional Services	
(a)	Training hours required: 92 hours, which will be provided at an hourly rate of \$150. Training rates are subject to adjustment from time to time.
(b)	If Licensee cancels a scheduled and confirmed training session within [thirty (30)] days prior to a training session, then Licensee will be responsible for any airline ticket penalties that Licensor incurs, as well as any other purchased travel expenses.
This Order Form is only valid and binding on the parties when executed by both parties and is contingent on Supplier and Customer executing Supplier's form of Master Services Agreement, either in connection herewith or previously. This Order Form is subject to the terms and conditions of	
Jonas Software USA LLC Signature: _____ Name: _____ Title: _____ Date: _____	LICENSEE Pelham Racquet Club Signature: _____ Name: _____ Title: _____ Date: _____

Jonas Club Software
 8133 Warden Avenue, Suite 400
 Markham, ON
 L6G 1B3
 1.888.789.9073



Microsoft® SQL Server® 2019
Standard Edition (RUNTIME)
'Server plus CALs Contract'

'THE CUSTOMER'

Pelham Racquet Club

100 Racquet Club Parkway
Pelham, AL 35124

DATE: 2022/08/08

CLIENT CODE: ----

SALES DIVISION	SALESPERSON	64 BIT VERSION?
TTA	Brady Dick	

[A] SERVER LICENSES (MANDATORY)

QTY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1	SQL SERVER 2019 SERVER LICENSE (ISV SQL SVR STD R/T 2019 AL EMBED 1CLT)	\$ 125.00	\$ 125.00

[B] USER CLIENT ACCESS LICENSES (MANDATORY)

QTY	DESCRIPTION	UNIT PRICE	LINE TOTAL
4	SQL SERVER 2019 USER CAL (ISV SQL CAL R/T 2019 AL EMBED)	\$ 125.00	\$500.00

GENERAL TERMS

1. This software is sold pursuant to Microsoft® ISV Royalty Agreement EULA (November 2019). Except as otherwise expressly provided for in the terms and conditions, no other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of the Microsoft® SQL Server® 2019 Standard Edition (RUNTIME) 'Server plus CALs Contract' or have any legal effect whatsoever. These terms and conditions may not be modified except by a later written agreement signed by both parties.
2. Customer acknowledges that embedded solution sold is solely for use with the Jonas Software Suite and may not be used in conjunction with any other third party application(s).
3. Customer understands this agreement does not include the "Microsoft® embedded maintenance option" or any benefits associated with it.
4. Customer understands this agreement does not include any future 'major version' upgrades.
5. Customer understands all applicable taxes have not been quoted in connection with this contract and will be billed appropriately.
6. Client acknowledges and agrees that: (i) they are responsible for the proper installation and maintenance of this software and installed database; and (ii) the extent of Jonas' support services shall be supplied in accordance with the 'Jonas Maintenance Guide' found at www.jonassoftware.com

SUBTOTAL	\$625.00
SALES TAX	NOT INCLUDED
TOTAL	\$625.00

'THE CUSTOMER'

I understand and agree to abide by the above statements in this contract and the terms and conditions outlined within the Microsoft SQL Server 2019 Standard Server-CAL (runtime) EULA (January 2017). I acknowledge that it is our organization's responsibility to accurately determine the number of licenses required.

I have the authority to bind the corporation.

TITLE

DATE (YYYY-MM-DD)

SIGNATURE

'JONAS SOFTWARE'

TITLE

DATE (YYYY-MM-DD)

SIGNATURE



HOSTED MANAGED SERVICE AGREEMENT

1. Term(s) of Agreement

This Agreement between PELHAM RACQUET CLUB, herein referred to as Client, and TTA VIP.CLUB, herein after referred to as Service Provider, is effective upon the date signed, shall remain in force for a period of one year, and may be reviewed annually to address any necessary adjustments or modifications. The Hosted Managed Service Agreement automatically renews for a subsequent year term beginning on the day immediately following the end of the Initial Term, unless either party gives the other ninety (90) days prior written notice of its intent not to renew this Agreement.

This Agreement may be terminated by either party upon ninety (90) days written notice if either party:

- A. Fails to fulfill in any material respect its obligations under this Agreement and does not cure such failure within thirty (30) days of receipt of such written notice.
- B. Breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days of receipt of such written notice.

If either party terminates this Agreement, Service Provider will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay Service Provider the actual costs of rendering such assistance.

2. Fees and Payment Schedule

Fees will be \$500.00 per month, due and payable on the first of each month via ACH/EFT. Client will be notified if payment is declined or rejected, and services will be suspended if payment is not received within 10 days of notification. Refer to Appendix A for services covered by the monthly fee under the terms of this Agreement.

It is understood that any and all Services requested by Client that fall outside of the terms of this Agreement will be considered Projects, and will be quoted and billed as separate, individual Services.

3. Taxes

It is understood that any Federal, State or Local Taxes when applicable shall be added for services or materials rendered under this Agreement. Client shall pay any such taxes unless a valid exemption certificate is furnished to Service Provider for the state of use.

4. Service Coverage

- A. Where applicable, Hosted Network Monitoring Services will be provided 24/7/365. Remote Help Desk Support and Vendor Management of Client's covered devices (See Appendix A) will be provided to the Client by Service Provider through remote means according to the subscribed service level (See Appendix A). All services qualifying under these conditions, as well as Services that fall outside this scope will fall under the provisions of Appendix A. Services provided outside of the subscribed service level will be billed-as-incurred at an hourly rate of \$180.
- B. Client agrees that all devices selected under the service coverage require a software agent to be installed which gives the Service Provider full access to those devices.
- C. Service Provider will respond to Client's Support Tickets under the provisions of Appendix B, and with best effort after hours or on holidays. Support Tickets must be opened by Client's



designated IT Contact Person, by email or by phone.

D. Hardware costs of any kind are billed-as-incurred upon the approval of Client.

5. Limitation of Liability

- A. Service Provider shall not be liable to Client or any of its affiliates for any damages, whether incidental, direct, indirect, special, consequential or punitive damages arising out of service or equipment provided hereunder, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, or loss to person or property, costs of substitute equipment or other costs even if Service Provider has been advised of the possibility of such damages. Regardless of the form of action, Service Provider's cumulative liability shall be only for loss or damage directly attributable to negligence of a Service Provider employee or contractor, for the cost of restoring the network to its condition prior to the negligence, but not to exceed thirty thousand Dollars. If a collection action is initiated by either party or if Service Provider has to defend any action by Client, Service Provider is entitled to its reasonable attorney fees and expenses to be paid by Client.
- B. Implied Warranties are expressly disclaimed by Service Provider. A Service Provider contractor is a technician or contractor who operates on behalf of Service Provider, is paid by Service Provider and has access to Service Provider's service ticket management system for making time entries and charges for their work. Service Provider is not responsible for the acts of other technicians, contractors or consultants providing service to Client not under its control and direction. If Client purchases equipment from Service Provider it understands and agrees that it will look to the manufacturer for all remedies and warranties and agrees that Service Provider is not responsible for functioning of the equipment and has not made any express or implied warranties. Service Provider shall not be liable for any claim or demand against the Client by any third party on account of errors or omissions performed hereunder.

6. Additional Services

- A. **Hardware/System Support** - Service Provider shall provide support of all hardware and systems specified in Appendix A, provided that all Hardware is covered under a currently active Vendor Support Contract; or replaceable parts be readily available, and all Software be genuine, currently Licensed and Vendor Supported. Should any hardware or systems fail to meet these provisions, they will be excluded from this Service Agreement. Should 3rd Party Vendor Support Charges be required in order to resolve any issues, these will be passed on to the Client after first receiving the Client's authorization to incur them.
- B. **Virus Recovery for Current, Licensed Antivirus protected systems** - Attempted recovery from damages caused by virus infection not detected and quarantined by the latest Antivirus definitions is covered under the terms of this Agreement. This Service is limited to those systems protected with a currently licensed, Vendor supported Antivirus solution.
- C. **Monitoring Services** - Service Provider will provide ongoing monitoring and security services of all critical devices as indicated in Appendix A. Should a problem be discovered during monitoring, Service Provider shall make every attempt to rectify the condition in a timely manner through remote means.



7. Suitability of Existing Environment

Minimum Standards Required for Services

In order for Client's existing environment to qualify for Service Provider's Managed Services, the following requirements must be met:

- A. All Desktop PC's and Notebooks/Laptops with Microsoft Windows Operating Systems must be running Windows 10 or later.
- B. All Desktop Software must be Genuine, Licensed and Vendor Supported.
- C. The environment must have a currently licensed, up to date and Vendor Supported Server based Antivirus Solution protecting all Desktops, Notebooks/Laptops, and Email.
- D. The environment must have a currently licensed, Vendor Supported Hardware Firewall between the Internal Network and the Internet. The Router/Firewall must support IPSEC VPN tunneling.
- E. All Wireless data traffic in the environment must be securely encrypted.
- F. There must be an outside static IP address assigned to a network device, supporting IPSEC VPN.
- G. Unless alternate arrangements are made, Client shall provide the Service Provider administrative access to the client-side VPN device.

Costs required to bring Client's environment up to these Minimum Standards are not included in this Agreement.

8. Excluded Services

Service rendered under this Agreement does not include:

- 1. Parts, equipment or software not covered by vendor/manufacture warranty or support.
- 2. The cost of any parts, equipment, or shipping charges of any kind.
- 3. The cost of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind.
- 4. The cost of any 3rd Party Vendor or Manufacturer Support or Incident Fees of any kind.
- 5. The cost to bring Client's environment up to minimum standards required for Services.
- 6. Failure due to acts of God, building modifications, power failures or other adverse environmental conditions or factors.
- 7. Service and repair made necessary by the alteration or modification of equipment other than that authorized by Service Provider, including alterations, software installations or modifications of equipment made by Client's employees or anyone other than Service Provider.
- 8. Maintenance of Applications software packages, whether acquired from Service Provider or any other source unless as specified in Appendix A.
- 9. Programming (modification of software code) and program (software) maintenance unless as specified in Appendix A.

9. Confidentiality

Service Provider and its agents will not use or disclose Client information, except as necessary to or consistent with providing the contracted services and will protect against unauthorized use.



10. Miscellaneous

- A. This Agreement shall be governed by the laws of the State of Florida. Its terms and conditions shall prevail should there be any variance with the terms and conditions of any order submitted by Client.
- B. Service Provider is not responsible for failure to render services due to circumstances beyond its control including, but not limited to, acts of God.
- C. Client agrees to carry liability insurance and property insurance covering any damage to its network as well as to any clients of the Client adversely affected by Client's network functioning or transmissions from its network.
- D. Service Provider may apply changes or additional terms, conditions and provisions to this Agreement upon 30 days advance written notice to client containing the proposed addition or change. If the additions or changes are not objected to then they shall take effect at the end of the 30 days. Within the 30 days Client may submit changes or objections to the proposed changes or additional terms. If the parties do not agree on the change or addition then it shall not become part of the Agreement. All the terms, conditions and provisions of this Agreement will continue to apply during any renewal term. Both parties agree to negotiate in good faith rates to be mutually agreed under any renewed contractual service term to be effective at the end of the initial term.
- E. Dispute Resolution: All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration unless they are of an amount which can be handled within the small claims court of the jurisdiction of the Service Provider. The parties agree they waive the right to bring a lawsuit based on such claims or disputes other than in small claims court. Before commencing any arbitration proceedings the aggrieved party must first present the claim or dispute in writing to the other party. The parties shall have 30 days to resolve the claim or dispute. If not resolved then the aggrieved party may commence arbitration proceedings. The arbitration shall be conducted by Arbitration Resolution Services, Inc. (ARS) or other mutually agreed upon dispute resolution service and the parties shall be bound by any and all rules of the American Arbitration Association's United States Commercial Resolution Dispute Resolution Procedures for Consumer-Related Disputes. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all decisions. Arbitration shall be conducted by an arbitrator experienced in Information Technology services and experience required for arbitrator and shall include a written record of the arbitration hearing. An award of arbitration may be converted to judgment in a Court of competent jurisdiction. The location of arbitration shall be in the home city, county of Service Provider. The fees and expenses of the arbitrator and proceedings shall be paid by the losing party.



Acceptance of Service Agreement

This Service Agreement covers only those services listed in Appendix A. After the effective date Service Provider must approve any Services or Equipment Client may want to add to this Agreement. The addition of Services not listed in Appendix A at the signing of this Agreement, if approved by Service Provider, may result in an adjustment to the Client's monthly charges.

IN WITNESS WHEREOF, the parties hereto have caused this Service Agreement to be signed by their duly authorized representatives as of the date set forth below.

TTAVIP.CLUB

PELHAM RACQUET CLUB

Signed Date

Print

Signed Date

Print



APPENDIX B

Response and Resolution Times

The following table shows the targets of response and resolution times for each priority level:

Issue	Priority	Response Time	Resolution Time
Service Not available - All users and functions unavailable	1	Within 1 hour	ASAP - Best Effort
Significant degradation of service - Large number of users or business critical functions affected	2	Within 4 hours	ASAP - Best Effort
Limited degradation of service - Limited number of users or functions affected, business process can continue	3	Within 24 hours	ASAP - Best Effort
Small service degradation - Business process can continue, one user affected	4	Within 48 hours	ASAP - Best Effort



LICENSE AGREEMENT

This Agreement effectively made 08/08/2022 (the "Effective Date"),

Name and Address of Licensor:

Jonas Software US LLC, ("Licensor"), a Delaware Limited Liability Company, with offices at:

330 South Warminster, Suite 360

Hatboro, PA

19040

Name and Address of Licensee:

Pelham Racquet Club ("Licensee"), with its principal place of business at:

100 Racquet Club Parkway

Pelham, AL

35124

This Agreement represents the complete and exclusive agreement between Licensor and Licensee concerning Licensee's use of the Software and all related matters and supersedes all prior agreements, negotiations, or understandings between Licensor and Licensee in any way relating to these matters. This Agreement may not be modified except by a later written agreement signed by both parties. The entire Agreement consists of the Order Form (and any subsequent Order Forms agreed by the parties) and enclosed Terms and Conditions together with this signing page. In the event of any conflict or inconsistency between the provisions of this Agreement and any, schedules, exhibits or appendices, the terms and conditions of this Agreement will govern to the extent of such inconsistency, unless it is expressly stated that a particular provision of such documents replaces a certain section of the Agreement, and such modification is executed by both the Licensor and Licensee.

By signing below, the Licensor agrees to provide the Software to the Licensee as set out in the attached Terms and Conditions. By signing below, the Licensee agrees to pay the Fees for the Software as set out in the Order Form. Licensor and Licensee acknowledge having read and understood this Agreement and hereby agree to be bound by the attached Terms and Conditions.

JONAS SOFTWARE USA LLC

LICENSEE

Signature:

Signature:

Name:

Name:

Title:

Title:

[The remainder of this page has deliberately been left blank. Terms and conditions follow.]

Jonas Club Software
8133 Warden Avenue, Suite 400
Markham, ON
L6G 1B3
1.888.789.9073

TERMS AND CONDITIONS

IN WITNESS WHEREOF, the parties agree hereto have caused this Agreement to be executed as of the Effective Date. The parties agree as follows:

1. Rights Granted & Permitted Use

Upon and subject to receipt of payment by Supplier of the applicable initial subscription, set-up and training fees set out in the Order Form(s), Supplier grants to Customer for use in connection with its internal business operations a limited, non-exclusive, non-transferrable, license to the Software and Documentation, subject to the Permitted Use and the terms set forth in this Agreement. Customer's rights to use the Software and Documentation are limited to the Subscription Term and subject to the payment of the applicable subscription fee. Updates (provided pursuant to Section 7 (Subscription License, Updates and Technical Support)) will be provided as part of the Subscription, will form part of the Software and will be subject to rights granted in this Agreement. Customer may permit its employees, agents and contractors to use the Software for purposes permitted pursuant to this Agreement and Customer will be responsible for their compliance in accordance with the terms of this Agreement. Customer may make a reasonable number of copies of the Software for testing, archival and/or back-up purposes, to be used only when the primary copies of the Software are not operational. All legends, trademarks, trade names, copyright marks and other proprietary notices included in the original copies of the Software must be maintained as part of any and all testing, archival, back-up or other copies of the Software made by Customer. All rights not expressly granted to Customer hereunder are reserved by Supplier. Customer acknowledges that the Software may require activation by way of an activation key on initial installation and from time to time based on certain events, including, without limitation, Updates and changes to hardware on which the Software is installed. Customer acknowledges that the activation keys and internal controls in the Software do not necessarily restrict usage to the Permitted Use and do not necessarily ensure compliance with this Agreement.

2. License Restrictions

Customer agrees (a) subject to any non-waivable rights Customer may enjoy under applicable law, not to decompile, disassemble, reverse engineer, or otherwise attempt to derive the Software's source code from the object code; (b) not to modify, enhance, change the data structures for or create derivative works from, the Software; (c) not to rent, lease, sell, sublicense or otherwise transfer the Software to third parties; (d) not to make the Software available in any form to any person other than Customer's employees, agents and contractors whose job performance requires such access; and (e) to use reasonable care and protection to prevent the unauthorized use, copying, publication or dissemination of the Software. Customer shall not allow access to the Software by any service bureau, third party outsourcer, or other similar third party service provider unless Supplier consents to such access in writing.

3. Ownership of Intellectual Property; Customer Input

As between Supplier and Customer, Supplier retains all title, ownership, and intellectual property rights in and to the Software and Documentation, and all developments by Supplier in connection with this Agreement. Customer acknowledges and agrees that it is only licensing the right to use Supplier's Software and Documentation and that no sale or other transfer of any title or ownership or any proprietary interest of any kind to such Software or Documentation is contemplated hereunder, other than the sale of the limited licenses as expressly granted herein. Except as specified in Section 1 (Rights Granted & Permitted Use) or as expressly authorized in writing by Supplier and, subject to any non-waivable rights Customer may enjoy under applicable law, Customer shall not allow for any duplicates or reproduction of the Software to be made and, upon the termination of this Agreement, shall promptly (and no later than within thirty (30) days of termination) return to Supplier all originals and copies of the Software or provide validation that the Software has been permanently deleted from all of Customer's systems and destroyed.

Supplier shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any Customer Input. Supplier shall have no obligation to make Customer Input an Update. Customer shall have no obligation to provide Customer Input.

4. Use of Logo for Promotional and Marketing Materials

Unless indicated otherwise in the applicable Order Form, Customer provides Supplier with permission to use its trademark, logo and trade name ("Branding") within Supplier's promotional and marketing materials. Supplier is granted no other right to the Branding and acknowledges that it shall not gain any proprietary interest in the same. Supplier is under no obligation to make use of, or to provide compensation for, the right or permission granted by Customer to the Branding. Supplier shall be the exclusive owner of all right, title, and interest, including copyright in its promotional and marketing materials. The permission to use the Branding may be terminated at any time by Customer by providing thirty (30) days' written notice to Supplier. Upon such termination, Supplier shall refrain from future use of the Branding; however, Supplier may continue to distribute and use the

promotional and marketing materials where Customer's Branding has been previously printed prior to the notice of termination and where such placements cannot be discontinued or altered without Supplier incurring a penalty.

5. Implementation, Training and Consulting

If so indicated in the Order Form(s), Supplier will provide to Customer Implementation, training services and/or consulting services to Customer. Unless otherwise specifically noted in the applicable Order Form, training will be held during weekdays. Supplier's installation and training personnel will have expertise and actual experience in the application area designed for installation at Customer's site. Customer acknowledges that Supplier's services are scheduled on a first come, first served basis, and shall be mutually agreed upon by Supplier and Customer subject to Supplier's availability. Should Customer require rescheduling of confirmed installation and training service appointment, Supplier will make commercially reasonable efforts to accommodate Customer's request. If Customer cancels a scheduled and confirmed training session, Customer will be responsible for Supplier's standard cancellation fees and any other charges as specified in the applicable Order Form. If the parties agree that training will be provided on-site at Customer's facility, Customer will: (i) provide and have properly prepared and set up an adequate training room or space; and (ii) at least one (1) week prior to scheduled training, have the hardware loaded with the operating system software and the Software, with all being adequately tested on-site. All travel and related expenses necessitated by training, implementation, and/or consulting services being rendered by Supplier hereunder at Customer designated sites will be reimbursed by Customer to Supplier. Such travel and related expenses will include reasonable coach class airfare, transportation to and from Customer site, lodging, meals and miscellaneous (e.g. tips, tolls, etc.) and may include travel time at Supplier's standard travel rate. Unless otherwise specified in the Order Form, all phases/sessions of training must be completed within six (6) months from receipt of the Software, or all prepaid training fees will be forfeit. Upon Customer's request, Supplier will provide further services to train any additional Customer personnel on the features, operation, and use of the Software, at Supplier's standard price list per diem rates in effect at the time such training is requested by Customer. Additional services that are required as a result of Customer's action, inaction or failure to meet its obligations, including delays or wait time caused by issues related to Customer's hardware and software, shall be billable to Customer and will be invoiced at Supplier's then-current rates.

6. Customer Responsibilities

Within a reasonable period of time following the execution of this Agreement, and prior to the commencement of installation of the Software, Customer shall appoint a member of its staff to act as its project lead. The project lead will serve as the main contact for Supplier's personnel in connection with any installation activities, disseminate information from Supplier to the various departments at Customer's operation, as applicable and relay any required information to Customer personnel in a timely manner. If the implementation affects multiple areas of Customer's operations, then it shall also appoint a team comprised of management level staff from those operational areas involved in the installation to act as its project team. The project lead and/or project team, as applicable, shall have primary responsibility for the coordination and execution of the installation. The project lead and/or the project team shall: (a) have a clear understanding of the general manager's or other top-ranking executive's vision and purchasing decision for the installation of the Software and shall communicate this vision to all levels of Customer's staff; (b) be familiar with and involved in Customer's daily operations; (c) be Customer's primary decision-makers, within their respective areas of operational responsibility, for any policies and procedures which may be involved in the implementation of the Software; (d) report to the general manager or other top-ranking manager as it relates to the responsibilities of installation coordination; (e) ensure that the minimum system requirements set forth in the Order Form(s), related Documentation and/or the applicable exhibit have been met or exceeded; (f) serve as liaison with other third party vendors who are involved in the installation process; and (g) be present during all phases of the installation and training process to include attendance at all designated training classes and ensure attendance of staff at scheduled training sessions.

Unless expressly agreed otherwise in the Order Form, Customer shall enter all data required for installation of the Software and shall be responsible for the integrity of such data. Supplier shall not have any liability for any Customer data, including for data that Supplier personnel may enter in an effort to assist Customer or any errors made in such efforts to assist Customer. Supplier reserves the right to refuse to do data entry and Customer agrees that Customer is solely responsible for providing sufficient staff to perform any data entry required for the installation of the Software.

Customer shall assume full responsibility for (i) the content of any database, (ii) the selection and implementation of controls on its access and use of the Software, (iii) the security of stored data and (iv) configuration data associated with the implementation of the Software.

7. Subscription License, Updates and Technical Support

During the Subscription Term, and in consideration of the Fees being paid by Customer in accordance with the terms of this Agreement, Supplier will provide, in a timely manner and

without additional charge to the subscription fee, the following to Customer:

- (a) The right to "use" under license, as provided in Section 1 (Rights Granted & Permitted Use), the Software, Documentation, and related materials;
- (b) Commercially reasonable efforts to correct any Errors reported to it by Customer, provided such Errors relate to the proper functioning of the Software and have not been caused by negligence on the part of Customer, a computer malfunction, Third Party Materials or other causes external to the Software; and further provided that Customer acknowledges and agrees that not all Errors are capable of being corrected;
- (c) Updates to the Software that Supplier makes generally available to its Customers, and Documentation as reasonably necessary for the proper function and continued material conformity of the Software with the applicable Documentation. Customer agrees to install all Updates to the Software made available by Supplier within ninety (90) days following such availability. If Customer fails to install any such Update, Supplier reserves the right to stop all implementation, training and support services until Customer installs such Update. Any programs which provides new functionality or expand the function of the Software and are regarded as New Products by Supplier, and for which Supplier separately charges other customers, are not covered by this Agreement, but may be offered to Customer for license on terms consistent with this Agreement; and
- (d) Access to Supplier's technical support hotline during the hours set out in the applicable Order Form, subject to any other terms and conditions indicated in the applicable Order Form.

Outside of the hours set out in the applicable Order Form, non-emergency telephone support will be charged to Customer at Supplier's then-current rates and any additional terms and conditions set forth in the Order Form will apply. Customer acknowledges and agrees that telephone support is intended to address specific problems experienced by Customer relating to the Software, and is not intended to train Customer's employees or to support third party products ("Other Assistance"). Supplier will advise Customer during a telephone support session if Supplier considers such telephone support to constitute Other Assistance. Following such notice, if Customer wishes for the telephone support session to continue, Customer will pay for such Other Assistance based on Supplier's then-current rates. In connection with the provision of technical support, Supplier may be required to access Customer's system to diagnose, and to resolve, certain issues. To the extent Customer supplies remote access facilities, Customer will be responsible to ensure such facilities are secure and readily available. Customer hereby consents and agrees that Supplier may access the Software by way of remote access for such purposes. Unless otherwise provided for in the Order Form, Supplier will not be responsible for providing technical support of Hardware or the related operating system and configuration. Customer agrees that Supplier will not be responsible for providing Hardware installation specifications (including those regarding cabling, power, space, etc.), or for the installation, operation, maintenance or technical support of Hardware.

Supplier's obligation to provide support is subject to the following conditions: (i) Customer uses the Software only in accordance with the terms and conditions of the Agreement; (ii) Software implementation, training, re-implementation, and system audit services must be provided by Supplier's employees or Supplier's Authorized Representatives; (iii) Customer has not modified or altered the Software; (iv) Customer has not authorized independent interfacing of third party components to the Software, or relevant database, particularly third party components that write to the database, without the express prior written consent of Supplier; (v) the Software, and the equipment on which it operates, is operated in accordance with the Documentation; (vi) the equipment on which the Software operates is in good operating condition; (vii) Customer implements all Updates on a timely basis and no later than ninety (90) days subsequent to the availability of the Updates; (viii) Customer obtains, maintains, and updates, as required, third party programs and such other software as is necessary for the proper operation of the Software; and (ix) Customer provides reasonable access to its systems (and, if applicable, such access is to be provided in accordance with the specifications set forth in the Documentation and the applicable exhibits) so as to enable Supplier to provide the technical support services, including, but not limited to, by way of telecommunications, Internet or other remote access to the server environment in which the Software resides or such other method reasonably acceptable to Supplier. All time and materials expended by Supplier resulting from Customer's breach of such conditions shall be billed to Customer at Supplier's standard time and materials rates. Support provided pursuant to this Section relates to the Software and the Updates only. Unless, and only to the extent that, Supplier and Customer have expressly agreed for Supplier to provide hardware support pursuant to the Order Form, should the problems that arise be the result of hardware malfunction, Supplier will advise Customer to have the hardware/network repaired. Support resulting from hardware/network problems will be billed to Customer at Supplier's then-current hourly rates.

The subscription fee for the first subscription period is set out in the Order Form.

8. Interfaces

Software interfaces to third party vendor systems may be available, as indicated in the Documentation. To the extent such third party vendor system interfaces are available, Supplier shall install the Software interfaces as agreed between the parties on the Order Form. Customer shall act as a liaison between Supplier and any third party vendor(s) with

which the Software shall interface. Customer shall have its third party vendor available at the time that Supplier is scheduled to install the interface and in order to assist with installation, as required by Supplier. Transactions processed by a third party vendor system may be subject to separate licensing requirements. Customer acknowledges and agrees that it has the sole obligation to obtain, or cause its third party vendor to obtain, any and all such licenses.

9. Custom Development and Enhancement Requests

This Agreement does not include any programming services for new software development or software modifications. Such work, if negotiated and agreed to between Supplier and Customer, shall be the subject of a separate agreement for development services between the parties. The fees, payment terms and delivery schedules related to such work shall be as outlined in such agreement for development services, and are independent of Software or services provided under this Agreement. Customer acknowledges that Supplier is not a contract development organization, but rather Supplier is a software developer that licenses its Software within specified industries. As such, Customer further acknowledges that the Software is a major and valuable asset of Supplier's business and, as such, Supplier shall have complete control of the design and development of the Software, including Updates to the Software. Therefore, Supplier has the right, and sole discretion, to reject any request for enhancement or modification to the Software by Customer. Should Customer require modification of any standard forms incorporated into the Software or design of new forms, any such customization work shall be contracted for separately at Supplier's then-current rates.

10. Payment Terms

Customer agrees to pay to Supplier all Fees as set out in the Order Form(s). All Fees are payable in accordance with the terms set out in, and in the currency specified in, the Order Form(s). Unless otherwise indicated on the Invoice, all invoices are due upon receipt. Fees stated in the Order Form are exclusive of Taxes. Supplier will provide a refund in respect of prepaid Fees in the event that this Agreement is terminated by Customer during the Subscription Term pursuant to Section 18(d). If Customer wishes to decrease its Permitted Use of the Software, Customer must notify Supplier sixty (60) days in advance of the conclusion of the Initial Subscription Term or the then-current Renewal Term. In such case, such reduction in Permitted Use of the Software will take effect upon the next Renewal Term. If Customer wishes to increase its Permitted Use of the Software, Customer must notify Supplier in advance and pay any applicable Fees.

Any invoice disputes must be initiated by Customer in good faith and in writing; Customer will be entitled to notify Supplier of any invoice dispute by the date that is thirty (30) days following the date of the applicable invoice, after which time the invoice shall be deemed to be accepted by Customer and will be due and payable in full. If Customer initiates a dispute with regard to a particular invoice, any undisputed amounts charged on such invoice will continue to be due and payable. Supplier and Customer agree to use reasonable efforts to address and attempt to resolve any invoice dispute within thirty (30) days after Supplier's receipt of Customer's notice to Supplier regarding such dispute.

With regard to any undisputed invoiced amount that is not paid when due, Supplier reserves the right to charge, and Customer agrees to pay, a late payment fee on the unpaid balance from the due date until paid (whether before or after judgment) equal to the lesser of one and one half percent (1.5%) per month, or the maximum amount allowable by law. If it is determined that Supplier properly charged any amount disputed and withheld by Customer, the late fee will be assessed and paid on the disputed, withheld amount.

Customer acknowledges that Supplier reserves the right to suspend or interrupt Customer's use of the Software, cease providing Updates and/or suspend delivery of technical support to Customer for any period during which any Fees due in accordance with the terms of this Agreement remain unpaid for fifteen (15) days after Supplier provides advanced written notice (including by way of email) of such unpaid Fees to Customer. In such event, Supplier shall not be precluded from exercising any additional remedies that might be available to it under the terms of this Agreement or otherwise.

11. Taxes; Customs

Customer will be responsible for paying all Taxes (other than taxes associated with Supplier's net income or Supplier's authority to do business in a particular jurisdiction), as well as for obtaining any necessary permissions related to the importation and use of the Software, Third Party Software and/or Hardware. If Supplier has a legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, the appropriate amount shall be computed based on Customer's address listed in the Order Form and invoiced to and paid by Customer, unless Customer provides Supplier with a valid tax exemption certificate authorized by the applicable governmental authority at least five (5) business days prior to the due date of the applicable Supplier invoice. All Fees are payable in full and without reduction or withholding for Taxes. If, for whatever reason, Customer is required by law to withhold any Taxes from Fees, Customer shall gross up its payments to Supplier so that Supplier receives Fees in full and free of any such deductions. Customer shall, upon request of Supplier, provide to Supplier proof that Taxes have been paid, if such payment is not made to Supplier directly. If Supplier pays any costs or expenses incurred in relation to any import duties, customs, formalities, permissions or other requirements,

then Customer shall promptly reimburse Supplier for all such amounts in full.

12. Hardware Purchase

If Customer so elects, Customer shall purchase Hardware at the price indicated in the Order Form or, if at a later date, at the then-current standard prices in effect at the time the order is placed. All Hardware will be shipped F.O.B. origin. Customer shall be responsible for all Delivery Costs. Payment by Customer of Delivery Costs shall be due and payable upon its receipt of Supplier's invoice.

13. Title to the Products

Subject to the second paragraph of this Section 13, with respect to Third Party Software and/or Hardware purchased from Supplier by Customer hereunder (collectively, the "Products"), and in the case of Third Party Software, the media on which such Products are contained and the license thereto, all risk therein shall pass to Customer upon shipment F.O.B. from the manufacturer's facility. Supplier reserves, and Customer hereby grants to Supplier, a security interest in all Products sold under this Agreement to secure payment of all applicable Fees until the applicable Fees have been paid in full. A copy of this Agreement may be filed, or Supplier may apply for any registration, or give any notification, in connection with the security interest, with, to or on appropriate authorities or registers in any jurisdiction at any time before or after execution by Customer including a financing statement in order to perfect and/or register Supplier's security interest in the Products. Customer agrees to execute and deliver any additional document or instrument and provide all other assistance as Supplier may reasonably request from time to time to establish, perfect, register, give effect to and/or enforce Supplier's security interest in the Products applicable in Customer's place of business. Supplier shall not, unless any requirement or obligation cannot be lawfully excluded, be obliged to comply with any requirement or obligation of any law in connection with the security interest, including without limitation giving to Customer any notice of any form or making any disclosure. Customer shall maintain sufficient insurance and shall bear the responsibility of insurance for Products from the time it leaves the manufacturer's facility until the applicable Fees have been paid in full. For greater certainty, Customer acknowledges and agrees that Supplier never sells but only licenses the right to "use" its Software, Documentation, and related materials, and that no sale or other transfer of any title or ownership or any proprietary interest of any kind whatsoever in or to such Software, Documentation, or related materials is contemplated hereunder.

Where the governing law of this Agreement is that of England and Wales, then this second paragraph of Section 13 shall apply in place of the first paragraph of Section 13. The legal and beneficial title to the Products, or in the case of Third Party Software, legal and beneficial title to the media, shall remain vested in Supplier and shall not pass to Customer until the purchase price for such Products has been paid in full and received by Supplier. Until payment in full has been received by Supplier and title to the Products passes: Supplier may require Customer to deliver up to Supplier all Products in its possession and if Customer fails to do so promptly, Supplier shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Products; Supplier and its agents and employees shall be entitled for such purpose at any time and without the need to give notice enter upon any property upon which the Products or any part are stored, or upon which Supplier reasonably believes them to be kept; Customer shall hold the Products as bailee and store or mark the Products in a manner reasonably satisfactory to Supplier indicating that title to the Products remains vested in Supplier; Customer shall take all reasonable care of the Products; and Customer shall insure the Products to their full replacement value, and arrange for Supplier to be noted on the policy of insurance as the loss payee. Irrespective of whether title to the Products remains vested in Supplier, risk in the Products shall pass to Customer upon delivery.

14. Confidentiality

By virtue of this Agreement, the parties may have access to the other party's Confidential Information. The parties will hold each other's Confidential Information in confidence. With respect to all Confidential Information other than Software and Documentation provided by Supplier, such obligation shall terminate three (3) years after termination of this Agreement. With respect to the Software and Documentation provided by Supplier, such obligation is perpetual. The parties will not make each other's Confidential Information available in any form to any third-party for any purpose except to the extent necessary to exercise its rights under this Agreement and will treat Confidential Information of the other party with the same degree of care with which it would treat its own confidential information of a like nature, and in no case less than a reasonable degree of care. The parties agree that the limitations of liability contained herein shall not apply to any disclosure of Software or Documentation in breach of this provision and that any such breach shall terminate the rights to such Software and Documentation granted to Customer under this Agreement.

Confidential Information may only be disclosed to those employees or agents who are required to access it in furtherance of this Agreement and who are required to protect such Confidential Information against unauthorized disclosure. Supplier and Customer shall each implement and enforce policies and contractual obligations with its employees, agents and subcontractors to ensure its employees, agents and subcontractors protect the

Confidential Information as required pursuant to this Section 14. It shall not be a breach of this Section 14 if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided that the party served with such process promptly notifies, to the extent legally permissible, the other party and provides reasonable assistance so that the other party may seek, at its own cost and expense, a protective order against public disclosure.

The parties recognize and agree that monetary damages are an inadequate remedy for breach of the obligations set forth in this Section 14 and further recognize that any breach would result in irreparable harm to the non-breaching party. In the event of such a breach, the non-breaching party may seek injunctive relief from a court of competent jurisdiction to pursue those remedies available to it.

15. Indemnification

Supplier will indemnify, defend and hold Customer Indemnified Parties harmless from, at its expense, any action brought against Customer Indemnified Parties by a third party based upon a claim that Customer's use of the Software within the scope of these Terms and Conditions and the Order Form(s) infringes a United States, Canadian, United Kingdom, European Union, Australian or New Zealand patent or copyright issued to or held by a third party, or misappropriates a trade secret of such third party; provided that Customer notifies Supplier promptly in writing of such claim, provides Supplier with the sole control and authority to defend or settle such action or claim, and gives Supplier the authority, information and assistance necessary to settle or defend such claim.

In the event a claim of infringement is made, or Supplier believes that such a claim is likely to be made, then Supplier shall at its expense: (a) procure the right for Customer to continue using the Software; (b) replace or modify the Software so that it becomes non-infringing, without materially decreasing the functionality of the Software; or (c) if neither (a) or (b) above is commercially practical, then at Supplier's sole option, terminate this Agreement upon three (3) months written notice, and either issue to Customer a credit equal to, or promptly refund to Customer, the subscription fee for the then-current subscription period, less an appropriately prorated amount for use, reflecting the number of months during which Customer enjoyed uninterrupted use of the Software during that subscription period.

Notwithstanding the foregoing, Supplier shall have no obligation to defend Customer or to pay any costs or legal fees for any action, claim or settlement, based upon: (a) use of a version of the Software that was not, at the time that the claim arose, the current unaltered version of the Software provided by Supplier hereunder, including, without limitation, failure of Customer to install Updates containing modifications to make the Software non-infringing; (b) combination, operation, integration or interfacing of the Software with Third Party Materials, other than Third Party Materials or Third Party Software with which the Software was intended to operate as specified in the Documentation associated with the Software if such claim would not have arisen but for such combination, operation, integration or interfacing (regardless of whether or not Supplier has advised Customer that such use would likely result in a claim of infringement by a third party); (c) use of the Software in a manner other than as authorized by the Documentation, the Order Form(s) or these Terms and Conditions; (d) Supplier's compliance with the designs, plans, or specifications furnished by or on behalf of Customer; (e) modifications to the Software by any person other than Supplier or its authorized agents or subcontractors; or (f) Customer's failure to accept any procured right to continue using the Software.

THE FOREGOING STATES SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER INDEMNIFIED PARTIES WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.

Customer shall defend, indemnify and hold harmless Supplier Indemnified Parties from and against any and all third party claims, actions, causes of action, liabilities, damages, costs and expenses, including reasonable legal fees, arising from or related to the exclusions (a) through (f) set out in the third paragraph of this Section 15.

16. Warranties; Disclaimer of Warranties

For a period of ninety (90) days after the Go-Live Date, Supplier warrants that the Software will operate substantially in accordance with the specifications set forth in the Documentation, provided that the Software is used on the computer hardware equipment and with third party software programs which meet Supplier's minimum requirements as set forth in the Order Form(s) or exhibit, as applicable. Customer's exclusive remedy and Supplier's sole liability for breach of this warranty shall be for Supplier to use commercially reasonable efforts to modify the Software so that it conforms to the warranty described above. Without limitation, Supplier shall have no liability to Customer or any third party arising out of Customer's failure to back-up the Software and the related data.

Supplier hereby represents that it has the authority of each manufacturer or producer of Hardware and Third Party Software which are, if applicable, subject to this Agreement to sell the same to Customer. Customer acknowledges that Supplier is not the manufacturer or producer and therefore makes no warranties, conditions, representations or guarantees, express or implied, concerning Hardware or Third Party Software, as applicable. So far as possible, Supplier hereby assigns to Customer the manufacturer's and producer's

warranties, if any, applicable to the Hardware and Third Party Software, and Customer hereby accepts such assignment and agrees that its sole remedies are included thereunder. Supplier makes no representations regarding the validity or enforceability of any such manufacturer's or producer's warranty.

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS SECTION 16 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, THIRD PARTY SOFTWARE AND HARDWARE, AS APPLICABLE, ARE PROVIDED "AS IS" AND "WITH ALL FAULTS", AND SUPPLIER DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY AND CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR THE USE OF REASONABLE SKILL AND CARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUPPLIER MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE USE OF REASONABLE SKILL AND CARE, NON-INFRINGEMENT, SATISFACTORY QUALITY, ACCURACY, FREEDOM FROM ERROR OR THAT THE SOFTWARE, THIRD PARTY SOFTWARE, SUPPORT, MAINTENANCE OR HARDWARE WILL MEET ALL OF CUSTOMER'S REQUIREMENTS. SUPPLIER MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR THIRD PARTY SERVICES PROVIDED WITH OR AS PART OF THE SOFTWARE, HARDWARE OR RELATED SERVICES. SUPPLIER'S LIMITED WARRANTIES DO NOT APPLY TO ANY SOFTWARE WHICH HAS BEEN MODIFIED OR ALTERED IN ANY MANNER BY ANYONE OTHER THAN SUPPLIER OR ITS AUTHORIZED AGENT. SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN OR ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. IN THAT EVENT, SUCH WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS ARE LIMITED IN DURATION TO THE WARRANTY PERIOD TO THE EXTENT LEGALLY PERMISSIBLE.

Nothing in this Agreement excludes, restricts, or modifies any right or remedy, or any guarantee, representation, warranty, condition or other term. Implied or imposed by any applicable law which cannot lawfully be excluded or limited. This may include any consumer law which contains guarantees that protect the purchasers of goods and services in certain circumstances. If any guarantee, representation, warranty, condition or other term is implied or imposed concerning this Agreement under any consumer law or any other applicable law and cannot be excluded (a "Non-Excludable Provision"), and Supplier is able to limit Customer's remedy for a breach of the Non-Excludable Provision, then the liability of Supplier for breach of the Non-Excludable Provision is limited to one or more of the following, at Supplier's option: (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

The parties agree that it is Customer's responsibility to determine whether the Software is suitable for Customer's requirements. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of this Agreement or have any legal effect whatsoever.

17. Limitation of Liability

EXCEPT FOR LIABILITY ARISING (i) FROM CUSTOMER'S BREACH OF SECTION 2 (LICENSE RESTRICTIONS) AND ANY DISCLOSURE BY CUSTOMER OF SOFTWARE OR DOCUMENTATION IN BREACH OF SECTION 14 (CONFIDENTIALITY), (ii) UNDER SECTION 15 (INDEMNIFICATION) OR (iii) FOR PERSONAL INJURY, DEATH, FRAUD OR FRAUDULENT MISREPRESENTATION:

(A) SUPPLIER'S ENTIRE LIABILITY UNDER THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, THE THIRD PARTY SOFTWARE, THE HARDWARE OR ANY RELATED SERVICES WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO SUPPLIER PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM; AND

(B) NEITHER PARTY WILL BE LIABLE FOR:

(i) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, THE THIRD PARTY SOFTWARE, THE HARDWARE OR ANY RELATED SERVICES; OR

(ii) ANY LOSS OF REVENUE, PROFITS, GOODWILL OR DATA, OR DATA USE (INCLUDING AS A RESULT OF A VIRUS), BUSINESS INTERRUPTION, FAILURE TO REALIZE AN EXPECTED SAVING, CORRUPTION OF DATA, OR CLAIMS AGAINST THEM BY ANY THIRD PARTY.

EVEN IF THE PARTIES ARE ADVISED, OR MAY REASONABLY SUPPOSED TO HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

SUCH LIMITATIONS WILL APPLY REGARDLESS OF HOW THE CLAIM ARISES, WHETHER ARISING BASED ON CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE AND WILL APPLY TO ALL ORDER FORMS, SCHEDULES, ADDENDA, AGREEMENTS AND ATTACHMENTS RELATED TO THIS AGREEMENT.

THE FOREGOING LIMITATIONS OF LIABILITY ALLOCATE THE RISKS BETWEEN SUPPLIER AND CUSTOMER AND FORM A MATERIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

SUPPLIER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

18. Term and Termination

- (a) Term. The subscription will continue until the conclusion of the Subscription Term, unless earlier terminated in accordance with Section 18(c) or Section 18(d). This Agreement will automatically renew for additional subscription periods (each being a "Renewal Term" and, collectively, with the Initial Subscription Term, the "Subscription Term") unless either party provides the other party with ninety (90) days written notice prior to the conclusion of the Initial Subscription Term or the Renewal Term, as applicable. All terms and conditions hereof shall remain in effect during any Renewal Term, except as the parties otherwise expressly agree to in writing.
- (b) Failure to Pay Subscription Fee. In the event that Customer fails to pay the applicable subscription fee when due, Supplier reserves the right to elect to take one of the following courses of action (without limiting Supplier's other available remedies): (i) notify Customer that this Agreement will immediately expire (or has expired) effective as of the expiration of the then-current Subscription Term; or (ii) allow this Agreement to renew for another renewal period, in which event, the applicable subscription fee for such renewal period will continue to be payable; provided, however, that if Supplier does not affirmatively notify Customer that alternative (i) or (ii) has been selected, then alternative (ii) will apply.
- (c) Termination by Supplier. Subject to Section 18(b) (Failure to Pay Subscription Fee), and the remedies set out in the last paragraph of Section 10, Supplier has the right to terminate the license granted under this Agreement if Customer is in default of any term or condition of this Agreement, and fails to cure such default within thirty (30) days after receipt of written notice of such default. Without limitation, it will be deemed a Customer default under this Agreement if Customer fails to pay any amount when due hereunder. Supplier may terminate this Agreement immediately if: (i) Customer breaches Section 2 (License Restrictions); or (ii) Customer becomes insolvent, a receiver, administrator, controller or a liquidator is appointed to Customer, Customer assigns any of its property for the benefit of creditors or any class of them or any proceedings have been commenced by or against Customer under any bankruptcy, insolvency or similar laws.
- (d) Termination by Customer. Customer has the right to terminate this Agreement effective immediately upon written notice to the Supplier.
- (e) Effect of Termination. Upon termination of this Agreement for any reason, any and all amounts owed to Supplier pursuant to this Agreement will be immediately due and payable, and all license rights granted to Customer hereunder will be immediately revoked and terminated. Following the termination of this Agreement, the Sections titled "Ownership of Intellectual Property; Customer Input," "Payment Terms," "Taxes; Customs," "Confidentiality," "Indemnification," "Warranties; Disclaimer of Warranties," "Limitation of Liability," "Audit," "Governing Law" and "General" will continue in full force and effect in accordance with their terms. Within ten (10) days following termination, Customer will cease using and will securely destroy or return to Supplier all copies of the Software, Documentation and any applicable copies thereof in accordance with Section 3 (Ownership of Intellectual Property; Customer Input; Data) and confirm the same to Supplier in writing by a duly authorized officer.

19. Audit

During the Subscription Term, Customer shall maintain complete and accurate books, records, policies, and procedures (collectively "Books and Records") sufficient to confirm Customer's compliance with these Terms and Conditions and the Order Form(s), including without limitation compliance with Permitted Use, and payment of Fees to Supplier. During the Subscription Term and for a period of one (1) year thereafter, Customer shall permit Supplier (or an independent representative engaged by Supplier), upon thirty (30) days prior written notice, to audit (each an "Audit") Customer's Books and Records and deployment of the Software to the extent reasonably necessary to verify Customer's compliance with the terms, conditions, and restrictions of this Agreement, at such times during Customer's regular business hours as Supplier may reasonably request. Supplier may exercise its right to audit no more frequently than one (1) time each calendar year. If any Audit should disclose any underpayment of Fees, Customer shall promptly pay Supplier such underpaid amount (whether before or after judgment), together with interest thereon at a rate of one and one-half percent (1.5%) per month during which each such amount was owed and unpaid, or the highest interest rate allowed by law, whichever is lower. If the amount of such underpayment exceeds five percent (5%) of amounts otherwise payable, then Customer shall reimburse Supplier for Supplier's reasonable and customary audit expenses. The rights and obligations set forth in this Section 19 shall survive termination or expiration of the Subscription Term (as such term is defined in Section 18(a)) for a period of one (1) year from such termination or expiration.

20. Assignment

Neither party may assign any of its rights or obligations hereunder, whether by operation

of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all schedules and Order Forms), without the other party's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement with immediate effect upon written notice. Any purported assignment in violation of this section shall be void and of no effect. Any permitted assignee shall assume all assigned obligations of its assignor under the Agreement.

21. Governing Law

The law that will apply to any question of interpretation regarding this Agreement, any question of the existence of this Agreement, or a lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such lawsuit, depend on the country of incorporation or organization, as applicable, of Customer, and will be determined as follows:

Customer Country of Incorporation:	Governing Law:	Courts Having Jurisdiction:
The United States of America, Mexico or a Country in Central or South America or the Caribbean	The laws of the State of New York and the federal laws of the United States applicable in that state.	(a) The United States District Court for the Southern District of New York (to the extent it has subject matter jurisdiction), or (b) the Commercial Division of the Supreme Court of the State of New York in New York County (or, if such court lacks subject matter jurisdiction, in the courts of the State of New York in New York County)
Canada	The laws of the Province of Ontario and the laws of Canada applicable in that province.	Toronto, Ontario
The United Kingdom or Another Country in Europe, the Middle East or Africa	The laws of England and Wales.	England and Wales
Australia or a Country in Asia or the Pacific Region	The laws of the State of New South Wales and the laws of the Commonwealth of Australia applicable in that state.	Sydney, Australia

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and, subject to the availability of injunctive relief pursuant to Section 14 (Confidentiality) and to Section 22 (Dispute Resolution), to the jurisdiction of the applicable courts above. The parties exclude the operation of the United Nations Convention on Contracts for the International Sale of Goods.

22. Dispute Resolution

Upon any dispute, controversy or claim between the parties, each of the parties will designate a representative from senior management to attempt to resolve such dispute. The designated representatives will negotiate in good faith in an effort to resolve the dispute over a period of thirty (30) days. If the dispute is not resolved in this thirty (30) day period, a party may submit the dispute to binding arbitration. Customer shall select an arbitrator from a list of three (3) arbitrators to be provided by Supplier to Customer, each of which shall be skilled in the legal and business aspects of the software industry. The parties agree that the arbitrator's fee shall be shared equally between the parties and that

each party shall be responsible for its costs, legal and otherwise, in relation to the arbitration, unless the arbitrator decides that the circumstances justify an award of costs. The arbitration shall be conducted in the English language and shall take place in accordance with arbitration rules and in the location set forth in the below chart, depending on the country of incorporation or organization, as applicable, of Customer:

Customer Country of Incorporation:	Applicable Arbitration Rules:	Location of Arbitration:
The United States of America, Mexico or a Country in Central or South America or the Caribbean	Commercial Arbitration Rules of the American Arbitration Association	New York City, New York
Canada	Canadian Arbitration Association	Toronto, Ontario
The United Kingdom or Another Country in Europe, the Middle East or Africa	London Court of International Arbitration	London, England
Australia or a Country in Asia or the Pacific Region	Australian Centre for Commercial Arbitration	Sydney, Australia

The foregoing provision shall not limit the ability of a party to seek injunctive relief.

23. General.

- Export Compliance.** The Software, Products and related services, and derivatives thereof may be subject to export laws and regulations. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit access or use of the Software or Products in a U.S.-embargoed country, EU-embargoed country, or United Nations-embargoed country or in violation of any other applicable embargo, export law or regulation.
- Anti-Corruption.** Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Supplier's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Supplier.
- Modifications.** This Agreement may not be modified except in writing signed by both parties.
- Subcontractors.** Supplier reserves the right to make use of subcontractors to provide services and to use such means as Supplier, in its sole discretion, considers appropriate. Supplier's use of subcontractors shall not relieve it of its obligations under this Agreement.
- Independent Contractor.** The relationship of the parties established by this Agreement is that of independent contractors. This Agreement does not establish an agency, joint venture or partnership relationship between Supplier and Customer. Supplier and its personnel, agents, Suppliers, and Supplier's Authorized Representatives, are acting as independent contractors and not as employees or agents of Customer. Nothing in this Agreement will be construed to permit either party to bind the other or to enter into obligations on behalf of the other party.
- Non-Solicitation.** During the Term of this Agreement and for a period of one (1) year following the termination of this Agreement, each party hereto agrees not to solicit, recruit or employ any employee of the other party without the prior written consent of the Chief Executive Officer, President or Director of the other party. For purposes of this section, the term "employee," shall include any person with such status at any time during the six (6) months preceding any solicitation in question. For the avoidance of doubt, the foregoing restriction shall not apply to the following forms of solicitation (and resulting employment): (i) a party using general bona fide solicitations directed at the public or industry participation in general in publications or internet resources not specifically targeted at employees of the other party, or employing any person who responds to such solicitations; (ii) using search firms, or hiring any persons solicited by such search firms, so long as such firms are not advised

by a party to solicit employees of the other party; or (iii) soliciting any person who has left the employment of the other party prior to the date of this Agreement.

- (g) **Severability.** If any provision contained herein or part thereof is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, such invalid provision or part thereof shall be deemed not to affect or impair the validity or enforceability of any other provision or part thereof contained herein, all of which remaining provisions or parts thereof shall be and remain in full force and effect.
- (h) **Headings.** The headings and subheadings contained herein are inserted for convenience of reference only and shall in no way be construed to be interpretations of terms.
- (i) **Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after being sent by pre-paid recorded post; or (iii) the second business day after sending by facsimile with telephonic confirmation of receipt. Notices to Supplier shall be sent to the address shown in the introductory paragraph of this Agreement addressed to Supplier's signatory of this Agreement. Notices to Customer shall be sent to the address shown in the introductory paragraph of this Agreement addressed to Customer's signatory of this Agreement. Each party may modify its recipient of notices by providing notice pursuant to this Agreement.
- (j) **Waiver.** No delay by either party in enforcing any of the terms or conditions of this Agreement will affect or restrict such party's rights and powers arising under this Agreement. No waiver of any term or condition of this Agreement will be effective unless made in writing. The waiver by any party of a breach of this Agreement does not constitute a waiver of a repeat of the same breach or of other breach of rights or obligations under this Agreement.
- (k) **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement and supersedes all proposals, oral and written, and all previous negotiations and communications

24. Definitions and Interpretation.

The definitions and rules of interpretation in this Section shall apply to this Agreement.

- (a) The following capitalized terms shall have the meanings ascribed to them in this section:

"Affiliate"	Includes any entity or association controlled by, controlling or under common control with a party and for the purposes of this definition, the term "control" shall mean (i) the ownership of more than fifty percent (50%) of the voting shares of the subject entity or association; (ii) the right or power, directly or indirectly, to elect or remove directors; or (iii) the right or power to control management.
"Audit"	Has the meaning set out in Section 19.
"Branding"	Has the meaning set out in Section 4.
"Books and Records"	Has the meaning set out in Section 19.
"Confidential Information"	All tangible or intangible information and materials, in any form or medium, including, but not limited to, all of the following, whether or not patentable: information that is clearly designated or identified as confidential by appropriate letter or by a proprietary stamp or legend; all information disclosed orally or visually, or other form of tangible information without an appropriate letter or a proprietary stamp or legend, if it would be apparent to a reasonable person familiar with the party's business and industry in which it operates, that such information is of a confidential nature; Software and the Documentation; documentation and other information related to hardware specifications, components lists, suppliers and the like; any scientific or technical design, drawing, process, technique or procedure; trade secrets; information related to business plans, forecasts, sales and marketing plans, Customers, pricing and finances; Customer data contained in the Software databases; the conduct of the other party in performing this Agreement; and the terms and conditions of this Agreement. Confidential Information will not include information that: (i) is or becomes generally known to the public through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third-party without restriction on disclosure; or (iv) is independently developed by or for the other party without use of or reference to the other party's Confidential Information, as evidenced by files from the time of such independent development.
"Customer Indemnified Parties"	Customer and its Affiliates and any of their respective officers, directors, employees, agents, successors and permitted assigns.
"Customer Input"	Suggestions, enhancement requests, recommendations or other feedback provided by Customer, its employees, contractors and agents relating to the operation or functionality of the Software.
"Customer Sites"	The physical location or address where Customer utilizes the Software for the Permitted Use, as set out on the applicable Order Form(s).
"Delivery Costs"	Costs related to the delivery of Hardware or Third Party Software, including insurance, packaging, shipping, freight and other delivery-related costs.
"Documentation"	Supplier-supplied related hard-copy or electronically reproducible technical and user documents associated and provided with the Software.
"Error"	Reproducible error of the Software which prevents the use of the Software substantially as described in the specifications set forth in the Documentation.

between the parties and their representatives with respect to the subject matter of this Agreement. For greater certainty, this Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if Supplier accepts or does not otherwise reject the purchase order. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

- (l) **Third party rights.** A person who is not a party to this Agreement shall not have any rights to enforce any term of this Agreement.
- (m) **Force Majeure.** Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control provided that the party affected by such failure or delay gives the other party prompt written notice of the cause and uses commercially reasonable efforts to correct such failure or delay within a reasonable period of time.
- (n) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a Portable Document Format (PDF), or by using a web-based e-signature platform such as DocuSign or Echosign, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page or e-signature was an original thereof.

"Fees"	Subscription fees, implementation and training fees, amounts payable in respect of Hardware and all other fees due hereunder.
"Go-Live Date"	The date on which Customer first uses the Software to process its daily business relative to the functions that the Software automates.
"Hardware"	Hardware products produced by third party manufacturers which Supplier buys from such manufacturers or distributors for resale to its Customers (to the extent available), including, but not limited computer hardware and point of sale devices.
"Initial Subscription Term"	The fixed term designated on the Order Form beginning on the later of (i) the Effective Date or (ii) the start date of the Subscription Term Indicated on the Order Form. If no Initial Subscription Term is indicated on the Order Form, the Initial Subscription Term shall be a period of one (1) year from the Effective Date.
"New Product"	Any new feature, module or enhancement to the Software that Supplier markets and licenses for additional fees separately from Updates.
"Order Form"	A separate document provided by Supplier, agreed to by the parties to, and governed by, this Agreement, by which Customer orders licenses and services. Additional Order Forms executed by the parties with respect to additional licenses, Products and services will form part of this Agreement.
"Other Assistance"	Has the meaning set out in Section 7.
"Permitted Use"	The quantity or extent of a license to the Software or particular modules thereof, as specified in the Order Form. The Order Form may specify that the license is measured by number of Users, number of Workstations or limited to specific Customer Sites.
"Products"	Has the meaning set out in Section 13.
"Renewal Term"	Has the meaning set out in Section 18(a).
"Software"	The (i) machine-readable instructions and data, (ii) components, files, and modules, (iii) audio-visual content (such as images, text, recordings or pictures) and (iv) related licensed materials, such as activation keys, as applicable, as further described in the Order Form(s), as well as any Updates.
"Subscription"	The agreement for Customer's use of the Software for the Subscription Term pursuant to this Agreement and the commercial terms specified in the Order Form.
"Subscription Term"	Has the meaning set out in Section 18(a).
"Supplier Authorized Representatives"	Supplier's authorized representatives who, by written authorization from Supplier, may have authorization to sell, install, or provide training in respect of the Software.
"Supplier Indemnified Parties"	Supplier and its Affiliates and any of their respective officers, directors, employees, agents, successors and permitted assigns.
"Taxes"	Any local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added taxes, excise, use, goods and services taxes, consumption taxes or similar taxes, export and import fees, customs duties and similar charges, in each case, associated with the Software, Third Party Software and/or Hardware, imposed upon the Fees or otherwise arising out of, or in connection with, the transactions contemplated by this Agreement.
"Third Party Materials"	Any software, hardware, data, or other materials or products not provided by Supplier.
"Third Party Software"	Software owned by third party producers which Supplier distributes or resells to its customers.
"Updates"	The latest updates, modifications, improvements to the Software, including corrections of Errors, which relate to the operating performance but do not change the basic functionality of the Software.
"User"	A person or machine that utilizes the Software for the Permitted Use, as authorized pursuant to an Order Form, as applicable.
"Workstation"	A personal computer or device providing equivalent functionality which is capable of executing the Software and which is linked to a computer network from which the Software is accessible, as authorized pursuant to an Order Form, as applicable.

- (b) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (c) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- (d) A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- (e) Any words following the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

[The remainder of this page has deliberately been left blank.]

RESOLUTION 2022-08-15-02

Accepting Lowest Responsive and Responsible Quote for Electrical Service as a
Public Works Project at the Street Department Pole Barn

WHEREAS, the City of Pelham has requested and received quotes for the Street
Department Pole Barn Electrical Service Project.

NOW, THEREFORE, BE IT RESOLVED by the Pelham City Council to accept the
lowest responsive and responsible quote of \$16,600.00 from 1 Call Contractors (Electrical) for
the Street Department Pole Barn Project and to authorize the Mayor, on behalf of the city, to
enter into an agreement for this public works project, which shall become a permanent part of
this Resolution, with 1 Call Contractors (Electrical).

BE IT FURTHER RESOLVED the City of Pelham will review the construction
inspection and pay estimates submitted by 1 Call Contractors (Electrical).

THEREUPON _____, a councilmember, moved and
_____, a councilmember, seconded the motion that Resolution
2022-08-15-02 be given vote, and said Resolution passed by a majority vote of all members of
the Council present and the Council President declared the same passed.

ADOPTED this 15th day of August 2022.

Maurice Mercer, President of the Council

[SEAL]

ATTEST

Tom Seale, MMC, City Clerk/Treasurer

I, the undersigned City Clerk/Treasurer of the City of Pelham, Alabama, do hereby
certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by
the City Council of the City named herein, at a regular meeting of such Council held on the 15th
day of August 2022 and that such Resolution is on file in the office of the City Clerk/Treasurer
and that no action has been taken to rescind or modify said Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of
the City on this 15th day of August 2022.

Tom Seale, MMC, City Clerk/Treasurer

[SEAL]



MEMORANDUM

To: Andre' Bittas

Cc:

From: Chris Cousins 

Date: August 3, 2022

Subject: Street Department – Electrical Service at Pole Barn
Munis Acct No. 1005050-550399
Project No. 5022005

Attached is the quote in the amount of \$16,600 from 1 Call Contractors (Electrical) to install new electrical equipment at the Street Department's Pole Barn. This is a public works project that falls below the \$50,000 threshold for advertising and bidding. This work will be in lieu of the fencing that was budgeted for FY22 in the amount of \$20,000.

I am requesting this quote be placed on the Council Agenda as soon as is practical.

1 Call Contractors (Electrical)

204 Fox Valley Highlands Drive
Alabaster, AL 35114 US
(205)296-4271
1callelectricalservice@gmail.com

Estimate

ADDRESS

City Of Pelham
3162 Parkway/ Po Box 1419
Pelham, Al 35124

ESTIMATE # 1185**DATE 07/01/2022**

ACTIVITY	QTY	RATE	AMOUNT
Electrical service	1	16,600.00	16,600.00
Poll barn electrical			
Install new 200 amp service with 200 amp panel			
Install 10 120 volt plugs on back wall			
Install 4 led dusk to dawn security lights			
Install 10 led high bay lights			
Install 3 way for inside lights on both side			
Install 220 for air compressor			
Off road lift rental for gravel			
Permit / inspection			

TOTAL**\$16,600.00**

Accepted By

Accepted Date

RESOLUTION 2022-08-15-03

Authorizing a Public Works Project for Electrical Repairs on Fields 1-4 at Pelham City Park

WHEREAS, the City of Pelham, has requested and received proposals for electrical repairs on Fields 1-4 at Pelham City Park.

NOW, THEREFORE, BE IT RESOLVED by the Pelham City Council to accept the lowest responsive and responsible proposal from Monroe Electric Company, Inc. for a public works project for electrical repairs on Fields 1-4 at Pelham City Park in an amount not to exceed \$19,521.00 and to authorize the Mayor, on behalf of the city to enter into an agreement, which shall become a permanent part of this Resolution, with Monroe Electric Company, Inc. for said public works project.

BE IT FURTHER RESOLVED the City of Pelham with continue efforts to seek reimbursement through the city's insurance carrier for this loss.

BE IT FURTHER RESOLVED the City of Pelham will provide construction inspections and review pay estimates submitted by Monroe Electric Company, Inc.

BE IT FURTHER RESOLVED any unforeseen conditions or occurrences encountered which significantly affect or may affect the services or the recommended scope of services will be presented to the City of Pelham for pre-approval of any additional expenses.

THEREUPON _____, a councilmember, moved and _____, a councilmember, seconded the motion that Resolution 2022-08-15-03 be given vote, and said resolution passed by majority vote of the Council present, and the President of the Council declared the same passed and adopted.

ADOPTED this 15th day of August 2022.

Maurice Mercer President of the Council

[SEAL]

ATTEST

Tom Seale, MMC, City Clerk/Treasurer

I, the undersigned qualified City Clerk/Treasurer of the City of Pelham, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council of the City of Pelham, at a regular meeting of such Council held on the 15th day of August 2022 and that such Resolution is on file in the office of the City Clerk/Treasurer and that no action has been taken to rescind or modify said Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 15th day of August 2022.

Tom Seale, MMC City Clerk/Treasurer

[SEAL]



Pelham

A path apart.

M E M O R A N D U M

To: Gretchen DiFante, City Manager

From: Alicia Walters, Assistant Director

Date: August 9, 2022

Subject: Repairs to Lighting on Fields 1-4 at City Park

Summary:

At the City Park we noticed on June 13th that we had no power at Fields 1-4. Our high voltage electrician came out over several days trying to troubleshoot the cause as it wasn't obvious as it usually is and Alabama Power could not re engage their fuses without something from our end immediately blowing the fuses feeding the power. After several days of troubleshooting Ed Monroe with Monroe Electric who handles our high voltage work determined that one of the 2 legs of power that supplies power to the transformers had grounded out and was causing the problems. These wires were installed in 1983 and from what I have seen with other wiring we have had to repair probably wasn't installed anywhere close to what codes would require today. We are lucky it is the leg of power leading to the transformer enclosure closest to the power supply and not the one that runs under the press box and asphalt.(knock on wood).

To fix the issue a new power pole on our side of the service will be installed, the current one is in really bad shape and probably the most important pole in the park. From there a new high voltage line will have to be laid and placed in conduit to current codes and brought into the trans closure hooked back up to the transformers that control the field lights for fields 1&2 and that entire half of the complex.

I have spoken with the insurance agent and we are moving forward with a claim to see if this will be covered under our insurance. At this point, we are unsure if the claim will be covered. We would like to make the Council aware of the situation, the steps we are taking but also if this is not covered under the insurance that we will need the funds for this project. Attached is the estimate from the high voltage electrician.

Monroe Electric Company Inc.

2325 Tanglewood Brook Ln

Vestavia, AL 35243

(205) 365-4702

harryedmonroe@gmail.com

Estimate

ADDRESS

City of Pelham Parks & Rec

PO Box 1419

Pelham, AL 35124

ESTIMATE # 9802**DATE** 07/20/2022**PROJECT / LOCATION**

Replace High Voltage Service

DESCRIPTION	AMOUNT
Replace high voltage service at ball park	
Wire	3,900.00
Pipe	1,430.00
Terminators	1,200.00
Wooden Pole	2,000.00
High voltage cut out	1,000.00
Labor; including 2 days of troubleshooting	1,991.00
Auger	3,000.00
Craine	5,000.00

Not responsible for damage to underground utilities

TOTAL**\$19,521.00**

Accepted By

Accepted Date

Thank you for your business.

RESOLUTION 2022-08-15-04

Acceptance of Monthly Street Light Electrical Service Expense in the Simms Landing Subdivision, Phase 2

WHEREAS, in accordance with the City's standard practice of accepting monthly electric service and the developer assuming responsibility of installation costs, decorative lighting, and any additional engineering costs associated with the streetlights, a request has been received by the City of Pelham to accept the monthly electrical service expense for certain streetlights located within the Simms Landing Subdivision, Phase 2, Pelham, Alabama, and

WHEREAS, the City of Pelham desires to continue to provide adequate street lighting to promote the safety and well-being of its citizens and therefore directs Alabama Power Company to begin invoicing the City of Pelham for the following electrical service only.

Simms Landing Subdivision, Phase 2 – Pelham, Alabama

Description: (5) LED Lighting, 7800/9400 Lumens at the following locations:

Lots: 204, 208, 216, 222 and 259

Estimated Monthly Electrical Service: \$14.03 Each (Annual \$70.15 + Utility Taxes)

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pelham to authorize Alabama Power Company to invoice the City of Pelham for the streetlights as listed above. The city assumes responsibility for monthly electrical service only. Any decorative lighting, installation or additional engineering costs are to be paid by the developer, homeowner and/or homeowner's association (HOA).

THEREUPON _____, a councilmember, moved and _____, a councilmember, seconded the motion that Resolution 2022-08-15-04 be given vote, and said resolution passed by a majority vote of all members of the Council present and the Council President declared the same passed and adopted.

ADOPTED this 15th day of August 2022.

Maurice Mercer, President of the Council

[SEAL]

ATTEST

Tom Seale, MMC, City Clerk/Treasurer

I, the undersigned City Clerk/Treasurer of the City of Pelham, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council of the City named herein, at a regular meeting of such Council held on the 15th day of August 2022 and that such Resolution is on file in the office of the City Clerk/Treasurer and that no action has been taken to rescind or modify said Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 15th day of August 2022.

Tom Seale, MMC, City Clerk/Treasurer

[SEAL]



MEMORANDUM

To: Andre' Bittas

Cc:

From: Chris Cousins 

Date: July 27, 2022

Subject: Street Light – LED Changeouts
Alabama Power Streetlight Additional Fixtures Exhibit

Attached is the sign off documentation from Alabama Power Company for the City to accept power bill responsibility for 5 new streetlights in Simms Landing.

Please consider this for placement on the Council agenda at the earliest convenient time.

STREETLIGHT ADDITIONAL FIXTURES EXHIBIT

Alabama Power Company ("APC") and the City of Pelham ("Customer") entered into a Master Contract for Lighting Services NESC® Lease Agreement (Governmental) on 03/08/2021 (the "Master Contract") for a term of 36 months. APC and Customer hereby agree that the terms and conditions of the Master Contract shall apply to this Additional Fixtures Exhibit between APC and Customer as contemplated in Section 1 of the Master Contract. APC and Customer agree that this Additional Fixtures Exhibit shall be in addition to the Fixtures Exhibit incorporated into the Master Contract and that the pricing terms and conditions thereof shall also apply to this Additional Fixtures Exhibit, as applicable.

	Qty	New LED Fixture Description	Location Details	Monthly Equipment Price (see Note 1)	Estimated Electric Service Charge (see Note 2)	Monthly Total Price
1	5	LED Decorative – 7800 -9400 Lumens	Simms Landing ph 2 – decorative fixtures	\$12.58	\$1.45	\$14.03
2						
3						
4						
5						
6						
7						
			TOTAL	\$62.90	\$7.25	\$70.15

Note 1: The Monthly Equipment Price shall be valid through the Initial Term of the Master Contract.

Note 2: The Estimated Electric Service Charge is subject to change at any time as dictated by the Alabama Public Service Commission or if a comparable LED fixture with a different wattage meeting the lumens range is selected.

Additional Information:

*** INCLUDES UP FRONT BUYDOWN OF \$9,352.31 PAID BY DEVELOPER ***

IN WITNESS WHEREOF, APC and Customer have caused this Additional Fixtures Exhibit to be executed by their authorized representatives and shall be effective as of the date of execution of this Additional Fixtures Exhibit.

City of Pelham

Alabama Power Company

By: _____

By: _____

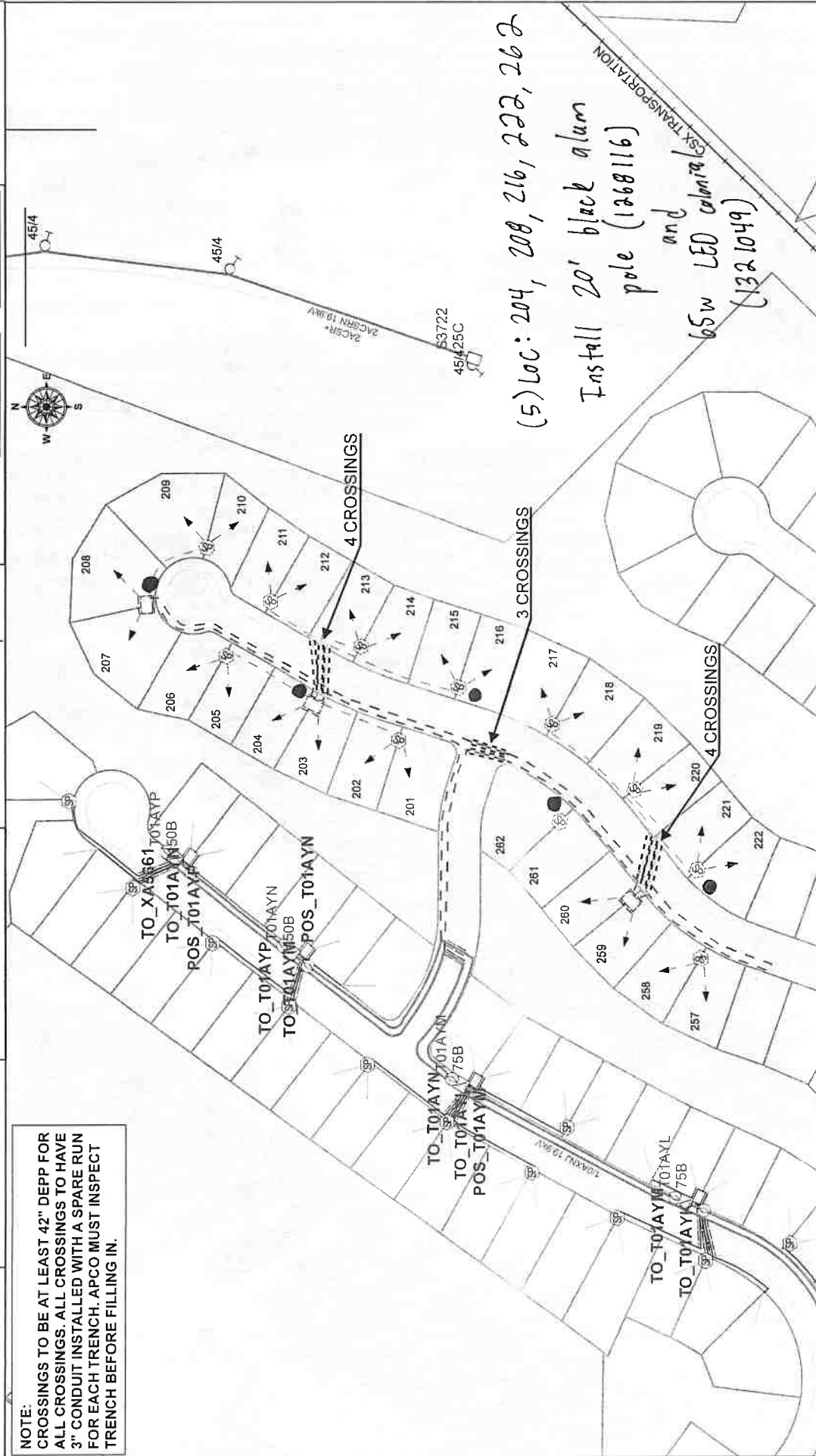
Name: _____

Name: _____

Date: _____

Date: _____

NOTE:
CROSSINGS TO BE AT LEAST 42" DEPP FOR ALL CROSSINGS. ALL CROSSINGS TO HAVE 3" CONDUIT INSTALLED WITH A SPARE RUN FOR EACH TRENCH. APCO MUST INSPECT TRENCH BEFORE FILLING IN.



RESOLUTION 2022-08-15-05

Accepting the Lowest Responsive and Responsible Bid for the Oak Mountain Trail Mass Infrastructure Improvements Project and Amending the Capital Improvement Budget

WHEREAS, the City of Pelham has requested and received sealed bids for the Oak Mountain Trail Infrastructure Improvements Project.

NOW, THEREFORE, BE IT RESOLVED by the Pelham City Council to accept the lowest responsive and responsible bid in the total amount of \$593,573.84 from Takco, Inc. for the Oak Mountain Trail Infrastructure Improvements Project and to authorize the Mayor, on behalf of the city, to enter into an agreement with Takco, Inc. for said project.

BE IT FURTHER RESOLVED the Agreement shall be a permanent part of this Resolution.

BE IT FURTHER RESOLVED the City of Pelham will coordinate the construction inspections and review the monthly pay estimates submitted by Takco, Inc.

BE IT FURTHER RESOLVED by the Pelham City Council to amend the FY2022 Capital Improvements-Oak Mountain Trail Property Improvement Budget by increasing the budget in the amount of \$400,000.00 to \$1,998,286.00.

THEREUPON _____, a councilmember, moved and _____, a councilmember, seconded the motion that Resolution 2022-08-15-05 be given vote, and said Resolution passed by a majority vote of all members of the Council present and the Council President declared the same passed and adopted.

ADOPTED this 15th day of August 2022.

Maurice Mercer, President of the Council

[SEAL]

ATTEST

Tom Seale, MMC, City Clerk/Treasurer

I, the undersigned City Clerk/Treasurer of the City of Pelham, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council of the City named herein, at a regular meeting of such Council held on the 15th day of August 2022 and that such Resolution is on file in the office of the City Clerk/Treasurer and that no action has been taken to rescind or modify said Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 15th day of August 2022.

Tom Seale, MMC, City Clerk/Treasurer

[SEAL]



MEMORANDUM

To: Andre' Bittas

Cc:

From: Chris Cousins

Date: July 29, 2022

Subject: Oak Mountain Trail – Infrastructure
Munis Acct No. 1005030-550199
Project No. 5322011

Attached is the bid tabulation for the Oak Mountain Trail – Infrastructure project. Pursuant to Alabama law, this pricing was directly solicited after no bids were received following the City's typical advertisement and bidding procedure.

1. Takco, Inc. – \$710,759.49¹
2. Chilton Contractors, Inc. – \$740,188.99

These amounts were higher than expected due to market conditions. We have value engineered the scope of work to include only those elements needed for the current Tractor Supply project. Project elements removed can be constructed at a later date as part of pad development. This reduced Takco's bid price by \$146,463.43 to \$593,573.84.

I recommend that the council consider awarding the infrastructure improvements to Takco Construction in the amount of \$593,573.84. I am also recommending that the remaining funds from the mass grading package for this site (this project is nearly complete and is expected to have a final cost below budgeted amounts) be applied to the infrastructure package and that a budget amendment of \$400,000 be made to complete the overall project.

¹ Takco's bid included gas main installation at \$29,277.78 which increased their total to \$740,037.27. Chilton did not bid this item. Takco's total bid shown does not include the gas main pricing so that bids can be compared equally.

City of Pelham, Alabama
Oak Mountain Trail - Infrastructure
Bid Tab

Original Pricing							
5	105	Tons	Superpave Bituminous Concrete Wearing Surface Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range C/D	\$304.74	\$31,997.70	\$237.12	\$24,897.60
6	74	Tons	Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range C/D	\$328.15	\$24,283.10	\$222.00	\$16,428.00
7	147	Tons	Superpave Bituminous Concrete Upper Base Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL C/D	\$177.03	\$26,023.41	\$232.80	\$34,221.60
8	693	Square Yard	Micro-Milling Existing Pavement (Approximately 0.050" Thru 1.006" Thick)	\$30.98	\$21,469.14	\$16.33	\$11,316.69
9	89	Linear Feet	Combination Curb and Gutter, Type C	\$75.84	\$6,749.76	\$25.20	\$2,242.80
10	257	Cubic Yard	Top Soil	\$62.19	\$15,982.83	\$30.00	\$7,710.00
11	1300	Square Yard	Soil Sodding (Bermuda)	\$9.21	\$11,973.00	\$7.75	\$10,075.00
12	574	Linear Feet	Silt Fence	\$7.01	\$4,023.74	\$4.50	\$2,583.00
13	574	Linear Feet	Silt Fence Removal	\$3.13	\$1,796.62	\$1.50	\$861.00
14	780	Linear Feet	Solid White, class 2, Type A Traffic Strip (5' Wide)	\$2.19	\$1,708.20	\$1.20	\$936.00
15	994	Linear Feet	Solid Yellow, class 2, Type A Traffic Strip (5' Wide)	\$2.35	\$2,335.90	\$1.20	\$1,192.80
16	776	Linear Feet	Broken Yellow, class 2, Type A Traffic Strip (5' Wide)	\$1.42	\$1,101.92	\$1.20	\$931.20
17	162	Square Feet	Traffic Control Markings, class 2, Type A	\$10.54	\$1,707.48	\$6.60	\$1,069.20
18	152	Square Feet	Traffic Control Legends, class 2, Type A	\$10.57	\$1,606.64	\$6.60	\$1,003.20
19	8	Square Feet	Class 10, Aluminum Flat Sign Panel 0.08" Thick (Type XI Background)	\$81.66	\$653.28	\$42.00	\$336.00
20	14	Linear Feet	Roadway Sign Post (#3 U-Channel, Galvanized Steel or 2" 14 GA Square Tubular Steel)	\$24.27	\$339.78	\$42.00	\$568.00
21	306	Square Feet	Construction Signs	\$16.20	\$4,957.20	\$12.00	\$3,672.00
22	45	Each	Channelizing Drus	\$174.78	\$7,865.10	\$66.00	\$2,970.00
23	27	Each	Cones (36" High)	\$104.67	\$2,826.09	\$30.00	\$810.00
24	27	Each	Ballast for Cone	\$15.48	\$417.96	\$12.00	\$324.00
25	358	Linear Feet	Dotted White, class 2, Type A Traffic Strip (5' Wide)	\$1.42	\$508.36	\$1.20	\$429.60
26	1	Lump Sum	Owner Directed Allowance	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
County Rd 35 Improvements Subtotal:					\$255,071.37		\$219,754.49
Grand Total of Base Bid:					\$740,037.27		\$740,186.99

Value Engineering Pricing - (Postponed Turning Lane)							
5	105	Tons	Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range C/D	\$304.74			\$31,997.70
6	74	Tons	Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range C/D	\$328.15			\$24,283.10
7	147	Tons	Superpave Bituminous Concrete Upper Base Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range C/D	\$177.03			\$26,023.41
8	693	Square Yard	Maximum Aggregate Size Mix, ESAL C/D Micro-Milling Existing Pavement (Approximately 0.050" Thru 1.006" Thick)	\$30.98			\$21,469.14
9	89	Linear Feet	Combination Curb and Gutter, Type C	\$75.84			\$6,749.76
10		x	Top Soil	\$0.00			\$0.00
11	700	Square Yard	Soil Sodding (Bermuda)	\$9.21			\$6,447.00
12	574	Linear Feet	Silt Fence	\$7.01			\$4,023.74
13	574	Linear Feet	Silt Fence Removal	\$3.13			\$1,796.62
14	780	Linear Feet	Solid White, class 2, Type A Traffic Strip (5" Wide)	\$2.19			\$1,708.20
15	994	Linear Feet	Solid Yellow, class 2, Type A Traffic Strip (5" Wide)	\$2.35			\$2,335.90
16	776	Linear Feet	Broken Yellow, class 2, Type A Traffic Strip (5" Wide)	\$1.42			\$1,101.92
17	162	Square Feet	Traffic Control Markings, class 2, Type A	\$10.54			\$1,707.48
18	152	Square Feet	Traffic Control Legends, class 2, Type A	\$10.57			\$1,606.64
19	8	Square Feet	Class 10, Aluminum Flat Sign Panel 0.08" Thick (Type XI Background)	\$81.66			\$653.28
20	14	Linear Feet	Roadway Sign Post (#3 U-Channel, Galvanized Steel or 2" 14 GA Square Tubular Steel)	\$24.27			\$339.78
21	306	Square Feet	Construction Signs	\$16.20			\$4,957.20
22	45	Each	Channelizing Drus	\$174.78			\$7,865.10
23	27	Each	Cones (36" High)	\$104.67			\$2,826.09
24	27	Each	Ballast for Cone	\$15.48			\$417.96
25	358	Linear Feet	Dotted White, class 2, Type A Traffic Strip (5" Wide)	\$1.42			\$508.36
26	1	Lump Sum	Owner Directed Allowance	\$25,000.00			\$25,000.00
County Rd 35 Improvements Subtotal:							\$188,790.78
Grand Total of Base Bid:							\$593,573.84

City of Pelham, Alabama
Oak Mountain Trail - Infrastructure
Bid Tab

Original Pricing				
County Rd 52 Infrastructure Package Oak Mountain Trail			Takco, Inc.	
ITEM	QUANT	UNIT	DESCRIPTION	TOTAL
1	1	Acre	Temporary Traffic Control	\$12,714.33
2	450	Cubic Yard	Unclassified Excavation	\$9,229.50
3	130	Linear Feet	Demo Existing Curbs and Gutters	\$3,628.30
4	1	Acre	Survey Services-Site Layout, Staking, and A-Built's	\$10,703.49
5	1400	Square Yard	Shape and Fine Grade Subgrade	\$7,434.00
6	125	Linear Feet	Wattle Sediment Filter	\$14.08
7	1	Lump Sum	Maintenance and 3/4" Rainfall Inspections	\$4,753.19
8		x	Deleted	
9	2	Each	ALDOT Type S Inlet Tops	\$6,253.03
10		x	Deleted	
11		x	Deleted	
12	273	Linear Feet	8" DI Class 350	\$115.23
13	1	Each	Relocate Existing Fire Hydrant	\$5,339.66
14	1	Each	Fire Hydrant Assembly	\$11,038.44
15	1	Each	8" Gate Valves and Valve Boxes	\$5,157.58
16	2	Each	8" MJ Tap Sleeve	\$9,187.87
17	1	Each	Tees (all sizes)	\$2,117.45
18	1	Each	Bends / Elbows (all sizes)	\$1,878.88
19	2	Each	Thrust Block	\$872.97
20	1	Lump Sum	Water Testing	\$4,523.12
21	408	Linear Feet	8" PVC-SDR26	\$66.07
22	4	Each	Manhole Precast with Cover	\$8,453.48
23	2	Each	Tie to existing Manhole	\$5,160.84
24	1	Lump Sum	A-Built Sanitary Sewer	\$2,484.62
25	1	Lump Sum	Testing	\$6,430.54
26	1	Lump Sum	Gas Utility Installation-by-Contractor not Utility	\$29,277.78
27	288	Linear Feet	5" Conduit-Power	\$73.72
28	288	Linear Feet	4" Telephone/Communications Conduit	\$56.31
29	80	Square Yard	Concrete Sidewalk	\$157.06
30	4	Each	Accessible Ramps	\$2,040.13
31	976	Square Yard	Heavy Duty Asphalt 8 in / 2 in / 2 in	\$97.69
32	620	Linear Feet	Curb and Gutter (24")	\$52.90
33	30	Linear Feet	Lane Striping (Yellow)	\$17.84
34	3	Each	Stop Sign	\$1,269.17
35	3	Each	Stop Bars	\$516.40
36	2	Each	ALDOT Type S Inlet Tops	\$8,414.01
37	110	Cubic Yard	Topsoli	\$61.97
38	1	Acre	Temporary Seeding	\$2,675.87
39	1	Acre	Permanent Seeding	\$4,084.23
40	40	Gallon	Tack Coat	\$14.08
County Rd 52 Infrastructure Package Oak Mountain Trail Subtotal:				\$484,966.90

County Rd 35 Improvements			Takco, Inc.	
ITEM	QUANT	UNIT	DESCRIPTION	TOTAL
1		x	Deleted	
2	893	Cubic Yard	Unclassified Excavation	\$30.55
3	661	Cubic Yard	Borrow Excavation (A-4(0) or Better)	\$47.77
4	63	Gallon	Tack Coat	\$14.08

Value Engineering Pricing - (Postponed Turning Lane)				
County Rd 52 Infrastructure Package Oak Mountain Trail			Takco, Inc.	
ITEM	QUANT	UNIT	DESCRIPTION	TOTAL
1	1	Acre	Temporary Traffic Control	\$12,714.33
2	450	Cubic Yard	Unclassified Excavation	\$20.51
3	130	Linear Feet	Demo Existing Curbs and Gutters	\$27.91
4	1	Acre	Survey Services-Site Layout, Staking, and A-Built's	\$8,705.85
5	1,400	Square Yard	Shape and Fine Grade Subgrade	\$5.31
6	125	Linear Feet	Wattle Sediment Filter	\$14.08
7	1	Lump Sum	Maintenance and 3/4" Rainfall Inspections	\$4,753.19
8		x	Deleted	
9	2	Each	ALDOT Type S Inlet Tops	\$6,253.03
10		x	Deleted	
11		x	Deleted	
12	246	Linear Feet	8" DI Class 350	\$115.23
13	1	Each	Relocate Existing Fire Hydrant	\$5,339.66
14	1	Each	Fire Hydrant Assembly	\$11,038.44
15		x	8" Gate Valves and Valve Boxes	\$0.00
16	1	Each	8" MJ Tap Sleeve	\$9,187.80
17	1	Each	Tees (all sizes)	\$2,117.43
18	1	Each	Bends / Elbows (all sizes)	\$1,878.88
19	2	Each	Thrust Block	\$872.97
20	1	Lump Sum	Water Testing	\$4,523.12
21	267	Linear Feet	8" PVC-SDR26	\$66.07
22	1	Each	Manhole Precast with Cover	\$10,037.43
23	1	Each	Tie to existing Manhole	\$5,962.73
24		x	A-Built Sanitary Sewer	\$0.00
25	1	Lump Sum	Testing	\$6,430.54
26	1	Lump Sum	Gas Utility Installation-by-Contractor not Utility	\$29,277.78
27	288	Linear Feet	5" Conduit-Power	\$73.72
28	288	Linear Feet	4" Telephone/Communications Conduit	\$56.31
29		x	Concrete Sidewalk	\$0.00
30		x	Accessible Ramps	\$0.00
31	976	Square Yard	Heavy Duty Asphalt 8 in / 2 in / 2 in	\$98,076.24
32	620	Linear Feet	Curb and Gutter (24")	\$52.90
33	30	Linear Feet	Lane Striping (Yellow)	\$17.84
34	3	Each	Stop Sign	\$1,269.17
35	3	Each	Stop Bars	\$516.40
36	2	Each	ALDOT Type S Inlet Tops	\$8,414.01
37	110	Cubic Yard	Topsoli	\$61.97
38	1	Acre	Temporary Seeding	\$2,675.87
39	1	Acre	Permanent Seeding	\$4,084.23
40	40	Gallon	Tack Coat	\$14.08
County Rd 52 Infrastructure Package Oak Mountain Trail Subtotal:				\$484,783.06

County Rd 35 Improvements			Takco, Inc.	
ITEM	QUANT	UNIT	DESCRIPTION	TOTAL
1		x	Deleted	
2	40	Cubic Yard	Unclassified Excavation	\$31.91
3	256	Cubic Yard	Borrow Excavation (A-4(0) or Better)	\$53.50
4		x	Tack Coat	\$0.00

RESOLUTION 2022-08-15-06

Authorizing a Professional Services Agreement with AECOM to Assist in the Application Process for a Railroad Crossing Elimination Grant

WHEREAS, the Pelham City Council has determined it serves a public purpose to apply for a grant through the Railroad Crossing Elimination Grant Program (RCE).

NOW, THEREFORE, BE IT RESOLVED by the Pelham City Council to authorize the Mayor, on behalf of the city, to enter into a professional services agreement with AECOM to assist the city in the preparation of a grant application for the Railroad Crossing Elimination Grant Program (RCE) in an amount not to exceed \$39,000.00 as outlined in said Agreement. The Agreement shall become a permanent part of this Resolution.

BE IT FURTHER RESOLVED the professional services fee in the amount of \$39,000.00 will be included in the FY2023 budget.

THEREUPON _____, a councilmember, moved and _____, a councilmember, seconded the motion that Resolution 2022-08-15-06 be given vote, and said resolution passed by a majority vote of all members of the Council present and the Council President declared the same passed and adopted.

ADOPTED this 15th day of August 2022.

Maurice Mercer, President of the Council

[SEAL]

ATTEST

Tom Seale, MMC, City Clerk/Treasurer

I, the undersigned City Clerk/Treasurer of the City of Pelham, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council of the City named herein, at a regular meeting of such Council held on the 15th day of August 2022 and that such Resolution is on file in the office of the City Clerk/Treasurer and that no action has been taken to rescind or modify said Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 15th day of August 2022.

Tom Seale, MMC, City Clerk/Treasurer

[SEAL]



MEMORANDUM

To: Andre' Bittas

Cc:

From: Chris Cousins *Chris Cousins*

Date: August 9, 2022

Subject: Pelham – FRA Grant Preparation
Highway 52 Railroad Crossing Improvements
Munis Acct No. 1005030-550599

Attached is a proposal from AECOM to assist the City with the grant application preparation for the new Railroad Crossing Elimination (RCE) Grant Program. The full application is due to the FRA no later than October 4, 2022. This will be a lengthy application and AECOM performed some preliminary engineering work on this project previously. This is a new program and this application was not included in the FY22 budget, however, it has been included as part of the Department's proposed FY23 budget.

Please consider this proposal for consideration by the Council.

PROPOSAL

Development of a Railroad Crossing Elimination
Grant Application and Optional Task for a Grant
Strategy

Pelham, AL

August 4, 2022

Prepared for:

City of Pelham, AL

Prepared by:

Toni Horst, PhD
Director, National Infrastructure Economics Group
M: 703.340.3048
E: toni.horst@aecom.com

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Consulting Manager, National Infrastructure Economics Group
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August 9, 2022

Mr. Andre' Bittas
Director of Development Services
And Public Works
City of Pelham, Alabama

Via email: abittas@pelhamalabama.gov

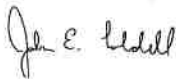
RE: Scope of Services to Conduct a Railroad Crossing Elimination Grant

Dear Andre':

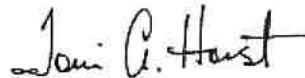
Following up on past conversations, AECOM is pleased to submit this scope of services outlining how we would approach a Railroad Crossing Elimination (RCE) Grant Program application for submittal in October 2022.

This document outlines our proposed scope of services. Upon approval of the scope, AECOM will provide a budget. We appreciate the opportunity to submit this proposal for your consideration. If you have any questions about the information provided, please do not hesitate to contact either of us.

Regards,



John E. Lobdell, P.E.
Associate Vice President
Eddie.lobdell@aecom.com



Toni Horst, PhD
Director, Infrastructure Economics
Toni.horst@aecom.com

Project Overview

The City of Pelham is seeking funding to grade separate County Road 52 E from two CSX rail crossings. With the passage of the Federal Infrastructure Investment and Jobs Act of 2021, the bill provides funding for a variety of infrastructure assets through formula and competitive discretionary grant programs for which the City and its regional partners are eligible.

The purpose of this work is to develop an application and conduct the supplemental studies in support of the application, according to the guidance for the new RCE program.

RCE Application Development

As the RCE program is new, AECOM proposes to address the scoring approach, and strengthening existing work that has been done. The key areas of focus will include:

- Conducting traffic and safety analyses to support the quantification of benefits from the project
- Assessing the benefits in a formal Benefit Cost Analysis: although not required for the RCE program, if the ratio is favorable, it would be eligible to compete under the CRISI program expected to be announced in the Fall
- Coordination with the railroad
- Inclusion of findings from ALDOT's Grade Crossing Action Plan, a required review of all grade crossings in the state (guidance required its submittal to FRA by February 14, 2022). This plan would report the assessed risk at the two crossings in the context of all statewide crossings.

The following outlines our approach to developing the grant application. It includes the following tasks to be completed by AECOM:

- Assemble Data Request
- Conduct BCA according to 2022 BCA Guidance
- Review ALDOT's updated Grade Crossing Action Plan (required by FRA by February 14, 2022)
- Coordinate with CSX
- Compile Supplemental Materials including safety analysis from GradeDec.NET
- Draft and Final Application and Supplemental Materials

It also assumes that the following tasks to be completed by the City:

- Securing a Grants.gov login and uploading the application package for delivery to USDOT
- Assist the City with securing letters in support of the project
- Certifications and signatures
- Assistance coordinating with project partners such as the railroad, police and emergency services providers, and ALDOT (obtaining ALDOT's unpublished updated GX Action Plan)
- Establishing and maintaining a project website for supplemental materials

The tasks for the grant application are described below.

Task 1—Assemble Data to Address Program Criteria

This task will focus on collecting information to address the Program criteria as outlined in the NOFO, to include project location, grade crossing information, crash history, project costs and schedule, funding strategy, environmental readiness, and others.

AECOM understands the City of Pelham wishes to pursue a grant for project construction.

Task 2—Conduct Safety Analysis

As required in the NOFO, AECOM will complete a safety analysis for the project using GradeDec.NET, which is FRA's model. AECOM will conduct the analysis in accordance with the 2022 USDOT BCA guidance. While a BCA is not required under the RCE Program, it would position the City to pursue additional IIJA grant programs if the BCA is favorable. The GradeDec model can be used to develop the BCA. AECOM has extensive experience with the GradeDec model and the developers at FRA.

BCAs generally represent the objective quantitative justification that a project is economically feasible and will deliver a multifaceted basket of benefits that outstrip the costs associated with planning, constructing, and operating the candidate project. AECOM will identify all potential benefits that could be captured through the implementation of a transportation project, including those associated with:

- Increased throughput of passengers and/or freight;
- Travel time savings;
- Operating costs reductions;
- Emissions reduction;
- Fuel savings;
- Reduction of accidents and fatalities;
- State of good repair improvements;
- Noise reduction; and
- Inventory savings.

In order to estimate some benefits, additional and complementary analyses must be conducted. These typically include travel demand modeling, which results in changes for travel times, ridership, and vehicle miles traveled; or a roadway safety analysis, which shows how the project saves lives, injuries, and property damage. Some of these analyses have already been conducted by AECOM as part of the work we've been performing for the CR52 project for ALDOT and the City. Benefits are then calculated through a variety of means ranging from mode shift to delay reduction to adoption of more efficient/sustainable equipment. The quantification of these changes is then monetized through their application to agency accepted metrics and assessment criteria, and then discounted to present day value. The sum of the benefits is then contrasted against the discounted construction and operational costs to arrive at a benefit-cost ratio (BCR).

AECOM's BCA analysis is bespoke for every project, yet rooted in best practice as evidenced by repeated commendation by Federal agency grant reviewers of the creativity, thoroughness and defensibility of our analysis supporting successful grant applications. AECOM follows the USDOT's BCA methodology and guidance as required for USDOT grant programs.

In addition to BCA, AECOM will conduct an economic impact analysis to estimate the potential impacts of construction and operation of the Project in terms of employment and regional output of the economy (i.e., ripple effect). Key elements of the economic impact analysis will include evaluating employment and income related to construction and operation of the facility. The impacts will be measured using RIMS II multipliers.

AECOM will review the analysis for quality assurance, providing a locked and unlocked excel workbook for delivery to USDOT, as well as a technical memorandum documenting the approach, assumptions, and results.

Task 3—Incorporate Findings from ALDOT's Draft Grade Crossing Action Plan

FRA required all states to submit a grade crossing action plan by February 14, 2022. ALDOT would have submitted an update. The Plan had several required elements including an assessment of the crossings with the greatest crash history and other crossings of concern. The plans are required to be made public once finalized. If this plan identifies the City's crossing as a priority, this is an important finding to highlight in the RCE narrative. It may also set the stage for other funding options. AECOM will need the City's help in securing the final draft of the report from ALDOT in order to use it for the RCE submission.

Task 4—Railroad Coordination

Although there are typically limited quantifiable benefits for the railroad that result from a grade separation project, coordination with CSX strengthens the application through demonstrated partnership. In addition, quantifiable benefits would contribute to the BCA. For example, the team can confirm whether the project cost includes elements that allow for future expansion of rail, or if there are travel time savings for rail customers. Greater interaction with the railroad could identify some ways to better show the benefits to the railroad of constructing the Project.

Task 5—Additional Application Elements

AECOM will work with the City to draft the additional elements required under the RCE Program, including:

- a Statement of Work (SOW) addressing the scope, schedule, budget, and performance measures for the proposed project if it were selected for award. The SOW must contain sufficient detail so FRA, and the applicant, can understand the expected outcomes of the proposed work to be performed and can monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. Applicants must submit an SOW, schedule, budget, and performance measures to be considered for award.
- Environmental compliance documents (as warranted)
- Forms (SF 424, SF 424A, SF 424B, FRA F 251, SF LLL)

Task 6—Narrative

AECOM will draft a complete narrative document consistent with the required elements outlined in the NOFO, including Cover page, Project Summary, Funding, Applicant Eligibility, Detailed Project Description, Crossing Info, Evaluation / Selection Criteria, Safety Benefit, Implementation, and Environmental Readiness Sections. Evaluation Criteria include: Safety, Equitable Economic Strength and Improving Core Assets, Equity and Barriers to Opportunity, Climate Change and Sustainability, Transformation of the Nation's Transportation Infrastructure, Eliminating Crossings and Making Corridor-wide Improvements, Geographic Diversity (allocation of funds).

AECOM will submit the first draft of the grant document to City for review and comment. The project team will revise the draft based on the comments and issue a final draft. AECOM will submit the final product to the City with all supporting databases and documents in a format suitable for electronic submittal. AECOM assumes the City will upload to Grants.gov.

Deliverables:

- Draft grant document (proposed on a rolling basis)
- Final grant document
- BCA technical memorandum or other supplemental materials as required
- Technical advice as requested

Project Schedule for Discussion

Assuming a Notice to Proceed (NTP), AECOM confirms that it is available to begin work the week beginning August 15th and can deliver the updated application in a condensed, but well-planned and executed schedule. AECOM can have the RCE application prepared by the October 4th submittal date.

Fee Proposal

Based on the proposed Scope of Services, our anticipated manhours are as follows:

(hours)	Trans Eng	GIS Specialist	Grants Lead	Benefits Task Lead	Project Economist	Total Hours
Task 1	10	10		4	4	28
Task 2				30	40	70
Task 3			2		4	6
Task 4	20					20
Task 5	24			10	12	46
Task 6	16	10	56	16	12	110
Total Hours	70	20	58	60	72	280

We are proposing a lump sum fee of \$39,000. Please note this fee is based on a reduced multiplier as we consider a portion of this labor to be a business development effort.

ORDINANCE NO. 135-251

AN ORDINANCE TO AMEND APPENDIX A – ZONING, ARTICLE XXI – CORRIDOR OVERLAY DISTRICT – SPECIFIC TO SECTION 5, SECTION 6, SECTION 8, SECTION 10, SECTION 11 AND SECTION 12

WHEREAS, the City of Pelham has determined that it is in the best interest of the City to amend Appendix A – Zoning, Article XXI – Corridor Overlay District, specific to Sections 5, Section 6, Section 8, Section 10, Section 11 and Section 12 of the Code of Ordinances of the City of Pelham, Alabama, which is contained within and is a part of Ordinance No. 135-182, thereto as hereinafter set out.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Pelham, Alabama, that Appendix A – Zoning, Article XXI – Corridor Overlay District, specific to Sections 5, Section 6, Section 8, Section 10, Section 11 and Section 12 of the Code of Ordinances of the City of Pelham, Alabama shall be and is hereby amended to read as follows:

Section 1:

Appendix A – Zoning, Article XXI – Corridor Overlay District:

Section 5: Site Design.

2. Existing and proposed buildings and structures, including signs, trash containers, fences, walls, light poles, power poles, outdoor utility equipment and structures, and roof and ground-mounted mechanical appurtenance units. Power to any new construction shall be underground.

Section 6. Building Design and Orientation.

1. Minimum front building setback from the corridor overlay district right-of-way shall be 50 feet. The maximum front building setback shall be 75 feet from the right-of-way.
5. Building orientation shall be such that the structure's main entrance fronts the Corridor, and that a minimum of 60 percent of the structure's width is along the front building line. Loading and service areas shall not face the corridor right-of-way, except in the case of double frontage lots, where such areas must be located in a rear or side yard which faces the right-of-way. All loading and service areas shall be screened from view from off the premises.
6. In order to prolong the life of buildings, reduce the need for periodic maintenance and maintain a character, which is commensurate with the public interest, the following materials shall be used as primary exterior building wall finishes on portions of the building which are visible from the corridor overlay district right-of-way: brick, stone, glass, wood, stucco, imitation stucco, composite, precast concrete, poured concrete, and/or split-face concrete block. Primary shall mean a minimum of 75%. Any of these listed materials can be used in combination to meet the primary requirement. Other architectural grade finishes may be used for accent at the discretion of the Zoning Administrator or Director.
7. Nonstructural awnings, covered with cloth fabric, or rigid metal, shall not project more than seven feet from the building wall shall neither be lower than eight feet nor higher than 14 feet above grade and shall not be internally illuminated.

Section 8. Exterior Lighting.

1. Lighting shall have underground electric service.

Section 10. Signs.

1. Only monument style free-standing signs will be permitted in the Corridor Overlay District. Sign materials for the base and supporting elements shall be coordinated with the exterior cladding of the structures.
2. Signs in the Corridor Overlay District shall be in accordance with the following:

- a. A monument sign not to exceed 20 feet from the grade, at maximum size of 90 sq. ft.
- b. Wall signs on no more than 2 building walls, not to exceed 20% of the front building wall, however, the maximum square footage for both walls cannot exceed 150 square feet. The front building wall shall provide the majority of this allowance, while the secondary wall sign is limited to 10% of the overall allowable square footage.
- c. Any electronic message display sign cannot exceed 50 percent of the total copy area of the monument sign, subject to the following:
 - i. No such sign shall feature any flashing, scrolling or other movement.
 - ii. The screen image shall be static, with a thirty (30) second delay for each screen image.
- d. Cabinet or box signs are not allowed for wall signs, except for low profile logo shape signs.

Section 11. Parking Regulations.

- 1. Off-street parking spaces shall be provided in accordance with the requirements for specific uses set forth in Article XXIII, off-street parking and loading requirements, in addition to the following:
 - a. No more than two rows of parking shall be allowed
 - b. Overall available parking shall not exceed more than five percent of the required parking as required in Article XXIII.

Section 12. Landscape Buffer Regulations.

- 1. Landscaping and buffers shall be in accordance with the requirements for specific uses set forth in Article XXIV, Section 9, landscaping and buffers, in addition to the following:
 - a. For parking areas exceeding 25 spaces, landscaped parking islands shall be provided for each 10 parking spaces. An alternate landscape parking plan to provide a continuous landscape strip to separate rows of parking with each row capped with a landscaped island, may be allowed at the discretion of the Zoning Administrator or the Director.
 - b. Landscape buffer strip shall be provided as follows:
 - i. Front buffer strips shall be a minimum of ten (10) feet, planted with one (1) shade tree per thirty (30) linear feet of lot frontage, supplemented with a continuous double-staggered row of shrubs.
 - ii. Rear and side buffer strips shall be a minimum of five (5) feet, planted with one shade tree per thirty linear feet.
 - c. A minimum ten (10) foot buffer shall separate industrial uses from commercial uses.
 - d. A minimum (20) twenty-foot buffer shall separate commercial uses from residential uses. The buffer may be a planted buffer meeting Art. XXIV, Sec. 9, a privacy wall or a combination of both plantings and wall
 - e. A minimum (30) thirty-foot buffer shall separate industrial uses from residential use. The buffer will consist of a privacy wall supplemented with evergreen plantings.

Section Two: Each of the provisions of this ordinance is severable; and if any provision shall be declared to be invalid, the remaining provisions shall not be affected but shall remain in full force and effect.

Section Three: All ordinances or parts of ordinances, in any manner conflicting herewith are hereby repealed.

Section Four: This ordinance shall become effective upon its passage and publication or posting as required by law.

THEREUPON _____, a member of the Pelham City Council, moved that all rules which would prevent the immediate consideration of **Ordinance No. 135-251**, hereupon attached, be suspended and immediate consideration given to passage of said Ordinance. Said motion was seconded by _____, a member, and passed unanimously by roll call vote.

The vote on said motion was as follows:

Maurice Mercer Council President	_____
David Coram Council Member	_____
Larry Palmer Council Member	_____
Rick Wash Council Member	_____
Mildred Lanier Council Member	_____

All rules which would prevent the immediate consideration of Ordinance No. 135-251 be suspended and immediate consideration given passed unanimously by roll call vote.

THEREUPON _____, a councilmember moved and _____, a councilmember seconded the motion that Ordinance No. 135-251 be given vote. The roll call vote on said motion was as follows:

Maurice Mercer, Council President	_____
David Coram, Councilmember	_____
Larry Palmer, Councilmember	_____
Rick Wash, Councilmember	_____
Mildred Lanier, Councilmember	_____

Ordinance No. 135-251 passed by majority vote of the Council and the Council President declared the same passed.

ADOPTED this 15th day of August 2022.

Maurice Mercer, Council President

David Coram, Councilmember

Larry Palmer, Councilmember

Rick Wash, Councilmember

Mildred Lanier, Councilmember

[SEAL]

ATTEST

APPROVED:

Tom Seale, MMC, City Clerk/Treasurer

Gary W. Waters, Mayor Date

POSTING AFFIDAVIT

I, the undersigned qualified City Clerk/Treasurer of the City of Pelham, Alabama, do hereby certify that the above and foregoing ORDINANCE No. 135-251 was duly ordained, adopted, and passed by the City Council of the City of Pelham, Alabama at a regular meeting of such Council held on the 15th day of August 2022 and duly published by posting an exact copy thereof on the 16th day of August 2022 at four public places within the city, including the Mayor's Office at City Hall, City Park, Water Works and Library, and at www.pelhamalabama.gov. I further certify that said ordinance is on file in the Office of the City Clerk/Treasurer and a copy of the full ordinance may be obtained from the Office of the City Clerk/Treasurer during normal business hours.

Tom Seale, MMC, City Clerk/Treasurer

[SEAL]



MEMORANDUM

TO: Tom Seale, City Clerk
FROM: Sherri S. Proctor, Zoning Administrator
DATE: August 1, 2022
RE: Zoning Text Amendments

Attached are suggested amendments to Articles XXI (Corridor Overlay District) and Article XV (B-2 General Business District). These are summarized below:

Amendments to the Corridor Overlay District include:

- **Sec. 5(2)** - Clarifying that all power must be underground.
- **Sec. 6(1)** - Providing a **maximum** setback of 75 feet.
- **Sec. 6(5)** – Requiring at least 60% of the building wall is along the building line.
- **Sec. 6(6)** - Clarification on ‘primary exterior materials’ and allowing more variety for accent materials (75%/25%).
- **Sec. 6(7)** – Deletes plastic, adds rigid metal (to allow only natural material)
- **Sec. 8(1)** – More clarification that all power/lighting is underground.
- **Sec. 10** - Strengthening the signage, to limit the square footage and height of signs, allowing monument style signs only, limiting LED/EMC sign square footage (50% of allowed).
- **Sec. 11** - Restricting front parking areas, by limiting to no more than 2 rows of parking.
- **Sec. 12** - Strengthening the landscaping and buffers.

Amendments to the B-2, General Business District include:

- **Sec. 2 – Permitted uses**
Removing duplications of permitted uses:
 - **2(13)** - Recreational vehicle sales (M-1)
 - **2(16)** - Major vehicle, farm implement, trailer repair (M-1)
 - **2(17)** - Farm implement sales and display (M-1)
 - **2(23)** - Building trades (carpentry, plumbing, electrician) (B-3)
 - **2(24)** – Warehouse/Distribution (M-1)

Clarifications:

Sec. 2(19) – adding ‘no outdoor storage of rental/sales of light equipment

Sec. 2(27) - Clarification of amusement and recreation service (health club, skating rink, bowling, etc.)

During a special-called meeting held on July 26, 2022, the commission voted unanimously to recommend these amendments. The commission asks the Council to consider and adopt the changes to the Zoning Ordinance.



PLANNING COMMISSION MEETING

MINUTES OF A

July 26, 2022

- I.** Meeting called to order at 7:15 PM, with Kim Speorl presiding.
- II.** Invocation led by Chairman Biciste.
- III.** Roll call was taken with the following members present: Kim Speorl, Russell Biciste, Chad Hester, Chad Leverette, Joey Pitts, David Russell, Rick Wash. Members absent: Mayor Gary Waters, Claude Peacock. Staff present were Andre Bittas, Director of Development Services and Public Works and Sherri Proctor, Planning and Zoning Administrator
- IV.** Amendments to various sections of Articles XXI and XV
 1. Amending Article XXI, Corridor Overlay Districts
City of Pelham Planning and Zoning Commission; Recommending several amendments to the Corridor Overlay District.
 2. Amending Article XV- Sec. 2, B-2-General Business District
City of Pelham Planning and Zoning Commission; Recommending amendments to the B-2 permitted uses, by deleting and clarifying certain uses.

The amendments were discussed at length during the work session. Ch. Speorl opened the public hearing. There being no one to speak for or against, a motion was called:

Chad Hester made a motion to recommend the amendments to City Council, second by David Russell. Vote recorded: Ayes- David Russell, Chad Leverette, Russell Biciste, Joey Pitts, Chad Hester, Rick Wash, Kim Speorl; Nays-none. Ch. Speorl declared motion passed.

- V.** The next regularly scheduled Planning Commission meeting is set for August 11, 2022.

With no further business to come before the commission, motion made and seconded to adjourn the meeting. Meeting adjourned at 7:18 PM.



NOTICE OF A PUBLIC HEARING

The Pelham City Council will hold a Public Hearing on Monday, August 15, 2022 at the Pelham Police & Court Building at 7:00 p.m. to consider proposed changes to the Zoning Ordinance of the City of Pelham as follows:

Proposed amendments to Articles XXI (Corridor Overlay District) and Article XV (B-2 General Business District) are summarized below.

Amendments to the Corridor Overlay District include:

- Providing a *maximum* setback of 75 feet.
- Clarification on 'primary exterior materials' and allowing more variety for accent materials (75%/25%).
- Strengthening the landscaping and buffers.
- Restricting front parking areas, by limiting to no more than 2 rows of parking.
- Strengthening the signage, to limit the square footage and height of signs, allowing monument style signs only, limiting LED/EMC sign square footage (50% of allowed).
- Clarifying that all power must be underground.

Amendments to the B-2, General Business District include:

- Removing duplications of permitted uses:
 - Warehouse (B-3 and M-1)
 - Distribution (M-1)
 - Building trades (carpentry, plumbing, electrician) (B-3)
 - Major vehicle, farm implement, trailer repair (M-1)
 - Farm implement sales and display (M-1)
 - Recreation vehicle sales (M-1)
- Clarification of amusement and recreation service (health club, skating rink, bowling, etc.)
- Emphasizing no outdoor storage of rental/sales of light equipment

Tom Seale, City Clerk/Treasurer

Posted: August 3, 2022

ORDINANCE NO. 135-252

**AN ORDINANCE TO AMEND APPENDIX A – ZONING, ARTICLE XV – B-2
GENERAL BUSINESS DISTRICT – SPECIFIC TO SECTION 2**

WHEREAS, the City of Pelham has determined that it is in the best interest of the City to amend Appendix A – Zoning, Article XV – B-2 General Business District, specific to Sections 2 of the Code of Ordinances of the City of Pelham, Alabama, which is contained within and is a part of Ordinance No. 135-182, thereto as hereinafter set out.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Pelham, Alabama, that Appendix A – Zoning, Article XV – B-2 General Business District, specific to Section 2 of the Code of Ordinances of the City of Pelham, Alabama shall be and is hereby amended to read as follows and renumbered:

Section 1:

Appendix A – Zoning, Article XV – B-2 General Business District:

Section 2: Permitted Uses

- 13. Delete
- 16. Delete
- 17. Delete
- 19. Rental and sales of light equipment, no outside storage of any kind.
- 23. Delete
- 24. Delete
- 27. Amusement or recreation service, such as health clubs, arenas, skating rinks and bowling alleys except drive-in theater, golf course, or practice golf-driving range.

Section Two: Each of the provisions of this ordinance is severable; and if any provision shall be declared to be invalid, the remaining provisions shall not be affected but shall remain in full force and effect.

Section Three: All ordinances or parts of ordinances, in any manner conflicting herewith are hereby repealed.

Section Four: This ordinance shall become effective upon its passage and publication or posting as required by law.

THEREUPON _____, a member of the Pelham City Council, moved that all rules which would prevent the immediate consideration of **Ordinance No. 135-252**, hereupon attached, be suspended and immediate consideration given to passage of said Ordinance. Said motion was seconded by _____, a member, and passed unanimously by roll call vote. The vote on said motion was as follows:

Maurice Mercer Council President	_____
David Coram Council Member	_____
Larry Palmer Council Member	_____
Rick Wash Council Member	_____
Mildred Lanier Council Member	_____

All rules which would prevent the immediate consideration of Ordinance No. 135-252 be suspended and immediate consideration given passed unanimously by roll call vote.

THEREUPON _____, a councilmember moved and _____, a councilmember seconded the motion that Ordinance No. 135-252 be given vote. The roll call vote on said motion was as follows:

- Maurice Mercer, Council President _____
- David Coram, Councilmember _____
- Larry Palmer, Councilmember _____
- Rick Wash, Councilmember _____
- Mildred Lanier, Councilmember _____

Ordinance No. 135-252 passed by majority vote of the Council and the Council President declared the same passed.

ADOPTED this 15th day of August 2022.

- _____
Maurice Mercer, Council President
- _____
David Coram, Councilmember
- _____
Larry Palmer, Councilmember
- _____
Rick Wash, Councilmember
- _____
Mildred Lanier, Councilmember

[SEAL]

ATTEST

APPROVED:

Tom Seale, MMC, City Clerk/Treasurer

Gary W. Waters, Mayor Date

POSTING AFFIDAVIT

I, the undersigned qualified City Clerk/Treasurer of the City of Pelham, Alabama, do hereby certify that the above and foregoing ORDINANCE No. 135-252 was duly ordained, adopted, and passed by the City Council of the City of Pelham, Alabama at a regular meeting of such Council held on the 15th day of August 2022 and duly published by posting an exact copy thereof on the 16th day of August 2022 at four public places within the city, including the Mayor's Office at City Hall, City Park, Water Works and Library, and at www.pelhamalabama.gov. I further certify that said ordinance is on file in the Office of the City Clerk/Treasurer and a copy of the full ordinance may be obtained from the Office of the City Clerk/Treasurer during normal business hours.

Tom Seale, MMC, City Clerk/Treasurer

[SEAL]



MEMORANDUM

TO: Tom Seale, City Clerk
FROM: Sherri S. Proctor, Zoning Administrator
DATE: August 1, 2022
RE: Zoning Text Amendments

Attached are suggested amendments to Articles XXI (Corridor Overlay District) and Article XV (B-2 General Business District). These are summarized below:

Amendments to the Corridor Overlay District include:

- **Sec. 5(2)** - Clarifying that all power must be underground.
- **Sec. 6(1)** - Providing a **maximum** setback of 75 feet.
- **Sec. 6(5)** – Requiring at least 60% of the building wall is along the building line.
- **Sec. 6(6)** - Clarification on ‘primary exterior materials’ and allowing more variety for accent materials (75%/25%).
- **Sec. 6(7)** – Deletes plastic, adds rigid metal (to allow only natural material)
- **Sec. 8(1)** – More clarification that all power/lighting is underground.
- **Sec. 10** - Strengthening the signage, to limit the square footage and height of signs, allowing monument style signs only, limiting LED/EMC sign square footage (50% of allowed).
- **Sec. 11** - Restricting front parking areas, by limiting to no more than 2 rows of parking.
- **Sec. 12** - Strengthening the landscaping and buffers.

Amendments to the B-2, General Business District include:

- **Sec. 2 – Permitted uses**
Removing duplications of permitted uses:
 - **2(13)** - Recreational vehicle sales (M-1)
 - **2(16)** - Major vehicle, farm implement, trailer repair (M-1)
 - **2(17)** - Farm implement sales and display (M-1)
 - **2(23)** - Building trades (carpentry, plumbing, electrician) (B-3)
 - **2(24)** – Warehouse/Distribution (M-1)

Clarifications:

Sec. 2(19) – adding ‘no outdoor storage of rental/sales of light equipment

Sec. 2(27) - Clarification of amusement and recreation service (health club, skating rink, bowling, etc.)

During a special-called meeting held on July 26, 2022, the commission voted unanimously to recommend these amendments. The commission asks the Council to consider and adopt the changes to the Zoning Ordinance.



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Amendments to the Corridor Overlay District include:

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- Clarifying that all power must be underground.

Amendments to the B-2, General Business District include:

- Removing duplications of permitted uses:
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 - Recreation vehicle sales (M-1)
- Clarification of amusement and recreation service (health club, skating rink, bowling, etc.)
- Emphasizing no outdoor storage of rental/sales of light equipment

Tom Seale, City Clerk/Treasurer

Posted: August 3, 2022



PLANNING COMMISSION MEETING
MINUTES OF A
July 26, 2022

- I.** Meeting called to order at 7:15 PM, with Kim Speorl presiding.
- II.** Invocation led by Chairman Biciste.
- III.** Roll call was taken with the following members present: Kim Speorl, Russell Biciste, Chad Hester, Chad Leverette, Joey Pitts, David Russell, Rick Wash. Members absent: Mayor Gary Waters, Claude Peacock. Staff present were Andre Bittas, Director of Development Services and Public Works and Sherri Proctor, Planning and Zoning Administrator
- IV.** Amendments to various sections of Articles XXI and XV
 - 1. Amending Article XXI, Corridor Overlay Districts
City of Pelham Planning and Zoning Commission; Recommending several amendments to the Corridor Overlay District.
 - 2. Amending Article XV- Sec. 2, B-2-General Business District
City of Pelham Planning and Zoning Commission; Recommending amendments to the B-2 permitted uses, by deleting and clarifying certain uses.

The amendments were discussed at length during the work session. Ch. Speorl opened the public hearing. There being no one to speak for or against, a motion was called:

Chad Hester made a motion to recommend the amendments to City Council, second by David Russell. Vote recorded: Ayes- David Russell, Chad Leverette, Russell Biciste, Joey Pitts, Chad Hester, Rick Wash, Kim Speorl; Nays-none. Ch. Speorl declared motion passed.

- V.** The next regularly scheduled Planning Commission meeting is set for August 11, 2022.

With no further business to come before the commission, motion made and seconded to adjourn the meeting. Meeting adjourned at 7:18 PM.