CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 9/12/2013

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Agreement with RBJ Bailey, L.L.C.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement with RBJ Bailey, L.L.C. for Stormwater Detention Facility Maintenance

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.

Stormwater Detention Facility Maintenance Agreement between RBJ Bailey, L.L.C. and the City requiring Management Enterprise Development & Services, Inc. to maintain the stormwater detention/retention facility at Legacy at Jones Farm Apartments. Agreement is at no cost to the City.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Kathy Martin

Date: 9/3/13

revised 3/12/2012

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Engineering** Council Meeting Date: **9/12/2013**

Department Contact: **Lynn Majors** Phone # **256-427-5201**

Contract or Agreement: **Detention Facilities Maintenance Agreement**

Document Name: **RBJ Bailey, LLC Legacy at Jones Farm Apartments**

City Obligation Amount: **N/A**

Total Project Budget: **N/A**

Uncommitted Account Balance: **N/A**

Account Number: **No City Funds Involved**

Procurement Agreements

Not Applicable	**Not Applicable**

Grant-Funded Agreements

Not Applicable	**Grant Name:**

Department	Signature	Date
1) Originating	Kathy Motz	9/3/13
2) Legal	Mary C. Cates	9/4/2013
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 13-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into an agreement with RBJ Bailey, L.L.C. for Stormwater Detention Facility Maintenance, in Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said contract is substantially in words and figures similar to that document attached hereto and identified as "Stormwater Detention Facility Maintenance Agreement between RBJ Bailey, L.L.C. and the City of Huntsville, Alabama" consisting of a total of six (6) pages plus one (1) additional page including Exhibit "A", and the date of September 12, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 12th day of September, 2013.

_____
President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 12th day of September, 2013.

_____
Mayor of the City of Huntsville,
Alabama

STATE OF ALABAMA)
)
COUNTY OF MADISON)

DETENTION FACILITIES
MAINTENANCE AGREEMENT

This Detention Facilities Maintenance Agreement ("Agreement"), made and entered into this 12th day of September, 2013 by and between RBJ Bailey, LLC (the "Owner") and The City of Huntsville, Alabama (the "City").

WITNESSETH:

WHEREAS, Owner is the owner of that certain tract of land in Madison County, Alabama, more particularly described on Exhibit A attached hereto and incorporated by this reference (the "Owner Property") upon which Owner intends to construct Legacy at Jones Farm Apartments and related improvements (the "Development"); and

WHEREAS, Owner has submitted plans (the "Plans") to the City as a part of Owner's permitting process for construction of the Development, which plans evidence that Owner shall construct certain stormwater detention and retention facilities, which may include but not be limited to swales, berms, pipes, and related appurtenances, upon the Owner Property (the "Detention Facilities");

WHEREAS, the City has requested that Owner enter into this Agreement to provide for the maintenance of the Detention Facilities;

NOW, THEREFORE, for Ten and 00/100 Dollars and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Maintenance and Detention Facilities. Owner agrees to construct the Detention Facilities in accordance with the Plans, except as the same may be modified with the consent of the City, and to maintain the Detention Facilities in good working order acceptable to the City Engineering Department. Upon Owner's failure to perform such maintenance obligations, the City shall have the right but not the obligation to perform the same pursuant to the easement granted in Section 2 below and shall have the right to receive reimbursement from Owner for the costs of such maintenance as set forth in Section 3 below.

_____
President of the City Council of
the City of Huntsville, Alabama
Date: September 12, 2013

2. Grant of Easement. Owner does hereby grant, bargain, sell and convey unto the City, its successors and assigns, a permanent and perpetual, non-exclusive easement in and to that portion of the Owner Property as may be required for the City to perform inspection of the Detention Facilities whenever deemed necessary and to perform maintenance of the Detention Facilities if at any time Owner, after notice and opportunity to cure if notice and opportunity to cure are required as set forth in Section 5 hereof, fails to maintain the Detention Facilities in accordance with Section 1 hereof; provided, however, that in the exercise of such easement rights, the City shall use its best efforts to minimize any disruption to Owner's Development.

3. Maintenance Costs. In the event Owner, after notice and opportunity to cure if notice and opportunity to cure are required as set forth in Section 5 hereof, fails to perform its maintenance obligations pursuant to Section 1 hereof and the City performs such maintenance of the Detention Facilities after such failure, Owner agrees to promptly reimburse the City for all reasonable costs incurred by the City in maintaining the Detention Facilities.

4. Indemnity/Liability. Owner hereby agrees to indemnify and hold harmless and does indemnify and hold harmless the City, its successors and assigns, and their respective present and future officials, officers, boards, commissions, employees, agents, attorneys, contractors, and subcontractors from and against any and all claims, actions, judgments, damages, fines, costs, liabilities, interest or losses (including reasonable attorneys' fees and expenses and court costs and fees), together with all costs and expenses of any kind or nature, which arise directly or indirectly from Owner's intentional or negligent acts, either sole or concurrent, with respect to the use or maintenance of the Detention Facilities and any other obligations imposed upon the Owner under the terms of this Agreement (including the intentional or negligent acts, either sole or concurrent, of Owner's employees, agents, contractors, subcontractors, tenants, subtenants, invitees, licensees, transferees, successors and assigns).

In no event shall the City, its successors and assigns, and their respective present and future officials, officers, boards, commissions, employees, agents, attorneys, contractors, and subcontractors (collectively referred to hereafter for purposes of this paragraph as "City") be liable to the Owner, its employees, agents, contractors, subcontractors, tenants, subtenants, invitees, licensees, transferees, successors and assigns, for any act or omission of the City in the event the City performs the maintenance obligations imposed on the Owner under the terms of this Agreement and Owner shall indemnify and hold harmless the City for same in accordance with the provisions of this paragraph 4.

Nothing contained in this paragraph 4 shall be construed as a waiver of any immunity of statutory protection of the City and no third party may expand any recovery against the City due to the Owner's duty of indemnification.

5. Notice and Cure. Notwithstanding anything to the contrary contained herein, the City shall not exercise any of its rights pursuant to Section 2 or Section 3 above

until the City has provided written notice of Owner's failure to perform its obligations hereunder as set forth herein and Owner has had thirty (30) days in which to cure such failure; provided, however, in the event there is an immediate threat to the health or safety of the public or to public property, then the City shall not be required to give Owner notice or an opportunity to cure. All notices and communications required, necessary or desired to be given to Owner pursuant to this Agreement, including a change of address for purposes of such notices and communications, shall be in writing and shall be given by personal delivery, overnight commercial courier, facsimile transmission or by United States mail, certified, return receipt requested, postage prepaid and addressed as follows:

OWNER: RBJ Bailey, LLC
401 Franklin Street
Huntsville, AL 35801
TELEPHONE: 256-535-9750
FAX : 256-535-9754

or to the then-current owner of the Owner Property, as recorded in the County Tax Assessors Office where the property lies.

6. Representations. Each party represents and warrants that it has the full right, power and authority to enter into, execute and deliver this Agreement and to convey the aforesaid easements and related rights and to be bound hereby and hereto.

7. Estoppel Certificate. The City agrees that it will, within sixty (60) days of receipt of written request by Owner, execute and deliver any estoppel certificate reasonably requested by Owner, for the benefit of Owner's mortgagee or prospective assigns, certifying that, to the best of the City's knowledge, information and belief, no amounts are due and owing under this Agreement and the Owner is in compliance with all of its obligations hereunder. Such written request shall be sent by personal delivery, overnight commercial carrier, or by U.S. Mail, certified, return receipt requested, postage prepaid and addressed as follows:

City Engineer
City of Huntsville
320 Fountain Circle
Huntsville, Alabama 35801

With a copy to:

City Attorney
City of Huntsville
308 Fountain Circle
Huntsville, Alabama 35801

8. Non-Waiver. Failure of the City to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Agreement or to exercise any of its

rights hereunder shall not waive such rights, but the City shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

9. Successors and Assigns. This Agreement is a covenant running with the land/Owner Property and shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns, and shall pass with the conveyance of all or any portion of such property, whether specifically referred to or not.

10. Choice of Law. Any and all disputes arising out of this agreement shall be governed, construed and enforced in accordance with the laws of the State of Alabama. All actions related to the validity, construction, interpretation and enforcement of this agreement shall be instituted and litigated in the courts of Alabama. Owner submits to the jurisdiction of the courts of Alabama located in Madison County, Alabama.

11 Entire Agreement. This Agreement contains the sole and entire agreement of the parties with respect to matters contemplated hereunder, and no representations, inducement, promise or agreement, oral or written, between Owner and the City and not incorporated herein shall be of any force or effect. Any amendment to this Agreement shall be in writing and executed by Owner and the City.

12. Running With Land. The easement contained herein shall run with the land as a burden to the Owner Property, and shall pass with the conveyance of all or any portion of such property, whether specifically referred to or not.

13. Severability. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal and delivered as of the date first above written.

OWNER:

By:_____(Seal)
Name: Raymond B Jones, Jr.
Title: Managing Member

[Signatures continued on following page]

STATE OF Alabama

COUNTY OF Madison

I, the undersigned, a Notary Public in and for said County in/and said State, hereby certify that before me personally appeared Raymond B. Jones Jr., whose name as Managing Member of RBJ Bailey, LLC, is signed to the foregoing Detention Facilities Maintenance Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Detention Facilities Maintenance Agreement, he/she, as such Managing Member and with full authority executed the same voluntarily for and as the act of said RBJ Bailey, LLC as of the day the same bears date.

GIVEN under my hand and seal this 7th day of August, 2013.

SHANNON K. FAUSZ NOTARY PUBLIC ALABAMA STATE AT LARGE

Shannon K. Fausz
Notary Public
My Commission expires: 3.15.17

CITY:

THE CITY OF HUNTSVILLE, ALABAMA

By:_____
Tommy Battle
Its: Mayor

ATTEST:

_____
Charles E. Hagood
City Clerk-Treasurer

[Signatures continued on following page]

STATE OF ALABAMA

COUNTY OF MADISON

Before me, the undersigned, a Notary Public in and for said County in said State, personally appeared Tommy Battle, whose name as Mayor of the City of Huntsville, Alabama, and Charles E. Hagood, whose name as Clerk-Treasurer of the City of Huntsville, Alabama, are signed to the foregoing Detention Facilities Maintenance Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of said Detention Facilities Maintenance Agreement, they, as such _____ and with full authority executed the same voluntarily for and as the act of said City of Huntsville, Alabama as the day the same bears date.

GIVEN under my hand and seal this _____ day of _____, 20__.

_____
Notary Public
My Commission expires:_____

This instrument prepared by:
K. Claudia Anderson
Assistant City Attorney
City of Huntsville
308 Fountain Circle
Huntsville, AL 35801
(256)427-5026

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 1 of Valley Bend East at Jones Valley Phase 2, Document Number 20121127000766290