

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Jun 11, 2015

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Termination of agreement.

Exact Wording for the Agenda:

Resolution authorizing and directing the Mayor to terminate the agreement between the City of Huntsville and Kovatch Mobile Equipment Corporation for the refurbishment of a 1989 Grumman Ladder truck.

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.

KME is currently in material breach of this agreement and in default of their performance in refurbishing a ladder truck for Huntsville Fire and Rescue.

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 6-8-15

RESOLUTION NO. 15-_____

WHEREAS the City Council of the City of Huntsville, Alabama, previously entered into an agreement by and between the City of Huntsville, Alabama, and Kovatch Mobile Equipment Corporation, t/a KME for the refurbishment of a City owned and furnished 1989 Grumman Ladder Truck known as Ladder 11 in the amount of \$756,415.00, said agreement adopted and approved on the 14th day of March, 2013, by the City Council of the City of Huntsville, Alabama by Resolution No. 13-211 and as modified by Modification No. 1 to that agreement by City of Huntsville, Alabama Resolution No. 13-415 on May 23, 2013; and

WHEREAS KME is currently in material breach of this agreement and thereby in default in their performance of the agreement for the reasons stated in the letter attached hereto as "Exhibit A" dated May 6, 2015 and signed by City Attorney, Peter S. Joffrion, and addressed to Mr. John Kovatch of Kovatch Mobile Equipment Corporation and incorporated by reference herein;

BE IT RESOLVED, by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized and directed to terminate for default by reason of material breach that certain Agreement entitled "Agreement between the City of Huntsville and Kovatch Mobile Equipment Corporation, t/a KME for the refurbishing of a 1989 Grumman Ladder truck known as Ladder 11" and to notify KME of such termination of such Agreement by the City of Huntsville by reason of KME's material breach of agreement.

ADOPTED this the 11th day of June, 2015.

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

APPROVED this the 11th day of June, 2015.

Mayor of the City of
Huntsville, Alabama

CITY OF HUNTSVILLE
OFFICE OF THE CITY ATTORNEY

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MELISSA STOKES
Claims Representative

May 6, 2015

Mr. John Kovatch
Kovatch Mobile Equipment Corporation (KME)
One Industrial Complex
Nesquehoning, PA 18240 USA

Re: 1989 Grumman Ladder refurbishment Contract
Huntsville City Council Resolutions 13-211 and 13-415

Dear Mr. Kovatch,

During the past two years, and particularly during the past five months or more, Huntsville Fire and Rescue (HFR) has continued to correspond, communicate, and meet with your company and you about the various deficiencies in the aerial ladder truck that KME refurbished pursuant to the above referenced contract. The scope of work of the contract was for your company to repurpose the Grumman Ladder furnished by the City of Huntsville and repurpose it onto a new cab and chassis within a 365 day period of time in accordance with the contract specifications. The original contract was awarded on March 14, 2013. Over two (2) years have passed and KME has never delivered the completed, certified, performance and acceptance tested refurbished ladder truck. KME has materially breached the contract.

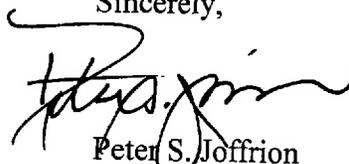
In addition to the seriously delinquent delivery status of the contract, there are other unresolved issues with the refurbished apparatus/truck some of which were identified prior to delivery. These remain despite the City pointing out these issues and others, some of which are:

- 1) Lack of a professionally engineered solution for the repairs to the KME caused damage sustained to the HFR supplied aerial stabilization apparatus and associated framework. This damage was due to rain and freezing weather exposure when KME delivered the truck to its local service dealer in North Alabama in November 2014. The damage affected the integrity and safety of the platform with regard to the expected tip loads and working angles as specified in the original specifications for the 1989 Grumman apparatus. (Note: In accordance with the specifications, page 74, early in the refurbishment process, the HFR furnished aerial device assembly had passed the proof load test administered by KME prior to disassembly and refurbishment. No damage or deficiencies of the aerial device were reported to HFR during the refurbishment process.)

- 2) Failure to properly resolve weighting issues of truck axles and to properly label chassis data label plate attached to cab with the proper gross vehicle weight rating. (Rear Axle rating kept changing and it was unclear what final rating was).
- 3) Master Stream Nozzle sensor missing.
- 4) Lack of sensor for outrigger remote when in stowed position.
- 5) Zolotone covering on shelving cracked on compartments.
- 6) Transmission dipstick is rubbing moving parts in the transmission.
- 7) The tire chains need to be reinstalled in a manner in which they do not come into contact with the apparatus drive wheel unless deployed.
- 8) Tires damaged by defectively installed tire chains need to be replaced.
- 9) Hydraulic hose for the return on the aerial hydraulic pump was not fitted with the proper compression fitting on either end and was leaking at the pump.
- 10) "Main pump pressure warning" on the IQAN display at the turntable.
- 11) Aerial was moving abnormally slowly and froze up while in operation during acceptance test for no apparent reason.
- 12) Rusty water coming from tubing underneath turntable, which is the tubing used to build the framework of the turntable platform.
- 13) After the final inspection at the factory just prior to delivery, modifications were made without our notification and were found by HFR personnel during acceptance testing.

Inasmuch as these issues continue to be unresolved thereby raising significant issues of the integrity and safety of the refurbished vehicle if completed, in addition the considerable delinquency in delivery of a completely certified and performance tested vehicle, HFR has no choice but to move forward with seeking termination of this contract for reason of material breach of contract through its City Council at its next City Council meeting.

Sincerely,



Peter S. Joffrion
City Attorney

cc: Chief McFarlan, Huntsville Fire & Rescue