

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: May 22, 2014

Action Requested By: Engineering

Agenda Type: Resolution

Subject Matter:

Agreement with Lost Boys Land Development, L.L.C.
Company

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Development Agreement Between the City of Huntsville and Lost Boys Land Development, LLC to provide sanitary sewer to the Wilson Cove Subdivision, Project No. 65-07-SM01
Company

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.

A development agreement between the City of Huntsville and Lost Boys Land Development, LLC for sanitary sewer service for a proposed development along Cherry Tree Lane, east of Old Highway 431. Account Numbers: ~~23~~-6500-0811-1339 (expenditure) and ~~23~~-6500-3098-1339 (revenue).
02 *02*

Associated Cost: _____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: *15* *PLC* *Gathys Martinez*

Date: *5/16/14*

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **5/22/2014**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Development Agreement**

Document Name: **Lost Boys Land Dev., Dev. Agmt Project # 65-07-SM01**

City Obligation Amount: \$50,000.00

Total Project Budget: \$50,000.00

Uncommitted Account Balance: -0-

Account Number: **02-23-6500-0811-1339** expenditure
02-23-6500-3098-1339 revenue

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Select...</u>	Grant Name:
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Department	Signature	Date
1) Originating	<i>Kath Martin</i>	5/16/14
2) Legal	<i>Mary Cates</i>	5/20/14
3) Finance	<i>J. B. J.</i>	5/20
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 14-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into a development agreement with Lost Boys Land Company, L.L.C. to provide sanitary sewer to the Wilson Cove Subdivision, Project No. 65-07-SM01 in the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Development Agreement between the City of Huntsville and Lost Boys Land Company, L.L.C." consisting of a total of five (5) pages plus one (1) additional page consisting of Exhibit "A" and the date of May 22, 2014, 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 22nd day of May, 2014.

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

APPROVED this the 22nd day of May, 2014.

Mayor of the City of Huntsville,
Alabama

COUNTY OF MADISON)
STATE OF ALABAMA)
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE AND LOST
BOYS LAND COMPANY, LLC

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT made and entered into on the 22nd day of May, 2014, by and between the City of Huntsville, a municipal corporation within the State of Alabama, ("City") and Lost Boys Land Company, LLC ("Developer"), an Alabama limited liability company.

WHEREAS, Lost Boys Land Company, LLC is the Owner and Developer of that certain tract of land described as Wilson Cove Subdivision ("Development"); and

WHEREAS, Developer has the need for a sanitary sewer system to serve the Development;

WHEREAS, the City has agreed to construct a sanitary sewer system in accordance with Exhibit "A" attached hereto and incorporated herein by reference to serve the Development and other needs of the City; and

WHEREAS, the Developer has agreed to share in the costs incurred by the City;

NOW, THEREFORE, for an in consideration of the mutual covenants, and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, the City and Developer agree as follows:

1. The Developer shall:

- a) Design the gravity sewer from the western boundary of the Development to the proposed pump station site along Cherry Tree Lane in accordance with City of Huntsville specifications. Developer shall provide the said design to the City within sixty (60) days of the execution of this Agreement by the Huntsville City Council. The design shall be subject to the approval of the City Engineer.
- b) Pay the City an Aid to Construction in the amount of Fifty Thousand Dollars (\$50,000.00) due at the time of the execution of this Agreement by the Huntsville City Council.
- c) Grant the City all construction, ingress/egress and utility & drainage easements for property owned by Developer and necessary for the completion of the work contemplated by this agreement. Developer shall grant the said

President of the City Council of the City
of Huntsville, AL
Date: May 22, 2014

easements within sixty (60) days of the execution of this Agreement by the Huntsville City Council.

2. The City shall:

- a) Install and maintain the gravity sewer specified in section 1 (a) herein from the western boundary of the Development to the proposed pump station located on the south side of Cherry Tree Lane. The City will obtain any required easements, pump station tracts, and permits for the work.
- b) Design and install a pump station on the south side of Cherry Tree Lane and temporary force main running west along Cherry Tree and south along Old Highway 431 to a manhole just outside the Goose Creek pump station. The City will obtain all necessary parcels, easements and permits for the force main installation. The City shall have the option of taking the said force main and the pump station referred to in section herein offline upon the installation of gravity sewer.
- c) Provide sewer service to the Development, within twenty-four (24) months of the Planning Commission's approval of the Development, provided the Developer has complied with all provisions within this Agreement.

3. Covenants Running with the Land. This Agreement and each of its agreements, covenants, provisions and terms are covenants running with the land as to the Developer Property and the Subdivision/Development and shall be binding on City, Developers and Private Owners (and, if applicable, Association) and all persons and entities claiming under them for a period of twenty-five (25) years from the date this Agreement is filed for record in the Office(s) of the Judge of Probate of the County in which the Subdivision/Development is located, after which time this Agreement shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the City, Developers and a majority of the then Private Owners has been filed for record in such Probate Judge's Office, agreeing to abolish or amend this Agreement in whole or in part.

4. General Provisions:

- a. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Alabama. For any action concerning this Agreement, (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state

courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

- b. This Agreement shall inure to the benefit of and be binding upon the City of Huntsville, Alabama and the Developer, Lost Boys Land Development, LLC.
- c. Nothing contained in this Agreement shall create, or be interpreted to create, privity or any other contractual agreement between the City and person or entity other than the Developer.
- d. The captions of the Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement and shall not be considered in any construction or interpretation of this Agreement or any art thereof.
- e. This Agreement merges and supersedes all prior negotiations, representation, and agreements and thus constitutes the entire Agreement between the parties hereto.
- f. City and the Developer hereby expressly agree, intend and understand that neither this Agreement nor any provision or terms hereof, shall be amended, changed or modified in any respect, not may be an estoppels, novation or waiver regarding the same be effectuated, without the parties first executing a writing, in equal dignity of this agreement, embodying their complete and full Agreement and understanding as to such amendment, change, modification, novation or waiver.
- g. By signing this Agreement, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- h. Notices: Whenever any notice, request, demand, or similar communication is required or permitted to be given under this Agreement, then the Notice shall be given in writing and shall be deemed to have been served and give if (i) delivered in person to the individual specified below; (ii) placed in the United States Mail, postage prepaid, certified mail, return receipt required and addressed to such party at the address hereinafter specified (and Notice in such a fashion shall be effective on the third business day after the same has been mailed as describe herein); (iii) sent by facsimile transmittal, with verbal confirmation made of the

receipt thereof (such Notice to be effective on such confirmation); (iv) sent by Federal Express or similar overnight courier service, prepaid and addressed to such party at the address hereinafter specified or the next business day delivery (and such Notice shall be deemed given when delivered to the appropriate address); or (v) by electronic mail:

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

Developer:
Lost Boys Land Development, LLC
Attention: R.L. Fortin
520 Madison Street, Suite A
Huntsville, Alabama 35801

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above-written.

Attest:

DEVELOPER:
Lost Boys Land Company, LLC

By: _____

Its:

CITY OF HUNTSVILLE
A municipal corporation in the
State of Alabama

Attest:

Charles E. Hagood
Its: Clerk-Treasurer

By: _____
Tommy Battle
Its: Mayor

STATE OF ALABAMA)

COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Tommy Battle** and **Charles E. Hagood**, whose names as Mayor and Clerk-Treasurer, respectively, of **The City of Huntsville**, a municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this the _____ day of _____ 2014.

[SEAL]

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)

COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Rene L. Fortin**, whose name as Managing Partner of **Lost Boys Land Company, LLC** an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said **Lost Boys Land Company, LLC** on the day the same bears day.

Given under my hand and official seal this the _____ day of _____ 2014.

[SEAL]

Notary Public
My Commission Expires: _____

EXHIBIT "A"

