

ORDINANCE NUMBER 3130-A

AN ORDINANCE AMENDING ORDINANCE NUMBER 3130 - APPROVING THE TERMS, PROVISIONS, CONDITIONS AND SUBSTANCE OF SIX (6) DIFFERENT TEMPLATE CONTRACTS TO BE EXECUTED AND DELIVERED BY CITIZENS WHO RENT FACILITIES IN THE NEW CIVIC CENTER AND VENDORS AND TO AUTHORIZE THE CITY MANAGER AND DIRECTOR OF PARKS AND LEISURE SERVICES TO SIGN THE SAID TEMPLATE CONTRACTS FOR AND ON BEHALF OF THE CITY OF VESTAVIA HILLS, ALABAMA IN ORDER TO REPLACE “EXHIBIT 2” ENTITLED “VENDOR CONTRACT FOR ALCOHOLIC BEVERAGE SERVICE”

WHEREAS, on October 10, 2022, the City Council approved and adopted Ordinance Number 3130 to approve the terms, provisions, conditions and substance of six (6) different template contracts to be executed and delivered by citizens who rent facilities in the new civic center and vendors and to authorize the City Manager and Director of Parks and Leisure Services to sign the said template contracts for and on behalf of the City of Vestavia Hills, Alabama; and

WHEREAS, the six templates were numbered consecutively and were attached to and incorporated into said Ordinance Number 3130 as if written fully therein; and

WHEREAS, it was later determined that Exhibit 2, the Vendor Contract for Alcoholic Beverage Service (“the Alcohol Vendor Contract”) had a required liquor liability insurance coverage limit of One Million Dollars (\$1,000,000.00) would cost an alcohol vendor Fifty Thousand Dollars (\$50,000.00) per year to maintain making said license cost prohibitive; and

WHEREAS, the City Attorney reviewed the issue and documented in a letter dated March 24, 2023 that the coverage limit can be reduced to One Hundred Thousand Dollars (\$100,000.00) without exposing the City to liability. Said letter is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3130-A as if written fully therein; and

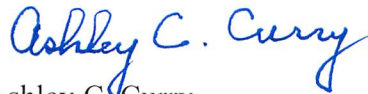
WHEREAS, the City Attorney drafted a replacement to the Exhibit 2, the Alcohol Vendor Contract and has recommended that the City Council amend Ordinance 3130 to replace Exhibit 2 with this revised contract. Said contract is marked as “Exhibit 2” and is attached to and incorporated into this Ordinance Number 3130-A as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to amend Ordinance 3130 and replace that Exhibit 2 with the Exhibit 2 detailed in this Ordinance Number 3130-A in order to revise the Alcohol Vendor Contract with newly detailed limits.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

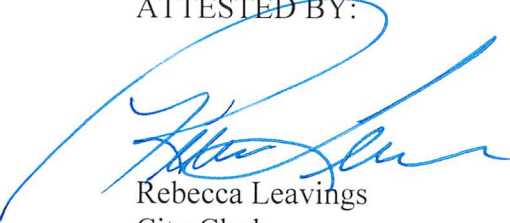
1. That Ordinance Number 3130 is hereby amended to replace Exhibit 2 of Ordinance Number 3130 with the revised Exhibit 2 of Ordinance Number 3130-A, the Alcohol Vendor Contract with amended liability limits to be sued for the alcoholic beverage service vendor for the City's Parks and Leisure Services; and
2. This is the Alcohol Vendor Contract that shall be utilized for vendors performing alcoholic beverage service at the City's new Civic Center; and
3. This Ordinance Number 3130-A shall become effective immediately upon approval and publishing/posting as required by Alabama law.

ADOPTED and APPROVED this the 10th day of April, 2023.



Ashley C. Curry
Mayor

ATTESTED BY:



Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3130-A is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 10th day of April, 2023 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkel House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the 17th day of April, 2023.



Rebecca Leavings
City Clerk

**STATE OF ALABAMA
JEFFERSON COUNTY**

VENDOR CONTRACT

WITNESSETH THIS VENDOR CONTRACT (“Contract”), made and entered into on this the ____ day of _____, 2022, by and between the City of Vestavia Hills, Alabama, a municipal corporation, (hereinafter referred to as “City”) and _____, whose business address is _____ in the City of _____, Alabama _____ (hereinafter referred to as “Vendor”).

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama is the owner of the real estate and improvements situated at 1090 Montgomery Highway (adjacent to the Vestavia Hills Municipal Center) in the City of Vestavia Hills, Alabama (hereinafter referred to as “Civic Center”); and

WHEREAS, the City established the Park and Recreation Board of the City of Vestavia Hills (hereinafter referred to as “Board”) by the approval and adoption of Ordinance Number 2258 on May 27, 2009 pursuant to the authority of Title 11-86-1, et seq., *Code of Alabama, 1975*; and

WHEREAS, the Board operates the recently constructed Civic Center for and on behalf of the City by providing facilities, programs and opportunities for the use of said facilities by resident citizens of the City; and

WHEREAS, the new Civic Center has a 10,000 square foot ballroom and five additional meeting rooms; and

WHEREAS, the City has found and determined that offering to the residents of the City the opportunity to use some of the facilities in the Civic Center for the purposes of wedding receptions, anniversary celebrations and other such parties will promote the health, safety, prosperity, comfort, order and convenience of the inhabitants of the residents of the City of Vestavia Hills, Alabama; and

WHEREAS, the City has further found and determined that if citizens using space at the Civic Center wish to hire a Vendor to serve alcoholic beverages to their guests, then in such event it would be in the public interest for said citizens to hire a qualified and responsible vendor that the City has preapproved, to use the equipment and facilities at the Civic Center; and

WHEREAS, Vendor desires the opportunity to provide its goods and services to members of the general public who rent space and facilities at the new Civic Center for various functions; and

WHEREAS, the City has found and determined that it will be in the public interest to allow members of the general public who rent space in the Civic Center to employ Vendor to provide its goods and services to guests who attend those various functions; and

WHEREAS, the City and Vendor wish to reduce their agreement to writing.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That in consideration of the mutual covenants, premises and promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by each of the parties hereto, the City and Vendor mutually agree as follows:

I. RECITALS

The recitals set forth above are incorporated herein by reference as though set out fully herein.

II. AUTHORITY

City agrees that subject to compliance of Vendor with conditions established herein, Vendor is hereby given non-exclusive permission to provide alcoholic beverage services within the Civic Center facilities and premises subject to the terms, provisions and conditions set forth herein.

III. REPRESENTATION AND WARRANTY BY VENDOR

Vendor represents, confirms and warrants that Vendor can and will fulfill the duties, the responsibilities and requirements of this contract as listed below. The signatory for Vendor represents and warrants that he/she has full authority to agree to the terms and conditions of this contract and enter into it. In the event that the Vendor is a corporate entity, signatory further represents that no further corporate or other approvals are necessary for this contract. The individual signing will assume personal liability for this contract, should the corporate Vendor contest such authority or should the entity otherwise be unable to comply with all of the terms of this contract.

IV. TERM OF CONTRACT

The term of this Vendor Contract shall be for a period of one (1) year beginning on _____, 2022 and ending on _____, 2023.

V. RENEWAL OF CONTRACT

The City and Vendor may renew this contract for two (2) separate one-year extensions by mutual written agreement.

VI. TERMINATION OF CONTRACT

Either party may terminate this contract by providing ninety (90) days advance written notice to the other party. If Vendor terminates this contract, then the written notice shall be by first-class mail, postage prepaid, to the City at 1032 Montgomery Highway, Vestavia Hills, Alabama 35216. If City terminates this contract, then the written notice shall be by first-class mail, postage prepaid, to the Vendor at _____ in the City of _____, Alabama _____.

VII. DUTIES, RESPONSIBILITIES AND LEGAL OBLIGATIONS OF THE PARTIES

A. CITY: During the term of this contract, and any extension thereof, the City shall perform and complete the following duties, responsibilities and legal obligations:

1. All room setups. All setups will be completed three hours before the event to ensure the Vendor has time to set their portion of the event.
2. City staff will clean and vacuum banquet rooms before and after the event.
3. A City staff member and a catering staff member must sign the Vendor out after the event is over and the check list is complete.
4. City will copy the Vendor on all correspondence with the client that pertains to the client's needs.
5. City will provide refrigeration and freezer space.
6. Only alcohol will be provided and served by Vendor.

B. VENDOR: During the term of this contract, and any extension thereof, the Vendor shall perform and complete the following duties, responsibilities and legal obligations:

1. Vendor will treat City facilities as if they were their own.
2. Vendor agrees to work in compliance with the rules and regulations of the Alabama Health Department.
3. Vendor is to provide the City with copies of the following: City of Vestavia Hills business license, any and all licenses required by the State of Alabama Alcoholic Beverage Control Board, ServSafe certifications, and the most current health department inspection form. A Health Department inspection of Vendor's facility will be required annually.
4. Vendor will copy the City on all correspondence with the client to include but not limited to Banquet Event orders, setup requests and final invoice.
5. Vendor will send the final invoice to the City no later than 3 business days prior to the event.
6. If client has additional guests not included on the final invoice, the Vendor will invoice the City the following business day.
7. Vendor must provide all garbage bags, disinfectant to wipe down all containers on departure and any other items needed for meal service.
8. All equipment used, counters and sinks are to be cleaned by Vendor and ready for the next use.

9. All alcohol related trash is to be disposed of by Vendor in the dumpster provided.

VIII. INDEMNITY

Vendor shall indemnify, hold harmless and defend the City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Parks and Recreation Board and its individual members, its Mayor and other elected public officials, employees, as Owner (hereinafter collectively referred to as the “Indemnitees”) from and against any loss, damage or liability resulting from demands, claims, suits or actions of any character presented or brought for any injuries or illnesses, including death, to persons or for damages to property caused by or arising out of any negligent (including strict liability), wanton, reckless or intentional act or omission of Vendor, any of its contractors, invitees, guests, employees, participants or agents, or which otherwise arises out of, relates to, or is attributable to, Vendor’s alcoholic beverage services and use of the Civic Center and City facilities, equipment or premises. This indemnity shall apply whether the same is caused by or arises out of the joint, concurrent or contributory negligence of any person or entity. The foregoing indemnity shall include, but not be limited to, court costs, attorney’s fees, costs of investigation, costs of defense, settlements and judgments associated with such demands, claims, suits or actions.

IX. INSURANCE

The Vendor shall purchase and maintain insurance policy coverages with liability limits of not less than as set forth below.

A. WORKERS’ COMPENSATION AND EMPLOYER’S LIABILITY INSURANCE:

1. Workers’ Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating the Vendor qualifies to pay its own workers’ compensation claims.

2. Employer’s Liability Insurance limits shall be at least:

- (a) Bodily Injury by Accident-- \$1,000,000 each accident
- (b) Bodily Injury by Disease-- \$1,000,000 each employee

B. COMMERCIAL GENERAL LIABILITY INSURANCE:

1. Commercial General Liability Insurance, written on an ISO Occurrence Form or equivalent, shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, personal injury liability and contractual liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

<u>Coverage</u>	<u>Limit</u>
(a) General Aggregate	\$2,000,000.00 per project
(b) Products, Completed Operations Aggregate	\$2,000,000.00 per project
(c) Personal and Advertising Injury	\$1,000,000.00 per occurrence
(d) Each Occurrence	\$1,000,000.00
(e) Liquor Liability	\$ 100,000.00

2. Additional Requirements for Commercial General Liability Insurance:

(a) The policy shall name the Owner (being the City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Mayor, elected officials, employees, Parks and Recreation Board of the City of Vestavia Hills, its individual members and employees) as additional insureds, state that this coverage shall be primary insurance for the additional insureds; and contain no exclusions of the additional insureds relative to job accidents.

(b) The policy must include separate per event aggregate limits.

C. COMMERCIAL BUSINESS AUTOMOBILE LIABILITY INSURANCE:

1. Commercial Business Automobile Liability Insurance which shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000.00 Combined Single Limits for each occurrence.

2. The policy shall name the Owner, City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Mayor, elected officials, employees, Parks and Recreation Board of the City of Vestavia Hills, its individual members and employees, and their agents, consultants and employees as additional insureds.

D. COMMERCIAL UMBRELLA LIABILITY INSURANCE:

1. Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employer's Liability to satisfy the minimum limits set forth herein.

2. Minimum Combined Primary Commercial General Liability and Commercial/Excess Umbrella Limits of:

- (a) \$5,000,000 per occurrence
- (b) \$5,000,000 aggregate

3. Additional Requirements for Commercial Umbrella Liability Insurance:

(a) The policy shall name the Owner, City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Mayor, elected officials, employees, Parks and Recreation Board of the City of Vestavia Hills, its individual members and employees, and their agents, consultants and employees as additional insureds.

(b) The policy must be on an "occurrence" basis.

X. ADDITIONAL INSUREDS

The Vendor shall cause all of the insurance policy coverages described in Section IX of the Vendor Contract above (except for the Worker's Compensation coverages) to include:

A. The City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Mayor, elected officials, employees, Parks and Recreation Board of the City of Vestavia Hills, its individual members and employees, and their agents, consultants and employees as additional insureds for claims caused in whole or in part by the Vendor's negligent acts or omissions during the Vendor's operations and/or performance of the work; and

B. The City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Mayor, elected officials, employees, Parks and Recreation Board of the City of Vestavia Hills, its individual members and employees, and their agents, consultants and employees as additional insureds for claims caused in whole or in part by the Vendor's negligent acts or omissions during the Vendor's completed operations and/or performance of the work; and

C. The insurance policy coverages shall state that these coverages shall be primary insurance for the additional insureds; and

D. Contain no exclusions of the additional insureds relative to job accidents; and

E. The policies must be on an "occurrence" basis.

XI. PAYMENT BY VENDOR TO CITY

In consideration of the City granting permission to the Vendor to use space, equipment and other facilities in the Civic Center for the purpose of serving alcoholic beverages to attendees at social functions described in the premises above (i.e., clients of Vendor), the Vendor shall pay to the City an amount equal to ten percent (10%) of the total amount charged by the Vendor to the client for alcoholic beverages for each social event.

The process, amount to be paid and time of payment, shall be as follows:

A. SUBMISSION OF COPY OF INVOICE: The Vendor shall, no later than three (3) days prior to the scheduled event, furnish to the City a copy of the final invoice to be submitted to the client. The invoice shall itemize the different charges by the Vendor to the client. Included in the invoice shall be a detailed list of the cost of alcoholic beverages charged to the client.

B. AMOUNT OF FEE: The fee to be paid by Vendor to the City shall be an amount equal to ten percent (10%) of the total cost of alcoholic beverages as shown on the invoice.

C. BILL FROM CITY TO VENDOR: The City shall send a bill to the Vendor for the amount of the fee.

D. PAYMENT BY VENDOR TO THE CITY: The bill from the City to the Vendor shall be paid in full by the Vendor no later than ten (10) days after the event.

E. EXAMINATION AND AUDIT OF BOOKS AND RECORDS: City and Vendor both agree that City reserves the right, during normal business hours and at its own expense, for an independent auditor of its choosing or its duly designated representative to examine Vendor's books and records in such detail as is necessary to determine compliance with the terms and provisions of this Agreement.

XII. COMPLIANCE WITH ALL LAWS, ORDINANCES AND REGULATIONS

Vendor shall, during the term of this contract and any extension thereof, comply with any and all federal, state and local laws, ordinances and regulations, including specifically, but not limited to, those laws, ordinances and regulations governing the furnishing of alcoholic beverages and the operation of its alcoholic beverage business. Upon request, Vendor will furnish to City copies of Vendor's current licenses and permits required by state or local governmental authorities for Vendor's business, including State of Alabama Alcoholic Beverage Control Board records for the prior twelve (12) months.

XIII. NO RELATIONSHIP BETWEEN CITY AND VENDOR

A. VENDOR IS AN INDEPENDENT CONTRACTOR: Vendor's relationship with the City of Vestavia Hills and the Park and Recreation Board of the City of Vestavia Hills shall be that of an independent contractor and not an employee of the City of Vestavia Hills or the Parks and Recreation Board of the City of Vestavia Hills. Each party will be solely responsible for wages, salaries and other amounts due to its respective employees or subcontractors. Each party shall be responsible for all reports and obligations regarding its employees concerning social security, income tax, unemployment insurance, workers compensation and security matters.

B. NO PARTNERSHIP, JOINT VENTURE OF AGENTS: Nothing in this contract shall be construed to place the parties in the relationship of partners or joint venturers or agents, and Vendor shall have no power to obligate or bind the City or Board in any manner whatsoever. Vendor agrees that it shall neither state nor imply, either directly or indirectly, that the Vendor, or its activities, other than pursuant to exercise of this contract, are supported, endorsed or sponsored by the City or Board and, upon the direction of the City or Board, shall issue express written disclaimers to that effect. Vendor shall not use the City or Board's name, trademarks or logos without the prior express written permission of the City. This contract does not constitute nor shall it be interpreted as approval for the use of the City's name or any of its trademarks, logos or other indicia without prior specific written approval of City.

C. NO SPONSORSHIP: Vendor acknowledges that its alcoholic beverage services are not sponsored, operated, performed or endorsed in any way by the City or Board. Vendor will not represent nor imply that Vendor's alcoholic beverage services business is sponsored, operated, performed or endorsed in whole or in part by the City or Board.

XIV. IMMIGRATION LAW

By signing this Vendor Contract, the contracting parties affirm, for the duration of the contract, 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. (Title 31-13-9(k), *Code of Alabama, 1975.*)

XV. COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS

The Vendor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade in violation of Title 41-16-5, *Code of Alabama, 1975.*

XVI. ASSIGNMENTS AND SUBCONTRACTING

Vendor may not assign this contract to another entity or delegate its rights and obligations under this contract without the prior written consent of the City.

XVII. MISCELLANEOUS:

A. NON WAIVER: The failure of the City to insist, in any one or more instances, upon a strict performance of any of the covenants of this contract, shall not be construed as a waiver, or a relinquishment for the future of such covenant, but the same shall continue and remain in full force and effect.

B. WAIVER OF MODIFICATION: Any waiver, alteration or modification of any of the provisions of this agreement or cancellation or replacement of this contract shall not be valid unless in writing and signed by the parties hereto. This contract may be amended at any time by written agreement of the parties signatory hereto.

C. NOTICES: Any and all notices required or permitted to be given under this agreement will be sufficient if furnished in writing and sent by first-class mail, properly addressed and postage prepaid, to the parties' last known address.

D. GOVERNING LAW: This contract shall be interpreted, construed and governed to the laws of the State of Alabama.

E. ARTICLE AND SECTION HEADINGS: The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

F. EXECUTION IN COUNTERPARTS: The contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

G. BINDING EFFECT: The contract shall inure to the benefit of, and shall be binding upon City and Vendor and their heirs, successors and assigns.

H. SEVERABILITY: In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

I. **CONSTRUCTION OF TERMS:** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this contract shall be construed fairly and equitably regardless of the participation of either party in drafting this contract. The reference in terms to gender and number shall be modified as may be appropriate.

J. **ENTIRE AGREEMENT:** This written contract contains the entire agreement between the City and the Vendor.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama, a municipal corporation, and _____ have caused this agreement to be executed by their duly authorized officers and their respective seals to be affixed hereto on this the ____ day of _____, 2022.

CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

Insert name of Vendor

By _____
Its _____

ATTESTED:

By _____

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Vendor Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the ____ day of _____, 2022.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Vendor Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the ____ day of _____, 2022.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

CORPORATE ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that _____ whose name as _____ of _____, an Alabama _____, is signed to the foregoing Vendor Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said _____

Given under my hand and official seal, this the _____ day of _____, 2022.

Notary Public

My Commission Expires:

SEAL

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720
TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

E-Mail: patrickboone@bellsouth.net

March 24, 2023

By Electronic Mail

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Alcohol Vendor Contract
Exhibit 2 to Ordinance Number 3130

Dear Mr. Downes:

You have requested that I provide you with my written legal opinion and recommendation regarding whether or not the City of Vestavia Hills, Alabama ("City") should amend its template Alcohol Vendor Contract by reducing the required insurance coverage limit for liquor liability coverage from One Million Dollars (\$1,000,000.00) to One Hundred Thousand Dollars (\$100,000.00). The purpose of this letter is to comply with your request.

I. FACTS

On September 21, 2022, I prepared and submitted to you Alcohol Vendor Contract for use at the new Civic Center. On October 10, 2022, the City Council approved and adopted Ordinance Number 3130 approving the terms, conditions and substance of six (6) different template contracts to be executed and delivered by citizens who rent facilities and vendors that are hired by those citizens.

The six (6) contract templates were attached to Ordinance Number 3130, marked as Exhibits 1-6 and incorporated therein. The contracts were:

<u>Description</u>	<u>Exhibit Number</u>
Caterer Contract	1
Vendor Contract for Alcoholic Beverage Services	2
Rental Contract	3
Vestavia Hills Civic Center Rental Agreement	4
Vestavia Hills Parks and Pavilion Rental Agreement	5
New Merkle House Facility Agreement	6

March 24, 2023

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The Alcohol Vendor Contract (Exhibit 2) provides in Section IX-B-1(d) that the liquor liability insurance coverage limit is One Million Dollars (\$1,000,000.00). Recently, we learned that the insurance premium for liquor liability insurance coverage with a coverage limit of \$1,000,000.00 for an alcohol vendor is Fifty Thousand Dollars (\$50,000.00) per year. That is cost prohibitive!

II. LEGAL ISSUE

A. LEGAL ISSUE: May the City amend Section IX-B-1 of the Alcohol Vendor Contract by reducing the required minimum insurance limit for liquor liability insurance coverage from One Million Dollars (\$1,000,000.00) to One Hundred Thousand Dollars (\$100,000.00) without exposing the City to liability?

B. LEGAL OPINION: It is my legal opinion that the answer to the legal question is in the affirmative. I do not believe that the reduction of the liquor liability insurance coverage limit from \$1,000,000.00 to \$100,000.00 will adversely expose the City to liability.

C. BASIS FOR LEGAL OPINION: I base my legal opinion upon the following Alabama legal authorities cited below:

1. Definition of Negligence: Negligence is the failure to discharge or perform a legal duty owed to the other party. Negligence means the failure to exercise (reasonable) (ordinary) care; that is, such care as a reasonably prudent person would have exercised under the same or similar circumstances. Therefore, "negligence" is the failure to do what a reasonably prudent person would have done under the same or similar circumstances, or the doing of something which a reasonably prudent person would not have done under the same or similar circumstances.

2. Elements of Negligence: The elements of negligence for recovery in any negligence action are set forth in *Albert v. HSU*, 602 So.2d 895 (1992) as:

- (a) Existence of a duty on part of the defendant; and
- (b) A breach of that duty; and
- (c) The existence of a causal relationship between defendant's conduct and plaintiff's injury; and
- (d) Resulting injury to plaintiff.

March 24, 2023

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3. **Municipalities May Be Liable for the Negligent Acts of Its Employees Acting in the Line and Scope of Their Employment:** Title 11-47-190, *Code of Alabama, 1975*, reads as follows:

“No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless such injury or wrong was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in work therefor and while acting in the line of his or her duty...”

4. **Maximum Amount of Damages Recoverable Against a Municipality:** Section 11-93-2, *Code of Alabama, 1975*, establishes the maximum amount of damages recoverable against governmental entities. The recovery of damages under any judgment against a city shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence and to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. This statute also provides in pertinent part that recovery of damages under any judgment against a city shall be limited to \$100,000 for damage for loss of property arising out of any single occurrence. This statute is not applicable to lawsuits brought against a municipality under 42 U.S.C. §1983 for damages arising out of claims of alleged violations of civil rights.

5. **No Cap on Liability of Municipal Employees:** In March 2014, the Supreme Court of Alabama decided the case of *Morrow v. Caldwell & Russell* and held that the statutory cap on damages does not apply to City employees.

6. **Joint Liability:** Section 11-47-191(b), *Code of Alabama, 1975*, provides that when a judgment shall be obtained against a municipality and another party, execution shall issue against the other defendant or defendants in the ordinary form and shall not be demandable of the city unless the other defendants are insolvent and the same cannot be made out of their property, and the city shall pay only so much of the said judgment as cannot be collected from the other defendants.

7. **Existence of a Duty:** The determination of whether a duty exists is a question of law to be determined by the Court. *Bain v. Colbert County Northwest Alabama Health Authority*, 233 So.3d 945 (2017).

8. **Breach of a Legal Duty:** Whether a party breached a legal duty is a question of fact for the jury. *Proctor v. Fluor.Ent*, 494 F.3d 1337.

9. **Where There is No Duty There Can Be No Negligence:** Where there is no duty, there can be no negligence. *Bryant v. Morley*, 406 So.2d 394 (1981); *Chatman v. City of Prichard*, 431 So.2d 532 (1983); and *Rose v. Miller & Co.*, 432 So.2d 1237 (1983).

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10. Public Officers and Employees Are Entitled to Discretionary Function Immunity: Public officials and employees who act within the scope of their authority in performing functions involving discretion are entitled to discretionary function immunity. *Woods v. Wilson*, 539 So.2d 224 and *Hillard v. Huntsville*, 585 So.2d 889.

11. City Employees Are Entitled to State-Agent Immunity Pursuant to Title 36-1-12, Code of Alabama, 1975: City of Vestavia Hills employees are entitled to state-agent immunity pursuant to *Ex parte Cranman*, which states that a state agent is immune when discharging duties imposed by statute, rule or regulation. *See Cranman*, 792 So.2d 392, 405 (Ala.2000), *holding modified by Hollis v. City of Brighton*, 950 So.2d 300 (Ala.2006). State agent immunity applies to employees of municipalities in the same manner that immunity applies to employees of the State. *City of Birmingham v. Brown*, 969 So.2d 910, 916 (Ala.2007).

Since City employees are entitled to state agent immunity, the City is shielded from any liability. *City of Bayou LaBatre v. Robinson*, 785 So.2d 1128, 1131 (Ala.2000) (“under principles of vicarious liability, where a municipal employee enjoys immunity, the municipality likewise is immune as to claims based on the employee’s conduct.”); *see also Stephens v. City of Butler, Ala.*, 509 F.Supp.2d 1098, 1116 (S.D.Ala.2007), *aff’d sub nom. Stephens v. Lovette*, 261 F.App’x.240 (11th Cir.2008).

12. Other Reasons:

(a) **No duty:** Neither the City or any of its employees will be serving alcoholic beverages at the Civic Center. Therefore, the City has no legal duty. If there is no duty, then in such event there can be no negligence. When there is no negligence, there can be no liability.

(b) **Indemnity Agreement:** Both the citizen/renter and the alcohol vendor agree to indemnify and hold harmless the City and its employees and public officials.

(c) **Independent Contractor:** The alcohol vendor is an independent contractor and not the agent or representative of the City.

(d) **Joint Venture:** The contract provides that there is no joint venture between the City and the alcohol vendor.

III. MY RECOMMENDATION

I recommend that the insurance limit for liquor liability insurance coverage be reduced from \$1,000,000.00 to \$100,000.00. I have taken the liberty to add Section (e) Liquor Liability \$100,000.00 to Section IX-B-1 of the Alcohol Vendor Contract marked as Exhibit 2 and attached to Ordinance Number 3130. It reads: “(e) Liquor liability \$100,000.00.” I forward you Exhibit 2 as amended.

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In my judgment, if the limit is not reduced, then in such event no alcohol vendor will be able to pay the insurance premium of \$50,000.00 per year for \$1,000,000.00 liquor liability insurance coverage. If that happens, then citizens using the facility would not be able to serve alcohol at social functions.

I will be prepared to discuss this matter at the City Council meeting on Monday, March 27, 2023. It will take City Council approval to amend Exhibit 2 to Ordinance Number 3130.

Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

Enclosure

cc: City Clerk Rebecca Leavings (by e-mail)