

**ORDINANCE NUMBER 3228**

**AN ORDINANCE AUTHORIZING THE PAYMENT OF SELF INSURED RETENTION IN THE SETTLEMENT OF THE CASE OF *CINDERELLA REEDER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DOUGLAS HART, DECEASED, V. CITY OF VESTAVIA HILLS, ALABAMA, ET AL*, BEING CIVIL ACTION NUMBER 2:22-CV-00292-AMM PRESENTLY PENDING IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION; AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO PAY THE FUNDS DESCRIBED HEREIN AND TO TAKE ANY ACTION AND EXECUTE AND DELIVER ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE SAID SETTLEMENT.**

**THIS ORDINANCE NUMBER 3228** is approved, adopted and enacted by the City Council of the City of Vestavia Hills, Alabama on this the 24th day of June, 2024.

**WITNESSETH THESE RECITALS:**

**WHEREAS**, Alabama law at Title 11-43-56, *Code of Alabama, 1975*, provides that the City Council shall have the management and control of the finances and all of the property, real and personal, belonging to the City; and

**WHEREAS**, Title 11-43-43, *Code of Alabama, 1975*, provides that all legislative powers granted to cities shall be exercised by the City Council; and

**WHEREAS**, Title 11-40-1, *Code of Alabama, 1975*, declares municipalities bodies corporate and gives them the power to contract and be contracted with; provided, however, that the contract is in writing as required by Title 11-47-5, *Code of Alabama, 1975*; that the execution and delivery of the contract shall have first been approved by the City Council, *Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3d 1166 (2011), in the form of an ordinance or resolution, *Van Antwerp, et al v. Board of Commissioners of City of Mobile*, 217 Ala. 201, 115 So. 239 (1928); that the contract be signed by the Mayor as required by Title 11-43-83, *Code of Alabama, 1975*; and that the contract be signed by the City Manager as required by Title 11-43-21(b)(7), *Code of Alabama, 1975*; and

**WHEREAS**, Title 11-47-24(b), *Code of Alabama, 1975*, provides that all municipal corporations of the State of Alabama are authorized to contract at governmental expense for policies of liability insurance to protect the City and its employees in the course of their employment; and

**WHEREAS**, Title 11-47-24(a), *Code of Alabama, 1975*, provides that a city may provide a legal defense for municipal employees sued for damages and indemnify those employees; and

**WHEREAS**, in 2020, States Self-Insured Risk Retention Group, Inc. (the “**insurance company**”) (*emphasis added*) wrote and issued a general comprehensive liability insurance policy providing insurance coverage for the City and its employees, hereinafter referred to as the “**insurance policy** (*emphasis added*),” that was managed by Berkley Risk Administrators Company, LLC (“Berkley Risk”); and

**WHEREAS**, the insurance policy provided, among other things, that the City was self-insured for the first Two Hundred Fifty Thousand Dollars (\$250,000.00), hereinafter referred to as “Self Insured Retention”; and

**WHEREAS**, the insurance policy provided that the amount of Self Insured Retention to be paid by the City on any and all claims resolved by the insurance company would be the Self Insured Retention of \$250,000.00, less any and all expenses paid by the City in defense of the claim, specifically including but not limited to, attorney fees; and

**WHEREAS**, the case of *Cinderella Reeder, as Personal Representative of the Estate of Douglas Hart, Deceased, v. City of Vestavia Hills, Alabama, et al*, (hereinafter referred to as “**lawsuit**”) (*emphasis added*) was filed on February 7, 2022 and is presently pending as civil action number 2:22-CV-00292-AMM in the United States District Court for the Northern District of Alabama, Southern Division; and

**WHEREAS**, the City of Vestavia Hills, Alabama (“City”) engaged attorney, J. Bentley Owens, III, and the law firm of Ellis, Head, Owens, Justice, Arnold and Graham as legal counsel to defend the City and its employees (“Defendants”) in the lawsuit; and

**WHEREAS**, City Attorney Patrick H. Boone, although not legal counsel of record in this lawsuit, has monitored the lawsuit and assisted J. Bentley Owens, III when needed; and

**WHEREAS**, Alabama law at Title 6-6-20(a), *Code of Alabama, 1975*, defines “mediation” as “a process in which a neutral third party assists the parties to a civil action in reaching their own settlement but does not have the authority to force the parties to accept a binding decision”; and

**WHEREAS**, mediations are conducted pursuant to the *Alabama Civil Court Mediation Rules* (“ACCMR”); and

**WHEREAS**, Rule 11 of ACCMR provides in pertinent part as follows:

**“11. Confidentiality.**

(a) All information disclosed in the course of a mediation, including oral, documentary, or electronic information, shall be deemed confidential and shall not be divulged by anyone in attendance at the mediation except as permitted under this Rule

or by statute. The term ‘information disclosed in the course of a mediation’ shall include, but not be limited to:

- (1) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- (2) admissions made by another party in the course of the mediation proceedings;
- (3) proposals made or views expressed by the mediator;
- (4) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator; and
- (5) all records, reports, or other documents received by a mediator while serving as mediator”; and

**WHEREAS**, Plaintiff and Defendants and their attorneys participated in mediations on April 12, 2023 and June 6, 2024; and

**WHEREAS**, a representative of Berkley Risk Administrators Company, LLC representing States Self-Insured Risk Retention Group, Inc. (“the insurance company”) for Defendants participated in both mediations; and

**WHEREAS**, Plaintiff and the insurance company agreed to a settlement of the lawsuit at and during the mediation conducted on June 6, 2024 by Confidential Agreement; and

**WHEREAS**, the Settlement Agreement requires the City to pay the Self Insured Retention amount as partial payment of the Settlement Agreement pursuant to the terms, provisions and conditions of the insurance policy; and

**WHEREAS**, the amount of the Self Insured Retention as of June 24, 2024 amounts to \$131,804.60 calculated as follows:

\$250,000.00	Deductible
<u>- 118,195.40</u>	Attorney Fees Paid By the City to Date
\$131,804.60	Amount of Self Insured Retention; and

**WHEREAS**, Special Counsel, J. Bentley Owens, III, by letter dated June 21, 2024, a copy of which is attached hereto, marked as Exhibit A and incorporated by reference as though set out fully herein, recommends that the settlement made by the insurance company is in the best interest of the City and that the City Council approve this Ordinance Number 3228 authorizing the payment of the Self Insured Retention; and

**WHEREAS**, City Attorney Patrick H. Boone by letter dated June 21, 2024, a copy of which is attached hereto, marked as Exhibit B and incorporated by reference as though set out fully herein, recommends that the settlement made by the insurance company is in the best

interest of the City and that the City Council approve this Ordinance Number 3228 authorizing the payment of the Self Insured Retention; and

**WHEREAS**, the Open Meetings Act (OMA) at Title 36-25A-1(a), *Code of Alabama, 1975*, provides “The deliberative process of governmental bodies shall be open to the public during meetings as defined in Title 36-25A-2(6), *Code of Alabama, 1975*; and

**WHEREAS**, based upon the Alabama legal authorities cited above, the payment of the Self Insured Retention must be approved by ordinance at and during an open and public meeting after providing notice pursuant to the requirements of Title 36-25A-3, *Code of Alabama, 1975*; and

**WHEREAS**, the City Council finds and determines that the City is legally obligated to pay the Self Insured Retention and that said payment will be in the best interest of the City of Vestavia Hills, Alabama.

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

I. **RECITALS:** The recitals set forth in the premises above are hereby incorporated into this ordinance by reference as though set out fully herein.

II. **EXHIBITS:** Exhibit A, being the letter from attorney, J. Bentley Owens, III, and Exhibit B, being the letter from City Attorney Patrick H. Boone, are attached hereto marked as Exhibits A and B and are incorporated into this Ordinance Number 3228 by reference as though set out fully herein.

III. **ACCEPTANCE OF RECOMMENDATIONS BY ATTORNEYS FOR THE CITY:** The City Council hereby accepts the recommendations of attorneys, J. Bentley Owens, III and Patrick H. Boone, as set forth in Exhibits A and B.

IV. **AUTHORITY TO PAY SELF INSURED RETENTION:** The City Manager is hereby authorized and directed to pay to Plaintiff’s attorney the Self Insured Retention in the amount of One Hundred Thirty-one Thousand Eight Hundred Four and 60/100 Dollars (\$131,804.60). If additional attorney fees are required to be paid by the City to either attorney, J. Bentley Owens, III or City Attorney Patrick H. Boone, for legal services rendered in connection with this case, then in such event the amount of the Self Insured Retention shall be reduced by the total amount of additional attorney fees paid. Stated another way, the amount of Self Insured Retention when added to the total amount of attorney fees shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00).

V. **EXECUTION AND DELIVERY OF SETTLEMENT DOCUMENTS:** The City Manager and the Mayor are hereby authorized and directed to take any actions and to execute and deliver any and all documents necessary to complete and effectuate the settlement made and entered into by the insurance company and Plaintiff.

VI. **NO ADMISSION OF LIABILITY:** While the settlement authorized herein is a compromise of a doubtful and disputed claim and the payment of the sum recited in Section IV above is not an admission of liability by the City for which liability is expressly denied, it is nevertheless in the best interest of the City to amicably resolve the dispute rather than prolong the litigation and the attendant risk of an adverse verdict.

VII. **RELEASE:** The Plaintiff shall forever discharge and release all of the named Defendants in the lawsuit from any and all damages arising out of the incident made the basis of this lawsuit and shall make no claim for any attorney fee whatsoever against the Defendants.

VIII. **DISMISSAL OF LAWSUIT:** The lawsuit shall be dismissed with prejudice.

IX. **SEVERABILITY:** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

X. **EFFECTIVE DATE:** The provisions of this Ordinance Number 3228 shall become effective immediately upon the passage, approval and adoption thereof by the City Council of the City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

**ORDAINED, APPROVED, ADOPTED, DONE and ORDERED** on this the 24th day of June, 2024.

  
Ashley C. Curry  
Mayor

ATTESTED BY

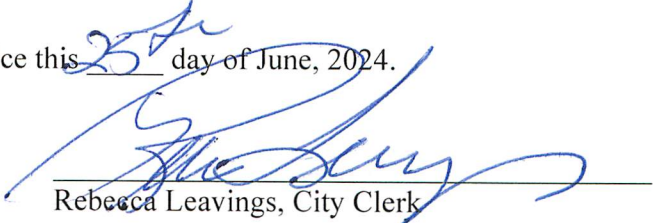
  
Rebecca Leavings  
City Clerk

**CERTIFICATION OF CITY CLERK**

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an ordinance duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the \_\_\_\_ day of \_\_\_\_\_, 2024 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this 25<sup>th</sup> day of June, 2024.



Rebecca Leavings, City Clerk

# WALLACE | ELLIS

ELLIS · HEAD · OWENS · JUSTICE · ARNOLD · GRAHAM

Attorneys at Law

Frank C. Ellis, Jr.  
J. Frank Head  
J. Bentley Owens, III  
William R. Justice  
Joshua D. Arnold  
Grace Graham  
G. Daniel Head

Wales W. Wallace, Jr. (1919-1986)  
Frank Head (1891-1979)  
Conrad M. Fowler, Jr. (1946-2020)

Retired:  
Judge Oliver P. Head

June 21, 2024

VIA E-MAIL – [jdownes@vhal.org](mailto:jdownes@vhal.org)  
and U. S. MAIL

Mr. Jeff Downes  
City Manager  
City of Vestavia Hills  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

Re: Douglas Hart/Cinderella Reeder v. City of Vestavia Hills

Dear Mr. Downes:

This letter is written to you as City Manager for the benefit of the City Council in their deliberations and decision-making process concerning the contemplated settlement of the captioned litigation. As you know, I serve as outside litigation counsel for the City, and it is in that capacity that I recommend to the City Council that it approve the Resolution authorizing the City's self-insured retention reserved by the City for litigation purposes.

This case was mediated and conditionally settled earlier this month, pending approval by the City Council of the authorization and release of the self-insured retention. Under Rule 11 of the Civil Court Mediation Rules, the negotiations and settlement agreement reached by the parties are confidential. The settlement was reached in coordination and collaboration with the City's excess insurer. Under the City's agreement with the insurer, the City has the duty to cooperate with the excess carrier. In that regard, as outside counsel for the City, I provided advice and recommendations to the excess carrier during the negotiating process. In the end, however, the excess carrier has both the opportunity and the obligation to settle the case under the terms and conditions of the excess policy of insurance. I believe that

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June 21, 2024

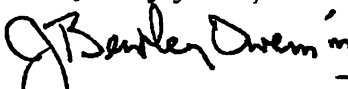
the settlement the insurer reached is reasonable and in the best interests of the City and the two individually named police officers.

Both the City and two (2) of its police officers were defendants in the case. Plaintiff in the case alleged civil rights violations incidental to an encounter with several officers of the Vestavia Hills Police Department and Mr. Hart on February 8, 2020. While several defendants and counts in the original complaint were dismissed, the claims for Fourth Amendment violations remained. The settlement was reached prior to the submission of summary judgment motions to challenge the legal sufficiency of the allegations. The officers, who were sued individually, enjoy both federal qualified and state agent immunities. These immunities are required to be decided by the trial court prior to a jury trial. In the circumstances confronting the defendants, the facts were such that predicting the likelihood that immunity would be granted to the individual officers was uncertain. Furthermore, since the City enjoys no immunity, it was equally unclear as to whether summary judgment would be granted to the City by the court.

For these reasons, given the uncertainty of the Court's decision on the legal issues of immunity, combined with the unpredictability of a jury verdict, I recommend that the Resolution be adopted. I believe it is in the best interest of the City and its individual police officers to settle rather than try this case because it eliminates all risk of a substantial adverse verdict.

Should you have any questions or instructions prior to the City Council's consideration of the Resolution, please let me know.

Very truly yours,

  
J. Bentley Owens, III

JBO/kf



PATRICK H. BOONE  
ATTORNEY AND COUNSELOR AT LAW  
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705  
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH  
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**E-Mail:** [patrickboone@bellsouth.net](mailto:patrickboone@bellsouth.net)

June 21, 2024

By Electronic Mail

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

In Re: Ordinance Number 3288 Authorizing and Directing the Payment of Self Insured Retention

Dear Mr. Downes:

The following case is presently pending in the United States District Court for the Northern District of Alabama, Southern Division: *Cinderella Reeder, as Personal Representative of the Estate of Douglas Hart, Deceased, Plaintiff v. City of Vestavia Hills, Alabama, et al, Defendants*, Civil Action number 2:22-CV-00292-AMM.

Although I am not the attorney of record representing the Defendants in the above captioned case, I am very familiar with the facts, legal issues and the applicable laws. I have read all of the pleadings and assisted Special Counsel J. Bentley Owens, III when requested to do so.

The case was mediated on April 12, 2023 and again on June 6, 2024. I was present in person along with Bent Owens and you at both mediations. A representative of Berkley Risk Administrators Company, LLC representing States Self-Insured Risk Retention Group, Inc. that wrote and issued the general comprehensive liability policy insuring the City and its employees participated in both mediations.

On June 6, 2024, the insurance company settled this case with the Plaintiff pursuant to a Confidential Settlement Agreement authorized by Rule 11 of the *Alabama Civil Court Mediation Rules* ("ACCMR").

**EXHIBIT B**

### **LEGAL OPINIONS**

I am of the legal opinions that:

**A.** The City Council should authorize and direct the payment of the Self Insured Retention as required by the insurance policy; and

**B.** That the settlement by and between the insurance company and the Plaintiff is in the best interest of the City of Vestavia Hills, Alabama and its employees.

### **BASIS FOR LEGAL OPINIONS**

I base my legal opinions upon the following reasons and Alabama legal authorities:

**A.** The City is self-insured for the first \$250,000.00 known as the "Self Insured Retention." The amount of the Self Insured Retention to be paid by the City is the difference between \$250,000.00 and the amount of the attorney fees paid by the City to date in defense of the case. The City is contractually obligated to pay the Self Insured Retention pursuant to the terms, provisions and conditions of its general comprehensive insurance policy.

**B.** The settlement by the insurance company and the Plaintiff is in the best interest of the City and its employees.

**1.** It is dangerous from a legal standpoint for the named insured to object to a settlement made by its insurance carrier. If the case is tried and results in a verdict for the Plaintiff, then in such event it may very well create coverage problems for the named insured.

**2.** Juries are very unpredictable.

### **MY RECOMMENDATIONS**

**A.** I recommend that the City approve and enact Ordinance Number 3288 at its meeting on June 24, 2024 by unanimous consent for immediate consideration.

**B.** I recommend that the City not object to the settlement made by and between the insurance company and the Plaintiff.

### **CONCLUSION**

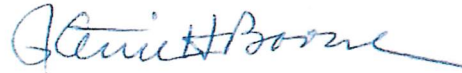
**A.** All City business must be conducted at an open and public meeting required by the Open Meetings Act (OMA). The City business in this case is limited to the payment of the Self Insured Retention. That action must be done by Ordinance Number 3288, which I have prepared and enclose.

June 21, 2024

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B. The payment by the insurance company is confidential pursuant to Rule 11 of ACCMR. Therefore, my ability to discuss the resolution of this case will be limited to the City business part of the settlement. The confidentiality requirement pursuant to Alabama law prohibits me from answering questions about the insurance company.

Sincerely,

A handwritten signature in blue ink that reads "Patrick H. Boone". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp  
Enclosure