



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 3/14/2024

File ID: 2024-1239

Department: Finance

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an Agreement between the City of Huntsville and Mauldin & Jenkins to assist with conducting a financial assessment of the Huntsville Eastern League within the City of Huntsville.

Resolution No.

Finance Information:

Account Number: 1000-13-13100-515370

City Cost Amount: Hourly rate estimated \$20,000-\$25,000

Total Cost: Based on rate reviewed bi-weekly

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address: NA

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 24-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby, authorized to enter into an agreement between the CITY OF HUNTSVILLE, an Alabama municipal corporation, and MAULDIN & JENKINS, which said agreement is substantially in words and figures as that certain document attached hereto and identified as “Agreement between the City of Huntsville and Mauldin & Jenkins,” consisting of ten (10) pages and the date of March 14, 2024, appearing on the first page thereof, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document after being signed by the Mayor, shall be permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 14th day of March, 2024.

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

APPROVED this the 14th day of March, 2024.

Mayor of the City of Huntsville, Alabama



DRAFT – For Discussion Purposes Only

Mauldin & Jenkins
307 Clinton Ave
Suite 500
Huntsville, AL 35801

March 12, 2024

Penny Smith, Director of Finance
City of Huntsville
308 Fountain Circle
Huntsville, AL 35801

Dear Penny:

Thank you for the opportunity to serve the City of Huntsville, Alabama ("City"). The purpose of this engagement letter is to document your agreement for Mauldin & Jenkins ("M&J") to consult with, and assist you in conducting a Financial Assessment ("Assessment") of the Huntsville Eastern League ("League"), a non-profit entity operating within the City of Huntsville, Alabama

We understand that a former Board Member for the League has been charged with stealing money from the League. The Assessment will evaluate the League's fiscal management, financial activities, and financial processes related to revenue collections and operating funds managed by the League to attempt to identify the amount stolen by the former Board Member and identify the root causes/operating environment that led to the theft.

A. Engagement Objectives, Scope, and Approach

We understand that the City of Huntsville desires an objective assessment of the League's financial transactions from February 2024 working back at least through January 2022 as well as the business processes and workflow for the League's financial management functions. We will review financial activities and related financial processes from the requested period to assess fiscal trends and outliers, financial processes, and compliance with applicable governing laws and regulations.

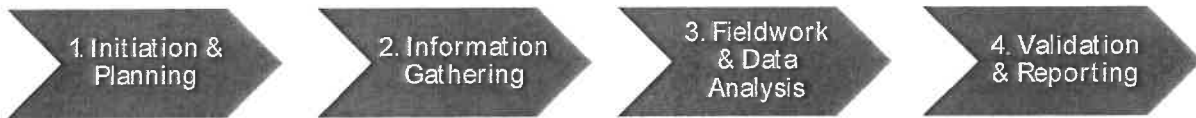
Objectives/Scope

Assessment objectives and scope include the following related to the League:

- Review financial activities and supporting documentation from the period of January 2022 through February 2024 (system generated reports, bank statements, reconciliations, etc.)
- Document financial processes/controls related to the management of the funds
- Document fund activity compliance with applicable governing laws and regulations
- Perform data analysis to attempt to identify questionable transactions
- Compare to leading practices
- Identify areas for improvement and/or risk concerns
- Develop meaningful recommendations to improve/enhance operations and management

Approach and Deliverables

Our approach will consist of the following four phases:



Phase 1 – Initiation and Planning

M&J will conduct a kick-off meeting with the City's Director of Finance and the League's Treasurer and other relevant City stakeholders. The purpose of the kick-off meeting will be to introduce the M&J Team; discuss roles and responsibilities; and project objectives, scope, timing, communication protocols, and potential risks. The meeting will allow for discussion at a more granular level to help ensure M&J and the City are aligned on key project attributes.

We will also discuss access to people and information needed during the Assessment and methods for requesting and obtaining interviews and data. We will bring an initial information request to the kick-off meeting based on our understanding of the City's needs and our knowledge of conducting similar assessments.

We will work with the City project sponsor to create an initial interview request list. Once the Assessment has begun and knowledge learned, additional information and interview request lists will be developed and submitted to the City.

Outputs: Initial Information and Interview Requests

Phase 2 – Information Gathering

The Information Gathering Phase will consist of obtaining information from two primary sources: information requested from the League and received, and from interviews.

We will create a tracking matrix to identify what information has been received and the completeness of the received information compared to what was requested. We will also create a tracking matrix for the interviews requested and timeliness of being able to conduct the meetings and obtain necessary data. We will include the information and interview tracking matrices in our bi-weekly status reports to the City to ensure visibility into any delays or obstacles.

Outputs: Additional Information and Interview Requests, and Tracking Matrices

Phase 3 – Fieldwork and Data Analysis

There will be significant amounts of data and information leveraged in our approach that will guide our findings, analysis, and recommendations. We will perform our initial fieldwork primarily by:

a. Reviewing requested information and data

We will request and review relevant information such as:

- Organization charts
- Job descriptions including roles, responsibilities, and competencies
- Policies and procedures
- Financial and budgetary information/reports/statements for the period of January 2022 through February 2024

- Technology/systems inventory
 - Workflow diagrams or mapping
- b. Conducting interviews
M&J will conduct multiple interviews with City/League management and staff. We will use the interviews to gain an understanding of people's roles and responsibilities, organization and reporting, operating functions, financial management and activities, and compliance and risk mitigation. We will meet with certain employees one-on-one, and will conduct group interviews or workshops where it makes sense.
- c. Performing field/workflow/system observations
Part of our fieldwork will include performing direct observations of business processes, workflow, and system usage. We want to understand first-hand how processes and workflow actually operate – not just how they are supposed to operate.

Phase 4 – Validation and Reporting

We will begin this phase while fieldwork is still being conducted. The purpose of this phase is to:

- Begin to share preliminary observations with the appropriate stakeholders through meetings/workshops
- Receive feedback on the preliminary observations
- Based on feedback received, perform additional fieldwork or data analysis as applicable
- Prepare draft report
- Communicate draft report to the City project sponsor and appropriate stakeholders
- Obtain written feedback from draft report
- Prepare final report
- Present final report to appropriate stakeholders

Outputs: Draft Report, Final Report, Final Report Presentation

Timing

We estimate a project duration of approximately 6-7 weeks to complete the Assessment.

We will deliver a draft report at approximately 4-6 weeks after project commencement and allow time for City review/commentary and any appropriate adjustments to be made before issuing a final report at approximately 6-7 weeks after project commencement.

B. Engagement Team

David Roberts will serve as the engagement partner and will be responsible for overseeing the engagement and the delivery of all services to you. David has extensive experience assessing government operations. James Bence and other professionals from our Government Practice will also serve the City in delivering services against our scope of work.

C. Engagement Assumptions, Client Acknowledgements, Responsibilities and Representations

Our Services, Fees and work schedule are based upon the following assumptions, acknowledgements, representations, and understandings with you:

- The services described in this engagement letter constitute an advisory engagement conducted under American Institute of Certified Public Accountants standards for consulting services
- Our work will be to assist and advise you with this project. As stated below and for clarity, we will not, nor does City desire us to, perform any management functions, make management decisions, or otherwise perform in a capacity equivalent to that of an employee or officer of the City or the League
- The City will determine the extent of services it wishes Mauldin & Jenkins to provide and will undertake the responsibilities set forth in this engagement letter
- The City will designate an employee or employees within its senior management who will make or obtain all management decisions with respect to this engagement on a timely basis
- The City will ensure that we have access to key people, facilities and data, and that all levels of your employees, contractors, and League Board members will cooperate fully and timely with us. The success of this engagement is dependent upon full openness, communications, cooperation and timely direction
- The City agrees that all assumptions set forth in this engagement letter are accurate and agrees to provide us with such further information we may need and which we can rely on to be accurate and complete. We will be entitled to rely on all of your decisions and approvals made independently, and we will not be obligated to evaluate, advise on, confirm or reject such decisions and approvals
- The City will evaluate the adequacy and results of services and will let us know immediately of any problems or issues you perceive in our personnel, services or deliverables
- Mauldin & Jenkins will provide recommendations as applicable. The City is responsible for evaluating such recommendations and implementing the recommendations as deemed appropriate by the City
- The City will review the draft report in a timely manner
- Untimely review, or access to people or information could have an impact on the project schedule
- In no event shall Mauldin & Jenkins (or its personnel) be liable to the City – whether a claim be in tort, contract or otherwise—for any consequential, indirect, lost profit or similar damages relating to the services provided under this engagement letter, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Mauldin & Jenkins relating to such service

The fulfillment and confirmation of these responsibilities, acknowledgements and representations are critical to the success of this engagement. The successful delivery of our services, and the fees charged, are also dependent on your timely and effective completion of your responsibilities, the accuracy and completeness of the assumptions, and timely decisions and approvals by your management. You will be responsible for any delays, additional costs or other liabilities caused by or associated with any deficiencies in the assumptions or in carrying out your responsibilities.

D. Additional Understandings Arising from the Performance of Attest Services by Mauldin & Jenkins

Mauldin & Jenkins currently performs the financial audit in accordance with *Government Auditing Standards* (GAS) issued by the Comptroller General of the United States. GAS requires that the auditor maintain independence so that opinions, findings, conclusions, judgments and recommendations will be impartial and viewed as impartial by reasonable and informed third parties. Before we agree to provide a nonaudit service to an existing GAS audit client or an entity for which we may be asked to provide future audit services under GAS standards, we determine whether providing such a service would create a significant threat to our independence for GAS audit purposes, either by itself or in aggregate with other nonaudit services provided. A critical component of our determination is consideration of management's ability to effectively oversee the nonaudit service to be performed. The City has agreed to designate an individual who possesses suitable skill, knowledge, or experience and that the individual understands the Services to be performed sufficiently to oversee them.

Accordingly, the management of the City agrees to the following:

1. The City has designated a senior member of management, who possesses suitable skill, knowledge, and experience to oversee the services.
2. The City will assume all management responsibilities for subject matter and scope of the Services.
3. The City will evaluate the adequacy and results of the services performed.
4. The City accepts responsibility for the results and ultimate use of the services.

GAS further requires we establish an understanding with the management, and those charged with governance, of the City of the objectives of the nonaudit service, the services to be performed, the entity's acceptance of its responsibilities, the auditor's responsibilities, and any limitations of the nonaudit service. We believe this engagement letter documents that understanding.

The City acknowledges it will not utilize Mauldin & Jenkins, LLC to store documents, data, or records on its behalf in accordance with the "Hosting Services" (see ET section 1.295.143) interpretation of the AICPA Code of Professional Conduct. The City is solely responsible for maintaining its own data and records.

E. Fees

M&J will provide the services described in this engagement letter based on time and material – meaning that we will bill the City for actual hours worked and related incurred expenses. As the scope and actual time/resource requirements are unknown, we will assume a base fee of \$25,000 or less. If we approach \$25,000 in fees, we will check in with the project sponsor to discuss the work completed to-date and our estimates for completing the work. We will have discussions with the project sponsor for every \$10,000 in fees over the initial \$25,000 base to obtain documented approval for continued work. We will also provide bi-weekly status reports that show work completed, anticipated work, and budget/timing status. Our fee estimates are based on the hourly rates included in the following table.

Professional Level	Hourly Rates
Partner	\$330
Director	\$300
Manager	\$250
Senior Staff	\$235
Junior Staff	\$205

We will invoice the City monthly for actual hours and expenses incurred and payment is expected within 30 days.

The above fees are based on anticipated cooperation from your personnel (including complete and timely receipt of requested information and the scheduling and conduct of requested interviews) and the assumption that unexpected circumstances (including scope changes) will not be encountered during the project. If significant additional time is necessary, or if additional scope elements are requested, we will discuss it with the designated client project sponsor and arrive at a new fee estimate before we incur the additional costs.

The attached Terms and Conditions apply to this engagement and are an integral part of our agreement. Please indicate your agreement to these arrangements by signing and returning a copy of this engagement letter with the completed acknowledgement section.

We appreciate the opportunity to be of service to you and look forward to working with you on this engagement.

Sincerely,

David Roberts, Mauldin & Jenkins
Government Advisory Lead Partner

F. Acknowledgement and Acceptance

We have read and agree to this engagement letter, the attached and incorporated Terms and Conditions. The City and its signatory below represents that said signatory is its duly authorized representative and has the requisite power and authority to bind the City to the undertakings and obligations contained herein.

Acknowledged and accepted:

City of Huntsville, Alabama

By: _____

Name: Tommy Battle

Title: Mayor

Mauldin & Jenkins (M&J) Government Advisory Terms and Conditions for the City of Huntsville

1. Client Acceptance of Services.

At the conclusion of each phase of the Services, M&J will review with Client the intended scope of work and Deliverables to confirm compliance with the defined project expectations. If Client reasonably believes the Deliverables do not conform to project expectations, Client will notify M&J of such nonconformity in writing within ten (10) business days of receiving the Deliverables. M&J will then have a reasonable period of time to correct the nonconformity, as mutually agreed to by the Parties based upon severity and complexity of the necessary correction. If Client uses the Deliverables before acceptance or fails to notify M&J of the nonconformance within the above-referenced ten-day (10-day) period, the Deliverables will be considered accepted.

2. Disputes and Remedies.

2.1. If Client objects to any portion of an invoice, Client will provide written notice of its objection to M&J within ten (10) days of the date it receives the applicable invoice, including a detailed description of the basis for Client's contention that any invoiced amounts are incorrect and any applicable supporting documentation. Client will be responsible for payment of the portion of the invoice that is not in dispute within thirty (30) days of the date it received the applicable invoice. If Client and M&J cannot resolve the disputed amounts within ten (10) days thereafter, the dispute shall be escalated to the senior management of each respective Party, who shall engage in good faith efforts, to promptly resolve such dispute. If it is determined by the Parties that Client owes all or part of any amount subject to dispute, Client shall remit such amount to M&J within five (5) days of such determination. M&J reserves the right to charge interest on any undisputed amount invoiced that is not paid within thirty (30) days of the invoice date.

2.2. In the event that Client fails to pay any undisputed invoiced amounts within sixty (60) days of their due date, upon written notice to

Client, M&J shall have the right to suspend its Services until such time as Client pays such undisputed amounts invoiced in full. M&J will not be liable for any resulting loss, damage or expense connected with such suspension.

2.3. The foregoing does not limit M&J from pursuing any other rights available at law or in equity and is in addition to, not in lieu of, M&J's termination rights under Section 5.

3. Use and Ownership.

3.1. Deliverables. "Deliverables" shall mean those custom-developed documents, data, reports, analyses, recommendations, work product (if any), and other materials authored or prepared by M&J specifically for Client pursuant to the Scope of Work and identified therein. For avoidance of doubt, Deliverables do not include M&J Information (as defined in Section 3.3) or M&J's administrative communications, records, files and working papers relating to the Services that remain the sole and exclusive property of M&J. In the event that a Scope of Work for outsourced services provides that Client acquires ownership of working papers, M&J will be entitled to retain copies of all such working papers subject to the confidentiality obligations herein. Notwithstanding anything stated to the contrary in this Agreement, as between M&J and Client, any information, data or material provided by Client to M&J in connection with M&J's Services hereunder shall remain, and is, the sole and exclusive property of Client.

3.2. License of Deliverables and M&J Information. Subject to the limitations set forth herein, upon final payment for the Services in connection with this Engagement Letter, Client shall have a perpetual, nontransferable royalty-free, worldwide license, without the right to grant sublicenses (except that Client may grant sublicenses to its Participating Affiliates consistent with the license restrictions and limitations set forth herein), to use, copy and modify the Deliverables delivered by M&J

Mauldin & Jenkins (M&J) Government Advisory Terms and Conditions for the City of Huntsville

thereunder, including the M&J Information incorporated therein or provided therewith (i) solely for the purpose of using such materials in Client's internal business and (ii) in accordance with any limitations and restrictions set forth in Client's licenses with third parties.

3.3. M&J Information. Notwithstanding any other provisions set forth herein, M&J reserves all rights in and to all proprietary works of authorship created, developed or purchased by M&J (or by any third party under contract to M&J) that either (i) have not been created specifically for Client or (ii) have general applicability to M&J's business. M&J Information includes works created before and during the term of this Agreement. M&J Information includes (without limitation) methodologies, templates and documentation, as well as copyrights, trademarks, service marks, ideas, concepts, know-how, techniques, knowledge or data, and any derivatives thereof (collectively, "M&J Information"). Except as set forth in the Scope of Work or otherwise permitted in this Agreement, Client may not reuse, resell or disclose M&J Information to any third parties. Further, Client is expressly prohibited from disaggregating M&J Information from the Deliverables.

3.4. Sole Benefit and Use. Client acknowledges and agrees that any advice, information or work product provided to Client by M&J in connection with this Engagement Letter is for the sole benefit and use of Client and may not be relied upon or used by any third party; provided, however, that Client may share any advice, information or work product provided to it by M&J with Client's regulators, auditors and advisors in the ordinary course of business as necessary.

4. Indemnification and Limitation of Liability

4.1. Client's Indemnification of M&J. Subject to the limitations set forth in the Alabama law of municipal liability, Client will indemnify M&J

(and its personnel) and tender a defense to M&J (and its personnel) for all costs, fees, expenses, damages and liabilities (including reasonable attorneys' fees and costs) associated with (i) a claim made by any claimant that is not a party to this Agreement and which arises from or relates to any Services, Deliverables or other work product from M&J that Client uses or discloses to others in a manner other than that expressly permitted by this Agreement OR (ii) a knowing misrepresentation by Client management.

5. Term and Termination

5.1. Term. This Agreement will commence on the Effective Date and will continue until it is terminated by one or both of the Parties in accordance with this Section 5.

5.2. Material Breach. Either Party may terminate this Agreement for a material breach that remains uncured for thirty (30) days after the breaching Party receives written notice of such breach from the non-breaching Party. The failure of Client to make full payment of any and all undisputed amounts invoiced in a timely manner constitutes a material breach of this Agreement. M&J will not be liable to Client for any resulting loss, damage or expense connected with a termination for Client's material breach under this provision.

5.3. Termination without Cause. Unless otherwise set forth in the Scope of Work, either Party may terminate this Agreement for any reason upon fifteen (15) days prior written notice to the other Party. If the Scope of Work contains a longer notice period for termination without cause than that set forth herein, then the notice period in such Scope of Work will govern; provided, however, that if Client terminates pursuant to this Section 5.3, it must pay all outstanding fees and expenses for Services actually performed and Client Deliverables or portions thereof delivered (in each case, even if such Services or Client Deliverables are incomplete) as of the effective date of

Mauldin & Jenkins (M&J) Government Advisory Terms and Conditions for the City of Huntsville

termination. If the Engagement Letter contains payment terms on any basis other than fees and expenses paid on time and materials basis, then such payment terms shall govern.

5.4. Effect of Termination. Upon the effective date of a termination of this Agreement (i) each Party shall promptly return to the other all Confidential Information of the other Party in its possession; (ii) M&J shall submit to Client an itemized final invoice for any fees, reimbursable expenses, and any related taxes not previously invoiced under this Agreement; (iii) within thirty (30) days after receipt of M&J's final invoice, Client shall pay all undisputed amounts due M&J pursuant to such invoice and all other outstanding invoices; (iv) M&J shall have no further responsibility for any incomplete or in-process Client Deliverable as of the date of termination; and (v) to the extent both Parties mutually agree at such time, M&J will provide Client with up to thirty (30) days of termination transition services. The scope, cost, and timing of such termination transition services will be mutually agreed upon by the Parties at such time.

5.5. Survival. The following Sections will survive the termination of this Agreement as applicable: 3 (Use and Ownership), 4 (Indemnification and Limitation of Liability), 5.4 (Effect of Termination), together with accrued payment obligations.

6. General Provisions

6.1. Governing Law. This Agreement will be governed and construed in accordance with the

laws of the state of Alabama, without regard to the conflicts of laws or principles thereof.

6.2. Time to Bring Claims. No claim or action by either Party, regardless of whether the claim is in contract, in tort, at law or in equity, arising out of or relating to any matter under this Agreement, may be brought by either Party more than twenty-four (24) months after the Party first knows or has reason to know that the claim or cause of action has accrued, but in no event more than thirty-six (36) months following the completion of the Services. This Section 6.2 may shorten, but in no event will it extend, any period of limitation on actions otherwise provided by applicable Law.

6.3. Legal Action Requiring Disclosure. In the event M&J is requested or authorized by Client or is required by regulation, Law, subpoena or other legal process to produce its documents or its personnel as witnesses with respect to its Services for Client, Client will, so long as M&J is not a Party to the proceeding in which the information is sought, reimburse M&J for its professional time and expenses, including the reasonable fees and expenses of counsel, incurred in responding to such requests. 4

6.4. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement. This Agreement may be amended or modified only by a written instrument executed by both Parties.