

RESOLUTION 2015-04-06-08

Agreement for Elevated Water Storage Tank and Water Booster Station for Magnolia Mill

WHEREAS, the City of Pelham desires to enter into the attached Agreement with Two Mountains, LLC, the Developer, for a proposed new subdivision development to be called Magnolia Mill; and

WHEREAS, the attached Agreement provides for the City to install, at the City's expense, an elevated storage tank and water booster station for the Magnolia Mill development; and provides specific requirements of the Developer whereby the City is reimbursed for the related expenses in a timely manner.

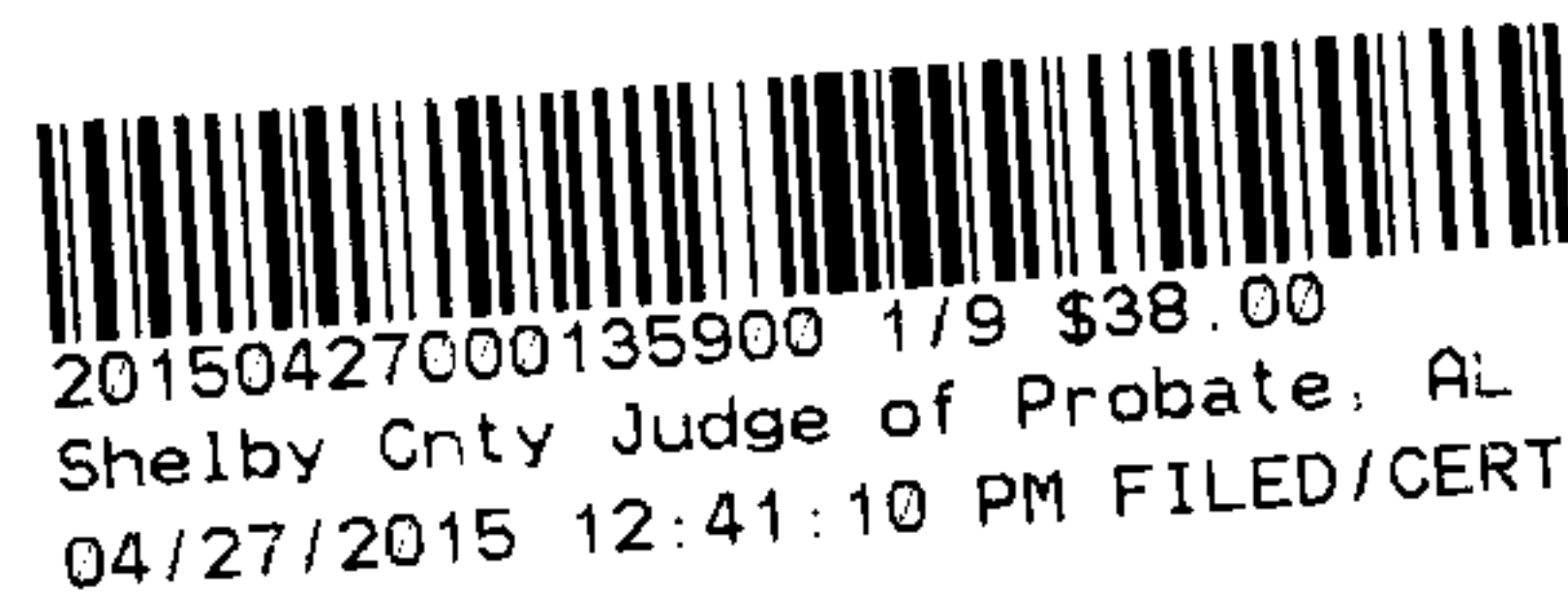
NOW, THEREFORE BE IT RESOLVED by the Pelham City Council to authorize the Mayor, on behalf of the City of Pelham and upon final approval of the City Attorney, to enter into an agreement with Two Mountains, LLC for the purpose of installing an elevated storage tank and water Booster station in the Magnolia Mill development.

THEREUPON Karyl Rice, a council member, moved and Maurice Mercer, a council member, seconded the motion that Resolution 2015-04-06-08 be given vote, and said resolution passed by majority vote of the Council present, and the President of the Council declared the same passed.

ADOPTED this 6th day of April 2015.



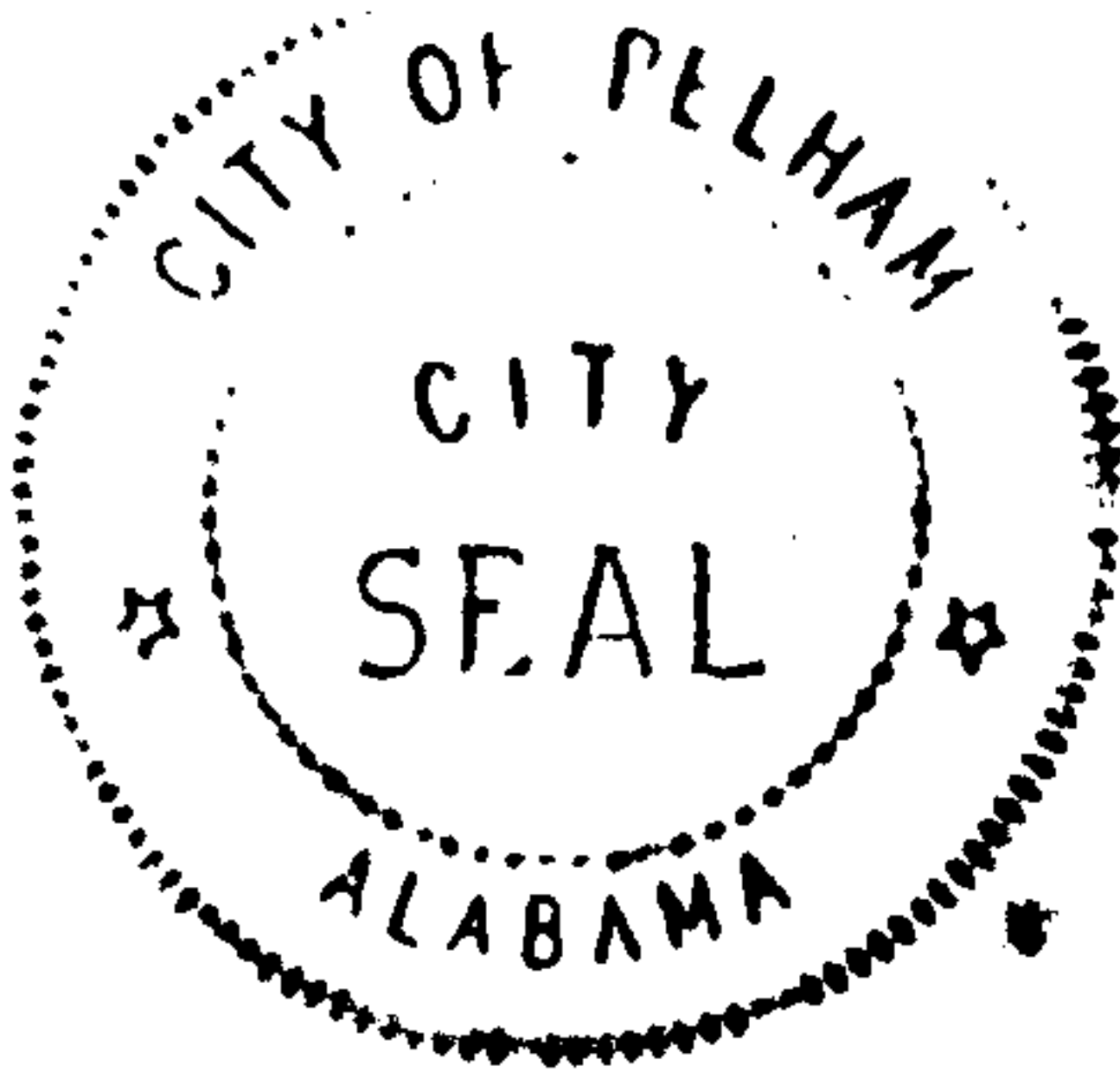
R. A. Hayes
Rick Hayes
President of the Council



Marsha Yates
Marsha Yates, CMC, City Clerk

I, the undersigned qualified City Clerk of the City of Pelham, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council of the City named herein, at a regular meeting of such Council held on the 6th day of April 2015 and that such resolution is on file in the office of the City Clerk and that no action has been taken to rescind or modify said Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City
on this 6th day of April 2015.



[Seal]

Marsha Yates

Marsha Yates, CMC, City Clerk



**STATE OF ALABAMA
SHELBY COUNTY**

COVENANTS AND AGREEMENT

WITNESS THIS AGREEMENT entered into this 13 day of APRIL, 2015, by and between the **City of Pelham**, a municipal corporation (hereinafter "City"), and **Two Mountains, LLC** (hereinafter "Developer"):

WHEREAS, Developer owns and holds fee simple title to several parcels of real property in Shelby County, Alabama which make up the Magnolia Mill development and are cumulatively referred to herein as the "Property," which said property is more particularly described as Exhibit "A" attached hereto, and

WHEREAS, Developer has requested City to make available to Property potable water for domestic consumption as provided and only to the extent provided herein:

NOW, THEREFORE, in consideration of the above premises, and in consideration of the mutual covenants and agreements contained herein, the parties hereto do hereby agree, covenant, and contract as follows:

1. City will design, locate, and install at City's expense a water booster station and tank at sites to be selected by the City on property owned by the Developer. Said booster station and tank sites shall be of sufficient size, elevation, and topographic characteristics to be suitable, in City's determination, for the installation by City of an approximately one hundred thousand (100,000) gallon capacity elevated storage tank (tank may be larger at City's option) and water booster station. The water tank will not include a fluorourethane coating that is regularly used for high gloss finishes and longer life of dark color paint applications. Said tank and booster station sites shall, as aforesaid, meet City's specifications and shall be selected jointly by City and Developer and donated/conveyed to City by warranty deed or other instrument acceptable to the City and be free and clear of all liens and/or encumbrances.
2. City shall have sole authority and control over the type and design of the aforesaid elevated storage tank and booster station to be installed pursuant hereto, and all construction, appurtenances, and facilities related thereto. Developer may request that the City include aesthetic elements that complement the proposed development (tank color, exterior finishes, etc.). The City will agree to any such request provided it is deemed feasible by the City. However, Developer will be responsible for the additional expense related to any aesthetic elements added and will pay for these elements and all related additional costs before the costs are incurred by City.
3. Developer agrees that upon request and prior to commencement of the work, it will immediately donate and convey to the City in fee simple all necessary easements over his property or properties which are necessary for the installation, access, and maintenance of the booster station, tank and any appurtenances thereto. In addition thereto, Developer shall donate, convey, and deed to City a permanent and perpetual, easement for ingress and egress and installation of utilities over and along any property lying between the closest public access road selected by City and the aforesaid tank and booster station sites, which said easement shall be perpetual and shall run with the land and be adequate width as determined by City for its purposes.


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4. Developer shall be responsible for designing and constructing the following items related to the tank and booster station:

- a. Water lines to and from the tank and the booster station.
- b. Three phase power to the booster station site (460 V).
- c. Single phase power to the tank site (120 V).
- d. Rough grading of the tank and booster station site to the City's requirements.
- e. Landscaping of tank and booster station site as required to meet the City's and/or the Developer's requirements.
- f. Paved access roads to the tank and booster station sites.

5. City agrees that it will design, install, and construct the aforesaid tank and elevated water storage tank of at least 100 thousand gallons gross capacity within a reasonable time after procuring all necessary easements and title to the aforesaid tank and booster station sites. It is currently estimated by City that from the time easements and titles, as aforesaid, are procured by City, it will require approximately one year for the design and construction of the aforesaid elevated storage tank and booster station.

6. The Property shall, within a reasonable time, be developed and marketed by Developer or others claiming title from Developer into at least one hundred and twenty-five (125) residential subdivision lots.

7. Upon the execution of this Agreement, Developer shall deposit with the City, the sum of four hundred thousand dollars (\$400,000), (hereinafter the "Initial Reimbursement")

8. Upon the sale of each individual lot, the owner thereof shall at closing immediately pay to City a Water Infrastructure Fee of seven thousand and five hundred dollars (\$7,500); there is hereby created in favor of City a lien against each lot and parcel of said Property developed and sold, which said lien shall secure the payment of all reimbursements to the City herein established, and if same is not timely paid to City as herein provided, and all reasonable cost incurred by City in the collection thereof, including legal fees and/or court costs, if any, which City may incur as a result of the default or failure of the owner to immediately pay said Water Infrastructure Fee when due.

9. Each builder or owner of each lot or parcel will be required to and shall purchase from City a City water meter at such time as the first construction is commenced on said lot or parcel.

10. Any person, firm, or corporation purchasing any part or parcel of the Property described on Exhibit "A" attached hereto, including but not being limited to any person, firm, or corporation who purchases all or any part, parcel, or lot of said Property from the existing owners shall be responsible for the payment of the \$7,500 Water Infrastructure Fee for each residential/building site and for the purchase of water meters from City. The purchase of each water meter will be required at the time that the applicable owner first commences construction.

11. Water Infrastructure Fees shall be paid at closing to the City for each lot sold pursuant to the provisions of paragraph 8. In no event shall the period for the City to receive Water Infrastructure Fees exceed five years from the date of this agreement. At the end of the five-year period, if nine hundred thirty-seven thousand and five hundred dollars (\$937,500) in Water Infrastructure Fees related to this agreement have not been paid to the City, the remaining unpaid portion of the \$937,500 shall be paid to the City by the Developer.

12. As security for the City's receipt of the total Water Infrastructure Fees, the Developer shall within sixty (60) days of the date of this agreement secure a performance bond in favor of the City for \$937,500.



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The Bond duration shall be for five years and six months.

13. Upon the City's receipt of the total Water Infrastructure Fees, the City shall release all liens and bonds established under this agreement. Any additional lots or property developed after the City's receipt of the total Water Infrastructure Fees shall not be subject to the Water Infrastructure Fee.

14. There shall be a separate Meter Tapping Fee paid for each lot or parcel subdivided from the larger Property described on Exhibit "A" and for each single family residence constructed thereon. In the event any part or parcel of said Property is developed for apartment use or multiple family dwellings or commercial use, then and in that event the Meter Tapping Fee shall be due and payable for each apartment unit and each habitable unit in any duplex or multifamily housing. Meter Tapping Fees for commercial structures, if any, shall be set by City using a formula reasonably related to the amount of water to be used, the size and amount of land being used therefor, and any other factors which City deems pertinent. Meter Tapping Fees are currently one thousand five hundred dollars (\$1,500) for a residential meter and may be amended from time to time by the City. Meter Tapping Fees shall be based on the City's standard fee schedule in place at the time water service is requested by the builder or owner.

15. Developer does hereby certify and warrant that he is the owner in fee simple of all of the property described on Exhibit "A" and do further certify and warrant that there are no other outstanding mortgages, liens, or encumbrances of any kind on or against said Property which are not disclosed in this document.

16. All covenants and agreements made herein by Developer and, specifically, the obligations to pay the Water Infrastructure Fees and other charges and assessments provided for herein, shall be covenants which shall run with the land and burden the Property as set forth herein and shall be binding on the heirs, successors, and assigns of the Developer.

17. The monies allocated and designated for this development shall be maintained by the City in a separate general ledger account.

18. The Developer agrees to indemnify, hold harmless and defend the City for any and all claims, demands, causes of action and/or obligations arising out of the work to be required of the Developer under the terms and conditions contained herein. The Developer also agrees to provide a Certificate of Insurance with comprehensive general liability limits of at least \$1,000,000 in the aggregate naming the City as an additional insured.

19. This Agreement shall be construed and interpreted under the laws of the State of Alabama. In the event of a dispute requiring court action, venue shall be proper only in the Circuit Court of Shelby County.

TWO MOUNTAINS, LLC

By

Title

Paul Ryan

PRESIDENT

Date

4/13/15


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CITY OF PELHAM

Gary W. Waters
By: Gary W. Waters

April 7, 2015
Date

Mayor

STATE OF ALABAMA
SHELBY COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that DAVID BROGDON, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal the 13th day of APRIL, 2015.

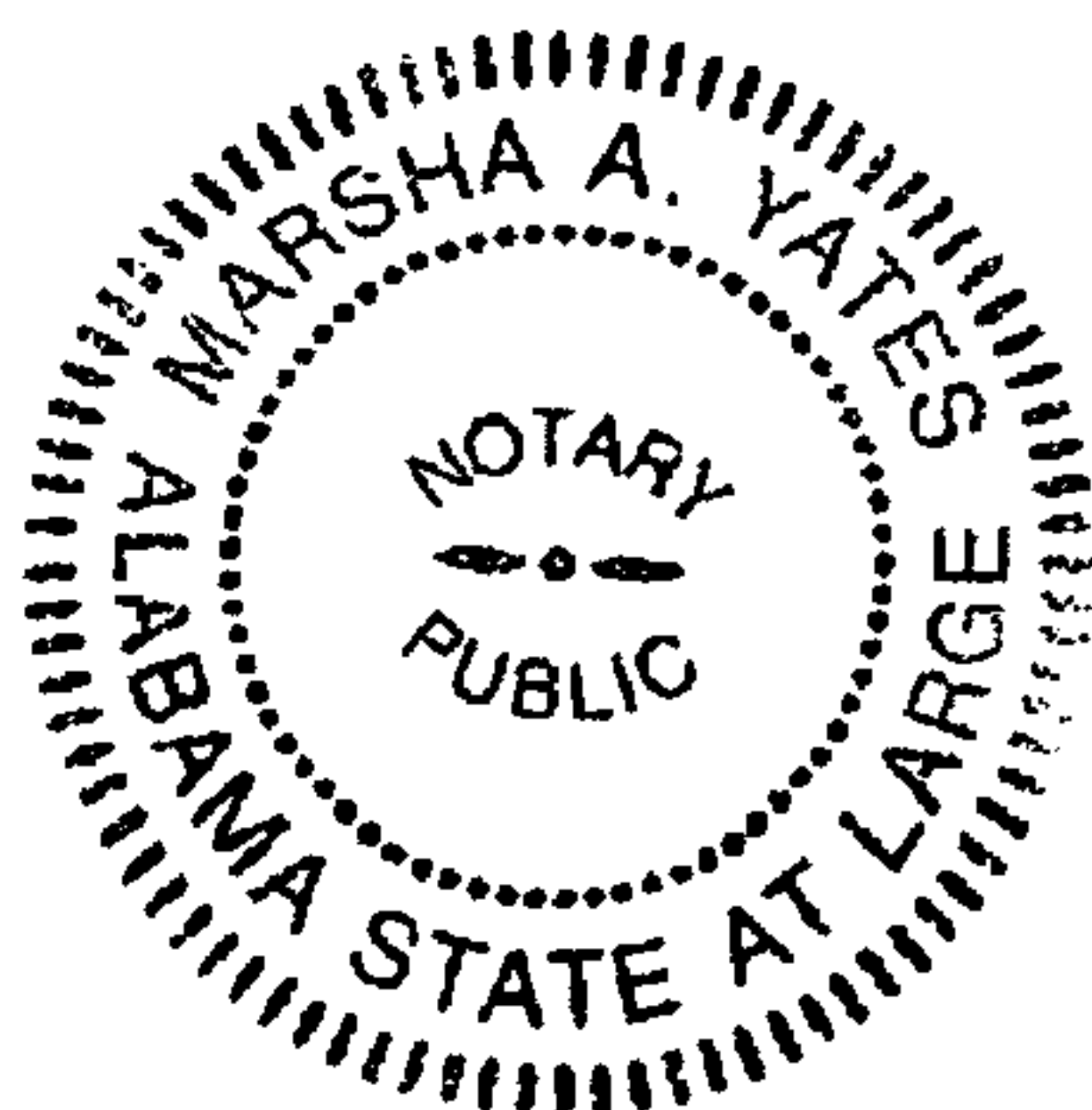
Loren M. Foxward
Notary Public

My commission expires: August 24, 2015

STATE OF ALABAMA
SHELBY COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Gary W. Waters, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal the 7th day of April, 2015.



Marsha A. Yates
Notary Public

My commission expires: 8-15-2018


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Exhibit "A"
Legal Description for Two Mountains, LLC

Parcel I:

A parcel of land situated in Sections 5 and 6 of Township 20 South, Range 1 West, and Sections 31 and 32 of Township 19 South, Range 1 West, in Shelby County, Alabama, being more particularly described as follows:

Begin at a pine knot at the NW corner of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 32, Township 19 South, Range 1 West, Shelby County, Alabama; thence N 89°05'03" E along the north line of said 1/4-1/4 section a distance of 1394.94 feet to a $\frac{1}{2}$ " rebar in a rock pile at the NE corner of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 32, Township 19 South, Range 1 West; thence S 0°49'44" E along the east line of said 1/4-1/4 section a distance of 173.20 feet to a $\frac{1}{2}$ " rebar at the NE corner of a parcel of land as described in Instrument number 20000814000277571 in the Office of the Judge of Probate in Shelby County, Alabama; thence S 49°29'40" W along the western line of said parcel a distance of 1070.02 feet to a rebar capped EDG; thence N 40°26'25" W along the western line of said parcel a distance of 50.00 feet to a rebar capped EDG; thence S 49°33'35" W along the western line of said parcel a distance of 2118.39 feet to a rebar capped EDG; thence S 40°26'25" E along the western line of said parcel a distance of 20.00 feet to a rebar capped EDG; thence S 49°33'35" W along the western line of said parcel a distance of 220.52 feet to a rebar capped EDG; thence N 40°26'25" W along the western line of said parcel a distance of 100.00 feet to a rebar capped EDG; thence S 49°33'35" W along the western line of said parcel a distance of 1307.61 feet to a rebar capped EDG; thence S 43°26'22" W along the western line of said parcel a distance of 119.85 feet to a rebar capped EDG; thence S 62°51'29" W along the western line of said parcel a distance of 101.59 feet to a rebar capped EDG; thence S 50°00'55" W along the western line of said parcel a distance of 59.08 feet to a rebar capped EDG; thence S 13°56'39" W along the western line of said parcel a distance of 75.95 feet to a rebar capped EDG; thence S 12°20'15" E along the western line of said parcel a distance of 75.78 feet to a rebar capped EDG; thence S 49°33'35" W along the western line of said parcel a distance of 100.82 feet to a rebar capped EDG; thence N 74°51'58" W along the western line of said parcel a distance of 206.10 feet to a rebar capped EDG; thence S 58°30'21" W along the western line of said parcel a distance of 509.54 feet to a rebar capped EDG; thence S 49°46'37" W along the western line of said parcel a distance of 576.79 feet to a rebar capped EDG on the south line of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 6, Township 20 South, Range 1 West; thence N 88°33'12" W along the south line of said 1/4-1/4 section and leaving said parcel a distance of 269.84 feet to a 1" open pipe in a rock pile at the SE corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 6, Township 20 South, Range 1 West; thence S 88°13'14" W along the south line of said 1/4-1/4 section a distance of 1328.91 feet to a hickory knot at the SE corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 6, Township 20 South, Range 1 West; thence S 88°45'00" W along the south line of said 1/4-1/4 section a distance of 1320.46 feet to a pine knot at the SW corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 6, Township 20 South, Range 1 West and the SE corner of a parcel of land as described in Deed Book 358 Page 195 in the Office of the Judge of Probate in Shelby County, Alabama; thence N 0°20'16" W along the east line of said parcel a distance of 493.05 feet to a rebar capped EDG; thence N 52°39'16" E and leaving said parcel a distance of 5968.94 feet to a rebar capped EDG on the north line of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 31, Township 19 South, Range 1 West; thence N 88°52'37" E along the north line of said 1/4-1/4 section a distance of 519.07 feet to a blazed and painted tree with 2 witness trees at the NW corner of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 32, Township 19 South, Range 1 West; thence N 89°05'15" E along the north line of said 1/4-1/4 section a distance of 1303.71 feet to the POINT OF BEGINNING. Said parcel of land contains 326.09 acres, more or less.

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Parcel II:

A parcel of land situated in Sections 1 and 12, Township 20 South, Range 2 West, and Section 6, Township 20 South, Range 1 West in Shelby County, Alabama, being more particularly described as follows:

BEGIN at a Hickory Knot at the NE corner of Section 6, Township 20 South, Range 1 West in Shelby County, Alabama; thence S 0°16'50"W along the east line of said 1/4-1/4 section a distance of 1344.49 feet to a rebar capped EDG at the SE corner of said 1/4-1/4; thence N 89°33'25" W leaving the east line of said 1/4-1/4 section and along the south line of said 1/4-1/4 section a distance of 55.08 feet to a rebar capped EDG; thence S 57°21'47" W leaving the south line of said 1/4-1/4 section a distance of 1506.21 feet to a rebar capped EDG; thence S 51°19'29" W a distance of 516.40 feet to a rebar capped EDG; thence S 0°16'50" W parallel to the east line of Section 1, Township 20 South, Range 2 West a distance of 96.00 feet to a rebar capped EDG on the northern right-of-way of Shelby County Highway 36; thence S 84°42'35" W along said right-of-way a distance of 355.26 feet to a concrete monument; thence N 2°06'32" W along said right-of-way a distance of 10.64 feet to a concrete monument; thence S 84°47'28" W along said right-of-way a distance of 800.45 feet to a concrete monument; thence N 6°56'45" W along said right-of-way a distance of 9.55 feet to a concrete monument; thence S 84°48'27" W along said right-of-way a distance of 600.00 feet to a rebar capped EDG; thence S 5°11'33" E along said right-of-way a distance of 10.00 feet to a rebar capped EDG; thence S 84°48'27" W along said right-of-way a distance of 484.20 feet to a cross on a rock; thence S 5°11'33" E along said right-of-way a distance of 10.00 feet to a rebar capped EDG on a curve to the right having a radius of 1105.96 feet and a central angle of 43°15'34", said curve subtended by a chord bearing N 73°33'46" W and a chord distance of 815.33 feet; thence along the arc of said curve and along said right-of-way a distance of 835.02 feet to a rebar capped EDG; thence N 38°04'01" E along said right-of-way a distance of 10.00 feet to a concrete monument on a curve to the right having a radius of 1095.96 feet and a central angle of 2°32'42", said curve subtended by a chord bearing N 50°26'26" W and a chord distance of 48.68 feet; thence along the arc of said curve and along said right-of-way a distance of 48.68 feet to a Concrete Monument; thence N 49°10'05" W along said right-of-way a distance of 249.10 feet to a rebar capped EDG; thence S 40°49'55" W along said right-of-way a distance of 10.00 feet to a rebar capped EDG; thence N 49°10'05" W along said right-of-way a distance of 16.31 feet to a rebar capped EDG on the southeastern line of Lot 21-A of Resurvey Lot 21 of Courtyard Manor as recorded in Map Book 42, Page 72 in the Office of the Judge of Probate in Shelby County, Alabama; thence N 39°23'59" E leaving said right-of-way and along the southeastern line of Lot 21A and along the southeastern line of Lots 20 through 16 of Courtyard Manor Map Book 35 Page 144 A & B and Lots 17A and 18A of Resurvey of Lots 17, 18 and 19 of Courtyard Manor Map Book 41 Page 26 a distance of 648.68 feet; thence N 48°27'38" E along the southeastern line of Lots 16 through 10 and 73 of Court Yard Manor

Map Book 35 Page 144 A & B a distance of 923.14 feet to a rebar capped EDG; thence N 52°39'36" E along the southeastern line of Lots 73, 60, 59, 55, and 54 of Courtyard Manor Map Book 35 Page 144 A & B a distance of 1302.79 feet to a rebar capped Weygand at the SW corner of Lot 53 of Courtyard Manor Map Book 35 Page 144 A & B; thence N 52°33'26" E along the southeastern line of said Lot 53 a distance of 275.52 feet to a rebar capped Weygand at the SE corner of Lot 53 and a point on the southern right-of-way of Normandy Lane; thence N 52°41'49" E along said right-of-way a distance of 59.00 feet to a rebar capped EDG at the SW corner of Lot 52; thence N 56°41'11" E leaving said right-of-way, and southeastern line of Courtyard Manor Map Book 35 Page 144 A & B and along the southeastern line of a strip of land as described in Instrument number 20060705000320910 a distance of 452.76 feet; thence S 87°18'26" E along the north line of the NE 1/4 of the SE 1/4 of Section 1 Township 20 South, Range 2 West, a distance of 451.64 feet to a rebar capped EDG on the west line of a parcel of property as described in Deed Book 358, Page 195; thence S 1°33'12" W along the west line of said parcel and leaving said 1/4-1/4 line a distance of 24.38 feet to a rebar capped EDG at the SW corner of said parcel; thence N 89°27'19" E along the south line of said parcel a distance of 431.64 feet to a Pine Knot at the NE corner of said 1/4-1/4 section and the SE corner of said parcel; thence N 88°45'00" E along the north line of the NW 1/4 of the SW 1/4 of Section 6, Township 20 South, Range 1 West and leaving said parcel a distance of 1320.46 feet to the POINT OF BEGINNING. Said parcel of land contains 205.13 acres, more or less.

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Magnolia Mill
Preliminary Estimates
4/2/2015

Item	Description	Budget Cost			
1	100,000 gallon tank	\$460,000			
2	Tank mixing system	\$35,000			
3	Tank scada	\$10,000			
4	Tank valve pit and piping	\$150,000			
5	Booster station equipment and building	\$230,000	Best Case	Best Guess	Worst Case
6	Booster station installation	\$250,000			
	Subtotal	\$1,135,000	\$1,000,000	\$1,100,000	\$1,200,000
7	Geotech	\$10,000			
8	Engineering (8%)	\$90,800			
	Total Excluding Contingencies	\$1,235,800	\$80,000	\$100,000	\$120,000
9	Contingencies (12%)	\$136,200	\$0	\$50,000	\$136,200
	Total Including Contingencies	\$1,372,000	\$1,080,000	\$1,250,000	\$1,456,200
Assumptions:					
1.	Site work is not included for tank or BPS	\$0	\$680,000	\$850,000	\$1,056,200
2.	Tank painting is urethane, standard color - add \$20,000 if fluorourethane is desired for high gloss on dark color	\$0			
3.	3-phase power to BPS is required and not included	\$0			
4.	Landscaping at BPS and Tank is not included	\$0			
	Total with No Additions	\$1,372,000			
	Assumes Contingency Needed				
			Option A	Option B	
	Initial payment for tank and booster pump related costs	\$411,600	\$400,000	\$425,000	
	Remaining costs to be reimbursed	\$960,400	\$0	\$0	
Assume	Number of lots in Magnolia Mill Subdivision (Use 125 - 130)	\$7,683.20	\$937,500	\$875,000	
125	Connectivity charge per homesite to be used	\$8,000.00	\$7,500	\$7,000	
	All homesite connectivity charges to be paid with 5 years		\$1,337,500	\$1,300,000	
	- Developer bond would be required to cover remaining charges				


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