

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
OCTOBER 10, 2022**

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[As a convenience, members of the public were invited to listen, observe and participate in the public meeting by Internet video conference.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 6:00 p.m. on the 10<sup>th</sup> day of October, 2022 (others were allowed to listen to the meeting by way of Internet video conference). The Council President called the pre-meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Alice B. Womack  
Gerald A. Garner  
Lloyd C. Shelton  
Stewart Welch III, Mayor

Absent: None

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

**1. AGENDA**

1. Discussion of Conditional Use for Rougaroux

Virginia Smith-Council President

- The conditional use was based on the Fire Marshall's study

Lee Rhudy-Fire Marshall

- Where the vehicles are parking illegally is considered fire access road and not private parking
- Concerns were the illegally parked cars and the size of the patio (for Rougaroux)
- Once the cars that are illegally parked are gone, it will make it easier for fire and emergency vehicle to enter the alley
- On Saturday counted 17 vehicles in the alley (plus a delivery truck)
- Biggest safety concern are cars parked illegally in the alley

Gerald Garner-Council Member

- Inquired from a safety standpoint if no cars should be allowed in alley

Lee Rhudy

- Biggest challenge is fire and emergency vehicles entering from Culver Road and making radius turn behind Old Sneaky Pete's
- The original patio size was causing a problem; however, Mr. Freeman brought a new design that reduces the patio size

Virginia Smith

- Inquired if the council has seen the updated design for the patio

Jay Freeman-owner of 2716 Culver Road Building

- The council has not seen the new design, was awaiting Fire Marshall and Building Official's approval when they submit their building set for permit
- Not ready to submit new patio design, need engineering tweaks
- Brought in the patio a couple of feet (instead of building to property line) which has a greater turning radius for cars to pass
- The issue is behind Another Broken Egg parking in the fire access road
- If illegal parking is not allowed, the access width would accommodate emergency vehicles and the patio would not cause significant problems

Gerald Garner

- The alley needs to be cleared of illegally parked cars

Billy Pritchard-Council President Pro Tempore

- Inquired with legal parking (on private property) and the patio being constructed if that would cause a problem
- From the original memo from the Fire Marshall he thought the patio would be a problem due to it impeding the fire department from responding

Chris Mullins-Fire Chief

- Mr. Freeman has a revised plan for the patio which would give the clearance needed IF the illegal parking goes away
- Just saw the revised patio plan today, will need to measure before able to give a clear answer on if it will be a problem or not

Lloyd Shelton-Council Member

- Need to clean up the alley, individuals who are parked illegally (not in a designated spot) should not be parking in the alley
- Another Broken Egg and other businesses need to be notified of the illegal parking in the alley

Virginia Smith

- Inquired about the dumpster that is sticking out beyond the private property around Another Broken Egg
- Asked if the dumpster location could be addressed with the owner
- The dumpster and the pad it sits on cannot be pushed back further due to it being built against the building.

Lee Rhudy

- The dumpster belongs to Another Broken Egg
- Half of the dumpster is not on their property
- With no illegal cars parking, the dumpster is not an issue

Billy Pritchard

- Stated he was recusing himself (with respect to the dumpster) due to a client of his owning the building where Another Broken Egg is located
- Stated the revised patio plan needs to be re-measured to have clarity on the patio

## 2. Observations of the Starbucks drive through in Lane Parke

Richard Caudle-Skipper Consultants

- Was able to observe today; however, it was Columbus Day (would expect to have a lower number of cars than typical day due to holiday)
- Presented handout to Council Members (Appendix 1)
- Based on observation, during mid-day peak, there is no issue
- The PM peak hours had even fewer cars
- The AM (after 8:00 and 8:40) had about 5 or 6 cars in queue
- Would suggest observing it again on another day
- In 2019, did project the queue would exceed the limit for 3 minutes

Lloyd Shelton-Council Member

- Last Thursday (October 7<sup>th</sup>), the queue exceeded the 3 minutes

Billy Pritchard-Council President Pro Tempore

- Phone orders can be placed that could expedite service

Richard Caudle

- Recommend he observe it again on one or two more occasions

Stewart Welch-Mayor

- Inquired what can be done if too many cars are in the queue

Virginia Smith-Council President

- If there is a problem, someone may be present to work the traffic

### 3. Drainage projects/studies update

Mark Simpson-Schoel Engineering

- Update on drainage projects:
  - Euclid-about 90 % complete for design
  - Richmar “the cut”-survey is complete and in middle of hydraulic study. Should have ideas to present on solution within a few weeks
  - Northcote-project is currently under construction and is about 60-70 % complete
  - Junior High-drainage improvements are out for bid (October 27<sup>th</sup>)
  - Pinecrest-construction documents are almost complete (may be a few more weeks before it is ready)
  - Cherry Street-very close to completing construction documents
  - Canterbury/Surrey Road-new inlets, pipework, and cleaning out existing inlets
  - Fairmont/Lorena Lane-the preliminary design is complete but needs to hold until the meeting with property owners have been conducted
  - West Montcrest Drive-looking at survey data and coming up with potential solutions to the problem

Lloyd Shelton-Council Member

- With all of these projects, need to follow water all the way to where it is supposed to go
- If doing something upstream, need to follow the water downstream

Sam Gaston-City Manager

- There is a contract with Schoel for design for Canterbury and Surrey Road

Virginia Smith

- Item added to the formal agenda (Resolution No. 2022-161)

## 4. Board of Zoning Adjustment (BZA) appointment

Dana Hazen-Director of Building, Planning and Sustainability

- There were 2 people who submitted their resume on the City's website
- The resumes were sent to the BZA board for their review
- The board unanimously recommended Scot Boomhover to serve another term

Virginia Smith-Council President

- Recommended moving this item to the next council session so the council can view the two resumes of the individuals who submitted their names

## 5. Junior High drainage and recreational field improvements contract

Billy Pritchard-Council President Pro Tempore

- Junior High construction project continues
- Brasfield and Gorrie is under contract with them until March 1<sup>st</sup> 2023
- The drainage project is going to be bid at the end of this month
- If bid comes in acceptable, this is the City's project and could start after 1<sup>st</sup> of the year
- Work could start by the "Hick's ditch" towards the end of the property line (south) and work up to the Junior High building and come across the field
- By late spring, the construction will hopefully be up to the alley
- At this point, can connect to all lines in alley and dig up alley to put in new lines
- The bid for the field project could be bid at the first of the year and work could start soon thereafter
- The goal is to have the construction complete before school starts in August 2023
- One project is the ongoing school project that Brasfield and Gorrie is under contract for
- The school stated we could use Brasfield and Gorrie until March 1<sup>st</sup> for construction services and management service of sewer/drainage project the City is doing
- After March 1<sup>st</sup> there will be another construction management contract with Brasfield and Gorrie that will go through September 2023 for the City's ongoing drainage project and the field project which is a shared project with the Board of Education
- Will also need a construction management contract (in the summer) for another elementary school project
- The fee for services for Brasfield and Gorrie is about \$700,000
- The fee for services will need to be discussed when bids are received to figure out how to allocate the service fee

## 6. Agreement with Spire for relocation of their line in conjunction with Field #1 fill project

Sam Gaston-City Manager

- Have been working with utilities for field fill-in project that is already underway below field #1
- Spire stated we could fill-in but their line would need to be relocated
- The money is in the FY2023 budget to relocate Spire's line

Virginia Smith-Council President

- The fill-in project has a lot of moving parts
- There is a \$100 contract with Morris-Shea who will move dirt and rock from Grants Mill and fill-in the ditch by field #1
- They will also cut down trees in ALDOT's right of way and will put the trees in the with the dirt and rock
- Inquired if a parking lot be able to be built on top of trees that are decomposing

Sam Gaston

- The council approved on May 24<sup>th</sup> 2022 a contract with Morris-Shea for this fill-in project
- The Shea's made one minor change to the contract (which was approved by City Attorney-Whit Colvin)
- There is a contract with Building and Earth to do inspections 3 days a week for the next 4 weeks as the ditch is filled in
- Spire will not move their lines until the fill-in project is complete

Virginia Smith

- Inquired if after money is spent, if there was a guarantee that a parking lot could be built

Sam Gaston

- If the decision is made to build a parking lot, then the space will need to be graded and compacted
- It was estimated to cost around \$150,000 to build a parking lot (This would include some retaining walls, compaction, engineering, and paving)

Stewart Welch-Mayor

- For phase 1-the initial plan was to use space as overage and gravel (not pave) the lot

Billy Pritchard-Council President Pro Tempore

- Wants to ensure payment is not sent to Spire until the fill project has been completed

Virginia Smith

- The Spire contract will be on the next session after clarification from Spire on when payment is due

Sam Gaston

- Morris-Shea has been moving dirt/rock for 2 weeks and will continue to do so for 3 more weeks
- Would like for Building and Earth to come and inspect the fill dirt
- The contract for Building and Earth is \$375 (per inspection) 3 times a week for 4 weeks (12 visits)

Virginia Smith

- Item added to the formal agenda (Resolution No. 2022-162)

7. Organizational meeting of the new City Council on November 7<sup>th</sup> (Time?)

- Meeting is scheduled for November 7<sup>th</sup> at 8:00 a.m.
- Judge Hairston will be contacted to administer the oaths

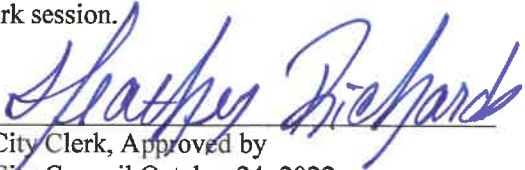
8. Review of the other matters to be considered at the formal (7:00p.m.) meeting

**2. ADJOURNMENT**

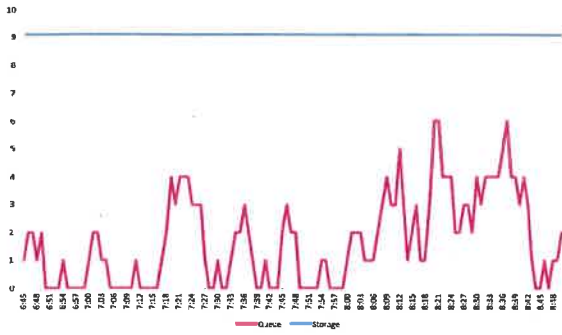
There being no further matters for discussion Council President adjourned the pre-meeting at approximately 7:04 pm.

**3. CERTIFICATION**

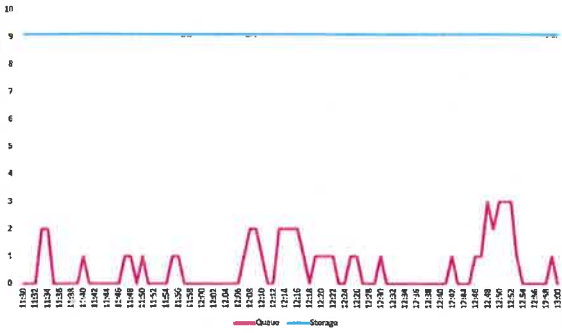
I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the regular session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A-106) on October 10, 2022, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

  
City Clerk, Approved by  
City Council October 24, 2022

Lane Parke Starbucks Queue  
Monday, October 10, 2022  
AM Peak Period



Lane Parke Starbucks Queue  
Monday, October 10, 2022  
Midday Peak Period



**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
OCTOBER 10, 2022**

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[As a convenience, members of the public were invited to listen, observe and participate in the public meeting by Internet video conference.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:06 p.m. on the 10<sup>th</sup> day of October, 2022 (others were allowed to listen to the meeting by way of Internet video conference). The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
William S. Pritchard III Chairman, Council President Pro Tempore  
Alice B. Womack  
Gerald A. Garner  
Lloyd C. Shelton  
Stewart Welch III, Mayor

Absent: None

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

The Council President stated that a quorum was present and that the meeting was open for the transaction of business

**1. INTRODUCED SPECIAL GUEST-BOY SCOUTS**

Jackson Eatman-Troup 320 out of Mountain Brook Presbyterian Church

- Present for Communications Merit badge

**2. CONSENT AGENDA**

Council President Smith announced that the following matters will be considered at one time on the consent agenda provided no one in attendance objects:

Approval of the minutes of the September 26, 2022, regular meeting of the City Council

<b>2022-151</b>	Authorize the City to enter into an agreement with All In Mountain Brook	Exhibit 1, Appendix 1
<b>2022-152</b>	Authorize the City to enter into an agreement with the Birmingham Zoo	Exhibit 2, Appendix 2
<b>2022-153</b>	Authorize the City to enter into an agreement with the Birmingham Botanical Society	Exhibit 3, Appendix 3
<b>2022-154</b>	Authorize the City to enter into an agreement with Prescott House	Exhibit 4, Appendix 4



<b>2022-155</b>	Establish the employees' and retirees' monthly premiums for medical insurance effective for employee payroll checks dated December 9, 2022, and retiree premiums due on January 1, 2023	Exhibit 5, Appendix 5
<b>2022-156</b>	Authorize a solid waste collection and disposal contract with Cahaba Solid Waste Disposal Authority	Exhibit 6, Appendix 6
<b>2022-157</b>	Amend the City of Mountain Brook Employee Handbook with respect to Authorized use of City Vehicles (Take-Home Vehicles)	Exhibit 7
<b>2022-158</b>	Execute a Statement of Work Order between the City and Ricoh with respect to the DocuWare On-Premise Upgrade/Migration	Exhibit 8, Appendix 7
<b>2022-159</b>	Accept the proposal submitted by Sain Associates with respect to surveying and engineering services for the sidewalk project on Brookwood Road	Exhibit 9, Appendix 8
<b>2022-160</b>	Create one (1) Police Officer position (Class no. 06031, G17/10) for the Police Department to be filled at the discretion of the City Manager	Exhibit 10, Appendix 9
<b>2022-161</b>	Authorize the agreement for consulting services between the City and Schoel Engineering Company Inc. for consulting services associated with the drainage improvement on Surrey Road and Canterbury Road	Exhibit 11, Appendix 10
<b>2022-162</b>	Accept the proposal submitted by Building and Earth with respect to performing construction materials testing and geotechnical consultation for the Mountain Brook High School Overflow parking	Exhibit 12, Appendix 11

Thereupon, the foregoing minutes and resolutions (Nos. 2022-151 through 2022-162), were introduced by Council President Smith and a motion for their immediate adoption made by Council Member Shelton. The minutes and resolutions were then considered by the City Council. Council Member Womack seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President  
 William S. Pritchard III, Council President Pro Tempore  
 Alice B. Womack  
 Gerald A. Garner  
 Lloyd C. Shelton

Nays: None

Abstained: None

Council President Smith thereupon declared that said minutes and resolutions (Nos. 2022-151 through 2022-162) were adopted by a vote of 5—0 and as evidence thereof she signed the same.

### 3. ANNOUNCEMENT

Council President Smith announced the next regular meeting of the City Council is October 24, 2022, 7:00p.m.

### 4. EXECUTIVE SESSION AND ADJOURNMENT

There being no further business to come before the City Council, President Pro Tempore Pritchard made a motion that the City Council convene in executive session to discuss potential litigation and that the City Council will not reconvene upon conclusion of the executive session. The City Attorney certified that the subject matters were allowed to be discussed in executive pursuant to Alabama Law. The motion was seconded by Council President Smith. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Gerald A. Garner  
Alice B. Womack  
Lloyd C. Shelton

Nays: None

President Smith adjourned the meeting at approximately 7:09 p.m.

### 5. CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A-108) on October 10, 2022, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

  
City Clerk Approved by  
City Council October 24, 2022

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### EXHIBIT 1 RESOLUTION NO. 2022-151

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into an agreement with All In Mountain Brook, in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

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### APPENDIX 1

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### EXHIBIT 2

**RESOLUTION NO. 2022-152**

**WHEREAS**, the Birmingham Zoo (“Zoo”) is a regional educational and entertainment attraction located adjacent to the municipal limits of the City of Mountain Brook (“City”); and

**WHEREAS**, the City desires to increase the learning opportunities for students who attend Mountain Brook City Schools; and

**WHEREAS**, the Zoo has developed certain programs, exhibits, and learning opportunities which, in the City’s opinion, will be helpful and instructive to said students; and

**WHEREAS**, such programs exhibits, and learning experiences are not available at Mountain Brook City Schools; and

**WHEREAS**, the City, as a community partner, supports the mission and purpose of the Zoo, and has provided financial commitments to the Zoo as a result of the Zoo’s commitments and service to the City; and

**WHEREAS**, the City Council of the City of Mountain Brook wishes to extend those financial commitments to the Zoo for an additional year, all as set forth in the attached Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mountain Brook that the City’s financial commitments to the Zoo shall be and hereby is extended for an additional year as set forth in the attached Agreement.

**BE IT FURTHER RESOLVED** that the commitments between the parties expressed in the Agreement is deemed to be fair and adequate and serve a public purpose, and the Mayor is hereby authorized to execute the Agreement on behalf of the City.

**APPENDIX 2**  

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**EXHIBIT 3****RESOLUTION NO. 2022-153**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Birmingham Botanical Society subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**APPENDIX 3**  

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**EXHIBIT 4****RESOLUTION NO. 2022-154**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Prescott House subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**APPENDIX 4**

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**EXHIBIT 5**

**RESOLUTION NO. 2022-155**

**WHEREAS**, the City's monthly Local Government Health Insurance Plan (LGHIP) medical/dental insurance premiums as established by the State Employees' Insurance Board (SEIB) effective January 1, 2023, are as follows:

	BCBS of Alabama
Active employee – 6.4% increase	
Single (dental)	\$587
Family (dental)	\$1,433
Retiree (without Medicare coverage) – 6.4% increase	
Single (dental)	\$1,214
Family (dental)	\$2,239
Family (dental) (spouse w/ Medicare)	\$1,415

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that (notwithstanding the provisions enumerated in Resolution No. 2014-084 adopted on July 14, 2014) the monthly medical/dental insurance premiums will be shared by the City, employees, and retirees as follows effective a) for employees with the payroll period ending December 5, 2022 (payroll checks dated December 9, 2022) and b) January 1, 2023 for retirees:

	Monthly Premiums – BCBS of Alabama		
	Employee / Retiree	City	Total
Employee (single coverage)	\$-0-	\$587	\$587
Employee (family coverage)	\$417	\$1,016	\$1,433
Retiree (single/no Medicare coverage)	\$209	\$1,005	\$1,214
Retiree (family/no Medicare coverage)	\$665	\$1,574	\$2,239
Retiree (family/dependent with Medicare)	\$665	\$750	\$1,415

**APPENDIX 5**

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**EXHIBIT 6**

**RESOLUTION NO. 2022-156**

**BE IT THEREFORE RESOLVED** on this 10th day of October 2022, by the City Council

of the City of Mountain Brook, Alabama, in a regularly scheduled meeting with a quorum present as follows:

**Section 1.** That the Council of the City of Mountain Brook, Alabama finds that it is wise, expedient, and necessary that the Cahaba Solid Waste Disposal Authority ("the Authority") administer the solid waste collection, disposal and treatment on behalf of its residents in accordance with Chapter 89A of Title 11 of the Code of Alabama and subject to the limitations and conditions in substantial form as attached hereto in Exhibit A.

**Section 2.** That pursuant to this Resolution, the Authority, effective October 1, 2022, shall be authorized to perform the solid waste collection, disposal and treatment, including residential garbage, trash, and residential recyclable materials within the corporate limits of the City of Mountain Brook, Alabama for a period not to exceed nine (9) years, beginning October 1, 2022 and ending September 30, 2031.

**Section 3.** That the Mayor is authorized to facilitate transfer of service from the current garbage provider to the Authority and sign such documentation as determined necessary between the Authority and City.

**Section 4.** That the City Council acknowledges that the contract pricing for said services shall conform with the Cahaba Solid Waste Disposal Authority's Controlling Agreement, as amended September 27, 2022 (Exhibit A) to include a fuel surcharge.

**Section 5.** This Resolution shall take effect immediately upon publication hereof as provided by law.

## APPENDIX 5

### EXHIBIT 7

#### RESOLUTION NO. 2022-157

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Section **IV SAFETY AND HEALTH**, subsection **D** of the City of *Mountain Brook Employee Handbook* are hereby amended as follow:

**“D. Authorized Use of City Vehicles, Driver License and Insurance Verification**

City vehicles are to be used by City employees **ONLY** in the performance of their duties with the City and for other official City business with the following exceptions: City vehicles may be used by City employees (1) to travel to places for breakfast, lunch, and dinner on workdays if the employee's assigned shift encompasses those meal period(s); (2) for short, personal errands during their assigned shift if the errand does not require the employee to deviate from the normal route the employee would be required to travel in the performance of his or her official duties; (3) in the event of medical emergencies; and (4) in the event of hardships, but only if such use is approved in advance by the City Manager or the employee's Department Supervisor.

In addition to the use of City vehicles during his or her regular shift, the following employees are authorized to use the City vehicle assigned to them for transportation to and from work:

**City Hall**  
City Manager

**Fire Department**  
Fire Marshall (Captain)

**Parks and Recreation Department**

Turf Grass Supervisor

Training and Safety Officer CP  
EMS Officer (Captain)  
Executive Fire Lieutenant**Police Department**

Chief of Police

Captain

Lieutenant - Detective Division

Lieutenant - Patrol Division

Lieutenant - Administrative Division

Detective Division personnel

School Resource Officers

All other law enforcement personnel  
subject to department-specific policies**Public Works Department**

Public Works Director

Assistant Public Works Dir.

Supervisor - Right-of-Way Div.

Supervisor - Shop Division

Supervisor - Construction Div.

**Building Inspections**

Building Inspectors

Other City employees may be allowed to use City vehicles for transportation to and from work with the express permission of the City Manager and the employee's Department Head.

Employees authorized to use City vehicles must generally live within 50 miles of the City offices in which assigned or limit their daily commute to no more than 50 miles and only as transportation to and from work are allowed to use the vehicles for short personal or family errands along the normal route followed by the employee when the employee is traveling to and from work and for such emergency and hardship use as referred to hereinbefore. City vehicles are not to be used for personal or family business at any other time, such as on weekends and holidays, except such emergency and hardship use. Employees that live more than 50 miles from their work station, must demonstrate to their Department Supervisor that they are able to limit their daily commute to no more than 50 miles through the use of public parking where such daily and overnight parking is permissible.

The abuse of the privilege of using a City vehicle may result in the loss of that privilege and other discipline up to and including discharge.

City employees authorized to use City vehicles as transportation to and from work must execute the Release and Indemnity Agreement attached hereto as Exhibit C. Additionally, the City reserves the right to examine motor vehicle reports of all employees authorized to drive City vehicles. Generally, the City shall obtain each such employees' motor vehicle report once every three years. In conjunction therewith, all new hires will be required to submit the "Driver History Form" (Exhibit D).

In addition, all employees may, at one time or another, be required to drive their personal vehicles on City business. Therefore, all employees are required to show proof of current valid driving licenses and current effective insurance coverage before the first day of employment. The City participates in a system that regularly checks state Department of Motor Vehicles (DMV) records of all employees. The City reserves the right to transfer to an alternative position, suspend or terminate an employee whose license is revoked or who fails to maintain personal automobile insurance coverage. (Resolution 2013-121 adopted August 26, 2013)."

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**EXHIBIT 8**
**RESOLUTION NO. 2022-158**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the Mayor or City Manager to execute a Statement of Work Order, in the form attached hereto as Exhibit 1, between the City and Ricoh with respect to the DocuWare On-Premise Upgrade/Migration (subject to such modifications as may be agreed upon between the City and Ricoh and review by City's legal counsel.

**APPENDIX 7**

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**EXHIBIT 9**

**RESOLUTION NO. 2022-159**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook that the City Council hereby accepts the proposal submitted by Sain Associates, in the form as attached hereto as Exhibit A, in the amount of \$49,200 with respect to surveying and engineering services for the sidewalk project on Brookwood Road.

**APPENDIX 8**

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**EXHIBIT 10**

**RESOLUTION NO. 2022-160**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the creation of one (1) Police Officer position (Class no. 06031, G17/10) for the Police Department to be filled at the discretion of the City Manager in accordance with the "Rules and Regulations" of the Personnel Board of Jefferson County for the purpose of filling a vacancy left by filling the six desk position assignments.

**APPENDIX 9**

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**EXHIBIT 11**

**RESOLUTION NO. 2022-161**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorize the agreement for consulting services between the City and Schoel Engineering Company, Inc., in the form attached hereto as Exhibit A, for consulting services associated with the drainage improvements on Surrey Road and Canterbury Road.

**APPENDIX 10**

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**EXHIBIT 12**

**RESOLUTION 2022-162**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook that the City Council hereby accepts the proposal submitted by Building and Earth, in the form as attached hereto as Exhibit A, with respect to performing construction materials testing and geotechnical consultation for the Mountain Brook High School Overflow parking (Field #1 fill in project).

**APPENDIX 11**

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STATE OF ALABAMA )
COUNTY OF JEFFERSON )

CONTRACT AGREEMENT

THIS AGREEMENT is entered into on this the 10th day of October, 2022, by and between the City of Mountain Brook (hereinafter referred to as "City") and All In Mountain Brook (hereinafter referred to as "Contractor"):

WHEREAS, municipalities in the State of Alabama are authorized to promote the public health, safety, morals, security, prosperity, contentment and the general welfare of the community;

WHEREAS, All In Mountain Brook is an organization which has as one of its goals the promotion of public health, safety, morals, security, prosperity, contentment and the general welfare in the City of Mountain Brook—specifically, the enhancement and protection of the lives of Mountain Brook youth;

WHEREAS, the City Council of the City of Mountain Brook, Alabama desires to enter into a contract with the Contractor for the purpose of providing services and resources to residents of the City of Mountain Brook which are designed to combat issues and problems that place the lives and well-being of Mountain Brook youth at risk;

WITNESSETH,

1. That the City, for and in consideration of the covenants and agreements hereinafter set out to be kept and performed by the Contractor, does hereby agree to pay the Contractor the sum of \$10,000.00 (Ten Thousand and No/100 Dollars) (hereinafter referred to as the "Contract Amount") for performing the services herein provided for the period beginning October 1, 2021, through September 30, 2022.

2. SCOPE OF SERVICES:

In consideration of the covenants and agreements made herein by the City, the Contractor agrees that the Contractor shall be totally responsible for, and shall have exclusive control over, the management and disbursement of the Contract Amount, and that the Contract Amount shall be used only for the purposes herein described:

- a. To underwrite All In Mountain Brook parent and student educational programming, thereby targeting families and youth in grades Kindergarten through twelfth grade, including but not limited to All In Mountain Brook speakers, activities, services, materials, and communications designed to combat issues and problems that place the lives and well-being of Mountain Brook youth at risk.
b. Activities will be planned by appointed Parent Teacher Organization representatives in each school, along with administrators and school counselors.
c. Contractor anticipates the following disbursement of the contract amount:
(1) approximately \$7,000 for parent and community programs
(2) approximately \$3,000 for student programs
d. Contractor agrees to provide any and all personnel, supplies, and/or equipment necessary for the services herein to be provided.

3. The Contractor agrees to provide to the City at all reasonable times and places an accounting of the Contractor's expenditure of the Contract Amount.

4. The Contractor shall not transfer or assign this contract or any of the rights and privileges granted herein without the prior written consent of the City.

5. The Contractor agrees that upon violation of any of the covenants and agreements herein contained, on account of any act or omission of the Contractor, the City may, at its option, terminate and cancel this contract and to exercise any remedy, at its option, available to it whether in law or equity.

6. The Contractor agrees it will comply with Title 6 of the Civil Rights Act of 1964 assuring that no person under its employ will be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination on the grounds of race, sex, color, national origin or handicap.

7. Notwithstanding any of the other provisions contained in this contract, the City shall maintain the right to terminate this contract upon proper notice, which shall be in writing and shall be provided to the Contractor at least 30 days prior to the intended date of cancellation.

8. Except as otherwise expressly provided in this Agreement, any notice, consent or other communication required or permitted under this Agreement must be in writing and will be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service, or, if mailed, three days after the notice is deposited in the United States mail addressed as follows:

To City of Mountain Brook: City Manager, City of Mountain Brook, Post Office Box 130009, Mountain Brook, Alabama 35213
To Contractor: All In Mountain Brook, c/o Dr. Dale Wisely

9. Any time period stated in a notice will be computed from the time the notice is deemed received. Either party may change its mailing address or the individual to receive notice by notifying the other party as provided in this paragraph.

10. No oral agreement or communication with any officer, agent, employee, or consultant of the City either before or after execution of this Agreement will affect or modify any of the terms or obligations contained in this Agreement. Any such oral agreement or communication will be considered as unofficial information and in no way binding upon City or Contractor. Any amendment to this Agreement must be in writing and signed by both parties.

APPENDIX I

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the 10th day of Oct., 2022

CITY OF MOUNTAIN BROOK, Municipal Corporation
BY: [Signature] Mayor, City of Mountain Brook

WITNESSED: BY: [Signature]

ALL IN MOUNTAIN BROOK
BY: \_\_\_\_\_
Its Authorized Agent
Print name: Dale Wisely
Title: Executive Director, All in Mountain Brook

STATE OF ALABAMA )
COUNTY OF JEFFERSON )

I, \_\_\_\_\_, a notary public in and for said County in said State, hereby certify that Dale Wisely whose name as Authorized Agent of All In Mountain Brook, a nonprofit corporation, 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, she, as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand this the \_\_\_ day of \_\_\_\_\_, 2021.

NOTARY PUBLIC
My Commission Expires:

AGREEMENT FOR SERVICES

business for or on behalf of the Zoo be deemed to be agents or employees of the City.

THIS AGREEMENT made this 7th day of October 2022 by and between the CITY OF MOUNTAIN BROOK, ALABAMA ("Mountain Brook" a municipal corporation of the State of Alabama) and the BIRMINGHAM ZOO, INC. ("Zoo" an Alabama non-profit corporation).

WHEREAS, the City desires to increase the learning opportunities for students who attend Mountain Brook City Schools; and

WHEREAS, the Zoo has developed certain programs, exhibits, and learning opportunities which, in the City's opinion, will be helpful and instructive to said students; and

WHEREAS, such programs exhibits, and learning experiences are not available at Mountain Brook City Schools; and

WHEREAS, the Zoo has agreed to work cooperatively with and assist the City with future public works projects; and

WHEREAS, the City has agreed to pay the Zoo the sum of Ten Thousand Dollars (\$10,000.00), in consideration of the Zoo providing the City the services referred to in this Agreement.

NOW, THEREFORE, consideration of the premises and in consideration of the covenants and agreements contained herein, the City and the Zoo hereby agree as follows:

1. The City shall pay to the Zoo Ten Thousand Dollars (\$10,000.00) within sixty (60) days of execution of the agreement and receipt of the Zoo's annual report for the year ended December 31, 2021.

2. In consideration of the payment of funds as provided herein, the Zoo shall provide at least the following services to the City ("Services") to the best of their ability based on the health and wellbeing of all parties due to COVID-19, and the guidelines for public safety issued by Jefferson County:

- a. The Zoo will provide educational resources for all pre-scheduled field trips to the Zoo from Mountain Brook City Schools for one (1) year from the date of execution of this Agreement. In addition, all participants in pre-scheduled field trips from Mountain Brook City Schools to the Zoo will be eligible to participate in the Zoo's group discount admission program.
- b. The Zoo will provide to Mountain Brook City Schools a series of educational programming and classes targeting elementary, middle and high school students free. The Zoo will provide an educational program for each school in the Mountain Brook City Schools system free of charge for one (1) year from the date of the execution of agreement. These programs may include virtual programs, field trip programs or outreach programs targeting elementary, middle and high school students.
- c. The Zoo will use its best efforts to work cooperatively with the City and provide assistance and support to the City with the City's future public works projects that are located near the Zoo.
- 3. The Zoo shall provide personnel, supplies, equipment, and expertise necessary to fulfill its obligations to Mountain Brook City Schools under the terms of this Agreement. The Zoo is an independent contractor and none of its agents or employees shall be deemed to be under the control of the City nor shall any of the agents or employees, or other persons, firms, or corporations conducting


4. The Zoo shall indemnify the City and its agents, employees, and elected officials and hold them harmless from and against all actions, causes of action, claims, demands, damages, losses, and expenses of any kind, including, but not limited to attorney's fees and court costs, which may be asserted against, or suffered by the City or its agents and employees arising out of, or in connection with: (a) the performance or attempted performance by the Zoo or its agents or employees of the Zoo's obligations under this Agreement; and (b) any claim that the payments described herein were improperly paid by the City to the Zoo.

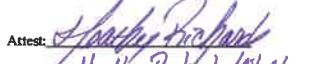
5. The Zoo agrees to employ accounting procedures which are appropriate to the types of operation conducted by the Zoo and which are customary to similar operations. All financial records and other documents pertaining to this Agreement shall be maintained by the Zoo for a period of three (3) years after the expiration or termination of this Agreement. The City shall have full access to, and the right to examine any of such financial records and other documents at all reasonable times during the term of this Agreement and during said three-year period. The Zoo agrees that upon request from the City, the Zoo will submit to and cooperate with periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.

6. If the Zoo fails to comply with the provisions of this Agreement, such failure shall constitute a default under this Agreement and, unless corrected by the Zoo within thirty (30) days following receipt of written notice for the City of such default, shall be deemed a breach of this Agreement and the City shall have a right to terminate this Agreement by giving the Zoo twelve (12) days prior written notice of such termination, and the city shall not be obligated to make any additional payments to the Zoo. Such termination of this Agreement by the City shall not relieve the Zoo of any of its obligation or liabilities to the City under the provisions of paragraph 4 of this Agreement, whether such obligations or liabilities occur or accrue before or after the termination of this Agreement.

In witness whereof, the Birmingham Zoo, Inc. has caused this Agreement to be executed by its duly authorized Chief Executive Officer and the City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor, all as of the 7th day of October 2022.

CITY OF MOUNTAIN BROOK  
  
Stewart Welch III  
Mayor, City of Mountain Brook

BIRMINGHAM ZOO, INC  
  
Chris Pfeiffer  
Chief Executive Officer, Birmingham Zoo, Inc

Attest:   
Name/Title: Heather Richards / City Clerk

Attest: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

APPENDIX 2

Native American Area	September-November March-May
Dr. George Washington Carver	September-November
Garden Gates Workshop (Plant Propagation)	January-February
Tropical Rain Forest	March-May
Alabama Woodlands (Interdependence)	September-November March-May
Secret Life of Trees	September-November March-May
Plants: Inside Out	September-November March-May
Pollinator Observation	March-May

\*Field trip topics are subject to change in order to coincide with the Alabama Course of Study and the needs of teachers in Jefferson County.

This contract for services ("Contract") is entered into by and between City of Mountain Brook, an Alabama Municipal corporation ("City"), and the Birmingham Botanical Society, a nonprofit corporation organized under the laws of the State of Alabama ("Contractor").

Whereas, City desires to increase the learning opportunities for students in its school system including:

Whereas, Contractor has developed certain programs, exhibits, and learning laboratories which, in the City's opinion, will be helpful and instructive to such students; and

Whereas, such programs, exhibits and learning laboratories are not available in the Mountain Brook school system; and

Whereas, City has agreed to pay Contractor the sum of ten thousand dollars (\$10,000.00) in consideration of Contractor providing City services referred to in the Contract.

Now, therefore, in consideration of the premises and in consideration of the covenants and agreements contained herein, City and Contractor hereby agree as follows:

1. City shall pay to Contractor the sum of ten thousand dollars (\$10,000.00), upon execution of this contract for services for one year from date of execution and receipt of the Contractor's annual report for the fiscal year ended September 30, 2022.
2. In consideration of the payment of the Contract Funds as provided herein, Contractor shall provide at least the following services to City ("Services"):
  - a. Contractor will continue to provide City students with a variety of free science curriculum-based field trips. The trained docents provide activities which are based on Alabama Course of Study: Science
  - b. Contractor agrees to inform the teachers about the Contractor's field trips and invite their participation
  - c. Field trips are for students in grades Kindergarten (K) through High School, inclusive
  - d. The following field trips\* are available during the following months:

- e. Field Trips are available Monday through Friday, inclusive, from 9:30-11:30am. No field trips are offered on federal and state holidays
  - f. Schools shall select the students that will attend the Contractors' field trips. The Contractor shall not be responsible for providing transportation
  - g. Schools shall contact the Contractor at least ten (10) business days in advance of a proposed field trip to schedule a date that shall be reasonably convenient for schools and the Contractor
  - h. The Contractor requires the presence of one (1) adult per ten (10) children for the duration of each field trip
  - i. The City and the Contractor shall each monitor the number of students that attend the Contractor's field trips and shall agree to reconcile the number at the end of the Contract period
  - j. The Contractor will engage with sophomore-through-senior City high school students
  - k. Select field trips will be made available virtually in English and Spanish
  - l. City Chamber of Commerce shall seek additional opportunities with the Contractor
3. Contractor shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Contract. Contractor is an independent Contractor and

**APPENDIX 3**

none of its agents or employees shall be deemed to be under the control of City nor shall any of the agents, or employees or other persons, firms, or corporations conducting business for or on behalf of Contractor be deemed to be agents, or employees of City.

4. Contractor shall indemnify City and its agents, employees and elected officials harmless, from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs which may be asserted against, or suffered by, City or its agents and employees arising out of, or in connection with: (a) the performance, or attempted performance, by Contractor or its agents or employees of Contractor's obligations under this Contract; and (b) any claim that the Contract funds were improperly paid by City to Contractor.
5. Contractor agrees to employ accounting procedures which are appropriate to the types of operations conducted by Contractor and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by Contractor for a period of three (3) years after the expiration or termination of the Contract. City shall have full access to, and the right to examine, any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. Contractor agrees that upon request from City, Contractor will submit to, and cooperate with, periodic audits by Alabama Department of Public Examiners or other audit procedures requested by the City.
6. If Contractor fails to comply with the provisions of the Contract, such failure shall constitute a default under this Contract and, unless corrected by Contractor within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this Contract and City shall have a right to terminate this Contract by giving Contractor ten (10) days prior written notice of such termination, and City shall not be obligated to make any additional payments to Contractor. Such termination of this Contract by City shall not relieve Contractor of any of its obligations or liabilities to City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.
7. The Contractor and the representative of the Contractor who executes this Contract, by the execution of the Contract, certify that:
  - a. no part of the Contract funds paid by City pursuant to this Contract shall be paid to, or used in any way for personal benefit of, any elected official, employee or representative of any government or any family member of any such official, employee or representative, including federal, state, county and municipal governments and any agency of any such government;

- b. neither the Contractor nor any of its officers, agents, representatives or employees has in any way colluded, conspired or connived with any elected official, employee, or representative of City, or any other elected official or public employee, in any manner whatsoever to secure or obtain the Contract; and
- c. except as expressly set out in this scope of services of this Contract, no promise or commitment of any nature whatsoever of anything of value whatsoever has been made to any such elected official, employee or representative of City as an inducement or consideration for this Contract.

Any violation of the certification shall constitute a breach and default of this Contract which shall be cause for termination. Upon such termination, the Contractor shall immediately refund to City all amounts paid by City pursuant to this Contract.

In witness whereof, the Birmingham Botanical Society has caused this Contract to be executed by its duly authorized Executive Director on Oct. 6, 2022, and City of Mountain Brook has caused this Contract to be executed by its duly authorized representative, on Oct. 6, 2022, but this Contract shall be effective as of October 1, 2022.

**Birmingham Botanical Society, Inc.**

By: *Deanna McDonald* 10/6/22  
It's Executive Director

**City of Mountain Brook**

By: *[Signature]*  
By: It's Mayor



MINUTE BOOK 93



June 5, 2022

Mayor Stewart Welch, III  
City of Mountain Brook  
56 Church Street  
Mountain Brook, AL 35213

**RE: Prescott House Child Advocacy Center**

Dear Mayor Welch:

I hope this letter finds you and the City of Mountain Brook safe and well! Believe it or not, this year marks our 35th year of service to the City of Mountain Brook and our surrounding community. As you know, it takes a community working together to care for children who have experienced abuse and to prevent future abuse.

As all the municipalities we serve enter their budget planning, we are reminded of what a great partner the City of Mountain Brook has been to Prescott House. As a result, we have been able to serve many children who have been victims of physical abuse, sexual abuse or witnessed violent crimes. Thank you so much for your generosity, loyal support, and partnership!

As you know, we provide forensic interviews, counseling, victim and family advocacy, multidisciplinary team coordination, court preparation and court accompaniment. Your past support has been critical in our mission to help child victims begin their healing process and restore their hope. To continue to provide the highest quality of services to you and the people of Mountain Brook, we are requesting that you will again include a \$5,000 appropriation for Prescott House in your proposed budget to the City Council for FY 2023. Your support is such an encouragement to us. Thank you for recognizing the value of what we do and for your long-time partnership.

Best Regards,

*Maribeth Thomas*  
Maribeth G. Thomas, M.A., LPC  
Executive Director

Cc: Sam Gaston, City Manager

1730 14<sup>th</sup> Avenue South ■ Birmingham, AL 35205 ■ (205) 930-4622 ■ www.prescotthouse.org

*where healing begins and hope is restored*

**CONTRACT FOR SERVICES**

Prescott House Child Advocacy Center hereby proposes to provide services to the City of Mountain Brook Police Department in the form of forensic interviews, counseling, team reviews, court preparation, and court accompaniment in all reported cases alleging child abuse, child sexual abuse, and children who have witnessed violent crime.

Prescott House proposes to provide said services, and additional related services as the case may require for FY2023, October 1, 2022 through September 30, 2023.

The City of Mountain Brook agrees to compensate Prescott House Child Advocacy Center for said services in the amount of five thousand dollars (\$5,000.00) to be paid during the period stated above.

Maribeth Thomas, M.A., LPC-S Executive Director

Date signed

*Stewart Welch*

On behalf of the City of Mountain Brook, AL

*10-10-2022*

Date signed

1730 14<sup>th</sup> Avenue South ■ Birmingham, AL 35205 ■ (205) 930-4622 ■ www.prescotthouse.org

*where healing begins and hope is restored*

APPENDIX 4



The City's unit price for residential collection shall be likewise adjusted to reflect the same percentage amount requested and granted to Contractor by the Authority.

5. Service Level. a. Garbage: Twice weekly curbside (and where applicable backdoor) garbage collection shall occur Monday through Saturday, between hours of 7:00 a.m. and 7:00 p.m., using up to three receptacles meeting the specifications set forth in Appendix A, as obtained by the City pursuant to paragraph 3, above (first-receptacle-only) or by owner or occupant of the residential or commercial unit (receptacles-exceeding-the-one-receptacle-provided-by-City). b. Recycling: the first-receptacle-collection of each week shall be commingled collection, consisting of both waste and recycling in the same container(s) and will be sent to a facility capable of sorting and removing recyclables and reducing placement into the landfill. The second-first weekly pickup shall be of waste only and no recycling shall be sorted out of such pickup. Accordingly, residents who wish to have their material recycled must place their recycling within their first-receptacle-weekly pick-up. c. Trash (including limbs, brush, bulky items): included in base monthly fee, operating 5-6 days a week with guaranteed service every ten (10) days per unit. d. Leaf collection: (i) Bagged leaf collection is included in base monthly fee for all units beginning November 1<sup>st</sup> through February 28<sup>th</sup> or upon such other schedule as mutually agreed, (ii) Loose leaf collection may be offered by a City at their sole cost, provided placement of those loose leaves shall not interfere with services by the Authority. e. Backdoor services: twice (2) weekly backdoor service based on documented need shall be available for up to 5% of total residential units of the City (approximately 375 as based on 7,551 units). A separate schedule and/or route for backdoor pickup may be set by the Authority through its preferred provider upon approval of City. Residents who are physically able to place garbage at the curb but desire to receive backdoor collection services may contract directly with the Authority's preferred provider to obtain such service. This elective backdoor service shall be available at the sole discretion of the Authority's preferred provider and will be billed directly to residents by the Authority's preferred provider at rates established and authorized by the Authority and agreed to by the City. f. Hazardous waste: a hazardous waste collection day shall be priced at \$10,000.00 per event, up to two events per annum. g. Infectious waste: as designated by the City, the Authority through its preferred provider shall provide custom pickup at \$85.00 per pickup of up to three (3) - 28 gallon provided containers, each additional pick-up/per container is \$35.00. h. Disaster and Debris Removal: shall be at City selected locations at the rate per knuckle boom truck under subsection c. i. Municipal buildings: Cart services for the pickup of garbage at all municipal buildings, fire stations and other city facilities, excluding schools, shall be provided two (2) times per week at no additional cost. j. Parks: two cart pickup is available twice weekly at \$19.93 per park or once weekly at \$18.90 per park. Dumpsters shall be provided by the Authority as needed. Compactor service shall also be provided at City facilities as needed, up to five (5) times per week, varying as follows:

(i) Commercial Front Load Collection by Size and Frequency

	1X	2X	3X	4X	5X
2yd	49.80	99.59	149.39	199.18	248.98
4yd	73.61	147.22	220.83	294.44	368.05
6yd	103.92	207.84	311.76	415.68	519.60
8yd	128.17	256.34	384.50	512.67	640.84

TO BE UPDATED TO REFLECT CPI (5% ADJUSTMENT EFFECTIVE 10/1/2022)

(ii) Roll-off Collection and Disposal: \$317.00 per collection plus \$37.50 per ton.

(iii) Compactor and Container rental: ranges from \$450 to \$750 per unit depending on size, installation cost for time and materials, and open tops (any size) at \$5.00 per day or \$120.00 per month.

APPENDIX 6

The CITY OF MOUNTAIN BROOK, ALABAMA, (hereinafter referred to as "City"), a municipal corporation, does hereby enter into a solid waste collection and disposal contract by, between and with the CAHABA SOLID WASTE DISPOSAL AUTHORITY (hereinafter referred to as the "Authority" or "CSWDA") a public corporation under and pursuant to the provisions of Chapter 89A of Title 11 of the Code of Alabama (1975) (hereinafter referred to as the "Enabling Act"). The Parties agree as follows:

1. Scope and Authorization. The City hereby designates and authorizes the Authority to administer and/or perform the collection and treatment (disposal) of its solid waste and refuse (including single-family residential garbage, infectious waste, trash, hazardous waste, recyclables, leaves, and storm debris) for the residents of the City and certain municipal-owned buildings and parks within the corporate limits of the City. The pricing and service level as discussed herein outlines the current offering of the Authority through its preferred provider who has committed to provide the tiered pricing and service levels to the Authority for a period of ten (10) years. The Authority extends this offering of services to the City, and the City authorizes the Authority to administer the collection and treatment of all solid waste within its corporate city limits.

2. Term. This authorization shall be for a period of nine (9) years, beginning October 1, 2022 and ending on September 30, 2031 and shall run concurrently with the contract of any service provider contracted by the Authority to perform solid waste collection and disposal services as described herein.

3. Tiered Pricing. The pricing for services is tiered and based upon the number of units serviced within the City and within the Authority's jurisdiction. The residential garbage and recycling pricing is based on twice weekly collection at a base cost and multiplied by the total number of residential units within the City and shall be subject to annual increases based on the utility CPI-U index or 5% per annum, whichever is less. Base monthly pricing for garbage and recycling shall be a combined cost of \$ 23.21 per residential unit (indexed for inflation effective October 1, 2022 as provided in the master agreement), where the second-first weekly pickup is taken to an Alabama Department of Environmental Management (ADEM) approved landfill facility and the first-receptacle weekly pickup includes both garbage and recycling commingled together that is delivered to a facility capable of removing and separating out recyclables from garbage. All services are further described in paragraphs 4 and 5. For administration of service by the Authority, the City may be required to obtain from the Authority up to one new cart per curbside and commercial customer at a cost of \$1 per month for each such curbside and commercial customer, to be billed to the City if the use of such carts is determined to be necessary to the administration of efficient and effective service by the Authority, in its sole discretion. If the base monthly pricing for garbage and recycling is reduced by the Authority's provider as a result of an increase in the number of units serviced by the Authority or other factor, the base monthly pricing provided for herein shall be reduced by the same percentage of reduction as that realized by the Authority.

4. CPI-U INDEX FOR ANNUAL RATE ADJUSTMENT explained. The unit price for residential collection as provided herein may be increased annually beginning the 2<sup>nd</sup> year of this Agreement, whereby the "Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics for June 2022: U.S. city average, Water and sewer and trash collection services, garbage and trash collection" reflecting the index for the month of June 2022 shall constitute a base Consumer Price Index. If, as of June 2022, or any subsequent June during the term of this Contract, this price index shows an increase, the Contractor may request an equitable adjustment in the Contract prices based upon the CPI-U in an amount not to exceed five (5%) percent per annum or as otherwise mutually agreed. If the Authority grants the requested annual adjustment in the Contract price,

4 Nov. 11 (1.05) = \$23.24

All other additional or desired services as quoted to the Authority by any of its selected providers shall be made available to City, upon request.

6. Billing and Payment: A detailed billing statement shall be provided to City within ten (10) days following the end of each month for services rendered hereunder. The billing statement shall provide a quantity and rate for each type of service provided. The Authority or its preferred provider shall be paid on or before the 30th day following the end of the month to which the bill relates. Such billing and payment shall be based on the rate and number of units serviced.

7. Service Days. The Authority or its preferred provider shall provide collection based on a six (6) day/week service schedule (fifty-two weeks per annum) through three routes (Mon-Thu, Tue-Fri, Wed-Sat). No collection shall occur on the seven (7) following holidays: New Year's Day, Martin Luther King, Jr. Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. If a normally scheduled pickup falls on one of the above holidays, collections shall be on the following workday.

8. Quality of Service. The Authority and City agree that the Authority through its preferred provider will provide exceptional service, including but not limited to: a. Customer Service: The Authority or its preferred provider shall maintain a toll free telephone number to be operational, Monday through Friday 8:00 A.M. to 5:00 P.M. local time, except for holidays. The preferred provider shall maintain, at its cost, a telephone line listed in the name in which it does business. Calls must be answered, and services rendered in a courteous and professional manner, during normal business hours by a live (not recorded) customer service agent employed by the Authority or its preferred provider. b. Automated System Monitoring. The Authority or its preferred provider shall monitor any reporting process or software used by the City to provide timely and quality service through the requests from residents and City staff. The City will provide guidance to the Authority or its preferred provider, but the Authority or its preferred provider shall be responsible to respond and close out requests in a timely and professional manner. Requests shall only be closed out after the matter has been satisfactorily addressed and shall also be closed in a timely manner once the matter has been satisfactorily addressed. c. Equipment Availability: The Authority shall ensure adequate well-maintained equipment is available to maintain timely service levels.

9. Penalties. The Authority or its preferred provider shall make every reasonable effort to provide quality service and have no unresolved complaints. Because of the costs incurred in administering and responding to unresolved complaints and unfulfilled requests by City, the Authority shall require the sum of Two Hundred Fifty Dollars (\$250.00) for each complaint or request not satisfied by its preferred provider within twenty-four (24) hours after receipt of notification thereof by the City, be paid to the Authority. If there are more than two (2) complaints at the same residence within the same month, the Authority may double the penalty to Five Hundred Dollars (\$500.00) at the Authority's discretion, notwithstanding the 24-hour time period. When applicable, the Authority's preferred provider will be notified of the imposition of such penalties by the CSWDA or City. Penalties shall apply to garbage, trash, recycling and cart delivery. Any penalties imposed may be deducted from any payment(s) due to the Contractor by the CSWDA or City. Failure to provide adequate equipment, as specified, will allow the CSWDA to assess a \$500.00 (five hundred dollar) per day per truck penalty to be imposed until that Contractor can provide evidence that all required equipment is active and functioning properly within the jurisdiction of the City.

10. Default. The Authority completed a request for proposal process to select a preferred provider or Contractor to assist with its administration of solid waste collection and disposal within its jurisdiction and required the following provisions for the selected provider: (i) Contractor fails to perform the work as specified in this contract or neglects or refuses to comply with any of the other

provisions of this contract, or in the event the Contractor willfully, knowingly, or repeatedly violates any ordinance of the CSWDA or any of the laws of the State of Alabama or any rules or regulations of the Health Department, now or hereinafter enacted pertaining to the collection, removal or disposal of Garbage, Trash or refuse, the CSWDA may give notice to the Contractor at its local office address, and the failure of the Contractor to remedy or correct such unsatisfactory condition within three (3) days from the date of mailing of such notice shall constitute a default herein. Furthermore:

- a. In the event of the termination of this contract or in the event the CSWDA is required to initiate litigation to enforce any of its rights under and by virtue of this contract, the Contractor hereby agrees that if the CSWDA prevails it will reimburse the CSWDA for all costs, fees and expenses including reasonable attorney's fees incurred by the CSWDA in any such undertaking.
- b. The termination of this contract shall not relieve the Contractor of the responsibility for any damages that the CSWDA may incur by reason of such default.
- c. In the event that the performance by the Contractor of any of its obligations or undertakings hereunder shall be interrupted or delayed by an act of God or the common enemy of the result of war, riot, civil commotion, strike or labor unrest, or sovereign conduct or any other event beyond its reasonable control, then it shall be excused from such performance for the duration of such disturbance.
- d. Additionally, the Contractor hereby agrees that in the event of such termination, interruption or delayed service, at the option of the CSWDA member(s), all trucks, machinery and equipment utilized by the Contractor in the performance of this contract shall thereupon be delivered to the CSWDA member(s) and may be used by the CSWDA member(s) for a period of one hundred eighty (180) days without cost or charge from the date of such termination, interruption or delayed service.

Should the Contractor be in default with the Authority and degradation of service with City occurs to the extent the Authority determines termination of services are necessary, this shall also constitute a default of this Agreement and the City may terminate this agreement.

11. Termination. Should the Authority be dissolved pursuant to its Enabling Act, this Contract shall be terminated without further action. Should the Authority or its preferred provider have a degradation of service that is not repairable to an acceptable level after evidence of these default provisions referenced herein, the City may terminate this contract with the Authority upon seven (7) days' notice.

12. Warranties. The Authority agrees that any warranties for carts or equipment made available to the Authority from its preferred provider or a manufacturer will also be provided to City.

13. Change in Units Served, Annexations and New Construction. The City shall provide annually to Authority any change in units serviced. The City and Authority agree that any contiguous areas annexed by City or new construction within the City limits during the term of this Contract shall be included within the service area at the same per unit charge as provided herein. Fluctuations in the number of units serviced and billed will be adjusted monthly except in an annexation or new construction of five (5) or more homes in which case the charges for services related to these specific addresses may be pro-rated based on the date on which services actually begin.

14. Insurance and Bonding. a. Insurance. The Authority or its preferred provider shall maintain at all times five million (\$5,000,000) dollar commercial umbrella insurance coverage per occurrence/aggregate and shall provide workers compensation/employer's liability insurance with a

minimum of one million (\$1,000,000) per accident. The Authority or its preferred provider shall name the City as an additional insured. b. *Bonding*. The Authority or its preferred provider shall maintain a performance bond equal to 100% of the contract price for residential units served.

15. **Anti-discrimination and immigration law compliance.** The Authority and/or its preferred provider shall ensure that in performing the work furnished by this Contract of furnishing the services provided here, shall not discriminate against any person seeking employment with or employed by him because of race, creed, color, or national origin. The Authority shall require any preferred provider affirm that for the duration this Contract, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an authorized alien within the State of Alabama. Furthermore, if that provider is found to be in violation of this provision, that provider shall be deemed in breach of this Contract and shall be responsible for all damages resulting therefrom. During the term of this Contract, the Authority's preferred provider shall participate in the U.S. Department of Homeland Security's E-Verify Program and shall verify every employee that is required to be verified according to applicable federal rules and regulations. The Authority agrees to provide sufficient documentation to the City to establish that its preferred provider is enrolled in the E-Verify Program and require its preferred provider to create and operate a system for assuring immigration law compliance by subcontractors by obtaining, prior to their performing any work related to this Contract.

16. **Independent Contractor.** It is expressly agreed and understood that the Authority and/or its preferred provider is, in all respects, an independent contractor as to the work provided for herein and is, in no respect, an agent, servant or employee of the City.

17. **Assignment or Transfer Permitted.** The Authority is authorized to administer solid waste collection and disposal at its discretion, subject to the provisions contained herein and the laws of the State of Alabama.

18. **Amendment.** This Agreement may be amended by mutual consent of both parties. The Authority may from time to time engage additional providers to allow for more efficient service, resulting in cost savings to the City, and no amendment to this agreement shall be necessary for a rate reduction. The Authority shall provide any such reduction in writing.

19. **Severability.** In the event that any provision or portion thereof of any Contract Document shall be found to be invalid or unenforceable, then such provision or portion thereof shall be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any Contract Document shall not affect the validity or enforceability of any other provision or portion of the Contract Documents, pursuant to the laws of the State of Alabama. Any dispute as to the validity of this agreement or its provisions herein shall be heard in the Circuit Court of Shelby County, Alabama, prevailing part to bear costs.

20. **Entire Contract.** This Agreement constitutes the complete terms between the parties. The entire response to the Authority's July 21, 2021 request for proposals to service its jurisdiction by its selected and preferred provider is incorporated hereto as if stated fully herein and provides the minimum and maximum parameters of service the Authority is currently offering. Should the Authority realize cost savings by adding additional providers to service City, those offerings shall be subject to any limitations provided herein.

Signatures on the following page

5

\_\_\_\_\_(Signature)

IN WITNESS WHEREOF, the parties hereto, having obtained the full consent of their governing bodies, have caused this Agreement with the Cahaba Solid Waste Disposal Authority to administer solid waste disposal and collection on behalf of the City of CITY OF MOUNTAIN BROOK as provided herein, cause to be executed by their duly authorized officers on the day and year written above, as follows:

CITY OF MOUNTAIN BROOK, ALABAMA,  
a Municipal Corporation

\_\_\_\_\_  
Stewart Welch III, Mayor

Attest:

\_\_\_\_\_  
Heather Richards, City Clerk

CAHABA SOLID WASTE DISPOSAL AUTHORITY,  
a Public Corporation

\_\_\_\_\_  
Alan Rice, its Chairman

Attest:

\_\_\_\_\_  
Elenie Counts, Secretary

ACKNOWLEDGEMENT OF SERVICES BY PROVIDER

Acknowledged by Service Provider: AMWASTE LLC, by \_\_\_\_\_  
(print)

Its \_\_\_\_\_ (title). This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

6

**Resolution 2022 - 01**

*Resolution Authorizing Fuel Surcharge and  
Annual Rate Increase of Five Percent*

**BE IT RESOLVED**, by the Board of Directors for the Cahaba Solid Waste Authority with a quorum present in a duly called special meeting on this 27<sup>th</sup> day of September, 2022, hereby resolves as follows:

- FUEL SURCHARGE AUTHORIZED.** As of August 1, 2022, a monthly fuel surcharge adjusted according to the fuel index for ultra-low sulfur diesel shall be applicable to all entities serviced by the Authority. The fuel surcharge shall account for the percentage change in fuel index from a baseline amount for ultra-low sulfur diesel of \$3.05 multiplied by a fuel factor of 0.263 and be added to the baseline service dollar amount for single family residential services and elective backdoor service for non-disabled customers, pursuant to the attached Tables 1-3 in Exhibit A. The percentage change in fuel index shall be adjusted monthly related to the fuel index for ultra-low sulfur diesel (Alabama – Gulf Coast (PADD3) as of the last day of each preceding month according to the Energy Information Administration of the U.S. Department of Energy (EIA/DOE), as published on its website: (<https://www.eia.gov/petroleum/gasdiesel>). The fuel surcharge is authorized only when ultra-low sulfur diesel as described herein exceeds \$3.05.
- CPI-U ANNUAL ADJUSTMENT CAPPED AT FIVE (5%) PERCENT.** As of October 1, 2022, an annual rate of adjustment of five percent (5%) shall occur for all services offered by the Authority for all eligible entities. The Board recognizes that the CPI-U Index for Annual Rate Adjustment ranges from eight to nine percent for water and sewer and trash collection services as of June 2022; however, understands that the maximum increase per contract with the Authority's preferred provider is capped at five (5%) percent and determines that five percent is the maximum rate increase authorized. Accordingly, the Authority declines to increase the adjustment beyond five (5%) percent as requested by AmWaste LLC and will instead revisit the 5% cap within 12 months.
- That any retroactive charges applicable will be billed in a future invoice, where said fuel surcharge will be added to all active Authority member invoices and shall apply to future services of any member entity or contracting party.
- That the Chairman is authorized to enter into periodic billing arrangements with any entity receiving service from the Authority that direct bills its residents and desires additional flexibility in its timing for phasing in the fuel surcharge and annual rate adjustment to ensure their billing reflects these additional costs in a manner consistent with the terms herein.
- That the Chairman shall be authorized to enter into a First Amendment to the Solid Waste Collection & Disposal Provider Agreement with AmWaste LLC upon such terms and October 10, 2022

conditions set forth in Exhibit 1 and sign such documentation necessary to facilitate the aforementioned wishes of the Authority.

6. This resolution shall take effect immediately and the Secretary is authorized to spread the same upon the minutes and certify a copy of this resolution to all entities utilizing the Authority's services for their concurrence.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED BY:

\_\_\_\_\_  
Allan Rice, its Chairman

ATTESTED BY:

\_\_\_\_\_  
Recording Secretary

FIRST AMENDMENT TO THE SOLID WASTE COLLECTION & DISPOSAL PROVIDER AGREEMENT

THIS FIRST AMENDMENT TO THE SOLID WASTE COLLECTION & DISPOSAL PROVIDER AGREEMENT (this "First Amendment") is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Cahaba Solid Waste Disposal Authority ("Authority" or "CSWDA") and AMWASTE LLC ("Contractor").

RECITALS:

WHEREAS, the Authority and the Contractor entered into that certain Solid Waste Collection & Disposal Provider Agreement effective September 28, 2021 (the "Agreement");

WHEREAS, the Authority and the Contractor desire to amend the Agreement in accordance with the terms and conditions set forth in this First Amendment.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, the Authority and Contractor agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Defined Terms. All capitalized terms used herein and not expressly defined herein shall have the meaning given to them in the Agreement.
3. Fuel Adjustment.
  - a. Effective with the August 2022 billing cycle, a fuel surcharge will be added to all contracting entities and active authority members' invoices as determined by the fuel adjustment calculator attached as Exhibit A.
  - b. Effective as of October 1, 2022, a fuel adjustment shall be authorized for each billing cycle moving forward and added to all active authority members and contracting entities as determined by said fuel calculator.
4. Controlling Agreement. To the extent any provisions contained herein conflict with the Agreement or any other Agreements between Authority and Contractor, oral or otherwise, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement or other Agreements, resolved in the favor of the Authority.
5. No Further Modifications. Except as set forth herein, the Agreement remains unmodified and in full force and effect.
6. Counterparts, Facsimiles. This First Amendment may be executed in counterparts. Each executed counterpart of this First Amendment will constitute an original document, and all executed counterparts, together, will constitute the same First Amendment. Any

WR81400545002.rje

APPENDIX 6

EXHIBIT 1  
Page 3 of 4

Done this \_\_\_\_ day of \_\_\_\_\_, 2022.

THE CAHABA SOLID WASTE DISPOSAL AUTHORITY

\_\_\_\_\_  
Allan Rice, its Chairman

Attest: \_\_\_\_\_  
Elenie Counts, its Secretary

AMWASTE LLC

\_\_\_\_\_  
Its: Chief Executive Officer  
Print Name: \_\_\_\_\_

EXHIBIT 1  
Page 4 of 4

EXHIBIT A

Fuel Adjustment Calculator

**For Single Family Residential Services.** The Base Bid Rate will be increased by a Fuel Adjustment to equal the Adjusted Rate. The Fuel Adjustment is determined by the Base Bid Rate being multiplied by a Fuel Factor (0.263) multiplied by the percentage change in fuel index (54%). This Fuel Adjustment is added to the Base Bid Rate to equal the Adjusted Rate.

**For Elective Backdoor Service (non-disabled customer).** The Base Bid Rate will be increased by a Fuel Adjustment to equal the Adjusted Rate. The Fuel Adjustment is determined by the Base Bid Rate multiplied by a Fuel Factor (0.263) multiplied by the percentage change in fuel index (54%).

As more particularly described on the following Tables 1 – 3.





RE: Amwaste Fuel Adjustment Calculator 09\_2022.xlsx  
1 message

Rod Evans <REvans@wallacejordan.com> Tue, Oct 4, 2022 at 2:31 PM  
To: 'arice@hooveralabama.gov' <arice@hooveralabama.gov>, 'jdownes@vhal.org' <jdownes@vhal.org>, Steve Boone <boones@mtnbrook.org>, 'gdifante@pelhamalabama.gov' <gdifante@pelhamalabama.gov>, 'bchoat@trussville.org' <bchoat@trussville.org>, 'jzissette@clanton.gov' <jzissette@clanton.gov>, 'berkley.squires@homewoodal.org' <Berkley.Squires@homewoodal.org>, 'lholcomb@fullondaleal.gov' <lholcomb@fullondaleal.gov>

Board members:

I recognize that most of you may have already sent your resolutions out for your council packets, which included the original spreadsheet for August 2022. This attached spreadsheet does have the pricing for September and a tab for fuel review periods consistent with the four-week average we discussed at the board meeting. Please note that it is not imperative that the attached spreadsheet be included in the resolution, but is up to you on whether including the spreadsheet is helpful.

Rod | Roderick J. Evans | MEMBER  
WALLACE JORDAN  
WALLACE JORDAN RATLIFF & BRANDT LLC

800 Shades Creek Pkwy #400, Birmingham, AL 35209  
Direct: 205.874.0349 | Email: revans@wallacejordan.com  
Asst: Tina Frazier: 205.874.0314 (tfrazier@wallacejordan.com)

CONFIDENTIALITY NOTICE: This e-mail (including any file attachments) is for the sole use of the intended recipient... not necessarily the addressee... and may contain confidential or privileged information... If you are not an intended recipient, please notify the sender by calling 205.874.0353 (office) if necessary. In addition, please return this e-mail using a reply command and delete all copies.

CIRCULAR 23 NOTICE: In compliance with requirements related to practices before the Internal Revenue Service, we are required to inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used by you, for the purposes of (i) avoiding penalties that may be imposed on you under United States Internal Revenue Code or (ii) promoting, marketing, or recommending to another person any transaction or tax-related matter referenced herein. If you have received this communication and are not the original intended recipient and a client of the sender, you should seek advice based on your particular circumstances from an independent tax advisor.

From: Rick Sweeney <rsweeney@amwasteusa.com>  
Sent: Tuesday, October 4, 2022 10:14 AM  
To: arice@hooveralabama.gov; jdownes@vhal.org; Steve Boone <boones@mtnbrook.org>; gdifante@pelhamalabama.gov; bchoat@trussville.org; jzissette@clanton.gov; berkley.squires@homewoodal.org; lholcomb@fullondaleal.gov; Rod Evans <REvans@wallacejordan.com>  
Cc: Randy Lee <rlee@amwasteusa.com>; David Carlisle <dcarlisle@amwasteusa.com>; Kathy Giles <kgiles@amwasteusa.com>; Andrew Dunham <adunham@amwasteusa.com>; Jon Black <jblack@amwasteusa.com>  
Subject: Amwaste Fuel Adjustment Calculator 09\_2022.xlsx

https://mail.google.com/mail/u/0/?ik=01587315a1&view=pt&search=all&permthid=thred-F%3A1745770483876434083%7Cmsg-F%3A1745786631984... 1/2

Sept-22

Project CSWDA  
Billing Period: 7/15/2021  
Fuel Index for current month (\$/gal) 3.05  
Fuel Index for current month (\$/gal) 4.71725  
(1) Current Month Index - Base Index: 1.67

Item No.	Description	Base Bid Rate	Fuel Factor (3)	Percentage Change in Fuel Index (4)	(3) x (4) Fuel Adjustment	Adjusted Rate
1	Single Family Residential Service (non-disabled customer)	\$ 22.11	0.263	55%	\$ 3.18	25.29
4	Electric Backdoor Service (non-disabled customer)	\$ 9.38	0.263	55%	\$ 1.35	10.73

PADD 3 - Pricing

9/5/2022	4.796
9/12/2022	4.76
9/19/2022	4.69
9/26/2022	4.623
4 Week Average	4.71725

10/17/22, 8:33 AM

City of Mountain Brook Mail - RE: Amwaste Fuel Adjustment Calculator 09\_2022.xlsx

All:

It was a pleasure to see you last week. We sincerely appreciate your business, the partnership with your communities, and the understanding and support of the requested rate adjustments. As discussed during the Board meeting, attached is the calculated September fuel adjustment. Additionally, for transparency, I have included an additional tab identifying the specific weeks to be reviewed by month through December of 2025. I have also included the link for the published fuel index with guidance of the table and region used for evaluation. The Index is reported each Tuesday. If the 1st of any month fell on a Tuesday, I included in the prior month evaluation as our billing will occur on or as close to the 1st of each month. If there are no objections, we will utilize the identified weeks for fuel evaluation.

We sincerely appreciate the opportunity to serve your communities, and look forward to a long standing partnership with the Authority.

Respectfully,

Rick

Fuel Adjustment Calculator 09\_2022.xlsx  
30K

APPENDIX 6



ORDER AGREEMENT

ORDER AGREEMENT CONSISTS OF THIS PAGE AND THE TERMS AND CONDITIONS ATTACHED

Sales Type: CASH

EQUIPMENT BILL TO INFORMATION

Table with customer and contact information for City of Mountain Brook.

Check all that apply:

- PO Included PO#
TS PO# (if applicable)
Sales Tax Exempt
Syndication
Add to Existing Service Contract #:
PS Service
IT Service
Fixed Rate Service Term

SHIP TO INFORMATION

Table with ship to information for City of Mountain Brook.

Table with item details including description, quantity, and price for SDARICOH PS DocuWare 6 Month Deployment Retainer.

Page 1 of 7

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10/6/2022 Version#1.1

ORDER TOTALS

Table showing order totals including Gold, Silver, Bronze, and Grand Total amounts.

Table for customer acceptance with signature lines for Authorized Signature, Printed Name, Title, and Date.

Terms and Conditions for Order Agreement

These Terms and Conditions for Order Agreement (together with the Order (defined below), the "Agreement") set forth the specific terms and conditions...

Terms applicable to Service transactions only:

- 1. Service: (a) An Order for Services must identify the specific Services to be performed... (b) For maintenance and repair Services... (c) The maintenance and repair Services provided by Ricoh...

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3038377



10/6/2022 Version#1.1

work which Customer requests to be performed on Ricoh Holidays (defined below); (iv) repairs or replacements that are materially hindered by Customer's failure to perform the Customer obligations set forth in this Agreement...

2. Service Calls: Unless otherwise specified in the Order, service calls will be made during 8:00am - 5:00pm local service time, Monday through Friday (Normal Business Hours) at the installation address shown on the Order...

3. Terms: Early Termination: This Agreement shall become effective on the date that Ricoh accepts the Order and shall continue for the term identified in the Order. At the expiration of the term identified in the Order, it will automatically renew for successive twelve (12) month periods unless notice of termination as specified below is given...

4. Service Charges: (a) Service charges ("Service Charges") will be set forth on the Order. Service Charges will not include any charges for repairs or service that are otherwise covered by the applicable manufacturer's limited warranty during the period covered by any such warranty...

10/6/2022 Version#1.1



and Customer expressly consents to such adjustment without additional notice, or (ii) the Service Charges or any rates expressly set forth in the Order are fixed for a period longer than twelve (12) months, then upon the expiration of the period during which the fixed Service Charges or other rates are fixed, the Service Charges or other rates may be increased by Ricoh in an amount up to fifteen percent (15%) of the then-current Service Charges and rates multiplied by the number of years during which the Service Charges or other rates were fixed...

5. Use of Recommended Supplies: Meter Readings: (a) It is not a condition of this Agreement that Customer use only Ricoh-provided supplies. If Customer uses other than manufacturer-recommended supplies, including paper, developer, toner, and fuser oil, and if such supplies are defective or not acceptable for use on the Serviced Products, that do not conform to the manufacturer's specifications, or cause abnormally frequent service calls or service problems, then Ricoh may, at its option, assess a surcharge or terminate the Agreement with respect to such Serviced Products...

(b) Customer is required to provide Ricoh actual and accurate meter readings in accordance with the billing schedule set forth on the Order. Ricoh may, at its discretion and dependent upon Serviced Product capabilities, collect remote meter readings and utilize equipment monitoring services using automatic meter reading solutions ("AMR"). This may allow for automated meter reading and submission, automatic placement of low toner alerts, automatic placement of service calls in the event of a critical Serviced Product failure and may enable firmware upgrades...

(c) If Customer fails to provide actual and accurate meter readings to Ricoh in accordance with the billing schedule set forth on the Order, Ricoh may calculate an estimated meter reading from previous meter readings and Customer agree to pay Service Charges based on such calculated estimate. Appropriate adjustments will be made by Ricoh in a subsequent billing cycle following Customer providing actual and accurate meter readings...

6. Connectivity and Professional Services: Customer may require connectivity, IT and professional services from Ricoh ("Professional Services") by executing and delivering to Ricoh an Order setting forth the specific services to be provided. Ricoh shall provide the Professional Services Customer's location(s) on a remote basis as set forth in the Order. Customer shall provide Ricoh with such access to its facilities, networks and systems as may be reasonably necessary for Ricoh to perform the Professional Services...

7. Customer Obligations: Customer agrees to provide a proper place for the use of the Serviced Products, including but not limited to, electric service, as specified by the manufacturer. Customer will provide adequate facilities (at no charge) for use by Ricoh representatives in connection with the service of the Serviced Products hereunder within a reasonable distance of the Serviced Products. Customer agrees to provide such access to its facilities, networks and systems as may be reasonably necessary for Ricoh to perform its Services, including but not limited to "360 degree" service access to the Serviced Products. Customer will provide a key operator for the Serviced Products and will make operators available for instruction in use and care of the Serviced Products...

8. Insurance: Each party certifies that it maintains, through self-insurance or otherwise, reasonable amounts of general liability, auto and personal property insurance, and workers' compensation insurance in the amount required by law, and that such insurance will remain in effect during the term of the Order. Such insurance shall be primary and non-contributory. Limits provided may not be construed to limit liability. General liability insurance shall include...

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3038377



the other party as an additional insured and contain no exclusions for cross liability between insureds. Upon request, each party agrees to deliver the other party evidence of such insurance coverage. Failure to maintain adequate insurance does not relieve liability under this Agreement.

# MINUTE BOOK

OR RELATED TO ANY FAILURE OF SOFTWARE, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR DELAY OF DELIVERY OF SERVICES UNDER THIS AGREEMENT. RICOH ASSUMES NO OBLIGATION TO PROVIDE OR INSTALL ANY ANTI-VIRUS OR OTHER SOFTWARE, AND THE LOSS OF SERVICES CONTEMPLATED HEREBY DOES NOT INCLUDE ANY SUCH SERVICES.

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9. **Indemnification.** Each party ("Indemnifying Party") shall indemnify, defend and hold harmless the other ("Indemnified Party") from all third-party claims incurred by the Indemnified Party arising out of the death or bodily injury of any agent, employee, or business invitee of the Indemnified Party, or the damage, loss, or destruction of any tangible property of the Indemnified Party to the extent proximately caused by the negligent acts or omissions or willful misconduct of the Indemnifying Party, its employees, or agents. Without intending to create any limitation relating to the survival of any other provisions of this Agreement, Ricoh and Customer agree that the terms of this paragraph shall survive the expiration or earlier termination of this Agreement. Each party shall promptly notify the other in the event of the threat or initiation of any claim, demand, action or proceeding to which the indemnification obligations set forth in this Section may apply.

### Terms applicable to Product sale transactions only:

10. **Order, Delivery and Acceptance.** An Order for Products must identify the Products, the Product delivery location and the applicable Product charges. Ricoh will not be obligated to sell or deliver Products where such information is not provided in the Order. Customer shall be responsible for all installation, transportation and rigging expenses. Customer agrees to confirm delivery of all Products covered by the Order when the same is delivered by signing a delivery and acceptance certificate or written delivery acknowledgment. Payment for accepted purchased Products will be due and payable in accordance with this Agreement and shall not be contingent on installation of software or performance of Professional Services. The Order shall not be cancellable by Customer following acceptance by Ricoh. Ricoh reserves the right to make Product deliveries in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Customer of its obligation to accept remaining installments and remit payments as invoiced by Ricoh. Ricoh reserves the right at any time to revoke any credit extended to Customer because of Customer's failure to pay for any Products when due or for any other credit reason.

11. **Title, Risk of Loss.** Unless otherwise agreed upon by both parties in writing, Products are deemed delivered and title passes to Customer: (i) upon delivery by Ricoh to common carrier, or (ii) in the case of an arranged delivery by a local Ricoh installation vehicle, upon delivery by such vehicle to Customer shipping point. Upon delivery in either case, Customer assumes all risk of theft, loss or damage to the Products, no matter how occasioned.

12. **Returns; Damaged Products.** No Products may be returned without Ricoh's prior written consent. Only consumable goods invoiced within sixty (60) days will be considered for return. On authorized returns, Customer agrees to pay a restocking charge equivalent to thirty percent (30%) of the purchase price. Products returned without written authorization from Ricoh may not be accepted by Ricoh and are the sole responsibility of Customer. All non-saleable merchandise (that has been opened or partially used) will be deducted from any credit due to Customer. All claims for damaged Products or delay in delivery shall be deemed waived unless made in writing and delivered to Ricoh within five (5) days after receipt of Products.

### Terms applicable to all transactions:

13. **Warranty.** Ricoh agrees to perform its Services: (a) in a good and workmanlike manner; (b) using reasonable care and skill; and (c) according to the description contained in the Order. Ricoh will re-perform any Services not in compliance with this warranty and brought to Ricoh's attention in writing within a reasonable time, but in no event more than thirty (30) days after such Services are performed, which shall be an exclusive remedy for such non-compliance. Customer acknowledges that Ricoh's performance of Services is dependent upon Customer's timely and effective performance of its responsibilities. For any Products manufactured by Ricoh ("Ricoh Equipment"), Ricoh further warrants that, at the time of delivery and for a period of ninety (90) days thereafter the Ricoh Equipment will be in good working order and will be free from any defects in material and workmanship. Ricoh's obligations under this warranty are limited solely to the repair or replacement (at Ricoh's option) of parts proven to be defective upon inspection. The foregoing warranty shall not apply if (a) the Ricoh Equipment is installed, wired, modified, altered, moved or serviced by anyone other than Ricoh, (b) the Ricoh Equipment is installed, stored and utilized and/or maintained in a manner not consistent with Ricoh specifications, (c) a defective or improper non-Ricoh accessory or supply or part is attached to or used in the Ricoh Equipment, or (d) the Ricoh Equipment is relocated to any place where Ricoh services are not available. CUSTOMER ACKNOWLEDGES THAT THE LIMITED WARRANTY CONTAINED HEREIN DOES NOT ASSURE UNINTERRUPTED OPERATION AND USE OF THE RICOH EQUIPMENT. In connection with any other Product sale, Ricoh shall transfer to Customer any Product warranties made by the applicable Product manufacturer, to the extent transferable and without recourse, and Ricoh makes no additional warranty or guaranty with respect to any such third-party Products. Physical or electronic copies of any applicable Product warranty will be delivered by Ricoh to Customer only upon Customer's specific written request. All Ricoh and/or third-party software provided by Ricoh is licensed, not sold, and is subject to the server, seat, quantity and/or other usage restrictions set forth in each applicable license agreement, license terms, or subscription terms relating to such intangible property or associated services (each such license of grant of rights to access or use, a "Software License"), whether pursuant to written, click-through, shrink-wrap or other agreements for such purpose, with the licensor of the software ("Licensor") and the restrictions set forth in the Order. Ricoh has no right, title or interest in any third-party software (including any open-source software) and Ricoh makes no representations and provides no representations or warranties with respect thereto. Customer is solely responsible for entering into and complying with Software Licenses with the applicable Licensor and acknowledges that its rights and obligations with respect to such software, as well as those of the Licensor, are solely as set forth in such Software Licenses. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN OR IN THE ORDER, RICOH MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INFRINGEMENT OR THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. NO WARRANTIES ARE CREATED BY ANY COURSE OF DEALING BETWEEN THE PARTIES, COURSE OF PERFORMANCE, TRADE USAGE OR INDUSTRY CUSTOM. IN NO EVENT SHALL RICOH BE LIABLE TO CUSTOMER OR A THIRD PARTY FOR ANY DAMAGES RESULTING FROM

14. **Limitations.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS HEREIN AND ANY LIABILITY RESULTING FROM THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9 HEREIN, THE AMOUNT OF ANY DIRECT LIABILITY OF A PARTY TO THE OTHER OR ANY THIRD-PARTY, FOR ONE OR MORE CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT PAID TO RICOH FOR THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT DURING THE SIX-MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

15. **Payment; Taxes.** Payment terms are net ten (10) days. If invoices are unpaid and overdue, Customer agrees to pay Ricoh a late charge of one and one-half percent (1.5%) per month on any unpaid amounts or the maximum allowed by law, whichever is less, and in addition shall pay Ricoh all costs and expenses of collection, or in the enforcement of Ricoh's rights hereunder, including, but not limited to, reasonable internal and external legal costs, whether or not suit is brought. Ricoh has no obligation to issue Customer's invoicing or billing portals, processes, methods or invoicing formats specific to Customer billing requirements. All remedies hereunder or at law are cumulative. Except to the extent of any applicable and validated exemption, Customer agrees to pay any applicable taxes that are levied on or payable as a result of the use, sale, possession or ownership of the Products and/or Services covered hereunder, other than income taxes of Ricoh.

16. **Default.** In addition to any other rights or remedies which either party may have under this Agreement or at law or equity, either party shall have the right to cancel the applicable Services specified in the Order immediately: (i) if the other party fails to pay any fees or charges or any other payments required under the Order when due and payable, and such failure continues for a period of ten (10) days after being notified in writing of such failure; or (ii) if the other party fails to perform or observe any other material covenant or condition of this Agreement, and such failure shall continue unremedied for a period of thirty (30) days after such party is notified in writing of such failure or breach; or (iii) if the other party becomes insolvent, dissolves, or assigns its assets for the benefit of its creditors, or files or has filed against it any bankruptcy or reorganization proceeding. Failure to permit Ricoh to repair or replace the Service Products shall constitute a material breach of this Agreement and excuse Ricoh from any and all future performance hereunder. Except as expressly permitted by this Agreement, no refund or credit will be given for any early termination of this Agreement. If Customer defaults in its obligations hereunder, Ricoh may, in addition to any other remedies available at law or equity, require Customer to immediately pay to Ricoh all past due payments under the Agreement, and the Termination Fee.

17. **Non-Solicitation; Independent Contractors.** Customer agrees that during the Term of the Order and for a period of one (1) year after termination or expiration of the Order, it shall not directly or indirectly solicit, hire, or otherwise claim as an employee or independent contractor any employee of Ricoh that is or was involved with or part of the Services. The relationship of the parties is that of independent contractors.

18. **Assignment; Force Majeure.** Customer shall neither assign any right or interest arising under this Agreement nor delegate any obligations hereunder, whether voluntarily or by process of law, without the prior written consent of Ricoh. Any such attempted assignment or delegation shall be null and void. Ricoh shall not be liable for failure to deliver or delays in delivery of Products or Services occasioned by causes beyond Ricoh's control, including without limitation, natural disasters, extreme weather, floods, transportation suspensions or delays, infrastructure failures, utility outages, demonstrations, pandemics, epidemics, plague, outbreaks of infectious disease, public health crises (including quarantine or other employee restrictions), prohibitions or restrictions on traveling, strikes, lockouts, fires, embargoes, war or other outbreak of hostilities, inability to obtain materials or shipping space, receipt of orders in excess of Ricoh's or its supplier's then-scheduled production capacity, machinery breakdowns, delays of carrier or suppliers, governmental acts and regulations (including restrictions on meeting or working in groups), unavailability of Services, personnel or materials or other causes beyond Ricoh's control ("Force Majeure Conditions"). If Force Majeure Conditions arise in a manner that, as determined in Ricoh's reasonable judgment, modify the conditions of Ricoh's performance of one or more Services in a material manner, then Ricoh will use good faith efforts to continue providing the Services; however, in that event, Ricoh may upon thirty (30) days' advance notice to Customer, increase the Service Charges and other applicable fees by a reasonable amount related to the Force Majeure Conditions.

19. **Hardware Log.** Under this Agreement, Customer may order certain hardware Products (or Customer may have independently obtained hardware Products outside of this Agreement) that create and store logs concerning its operation that may include information about individual end-users, such as employees' work email addresses, IP addresses of assigned workstations, and other personal information. Ricoh, its corporate parent, and their subsidiaries and affiliates in some cases use device logs to update and upgrade the features of products, authenticate end users, and provide end-user support and other customer service. Additional information about applicable device logging features, including Customer's options for configuring those features, appear in the applicable product documentation, copies of which are available to Customer at no additional charge for Ricoh Products. Except as Customer otherwise instructs Ricoh in writing, Customer: (a) authorizes Ricoh to install and configure the Products ordered under this Agreement using its default device log settings; and (b) instructs Ricoh to process the personal information included in device logs, if any, subject to: (i) Ricoh's confidentiality and privacy obligations to Customer (if any); (ii) solely to perform under this Agreement; and (iii) in accordance with applicable law for the purposes stated above and for no other purpose.



20. **Electronic Signatures.** Each party agrees that electronic signatures of the parties on this Agreement will have the same force and effect as manual signatures.

21. **Governing Law; Entire Agreement.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware without regard to its conflict of laws principles. The parties hereto also agree to submit to the non-exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania to resolve any action under this Agreement. The Uniform Computer Information Transactions Act shall not apply to this Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained in this Agreement, supersedes all proposals, oral and written, and all other communications between the parties relating to the Products and Services and may not be amended except in writing and signed by an officer or authorized representative of both parties. Customer agrees and acknowledges that it has not relied on any representation, warranty or provision not explicitly contained in this Agreement, whether in writing, electronically communicated or in oral form. Any and all representations, promises, warranties, or statements by any Ricoh agent, employee or representative, including but not limited to, statements or representations made in sales presentations or sales proposals that differ in any way from the terms of this Agreement shall be given no force or effect. In the event of any conflict or inconsistency between the terms and conditions set forth in these Terms and Conditions for Order Agreement and those contained in the Order, the terms and conditions of the Order shall control; provided, however, purchase orders issued to Ricoh for Products and/or Services, even if they do not expressly reference or incorporate this Agreement, shall: (i) be subject to this Agreement, (ii) serve only to identify the Products and/or Services (along with pricing and quantities) ordered; and (iii) not be deemed to alter or otherwise modify the terms and conditions of this Agreement. The delay or failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of such provision or affect the right of such party thereafter to enforce each and every provision of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable. Ricoh may accept the Order under this Agreement by either its signature or by commencing performance (e.g., Product delivery, initiating Services, etc.). Ricoh may accept or reject any order in the exercise of its discretion and may rely upon each order submitted by Customer as a binding commitment. No local, general or trade custom or usage or course of prior dealings between the parties shall be relevant to supplement or explain any term used herein. Ricoh shall comply with all laws directly applicable to its performance under this Agreement in delivering Products and Services. This Agreement may be executed in one or more counterparts which, taken together, shall constitute one and the same original document. Any notices required under this Agreement should be sent to: Ricoh USA, Inc., 3920 Aclivonig Road, Macon, GA 31210.

Initials

### Certificate of Completion

Envelope ID: C5E428738717430FB44FFD0D672195EC  
Subject: Ricoh Does for CITY OF MOUNTAIN BROOK to Review & Sign (Quote 30333377)  
Source Envelope:  
Document Pages: 7  
Certificate Pages: 3  
AutoNav: Enabled  
EnvelopeStamping: Enabled  
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Sent

Envelope Originator:  
Ricoh DocuSign  
PO Box 6117  
Macon, GA 31208  
RicohDocuSign@Ricoh-usa.com  
IP Address: 52.2.226.144

### Record Tracking

Status: Original  
10/6/2022 6:16:10 AM  
Holder: Ricoh DocuSign  
RicohDocuSign@Ricoh-usa.com  
Location: DocuSign

### Signer Events

Signature  
Tim Jordan  
tim.jordan@ricoh-usa.com  
Security Level: Email, Account Authentication (None)  
Electronic Record and Signature Disclosure:  
Accepted: 4/13/2022 9:44:02 AM  
ID: 0c73eb8e-893d-4eb1-b4b6-1b2803e8997b  
Timestamp  
Sent: 10/6/2022 6:16:12 AM

### In Person Signer Events

Signature  
Timestamp

### Editor Delivery Events

Status  
Timestamp

### Agent Delivery Events

Status  
Timestamp

### Intermediary Delivery Events

Status  
Timestamp

### Certified Delivery Events

Status  
Timestamp

### Carbon Copy Events

Status  
Timestamp  
Sent: 10/6/2022 6:16:12 AM  
Viewed: 10/6/2022 6:16:26 AM

COPIED

### Witness Events

Signature  
Timestamp

### Notary Events

Signature  
Timestamp

### Envelope Summary Events

Status  
Timestamps  
Envelope Sent  
Hashed/Encrypted  
10/6/2022 6:16:12 AM

### Payment Events

Status  
Timestamps

### Electronic Record and Signature Disclosure



**CONSUMER DISCLOSURE**

From time to time, RICOH USA Inc. (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

**Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you.

**Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

**Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

**All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact RICOH USA Inc.**

Please contact your Ricoh Sales Executive directly for any questions or to change your preferred contact method.

**To withdraw your consent with RICOH USA Inc.**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent

**Required hardware and software**

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

\*\* These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify RICOH USA Inc. as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by RICOH USA Inc. during the course of my relationship with you.



# Statement of Work

## DocuWare On-Premise Upgrade/Migration

Created for:  
CITY OF MOUNTAIN BROOK

October 5, 2022

SOW Design Record #  
DR29113731

### Proprietary & Confidential Information

The enclosed materials are proprietary to RICOH USA, INC. ("Ricoh"), and Ricoh reserves all right, title, and interest in and to such materials. The terms, conditions, and information set forth herein are confidential to Ricoh and may not be disclosed in any manner to any person other than the addressee, together with its officers, employees, and agents who are directly responsible for evaluating the contents of these materials for the limited purpose intended. These materials may not be used in any manner other than for such limited purpose. Any unauthorized disclosure, use, reproduction, or transmission is expressly prohibited without the prior written consent of Ricoh.

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### Introduction

RICOH USA, INC. ("Ricoh") has prepared the following Statement of Work ("SOW") to detail services for the DocuWare Upgrade project (the "Project") at CITY OF MOUNTAIN BROOK ("Customer").

This SOW outlines the Project scope and costs. The costs outlined in this SOW are based on Ricoh's experience and preliminary information received from Customer. The information in this SOW supersedes all previous estimates or verbal discussions on the Project. If there are any desired deliverables not listed in this SOW, Ricoh will manage those requests via our Change Control ("CO") process (which may be billable).

Additionally, the following Statement of Work includes a Block of Services Time to provide the Customer with the ability to leverage hourly-based Professional Services at competitive rates. This Statement of Work delivers resources on a time-and-materials basis over a 12-month period beginning the first day of purchase.

### Project Objective

Customer is currently running DocuWare Professional Server Build 6.11 and would like to upgrade their DocuWare Professional Server to the current Version 7.6 and MSSQL. The current DocuWare server content will be migrated to a new DocuWare On-Premise Infrastructure.

Customer has the following modules: DocuWare Professional with 15 Concurrent Client Licenses, Upload Service, Barcode and Forms, DocuWare Import, Connect to Mail, Smart Connect, Task Manager, and Workflow. Customer has 23 Search & Store Dialogs with 1 File Cabinet utilizing the DocuWare Built-in database platform.

The Customer has 1 File cabinets, 23 Search & Store Dialogs, 3 x Workflows Configuration that will be rebuilt and synchronized to the DocuWare On-Premise Infrastructure.

**Project Scope**

**Services included in the Project Scope**

Upon receipt of authorization to proceed, the following functions and deliverables will be fulfilled within the scope of the Project. See below under "Services Detail" for a complete description of these tasks.

1. Design
2. Implementation

**Customer Location**

The following Customer location is included in the scope of this Project.

56 CHURCH ST  
BIRMINGHAM, AL 35213

**Services Detail / Project Scope**

The following are the services and tasks that Ricoh will perform to fulfill the defined deliverables in this SOW (the "Services"). Ricoh shall provide the Services on a remote basis.

**1. Design**

Ricoh and Customer Project team members will jointly gather, develop, and finalize the technical requirements for the Project including the validation of the preliminary requirements and configurations defined in this SOW. These requirements will be translated into a technical design document ("TDD"). If any changes to the Project scope are identified during this phase, Ricoh will address via the [Change Control](#) process.

**Deliverable:** Technical Design Document for Customer review and approval

**2. Implementation**

In this phase, Ricoh will install, configure, and test the solution as defined in the TDD and approved by Customer, as follows:

The current DocuWare V 6.11 environment will be reviewed for potential breaking changes before migration to Version 7.6. Version 7.6 licensing will be acquired from DocuWare for deployment on the existing server.

**Install DocuWare server components**

Install, license and configure DocuWare Professional in accordance to the implementation plan created during the Discovery/Design Phase. As recommended by DocuWare, the migration process will involve three (e) intermediary version upgrade (6.12, 7.1) prior to the final version being installed.

Implementation will include installation on the new DocuWare production server running the FrontEnd, BackEnd and Full-Text Services. Additional modules upgraded will be:

- DocuWare Import
- DocuWare Barcode & Forms
- Connect to Mail
- DocuWare Smart Connect
- DocuWare Task Manager

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**Admin Training**

- One – one-hour Session – Train the trainer session showing client IT admin new functionality of DocuWare 7.6 in the Production Environment

**User Training**

- One – One-hour end-user session – Train the trainer sessions showing client end users new functionality of DocuWare 7.6 in the Production Environment

**UAT Support – Production Environment upgrade from 6.11 to 7.6**

Ricoh will provide support for up to seven (7) hours of support to assist one (1) Customer DocuWare Admins with troubleshooting issues that come up during the UAT phase.

- Admin listed above will assign an end user to test the DocuWare system within each File Cabinet. Testing will include the following:
  - o Importing Documents
  - o Indexing Documents
  - o Searching Documents
  - o Module Testing
    - DocuWare Printer
- End Users will report issues directly to the admin listed above. If the Customer Admin can't resolve the issue, they will reach out to Ricoh to help assist with resolving the issue
- Customer will complete the UAT phase within 3 business days
- If additional Ricoh UAT support is needed a Change Order will be required

**Phase 2: Migrate to new DocuWare MS SQL Infrastructure**

**Software Installation Services:**

- Run Pre-Flight tests (if applicable) on new Windows 2022 Server
- Install DocuWare v7.6 Application Server
- Assist Customer with creating the DocuWare Database within the MS SQL Instance.

**Ricoh Professional Services:**

- Export & import the 23 File Cabinet Search & Store Dialogs
- Recreate 15 Named User Accounts (SSO utilizing MS Active Directory Services)
- Recreate the 3 Public Stamps
- No Personal Stamps
- Export & import the 25 Select Lists
- Recreate the sixteen (16) Document Trays
- Recreate the one (1) DocuWare Import Jobs
- Export & Import two (2) Barcode and Forms profiles
- Export & Import two (2) SmartConnect (image-enable a MS Access-based accounting system)
- Export & Re-create three (3) DocuWare Workflows (PO Requisitions, Invoice Approvals, and PO Approvals)
- Create 23 File Cabinet Synchronization Tasks
- Perform integration review of File Connections, Upload Service profiles, Barcode & Forms profiles and Workflows.

**Phase 1: In-Place Upgrade DocuWare Production Environment**

**Software Installation Services:**

- Run Pre-Flight tests (if applicable)
- Upgrade DocuWare Application Server
  - o Validate the stability of the existing server
  - o Upgrade DocuWare from 6.7 to 7.6 on the current Windows 2012 R2 DocuWare server
    - 6.11 to 6.12
    - 6.12 to 7.1
    - 7.1 to 7.6
  - o Apply latest hot fixes that may be available
  - o Test DocuWare search functionality from server with each upgrade/hotfix
  - o Test DocuWare Web client functionality from server with each upgrade/hotfix
- Install upgraded Desktop apps on one PC
  - o Client IT will be responsible for installing Desktop apps on any additional PC's including any PC's running DocuWare Import jobs

**Internal System Integration Testing:**

- Perform integration review of File Connections, Upload Service profiles, Barcode & Forms profiles and Workflows.
  - o 1 File Cabinet
  - o 23 Search & Retrieve Dialogs
  - o 45 Users
  - o 3 Public Stamps
  - o No Personal Stamps
  - o 25 Select Lists
  - o 16 Document Trays
  - o 1 DocuWare Import Jobs
  - o 2 Barcode and Forms profiles
  - o 2 SmartConnect (image-enable a MS Access-based accounting system)
  - o 3 DocuWare Workflows (PO Requisitions, Invoice Approvals, and PO Approvals)

**Upgrade DocuWare Desktop components on one PC**

- Re-Connect Desktop apps on one PC
  - o Client IT will be responsible for installing Desktop apps on any additional PC's including any PC's running DocuWare Import jobs

**UAT Support – Migration to new DocuWare Infrastructure**

Ricoh will provide support for up to seven (7) hours of support to assist one (1) Customer DocuWare Admins with troubleshooting issues that come up during the UAT phase.

- Admin listed above will assign an end user to test the DocuWare system within each File Cabinet. Testing will include the following:
  - o Importing Documents
  - o Indexing Documents
  - o Searching Documents
  - o Module Testing
    - DocuWare Printer
- End Users will report issues directly to the admin listed above. If the Customer Admin can't resolve the issue, they will reach out to Ricoh to help assist with resolving the issue
- Customer will complete the UAT phase within 3 business days
- If additional Ricoh UAT support is needed a Change Order will be required

**Training and Documentation**

In this phase, Ricoh will provide the following materials and training for Customer. This training will be provided to the users that will be participating in the UAT Phase to enable the Customer resources to complete the UAT. These individuals will be the users that will conduct the "Train the Trainer" sessions for all remaining users.

**Admin Training**

One – one-hour session – Train the trainer session with client admin on Version 7 changes.

**User Training**

One – one-hour sessions – Train the trainer sessions with client end users on Version 7 changes.

**Deliverable(s):** Completed delivery of UAT "Train the Trainer" and administrative user training sessions Provision of Project-specific documentation.

Additional training by Ricoh may be requested through the [Change Control](#) process.

**User Acceptance Testing**

The primary purpose of UAT is for Customer to test the Project from a functional standpoint, prior to company-wide production rollout. In order to verify that all the features documented are working as specified in the UAT test plan defined in the TDD. As a standard, UAT consists of testing the installed application with a subset of no more than 5 users for a period of up to 3 business days.

UAT support for any new functionality or desired enhancements outside of the TDD will be handled with the established [Change Control](#) process.

Prior to production rollout, Ricoh will request signoff of the UAT phase of the project per the mutually approved Project plan/timeline.

**Client Support Desk (Engagement Process)**

To obtain service under a Block of Time SOW, Customer will contact the Implementation Resource Manager for assignment any time from 8 am to 8 pm EST, Monday through Friday.

**Acceptance Criteria**

At the end of each service delivery, either a Professional Services Service Order or a Solutions Delivery and Acceptance (SD&A) form (if services are rendered under a Statement of Work) will be delivered to the Customer with the service description and the amount of time defined. Customer will sign this form to acknowledge and accept service delivery.

**Customer Roles and Responsibilities**

Any successful Project is a cooperative effort. With that in mind, the following section provides information on the roles and responsibilities expected of the Customer's Project team. Please note that a single individual may execute the roles and responsibilities listed below. Each role does not necessarily mean that a separate Customer resource is required.

**Project Sponsor**

Customer will provide a designated Project sponsor who will have policymaking and budgetary authority for the Project and will be responsible for the success of the Project (including participation/delegation of status calls and/or review of status reports).

**Project Lead**

Customer will provide a designated Project lead who will:

- Support the development of the TDD
- Assist with the success and development of the overall Project plan/timeline and/or implementation schedule.
- Assist with the Change Control process for those tasks that are outside the scope of the Services and the TDD, including obtaining authorized signatures for COs.
- Coordination of Customer authorized signoff of each phase and milestone if required before commencement of another phase or milestone.
- Provide a list of key resources with their contact information for areas affected by the Project to the Ricoh Project lead prior to the Project kickoff.

**End User Representative**

Customer will designate an end user representative who will:

- Possess a solid understanding of the business processes as well as the overall project objectives.
- Be available throughout the Project Scope Phases of the project.
- Be available to answer questions or provide input during the project.

**System Administrator / Technical Support**

Customer will designate a representative(s) who will:

- Provide Ricoh a system administrator during implementation.
- Provide Ricoh with local area network ("LAN") access and participate in the personal computer ("PC") workstation software configuration.
- Provide Ricoh with system access and participate in the software installation.
- Be the focal point for the day-to-day administration of the application.
- Work with the Ricoh Project team during the system integration test and UAT as necessary.
- Be available for training and application support as specified in the Project schedule/plan.
- Provide ongoing technical support for the various software components.
- Ensure the network is in proper working order in a stable environment.
- Execute appropriate backups of the development, test, and production environments, if applicable.
- Ensure appropriate virus protection is enabled throughout the Project.
- Ensure accuracy of data/information supplied to Ricoh.

- Timely meet any deadlines for actions or decisions, including the review and acceptance of all deliverables.
- Provide any and all training not listed in this SOW to the end users.
- If this SOW is dependent upon the availability of certain hardware, software, data, or documentation, cause those items to be available, installed, configured and operational in advance of commencement of the Services.

**Completion Criteria**

When the Services or Project detailed in this SOW have been completed and demonstrated through satisfactory UAT or otherwise, the Project will be considered complete and Ricoh will provide to Customer a solutions delivery and acknowledgement, or similar form or document (each a "Completion Notice"). Despite the previous sentence, Ricoh will have fulfilled its obligations under this SOW when any one of the following first occurs:

- Ricoh completes the Services or Project described in this SOW and provides a Completion Notice.
- This SOW is terminated in accordance with Terms and Conditions applicable to this SOW. In this case, Ricoh will invoice Customer for actual hours worked and expenses incurred up to the date of termination. Hardware and software purchases are governed by their own separate agreements and are not included in this definition.

No later than 5 business days after Customer's receipt of the Completion Notice, Customer shall: (i) accept the Services or Project by signing the Completion Notice (or so inform Ricoh in other writing, including email); or (ii) if the Project or Services contains material defects or fails to conform to the specifications, reject the Project or Services, in which event, Customer shall provide to Ricoh a reasonably detailed written statement outlining the basis for its rejection. Customer's failure to respond within the 5 business day period shall be deemed acceptance of the Services and/or Project.

In the event of rejection by Customer and written notice in accordance with the procedure above, Ricoh shall promptly correct the defect set forth in the written statement and redeliver the Project or Services within a reasonable period of time. Customer shall, as soon as reasonably practicable after such redelivery (but in no event later than 5 business days thereafter), accept or reject the redelivery in accordance with the procedure set forth above, which procedure shall be repeated until the Project or Services are accepted in accordance with this section.

**Change Control**

Changes to the scope of the Project or Services shall be made only in a written CO signed by both parties. Ricoh shall have no obligation to commence work in connection with any change until the fee and/or schedule impact of the change and all other applicable terms are agreed upon by both parties in writing. The following is the process to follow if changes to components within the scope of this SOW are required.

- A CO will be the vehicle for communicating change. The CO must describe the change, the reason for the change, and the effect the change will have on the Project or Services.
- The designated Project lead of the requesting party will review the proposed change and determine whether to submit the request to the other party.
- Both the Ricoh and the Customer Project leads will review the proposed change and approve it for further investigation. Ricoh will specify if there will be any charges for such investigation, which may be incorporated into the CO. The investigation will determine the effect that the implementation of the CO charge will have on price, schedule, and other terms and conditions of this SOW.
- A written CO must be signed by both parties to authorize the implementation of the changes.

**Block of Time Services Scope**

**Services Included**

Time applied toward the block hours includes: all telephone and email conversations, preparation time, and any agreed upon documentation to perform and support the following support services:

- Reinstallation of Software
- Document Management System consulting
- Assist with configuration or customization of Ricoh supplied products
- Technical Support (WPTZ30/PS-SUPTECH)
- Training (WPVZ00/PS-TRAINING)

**Services Excluded**

This project does not cover the following functions or deliverables:

- Resources that must travel outside of their home area
- Formal Project Development or Implementation (Statement of Work) required
- Work performed outside of standard working hours (Monday thru Friday 8:00am - 6:00 pm)

**Project Assumptions**

All services will be delivered remotely by Ricoh's technical resources unless otherwise noted in this SOW. If in the course of delivering the Services, Ricoh determines that onsite installation or delivery is required additional charges will apply. In addition, if services are delayed or additional hours are incurred due to Customer IT availability, additional charges may apply as determined by the Change Control Process.

- All services will be delivered remotely by Ricoh's technical resources unless otherwise noted in this SOW. If in the course of delivering the Services, Ricoh determines that onsite installation or delivery is required additional charges will apply.
- All discussions of Project duration are dependent upon a timely reception of requisite purchase orders ("POs") and other Customer-generated paperwork necessary to launch the Project or move forward to the next phase.
- Ricoh will start work once this SOW has been signed and a purchasing agreement received.
- Services provided by Ricoh or its subcontractors will be provided during normal business hours (8:00 am to 5:00 pm) Monday through Friday excluding Ricoh recognized holidays. Required Services provided outside of these hours have not been included in the costs.
- Maintenance and support are current for DocuWare.
- The DocuWare system is in a stable state with no active support issues.
- The customer will be responsible for configuration of all software outside of DocuWare.
- DocuWare On-Premise Single Sign On(SSO) requires MS Active Directory
- Ricoh in conjunction with the Customer will monitor the DocuWare On-Premise to DocuWare New On-Premise Synchron Process.
- A complete DocuWare production Server and Database backup will be performed by customer prior to project commencement.

**Deployment Retainer Professional Services Fees**

**MINUTE BOOK 93 of Time Price**

The level of effort to install this Project as outlined in this SOW will be delivered via a deployment retainer. The number of hours included to deploy this Project listed in the retainer amount below is based on Ricoh's experience and the scope detailed in this SOW. If the scope changes or the effort to deploy the Project is greater than the estimate, Ricoh will address via our Change Control process (that may be billable at Ricoh's standard hourly rate.)

Deliverable Description	Installation Deployment Retainer
Retainer Amount (Phase 1)	49hrs @ \$201.61
Retainer Amount (Phase 2)	83hrs @ \$201.61

The total services price for this block of time engagement shall be (\$4,320.00) and does not include any hardware, software, or sales tax. The purchase or lease of any hardware or software is independent from this Statement of Work and therefore not contingent on Customer's acceptance of these services performed.

<b>Customer Name:</b>	City of Mountain Brook
<b>Project Name:</b>	Professional Service Support Block of Time
<b>Deliverable Description:</b>	Support – Block of Time
<b>Block Size:</b>	20
<b>Standard Price/hr:</b>	\$220.00
<b>Discount Price/hr</b>	\$216.00
<b>Total Services:</b>	\$4,320.00

In consideration of the Services, Customer shall pay Ricoh the Fees in the amounts and at the rates set forth as follows:

The total fees for the DocuWare Upgrade Project shall be (\$26,612.52) ("Fees"), not including hardware, software, sales tax, or hardware/software technical support. The purchase or lease of any hardware or software is independent from this SOW and therefore not contingent on Customer's acceptance of the Services performed.

**Payment Schedule**

Deployment hours will be pre-paid. Ricoh will invoice Customer for all Fees for the Project upon execution of this SOW, and Customer will pay the invoice in full within 30 days.

If the invoice is not paid in full on time, then Customer agrees to pay to Ricoh a late charge of 1.5% per month on any unpaid amounts (or the maximum allowed by law, whichever is less) and shall also pay to Ricoh all costs and expenses of collection or the enforcement of Ricoh's rights under this section (including, but not limited to, reasonable internal and external legal costs), whether or not suit is brought. Ricoh has no obligation to use Customer's invoicing or billing portals, processes, methods, or invoicing formats specific to Customer billing requirements. All remedies hereunder or at law or in equity are cumulative. Except to the extent of any applicable and validated exemption, Customer agrees to pay any applicable taxes that are levied on or payable as a result of the use, sale, possession, or ownership of the products and/or services covered under this SOW (other than income taxes of Ricoh).

**NOTES:**

- All Services must be prepaid with Statement of Work signing and execution.
- All hours must be used within one (1) year of execution date of this contract.
- Services must be scheduled 48 hours in advance.
- Professional Services support will be charged at 15-minute increments.
- This estimate does not include taxes or miscellaneous expenses.

**Payment Schedule**

Block hours will be pre-paid. Services amount described above will be payable upon execution of this Statement of Work.

**Retainer Notes**

- All hours must be used within (6 months) of execution date of this SOW.
- All hours are for standard working hours only (Monday through Friday 8:00 am through 5:00 pm local time). Off hours, weekend, holiday, etc. are not included.
- Once the hours have been depleted, additional time can be purchased at Ricoh's contracted retainer rate.

**Budget Notes**

- All costs are exclusive of applicable taxes.
- This cost is valid for a period of 30 days from the cover date; after this date it may be revised.

**Terms & Conditions:**

The performance of the Services described in this SOW by Ricoh for Customer is subject to and governed solely by the following terms and conditions:


1. **Term.** This SOW is effective as of the date that it is executed by both Customer and Ricoh and it will continue in effect for the shorter of the period necessary to complete the Services or 1 year (unless terminated earlier as specified in the following Section) (the "Term").
2. **Termination.** Either party may terminate this SOW for cause if the other party materially breaches the SOW, unless the breach is cured no later than 30 days after the breaching party's receipt of written notice of the breach. Either party may terminate this SOW immediately for cause upon the commencement of any voluntary or involuntary bankruptcy or insolvency proceeding by or against either party. Ricoh may terminate this SOW, for convenience without cause, upon 90 days prior written notice to Customer. In addition to its other legal remedies, Ricoh may suspend the performance of the Services, stop delivery of products and/or terminate this SOW for any non-payment on Customer's accounts that continues for more than 30 days following the due date. If this SOW is terminated by Customer without cause or terminated by Ricoh for cause, then Customer agrees to pay Ricoh the Fees, materials and reimbursable expenses for all non-defective Services that Ricoh provides through the date of termination. If a SOW is terminated by Ricoh without cause or terminated by Customer for cause, then, with respect to Services for which Customer has prepaid and which Ricoh has not yet fully provided to Customer, Ricoh will provide Customer with a prorated refund. The obligations of the parties under this SOW that by their nature would continue beyond expiration or termination of this SOW will survive any such expiration or termination.
3. **On-Site Safety.** While on Customer's site, Ricoh's personnel will comply with Customer's reasonable site safety and security policies, provided that Customer first provides those policies to Ricoh in writing in advance; they do not conflict with this SOW, and do not impose any additional financial or legal burden on Ricoh.
4. **Insurance.** Each party certifies that it maintains reasonable amounts of general liability, auto and personal property insurance, and workers' compensation insurance in the amount required by law, and that such insurance will remain in effect during the Term. Upon request, each party agrees to deliver the other evidence of such insurance coverage.
5. **Limited Warranty and Disclaimers.** Ricoh warrants that the Services will be performed: (i) in a good and workmanlike manner; (ii) using reasonable care and skill, and (iii) according to the description contained in this SOW. Ricoh will re-perform any Services not in compliance with this warranty and brought to Ricoh's attention in writing within a reasonable time, but in no event more than 30 days after such Services are performed, which will be the exclusive remedy for such non-compliance. Customer acknowledges that Ricoh's performance of Services is dependent upon Customer's timely and effective performance of its responsibilities set forth in this SOW. Except for the limited warranty provided above in this Section, (a) the Services, work, and any deliverables or other goods are provided "as is"; and (b) Ricoh makes no warranties of any kind (express or implied) with respect to any services, work, and any deliverables or other goods provided under this SOW, including (without limitation) any implied warranty of merchantability, fitness for a particular purpose, or non-infringement. No warranties are created by any course of dealing between the parties, course of performances, trade usage, or industry custom.
6. **Limits of Liability.** In no event will either party be liable for consequential, incidental, punitive, or indirect damages, including any damages for business interruption, loss of use, revenue, or profit, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, regardless of whether such damages were foreseeable and whether or not the breaching party was advised of the possibility of such damages. In no event will (1) Ricoh's liability arising out of or related to this SOW, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed, in the aggregate, the Fees that Ricoh received from Customer under this SOW, and (2) Ricoh be liable to Customer or a third party for any damages arising out of or related to any failure of service, including (but not limited to) loss of data or delay of delivery of services under this SOW. Ricoh assumes no obligation to provide or install any anti-virus or similar software, and the scope of services contemplated under this SOW does not include such services.
7. **IP Rights.** Intellectual property rights, including the design, development and delivery of all inventions, business methods, processes, concepts, designs, blueprints, photographs, reports, plans, software (in source and object code format), documentation, databases, data, information and other materials (whether intangible or tangible), prepared or created by Ricoh related in the course of the Services will, upon creation, become Ricoh's property ("Ricoh IP") and Ricoh will retain all ownership rights in Ricoh IP; however, that Ricoh IP does not include, and Ricoh will not acquire ownership of, data, materials or content provided by Customer. Nothing contained in this SOW will be construed to transfer, convey, restrict, impair or deprive Ricoh of any of its ownership or proprietary interest or rights in technology, information or products that existed prior to the provision of deliverables under this SOW or that may be independently developed by Ricoh outside the scope of this SOW. Customer will not use any Services or deliverables for any unlawful purpose. Subject to payment of all relevant Fees and charges, Ricoh hereby grants Customer a worldwide, perpetual, non-exclusive, non-transferable, royalty-free (other than payments identified in this SOW) license solely for its internal business purposes, and may use, display, and distribute within Customer's organization only the Ricoh IP, except as otherwise limited under this SOW. For clarity, this SOW and the foregoing license relates to the Services only, and software programs (whether on-site or hosted) will not be deemed to be deliverables or "Services." All licensing of Ricoh and/or third-party software is as provided in the next Section.

8. **Software.** All Ricoh and/or third-party software provided by Ricoh is licensed, not sold, and is subject to both the server, seat, quantity, and other usage restrictions set forth in any applicable license agreement, license terms, or subscription terms ("Software License"), whether pursuant to written, click-through, shrink-wrap or other agreements for such purpose, with the licensor of the software ("Licensor"). Ricoh has no right, title or interest in any third-party software and Ricoh makes no representations and provides no warranties with respect thereto. Customer is solely responsible for entering into Software Licenses with the applicable Licensor and acknowledges that its rights and obligations with respect to such software, as well as those of the Licensor, are solely as set forth in such Software Licenses.
9. **Confidentiality.** "Confidential Information" means information in any form which may be disclosed in the performance of this SOW and which: (a) is identified as confidential; or (b) should reasonably be understood by the receiving party to be confidential and proprietary (including information relating to the Services, data used or generated in the provision of the Services, or any of a party's products, operations, processes, plans or strategies, know-how, trade secrets, market opportunities or business affairs). But, "Confidential Information" will not include information which: (i) has been or will be in the public domain; (ii) was or is known to the receiving party or its employees and subcontractors do not divulge, to any third-party, any Confidential Information of the other party without the other party's prior written consent, except to authorized representatives of Customer or to employees or subcontractors of Ricoh who have a need to access such Confidential Information to perform the Services; Customer acknowledges and agrees that it will not provide any sensitive information, personal data or information that is otherwise regulated by applicable law, rule, statute, regulation or guidance document without first notifying Ricoh in writing, so the parties may, if required, enter into additional terms and conditions related to such information. Ricoh may use general statistics relating to this engagement so long as it does not disclose the identity of Customer or make any reference to any information from which the identity of Customer may be reasonably ascertained. Notwithstanding anything in this SOW to the contrary, Customer is responsible for ensuring its own compliance with any and all applicable legal, regulatory, business, industry, security, compliance and storage requirements relating to data retention, protection, destruction and/or access. It is Customer's sole responsibility to obtain advice of competent legal counsel as to the interpretation and interpretation of any relevant laws and regulatory requirements that may affect Customer's business or data retention, and any actions required to comply with such laws.
10. **Compliance.** Customer will indemnify, defend and hold harmless Ricoh and its representatives and affiliates from and against any fine, penalty, claim, suit, demand, liability, cause of action, damage or cost (including reasonable attorneys' fees) for any actual or alleged violation of any law or regulation, including without limitation, claims relating to: (a) shipping of any regulated materials (e.g., hazardous materials) arising from Ricoh's shipping of materials provided by or on behalf of Customer hereunder; (b) Customer's use of personal or other regulated data in conjunction with any one or more Services; and (c) import, export and re-export control (collectively, "Import/Export Laws") arising from Customer's use of the Services and/or any software or web-based solution provided or contemplated under this SOW. Despite any other provision of this SOW, Customer will at all times remain solely responsible for complying with all applicable laws (including shipping laws or regulations and Import/Export Laws) and for obtaining any applicable authorization or license thereunder. Ricoh does not provide legal, accounting, or tax advice or represent or warrant that its services or products will guarantee or ensure compliance with any law, regulation, or other requirement. Customer represents and warrants to Ricoh that it, its employees and agents will not provide Ricoh with any document, technology, software or item for which any authorization or license is required under any Import/Export Law. Without limiting the survival of any other provisions of this SOW, Ricoh and Customer agree that the terms of this Section will survive the expiration or earlier termination of this SOW. Each party will promptly notify the other if there is a threat or initiation of any claim, demand, action or proceeding to which the indemnification obligations set forth in this Section may apply.
11. **Non-Solicitation.** Customer agrees that during the term of the Services and for a period of 1 year after termination thereof, it will not directly or indirectly solicit, hire or otherwise retain as an employee or independent contractor any employee of Ricoh that is or was involved with or part of the Services.
12. **General.** This SOW is the entire agreement between the parties relating to the subject matter of the SOW and supersedes all prior understandings, writings, proposals, representations or communications (oral or written) of either party. Only a CO in writing executed by authorized representatives of both parties may amend this SOW. Any purchase order or other Customer ordering document will not modify or affect this SOW, nor have any other legal effect. All equipment is purchased or leased by Customer under a separate agreement with independent obligations governed solely by the terms in the separate agreement. Customer may not transfer or assign this SOW without Ricoh's prior written consent. Ricoh will be excused from any delay or failure in performance under this SOW if the delay or failure is caused by any event of force majeure or other factor beyond Ricoh's reasonable control. The parties are independent contractors. This SOW will be interpreted in accordance with the substantive laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. Electronic signatures of the parties on this SOW will have the same force and effect as manual signatures. This SOW may be executed in multiple counterparts, each of which will be deemed an original.

[Remainder of Page Intentionally Left Blank]

This SOW shall be effective as of the date of execution by both Ricoh and Customer. Scheduling of resources and Project duration estimates can only be provided after this SOW has been signed by both parties. By signing below, the undersigned represent that they are duly authorized to enter into this SOW on behalf of their respective entities.

CUSTOMER ACCEPTANCE

	Stewart Welch/Hayes	10-10-2022
Authorized Signature	Name and Title	Date

RICOH ACCEPTANCE

Authorized Ricoh Signature	Name and Title	Date

PLEASE PRINT THE NAME AND TITLE OF THE SIGNER IN THE APPROPRIATE SIGNATURE BLOCK.

Fwd: Docuware proposal[EXTERNAL]  
1 message

Steve O'Dell <odells@mtnbrook.org>  
To: Steve Boone <boones@mtnbrook.org>

Wed, Oct 5, 2022 at 4:27 PM

See below

Sent from my iPhone

Begin forwarded message:

From: Tim Jordan <Tim.Jordan@ricoh-usa.com>  
Date: October 5, 2022 at 3:53:10 PM CDT  
To: Steve O'Dell <odells@mtnbrook.org>  
Subject: RE: Docuware proposal[EXTERNAL]

Hi Steve,

Attached you will find the updated Statement of Work (SOW) I believe addresses all of the noted items.

Following are questions, comments or concerns about the proposal:

1. PDF pg 12-Can we change use of hours from 3 months to 6 months? **DONE**
2. PDF pg 12-Wording about honoring the proposed costs is confusing. Confirm that once the SOW is executed, the rates cannot be increased? Are the quoted rates in the SOW still good? **YES**
3. PDF pg 14-Terms and Conditions #2, can we increase the 10 days to 30 days? **DONE**

From: Tim Jordan <Tim.Jordan@ricoh-usa.com>  
Sent: Friday, September 30, 2022 2:43 PM  
To: Steve O'Dell <odells@mtnbrook.org>  
Subject: RE: Docuware proposal[EXTERNAL]

I will have our team take a look. Have a nice weekend.

PS – would you be open to taking a look at our Ransomware protection?

<https://mail.google.com/mail/u/0/?ik=01567315a1&view=pt&search=all&permthid=thread-f%3A1745884526843024429%7Cmsg-f%3A1745884526843024429%7C> 1/3

APPENDIX 7





Heather Richards <r-richardsh@mtnbrook.org>

# MINUTE BOOK 93

October 3, 2022



**Fwd: Sidewalk on Brookwood Road**  
1 message

Ronald Vaughn <vaughnr@mtnbrook.org> Wed, Oct 5, 2022 at 11:01 AM  
To: Sam Gaston <gastons@mtnbrook.org>, Steve Boone <boones@mtnbrook.org>, Steven Gay <gayj@mtnbrook.org>, Heather Richards <r-richardsh@mtnbrook.org>  
Cc: "Currie, Nathan" <NCurrie@sain.com>, Alicia Bailey <abailey@sain.com>

Thanks Nathan, everything looks good to me. I have forwarded to Sam and other staff for their review and to place it on the council agenda for Monday October 10th.

Thanks again.

**Ronnie Vaughn**  
Public Works Director  
City of Mountain Brook AL  
3579 East Street  
Birmingham, Alabama 35243  
205.802.3865 Office  
205.967.2631 Fax  
vaughnr@mtnbrook.org

----- Forwarded message -----  
From: Currie, Nathan <NCurrie@sain.com>  
Date: Mon, Oct 3, 2022 at 5:57 PM  
Subject: Sidewalk on Brookwood Road  
To: Ronnie Vaughn (vaughnr@mtnbrook.org) <vaughnr@mtnbrook.org>  
Cc: Bailey, Alicia <abailey@sain.com>

Ronnie,

I hope you're doing well. Please see attached for our proposal for survey, design, and bidding services for the proposed sidewalk along Brookwood. Thanks for considering this!

Please let us know if you have any questions or need anything else.

**Nathan Currie, P.E.**  
Project Manager / Associate  
Sain Associates, Inc.

Two Perimeter Park South  
Suite 500 East  
Birmingham, Alabama 35243

https://mail.google.com/mail/u/0/?ik=8084775052&view=pt&search=all&permthid=thread-F%3A1745664094938423461&imp=msg-F%3A1745664094... 1/2

Sidewalk on Brookwood Road  
City of Mountain Brook  
October 3, 2022  
Page 2



Contours will be shown at 1-foot intervals and spot elevations will be shown in flat areas. Visible drainage structures will be shown indicating top and invert elevations as well as type and size of pipes. Visible improvements will be shown including buildings, walls, fences, sidewalks, curbs, parking areas, paved areas, and landscaped areas. Please note that in wooded areas tree lines will be shown in place of individual trees. Utility locate request will be made to Alabama 811 to have underground utilities within the project corridor identified and marked. Once or if the underground utilities have been marked, we will gather field locations in order to show the underground utilities on the survey. Please note that utility locators contracted with the Alabama 811 often refuse to mark underground utilities lying outside the limits of public Right-of-Way. In addition, utility locators contracted with Alabama 811 often refuse to mark underground utilities for corridor surveys. If after five days, the underground utilities have not been marked a second and final ticket request will be made. If the underground utilities are not marked within five days of the second ticket request a note will be shown on the survey listing the 811 ticket locate number and the unmarked area that the ticket covers. We will perform research with the Jefferson County Judge of Probate in order to obtain Right-of-Way information throughout the survey corridor. Those documents along with field monumentation will be used to establish the existing Rights-of-Way throughout the survey corridor.

A basic control survey will be performed to locate and identify horizontal and vertical control points which will provide control in the project corridor and will be the basis of subsequent work. In addition, benchmarks will be monumented at intervals not to exceed 1000 feet along the project corridor. This control will be based State Plane Coordinate System (NAD83, Alabama West Zone). Elevations will be based on NAVD88 Datum.

The above survey will be drawn to ALDOT Cad standards (ALCAD) and provided in Microstation V8i format.

### Sidewalk Plans

The plans will include the following sheets:

- Cover Sheet with index
- Typical section(s) and detail(s)
- Project Notes and Legend
- Plan and Profile with grading and drainage
- Traffic control notes
- Traffic control details
- Erosion control layout

The project will utilize ALDOT's technical specifications and standard drawings. Sain will prepare an opinion of probable cost for the City's use. The area of disturbance is estimated under 1 acre, therefore a permit from ADEM is not included in this proposal.

Sain has budgeted the attendance of one meeting with the City regarding the project.

Mr. Ronnie Vaughn  
City of Mountain Brook

SUBJECT: Sidewalk on Brookwood Road  
SA Project #21-0059

Dear Ronnie:

We appreciate the opportunity to submit this proposal for surveying and engineering services. Following is a description of our understanding of your project and the scope of services that we propose to undertake.

### General Project Understanding

The City of Mountain Brook will fund the construction of a sidewalk along Brookwood Road from Crosshill Road to approximately 3629 Brookwood Road, for an approximate distance of 1025LF. This sidewalk section is a part of the City's Master Sidewalk Plan and will connect to existing sidewalks at the intersection of Crosshill Road. The sidewalk will terminate at the residential driveway of 3629 Brookwood Road. The City intends to fund the continuation of this sidewalk to tie to the existing sidewalk at the City limits in the future.

The sidewalk design is expected to include:

- 5' wide sidewalk (approximately 1025' in length) on the east side of the road.
- Sidewalk will be installed behind the existing curb and/or gutter. Replacement of existing gutter with new curb and gutter may be needed if an increase in elevation is required for tying grades in the Right of Way.
- New drainage inlets (Type E) and pipes may be needed to drain the new curbline.

The installation of the sidewalk is expected to stay within the Brookwood Road Right of Way. The existing utilities will remain in place, except for possible adjustments to water service lines and meters. Retaining walls and narrowing the pavement are not expected for the installation of the sidewalk, but could become necessary to keep the installations within the Right of Way.

### Scope of Services

#### Topographic Survey

Field locations will be gathered in order to establish Topographic and Right of Way locations on Brookwood Road from Shady Lane to Brookwood Lane in the City of Mountain Brook. Details of the limits are indicated in red on the attached Exhibit A. The limits will extend from the existing sidewalk near Crosshill Road and terminate approximately 10' to the north-east of the driveway at 3629 Brookwood Road and will provide coverage from the west edge of pavement of Brookwood Road to 10' beyond the Right of Way. The Right of Way will be shown, but individual property lines will not be shown.

Engineering Better Partnerships

Sidewalk on Brookwood Road  
City of Mountain Brook  
October 3, 2022  
Page 3



### Contract Documents, Advertising and Bidding Services

Sain will prepare contract documents necessary for the project. We will utilize the Engineers Joint Contract Documents Committee (EJCDC) or the American Institute of Architects (AIA) standard documents for the front end documents, contract, and general conditions. The ALDOT specifications will be utilized as the technical specifications for the work. Sain will prepare any required special conditions for insertion into the contract documents.

Sain will prepare an advertisement for bids to be advertised in newspapers. Sain will prepare the advertisement and contact the newspapers for publishing. As part of this task, Sain will respond to contractor's requests for information (RFIs) and tabulate and review the bids to then recommend awarding the contract.

The City will handle contract execution, conducting of meetings with the contractor, and construction inspection and oversight.

### Exclusions

The following services are excluded from this proposal but can be provided if deemed necessary and requested by you: boundary survey, ALTA/ACSM survey requirements, setting of missing property corners, title review or research, setting metal caps for control, staking, GPR, setting control to ALDOT standards, providing of utility contact information, tract sketches and legal descriptions, utility relocation designs, landscaping and lighting, geotechnical services, securing of funds or grants, coordination with any other agencies other than the City, construction services (layout, staking inspection, or testing), attendance at pre-bid or pre-construction meetings, geotechnical, pavement design, structural.

### Fees

We propose to provide the above described services based on the following fee schedule:

Topographic Survey .....	Lump Sum \$8,500
Sidewalk Plans.....	Lump Sum \$28,200
Contract Documents, Advertising and Bidding Services.....	Lump Sum \$12,500
Total Estimated Budget.....	\$49,200

Reimbursable expenses such as printing, shipping, plan/permit application fees, mileage, etc. are included in the above fees.

### Procedures for Changes in Scope of Work

The scope of work documented herein is based upon information known as of the date of this proposal. Should future changes (e.g. site plan, regulatory, project phasing, additional meetings, etc.) necessitate changes in the scope of work, we will contact you to discuss the scope of the additional work and its impact to our contracted fees and project schedule. No additional work will be undertaken by Sain or our subconsultants without your authorization.

APPENDIX 8



**Terms and Conditions**

This contract is subject to the enclosed Terms and Conditions. All subsequent services required by you outside the scope of service specified will be performed on a time and materials basis according to the schedule of rates enclosed. Any modification to this contract document must be approved in writing by both parties with approval indicated by each signatory's initials and the date of approval.

**Proposal Limitations**

We reserve the right to withdraw or modify this proposal if not contracted within 60 days. Sain Associates has provided this proposal with the understanding that you have selected our firm to perform professional services based upon our staff's qualifications, experience and reputation and not solely upon the cost of the services proposed. We trust the fees outlined herein are acceptable and within your project budgetary plans. We look forward to commencement of the work and will be glad to address any questions or concerns you have regarding the technical scope and/or schedule of fees for this proposal. If you should request additional prices for the scope of work included herein from other consulting engineers and/or land surveyors, please consider our proposal withdrawn in order to comply with Alabama Administrative Code Chapter 330-X-14-.05(f).

**Schedule**

Once we receive the signed contract, Sain can prepare the survey within 4 weeks. Sain will work with the City to prepare a schedule for completion of the sidewalk plans and timeline for construction.

Thank you for the opportunity to provide this proposal. If you have any questions or need clarification on any item, please call me. We look forward to working with you.

Sincerely,  
  
SAIN ASSOCIATES, INC.  
  
*Nathan Currie*  
  
Nathan Currie, P.E.  
Project Manager/Associate  
Alabama Reg. #32400

OFFERED:  
SAIN ASSOCIATES, INC.  
BY: Alicia Bailey, Practice Leader/Sr. Principal  
  
*Alicia Bailey*  
Signature of Authorized Representative

Date: 10/3/22

ACCEPTED:  
CITY OF MOUNTAIN BROOK  
  
*Stewart Welch-Mayor*  
Signature of Authorized Representative

BY:   
  
*Stewart Welch-Mayor*  
Print Name & Title  
Date: 10-10-2022

Enclosures:  
Sain Terms & Conditions (sch. 2022)  
Exhibit A

EXHIBIT A (TOPOGRAPHIC SURVEY AREA)



APPENDIX B

Engineering Better Partnerships

**SAIN ASSOCIATES, INC.  
TERMS AND CONDITIONS**

Rates:

Principal	\$190.00 - \$275.00 per Hour
Engineer/Planner	\$98.00 - \$148.00 per Hour
Senior Engineer	\$150.00 - \$210.00 per Hour
GIS Professional	\$125.00 - \$135.00 per Hour
Designer	\$87.00 - \$125.00 per Hour
Surveyor	\$100.00 - \$140.00 per Hour
Survey Crew (1-Person)	\$100.00 per Hour
Survey Crew (1-Person + Robot)	\$150.00 per Hour
Survey Crew (2-Person)	\$175.00 per Hour
Survey Crew (3-Person)	\$215.00 per Hour
Survey Per Diem	\$150.00 per person per Night
Administrative Support	\$40.00 - \$75.00 per Hour

**Reimbursable Expenses**  
Printing, contract carrier service, and travel expenses are not included within Consultant's basic fee and will be passed along to Client at cost plus 10%.

**Payment**  
Payment for services by Consultant is to be made monthly based upon the percentage of work completed and invoiced to Client. Client's obligation to pay for services rendered hereunder is in no way dependent upon its ability to obtain financing, to obtain payment from a third party, or to obtain approval of any governmental or regulatory agencies, or upon Client's successful completion of the project. Payment for services and expenses hereunder is due in full within thirty (30) days after receipt of invoice. For past due accounts in excess of 120 days Consultant will issue a past due statement with interest of 1.5% per month from date thereof (30th day). Consultant may elect to seek assistance in collection of accounts in excess of 120 days in which case Client will be billed for attorney's fees for collection in the amount of 1/3 of the outstanding balance or such greater amount as the court finds reasonable. Consultant reserves the right to suspend services under this agreement until receipt of payment in full for all amounts due for services rendered and expenses incurred.

**All Immigration Law Compliance**  
By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting there from.

**Standard of Care**  
The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the skill and care ordinarily provided by members of Consultant's profession practicing under the same or similar circumstances and professional licenses at the same time and in the same locality, as specifically as is prudent considering the ordinary professional skill and care of a competent member of Consultant's profession. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

**Responsibility of the Client**  
Client shall provide all criteria and full information as to Client's requirements for the Project, including budgetary limitations.

**Reliance on Information Provided by Others**  
Consultant shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's Consultants and Contractors, and information from public records, without the need for independent verification.

**Schedules, Budgets and Estimates or Opinions of Cost**  
Any schedules or completion dates, budgets, or estimates of cost prepared by Consultant represent Consultant's professional judgment based on its experience and available information. Since neither Consultant nor Client has control over the cost of labor, materials, or equipment, or contractor's work, it is not possible to determine precise completion bidding or market conditions; utility conflicts or right-of-way acquisition; agency approval times or actions of a Consultant Project Manager not employed by Sain. The Consultant cannot and does not warrant or represent that actual schedules, budgets or completion dates or actual costs will not vary from schedules or completion dates, budgets or estimates of cost prepared by Consultant or proposed, established, or approved by Client.

**Approvals**  
Client agrees and acknowledges that the approval process necessary to maintain a project timeline is both unpredictable and outside of the Consultant's control. Consequently, the Consultant makes no representations as to its ability to timely achieve or to obtain said permits or approvals from any governing authority or outside agency.

**Site Visits/Job Site Safety/Construction Phase Services**  
Consultant and Client acknowledge and agree that the Consultant shall not have responsibility and will not be liable for job site safety or construction means and methods, regardless of whether Consultant's scope of services documented herein include site visits during the construction phase. The Consultant is not responsible for, and that by no means be liable for, the acts or omissions of any owner, contractor, subcontractor or material supplier.

**Right of Entry**  
Client, at its sole cost and expense, shall furnish the Consultant, its agents, employees, and subcontractors a right-of-entry and any other authorizations or licenses needed for Consultant to enter the Project location to perform the services contemplated by this Agreement. Client agrees and acknowledges that the services provided by the Consultant may require certain activities that may disrupt the use of the Project's property location and may disturb, alter, or damage the terrain and vegetation thereabout and that Consultant will not restore the property to its original state.

**Certifications**  
Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, guarantee, or warrant the existence of conditions that Consultant cannot ascertain or verify. Further, Consultant and Client acknowledge and agree that Consultant shall not be expected to provide any such certifications to Client.

**SAIN ASSOCIATES, INC.  
TERMS AND CONDITIONS**

**Unforeseen Conditions and Occurrences**  
If, during the course of performance of services pursuant to this Agreement, any unforeseen hazardous substance, material, object, element, or other condition, during the course of performance of services pursuant to this Agreement, materially affects or may affect the services to be provided hereunder, the risk involved in providing the services, or the scope of the services, Consultant will notify Client. Subsequent to that notification, Consultant may, (a) if practicable, in Consultant's judgment and with Client's approval, complete the original scope of services in accordance with this Agreement; (b) agree with Client to modify the scope of services and the estimate of costs to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the Parties and incorporated herein; or (c) terminate the services effective on the date of notification for convenience.

**Use of Electronic Media**  
Copies of documents that may be relied upon by the Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data, graphic or other types that are furnished by Consultant to Client are only for convenience of the Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application, operating systems or computer hardware differing from those in use by Consultant at the beginning of this assignment.

**Limitation of Remedies**  
Liability of remedies of Sain Associates, Inc., resulting from errors, omissions, or the negligence of Sain Associates, Inc., its agents or employees, pursuant to work under this agreement shall not exceed the lesser of the value of engineering or surveying services required to correct the deficiency or the basic consulting fee for work covered hereunder or the actual cost of the remedies. This provision is being agreed to as a result of the fees being charged.

**Consultant's Choice of Arbitration or Court**  
Client and Consultant agree that if a dispute arises out of or relates to this Agreement, the parties will attempt to settle the dispute through good faith negotiations. If direct negotiations do not resolve the dispute, the parties agree to endeavor to settle the dispute by mediation prior to the initiation of any legal action unless delay in initiating legal action would irreversibly prejudice one of the parties. Mediation shall take place in Jefferson County, Alabama, and if a mediator cannot be agreed upon by parties, then it is agreed that AAA (American Arbitration Association) will appoint a mediator. If mediation is unsuccessful, any such dispute shall be subject to and resolved at the election of Consultant, by either arbitration in accordance with the Rules of the AAA or by a trial by judge in either the Circuit Court for Jefferson County, Alabama, or the United States District Court for the Northern District of Alabama.

**Indemnification**  
Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.

**Force Majeure**  
Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.

**Termination of Contract**  
Client and Consultant each agree to terminate this Agreement with seven days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Consultant has been paid in full all amounts due for services, expenses and other related charges.

**Ownership of Documents**  
All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein. Consultant grants Client a license to use instruments of Consultant's professional services for the purpose of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or Client's disclosure of any such documents to any third party.

**Third Parties**  
Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Consultant. Consultant's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against Consultant because of this Agreement or Consultant's performance of services hereunder.

**Consequential Damages Waiver**  
Neither the Client nor the Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, lost income, loss of reputation, unrelated savings or diminution of property value and that shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

**Waiver of Incidental Terms/Severability**  
In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any provision of this Agreement which is held to be void or unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions.

Schedule 2022



October 10, 2022

Minutes & Agenda for October 10, 2022 to 70 minutes.docx



To: Mountain Brook City Council  
From: J. Loggins, Chief of Police  
Date: October 5, 2022  
Re: Personnel Position Request

The City of Mountain Brook entered into an agreement with Shelby County 911 for call taking and dispatch of 911 services in 2021. The transfer of services was completed in January 2022. In planning for the transition, the Mountain Brook Police Department requested six additional positions to backfill the reduction of eleven dispatch positions to cover ancillary duties the previous positions had provided. During the planning and discussions, it was agreed upon that the police department would be allowed four positions effective October 2021 and that the department could request an additional position each of the following two years. In doing so, MBPD pulled officers from other areas of the police department and filled the six desk position assignments that were needed.

I am requesting approval of an additional position which would represent the fifth of six positions needed and originally requested. Currently, MBPD has one vacant position. Candidates for the position are being recruited and currently participating in the hiring process. We believe the position will be filled by the end of 2022. The approval of the additional personnel position would allow the police department to recruit and potentially hire two officers through the same timeframe and have them attend the January 2023 police academy. In anticipation of the additional position, the '23 budget includes the funding for the position.

I will be available for any questions or concerns. I appreciate any and all consideration in advance.

**Update on Projects – Flooding/Drainage Issues  
October 07, 2022**

1. **900 block of Euclid Avenue** - Plans 90% complete.
2. **Richmar "The Cut"**  
Field surveying is complete and we are evaluating upgrade options
3. **3669 Northcote Under Construction**
4. **Junior High Drainage – Out to bid**
5. **Pinecrest Road at Canterbury Methodist**  
Design 90% complete. Should issue within two weeks (Mid Oct.)
6. **Cherry Street Drainage**  
Design 75% complete – meeting on site next week
7. **Canterbury/Surrey Road Drainage Improvements** – Study complete alternate design options developed, have discussed with stakeholders. Submitting a proposal for design and construction services. Cost est \$100,000.
8. **Surrey Road – as above**
9. **Fairmont Drive/Lorena Lane** – Preliminary Design complete. Ready to meet with neighbors. Cost est \$175,000.
10. **Crestline Branch from Cherry Street to Montcrest Drive** – Surveying complete. Forming opinions.

**4. Assistance with bidding and Contractor Selection**

The Consultant would assist the Client with contractor selection. This work would include assisting the City with the preparation of Bid Documents, attending pre-bid conference, answering contractor questions, and assisting the City in the review of the bids. The Detailed Scope is as follows:

- Assist in the selection of the Contractor
- Attend pre-bid conference
- Address questions posed by selected Contractor, issue clarifications if required
- Assist client with contract preparation and coordinate Client/Contractor administration

Lump Sum Fee \$4,500

**4. Construction Administration**

The Consultant will perform Construction Review to evaluate the Contractor's general conformance with plans and specifications. The Consultant will review Shop Drawings, and work with the Contractor and Client in solving any minor construction related problems that may arise. The Consultant will review and approve pay request and assist with project closeout. The detailed scope is as follows:

- Review of shop drawings
- Construction observation to be performed on an as-needed basis and at the direction of the Client
- Minor construction-related revisions – Revisions required as a result of field conditions or as agreed upon by the Client

Lump Sum Fee \$3,500

**NOT INCLUDED IN SCOPE OF WORK**

1. Structural engineering
2. Fees for video service (billed as a reimbursable)
3. Design or modification to public sanitary sewers (if required, this would be added to scope and a new fee developed)
4. Full Construction Engineering and Inspection (CEI), not assumed to be required
5. Construction surveying
6. Major revisions
7. Stormwater permitting with ADEM (not required)
8. Design or study of downstream improvements
9. Negotiations with property owners for easement rights (not required)

If additional services not included in the above scope are performed, those additional services should be approved by Client in advance and may be billed according to the attached Schedule of Unit Rates.

**Agreement for Consulting Services**

**Surrey and Canterbury Roads Drainage Improvements  
Design and Preparation of Construction Documents**

October 06, 2022

This AGREEMENT, entered into by and between The City of Mountain Brook, Alabama, hereinafter referred to as the Client, and Schoel Engineering Company, Inc., hereinafter referred to as the Consultant, is for Consulting Services associated with the drainage improvements in Surrey Road and Canterbury Road as proposed in September 2022.

**PROPOSED SCOPE & SERVICES**

**1. Required Topographic Surveying**

The Consultant would field survey the areas where the drainage improvements would be located. These improvements are outside of areas previously surveyed. The detailed scope is as follows:

- Walk site with Survey Crew to identify needed locations
- Coordinate with Video service for pipe inspections
- Field surveying of additional areas
- Process data and add to survey base map

Lump Sum Fee \$7,400

**2. Evaluation of Local Measures to Address Flooding at Surrey**

The Consultant would evaluate the possibility of employing local measures to mitigate flooding of properties north of Surrey. This may involve the use of backflow preventers and other locally employed measures.

Lump Sum Fee \$5,200

**2. Final Design and Preparation of Construction Documents**

The Consultant would prepare final design and Construction Documents of the drainage improvements as identified in the study phase. The detailed scope is as follows:

- Coordinate as required with Client
- Develop final design of proposed drainage improvements
- Preparation of Final Construction Plans, Including:
  - o Cover Sheet
  - o Layout Plan of drainage improvements
  - o Demolition plan
  - o Design Details
- Preparation of technical specifications

Lump Sum Fee \$16,500

1

**SCHEDULE OF UNIT RATES – EFFECTIVE THROUGH 12/31/2022**

Senior Principal	\$ 325.00 per hour
Principal	\$ 200.00 per hour
Field Survey Party	\$ 185.00 per hour
Chief Land Surveyor/Assistant Director	\$ 175.00 per hour
Senior Project Manager	\$ 165.00 per hour
Project Manager	\$ 150.00 per hour
Senior Professional	\$ 140.00 per hour
Project Professional	\$ 125.00 per hour
Staff Professional	\$ 115.00 per hour
Senior Designer / Drafter / Specialist	\$ 115.00 per hour
Designer 2 / Drafter 2 / Specialist 2	\$ 100.00 per hour
Designer 1 / Drafter 1 / Specialist 1	\$ 90.00 per hour
Administrative / Technical Support	\$ 75.00 per hour
Transportation	\$ 0.56 per mile

Printing and other reimbursable expenses will be charged at cost plus 15% and are not included in the fee basis described above. Lodging and Meals and Incidentals (M&IE) will be billed according to government Services Administration (GSA) rates. Sub-consultant invoices will be billed to the client at a rate of 115% of the sub-consultant invoice amount. Overtime rates may apply for work required during non-standard work hours.

The above fees are inclusive of all expenses or charges that Consultant may incur in connection with provision of Services on the Project, including travel, mail, courier services, communication and a commercially reasonable quantity of copying and reproduction expenses.

**GENERAL TERMS AND CONDITIONS**

1) Services performed under this Agreement will be conducted in a manner consistent with that level of care and skill exercised by members of the profession currently practicing under similar conditions. Plans, specifications, and submittals will be prepared in accordance with the written standards of the governing authorities having jurisdiction. Any extraordinary requirements for approvals will be considered additional services. Except as expressed herein, no other warranty, expressed or implied, is made. Nothing in this agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

2) Consultant agrees that, to the fullest extent permitted by law, it will defend, indemnify, reimburse and hold Client harmless from the expenses (including those for attorneys' fees, litigation costs and court expenses), damages (including those for bodily injury, death or damage to Clients' property or that owned by third parties) and losses that Client might incur that arise from the following types of claims, causes, suits or actions relating to the Project, the Project site, or Consultant's breach of its obligations under this Agreement (collectively, "Claims"):

(a) professional liability Claims by the Client against the Consultant to the extent caused by Consultant's negligent performance of its professional services contemplated hereunder (a "Professional Liability Claim"); provided that (i) Consultant's total liability for a Professional Liability Claim (including, but not limited to, those arising from its negligence, errors and omissions, or those alleging strict liability, breach of contract or breach of warranty) shall not exceed the minimum limits of the Consultant's Professional Liability insurance coverage required herein in subpart 7(a) below; and (ii) nothing in this provision obligates Consultant to indemnify Client (October 10, 2022) Claims resulting from Client's negligence or willful misconduct;

(b) any Claims for bodily injury, death, or property damage by third parties against the Client that arise out of any "occurrence" as that term is defined by Consultant's policy of Commercial General Liability insurance required in section 7(b) below, provided that (i) Consultant's total liability under this provision shall not exceed the amount of the minimum limits of the Comprehensive General Liability policy required in subpart 7(b) below; and (b) nothing in this provision shall obligate Consultant to indemnify the Client for Claims by third parties that result from the sole negligence or the willful misconduct of the Client. Nothing herein is intended or shall be interpreted to demand or require Consultant to defend or indemnify the Client from and against any third-party claims, demands, actions, proceedings or suits alleging or in any way arising out of Consultant's breach of its professional services obligations or warranty hereunder, except to the extent provided for in subsection (a) above.

(c) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.

Consultant may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before commencement of any Services, the Consultant shall provide Client a certificate(s) of insurance evidencing compliance with the requirements in this section. Further, through an endorsement, Client shall be named an additional insured on the Comprehensive General Liability and any applicable umbrella and excess policies

3) The fees for different phases of Services in this Agreement are based on the Scope of Services herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will be performed at the above hourly rates, or at a revised fee that the parties will negotiate to their mutual satisfaction. If construction of the Project is delayed and completed more than six (6) months following the anticipated completion date set forth herein, the Consultant reserves the right to adjust its Hourly rates for inflation costs on a one-year interval from the date of this proposal.

8) All reports, plans, documents, materials created by Consultant or its work product from its Services (collectively, the "Instruments of Service") shall remain the property of the Consultant, and are intended solely for use related to this Agreement and construction of the Project. Notwithstanding, Consultant grants Client a perpetual license to distribute to any third party, reproduce or otherwise use any of the Instruments of Service for purposes it deems reasonably necessary that relate to construction of the Project or conditions at the Project site. Client agrees and acknowledges any reuse of the Instruments of Service for purposes outside of this Agreement or the Project, or any failure to follow Consultant's recommendations in those Instruments without Consultant's written permission, shall be at the Client's and other user's sole risk.

4) If a claim, dispute, and other controversy arises between Consultant and Client concerning this Agreement or the alleged failure to perform their respective responsibilities hereunder (a "Dispute"), the respective Project Representatives for the Parties will use good faith efforts to amicably resolve such Dispute. If the Dispute is not resolved by the Project Representatives, it will be escalated to the senior official or manager level of each party for consideration. If a Dispute other than as a result of Client's failure to pay amounts undisputedly due hereunder is not resolved at the senior level, it will be submitted to mediation before, and as a condition precedent to, either party availing themselves of remedies provided by law. Mediation shall be held in the county where the Project is located, and if the parties cannot agree on a mediator, then one shall be appointed by the American Arbitration Association (AAA). The parties agree to equally split the cost billed by the mediator.

9) This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure to perform in accordance with its terms by the other party through no fault of the terminating party. If this Agreement is terminated by Consultant due to default of Client, it agrees that Consultant shall be paid for total charges for work performed prior to the termination notice date.

Additionally, at Client's convenience and without cause or default by Consultant, Client may suspend or cancel the Agreement, performance of Services or work on the Project at any time by providing written notice to Consultant. In the event of such suspension or cancellation, Client will compensate Consultant for Services performed up to through the date of that notice.

5) Services not expressly set forth in writing as basic or additional services and listed in the proposal to this Agreement are excluded from the scope of the Consultant's Services, and the Consultant assumes no duty to the Client to perform them unless agreed in a subsequent writing.

10) Delayed Performance/Force Majeure Events. Neither party to this Agreement shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under it during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed party must promptly provide the other with written notice of the Force Majeure Event, the delayed party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed party.

6) Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in Client's files. The Consultant may rely on the information provided by the Client without verification. The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the Scope of Services within established schedules.

11) The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

7) Consultant's Insurance. For the duration of the Project and the Agreement and for limits not less than stated below, Consultant, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to Client:

12) Consultant shall not be responsible for construction safety or construction procedures at the Project site, nor will it be responsible for the quality of the work performed by the Contractor or any consultants that are not retained by it.

(a) Professional Liability with minimum limits of not less than One Million Dollars (\$1,000,000.00) covering claims to the extent caused by Consultant's negligent performance of professional services or breach of professional warranty. This Professional Liability policy shall include coverage on an occurrence basis.

13) At Client's request and for its convenience, Consultant may provide documents and its work product in electronic format. Data, words, graphical representations, and drawings that are stored on electronic media or which are transmitted electronically, may be subject to uncontrollable alteration. The printed, signed and sealed hard copy is the actual professional Instrument of Service. In the event of a discrepancy between the electronic document and the hardcopy document, the hardcopy document will prevail.

(b) Comprehensive General Liability with minimum limits of not less than One Million Dollars (\$1,000,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage on an occurrence basis for premises/operations, products/completed operations, assumed contractual obligations, and independent contractors; and

14) This Agreement is entered with the expectation that it is not being used in a price comparison with other firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

15) Limitation of Liability. In no event may Consultant recover from Client any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the Client's breach of its obligations hereunder or suspension or termination of this Agreement.

16) Project Representative. Each party shall appoint a representative who shall coordinate with the other party on all matters related to the performance of the Services and the administration of this Agreement (the "Project Representative"). Any notice required hereunder shall be sufficiently given when sent to the appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

17) This Agreement may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

18) Any forbearance or delay on the part of Client in enforcing any of its rights under this Agreement shall not be construed as a waiver of such rights. No terms of this Agreement shall be waived unless expressly waived in writing.

19) Consultant may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of Client, which consent may be withheld for any reason.

20) This Agreement is made only for the benefit of the parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

21) Consultant is an independent contractor of Client. This Agreement does not create any partnership, joint venture or principal-agent relationship between the parties. Further, Client retains no control or authority with respect to its means and methods in which Consultant (or any of its employees or representatives) performs their work or Services.

22) Immigration Law Compliance. Consultant represents and warrants to Client that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the "Act"); (ii) it has enrolled or will enroll in the E-Verify program prior to performing any Services on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Consultant shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Consultant further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it 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, if Consultant is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

23) Amendment. Neither this Agreement nor any of the provisions herein may be amended or modified except in accordance with the terms of a subsequent written instrument that is signed by both parties.

24) This instrument sets forth the entire understanding between the parties concerning the matters herein, and, unless expressed herein, all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are of no effect and are hereby rejected.

25) This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Alabama.

Whereas, the undersigned, duly authorized representatives of the parties execute this Agreement on behalf of their respective organization on the date(s) shown below.

CITY OF MOUNTAIN BROOK, ALABAMA (CLIENT)

By: Stewart H. Welch III  
Mayor

Date: 10-10-2022

SCHOEL ENGINEERING COMPANY, INC. (CONSULTANT)

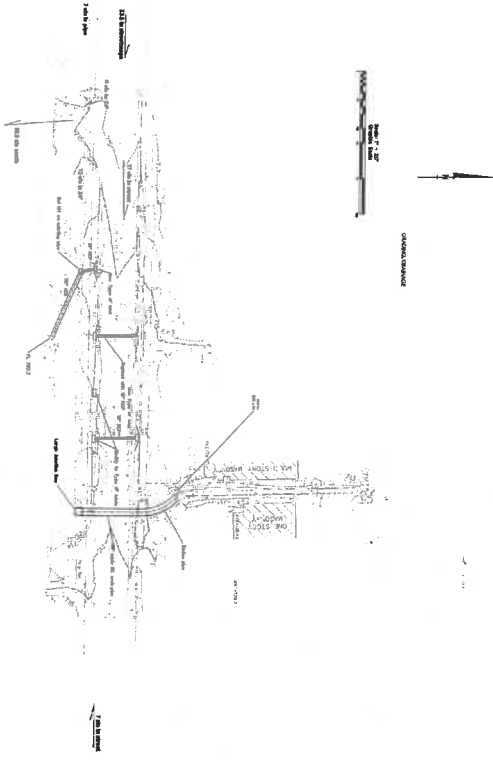
By: Walter School, III  
Walter School, III  
President

Date: 10/06/2022

Below please print or type the following information for the individual to whom invoices for payment should be sent and enter the names of the respective Project Representatives.

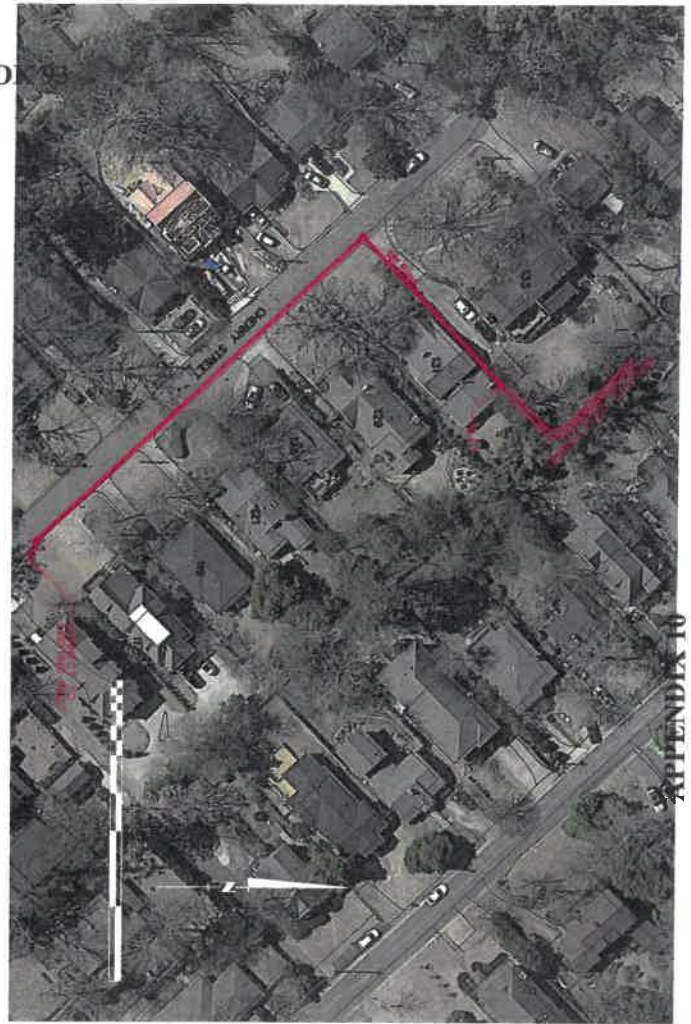
Company: \_\_\_\_\_  
Client: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Client's Project Number: \_\_\_\_\_ Client's Purchase Order Number: \_\_\_\_\_  
Consultant's Project Representative: \_\_\_\_\_  
Client's Project Representative: \_\_\_\_\_

DATE: 10/10/2022  
TIME: 10:00 AM  
PAGE: 192



EUCUID AVENUE  
DRAINAGE IMPROVEMENTS  
MOUNTAIN BROOK, ALABAMA

**SCHÖEL**  
Engineering & Construction Services, Inc.  
1000 North Loop East, Suite 1000, Mountain Brook, AL 35220  
Phone: (205) 966-1100  
www.schoel.com



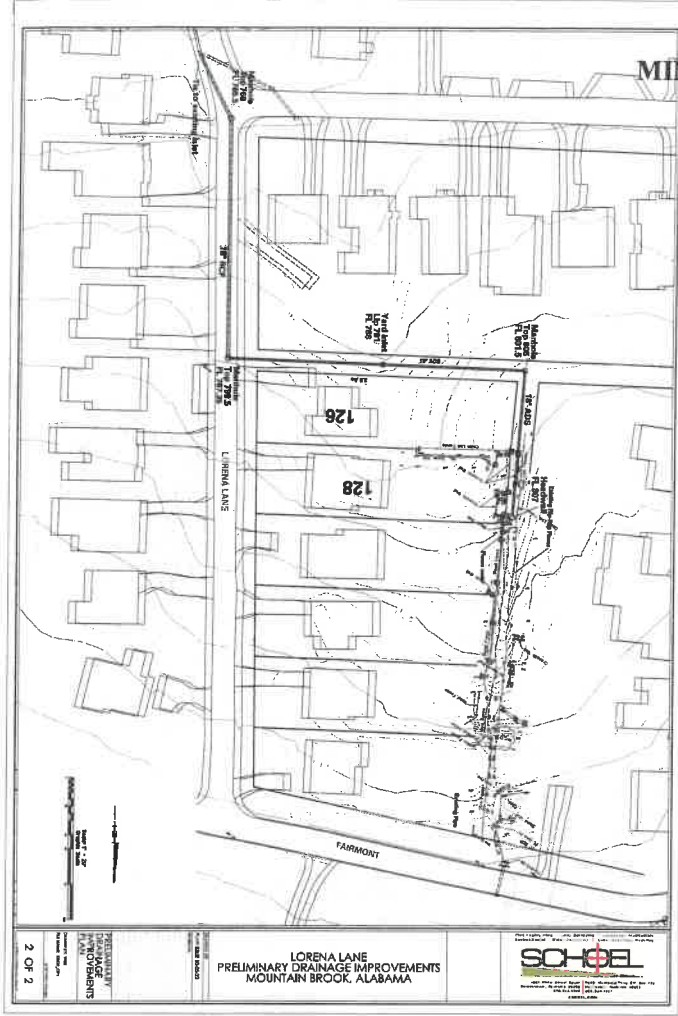
Cherry St



CANTERBURY Rd

Surrey Rd





October 10, 2022

Sam Gaston  
 City of Mountain Brook  
 56 Church Street  
 P.O. Box 130009  
 Mountain Brook, AL 35213  
[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)

Subject: Proposal to Provide Construction Materials Testing for  
 Mountain Brook HS Overflow Parking  
 Mountain Brook, Alabama  
 Building & Earth Proposal No. BH24440

Dear Mr. Gaston:

Building & Earth is pleased to submit this proposal to perform construction materials testing and geotechnical consultation for the subject project. Based on our phone conversation on 10/10/2022, and our correspondence with Walter Schoel, we understand that rock fill is being placed east of the baseball fields. This area will be used as an overflow parking lot. We understand that rock fill placement has already started.

As we discussed, the purpose of our visits will be to document fill placement progress. We anticipate part-time visits will be made approximately three times per week by a Staff Engineer. We understand project plans and specifications are not available, therefore we cannot comment on the suitability of the rock fill and placement techniques observed. We recommend settlement plates be installed after completion of fill placement. The plates should be monitored until no movement is observed.

The cost of our services will be based on the number and length of our visits, appropriate project management and report review time. Our services will be charged based on the attached unit fee schedule. Additional services, if needed, will also be charged based on the attached fee schedule. We recommend establishing a budget of approximately \$375 per visit.

Birmingham, AL • Auburn, AL • Huntsville, AL • Montgomery, AL  
 Tuscaloosa, AL • Columbus, GA • Louisville, KY • Raleigh, NC • Dunn, NC  
 Jacksonville, NC • Springdale, AR • Little Rock, AR • Ft. Smith, AR • Tulsa, OK  
 Oklahoma City, OK • DFW Metroplex, TX • Virginia Beach, VA • Nashville, TN

We have attached a copy of our Standard Proposal Acceptance Form, which, when signed and returned to Building & Earth, will serve as authorization to proceed with the proposed scope of work.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. If you have any questions regarding this proposal, please contact the undersigned.

Respectfully submitted,  
**BUILDING & EARTH SCIENCES, INC.**

  
 Joey Jones, P.E.  
 Branch Manager

  
 Weston Stidham, E.I.  
 CMT Department Manager

Attachment:  
 2022 Fee Schedule  
 General Terms & Conditions

APPENDIX 11

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**2022 FEE SCHEDULE**

Building & Earth 2022 Unit Fee Schedule  
 Rev. 01/01/2022

**SOIL TESTING**

Standard Proctor (ASTM D-698 or AASHTO T-99)	\$135.00
Modified Proctor (ASTM D-1557 or AASHTO T-180)	\$155.00
Atterberg Limits	\$105.00
Mechanical Sieve Analysis	\$115.00
Wash #200	\$105.00
Hydrometer Analysis	\$210.00
Soil Classification	\$55.00
Permeability of Undisturbed Sample	\$370.00
Permeability of Remolded Sample	\$420.00
Moisture Content	\$16.00
Resistivity	\$125.00
pH	\$50.00
Consolidation	\$550.00
Triaxial Shear (cu)	\$1,050.00
Triaxial Shear (uu)	\$630.00
Swell Pressure	\$395.00
Soil Unconfined Compressive Strength	\$135.00
Rock Core Unconfined Compressive Strength	\$55.00
In Situ Unit Weight Undisturbed Samples	\$95.00
Soil Cement/Lime Moisture-Density Relationship	\$210.00
Soil Cement/Lime Compressive Strength	\$30.00
Organic Content (LOI)	\$90.00
Laboratory CBR	\$525.00

**CONCRETE TESTING**

Concrete Cylinder Compressive Strength	\$17.00
Mortar/Grout Cube Compressive Strength	\$17.00
Grout Prism Compressive Strength	\$26.00
Concrete Cylinder (by others) Compressive Strength	\$42.00
Concrete Beam Flexural Strength	\$60.00
Masonry Prism Compressive Strength	\$150.00
Masonry Unit Compressive Strength and Net Area	\$300.00
Lightweight Concrete Cylinder Unit Weight	\$30.00
Concrete Coring (per inch depth)	\$26.00
Concrete Core Compressive Strength	\$26.00

**AGGREGATE TESTING**

Mechanical Sieve Analysis	\$115.00
Wash #200	\$105.00
Specific Gravity and Absorption of Coarse Aggregate	\$75.00
Specific Gravity and Absorption of Fine Aggregate	\$100.00
Organic Impurity	\$90.00

**PERSONNEL**

Clerical	\$45.00/hour
Engineering Technician	\$56.50/hour
Special Inspector	\$86.00/hour
Registered Roofing Observer (RRO)	\$105.00/hour
Structural Steel Inspector (CWI) (Visual Inspections)	\$105.00/hour
Structural Steel Inspector (CWI NDT)	\$115.00/hour
Field/Staff Engineer	\$105.00/hour
Project Manager	\$117.00/hour
Senior Manager, P.E.	\$160.00/hour
Principal	\$270.00/hour

**FIELD EXPLORATION**

ATV-mounted Rig Mobilization	\$400.00 base
Mileage	\$125.00/mile
Standard Test Boring w/SPT	\$17.00/foot
Mud Rotary boring w/SPT	\$18.00/foot
Auger Boring	\$11.00/foot
NQ Wireline Rock Coring	\$51.00/foot
Casing	\$9.80/foot
2" Piezometers	\$21.00/foot
Additional Split Spoon Sample	\$23.00/each
Undisturbed Sample	\$59.00/each
Water Hauling	\$230.00/day
NQ Core Boxes	\$23.00/each
Drill Crew Per Diem	\$125.00/man/day
Drill Rig Standby Time	\$230.00/hour





**ASPHALT TESTING**

Asphalt Superpave Mix Setup.....	\$390.00
Asphalt Marshall Mix Setup.....	\$290.00
Asphalt Maximum Theoretical Specific Gravity.....	\$105.00
Asphalt Content and Gradation by Ignition.....	\$160.00
Asphalt Coring (per inch depth).....	\$16.00
Asphalt Core Thickness and Density (per layer).....	\$52.00

**ADMINISTRATIVE**

Nuclear Moisture/Density Gauge.....	\$35.00/day
Concrete/Asphalt Coring Equipment (up to 4" Diameter).....	\$110.00/day
Floor Flatness/Levelness Equipment.....	\$500.00/day
NDT Consumables (UT Couplant).....	\$45.00/gal
NDT Consumables (PT Penetrant).....	\$18.00/can
NDT Consumables (MT Powder).....	\$12.00/lb
Mileage.....	\$0.85/mile
Per Diem.....	\$125.00/day

Technician and Inspector personnel rates will be billed with a 4-hour minimum charge per day. Rates will be charged portal-to-portal. Overtime will apply for hours worked in excess of eight (8) hours per day, for hours between 7:00 pm and 5:00 am, or for work performed on weekends or holidays. Overtime will be billed at a rate of 1.5 times the normal unit rates.

Clerical and Engineering time of 0.25 hours per report is typically required for report review and incidental consultation. Project coordination time will be billed according to the actual time required for scheduling.



**INFORMATION SHEET**

**PROJECT NAME/LOCATION:** Mountain Brook High School Overflow Parking (CMT) Mountain Brook, AL  
**PROPOSAL/PROJECT NO.:** BH24440 **DATE:** 10/10/2022  
**CLIENT:** City of Mountain Brook, AL

**FOR PAYMENT OF CHARGES:**

Charge invoice to the account of:

**Firm:** City of Mtn. Brook  
**Address:** 56 Church St, Mtn. Brook, AL 35213  
**Phone:** 205/802-3803 **Fax:** 205/802-2577 **Email:** gas@ci.mtbrook.al.gov  
**Attention:** Sam Gaston **Title:**

**FOR APPROVAL OF CHARGES:**

If the invoice is to be mailed to someone other than the account charges, please indicate where to mail the invoice in the space below:

**Firm:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_ **Email:** \_\_\_\_\_  
**Attention:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**REPORT DISTRIBUTION:**

**Firm:** Same as Payment **Firm:** \_\_\_\_\_  
**Address:** \_\_\_\_\_ **Address:** \_\_\_\_\_  
**Attention:** \_\_\_\_\_ **Attention:** \_\_\_\_\_  
**Email:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**SERVICES:** See Consultant's Proposal

**PAYMENT:** See Consultant's Proposal



**PROJECT NAME/LOCATION:** Mountain Brook High School Overflow Parking (CMT) Mountain Brook, AL  
**PROPOSAL/PROJECT NO.:** BH24440 **DATE:** 10/10/2022  
**CLIENT:** City of Mountain Brook, AL

**ACCEPTANCE OF CONTRACT:**

The Contract consists of the Information Sheet, the Consultant's Proposal, and the attached General Terms and Conditions (the "Contract"), including all additions, deletions, and modifications as agreed upon in writing by Consultant. The Contract sets forth the entire agreement between the parties pertaining to the services and supersedes all inquiries, proposals, agreements, negotiations and commitments, whether written or oral, prior to the execution of the Contract. The provisions of the Contract may be changed only by a writing executed by Consultant and Client.

THIS CONTRACT is entered into as of the 10th day of October, 2022

12 visits  
over  
4 weeks  
SSG

**CLIENT:** City of Mtn. Brook  
**[Company Name]**  
**Sign:** Sam S. Gaston  
**Print:** Sam S. Gaston  
**Its:** City Manager  
**Address:** 56 Church St.  
 Mtn Brook, AL 35213

**GENERAL TERMS AND CONDITIONS-CONSTRUCTION PHASE SERVICES**

**SECTION 1: STANDARD OF CARE**

1.1 The standard of care for all services performed or furnished by Building & Earth Sciences, Inc. ("Consultant") under this Contract will be that level of care and skill ordinarily exercised by members of Consultant's profession practicing under similar conditions at the same time and in the same geographical region. Consultant makes no warranties, express or implied, under this Contract or otherwise, in connection with the Consultant's services.

**SECTION 2: CONSULTANT'S SERVICES**

- 2.1 **Services.** Consultant shall perform construction materials consultation, testing and/or special inspection services as described in Consultant's Proposal in accordance with this Contract. The information provided and reports prepared by Consultant are intended for the exclusive use of Client for the Project and the scope of services defined herein.
- 2.2 **Schedule of Performance.** Unless specific periods of time or specific dates are specified in this Contract, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services. If in this Contract specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are changed through no fault of Consultant, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.
- 2.3 **Changes.** If Client requests changes in the scope of Consultant's services or changes in the project schedule, the schedule of performance of Consultant's services shall be adjusted equitably and the rates and amounts of compensation provided for herein shall also be subject to equitable adjustment.

**SECTION 3: CLIENT RESPONSIBILITIES AND INFORMATION**

- 3.1 **Designated Client Representative.** The Client shall identify a Designated Representative who shall be authorized to act on the Client's behalf with respect to the Project. The Client's Designated Representative shall render Project related decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of Consultant's services. Consultant shall not be liable for any error or omission made by the Client, or Designated Client Representative or consultant or contractor retained by Client.
- 3.2 **Client Provided Services and Information.** Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the Client or its Designated Client Representative or other consultants or contractors retained by Client.

**SECTION 4: OWNERSHIP OF DOCUMENTS**

- 4.1 All reports, field notes, laboratory test data, calculations, estimates, proprietary information and other documents or information ("Instruments of Service") prepared, developed, or acquired by Consultant shall be the property of Consultant, and Consultant shall retain an ownership and property interest therein.
- 4.2 Client agrees that all Instruments of Service or other work furnished to the Client or its agents, which are not paid for in accordance with the Contract, shall be returned to Consultant upon demand and shall not be used by the Client for any purpose whatever.
- 4.3 Client may make and retain copies of the Instruments of Service only for use on the Project by Client. The Instruments of Service are not suitable for reuse by Client or others on extensions, modifications, or expansions of the Project or any other project. Any such reuse or modification without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, shall be at Client's sole risk and without liability or legal exposure to Consultant, or to Consultant's officers, directors, partners, employees, agents, or representatives (the "Consultant Group").



4.4 Client agrees to defend any and all claims against the Consultant and to defend, indemnify and hold harmless Consultant and any of its employees and sub-consultants from and against any and all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to Client's use of the Instruments of Service in violation of the Contract.

SECTION 5: PAYMENT TERMS

- 5.1 Client shall pay Consultant for the services performed or furnished on the basis set forth on the Information Sheet.
5.2 Invoices will be submitted monthly to Client and upon Consultant's completion of services. Invoices are due and payable within thirty (30) days of receipt.
5.3 In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and Client shall pay to Consultant the undisputed portion.
5.4 Client agrees to pay all collection costs and expenses, including attorneys' fees, incurred by Consultant in collecting or attempting to collect any past due account.

SECTION 6: INSURANCE & LIMITATION OF LIABILITY

- 6.1 Consultant shall procure and maintain the following insurance coverage:
(a) Worker's Compensation Insurance statutory limit
(b) Employer's Liability \$1,000,000
(c) Comprehensive General Liability Insurance
General Aggregate \$2,000,000
Bodily Injury & property damage \$1,000,000 per occurrence
(d) Automobile Liability Insurance \$1,000,000 per occurrence

6.2 Limitation of Professional Liability. Notwithstanding anything in the Contract to the contrary, and to the fullest extent permitted by law, Client agrees that the total liability of Consultant to Client and anyone claiming by, through, or under Client for any cost, loss, or damages caused by the acts or omissions of Consultant shall not exceed \$100,000.00 or Consultant's total fee for the services, whichever is less.

6.3 Waiver of Consequential Damages. Notwithstanding anything herein to the contrary, neither Consultant nor Client shall be liable to the other for any consequential, special, or indirect losses or damages, whether arising in contract, warranty, tort, strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

SECTION 7: RIGHT OF ENTRY

7.1 Client and/or property owner shall provide access to and make all provisions for right of entry to Consultant and all equipment necessary for Consultant to perform the services. It is understood by Client that in the normal course of services some damage may occur, the correction of which is not part of this Contract. Consultant shall not be responsible whatsoever for any such damage or for the correction of any damage.

SECTION 8: SAMPLING OR TEST LOCATION

8.1 Unless otherwise specified in writing, Consultant's fees set forth on the Information Sheet do not include costs associated with surveying the site for the accurate horizontal and vertical locations of test pits or other field tests performed. Client shall be responsible for such additional costs. Field test locations described in Consultant's report or shown on sketches are based on information furnished by others or estimates made in the field by Consultant's representatives. Client acknowledges and agrees that such dimensions, depths, or elevations are approximations only. Client shall not rely upon such information, and Consultant makes no warranties, express or implied, as to this information.

SECTION 9: MONITORING OF FIELD ACTIVITIES

- 9.1 The presence of Consultant's field personnel, either full-time or part-time, at the Project will be solely for the purpose of providing periodic observation and field testing of specific aspects of the Project as defined in Consultant's scope of services and authorized by the Client.
9.2 The observations and tests performed by Consultant's field representative are valid only for the time and location the test is performed.
9.3 Client agrees that the contractor will be solely and completely responsible for working conditions at the Project, including safety of all persons and property during performance of its work, and compliance with OSHA regulations.
9.4 Client waives any and all claims against Consultant and agrees to indemnify, defend and hold harmless the Consultant Group from and against all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to contractor's failure to perform its work in accordance with plans and specifications or contractor's failure to comply with the applicable safety requirements and regulations.

SECTION 10: HAZARDOUS SUBSTANCES

- 10.1 Client agrees to comply with all applicable laws related to Hazardous Substances. Consultant shall not be responsible in any way for any Hazardous Substances uncovered, revealed, or discovered at the Project site.
10.2 The term "Hazardous Substance" means any substance or material: (i) the presence of which requires management, reporting, investigation or remediation under any federal, state or local law, statute, rule, regulation, ordinance, order, action, policy or common law; (ii) which is or becomes regulated by any federal, state or local governmental authority, including without limitation, any substance or waste material which is defined or listed as a "hazardous waste," "acutely hazardous waste," "extremely hazardous substance," "restricted hazardous waste," "industrial waste," "hazardous substance," "hazardous material," "pollutant," "hazardous air pollutant," "criteria pollutant," "volatile organic compound," "priority pollutant," "special waste," "SARA 313 chemical" or "contaminant" under any law; (iii) which contains gasoline, diesel fuel or other petroleum hydrocarbons or a petroleum derivative; (iv) which contains polychlorinated biphenyls ("PCBs"), asbestos or urea formaldehyde; or (v) which poses an unreasonable risk of injury to human health or the environment.

10.3 If any Hazardous Substance is discovered at the Project site, Client shall be solely responsible for all costs and expenses associated with the discovery of such Hazardous Substance. To the fullest extent permitted by law, Client shall defend, indemnify and hold harmless Consultant and its sub-consultants (if any) from and against any and all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to the presence or discovery of any Hazardous Substance on the Project site.

SECTION 11: DISPUTES

- 11.1 In the event of a dispute arising out of or relating to this Contract or the services to be rendered hereunder, Client and Consultant agree to attempt to resolve such disputes in the following manner:
(a) Amicable Resolution. The parties agree to first attempt to resolve such disputes amicably through direct negotiations between appropriate representatives of each party authorized to bind each party.
(b) Mediation. If such negotiations are not fully successful, the parties agree to attempt to resolve any remaining disputes by mediation conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect.
(c) Binding Dispute Resolution. If the parties do not resolve a dispute through mediation the parties shall proceed to binding dispute resolution either through litigation in a court of competent jurisdiction in Birmingham, Alabama or by arbitration, as determined by the parties at the time of the unresolved dispute.
(i) Arbitration. The parties acknowledge and agree that the Contract and the subject matter hereof are substantially connected with and involved with interstate commerce.
(ii) In the determination by the court of competent jurisdiction or arbitrator(s), the prevailing party may be entitled to have its reasonable attorneys' fees and related costs and expenses paid by the non-prevailing party.

SECTION 12: THIRD PARTY CLAIMS

12.1 To the fullest extent permitted by law, Client agrees to defend, indemnify and hold harmless Consultant from and against any and all third party claims whatsoever (including, but not limited to, all attorneys' fees, expenses and dispute resolution costs) arising from any act, error, or omission of Client relating to the Project. To the fullest extent permitted by law, Consultant agrees to indemnify and hold harmless the Client, but not defend, from and against damages, losses and judgments arising from claims by third parties (including reasonable attorneys' fees, expenses and dispute resolution costs) but only to the extent they are caused by the negligent acts or omissions of the Consultant, its employees, and its consultants in the performance of professional services under this Contract.

SECTION 13: TERMINATION

13.1 This Contract may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with this Contract, and provided that the defaulting party has not cured such failure within five (5) days after receiving such written notice. In the event of termination, Consultant shall be paid for services performed to the termination date plus reasonable termination expenses.

13.2 In the event Client terminates or suspends Consultant's services for three (3) months or more prior to Consultant's completion of all reports contemplated by this Contract, Consultant may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of termination or suspension. Client shall be responsible for the expenses of such termination or suspension, which shall include, without limitation, all costs of Consultant to complete such analyses, reports or records.
13.3 Consultant may terminate the Contract by written notice to Client if Client fails to pay Consultant's undisputed invoices in the manner required by this Contract, if such failure continues for a period of ten (10) days after written notice is given to Client.

SECTION 14: ASSIGNS

14.1 Neither the Client nor Consultant may delegate, assign, sublet or transfer any obligation or interest in this Contract without the written consent of the other party.

SECTION 15: CERTIFICATIONS, GUARANTEES AND WARRANTIES

15.1 Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant having to certify, guarantee or warrant the existence of conditions whose existence Consultant cannot ascertain or are inconsistent with the scope of Consultant's services on the Project. Client shall not make resolution of any dispute with Consultant or payment of any amount due to Consultant in any way contingent upon signing any such certification, guarantee, or warranty.

SECTION 16: NON-SOLICITATION AGREEMENT

16.1 It is agreed that the Client, shall not solicit for hire or induce any person who is an employee, independent contractor, subcontractor or agent of Consultant to terminate their employment or relationship with Consultant, in order to become an employee, come under the direction of the Client to independently perform services for the Client, during the term of this Agreement and twelve (12) months after its termination without the express written consent of Consultant. If the Client breaches this agreement and employs the above, or causes the termination of employment with Consultant, the Client will immediately pay Consultant an amount equal to two (2) years of revenue typically generated by that employee to compensate for the loss of revenue and training.

SECTION 17: MISCELLANEOUS

- 17.1 Governing Law. This Contract shall be governed by the law of the state in which the Project is located.
17.2 Notices. Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally, by certified mail (return receipt requested), or by Federal Express, UPS, or other nationally recognized overnight carrier.
17.3 Waiver. Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Contract.
17.4 Headings. This Contract may be executed in one or more counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.
17.5 Severability. The determination of the invalidity of all or any provision in this Contract shall not render the remaining provisions void or unenforceable, and this Contract shall thereafter be construed as though such invalid provision were not a part hereof.
17.6 Expiration. This proposal is valid for a period of 90 days from the date of the proposal. After 90 days, Consultant will consider extending the offer if requested to do so by Client.