

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
NOVEMBER 14, 2022**

---

[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 14<sup>th</sup> day of November, 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  
Graham L. Smith  
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. Change order for the parking lot fill project by Field #1

Sam Gaston-City Manager

- Change order is from Morris Shea for them removing trees
- Change order is for \$13,679.45
- The work has already been completed by Morris Shea

Billy Pritchard-Council President Pro Tempore

- If approved, then no more requests for payment for this project at this site without the council approving the change order in advance

Lloyd Shelton-Council Member

- Change orders are typically approved before the work has been completed

Sam Gaston

- There should be no more change orders for this project

Virginia Smith-Council President

- The contract stated Morris Shea would pay for labor materials and equipment needed
- Inquired about the equipment charge of \$3,329.45 on the change order and asked Sam Gaston to contact Morris Shea regarding the equipment charge
- Item added to the formal agenda (Resolution No. 2022-187)

2. Contract with Focus Creative Birmingham for social media management communications consulting and other services

Stuart Franco-Focus Creative Birmingham

- Will be updating/upgrading the City's communications for the City
- Creating a dynamic social media with Facebook, Instagram and Twitter
- Making better graphics and content creations on a routine basis so there is better engagement with the city

Virginia Smith-Council President

- Item added to the formal agenda (Resolution 2022-188)

3. Board of Landscape Design (BLD) re-appointments

Dana Hazen-Director of Planning, Building and Sustainability

- The Board of Landscape Design has two appointments
- The board voted unanimously to reappoint Ro Holman and Elizabeth Poyner to the BLD
- There was one (1) additional résumé submitted

Virginia Smith-Council President

- Want to encourage all new applicants to sit in on various boards to see if they are interested in serving on these boards
- Item added to the formal agenda (Resolution No. 2022-189 and 2022-190)

4. Conditional Use application for Watkins Branch to serve lunch at 2708 Culver Road

Kalyna Jowyk-Watkins Branch General Manager

- They are looking to expand their business by providing lunchtime service
- Have 28 indoor seats, 8 barstools, and 5 tables
- Looking to push to-go and curbside orders for the lunchtime service

Lloyd Shelton-Council Member

- In letter submitted it stated 28 seats and serving 70 people within the 2 hour block

Kalyna Jowyk

- The number of 70 provided in letter includes to-go orders
- Plan is to turn the tables 1 ½ times depending on foot traffic within the 2 hour block

Billy Pritchard-Council President Pro Tempore

- Appreciates their request and business but does not think it is the right thing to do at this time
- There is no parking at that location
- Would like to hold off until Lane Parke is open to see how parking is affected

Gerald Garner-Council Member

- In favor of conditional use
- Pro-business and anti-parking because parking will work itself out

Lloyd Shelton-Council Member

- In favor of conditional use

Graham Smith-Council Member

- In favor of the conditional use
- Suggested they scale back and open on Mondays for lunch

Virginia Smith-Council President

- In favor of the conditional use
- The location is small and does not think it would have a negative impact on parking
- Item added to the formal agenda (Resolution 2022-191)

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

## 2. EXECUTIVE SESSION AND ADJOURNMENT

Council President Pro Tempore Pritchard made a motion that the City Council convenes in executive session to discuss a pending litigation and real estate matter and that the City Council shall reconvene at approximately 7 p.m. 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 Virginia 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  
 Graham L. Smith  
 Lloyd C. Shelton

Nays: None

There being no further matters for discussion Council President Virginia Smith adjourned the pre-meeting at approximately 6:21 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 November 14, 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 November 28, 2022

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
NOVEMBER 14, 2022**

---

[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 7:00 p.m. on the 14<sup>th</sup> day of November, 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  
Graham L. Smith  
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 GUESTS-BOY SCOUTS**

Rayner Brom-Troup 320 out of Mountain Brook Baptist Church

- Present for Communications Merit badge

Jude Moore, Jack Robinson, Maxwell Brown, and Davis Echols-Troup 63 out of Canterbury Church

- Present for Citizens in Community Merit badge

**2. SMALL BUSINESS PROCLAMATION NO. 2022-182 (EXHIBIT 1, APPENDIX 1)**

Billy Pritchard-Council President Pro Tempore

- Presented Emily Jensen with the Proclamation

**3. NATIVE AMERICAN INDIAN HERITAGE MONTH PROCLAMATION NO. 2022-185 (EXHIBIT 2)**

Virginia Smith-Council President

- Presented Jesse Schniper with the Proclamation

**4. OATH OF OFFICE TO COUNCIL MEMBER LLOYD C. SHELTON (APPENDIX 2)**

Judge Hariston administered the oaths of office to Council Member Lloyd C. Shelton (Appendix 2).

**5. MOUNTAIN BROOK CHAMBER OF COMMERCE SEMI-ANNUAL REPORT**

Emily Jensen-Chamber of Commerce Executive Director

- Purpose is to promote businesses, communities, and quality of life in Mountain Brook
- As of November 10<sup>th</sup> 2022, have 409 members
- Aiming for 500 members
- Taken steps to list ribbon cuttings on FaceBook to let individuals know they are supported
- Continue to engage members with luncheons, merchant meetings, tent sale, etc.
- Social Media reach is growing (FaceBook increased 94% and Instagram increased 538%)
- Village Gold is a digital platform and created \$252,000 in sales that stays in community
- Community engagement-In the summer had a promotion “Eating for Gold” which helped get the community out and enjoying the community
- During election had a meet and greet with the candidates
- Junior Board raised \$20,000 for Friends of Jemison Park
- Holiday open house is kicking off on December 1<sup>st</sup>. A trolley will run between English Village and Mountain Brook village in Lane Parke.
- Santa will be in the holiday parade on December 4<sup>th</sup>, 2022.
- Chamber quarterly luncheon will be held on November 16<sup>th</sup>, 2022
- Looking ahead-in process of re-designing website, member retention and retraction campaign for 2023, and creating brand conformity, and strategic planning process.

**6. CONSENT AGENDA**

Council President Virginia 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 October 24, 2022, regular meeting of the City Council  
 Approval of the minutes of the November 7, 2022, organizational meeting of the City Council and Mountain Brook Emergency Communications (E911) District

<b>2022-182</b>	Small Business Proclamation	Exhibit 1, Appendix 1
<b>2022-183</b>	Authorize the sale or disposal of certain surplus property (Library)	Exhibit 3, Appendix 3
<b>2022-184</b>	Authorize the agreement for consulting services between the City and Schoel Engineering Co. with respect to the Lorena Lane and Fairmont Drive Area drainage project.	Exhibit 4, Appendix 4
<b>2022-185</b>	National American Indian Heritage Month	Exhibit 2
<b>2022-186</b>	Award the bid [B-20220830-817] for the janitorial services contract at the O’Neal Library to Hills Janitorial Services	Exhibit 5, Appendix 5
<b>2022-187</b>	Authorize the execution of Morris Shea Bridge Company change order No. 1 with respect to the fill project at Mountain Brook Athletic Complex Field #1.	Exhibit 6, Appendix 6
<b>2022-188</b>	Execute a social media and communications contract with Cotton State Media LLC (DBA Focus Creative Birmingham) with respect to the social media management, communications consulting, videography, photography, and graphic design services for Mountain Brook	Exhibit 7, Appendix 7

<b>2022-189</b>	Re-appoint Ro Holman to the Board of Landscape Design with the term of office to end November 25, 2025	Exhibit 8, Appendix 8
<b>2022-190</b>	Re-appoint Elizabeth Poyner to the Board of Landscape Design with the term of office to end November 25, 2025	Exhibit 9, Appendix 9

Thereupon, the foregoing minutes, proclamations and resolutions (Nos. 2022-183, 184, 186 through 2022-190), were introduced by Council President Virginia Smith and a motion for their immediate adoption made by Council Member Shelton. The minutes, proclamations and resolutions were then considered by the City Council. Council President Pro Tempore seconded the motion to adopt the foregoing minutes, proclamations, 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  
Graham L. Smith  
Gerald A. Garner  
Lloyd C. Shelton

Nays: None

Abstained: None

Council President Virginia Smith thereupon declared that said minutes, proclamations and resolutions (Nos. 2022-183, 184, 186 through 2022-190) were adopted by a vote of 5—0 and as evidence thereof she signed the same.

**7. CONSIDERATION OF RESOLUTION NO. 2022-191 APPROVING THE CONDITIONAL USE APPLICATION (LUNCHTIME OPERATION FOR WATKINS BRANCH TO BE LOCATED AT 2708 CULVER ROAD)(EXHIBIT 10, APPENDIX 10)**

Council Member Garner made a motion to approve the conditional use application (lunchtime operation for Watkins Branch to be located at 2708 Culver Road).

Thereupon, the resolution was then considered by the City Council. Council Member Graham Smith seconded the motion to approve the foregoing resolution. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President  
Lloyd C. Shelton  
Gerald A. Garner  
Graham L. Smith

Nays: William S. Pritchard III, Council President Pro Tempore

Council President Smith thereupon declared that said Resolution is approved by a vote of 4—1.

**8. ANNOUNCEMENT**

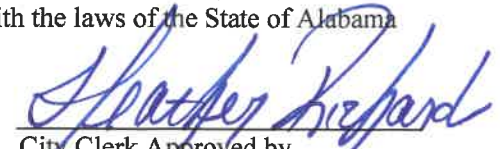
Council President Virginia Smith announced the next regular meeting of the City Council is November 28, 2022, 7:00p.m.

**9. ADJOURNMENT**

There being no further business to come before the City Council, President Virginia Smith adjourned the meeting at approximately 7:20 p.m.

**10. 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 November 14, 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 November 28, 2022

**EXHIBIT 1  
 PROCLAMATION NO. 2022-182**

**WHEREAS**, the government of Mountain Brook, celebrates our local small businesses and the contributions they make to our local economy and community; and

**WHEREAS**, according to the United States Small Business Administration, there are 32.5 million small businesses in the United States, small businesses represent 99.7% of firms with paid employees, small businesses are responsible for 62% of net new jobs created since 1995, and small businesses employ 46.8% of the employees in the private sector in the United States; and

**WHEREAS**, 79% of consumers understand the importance of supporting the small businesses in their community on Small Business Saturday®, 70% report the day makes them want to encourage others to Shop Small®, independently-owned retailers, and 66% report that the day makes them want to Shop Small all year long; and

**WHEREAS**, 58% of shoppers reported they shopped online with a small business and 54% reported they dined or ordered takeout from a small restaurant, bar, or café on Small Business Saturday in 2021; and

**WHEREAS**, Mountain Brook supports our local businesses that create jobs, boost our local economy, and preserve our communities; and

**WHEREAS**, advocacy groups, as well as public and private organizations, across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday.

**NOW, THEREFORE**, I, Stewart H. Welch III, Mayor of Mountain Brook, Alabama do hereby proclaim, November 26, 2022, as

*“SMALL BUSINESS SATURDAY”*

and urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and throughout the year.

**APPENDIX 1**

---

**APPENDIX 2**

---

**EXHIBIT 2**

**PROCLAMATION NO. 2022-185**

**Whereas**, the history and culture of our great nation have been significantly influenced by American Indians and indigenous peoples; and

**Whereas**, the contributions of American Indians have enhanced the freedom, prosperity, and greatness of America today; and

**Whereas**, their customs and traditions are respected and celebrated as part of a rich legacy throughout the United States; and

**Whereas**, Native American Awareness Week began in 1976 and recognition was expanded by Congress and approved by President George Bush in August 1990, designating the month of November, as National American Indian Heritage Month; and

**Whereas**, in honor of National American Indian Heritage Month, community celebrations as well as numerous cultural, artistic, educational, and historical activities have been planned;

**Now, Therefore**, I, Stewart H. Welch III, Mayor of the City of Mountain Brook, Alabama do hereby proclaim, November, 2022, as:

***“NATIONAL AMERICAN INDIAN HERITAGE MONTH”***

and urge the residents of our community, and communities across the country, to observe this month with the appropriate programs, ceremonies and activities.

**EXHIBIT 3**

**RESOLUTION NO. 2022-183**

**WHEREAS**, the City of Mountain Brook, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and



**WHEREAS**, Section 11-43-56 of the Alabama Code of 1975 authorizes the municipal governing body to dispose of unneeded personal property.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mountain Brook, as follows:

Section 1. It is hereby established and declared that the following equipment owned by the City of Mountain Brook, Alabama is no longer needed for public or municipal purposes and is hereby declared surplus property:

Item	Manufacturer	Model	Number
Mat rest cart	N/A	N/A	1
Yellow mat 49 ½"x24"	N/A	N/A	9
Purple mat 49 ½"x24"	N/A	N/A	4
Purple mat 31 ½"x20 ½"	N/A	N/A	14

Section 2. That the City Manager, or his designated representative, is hereby authorized and directed to sell said property by way of public Internet auction or to dispose of said items not sold.

**APPENDIX 3**

---

**EXHIBIT 4**

**RESOLUTION NO. 2022-184**

**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 Lorena Lane and Fairmont Drive Area drainage project.

**APPENDIX 4**

---

**EXHIBIT 5**

**RESOLUTION NO. 2022-186**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby awards the bid [B-20220830-817] for the Janitorial Services contract at the O'Neal Library to Hills Janitorial Services in the amount of \$22,850.00, having been determined by the City to have submitted the lowest responsible bid in conformance with the expressed specifications.

**APPENDIX 5**

---

**EXHIBIT 6****RESOLUTION NO. 2022-187**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of Morris Shea Bridge Company change order No. 1 (not to exceed \$13,679.45), in the form as attached hereto as Exhibit A, with respect to the fill project at Mountain Brook Athletic Complex Field #1 (Resolution No. 2022-074).

**APPENDIX 6**

---

**EXHIBIT 7****RESOLUTION NO. 2022-188**

**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 execute a social media and communications contract between the City and Cotton State Media LLC (DBA Focus Creative Birmingham), in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney with respect to the social media management, communications consulting, videography, photography, and graphic design services for Mountain Brook.

**APPENDIX 7**

---

**EXHIBIT 8****RESOLUTION NO. 2022-189**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Ro Holman is hereby re-appointed as a full voting member to the Board of Landscape Design, to serve without compensation, with the term of office to end November 25, 2025.

**APPENDIX 8**

---

**EXHIBIT 9****RESOLUTION NO. 2022-190**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Elizabeth Poyner is hereby re-appointed as a full voting member to the Board of Landscape Design, to serve without compensation, with the term of office to end November 25, 2025.

**APPENDIX 9**

---

**EXHIBIT 10****RESOLUTION NO. 2022-191**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the conditional use application (lunchtime operation for Watkins Branch to be located at 2708 Culver Road.)

**APPENDIX 10**

---



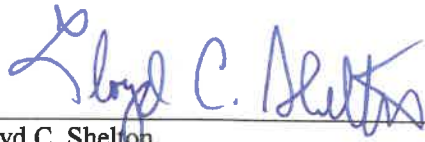
OATH OF OFFICE

STATE OF ALABAMA

JEFFERSON COUNTY

CITY OF MOUNTAIN BROOK

I, Lloyd C. Shelton, solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability, so help me God.

  
\_\_\_\_\_  
Lloyd C. Shelton

APPENDIX 2

Sworn to and subscribed before me this 14th day of November, 2022.

  
\_\_\_\_\_  
K. C. Hairston, Judge  
Municipal Court of Mountain Brook

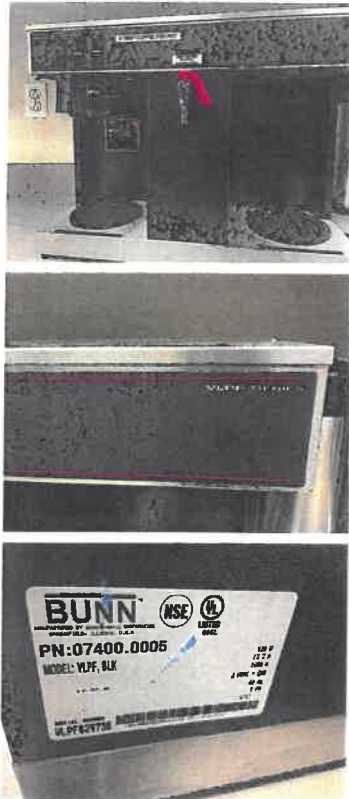
The library does not have a loading deck, and staff are not available to assist with moving/loading.

Surplus

Mats and cart -

- 1 metal rest mat cart 50" x 24"
- 9 yellow rest mats 49 1/2" x 24"
- 4 Purple rest mats 49 1/2" x 24"
- 14 purple mats 31 1/2" x 20 1/2"

The library does not have a loading deck, and staff are not available to assist with moving/loading.



Bunn Coffee Maker - 1

Lorena Lane/Fairmont

Preliminary Drainage Plan

October 20, 2022

The plan involves first improving the drainage conditions at northern Fairmont. A concrete swale/flume is proposed to direct stormwater from eastern Fairmont down Lorena such that it will not enter the alley drainage system. In addition, two new inlets and a new 18" pipe are proposed to collect the water along Lorena and convey it to the alley and not allow it to run down the adjacent driveway and bypass the alley system.

Next the plan proposes intercepting the drainage coming from the existing rip-rap flume in the unopened alley between Lorena and Fairmont with an inlet or headwall and directing the stormwater south down the unopened alley in an 18" pipe to a point where the alley turns ninety degrees and thence runs east-west. The drainage would then be directed west in the un-opened alley to Fairmont. The pipe would then turn to the south and run some 206 feet to a point below Braddock where it would tie to an existing inlet.

**Agreement for Consulting Services**

**Lorena Lane/Fairmont et Area Drainage Improvements  
Design and Preparation of Construction Documents**

November 08, 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 the vicinity of Lorena Lane in Mountain Brook, Alabama. These improvements will be based on the recommendations and preliminary design of drainage improvements previously performed and presented to the City.

**PROJECT OVERVIEW**

There has periodic and serious flooding in the rear of residences fronting on Lorena Lane. A preliminary design suggestion has been developed to mitigate the flooding. In this work, Final Design and the preparation of Construction Documents will be performed based on the preliminary design.

**PROPOSED SCOPE & SERVICES**

**1. Required Topographic and Boundary Surveying of Certain Items**

The Consultant would field survey certain items which were identified as being needed to be located in the preliminary study. This includes locations in Fairmont Lane and in the east-west alley. The detailed scope is as follows:

- Walk site with Survey Crew to identify needed locations
- Field surveying of additional information
- Tie to lot boundaries in study area
- Process data and add to survey base map

Lump Sum Fee \$ 10,400

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

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

- Coordinate as required with Client
- Meet with affected neighbors on plans
- Develop final design of proposed drainage improvements
- Preparation of Final Construction Plans, including:
  - o Cover Sheet
  - o Layout Plan of drainage improvements
  - o Profile of proposed storm line
  - o Demolition plan (if required)
  - o Design Details
- Preparation of technical specifications

Lump Sum Fee \$ 17,500

APPENDIX 4

Established 1888

**SCHOEL ENGINEERING COMPANY, INC.**  
1001 22nd Street South | Birmingham, AL 35205  
P 205-923-8168 | F 205-923-2262 | schoel.com

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 from Professional Liability Claims resulting from Client's negligence or willful misconduct;

**3. 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 \$3,800

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



(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.

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.

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.

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.

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:

(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.

(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

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 and superseded.

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 uses 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.

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.

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.

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.

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.

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.

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.

APPENDIX 4

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

Its: Mayor

Date:

SCHOEL ENGINEERING COMPANY, INC. (CONSULTANT)

By:  Walter Schoel, III

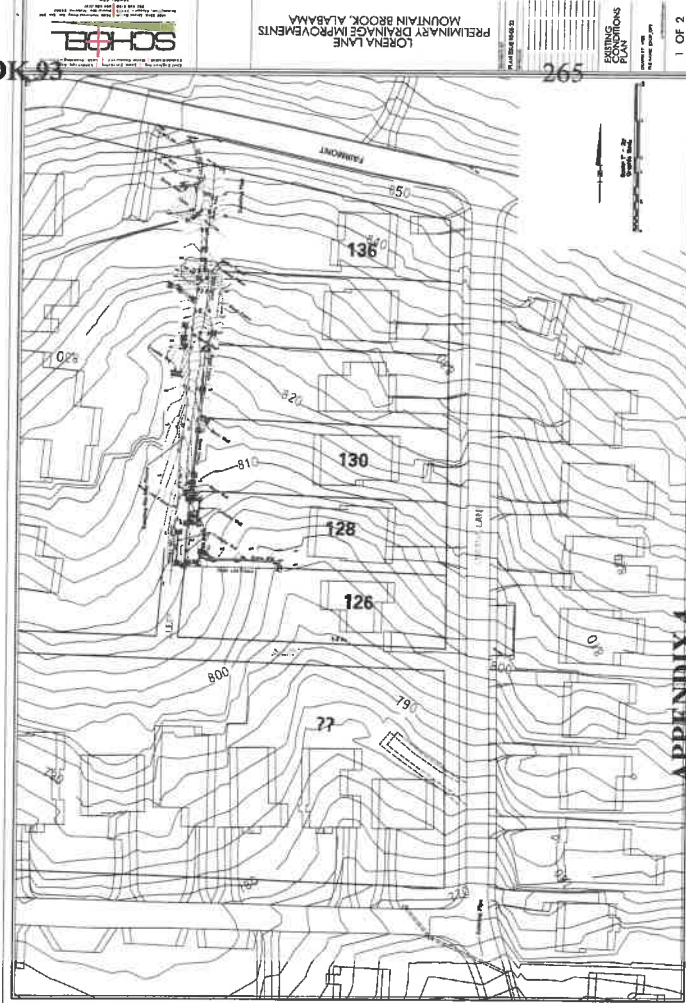
Its: President

Date: 11/08/2022

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.

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: \_\_\_\_\_





Janitorial Service Bid (B-20220830-817) Tabulation O'Neal Library						
November 10, 2022						
Bid Form	Bid 1	Bid 2	Disqualified Bid 3	Bid 4	Bid 5	Bid 6
Base Bid	Acceptance	Eagle	Baza	Office Pride	Hills	Pritchard
1 Evening Janitorial Services	37,052.88	38,244.00	7,600.00	47,880.00	16,800.00	34,800.00
2a Restorative Carpet Cleaning	1,500.00	2,202.00	8,000.00	6,500.00	2,300.00	8,800.00
2b Strip Wax VCT Tile Flooring	3,750.00	3,430.00	12,000.00	4,000.00	1,350.00	6,000.00
2c Interior/Exterior Window Cleaning	9,000.00	3,230.00	2,800.00	4,250.00	2,400.00	4,200.00
<b>Annualized Services</b>	<b>51,302.88</b>	<b>47,106.00</b>	<b>31,200.00</b>	<b>62,630.00</b>	<b>22,850.00</b>	<b>53,800.00</b>
<b>Alternate Bids</b>						
1 Intermittent Day Custodian Service	17.25	16.15	30.00	25.00	18.50	24.00
2 Light Housekeeping Service for Special Events	17.25	16.15	30.00	25.00	18.50	20.00
<b>Other Requirements</b>						
Attended mandatory pre-bid meeting	Y	Y	N	Y	Y	Y
Bid Form Notarized	Y	Y	N	Y	Y	Y
Bidder Affidavit and Warranty Notarized	Y	Y	N	Y	Y	Y
<b>Bidder Qualification Form:</b>						
1 Name, Address	Y	Y	N	Y	Y	Y
2 Contact	Y	Y	N	Y	Y	Y
3 History	Y	Y	not add	Y	Y	Y
4 Experience at least 4 yrs	not add	not add	not add	not add	not add	not add
5 Prior Contracts 3 similar clients	Y	Y	not add	Y	Y	Y
6 Staff 6 minimum	Y	Y	not add	Y	Y	Y
7 Key Personnel	Y	Y	not add	Y	Y	Y
8 Subcontractors					Windows - Sunlight or star Brtte Cleaners	Yes - evening service
9 Resources	Y	Y	not add	Y	Y	Y
10 Licensing	need MB	need MB	need MB	need MB	need MB	Y
11 Insurance Certificate	Y	Y	not add	Y	No auto, prop damage	Y
12a Claims History	N	N	N	N	N	N
12b Performance Bond/Surety Claims	N	N	N	N	N	N
12c Customers declared provider in default	N	N	N	N	N	N
12d Ever failed to complete awarded work	N	N	N	N	N	N
12e Judgements or arbitrations	N	N	N	N	N	N
12f Failed to complete a service contract	N	not add	N	N	N	N
Notarized	Y	Y	N	Y	Y	Y
Federal W-9?	Y	Y	N	N	Y	Y
e-Verify?	Y	Y	not add	not add	Y	Y
Copies of bid response provided	Y	Y	N	Y	Y	Y
not add=not addressed						

APPENDIX 5

O'Neal Library  
 To: Mountain Brook City Council  
 From: Lindsay E Gardner  
 CC:  
 Date: 11/10/22  
 Re: Janitorial Services Bid

After careful review of the bids received today, I am recommending Hills Janitorial Services for the O'Neal Library Janitorial Services Bid B-20220830-817.

Please find below a simple ranking of bids by the annual cost of services. A detailed tabulation is attached.

- Hills Janitorial Services - \$22,850.00
- Eagle Cleaning Services - \$47,106.00
- Acceptance Janitorial Services - \$51,302.88
- Pritchard Industries Southeast - \$53,800.00
- Office Pride Commercial Cleaning Service - \$62,630.00



-CONFIDENTIAL-

deemed to provide Consultant with the power or authority to act for or on behalf of The City, or to bind The City to any contract, agreement, or arrangement with any other person, except as specifically set forth herein. For the avoidance of confusion, however, during the term of the Agreement, Consultant may represent publicly that it is affiliated with The City, and The City may represent publicly that it is affiliated with Consultant.

This Social Media Management, Communications Consulting, and Graphic Design AGREEMENT (the "Agreement") is made as of this \_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), by and between The City of Mountain Brook ("The City"), with offices at \_\_\_\_\_ and Cotton State Media LLC (DBA Focus Creative Birmingham) ("Consultant"), with a mailing address at 120 19th St N Suite 250, Birmingham Alabama 35226. The City and Consultant are referred to herein as a "Party" and together as the "Parties".

**RECITALS**

WHEREAS, The City desires to engage Consultant as an independent contractor to perform social media management, communications consulting, videography, photography, and graphic design services ("Services");

WHEREAS, Consultant is agreeable to providing such services; and

NOW, THEREFORE, in consideration of these mutual covenants and agreements, the sufficiency of which is hereby acknowledged, the parties, each intending to be legally bound, covenant and agree as follows:

**1. SERVICES**

- 1.1. Consultant agrees to perform such consulting and advisory services to and for Company as may be reasonably requested from time to time by Company, including, but not limited to, the services and duties listed on the attached Exhibit A and such other services as may be agreed upon from time to time (the "Services").
- 1.2. During the term of this Agreement, Consultant may provide services to other parties provided such services do not conflict with the interests of The City for which Consultant is performing Services under the terms of this Agreement.
- 1.3. Consultant shall act as an independent contractor in performing the Services described in this Agreement. Nothing contained herein shall be deemed to make Consultant the agent, employee, joint venturer, or partner of The City, or to be

**2. COMPENSATION, EXPENSES, INVOICING, TAXES, AND BENEFITS**

- 2.1. In exchange for performance of the Services, Consultant will receive a monthly retainer equivalent to \$7,000 (seven thousand dollars) per month (the "Retainer Fee"). Should this Agreement be effective for any part of a month, less than a whole, the retainer shall be prorated proportionally. Additionally, reasonable business expenses incurred by Consultant in the performance of the Services shall be reimbursed by The City.
- 2.2. During the Term of this Agreement, Consultant will invoice The City on a monthly basis for both the Retainer Fee and for any reimbursable costs and expenses.
- 2.3. Consultant's monthly invoices are payable by The City within 15 days after receipt.
- 2.4. The City will provide Consultant with a 1099 tax form, if applicable, for the Consultant's filing.
- 2.5. Consultant is solely responsible for the payment of Consultant's federal, state, and local taxes, and for any filings required in connection with such taxes. The City is not responsible for the payment of, or withholding of, federal, state, or local income taxes, payroll taxes, social security taxes, health insurance, unemployment insurance, workers compensation insurance, and any other similar personnel costs in connection with the Services performed under this Agreement. Under no circumstances will Consultant or any of Consultant's employees or subcontractors or representatives be entitled to any form of fringe benefit or employee benefit from The City, including, but not limited to, any pension, deferred compensation, 401(k), retirement, disability, health insurance or life insurance benefit or coverage, and Consultant, Consultant's employees, representatives, agents and subcontractors expressly and irrevocably waive any such claim or entitlement.

**3. TERM OF ENGAGEMENT**

- 3.1. This Agreement shall be for the period commencing on the Effective Date and continuing for a period of seven (7) months, unless terminated in accordance with this Section 3.
- 3.2. Either party shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the other.
- 3.3. If this Agreement is terminated for any reason, The City will be obligated to pay Consultant for all Services performed under this Agreement through the date of termination.

4.4. Immediately upon the termination of this Agreement, Consultant will deliver to The City (without retaining any copies thereof), any and all documents, files (electronic or otherwise), work products, statements or other written information, or other property obtained from The City that contain, are based upon, or are generated from confidential information.

**4. CONFIDENTIALITY**

- 4.1. Consultant and The City mutually acknowledge that each Party may have access to written, computerized, oral, and other confidential information, which is highly proprietary to the other Party, and the disclosure of which, beyond each Party and its employees and consultants, is not authorized. Except as necessary to perform the Services hereunder, each Party agrees that it will not disclose or use any confidential information, in any form, for any purpose, except with the other Party's express, written, prior approval or with the express written, prior approval of such designee as the other Party may choose. This provision does not apply to information already in the public domain at the time of the disclosure or use through no fault of the first Party, or disclosure required by law or court order.
- 4.2. Each Party will assume that all information it will receive in the course of Services under this Agreement is confidential, unless such information clearly is in the public domain.
- 4.3. Each Party (and its employees, agents, or independent contractors) will not, during or after the Term of this Agreement, directly or indirectly, use, disseminate, or disclose to any person, firm or other business entity for any purpose whatsoever, any information which was disclosed to it as a consequence of or through Services under this Agreement.

**5. INDEMNIFICATION**

5.1. The City agrees to indemnify Consultant and hold it harmless from any cost or expenses, including attorney fees, and any and all liability or loss resulting from or arising in any way out of the performance of Services under this Agreement, provided that the actions taken by Consultant and resulting in such cost, expense, liability, or loss (i) were authorized by The City and (ii) adhered to all of the policies and procedures instituted by The City and provided to Consultant in advance of the date on which Consultant took such actions leading to or resulting in said cost, expense, liability, or loss.

**6. INTELLECTUAL PROPERTY**

- 6.1. To the extent that any work product delivered to The City pursuant to this Agreement includes material subject to copyright, Consultant agrees that the work product is created as a "work for hire" as that term is defined under United States copyright law, and that as a result, The City shall own all copyrights in the work product. The Company reserves the right to use the photographs/images/graphics for advertising and promotional purposes or otherwise.
- 6.2. To the extent that such work product does not qualify as a work for hire under applicable law, and to the extent that such work product includes material subject to copyright, trademark, patent, trade secret, or other proprietary right protection, Consultant hereby assigns to The City, its successors and assigns, all right, title and interest in and to the work product, including all copyrights, trademarks, patents, trade secrets, and other proprietary rights therein (including renewals thereof). Consultant shall execute and deliver such instruments and take such other action as may be required and requested by The City to carry out the assignment contemplated by this paragraph.
- 6.3. Any documents, files, images, audio, video, magnetically or optically encoded media, or any other materials created by Consultant pursuant to this Agreement

APPENDIX 7




shall be the exclusive property of The City and subject to the terms of this Agreement.

7. GENERAL PROVISIONS

- 7.1. The rights and obligations under this Agreement may not be assigned or delegated, in whole or in part, by Consultant or The City without prior written consent.
- 7.2. All rights of the parties under this Agreement shall survive the conclusion or termination of this Agreement.
- 7.3. Except as provided in the paragraph immediately below, the parties agree that any action or proceeding arising out of or relating to this Agreement and all claims in respect of the action or proceedings may be heard and determined in a court with jurisdiction sitting in the State of Alabama. This Agreement shall be governed and construed in accordance with and pursuant to the laws of the State of Alabama without giving effect to any choice of conflict of law provision or rule (whether of the State of Alabama or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Alabama.
- 7.4. If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be valid.
- 7.5. The failure of either party hereto at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party thereafter to enforce the same, nor shall any waiver of any breach of any provision hereof by the other party be taken or held to be a waiver by such party of any succeeding breach of such provisions, or as a waiver of the provision itself.
- 7.6. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 7.7. Except as specified otherwise, each party shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

By: \_\_\_\_\_  
Name: **STUART FRANCO**  
Its: Owner

City of Mountain Brook

By:   
Name: Stuart Welch  
Its: Mayor

7.8. The provisions of this Agreement were negotiated by the parties hereto and said agreement shall be deemed to have been drafted jointly by all of the parties hereto and it shall not be deemed to be the work of either party, nor shall it be interpreted against either party as the drafter. If any action is brought to enforce, or to construe or determine the validity of, any term or provision of this Agreement, the substantially prevailing party shall be entitled to reasonable attorneys' fees and costs of the action.

7.9. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon electronic mail (with confirmation of receipt), or personal delivery or upon deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other Party as set forth in the opening paragraph.

7.10. This Agreement supersedes all prior oral or written proposals, communications or other agreements related to the subject matter of this Agreement. This Agreement constitutes the entire understanding between Consultant and The City with regard to the subject matter of this Agreement and no amendment or change shall be binding upon the parties unless in writing and signed by both parties.

7.11. Time is of the essence with respect to each and every provision of this Agreement.

7.12. Each exhibit and schedule hereto shall be attached hereto and shall be considered a part hereof as if set forth in the body hereof in full.

7.14. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties herby have executed this Agreement as of the Effective Date.

Consultant:

**Cotton State Media LLC (DBA Focus Creative Birmingham)**

**EXHIBIT A**

**SERVICES**

The Consultant agrees to provide the following Services:

- 1. Social Media
  - a. Management of three social media platforms Facebook, Twitter, and Instagram for the City of Mountain Brook
  - b. Build engaging graphics and social media content which will highlight the people of the city. At the end of each month, we will propose content calendars for the city's approval. Once approved we will ensure that at least three posts are made per week on these social media platforms. In addition, we will also develop a quarterly newsletter.
  - c. We plan to create engaging videos to be used to communicate City notices and happenings to the citizens.
- 2. Marketing and Public Relations
  - a. Deploy and develop newsletter
  - b. Create monthly stories and work with media in the area to create more engaging content about the city.

APPENDIX 7

ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND COTTON STATE MEDIA LLC (DBA) FOCUS CREATIVE BIRMINGHAM

THIS ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT ("the/this Addendum") between the City of Mountain Brook, Alabama ("the City") and Cotton State Media LLC (DBA Focus Creative Birmingham) ("the Contractor") is entered between the parties.

This Addendum is a part of the Professional Services Agreement between the parties (the "Agreement") concerning the work, services or project described in the Agreement. In the event of any conflict between the terms and provisions of this Addendum and the Agreement, the terms herein supersede and control any conflicting or inconsistent terms or provisions, particularly to the extent the conflicting or inconsistent terms or provisions in the Agreement purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The Addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal Agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without the express approval of the Mountain Brook City Council.

1. Definitions. For purposes of this Addendum, the terms below have the following meanings:

- A. "The City" refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies. The City may also be referenced in the Agreement as the "Client."
B. "The (this) Agreement" refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
C. "The Contractor" refers to the person, firm, or other legal entity that enters the Agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors. The Contractor may also be referenced in the Agreement as the "Consultant."

2. Dispute Resolution. If a disagreement, claim, issue or disagreement arises between the parties with respect to the performance of this Agreement or the failure of a Party to perform their respective rights or obligations hereunder (a "Dispute"), the parties will use reasonable efforts to resolve any Dispute at the designated representative level. If the parties are unable to amicably resolve any Dispute at that level, each agree to escalate that matter to senior managers or senior officials for consideration by and potential resolution by them. If the Dispute is not resolved at the senior level, the dispute resolution mechanism shall be litigation in a court with competent jurisdiction that is located in Jefferson County, Alabama.

3. Attorney's Fees; Court Costs; Litigation Expenses. The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. Late Payment Charges; Fees; Interest. The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services, and bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be considered delinquent pending resolution of the dispute.

5. Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies. The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.

6. Choice of Law; Choice of Venue or Forum. The meaning, legal effect, and enforcement of terms and provisions of the Agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the Agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.

7. Construction of Addendum. Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal Agreement or as a matter of law.

8. Independent Contractor. Consultant's relationship to Client at all times is that of an independent contractor. Consultant exclusively controls the means and methods in which it performs its operations or provides the goods, services or undertaking described in the Agreement. The Client does not reserve any right of control over Consultant's operations or the activities it utilizes to perform its obligations in the Agreement.

9. Contractor's Insurance Requirements: For the duration of this Agreement and for limits not less than stated below, the Contractor shall maintain the following insurance with a company(ies) lawfully authorized to do business in the location of the Project and reasonably acceptable to the City:

- 1. Comprehensive General Liability: This insurance shall cover all operations performed by or on behalf of Contractor, and provide coverage for bodily injury and

APPENDIX 7

property damage with a combined single limit of not less than \$500,000 per occurrence.

2. Automobile Liability: If the work or services performed by the Contractor involves use of motor vehicles on public streets, Automobile Liability covering owned and rented vehicles operated by Contractor with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) combined single limit and aggregate for bodily injury and property damage, per occurrence.

3. Workers Compensation: Workers' Compensation and Employers Liability as required by statute.

4. Professional Liability: If Contractor is providing professional services, Professional Liability covering Contractor's negligent acts, errors and omissions in its performance of professional services with policy limits of not less One Million Dollars (\$1,000,000) per claim and in the aggregate.

Contractor may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. These insurance requirements are in addition to and do not affect any indemnification obligation of Contractor herein.

All policies, except for the Workers Compensation and Professional Liability policies shall contain endorsements naming the City, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of the Contractor or its performance of Services or work. The additional named insured endorsement shall not limit the scope of coverage to the City to vicarious liability, but shall allow coverage for the City to the fullest extent provided by the policy.

All insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance program administered by the City.

Before commencement of Services hereunder, Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section. This certificate(s) shall provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the City.

10. Indemnification for Claims by Third Parties. The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (collectively hereinafter the "Indemnitees") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages, collectively hereinafter "Claim(s)") that are made against the City by any third parties (including any employee, agent or representative of the Contractor, collectively "Third Parties") to the extent that such Claims are caused or allegedly caused by the negligence of the Consultant in the performance of its Services, its work on the Project described in the Agreement or its failure to perform its obligations in the Agreement.

11. EXCLUSION OF CONSEQUENTIAL DAMAGES. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT, IN THE EVENT THAT IT ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THE AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS THEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE ACTUAL DAMAGES THAT DIRECTLY ARISE FROM THAT BREACH. THE CONTRACTOR FURTHER ACKNOWLEDGES THAT THE COMMERCIAL TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT ENTERED INTO THIS AGREEMENT WITHOUT INCLUDING THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR OTHER SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS. NOTHING IN THIS PROVISION IS INTENDED TO IMPACT, MODIFY, AMEND OR LIMIT THE TERMS OR APPLICATION OF THE INDEMNIFICATION PROVISION IN THE PROVISION ABOVE THAT PERTAINS TO CONTRACTOR'S OBLIGATIONS TO INDEMNIFY THE CITY FOR CLAIMS MADE AGAINST THE CITY BY THIRD PARTIES.

CITY: CITY OF MOUNTAIN BROOK CONTRACTOR:
By: [Signature] By:
Printed Name: Stewart Welch Printed Name:
Title: Mayor Title:
Date: 11-15-2022 Date:



DATE: November 14, 2022

TO: Mayor, City Council & City Manager

FROM: Tyler Slaten, City Planner

RE: Board of Landscape Design Term Appointment

Ro Holman's BLD term expires on November 25, 2022; Ms. Holman has expressed a wish to continue to serve on BLD, and the BLD members have unanimously recommended that she renew for another term.



CITY OF MOUNTAIN BROOK

Tyler Slaten  
Senior Planner  
56 Church Street  
Mountain Brook, Alabama 35213  
Telephone: 205.802-3511  
Fax: 205.879-6913  
slaten@mtmbrook.org  
www.mtmbrook.org

## MINUTE BOOK 93

DATE: November 14, 2022

TO: Mayor, City Council & City Manager

FROM: Tyler Slaten, City Planner

RE: Board of Landscape Design Term Appointment

Elizabeth Poynor's BLD term expires on November 25, 2022; Ms. Poynor has expressed a wish to continue to serve on BLD, and the BLD members have unanimously recommended that she renew for another term.

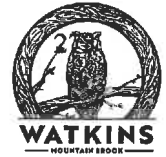
APPENDIX 9





Dana Hazen
56 Church Street
Mountain Brook, Alabama 35213
Telephone: 205/802-3816
Fax: 205.879.6913
hazend@mtmbrook.org
www.mtmbrook.org

MINUTE BOOK 93



DATE: November 14, 2022
TO: Mayor, City Council & City Manager
FROM: Dana Hazen, Director of PB&S
RE: Conditional Lunchtime Food Use - Watkins Branch
2708 Culver Road

2708 Culver Road
Mountain Brook, AL. 35223
P: (205) 593-4403 | watkinsbranchbham@gmail.com
www.watkinsbranch.com

JON HOLLAND
watkinsbranchbham@gmail.com

October 17, 2022

Watkins Branch has been in operation as a dinner service in Mountain Brook Village for the past 3 years. At this time the applicant proposes the addition of a lunchtime service.

Please see the attached letter from the applicant as to the details of the proposed use, the proposed menu, and the interior floor plan. It is anticipated that up to 70 people may be served between 11:00a-1:00p. There are 28 seats inside the facility (no outdoor dining is proposed in conjunction with the lunchtime operation). It is anticipated that on premise diners may remain for 35 minutes; but that there will be an emphasis on "to-go" orders as well. Employees will continue to park in the all-day parking along Montevallo Road.

The zoning ordinance requires council approval of a lunchtime conditional use, and states that any proposed conditional use will be reviewed as to the following:

- Whether the use would disparately impact public parking in the area;
Whether vehicular or pedestrian circulation would be impacted by the use;
Whether the use is compatible with surrounding existing uses;
Whether the hours of operation or peak traffic times would impact existing uses.

Mountain Brook City Council
Dana Hazen
hazend@mtmbrook.org

RE: Conditional Use Application

To the Mountain Brook City Council,

We hope this letter finds you at the start of a strong week! Please allow this letter to serve as a formal conditional use application to serve lunch by our current concept - Watkins Branch, located at 2708 Culver Road. Watkins Branch is the second restaurant concept by Jon Holland of The Fig Tree in Cahaba Heights. Currently, Watkins Branch has served the Mountain Brook Village area for nearly three years with their Chef-driven dishes rooted in classic French cooking techniques, a full bar with an immense bourbon collection, and craft cocktails. The team behind this successful concept is looking to expand their business by offering a lunch service for the area.

I. Watkins Branch Lunch Concept

A. As a full-service dinner destination, Watkins Branch is ready to serve the immediate area with delicious lunchtime options. With indoor seating and the capability to serve items "to-go," the restaurant makes use of the freshest ingredients, locally-sourced when possible. They team up with local producers such as Yellowhammer Farms, Grandview Farms, Pure Chilean, and McEwen and Sons to provide produce and protein fit for the Chef-driven plates. Though a patio exists, we do not wish to include it in this use application. Instead, we would like

to focus our business prospects on serving the employees of Mountain Brook Village and the pedestrians shopping the existing and incoming retailers. This way, we hope to help relieve parking pressure as a whole and make Watkins lunch a destination within a destination.

B. Operations

- Proposed Hours of Operation:
a) Tuesday - Friday 11:00am - 10:00pm
b) Saturday 10:00am - 11:00pm
c) Sunday - 10:00am - 8:00pm
Number of Employees:
a) Daytime - 3
b) Nighttime - 4
Employee Parking
a) Staff will continue parking on Montevallo Road
b) Our staff carools or uses rideshare for 90% of working hours, making our parking needs very low (3 cars at most any given day)
Tables and Seating
a) 28 seats including those for bar patrons
b) Outdoor seating not available during lunch operation
c) Emphasis on To-Go service
d) Current indoor seating plan attached
Turnover Rate
a) Expected dining time: 35 minutes
b) Expected average number of guests served: 70
Menu
a) Prospective menu attached
b) Upscale casual plates, reasonably priced and plated with aesthetics in mind to highlight the quality ingredients
c) Staff group discounts available

SMALL PLATES

- TRUFFLE FRIES truffle oil, shaved parmesan 10
DEVILED EGGS farm eggs, house filling, Chef's daily topping 8
WRAPPED PEARS grilled prosciutto, goat cheese, local honey drizzle 12
CRAB CAKE steamed claw meat, pickled shallot, house remoulade 19
MONKFISH DIP roasted monkfish, artisanal blend of creamy cheeses, crostinis 10

ENTREES

- CHICKEN CAESAR SALAD Joyce Farms chicken breast, romaine, housemade croutons, parmesan 15
JOYCE FARMS CHICKEN WINGS French-boned organic chicken, buffalo sauce, house ranch 16
WB OMELET heritage pork sausage, spinach, mushroom, parmesan cheese, side cheese grits 17
CHICKEN SANDWICH Airline chicken breast, aioli, dill havarti, bacon, spring mix, tomato 15
CONECUH DOG house mustard, Alecia's tomato chutney, crispy garlic, housemade chips 12
FARM BURGER dill-havarti cheese, lettuce, tomato, onion, local bun, truffle fries 18\*

BEVERAGES

- NON-ALCOHOLIC >> Coke, Diet Coke, Sprite, Q Gingerale, Q Gingerbeer, Juice, Tea, Coffee 3
MOCKTAILS >> based on your taste 6

II. Conclusion

Following your review of the above information, Watkins Branch respectfully requests that the Mountain Brook City Council approve this conditional use application for lunchtime service. Any other information necessary we will happily provide.

Kind regards,

Jon Holland

\* Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness

Enclosed:
Seating Plan
Menu

MINUTE BOOK 93

