

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
JULY 24, 2023**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 2 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 6:15 p.m. on the 24th day of July, 2023 (others were allowed to listen to the meeting by way of Internet video conference-2 virtual attendees). Council President Smith 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
Lloyd C. Shelton
Gerald A. Garner
Graham L. Smith
Stewart Welch III, Mayor

Absent: None

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

1. AGENDA

[Introduced special guest “Mayor-for-a-Day” Carter Kirksey]

1. Discussion of time limits for use of playing fields and courts

Shanda Williams- Parks and Recreation Superintendent

- With the popularity of the pickle ball court, they became aware that there are no official time regulations for the fields and courts
- There is nothing that states when the courts and fields open
- Have received complaints of individuals playing pickle ball before 7:00am
- One suggestion would be to open fields and courts at 7:00am Monday through Saturday and 8:00 am on Sunday
- Want the council to consider if it should be an ordinance or regulated by the Parks and Recreation

Gerald Garner-Council Member

- Feels it should fall to the Parks and Recreation Board to come up with policy, so they can make changes to determine what works and what does not work

Virginia Smith-Council President

- Would like the Parks and Recreation Board to provide input at their next meeting (August 8th)

2. ROW encroachment agreements for alley behind Braddock Avenue in regard to the City’s drainage project in this location

Whit Colvin-City Attorney

- Drafted standard encroachment agreements

- There are two structures in ROW along the project that the City is doing the drainage project
- One is a segmented retaining wall that is holding up driveway (owned by Mailon Kent)
- The other is a brick wall about 3' tall that is in ROW (owned by Jeffrey and Allison Tillett)
- This is an unopened alley and there is an encroachment which an agreement is standard
- There is an active project in the alley that involves a major storm water project
- There is a possibility that some of these improvements may be compromised as a result of the project
- The council will need to decide what the City is willing to fix anything if something gets moved or broken

Virginia Smith

- Inquired as to how extensive the drainage project will be

Sam Gaston-City Manager

- Mr. Gillespie “thinks” he might be able to make sure he doesn’t intrude on the keystone wall (Mr. Kent seems to be in favor of the project)
- If the agreements are signed, the work should resume next week and take about three weeks

Virginia Smith

- The city does not typically pay for repairs done on the City’s ROW
- Items added to the formal agenda (Resolution No. 2023-121 and 2023-122)

3. Introduction of Special Guest-Boy Scout

Sam Harrison with Troup 53 out of St. Peters

- Working on Citizenship in the Community badge

4. Updates

Billy Pritchard-Council President Pro Tempore

- The paving at the Junior High is underway
- Hillsdale paving should be done before school starts

Ronnie Vaughn-Public Works Director

(City paving projects)

- They are finished with everything except for Lane Parke

Sam Gaston-City Manager

(Parking lot at High School)

- Talked with Mr. Shea, some of the rock is to help form base
- Will be coming back this week to grass the area
- Budgeted in the Parks and Recreation budget will include graveling the lot and the installation of guardrails

5. 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 Virginia Smith adjourned the pre-meeting at approximately 6:45 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 July 24, 2023, 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 August 14, 2023

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
JULY 24, 2023**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 3 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:00 p.m. on the 24th day of July, 2023 (others were allowed to listen to the meeting by way of Internet video conference-no one did). Council President Virginia Smith called the 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
Lloyd C. Shelton
Gerald A. Garner
Graham L. Smith
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 Virginia Smith stated that a quorum was present and that the meeting was open for the transaction of business

1. RECOGNITION TO THE CITY OF MOUNTAIN BROOK FOR RECEIVING THE ETC LEADING THE WAY AWARD

Sam Gaston-City Manager

- Congratulated and thanked the Council, Mayor, Department Heads, and employees for their commitment to excellence

Virginia Smith-Council President

- Thanked Sam Gaston for providing the leadership to the city

2. RECOGNIZE CARTER KIRKSEY AS “MAYOR FOR A DAY”

Stewart Welch-Mayor

- Carter Kirksey is 12 years old
- Carter Kirksey is an aspiring actor, swimmer, soccer player, and is a Boy Scout
- (Presented Carter Kirksey with a key to the city)

3. PARKS AND RECREATION MONTH PROCLAMATION

Carter Kirksey-Mayor for a Day

- Presented the proclamation to Shanda Williams the Parks and Recreation Superintendent

4. 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 June 8, 2023, special meeting of the City Council
 Approval of the minutes of the June 20, 2023, special meeting of the City Council

2023-117	Parks and Recreation Month Proclamation	Exhibit 1
2023-118	Ratify the execution of a contractor agreement with JD Morris for the Cherry Street drainage project	Exhibit 2, Appendix 1
2023-119	Authorize the execution of an agreement with International Fire Protection Inc. for the suppression system and backflow preventer inspection services for the municipal complex and O’Neal Library and authorizing Change Order No. 1 in the amount of \$1,734	Exhibit 3, Appendix 2
2023-120	Authorize the sale or disposal of surplus property (Library)	Exhibit 4, Appendix 3
2023-121	Authorize the execution of a right-of-way (ROW) encroachment agreement with Jeffrey and Allison Tillett for the property located at 700 Braddock Avenue	Exhibit 5, Appendix 4
2023-122	Authorize the execution of a right-of-way (ROW) encroachment agreement with James Kent III and Dana Kent for the property located at 147 Fairmont Drive	Exhibit 6, Appendix 5

Thereupon, the foregoing minutes, proclamation, and resolutions (Nos. 2023-117 through 2023-122), were introduced by Council President Virginia Smith and a motion for their immediate adoption made by Council Member Shelton. The minutes, proclamation, and resolutions were then considered by the City Council. Council Member Garner seconded the motion to adopt the foregoing minutes, proclamation, and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith
 William S. Pritchard III
 Lloyd C. Shelton
 Gerald A. Garner
 Graham L. Smith

Nays: None

Abstained: None

Council President Virginia Smith thereupon declared that said minutes, proclamation, and resolutions (Nos. 2023-117 through 2023-122) were adopted by a vote of 5—0 and as evidence thereof he signed the same.

5. 1st READING OF THE AMENDMENTS TO SECTION 50-46(B)(6) OF THE CITY CODE RELATING TO THE SPEED LIMIT ON MARLBORO DRIVE

Virginia Smith-Council President

- (There were no public comments)
- Item will be passed at the August 14th council session

6. COMMENTS FROM RESIDENCES AND ATTENDEES

(There were no public comments)

7. ANNOUNCEMENT

Council President Virginia Smith announced the city council will have a special meeting on Monday, July 31st, 2023 at 8:00 a.m.

Council President Virginia Smith announced the next regular meeting of the City Council is August 14, 2023, 7:00p.m.

8. ADJOURNMENT

There being no further business to come before the City Council, Council President Virginia Smith adjourned the meeting at approximately 7:09 p.m.

9. 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 July 24, 2023, 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 August 14, 2023

EXHIBIT 1

PROCLAMATION NO. 2023-117

WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month since they are an integral part of communities throughout this country, including Mountain Brook, Alabama; and

WHEREAS, parks and recreation promotes time spent in nature, which positively impacts mental health by increasing cognitive performance and well-being, and alleviating illnesses such as depression, attention deficit disorders, and Alzheimer's; and

WHEREAS, parks and recreation encourages physical activities by providing space for popular sports, hiking trails, and many other activities designed to promote active lifestyles; and

WHEREAS, park and recreation programming and education activities, such as youth sports and environmental education, are critical to childhood development; and

WHEREAS, parks and recreation increases a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction.

WHEREAS, the City of Mountain Brook recognizes the benefits derived from parks and recreation resources and has made improvements at the Sports Complex and begun improvements at Jemison Park;

NOW, THEREFORE, I, Carter Kirksey, Mayor for a Day of the City of Mountain Book, Alabama, do hereby proclaim July 2023 as

PARKS AND RECREATION MONTH

in Mountain Brook, Alabama recognizing the benefits derived from parks and recreation resources.

EXHIBIT 2

RESOLUTION NO. 2023-118

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby ratifying the execution of a contractor agreement with JD Morris with respect to the Cherry Street drainage project.

APPENDIX 1

EXHIBIT 3

RESOLUTION NO. 2023-119

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizing the execution of an agreement with International Fire Protection, Inc. with respect to the suppression system and backflow preventer inspection services for the municipal complex and O'Neal Library and authorizing Change Order No. 1 in the amount of \$1,734.

APPENDIX 2

EXHIBIT 4

RESOLUTION NO. 2023-120

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 property, as described in the form as attached hereto as Exhibit A, owned by the City of Mountain Brook, Alabama are no longer needed for public or municipal purposes and is hereby declared surplus property; and

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 5

RESOLUTION NO. 2023-121

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that City Council hereby authorizes the execution of a right-of-way encroachment agreement between the he City and William and Julie Lewis, in the form as attached hereto as Exhibit A, with respect to the property located at 64 Pine Crest Road.

APPENDIX 4

EXHIBIT 6

RESOLUTION NO. 2023-122

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that City Council hereby authorizes the execution of a right-of-way encroachment agreement between the he City and James Kent III and Dana Kent, in the form as attached hereto as Exhibit A, with respect to the property located at 147 Fairmont Drive.

APPENDIX 5

MEMORANDUM

To: Steven Boone
From: Whit Colvin
Date: July 14, 2023
Subject: Emergency Exception Under Alabama Public Works Law

In March of 2023, the City undertook a public works project (Resolution No. 2023-036) to install drainage structures and facilities on and along Cherry Street in the City (the "Project"). The Project was necessary as a result of severe flooding which caused property damage and constituted a threat to safety and property of the residents affected by the flooding. The Project was designed by Walter Schoel Engineering and was bid pursuant to the Public Works Law. The successful bidder was Gillespie Construction, LLC.

Part of the Project involved installation of facilities in an area along the driveway at 133 Cherry Street behind a retaining wall that stabilized the driveway serving that address. On or about May 15th, 2023, the City experienced a significant rain event and the retaining wall collapsed, damaging the home at 131 Cherry Street and compromising the flood mitigation improvements installed as part of the Project. The retaining wall itself was over 6 feet in places and a screening fence was located on the top of the wall. The wall and the fence collapsed such that it now lies against the adjacent home (see attached photos). The building envelope was compromised and the areas where the wall now lies are unstable. The concern is that an additional rain event will cause further settlement and compound the damage already caused. A significant rain event could also compromise the newly installed stormwater system as it is not currently backfilled and covered pursuant to the design or construction drawings.

The Project contractor was asked to remediate and correct the damage and conditions, but it is either unwilling or unable to do so in a timely fashion. The City's engineers advise that the condition has to be remedied without further delay as the failure to do so will inevitably result in further damage to the neighbor's home, further degradation of the site conditions where the driveway lies, and damage to the newly constructed stormwater drainage system.

The City's engineer has created a remediation plan and the City plans to pursue a

construction project to restore the pre-incident conditions at the site. (the "Remedial Project") The City has obtained two informal bids from contractors and one of the contractors can begin work immediately. The City has asked about application for the Public Works Law to the Remedial Project.

The Public Works Law requires that all public works projects be advertised and bid according to its provisions. See Ala Code § 39-2-1, et seq. (1975). The customary bid process under the Public Works Law requires formal advertisement and takes considerable time. The Public Works Law also contains an exception to the ordinary bid process for emergencies. The law was amended in 2023 and the emergency exception provisions were modified. Before the amendment, the Public Works Law only permitted a City to dispense with the advertisement process in an emergency. The amended law retains that provision:

In case of an emergency affecting public health, safety, or convenience, as declared in writing by the awarding authority, setting forth the nature of the danger to the public health, safety, or convenience which would result from delay, contracts may be let to the extent necessary to meet the emergency without public advertisement requirement. Ala Code § 39-2-2 (e)(2)(1975).

However, the Legislature added a second emergency provision in the 2023 amendment, which allows for a emergency contract to be let with advertisement or bidding:

In case of an emergency for which a delay in remedying would cause immediate harm to a person or public property, contracts may be let to the extent necessary to meet the emergency without public advertisement or bidding. Ala Code § 39-2-2 (e)(1)(1975).

Thus, in cases where this broader exception applies, the City does not have to advertise or bid the contract.

For this provision to apply, the emergency has to be one "for which a delay in remedying would cause immediate harm." As has been established by Schoel immediate remediation is essential to safety, to the protection of the newly installed City stormwater facilities and to property. The collapse is uphill of a home at 133 Cherry Street and the wall is currently leaning on that home. The owners have engaged counsel, who have advised the City of the threat to the homeowners and the home posed by the current conditions. The wall also functions to hold up the driveway on the property above. If a significant rain event occurs, major additional damage is expected. Given the current weather patterns, such an event could occur at any time. Further delay in remedying the site conditions would cause immediate harm.

The second part of the emergency exception test is whether the immediate harm is to a "person or public property". As before stated, the site conditions currently pose a threat of harm to anyone who lives on either of the affected properties. Continued

APPENDIX 1

delay will only exacerbate that risk.

In addition, the City drainage facilities themselves, located in a city easement, would be harmed if the condition is not remedied before a rain event. "Public Property" is defined by the Public Works Law as follows:

PUBLIC PROPERTY. Real property which the state, county, municipality, or awarding authority thereof owns or has a contractual right to own or purchase, including easements, rights-of-way, or otherwise. Ala Code § 39-2-1 (5)(1975)

The property in question meets this definition.

In sum, the Public Works Law permits contracts to be let for public works projects in the case of an emergency where a delay would cause immediate harm to a person or public property and the situation at hand falls within that emergency exception. Accordingly, the contract on the remedial project may be let without advertisement or bidding.

As a side note, even where a contract does not have to be bid, it is prudent to obtain competitive proposals. In this case, the City obtained proposals from two contractors and the prices for both were comparable. The contractor selected was chosen because it could begin almost immediately (thus mitigating the risk of immediate harm) and without delay.

CONTRACTOR AGREEMENT

J.D. Morris Construction, Inc. (hereinafter the "Contractor") enters this Contractor Agreement ("Agreement") with the City of Mountain Brook, Alabama, a municipal corporation ("City"), effective as of the date last executed by a party below (the "Effective Date"). Contractor and City may be individually referenced herein as "Party" or collectively as "Parties."

1. **Project.** Unless otherwise stated on the attached Exhibit A - Specifications (which is incorporated by reference), Contractor, at its expense, will furnish all the labor, materials, supplies, supervision, and equipment needed to perform the work, services and operations (collectively, the "Work") at 131 and 133 Cherry Street, Mountain Brook, AL 35213 (the "Site") in accordance with the terms, conditions and specifications in this Agreement and on Exhibit A (the "Project").

2. **Term/Termination.** The term of this Agreement shall commence on the Effective Date and thereafter continue in effect for three (3) months (the "Term"). The period in which Contractor will complete the Project is set forth on Exhibit A.

Notwithstanding the provision immediately above or any other language herein, City may terminate this Agreement before the expiration of its Term at the time designated in a written notice to Contractor if each of the following have occurred: (a) Contractor has defaulted on a material obligation to the City hereunder (a "Default"); and (b) following the City's provision of written notice of Default to Contractor, the Contractor fails to correct or remedy that Default within fifteen (15) days after receipt of that notice. The failure of the Contractor to timely perform the Work shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available to City under law or in equity.

3. **Contract Price/Invoice/Certification.** Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of One Hundred Thirty Three Thousand Four Hundred and Forty Dollars (\$133,440.00) as compensation for performing the Work (the "Contract Price"). Further, unless agreed in a writing or amendment to this Agreement that is signed by duly authorized representatives of both Parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price.

Within ten (10) days following the successful completion of the Project, Contractor will submit to City Project Representative an invoice for the Contract Price (as adjusted by any mutually agreed change orders signed by both parties). With such invoice Contractor shall submit records reasonably supporting its payment. Within five (5) days following receipt of that invoice, City Project Representative will review same, consult with Contractor and make any mutually agreed modifications to it, certify that the invoice is due to be paid, and forward that certified invoice to the City Clerk. The City Clerk will remit to the Contractor the amount certified for payment within twenty (20) days after it receives that certification.

4. Warranties of Contractor. The Contractor warrants each of the following with respect to its Work:

- (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;
- (b) that it, and all of its employees or any subcontractors (if authorized), will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;
- (c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;
- (d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;
- (e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;
- (f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of completion of the Project; and
- (g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of Contractor is authorized to execute this Agreement.

5. Insurance/Safety/Indemnification.

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

(i) Comprehensive General Liability: 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 for

premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;

(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than One Million Dollars (\$1,000,000.00) combined single limit and aggregate for bodily injury and property damage;

(iii) 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.

The Contractor may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before the execution of this Agreement, the Contractor shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate shall name City as an additional insured on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

(b) Safety. Contractor agrees that it (a) has the sole responsibility to identify any condition or hazard at the Site or other locations on City property that will prevent it from safely performing the Work, and (b) is exclusively responsible for performing the Work in a safe manner that does not put at risk the safety of persons or endanger property. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) its employees and all other persons who may be affected by the Work; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work Site or adjacent thereto.

(c) Indemnification. Contractor agrees to defend, indemnify, and hold harmless City and its agents, employees and officials (hereinafter collectively, the "Indemnitees") from and against all demands, actions, liabilities, expenses (including reasonable attorney's fees) or claims for damages by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") that arise out of, relate to or are caused by any negligent act, omission or conduct by Contractor or any Contractor Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.

(d) Limitation of Liability. In no event may Contractor recover from the City 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 City's breach of its obligations hereunder.

7. Project Representative. Each Party shall appoint and indicate on Exhibit A its representative who shall coordinate with the other Party on all matters related to the performance

of the Work 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.

8. Miscellaneous Provisions.

(a) Entire Agreement. This Agreement (which is comprised of this instrument and Exhibit A) sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein.

(b) Counterparts. 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.

(c) No Waiver. Any forbearance or delay on the part of City 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.

(d) Assignment. Contractor may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of City, which consent may be withheld for any reason.

(e) No Third Party Rights. 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.

(f) Independent Contractor. Contractor is an independent contractor of City. This Agreement does not create any partnership, joint venture or principal-agent relationship between the Parties. Further, City retains no control or authority with respect to its means and methods in which Contractor (or any of its employees or representatives) performs the Work.

(g) Immigration Law Compliance. Contractor represents and warrants to the City 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 will enroll in the E-Verify program prior to performing any work 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 Contractor 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. Contractor 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 Contractor 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.

(h) Amendment. Neither this Agreement nor any of the provisions herein (including, without limitation, those concerning the Scope, Project Schedule and Contract Price) may be amended or modified except in accordance with the terms of a written instrument (or change order) signed by both Parties.

(i) Delayed Performance/Force Majeure Events. Neither Party shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under this Agreement 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.

(j) Governing Law. This Agreement shall be governed by, and construed 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.

Signature page follows:

APPENDIX 1

CITY OF MOUNTAIN BROOK, ALABAMA

By: Steve Boone

Its: Assistant City Manager/Finance Director

Date: 07/24/2023

J.D. MORRIS CONTRACTING CO., INC.

By: [Signature]

Its: VICE PRESIDENT

Date: 7.17.23

EXHIBIT A – SPECIFICATIONS

1. Scope of Work (Describe Project Below)

The Scope of Work (the "Scope") is defined by the Site Remediation Drawings dated July 14, 2023 and attached hereto, as well as the Cherry Street Drainage Improvements Technical Specifications Engineering Package. If Contractor desires or is required to perform services on the Project that fall outside the Scope ("Additional Operations"), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same.

2. Project Schedule. Contractor will commence performing the Work within no more than two (2) days after the City gives written or verbal notice to proceed, and successfully complete the Project within ~~thirty (30) days~~ following its receipt of that notice.

3. Project Representatives.

City Project Representatives:
Sam Gaston
City Manager
gaston@mtmbrook.org
(205) 802-3803

Contractor Project Representative:

Steve Boone
Assistant City Manager/Finance Director
boones@mtmbrook.org
(205) 802-3825

4. Special Conditions.

APPENDIX 1

AGREEMENT
CITY OF MOUNTAIN BROOK ("BUYER")

This Agreement is made by and between the City of Mountain Brook, Alabama ("Buyer") doing business at 56 Church Street, Mountain Brook, Alabama 35213 and International Fire Protection, Inc. ("Seller"), doing businesses at 2400 First Avenue South, Irondale, AL 35210.

The parties above hereby agree to the terms and conditions as enumerated below with respect to fire suppression system inspection services for the City Municipal Complex and O'Neal Library as described in Exhibits A and B, respectively, attached hereto.

1. ACCEPTANCE. A Purchase Order for the services described herein may be accepted by (i) Seller beginning to perform the services set forth on the face of this Purchase Order, or (ii) the delivery of the goods ordered on the face of this Purchase Order, or (iii) Seller's commencement of work which is the subject to this Purchase Order.

2. DELIVERY/PERFORMANCE. Time is of the essence in the delivery of goods, in the performance of services, and in any other performance required of Seller hereunder.

3. INSPECTION/REJECTION. Buyer may inspect and reject all nonconforming goods and/or services until such goods and/or services have been accepted by Buyer, without regard to whether payment has been made and without regard to whether the goods and/or services have been delivered to Buyer, are located on Buyer's property, or are being used by Buyer in a manner not inconsistent with Seller's ownership of the goods and/or services.

4. WORK ON PREMISES. Seller shall adequately protect the work and surrounding premises and the public in its access to Seller's work site. Seller shall, while on Buyer's premises, comply with Buyer's rules and regulations, of which Seller has been provided written notice.

5. WARRANTIES. Seller represents and warrants that all goods and/or services will conform to all written proposals and descriptions as well as to any drawings or specifications furnished by Buyer or furnished by Seller and approved by Buyer.

11. GENERAL. Seller shall not assign or transfer this purchase Order to subcontract this Purchase Order without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Purchase Order shall not be amended, altered, or modified except by a single instrument signed by representatives of Seller and Buyer, which instrument must expressly state that it undertakes to amend, alter, or modify this Purchase Order.

12. COUNTERPART SIGNATURES. This Agreement may be executed by each party in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one binding document.

13. EFFECTIVE DATE. This agreement shall be effective as of the last date signed by either of the parties named below.

CITY OF MOUNTAIN BROOK ("BUYER")
By: [Signature]
Printed Name: Stewart Welch
Title: Mayor
Date: 7-24-23

INTERNATIONAL FIRE PROTECTION, INC. ("SELLER")
By: [Signature]
Printed Name: Kim M Gray
Title: Corporate Risk and Safety Director
Date: 07-24-2023

services, or related items, including, without limitation, cost to transport from Buyer to Seller and return shipment to Buyer, will be borne by Seller. If Seller fails to repair or replace the nonconforming goods, services or related items within the time periods set forth herein, Buyer may repair or replace the defective or nonconforming goods, services, or related items at Seller's expense.

6. INVOICES/AUDIT. Buyer shall have no obligation to pay for any item until a proper invoice for the item is received. Seller may not send its invoice to Buyer until delivery of the applicable goods or completion of the applicable services.

7. INDEMNITY. Seller will indemnify, defend and hold harmless Buyer, its departments, divisions, and their officers, directors, agents, representatives, elected officials, and employees, and each of their respective successors and assigns (the "Indemnified Parties") against any and all suits, claims, losses, demands, damages, liabilities, costs and expenses (including reasonable attorneys' fees and other costs of defending any action) ("Losses") which such Indemnified Parties may sustain or incur (i) in connection with a breach of any representation, warranty, or undertaking made by Seller in this Purchase Order, or (ii) in connection with the performance, design, development, service, use or delivery of the goods or services (as applicable), whether the suit, claim or demand be based upon a theory of breach of contract or warranty, negligence, strict liability, other tort, infringement or any other legal theory, provided, however, that Seller shall not indemnify the Indemnified Parties for Losses under (i) or (ii) to the extent caused by the willful misconduct, negligence, acts, or omissions of the Indemnified Parties.

8. INDEPENDENT CONTRACTOR. Seller is an independent contractor or Buyer, and nothing herein will at any time be construed as to create the relationship of employer and employee, partnership, or principal and agent between Seller and Buyer.

9. COMPLETION OF SERVICES. Buyer's review, approval, acceptance of, or payment for any of the services required pursuant to this Purchase Order shall not be construed to operate as waiver of any rights under this Purchase Order or any cause of action arising out of the performance of this Purchase Order.

10. CANCELLATION/TERMINATION. Buyer may cancel all or any portion of this Purchase Order at any time by giving notice to Seller. If this Purchase Order is cancelled or terminated due to an event caused by the Seller or resulting from Seller's acts or omissions, Buyer may complete Seller's performance by such reasonable means as Buyer determines, and Seller shall be responsible for, and shall indemnify Buyer against any damages and reasonable costs, including without limitation, attorneys' fees, incurred by Buyer as a result thereof.

[8460527]

[8460527]

APPENDIX

EXHIBIT A



This Agreement dated June 1, 2023 hereinafter referred to as "the Agreement," by and between International Fire Protection, Inc. hereinafter referred to as "Company," and City Municipal Complex with offices for the purposes of billing and legal service as noted below in "Owners and/or Authorized Representative's Information" hereinafter called "Customer," hereby agrees to the following terms of inspection of the property outlined below owned and/or occupied by the Customer, hereinafter referred to as "the Property."

SECTION I: Owner's and/or Authorized Representative's Information

The Customer represents that the following information is true and correct and understands that the Company is relying upon the accuracy of this information for the purposes of this Agreement.

Form with fields for Name, Title, Address, Phone, Mobile, e-Mail, and Secondary information for Leland Rhady, Fire Marshal.

Form with fields for C/O, Address, Contact, Phone, e-Mail, Invoice to be, and PD Required information for City Municipal Complex.

Form with fields for Name of Property to be Inspected and Property Physical Address for City Municipal Complex.

Note: If this Agreement is signed by a person other than the owner, he or she certifies by their signature hereon that they are authorized to act as the property owner's agent and as such may enter into binding agreements on behalf of the property owner.

[8460527]



SECTION II: SCOPE OF WORK

The parties agree, subject to the terms, limitations and exclusions contained herein, to commit to the following scope of work:

Table with columns: DESCRIPTION, QUANTITY, Frequency, 8/1/2023, 8/1/2024, 8/1/2025. Lists various fire safety services like Fire Alarm Inspection, Control Panel, Pull station, etc.

NOTE: ANY SPECIAL PROVISIONS

Table with columns: Description, Amount, Frequency. Includes Normal Business Hours (NBI), After Hours and/or Saturday, Double Time, Sundays & Holidays.

SECTION III: AGREEMENT TERM

Table with columns: Term, Dates, Full Contract, Breakout Per Year (Inspection, Maintenance, Total). Shows 1, 2, and 3 year terms.

UPON RENEWAL DATE, CONTRACTS WILL AUTOMATICALLY RENEW WITH AN INCREASE UNLESS NOTIFIED IN ADVANCE BY A 30 DAY WRITTEN NOTICE. Multi-year contracts will not have yearly increases until full term has expired.

SECTION IV: PAYMENT SCHEDULE

In consideration of the above outlined service(s) the Customer agrees to pay the sum plus applicable state and local sales and/or use taxes as follows:

Empty box for payment details.

NOTES:

- Monthing Year 1 does not include any applicable reprogram fee, a one-time apparatus invoice. Monthing bills separately through Cornerzone. Year 2 inspection increase includes 5 Year Interior Sprinkler Inspection.

APPENDIX 2



This Agreement dated June 14, 2023 hereinafter referred to as "the Agreement," by and between International Fire Protection, Inc. hereinafter referred to as "Company," and O'Neal Library...

SECTION I: Owner's and/or Authorized Representative's Information

The Customer represents that the following information is true and correct and understands that the Company is relying upon the accuracy of this information for the purposes of this Agreement.

Form for Leland Rhady, Fire Marshal, Mountain Brook, AL 35213. Includes contact information.

Form for O'Neal Library, 50 Oak Street, Mountain Brook, AL 35213. Includes contact information.

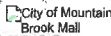
Form for Name of Property to be Inspected: O'Neal Library, 50 Oak Street, Mountain Brook, AL 35213.

Note: If this Agreement is signed by a person other than the owner, he or she certifies that they are authorized to act as the property owner's agent and as such may enter into binding agreement(s) on behalf of the property owner.

SECTION II: SCOPE OF WORK

The parties agree, subject to the terms, limitations and exclusions contained herein, to commit to the following scope of work:

Table with columns: DESCRIPTION, QUANTITY, Frequency, 8/1/2023, 8/1/2024, 8/1/2025. Lists various fire safety services like Fire Alarm Inspection, Control Panel, Pull station, etc.



International Fire 2023-108

1 message

Steve Boone <boones@mtnbrook.org>
To: Heather Richards <richardsh@mtnbrook.org>

Thu, Jul 27, 2023 at 3:51 PM

Change the resolution by adding after "contract" "and Change Order No. 1 in the amount of \$1,734.00", in the form as attached hereto as Exhibit A. You can handwrite on the signed resolution. Just be sure to include the new language in the resolution in the minutes and include the change order in the appendices. See me if you have any questions.

Steven Boone
City of Mountain Brook
P. O. Box 130009
Mountain Brook, AL 35213-0009
Direct: (205) 802-3825
Facsimile: (205) 874-0611

www.mtnbrook.org
http://mtnbrookcity.blogspot.com/

2023-108 changer order 1 (Signed).pdf
1324K

NOT APPLICABLE PROVISIONS

Table with 3 columns: Service Type, Price, and Additional Charge. Rows include Normal Business Hours (NBH), After Hours and/or Saturday, and Double Time, Sundays & Holidays.

SECTION III: AGREEMENT TERM

Table with 5 columns: Term, Dates, Full Contract Value, Inspection, and Mountings. Rows show 3 Year Term contracts for 2023-2024, 2023-2025, and 2023-2026.

UPON RENEWAL DATE, CONTRACTS WILL AUTOMATICALLY RENEW WITH AN INCREASE UNLESS NOTIFIED IN ADVANCE BY A 30 DAY WRITTEN NOTICE.
Multi-year contracts will not have yearly increases until full term has expired

SECTION IV: PAYMENT SCHEDULE

In consideration of the above outlined service(s) the Customer agrees to pay the sum plus applicable state and local sales and/or use taxes as follows:

Empty rectangular box for payment schedule details.

NOTES:
Monitoring Year 1 does not include any applicable reprogram fees, a one-time separate invoice
Monitoring bills separately through Commensate
Year 3 inspection increase includes 5 Year Internal Sprinkler inspection

APPENDIX 2

https://mail.google.com/mail/u/0/?ik=80a4775062&view=pi&search=all&permthid=brdead-f:1772608423221002464&siml=msg-f:1772608423221002463 1/1



July 27, 2023

To: O'neal Library

Re: Smoke Detector Change Order

Per your request, International Fire Protection is pleased to offer a quotation for the following:

Scope of Work:

- 1. We found smoke detectors over the amount that was on the inspection report we were given. This is to cover the cost and labor for 5 extra devices.

Total: \$ 1,734.00

Any alteration or deviation from the scope of work involving extra cost will be executed only upon a written work order and will become an extra charge over and above the proposed amount.

Payment Terms: NET 30 DAYS. Or Net 30 with progress billing for the percentage of work (labor and material) executed at the close of each month after the project has started until the project is complete.

Excluded:

- 1. Excludes all electrical or alarm wiring.
2. Excludes BIM Modeling.
3. Excludes cut grooved piping.
4. Excludes shift work, overtime, or night work.
5. Excludes any temporary fire protection.
6. Excludes fire watch of any kind.
7. All wiring is expected to be in working order, if wire is not this will result in a change order.
8. Additional work not specified in the above Scope of Work or specified on the project drawings.
9. Unknown or concealed conditions, including but not limited to asbestos and lead, that require an increase in cost and/or time in the performance of the above Scope of Work. Any abatement is strictly the responsibility of the Owner/General Contractor.

Special Conditions:

- This quotation is valid for 30 days.
All work quoted is to be performed during normal working hours (7:00 am - 3:30 pm; Monday thru Friday).

J:\Minutes & Agendas\Council\2023\20230724 Minutes.docx

- Neither Customer or International Fire Protection (IFP) shall be liable to the other for indirect, incidental, consequential and/or punitive damages arising out of the Work.
Force Majeure: Should this proposal be accepted, IFP shall not be responsible for any failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including without limitation pandemics (i.e. COVID-19), acts or omissions of government or military authority, acts of God, shortages of materials, fires, floods, diseases, labor disturbances, riots, or wars provided that IFP gives prompt notice to Customer of its invocation of this provision. IFP will make diligent efforts to resume its performance despite such force majeure. If IFP is hindered or delayed in the commencement or progress of the Work for a Force Majeure event, IFP shall be entitled to an extension of Contract time.
Structure and Site Conditions: IFP will exercise reasonable care to prevent damage to Customer's property, however, IFP shall not be responsible for loss or damage due to the character, condition or use of foundations, walls or other structures not installed by IFP. Nor shall IFP be responsible for damage to or resulting from concealed piping, wiring, fixtures, or other equipment.
It is understood and agreed by Customer that International Fire Protection is not an insurer, that Customer shall obtain the type and amount of insurance coverage which it determines necessary and that the amount payable to the IFP hereunder is based upon the value of the services rendered and are unrelated to the value of Customer's property, the property of others located on Customer's premises, or any potential liability or damage to Customer arising out of the work performed by IFP. Customer accordingly agrees that the liability of IFP, its officers, directors, employees, parent companies, subsidiaries, affiliates, and agents arising out of or in any way relating to or connected with the work performed by IFP shall be limited to the lesser of \$10,000.00 or the price of the work performed by IFP. This limitation shall apply to all claims, demands, losses, expenses or liabilities of any kind including attorney's fees, (herein under referred to as Damages), sustained by Customer or any other party claiming by or through Customer and shall apply regardless of whether such damages are actually or allegedly caused by the negligence, product liability, breach of contract, breach of warranty, breach or violation of a statute, ordinance, governmental regulation, standard or rule or other fault of IFP, its officers, directors, employees, agents, parent companies, subsidiaries and affiliates.

Escalation Clause Notice:

The Contract Price has been calculated based on the current prices for materials as of the execution of this Agreement. However, the market for the materials that are hereafter specified is volatile, and sudden price increases could occur. Current supply chain disruptions have created an environment where our vendors cannot guarantee pricing or availability of products for any amount of time. We have prepared this quotation based on current material prices and is only good for the date of the quotation. We cannot execute a contract to do this work without a material price and availability analysis at the time of award. Any contractual agreement related to this quoted work must include language that relieves International Fire Protection from any costs or liquidated damages that may result from unavailability of products. This includes inflated material costs due to material shortages.
July 24, 2023

The price, specifications, and conditions contained herein are hereby accepted. You are authorized to proceed with the work as specified. Payment will be made as outlined above.

Accepted: Steven Boone Signature: *Steven Boone*
Print Name

Sincerely,

International Fire Protection, Inc.

Jared Devine

SHAD Leader

205.918.7012

APPENDIX 2

Book carts – 2

One wheel missing from each cart.

Both carts dimensions:

42 inches high

32 inches long

17 inches wide

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



THIS INSTRUMENT PREPARED BY:

Whit Colvin
Bishop Colvin, LLC
1910 First Avenue North
Birmingham, Alabama 35203

JEFFERSON COUNTY }
STATE OF ALABAMA }

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

This Right of Way Encroachment License Agreement (the "Agreement") is entered this 24th day of July, 2023, by and between the City of Mountain Brook, Alabama, a municipal corporation (hereinafter the "City" or "Licensor"), and Jeffrey Tillett and Allison Tillett (hereinafter individually or collectively referenced for purposes of this Agreement as the "Licensee").

WITNESSETH:

WHEREAS, the Licensee represents that it owns the following real property located in the City of Mountain Brook, Jefferson County, Alabama:

Address: 700 Braddock Avenue, Mountain Brook, Alabama 35213
Parcel ID #: 23 00 33 4 004 005.000
Legal Description: Lot 13, Block B, according to the Survey of Overlook Subdivision, as recorded in Map Book 15, Page 19, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

(the "Property");

WHEREAS, the Property abuts right(s) of way that is owned by the City and reserved for the use of the general public (the "City ROW");

WHEREAS, the Licensee has constructed and desires to maintain a brick wall at the location depicted on the attached Exhibit "A" (collectively hereinafter the "Improvement"), and intends that the Improvement will be used by the occupants of the Property or their guests;

WHEREAS, part or all of the area in which the Improvement is located within and encroaches upon the City Right of Way (hereinafter, the "Encroachment Area"); and

WHEREAS, subject to terms, conditions and understandings herein, the City agrees to grant the Licensee a non-exclusive, revocable license to use the encroaching Improvement within the City ROW.

1

Improvement (collectively, a "Lien"). If such a Lien is filed, then the Licensee, after notice of its filing, promptly shall either (a) cause the same to be discharged by depositing adequate funds in court or issuing a bond; or (b) indemnify the City against any loss from a Lien by posting security or taking other actions that are reasonably satisfactory to the City.

8. The Licensee, for itself and on behalf of any of its heirs, personal representatives, authorized assigns or other persons or entities that may succeed to its interest in this Agreement (collectively the "Licensee" for purposes of this provision) agrees to waive, release, indemnify, defend and hold harmless the City, and its officers, employees, and representatives (collectively for purposes of this provision, the "City"), from and against any claim, liability, loss, expense (including, reasonable attorney fees and costs of court), demand or action asserted against the City by the Licensee or by any third party claiming personal injury, property damage or any other loss of any kind (collectively, a "Claim") that arises from or is in any manner related to (a) the Licensee's use of the License granted herein or the Encroachment Area, or (b) any encroaching Improvement placed in the City ROW. The scope of this indemnification obligation includes Claims that are caused or allegedly caused in whole or part by the negligence of the City; provided that the Licensee shall not be obligated hereunder to indemnify the City for Claims that are caused by the gross negligence or willful misconduct of the City.

9. If the Licensee removes or substantially modifies an encroaching Improvement after this Agreement is executed, it shall not replace or construct another or different Improvement or structure in the City ROW without advance approval from the City; provided that nothing herein shall prohibit the Licensee from maintaining, repairing or refurbishing any encroaching Improvement contemplated by this Agreement.

10. All notices that may be required to be given hereunder shall be deemed to have been properly given if in writing and (a) if personally delivered, or (b) sent either by registered or certified mail, postage prepaid, and addressed as follows, or by nationally recognized overnight courier to the following address (or such other address as a party may designate in writing):

To the City:
City of Mountain Brook, Alabama
Attention: City Manager
56 Church Street
Mountain Brook, AL 35213

To the Licensee:
Jeffrey Tillett
Allison Tillett
700 Braddock Avenue
Mountain Brook, Alabama 35213

Notices shall be deemed given upon receipt or refusal of delivery.

11. Miscellaneous Provisions.

NOW, THEREFORE, in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The City grants the Licensee a non-exclusive, revocable license to utilize the City ROW for purposes reasonably related to the construction, installation, maintenance, and use of above-described encroaching Improvement within the Encroachment Area (the "License"). No other uses of the City ROW are authorized.

2. The Licensee agrees and acknowledges that this Agreement grants it (or them) only a license, not any interest, title, permanent right or estate. The grant made hereunder is personal to the Licensee and does not run with the land. Further, the Licensee agrees to not claim any permanent interest in the Encroachment Area by entering into this Agreement or by its use of any contemplated encroaching Improvement.

3. The Licensee agrees to (a) keep the Encroachment Area clean and free of debris, weeds or overgrown grass, (b) maintain the contemplated encroaching Improvement in good and sound condition, and (c) not use the Encroachment Area or any encroaching Improvement in a manner that creates a hazard or causes damage to any third persons or adjacent properties.

4. The Licensee acknowledges that, in the event that the City, in the exercise of its sole discretion, determines that the Licensee's utilization of the Encroachment Area or the Improvement conflicts with City's use of or plans to use that Area, it may revoke the License effective upon providing the Licensee written notice from the Mayor, the City Manager or the City's other executive official. If the License is revoked, the City, in the exercise of its sole discretion, either (a) may request that the Licensee, at its (or their) expense, remove any encroaching Improvement and restore the City ROW to a condition that is reasonably satisfactory to the City within thirty (30) days after the receipt of notice of revocation, or (b) at the City's expense, may remove any encroaching Improvement placed by the Licensee in the Encroachment Area. If the City revokes the License, the Licensee waives and releases the City from any and all claims for expenses incurred by the Licensee to construct or maintain any Improvement in the Encroachment Area.

5. The Licensee may not assign or transfer this Agreement (or any benefit, right or obligation hereunder) to any third party without advance written consent by the City, which consent shall not be unreasonably withheld.

6. All plans, designs and work to construct any contemplated encroaching Improvement shall be subject to review and approval of the City's Building Inspection Department, or such other department as the City may designate. Further, the Licensee agrees that all operations related to the installation or maintenance of any such Improvement will comply with applicable federal, state and local laws, ordinances and regulations (including but not limited to, license and permit requirements) that relate to those operations.

7. The Licensee shall not permit any mechanic or materialman's lien to be filed against the City or concerning the Encroachment Area by reason of any labor, services, materials or equipment supplied or claimed to have been supplied to construct or maintain any encroaching

2

(a) This Agreement may not be amended or modified unless all parties execute a writing that is signed by their duly authorized representatives.

(b) The failure of the City to enforce any of the terms, conditions or provisions of this Agreement shall not be construed as a waiver of its right to subsequently compel enforcement of that or any other term, condition or provision herein. The rights, benefits and obligations under this Agreement may be waived only in a writing signed by the parties.

(c) This Agreement, and the conditions, terms and provisions herein, do not create, and are not intended to create or confer any benefit to any third party.

(d) This Agreement contains the complete agreement of the parties concerning the subject matter herein. Any prior negotiation, agreement or understanding, whether oral or written, concerning the matters addressed herein is superseded and of no effect unless expressed herein.

(e) This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile or other form of electronic transmission, and any signature so transmitted will be given the same force and effect as an original signature

(f) If requested by the City, the Licensee shall record a fully-executed form of this Agreement in the real property records of the Probate Court for Jefferson County.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date hereinabove set forth.

ATTEST
[Signature]
City Clerk

CITY OF MOUNTAIN BROOK, ALABAMA
By: [Signature]
Mayor

LICENSEE (if individual)

[Signature]

LICENSEE (if individual)

[Signature]

APPENDIX

See attached.

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Jeffrey Tillet whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed same voluntarily.

Given under my hand and official seal this 28th day of July, 2023
Heather T. Richards
NOTARY PUBLIC
My Commission expires: 1-11-2027

HEATHER T. RICHARDS
Notary Public, Alabama State at Large
My Commission Expires 1-11-2027

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Allison Tillet whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed same voluntarily.

Given under my hand and official seal this 31st day of July, 2023
Heather T. Richards
NOTARY PUBLIC
My Commission expires: 1-11-2027

HEATHER T. RICHARDS
Notary Public, Alabama State at Large
My Commission Expires 1-11-2027

APPENDIX 4

7/24/23, 12:18 PM

City of Mountain Brook Mail - Boundary map by School



City of Mountain Brook

Heather Richards <richardsh@mtnbrook.org>

Boundary map by School

Glen Merchant <merchantg@mtnbrook.org> Fri, Jul 21, 2023 at 4:18 PM
To: Heather Richards <richardsh@mtnbrook.org>, Sam Gaston <gastons@mtnbrook.org>, Janet Forbes <forbesj@mtnbrook.org>, Whit Colvin <wcolvin@bishopcolvin.com>

147 Fairmont Drive
700 Braddock Ave

----- Forwarded message -----
From: <mbscanner@mtnbrook.org>
Date: Fri, Jul 21, 2023, 4:14 PM
Subject: Message from KM_C558
To: <merchantg@mtnbrook.org>

SKM_C55823072116510.pdf
55K

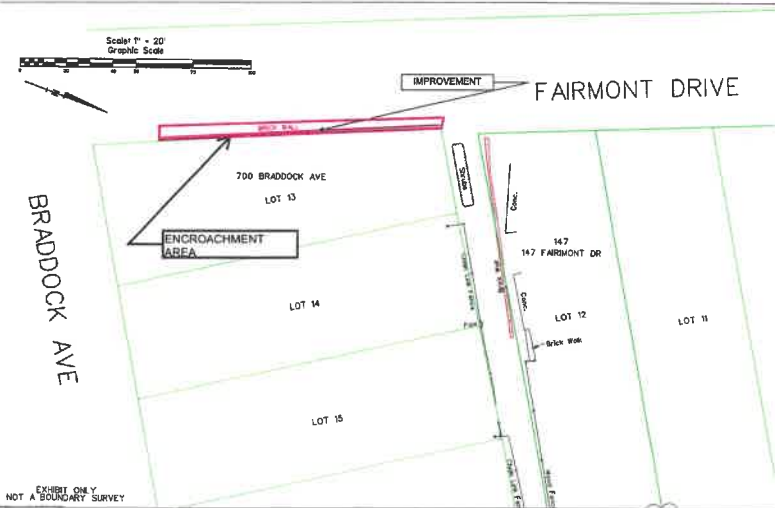


EXHIBIT ONLY
NOT A BOUNDARY SURVEY

700 Braddock Avenue
1 message

Glen Merchant <merchantg@mtnbrook.org> Fri, Jul 21, 2023 at 4:04 PM
To: Heather Richards <richardsh@mtnbrook.org>, Sam Gaston <gastons@mtnbrook.org>, Janet Forbes <forbesj@mtnbrook.org>, Whit Colvin <wcolvin@bishopcolvin.com>

Jeffrey and Allison Tillet

A small brick retaining wall approximately 1 foot inside the Fairmont Drive right of way is holding a plant bed and some large shrubs. The shrubs are being removed from the right of way during the placement of the new stormwater pipe.

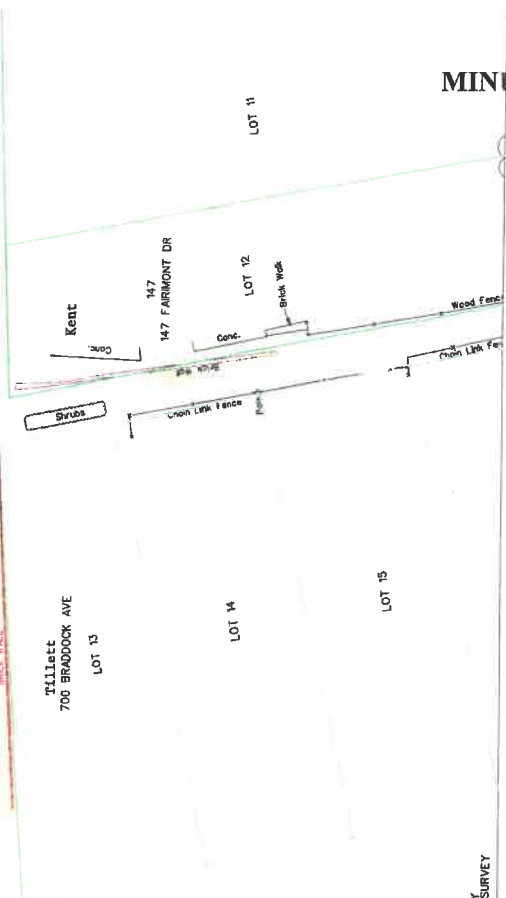


20230721_110834.jpg
7589K

APPENDIX 4

<https://mail.google.com/mail/u/0/?ik=80e4775052&view=pt&search=all&permthid=thread-f.177206569616342356&simpi=msg-f.177206569616342356> 1/1

FAIRMONT DRIVE



Tillet
700 BRADDOCK AVE
LOT 13

LOT 14

LOT 15

BRADDOCK AVE



Scale: 1" = 20'
Graphic Scale

EXHIBIT ONLY
NOT A BOUNDARY SURVEY



NOW, THEREFORE, in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

JEFFERSON COUNTY }
STATE OF ALABAMA }

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

This Right of Way Encroachment License Agreement (the "Agreement") is entered this 24th day of July, 2023, by and between the City of Mountain Brook, Alabama, a municipal corporation (hereinafter the "City" or "Licensor"), and James Mailon Kent, III and Dana Kent (hereinafter individually or collectively referenced for purposes of this Agreement as the "Licensee").

WITNESSETH:

WHEREAS, the Licensee represents that it owns the following real property located in the City of Mountain Brook, Jefferson County, Alabama:

Address: 147 Fairmont Drive, Mountain Brook, Alabama 35213
Parcel ID #: 23 00 33 4 004 004.001
Legal Description: Lot 12, Block B, according to the Survey of Overlook Subdivision, as recorded in Map Book 15, Page 19, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

(the "Property");

WHEREAS, the Property abuts right(s) of way that is owned by the City and reserved for the use of the general public (the "City ROW");

WHEREAS, the Licensee has constructed and desires to maintain a retaining wall at the location depicted on the attached Exhibit "A" (collectively hereinafter the "Improvement"), and intends that the Improvement will be used by the occupants of the Property or their guests;

WHEREAS, part or all of the area in which the Improvement is located within and encroaches upon the City Right of Way (hereinafter, the "Encroachment Area"); and

WHEREAS, subject to terms, conditions and understandings herein, the City agrees to grant the Licensee a non-exclusive, revocable license to use the encroaching Improvement within the City ROW.

Improvement (collectively, a "Lien"). If such a Lien is filed, then the Licensee, after notice of its filing, promptly shall either (a) cause the same to be discharged by depositing adequate funds in court or issuing a bond; or (b) indemnify the City against any loss from a Lien by posting security or taking other actions that are reasonably satisfactory to the City.

8. The Licensee, for itself and on behalf of any of its heirs, personal representatives, authorized assigns or other persons or entities that may succeed to its interest in this Agreement (collectively the "Licensee" for purposes of this provision) agrees to waive, release, indemnify, defend and hold harmless the City, and its officers, employees, and representatives (collectively for purposes of this provision, the "City"), from and against any claim, liability, loss, expense (including, reasonable attorney fees and costs of court), demand or action asserted against the City by the Licensee or by any third party claiming personal injury, property damage or any other loss of any kind (collectively, a "Claim") that arises from or is in any manner related to (a) the Licensee's use of the License granted herein or the Encroachment Area, or (b) any encroaching Improvement placed in the City ROW. The scope of this indemnification obligation includes Claims that are caused or allegedly caused in whole or part by the negligence of the City; provided that the Licensee shall not be obligated hereunder to indemnify the City for Claims that are caused by the gross negligence or willful misconduct of the City.

9. If the Licensee removes or substantially modifies an encroaching Improvement after this Agreement is executed, it shall not replace or construct another or different Improvement or structure in the City ROW without advance approval from the City, provided that nothing herein shall prohibit the Licensee from maintaining, repairing or refurbishing any encroaching Improvement contemplated by this Agreement.

10. All notices that may be required to be given hereunder shall be deemed to have been properly given if in writing and (a) if personally delivered, or (b) sent either by registered or certified mail, postage prepaid, and addressed as follows, or by nationally recognized overnight courier to the following address (or such other address as a party may designate in writing):

To the City:
City of Mountain Brook, Alabama
Attention: City Manager
56 Church Street
Mountain Brook, AL 35213

To the Licensee:
James Mailon Kent, III
Dana Kent
147 Fairmont Drive
Mountain Brook, Alabama 35213

Notices shall be deemed given upon receipt or refusal of delivery.

11. Miscellaneous Provisions.

1. The City grants the Licensee a non-exclusive, revocable license to utilize the City ROW for purposes reasonably related to the construction, installation, maintenance, and use of above-described encroaching Improvement within the Encroachment Area (the "Licensee"). No other uses of the City ROW are authorized.

2. The Licensee agrees and acknowledges that this Agreement grants it (or them) only a license, not any interest, title, permanent right or estate. The grant made hereunder is personal to the Licensee and does not run with the land. Further, the Licensee agrees to not claim any permanent interest in the Encroachment Area by entering into this Agreement or by its use of any contemplated encroaching Improvement.

3. The Licensee agrees to (a) keep the Encroachment Area clean and free of debris, weeds or overgrown grass, (b) maintain the contemplated encroaching Improvement in good and sound condition, and (c) not use the Encroachment Area or any encroaching Improvement in a manner that creates a hazard or causes damage to any third persons or adjacent properties.

4. The Licensee acknowledges that, in the event that the City, in the exercise of its sole discretion, determines that the Licensee's utilization of the Encroachment Area or the Improvement conflicts with City's use of or plans to use that Area, it may revoke the License effective upon providing the Licensee written notice from the Mayor, the City Manager or the City's other executive official. If the License is revoked, the City, in the exercise of its sole discretion, either (a) may request that the Licensee, at its (or their) expense, remove any encroaching Improvement and restore the City ROW to a condition that is reasonably satisfactory to the City within thirty (30) days after the receipt of notice of revocation, or (b) at the City's expense, may remove any encroaching Improvement placed by the Licensee in the Encroachment Area. If the City revokes the License, the Licensee waives and releases the City from any and all claims for expenses incurred by the Licensee to construct or maintain any Improvement in the Encroachment Area.

5. The Licensee may not assign or transfer this Agreement (or any benefit, right or obligation hereunder) to any third party without advance written consent from the City, which consent shall not be unreasonably withheld.

6. All plans, designs and work to construct any contemplated encroaching Improvement shall be subject to review and approval of the City's Building Inspection Department, or such other department as the City may designate. Further, the Licensee agrees that all operations related to the installation or maintenance of any such Improvement will comply with applicable federal, state and local laws, ordinances and regulations (including but not limited to, license and permit requirements) that relate to those operations.

7. The Licensee shall not permit any mechanic or materialman's lien to be filed against the City or concerning the Encroachment Area by reason of any labor, services, materials or equipment supplied or claimed to have been supplied to construct or maintain any encroaching

(a) This Agreement may not be amended or modified unless all parties execute a writing that is signed by their duly authorized representatives.

(b) The failure of the City to enforce any of the terms, conditions or provisions of this Agreement shall not be construed as a waiver of its right to subsequently compel enforcement of that or any other term, condition or provision herein. The rights, benefits and obligations under this Agreement may be waived only in a writing signed by the parties.

(c) This Agreement, and the conditions, terms and provisions herein, do not create, and are not intended to create or confer any benefit to any third party.

(d) This Agreement contains the complete agreement of the parties concerning the subject matter herein. Any prior negotiation, agreement or understanding, whether oral or written, concerning the matters addressed herein is superseded and of no effect unless expressed herein.

(e) This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile or other form of electronic transmission, and any signature so transmitted will be given the same force and effect as an original signature

(f) If requested by the City, the Licensee shall record a fully-executed form of this Agreement in the real property records of the Probate Court for Jefferson County.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date hereinabove set forth.

ATTEST:

City Clerk

CITY OF MOUNTAIN BROOK, ALABAMA
By: 
Mayor

LICENSEE (if individual)

LICENSEE (if individual)

APPENDIX

See attached.

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that _____ whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed same voluntarily.

Given under my hand and official seal this ____ day of _____, 20__.

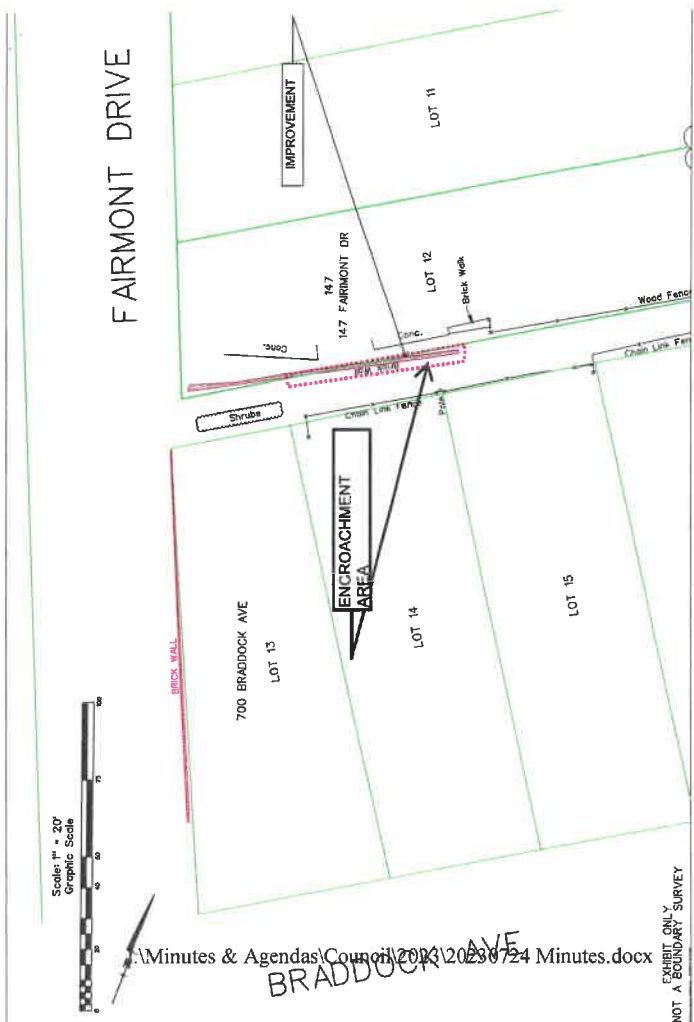
NOTARY PUBLIC
My Commission expires: _____

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that _____ whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed same voluntarily.

Given under my hand and official seal this ____ day of _____, 20__.

NOTARY PUBLIC
My Commission expires: _____

APPENDIX 5



7/24/23, 12:17 PM

City of Mountain Brook Mail - 147 Fairmont Drive



City of Mountain Brook

Heather Richards <richardsh@mtnbrook.org>

147 Fairmont Drive

1 message

Glen Merchant <merchantg@mtnbrook.org> Fri, Jul 21, 2023 at 3:59 PM
To: Heather Richards <richardsh@mtnbrook.org>, Sam Gaston <gastons@mtnbrook.org>, Whit Colvin <wcolvin@bishopcolvin.com>, Janet Forbes <forbesj@mtnbrook.org>

James and Dana Kent

-Encroachment is a segmental wall incidentally placed over the property line approximately 18 inches x 40 feet in length. The wall varies from 6 feet to 2 feet at the rear of the property side boundary.



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5212K

