

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
NOVEMBER 27, 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 informally in-person at 5:45 p.m. on the 27th day of November, 2023 (others were allowed to listen to the meeting by way of Internet video conference-there were 3 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
Graham L. Smith
Lloyd C. Shelton
Gerald A. Garner
Stewart Welch III, Mayor

Absent:

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

1. AGENDA

1. Preliminary discussion of proposed PUD rezoning case (P-23-18) at 2900 Cahaba Road

Dana Hazen-Director of Planning, Building, and Sustainability

- This is currently zoned local business
- The village master plan does call for pedestrian connection
- The PUD as proposed is not perfectly aligned with the land use plan but it does align with the overall master plan goals
- Subject site is located in area governed by the village overlay but the map excludes the subject site from the requirements of the village overlay saying it is governed by base zone districts only
- Project Scope: There are 166 residential units proposed (102 independent living units, 32 assisted living units, and 32 memory care units)
- There are 3,4, and 5 story components
- Primary access to site is Cahaba Road
- The base zoning district Residence G allows 12 units per floor per acre, the proposed density is 8.37 units per floor per acre
- Parking: Residence G requires 2 spaces per dwelling unit, the proposed PUD would be required to have 332 and 38 visitor spaces based on that formula
- There are 167 parking spaces proposed on site for use by residents, staff, and visitors
- The Board of Landscape Design asked the applicant to provide an existing tree survey (this will be forthcoming)
- The applicant has worked with the Fire Marshall

Lee Rhudy-Fire Marshall

- Met twice with the applicant, had 16 concerns and all 16 concerns have been met verbally by the applicant

Dana Hazen

- Traffic study-the levels of service for both existing and projected appear to be above acceptable range in the morning and afternoon peaks

Lloyd Shelton-Council Member

- Inquired if the traffic study contemplates two new roundabouts and the new development on Shade Valley property

Scott Skipper-Skipper Consultants

- The counts were done for what is there today
- Did not project for the future because this development would be completed before the other property is complete

Dana Hazen

- The proposed PUD would have a commencement date of June of 2024 to be completed in 20-24 months

2. Contract for painted brick crosswalks in English Village

Ronnie Vaughn-Public Works Director

- This is a budgeted item; however, this came back \$17,000 over budget
- This is for 6 crosswalks in total (4 on Cahaba Road and 2 on the side street on 20th Avenue)
- To be completed around spring of 2024

Virginia Smith-Council President

- Item added to the formal agenda (Resolution No. 2023-197)

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

2. EXECUTIVE SESSION AND ADJOURNMENT

Council President Pro Tempore made a motion that the City Council convenes in executive session to discuss matters of litigation and that the City Council shall reconvene upon conclusion of the executive session to the regular council meeting. 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:

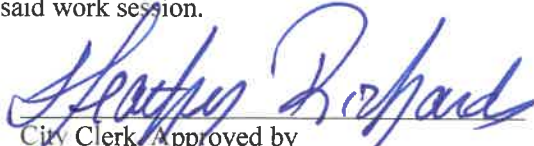
Ayes:	Virginia C. Smith William S. Pritchard III Graham L. Smith Lloyd C. Shelton Gerald A. Garner
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Nays:	None
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There being no further matters for discussion Council President Virginia Smith adjourned the pre-meeting at approximately 6:29 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 27, 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 December 11, 2023

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
NOVEMBER 27, 2023**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 4 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:02 p.m. on the 27th day of November, 2023 (others were allowed to listen to the meeting by way of Internet video conference-there were 4 attendees). 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
Graham L. Smith
Lloyd C. Shelton
Gerald A. Garner
Stewart Welch III, Mayor

Absent:

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. 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 November 9, 2023, special meeting of the City Council
Approval of the minutes of the November 13, 2023, regular meeting of the City Council

2023-195	Accept the proposal with PRI Management for the Police Department's inventory and purge of records	Exhibit 1, Appendix 1
2023-197	Execute a contractor agreement with Acron LLC for the Pedestrian Brick Pattern Brick Pattern Crosswalk in English Village (2000 Cahaba Road)	Exhibit 3, Appendix 3

Thereupon, the foregoing minutes and resolutions (Nos. 2023-195 and 2023-197), were introduced by Council President Virginia Smith and a motion for their immediate adoption made by Council Member Shelton. The minutes and resolutions were then considered by the City Council. Council Member Graham Smith seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

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

Gerald A. Garner

Nays: None

Abstained: None

Council President Virginia Smith thereupon declared that said minutes and resolutions (Nos. 2023-195 and 2023-197) were adopted by a vote of 5—0 and as evidence thereof he signed the same.

2. DIRECTOR OF STUDENT SERVICES TO ADDRESS COUNCIL

Amanda Hood-Mountain Brook Director of Student Services

- Would like to offer a local crisis line to the community
- Found the National Crisis Hotline is widely being utilized during the times of 10:00am and 1:00am and wait times can exceed 45 minutes
- Would like to provide another opportunity for every member of the community
- The same company that offers Gaggle, has a new program called Reach Out that provides local crisis lines to local communities
- This is a live monitored 24/7 crisis line supported by trained crisis counselors
- A person can reach out via call, text or web chat
- Goal is to propose a partnership with AllIn Mountain Brook, Mountain Brook Schools and the City of Mountain Brook
- The total cost is structured based on the number of students in the school system (\$1.75 per student per year for 3 years)
- Mountain Brook has over 4,400 students
- The total annual cost would be \$8,500

Virginia Smith-Council President

- The council is in support of this program

3. THE BOARD OF LANDSCAPE DESIGN PRESENTING THE 29TH YEAR TREE USA AND THE 21ST GROWTH AWARD TO THE CITY OF MOUNTAIN BROOK

Katie Wiswall-Alabama Forestry Commission

- Presented the 29th year tree USA and the 21st growth award to the City of Mountain Brook

4. CONSIDERATION OF RESOLUTION (NO. 2023-196) APPROVING THE CONDITIONAL USE APPLICATION AT 2701 CAHABA ROAD (EXHIBIT 2, APPENDIX 2)

Dana Hazen-Director of Planning, Building, and Sustainability

- The conditional use is for an office use on the 2nd floor in the previous Barton Clay building
- There is an opportunity for 5 offices plus a reception desk
- The employees will not be full time, the primary office is located downtown

Virginia Smith-Council President

- Inquired if the conditional use will come back if it is sold or if they have to add more offices

Dana Hazen

- If the company decides to grow or they sell the property, it would have to come back before the council for approval

Billy Pritchard-Council President Pro Tempore

- With the proposed limited office use on this application, is in favor of what is proposed

Council Member Graham Smith made a motion to approve Resolution 2023-196 approving the conditional use application at 2701 Cahaba Road. The motion was seconded by Council President Virginia Smith. Thereupon, Council President Virginia Smith called for a vote with the following results:

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

Nays: None

Council President Virginia Smith declared Resolution (No. 2023-196) is hereby passed by a vote of 5-0 (Exhibit 3)

5. PUBLIC HEARING: REQUEST TO REZONE PROPERTY FROM LOCAL BUSINESS DISTRICT TO PLANNED UNIT DEVELOPMENT (PUD) DISTRICT FOR A SENIOR LIVING FACILITY 2900 CAHABA ROAD MTB OFFICE PARK, LLC (CASE P-23-18)

Charlie Beavers-Attorney for applicant

- This property is under an 85 year lease with the LAD family to the applicant
- (Introduced team to present at the public hearing)

Al Worthington

- Studies have shown that a senior, living in a senior housing, lives 7 years longer
- This is because they are receiving 3 meals a day, are more active, and are more social
- Developed a luxury senior housing community that consists of 65% independent living, 15% assisted living and 15% memory care
- As needs change, they are able to move to different unit within the same building
- Will offer 3 dining venues (white table cloth fine dining, casual, and bistro)
- Will offer spa services, fitness center, indoor pool, therapy and massage, library, theater room, and outdoor activities
- Plan to operate like a 5-star hotel with 24/7 concierge service

Louis Nequette-Nequette Architecture and Design 2227 2nd Avenue North Birmingham

- Asked to help guide the exterior character of the project to keep within the vision of the village

Nathan Roseman-Roseman Associate Architects 730 Peachtree Street S.E. Atlanta Georgia

- There will be 123 parking stalls in the parking garage then additional 44 surface parking spots (total 167)
- The first floor contains the main area, dining room, kitchen, wellness facilities, and assisted living units
- The second floor contains assisted living units and independent living units
- The third floor contains independent living units and memory care
- The fourth floor contains memory care, assisted living, and independent care
- Some trees on the property will remain
- The building is not parallel to Cahaba so the setback grows

- The building is setback 87' from Cahaba on the southside
- The limits of construction shows the line that will not be crossed when doing erosion or utilities (any trees within the limits of construction will be lost)
- There is a portion of the property that they are still investigating ways to save the trees

Sam Sampson-Ironwood Design Group-426 South Atlanta Street Roswell Georgia

- Likes to provide a lot of shade for the residents
- Preference is to use shade canopy from trees (flowering trees, deciduous trees, etc)
- As the site is designed more, will be able to refine the plan
- Preference is to save trees where they can
- Where there is an impact on existing trees, will replant to re-naturalize with the existing vegetation

Virginia Smith-Council President

- Inquired about the retaining wall versus slope on the back of the property

Sam Sampson

- Currently it is shown as being graded out
- Working with adjacent property owner to grade the site out at a steeper slope that would eliminate the retaining wall at the low end
- This would impact more trees but they would re-naturalize and replant with additional hardwood mix similar to what is there currently

Dana Hazen-Director of Planning, Building and Sustainability

- Inquired as to what species of trees are along Cahaba Road

Sam Sampson

- There is a variety (Oak, Pine, Hickory)
- Would try to replace any trees with as similar trees as possible
- On the tree survey, it only shows the larger trees
- There are a lot of smaller trees on the property that does not show up on the tree survey

Ben Watson-Live Oak Engineering 2509 7th Avenue South Birmingham

- Currently with the existing building there are approximately 2.7 acres that is impervious
- The new plan is 3.7 acres (that is adding an acre of impervious area)
- This is addressed by water falling off property in 3 locations 1) An existing headwall in the northwest corner 2) an acre will run along Cahaba 3) most of the developed area will drain into a closed storm system down headed towards Culver
- Intent is to directly match pre and post impervious areas on the two outside areas
- Velocity of water will be similar
- The added increase in storm water runoff initially would be to put a closed chamber system under the carpark
- This development will not affect flooding downstream negatively
- Utilities-there is an existing sewer main that runs up existing road
- Will run a new sewer main to car park
- Will have more than adequate fire protection

Scott Skipper-Skipper Consulting

- The purpose of the traffic study was to look at what is happening today from traffic operations standpoint
- The traffic study count was as of April 2023

- The current traffic conditions are operating at a C or better
- Looked at the traffic this would generate, found the post development traffic operations are very similar to current conditions
- A senior living facility is usually not heavy traffic generators
- Post development conditions very similar to current conditions

Billy Pritchard-Council President Pro Tempore

- Inquired how the numbers were generated for the senior housing use

Scott Skipper

- It came from a national average
- Used nursing home because that is what is most closely related to memory care because there is not a “memory care” land use

Lloyd Shelton-Council Member

- Inquired about future development being taken into consideration in the study

Scott Skipper

- Did not take out existing office traffic
- Did not take into account any future development beyond the scope of when this project would occur

Virginia Smith

- Inquired if there is any need to reconfigure the traffic light

Scott Skipper

- Would suggest at looking at the timing of the traffic light post development (if need be)

Charlie Beavers

- The team has determined that there is a tremendous need for something like this in Mountain Brook
- Thinks this is the perfect site because it is a closed site

Graham Smith-Council Member

- Inquired if there was any discussion to reduce the height of the building

Charlie Beavers

- For this project to work and to justify the cost, there needs to be a certain numbers of units
- The 5-story portion is up against Office Park, the 4-story portion is towards the village and Cahaba
- The building is set significantly off the road

Lloyd Shelton

- Inquired as to any provision for residents in the independent living units to access the village

Al Worthington

- There is a sidewalk that runs down the drive to the redlight (the hill is a 12% grade)
- In addition to those that can walk, there will be daily transportation that will take the residents wherever they need to go

Brandon Plowden-2844 Overton Road (Chairman of the Board of Landscape Design)

- Inquired as to when the survey will be available

- Concerned with canopy that is there today
- Inquired if there can be some requirements regarding trees such as 1) if a tree dies in a couple of years, it will be replaced 2) if a certain larger caliber tree is taken out, what size caliber can they expect it to be replaced with
- Inquired as to when will the decision be made regarding the retaining wall in the back and how it will affect the trees, vegetation, and drainage

Virginia Smith

- Inquired as to when the tree survey will be available

Ben Watson

- The tree survey has every tree on the property it does not have trees on the right-of-way

Brandon Plowden

- Would like to have a good understanding what is there today and realistically what will have to be removed for the building

Victor Hanson-2328 Chester Road

- Have not heard any steps to address Charlie Perry's concerns regarding the traffic study (Appendix 4)

Billy Pritchard

- Will take steps to address those concerns

Victor Hanson

- The heaviest traffic times are between 11:00am and 3:00pm (not during the morning and afternoons)
- Thinks the traffic measurements should be actual measurements and not standard measurements

Chris Mullins-Mountain Brook Fire Chief

- One main point for the fire department is access to the parking garage so they can get patients from the upper floor to the basement
- Have not received confirmation that they will have access to the parking garage

Virginia Smith

(Closed the public hearing)

6. COMMENTS FROM RESIDENCES AND ATTENDEES

(There were no public comments)

7. ANNOUNCEMENT

Council President Virginia Smith announced the next regular meeting of the City Council is December 11, 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 8:32 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 November 27, 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 December 11, 2023

EXHIBIT 1

RESOLUTION NO. 2023-195

BE IT RESOLVED by the City Council of the City of Mountain Brook that the City Council hereby accepts the proposal submitted by PRI Management, in the form as attached hereto as Exhibit A, with respect to the Police Departments inventory and purge of records.

APPENDIX 1

EXHIBIT 2

RESOLUTION NO. 2023-196

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the conditional office use application at 2701 Cahaba Road.

APPENDIX 2

EXHIBIT 3

PROCLAMATION NO. 2023-197

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 contractor agreement, in the form as attached hereto as Exhibit A, between the City and Acron, LLC with respect to the Pedestrian Brick Pattern Crosswalk in English Village (2000 Cahaba Road).

APPENDIX 3



I. Overview

The Mountain Brook Police Department seeks to reduce its liability by conducting a records inventory and purge of records that have met retention periods and disposition. The department also seeks assistance developing a records management SOP and policy to establish written guidance and consistency with regard to records retention and public records requests moving forward. The current environment includes the following:

- Southern Software RMS (2022-Present)
- Prior RMS Tyler (2009-2022)
- 65 banker boxes containing master reports from 2009 and prior
- 1 FT Records Clerk, Lieutenant and Corporal over records

II. Objectives

The objectives of this project include inventorying agency records and developing a records management SOP and policy regarding records retention and public records requests. The inventory will identify cases that, per retention requirements, should be purged to achieve compliance with legal mandates, reduce agency liability, and provide for the efficient management of records in the future. Developing a written records retention and public records request management SOP and policy will enable efficient and consistent records management processes. This includes:

- Obtain a customized Standing Operating Procedure (SOP) manual for the records unit to establish precise records retention management and public record request policies and procedures.
- Identify paper records that have met disposition and are eligible for destruction.
- Obtain training in records retention and public records management best practices and business processes to establish a core knowledge base within the unit.

III. Results

The value that the Mountain Brook Police Department will derive from the successful completion of this project will include but not be limited to:

- Established records retention and public records management procedures and policies and an understanding of records retention management best practices;
- Limited liability and potential workload stemming from the management of unnecessary records.
- Ensured compliance with all legal requirements, retention schedules, public records requests, and legal liability stemming from any improper management of records.

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APPENDIX 1

November 15, 2023

Lieutenant Christopher Thompson
Mountain Brook Police Department
Via email: Thompsonc@mtnbrook.org

Re: Records Management Services

Dear Lieutenant Christopher Thompson,

Thank you for considering PRI Management Group for your agency's records management needs. This fixed price quote ensures you know upfront what the project costs and furthermore, should any aspect of the project take longer than expected, you will not be charged for the additional time. The quote is valid for 90 days upon receipt.

Please contact me for any questions you may have at amanda@policerecordsmanagement.com or 305-460-0096 x 412. I look forward to serving you in this project.

Sincerely,

Amanda Moore

Amanda Moore, Account Executive
PRI Management Group

Office 305.460.0096 | 150 Alhambra Circle, Suite 1270 | Coral Gables, FL 33134

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IV. Resources

PRI is a highly specialized law enforcement records management and IT consulting firm, in business since 2008. Each consultant has worked in the field of law enforcement records management and technology, serving in both sworn and civilian capacities as either records managers, commanders or IT support staff. The consultants assigned to this project through its completion are listed below.

Edward Claughton, President

The company's president, Lt. Ed Claughton (ret.), specializes in police records operations including public records and UCR compliance, records management, case management, quality control, organizational structure, workflow and records management systems administration. Mr. Claughton is a premier, nationally recognized expert in law enforcement information management having provided project management, business process design and technical consultative and training services to over 350 public safety agencies.

He is a selected speaker for the IACP along with various other industry organizations, has written numerous articles on law enforcement records and technology as published in Police Magazine, GovTech, GCN and in the book "Modernizing Crime Statistics" by the National Academy of Sciences. He served on the recent National Academy of Sciences and FBI panel convened to assist with the nationwide transition to NIBRS reporting as a subject matter expert.

Mr. Claughton is a certified records manager, auditor and instructor in UCR and public records, having created state certified police records training curriculum in various states.

Education

- Master of Science in Criminal Justice, Boston University
- Bachelor of Arts in Political Science, Loyola University New Orleans
- Certificate in Public Records, Florida State University
- FBI Law Enforcement Executive Development Association, Executive Development Program

Carl Brooks, Consultant

Carl Brooks, a retired Captain, has 28 years of law enforcement experience with 18 years of executive leadership within criminal justice. He is a graduate of the Federal Bureau of Investigation (FBI) National Academy class #277.

As a consultant with PRI, Carl has led many records management projects, ranging from records assessments, CAD/RMS implementations, to NIBRS support and transitions. He has also worked on numerous records retention projects, including inventorying records, updating records retention schedules based on state laws and requirements, and creating records management policy and procedure manuals.

Education

- Bachelor's Degree in Criminal Justice, University of Maryland
- Master's Degree in Management, John Hopkins University

V. Scope of Work

Develop a Records Retention and Public Records Request SOP and Policy

PRI will develop a manual and policy for the department's management of records retention and public records requests for review and use. The manual will be developed with staff according to agency and state requirements. The policy will include documented workflows and business practices to include but not be limited to:

- Records retention processes and procedures
- Current records retention schedule
- Required state and departmental forms
- Public records request processing

Onsite Records Retention and Destruction Workshop

PRI will provide two days of hands-on training. Alongside staff, PRI will

- Review a sampling of paper records to determine the purging eligibility based on the current retention schedule.
- Review a sampling of records with staff and provide training regarding best practices for sorting and searching disposition.
- Review best practices for managing and purging paper files.
- Develop records inventory tracking forms and tools designed to ensure compliance with state and department retention requirements, including digital forms, calendaring, policy language, and training.

PRI will inventory, pull, and purge 65 banker boxes containing case reports. This work includes guiding and assisting personnel with the research they need to verify what records are eligible for destruction. Agency staff will be responsible for destroying the records. PRI's work will include the following:

- Review paper files within the identified banker boxes, sort, document the time, records series types, and eligibility for purging;
- Pull the physical files eligible for purging;
- Record the volume of records to be destroyed;
- Log and index all findings;
- Complete the required disposition forms, allowing the Department to easily access and destroy the appropriate records.

VI. Timing

PRI is able to begin at any mutually agreeable time beginning in 2024. The below time frames are estimates. The time frame to complete both the onsite and offsite site work may be longer due to any unexpected circumstances beyond our control.

PRI anticipates this project to be completed in approximately a 4-5 month timeframe.

VII. Joint Accountabilities

Mountain Brook Police Department will be responsible for providing PRI access to and coordinating agency personnel availability, facilities and records management related systems, and providing available personnel to work with PRI staff during the onsite work. Police department personnel will also be required to conduct research that will be needed to help determine the status of records involved in the purge effort.

PRI will be responsible for carrying out the work requested, maintaining confidentiality of agency information and adhering to all mutually agreed upon schedules. Both parties will keep each other informed of any unforeseen changes or other issues that impact and influence the project so we can both adjust accordingly.

We will mutually accommodate each other's unexpected scheduling conflicts and agree to err on the side of over communication to keep each other abreast of all aspects of the project.

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SIGNATURE PAGE

TODAYS DATE: October 19, 2023

AGENCY CONTACT:

Chris Thompson, Lieutenant
Mountain Brook Police Department
101 Tibbett Street Mountain Brook, AL 35213
(205) 802- 3853

E-MAIL:

Thompsonc@mtnbrook.org

FINANCE CONTACT:

(Name)
(Agency)
(Email)

APPROVED BY:


Typed or printed name of Authorized Officer or Agent

Mayor
Title of Authorized Officer or Agent

11-27-2023
Date signed

APPROVED BY:

Ed Cloughton, CEO & PRI President

Date signed



Notes from Applicant:

- number of employees during peak hour; [3-5 depending on the day. Most employees do not live local and one has another office downtown Birmingham]
- where the employees will park [long term parking on perimeter of village]
- hours of operation; [9:00 am -5:00 pm]
- days of the week; [Monday – Friday]
- general description; [The space is to be primarily for the owner's family office and related entities. One initial tenant will be Trivela, a European League Soccer Club owner. There will be 3-4 offices used by Trivela and the most employees do not live in Alabama. The building owner will occupy 2 spaces for his family office. The owner has a business that is primarily located in downtown Birmingham and will not be full time at the Mtn Brook location often.]
- patrons expected during a peak hour; [This is not an office for regular visitors/customers. I can only estimate it would average less than one per day]

MEMO

DATE: November 13, 2023

TO: Mayor, City Council, City Manager, City Attorney
FROM: Dana Hazen, City PlannerRE: 2701 Cahaba Road, Mountain Brook Village (previous Barton-Clay building)
Conditional Use – Office Use

The Barton-Clay building is under new ownership, and the new owner seeks to establish his personal business office use on the second floor. The future tenant for the first floor has not been selected, but it is anticipated that it may be food use or retail use (*proper city approvals to be applied for at such time*).

The proposed second floor office use is what has been described by the new owner of the building as an alternate (second location); the primary office use being located in Birmingham is to remain. As such, it is not anticipated that there will be full-time use of the proposed second floor office.

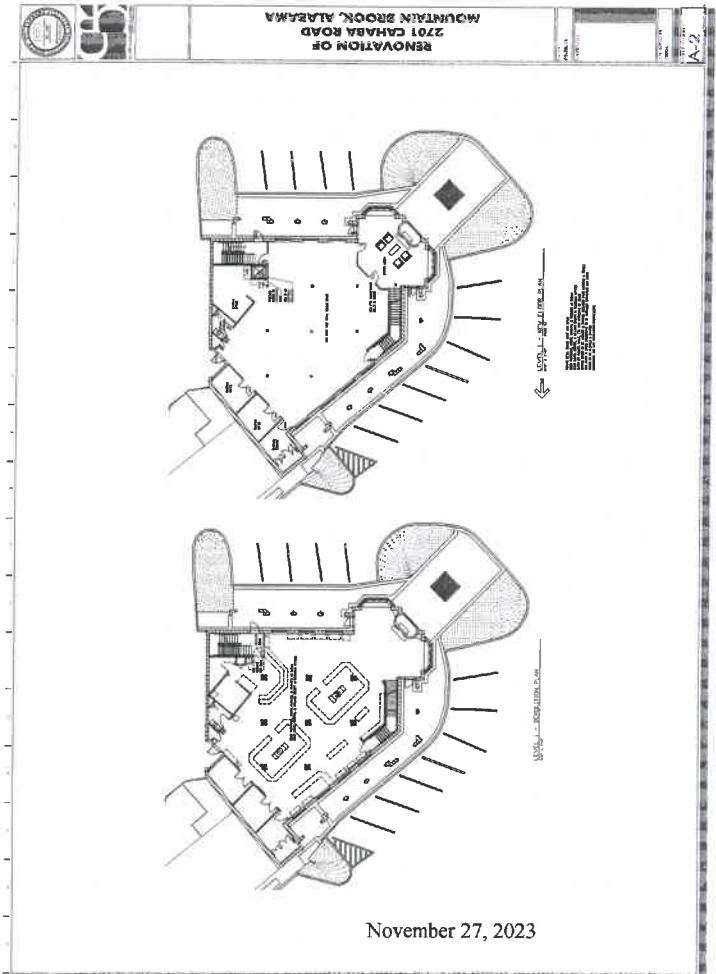
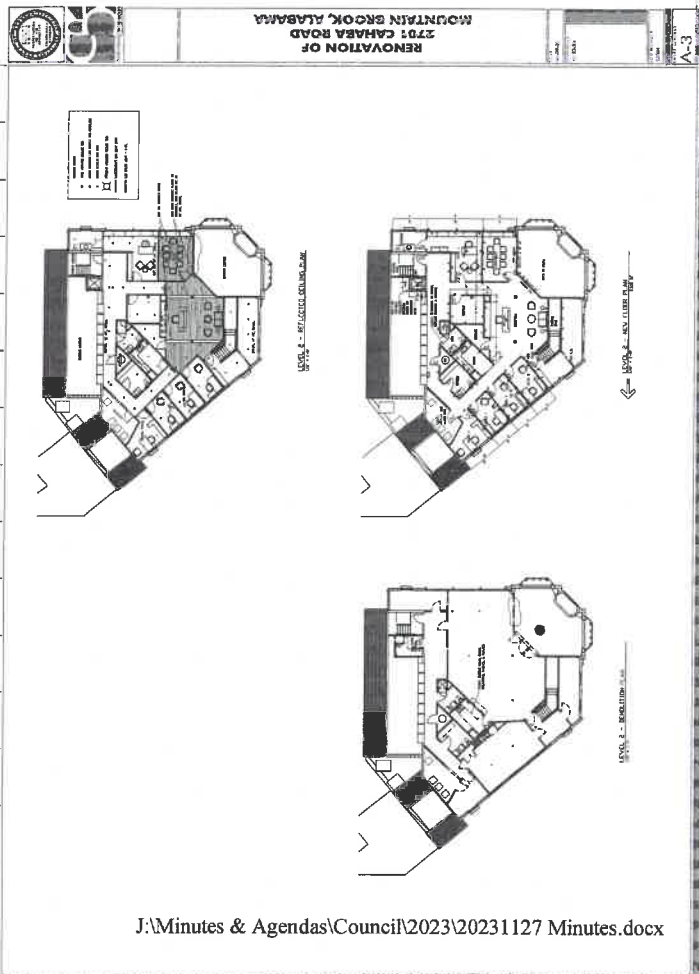
The attached floor plan indicates 5 offices with one a reception desk, for a potential for 6 people to utilize the offices at any given time. The applicant has indicated that the second floor previously contained offices for three people (in conjunction with the Barton-Clay operation). Of course the previous second floor office use was ancillary to the primary retail use on the first floor (Barton-Clay), so there were likely no full-time employees utilizing the second floor.

The total square footage for the leasable area of both floors is 7,343 (4091 for the first floor, and 3252 for the second floor; the basement is excluded from parking calculations per the zoning code). The on-site parking required for the building (based on second floor office and first floor retail) is 33 parking spaces.

Attached is a survey of the property indicating that all of the street parking abutting this site along Cahaba Road and Culver Road is in the public ROW (even though it has historically been signed for private use by Barton-Clay patrons). Therefore, the 13 parking spaces shown on the survey cannot be credited toward on-site parking. However, the zoning code allows existing uses (that are non-conforming with regard to on-site parking) to continue and be replaced with like uses in spite of on-site parking deficits. Therefore, this office use (and any future retail use or evening food use on the first floor) would be allowed without parking being to-code.

The zoning ordinance requires council approval of office uses as a 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.



CONTRACTOR AGREEMENT

Arcon, LLC ("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") on the understated project (the Project")

Name of Project: Pedestrian Brick Pattern Crosswalk English Village

Site of Project: 2000 Cahaba Road
Mountain Brook, AL 35223

2. **Scope of Work.** See Exhibit A (which includes the City Scope of Work and November 21, 2023 Contractor Proposal, hereinafter the "Contractor Proposal") that is attached and incorporated herein.

3. **Undertaking of Parties.** Contractor agrees to perform the Work in accordance with the terms, conditions and specification in this Agreement and on Exhibit A. City agrees to compensate Contractor and perform its other responsibilities set forth in the Contract Documents.

4. **Term/Termination.** The term of this Agreement shall commence on the Effective Date and thereafter continue in effect for six (6) 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.

Contractor's obligations herein shall survive the termination or expiration of the Term for these periods: Section 6(f) (Warranty on workmanship and materials) for one year following Project acceptance; other warranties in Section 6 for a period of one year, and Section 7(c) (Indemnification) for a period of two (2) years.

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it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;

(c) 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 acceptance 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.

7. **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:** Seven Hundred Fifty Thousand Dollars (\$750,000.00), 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 Seven Hundred Fifty Thousand Dollars (\$750,000.00) 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.

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\$36,000
Budgeted
Six (6)
Crosswalks

5. **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 Fifty-three thousand and twenty-five dollars (\$53,025.00) as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing signed by duly authorized representatives of both parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price (and agreed sum(s) payable for any Additional Operations contemplated on Exhibit A). In no event will the total amount paid to Contractor for its Work (including the Contract Price or any amount paid for Additional Operations) exceed \$100,000.00.

The City will pay the Contract Price on this Project on the following schedule:

(a) The balance of the Contract Price after the following certification of completion of Work.

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.

6. **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

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The City will not furnish any type, form, coverage or amount of insurance in connection with the Project.

(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.

The City will not indemnify Contractor (or any of its representatives or authorized subcontractors) for any claims that relate to or arise out of the Project.

(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.

8. **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.

9. **Miscellaneous Provisions.**

November 27, 2023

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a. This Agreement which is comprised of this instrument, the City Scope of Work and the November 21, 2023 Contractor Proposal (collectively, the "Contract Documents") 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. In the event of any conflict or inconsistency between provisions in the various Contract Documents, the provision(s) in the document in the order below shall control and take precedence: (1) this Agreement; (2) the City Scope of Work; and (3) the Contractor Proposal.

b. 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. 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. 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. 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. 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.

h. 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

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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

By: 

Its: Mayor

Date: 11-27-2023

Arcon, LLC CONTRACTOR.

By: _____

Its: _____

Date: _____

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.

i. 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.

j. 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.

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

(Signature Page Follows)

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EXHIBIT A – SPECIFICATIONS

1. Scope of Work. Measurement of Brick Pattern Crosswalk 10' wide with 12" White Borders Impressed preformed thermoplastic Crosswalks Into Asphalt

See attached City Scope of Work and November 21, 2023 Contractor Proposal.

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. No compensation for Additional Operations will be paid unless those Operations are approved in advance.

2. Project Schedule. Weather permitting, Contractor expects to complete the Work within an approximate 5 week period after execution of the Agreement and the City provides it a Notice to Proceed.

3. Project Representatives.

City Project Representative:
Hunter Johnston
3579 East Street
Birmingham, AL 35243
Email: johnstonh@mtnbrook.org
Day Tel #: 205-802-3875

Contractor Project Representative:
Robbie Butler
3505 Branch Mill Road
Birmingham, AL 35223
Email: robbie@arconus.net
Day Tel #: 205-937-6201

4. Special Conditions. The City of Mountain Brook will provide traffic control throughout the project. City will be responsible for removal of existing thermo will provide new asphalt surface for new Impressed preformed thermoplastic Crosswalks. Work will be performed during normal business hours 7 a.m. to 5 p.m.