

**JOINT MEETING AGENDA OF THE
MOUNTAIN BROOK CITY COUNCIL AND
MOUNTAIN BROOK EMERGENCY COMMUNICATIONS (E911) DISTRICT**

**CITY HALL COUNCIL CHAMBER (ROOM A108)
56 CHURCH STREET, MOUNTAIN BROOK, AL 35213**

TUESDAY APRIL 23, 2019, 7:00 P.M.

1. "National Get On-Board Day" proclamation (to encourage the use of public transportation all passengers will ride free on April 25, 2019).
2. International Code Council "Building Safety" proclamation.
3. Approval of the minutes of the April 8, 2019, regular meeting of the City Council.
4. Consideration: Resolution reappointing Paige B. Daniel to the Finance Committee, to serve without compensation through May 11, 2023.
5. Consideration: Resolution reappointing W. Craig Fravert to the Finance Committee, to serve without compensation through May 11, 2023.
6. Consideration: Resolution authorizing the [unbudgeted] purchase/replacement of a batteries, AC/DC caps and fans for the uninterrupted power supply (UPS) serving the back-up E911 system.
7. Public hearing to consider an ordinance amending Article X of the City Code, Professional District, with respect to permitted uses therein.
8. Announcement: The next regular meeting of the City Council will be May 13, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
9. Comments from residents.
10. Adjourn.

**“NATIONAL GET ON BOARD DAY”
PROCLAMATION**

WHEREAS, The Birmingham-Jefferson County Transit Authority (the “BJCTA”) is a public entity established by the Alabama Legislature to provide mass public transportation in Jefferson County, Alabama; and

WHEREAS, April 25, 2019, marks “National Get on Board Day” as a day that encourages people to ride public transportation to save money, protect the environment, and improve the quality of life for all Americans; and

WHEREAS, Free rides will be offered to all customers on April 25, 2019 in celebration of “National Get On Board Day”; and

WHEREAS, public transportation is a \$71 billion industry that directly employees 420,000 people and supports millions of private sector jobs; and

WHEREAS, for every \$1 invested in public transportation, \$4 is generated in economic returns; and

WHEREAS, 87 percent of public transit trips directly impact the economy by connecting people to jobs or retail and entertainment venues;

ALSO BE IT RESOLVED THAT Alabama declares that public transportation helps people save money, helps the environment, and improves America’s quality of life;

ALSO BE IT RESOLVED THAT where public transportation goes, communities grow and prosper.

NOW, THEREFORE, I, Stewart H. Welch III, Mayor of the City of Mountain Brook, proclaim **APRIL 25, 2019**, as “**NATIONAL GET ON BOARD DAY**” in our city and will join with the State of Alabama and the Birmingham-Jefferson County Transit Authority, and other public transportation agencies across the country, to showcase the benefits of public transportation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Mountain Brook to be affixed the 23rd day of April of the year of our Lord 2019 and of the Independence of the United States of America, the 243rd.

Stewart H. Welch III, Mayor



2019-054

Building Safety Month Proclamation

Whereas, the City of Mountain Brook is committed to recognizing that our growth and strength depends on the safety and economic value of the homes, buildings and infrastructure that serve our citizens, both in everyday life and in times of natural disaster; and

Whereas, our confidence in the structural integrity of these buildings that make up our community is achieved through the devotion of vigilant guardians—building safety and fire prevention officials, architects, engineers, builders, tradespeople, design professionals, laborers, plumbers and others in the construction industry—who work year-round to ensure the safe construction of buildings; and

Whereas, these guardians are dedicated members of the International Code Council, a U.S. based organization, that brings together local, state and federal officials that are experts in the built environment to create and implement the highest-quality codes to protect us in the buildings where we live, learn, work, play; and

Whereas, our nation benefits economically and technologically from using the International Codes® that are developed by a national, voluntary consensus codes and standards developing organization, our government is able to avoid the high cost and complexity of developing and maintaining these codes, which are the most widely adopted building safety and fire prevention codes in the world; and

Whereas, these modern building codes include safeguards to protect the public from natural disasters such as hurricanes, snowstorms, tornadoes, wildland fires, floods and earthquake; which, according to a FEMA- commissioned study by the National Institute of Building Sciences, provide \$11 in future mitigation benefits for every dollar invested; and

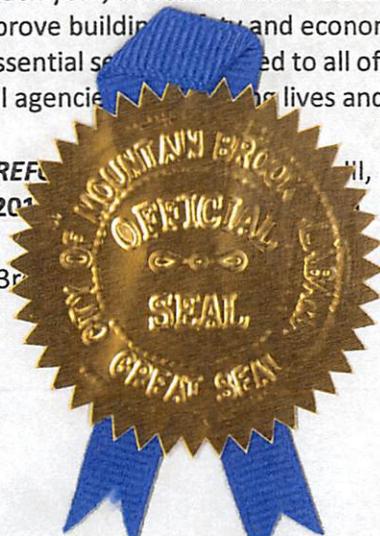
Whereas, Building Safety Month is sponsored by the International Code Council to remind the public about the critical role of our communities' largely unknown protectors of public safety—our local code officials—who assure us of safe, efficient and livable buildings that are essential to America's prosperity; and

Whereas, "No Code. No Confidence" the theme for Building Safety Month 2019, encourages all Americans to raise awareness of the importance of safe and resilient construction; fire prevention; disaster mitigation, and new technologies in the construction industry. Building Safety Month 2019 encourages appropriate steps everyone can take to ensure the safety of our built environment, and recognizes that the implementation of safety codes by local and state agencies has saved lives and protected homes and businesses; and

Whereas, each year, in observance of Building Safety Month, Americans are asked to consider the commitment to improve building safety and economic investment at home and in the community, and to acknowledge the essential services provided to all of us by local and state building departments, fire prevention bureaus and federal agencies that protect our lives and property.

NOW, THEREFORE, I, Stewart H. Welch III, Mayor of the City of Mountain Brook, do hereby proclaim the month of May 2019 as Building Safety Month.

Proclaimed this 23rd day of May 2019.



Stewart H. Welch III, Mayor

2019-055

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
APRIL 8, 2019**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:15 p.m. on the 8th day of April, 2019. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Philip E. Black
Alice B. Womack
Stewart Welch III, Mayor

Absent: Lloyd C. Shelton

Also present were City Attorney Whit Colvin, City Manager Sam Gaston and City Clerk Steven Boone.

1. RECOGNITION OF GUESTS

Council President recognized Boy Scout Sam McIlvaine and 5-10 fellow scouts from Troop 253 in attendance for their Arrow of Light merit badge.

2. AGENDA

1. Board of Equalization nominations—Sam Gaston
2. Mountain Brook entrance signs—Ferris Schwefler and Frances Torbert of the 2018—2019 Leadership Mountain Brook Class (Motion No. 2019-053 was added to the formal agenda.)
3. Decorative street light on Dexter Avenue—Ronnie Vaughn (Appendix 1). The elected officials individually expressed their support for the proposal. The Public Works Superintendent will proceed with the purchase and installation of the budgeted decorative street light.
4. April 22nd Council meeting moved to April 23rd
5. Set date for City Council's fiscal year 2021-2020 budget planning session—Sam Gaston (the work session was scheduled for Wednesday, May 22, 2017 at 7:30 a.m.)
6. Review of the matters to be considered at the formal (7 p.m.) meeting

3. EXECUTIVE SESSION

There being no further matters for discussion, Council President Smith made a motion that the City Council convene in executive session to discuss a matter involving potential litigation. The City Attorney certified that the subject matter of the executive session is permissible under the Open Meetings Act. The motion was seconded by Council President Pro Tempore Pritchard. There being no further discussion, the vote was called with the following results:

Ayes: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Philip E. Black
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said motion carried by a vote of 4—0.

4. ADJOURNMENT

There being no further matters to be discussed, Council President Smith excused those in attendance at the meeting, announced that the City Council shall reconvene in the Council Chamber upon conclusion of the execution session at 7 p.m. and adjourned the pre-meeting at approximately 6:45 p.m.

5. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on April 8, 2019, 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

**MINUTES OF THE REGULAR OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
APRIL 8, 2019**

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:00 p.m. on the 8th day of April, 2019. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Philip E. Black
Alice B. Womack
Stewart Welch III, Mayor

Absent: Lloyd C. Shelton

Also present were City Attorney Whit Colvin, City Manager Sam Gaston and City Clerk Steven Boone.

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

1. CONSENT AGENDA

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

Approval of the minutes of the March 25, 2019, regular meeting of the City Council

2019-046	Reappoint Brian Lucas to the Park and Recreation Board, to serve without compensation, the term to end April 8, 2024	Exhibit 1
2019-047	Authorize the execution of an agreement for services between the City and Regional Planning Commission of Greater Birmingham (RPCGB) with respect to a comprehensive APPLE grant-funded traffic study of Overton Road	Exhibit 2, Appendix 1
2019-048	Recommend to the State of Alabama, Alcoholic Beverage Control Board, the issuance of a 040 – Retail Beer (On or Off Premises) and 060 – Retail Table Wine (On or Off Premises) licenses to Golden Age Wines LLC, 2828 Culver Road, Mountain Brook 35223	Exhibit 3, Appendix 2
2019-049	Adopt internal control policies and procedures	Exhibit 4, Appendix 3
2019-050	Award the bid (#B-20190312-502) for landscape services for the municipal complex, villages and library to Landscape Services, Inc.	Exhibit 5, Appendix 4
2019-051	Award the bid (#B-20190314-504) for janitorial services for the City Hall and Fire Administration to Protek Cleaning Services, Inc.	Exhibit 6, Appendix 5

2019-052	Expression of support for, and encouraging the Alabama Legislature to adopt the provisions of, HB41 concerning regulation of alternative nicotine products by the ABC Board	Exhibit 7, Appendix 6
2019-053 Motion	Authorize the expenditure of \$10,685 for two gateway signs pursuant to the 2018—2019 Leadership Mountain Brook project description provided the Leadership Class successfully raises \$1,400 and the receipt/contribution of \$4,000 from the Mountain Brook Chamber of Commerce (\$5,000 net cost to the City)	Exhibit 8, Appendix 7

Thereupon, the foregoing minutes, resolutions and motion were introduced by Council President Smith and a motion for their immediate adoption made by Council member Black. The minutes, resolutions and motion were then considered by the City Council. Council member Womack seconded the motion to adopt the foregoing minutes, resolutions and motion. Council President Pro Tempore Pritchard announced that he will abstain from voting with respect to Resolution No. 2019-050. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President
 William S. Pritchard III, Council President Pro Tempore (except for Resolution No. 2019-050)
 Philip E. Black
 Alice B. Womack

Nays: None

Council President Smith thereupon declared that said minutes, resolutions (Nos. 2019-046 through 049, 051 and 052) and motion (No. 2019-053) are adopted by a vote of 4—0 and that Resolution No. 2019-050 is adopted by a vote of 4—0 as evidence thereof she signed the same.

2. ANNOUNCEMENTS

The next regular meeting of the City Council will be Tuesday, April 23, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

3. OTHER BUSINESS

Mr. David Barber expressed his gratitude to the City Council for its ongoing support of the Prescott House, celebrating its 30th year of existence this month.

4. ADJOURNMENT

There being no further business to come before the City Council, Council President Smith adjourned the meeting at approximately 7:05 p.m.

5. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the joint, regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on April 8, 2019, 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

RESOLUTION NO. 2019-056

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Paige B. Daniel is hereby appointed to the Finance Committee, to serve without compensation, with the term of office to end May 11, 2023.

ADOPTED: This 23rd day of April, 2019.

Council President

APPROVED: This 23rd day of April, 2019.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on April 23, 2019, as same appears in the minutes of record of said meeting.

City Clerk

RESOLUTION NO. 2019-057

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that W. Craig Fravert is hereby appointed to the Finance Committee, to serve without compensation, with the term of office to end May 11, 2023.

ADOPTED: This 23rd day of April, 2019.

Council President

APPROVED: This 23rd day of April, 2019.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on April 23, 2019, as same appears in the minutes of record of said meeting.

City Clerk

RESOLUTION NO. 2019-058

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, and Board of Commissioners of the Mountain Brook Emergency Communications (E911) District that the City Council and District Commission hereby authorizes the replacement of the uninterrupted power supply (UPS) batteries, AC/DC caps and fans as follows: and

<u>Line</u>	<u>Description</u>	<u>Amount</u>
1.	NX 20-30 INTBAT, model 38SA030C0CHR, AC/DC cap and fans	\$3,263.10
2.	24 x CSBHRL12150WFR with batter verification and shipping	2,757.31
3.	Installation options (check one)	
	<input checked="" type="checkbox"/> M-F 8 am-5pm	1,457.08
	<input type="checkbox"/> M-F 5pm-8 am and/or all day Sat	2,077.09
	<input type="checkbox"/> Sunday/holiday	2,697.09

BE IT FURTHER RESOLVED by the Mountain Brook Emergency Communications (E911) District that the District Commissioners hereby authorize the expenditure of District funds for the aforementioned expenditures to be administered by the City of Mountain Brook Policy Department.

ADOPTED AND APPROVED: This 23rd day of April, 2019.

Council President/District Chairman

APPROVED: This 23rd day of April, 2019.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook and District Commissioners at its regular, joint meeting held on April 23, 2019, as same appears in the minutes of record of said meeting.

City Clerk



Steve Boone <boones@mtnbrook.org>

Fwd: Liebert ups caps and batteries

1 message

Ted Cook <cookt@mtnbrook.org>

Tue, Apr 9, 2019 at 10:29 AM

To: Sam Gaston <gastons@mtnbrook.org>, Steve Boone <boones@mtnbrook.org>

Cc: Greg Hagood <hagoodg@mtnbrook.org>, Jay Loggins <logginsj@mtnbrook.org>

Can this be added to the next Council Agenda? This would have to be a budget amendment to come out of 911 funds.

By the way, the cost of completely replacing the unit is around \$36,000.

Chief Ted Cook
Mountain Brook Police Department
 101 Tibbett St.
 Mountain Brook, AL 35213
 (205) 802-3852



----- Forwarded message -----

From: **Jaye Loggins** <logginsj@mtnbrook.org>

Date: Wed, Feb 6, 2019 at 9:44 AM

Subject: Fwd: Liebert ups caps and batteries

To: Ted Cook <cookt@mtnbrook.org>, Greg Hagood <hagoodg@mtnbrook.org>

Here are the quotes for the capacitors and batteries for the UPS. I have also requested a quote to replace the entire system. I will forward it when I receive it.

Lieutenant J. Loggins
Mountain Brook Police Department
 Administrative Division
 101 Tibbett Street
 Mountain Brook, AL 35213

Office Px: 205-802-3855
 Office Fax: 205-879-0634
 e-mail: logginsj@mtnbrook.org

----- Forwarded message -----

From: **Matt Honeycutt** <mhoneycutt@joepowell.com>

Date: Thu, Jan 31, 2019 at 10:06 AM

Subject: Liebert ups caps and batteries

To: logginsj@mtnbrook.org <logginsj@mtnbrook.org>

Cc: Davis.Gantt@vertivco.com <Davis.Gantt@vertivco.com>

Lieutenant,

You're ce Davis, has found that it is time to replace your caps and batteries. Your batteries are five years old and starting to fail and loose reliable service. Davis also recommends that it is time to replace your capacitors before you have any failures. I have attached a proposal for batteries, capacitors and fans. We just need the signature page signed and completed, or a PO that aligns with the information at the top of that same page. We did have a name change last year. Can I do anything to help you update our vendor profile? Would you like a copy of our sole source letter, W-9, COI, etc.? And are there any questions I can answer that would be helpful? I'm happy to stop by in the next week or two if you'd like to go over anything as well.

Thanks

Matt Honeycutt

Matt Honeycutt

JOE POWELL AND ASSOCIATES

221 Applegate Trace, Pelham, AL, 35124

P: (205) 444-9195

mhoneycutt@joepowell.com



2 attachments

 **Mountain Brook Police Dpt Cap_fan 113932.pdf**
227K

 **Mountain Brook Police Dpt Batteries 113932.pdf**
265K

*\$3263.10
AC/DC CAP & Fans*

Proposal for Cap & Fan Replacement

Vertiv Corporation

Oct 16, 2018

Mountain Brook Police Dept
100 Tibbett Street
Mountain Brook, AL, 35213

Oct 16, 2018

Mountain Brook Police Dept
100 Tibbett Street
Mountain Brook, AL, 35213

Q02871348

Dear Lieutenant J. Loggins

Thank you for your interest in Vertiv Corporation. We are pleased to submit the following proposal for your review and consideration.

As the rate of change and complexity in your data center increases, Vertiv is the dedicated partner that you need to help you achieve your goals.

Please complete all required fields on the signature page and attach your Purchase Order to assist timely order processing. Should you have any questions regarding the proposal, feel free to contact me directly at 205-213-0137. I look forward to your response and the opportunity to work together to improve your data center investment.

Sincerely,

Matthew Honeycutt

221 Applegate Trace
Pelham, AL 35124

PHONE (205) 444-9195

EMAIL mhoneycutt@joepowell.com

October 16, 2018
Q02871348

Liebert UPS Capacitor and Fan Replacement Services:

- Please plan/allow 8-12 weeks for capacitor and fan replacement, (if applicable).
- Replacement of all DC Capacitors.
- Replacement of all Fans and Blowers (if applicable).
- Replacement of all AC Input and Output filter Capacitors.

Standard Maintenance Contracts:

Site #: 11393 - Mountain Brook Police Dept – 100 Tibbett Street Mountain Brook AL 35213

Tag #	Description	Model #	Annual PM Qty.	Coverage Type (Coverage Dates)	Coverage Amount
1438880	NX 20-30 INTBAT	38SA030C0CHR		AC/DC Cap and Fans Replacement	\$3,263.10

Progress billing: For all projects involving capacitor replacement, progress payments will apply. Invoices will be issued per the following project milestones:

Milestone

Shipment of capacitors
Completion of installation and testing

Payment Due

Total amount for capacitors and freight
Balance of project price

Total price not including tax: USD \$3,263.10
any tax required must be included in customer purchase order
Payment Terms: Net 30 Days

SCOPE OF WORK

UNINTERRUPTIBLE POWER SYSTEMS

SERIES 300 AND NX 10-30 KVA MODELS ONLY

LIFE EXTENSION - DC CAPACITOR / FAN REPLACEMENT

SERVICE SUMMARY

Feature	Detail
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
Cap Replacements	Includes a complete replacement of all DC capacitors (all necessary labor and material).

SERVICE PERFORMED

DC Capacitor and Fan Replacement Service

1. Check all nuts, bolts, screws, and connectors for tightness and heat discoloration.
2. Verify new capacitor values prior to installation.
3. Clean capacitor decks and buss bars of all dirt, debris, and/or leakage.
4. Record AC ripple voltage and current before, and after, capacitor replacement.
5. Replace DC buss filter capacitors.
6. Inspect DC capacitor wiring for loose connections and heat discoloration. Replace, if necessary.
7. Ensure all capacitor connections are properly torqued.
8. Record new capacitor date codes.
9. Form new DC capacitors.
10. Perform thermal scan of capacitor decks and connections.
11. Dispose of removed capacitors (upon request and at time of service).
12. Review system performance with customer to address any system questions.

ASSUMPTIONS AND CLARIFICATIONS

Service to be performed during the Annual preventive maintenance visit, as per the contract purchased on the UPS (excluding national holidays). Change out can also be performed during a Semi-annual visit if customer agrees to shut down the equipment. If a special visit was purchased, service is performed at the customer's convenience, regardless of contract purchased on the UPS (excluding national holidays).

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.

- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- Equipment Access: Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- Shutdown: Service may require shutdown of load to ensure electrical connection integrity.
- Notification: If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

SCOPE OF WORK

UNINTERRUPTIBLE POWER SYSTEMS

ALL 3-PHASE MODELS

LIFE EXTENSION - AC CAPACITOR REPLACEMENT

SERVICE SUMMARY

Feature	Detail
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
Cap Replacements	Includes a complete replacement of all AC Input and Output Filter Capacitors (all necessary labor and material).

SERVICE PERFORMED

AC Capacitor Replacement Service

1. Check all nuts, bolts, screws, and connections for heat discoloration.
2. Verify new capacitor values prior to installation.
3. Clean capacitor decks and buss bars of all dirt, debris, and/or leakage.
4. Record AC filter currents before and after capacitor replacement.
5. Replace input filter capacitors.
6. Replace output filter capacitors.
7. Replace commutation capacitors, if applicable.
8. Replace power supply electrolytic capacitors, if applicable.
9. Inspect AC, input/output capacitor wiring, and replace if necessary.
10. Properly torque all capacitor connections.
11. Record new capacitor date codes.
12. Perform thermal scan of capacitor decks and connections.
13. Dispose of removed capacitors (upon request and at time of service).
14. Review system performance with customer to address any system questions.

ASSUMPTIONS AND CLARIFICATIONS

Service to be performed during the Annual preventive maintenance visit, as per the contract purchased on the UPS (excluding national holidays). Change out can also be performed during a Semi-annual visit if customer agrees to shut down the equipment. If a special visit was purchased, service is performed at the customer's convenience, regardless of contract purchased on the UPS (excluding national holidays).

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- **Site Access:** Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- **Equipment Access:** Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- **Shutdown:** Service may require shutdown of load to ensure electrical connection integrity.
- **Notification:** If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

Order Number: Q02871348

Purchase Order must be assigned to:
Vertiv Corporation
1050 Dearborn Dr.
Columbus, OH 43085

Payment remittance address:
Vertiv Corporation
PO Box 70474
Chicago, IL 60673

FID# 31-0715256

PO should be e-mailed with signed proposal to:

Attn: Matthew Honeycutt Email: mhoneycutt@joepowell.com

Please complete the following information (All fields are required):

Purchase Order Number: _____ Purchase Order attached: Yes No

If PO **NOT** attached, please specify reason: _____

Invoice Delivery Method: Web Billing (Attach Instructions) Mail Other: _____

Accounts Payable Email _____ @ _____

Billing Contact Person: _____ Phone: _____

Email: _____ Fax #: _____

Bill-To Company Name: _____ Bill-To Address: _____

Federal Tax ID # _____ Bill-To City, ST Zip: _____

Tax Exempt: Yes (Attach tax exempt certificate) No

Site Services/IT Contact Person: _____ Phone: _____

**** COVERAGE DETAILS ****

For equipment not currently under a Service Agreement or for equipment for which the warranty has expired in excess of thirty (30) days, parts required to bring equipment back to manufacturers specifications are the responsibility of the Buyer and billable at the time of the first preventive maintenance visit or Service call. All pricing is valid only for Service coverage stated and is subject to change if this Proposal is modified in any way. This Proposal is valid for 30 days from the date of this Proposal unless otherwise noted. INFORMATION TO BUYER: This order between the Buyer and Seller is limited to Seller's Terms and Conditions located at termsconditions.vertivco.com unless a formal agreement governing this Purchase Order/transaction has been executed by the parties, in which case the Terms and Conditions of the signed agreement shall govern. Seller hereby objects to all Buyer's terms and conditions received by Seller and/or issued by Buyer.

Signature of this agreement authorizes Seller to invoice for Services mentioned herein and to utilize the provided purchase order number. If a purchase order number is not used, then the Buyer authorizes and guarantees Seller the payment of such invoices by authority of the signature below.

Thank you for your business.

Proposed By:

Matthew Honeycutt 1/31/2019
Matthew Honeycutt Date

Accepted By:

X _____
Customer Signature Required Date

X _____
Printed Name Title

EXCITING NEWS: On Sept. 1, 2018, we transitioned to Vertiv Corporation as our legal entity. Visit <http://vertivco.com/legalentityinfo> for changes you may need to make.

Vertiv Corporation
TERMS AND CONDITIONS OF SALE

Vertiv Corporation is herein referred to as the "Seller" and the customer or person or entity purchasing goods and/or services ("Goods") and/or parts required for services ("Parts") or licensing software and/or firmware, which are preloaded, or to be used with Goods ("Software") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope or statement of work, or invoice from Seller relevant to the sale of the Goods, Parts and licensing of Software by Seller, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement ("Agreement") governing the sale of Goods, Parts, and/or license of Software by Seller to Buyer. Any discrepancies between the terms of the above referenced documents shall be resolved by Seller. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of Seller's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Buyer's acceptance of the Goods, Parts, and/or Software will manifest Buyer's assent to the terms of this Agreement. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods, Parts and/or Software shall remain in effect for thirty (30) days after the date of Seller's quotation, Seller's scope of work or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment or performance of the Goods and/or Parts, and/or Software is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods, Parts and/or Software to Seller's price for the Goods, Parts, and/or Software at the time of Seller's shipment or performance thereof. All prices and licensee fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices. Unless otherwise specified by Seller, Parts that are required for the performance of services will be furnished at Seller's then-prevailing prices. A service charge of \$19.99 will be added to all orders which, excluding shipping charges, taxes, and insurance, do not meet the minimum order value of \$750.00. The service charge amount and/or minimum order value may be changed by Seller at any time, without notice.

2. **TAXES:** Any current or future tax, duty, tariff or governmental charge (or increase in same) affecting Seller's costs of production, sale, services or delivery or shipment of Goods Parts, and/or Software, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, performance, storage, processing, use or consumption of Goods, Parts, and/or Software, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its interests in payment by enforcing any applicable mechanic's, labor, construction or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries or performance of Goods, Parts, and/or Software. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries or performance. Buyer hereby grants Seller a security interest in all Goods, Parts, and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods, Parts, and/or Software are fully paid for, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest. As permitted by law, all purchases paid by credit card shall be charged a 2.0% usage surcharge of the invoice total, for fees paid by Seller to accept credit card transactions.

4. **SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts, and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment or performance of the Goods, Parts, and/or Software is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For sales in which the end destination of the Goods, Parts, and/or Software is outside of the United States (except for those international sales to Seller's affiliated companies), risk of loss and legal title to the Goods, Parts, and/or Software shall transfer to Buyer immediately after the Goods, Parts, and/or Software have passed beyond the territorial limits of the United States. For international sales to Seller's affiliated companies, all shipments of Goods, Parts, and/or Software are made on a Delivered at Terminal (DAT) basis, per Incoterms 2010, with freight charges from Seller's facility to destination terminal invoiced to buyer either on a Prepaid or PPD/Add basis, as agreed to by Seller and Buyer. All other shipments of Goods, Parts, and/or Software are made on an Ex Works (EXW) Seller's Shipping Point basis, per Incoterms 2010, with Seller responsible to load goods on Buyer's nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) upon delivery by the Seller, or (ii) at the time Parts are placed in storage due to Buyer's delay or postponement. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes to orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller's

acceptance and adjustment in freight price. The transportation costs quoted by Seller may be changed by Seller without notice in order to reflect Seller's prices at the time of shipment and will reflect any market increase in transportation costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, switching, handling, storage and other accessory services and demurrage shall be borne by the customer, and any related increase in transportation charges shall be added to the quoted price.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller's standard warranty that is applicable to the Goods and/or Software at the time of purchase is the only warranty applicable to the sale of Seller's Goods and/or Software and its terms, conditions and limitations are incorporated by reference herein. Seller warrants that it will perform the services as described in these terms and conditions and will exercise all reasonable skill, care and due diligence in the performance of the services. Seller warrants that all services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of services. Thermal Solution Components, including but not limited to, fans, air-to-air heat exchangers, air conditioners, emergency DC vent systems and filtered thermal vent systems are warranted to be free from defects in material and workmanship for a period of twelve (12) months from date of shipment, or manufacturer's pass through warranty, whichever is longer, provided the following conditions are met: (i) Semi-annual preventive maintenance logs are maintained by Buyer and such logs are available to Seller upon request; and (ii) Input voltage to the air conditioner unit does not vary by greater than +/-10%; and (iii) in the event of accidental or intentional shut-off, a Thermal Solution Component will not be restarted for at least five (5) minutes; and (iv) the refrigerant specified on the unit nameplate label will be the only refrigerant utilized in the air conditioner unit; and, (v) Buyer complies with all installation, operations and maintenance instructions provided by Seller. Goods, Parts and/or Software purchased by Seller from a third party for resale or license to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of such Resale Products. EXCEPT AS SPECIFIED ABOVE, RESALE PRODUCTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND/OR SOFTWARE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.

SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and/or Software and the preparation of Seller's quotation, and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, Parts, and/or Software, either alone or in combination with other products/components.

6. **LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 8) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS, PARTS, AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods, Parts and/or Software is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

7. **INSURANCE:** Seller shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and per location aggregate. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$2,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. **Buyer expressly acknowledges and**

agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance coverage, and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.

8. **PATENTS AND COPYRIGHTS:** Subject to the limitations of the second paragraph of Section 6 and any and all associated terms, conditions and documents incorporated by specific reference by Seller, Seller warrants that the Goods and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of Buyer's operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability. Except as otherwise provided herein, Seller or applicable third party licensor to Seller maintains all right, title and interest in and to the intellectual property in the Goods, Parts, and/or Software.

9. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war, epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances, acts or omissions of Buyer, or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance and/or allocate its available supply of the Goods, Parts, Software, or other such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

10. **CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and to cover commitments made by the Seller, and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

11. **CHANGES:** Buyer may request changes or additions to the Goods, Parts, and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods, Parts, and/or Software without prior notice to Buyer, except with respect to Goods, Parts, and/or Software being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods, Parts, and/or Software manufactured prior to the date of such change.

12. **NUCLEAR/MEDICAL:** GOODS, PARTS, AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods, Parts, and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

13. **ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

14. **SOFTWARE:** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a non-exclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

15. **TOOLING:** Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

16. **DOCUMENTATION:** Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

17. **INSPECTION/TESTING:** Buyer, at its option and expense, may observe the inspection and testing by Seller of the Goods and/or Software for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods and/or Software meet Seller's criteria for such procedures. If Buyer does not inspect

the Goods and/or Software at Seller's plant as provided herein, Buyer shall have ten (10) days from (i) the date of delivery of Goods, Parts, and/or Software and (ii) from the date of completion of each portion of the services to inspect the Goods, Parts, and/or Software, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Goods, Parts, and/or Software are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Goods, Parts, and/or Software. Buyer's sole remedy for non-conforming services shall be correct performance of services incorrectly performed by Seller.

18. **RETURNED GOODS:** Advance written permission to return Goods, Parts, and/or Software must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA) procedures and a return authorization number issued. Such Goods, Parts, and/or Software must be (i) current, unused, catalogued Goods, Parts, and/or Software, still in original packaging (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified location. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods, Parts, and/or Software prior to authorizing return.

19. **BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; b) any services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein, or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry or technical training.

20. **DRAWINGS:** Seller's documentation, prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor. Notwithstanding the foregoing, Buyer may use the documentation, prints and drawings in connection with the use of the Goods, Parts, and/or Software.

21. **BUYER SUPPLIED DATA:** To the extent that Seller has been provided by, or on behalf of, Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods, Parts, and/or Software, and/or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

22. **EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts, Software, and services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts, or Software in violation of such applicable laws, regulations, orders or requirements.

23. **NON-SOLICITATION:** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods are being provided to Buyer and for a period of one (1) year after the last provision of Goods.

24. **GENERAL PROVISIONS:** This Agreement supersedes all other communications, negotiations and prior oral or written statements regarding the subject matter of this Agreement. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract services to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

25. **DATA COLLECTION AND USE:** By using the Goods, Parts and/or Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers, a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, your non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information ("Service Data") that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Goods, Parts, and/or Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i)

to provide services, support, and maintenance; (ii) to develop and improve products, software, and services; and (iii) for scientific and technical research and marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer's identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its affiliates, subsidiaries, or service providers maintain operations. By using the Goods, Parts, and/or Software, Buyer agrees to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its affiliates and subsidiaries business purposes in accordance with applicable law. The rights and licenses granted herein to Seller's service providers shall only be granted to the extent service providers are providing goods and services on Seller's and its affiliates and subsidiaries behalf.

26. **ADDITIONAL SERVICE CONDITIONS:** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Goods are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Goods. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform services, including services on different scopes of work and equipment as requested by Buyer. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless

specifically agreed upon in Seller's scope of work. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller's performance hereunder. Buyer shall appoint a representative familiar with the site and the nature of Seller's performance to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

27. **INDEMNITY:** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or that party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others and in no event shall the indemnifying party be obligated to indemnify or insure the other party for the indemnitee's own fault or negligence. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; ii) given all reasonable information and assistance by the other party; iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

~~\$4214.39~~ → \$5454.40
Battery & Installation

Proposal for Service

Vertiv Corporation

Jan 31, 2019

Mountain Brook Police Dpt

100 Tibbett Street
Mountain Brook, AL 35213

Jan 31, 2019

Mountain Brook Police Dpt
100 Tibbett Street
Mountain Brook, AL 35213

Dear Lieutenant J. Loggins

Thank you for your interest in Vertiv Corporation. We are pleased to submit the following proposal for your review and consideration.

As the rate of change and complexity in your critical infrastructure increases, Vertiv is the dedicated partner that you need to help you achieve your goals.

Please complete all required fields on the signature page and attach your purchase order to assist timely order processing. Should you have any questions regarding the proposal, feel free to contact me directly at 205-444-9191. I look forward to your response and the opportunity to work together to improve your critical infrastructure investment.

Sincerely,

MATTHEW HONEYCUTT

221 Applegate Trace
Pelham, AL 35124

PHONE: 205-444-9191

EMAIL: mhoneycutt@joepowell.com

Proposal Q02866728

We are pleased to submit the following proposal for replacement of your batteries for your consideration. Please refer to the Scope of Work for specific coverage information. Below is a summary of the services included in this quote.

Site ID: 113932, Mountain Brook Police Dpt, 100 Tibbett Street, Mountain Brook, AL 35213

Line Item	Line Item Pricing
Tag # 1438880 24 x CSBHRL12150WFR	\$1,954.08
- New Battery Verification Service – 1 Strings	\$689.31
Freight	\$113.92
Subtotal	\$2,757.31

Select One Option:	Installation	Total
<input checked="" type="checkbox"/> Normal Hours (M-F 8am to 5pm)	\$1,457.08	\$4,214.39
<input type="checkbox"/> After Hours (M-F 5pm to 8am, and/or all day Saturday)	\$2,077.09	\$4,834.40
<input type="checkbox"/> Sunday/Holiday	\$2,697.09	\$5,454.40

(NOT including tax: any tax required must be included in customer purchase order amount)
Payment Terms: Net 30 Days

Progress billing: For all projects involving battery replacement, progress payments will apply. Invoices will be issued per the following project milestones:

Milestone

Shipment of batteries
 Completion of installation and testing

Payment Due

Total amount for batteries and freight
 Balance of project price

SCOPE OF WORK

SEALED VRLA BATTERIES (10 YEAR DESIGN LIFE) BATTERY VERIFICATION SERVICE

SERVICE SUMMARY

Feature	Detail
On-Site Service	Includes 2 site visits on new installations or prior to a load bank test. Scheduled by the customer at the customers convenience (excluding national holidays).
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
IEEE	Ensures battery installation meets manufacturer and IEEE requirements.
Freshening Charge	For new installations Vertiv Services will perform the initial freshening charge on the batteries. Water additions for VLA (if applicable), will be addressed as needed after the equalize/freshening charge has been completed.

SERVICE PERFORMED

Battery Verification Service

First trip:

1. Inspect the appearance and cleanliness of the battery and the battery room area. Record any findings
2. Visually inspect the jars and covers for cracks and leakage. Record any findings
3. Visually inspect the racks or cabinets for any deficiencies. Record any findings.
4. Confirm that ventilation is provided.
5. Visually inspect for evidence of corrosion at terminals and connectors ensuring that the connections meet manufacturer's requirements.
6. Tighten all battery connections to the battery manufacturer's specifications and record the value utilized.
7. Ensure connections are properly prepped per the manufacturers IOM.
8. Measure and record the total string voltage.
9. Measure and record the float voltage of all cells.
10. Measure and record the ambient temperature.
11. Measure and record the jar temperature.
12. Place battery online.
13. Verify and record the battery float voltage.
14. Measure and record the AC ripple voltage.
15. Measure and record the AC ripple current.
16. Follow Note 2, below.

Second Trip:

1. Measure and record the ambient temperature.

2. Measure and record cell temperatures.
3. Measure and record the total battery float voltage and charging current. Verify proper float voltage is applied per the manufacturer.
4. Measure and record the float voltage of each jar/cell.
5. Measure and record the AC ripple voltage.
6. Measure and record the AC ripple current.
7. Measure and record the internal ohmic value of each jar.
8. Provide a detailed written report noting any deficiencies and corrective action taken and/or required.

ASSUMPTIONS AND CLARIFICATIONS

Does not include parts or return corrective visits.

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- Equipment Access: Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- Shutdown: Service may require shutdown of load to ensure electrical connection integrity.
- Notification: If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

SCOPE OF WORK

STATIONARY BATTERY SYSTEMS

VRLA (SEALED) BATTERY

FULL STRING REPLACEMENT

SERVICE SUMMARY

Feature	Detail
Customer Support	Includes access to the Customer Resolution Center (1-800-543-2378) and the Vertiv Customer Services Network Online Internet portal.
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
Battery Recycling	Includes battery recycling as required, with documentation meeting EPA requirements.
Alber Commissioning	Includes commissioning of Alber battery monitoring hardware, if battery monitoring is present.

SERVICE PERFORMED

1. Ensure the battery system is disconnected from UPS and battery system is safe to be worked with.
2. Verify the integrity of the battery rack/cabinet.
3. Remove all modules.
4. Measure and record all open circuit voltages for all units to ensure they can be placed in the string(s) and online.
5. Replace with new units in the exact same orientation as the old units.
6. Replace hardware if supplied with the new batteries. If not supplied, inspect, clean and neutralize the existing cables and clean the racks/trays from any possible leaking batteries.
7. Clean any corrosion from cables if re-using existing cables and clean the racks/trays from any possible leaking batteries.
8. Add a thin coat of anti-corrosion inhibitor to the face of the connector and to the contact surface of the battery terminal or as directed by the battery manufacturer.
9. Install tab washers for battery monitoring senses leads.
10. Torque all connections to the specific "inch pound" requirement specified by the manufacturer of the battery.
11. Ensure all battery monitoring wires are connected properly, if battery monitoring is present.
12. Verify that no ground faults exist prior to energizing the battery.
13. Return the battery system to normal float per the manufacturer's guidelines.
14. Measure and record the total battery float voltage (at the battery).
15. Measure and record charging current.
16. Measure and record the overall AC ripple voltage.
17. Measure and record the overall AC ripple current.
18. Measure and record the ambient temperature.
19. Measure and record 100% of the jar temperatures.
20. Measure and record the float voltage of all jars.

21. Commission the Alber monitor (if present) following the standard commissioning procedures.
22. Provide the battery the proper Freshening charge per the manufacturer's guidelines.
23. Clean the site of any foreign materials left behind.
24. Prepare batteries for recycling and transportation (wrap the batteries with plastic wrap to secure them to the pallets)

Site specific Requirements for Full String Replacement for VRLA Batteries

1. Standard dock delivery that accommodates a standard size semi-truck with an onsite forklift or pallet jack(at least 4,000 lb capacity)
2. Inside staging area large enough for the batteries being installed and removed.
3. Inside, staging area must be within 50' of the dock area.
4. Battery room/cabinets must be within 200' of the staging area.
5. Doorways at least 34" in width.
6. Elevators within easy access and be rated for at least 4,000 lbs.
7. In the event that the customer needs a service or has a site requirement that falls outside of the Basic Installation Services or Basic Site Requirements, Vertiv Services will provide the customer with an additional quote for said Special Installation Services or in response to said Special Site Requirements, and if agreed to by the customer, the customer shall be separately invoiced the additional amounts set forth in the quote. Please notify your salesperson if you require Special Installation Services or have any other Special Site Requirements for which there will be an additional charge.
8. Special Installation Services and Special Site Requirements for which there will be additional costs and charges include, but are not limited to:
 1. Inside delivery
 2. Ground Delivery
 3. Floor Protection
 4. Floor Loading Limitations
 5. Delivery Path Includes Stairways, Ramps or Other Obstructions
 6. Use of Cranes
 7. Exclusive labor requirements installations
9. If Alber battery monitoring is present, access to the Central computer must be provided at the time of the battery installation for commissioning and developing of the new database. If access is not provided at the time of installation and a return trip is required to commission the Alber Monitor, there will be additional charges applied.

ASSUMPTIONS AND CLARIFICATIONS

If the Alber monitor is not commissioned at the time of the battery installation there could be nuisance alarms generated, until the system is properly commissioned. The data from an un-commissioned Alber Monitor cannot be used for warranty purposes.

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.

- **Equipment Access:** Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- **Shutdown:** Service may require shutdown of load to ensure electrical connection integrity.
- **Notification:** If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.



Proposal Number: Q02866728

Purchase order must be assigned to:

Vertiv Corporation
1050 Dearborn Dr.
Columbus, OH 43085

Payment remittance address:

Vertiv Corporation
PO Box 70474
Chicago, IL 60673

FID# 31-0715256

EXCITING NEWS: On Sept. 1, 2018, we transitioned to Vertiv Corporation as our legal entity. Visit <http://vertivco.com/legalentityinfo> for changes you may need to make.

PO should be e-mailed or faxed with signed proposal to:

Attn: MATTHEW HONEYCUTT
Email: mhoneycutt@joepowell.com
Fax: 205-444-9196

Please complete the following information (All fields are required):

Purchase Order Number: _____ Purchase Order attached: Yes No

If PO **NOT** attached, please specify reason: _____

Invoice Delivery Method: Web Billing (Attach Instructions) Mail Other _____
 Accounts Payable Email _____ @ _____

Billing Contact Person: _____ Phone: _____

Email: _____ Fax #: _____

Bill-To Company Name: _____ Bill-To Address: _____

Federal Tax ID # _____ Bill-To City, ST Zip: _____

Tax Exempt: Yes (Attach tax exempt certificate) No

Site Services/IT Contact Person: _____ Phone: _____

**** COVERAGE DETAILS ****

For equipment not currently under a Service Agreement or for equipment for which the warranty has expired in excess of thirty (30) days, parts required to bring equipment back to manufacturers specifications are the responsibility of the Buyer and billable at the time of the first preventive maintenance visit or Service call. All pricing is valid only for Service coverage stated and is subject to change if this Proposal is modified in any way. This Proposal is valid for 30 days from the date of this Proposal unless otherwise noted. INFORMATION TO BUYER: This order between the Buyer and Seller is limited to Seller's Terms and Conditions located at termsconditions.vertivco.com unless a formal agreement governing this Purchase Order/transaction has been executed by the parties, in which case the Terms and Conditions of the signed agreement shall govern. Seller hereby objects to all Buyer's terms and conditions received by Seller and/or issued by Buyer.

Signature of this agreement authorizes Seller to invoice for Services mentioned herein and to utilize the provided purchase order number. If a purchase order number is not used, then the Buyer authorizes and guarantees Seller the payment of such invoices by authority of the signature below.

Thank you for your business.

Proposed By:

Matthew Honeycutt 1/31/2019
MATTHEW HONEYCUTT Date

Accepted By:

Buyer Signature Required Date

Printed Name Title Phone

Vertiv Corporation
TERMS AND CONDITIONS OF SALE

Vertiv Corporation is herein referred to as the "Seller" and the customer or person or entity purchasing goods and/or services ("Goods") and/or parts required for services ("Parts") or licensing software and/or firmware, which are preloaded, or to be used with Goods ("Software") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope or statement of work, or invoice from Seller relevant to the sale of the Goods, Parts and licensing of Software by Seller, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement ("Agreement") governing the sale of Goods, Parts, and/or license of Software by Seller to Buyer. Any discrepancies between the terms of the above referenced documents shall be resolved by Seller. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of Seller's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Buyer's acceptance of the Goods, Parts, and/or Software will manifest Buyer's assent to the terms of this Agreement. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods, Parts and/or Software shall remain in effect for thirty (30) days after the date of Seller's quotation, Seller's scope of work or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment or performance of the Goods and/or Parts, and/or Software is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods, Parts and/or Software to Seller's price for the Goods, Parts, and/or Software at the time of Seller's shipment or performance thereof. All prices and licensee fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices. Unless otherwise specified by Seller, Parts, that are required for the performance of services will be furnished at Seller's then prevailing prices. A service charge of \$19.99 will be added to all orders which, excluding shipping charges, taxes, and insurance, do not meet the minimum order value of \$750.00. The service charge amount and/or minimum order value may be changed by Seller at any time, without notice.

2. **TAXES:** Any current or future tax, duty, tariff or governmental charge (or increase in same) affecting Seller's costs of production, sale, services or delivery or shipment of Goods Parts, and/or Software, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, performance, storage, processing, use or consumption of Goods, Parts, and/or Software, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its interests in payment by enforcing any applicable mechanic's, labor, construction or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries or performance of Goods, Parts, and/or Software. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries or performance. Buyer hereby grants Seller a security interest in all Goods, Parts, and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods, Parts, and/or Software are fully paid for, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.

4. **SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts, and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment or performance of the Goods, Parts, and/or Software is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For sales in which the end destination of the Goods, Parts, and/or Software is outside of the United States (except for those international sales to Seller's affiliated companies), risk of loss and legal title to the Goods, Parts, and/or Software shall transfer to Buyer immediately after the Goods, Parts, and/or Software have passed beyond the territorial limits of the United States. For international sales to Seller's affiliated companies, all shipments of Goods, Parts, and/or Software are made on a Delivered at Terminal (DAT) basis, per Incoterms 2010, with freight charges from Seller's facility to destination terminal invoiced to buyer either on a Prepaid or PPD/Add basis, as agreed to by Seller and Buyer. All other shipments of Goods, Parts, and/or Software are made on an Ex Works (EXW) Seller's Shipping Point basis, per Incoterms 2010, with Seller responsible to load goods on Buyer's nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) upon delivery by the Seller, or (ii) at the time Parts are placed in storage due to Buyer's delay or postponement. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes to orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller's acceptance and adjustment in freight price. The transportation costs quoted by Seller may be

changed by Seller without notice in order to reflect Seller's prices at the time of shipment and will reflect any market increase in transportation costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, switching, handling, storage and other accessorial services and demurrage shall be borne by the customer, and any related increase in transportation charges shall be added to the quoted price.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller's standard warranty that is applicable to the Goods and/or Software at the time of purchase is the only warranty applicable to the sale of Seller's Goods and/or Software and its terms, conditions and limitations are incorporated by reference herein and Seller warrants that it will perform the services as described in these terms and conditions and will exercise all reasonable skill, care and due diligence in the performance of the services. Seller warrants that all services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of services. Thermal Solution Components, including but not limited to, fans, air-to-air heat exchangers, air conditioners, emergency DC vent systems and filtered thermal vent systems are warranted to be free from defects in material and workmanship for a period of twelve (12) months from date of shipment, or manufacturer's pass through warranty, whichever is longer, provided the following conditions are met: (i) Semi-annual preventive maintenance logs are maintained by Buyer and such logs are available to Seller upon request; and (ii) Input voltage to the air conditioner unit does not vary by greater than +/-10%; and (iii) in the event of accidental or intentional shut-off, a Thermal Solution Component will not be restarted for at least five (5) minutes; and (iv) The refrigerant specified on the unit nameplate label will be the only refrigerant utilized in the air conditioner unit; and, (v) Buyer complies with all installation, operations and maintenance instructions provided by Seller. Goods, Parts and/or Software purchased by Seller from a third party for resale or license to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of such Resale Products. EXCEPT AS SPECIFIED ABOVE, RESELL PRODUCTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND/OR SOFTWARE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.

SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and/or Software and the preparation of Seller's quotation, and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, Parts, and/or Software, either alone or in combination with other products/components.

6. **LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 8) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS, PARTS, AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods, Parts and/or Software is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

7. **INSURANCE:** Seller shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and per location aggregate. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$2,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. **Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the**

limitations of liability, insurance coverage, and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.

8. PATENTS AND COPYRIGHTS: Subject to the limitations of the second paragraph of Section 6 and any and all associated terms, conditions and documents incorporated by specific reference by Seller, Seller warrants that the Goods and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of Buyer's operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability. Except as otherwise provided herein, Seller or applicable third party licensor to Seller maintains all right, title and interest in and to the intellectual property in the Goods, Parts, and/or Software.

9. EXCUSE OF PERFORMANCE: Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer, war, epidemic, fire, flood, weather, sabotage, strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances, acts or omissions of Buyer, or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance and/or allocate its available supply of the Goods, Parts, Software, and/or such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

10. CANCELLATION: Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

11. CHANGES: Buyer may request changes or additions to the Goods, Parts, and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods, Parts, and/or Software without prior notice to Buyer, except with respect to Goods, Parts, and/or Software being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods, Parts, and/or Software manufactured prior to the date of such change.

12. NUCLEAR/MEDICAL: GOODS, PARTS, AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods, Parts, and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

13. ASSIGNMENT: Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

14. SOFTWARE: Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

15. TOOLING: Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

16. DOCUMENTATION: Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

17. INSPECTION/TESTING: Buyer, at its option and expense, may observe the inspection and testing by Seller of the Goods and/or Software for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods and/or Software meet Seller's criteria for such procedures. If Buyer does not inspect the Goods and/or Software at Seller's plant as provided herein, Buyer shall have ten (10) days from

(i) the date of delivery of Goods, Parts, and/or Software and (ii) from the date of completion of each portion of the services to inspect the Goods, Parts, and/or Software, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Goods, Parts, and/or Software are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Goods, Parts, and/or Software. Buyer's sole remedy for non-conforming services shall be correct performance of services incorrectly performed by Seller.

18. RETURNED GOODS: Advance written permission to return Goods, Parts, and/or Software must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA) procedures and a return authorization number issued. Such Goods, Parts, and/or Software must be (i) current, unused, catalogued Goods, Parts, and/or Software, still in original packaging (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified location. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods, Parts, and/or Software prior to authorizing return.

19. BILLABLE SERVICES: Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; b) any services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein, or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry or technical training.

20. DRAWINGS: Seller's documentation, prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor. Notwithstanding the foregoing, Buyer may use the documentation, prints and drawings in connection with the use of the Goods, Parts, and/or Software.

21. BUYER SUPPLIED DATA: To the extent that Seller has been provided by, or on behalf of, Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods, Parts, and/or Software, and/or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

22. EXPORT/IMPORT: Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts, Software, and services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts, or Software in violation of such applicable laws, regulations, orders or requirements.

23. NON-SOLICITATION: Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods are being provided to Buyer and for a period of one (1) year after the last provision of Goods.

24. GENERAL PROVISIONS: These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of this Agreement. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract Services to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

25. DATA COLLECTION AND USE: By using the Goods, Parts and/or Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers, a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, your non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information ("Service Data") that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Goods, Parts, and/or Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and

services; and (iii) for scientific and technical research and marketing purposes. Buyer is solely affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer's identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its affiliates, subsidiaries, or service providers maintain operations. By using the Goods, Parts, and/or Software, Buyer agrees to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its affiliates and subsidiaries business purposes in accordance with applicable law. The rights and licenses granted herein to Seller's service providers shall only be granted to the extent service providers are providing goods and services on Seller's and its affiliates and subsidiaries behalf.

26. **ADDITIONAL SERVICE CONDITIONS:** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Goods are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Goods. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform services, including services on different scopes of work and equipment as requested by Buyer. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in Seller's scope of work. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the

responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller's performance hereunder. Buyer shall appoint a representative familiar with the site and the nature of Seller's performance to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

27. **INDEMNITY:** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others and in no event shall the indemnifying party be obligated to indemnify or insure the other party for the indemnitee's own fault or negligence. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; ii) given all reasonable information and assistance by the other party; iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

ORDINANCE NO. 2044

AN ORDINANCE AMENDING ARTICLE X OF THE CITY CODE

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, that Article X of the City Code is hereby adding Section 129-50, and amending Sections 129-151 and 129-153 as follows:

Section 1.

“ARTICLE X. – PROFESSIONAL DISTRICT

Sec. 129-150. – Intent and purpose.

The Professional District is intended to provide appropriate-scaled buildings for professional offices. The district may be applied to sites which can establish an effective transition to adjacent residential neighborhoods.

Sec. 129-151. – Permitted uses.

(a) The uses permitted in Professional Districts shall be as follows:

1. Professional offices
2. Accessory structures customarily incidental to the uses permitted by this section 129-151.

(b) Conditions on Permitted Uses. All uses in the Professional District shall be conditional uses and shall only be permitted with prior written approval of the city council. Conditional uses are uses which may be acceptable within the Professional District, based on specific circumstances and mitigating site design provisions that would eliminate the potential for these uses to otherwise have negative impacts on adjacent property or other uses in the vicinity. Therefore, they require special review to better determine if the circumstances and design provisions for the proposed use, when applied to a specific site, are sufficient to mitigate any potential negative impacts. Proposed conditional uses will be reviewed as to the following.

- i. Whether the use would disparately impact public parking in the area;
- ii. Whether vehicular or pedestrian circulation would be adversely impacted by the use;
- iii. Whether the use would adversely impact surrounding existing uses;
- iv. Whether the hours of operation or peak traffic times would adversely impact the surrounding properties and public streets.
- v. Whether sufficient landscape buffers exist or are proposed along any adjoining residential properties;
- vi. Whether existing or proposed exterior lighting is sufficiently designed so as not to spill onto adjoining properties.

(c) The city council may require the party applying for the approval of such conditional use to furnish to the city council any or all of the following information and

2044

documents and such additional information and documents which the city council may consider necessary or helpful in deciding whether to approve such requested conditional use:

1. A survey of the property;
2. A topographical survey of the property;
3. A site plan for the property, showing the location, size, height and elevation of all existing and proposed improvements, the location, number and size of parking spaces and such other information about the existing and proposed improvements and the development plan for the property which the planning commission considers reasonably necessary for its consideration of the request for approval;
4. Plans for all proposed improvements;
5. The type of construction materials to be used in the proposed improvements;
6. A traffic study with respect to the traffic expected to be generated by the use;
7. Information concerning outdoor lighting;
8. The hours of operation of the activities proposed to be conducted on the property;
9. Information concerning the visibility of the proposed improvements from adjacent property, buildings and public streets;
10. Information concerning the proposed screening of the proposed improvements by fences, walls, berms, shrubs, trees or other means;
11. Whether any trees or other vegetation which would serve to screen the proposed improvements and the use thereof from adjacent property will be removed from the property; and
12. Information concerning vehicles, equipment and materials which may be stored on the property or within the improvements.

All materials and information required to be submitted must be submitted to the zoning officer at least 24 days prior to consideration of any application for such conditional use.

- (d) The city council shall hold a public hearing for the consideration of any such conditional use, after giving at least ten days' notice thereof. For purposes of this section, written notice of public hearings held by the city council shall be sent, by United States mail, to all property owners, any portion of whose property lies within 500 feet of any portion of the parcel included in a request for conditional use consideration. For the purpose of such notice, the owner of a parcel shall be considered to be the person who is shown as the owner of such parcel according to the records of the tax assessor of Jefferson County, Alabama. If a public hearing is continued or postponed during the meeting of the city council during which such hearing was held or was scheduled to have been held, no notice of such continued or postponed hearing need be given.

- (e) Any use established and permitted by right in the Professional District prior to April 23, 2019 shall be permitted to continue in the same location without regard to these provisions, provided that such use is not expanded. However, should such use be expanded, such expansion shall require prior written approval of the city council per subsection (b) of this section.
- (f) A Professional Office use established on or after April 23, 2019 and permitted after city council review and approval under subsection (b) of this section may be replaced by another Professional Office use if the zoning officer determines that there are non-material changes for the proposed professional use utilizing the criteria for review outlined in subsection (b). In the absence of such a determination, city council review of the replacement use shall be required under subsection (b).

Sec. 129-153. – Additional requirements and provisions.

- (a) Service yards. On any parcel on which a professional building is hereafter built, the construction of which is started after the effective date of this chapter, there shall be provided a service yard, the size of which shall be sufficient to serve the needs of the occupants of the building, and which shall be located at the rear of such office building. The service yard shall have access to a street, alley or driveway and shall provide adequate accommodations for the handling of waste and garbage and for the loading and unloading of vehicles. The service yard shall be paved with asphalt or concrete and shall be enclosed with an opaque wall or fence of permanent construction, at least 6 feet, but no more than 8 feet, in height, and designed and constructed to conceal the service yard from visibility from outside such wall or fence. The entrance to the service yard shall be screened by a gate constructed of an opaque material, which gate must be at least 6 feet, but not more than 8 feet, in height. No part of the service yard may be used to satisfy the offstreet parking requirements of this article.
 - (b) Building setbacks. Any professional office, the construction of which is started after the effective date, shall not be located closer to the front lot line than 35 feet, or the front line of the principal structure on the adjacent property located in a residential district, whichever is greater.”
2. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
 3. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

4. **Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

ADOPTED: This 23rd day of April, 2019.

Council President

APPROVED: This 23rd day of April, 2019.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, at its meeting held on this 23rd day of April, 2019, as same appears in the minutes of record of said meeting, and published by posting copies thereof on April 24, 2019, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Overton Park, 3020 Overton Road

Gilchrist Pharmacy, 2805 Cahaba Road
Cahaba River Walk, 3503 Overton Road

City Clerk

Proposed Amendment to the Professional District (Article X)

Recent Background

On March 25, the city council held a public hearing on the proposed amendment to the professional district, and voted to carry it over the its meeting of April 23, 2019. The city council requested that language be added to the amendment to require notification of property owners within a 500-foot radius of any property requesting approval of a conditional use. Language was also added as to the type of materials that may be submitted with such a conditional use request, and what the submittal deadline would be.

On February 25, 2019, the city council held a public hearing on the proposed amendment to the professional district, and voted to carry it over the its meeting of March 25, 2019. Minor changes were made to the draft amendment, which was re-noticed for the meeting of March 25, 2019.

The planning commission, on January 7, 2019, and February 4, 2019 held public hearings on a pending rezoning proposal of the Kneseth Israel property on Overton Road, which has been further postponed the planning commission meeting of May 6, 2019. The proposal is to rezone the property from Res-A district to Professional district.

The rezoning proposal involves the conversion of the existing KI facility to an outpatient plastic surgery practice; a professional office for physicians specializing in plastic surgery – not to be used as a clinic. Proposed hours of operation are from 7:30a-5:00p M-F.

While it is noted that there is a good deal of community opposition to the rezoning case, some members of the planning commission (and some of the neighboring residents) expressed concern, perhaps not so much about the proposed use, itself, but about potential future uses allowed in the professional district, should the property be rezoned and the applicant vacate the premises in the future.

Proposed Amendment to the Professional District

The on-going rezoning case at KI has shed some light on the professional district regulations, and caused staff and the planning commission to take a closer look at these regulations. A 2-pronged approach to revisions to the professional district regulations has been recommended for approval by the planning commission:

Prong #1: Eliminate the antiquated uses (1. and 2.) noted below.

In addition to professional offices, the district regulations currently allow for:

1. Private schools for the teaching of dance, music and other courses, and;
2. The assembling of frames.

Both of these uses were added to the professional district to accommodate previous businesses which were located in the professional district; these are no longer located on any lot zoned professional district in the city.

The idea behind allowing professional offices in a zoning category separate from the local business district is to provide transitional areas between the villages and the surrounding residential areas. Private schools and the assembling of frames don't necessarily lend themselves to transitional characteristics, and so it is proposed to remove these uses from the professional district regulations.

Prong #2: Make the remaining permitted uses (professional offices) subject to the city council conditional use process going forward.

The ordinance is proposed to be amended such that any properties zoned to the professional district after the effective date of the amendment would be subject to city council approval of a conditional use for any proposed professional office use in said district. Conditional use approval would ensure the implementation of appropriate measures to mitigate potential any potential negative effects on adjoining properties (such as landscape buffers, hours of operation, parking, lighting restrictions, etc.) This is similar to the process outlined for conditional uses in the local business district.

As drafted, properties that are currently zoned professional district would not be subject to the conditional use process. There are currently 15 properties that fall into this zoning category in the city (see attached maps for locations):

Crestline Village: 6 lots, all in transitional locations

English Village: 6 lots, all in transitional locations

Overton Village: 2 lots, in transitional locations

Hwy 280: 1 lot in transitional location

None of the businesses on these lots has changed in the past 11 years.

City Council Action

If it be the wish of the city council, it could approve the changes to the professional district as drafted, approve one of the two "prongs," reject the proposed changes in its entirety, or recommend revisions to the changes.

Relationship of the Proposed Amendment to the KI Rezoning Case

Should the council approve Prong-2 (conditional use process), the KI rezoning case would be subject to the new regulations; and the planning commission would carry on with its review of the case and make a recommendation to the city council on the rezoning (the applicant for the rezoning case requested at the February, March and April PC meetings that the case be carried over until such a time that the city council took action on the proposed revisions to the professional district).

It is important to note that any city council approval of the proposed professional district revisions would in no way bind the city council to an approval of a future rezoning request of the KI property to the professional district.

**NOTICE OF PUBLIC HEARING
PROPOSED AMENDMENTS TO THE ZONING
ORDINANCE**

Notice is hereby given that at a regular meeting of the City Council of the City of Mountain Brook to be held on Tuesday, April 23, 2019, at 7:00 p.m., in the Council Chamber of the Mountain Brook City Hall located at 56 Church Street, Mountain Brook, Alabama 35213, the City Council will hold a public hearing to consider proposed amendments to Chapter 129 of the Code of the City of Mountain Brook as it pertains to Article X Professional District, a proposal that the City Council adopt an ordinance in words and figures substantially as follows:

ORDINANCE NO.

AN ORDINANCE AMENDING ARTICLE X OF THE CITY CODE

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, that Article X of the City Code is hereby adding Section 129-50, and amending Sections 129-151 and 129-153 as follows:

Section 1.

“ARTICLE X. – PROFESSIONAL DISTRICT

Sec. 129-150. – Intent and purpose.

The Professional District is intended to provide appropriate-scaled buildings for professional offices. The district may be applied to sites which can establish an effective transition to adjacent residential neighborhoods.

Sec. 129-151. – Permitted uses.

(a) The uses permitted in Professional Districts shall be as follows:

1. Professional offices
2. Accessory structures customarily incidental to the uses permitted by this section 129-151.

(b) Conditions on Permitted Uses. All uses in the Professional District shall be conditional uses and shall only be permitted with prior written approval of the city council. Conditional uses are uses which may be acceptable within the Professional District, based on specific circumstances and mitigating site design provisions that would eliminate the potential for these uses to otherwise have negative impacts on adjacent property or other uses in the vicinity. Therefore, they require special review to better determine if the circumstances and design provisions for the proposed use, when applied to a specific site, are sufficient to mitigate any potential negative impacts. Proposed conditional uses will be reviewed as to the following.

1. Whether the use would disparately impact public parking in the area;

2. Whether vehicular or pedestrian circulation would be adversely impacted by the use;
 3. Whether the use would adversely impact surrounding existing uses;
 4. Whether the hours of operation or peak traffic times would adversely impact the surrounding properties and public streets.
 5. Whether sufficient landscape buffers exist or are proposed along any adjoining residential properties;
 6. Whether existing or proposed exterior lighting is sufficiently designed so as not to spill onto adjoining properties.
- (c) The city council may require the party applying for the approval of such conditional use to furnish to the city council any or all of the following information and documents and such additional information and documents which the city council may consider necessary or helpful in deciding whether to approve such requested conditional use:
1. A survey of the property;
 2. A topographical survey of the property;
 3. A site plan for the property, showing the location, size, height and elevation of all existing and proposed improvements, the location, number and size of parking spaces and such other information about the existing and proposed improvements and the development plan for the property which the planning commission considers reasonably necessary for its consideration of the request for approval;
 4. Plans for all proposed improvements;
 5. The type of construction materials to be used in the proposed improvements;
 6. A traffic study with respect to the traffic expected to be generated by the use;
 7. Information concerning outdoor lighting;
 8. The hours of operation of the activities proposed to be conducted on the property;
 9. Information concerning the visibility of the proposed improvements from adjacent property, buildings and public streets;
 10. Information concerning the proposed screening of the proposed improvements by fences, walls, berms, shrubs, trees or other means;
 11. Whether any trees or other vegetation which would serve to screen the proposed improvements and the use thereof from adjacent property will be removed from the property; and
 12. Information concerning vehicles, equipment and materials which may be stored on the property or within the improvements.

All materials and information required to be submitted must be submitted to the zoning officer at least 24 days prior to consideration of any application for such conditional use.

- (d) The city council shall hold a public hearing for the consideration of any such conditional use, after giving at least ten days' notice thereof. For purposes of this section, written notice of public hearings held by the city council shall be sent, by United States mail, to all property owners, any portion of whose property lies within 500 feet of any portion of the parcel included in a request for conditional use consideration. For the purpose of such notice, the owner of a parcel shall be considered to be the person who is shown as the owner of such parcel according to the records of the tax assessor of Jefferson County, Alabama. If a public hearing is continued or postponed during the meeting of the city council during which such hearing was held or was scheduled to have been held, no notice of such continued or postponed hearing need be given.

- (e) Any use established and permitted by right in the Professional District prior to April 23, 2019 shall be permitted to continue in the same location without regard to these provisions, provided that such use is not expanded. However, should such use be expanded, such expansion shall require prior written approval of the city council per subsection (b) of this section.

- (f) A Professional Office use established on or after April 23, 2019 and permitted after city council review and approval under subsection (b) of this section may be replaced by another Professional Office use if the zoning officer determines that there are non-material changes for the proposed professional use utilizing the criteria for review outlined in subsection (b). In the absence of such a determination, city council review of the replacement use shall be required under subsection (b).

Sec. 129-153. – Additional requirements and provisions.

- (a) **Service yards.** On any parcel on which a professional building is hereafter built, the construction of which is started after the effective date of this chapter, there shall be provided a service yard, the size of which shall be sufficient to serve the needs of the occupants of the building, and which shall be located at the rear of such office building. The service yard shall have access to a street, alley or driveway and shall provide adequate accommodations for the handling of waste and garbage and for the loading and unloading of vehicles. The service yard shall be paved with asphalt or concrete and shall be enclosed with an opaque wall or fence of permanent construction, at least 6 feet, but no more than 8 feet, in height, and designed and constructed to conceal the service yard from visibility from outside such wall or fence. The entrance to the service yard shall be screened by a gate constructed of an opaque material, which gate must be at least 6 feet, but not more than 8 feet, in height. No part of the service yard may be used to satisfy the offstreet parking requirements of this article.

- (b) **Building setbacks.** Any professional office, the construction of which is started after the effective date, shall not be located closer to the front lot line than 35 feet, or the front line of the principal structure on the adjacent property located in a residential district, whichever is greater.”

2. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
3. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.
4. **Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

At the aforesaid time and place, all interested parties will be heard in relation to the changes proposed by said ordinance.

For questions concerning the proposed zoning amendment, please contact:

Dana Hazen, AICP, MPA
Director of Planning, Building & Sustainability
205/802-3816
hazend@mtnbrook.org

CERTIFICATION

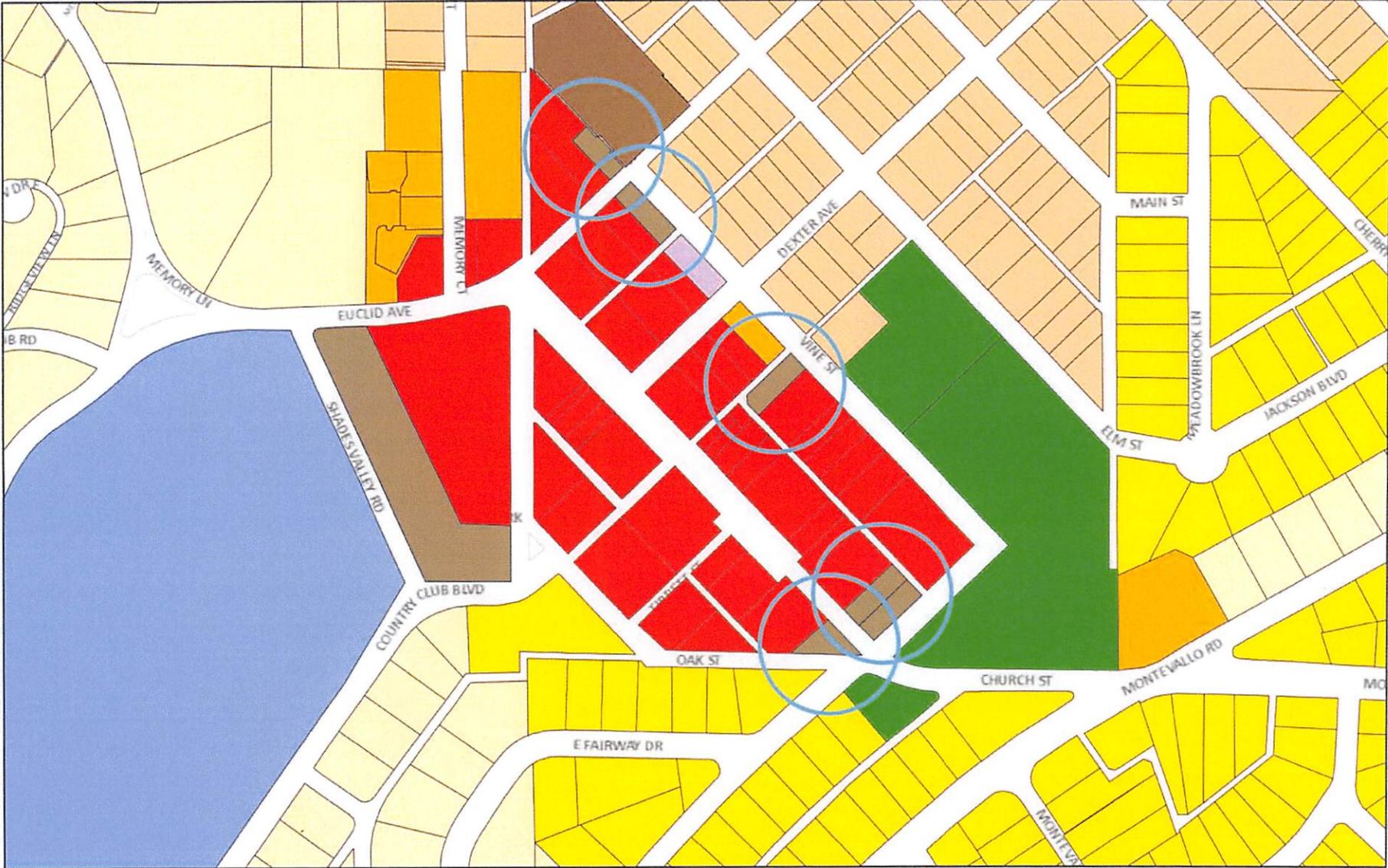
I, Tammy Reid, Administrative Analyst for the City of Mountain Brook, Alabama, do hereby certify that I have caused notice of the proposed amendment to the zoning ordinance and of public meeting thereupon set forth above to be published and provided in the manner specified by Article XXV, Sec. 12-431, of the Mountain Brook City Code. I further certify that I have posted said notice in four conspicuous places within the City of Mountain Brook, in the manner and within the time permitted by law, said places being:

Mountain Brook City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road
Cahaba River Walk, 3503 Overton Road
Overton Park, 3020 Overton Road

Tammy Reid
Tammy Reid, Administrative Analyst

4-5-19
tr

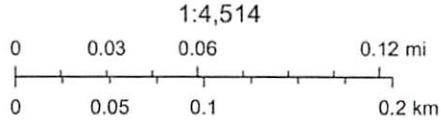
Crestline Professional Lots



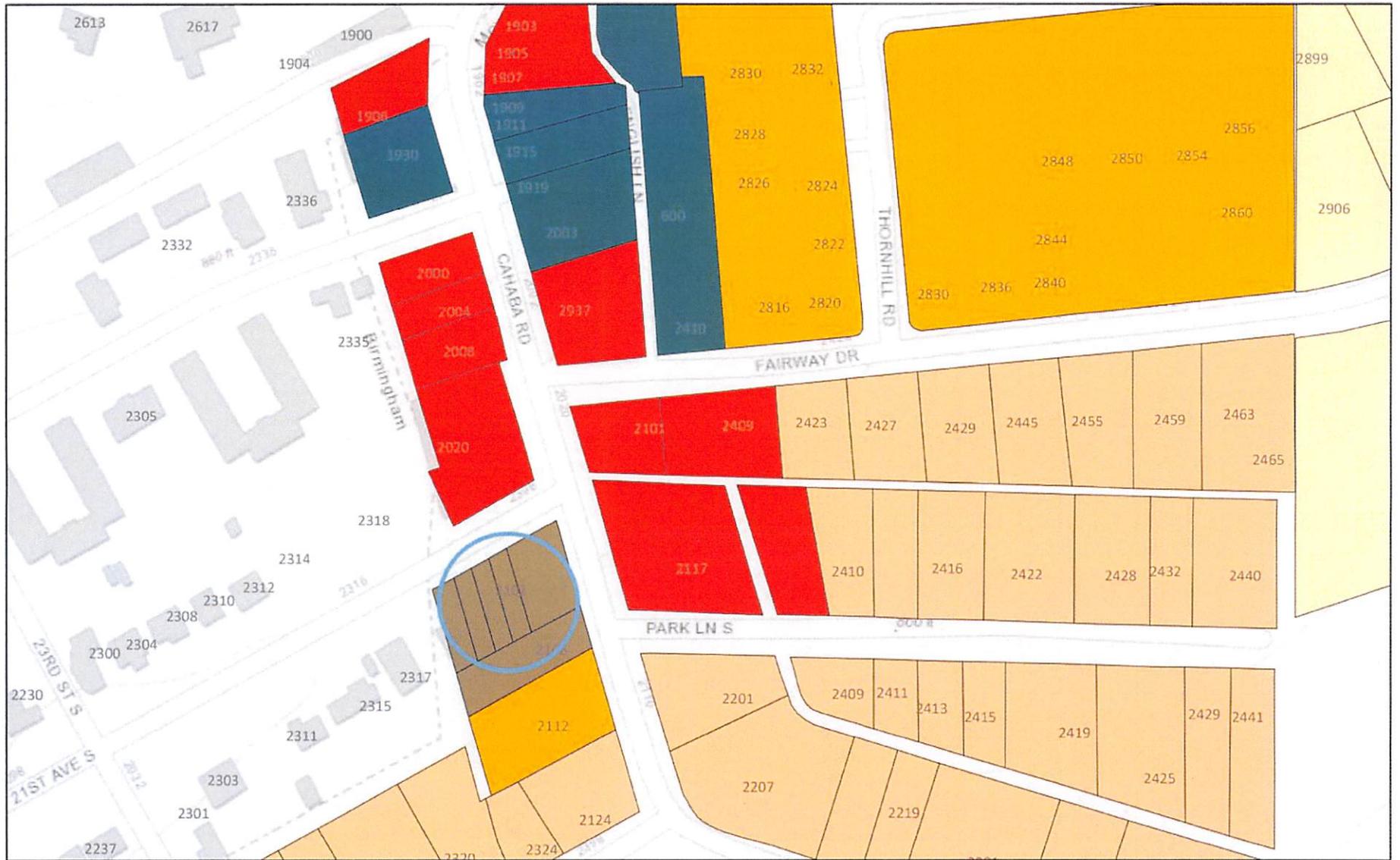
1/23/2019, 7:56:36 AM

Tax_Parcels
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|-------------------------|----------------------|--------------------------|
| Professional District | Residence C District | Recreation District |
| Residence A District | Residence D District | Rec-2 |
| Local Business District | Residence B District | Residence E District |
| | | Vine Street Transitional |



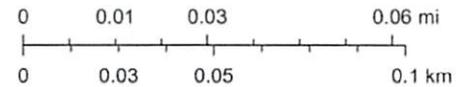
English Village Professional Lots



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1:2,257

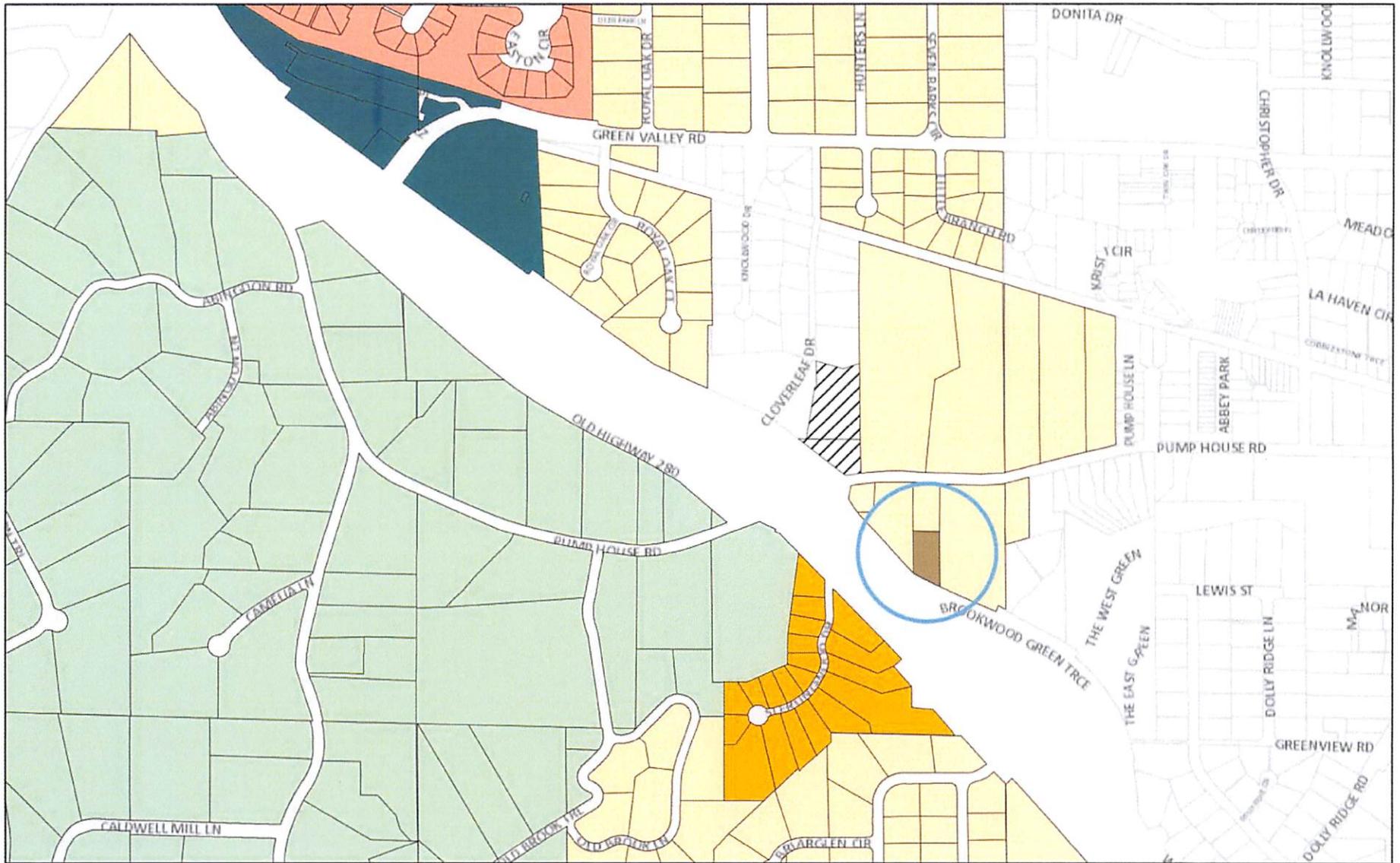
SiteAddressPoints Tax_Parcels



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS.

Web AppBuilder for ArcGIS
Esri, HERE, GARMIN, INCREMENT P, USGS, EPA, USDA | Hunter Simmons |

Hwy 280 Professional Lot



1/23/2019, 8:09:10 AM

1:9,028

Tax_Parcels

0

Clusters Residential

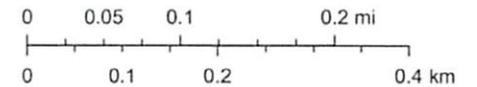
Estate Residence District PUD

MXD

Professional District

Residence A District

Residence D District



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS,

Web AppBuilder for ArcGIS

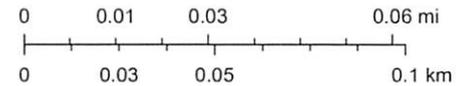
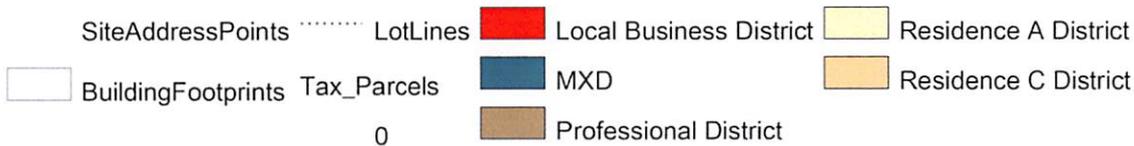
Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA | Hunter Simmons |

Overton Village Professional Lots



1/23/2019, 2:28:13 PM

1:2,257



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS,

Web AppBuilder for ArcGIS
Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA | Hunter Simmons |