

**MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

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

JUNE 13, 2022, 7 P.M.

As a matter of convenience, members of the public are invited to listen, observe and participate in public meetings by Internet video conference. Presenters and others interested in a particular matter for discussion are encouraged to attend the meeting in-person. The City is not responsible for technical issues that may occur that interfere with the virtual meeting. The City Council, at its sole discretion, may proceed with its in-person business meeting regardless of whether virtual attendees can hear and/or observe the proceedings. The City intends to make the meeting available by way of the Zoom app (re: Meeting ID 801-559-1126, password 06132022). Unvaccinated in-person attendees are asked to mask.

1. Approval of the minutes of the May 23, 2022, regular meeting of the City Council.
2. Consideration: Resolution authorizing the payment from the General Fund of \$300,000 into the City of Mountain Brook Section 115 (retiree medical insurance) Trust for investment.
3. Consideration: Resolution executing the purchase and sale agreement between the City and F&B Holdings, LLC.
4. Consideration: Resolution accepting the Hold Harmless Agreement from Real and Rosemary for a sidewalk café permit.
5. Consideration: Resolution accepting the professional services proposal submitted by Enviro Management Corp. with respect to Wastewater Treatment Plant Project-Plans, Specifications, and Project Oversight/Construction Administration Services.
6. Consideration: Resolution authorizing an Interlocal Agreement between the City and the City of Birmingham for the purpose of sharing of municipal equipment and services for the upcoming World Games during July 7th – July 17th 2022.
7. Consideration: Resolution authorizing the sale or disposal of certain surplus property.
8. Comments from residents and attendees.
9. Announcement: The next regular meeting of the City Council is June 27, 2022 at 7:00 p.m.
10. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
MAY 23, 2022**

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

The City Council of the City of Mountain Brook, Alabama met informally in-person at 6:00 p.m. on the 23rd day of May, 2022 (others were allowed to listen to the meeting by way of Internet video conference). The Council President Pro Tempore called the pre-meeting to order and the roll was called with the following results:

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

Absent: Virginia C. Smith
Lloyd C. Shelton

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

1. AGENDA

1. Spartan Recognition Program

Heather Richards-City Clerk

- The program is for Mountain Brook employees
- This program would promote a positive and enriched environment where employees recommend each for exemplary services provided
- One winner from each department (Police, Fire, Public Works, Park & Rec., Library, and City Hall) would receive 8 hours to be credited to their personal holiday bank
- Drawings for the winner will be conducted at the start of the fiscal year (all names from the previous fiscal year will be discarded)
- Recommendations must be made on the recommendation form
- All forms will go to the supervisor to verify the validity of the recommendation
- Only non-supervisory employees are eligible
- Contacted the Alabama League of Municipalities and the Jefferson County Personnel Board to get their approval

Billy Pritchard-Council President Pro Tempore

- Item added to the formal agenda (Resolution No. 2022-071)

2. Police Department request to replace the jail camera system server now instead of in FY2023

Jaye Loggins-Police Chief

- \$56,000 available in ERS
- The jail camera system server was to be replaced in FY2023, but the server failed several weeks ago

- Attempts have been made to repair the server but it continues to fail; therefore, the acceleration of the purchase needs to be made
- If the server fails completely, jail operations will have to cease until it is replaced due to liability
- New server will take 5 to 8 weeks to come in
- Received a proposal of \$80,051 from Alscan

Billy Pritchard-Council President Pro Tempore

- Item added to the formal agenda (Resolution No. 2022-072)

3. Conditional Use request for Therapy South to expand into adjoining retail space at 201-205 Country Club Park

Dana Hazen-Director of Planning, Building, and Sustainability

- Therapy South wants to expand to adjoining tenant space (previously Once Upon a Time)
- They would go from 9 patients to 11 patients at peak hour
- Not increasing staff
- Country Club Park has surplus of 11 parking spaces

Billy Pritchard-Council President Pro Tempore

- Item added to the formal agenda (Resolution No. 2022-073)

4. Change order #5 for the Athletic Complex project

John Bricken-GMC

- Last change order for this project
- Ran into rock and utilities when digging started

Whit Colvin-City Attorney

- Rely on architecture certification to justify need for change order, everything in order

Billy Pritchard-Council President Pro Tempore

- Item added to the formal agenda (Resolution 2022-075)

5. Agreement with Morris-Shea for fill work at Field #1

Sam Gaston-City Manager

- Received approval from State to do the fill and move the right of way fence down
- This agreement is to move soil to the location
- There is no cost to move soil

Whit Colvin-City Attorney

- Some engineering will need to be done
- Soil tests will need to be conducted

Billy Pritchard-Council President Pro Tempore

- Item added to the formal agenda (Resolution 2022-074)

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

2. EXECUTIVE SESSION AND ADJOURNMENT

There being no further topics for discussion, Council President Pro Tempore Pritchard made a motion that the City Council convene in executive session to discuss a real estate matter and that the City Council shall reconvene at approximately 7 p.m. upon conclusion of the executive session. The City Attorney certified that the subject matters were allowed to be discussed in executive pursuant to Alabama Law. The motion was seconded by Council Member Womack. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: William S. Pritchard III, Council President Pro Tempore
Gerald A. Garner
Alice B. Womack

Nays: None

President Pro Tempore Pritchard then adjourned the pre-meeting at approximately 6:20 p.m.

3. CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A-106) on May 23, 2022, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

City Clerk, Approved by
City Council June 13, 2022

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
MAY 23, 2022**

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

The City Council of the City of Mountain Brook, Alabama met in person at 7:00 p.m. on the 23rd day of May, 2022 (others were allowed to listen to the meeting by way of Internet video conference). The Council President Pro Tempore called the meeting to order and the roll was called with the following results:

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

Absent: Virginia C. Smith
Lloyd C. Shelton

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

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

1. GREG COOK, SUPEREME COURT CANDIDATE TO ADDRESS COUNCIL

Greg Cook-Supreme Court Candidate

- Running because he believes in public service
- Served in the US Air Force for 4 years
- Vice President with the Greater Alabama Boy Scout Council
- Deacon at Dawson Baptist Church
- 30 years practicing law
- Wrote 2,000 page book on the rules of court in Alabama
- Lawyer for the Republican party for many years
- Thanked the council for all they do for the city
- Stated he will follow the rule of the law, he knows election law, and he is qualified for this position

2. CONSENT AGENDA

Council President Pro Tempore Pritchard 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 May 9, 2022, regular meeting of the City Council

2022-069	Declare certain property surplus and authorizing it sale at public Internet auction.	Exhibit 1, Appendix 1
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2022-070	Designate Lindsay Gardner and Gloria Repolesk as Authorized Signatories/Guarantors with respect to the City's Truist Bank commercial credit/purchasing cards.	Exhibit 2
2022-071	Authorize the establishment of the Spartan Recognition Program	Exhibit 3, Appendix 2
2022-072	Authorize the purchase of a new Police Department jail camera system server and accept the proposal submitted by Alscan with respect to replacing existing police and jail servers with new Avigilon servers	Exhibit 4, Appendix 3
2022-073	Approve the conditional service use application submitted by Therapy South for property at 201 and 205 Country Club Park	Exhibit 5, Appendix 4
2022-074	Execute a contractor agreement between the City and Morris Shea Bridge Company Inc. with respect to the fill project at the Mountain Brook Athletic Complex Field #1	Exhibit 6, Appendix 5
2022-075	Authorize the execution of change order No. 5 with respect to the [baseball] Field 1 improvement project	Exhibit 7, Appendix 6

Thereupon, the foregoing minutes and resolutions (Nos. 2022-069 through 2022-072), were introduced by Council President Pro Tempore Pritchard and a motion for their immediate adoption made by Council Member Womack. The minutes and resolutions were then considered by the City Council. Council Member Garner seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: William S. Pritchard III, Council President Pro Tempore
Alice B. Womack
Gerald A. Garner

Nays: None

Abstained: None

Council President Pro Tempore Pritchard thereupon declared that said minutes and resolutions (Nos. 2022-069 through 2022-075) were adopted by a vote of 3—0 and as evidence thereof she signed the same.

3. ANNOUNCEMENT

Council President Pro Tempore announced the next regular meeting of the City Council is June 13, 2022, 7:00p.m.

4. ADJOURNMENT

There being no further business to come before the City Council, President Pro Tempore Pritchard adjourned the meeting at approximately 7:06p.m.

5. CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A-108) on May 23, 2022, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

City Clerk Approved by
City Council June 13, 2022

EXHIBIT 1
RESOLUTION NO. 2022-069

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

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

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

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

Item	Manufacturer	Model	Number
Round Table (Blue top)	N/A	N/A	2
Plastic Table (White)	N/A	N/A	1
Table (Brown)	N/A	N/A	1
Chairs	N/A	N/A	8
HDMI DTV	Vizio	N/A	1
Microwave	Sharp	N/A	1
TV Cart	N/A	N/A	1
Wire Utility Cart	N/A	N/A	1

RESOLUTION NO. 2022-076

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the [unbudgeted] payment from the General Fund of \$300,000 into the City of Mountain Brook Section 115 (retiree medical insurance) Trust for investment in accordance with the City's investment policy (Resolution No. 2020-053) said deposit to be made in up to three (3) installments between June 15 and September 15, 2022.

ADOPTED: This 13th day of June, 2022.

Council President

APPROVED: This 13th day of June, 2022.

Mayor

CERTIFICATION

I, Heather Richards, 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 June 13, 2022, as same appears in the minutes of record of said meeting.

City Clerk



CITY OF MOUNTAIN BROOK

P. O. Box 130009
Mountain Brook, Alabama 35213-0009
Telephone: 205.802.2400
www.mtnbrook.org

To: Sam Gaston, City Manager
From: Steven Boone
Date: June 10, 2022
Subject: Retiree Medical (Sec. 115 OPEB) Trust Deposit

In 2008, the City established the City of Mountain Brook Sec. 115 Trust for the purpose of accumulating funds to be used for retiree medical benefits. GASB standards require that OPEB plans be accounted for in a similar manner as defined benefit pension plans whereby the total OPEB obligation (or net obligation when a Sec. 115 trust exists) is reported on the entity's annual statement of net position.

As of September 30, 2021, the City's actuarial valuation reported the following trust net position:

Total OPEB liability	\$6,511,319
Plan Fiduciary Net Position (Trust assets)	<u>4,536,720</u>
Net OPEB Liability	<u>\$1,974,599</u>
Funded status	70%

On behalf of the Trust, the City pays the total cost of the retiree medical premium and collects the retirees' share monthly. In addition, the City deposits funds into the trust account for future retiree medical costs. Below is a history of the City's OPEB trust deposits:

2009	\$ 180,000
2010-2011	200,000
2012	300,000
2013	320,000
2014-2019	300,000
2020	200,000
2021	<u>300,000</u>
Cumulative trust deposits through 2020	<u>\$3,500,000</u>

In 2020, the City revised the OPEB investment policy authorizing up to 65% of the portfolio be invested in equity securities. The expressed return objective, net of investment advisory fees, is 5.5% (which approximates the medical trend used by the actuaries to determine the total OPEB liability). The new investment policy was implemented in mid-June 2020. For the 23-months ended May 2022, the OPEB trust assets average annual rate of return, net of investment advisory fees, was 10.5%.

RESOLUTION NO. 2022-077

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute the Purchase and Sale Agreement ,in the form as attached hereto as Exhibit A, between the City and F&B Holdings, LLC.

ADOPTED: This 13th day of June, 2022.

Council President

APPROVED: This 13th day of June, 2022.

Mayor

CERTIFICATION

I, Heather Richards, 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 meeting held on June 13, 2022, as same appears in the minutes or record of said meeting.

City Clerk

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into by and between **F&B HOLDINGS, LLC**, an Alabama limited liability company (the "Seller"), and **THE CITY OF MOUNTAIN BROOK, ALABAMA**, an Alabama municipal corporation (the "Purchaser"). The "Effective Date" of this Agreement shall be the latest date on which either the Seller or Purchaser execute this Agreement.

WITNESSETH:

For and in consideration of the representations, covenants, and agreements herein contained, the parties hereto agree as follows:

1. **PURCHASE AND SALE.** Seller hereby agrees to sell, transfer, convey, assign and deliver to Purchaser, and Purchaser hereby agrees to purchase from Seller, on the "Closing Date" (as defined below), that certain tract or parcel of land located at 3100 Overton Road, Mountain Brook, Alabama 35223 (more particularly described on **Exhibit A** attached hereto), at the "Purchase Price" (as defined below) and upon the terms and conditions hereinafter set forth. The real estate and improvements being sold by Seller and purchased by Purchaser are collectively referred to herein as the "Property," and shall include all title, rights, privileges, easements, and appurtenances belonging or appertaining thereto.

2. **PURCHASE PRICE AND EARNEST MONEY.** The purchase price of the Property shall be Two Million, Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) (the "Purchase Price") to be paid as follows to Seller by wire transfer at Closing, subject to adjustments as provided for herein.

3. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER.** Seller hereby represents, warrants and covenants the following, all of which such representations, warranties and

covenants shall be true and correct as of the Effective Date and at the time of Closing, are material inducements for Purchaser entering into this Agreement, and shall survive the Closing for a period of six (6) months:

(a) Seller is the owner of the Property and has fee simple, record and marketable title to the Property, free and clear of all encumbrances, except as stated herein.

(b) To Seller's best knowledge: (i) Seller has performed all obligations required to be performed with respect to the Property; (ii) Seller is not in default, nor will entering into this Agreement constitute a default, under any lease, indenture, mortgage, security agreement, contract or other agreement to which Seller is a party and which relates in any way to the Property; (iii) Seller has not violated, nor will entering into this Agreement constitute a violation of, any judgment or judicial order of any nature to which Seller is bound and which relates in any way to the Property; and (iv) no litigation is pending or threatened against the Seller or the Property.

(b) No contract of any kind, including, without limitation, real estate leasing and brokerage contracts, and contracts for servicing, operating or managing the Property, are, or will be within thirty (30) days of Closing, effective and binding upon the Property or Purchaser, except for agreements that may be terminated upon not more than thirty (30) days prior written notice without penalty.

(c) Except as may be disclosed via a "Title Commitment" (as defined below), Seller has neither written notice nor knowledge of: (i) any improvement liens or other liens, special assessments, taxes, dues or similar financial obligations affecting or attached to the Property; or (ii) any actions, suits or proceedings, governmental or otherwise, including, without limitation, condemnation or eminent domain proceedings, pending or threatened against, or affecting in any manner, the Property, and there are no such actions, suits or proceedings pending, contemplated or threatened by Seller in connection with

the Property. From and after the Effective Date, Seller shall not commence on its behalf, or on behalf of a third party, any action, suit or proceeding which relates to the Property without the prior written consent of the Purchaser.

(e) Within five (5) days of the Effective Date (unless specifically noted otherwise on Schedule 1), Seller agrees to furnish to Purchaser copies of the documents listed at Schedule 1 (the "Seller Deliverables") to the extent such documents are in Seller's possession or control. Seller's written certification that all Seller Deliverables have been delivered shall satisfy the requirements of this Section.

(f) Between the Effective Date and the Closing Date, Seller shall operate the Property in the ordinary course of business and shall maintain and repair the Property in accordance with its standard practices so that, on the Closing Date, the Property will be in substantially the same condition as it now exists, normal wear and tear and loss by casualty excepted but there is no obligation to replace major systems nor make major repairs to items that need repair.

(d) Seller warrants that there are no Leases on the Property except for a Lease/License to Kneseth Israel Synagogue ("KI") which will be terminated prior to the Closing Date ("KI Lease") and, as such as of the Closing, there are or will be no tenant agreements, leases, lease amendments or other agreements that would prohibit Purchaser from fully occupying and having full possession and use of the Property upon its conveyance to Purchaser.

(h) Seller is a duly organized and validly existing limited liability company under the laws of the State of Alabama with full power and authority to enter into the transaction set forth herein. At Closing, Seller shall supply to Purchaser a true and correct copy of all of its organizational documents as shall be necessary for Purchaser's counsel and/or the title insurance company to determine that Seller is

properly organized and that Seller's constituent officers, partners, and/or members are authorized to execute the documents contemplated herein.

(i) Seller is not a "foreign person" such that Purchaser would be subject to the withholding tax provisions of Section 1445 of the Internal Revenue Code. Prior to Closing, Seller shall execute and deliver to Purchaser an affidavit in the usual and customary form, as required by law, certifying, among other things, that Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

(j) All utilities, including but not limited to, water, electricity, gas (if available) and sewer, shall be connected to the Property and in working order at or before the Closing with all connection fees paid.

4. TITLE INSURANCE.

(a) Within five (5) business days following the Effective Date, Seller, at Seller's expense, shall obtain a title commitment (the "Title Commitment") for the issuance of an owner's title policy in the amount of the Purchase Price, covering title to the Property and showing fee simple title vested in Seller, subject only to taxes for the current tax year and the permitted exceptions as approved or deemed approved or waived by Purchaser (collectively the "Permitted Exceptions"). Purchaser shall review the Title Commitment and make its written objections to title (the "Title Objection Notice") within five (5) days of Purchaser's receipt of the Title Commitment. Within five (5) days of receipt of Purchaser's Title Objection Notice, Seller shall notify Purchaser as to which objections Seller will elect to attempt to cure prior to Closing. If Seller is unable to cure or elects not to cure any exception to title or satisfy any title requirement, as set forth in the Title Objection Notice, then Purchaser shall elect to either (i) terminate this Agreement upon written notice to Seller and the parties shall have no further rights or obligations

hereunder except those expressly stated to survive termination, or (ii) elect to purchase the Property without offset against the Purchase Price for any such exception(s) and such exception(s) shall become Permitted Exceptions. Purchaser's failure to provide written notice of such election shall be deemed Purchaser's election of (ii) in the preceding sentence.

(b) Any exceptions or requirements appearing on any updated title commitment which were not reflected in the Title Commitment and which are objectionable to Purchaser shall be treated in the same manner as stated in Section 4(a), above; *provided* that Purchaser shall give Seller written notice of such objection within five (5) days after receipt of the updated title commitment reflecting such new exceptions or requirements.

5. INSPECTION.

(a) Purchaser's obligations under this Agreement are hereby conditioned upon, at its sole cost and expense (except as otherwise provided herein), satisfactory completion of inspections of the Property, including, but not limited to, title, survey, environmental tests, examination of topography, local building restrictions, utility availability, soil conditions, engineering reports, and such other observations and inspections of the Property as are deemed necessary or appropriate by Purchaser. Seller agrees to provide Purchaser, its contractors, agents and employees reasonable access to the Property until Closing for such purposes and acknowledges that such inspections and examinations may involve soil borings and samplings and similar invasive procedures; *provided* that any invasive testing shall be subject to Seller's prior written approval, not to be unreasonably withheld. In exercising such right of entry, Purchaser agrees to not interfere with the operation of the Property or the rights of the tenants therein. Purchaser shall provide to Seller written notice of the intention of Purchaser and/or its agents to enter the Property at least two (2) days prior to such intended entry. Purchaser shall conduct the inspections contemplated

under this Section during a period commencing on the Effective Date and ending twenty (20) days after the Effective Date (the "Inspection Period").

(b) Purchaser shall take reasonable measures to protect all existing improvements on the Property from damage caused by inspection activities on the Property by Purchaser and its employees, agents and contractors, and shall fully repair any such damage, which such obligation shall survive the termination of this Agreement. Further, Purchaser hereby indemnifies and holds Seller harmless for injuries to persons or damage to the Property, including the cost of defending any action, resulting from the actions of Purchaser or Purchaser's employees, agents, contractors, guests, or invitees on the Property prior to the Closing, which such obligation shall survive the Closing or earlier termination of this Agreement.

(c) During the Inspection Period, for any reason (or for no reason), Purchaser may, by providing written notice to Seller, terminate this Agreement.

6. **CONDITIONS OF CONTRACT.** This Agreement and the obligations of Purchaser to consummate the transaction contemplated hereby are conditioned and contingent upon the following:

(a) **Title.** Seller's delivery to Purchaser of good, marketable and insurable title to the Property such that the title company will insure the same at standard rates, subject only to ad valorem taxes for the current year endorsed "not yet due and payable" and the Permitted Exceptions. The standard exceptions within the policy for mechanic's and materialmen's liens and the gap coverage exception shall be deleted.

(b) **Representations.** The truth and accuracy as of the date of Closing of each and every representation and warranty, and the performance of each Seller covenant, contained in this Agreement in all material respects.

(c) **Closing Documents.** The delivery to Purchaser of the Closing Documents listed in Section 8(c).

(d) **No Default.** Seller has complied with and otherwise performed each of the covenants and obligations of Seller set forth in this Agreement.

(e) **KI Lease/License.** Seller has provided Purchaser a termination of the KI Lease and termination of all KI's possessory rights to the Property. This is a condition to Seller's obligation to close also.

If any of the above conditions are not met on or before the Closing Date, Purchaser shall be entitled to elect, as its sole and exclusive remedy, to either waive the same or terminate and rescind this Agreement by giving written notice to Seller of its intention to rescind, whereupon this Agreement shall be null and void and of no further force and effect, except for the obligations expressly stated to survive termination.

7. **SURVEY.** If Purchaser requires an updated survey of the Property, the same shall be prepared at Purchaser's expense. Purchaser shall provide a copy of the survey for review by Seller. If Purchaser shall disapprove of any survey matter, Purchaser shall give written notice of such objection within the Inspection Period and the objection shall be treated like a title objection in accordance with Section 4. Any matter of survey not timely objected to by Purchaser, or waived or deemed waived by Purchaser, shall be a Permitted Exception.

8. CLOSING.

(a) The consummation of the sales transaction described in this Agreement is referred to herein as the "Closing."

(b) The "Closing Date" shall occur on or before thirty (30) days after the date on which the Inspection Period expires, and shall be held at a mutually acceptable time and place, subject to closing conditions.

(c) At the Closing, Seller shall deliver to the Purchaser the following:

(i) A Statutory Warranty Deed fully executed and acknowledged by Seller conveying the Property to Purchaser subject to the Permitted Exceptions.

(ii) An affidavit certifying that, as of the date of Closing, no improvements or repairs have been made in, on or to the Property, nor has any similar work been performed, which has not been fully paid for, nor have any materials been furnished or delivered to the Property which have not been fully paid for, and that no contract has been made or entered into or anything done, suffered, or permitted in relation to the Property the consequences of which will cause or allow any lien or claim of lien to be made against the Property.

(iii) An affidavit that there are no judgments, liens or other claims against the Property, nor any claims or disputes concerning boundary lines subject to any matters disclosed or that would be disclosed in a Survey of the property access or other similar matters which would in any manner create an encumbrance upon or affecting the Property.

- (iv) The Title Company's standard broker's lien affidavit.
 - (v) Two (2) signature counterparts to a settlement statement.
 - (vi) A duly executed "non-foreign person" affidavit as required by the Internal Revenue Service with respect to the sale of real property.
 - (vii) **Intentionally deleted.**
 - (viii) Such other documents as reasonably required by the Title Company or the Purchaser.
 - (ix) Full satisfaction and releases of all liens, mortgages or loans secured by the Property.
- (d) At the Closing, the Purchaser shall deliver to Seller the following:
- (i) The funds required to be delivered by Seller at Closing, by wire transfer,
 - (ii) The Title Company's standard broker's lien affidavit.
 - (iii) Two (2) signature counterparts to a settlement statement.
 - (iv) Such other documents as reasonably required by the Title Company or the Seller.

(e) Ad valorem real estate and property taxes, and any applicable assessments against the Property, as well as utilities, shall be prorated at Closing as of the Closing Date based on the latest information available. Seller and Purchaser shall use their best efforts prior to the Closing Date to prepare a schedule of prorations covering as many items to be prorated as practicable so such prorations can be made at the Closing. Such prorations shall be adjusted, if necessary, and completed after the Closing as soon as final information becomes available. The parties agree that the proration shall be calculated with the understanding that municipal taxes are paid in advance and county taxes in arrears. The terms of this Section 8(e) shall survive the Closing for twelve (12) months.

9. **CLOSING COSTS.** Seller shall pay: (i) the costs of releasing or bonding over all mortgages, liens, judgments and other encumbrances that are to be released and of recording such releases; (ii) the cost of all title insurance for the Purchaser in the amount of the Purchase Price; and (iii) Seller's attorney's fees. Purchaser shall pay: (a) the cost of Purchaser's due diligence; and (b) Purchaser's attorney's fees. All transfer and conveyance taxes and recordation fees related to the conveyance of the Property will be paid by Purchaser. At Closing, the normal and customary items for a transaction of this nature will be prorated between Seller and Purchaser, including but not limited to real estate taxes, or operating expenses.

10. **DEFAULT.**

(a) In the event all conditions to Purchaser's obligation to close have been satisfied, and Purchaser fails to close the transaction, Seller may terminate this Agreement.

(b) In the event all conditions to Seller's obligation to close have been satisfied, and Seller fails to close the transaction, or if any warranty or representation of the Seller contained herein is false or misleading in any material respect, Purchaser shall elect, at its sole discretion and as Purchaser's sole and

exclusive remedy, to either (i) enforce this Agreement and the sale and purchase provided for herein through an action for specific performance, or (ii) terminate this Agreement.

(c) In the event of a dispute arising out of this Agreement, the parties expressly waive the right to claim consequential, special or punitive damages, including, without limitation, lost profits.

11. **BROKERAGE FEE.** The parties represent to each other that no real estate commission or brokerage fee shall be paid for or as a result of the sale of the Property, and each party shall indemnify and hold the other harmless from any and all claims, liabilities, suits, damages, causes of action, judgments, verdicts, expenses or costs arising from any claim by any broker, agent, salesman or representative for any fees or commissions claimed that arise from or relate to the transaction contemplated herein.

12. **RISK OF LOSS.** The risk of loss or damage to the Property and any improvements thereon shall remain with the Seller until the Closing. In the event that the improvements on the Property are destroyed or materially damaged between the Effective Date and the date title is conveyed to Purchaser, Purchaser shall have the option of being released from all obligations hereunder or, alternatively, taking such improvements as Seller can deliver with an assignment of the insurance proceeds and a credit for the amount of the deductible under such insurance policy.

13. **NOTICES.** All notices and other communications provided for herein shall be validly given, made or served if in writing and (a) delivered personally; or (b) sent by United States certified mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight courier service; or (d) sent by electronic mail (provided that if notice is sent by electronic mail, then such notice must also promptly thereafter be delivered in accordance with another permissible method of delivery), addressed

(i) to Purchaser at the City of Mountain Brook, Mountain Brook City Hall, 56 Church Street, Mountain Brook, Alabama 35213, attn: Its City Manager; and

(ii) to Seller at F&B Holdings, LLC, 3417 Oak Canyon Drive, Birmingham, Alabama 35243 attn: Brenda Friedman; or

to such other address as shall be furnished in writing by any party to the other parties. Notice shall be effective when received.

14. MISCELLANEOUS PROVISIONS.

(a) **Assignment.** Upon provision of written notice to the other party, the parties shall have the right to assign this Agreement to a subsidiary, affiliate or other entity managed or controlled by, or associated with, the assigning party. Purchaser and/or Seller shall have the right to designate an exchange property, or take other such action necessary to affect a 1031 Tax-Deferred Exchange. Either or both parties shall cooperate with the other in affecting a 1031 Tax-Deferred Exchange provided that neither party shall incur any additional liabilities or losses as a consequence of cooperating with the other party's exchange and either or both parties shall hold the other harmless from any liabilities, claims, losses or actions resulting from the other party's exchange.

(b) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama.

(c) **Binding Effect.** All the terms of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

(d) **Exhibits.** The Exhibits attached to this Agreement are incorporated herein and made a part hereof as though fully set out herein.

(e) **Construction.** The section and subsection captions and headings herein are for convenience only and shall not affect the construction of any of the terms and provisions of this Agreement.

(f) **Entire Agreement.** This Agreement sets forth the entire agreement of the parties and it shall not be changed except by written instrument signed by Seller and Purchaser.

(g) **Personal Property.** Purchaser recognizes that KI has the right to remove all of its personal property and the stained glass window in the synagogue prior to the Closing. Should KI remove the stained-glass window, KI will board up the location of said window.

[Signatures to appear on the following page]

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

SELLER:

F&B HOLDINGS, LLC

An Alabama limited liability company

By: _____

Name:

Its:

PURCHASER:

**THE CITY OF MOUNTAIN BROOK,
ALABAMA**

an Alabama municipal corporation

By: _____

Name:

Its:

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lot 1 of the Kneseth Israel Congregation addition to Mountain Brook as recorded in Map Book 220, Page 41 in the Office of the Judge of Probate of Jefferson County, Alabama.

SUBJECT TO: All easements, restrictions, reservations, rights-of way, covenants, encumbrances and other matters of public record.

Schedule 1

Seller Deliverables (If available)

1. Building and Civil Plans
2. Existing ALTA Survey
3. Existing Title Policy
4. Recent Phase I Report
5. Certificate of Occupancy
6. Vendor & Service Contracts (as applicable)

RESOLUTION NO. 2022-078

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the application of Real & Rosemary, for a permit to operate a sidewalk cafe' is hereby approved, and the related indemnification and hold harmless agreement, in the form as attached hereto as Exhibit A, is hereby accepted subject to such minor revisions as may determine appropriate by the City Attorney.

ADOPTED: This 13th day of June, 2022.

Council President

APPROVED: This 13th day of June, 2022.

Mayor

CERTIFICATION

I, Heather Richards, 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 June 13, 2022, as same appears in the minutes of record of said meeting.

City Clerk



Tyler Slaten
56 Church Street
Mountain Brook, Alabama 35213
Telephone: 205/802-3811
Fax: 205.879.6913
slatent@mtnbrook.org
www.mtnbrook.org

DATE: June 7, 2022
TO: Mayor, City Council & City Manager
FROM: Tyler Slaten, Planner
RE: Sidewalk Café for Real & Rosemary

On May 18, 2022, the Village Design Review Committee voted to approve the sidewalk café application for Real & Rosemary located at 75 Church Street. The application now requires City Council approval in order to receive a sidewalk café permit.

SIDEWALK CAFE PERMIT APPLICATION

CITY OF MOUNTAIN BROOK, ALABAMA

Date of Application 3/10/22

Establishment/Business Information

Restaurant Owner's Name: Jennifer + Nate Carlson

Restaurant/Business Name: Real + Rosemary Crestline LLC

Address of premises for proposed sidewalk cafe:

75 Church Street + Mtn. Brook, AL 35213

Restaurant Business Address (if different from above): _____

Restaurant Owner's Phone: 205.789.7670

Restaurant Owner's Email: jennifer@realandrosemary.com

City of Mountain Brook Business License #: 20220350A

Date Issued: 2/9/22

Property Owner Information (if different from above)

Property Owner's Name: JH Berry + Gilbert Co.

Property Owner's Business Address:

3125 Independence Drive Suite 125 35209

Property Owner's Phone: 205.226.8836

Property Owner's Email: Cthames@jhberry.com

Required Attachments

1. Dimensioned drawing of proposed location of sidewalk cafe operation in relation to the subject premises (and any adjoining business where evening sidewalk café is to be provided); indicating maximum number and location of tables, chairs and accessories. (See attached sample diagram; does not have to be done by a professional, but should be legible and clearly indicate sidewalk width and a minimum of 5 feet between proposed furnishings and the curb, as well as indicating that no furnishings are proposed in front of any exit doors (neither that of the subject food establishment nor any adjoining establishment).
2. Hold Harmless Agreement, signed and dated by both the owner of the restaurant and the owner of the property.
3. Written description of proposed operations of outdoor services, sanitation, monitoring and responsibilities.
4. Photographs of premises/sidewalk under consideration.

Submittal of Application and Attachments

Submissions should be electronic, and may be emailed to: Dana Hazen at hazend@mtnbrook.org

Copy Tammy Reid at reidt@mtnbrook.org on email submissions.

Fee: none

Revocation of Permits

All permits issued for sidewalk cafes shall be subject to revocation in whole or in part by the City Clerk:

- a) Whenever he shall consider it necessary or advisable that the sidewalk area covered by the permits, or any portion thereof, be vacated in order that the same may be used for a public purpose, or because of the need for construction or maintenance on or below such sidewalk.
- b) Whenever he finds a permittee has failed or neglected to comply with any of the specific conditions permitted, including number of tables and chairs and accessories and their location, or any of the conditions outlined in the operations plan of services, sanitation, monitoring schedule and responsibilities.
- c) Whenever he finds there to be a danger to the public health, safety, or welfare as a result of continuation of the permitted activity.

ORDINANCE NO. 2067

**TEMPORARY MODIFICATION OF SIDEWALK
RESTAURANT DINING REGULATIONS**

WHEREAS, many small businesses and have suffered financially due to the business disruptions caused by government and business restrictions imposed to curtail the spread of the COVID-19 virus; and

WHEREAS, restaurants are among those small businesses facing economic challenges as those restrictions required them to cease on-premises dining; and

WHEREAS, the State of Alabama has now passed new guidelines which will permit restaurants to resume on-premises dining, albeit with appropriate safeguards; and

WHEREAS, the City, its small business community, restaurants and residents understand the importance of keeping appropriate safeguards in place so as maintain the progress that has been achieved through social distancing; and

WHEREAS, the City understands that continued productivity and economic activities are necessary to the welfare of business owners, employees, families and the entire Mountain Brook community and is committed to protecting both the economic health of its business owners and the health of the community; and

WHEREAS, one of the ways that the City believes on-premise dining can be made safer and compliant with State Health requirements is by use of outdoor dining areas, including those on sidewalks in front of dining establishments; and

WHEREAS, the City has detailed regulations and standards in place concerning the use of public sidewalks for dining operations and those regulations are designed to protect the character of the City's historic villages; and


WHEREAS, during these unprecedented times, the City finds that temporary modification of some of those standards and regulations to be appropriate and necessary to permit business operations and the economic vitality of the community to continue, as well as to protect the health and safety of patrons.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, pursuant to relevant provisions of the Emergency Management Agency Act of 1955, as amended, Governor Kay Ivey's State of Emergency Proclamations and the Alabama State Health Officer's Orders as follows:

1. For a period of time beginning on the date of passage of this Ordinance and ending 90 days thereafter (the "Restaurant Relief Period"), Section 46-6 of the City Code containing Sidewalk Café Regulations shall be temporarily modified so as to facilitate and expedite the ability of restaurants to utilize sidewalks for dining operations. Such modifications are as follows:
 - a) Village Design Review Committee review and approval provided for in Section 46-6 (b)(2) & (3) shall not be required.
 - b) City Council review and approval required by Section 46-6 (b)(4) shall not be required; provided, however, that city clerk shall not issue a Sidewalk Café Permit until such time as the owners of both the restaurant and the property have executed the City's Hold Harmless & Release Agreement in the form attached hereto.
 - c) New sidewalk cafés permitted pursuant to these temporary modifications and expansion of existing sidewalk cafes shall also be subject to the following in lieu *2067*

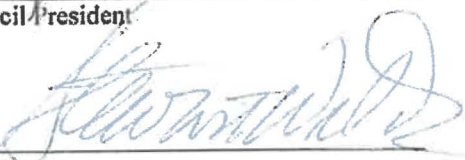
- c) New sidewalk cafés permitted pursuant to these temporary modifications and expansion of existing sidewalk cafes shall also be subject to the following in lieu of those regulations found in Sections 46-6 (c)(1) & (2):
- a. Limitations on the area permitted to be used by a sidewalk café during the Restaurant Relief Period shall be temporarily modified so as to allow the area to be expanded beyond the area directly in front of the building in which the restaurant is located, as may be approved by the City Clerk, provided that sufficient clearance for pedestrian passage is maintained pursuant to ADA requirements.
 - b. Operation of outdoor areas approved under these temporary standards shall be restricted to evening hours from 5:00 p.m. until close of business.
 - c. Tables and chairs shall be removed from the sidewalk and stored during the hours in which operation is not permitted.
- d) Sidewalk cafes approved prior to the passage of these modification and under the existing Code provisions shall be permitted to continue to operate pursuant to and within the scope of the City Council approval for such café.
2. All other provisions of City Code Section 46-6 that are not specifically modified hereby shall remain in full force and effect.
 3. The Administrative Processing Fee imposed pursuant to Section 46-6(b)(1) is hereby waived for all applications submitted pursuant to this Ordinance.
 4. 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.
 5. 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.
 6. Effective Date. This ordinance shall become effective immediately upon adoption and publication as provided by law. The provisions of this ordinance shall expire ninety (90) days from the date of passage unless otherwise extended or made permanent by the City Council.

ADOPTED: This 11th day of May, 2020.



Council President

APPROVED: This 11th day of May, 2020.



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, as its meeting held on May 11th, 2020, as same appears in the minutes of record of said meeting, and published by posting copies thereof on May 12, 2020, at the following public places, which copies remained posted for five (5) days as required by law.

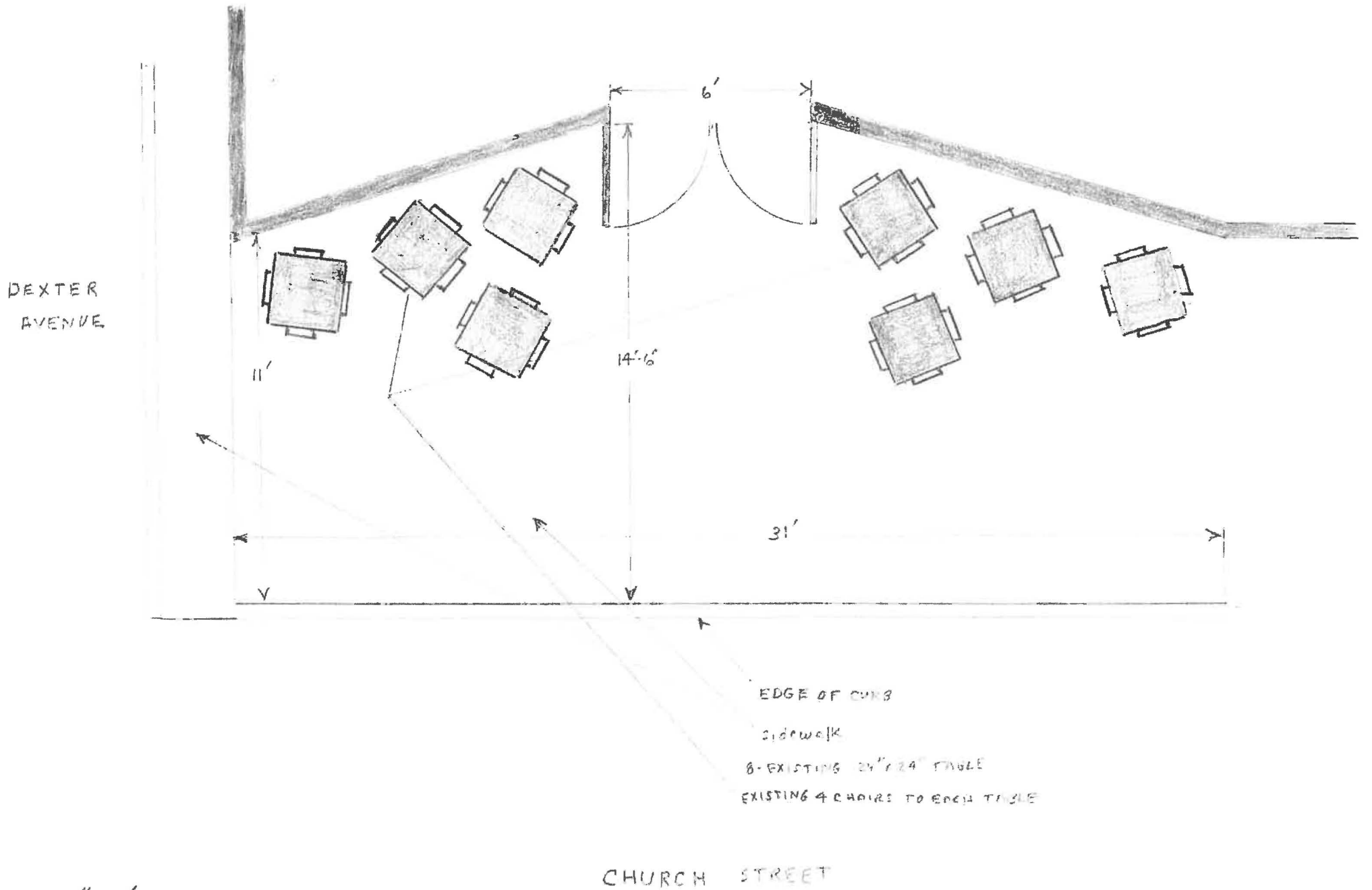
City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road

Overton Park, 3020 Overton Road
Cahaba River Walk, 3503 Overton Road



City Clerk

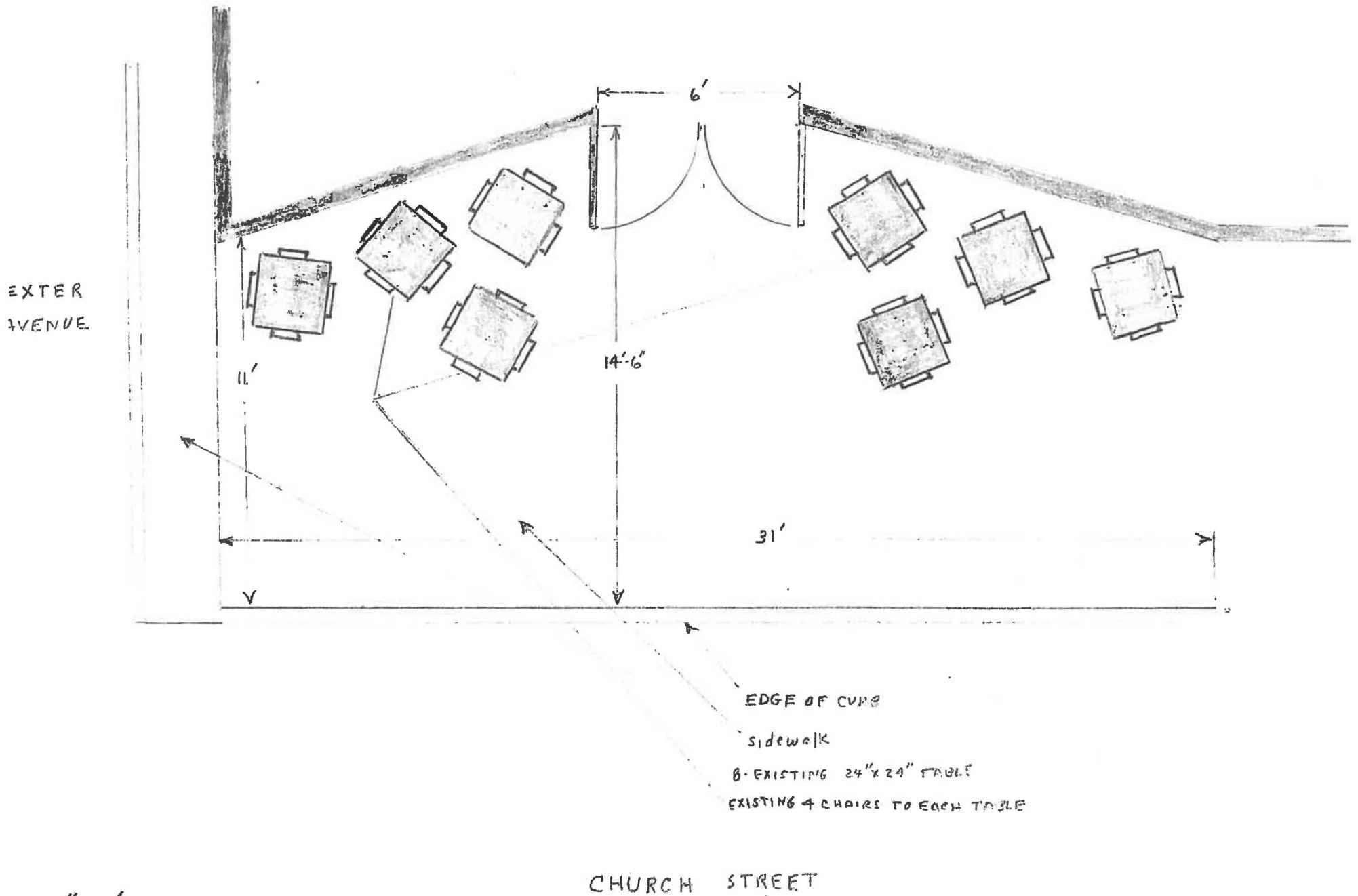
Real and Rosemary



$\frac{1}{4}'' = 1'$

MARCUS CASSIMUS

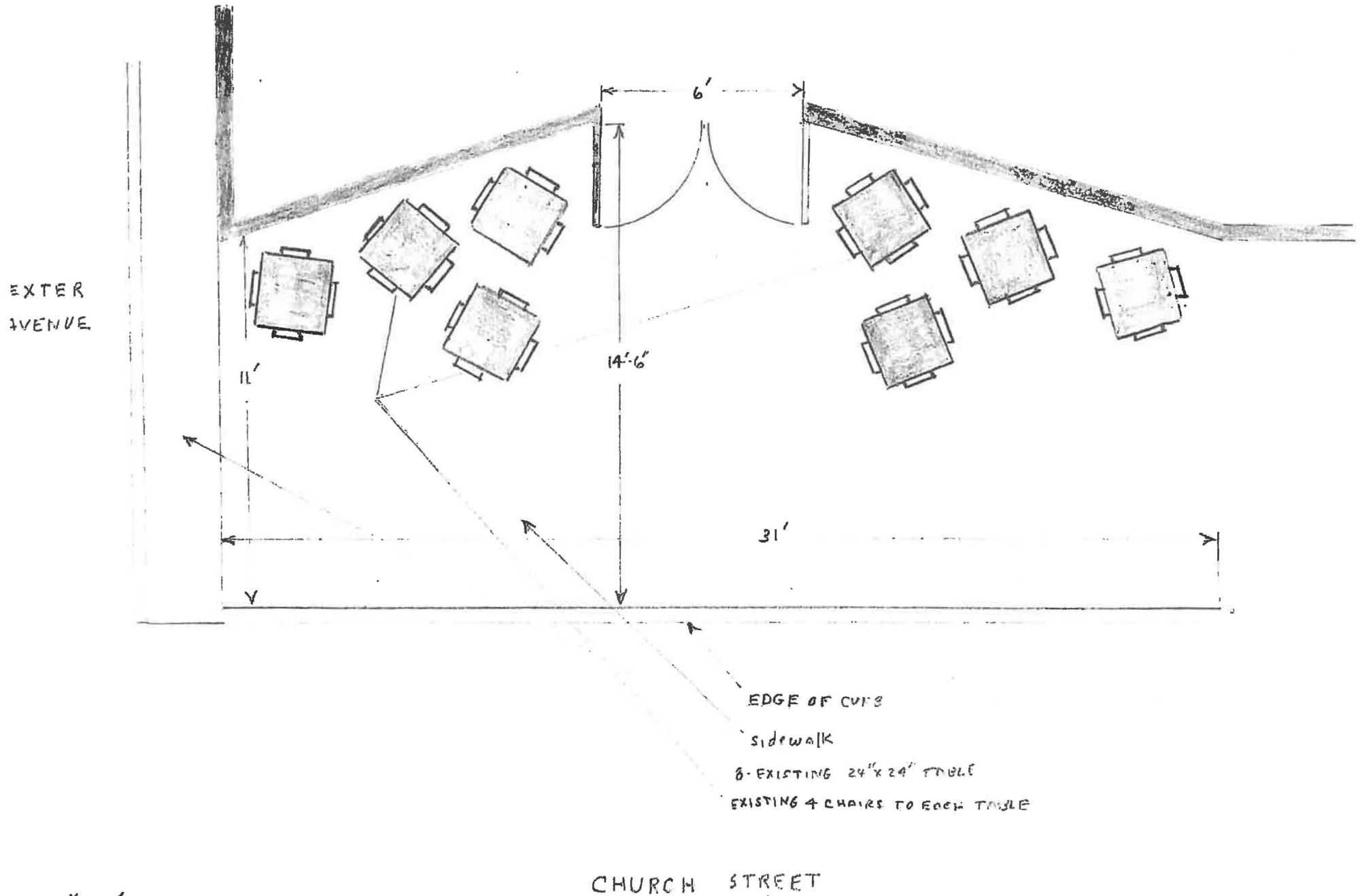
Real and Rosemary



$\frac{1}{4}'' = 1'$

--- ARCHITECT'S NAME ---

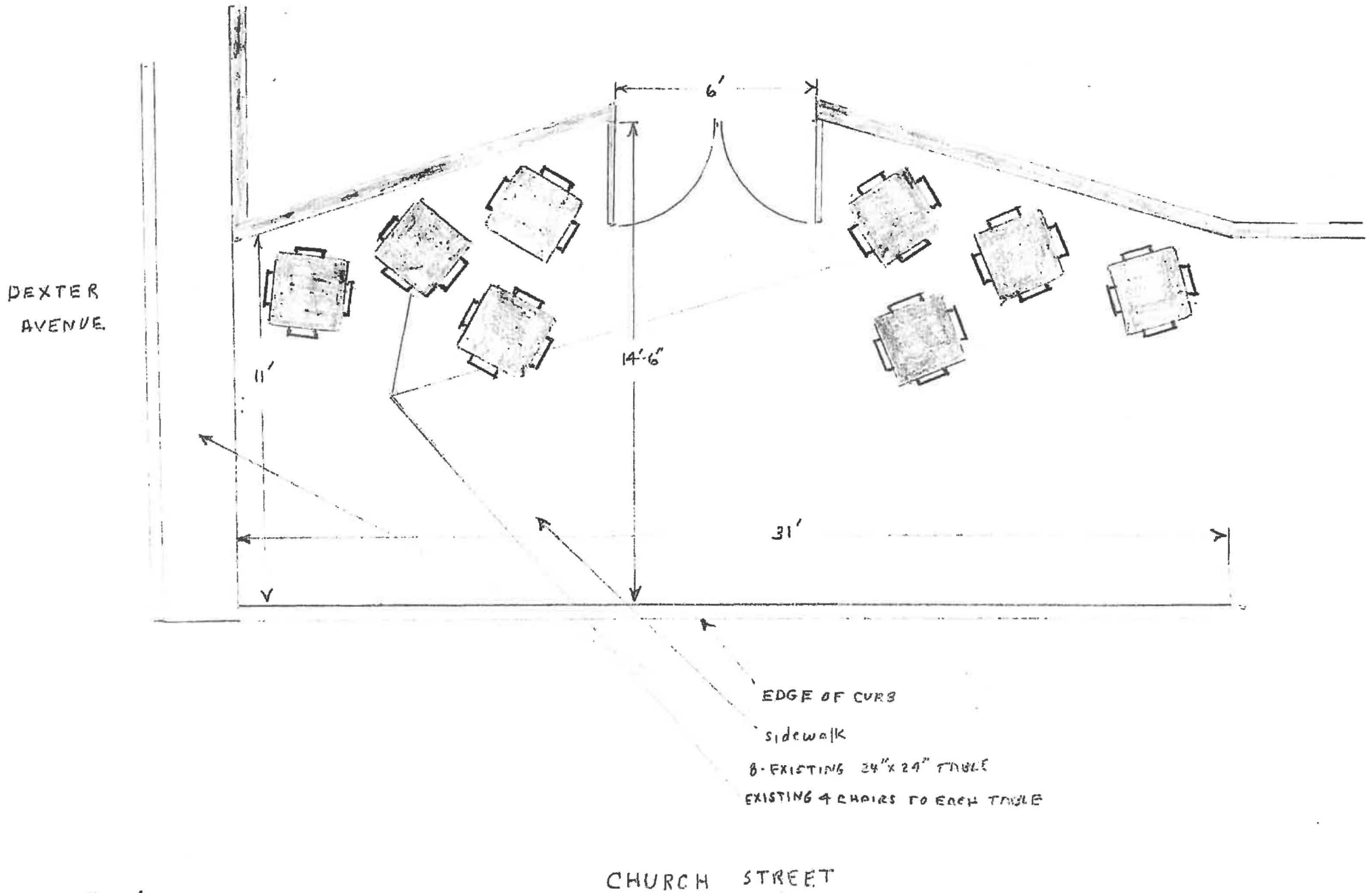
Real and Rosemary



$\frac{1}{4}'' = 1'$

MAGNUS CASCIUMUS

Real and Rosemary



$\frac{1}{4}'' = 1'$

STATE OF ALABAMA)
JEFFERSON COUNTY)

**INDEMNIFICATION and HOLD HARMLESS AGREEMENT
Operation of Sidewalk Café in Mountain Brook, Alabama**

THIS AGREEMENT is entered into between Ren and Rosemary Crestline, LLC
("Restaurant Owner") and Club Village Properties, LLC ("Property Owner"),
hereinafter collectively "Owners," and the City of Mountain Brook, Alabama, an Alabama
municipal corporation, hereinafter "City", to provide for indemnification by Owners to the City
with respect to the operation and use of a sidewalk café in the City.

WHEREAS, the City has enacted a municipal ordinance addressing the operation and use
of sidewalk cafes and requiring a revocable permit to lawfully operate a sidewalk café within the
Villages of the City;

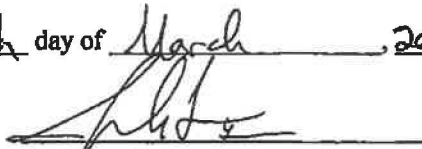
NOW THEREFORE, the parties agree as follows:

1. In consideration of the agreement and permission to operate and use a sidewalk
café in the City, Owners, their heirs, agents, successors, and assigns (herein collectively
"Owners") covenant and agree to indemnify, defend, save and hold harmless the City, its
officers, agents, employees, successors, and assigns, (herein collectively "City") from all claims,
demands, suits, proceedings, expenses, civil and criminal penalties and fines, damages, losses,
reasonable attorneys' fees, and liabilities (collectively "Claims") arising from the operation or
use of a sidewalk café. The existence of, or inadequacy of, insurance protection and coverage
carried by Owners, in no way limits the indemnification agreement as stated herein.
2. This indemnification shall survive the cancellation, termination, or expiration of
the agreement to use, revocable permit, and operation use term.

DONE and ENTERED into on this the 16th day of March, 2022.



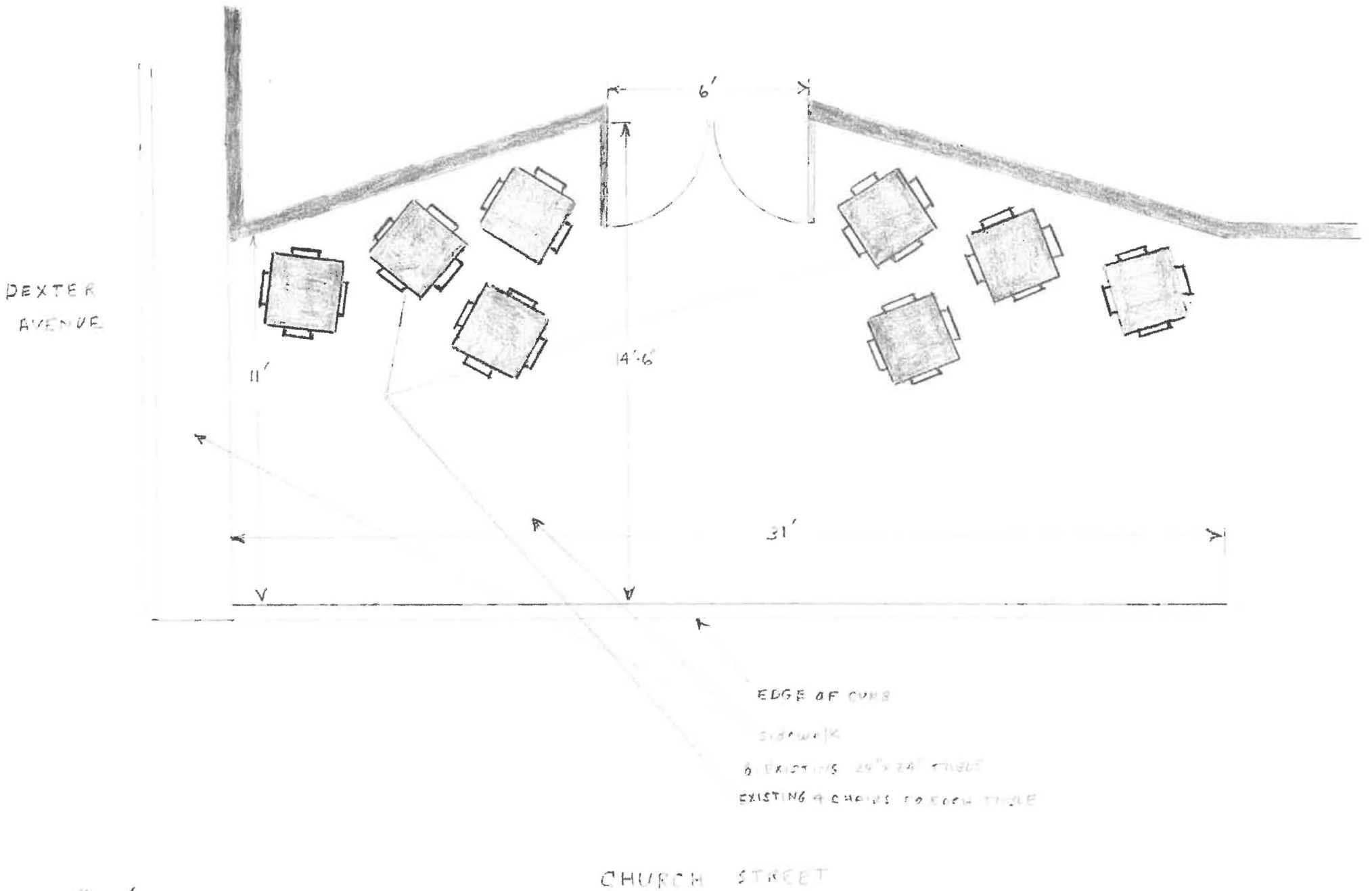
Restaurant Owner



Property Owner

John W. Minor IV
Managing Member
Club Village Properties, LLC

Real and Rosemary



$\frac{1}{4}'' = 1'$

MARCUS CASSIMUS







RESOLUTION NO. 2022-079

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby accepts the professional services proposal submitted by Enviro Management Corp., in the form as attached hereto as Exhibit A, with respect to the Wastewater Treatment Plant Project-Plans, Specifications & Project Oversight/Construction Administration Services.

ADOPTED: This 13th day of June, 2022.

Council President

APPROVED: This 13th day of June, 2022.

Mayor

CERTIFICATION

I, Heather Richards, 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 meeting held on June 13, 2022, as same appears in the minutes or record of said meeting.

City Clerk



Heather Richards <richardsh@mtnbrook.org>

FW: EMC Contract - Generator

1 message

Sam Gaston <gastons@mtnbrook.org>
To: Heather Richards <richardsh@mtnbrook.org>
Cc: boones@mtnbrook.org, Ronnie Vaughn <vaughnr@mtnbrook.org>

Mon, Jun 6, 2022 at 10:14 AM

For Formal agenda.

Samuel S.Gaston
City Manager
City of Mountain Brook, AL.
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213
(205) 802-3803 Phone
(205) 870-3577 Fax



From: dudley@emcbham.com [mailto:dudley@emcbham.com]
Sent: Thursday, June 02, 2022 12:45 PM
To: Sam Gaston
Subject: EMC Contract - Generator

Sam -

Attached is the contract that Steve Stine put together for the generator project. We're working on the Bid Package Documents and I'll forward those as soon as we finish.

Dudley

Dudley Dickerson III

Enviro Management Company, Inc.

2607 Commerce Boulevard

Birmingham, Alabama 35210

205-951-3400

205-907-3254 cell

www.EMCbham.com



ISO 9001:2015

 **EMC Copntract - Generator Project (signed).pdf**
10359K



ISO 9001:2015

May 25, 2022

Sam Gaston, City Manager
City of Mountain Brook
Post Office Box 130009
Mountain Brook, AL 35213

Via Email: gastons@mtbrook.org

Re: Proposal for Wastewater Treatment Plant Project- Plans, Specifications & Project Oversight/Construction Administration Services - EMC Proposal Number: EMC 20223441

Dear Mr. Gaston,

Thank you for allowing Enviro Management Company, Inc. (“EMC” or “Consultant”) this opportunity to provide the City of Mountain Brook, Alabama (“Client” or “City”) with this proposal for EMC to develop plans and specifications and perform project oversight/contract administration services (collectively, “Professional Services” or “Services”) for a required upgrade, repairs, and improvements to the Wastewater Treatment Facility (the “WWTF”), that serves the Athletic Complex near Mountain Brook High School and that School (the “Project” or “Work”). Installation of a backup generator and other facility repairs to the WWTF are required for it to maintain compliance with the current Alabama Department of Environmental Management (ADEM) Permit. This proposal is for EMC to provide the stated Professional Services on the Project pursuant to the terms herein.

The principal issue with the WWTF is that it may not operate during a power outage. The pumps, motors, blowers, and control equipment with this plant that are all dependent on a continuous power supply. A backup generator will provide protection during power interruptions and allow the treatment plant to operate continuously. In addition, the WWTF requires repairs to the electrical control panels, the exhaust system for the building, the gutter system for the building housing the plant and the dosing tank for the sand filter system. These components have not been repaired or upgraded in over 20 years and these repairs will extend the life of the systems for years to come.

This proposal describes the scope of Professional Services to be completed, cost, and schedule for completion of these Services and the Project.

1. SCOPE OF PROFESSIONAL SERVICES WORK

1.1. EMC will develop the plans, specifications, and provide project oversight/contract administration services for the Project. These Professional Services will involve the following activities:

- 1.1.1. Developing plans and specifications for a backup generator
- 1.1.2. Developing plans and specifications for 2 electrical control panels
- 1.1.3. Developing plans and specifications for an exhaust fan
- 1.1.4. Developing plans and specifications for roof gutters
- 1.1.5. Developing plans and specifications for the application of a protective coating for the dosing tank
- 1.1.6. Project oversight to include managing the bid process, routine inspections of work progress, managing the startup of all equipment, and Project closure.

2. CLIENT INTERACTION

2.1. EMC will coordinate performance of the Professional Services with the designated City Representative selected by the City.

3. SCHEDULE

EMC is prepared to begin performing the Professional Service described above when notified by the City. Once the plans and specifications are completed, the project will be bid out and work on the Project will commence.

4. CLIENT RESPONSIBILITIES

- 4.1. EMC requests that the City provide the following:
- 4.1.1. Access to the facility and Project site contact,
 - 4.1.2. Complete the written Authorization to Proceed located in Appendix A; and
 - 4.1.3. Furnish it a draft of the City's "Up-Front" Bid/Contract documentation for use by Consultant to assist the City in the bidding phase of the Project to select the contractor who will construct the improvements at the Project site.

6. COMPENSATION AND EXPENSES/TIME FOR DELIVERABLES

- 6.1. EMC proposes to perform the scope of Professional Services as described as a fixed fee of **\$9800.00 (“Fee”)**. This Fee includes its time and materials associated with this Project, travel expense, and other expenses incurred by it on the Project. The Fee will be paid at the following intervals: (1) 70% of total at conclusion of the design/document production phase of the Project; and (2) the remaining balance of 30% payable at closure of the Project.
- 6.2. EMC agrees to provide the deliverables contemplated in the document production phase of its work (i.e., the Plans, Drawings, and contractor work specifications or requirements) within sixty (60) days following the City’s execution of Attachment A.

7. CONFIDENTIALITY

All confidential and proprietary information exchanged between the City and EMC will remain confidential and shall remain the properties of the City and EMC, respectively. EMC shall not disclose any compliance related information regarding the WWTF to a third party (other than the contractor selected to perform the improvements) without prior written agreement from the City, by court order directing such disclosure, or as the City, in the exercise of its reasonable judgment, determines it is required to disclose to a third person making a public records request as provided by applicable law.

8. DISCLAIMER

- 8.1. EMC is not responsible, nor can EMC be held accountable, for activities, conditions, operations, actions, or failure of actions by the City’s staff that may occur or not occur during or after the completion of the Project.
- 8.2. EMC shall not be held liable for any fines, penalties, or other sanctions that may be assessed against the facility by any state, county, city, or other local regulatory authority.

Thank you for allowing EMC the opportunity to provide you with this proposal. You may authorize us to proceed by signing the Authorization to Proceed and forwarding a copy to our office. If you have any questions, or need additional information, please contact me at my office (205) 951-3400 or my cell 205-907-3254.

Sincerely,



Dudley Dickerson, II
President Enviro Management Company, Inc.

Attachments

- Appendix A: Authorization to Proceed with Professional Services
- Appendix B: EMC Business Terms and Conditions
- Appendix C: Supplemental Terms of Professional Service

APPENDIX A – AUTHORIZATION TO PROCEED WITH PROFESSIONAL SERVICES

PROJECT DESCRIPTION			
Project Description:	Develop Plans, Specifications, and Project Oversight/Contract Administration Services for the WWTF Project		
Proposal Number	20223441		
Client Name:	City of Mountain Brook		
Client Contact	Sam Gaston, City Manager	Email:	gastons@mtnbrook.org
Client Phone	205-802-3803		
Site Address	Mountain Brook High School		
PROJECT TERMS			
Start Date	Upon Receipt of the signed Authorization to Proceed		
Project Fee:	See Section 5		
Terms	Proposal, Attachment A, Attachment B & Attachment C		
AUTHORIZATION			

The City of Mountain Brook hereby authorizes EMC to provide the Professional Services described at the stated fee in accordance the terms of the Agreement.

Name: _____

Signature: _____

Title: _____

Date: _____

APPENDIX B EMC BUSINESS TERMS AND CONDITIONS

A. Agreement for Services

The terms and conditions set forth in these Business Terms and Conditions, the accompanying proposal (herein after referred to as the “proposal”), Attachment A, and Attachment C (the Supplemental Terms of Professional Service) constitute the entire agreement (herein collectively referred to as the “Agreement”) between **Enviro Management Company, Inc.** (EMC) and **City Of Mountain Brook.** (Client). This Agreement supersedes all previous proposals, offers, understandings or other verbal or written communication concerning the proposed services. Any revision or modification to this Agreement through purchase orders, correspondence, or other forms that are not consistent with the provisions, terms, or conditions of this Agreement are void, and shall not supersede the provisions, terms or conditions of this Agreement. Any revision to the terms and conditions of this Agreement must be accomplished in writing and signed by authorized representatives of EMC and Client.

B. Confidentiality

All information generated during the performance of work under this Agreement will be considered proprietary and confidential. Such information received, whether ascertained directly or indirectly, will not be disclosed to any third party without prior authorization from Client, unless required by law or applicable regulation(s). Confidential information, which has become available directly or indirectly to the general public through governmental agencies will not be considered the fault of EMC and will in no way be construed as breach of this Agreement. All information submitted in the form of proposal, bid, cost estimate, etc. by EMC is considered to be confidential and privileged. Any use or disclosure of this information without written consent from EMC is prohibited, unless required for the purpose of evaluating content for procuring of services requested by Client.

C. Changed Conditions/Change of Scope

The parties understand that, in the course of performing the Professional Services described in the accompanying proposal conditions may arise or become apparent that require certain work be done in addition to the work described. The additional work shall be performed only with the consent of the Client in form of a written agreement, signed by both parties. Any additional work shall be performed subject to all terms and conditions of this Agreement. If conditions have changed to the extent that EMC believes that continued work poses an unreasonable health or safety risk, EMC may cease all work until a change of scope can be agreed upon in writing that provides for the elimination of unreasonable risks to health and safety. If a change of scope cannot be agreed upon in order to continue to work under conditions satisfactory to both parties, this Agreement shall be terminated at that time. Should this Agreement be terminated after EMC commences performing its Professional Services, EMC will be compensated for all services rendered up to the date of termination based on an equitable determination of work completed in consideration of the total Fee.

D. Delays

Should EMC be prevented from complying with any of its obligations of this Agreement by operation of force majeure, or because of any federal or state law or any order, rule or regulation of a governmental authority, or any other delay which is not the fault of EMC, then

while so prevented, EMC's obligations to comply with such covenant shall be suspended, and EMC shall not be liable for any actual or consequential damages arising out of force majeure or any other delay which is not the fault of EMC.

E. Termination. See Section (g) of Attachment C.

F. Ownership of Documents

The production of documents produced in accordance with this Agreement are for the sole use and enjoyment of the Client.

G. Use of Documents

All documents and reports of EMC, and the results and conclusions therein, arising out of this Agreement or pertaining to the Project objectives are intended solely for the use of EMC and Client unless the parties to this Agreement specify otherwise in writing.

H. Reserved

I. Indemnification – Intentionally Deleted

J. Invoices

Invoices for Services performed by EMC will be submitted at the intervals provided in Section 5 of the proposal. EMC may suspend its work should payment not be received within 45 days of the date of invoicing. Any acceptance of late or partial payments by EMC shall not constitute a waiver of EMC's right to enforce the terms of the Agreement. However, Client will be responsible to pay the interest level awardable under Alabama for breach of contract (which is currently 8%) if it fails to timely pay an undisputed invoice and reasonable attorney's fees if EMC is required to institute suit to collect an undisputed invoice.

The Client will notify EMC of any dispute concerning an invoice within 10 days of the date of invoice. Notwithstanding any such dispute, Client shall, within the limitations and under the terms of this Agreement, pay EMC all portions of invoices that are not in dispute. Should EMC agree that the disputed amount was charged in error, EMC will credit the Client with such amount on subsequent invoices to the Client.

The Client is responsible for full payment of all EMC invoices at agreed upon terms, conditions, and fees. Shall be valid or effective unless it is stated in writing. EMC may allow Client an additional period of time for payment for the purpose of giving the Client an opportunity to receive reimbursement from any applicable funds for the Project or other applicable insurance policies; in no event shall this extended time period exceed 180 days from the invoice date.

K. Method of Payment

EMC accepts payment in the form of a credit card or check made payable to Enviro Management Company, Inc.

L. Validity

This proposal is valid, unless revoked in writing, for a period of thirty (30) days from the date of the proposal. This proposal is automatically revoked if not accepted within thirty (30) days and received by EMC within 45 days unless otherwise accepted in writing by EMC and at sole discretion of EMC.

M. Hazardous Materials.

EMC will neither be responsible for, nor be considered to be a generator of any hazardous waste as defined in applicable Federal and State laws, statutes or regulations from performing its Services.

APPENDIX C - SUPPLEMENTAL TERMS OF PROFESSIONAL SERVICES

The following additional terms and conditions apply to the performance by EMC (also referenced herein as “Consultant”) of its Professional Services on the Project

(a) Warranty. Consultant agrees to perform its Services in a manner that is consistent with professional skill and care that would be provided by other professionals in its industry under same or similar conditions, and in the orderly progress of the schedule for them and the Project.

(b) Instruments of Service. All reports, plans, documents, materials created by Consultant or its work product or deliverables from its Services (collectively, the “Instruments of Service”) shall remain the property of the Consultant and are intended solely for uses related to this Agreement and construction of the Project. Notwithstanding, Consultant grants Client a perpetual license to distribute the Instruments of Service to any third party, reproduce or otherwise use them for purposes it deems reasonably necessary for the Project or its operations.

(c) Client’s Use of Instruments. Client understands that the Consultant intends that the Instruments of Service be used only in connection with the Project. Accordingly, Client acknowledges and agrees that any use of them for purposes unrelated to the Project or on any other project, or any failure by it to follow Consultant's recommendations in those Instruments without Consultant's written permission, shall be at the Client’s and any other user’s sole risk.

(d) Client, at its expense, will provide the Consultant with information requested by Consultant that is in Client’s possession and concerns the Project, including existing plans, reports, studies, schedules, criteria and similar information in its files. Client will furnish this information in a timely manner, review documents and make decisions on Project alternatives to the extent necessary to allow the Consultant to perform its Services within established schedules. The Consultant may rely on the information provided by the Client without verification.

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

(f) Compensation for Services: See Section 5 of proposal and Attachment B.

(g) Term/Termination. The term of this Agreement shall commence when the City executes the proposal and thereafter continue in effect up to twelve (12) months, or when the Services are successfully completed, whichever occurs first (the “Term”). Notwithstanding the provision immediately above or any other provision herein, this Agreement may terminate before the expiration of its Term if any of the following events occur:

- (1) Client may terminate the Agreement for cause if (1) Consultant defaults on a material obligation to the Client hereunder (a “Default”), and (2)

following the Client's provision of written notice of Default to Consultant, it fails to correct or remedy that Default within fifteen (15) days after receipt of that notice. The failure of the Contractor to timely perform the Services shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available to Client under law or in equity;

- (2) Consultant may terminate this Agreement for cause if (1) Client default on a material obligation to the Consultant hereunder, and (2) following the Consultant's provision of written notice of Default to Client, it fails to correct or remedy that Default within thirty (30) days after receipt of that notice. The failure of the Client to timely compensate Consultant for its Services shall be considered an event of Default. In the event of such termination for cause, Consultant agrees that its sole and exclusive remedy arising therefrom shall be limited to the prorated amount owed it by Client for Services performed up through the effective time of termination in relation to the total Fee; and
- (3) At any time during the Term Client may terminate the performance of Services or the Project solely for its convenience (with or without cause). In the event of such termination by Client for its convenience, Consultant agrees that its sole and exclusive remedy arising therefrom shall be limited to the prorated amount owed it by Client for Services performed up through the effective time of termination in relation to the total Fee.

In the event of early termination of the Agreement for any reason, Consultant shall cease performing Services as of the date of its receipt of notice of termination; provided that, after receiving that notice, Consultant shall take reasonably necessary actions to organize its work product at that stage of the Project and furnish any Instruments of Service (albeit incomplete) to Client in the form then existing, and Client shall equitably compensate Consultant for that organizational work.

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

- (1) Professional Liability covering Consultant's negligent acts, errors, and omissions in its performance of professional services with policy limits of not less One Million Dollars (\$1,000,000) per claim and in the aggregate;
- (2) Comprehensive General Liability: This insurance shall cover all operations performed by or on behalf of the Consultant related to the Project and provide coverage for bodily injury and property damage with a combined single limit of not less than \$1,000,000 per occurrence. This policy shall include coverage on an occurrence basis for premises/operations,

products/completed operations, assumed contractual obligations, and independent contractors;

(3) Automobile Liability: This insurance shall cover owned and rented vehicles operated by the Consultant and have policy limits of not less than One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage, per occurrence; and

(4) Worker's Compensation – As required by statute.

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

Except for the Workers Compensation and Professional Liability policies, the coverage furnished by Consultant shall contain endorsements naming the City of Mountain Brook, Alabama, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of Consultant on the Project or its performance of the Services.

(i) Right of Approval. Client shall have right to review and finally approve all plans, specifications and deliverables that Consultant furnishes in connection with its Services. Client agrees that it will not unreasonably withhold or delay such reviews or approvals.

(j) No Assignment. This is a personal services Agreement. Accordingly, unless specifically agreed by Client in writing, the rights, duties and obligations of Consultant hereunder may not be assigned, transferred or subcontracted to any other person, firm, corporation, or other entity without the advance written consent of Client.

(k) Dispute Resolution. The Project Representatives will use their good faith efforts to resolve any dispute or claim between the Parties arising from the performance or failure to perform their respective obligations under this Agreement (a "Dispute"). If those Representatives are unable to amicably resolve a Dispute, it will be escalated to the senior manager/official level of each Party for consideration. If the Dispute cannot be resolved at the senior official level, either party may request that the Dispute be mediated.

However, if the parties are unable to amicably resolve any Dispute, the dispute resolution mechanism for any claim between the parties shall be litigation in a court located in Jefferson County, Alabama. If the Client (i) should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto, Consultant will reimburse the Client for its reasonable attorneys' fees and other reasonable expenses that are incurred in that action.

(d) Exclusion of Consequential Damages. In no event may Consultant recover from the Client any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost

opportunity, loss of savings or revenues or for increased cost of operations) arising from the Client's breach of its obligations hereunder or its termination of the performance of Services or the Project (whether for its convenience or with or without cause).

(l) Entire Agreement/Ineffective Provisions in Consultant Documents. The proposal and Attachments A-C comprise the entire contract and understanding between the Parties concerning the matters herein. The terms, provisions and conditions in the Agreement supersede all prior negotiations, representations, or agreements, either written or oral, concerning the subjects herein, and any such prior understandings concerning these matters are of no effect and are merged herein.

Further, the parties agree that no terms, provisions or conditions that are stated in any invoice, order or other document generated by the Consultant or presented by it to Client in connection with its performance of Services or the Project are incorporated into or form part of this Agreement. Notwithstanding the existence of any such documents, the parties understand, agree and covenant as follows:

- (i) Client shall not be liable to the Consultant for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the Client under applicable law in the absence of any contractual provision imposing or assigning liability therefor, or are agreed herein;
- (ii) Client shall not be liable for any late payment charges, interest, or fees on any delinquent payment for Services; provided that, in the event Client is delinquent in paying amounts owed Consultant hereunder, nothing herein shall restrict Consultant from seeking recovery the amount of interest allowed under applicable law for breach-of-contract claims;
- (iii) Client will not indemnify, hold harmless, or release the Consultant or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof; and
- (iv) Unless expressly stated in the Agreement, Client does not waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Consultant or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Consultant or any person, firm, or entity in privity therewith or acting on its behalf in connection with the performance of the Services. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the Client is expressly disavowed, excluded from the terms of the Agreement, and void.

(i) Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement or between this Agreement and any other form, invoice or document

generated by Consultant, presented to Client or used by Consultant in connection with the Project, the provisions in this Agreement shall supersede and control.

(j) **Applicable Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Alabama.

(k) **No Waiver.** The failure of either party to insist upon the performance of any of the terms and conditions of this Agreement shall not be construed as thereafter waiving any subsequent breach of those terms and conditions, and same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. Further, no terms of this Agreement shall be waived unless expressly waived in a writing executed by the parties.

(l) **Partial Invalidity.** If any provision in the Agreement is determined to be invalid, the remaining provisions shall continue to be in full force and effect. The invalidity of any provision or portion of this Agreement will not and shall not be deemed to affect the validity of any other provision.

(m) **Force Majeure.** Neither party shall be liable to the other for any loss, cost, or damages, arising out from or resulting from, any failure to perform in accordance with its terms where the causes of such failure shall occur due to events beyond a party's reasonable control, including, but not limited to, the following: acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockades, insurrections, riots, governmental action, explosions, fire, floods, or any other cause not within the reasonable control of either party.

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

The Client will not indemnify Consultant (or any of its employees or representatives) for any claims or matters that relate to or arise out of the Project or this Agreement.

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

(p) **Representations.** The Parties represent to each other that all actions required by their respective governing body, officials, or managers to enter this Agreement have been completed, that their representatives signing below have full authority to execute it on behalf of their respective organizations, and that this Agreement shall be binding of their respective organization (and any successors or authorized assigns of the parties).

(q) Amendment. No amendment or modification of this Agreement or its terms or provisions shall be binding unless expressed in writing and signed by an authorized representative of each party.

(r) No Third-Party Beneficiaries. This Agreement is made only for the benefit of the parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

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

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

(u) Safety. If Consultant (or any of its employees or representatives) inspect, enter or access the Project site in connection with the performance of Services, Client makes no representation that the site is safe or fit for those purposes or free from defects (latent or patent). Consultant agrees that it (a) has the sole responsibility to identify any condition or hazard at the Project site that may impact its operations thereon and (b) is exclusively responsible for the safety of its personnel who enter that site.

RESOLUTION NO. 2022-080

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute the an Interlocal Cooperation Agreement, in the form as attached hereto as Exhibit A, between the City and the City of Birmingham for the purpose of sharing municipal equipment and services for the upcoming World Games during July 7th-July 17th 2022.

ADOPTED: This 13th day of June, 2022.

Council President

APPROVED: This 13th day of June, 2022.

Mayor

CERTIFICATION

I, Heather Richards, 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 meeting held on June 13, 2022, as same appears in the minutes or record of said meeting.

City Clerk



Heather Richards <richardsh@mtnbrook.org>

City Council Agenda Next Week

1 message

Jaye Loggins <logginsj@mtnbrook.org>

Mon, Jun 6, 2022 at 1:19 PM

To: Heather Richards <richardsh@mtnbrook.org>, Sam Gaston <gastons@mtnbrook.org>

See attached for resolution and agreement proposed with Birmingham for World Games

Basically, we are providing 4 officers for 10 days at one of the event sites

Please get this added to next week's agenda. Thanks

Jaye Loggins
Chief of Police
Mountain Brook Police Department
[101 Tibbett Street](#)
[Mountain Brook, AL 35213](#)

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

2 attachments

 **AATF - Agreement - Mountin Brook - TWG 2022.pdf**
661K

 **Ordinance.docx**
24K

**INTERLOCAL COOPERATION AGREEMENT
(The World Games 2022)**

The CITY OF BIRMINGHAM, ALABAMA (“**Birmingham**”), a municipal corporation, and the CITY OF MOUNTAIN BROOK, ALABAMA (“**Mountain Brook**”) a municipal corporation, enter into this Agreement on the _____ day of _____, 2022.

WHEREAS, Birmingham and Mountain Brook, desire to enter into an Agreement that will benefit both Cities (“**Agreement**”); and

WHEREAS, The Eleventh Edition of the World Games (“**TWG2022**”) are scheduled to be held in the Birmingham area during July 7-17, 2022; and

WHEREAS, the Alabama Legislature adopted Alabama Code §11-102-1 which provides that:

Except as otherwise provided in this chapter or as otherwise prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. For purposes of this chapter, it is sufficient if each of the contracting entities has the authority to exercise or perform the power or service which is the subject of the contract regardless of the manner in which the power or service shall be exercised or performed, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities.

; and

WHEREAS, all parties find that it is in the public interest that the parties enter into a joint service agreement in accordance with Alabama Code §11-102-1, *et seq.*, in order to authorize the sharing of municipal equipment and services for the benefit of both municipalities; and

IN CONSIDERATION OF THE PREMISES stated herein Birmingham and Mountain Brook mutually agree as follows:

- I. **PURPOSE:** The Parties agree to the sharing of equipment and services for the mutual benefit of each municipality during the period leading up to and extending through and after TWG2022, including particularly June 30, 2022 – July 21, 2022. Mountain Brook will provide upon request and subject to availability certain equipment and services to Birmingham, including but not limited to 4 Police Officers and accompanying Police vehicles, for use in preparing for and hosting TWG2022.

II. **TERM:** The provisions of this agreement shall become effective on June 15, 2022. The duration of this contract shall not exceed two months from the date of its final execution and in no event shall extend beyond July 31, 2022.

III. **IMPLEMENTATION:** The parties agree as follows:

a. Mountain Brook will provide the following described personnel, and make available for pick up by Birmingham the following described equipment and such other available equipment as the parties may agree:

Description: 4 Police Officers and accompanying Police vehicles.

b. Birmingham will assign operators for the equipment.

c. Except as expressly provided in this agreement, no party to the contract shall have any power to incur any debt which shall become the responsibility of any other contracting party.

d. Except as specifically provided in this Agreement, the execution of this Agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the parties the relationship of principal or agent or of partnership or of joint venture.

e. Except as otherwise provided by law and as limited by this Agreement between the parties, the parties to this Agreement shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the contract.

f. This Joint Services Agreement shall not take effect until it has been approved by the governing body of each of the contracting municipalities and required publications have been made. Approval by a municipal governing body shall be by adoption of an ordinance of general and permanent operation. Each party to this agreement shall also adopt all ordinances, resolutions, or policies necessary to authorize the other contracting entities to carry out their contractual duties and responsibilities. Each of the contracting municipalities shall each deliver a copy of their ordinance to the other party prior to any exchange of equipment or services.

IV. IMMIGRATION LAW COMPLIANCE:

By signing this Contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

V. NON-DISCRIMINATION:

During the performance of this contract Mountain Brook agrees as follows:

(1) Mountain Brook will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Mountain Brook will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Mountain Brook agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(2) In the event of the Mountain Brook's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Birmingham municipal contracts.

VI. HISTORICALLY UNDERUTILIZED BUSINESS ENTERPRISES: Mountain Brook acknowledges that the Birmingham, as a matter of public policy and to the extent allowed under applicable law, encourages participation of minority-owned, women owned and disadvantaged business enterprises to the maximum extent possible and seeks to provide opportunities for and to actively include Disadvantaged Business Enterprises (DBEs) and Historically Underutilized Business Enterprises (HUBE's) which includes architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the Birmingham's business, economic and community revitalization programs. Mountain Brook agrees to reasonably comply with this policy, and to include and retain those firms, contractors and consultants as sub-contractors or participants in other capacities to assist Mountain Brook to complete the services provided pursuant to this Agreement.

- VII. **OFFSET FOR OVERDUE FEES, TAXES, ETC.:** Pursuant to Executive Order of the Mayor of Birmingham No. 76-09 (effective as of August 21, 2009), Mountain Brook acknowledges and agrees that Birmingham has the right to deduct from the total amount of consideration to be paid, if any, to Mountain Brook under this Agreement all unpaid, delinquent, or overdue license fees, taxes, fines, penalties and other amounts due Birmingham from Mountain Brook.
- VIII. **BOYCOTTING ACTIVITIES:** By signing this contract, the Parties represent and agree that they are not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.
- IX. **TERMINATION:** Any party hereto may terminate this Agreement at any time by giving thirty (30) days' notice of the intention to do so to the other party. Such notice shall be sent to the governing body of the other party. If the Agreement is terminated by Mountain Brook prior to the end of the Term of this Agreement, any equipment provided shall be returned to owner municipality upon written request.
- X. **SEVERABILITY:** If any provision of this agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid.
- XI. **GOVERNING LAW:** This agreement shall be governed by and construed in accordance with the laws of the State of Alabama as interpreted by Alabama Courts.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as reflected below.

CITY OF MOUNTAIN BROOK, ALABAMA

Date

BY: _____
Mayor

ATTEST:

City Clerk

CITY OF BIRMINGHAM, ALABAMA


Date

BY: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT:

 _____
Assistant City Attorney Date

1 June 2022

ORDINANCE NO. _____

**AN ORDINANCE TO PROVIDE FOR AN
INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BIRMINGHAM AND
THE CITY OF MOUNTAIN BROOK**

WHEREAS, the CITY OF BIRMINGHAM, ALABAMA (“**Birmingham**”), a municipal corporation, and the CITY OF MOUNTAIN BROOK, ALABAMA (“**Mountain Brook**”) a municipal corporation, desire to enter into an Agreement that will benefit both cities (“**Agreement**”); and

WHEREAS, the Eleventh Edition of the World Games (“**TWG2022**”) are scheduled to be held in the Birmingham area during July 7-17, 2022; and

WHEREAS, the Alabama Legislature adopted Alabama Code §11-102-1 which provides that:

Except as otherwise provided in this chapter or as otherwise prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. For purposes of this chapter, it is sufficient if each of the contracting entities has the authority to exercise or perform the power or service which is the subject of the contract regardless of the manner in which the power or service shall be exercised or performed, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities.

; and

WHEREAS, all parties find that it is in the public interest that the parties enter into a joint service agreement in accordance with Alabama Code §11-102-1, *et seq.*, in order to authorize the sharing of municipal equipment and services for the benefit of both municipalities.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama as follows:

SECTION 1. Authorization

The Mayor of the City of Mountain Brook, Alabama is hereby authorized to enter into an Agreement with the City of Birmingham, containing the following terms:

A. **PURPOSE:** The Parties agree to the sharing of equipment and services for the mutual benefit of each municipality during the period leading up to and extending through and after TWG2022, including particularly June 30, 2022 – July 21, 2022. Mountain Brook will provide upon request and subject to availability certain equipment and services to Birmingham, including but not limited to 4 police officers and accompanying police vehicles, for use in preparing for and hosting TWG2022.

B. **TERM:** The provisions of this agreement shall become effective on June 15, 2022. The duration of this contract shall not exceed two months from the date of its final execution and in no event shall extend beyond July 31, 2022.

C. **IMPLEMENTATION:** The parties agree as follows:

a. Mountain Brook will provide the following described personnel, and make available for pick up by Birmingham the following described equipment and such other available equipment as the parties may agree:

Description: 4 police officers and accompanying police vehicles.

b. Birmingham will assign operators for any other equipment which is requested by Birmingham and agreed to be provided by Mountain Brook.

c. Except as expressly provided in this Agreement, no party to the contract shall have any power to incur any debt which shall become the responsibility of any other contracting party.

d. Except as specifically provided in this Agreement, the execution of this Agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the parties the relationship of principal or agent or of partnership or of joint venture.

e. Except as otherwise provided by law and as limited by this Agreement between the parties, the parties to this Agreement shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the contract.

f. This Joint Services Agreement shall not take effect until it has been approved by the governing body of each of the contracting municipalities and required publications have been made. Approval by a municipal governing body shall be by adoption of an ordinance of general and permanent operation. Each party to this agreement shall also adopt all ordinances, resolutions, or policies necessary to authorize the other contracting entities to carry out their contractual duties and responsibilities. Each of the contracting municipalities

shall each deliver a copy of their ordinance to the other party prior to any exchange of equipment or services.

- D. **IMMIGRATION LAW COMPLIANCE:** By signing this Contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

- E. **TERMINATION:** Any party hereto may terminate this Agreement at any time by giving thirty (30) days' notice of the intention to do so to the other party. Such notice shall be sent to the governing body of the other party.

- F. **SEVERABILITY:** If any provision of this agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid.

- G. **GOVERNING LAW:** This agreement shall be governed by and construed in accordance with the laws of the State of Alabama as interpreted by Alabama courts.

SECTION 2. Severability.

The provisions of this Ordinance are hereby declared to be severable. If any of these sections, provisions, sentences, clauses phrases, or parts is held to be unconstitutional or void, the remainder shall continue in full force and effect.

SECTION 3. Publication.

This Ordinance shall become effective upon publication as required by statute.

ADOPTED AND APPROVED THIS ____ the day of _____ 2022.

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

City Clerk

By: _____
Mayor

RESOLUTION NO. 2022-081

**A RESOLUTION AUTHORIZING THE SALE OR DISPOSAL
OF CERTAIN SURPLUS PROPERTY**

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

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

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

Section 1. It is hereby established and declared that the following equipment, as described in the form as attached hereto as Exhibit A, owned by the City of Mountain Brook, Alabama is no longer needed for public or municipal purposes and is hereby declared surplus property; and

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

ADOPTED: This 13th day of June, 2022.

Council President

APPROVED: This 13th day of June, 2022.

Mayor

CERTIFICATION

I, Heather Richards, 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 meeting held on June 13, 2022, as same appears in the minutes of record of said meeting.

City Clerk

Old Equipment Inventory

Location: Dispatch/Dispatch Supervisor Office

Make	Model	Serial Number	Description	Quantity	Notes
Box 101					
Motorola	XTL 1500 (M28URS9PW1AN)	775CMF1170	Radio	8	
		775CMF1138			
		775CMF1116			
		775CMF1141			
		775CMF1126			
		775CMF1131			
		775CMF1132			
		775CMF1123			
	Cylinder Antenna	NA	Antenna	1	
	1/4 Whip Antenna	NA	Antenna	4	
	MaxTrac	428TZQ2100	Radio	1	
Box 102					
Motorola	XTL 1500 (M28URS9PW1AN)	775CMF1117	Radio	10	
		775CMF1136			
		775CMF1137			
		775CMF1122			
		775CMF1125			
		775CMF1120			
		775CMF1139			
		775CMF1158			
		775CMF1133			
		775CMF1114			
	1/4 Whip Antenna	NA	Antenna	4	
	Curly-Q Antenna	NA	Antenna	2	
Box 103					
Motorola	1/4 Whip Antenna	NA	Antenna	3	
	Curly-Q Antenna	NA	Antenna	2	
	XTL 1500 (M28URS9PW1AN)	775CMF1134	Radio	10	
		775CMF1171			
		775CMF1127			
		775CMF1172			
		775CMF1142			
		775CMF1129			
		775CMF1118			
		775CMF1130			
		775CMF1119			
		775CMF1135			
Box 104					
Motorola	HMN1090B	NA	Mics	21	
Box 105					
Motorola	IMPRES NNTN7335A	NA	Battery	40	
	IMPRES NNTN7335A	NA	Battery	3	DAMAGED - DESTROY
	IMPRES NNTN7335B	NA	Battery	15	
	IMPRES NNTN7554B	NA	Battery	1	
	IMPRES NNTN9858C	NA	Battery	1	
	HLN6042A	NA	Desk Tray/Speaker	3	
Uniden	Bearcat TrunkTracker IV BCD 996XT	360Z48000311	Scanner	1	

Box 8				
Kenwood	KSC-25	NA	Battery Charger	3
	TK-2170	A9102257	Battery	3
		"00102042"		
		A9A00824		
	KNB-26N	NA	Battery	3
	NA	NA	Shoulder Mic	2
	Unknown	4205638V07	Radio Belt Clip	5
Box 6				
Motorola	NTN7143CR	NA	Battery	6
	NTN8294A,B	NA	Battery	1
	NA	NA	Antenna	27
W&W Manufacturing	WC-060M5-7144A	NA	Battery	1
Box 106				
Motorola	NA	NA	Battery Charger Adapters	62
	HMN1079B	NA	Mic	2
	AN000197A10	NA	Antenna	2
	05 HLN1468B/HLN6912B	NA	Radio Control Head	3
Box 107				
Motorola	IMPRES NNTN7079A	NA	Battery Charger	3
	XTL 1500 M28URS9PW1AN	775CMF1162	Radio	2
		775CMF1174		
	HLN6042A	NA	Desk Tray/Speaker	2
Box 108				
Motorola	NNTN4115A	NA	Radio Pouch	3
	PMLN5407A	NA	Radio Pouch Belt Clip	37
Box 109				
Motorola	IMPRES WPLN4114AR	1032MKA01003Y	Battery Charger	16
		1046MKD0105QD		
		1046MKD0105RA		
		1033MKQ0101PU		
		1032MKD0100DJ		
		1033MKQ0101PY		
		1046MKD0105QJ		
		1046MKX0105AB		
		1033MKQ0101Q1		
		1046MKX01059U		
		1046MKD0105RX		
		1046MKA0105BH		
		1031MKW010D2G		
		1046MKD0105RM		
		1046MKA0105B8		
		1032MKE0100DV		
Box 110				
Motorola	IMPRES WPLN4114AR	1215MKX0102A5	Battery Charger	24
		1046MKD0105Q5		
		1025MKX0109JE		
		1046MKD0105RB		
		1033MKQ0101PQ		

		1033MKP0101PH			
		1047MKM0106VF			
		1046MKX0105A4			
		1046MKD0105RO			
		1046MKD0105QZ			
		1028MKB010CPV			
		1214MKW010281			
		1033MKQ0101PR			
		1033MKQ0101PT			
		1046MKC0105LF			
		1046MKX0105AE			
		1203MKV010DG5			
		1046MKX0105AK			
		1032MKE0100DV			
		1046MKD0105RD			
		1215MKX0102A8			
		1203MKV010DFZ			
		1033MKP0101PN			
		1031MKP010DLE			
NA					
Motorola	HMN1079B	NA	Mic	1	DAMAGED - DESTROY
Basement Secure Storage					
Motorola	XTL 5000 M20 URS 9PW1AN	500CMF0395 500CMF0394	Radio	3	Hold for Trade-In
		Unknown			
	XTL 5000 L20URS9PW1AN	MQQPYDAR 276CMZ0524 MQQPYDAB MQQPYDB0		4	Hold for Trade-In
Dispatch Supervisor Office					
Dell	1908fPt	CN-0D307J-74445-960-DPG5	Monitor	3	
HP	L1950	CNC914QR6W CNCK9020L68	Monitor	2	
Canvys	C22WT	CL2286ATA304161 CL2286ATA304156 CL2286ATA304128	Monitor	3	
NEC	AS191WM-BK	1X531921TA 1X531947TA 1X531949TA	Monitor	3	
Mitel	NEVO I 6873i SIP	2EHFW17170E3 2EHFW17170CR 2EHFW17170AL	Phone	3	
JVC	C-13010		8413691 TV	1	
ViewSonic	VA705-LED	T9T150220435 T9T150220430	Monitor	2	NIB
Samsung	UN32EH4050F	Z4NW3CSCA39451H Z4NW3CSCA39533L	TV	2	
HP	LaserJet P2035n LaserJet 2200dn	CNB9X20945 CNGRC70043	Printer Printer	1 1	
TSSI	TSS-20s31	TS20317730	Monitor	1	
Cellular Specialties, Inc.	CSI-BDA 51062-S8S	CBL00173	Cellular Signal Device	1	
Black & Decker	Fire Storm 18V	20022152	Skillsaw	1	

Cantex	NA	NA	8x8x4 Junction Box	1	
Electronic Tracking Systems	NA	NA	NA	1	DESTROY
Box 111					
AASTRA	6757I	ODO911OAD3	Phone	5	
		ODO911OA3A			
		ODO911OA35			
		ODO911OA85			
		ODO911OACB			
Polycorn	SoundPoint IP 601 SIP	0004F21COA49	Phone	1	
Box 112					
Airbus DS Communications	4210022G-11-SR04	QY100162	Dispatch System Speaker	5	
		QY100180			
		QY100088			
		QY100205			
		QY100070			
	4210022G-12-SR03	UT100299	Dispatch System Speaker	2	
		UN100069			
	5855-12(USB)	5855-12-112414-0081	Dispatch System Keypad	4	
		5855-12-110414-0164			
		5855-12-110414-0162			
		5855-12-112414-0086			
	Sound Arbitration Module (SAM) 850808-00902	18990 B			
		07788 B			
		18989 B			
		07789B			
		07791 B			
		18393 B			
		18394 B			
		07787 B			
		07790 B			
Genovation	CP24-USBHID	CP-24-USB-042815-0528	Dispatch System Keypad	1	
Vesta Solutions Inc.	5963-12	5963-12-0102190003	Dispatch System Keypad	2	
		5963-12-0102190033			
Motorola	4210031G-02-SR03	NA		5	
	4210031G-02-SR04	NA		2	
	USB Jackbox Enhanced DDN9493A	740CMW0965	Dispatch System Jackbox	7	
		740CMW0971			
		740CMW0968			
		740CMW0964			
		740CMW0963			
		740CNP0349			
		740CQL0214			
	B1914A	4431QN0080	Dispatch Gooseneck Mic	4	
		4431QL0241			
		4431MY0331			
		4431MG0496			
Dell	FD-05PUB	19308803-64/6794172	Floppy Disk Drive	1	
Unknown	Unknown	Unknown	Bracket and Cables	1	
Plantronics	SupraPlus HW251N	NA	Dispatch Headset	9	
	SHS1890-15	NA	PTT Headset Amplifier	1	
Canon	PIXMA K10249	FCVB59756	Printer	1	
Box 113					

Motorola	4210031G-02-SR03	NA	Jackbox Kit	2	
	i355 LINC H72XAH6RR1AN	364YHS472J	Rugged Phone	1	
Plantronics	CA12CD-S	NA	PTT Adapter	1	NIB
	CA12CD-S	NA	PTT Adapter	9	
	NA	NA	Jackbox Handset	8	
	Vista M12 ED5278 F5	NA	Headset Amplifier	1	
	Unknown	NA	Dispatch Headset	2	
	EncorePro 510	NA	Dispatch Headset	3	
	80322-01	NA	Headset Amplifier Spare Batteries	12	
	27019-03	NA	Adapter Trainer	1	
Clipper Twin Switch	SP-522-327	NA	Dispatch Footswitch	3	
IPC Command Systems	900-0399 REV A	NA	PTT Desk Mic	3	
Kenwood	KMC-9C	NA	PTT Desk Mic	2	
Unknown	P34T1772AFL01L0200418701800	NA	Bracket	1	
Konexx	100 Recording Interface	100	Phoneline Recorder	1	
Box 114					
Vesta Solutions	4210031G-02-SR02	NA	Jackbox Kit	4	
Motorola	NA	NA	Box of Accessories for SAM Unit	1	
Olympus	MAUSB-10	01L35225M2B	Card Reader/Writer	1	
Bio-Key	TCRU1C5BB1AC2A	2359	USB Fingerprint Reader	3	
		2360			
		2358			
Sony	MPF88E	20305678	Floppy Disk Drive	1	
PalmOne	Tungsten	PN20UST26R1JA	PDA	1	DESTROY
Box 115					
Uniden	UV360	NA	4G/LTE Fleet Communication Device	1	
Smoothtalker	DCH6i	NA	4G/LTE Booster Power Supply	1	
	Mobile CX6 4G LTE	3003554	4G/LTE Booster	1	
Unknown	Unknown	NA	Speaker	1	
Unknown	Unknown	NA	Radio and GPS Antennas	1	
Unknown	Unknown	NA	Cabin Mic	1	

For auction at GovDeals.

Model	Serial Number
HP 8300	MXL2381x2s
Dell optiplex	Cryv3w1
Dell optiplex	Dzpykn1
HP z400	2ua14118t2
HP z400	2ua14118rh
HP z400	2ua14118r8
HP z400	2ua14118rj
Hp z400	2ua14118r9
Dell dimension	J3vbqb1
Dell precision	4b13yv1
HP 8000	Mxl0441208
HP DC7800	Mxl8330jv1
Dell optiplex	Jrm2qw1
Dell precision	Jz djvv1
Hp 8200	mxl1291ytl
Hp 8200	Mxl1292185
Hp dc7900	Mxl94001f3
Acer veriton	X6xz06
Hp 8200	2ua1271vzn
Hp dc7700	2ua7370gdv
Dell precision	Fotxxv1
Hp dc7700	2ua7370gdx
Hp 8000	Mxl107wrq
Hp 8000	Mxl0390c45
Hp 8000	Mxl0390c4n
Hp dc7700	mxl7251c38
Dell optiplex	JRL2rw1

Surplus

Side-by-Side Refrigerator - 1

White, About 33" wide, 66" high, 29 ¾" deep. The library does not have a loading deck, and staff are not available to assist with moving/loading.



Table - 1

About 28.5" tall, 59" wide, 17.5". The library does not have a loading deck, and staff are not available to assist with moving/loading.



Chairs – 4

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

