

**MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

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

SEPTEMBER 11, 2023, 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 09112023).

1. Constitution Week Proclamation.
2. Approval of the minutes of the August 28, 2023, regular meeting of the City Council.
3. Consideration: Resolution authorizing the sale or disposal of certain surplus property.
4. Consideration: Resolution authorizing the sale or disposal of a 2012 Chevrolet Tahoe and authorizing the trade for a Stryker Powered Stretcher.
5. Consideration: Resolution authorizing the execution of a contribution agreement (cost sharing) with Mountain Brook Board of Education with respect to the Junior High field improvements.
6. Consideration: Resolution recommending to the ABC Board the issuance of a Restaurant Retail Liquor license to Everest Sushi LLC (Maro).
7. Consideration: Resolution authorizing an increase to the EMS Standby Hourly rate for the Fire Department.
8. Consideration: Resolution authorizing a drainage improvement study by Schoel Engineering for the Montevallo Road and Overhill Road area.
9. Comments from residents and attendees.
10. Announcement: The next regular meeting of the City Council is September 25, 2023 at 7:00 p.m.
11. Announcement: The City Council shall conduct a public hearing at the next regular council session on September 25, 2023 at 7:00 p.m. to consider an Ordinance making Winthrop Avenue "one-way", restricting parking to one side on Winthrop Avenue, and restricting parking to one side on Norman Drive during the times of 2:30 p.m.-3:15 p.m. Monday-Friday.
12. Adjourn.

PROCLAMATION

WHEREAS, the Constitution of the United States of America, the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to rule by law; and

WHEREAS, September 17, 2023, marks the two hundred and thirty-sixth anniversary of the framing of the Constitution of the United States of America by the Constitutional Convention, providing a historic opportunity for all Americans to remember the achievements of our Founding Fathers and to reflect on the actions of Americans who for the past 236 years have defined the words of the Constitution by exercising their rights and responsibilities as citizens; and

WHEREAS, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebration which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17th through 23rd as Constitution Week;

NOW, THEREFORE, I, Stewart H. Welch III, by virtue of the authority vested in me as Mayor of the City of Mountain Brook, do hereby proclaim the week of September 17th through 23rd, 2023, as

CONSTITUTION WEEK

and encourage all residents to recognize and appreciate the importance of this enduring document to our nation and reaffirm our commitment to the rights and responsibilities of citizenship in this great nation, study the Constitution, and reflect on the privilege of being an American with all the rights and responsibilities which that privilege involves.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Mountain Brook to be affixed the 11th day of September of the year of our Lord 2023 and of the Independence of the United States of America, the 247th.

Stewart H. Welch III, Mayor

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
AUGUST 28, 2023**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were no virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 6:30 p.m. on the 28th day of August, 2023 (others were allowed to listen to the meeting by way of Internet video conference- no one did). Council President Smith called the pre-meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Gerald A. Garner
Graham L. Smith
Stewart Welch III, Mayor

Absent: Lloyd C. Shelton

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

1. AGENDA

1. Appointment of a City Prosecutor

Billy Pritchard- Council President Pro Tempore

- The committee interviewed 7 candidates
- The committee is recommending Ross Self
- The committee is also recommending increasing the hourly rate to \$175 an hour

Virginia Smith

- Item added to the formal agenda (Resolution No. 2023-132)

2. Review of making Winthrop Avenue “One Way” during school

Gerald Garner-Council Member

- Based on the desire to focus on public safety, a group was formed to discuss potential safety concerns with regards to traffic issues and first responders
- The group included a representative from Public Works, City Manager, City Attorney, City Traffic Engineer, Police Chief, Fire Chief, Deputy Fire Chief, and Battalion Fire Chief
- The group will identify areas of critical safety concerns
- As concerns are identified, it will be brought to the council to identify a remedy
- Public safety is paramount
- The first concern is Winthrop Avenue

Richard Caudle-Skipper Consultants (Traffic Engineer)

- There was a request of the possibility of making Winthrop Avenue one way during school hours
- A study was conducted on Winthrop Avenue

- For about 15 minutes, there are about 15 cars in the que on Winthrop Avenue
- Biggest concern is access for public safety vehicles
- On Norman Drive, cars were parked on both sides of the road which would prevent any public safety vehicles to access that road
- Recommendation: Have a public hearing to discuss making Winthrop Avenue one way during school hours, post no parking signs on one side of Winthrop Avenue and Norman Drive to only allow parking on one side of the road

Graham Smith-Council Member

- Concern is taking away parking spaces for carpool pickup

Sam Gaston-City Manager

- Will send out letters to the surrounding residents and the school informing them of the Public Hearing regarding the recommendations

3. Change Order for Jamison Trail project

Joao Eliason-Nimrod Long and Associates

- This is the second change order
- The Friends of Jemison raised more money that allowed a few areas to be added back into the contract (that was originally deducted).

Virginia Smith

- Item added to the formal agenda (Resolution No. 2023-136)

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

2. EXECUTIVE SESSION

Council President Virginia Smith made a motion that the City Council convenes in executive session to discuss a matter of potential litigation and that the City Council shall reconvene to the formal meeting upon conclusion of the executive session. The City Attorney certified that the subject matters were allowed to be discussed in executive pursuant to Alabama Law. The motion was seconded by Council President Pro Tempore Pritchard. Then, upon the question being put and the roll called, the vote was recorded as follows:

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

Nays:	None
-------	------

3. ADJOURNMENT

There being no further matters for discussion Council President Virginia Smith adjourned the pre-meeting at approximately 6:51 pm.

4. CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the regular session of the City Council of the City of Mountain Brook.

Brook, Alabama held at City Hall, Pre-Council Room (A-106) on August 28, 2023, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

City Clerk, Approved by
City Council September 11, 2023

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
AUGUST 28, 2023**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There was no virtual attendee at the meeting.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:03 p.m. on the 28th day of August, 2023 (others were allowed to listen to the meeting by way of Internet video conference-no one did). Council President Virginia Smith called the meeting to order, and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Gerald A. Garner
Graham L. Smith
Stewart Welch III, Mayor

Absent: Lloyd C. Shelton

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

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

1. CONSENT AGENDA

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

Approval of the minutes of the August 14, 2023, regular meeting of the City Council

2023-131	Authorize the sale or disposal of certain surplus property	Exhibit 1, Appendix 1
2023-132	Appoint J. Ross Self to the position of Prosecutor of the City of Mountain Brook	Exhibit 2, Appendix 2
2023-133	Ratify change order No. 1 with respect to the Canterbury United Methodist Church drainage improvement project	Exhibit 3, Appendix 3
2023-134	Authorize payment from the General Fund of \$300,000 into the City of Mountain Brook Section 115 (retiree medical insurance) Trust	Exhibit 4, Appendix 4
2023-135	Execute an assignment and first amendment to agreement with EMS Management and Consultants Inc. with respect to the debt recovery and collection services on behalf of the Mountain Brook Fire Department	Exhibit 5, Appendix 5

2023-136 Approve change order No. 2 with respect to the Jemison Nature Trail Improvement Project Exhibit 6, Appendix 6

Thereupon, the foregoing minutes and resolutions (Nos. 2023-131 through 2023-135), were introduced by Council President Virginia Smith and a motion for their immediate adoption made by Council Member Garner. The minutes and resolutions were then considered by the City Council. Council Member Graham Smith seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

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

Nays: None

Abstained: None

Council President Virginia Smith thereupon declared that said minutes and resolutions (Nos. 2023-131 through 2023-135) were adopted by a vote of 4—0 and as evidence thereof he signed the same.

2. INAUGURATION OF MOUNTAIN BROOK PROSECUTOR

K.C. Hairston-Mountain Brook Judge

- Issued the oath of office to Ross Self

3. COMMENTS FROM RESIDENCES AND ATTENDEES

(There were no public comments)

4. ANNOUNCEMENT

Council President Virginia Smith announced the next regular meeting of the City Council is September 11, 2023, 7:00p.m.

5. EXECUTIVE SESSION AND ANNOUNCEMENT

Council President Pro Tempore Pritchard made a motion that the City Council convenes in executive session to discuss a matter of real estate and that the City Council shall adjourn 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 Garner. Then, upon the question being put and the roll called, the vote was recorded as follows:

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

Nays: None

There being no further business to come before the City Council, Council President Virginia Smith adjourned the meeting at approximately 7:08 p.m.

6. 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 August 28, 2023, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

City Clerk Approved by
City Council September 11, 2023

EXHIBIT 1

RESOLUTION NO. 2023-131

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

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

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

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

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

EXHIBIT 2

RESOLUTION NO. 2023-132

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby appoints J. Ross Self to the position of Prosecutor of the City of Mountain Brook, to serve at the pleasure of the Council or until his successor be duly appointed.

BE IT FURTHER RESOLVED the compensation rate of the City Prosecutor shall be \$175.00 per hour (plus out-of-pocket expenses) and is subject to annual cost of living increases.

RESOLUTION NO. 2023-138

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

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

ADOPTED: This 11th day of September, 2023.

Council President

APPROVED: This 11th day of September, 2023.

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 September 11, 2023, as same appears in the minutes of record of said meeting.

City Clerk

Komatsu Backhoe

Model: WB 150 AWS-2

Manufactured in 2002

Serial #: 150F80046

2323 hours

Machine has been replaced



Vermeer Mini-Skid Steer

Model: CTX 100

Serial #: 1VRZ080HXJ1001163

Manufactured in 2018

Machine has been replaced.



Case TR 320 Loader (Skid Steer)

Manufactured in 2012

Serial #: JAFTR320KCM440393

Unit has been replaced.

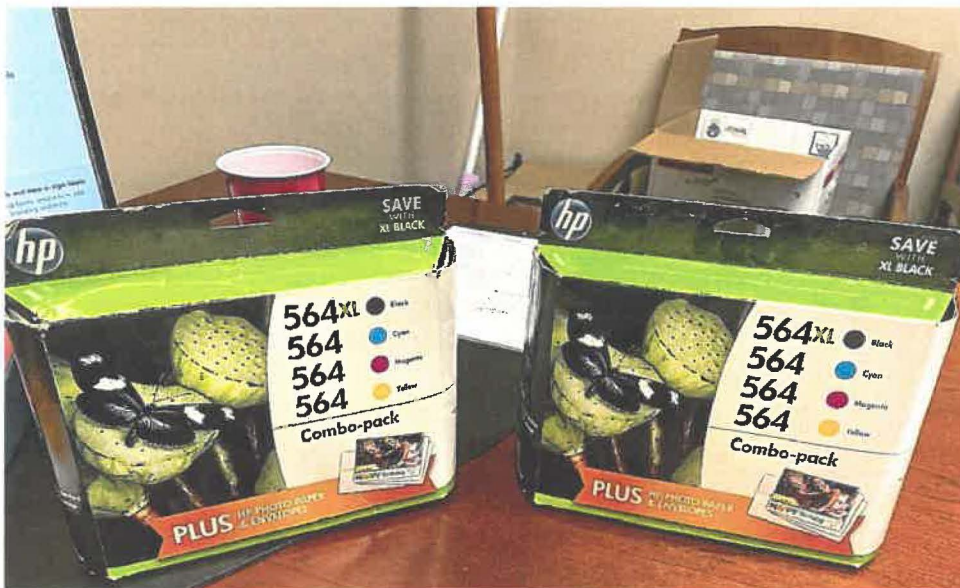


Surplus

**Acrylic Stands -
86, various sizes, scratched**



**HP Photo Paper and Envelopes -
2, unknown purchase date**



XL Eraser Replacement pads - 8







RESOLUTION NO. 2023-139

**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 2012 Chevrolet Tahoe (VIN 1GNSK2E0XCR260694) owned by the City of Mountain Brook, Alabama are no longer needed for public or municipal purposes and is hereby declared surplus property; and

Section 2. That the City Manager, or his designated representative, is hereby authorized and directed to trade said property for a Stryker Powered Stretcher (Serial Number: 110940453)

ADOPTED: This 11th day of September, 2023.

Council President

APPROVED: This 11th day of September, 2023.

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 September 11, 2023, as same appears in the minutes of record of said meeting.

City Clerk



City of
Mountain Brook

Heather Richards <richardsh@mtnbrook.org>

Suplus Equipment

8 messages

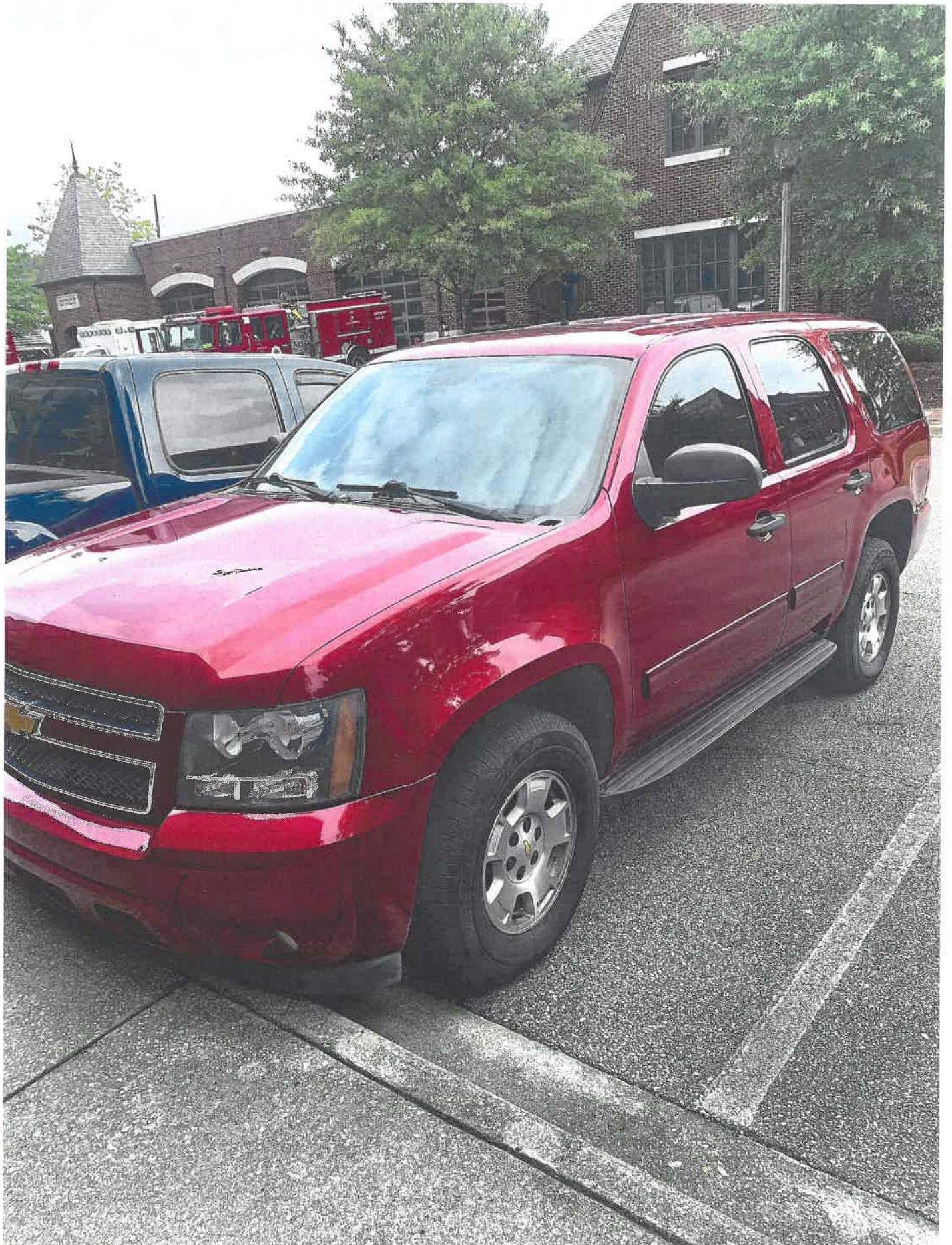
Jonathan King <kingj@mtnbrook.org>

Thu, Aug 31, 2023 at 11:50 AM

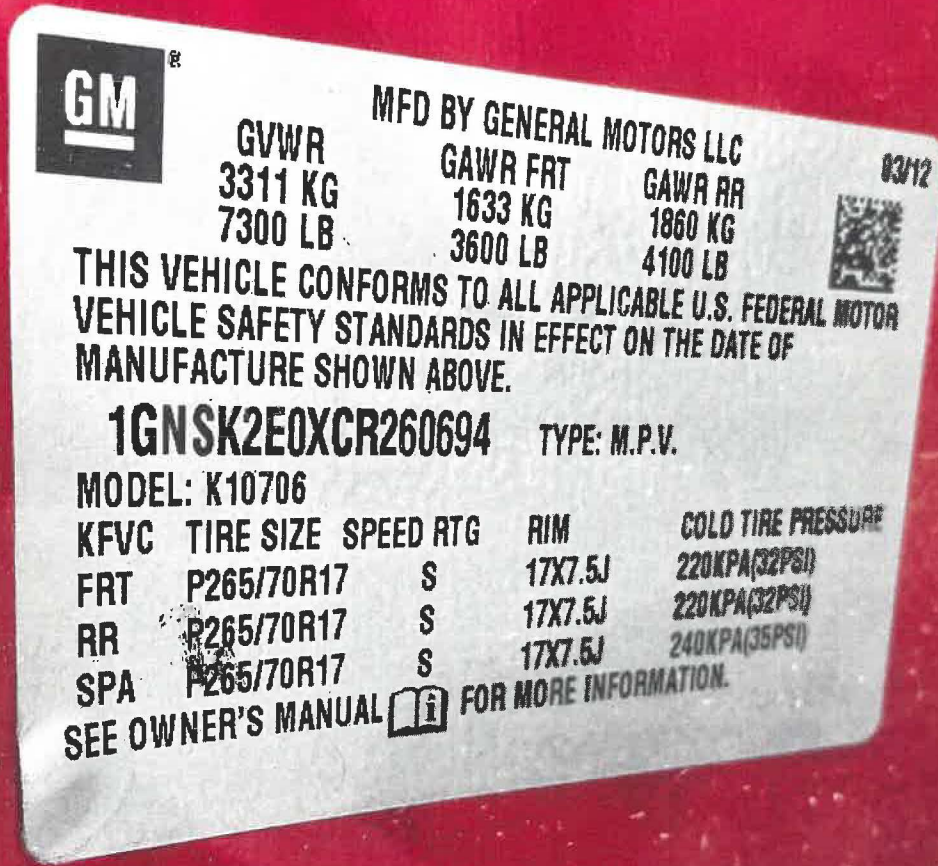
To: Heather Richards <richardsh@mtnbrook.org>, David Kennedy <kennedyd@mtnbrook.org>, Christopher Mullins <mullinsc@mtnbrook.org>

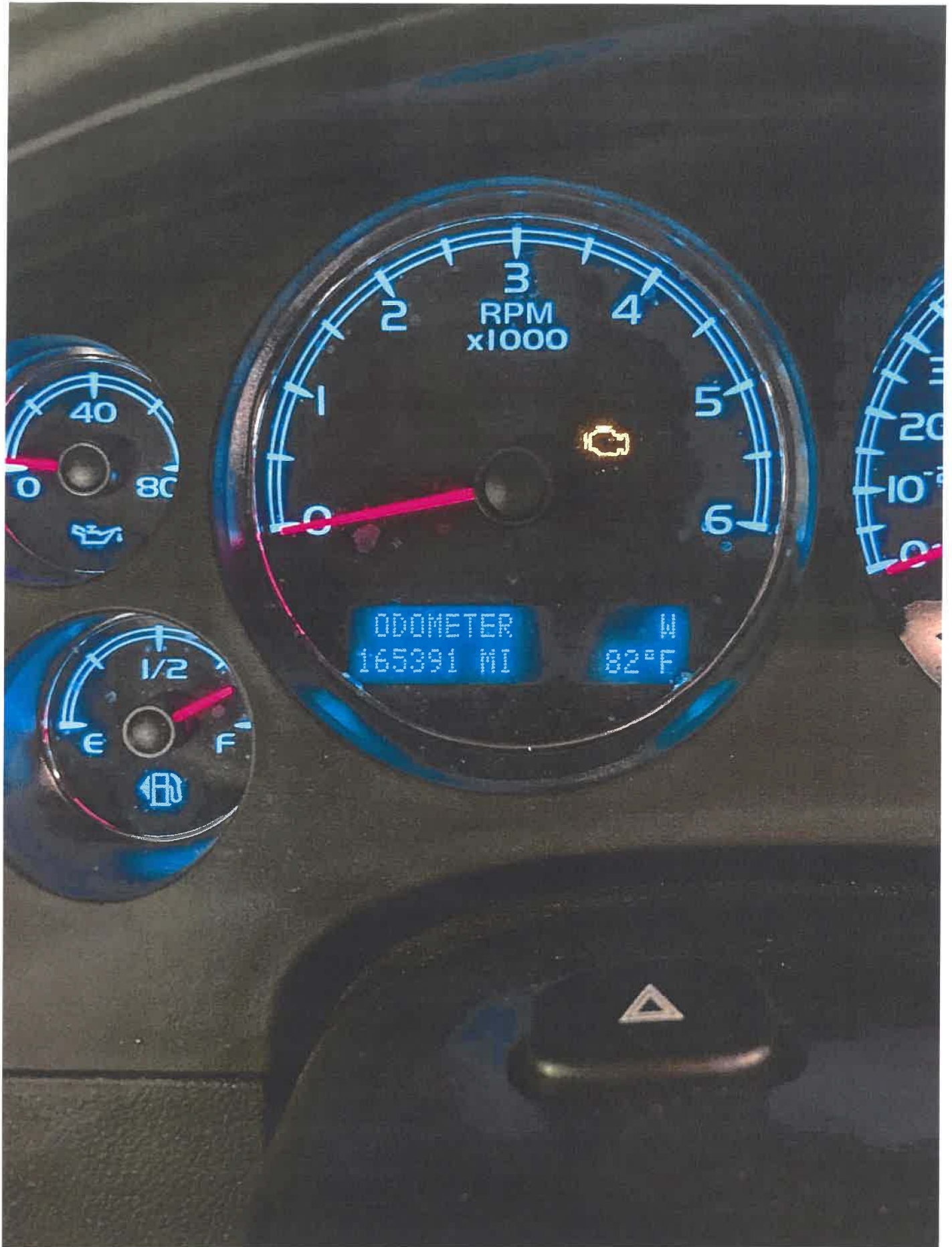
We would like to have the vehicle below listed as surplus. Will you place this on the agenda for the next Council meeting?

2012 Chevrolet Tahoe
VIN 1GNSK2E0XCR260694
Mileage- 165,391









--

Thanks,

Jonathan King
Executive Lieutenant
Mountain Brook Fire Department
[102 Tibbett St](#)
[Mountain Brook, AL 35213](#)
205/802/3842 Office
205/438/3006 Work



Heather Richards <richardsh@mtnbrook.org>

Thu, Aug 31, 2023 at 12:47 PM

To: Jonathan King <kingj@mtnbrook.org>Cc: David Kennedy <kennedyd@mtnbrook.org>, Christopher Mullins <mullinsc@mtnbrook.org>

I will add it to the agenda. We have a new auction company that we are using (Pearce Auction). Do you want this vehicle listed with them once it is surplus?

Heather Richards

City Clerk

City of Mountain Brook

P.O. Box 130009

Mountain Brook, AL 35213

Direct - 205-802-3823**Facsimile** - 205-874-0611

[Quoted text hidden]

Jonathan King <kingj@mtnbrook.org>

Thu, Aug 31, 2023 at 12:53 PM

To: Heather Richards <richardsh@mtnbrook.org>Cc: David Kennedy <kennedyd@mtnbrook.org>, Christopher Mullins <mullinsc@mtnbrook.org>

No ma'am. We just need it declared surplus. We've talked to Whit Colvin and we're going to trade this for another item and he advised we need to declare it as surplus to make that work.

[Quoted text hidden]

Heather Richards <richardsh@mtnbrook.org>

Thu, Aug 31, 2023 at 1:07 PM

To: Jonathan King <kingj@mtnbrook.org>Cc: David Kennedy <kennedyd@mtnbrook.org>, Christopher Mullins <mullinsc@mtnbrook.org>

Sounds good. Thank you.

Heather Richards

City Clerk

City of Mountain Brook

P.O. Box 130009

Mountain Brook, AL 35213

Direct - 205-802-3823**Facsimile** - 205-874-0611

[Quoted text hidden]

Jonathan King <kingj@mtnbrook.org>

Thu, Aug 31, 2023 at 1:12 PM

To: Heather Richards <richardsh@mtnbrook.org>

Cc: David Kennedy <kennedyd@mtnbrook.org>, Christopher Mullins <mullinsc@mtnbrook.org>

Thanks

[Quoted text hidden]

Christopher Mullins <mullinsc@mtnbrook.org>

Thu, Aug 31, 2023 at 1:06 PM

To: Heather Richards <richardsh@mtnbrook.org>

Cc: Jonathan King <kingj@mtnbrook.org>, David Kennedy <kennedyd@mtnbrook.org>

No, this vehicle will not be auctioned.

Sent from my iPhone

On Aug 31, 2023, at 12:47 PM, Heather Richards <richardsh@mtnbrook.org> wrote:

I will add it to the agenda. We have a new auction company that we are using (Pearce Auction). Do you want this vehicle listed with them once it is surplus?

Heather Richards

City Clerk

City of Mountain Brook

P.O. Box 130009

Mountain Brook, AL 35213

Direct - 205-802-3823

Facsimile - 205-874-0611

On Thu, Aug 31, 2023 at 11:50 AM Jonathan King <kingj@mtnbrook.org> wrote:

We would like to have the vehicle below listed as surplus. Will you place this on the agenda for the next Council meeting?

2012 Chevrolet Tahoe

VIN 1GNSK2E0XCR260694

Mileage- 165,391

<IMG_0280.jpg>

<IMG_0283.jpg>

<IMG_0282.jpg>

<IMG_1609.jpg>

[Quoted text hidden]

Heather Richards <richardsh@mtnbrook.org>

Tue, Sep 5, 2023 at 10:45 AM

To: Christopher Mullins <mullinsc@mtnbrook.org>

Cc: Jonathan King <kingj@mtnbrook.org>, David Kennedy <kennedyd@mtnbrook.org>

I believe this vehicle is being swapped for another vehicle. I need to put the specifics of that vehicle on the resolution. Will you please provide me with the information on the vehicle we will be receiving?

Heather Richards

City Clerk

City of Mountain Brook

P.O. Box 130009

Mountain Brook, AL 35213

Direct - 205-802-3823

Facsimile - 205-874-0611

[Quoted text hidden]

Jonathan King <kingj@mtnbrook.org>

Tue, Sep 5, 2023 at 5:00 PM

To: Heather Richards <richardsh@mtnbrook.org>

Cc: Christopher Mullins <mullinsc@mtnbrook.org>, David Kennedy <kennedyd@mtnbrook.org>

Heather,

It is being traded for a powered stretcher of equal value or greater value. Chief talked to Sam and Whit and I was just following their instructions which were to have the Tahoe declared surplus and then trade the items using a bill of sale template. I'm sorry I did not include you in that.

The item we are receiving:

Stryker Powered Stretcher with serial number pictured below. Do you also need a picture of the stretcher?



RESOLUTION NO. 2023-140

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a contribution agreement (costs sharing) between the City and Mountain Brook Board of Education with respect to the Junior High field project.

ADOPTED: This 11th day of September, 2023.

Council President

APPROVED: This 11th day of September, 2023.

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 September 11, 2023, as same appears in the minutes of record of said meeting.

City Clerk

CONTRIBUTION AGREEMENT

28th **THIS CONTRIBUTION AGREEMENT** (the "Agreement") is made and entered into as of the day of August, 2023 (the "Effective Date") by and among the City of Mountain Brook, an Alabama municipal corporation (the "City"), and the Mountain Brook City Board of Education, a quasi-corporation and agency and instrumentality of the State of Alabama (the "Board").

RECITALS:

- A. The Board owns certain property located in the City where Mountain Brook Junior High School is located (the "Property").
- B. The City and the Board wish to improve the Junior High School facilities, as well as provide additional space for recreation for the children and citizens of the City, including, Mountain Brook Athletics.
- C. The City and the Board have determined that it is in the best interest of the schools and the City to install artificial turf, restrooms, parking, LED lighting upgrades and tennis courts at the Junior High School (the "Project") (C-20221221-853/LMBHM220030, Resolution No. 2023-047).
- D. The Project will be constructed on the Board's Property and will be paid for jointly by contributions from the Board and the City.
- E. The City and the Board wish to confirm their agreement for the Project by this Agreement.

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confirmed, the parties hereto agree as follows:

1. **PROPERTY DILIGENCE.**

1.1 **Plans.** The City shall be responsible for obtaining the plans for the Project. The Board shall consult with the City on those plans for final approval by and among the City and the Board.

1.2 **Entitlements and Approvals.** The City shall be responsible for all entitlements and approvals permits, licenses, variances, special exceptions, conditional use authorizations, zoning changes and other governmental approvals that are required for the Project.

2. **PROPERTY OPERATION.**

2.1 **Cooperation and Management.** After the Effective Date, the Board agrees to allow the City and its agents to enter the Property for the development, construction and items related thereto for the Project and to maintain its existing property insurance policy covering the Property in full force and effect.

2.2 **Updates.** The City agrees that until the Project is completed it will promptly notify the Board, in writing, if the City obtains knowledge or receives written notice of (a) any event which has or is likely to have an adverse effect on the operation, physical condition or financial condition of the Property, (b) any violation, potential violation or alleged violation of any legal requirements or the encumbrances

ma

related to the Property, (c) any legal action or governmental proceeding related to the Property or which may affect the City's ability to perform its obligations under this Agreement, (d) any default under any agreement related to the Property, (e) any damage to or destruction of the Property by fire or other casualty, or (f) any actual, pending or threatened taking of the Property by condemnation or eminent domain.

3. **DEVELOPMENT.**

3.1 **Construction of the Project.** The City shall take the lead in obtaining bids for the costs of the Project and shall be responsible for hiring and contracting with the appropriate architect, contractor and project manager to be responsible for and oversee the development and construction of the Project.

3.2 **Financing.** The City and the Board agree that the costs of the Project have been estimated to be Three Million Nine Hundred Ninety Thousand Dollars (\$3,990,000) ("Construction Cost Estimate"). The City and The Board agree that the construction costs shall be paid through the following contribution percentages until such time as all construction costs, including, but not limited to the Construction Cost Estimate and any increases, add-ons, change orders, or cost overruns ("Construction Costs"):

(1) The City shall contribute Fifty Percent (50%) of all Construction Costs and the Board shall contribute Fifty Percent (50%) of all Construction Costs. The Board shall pay the City its portion of the Construction costs upon completion and acceptance of the project by both parties.

4. **MISCELLANEOUS.**

4.1 **Consents, Approvals and Discretion.** Except as herein expressly provided to the contrary, whenever this Agreement requires any consent or approval to be given by a party, or whenever a party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

4.2 **Choice of Law.** The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without regard to conflict of laws principles.

4.3 **Benefit/Assignment.** Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors, and assigns. No party may assign this Agreement without the prior written consent of the other parties; provided, however, that any party may, without the prior written consent of the other parties, assign its rights and delegate its duties hereunder to one or more affiliates, but in such event, the assignor shall be required to remain obligated hereunder in the same manner as if such assignment had not been affected.

4.4 **Waiver of Breach.** The waiver by any party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or any other provision hereof.

4.5 **Severability.** In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this Agreement, which shall be and remain in full force and effect, enforceable in accordance with its terms.

4.6 **Gender and Number.** Whenever the context of this Agreement requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words herein shall include the singular and plural.

4.7 **Divisions and Headings.** The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

4.8 **No Partnership or Joint Venture.** The terms and provisions of this agreement are intended solely to create a Contribution Agreement and are not intended and do not create any partnership or joint venture between the Parties hereto.

4.9 **Third-Party Beneficiaries.** The terms and provisions of this Agreement are intended solely for the benefit of the City and the Board and their respective permitted successors or assigns, and it is not the intention of the parties to confer, and this Agreement shall not confer, third-party beneficiary rights upon any other person.

4.10 **Enforcement of Agreement.** The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

4.11 **Entire Agreement/Amendment.** This Agreement supersedes all previous contracts or understandings, including any offers, letters of intent, proposals or letters of understanding, and constitutes the entire agreement of whatsoever kind or nature existing between or among the parties respecting the within subject matter, and no party shall be entitled to benefits other than those specified herein. As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect. The parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or verbal, not expressly incorporated herein are superseded, and no changes in or additions to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto.

4.12 **Counterparts.** This Agreement may be executed in separate counterparts. Each such counterpart shall be deemed an original and all of which shall constitute one and the same instrument. The signature pages and notary acknowledgments, if any, from one or more separate executed counterparts may be combined together with one or more other separate executed counterparts to form a single document. This Agreement shall be fully executed when each party whose signature is required has signed and delivered at least one (1) counterpart even though no one (1) counterpart contains the

signatures of all of the parties to this Agreement. This Agreement and any instrument, document or agreement to be executed or delivered in connection herewith may be executed and delivered by facsimile transmission, electronic mail or other electronic means and the electronic signature of a party, or a signature transmitted or delivered by electronic means, shall be binding upon such party as fully as though such signature was executed and delivered in person. An electronic or photocopy of this Agreement, certified as being in full force and effect, shall be admissible into evidence in any judicial proceeding and no party shall be required to produce the copy of this Agreement containing the original signatures of the parties.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

MOUNTAIN BROOK CITY BOARD OF EDUCATION
a quasi-corporation and agency and instrumentality of
the State of Alabama

By: 

Name: Richard Barlow

Title: Superintendent

CITY OF MOUNTAIN BROOK, ALABAMA
An Alabama municipal corporation

By: _____

Name: _____

Title: _____

RESOLUTION NO. 2023-141

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby recommends to the State of Alabama, Alcoholic Beverage Control Board, the issuance of a 020 – Restaurant Retail Liquor license to Everest Sushi LLC, (trade name: Maro), 361 Rele Street Mountain Brook, AL 35223.

BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to forward a copy of this resolution to the State of Alabama, Alcoholic Beverage Control Board.

ADOPTED: This 11th day of September, 2023.

Council President

APPROVED: This 11th day of September, 2023.

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 September 11, 2023, 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
Facsimile: 205.879.6913
www.mtnbrook.org

September 12, 2023

Ms. Valencia Johnson
Alabama ABC Board
234 Aquarius Drive, Suite 103
Homewood, AL 35209

Facsimile: (205) 942-2101

Gentlemen:

Attached is a copy of a resolution passed at the June 12, 2023, City Council meeting recommending the issuance of 020 – Restaurant Retail Liquor license as follows:

Everest Sushi LLC
Trade name: Maro
361 Rele Street
Mountain Brook, AL 35223

If you have any questions, please call me at 802-3823.

Sincerely,

Heather Richards
City Clerk

Enclosure

c: Mollie Brunson Camara
ainabhi@yahoo.com



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20230901081133188

Type License: 020 - RESTAURANT RETAIL LIQUOR

State: \$300.00 County: \$300.00

Type License:

State: County:

Trade Name: MARO

Filing Fee: \$50.00

Applicant: EVEREST SUSHI LLC

Transfer Fee:

Location Address: 361 RELE ST MOUNTAIN BROOK , AL 35223

Mailing Address: 429 GREEN SPRINGS HWY STE 161; SPACE 315 BIRMINGHAM, AL 35209

County: JEFFERSON Tobacco sales: NO

Tobacco Vending Machines:

Product Type:

Type Ownership: LLC

Book, Page, or Document info: LR201317 15066

Do you sell Draft Beer?:

Date Incorporated: 08/26/2013 State incorporated: AL

County Incorporated: JEFFERSON

Date of Authority:

Federal Tax ID: 46-3497251

Alabama State Sales Tax ID: R009710856

Name:	Title:	Date and Place of Birth:	Residence Address:
ABHISHEK SAINJU 6712598 - AL	MEMBER	10/02/1975 NEPAL	317 HUNTINGTON PARC RD BIRMINGHAM , AL 35226

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES

Does ABC have any actions pending against the current licensee? NO

Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO

Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO

Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES

Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of a corporation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO

Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO

Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

Contact Person: MOLLIE BRUNSON CAMARA

Home Phone: 205-563-2773

Business Phone: 205-563-2773

Cell Phone: 205-563-2773

Fax:

E-mail: AINABHI@YAHOO.COM

PREVIOUS LICENSE INFORMATION:

Previous License Number(s)

Trade Name:

License 1:

Applicant:

License 2:



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20230901081133188

If applicant is leasing the property, is a copy of the lease agreement attached? YES

Name of Property owner/lessor and phone number: LANE PARKE RETAIL 205-254-1997

What is lessors primary business? REAL ESTATE

Is lessor involved in any way with the alcoholic beverage business? NO

Is there any further interest, or connection with, the licensee's business by the lessor? NO

Does the premise have a fully equipped kitchen? YES

Is the business used to habitually and principally provide food to the public? YES

Does the establishment have restroom facilities? YES

Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? YES

Will the business be operated primarily as a package store? NO

Building Dimensions Square Footage: 2775 Display Square Footage:

Building seating capacity: 35 Does Licensed premises include a patio area? NO

License Structure: SINGLE STRUCTURE License covers: ENTIRE STRUCTURE

Number of licenses in the vicinity: 0 Nearest:

Nearest school: Nearest church: Nearest residence: 0 blocks

Location is within: CITY LIMITS Police protection: CITY

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20230901081133188

Initial each

MBC
MBC
MBC

Signature page

In reference to law violations, I attest to the truthfulness of the responses given within the application.

In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within the application.

In reference to ACT No. 80-529, I understand that if my application is denied or discontinued, I will not be refunded the filing fee required by this application.

In reference to Special Retail or Special Events retail license, Wine Festival and Wine Festival Participant Licenses, and Food or Beverage Truck Licenses, I agree to comply with all applicable laws and regulations concerning this class of license, and to observe the special terms and conditions as indicated within the application.

In reference to the Club Application information, I attest to the truthfulness of the responses given within the application.

In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.

In accordance with Alabama Rules & Regulations 20-X-5-.01(4), any social security number disclosed under this regulation shall be used for the purpose of investigation or verification by the ABC Board and shall not be a matter of public record.

The undersigned agree, if a license is issued as herein applied for, to comply at all times with and to fully observe all the provisions of the Alabama Alcoholic Beverage Control Act, as appears in Code of Alabama, Title 28, and all laws of the State of Alabama relative to the handling of alcoholic beverages.

The undersigned, if issued a license as herein requested, further agrees to obey all rules and regulations promulgated by the board relative to all alcoholic beverages received in this State. The undersigned, if issued a license as herein requested, also agrees to allow and hereby invites duly authorized agents of the Alabama Alcoholic Beverage Control Board and any duly commissioned law enforcement officer of the State, County or Municipality in which the license premises are located to enter and search without a warrant the licensed premises or any building owned or occupied by him or her in connection with said licensed premises. The undersigned hereby understands that he or she violate any provisions of the aforementioned laws his or her license shall be subject to revocation and no license can be again issued to said licensee for a period of one year. The undersigned further understands and agrees that no changes in the manner of operation and no deletion or discontinuance of any services or facilities as described in this application will be allowed without written approval of the proper governing body and the Alabama Alcoholic Beverage Control Board.

I hereby swear and affirm that I have read the application and all statements therein and facts set forth are true and correct, and that the applicant is the only person interested in the business for which the license is required.

Applicant Name (print):

Signature of Applicant:

Notary Name (print):

Notary Signature:

Commission expires:

Application Taken:

App. Inv. Completed:

Forwarded to District Office:

Submitted to Local Government:

Received from Local Government:

Received in District Office:

Reviewed by Supervisor:

Forwarded to Central Office:

Receipt Confirmation Page

Receipt Confirmation Number: **20230901081133188**
Application Payment Confirmation Number: **94292064**

Payment Summary	
Payment Item	Fee
Application Fee for License 020	\$50.00
Total Amount to be Charged	\$50.00

License Payment Confirmation Number:

Payment Summary			
Payment Item	County Fee	State Fee	Total Fee
020 - RESTAURANT RETAIL LIQUOR	\$300.00	\$300.00	\$600.00
			\$0.00
Total Amount to be Charged	\$300.00	\$300.00	\$600.00

Application Type

Application Type: APPLICATION

Applicant Information

License Type 1: 020 - RESTAURANT RETAIL LIQUOR
License Type 2:
License County: JEFFERSON
Business Type: LLC
Trade Name: **MARO**
Applicant Name: **EVEREST SUSHI LLC**
Location Address: **361 RELE ST**
MOUNTAIN BROOK , AL 35223
Mailing Address: **429 GREEN SPRINGS HWY STE 161; SPACE 315**
BIRMINGHAM, AL 35209
Contact Person: **MOLLIE BRUNSON CAMARA**
Contact Home Phone: **205-563-2773**
Contact Business Phone: **205-563-2773**
Contact Fax:
Contact Cell Phone: **205-563-2773**
Contact Email Address:
Contact Web Address:



**Alabama Alcoholic Beverage Control Board
Licensing Division**

Memorandum of Understanding for Restaurant Retail Liquor License

Restaurant Retail Liquor Licenses shall be issued only to reputable persons for locations which are **"habitually and principally"** used for the purpose of preparing and serving meals for the public to consume on the licensed premises during normal and reasonable dining hours. Only those locations whose customary and primary business is preparing and serving meals to the public will be issued a Restaurant Retail Liquor License.

Restaurant Retail Liquor Licenses applicants shall comply with all pertinent and related requirements of State, County, and where applicable, Municipal health departments prior to licensing and shall remain in compliance thereafter for as long as said license shall remain valid.

All Restaurant Retail Liquor Licensees shall have a fully equipped and operational kitchen on the licensed premises. The Licensee shall maintain and operate said kitchen and shall, upon order of a customer, prepare and serve all food items shown on its menu during normal and reasonable dining hours. Exceptions shall be made where there is a known and provable shortage or temporary unavailable supply of a food item.

Any applicant or Licensee shall, upon request, provide to the ABC Board, any records, books, ledgers, menus, receipts, or other documentation necessary to demonstrate compliance with this regulation.

In addition to the above Rule and Regulation, Title 28-3-1(23) defines a meal as a "diversified selection of food some of which is not susceptible of being consumed in the absence of at least some articles of tableware and which cannot be conveniently consumed while one is standing or walking about".

Additionally, Title 28-3A-13 states that a Restaurant Retail License is "for on premise consumption" and does not allow sales for off-premises consumption with the exception of re-corked wine conforming to 28-3A-20.1.

By signing this memorandum of understanding, the Licensee agrees and understands the requirements of obtaining and maintaining a Restaurant Retail Liquor License. Any deviation from these requirements will prohibit the ABC Board from issuing this type of License. Furthermore, failing to follow these requirements after obtaining a Restaurant Retail Liquor License could result in the protest of the renewal of this type license.

Signature Mollie Camara Date 9-1-23
Print Name Mollie Camara Position Held POA

RESOLUTION NO. 2023-142

WHEREAS, the hourly rate for standby Emergency Medical Services (EMS) and Ambulance services is currently \$75.00 plus one hour of travel time which was last increased in 2017 and;

WHEREAS, labor and other operating costs increase annually and;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes an increase to the Emergency Medical Services (EMS) Standby hourly rate to \$110.00 (plus one additional hour of travel time) effective October 1, 2023.

ADOPTED: This 11th day of September, 2023.

Council President

APPROVED: This 11th day of September, 2023.

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 September 11, 2023, as same appears in the minutes of record of said meeting.

City Clerk



From: Stacey Cole [mailto:coles@mtnbrook.org]
Sent: Tuesday, September 05, 2023 10:01 AM
To: Sam Gaston
Subject: Re: EMS Standby Hourly Rate Increase Recommendation

I emailed Michelle O'Connor at the High School to inform her that the City will increase EMS Standby to \$110 starting in October.

On Tue, Sep 5, 2023 at 9:39 AM Stacey Cole <coles@mtnbrook.org> wrote:

Sam,

Due to the scheduled salary increases for firefighters in the FY2024 Budget, I thought it best to review the EMS Standby rate currently set at **\$75 an hour** plus one hour of travel time. EMS Standby rates were last increased in June of 2017. Based on a rough average from Firefighters to Lieutenants' salaries in the new budget, it will cost the City **\$97 per hour** in wages alone to provide ambulance service, not to mention fuel, insurance, and equipment cost. Due to operational cost increases, I recommended that the City increase the hourly rate for EMS Standby to **\$110**. Please let me know how you would like to proceed on this matter.

Stacey L. Cole

Deputy Chief / Emergency Operations

Mountain Brook Fire Department

Office: (205) 802-3831

Cell: (205) 438-2569

Email: Coles@mtnbrook.org

Notice of Confidentiality: This transmission contains information that may be confidential and may also be privileged. Unless you are the intended recipient of the message (or authorized to receive it for the intended recipient), you may not copy, forward, or otherwise use it, or disclose its contents to anyone else. Please be aware that email communication can be intercepted in transmission or misdirected. If you have received this transmission in error, please notify me immediately at coles@mtnbrook.org and delete it from your system.

RESOLUTION NO. 2023-143

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the agreement for consulting services, attached hereto as Exhibit A, between the City and Schoel Engineering Company, Inc. for consulting services associated to potential flood protection measures in the Montevallo Road and Overhill Road area.

ADOPTED: This 11th day of September, 2023.

Council President

APPROVED: This 11th day of September, 2023.

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 September 11, 2023, as same appears in the minutes or record of said meeting.

City Clerk

Agreement for Consulting Services

Montevallo Rd and Overhill Ln Flood Protection Review

September 5, 2023

This **AGREEMENT**, entered into by and between **The City of Mountain Brook, Alabama**, hereinafter referred to as the **Client**, and **Schoel Engineering Company, Inc.**, hereinafter referred to as the **Consultant**, is for Consulting Services associated to potential flood protection measures in the Montevallo Rd and Overhill Rd area of Mountain Brook.

PROJECT OVERVIEW

Certain properties along Montevallo Rd near the intersection with Overhill Rd have historically flooded. The City of Mountain Brook has commissioned drainage studies and at least two design projects in the last 20 years to address the flooding in the area described above, along with downstream areas. Construction obstacles throughout the entire drainage system have halted progress on addressing the flooding. In this work, the area immediately upstream of Overhill Rd and east of Montevallo Ln will be evaluated more closely with the goal of evaluating potential local flood protection and mitigation measures. Final design options or measures may be considered for future work.

PROPOSED SCOPE & SERVICES

Evaluation of Drainage Issues and Flood Protection Measures

The Consultant will assist the Client with the preliminary evaluation of the drainage issues that have resulted from heavy rain events. These services would generally include a site visit, limited field survey work (if deemed required), and other services in response to the unique issues associated with the location. The Client may leverage prior hydrologic study models to evaluate certain protection measures. The activities to be performed may include:

- Site visit(s)
- Limited field survey (if necessary)
- Evaluation of potential local flood protection measures
- Consultation with the City of Mountain Brook on findings and opinions

Proposed Fee \$4,500 (To be Billed Hourly)

NOT INCLUDED IN SCOPE OF WORK

The following items are not included in the scope or fee provided. If any of these services are requested, an additional services proposal can be provided.

1. Drainage or Flood Studies, including FEMA and Floodplain Development Permits
2. Offsite utility evaluation, extension, or upgrades
3. Geotechnical work of any kind
4. Corps of Engineers related work
5. ADEM Stormwater Permit Compliance Activities
6. Structural design of any kind
7. Multiple design packages or public bid package
8. Permit applications and/or fees



PAYMENT TERMS

The Consultant will bill the Client monthly based on work completed during the billing period. Work completed will be based upon a percentage of completion for Lump Sum Fees, and will be based on time and materials at the attached schedule of unit rates for Hourly Estimates and Not to Exceed agreements. Payments are due within thirty (30) days of invoice date. The Client's obligation to pay for services is in no way dependent upon the Client's ability to obtain financing, obtain approval from any governmental or regulatory agencies, real estate closing, receipt of payment from other parties or upon successful completion of the project. If payment is not received within thirty (30) days from date of invoice, the amounts may include a late charge of 1½ % per month, calculated from said thirtieth (30th) day. Should Consultant incur attorney's fees for collection of payment, the amount owed to Consultant shall include any and all said fees. Failure to make payment within sixty (60) days shall constitute a waiver of the right to dispute the accuracy and appropriateness of the invoice. In addition, Consultant reserves the right to suspend services under this Agreement until such time as payment is made in full for all amounts due for services rendered and expenses incurred has been received.

SCHEDULE OF UNIT RATES – EFFECTIVE THROUGH 12/31/2023

Senior Principal	\$ 325.00 per hour
Principal	\$ 215.00 per hour
Survey Field Crew	\$ 195.00 per hour
Department Manager/Chief Land Surveyor	\$ 185.00 per hour
Senior Project Manager	\$ 175.00 per hour
Project Manager	\$ 150.00 per hour
Senior Professional	\$ 150.00 per hour
Project Professional	\$ 125.00 per hour
Staff Professional	\$ 115.00 per hour
Senior Designer / Drafter / Specialist	\$ 115.00 per hour
Designer 2 / Drafter 2 / Specialist 2	\$ 105.00 per hour
Designer 1 / Drafter 1 / Specialist 1	\$ 95.00 per hour
Admin/Co-Op/Technical Support	\$ 85.00 per hour

Printing and other reimbursable expenses will be charged at cost plus 15% and are not included in the fee basis described above. Lodging and Meals and Incidentals (M&IE) will be billed according to Government Services Administration (GSA) rates. Sub-consultant invoices billed as reimbursables will be invoiced to the client at a rate of 115% of the invoice amount.

GENERAL TERMS AND CONDITIONS

- 1) Services performed under this Agreement will be conducted in a manner consistent with that level of care and skill exercised by members of the profession currently practicing under similar conditions. Plans, specifications, and submittals will be prepared in accordance with the written standards of the governing authorities having jurisdiction. Any extraordinary requirements for approvals will be considered additional services. No other warranty, expressed or implied, is made. Nothing in this agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.
- 2) The Client hereby agrees that to the fullest extent permitted by law the Consultant's total liability to Client for any and all injuries, claims, losses, expenses of damages whatsoever arising out of or in any way relating to the project, the site, or this Agreement, from any cause or causes including but not limited to the Consultant's negligence, errors, omissions, strict liability, breach of contract, breach of warranty shall not exceed the greater of the total amount paid by the Client for the services of the Consultant under this contract or \$50,000.00, whichever is greater. The Consultant's liability shall expire one (1) year from the completion date of the provision of services for each phase of the work.
- 3) The figures given above and in the body of this Agreement are based on the Scope of Work as described herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will also be performed at the above unit rates, or a revised fee will be negotiated to the satisfaction of both the Client and Consultant at that time. The Consultant reserves the right to adjust these unit rates for inflation costs on a one-year interval from the date of this proposal.
- 4) All claims, disputes, and other matters in controversy between Consultant and Client arising out of or in any way related to this agreement (other than as a result of Client's failure to pay amounts due hereunder) will be submitted to mediation before, and as a condition precedent to, other remedies provided by law. Mediation shall be held in the county where the project is located, and if the parties cannot agree on a mediator then one shall be appointed by the American Arbitration Association (AAA). Parties agree to split cost of mediation 50-50.
- 5) Services not expressly set forth in writing as basic or additional services and listed in the proposal to this Agreement are excluded from the scope of the Consultant's services, and the Consultant assumes no duty to the Client to perform such services.
- 6) Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in Client's files. The Consultant may rely on the information provided by the Client without verification. The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the scope of work within established schedules.
- 7) Consultant shall secure and maintain insurance as required by law or statutory requirements which will protect him from claims under the workers compensation acts and from claims for bodily injury, death, or property damage that may arise from the performance of his services under and pursuant to this Agreement. Certificates of such coverage will be provided to Client upon request.
- 8) All reports, plans, documents, or other materials resulting from the Consultant's efforts shall remain the property of the Consultant and are intended solely for the purpose of this Agreement. Any reuse by Client for purposes outside of this Agreement or any failure to follow Consultant's recommendations without Consultant's written permission shall be at the user's sole risk.
- 9) This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure to perform in accordance with the terms of the agreement by the other party through no fault of the terminating party. If this Agreement is terminated, it is agreed that Consultant shall be paid for total charges for labor performed to the termination notice date, plus reimbursable charges.
- 10) Neither party to this Agreement will be liable to the other party for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of

governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control of either party.

- 11) The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.
- 12) The Consultant shall not be responsible for construction site safety or construction procedures, nor will the Consultant be responsible for the quality of the work performed by the contractor or other consultants.
- 13) Consultant may, at Client's request and for Client's convenience, provide documents in electronic format. Data, words, graphical representations, and drawings that are stored on electronic media or which are transmitted electronically, may be subject to uncontrollable alteration. The printed, signed and sealed hard copy is the actual professional instrument of service. In the event of a discrepancy between the electronic document and the hardcopy document, the hardcopy document will prevail.
- 14) This agreement is provided with the expectation that it is not being used in a price comparison with other firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

PROPOSAL ACCEPTANCE

SUBMITTED:

Consultant: Schoel Engineering Company, Inc.

Signature: _____

Name: Mark E. Simpson

Title: Water Resources Department Manager

Date: September 5, 2023

ACCEPTED:

Client: The City of Mountain Brook

Signature: _____

Name: _____

Title: _____

Date: _____

Please print or type the following information for the individual, firm or corporation responsible for payment.

Company: _____

Client or Client's authorized representative: _____

Street Address: _____

City, State, Zip: _____

Phone Number: _____ **Fax Number:** _____

Email Address: _____

Client's Project Number: _____ **Client's Purchase Order Number:** _____

Invoice Delivery Method: ☐ Mail ☐ Email ☐ Other _____

