

THE CITY OF TUSCALOOSA, ALABAMA



CONTRACT BETWEEN THE CITY OF TUSCALOOSA AND MCKENNA-
WANSTALL, INC. D/B/A HERITAGE HOUSE COFFEE AND TEA TO OPERATE
THE GATWAY COFFEE SHOP
(A16-0511)

AN AGREEMENT BETWEEN THE

CITY OF TUSCALOOSA, ALABAMA

And

MCKENNA-WANSTALL, INC. D/B/A HERITAGE HOUSE COFFEE AND TEA



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WANSTALL, INC. D/B/A HERITAGE HOUSE COFFEE AND TEA TO OPERATE
THE GATWAY COFFEE SHOP
(A16-0511)

THIS CONTRACT is made and entered into by and between the City of Tuscaloosa, Alabama, a Municipal Corporation, and McKenna-Wanstall, Inc. D/B/A Heritage House Coffee and Tea as follows:

W-I-T-N-E-S-S-E-T-H:

WHEREAS, the April 27, 2011 tornado that struck the City of Tuscaloosa (City) devastated the area Alberta which at the time was home to many low to moderate income residents; and,

WHEREAS, since the tornado the City has rebuilt public safety buildings and the Tuscaloosa City Board of Education (Board) has rebuilt on the site of the former Alberta Elementary School the Alberta School of Performing Arts in an effort to provide the necessary public infrastructure that will promote, assist and facilitate the regrowth of business and residential opportunities in the Alberta area; and,

WHEREAS, the City has also constructed a technology center known as the Gateway Alberta's Innovation + Discovery Center Alberta (Gateway) in Alberta the purpose of which is to provide and facilitate an increased educational level to a low-moderate area and offer computer access and meeting space for the public that can be utilized by low-moderate income individuals in the area as well as students from nearby colleges such as The University of Alabama and in addition to offering technology resources; and,

WHEREAS, MCKENNA-WANSTALL, INC. D/B/A HERITAGE HOUSE COFFEE AND TEA (Heritage House) was chosen to operate the coffee shop in the Gateway by Resolution of the City Council on May 10, 2016; and,

WHEREAS, Heritage House and the City have agreed to certain terms and conditions regarding the operation of the coffee shop in the Gateway and upon the execution of this Agreement by both parties, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. RESPONSIBILITIES OF Heritage House

- 1.1** Generally: Heritage House will operate a coffee shop within the Gateway. Heritage House will be responsible for providing the necessary staff, and shall maintain all equipment. Heritage House will be responsible for keeping the coffee shop area clean and sanitary. Heritage house will provide coffee and pastries for 12 (twelve) city events of up to 25 (twenty-five) people each year.
- 1.2** Rent: Heritage House will pay the City of Tuscaloosa \$1.00 (One Dollar) a month for 36 months beginning July 1, 2016.
- 1.3** Duration: This contract expires on July 1, 2019. Upon expiration of this contract the parties may continue to operate under this contact on a year to year basis at market value rent.
- 1.4** Permits: Heritage House will maintain all necessary permits, licenses, and approvals from the Alabama Department of Public Health, and abide all appropriate Public Health regulations.

SECTION 2. RESPOSIBILITIES OF THE CITY

- 2.1** Utilities: The City will pay all utilities.
- 2.2** Access: The City will provide Heritage House with all access necessary to fulfill its obligations under this contract.

SECTION 3. INSURANCE REQUIRMENTS

3.1 Insurance shall be primary coverage, and hold harmless the City, its officers, agents, and employees, naming the City as Additional Insured and include a Waiver of Subrogation. In the event that Heritage House retains

outside service providers or vendors to provide services to the Gateway, as per their requirements in Section 2.1 herein, Heritage House shall likewise require any such service providers or vendors to provide primary coverage insurance and hold harmless the City, its officers, agents, and employees, naming the City as Additional Insured and include a Waiver of Subrogation. The insurance shall be written in comprehensive form by insurance companies rated A- or better by A.M. Best and shall protect the Lessee and the City against claims for Injuries to members of the public (including City employees) or damages to property of others (including City property) arising out of any act of the Lessee or any of its agents, employees or designees and said insurance shall extend to any motor vehicles or other related equipment, irrespective of whether the same is owned, non-owned or hired. Said insurance shall give all parties 30 days written notice of cancellation or intent not to renew the insurance.

3.2 Insurance Limits. Heritage House shall provide the following coverages:

(b) Insurance Limits. Heritage House shall provide the following coverages:

(i) General Liability not less than \$1,000,000 per occurrence with \$2,000,000 General aggregate, including \$1,000,000 property damage to premise occupied

(ii) Workers Compensation – Statutory, with Employers Liability Limits not less than \$1,000,000 for Each Accident, Disease for Each Employee, Disease for Policy limit

3.3 Heritage House shall provide to the Director, Resilience and Innovation a Certificate of Insurance acceptable to the Director as evidence of insurance coverage for the use and lease of the Facility. This Certificate of Insurance must be delivered to the Director prior to Heritage Houses's providing the services as set forth in this agreement.

SECTION 4. HOLD HARMLESS/INDEMNITY

4.1 Each party shall generally be responsible for its own acts and will be responsible for all damages, costs, fees, and expenses, including attorney's fees and costs, which arise out of the performance of this agreement and which are due to that party's own negligence, carelessness, unskillfulness and other unlawful conduct and/or the negligence, carelessness or unskillfulness or other unlawful conduct of its respective officers, agents and/or employees acting in their official capacities. Provided; however, Heritage House shall defend, indemnify and hold the City, its officers, agents and employees free and harmless from and against any claims, demands, actions, damages, expenses, fees, liabilities and/or attorney's fees arising out of, by virtue of or associated with, any claims, demands or actions brought by third parties which are related in any way or are associated with the negligence, tortious acts or other unlawful conduct of Heritage house or its respective agents, officers and employees in the performance of this agreement. In addition, the City shall release and remise Heritage House, its officers, agents and employees from and against any claims, demands, actions, damages, expenses, fees, liabilities and/or attorney's fees arising out of, by virtue of or associated with, any claims, demands or actions brought by third parties which are related in any way or are associated with the negligence, tortious acts or other unlawful conduct of the City or its respective agents, officers and employees in the performance of this agreement.

SECTION 5. SMOKING PROHIBITED ON PREMISES

5.1 Heritage House shall comply with and enforce all Tuscaloosa City Code Ordinances which restrict or prohibit smoking in public places and in municipal facilities as more specifically set forth in Sec. 13-92 et seq. of the Tuscaloosa City Code.

SECTION 6. DEFAULT/TERMINATION DECLARED BY THE CITY

6.1 The City shall have the right to terminate this agreement forthwith, by giving written notice to Heritage House of such termination, upon or after the happening of one or more of the following events:

- a. Heritage House undertakes, engages or conducts operations of its business which interferes, compromises or adversely affects the operations of the Gateway; or
- b. Heritage House abandons its obligations prior to the expiration of this agreement; or
- c. Heritage House shall default in fulfilling any other term, covenant or condition to be fulfilled by it hereunder and shall fail to remedy said default within thirty (30) days following receipt by Heritage House of written demand from City to do so, or if by reason of the nature of such default the same cannot be remedied within such thirty (30) day period, Heritage House shall have failed to commence the remedying of such default within said thirty (30) day period, or having so commenced, shall have failed there-after to continue with diligence the remedying thereof; or
- d. Seizure or need by the Federal Government or State of Alabama due to a natural disaster or emergency; or
- e. Any such need by the City to insure the effective and efficient operation of government or any matter which may adversely affect the health, safety and welfare of the public; or
- e. Filing a petition in bankruptcy for reorganization or for an arrangement pursuant to the U.S. Bankruptcy Code or any similar federal or state law now or hereafter in effect; or
- f. Filing an answer admitting the material allegations of or consenting to or defaulting in answering a petition filed against it in any bankruptcy, reorganization, or similar insolvency proceeding, or if any action shall be taken against it for the purpose of effecting any of the foregoing, or
- g. All rights and remedies of the City under this Agreement shall be cumulative and none shall exclude any other right or remedy at law. Such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefor arises, in the absolute discretion of the City.

SECTION 7. DEFAULT/TERMINATION DECLARED BY Heritage House.

7.1 Heritage House shall have the right to terminate this Lease in its entirety by giving thirty (30) day's written notice to the City of such termination upon or after the happening of one or more of the following events:

- a. The inability of Heritage House to continue to provide the services as set forth in Section 2.1 herein.
- b. A court of competent jurisdiction shall issue an injunction, order or decree preventing or restraining the use by Heritage House of all or any substantial part of the Leased Premises which remains in force and is not vacated or stayed for a period of ninety (90) days; or
- c. Seizure or need by the Federal Government or State of Alabama due to a natural disaster or emergency.
- d. Destruction, Fire or Casualty of the Gateway as set forth in Section 9 herein.

SECTION 8. DISCRIMINATION

8.1 Heritage House, for itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(1) no person on the grounds of race, color, national origin, sex or religion shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Gateway under the provisions of this Agreement;

(2) that Heritage House shall operate the Gateway in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-effectuation Title of the Civil Rights Act of 1964, Americans with Disabilities Act, Rehabilitation Act of 1973 and as said Regulations may be amended. Likewise, Heritage House shall comply with laws of the State of

Alabama prohibiting discrimination because of sex, religion, age or physical handicap.

SECTION 9. CASUALTY OR DESTRUCTION OF THE PREMISIES

9.1 In the event that the Gateway is destroyed or damaged by fire or casualty to the extent that the services to be performed by Heritage House are impossible or may be impeded for a prolonged period of time, Heritage House may provide the City with written notice and terminate its obligations under this agreement as set forth in Section 7.1 herein. Upon the City's receipt of the termination notice from Heritage House, the obligations of both parties as set forth in this agreement are discharged and rendered void.

SECTION 10. NOTICES

10.1 All notices or other communications provided for herein to be given or sent to a party by another party shall be deemed validly given or if sent in writing and mailed, postage prepaid, by registered or certified United States mail, addressed to the party at its address set forth above. Any party hereto may give notice to another party at any time, by the method specified above, of a change in the address at which, or the person to whom, notice is to be addressed. The names and addresses of the representatives for the Parties are as follows:

For the City:

Director, Resilience and Innovation
City of Tuscaloosa
Post Office Box 2089
Tuscaloosa, Alabama 35403

For Heritage House:
700 Towncenter Boulevard
Tuscaloosa, AL 35406
(205) 758-0042

SECTION 11. BUSINESS LICENSE

11.1 Heritage House shall obtain a business license from the City of Tuscaloosa and shall renew said license annually while doing business in the City.

SECTION 12. EMERGENCY SITUATIONS

12.1 Heritage House shall have its employees cooperate and coordinate with the City and or emergency officials in the event of a disaster or inclement weather which may necessitate the public use of the Gateway as a storm or disaster shelter. Heritage House employees shall become familiar with the emergency procedures as they pertain to the Gateway concerning its use as storm shelter to inform and assist the public in the event of an emergency. The City reserves the right to use any portion of the Gateway in the event of a Federal, State or local emergency or event which may necessitate the need for storage of supplies and equipment as may be needed or required.

SECTION 13. MISCELLANEOUS:

13.1 Capacity: Each party to this Memorandum represents and warrants to the other as follows:

- A. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
- B. That each has full power and capacity to enter into this Memorandum, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
- C. That to the extent required, each party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this Memorandum and said approval has

been reduced to writing and certified or attested by the appropriate official of the party.

- D. That each party has duly authorized and empowered a representative to execute this Memorandum on their respective behalf and the execution of this Memorandum by such representative fully and completely binds the party to the terms and conditions hereof.
- E. That absent fraud, the execution of this Memorandum by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same.
- F. That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon the terms and conditions of this Memorandum or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this Memorandum.
- G. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this Memorandum.

13.2 Third party Beneficiaries: It is the intent of the parties hereto that there shall be no third party beneficiaries to this Memorandum.

13.3 Final Integration: This Memorandum, together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Memorandum, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Memorandum or expressly referred to herein has been relied on by any party in entering into this Memorandum.

13.4 Force Majeure: Neither party to this Memorandum shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

13.5 Amendment in Writing: This Memorandum may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

13.6 Binding Effect: This Memorandum shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Memorandum shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

13.7 Captions: The captions of this Memorandum are for convenience and reference only, are not a part of this Memorandum, and in no way define, describe, extend, or limit the scope or intent of this Memorandum.

13.8 Construction: This Memorandum shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

13.9 Mandatory and Permissive: "Shall", "will", and "agrees" are mandatory; "may" is permissive.

13.10 Governing Laws: The laws of the State of Alabama shall govern the validity of this Memorandum, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Memorandum.

13.11 Prohibition on Assignment and Delegation: No party to this Memorandum may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. Unless the other party consents in writing, no such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

13.12 Waiver: Non enforcement of any provision of this Memorandum by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the Memorandum.

13.13 Memorandum Date/Counterparts: The date of this Memorandum is intended as and for a date for the convenient identification of this Memorandum and is not intended to indicate that this Memorandum was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

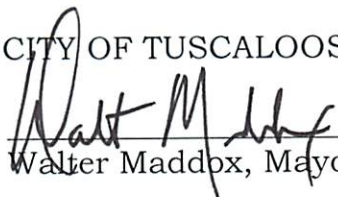
13.14 Use of Words and Phrases: The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

13.15 Liability of the City or City Officials. Notwithstanding any provision hereof to the contrary, the parties agree and acknowledge that the liability and obligations of the City, City officials or City employees as set forth herein are subject to the limitations imposed on municipalities by the Constitution and laws of the State of Alabama. No present or future official, officer or employee of the City shall ever be personally liable for the performance of any obligations hereunder.

The definitions set forth in any portion of this Memorandum, unless the text or context indicates differently, shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

IN WITNESS WHEREOF the parties hereto have set their hands this the 13 day of July, 2016.

CITY OF TUSCALOOSA



Walter Maddox, Mayor

MCKENNA-WANSTALL, INC.
D/B/A HERITAGE HOUSE COFFEE AND
TEA

By: 

Rebekah Wanstall

As Its: _____

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Walter Maddox, whose name as Mayor of the City of Tuscaloosa, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal that the 8th day of July, 2016.

My Commission Expires:
2/3/19

Vickie Hilliland
Notary Public

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Rebekah Wanstall, whose name as Rebekah Wanstall of McKenna-Wanstall, Inc. D/B/A Heritage House Coffee and Tea, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal that the 13 day of July, 2016.

My Commission Expires:
5-9-18

Ann M. Sullivan
Notary Public