

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING AGENDA**

**PRE-COUNCIL ROOM (A106) CITY HALL
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213**

MARCH 9, 2015, 6:15 P. M.

1. Removal of some of the modular newspaper racks in the commercial villages – Dana Hazen. (See attached. May be added to formal agenda.)
2. Access easement agreement regarding the Ajlouny Investments (Piggly Wiggly), Donna Gray, owner of the old CVS property, and the City. (Information will be distributed separately once available.)
3. Contract with Walter Schoel Engineering, Inc. to review and advise the City regarding the Park View Townhomes Subdivision – Dana Hazen. (See attached. May be added to formal agenda.)



CITY OF MOUNTAIN BROOK

Dana O. Hazen, AICP
City Planner
56 Church Street
Mountain Brook, Alabama 35213
Telephone: 205/802-3821
Fax: 205.879.6913
hazend@mtnbrook.org
www.mtnbrook.org

MEMO

DATE: February 19, 2015

TO: Mayor, City Council
City Manager
City Attorney

FROM: Dana Hazen, City Planner

RE: Newspaper Racks

The Birmingham News Distributor has reported that none of the City's public newspaper racks are being used in Mountain Brook Village, Crestline or English Village. As such, staff recommends that the following newspaper racks (see attached maps) be removed:

Crestline – 2
Mountain Brook Village – 3
English Village - 1

As a point of reference, the Birmingham News is sold in the following private establishments:

Crestline:
CC Food Mart

Mountain Brook Village:
Starbucks
Minute Man Gas Station

English Village:
none

RESOLUTION NO. 2015-036

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the removal and storage of the following newsstand racks:

1. Crestline Village: at the southeast corner of Dexter Avenue and Church Street (in front of Tracy's Diner)
2. Mountain Brook Village: on Culver Road (in front of Sneaky Pete's)
3. Mountain Brook Village: on the southeast curve of Village Circle (in front of Realty South)

ADOPTED: This 9th day of March, 2015.

Council President

APPROVED: This 9th day of March, 2015.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on March 9, 2015, as same appears in the minutes of record of said meeting.

City Clerk



March 05, 2015

City of Mountain Brook
56 Church Street
PO Box 130009
Mountain Brook, Alabama 35213

Attention: Mr. Sam Gaston

Reference: Bruce McClary project
Near Lane Park

Dear Mr. Gaston:

Please accept this letter as a proposal to provide Consulting Services on the above referenced project. The Detailed Scope is as follows:

1) DRAINAGE AND FEMA REVIEW

The consultant will review design plans and other documents for conformance with the City of Mountain Brook Detention Ordinance and for the appropriateness of the design. The Consultant will also review the submittal for conformance with the Mountain Brook Flood Ordinance and FEMA standards.

Proposed Fee \$ 1,500

2) SITEWORK/SUBDIVISION PLAN REVIEW

The consultant will review the sitework design plans and surveys documents for conformance with the City of Mountain Brook standards and subdivision regulations.

Proposed Fee \$ 1,000 addition

These reviews will include a mark-up of the plan set and a brief letter report.

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. The Consultant has the right to review and adjust fees annually subject to Clients final approval. Payments are due upon receipt. Additional services beyond the herein-described scope of work will be performed according to the attached schedule of unit rates, or alternately for an additional fee as agreed upon.

PROPOSAL ACCEPTANCE

SUBMITTED:

Consultant: Walter Schoel Engineering Company, Inc.

Signature: Walter Schoel III

Name: Walter Schoel III

Title: President

Date: March 06, 2015

ACCEPTED:

Client: City of Mountain Brook

Signature: _____

Name: _____

Title: _____

Date: _____

Schedule of Unit Rates – Effective Through 12/31/2014

Senior Principal		\$ 225.00 per hour
Principal		\$ 170.00 per hour
Chief Land Surveyor		\$ 150.00 per hour
Senior Project Manager		\$ 140.00 per hour
Project Manager 2		\$ 125.00 per hour
Project Manager 1		\$ 110.00 per hour
Senior Professional		\$ 120.00 per hour
Project Professional		\$ 105.00 per hour
Staff Professional		\$ 90.00 per hour
Senior Designer / Survey Draftsman / Specialist		\$ 90.00 per hour
Designer / Survey Draftsman / Specialist 2		\$ 80.00 per hour
Designer / Survey Draftsman / Specialist 1		\$ 70.00 per hour
Field Survey Party		\$ 150.00 per hour
Laser Scanning Field Crew		\$ 400.00 per hour
Laser Scanning Specialist		\$ 125.00 per hour
Intern/Support		\$ 55.00 per hour
Courier		\$ 25.00 per delivery
Transportation		\$ 0.50 per mile
Materials	(Stakes and Hubs)	\$ 0.35 each
	(Flagging)	\$ 2.50 per roll
	(Iron Pins and Caps)	\$ 5.00 each
	(Spray Paint)	\$ 5.00 per can

Printing and other reimbursable expenses will be charged at cost, and are not included in the fee basis described above. Sub-consultant invoices will be billed to the client at a rate of 110% of the sub-consultant invoice. Overtime rates may apply for work required during non-standard work hours.

GENERAL TERMS AND CONDITIONS

- 1) 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.
- 2) 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.
- 3) 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 of other for purposes outside of this Agreement or any failure to follow Consultant's recommendations without Consultant's written permission shall be at the users sole risk.
- 4) 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 consultant.

**ADDENDUM TO AGREEMENT BETWEEN
THE CITY OF MOUNTAIN BROOK AND
WALTER SCHOEL ENGINEERING COMPANY, INC.
DATED MARCH 9, 2015**

THIS ADDENDUM (“the/this Addendum”) to the principal agreement between the **City of Mountain Brook, Alabama** (“the City”) and **Walter Schoel Engineering Company, Inc.** (“the Contractor”) dated March 9, 2015.

This Addendum is a part of the principal agreement, but supersedes and controls any conflicting or inconsistent terms or provisions in the principal agreement, particularly to the extent the conflicting or inconsistent terms or provisions purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without express approval of the Mountain Brook City Council.

1. **Definitions.** For purposes of this Addendum, the terms below have the following meanings:
 - A. “*The City*” refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies.
 - B. “*The (this) Agreement*” refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
 - C. “*The Contractor*” refers to the person, firm, or other legal entity that enters into an agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor’s vendors, suppliers, and subcontractors.
2. **Arbitration; Mediation; Alternate Dispute Resolution.** The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (1) the rights and remedies available under such arbitration rules or processes do not afford the Contractor greater relief (e.g., attorney’s fees, damages, etc.) than would be available under otherwise applicable law, (2) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (3) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.
3. **Attorney’s Fees; Court Costs; Litigation Expenses.** The City shall not be liable 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 City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. ***Late Payment Charges; Fees; Interest.*** The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services at a rate higher than two-thirds of one percent per month (eight percent per annum), but bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be subject to late payment charges pending resolution of the dispute.
5. ***Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies.*** The City shall not and does not indemnify, hold harmless, or release the Contractor 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; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. 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 City is expressly disavowed, excluded from the terms of the agreement, and void.
6. ***Choice of Law; Choice of Venue or Forum.*** The meaning, legal effect, and enforcement of terms and provisions of the agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.
7. ***Construction of Addendum.*** Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal agreement or as a matter of law.
8. ***Alabama Immigration Law Compliance Contract.*** Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplied by the Board and return the same to the City. Contractor shall also enroll in the E-Verify

Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as the Board may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the City and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

DATED this 9th day of March, 2015.

Walter Schoel Engineering Company, Inc.

City of Mountain Brook, Alabama

By : _____

By : _____

Its : _____

Its : _____

RESOLUTION NO. 2015-038

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that City Council hereby authorizes the execution of a professional services agreement between the City and Walter Schoel Engineering, Inc., in the form as attached hereto as Exhibit A, with respect to the drainage, FEMA, site work, and subdivision plans review for the Park View Townhomes subdivision near Lane Parke.

ADOPTED: This 9th day of March, 2015.

Council President

APPROVED: This 9th day of March, 2015.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on March 9, 2015, as same appears in the minutes of record of said meeting.

City Clerk