

**MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

**CITY HALL COUNCIL CHAMBER
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213**

MAY 11, 2015, 7:00 P.M.

1. Women's Lung Health Week Proclamation.
2. Approval of the minutes of the April 27, 2015 regular meeting of the City Council.
3. Consideration: Resolution awarding the professional services proposal for the Park and Recreation master plan development to Lose & Associates and authorize the execution of a contract for same.
4. Consideration: Resolution approving the conditional use application submitted by Paulette DeGraw for the operation of "Cup Food You Pick Up" to be located at 73 Church Street in Crestline Village.
5. Consideration: Resolution authorizing the execution of the following license agreements with respect to the West Montcrest Drive sidewalk construction project:
 - a. Robert Bradford and Katie Avery, 12 West Montcrest Drive, 35213
 - b. John and Gina F. Thomas, 16 West Montcrest Drive, 35213
 - c. John B. and Kerri C. Windle, 14 West Montcrest Drive, 35213
6. Announcement: The next regular meeting of the City Council is May **(TBD)**, 2015, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
7. Comments from residents.
8. Adjourn.

PROCLAMATION

WHEREAS, every five minutes, a woman in the United States of America is told she has lung cancer; and

WHEREAS, lung cancer is the number one cancer killer of women in the United States of America; and

WHEREAS, the lung cancer death rate in women has almost doubled over the past 37 years; and

WHEREAS, advocacy and increased awareness will result in more and better treatment for women with lung cancer and other lung diseases and will ultimately save lives; and

WHEREAS, LUNG FORCE is the national movement led by the American Lung Association, with the mission of making lung cancer history—uniting women to stand together with a collective strength and determination to lead the fight against lung cancer and for lung health.

Now, Therefore, I, Lawrence T. Oden, Mayor of the City of Mountain Brook, do hereby proclaim May 10, 2015 through May 16, 2015, as

“Women’s Lung Health Week”

in the City of Mountain Brook, and I encourage all residents of Mountain Brook to learn more about the detection and treatment of lung cancer.

Given under my hand and the City of Mountain Brook, Alabama, on this 11th day of May, in the year of our Lord, 2015, and of the Independence of the United States of America, 239th.

Lawrence T. Oden, Mayor

2015-062

From: Ashley Lyerly [mailto:Ashley.Lyerly@lungse.org]
Sent: Tuesday, April 14, 2015 6:04 PM
To: 'gastons@mtnbrook.org'
Subject: Proclamation Request: Women's Lung Health Week

Good Evening, Mr. Gaston –

As a resident of the City of Mountain Brook and staff member of the American Lung Association, I would like Mayor Oden to consider proclaiming that the second week in May is Women's Lung Health Week as part of our [LUNGFORCE](#) initiative. [LUNGFORCE](#) is a strategic campaign to raise awareness about lung cancer in women.

We have draft language for Mayor Oden to consider as part of the proclamation, which I have listed below. Many organizations across Alabama have recognized the importance of lung cancer as it has become the leading cancer killer in women. Mayor Oden's proclamation will strategically help to reduce the stigma associated with lung cancer through increased community awareness.

If you have any questions, please do not hesitate to outreach to me by email, office phone, or by cell phone ([205-913-4760](tel:205-913-4760)).

Sincerely,
Ashley Lyerly

DRAFT PROCLAMATION LANGUAGE

The Second Full Week in May is
Women's Lung Health Week
Proclamation

Designating the second full week in May as "Women's Lung Health Week"

WHEREAS, every five minutes, a woman in the U.S. is told she has lung cancer; and

WHEREAS, lung cancer is the #1 cancer killer of women in the U.S.; and

WHEREAS, the lung cancer death rate in women has almost doubled over the past 37 years;
and

WHEREAS, advocacy and increased awareness will result in more and better treatment for women with lung cancer and other lung diseases and will ultimately save lives; and

WHEREAS, LUNG FORCE is the national movement led by the American Lung Association, with the mission of making lung cancer history—uniting women to stand together with a collective strength and determination to lead the fight against lung cancer and for lung health.

BE IT RESOLVED, that, I, Mayor Lawrence Terry Oden, Mayor of the City of Mountain Brook, do hereby designate the second full week in May as Women's Lung Health Week throughout the City of Mountain Brook and encourage all residents of Mountain Brook to learn more about the detection and treatment of lung cancer.

Please note my email address has changed to ashley.lyerly@lungse.org.

Ashley Lyerly, MPA | Director of Public Policy
American Lung Association in Alabama
P.O. Box 661465 | Birmingham, AL 35266
O: [205-968-2266](tel:205-968-2266) |
LungSE.org | Ashley.Lyerly@LungSE.org

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
APRIL 27, 2015**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:00 p.m. on Monday, the 27th day of April. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack
Lawrence T. Oden, Mayor

Absent: None

Also present were City Attorney Carl Johnson, City Manager Sam Gaston, and City Clerk Steven Boone.

1. AGENDA

1. Hunter Simmons, GIS Manager, was introduced to the elected officials.
2. Selection of consultant for Parks & Recreation master plan (Appendix 1).

It was the general consensus of the members of the City Council that Lose & Associates will be considered for selection to perform the study. Members of the City Council expressed concern about the scope of the master plan study. The City Manager will distribute the request for proposal to the governing body which describes the intended scope (Lose & Associates option 3) of the project. The terms of the proposed agreement will be further studied by management and City Attorney. This matter will be considered again at the May 11, 2015 meeting of the City Council.

3. Ms. Kathy Thomson to address the City Council concerning leaf blowers (Appendix 2).

Ms. Thomson suggested that the Council consider tightening the restrictions on commercial operators in order to reduce the noise pollution from commercial lawn equipment (namely gasoline-powered leaf blowers). Suggestions include increasing the restricted time period (currently 6 p.m. until 7 a.m. weekdays and 6 p.m. until 8 a.m. on weekends pursuant to Ordinance No. 1906 adopted June 23, 2014) for commercial landscape service providers, requiring the use of newer, quieter power equipment, and restricting the number of simultaneous operators. It was the consensus of the members of the City Council that another mail-out be distributed to commercial operators informing them that the noise issue has not been resolved and that further restrictions are being considered. This matter will be reviewed again at a later date.

4. Fencing around equipment/cell tower area behind police station (Appendix 3). Further study of options intended to reduce the noise will be evaluated. This matter will be considered by the City Council again at a later date.
5. Change-order for Cahaba River Walk–Nimrod Long. Motion 2015-061 was added to the formal meeting agenda. A change-order will be delivered to the City Manager for execution upon its completion.
6. Fiscal year 2016 budget schedule and set date for Mayor and Council budget planning work session–Sam Gaston. The initial planning meeting was set for Wednesday, May 20, 2015 at 7:30 a.m. in Room A231 (Training Room).

7. Review of the formal [7 p.m.] agenda issues. [Note: The conditions of Resolution No. 2015-060 were discussed and formalized for incorporation in said resolution.]

2. EXECUTIVE SESSION AND ADJOURNMENT

There being no further business to come before the City Council, it was moved by Council President Pro Tempore Pritchard that the City Council convene in executive session to discuss a matter involving a real estate matter. The motion was seconded by Council President Smith. The City Attorney certified that the subject matter of the executive session is allowed pursuant to the Open Meetings Act. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President
William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Smith declared that the motion carried by a vote of 5—0 and then asked that the members of the audience be excused. She also announced that the City Council shall convene in the Council Chamber at approximately 7 p.m. upon conclusion of the executive session.

City Clerk

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA
APRIL 27, 2015**

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:00 p.m. on Monday, the 27th day of April, 2015. The Council President called the meetings 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
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack
Lawrence T. Oden, Mayor

Absent: None

Also present were City Attorney Carl Johnson, City Manager Sam Gaston, and City Clerk Steven Boone.

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

1. CONSENT AGENDA

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

Approval of the minutes of the April 13, 2015 regular meeting of the City Council.

2015-058	Authorize the City's participation in the 2015 "Back-to-School" Sales Tax Holiday, beginning at 12:01 a.m. on Friday, August 7, 2015, and ending at twelve midnight on Sunday, August 9, 2015, whereby the City of Mountain Brook will exempt certain school supplies, computers, and clothing from municipal sales or use tax in conformance with the time period, terms and conditions, and definitions as provided for the "State of Alabama Sales Tax Holiday"	Exhibit 1 Appendix 1
2015-059	1) declare a 2008 model postage machine obsolete, declaring it surplus, and authorizing it trade-in , and 2) authorize the execution of a lease agreement between the City and Secap Financial (subsidiary of Pitney Bowes Global Financial Services, LLC) with respect to City's lease of a Pitney Bowes Connect +500W Mailing System	Exhibit 2 Appendix 2
2015-060	Approve the conditional [service] use application submitted by James Lee to allow yoga classes (dba\ mountainbrook.yoga) at 2414 Canterbury Road in Mountain Brook Village [Local Business], subject to specified conditions.	Exhibit 3 Appendix 3
2015-061 Motion	Approve Cahaba River Walk change-order	Appendix 4

Thereupon, the foregoing minutes, resolutions, and motion were introduced by Council President Smith and their immediate adoption was moved by Council member Womack. The minutes, resolutions, and

motion were then considered by the City Council. Council President Pro-Tempore Pritchard seconded the motion to adopt the foregoing minutes, resolutions, and motion. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President
William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said minutes, Resolution Nos. 2015-058 through 2015-060, and Motion No. 2015-061 are adopted by a vote of 5–0.

2. ANNOUNCEMENTS REGARDING THE NEXT REGULAR MEETING OF THE CITY COUNCIL

Council President Smith announced that the next meeting of the Mountain Brook City Council will be held on Monday, May 11, 2015 at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213. Please visit the City's web site (www.mtnbrook.org) for more information.

3. ADJOURNMENT

There being no further business to come before the City Council, President Smith adjourned the meeting.

City Clerk

EXHIBIT 1

RESOLUTION NO. 2015-058

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that pursuant to Act No. 2006-574, beginning at 12:01 a.m. on Friday, August 7, 2015, and ending at twelve midnight on Sunday, August 9, 2015, the City of Mountain Brook will exempt certain school supplies, computers, and clothing from municipal sales or use tax. Said sales and use tax exemption shall conform with respect to the time period, terms and conditions, and definitions as provided for the "State of Alabama Sales Tax Holiday".

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Clerk is hereby instructed to send a certified copy of this resolution to the Alabama Department of Revenue, Attention: Wanda Robbins, Room 4311, Sales, Use & Business Tax Division, Post Office Box 327900, Montgomery, Alabama 36132-7900 as required by Sales Tax Holiday Rule 810-6-3-.65 and Code of Alabama 1975, §11-51-210(e).

APPENDIX 1

EXHIBIT 2

RESOLUTION NO. 2015-059

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

RESOLUTION NO. 2015-063

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby accepts the professional services proposal submitted by Lose & Associates, Inc., with respect to the master plan study and development for the Parks and Recreation Board of the City of Mountain Brook.

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook that the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute a professional services agreement between the City and Lose & Associates, Inc., in the form as attached hereto as Exhibit A, with respect to said Parks and Recreation Board master plan project.

ADOPTED: This 11th day of May, 2015.

Council President

APPROVED: This 11th day of May, 2015.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City 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 May 11, 2015, as same appears in the minutes of record of said meeting.

City Clerk

Agreement - City of Mt. Brook & Lose - Comprehensive Park Master Plan

Steve Stine <ssstine@bishopcolvin.com>

9:58 AM (4 hours ago)

to Chris, Sam, Shanda, me, Marla

Images are not displayed. [Display images below - Always display images from \[ssstine@bishopcolvin.com\]\(mailto:ssstine@bishopcolvin.com\)](#)

Chris, thank you again for sending me the editable version of Lose & Associates' proposed Agreement for the above project.

We have reviewed Lose's draft, and made some changes to it for it to be consistent with professional service agreements that the Mt. Brook City Council has accepted in the past. Attached is a revised version of the Agreement (the May 6 Version), and a red-lined version that shows the changes we made to Lose's first draft. It is intended that the following two documents be attached to the revised version: (i) Attachment A – Hourly Rate Schedule for any Additional Services; and (ii) Attachment B - the Letter and Scope of Services that you sent the City when you responded to the City's request for proposals. (I also have attached this Attachment B.)

In your first draft, Lose proposed that its liability to the City for any claim arising out of your work be limited to \$50,000. The City does not agree to these type of limitations. However, we have addressed your request for a Limitation of Liability in the following manner. We have added an Insurance Requirement for Lose to provide comprehensive general, automobile and professional liability insurance with minimum limits of \$500,000 for each of those policies (see page 5); we expect that you already have insurance with at least these limits. As stated on page 4 of version 2 of the Agreement, for this undertaking only, I have included language to limit Lose's liability for claims by the City to \$500,000 (the minimum amount of insurance that you are required to furnish). I think this is a very reasonable approach to addressing this question.

Please advise me and Mr. Gaston if Lose accepts the attached May 6 version of the Agreement. If so, please sign it and return the executed version to Mr. Gaston, and he will ask the City Council to approve it at its meeting on Monday night (May 11). We need to finalize this in the next 24 hours in order for this to be considered by the City Council this upcoming Monday.

Do not hesitate to contact me or Mr. Gaston if you have any questions.

Steve Stine
1910 First Avenue North
Birmingham, Alabama 35203
Phone : [\(205\) 251-2881](tel:(205)251-2881)
Fax : [\(205\) 254-3987](tel:(205)254-3987)
Email: ssstine@bishopcolvin.com

From: Steve Stine [<mailto:ssstine@bishopcolvin.com>]
Sent: Tuesday, April 28, 2015 11:29 AM
To: 'Sam Gaston'; 'Chris Camp'
Cc: 'Carl Johnson'
Subject: RE: Attached Image - Agreement - City of Mt. Brook & Lose

Chris, I am one of the attorneys for the firm that represents the City of Mt. Brook. Could you please send me the form of the contract & proposal that you sent to Mr. Gaston yesterday in Word form so I can edit it? As

Sam has noted, we are going to suggest some changes to your proposed terms. If I can get your first draft in Word, I can track and later show you proposed changes.

Thanks in advance for your help on this.

Steve Stine
1910 First Avenue North
Birmingham, Alabama 35203
Phone : [\(205\) 251-2881](tel:2052512881)
Fax : [\(205\) 254-3987](tel:2052543987)
Email: sstine@bishopcolvin.com

From: Sam Gaston [<mailto:gastons@mtnbrook.org>]
Sent: Tuesday, April 28, 2015 8:12 AM
To: Chris Camp
Cc: Carl Johnson; sstine@bishopcolvin.com
Subject: RE: Attached Image

Chris,
Our City Council would like several changes to the contract in order to consider it at their next Council meeting on May 11th.
Our City Attorneys will be in contact with you about these revisions.

Sam S.Gaston
City Manager
City of Mountain Brook, AL.
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213
[\(205\) 802-3803](tel:2058023803) Phone
[\(205\) 870-3577](tel:2058703577) Fax

From: Chris Camp [<mailto:ccamp@loseassoc.com>]
Sent: Monday, April 27, 2015 8:40 AM
To: Sam Gaston
Subject: Re: Attached Image

Sam
Here is contract as requested.
Chris

Chris Camp, ASLA
President
Lose & Associates, Inc.
1314 5th Ave, North
Nashville, Tennessee 37208
[615-242-0040](tel:6152420040) (p)
[615-242-1405](tel:6152421405) (f)
[615-390-4366](tel:6153904366) cell

Celebrating our 31st Anniversary

Check Us Out!

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PRIVILEGED AND CONFIDENTIAL: This electronic message and any attachments are confidential property of LOSE & ASSOCIATES, INC. The information is intended only for the use of the person to whom it is addressed. Any other interception, copying, accessing, or disclosure of this message is prohibited. If you have received this message in error, please immediately notify LOSE & ASSOCIATES, INC., and purge the message received. Do not forward this message without permission.

On Fri, Apr 24, 2015 at 11:18 AM, Sam Gaston <gastons@mtnbrook.org> wrote:

We are taking your proposal to the City Council on Monday night. Do you have a contract for this proposal that you can email me?

Sam S.Gaston
City Manager
City of Mountain Brook, AL.
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213
[\(205\) 802-3803](tel:2058023803) Phone
[\(205\) 870-3577](tel:2058703577) Fax

From: Chris Camp [mailto:ccamp@loseassoc.com]

Sent: Wednesday, April 15, 2015 4:00 PM

To: Sam Gaston

Subject: Fwd: Attached Image

Sam

Here is the revised scope with Mary Henderson back in the project. Please let me know if you need any additional information.

Chris

Chris Camp, ASLA
President
Lose & Associates, Inc.
1314 5th Ave, North
Nashville, Tennessee 37208
[615-242-0040](tel:6152420040) (p)
[615-242-1405](tel:6152421405) (f)
[615-390-4366](tel:6153904366) cell

Celebrating our 31st Anniversary



PROFESSIONAL SERVICES AGREEMENT

Project: Mountain Brook Comprehensive Park And Recreation Master Plan **Lose & Associates, Inc. – Project No:** 14235

Client: City of Mountain Brook, Alabama **Date:** April 27, 2015
 PO Box 13009
 56 Church Street
 Mountain Brook, AL 35213

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Services: Lose & Associates, Inc. (the "Design Professional,") is hereby contracted to provide the following services as authorized by you, set forth in this Professional Services Agreement (the "Agreement") for the Client.

See The Agreement includes and incorporates (a) the Terms and Conditions outlined on the following pages; (b) Attachment A; and (c) Attachment B - the April 15, 2015 letter and proposal setting forth the scope of services (the "Scope of Services").

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Fees: Lump Sum feeFee of \$67,580.00*

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Other Conditions: *The lump sum feeLump Sum Fee quoted above includes the cost of anyall out-of-pocket reimbursable expenses. (including, but not limited to, transportation, lodging, meals, printing, copies, long distance or other communication charges, postage or delivery expense, preparation of media or presentations, or other expenses associated with the Project)

Terms and Conditions outlined on the following three pages are a part of this Agreement. Signature by the Client parties below indicates the Client's agreement with the proposed Services, Fees, and Terms and Conditions as set forth in this Professional Servicesof both that the Project be performed by the Design Professional in accordance with the terms of this Agreement.

ACCEPTED: This ___ day of _____, 2015 ISSUED: This 27th day of April, 2015

LOSE & ASSOCIATES, INC.

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____
Signature Authorized Representative
*Mountain Brook Park and Rec Master Plan
April 27, 2015*

By: _____
Signature Authorized Representative
*Page 1 of 11
LA #14235*



Client's signature

Chris Camp
President

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Print Name

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Title

Its: _____

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Title _____

Date: _____

Date: _____

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TERMS AND CONDITIONS

Project Schedule – As set forth in the attached Scope of Services, the parties anticipate that the Design Professional's services will be performed over a twenty-one (21) week period after it commences work.

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Payment Schedule and Terms – Progress payments for the fees described previously will be due in monthly invoices, by the Design Professional based on the Design Professional's estimate of the percentage of the work complete. If payment is not received by the Design Professional with each invoice the Design Professional shall include sufficient information that reasonably describes the work completed during that billing period. Client will pay all properly supported invoices for work successfully completed within thirty (30) calendar days of the invoice date, the Client shall pay as interest an additional charge of 1.5% of the past due amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. Failure to make payments when due shall be cause for suspension of the Design Professional's services, and the filing of a lien against the property.

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Current Hourly Rates - An attached table, Attachment A, dated January 1, 2015, outlines our Design Professional's current hourly rates and reimbursable expenses rates. These rates are current until January 1, 2016, at which time they may be adjusted by the Design Professional. These rates will be utilized and apply only if (a) additional services other than those contemplated in the Scope of Services are performed ("Additional Services") and (b) the Client approves the performance of such Additional Services in advance in writing.

Additional Services – Only items of work specifically called out under the Scope of Services section of this Agreement are to be performed for the specified Fees. The Design Professional will consider the performance of any items not so specified as "Additional Services", and, unless otherwise agreed, will perform those services upon request on an hourly fee basis as outlined on the attached Hourly Rate Schedule. If any Additional Services are requested, the Design Professional shall be reimbursed for associated out-of-pocket expenses as reflected on the attached Hourly Rate Schedule.

Term of Proposal – It is understood that this document outlines the proposed Services and Fees to be provided in relation to the Client's project, and that the Design Professional's offer of proposed Services and Fees remains open for sixty (60) days from the date this document is issued. If the Client does not indicate acceptance by signing and returning one copy to the Design Professional parties do not enter into a contract within sixty days, this document becomes null and void.

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Fee Adjustment – It is understood that in the event this project extends over a period of more than one year from the date of this Agreement, the fees for any remaining services will be adjusted proportionately to the "all items" group of the U.S. Department of Labor's Bureau of Labor Statistics Consumer Index.

Ownership of Documents – All reports, plans, specifications, computer files, field data, notes and other documents and instruments prepared by the Design Professional as instruments of service shall remain the property of the Design Professional and jointly owned by the Client and Design Professional. The Instruments of Service may be distributed to third parties or otherwise used at the discretion of either party. The Design Professional shall retain all common law, statutory and other reserved rights, including the right to share such copyright thereto. Reuse for , proprietary (intellectual or otherwise) rights, titles and interests with the Client as aforesaid free from lien or encumbrance. Client and Design Professional shall each have the right to apply for copyright registration and future renewals or extensions of the project or for new projects shall require written permission of the Design Professional and further compensation at a rate agreed upon by both parties. Any changes made to the construction documents by the Client, or by the Client's representatives, are strictly prohibited without the knowledge and written

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consent of the copyright terms as joint owners, and the right to sue for copyright infringement, each at its own expense.

The Design Professional may use the Instruments for any and all purposes that are reasonably related to its commercial enterprises. Specifically, the Design Professional may reuse elements of the Instruments of Service on other projects, provided that the reused aesthetic design or a major element shall not infringe the copyright in the original work created in connection with the Project. The Design Professional shall be released from any liability resulting from the unauthorized alteration of construction documents. The Design Professional also may use the Instruments of Service for advertising and promotion when such use is approved in writing by the Client, which approval shall not be unreasonably withheld. Further, the Design Professional grants the Client the right to use the drawings, plans and other Instruments for their use in publications, public meetings, planning efforts, and award submittals, and the right to reproduce the drawing drawings, plans or other Instruments as needed for stated uses without requesting authorization from the Design Professional.

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Jobsite Safety – The Design Professional is not responsible for job site safety during the master planning process. The owner retains sole responsibility and liability associated with securing the site and maintaining job site safety during the planning process.

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The Client acknowledges that (a) the Design Professional has prepared the Instruments solely for this Project, and that it does not represent, and specifically disclaims any warranty (express or implied), concerning the feasibility or appropriateness of using the Instruments for any purpose other than the implementation of the Project addressed in this Agreement, (ii) the Design Professional shall not be responsible to the Client regarding the use or workability of such Instruments of Service in connection with any project other than the Project contemplated herein, and (iii) the Client shall release the Design Professional and its consultants from any claims, causes of actions, expenses or loss arising from the use of the Instruments on other projects.

Safety – If the Design Professional or its agents, employees or representatives inspect or perform operations on Client property (a "Project Site"), the following understandings apply: (a) the Design Professional has inspected, or will have inspected the Project Site, before commencing its services; (b) the Design Professional has the sole responsibility to identify any condition, hazard or defect on a Project Site that will prevent it from safely performing its services; and (c) the Client makes no representation or warranty that a Project is safe, free from latent or patent defects, or fit for the purposes intended by the Design Professional.

Applicable Law – Unless otherwise provided, this Agreement shall be governed by Tennessee state law of the State of Alabama.

Disputes Resolution - All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or breach thereof shall be presented to non-binding mediation, subject to the parties agreeing to a mediator.

Dispute Resolution – The respective representatives of the parties who will administer this Agreement will use their good faith efforts to resolve any dispute or claim between them arising from the performance or failure to perform their respective obligations hereunder (a "Dispute"). In the event that those representatives are unable to amicably resolve a Dispute, it will be escalated to the senior manager/official level of each party for consideration. If the Dispute cannot be resolved at the senior official level, either party may request that the Dispute be mediated. However, if the parties are unable to amicably resolve any Dispute, the dispute resolution mechanism shall be litigation in a court that is located in Jefferson County, Alabama. If (i) either party should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) one party secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the other party, the losing party will

Mountain Brook Park and Rec Master Plan
April 27, 2015

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LA #14235

Nashville Office: 1314 5th Avenue North, Suite 200 • Nashville, Tennessee 37208 • Phone: 615 242-0040 • Fax: 615 242-1405
Atlanta Office: 220 W Crogan Street, Suite 100 • Lawrenceville, Georgia 30046 • Phone: 770-338-0017 • Fax: 770-338-0397

www.LoseASoc.com



pay the prevailing party its reasonable attorneys' fees and other reasonable expenses that are incurred in that action.

Term/Early Termination of Services – This Agreement will become effective on the date last executed above by a party. Thereafter, it shall continue in effect for a period of one (1) year or the Design Professional's successful completion of its services on the Project, whichever occurs first (the "Term"). Notwithstanding the provision immediately above or any other provision herein this Agreement may be terminated by either party upon not less than before the expiration of its Term on the occurrence of any of the following:

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(a) Termination for Cause by Client. If the Design Professional fails to perform any material obligation in this Agreement (a "Default"), the Client may terminate this Agreement for cause on seven (7) days' advance written notice should the other party fail to perform substantially in accordance with the terms of this Agreement through no fault of the party initiating to the Design Professional; provided that the Design Professional shall be provided an opportunity during that period to cure or correct any deficiency in performance that is the basis of the proposed termination for cause. The failure of the Design Professional to timely and diligently perform its services shall be considered an event of Default. This termination remedy is in addition to any other remedy or right provided to the Client in this Agreement or available by law that arises from a Default;

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(b) Termination for Cause by Design Professional. If the Client fails to perform a material obligation in this Agreement, the Design Professional may terminate the Agreement for cause on thirty (30) days' advance written notice to the Library; provided that the Client shall be provided an opportunity during that period to cure or correct any deficiency in performance that is the basis of the proposed termination for cause. The Client's failure to make payments when due shall be an event of Default; and

(c) Termination for Convenience by Client. At its convenience and without the occurrence or declaration of a Default, the Client may terminate the Agreement without cause on twenty (20) days' advance written notice to the Design Professional.

If this Agreement is terminated by the Client, the Design Professional shall be paid for services for its convenience, is terminated by the Design Professional for cause, or the performance of services is suspended for Client's failure to make payments, the Design Professional agrees that its sole and exclusive remedy for any such termination or suspension shall be the payment for services it has performed up to the termination notice date, including reimbursable expenses due plus termination expenses. Termination expenses are defined as reimbursable expenses directly attributable to termination, plus 15 percent of the total compensation earned to or the time of termination to account for the Design Professional's suspension in relation to the point in the Project at which such termination or suspension has occurred. Additionally, if the Design Professional has suspended its services due to the Client's failure to make timely payments hereunder, the Design Professional, as a condition to resuming its services, may request the Client to pay a mutually-agreed amount for rescheduling adjustments, reassignment of personnel, and related costs incurred due to remobilization that arose from the termination/suspension of services.

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Opinion of Probable Cost – In providing opinions off the Design Professional provides the Client an opinion on probable construction costs related to the Project, the Client understands that the Design Professional has no control over costs or the price of labor, equipment, or materials, or over the contractor's method of pricing, and that the opinions of probable construction costs provided are to be made on the

basis of the Design Professional's qualifications and experience. The Design Professional makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

Limitation of Liability/Exclusion of Consequential Damages - In recognition of the relative risks and benefits of the project to both the Client and the Design Professional, the risks associated or arising from the performance of this Agreement have been allocated such that as follows:

- (a) the Client agrees, to the fullest extent permitted by law, to limit the liability of the Design Professional and its subconsultants to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims and expenses from any such cause or causes, so that the total aggregate liability of the Design Professional and its subconsultants to all those named shall not exceed \$50,000 or the Design Professional's total fee for services rendered on this project, whichever is lesser. Such claims and causes include (including, but are not limited to, negligence, professional errors or omissions, strict liability, breach of contract or warranty.) to \$500,000 (the limits of the comprehensive liability, automobile and professional liability coverage required herein).

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In addition, the Client agrees to indemnify and hold the Design Professional harmless for any damage, liability or cost, including reasonable attorney's fees and defense costs, arising from any errors or omissions contained in the plans, specifications or other contract documents prepared by others. The Client agrees to extend any and all liability limitations and indemnifications provided by the Client to the Design Professional to those individuals and entities the Design Professional retains for performance of the services under this Agreement, including but not limited to the Design Professional's subconsultants and their officers, employees, heirs and assigns.

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It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

Betterment - If, due to the Design Professional's error, any required item or component of the project is omitted from the Design Professional's construction documents, the Design Professional shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will the Design Professional be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.

Contract Termination - Upon giving the other party five (5) calendar days prior written notice, this Agreement may be terminated by either party in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If this agreement is so terminated, the Design Professional shall be paid for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract. The Client shall pay the Design Professional in full within ten (10) calendar days of termination.

- (b) NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE DESIGN PROFESSIONAL AGREES THAT, IN THE EVENT IT MAKES ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CLIENT ARISING FROM ITS BREACH OR ALLEGED BREACH OF THIS AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER, THE MAXIMUM AMOUNT THAT THE DESIGN PROFESSIONAL MAY RECOVER FROM THE CLIENT AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE DESIGN PROFESSIONAL'S ACTUAL, DIRECT DAMAGES ARISING FROM THE CLIENT'S BREACH. THE DESIGN PROFESSIONAL AGREES AND ACKNOWLEDGES THAT THE COMMERCIAL TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT OWNER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE INCLUSION OF THIS LIMITATION. IN NO EVENT WILL THE CLIENT BE LIABLE TO THE DESIGN PROFESSIONAL FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING WITHOUT



LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY THE CLIENT.

Betterment – Intentionally Deleted. N/A to this Project.

Contract Termination – See Term/Early Termination Section above.

Insurance Requirements - For the duration of the Agreement and for limits not less than stated below, the Design Professional shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to the Client:

- (a) Comprehensive General Liability: Five Hundred Thousand Dollars (\$500,000);
- (b) Automobile Liability: Automobile Liability covering owned and rented vehicles operated by the Design Professional with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) combined single limit and aggregate for bodily injury and property damage;
- (c) Workers Compensation: Workers' Compensation and Employers Liability as required by statute; and
- (d) Professional Liability: Professional Liability covering the Design Professional's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) per claim and in the aggregate.

The Design Professional may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

Before the execution of the Agreement, the Design Professional shall provide Client a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificates shall name the Client, and its officials and employees, as additional insureds on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

Indemnification for Claims against Client by Third Parties - The Design Professional agrees to defend, indemnify, and hold harmless the City of Mountain Brook, and its agents, employees and officials (hereinafter the "Indemnitees") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages) (collectively herein "Claim(s)") made by any third parties (including any employee, subcontractor or representative of the Design Professional, hereafter a "Design Professional Representative") that arise out of, relate to, result from, or are attributable to any of the following: (a) any conditions in or about the Client-owned properties or Sites that the Design Professional or any Design Professional Representative may enter or encounter in performing their services or work; (b) any negligent act, omission or conduct by the Design Professional or any Design Professional Representative that arises from or relates to its (or their) performance or failure to perform its (or their) responsibilities under this Agreement. This indemnification obligation includes Claims by third parties that are caused in part by the negligence of an Indemnitee; provided, nothing herein shall obligate the Design Professional to indemnify any of the Indemnitees for Claims resulting from the sole negligence or from the willful misconduct of the Indemnitees.

Licensing - Before commencing its services, the Design Professional, at its own expense, will obtain all licenses, permits or other governmental authorizations needed to complete that work, including without



limitation, a business license issued by the City of Mountain Brook (collectively, "Licensing"). The Design Professional further agrees to maintain that Licensing throughout the performance of its work.

Standard of Services -The Design Professional expeditiously will perform its services in a manner that is consistent with professional skill and care that would be provided by other professionals in its industry under same or similar conditions, and in the orderly progress of the Project.

Independent Contractor – The Design Professional is an independent contractor of the Client. This Agreement does not create any partnership, joint venture or principal-agent relationship between the Client and the Design Professional. Further, the Client retains no control or authority with respect to its means and methods in which the Design Professional (or any of its employees or representatives) performs the services or work.

No Assignment - The Design Professional may not assign or subcontract any of its rights, obligations or the benefits of this Agreement to any third party without the written consent of the Client, which consent may be unreasonably withheld.

No Third Party Beneficiaries. The Agreement is made only for the benefit of the Client and the Design Professional. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

Conflicting Provisions - In the event of any conflict between the provisions in these Terms and Conditions and those in the Scope of Services, the provisions in these Terms and Conditions shall govern and control.

Intellectual Property Warranty. With respect to any deliverables or Instruments of Services furnished by the Design Professional to the Client in connection with this Project, the Design Professional warrants that it owns, is licensed or has the right to supply all such work product, including all intellectual rights attendant thereto. To the fullest extent permitted by law, the Design Professional shall defend, indemnify, and hold harmless the Client (and its representatives) from and against all actions, damages, judgments, losses, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs) and claims for patent, copyright or other infringement of intellectual property rights arising out of, related to, or resulting from the Design Professional's breach of this warranty.

Entire Agreement – This Agreement (including Attachment A and Attachment B - the Scope of Services) represents the entire agreement between the parties concerning the matters herein, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

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

No Waiver - Any forbearance or delay on the part of the Client in enforcing any of its rights under this Agreement shall not be construed as a waiver of such rights. No terms herein shall be waived unless expressly waived in writing.

Immigration Law Compliance. The Design Professional represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien," as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the "Act"), and that, during the performance of this Agreement, it shall participate in the E-Verify program as required under the terms of the Act; (b) it will comply with all applicable provisions of the Act with respect to its contractors or subconsultants by entering into an agreement with or by obtaining an affidavit from such entities providing that such entities are in compliance with the Act with respect to their participation in the E-verify program; and (c) it shall not hire, retain or contract with any contractor or



subconsultant that it knows is not in compliance with the Act. The Design Professional further agrees and warrants that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, in its hiring and employment practices, and that if it 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 and shall require each of its contractors, subconsultants or other parties with whom it has a contract, to act in a similar fashion. If the Design Professional violates any term of this paragraph, the Agreement will be subject to immediate termination by the Client. To the fullest extent permitted by law, the Design Professional shall defend, indemnify and hold harmless the Client 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 the Design Professional's failure to fulfill its obligations contained in this paragraph.



ATTACHMENT A - Hourly RatesRate Schedule

LOSE & ASSOCIATES, INC.

HOURLY RATE SCHEDULE (for use with all hourly agreements and for This Schedule is applicable only if Additional Services) are approved by Client and performed by Lose.

Professional Services Hourly Rate

Senior Principal/President.....	\$230.00
Principal I/Vice President.....	\$210.00
Principal II/Vice President.....	\$190.00
Division Director I, President Emeritus, Associate	\$185.00
Division Director II.....	\$140.00
Sr. Environmental Biologist.....	\$125.00
Senior Landscape Architect, Architect, and Engineer	\$120.00
Certified Park & Recreation Specialist	\$110.00
Engineer Specialist/Project Coordinator	\$110.00
L A I, Architect I, Engineer I, Project Manager I	\$110.00
LA II, Architect II, Engineer II, Project Manager II	\$105.00
Land Planner I, Intern Architect I, Engineer in Training I	
BIM Specialist, GIS Specialist I, Assistant Graphic Designer I.....	\$90.00
Land Planner II, Intern Architect II, Engineer in Training II	
GIS Specialist II, Assistant Graphic Designer II	\$85.00
Technician.....	\$70.00
Corporate Controller	\$95.00
Marketing Director.....	\$65.00
Assistant Accounts Manager, Administrative Assistant I.....	\$45.00
Administrative Assistant II.....	\$35.00

Reimbursable Expenses

Consultants' Services	cost + 10%
Prints	cost + 10%
Long Distance Telephone Charges	cost + 10%
Postage and Shipping	cost + 10%
Mileage and Travel Expenses	cost + 10%
Copies	cost + 10%

January 1, 2015

NOTE: All the above-stated fees and expenses are to be billed monthly, and the invoices are due and payable upon receipt. Other reimbursable expenses not shown hereon will be invoiced at our cost plus 10%. These rates are current until January 1, 2016, at which time they may be adjusted by the Design Professional.

ATTACHMENT B

Members

American Society of
Landscape Architects

American Institute of
Architects

American Society of
Civil Engineers

American Planning
Institute

April 15, 2015

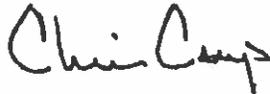
**Mr. Sam S. Gaston, City Manager
City of Mountain Brook, Alabama
P. O. Box 13009
Mountain Brook, AL 35213**

Dear Mr. Gaston:

Per your request I have revised our scope of services for the development of a Comprehensive Parks and Recreation Master Plan. We have added Mary Henderson back into the project to look at programming, staffing and fees and charges. We will also provide facility recommendations, benchmarking, demographics and connectivity. I have also included a web based survey as I think it will give the city more information on community desires for new facilities. We did not include concept sketches for each park to keep the cost down. If you would like to add them, the costs would be \$3,500.00 for each park's concept plan.

I have enclosed a revised approach and an updated spread sheet. Please review these items and let me know if you have any questions.

Sincerely,



**Chris Camp, ASLA
President**

Mountain Brook Comprehensive Parks Plan	Christopher L. Camp	John P. Lavender	Zerek Kroft	Mary S. Vavra	Mary Henderson	Total
Employee Initial	cl	jl	zk	mv	mh	
Hourly Rate	\$230.00	\$140.00	\$85.00	\$120.00	\$110.00	
Project Initiation						
Kick off meeting	6	6			6	18
Officials Interviews	8	8			8	24
Base Map Preparation			20			20
Site Assessments		16	16			32
Total Hours	14	30	36	0	14	94
Subtotal	\$ 3,220.00	\$ 4,200.00	\$ 3,060.00	\$ -	\$ 1,540.00	\$ 12,020.00

Public Participation						
Steering Committee Workshop	12	12				24
1st Public Meeting	12	12				24
Web Survey				20		20
Total Hours	24	24	0	20	0	68
Subtotal	\$ 5,520.00	\$ 3,360.00	\$ -	\$ 2,400.00	\$ -	\$ 11,280.00

Demand Analysis, Facility Assessment, etc						
Demographic Research	2		20			22
Gap Analysis	2			10		12
Connectivity Analysis	2			10		12
Total Hours	6	0	20	20	0	46
Subtotal	\$ 1,380.00	\$ -	\$ 1,700.00	\$ 2,400.00	\$ -	\$ 5,480.00

Park and Facility Analysis	2	6	20			28
CIP	2	20	10			32
Benchmarking	1	4	20			25
Programming assessment					16	16
Staffing assessment					16	16
Budget and Fees & Charges assessment					20	20
Total Hours	5	30	50	0	52	137
Subtotal	\$ 1,150.00	\$ 4,200.00	\$ 4,250.00	\$ -	\$ 5,720.00	\$ 15,320.00

Prepare Preliminary Plan	8	20		8	8	44
Present Preliminary Plan	8	8				16
Prepare Final Plan	8	20	8	8	8	52
Present Final Plan	12				12	24
Total Hours	36	48	8	16	28	136
Subtotal	\$ 8,280.00	\$ 6,720.00	\$ 680.00	\$ 1,920.00	\$ 3,080.00	\$ 20,680.00

						0
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Total Hours	0	0	0	0	0	0
Subtotal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Individual totals	\$ 19,550.00	\$ 18,480.00	\$ 9,690.00	\$ 6,720.00	\$ 10,340.00	
Labor Total	\$64,780.00					
Labor with Contingency	\$ 64,780.00		0%			
Reimbursable Expenses			0.0%			
Consultants (Part of Our Fees)			0.0%			
Projected Grand Total	\$ 67,580.00	\$ 67,580.00				

PROJECT INITIATION

Kickoff Meeting, Research, Information Assembly and Interviews:

The planning team will conduct a planning meeting with members of the City staff and other officials to review project goals, the planning process and the proposed time schedule. This will give the elected leaders an opportunity to share constituent concerns and their long-range visions for the department. This meeting will provide the opportunity to identify known issues and concerns, to gain an overview of the Mountain Brook's resources and to discuss specific areas that may require special attention during the planning process. Target dates will be set for delivery of the preliminary reports and recommendations, submission of comments by the City and preparation of the final document for publication. We will end this stage with a windshield visit to as many parks as possible to get a feel of the condition and make-up of public facilities.

Benchmarking:

We will work with staff to formulate a list of benchmarking departments and then begin gathering comparison data. On previous projects, we have found that staff and elected officials have a good idea which communities they feel they should be measured against.

Base Map Development:

Prior to the kickoff meeting, we will have reviewed any current owner-provided inventories, maps and GIS data; we will discuss previous planning reports developed by Mountain Brook to gain a better idea of previous planning efforts and results. We will consult with City staff to identify the large private recreation providers in and around the City and how surrounding City and County recreation agencies (Vestavia, Homewood, Birmingham, Jefferson County) should be involved in the process. We will then contact these providers in order to ascertain the levels and types of recreation services and facilities each provides.

Site Assessments:

In the weeks following the kickoff meeting, our team members, using the information provided by the City, will begin visiting facilities to gain a better understanding of the City's level of service, maintenance practices and overall condition of park facilities. The team will record their impressions relating to conditions of facilities, making specific notes on areas of safety concern or accessibility issues related to the Americans with Disabilities Act. Other issues related to historic significance, need for conservation, access, circulation, safety, aesthetics, surrounding land uses, drainage and forest canopy and user groups observed will be noted. Particular attention will be paid to the level of maintenance at each facility. Facility inventories will also be used to provide evaluations and recommendations for the comparative analysis of benchmark communities.

PUBLIC PARTICIPATION

Steering Committee Formation:

Concurrent with the site inventory and analysis, we will finalize with the City the makeup of the Steering Committee to work with our master planning team. We strongly encourage that you empower a group of citizen representatives (who can be relied up to make compromises where necessary) to help manage larger citizen special interest group expectations and represent underserved groups who might not otherwise participate in other types of public input. If you decide to go this route, we will work with City staff to identify those to serve and will prepare a letter of invitation to potential members. The invitation will include an overview of the planning process and a list of members' requisite tasks and responsibilities. We will follow up with chosen committee members to ensure that they fully understand the tasks and are committed to attend the Steering Committee workshop, public meetings, the preliminary draft presentation (at your discretion) and the final presentation.

Steering Committee Workshop:

We will then conduct a workshop with the Steering Committee. The workshop agenda will involve subdividing the group and giving each smaller group a list of questions to which each responds. The issues considered in this workshop will include developing a mission and vision for the department and a discussion on establishing local facility development standards or level-of-service standards. This will involve presenting existing National Recreation and Parks Association (NRPA) community park standards and modifying these standards to reflect the specific needs in Mountain Brook. We will also discuss the demographic trends in the area and how new expectations for park and recreation services may differ from the established understanding of park and recreation facilities. Also on the agenda will be the identification of dual service opportunities and partnerships that exist in the community. Projected areas of growth, which will require expanded parks and services in the future, will be identified and new developments planned within the community will be evaluated for the impact they will have on the parks system. The groups will then reassemble to hear presentations from each and subsequently build a consensus as a single body.

Public Input Meetings:

In order to gauge public support and to understand fully the recreational needs of Mountain Brook, our team will facilitate an initial public meeting to inform citizens of the upcoming planning process and to take their input. Prior to the meeting, the team will assist in the preparation of a press release to be submitted by the City for advertisement about the upcoming input sessions. The goal of the meeting, like other venues for public input, is to gauge a list of needed facilities and programs. The meeting will also reflect the community's vision for parks within the overall scope of public services offered by the City. Input will be solicited about the development of the local park and recreation

standards specific to the City. During the meeting, the project team will also address citizens' questions about the master plan and will record opinions and ideas about the current delivery system.

The meeting will also provide opportunities for people to offer ideas for change and improvement. This first round of public input will occur on the second team site visit after the team has developed inventories and a basic understanding of the department. A presentation on initial findings, as well as recreation trends and opportunities, will be made to explain the planning process and to encourage the community to think of recreation opportunities outside of those that currently exist. We will solicit comments on recreation needs, open space and conservation needs, programming opportunities and issues of connectivity with greenways and sidewalks as part of the presentations. Comment cards will be distributed; the resulting submissions will be compiled with the verbal comments from the workshops for inclusion in the final report.

Product of This Phase:

We will record all comments during interviews, meetings and presentations and assemble the material into a summary report illustrated with charts and graphs to indicate clearly the outcome of the process. This information will be evaluated and tabulated for use in the demand analysis and/or recommended program offerings. This information will also be used in subsequent evaluations and recommendations of the Department. All summaries, results, charts and graphs will be included in the final master plan document.

DEMAND ANALYSIS AND EVALUATION/NEEDS INDEX/FACILITY ASSESSMENT/ACTION PLAN

This phase begins with previous phases, but continues after the initial phases are complete. The analysis phase of the project is a detailed process that identifies community characteristics and allows the project team to become familiar with previous and current planning efforts. At this stage of the process, we will consolidate and analyze all public input, demographics and existing planning documents. Existing parks and recreation goals will be analyzed and restructured in response to interviews, workshops, and public comment. We will review the goals and objectives of existing planning reports to determine the extent to which those goals have been achieved. We will utilize the consensus results of public input, personal interviews, workshops and steering committee meetings to shape demand analysis questions that are part of a Community Needs Assessment survey.

Demand Analysis/Community Needs Assessment Survey:

We will use a technique we used on several recent plans, which is to post on the City's website the link to the community survey we will host on a separate web site. This will give people who were not able to attend public input meetings an opportunity to participate in the process. While these responses will not be fully statistically valid, they

do provide us with valuable preference data that can be used to shape programming and facility recommendations. We will work with staff to tailor the questions for the survey to focus on the most critical issues related to parks, open space, greenways and access to park programs and facilities.

Our staff will compile and analyze the survey results, looking for preferences and tendencies within the survey responses. Because we have completed multiple recreation surveys as part of our comprehensive planning process for other communities around the country, we will be able to compare Mountain Brook area responses to other communities and see if local trends are similar to regional and national trends. As part of the master plan report, the survey responses will be tabulated and documented with charts and graphs. A PowerPoint presentation of survey findings will also be provided in addition to the survey narrative in the master plan report.

Demographic Research:

In order to fully reflect the community for which the plan is being developed, the project team will utilize current and projected demographic and sociological factor data, including population composition, population growth projection and trends, economic factors, and land-use patterns to prepare charts and graphs illustrating the City's actual growth between 2000 and 2010, as well as projected growth through the year 2030. Available data from the U.S. Bureau of the Census will be used to express the overall gender, age, education and economic health of the citizens served by Mountain Brook parks. General comparisons of these statistics will be made at state and national levels in order to understand community characteristics in a broader sense. We will prepare a detailed comparative analysis with the selected benchmark communities. We will look at the data both globally throughout the City and by census tract when evaluating service areas. We will also apply the demographics analysis to the service area of the parks to determine how each park is servicing the surrounding population, both currently and in the future.

Park Distribution Mapping and Gap Analysis:

A critical element of the planning and evaluation service will be to develop level-of-service maps with service area boundaries for existing parks using GIS base information provided by the City. These maps will then be overlaid with other community data, such as location of libraries, schools and school playgrounds, colleges, large private recreation facilities and state or federal park facilities, to determine access to park facilities on a community-wide basis. These maps will allow the planning team to determine where service gaps are located and the relationship of facilities to major population centers within Mountain Brook. All of this data will be critical to developing recommendations for new park facilities and recommending open space. Completed maps will be formatted so that GIS staff can update them in the future.

As part of the park distribution gap analysis, we will review the impacts of the growth projections and land use guidelines outlined in the City's comprehensive plan. It will

include analysis of the impact of the desired growth patterns on existing parks and identify where new parks, greenways and open space will be needed to provide a well rounded system as growth and new development patterns develop. It will look at travel times and impediments to travel that limit access to existing and proposed facilities. Short term and long term recommendations will be made in order to minimize the gaps in service and create more connectivity through greenway and sidewalk development. This part of the analysis will also look at where potential passive open space may be needed to provide relief from development and to protect ecologically sensitive areas.

Using a combination of the demographics analysis and the park distribution analysis, we will develop a scoring strategy that outlines areas of the city based on how well they are served and how future demographic trends will affect these levels of service.

Connectivity Analysis:

Team members will review any existing and planned greenway corridors in Mountain Brook, recommendations of the City's comprehensive transportation plan and projected land use plans to see if there are opportunities to expand greenway corridors. The team will assess the overall connectivity of the community in order to determine areas where connectivity is limited and where improved community access is needed. The team will also look at the potential to link City greenway corridors with those of surrounding communities in order to maximize overall connectivity within the region.

After the analysis of connectivity and environmental benefits has been completed, the team will prepare a greenway corridor map that details existing systems and recommended facilities. The team will develop a phasing plan and cost analysis for the recommendations.

Program Analysis

The planning team will use the results of all the input methods and inventories to make recommendations for programs. Recommendations will identify new programs that will require new facilities, in addition to programming opportunities that have the potential to serve new user groups and program opportunities to expand revenue generation within the department.

An important part of this analysis will be to maximize the effective leadership groups that are already playing a role in programming, such as athletic associations or 501.c.3 organizations. Taking advantage of non-paid staff and volunteer groups is an effective tool that is utilized by parks and recreation departments across the country. The key is to establish clear policies and guidelines that these groups follow when operating on public property.

Working with the park staff and our stakeholder groups, we will develop a ranking strategy to determine which programs receive priority.

Partnering Analysis/Public Private System Considerations

The goal of this assessment is to determine what agreements might be enacted to improve the overall recreation delivery system and make optimal use of facilities. The team will also review capital improvement projects/CIP and program costs to determine the effectiveness of existing policies and the viability of future policies.

This process will include an assessment of groups such as private youth associations, adult sports leagues, civic groups, 501.c.3 organizations, schools, and other secondary group agreements relative to maintenance and operating costs and revenue generated. The process will also include an evaluation of communitywide programming potential for the department. Particular attention will be paid to developing recommendations for continued and future coordination with youth associations and other groups; these recommendations will also focus on achieving the highest degree of efficiency and effectiveness possible. Our team will identify potential opportunities for revenue generation and funding in addition to those already in place, including sources for grants.

Additionally, we will identify opportunities for private providers to assume some department roles, where it makes sense. Part of that analysis involves consideration of situations where private providers may be able to provide services more efficiently, but must also consider which private providers may not be a good solution in cases where access to park and recreation activities are not as inclusive as at public facilities and programs.

Budget Analysis, Fees and Charges

We will look at the parks budget to determine the current level of per capita spending by the City, to determine percentage of total City budget and to compare these spending levels with other communities of similar size in the state and region. These comparisons will provide the planning team with a better understanding of the level of funding for recreation programs and services. This assessment will also look at areas to increase internal revenue production based on the current fees and charges. The planning team will determine the best business practice for fees and charges. The planning team will evaluate your current fee determination process and make recommendations for development of a standardized approach to assessing resident and nonresident fees.

Staffing Assessment and Operational Budget

Working with City staff and elected officials, the team will evaluate and provide recommendations for the future department staff structure. Recommendations will be developed for staff organization, titles, new planning and programming divisions, and new staff needed to operate and maintain new park programs and facilities. These recommendations will be made to provide for the delivery of recreation services and programs. Budgeting projections for new staff and future staff at new facilities will be provided along with estimates for operational expenses for each basic park using per-acre cost and for all major facilities.

As part of this evaluation, the planning team will look at which staff positions will optimize service delivery by full time City staff and which positions can be contract positions. Many parks and recreation agencies today routinely utilize part-time staff and

contract staff to direct programs, oversee entire facilities and as part of the overall maintenance operation. We recently did a similar evaluation in a recent plan and recommended a combination of contract services and City staff to maximize delivery of service for a new department with challenges similar to those Mountain Brook faces.

Park, Facility and Land Needs Assessment:

The planning team will review existing facilities relative to expandability, existing design standards and levels of maintenance. In addition to site-based assessment, the distribution of facilities relative to travel times and population served will be developed. Facilities will also be categorized using established park standards (mini-park, neighborhood, community, open space, greenway) to analyze the makeup of the parks within the system relative to national standards for park facilities. Use and overuse of facilities based on program registrations and community input will be evaluated to aid in the development of recommendations. Strategies and policy recommendations will be made to enhance existing facilities and to maximize recreation opportunities. We will identify where additional focused studies may be needed in order to take the master plan recommendation and develop recommendations related to the operations and maintenance of parks and facilities. We will analyze these factors to determine their carrying capacity and if they have reached, or are near reaching, that capacity. We will review and rank major green space resources for applicability to overall park land needs and will recommend criteria for park land acquisition.

We will utilize national standards published by the National Recreation and Park Association (NRPA), staff and steering committee recommendations and benchmark communities to develop standards and recommendations specific to Mountain Brook. The proposed standards will be tailored to achieve the consensus goals, objectives and vision identified in the planning process; it is understood that local trends and desires are critical to this planning process and should take precedence over national planning standards.

Capital Improvement Priorities:

We will prepare a preliminary Capital Improvements Plan (CIP) for the City's park system. We will use information gathered throughout the process to create a short-term phasing recommendation (years 1-2,) a long-term phasing recommendation (years 3-5) and a future term (years 6-10). The plan will also include recommendations for implementing changes using partnering agencies (schools, private groups, community organizations, etc.) to carry some of the responsibility. Recommendations will be based on actionable, not theoretical methods of funding, and will consider possibilities such as fees, foundations, sales tax, millage increases, grants and endowments, etc. These will be presented to the City as well as to the Steering Committee for review and comments. Following review comments and recommended modifications, we will prepare the final capital recommendations and phasing report.

Public Outreach Recommendations:

The results of the survey data will identify strengths and weaknesses of how the public is made aware of the department's activities. From the survey questions, we will be able recommend ways to increase your presence in the community and identify which media resources, partnering community organizations, etc. are the best avenues for communication.

PRESENTATION OF THE PRELIMINARY MASTER PLAN REPORT AND FINDINGS ALONG WITH THE PRELIMINARY MASTER PLAN, COST AND FUNDING RECOMMENDATIONS

Preliminary Recommendations Input Meetings and Web Posting:

Our planning team will present the preliminary recommendations and findings for the park system and the individual park/connectivity master plans to the Steering Committee, Elected Officials and City staff to gain their feedback on the recommendations. We will also conduct communitywide public meeting to gather input and review comments on the proposed plan recommendations. We will provide the City with a .PDF copy of the preliminary master plan report to post on the City's website for a two-week comment period. This will give citizens who were unable to attend the public meetings an opportunity to comment on the plan.

Prioritization strategies will be prepared for implementation of recommended facilities. These strategies will include recommendations for improvements and renovations to existing facilities, as well as new facilities required to meet the identified public need. Vision statements along with short- and long-term goals and objectives will be provided to direct implementation of the master plan.

Product of This Phase:

The technical report from this phase will include:

- Summaries of data analysis
- Survey summaries and analysis
- Policy and Program summaries and recommendations
- Staffing summaries and recommendations
- Budget review and recommendations
- Individual park assessments and potential new land acquisition recommendations.
- New park facility cost estimates
- Distribution pattern maps
- Benchmarking comparisons
- Facility inventory charts
- Greenway and trails connectivity maps and cost estimates
- Land acquisition recommendations for future development or reserved open space
- Funding sources and recommendations
- Overall capital spending and phasing plans

An executive summary

After we have gathered all the comments, we will meet with staff, City Administration and Elected Officials to go over a comment summary. At this meeting, comments will be presented by topic area, and the team will ask for final input before the final master plan is prepared.

Deliverables

We will provide a digital copy in .PDF format on CD and a copy of our PowerPoint presentation to staff for distribution. We will also provide a full-size print of key maps. A master plan appendix will have copies of all meeting and planning session summaries. Other critical data that is felt to be important to explaining the master plan recommendations will also be included in the appendix.

FINAL MASTER PLAN PREPARATION

After a thorough evaluation of all comments on the Preliminary Master Plan, our team will prepare a Final Master Plan Report and will present it first to City staff as a draft, and then after revision, to the City Manager and City Council. This plan will include the following:

Final Deliverables

We will provide a digital copy in .pdf format on CD and a copy of our PowerPoint presentation to staff for distribution. We will also provide a full-size version of key maps. A master plan appendix will have copies of all meeting and planning session summaries. Other critical data that is felt to be important to explaining the master plan recommendations will also be included in the appendix.

PROJECT TIMELINE AND MILESTONES

We regularly perform comprehensive master plans for cities and counties in approximately 5-6 months. We feel that in order to perform the scope of work in a professional and meaningful manner, the amount of time we have dedicated to each step is appropriate, and includes sufficient time for City officials to review the recommendations at each step. If desired, we can condense the schedule as desired.

Project Initiation:	Weeks 1-3
Public Participation:	Weeks 4-5
Demand Analysis/Survey and Evaluation/Needs Index/ Facility Assessment/Action Plan & Creation of Preliminary Plan:	Weeks 1-14

Presentation of the Preliminary Master Plan Report and Findings & Associated Meetings:	Weeks 15-16
Creation of Final Master Plan	Weeks 16-20
Final Master Plan Presentation:	Week 21

RESOLUTION NO. 2015-064

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the lunchtime restaurant conditional use application for CUP Food You Pick Up at 73 Church Street.

ADOPTED: This 11th day of May, 2015.

Council President

APPROVED: This 11th day of May, 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 May 11, 2015, as same appears in the minutes of record of said meeting.

City Clerk



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: May 7, 2015

TO: Mayor, City Council
City Manager
City Attorney

FROM: Dana Hazen, City Planner

RE: **Conditional Use for CUP – Food You Pick Up**
73 Church Street (previous Gia's Cakes) Crestline Village

Request for approval of a fast-casual, pick up food use (lunchtime operation) in the previous Gia's Cakes location in Crestline Village. As may be seen in the attached letter of operational characteristics, the establishment is proposed to be open during the lunch peak hours of 11:00 a.m. to 1:00 p.m., thereby requiring approval of a conditional use. There are only 6-8 seats proposed inside, with another 6 proposed on the outdoor sidewalk (sidewalk café permit on VDR agenda for May 20th).

The concept is walk-in/take-out. Meals are pre-packed and serve mostly to-go customers. The applicant has indicated that the experience in other CUP locations is that it is not a "destination" use, but tends to serve mostly walk-up patrons.

The number of employees present between is minimal, with the peak employee time in the early morning and late evening shifts (3-4 employees). The applicant has indicated that the employees will park in designated long-term public parking.

The zoning ordinance requires council approval of a lunchtime conditional use, and states that any proposed conditional use will be reviewed as to the following:

- Whether the use would disparately impact public parking in the area;
- Whether vehicular or pedestrian circulation would be impacted by the use;
- Whether the use is compatible with surrounding existing uses;
- Whether the hours of operation or peak traffic times would impact existing uses.

CUP Food You Pick Up, LLC
174 Watercolor Way
Suite 103
Santa Rosa Beach FL 32459
May 1, 2015



Mountain Brook City Council
56 Church Street
PO Box 130009
Mountain Brook AL 35213

Dear Mountain Brook City Council:

We are requesting a land use permit to allow our business CUP Food You Pick Up, LLC to operate from the hours of 7:00AM to 9:00PM. We have signed a lease on the property located at 73 Church Street and were not made aware of this requirement until this week.

CUP provides healthy and delicious meals for people on the go. Our breakfast, lunch, and dinner menu items are made fresh daily and packaged for convenience. We rely on foot traffic and grab and go customers for our sales.

Our kitchen will be most heavily staffed in the early morning (3-4 staff members) and late evening shifts (3-4 staff members). With the limited parking available our employees will be using the all-day parking on Dan Watkins.

We currently plan to have 6-8 seats inside and will be making an application for café seating for an additional 6-8 seats. Most of our customers take their meals to go and because the meals are pre-packaged the time they spend in the restaurant is simply the time it takes to complete the sales transaction.

Please feel free to contact me directly if you require additional information.

Sincerely,

Paulette DeGraw

Direct 770.653.6534
paulette@pickupcup.com
www.pickupcup.com



RESOLUTION NO. 2015-068

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of license agreements with respect to the West Montcrest Drive sidewalk construction project as follows:

1. Robert Bradford and Katie Avery, 12 West Montcrest Drive, 35213 (Exhibit A)
2. John and Gina F. Thomas, 16 West Montcrest Drive, 35213 (Exhibit B)
3. John B. and Kerri C. Windle, 14 West Montcrest Drive, 35213 (Exhibit C)

ADOPTED: This 11th day of May, 2015.

Council President

APPROVED: This 11th day of May, 2015.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City 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 May 11, 2015, as same appears in the minutes of record of said meeting.

City Clerk

LICENSE AGREEMENT

This License Agreement (the "Agreement") is made and entered into on the date last written below (Date: May 8, 2015) by and between Robert Bradford & Katie Avery (hereinafter referred to as "Grantor") and the City of Mountain Brook, Alabama, a municipal corporation (hereinafter referred to as "City").

WHEREAS, Grantor is the owner of the following described real estate (hereinafter referred to as the "Property") located in the City of Mountain Brook, Alabama, to-wit:

Lot 9 BLK 6, according to the survey of Shades Valley, 2nd Sector, as recorded in Map Book 25, page 55, in the Probate Office of Jefferson County, Alabama.

At the time of this Agreement the Property is also known as 12 West Montcrest Drive;

WHEREAS, the City is constructing a new wall that will be approximately 3' high and a sidewalk approximately 4' wide on the municipal right of way along the street in front of the structure located on the Property (the "Project");

WHEREAS, in order to construct the Project, the City may be required to perform operations on the Property that may include, but are not limited to, the following:

- a. alter and re-slope the existing grade of the Property to align with new wall;
- a. disturb and replant grass, turf and other pre-existing plantings;
- b. remove sections of the existing driveway and repave/restore same;
- c. as needed, install, maintain, repair and replace drainage structures (including pipes, culverts, and catch basins) on under the Property;
- d. store machinery, equipment and supplies on the Property throughout the Project; and
- e. perform other work, activities and operations reasonably related to the construction of the aforesaid wall and sidewalk.

(collectively hereinafter the "Operations");

WHEREAS, the location on the Property at which the Operations may be conducted on is depicted on the attached Exhibit A and hereinafter referenced as the "License Area," and

WHEREAS, pursuant to the terms set forth in this Agreement, the undersigned desire to enter into this Agreement to facilitate the construction of the improvements contemplated on the Project

WITNESSETH

For and in consideration of the sum of one dollar (\$1.00) in hand paid to Grantor by the City, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and the City agree as follows:

1. The Grantor grants the City and its employees, contractors and representatives (collectively hereinafter the "City") an irrevocable, non-exclusive right to enter, occupy and use the License Area to conduct its Operations.

2. The City agrees to perform its Operations in a commercially reasonable manner, and in compliance with applicable federal, state and other governmental laws, rules and regulations

3. This term of this Agreement shall commence on the Effective Date and, unless extended by the parties in writing, expire six (6) months later.

4. At the completion of construction of the Project, the City shall restore the surface and improvements on Grantor's Property to the condition reasonably existing at the time of this Agreement, excepting changes in grade and other modification on the Property made to construct the Project.

5. This Agreement only grants the City a license, not any interest or estate of any kind, nature or extent in the Property. The City does not and shall not claim any such interest or estate in the Property by virtue of entering into this Agreement or performing the Operations.

6. The City shall not permit any mechanic's or materialman's lien to be filed against the Property by reason of any labor, services, materials or equipment supplied in connection with the Operations. If any such lien is filed affecting the Property, the Grantor shall promptly furnish the City with notice of that lien and the City shall promptly cause the same to be discharged.

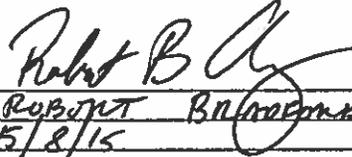
7. Nothing in this Agreement shall be construed to create a partnership, joint venture, principal-agent relationship, or any other relationship between the parties other than as independent parties to a contract entered at arms' length.

8. This Agreement expresses the complete intent and agreement of the parties. The provisions herein supersede all prior negotiations, conversations, and understandings concerning the matters addressed herein. All terms and conditions of this Agreement shall be binding upon the parties and their respective successors and assigns, and cannot be amended, varied or waived by any oral representation or promise of any representative of the parties unless made in a subsequent writing that is signed by all parties. This Agreement may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

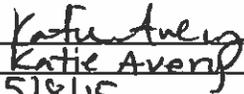
(Signature Page Follows)

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the date(s) shown below.

GRANTOR

Signature: 
Printed Name: ROBERT BALDWIN AVERY
Date: 5/8/15

GRANTOR

Signature: 
Printed Name: Katie Avery
Date: 5/8/15

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____
Date: _____

ATTEST Its:

City Clerk

EXHIBIT A

EXHIBIT A – DEPICTION OF LICENSE AREA

See attached.

EXHIBIT A

LICENSE AGREEMENT

This License Agreement (the "Agreement") is made and entered into on the date last written below (Date: 5/8/15) by and between John J & Gina F Thomas (hereinafter referred to as "Grantor") and the City of Mountain Brook, Alabama, a municipal corporation (hereinafter referred to as "City").

WHEREAS, Grantor is the owner of the following described real estate (hereinafter referred to as the "Property") located in the City of Mountain Brook, Alabama, to-wit:

Lot 11 BLK 6, according to the survey of Shades Valley Gardens, 2nd Sector, as recorded in Map Book 25, page 55, in the Probate Office of Jefferson County, Alabama.

At the time of this Agreement the Property is also known as 16 West Montcrest Drive;

WHEREAS, the City is constructing a new wall that will be approximately 3' high and a sidewalk approximately 4' wide on the municipal right of way along the street in front of the structure located on the Property (the "Project"),

WHEREAS, in order to construct the Project, the City may be required to perform operations on the Property that may include, but are not limited to, the following:

- a. alter and re-slope the existing grade of the Property to align with new wall;
- a. disturb and replant grass, turf and other pre-existing plantings;
- b. remove sections of the existing driveway and repave/restore same;
- c. as needed, install, maintain, repair and replace drainage structures (including pipes, culverts, and catch basins) on under the Property;
- d. store machinery, equipment and supplies on the Property throughout the Project; and
- e. perform other work, activities and operations reasonably related to the construction of the aforesaid wall and sidewalk.

(collectively hereinafter the "Operations");

WHEREAS, the location on the Property at which the Operations may be conducted on is depicted on the attached Exhibit A and hereinafter referenced as the "License Area," and

WHEREAS, pursuant to the terms set forth in this Agreement, the undersigned desire to enter into this Agreement to facilitate the construction of the improvements contemplated on the Project

EXHIBIT B

WITNESSETH

For and in consideration of the sum of one dollar (\$1.00) in hand paid to Grantor by the City, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and the City agree as follows:

1. The Grantor grants the City and its employees, contractors and representatives (collectively hereinafter the "City") an irrevocable, non-exclusive right to enter, occupy and use the License Area to conduct its Operations.

2. The City agrees to perform its Operations in a commercially reasonable manner, and in compliance with applicable federal, state and other governmental laws, rules and regulations

3. This term of this Agreement shall commence on the Effective Date and, unless extended by the parties in writing, expire six (6) months later.

4. At the completion of construction of the Project, the City shall restore the surface and improvements on Grantor's Property to the condition reasonably existing at the time of this Agreement, excepting changes in grade and other modification on the Property made to construct the Project.

5. This Agreement only grants the City a license, not any interest or estate of any kind, nature or extent in the Property. The City does not and shall not claim any such interest or estate in the Property by virtue of entering into this Agreement or performing the Operations.

6. The City shall not permit any mechanic's or materialman's lien to be filed against the Property by reason of any labor, services, materials or equipment supplied in connection with the Operations. If any such lien is filed affecting the Property, the Grantor shall promptly furnish the City with notice of that lien and the City shall promptly cause the same to be discharged.

7. Nothing in this Agreement shall be construed to create a partnership, joint venture, principal-agent relationship, or any other relationship between the parties other than as independent parties to a contract entered at arms' length.

8. This Agreement expresses the complete intent and agreement of the parties. The provisions herein supersede all prior negotiations, conversations, and understandings concerning the matters addressed herein. All terms and conditions of this Agreement shall be binding upon the parties and their respective successors and assigns, and cannot be amended, varied or waived by any oral representation or promise of any representative of the parties unless made in a subsequent writing that is signed by all parties. This Agreement may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the date(s) shown below.

GRANTOR

Signature: John J. Thomas
Printed Name: John J. Thomas
Date: 5-8-15

GRANTOR

Signature: Gina Thomas
Printed Name: Gina Thomas
Date: 5-8-15

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____
Date: _____

ATTEST Its:

City Clerk

EXHIBIT B

EXHIBIT A – DEPICTION OF LICENSE AREA

See attached.

EXHIBIT B

