

**MEETING AGENDA  
MOUNTAIN BROOK CITY COUNCIL**

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

**NOVEMBER 9, 2015, 7:00 P.M.**

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1. Approval of the minutes of the October 26, 2015 regular meeting of the City Council.
2. Approval of the minutes of the November 2, 2015 special meeting of the City Council.
3. Consideration: Resolution ratifying internal fund transfers as of and for the year ended September 30, 2015 (Park Board to General Operations and General Operations to Emergency Reserves).
4. Consideration: Resolution authorizing the street light upgrades (3) on Brook Manor Drive.
5. Consideration: Resolution authorizing the execution of the following service agreements:
  - a. Jefferson/Blount/St. Clair Mental Health Authority
  - b. Exceptional Foundation
  - c. Jefferson County Historical Commission
  - d. Alabama Veterans' Memorial Foundation
  - e. Birmingham Museum of Art
  - f. Alabama Symphonic Association
  - g. Birmingham Botanical Society
  - h. Birmingham Children's Theatre
  - i. Birmingham Zoo
  - j. Prescott House
  - k. McWane Science Center
  - l. Alabama Ballet
6. Consideration: Resolution authoring the installation of a street light on Mount Royal Circle (between houses 2720 and 2724).
7. Consideration: Resolution authorizing the execution of an agreement with ETC Institute regarding the follow-up (second) resident survey.
8. Consideration: Resolutions regarding the [roundabout] improvements to be constructed at the intersection of Cahaba Road/U S Highway 280/Culver Road/Lane Park Road:
  - a. Agreement for Cost Sharing between the City and City of Birmingham with respect to the Roundabout Improvements, ALDOT Project CMAQ-3715( )
  - b. Agreement between the City and ALDOT for Preliminary Engineering (Project CMAQ-3715( ), Project Reference Number 100064199
  - c. Agreement between the City and ALDOT for Right-of-Way Acquisition (Project CMAQ-3715( ), Project Reference Number 100064200
  - d. Agreement between the City and ALDOT for Utility and Construction (Project CMAQ-3715( ), Project Reference Numbers 100064201 and 100064202

**MEETING AGENDA – PAGE TWO  
MOUNTAIN BROOK CITY COUNCIL**

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

**NOVEMBER 9, 2015, 7:00 P.M.**

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9. Consideration: Ordinance amending the educational incentive policy of the City with respect to the Director of Planning, Building and Sustainability.
10. Announcement: The next regular meeting of the City Council is November 23, 2015, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
11. Comments from residents.
12. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
OCTOBER 26, 2015**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:30 p.m. on Monday, the 26th day of October, 2015. 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 Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

## 1. AGENDA

### 1. Street Lights upgrades on Brook Manor Drive—Ronnie Vaughn and Sam Gaston

The members of the City Council expressed their general consensus with the lighting upgrade. The City Manager stated that letters will be mailed to Brook Manor residents informing them that this matter will be considered again on November 9, 2015 at which time a final decision will be made with respect to the lighting upgrades.

### 2. Request by HomeFit Consulting to hold a weekly exercise class for four weeks in front of City Hall—Cody Robinson

The members of the City Council expressed their general opposition to the classes being held in front of City Hall. However, several members of the City Council expressed that such classes may be considered in other public locations within the City. President Smith invited Mr. Robinson to a public hearing before the Park and Recreation Board scheduled for October 27, 2015 at 6 p.m. where the Master Plan will be publicly discussed. [Note: Residents expressed interest in similar recreational activities during the public involvement meetings held during the early stages of the Master Plan project].

### 3. Review and discussion of the 7 p.m. Mountain Brook Emergency Communications District and City Council formal meeting agendas

Regarding the Park Board appointment, three names were submitted to the City Council by the Park and Recreation Board for consideration: Trenton Wright, Leigh Ann Speake, and Eddie Allen. The Park and Recreation Board recommended that Trenton Wright be appointed to the Board. The general consensus of the members of the City Council was to appoint Mr. Wright to the Park and Recreation Board (see Resolution No. 2015-146).

## 2. EXECUTIVE SESSION AND ADJOURNMENT

There being no further matters for discussion, it was moved by Council President Smith that the City Council convene in executive session to discuss a matter involving good name and character of an individual. The motion was seconded by Council President Pro Tempore Pritchard. [The matter did not require certification from the City Attorney as it is expressly provided for in 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 reconvene in the City Hall Council Chamber (Room A108) upon conclusion of the executive session.

### 3. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on October 26, 2015, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

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City Clerk

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA AND  
MOUNTAIN BROOK EMERGENCY COMMUNICATIONS DISTRICT  
OCTOBER 26, 2015**

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The City Council of the City of Mountain Brook, Alabama and Board of Commissioners of the Mountain Brook Emergency Communications District met in public session in the City Hall Council Chamber at 7:00 p.m. on Monday, the 26th day of October, 2015. The Council President (and Chairman) called the meeting to order and the roll was called with the following results:

**Present:** Virginia C. Smith, Council President (and Chairman)  
William S. Pritchard, III, Council President Pro Tempore (and Vice-Chairman)  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack  
Lawrence T. Oden, Mayor

**Absent:** None

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

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

**1. CONSENT AGENDA**

Council President (and Chairman) 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 October 12, 2015 meeting Mountain Brook Emergency Communications District.

Approval of the minutes of the October 12, 2015 regular meeting of the City Council.

<b>2015-146</b>	Appoint Trenton Wright to the Park Board (replacing Pinkie Chace) to serve without compensation through October 26, 2020	Exhibit 1, Appendix 1
<b>2015-147</b>	Declare certain vehicles and equipment surplus and authorize their sell at public Internet auction	Exhibit 2
<b>2015-148</b>	Authorize the establishment of an interest bearing checking account (Iberia Bank) to be used for the deposit of municipal court cash bonds and fines	Appendix 2

Thereupon, the foregoing minutes and resolutions were introduced by Council President (and Chairman) Smith and their immediate adoption were moved by Council (and Board) member Womack. The minutes and resolutions were then considered by the City Council and Board of Commissioners. Council (and Board) member Shelton seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

**Ayes:** Virginia C. Smith, Chairman  
William S. Pritchard, III, Vice-Chairman  
Jack D. Carl  
Lloyd C. Shelton

Alice B. Womack

Nays: None

Chairman Smith thereupon declared that said District minutes are adopted by a vote of 5—0.

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 Council minutes and resolution (Nos. 2015-146 through 2015-148) are adopted by a vote of 5—0 and as evidence thereof she signed the same.

**2. CONSIDERATION: ORDINANCE (NO. 1942) AMENDING THE EDUCATIONAL INCENTIVE POLICY OF THE CITY WITH RESPECT TO PUBLIC SAFETY PERSONNEL (EXHIBIT 3, APPENDIX 3)**

The ordinance was introduced in writing by Council President Smith who then invited questions and comments from the audience.

There being no comments or discussion, Council President Smith called for a motion. Council President Pro Tempore Pritchard made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Carl and was carried, 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

The Council President Smith declared the motion carried by a vote of 5—0.

After said ordinance had been considered in full by the Council, Council member Shelton then moved for the adoption of said ordinance. The motion was seconded by Council President Pro Tempore Pritchard. Thereupon, Council President Smith called for vote with the following results:

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

The Council President Smith declared that the said ordinance (No. 1942) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

### 3. 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, November 9, 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](http://www.mtnbrook.org)) for more information.

### 4. ADJOURNMENT

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

### 5. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on October 26, 2015, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

\_\_\_\_\_  
City Clerk

#### EXHIBIT 1

#### RESOLUTION NO. 2015-146

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Trenton Wright is hereby appointed to the Park and Recreation Board, to serve without compensation, with the term of office to end October 26, 2020.

#### APPENDIX 1

#### EXHIBIT 2

#### RESOLUTION NO. 2015-147

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

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

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mountain Brook, as follows: It is hereby established and declared that the following property owned by the City of Mountain Brook, Alabama is not needed for public or municipal purposes and is hereby declared surplus property:

Item	Asset	Description	Serial Number	Notes
1	13333	2006 Ford Crown Victoria	2FAHP71W36X156284	Police
2	13694	2009 Ford Crown Victoria	2FAHP71V29X123577	Police
3	13890	2010 Ford Crown Victoria	2FABP7BVXAX126722	Police
4	13951	2011 Ford Crown Victoria	2FABP7BV4BX123090	Police

**MINUTES OF THE SPECIAL MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA  
NOVEMBER 2, 2015**

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The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Training Room A231 at 5:00 p.m. on Monday, the 2nd day of November, 2015. 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  
Lawrence T. Oden, Mayor

Absent: Alice B. Womack

Also present were City Attorneys Whit Colvin and Melissa McKie, City Manager Sam Gaston, Parks and Recreation Superintendent Shanda Williams, and City Clerk Steven Boone.

**1. EXECUTIVE SESSION**

Council President Smith made a motion that the City Council convene in executive session to discuss a matter involving potential litigation and another involving economic development. The motion was seconded by Council President Pro Tempore Pritchard. The City Attorney certified that the subjects of the executive session are 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

Nays: None

Council President Smith declared that the motion carried by a vote of 4—0 and then announced that the City Council shall adjourn upon conclusion of the executive session.

**2. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the special meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Training Room (A231) on November 2, 2015, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

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City Clerk

**RESOLUTION NO. 2015-149**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby ratifies and approves the transfer of funds as follows as of and for the year ended September 30, 2015:

<b>Ledger Number</b>	<b>Ledger Description</b>	<b>Amount</b>
115-1001-0000	Cash (Park Board)	\$46,979.96 CR
115-3408-4810	Transfers to General Fund (Park Board) Transfer surplus from Park Board to General Operations	46,979.96 DR
146-1001-0000	Cash (Emergency Reserves)	41,140.97 DR
146-3408-4810	Transfers to General Fund (Emergency Reserves) Transfer surplus from General Operations to Emergency Reserves	41,140.97 CR
100-1001-0000	Cash (General Operations)	5,838.99 DR
100-1116-6915	Transfers to Park Board (General Operations)	46,979.96 CR
100-1116-6945	Transfers to Emergency Reserves (General Operations) Complete intrafund transfers itemized above	41,140.97 DR

**ADOPTED:** This 9th day of November, 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November, 2015.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

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

\_\_\_\_\_  
City Clerk

**Voucher List**

**City of Mountain Brook**

10/28/2015 1:24:37 PM

Voucher	Voucher Description	Date Entered	No Trans	Status	Ctrl Total	Actual Total				
Trans ID	Year	Per	Entered	Ledger	Ledger Description	Transaction Notes	Op	Amount	Indep	Status
<b>GJ09-45</b>	<b>GJ 09-45 Intrafund Trans</b>			<b>28-Oct-15</b>	<b>7</b>	<b>B</b>		<b>\$0.00</b>	<b>\$0.00</b>	
1652825	2015	12	28-Oct-15	10010010000	Pooled Cash, General Operat	GJ09-45 100<115, and 100>146 /	D	\$5,838.99	No	V
1652826	2015	12	28-Oct-15	10011166915	Transfers-Parks & Recreation	GJ09-45 100<115, and 100>146 /	D	(\$46,979.96)	No	V
1652827	2015	12	28-Oct-15	10011166945	Transfers-Emergency Storm	IGJ09-45 100<115, and 100>146 /	D	\$41,140.97	No	V
1652821	2015	12	28-Oct-15	11510010000	Pooled Cash, Park Board	GJ09-45 Trans 115>100 /	D	(\$46,979.96)	No	V
1652822	2015	12	28-Oct-15	11534084810	Transfers-City General Fund	GJ09-45 Trans 115>100 /	D	\$46,979.96	No	V
1652823	2015	12	28-Oct-15	14610010000	Pooled Cash, Storm Reserve	GJ09-45 Round 146 to \$75,000 from 100 /	D	\$41,140.97	No	V
1652824	2015	12	28-Oct-15	14634084810	Transfers-City General Fund	GJ09-45 Round 146 to \$75,000 from 100 /	C	\$41,140.97	No	V

Financial Unit	Sum of NonIndependent
100 General Fund	D \$0.00
115 Parks and Recreation	D \$0.00
146 General Fund-Storm Reserves	C \$41,140.97
146 General Fund-Storm Reserves	D \$41,140.97

*Handwritten signature and date: 10/28/15*

*09-45*

# Trial Balance / Budget

Period 13 / 2015

# City of Mountain Brook

Fund 146 General Fund-Storm Reserves

Account	Description		Begin Balance/ Budget	YTD Debits	YTD Credits	YTD Encumb	Ending Balance/ Remain. Budget
146-6663-6004	Overtime	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6663-6110	Benefits FICA	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6663-6120	Benefits RSA	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>X-EXPENSE Type Totals</b>			<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Fund 146 Totals</b>			<b>\$27,500.00</b>	<b>\$33,858.99</b>	<b>(\$67,718.02)</b>	<b>\$0.00</b>	<b>(\$6,359.03)</b>
<b>Grand Totals</b>			<b>\$27,500.00</b>	<b>\$33,858.99</b>	<b>(\$67,718.02)</b>	<b>\$0.00</b>	<b>(\$6,359.03)</b>

SEE 11/9/2015  
AGENDA FOR  
AUTOMIZATION

146 Surplus  
From 115

\$ 33,859.03  
41,140.97  
\$ 75,000.00

115 1001 0000 \$ <46,979.96> ①  
115 3408 4810 46,979.96  
146 1001 0000 41,140.97 ②  
146 3408 4810 <41,140.97>  
100 1001 0000 58,38.99  
100 1116 6915 <46,979.96> ③  
100 1116 6945 41,140.97

- ① TRANSFER 115 SURPLUS > BUDGET TO 100
- ② ROUND 146 SURPLUS TO \$75,000
- ③ COMPLETE ①/② TRANSFERS

# Trial Balance /Budget

Period 13 / 2015

# City of Mountain Brook

Fund 146 General Fund-Storm Reserves

Account	Description		Begin Balance/ Budget	YTD Debits	YTD Credits	YTD Encumb	Ending Balance/ Remain. Budget
<b>A-ASSETS</b>							
146-1001-0000	Pooled Cash, Storm Reserves	A	\$2,400,000.00	\$33,858.99	\$0.04	\$0.00	\$2,433,859.03
146-1002-0000	Cash-Regions #78-355-389	A	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-1201-0000	A/R-State	A	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-1260-0000	A/R-Other	A	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>A-ASSETS Type Totals</b>		<b>\$2,400,000.00</b>	<b>\$33,858.99</b>	<b>\$0.04</b>	<b>\$0.00</b>	<b>\$2,433,859.03</b>
<b>L-LIABILITIES</b>							
146-2000-0000	Accounts Payable	L	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-3000-0000	Fund Balance Unreserved	L	(\$2,400,000.00)	\$0.00	\$0.00	\$0.00	(\$2,400,000.00)
146-9998-0000	Revenue Control	L	\$0.00	\$0.00	(\$33,859.03)	\$0.00	(\$33,859.03)
146-9999-0000	Expenditure Control	L	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>L-LIABILITIES Type Totals</b>		<b>(\$2,400,000.00)</b>	<b>\$0.00</b>	<b>(\$33,859.03)</b>	<b>\$0.00</b>	<b>(\$2,433,859.03)</b>
<b>R-REVENUES</b>							
146-3106-4310	Grants Federal	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-3206-4310	Grants State	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-3407-4400	Other Investment Earnings	R	\$2,500.00	\$0.00	(\$8,859.03)	\$0.00	(\$6,359.03)
146-3408-4810	Transfers-City General Fund	R	\$25,000.00	\$0.00	(\$25,000.00)	\$0.00	\$0.00
	<b>R-REVENUES Type Totals</b>		<b>\$27,500.00</b>	<b>\$0.00</b>	<b>(\$33,859.03)</b>	<b>\$0.00</b>	<b>(\$6,359.03)</b>
<b>X-EXPENSE</b>							
146-1211-6510	Rep & Maint-Grounds	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-3510-6501	Repair & Maint-Bldgs & Grounds	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-3550-6520	Rep & Maint-Veh	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6610-6501	Rep & Maint-Bldgs & Grounds	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6660-6420-0501	Waste Disposal-Hurricane Ivan	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6660-6420-1101	Waste Disposal-4/27/11 Tornado	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6661-6004	Overtime	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6661-6110	Benefits FICA	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6661-6120	Benefits RSA	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6661-6451	Rents-Land/Equip	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6662-6004	Overtime	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6662-6110	Benefits FICA	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
146-6662-6120	Benefits RSA	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

# Trial Balance /Budget

Period 13 / 2015

# City of Mountain Brook

Fund 115 Parks and Recreation

Account	Description		Begin Balance/ Budget	YTD Debits	YTD Credits	YTD Encumb	Ending Balance/ Remain. Budget
<b>A-ASSETS</b>							
115-1001-0000	Pooled Cash, Park Board	A	\$29,684.19	\$1,234,981.83	(\$1,144,637.73)	\$0.00	\$120,028.29
115-1002-0000	Cash-Regions #78-355-389	A	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-1160-0000	Investments-Common Stock @ FMV	A	\$34,692.00	\$16,687.00	\$0.00	\$0.00	\$51,379.00
115-1202-0000	AR-County	A	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-1204-0000	AR-School Board	A	\$44,236.19	\$0.00	(\$44,236.19)	\$0.00	\$0.00
115-1229-0000	AR-Unassigned	A	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-1230-0000	AR-Mountain Brook Athletics	A	\$48,401.19	\$54,088.69	(\$48,401.19)	\$0.00	\$54,088.69
	<b>A-ASSETS Type Totals</b>		<b>\$157,013.57</b>	<b>\$1,305,757.52</b>	<b>(\$1,237,275.11)</b>	<b>\$0.00</b>	<b>\$225,495.98</b>
<b>L-LIABILITIES</b>							
115-2000-0000	Accounts Payable	L	(\$7,013.57)	\$94,692.02	(\$116,194.47)	\$0.00	(\$28,516.02)
115-2100-0000	Accrued Salaries	L	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-2210-0000	AR-General Fund	L	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-3000-0000	Fund Balance Unreserved	L	(\$150,000.00)	\$0.00	\$0.00	\$0.00	(\$150,000.00)
115-9998-0000	Revenue Control	L	\$0.00	\$0.00	(\$1,221,514.05)	\$0.00	(\$1,221,514.05)
115-9999-0000	Expenditure Control	L	\$0.00	\$1,272,654.07	(\$98,119.98)	\$0.00	\$1,174,534.09
	<b>L-LIABILITIES Type Totals</b>		<b>(\$157,013.57)</b>	<b>\$1,367,346.09</b>	<b>(\$1,435,828.50)</b>	<b>\$0.00</b>	<b>(\$225,495.98)</b>
<b>R-REVENUES</b>							
115-3206-4310	Grants State	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-3306-4320	Grants Local	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-3404-4230	Approp-Mtn Brook Athletics	R	\$42,500.00	\$0.00	(\$40,836.84)	\$0.00	\$1,663.16
115-3404-4231	Approp-Mtn Brook Soccer	R	\$27,400.00	\$0.00	(\$30,343.39)	\$0.00	(\$2,943.39)
115-3404-4550-7801	Other Miscellaneous Tennis	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-3404-4900	Approp-MB BOE	R	\$46,800.00	\$0.00	(\$48,110.36)	\$0.00	(\$1,310.36)
115-3407-4400	Other Investment Earnings	R	\$500.00	\$0.00	(\$16,779.16)	\$0.00	(\$16,279.16)
115-3407-4550	Other Miscellaneous	R	\$3,000.00	\$0.00	(\$9,887.30)	\$0.00	(\$6,887.30)
115-3408-4810	Transfers-City General Fund	R	\$1,066,267.00	\$0.00	(\$1,066,267.00)	\$0.00	\$0.00
115-3408-4829	Transfers-Library	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-3409-4510	Donations-Other	R	\$0.00	\$0.00	(\$20.00)	\$0.00	(\$20.00)
115-3409-4510-0605	Donations-Park Benches	R	\$0.00	\$0.00	(\$5,750.00)	\$0.00	(\$5,750.00)
115-3409-4510-0801	Donations-Street Lights	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-3409-4510-1301	Donations-Cahaba River Walk	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

\$46979.96

# Trial Balance /Budget

Period 13 / 2015

# City of Mountain Brook

Fund 115 Parks and Recreation

Account	Description		Begin Balance/ Budget	YTD Debits	YTD Credits	YTD Encumb	Ending Balance/ Remain. Budget
115-3409-4510-7801	Donations-Mtn Park Cir Island	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-3409-4510-7802	Donations-Park Lane Trees	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-3409-4510-7803	Donations-Zoo	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-3409-4510-7804	Donations-Memorials	R	\$0.00	\$0.00	(\$3,520.00)	\$0.00	(\$3,520.00)
115-3409-4510-7805	Donations-Friends of Jemison	R	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>R-REVENUES Type Totals</b>		<b>\$1,186,467.00</b>	<b>\$0.00</b>	<b>(\$1,221,514.05)</b>	<b>\$0.00</b>	<b>(\$35,047.05)</b>
<b>X-EXPENSE</b>							
115-7800-6001	Salaries-Regular Full-Time	X	\$566,124.00	\$616,457.73	(\$71,767.35)	\$0.00	\$21,433.62
115-7800-6004	Wages-Overtime	X	\$33,186.00	\$30,149.82	(\$3,205.77)	\$0.00	\$6,241.95
115-7800-6010	Special Pay-Longevity	X	\$12,380.00	\$14,771.12	\$0.00	\$0.00	(\$2,391.12)
115-7800-6011	Special Pay-Service Awards	X	\$153.00	\$152.50	\$0.00	\$0.00	\$0.50
115-7800-6110	Benefits-Taxes FICA (7.65%)	X	\$46,807.00	\$51,326.18	(\$5,848.51)	\$0.00	\$1,329.33
115-7800-6120	Benefits-Pension (RSA)	X	\$5,446.00	\$15,465.21	(\$1,759.10)	\$0.00	(\$8,260.11)
115-7800-6130	Benefits-Medical/Dental Ins	X	\$85,998.00	\$88,388.65	(\$13,416.73)	\$0.00	\$11,026.08
115-7800-6131	Benefits-Group Dental (Only)	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7800-6132	Benefits-Group Term Life	X	\$1,564.00	\$1,179.60	\$0.00	\$0.00	\$384.40
115-7800-6133	Benefits-Long-Term Disability	X	\$2,619.00	\$1,925.02	\$0.00	\$0.00	\$693.98
115-7800-6134	Benefits-Flex Plan Admin Fees	X	\$0.00	\$48.00	\$0.00	\$0.00	(\$48.00)
115-7800-6140	Benefits-Workers' Compensation	X	\$6,274.00	\$14,104.54	\$0.00	\$0.00	(\$7,830.54)
115-7800-6150	Benefits-Industrial Health	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7800-6152	Benefits-Pre-Employment Exam	X	\$240.00	\$320.00	\$0.00	\$0.00	(\$80.00)
115-7800-6153	Benefits-Drug Testing	X	\$240.00	\$40.00	\$0.00	\$0.00	\$200.00
115-7800-6160	Allowances-Automobile	X	\$9,000.00	\$9,000.00	\$0.00	\$0.00	\$0.00
115-7800-6161	Allowances-Uniforms	X	\$5,900.00	\$4,827.70	\$0.00	\$0.00	\$1,072.30
115-7800-6162	Allowances-Declined Medical	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7800-6211	Development-Meetings/Conf	X	\$2,500.00	\$1,776.50	\$0.00	\$0.00	\$723.50
115-7800-6212	Development-Travel/Meals	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7800-6300	Supplies/Exp-General	X	\$4,206.00	\$1,808.98	\$0.00	\$0.00	\$2,397.02
115-7800-6303	Sup/Exp-Other Office Equip	X	\$8,300.00	\$7,009.01	\$0.00	\$0.00	\$1,290.99
115-7800-6314	Misc Expense	X	\$1,000.00	\$717.57	\$0.00	\$0.00	\$282.43
115-7800-6314-7801	Misc Expense-Bldg Materials	X	\$7,500.00	\$5,807.22	\$0.00	\$0.00	\$1,692.78
115-7800-6314-7802	Misc Expense-Parks/Islands	X	\$13,000.00	\$13,367.93	\$0.00	\$0.00	(\$367.93)
115-7800-6314-7803	Misc Expense-Ball Fields	X	\$16,000.00	\$19,317.35	(\$165.10)	\$0.00	(\$3,152.25)

# Trial Balance /Budget

Period 13 / 2015

# City of Mountain Brook

Fund 115 Parks and Recreation

Account	Description		Begin Balance/ Budget	YTD Debits	YTD Credits	YTD Encumb	Ending Balance/ Remain. Budget
115-7800-6314-7804	Misc Expense-Turf	X	\$25,000.00	\$20,959.94	(\$940.11)	\$0.00	\$4,980.17
115-7800-6410	Contract Svc-Janitorial	X	\$11,500.00	\$10,980.00	\$0.00	\$0.00	\$520.00
115-7800-6412	Temporary Personnel	X	\$1,200.00	\$0.00	\$0.00	\$0.00	\$1,200.00
115-7800-6422	Tree Removal	X	\$10,000.00	\$9,100.00	\$0.00	\$0.00	\$900.00
115-7800-6423	Dumping	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7800-6423-7801	Dumping-Hauling	X	\$1,500.00	\$150.30	\$0.00	\$0.00	\$1,349.70
115-7800-6431	Security (Guard)	X	\$1,000.00	\$2,278.60	(\$694.43)	\$0.00	(\$584.17)
115-7800-6451	Rents-Land/Equip	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7800-6465	Service Contr-Pest Control	X	\$1,300.00	\$838.56	\$0.00	\$0.00	\$461.44
115-7800-6465-2561	Service Contr-Pest Control	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7800-6501	Rep & Maint-Bldgs	X	\$5,000.00	\$5,045.91	\$0.00	\$0.00	(\$45.91)
115-7800-6510-7801	Rep & Maint-Grds Irrig	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7800-6510-7802	Rep & Maint-Grds Gates	X	\$1,000.00	\$762.00	\$0.00	\$0.00	\$238.00
115-7800-6511	Rep & Maint-Utility	X	\$10,000.00	\$8,537.53	\$0.00	\$0.00	\$1,462.47
115-7800-6520	Rep & Maint-Veh	X	\$6,000.00	\$4,737.83	\$0.00	\$0.00	\$1,262.17
115-7800-6520-9999	Allocated Fleet Repair Charges	X	\$18,000.00	\$18,796.28	\$0.00	\$0.00	(\$796.28)
115-7800-6530	Rep & Maint-Equip	X	\$12,000.00	\$9,743.69	\$0.00	\$0.00	\$2,256.31
115-7800-6550	Fuel and Lubricants	X	\$26,000.00	\$20,716.31	\$0.00	\$0.00	\$5,283.69
115-7800-6600	Utilities	X	\$58,000.00	\$66,883.46	\$0.00	\$0.00	(\$8,883.46)
115-7800-6611	Utilities-Mobile Telephone	X	\$2,600.00	\$4,888.43	(\$322.88)	\$0.00	(\$1,965.55)
115-7800-6614	Utilities-Internet	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7816-6942	Transfers-Capital ERS	X	\$137,180.00	\$137,180.00	\$0.00	\$0.00	\$0.00
115-7880-6314-7805	Unassigned	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7880-6314-7806	Eagle Projects	X	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00
115-7880-6314-7807	Tree Commission	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7880-6314-7808	Easter Egg Hunt	X	\$300.00	\$300.00	\$0.00	\$0.00	\$0.00
115-7880-6314-7809	Interpretive Signs	X	\$250.00	\$0.00	\$0.00	\$0.00	\$250.00
115-7880-6314-7810	Tree Planting Program	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7880-6314-7811	Security	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7880-6314-7812	Birmingham Zoo Inc.	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6720-0506	Bldg Imp-Building Relocation	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6750-0503	Drainage-Shades Creek Stump Re	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6750-0605	Drain-Chabad of Alabama	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6750-0701	Drain-Chabad Drainage Project	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

# Trial Balance /Budget

Period 13 / 2015

# City of Mountain Brook

Fund 115 Parks and Recreation

Account	Description		Begin Balance/ Budget	YTD Debits	YTD Credits	YTD Encumb	Ending Balance/ Remain. Budget
115-7890-6760-0501	Parks-Widen Field One Road	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0504	Parks-Parkbrook Parking Spaces	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0505	Parks-Irrigate Overbrook Trian	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0601	Parks-Woodcliff Play Equip	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0603	Parks-Iron Fence Furnace	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0604	Parks-Memory Triangle	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0605	Parks-Benches	X	\$0.00	\$4,069.42	\$0.00	\$0.00	(\$4,069.42)
115-7890-6760-0702	Parks-Sports Complex Mstr Plan	X	\$30,000.00	\$48,725.18	\$0.00	\$0.00	(\$18,725.18)
115-7890-6760-0703	Parks-Island Improvements	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0705	Parks-Bleacher Railings	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0706	Parks-Benches Irondale Furnace	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0801	Tennis Courts (1/2 Pd by BOE)	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0802	Park Restroom Facility	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0803	Garbage Cans for MBE Field	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0901	Parks- Playhouse	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-0902	Soccer Field Slope Failure	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-1001	Parks-Play Area Overhead Cover	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7801	Parks-Step Lighting	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7802	Parks-Fountain (M-82-2)	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7803	Parks-Picnic Tables	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7804	Parks-Memorials	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7805	Parks-Unassigned	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7806	Parks-Unassigned	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7807	Parks-Unassigned	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7808	Parks-Canterbury Park Fence	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7809	Parks-Unassigned	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7810	Parks-Unassigned	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7811	Parks-Island O'brook/Cher	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7812	Parks-Unassigned	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
115-7890-6760-7813	Parks-Unassigned	X	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>X-EXPENSE Type Totals</b>		<b>\$1,186,467.00</b>	<b>\$1,272,654.07</b>	<b>(\$98,119.98)</b>	<b>\$0.00</b>	<b>\$11,932.91</b>
	<b>Fund 115 Totals</b>		<b>\$2,372,934.00</b>	<b>\$3,945,757.68</b>	<b>(\$3,992,737.64)</b>	<b>\$0.00</b>	<b>(\$23,114.14)</b>
	<b>Grand Totals</b>		<b>\$2,372,934.00</b>	<b>\$3,945,757.68</b>	<b>(\$3,992,737.64)</b>	<b>\$0.00</b>	<b>(\$23,114.14)</b>

**RESOLUTION NO. 2015-150**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, as follows:

1. That the Alabama Power Company be requested to upgrade three (3) street lights on existing poles along Brook Manor Drive (see attached map/ illustration - Exhibit A).
2. That the City Clerk be directed to furnish the Alabama Power Company a certified copy of this resolution.

**ADOPTED:** This 9th day of November, 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November, 2015.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

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

\_\_\_\_\_  
City Clerk

**Street Lighting Modifications**

**Alabama Power** 

Alabama Power Company

\_\_\_\_\_, Alabama

Gentlemen:

This to advise that CITY  Council City of Mountain Brook, Alabama

on the 9th day of November 2015, adopted resolutions which appear in the minutes of

this meeting, authorizing the following street lighting modifications:

Fixture Ownership				Size Lamp (Lumens)	Location
Number of Fixtures Owned by Co.		Number of Fixtures Owned by Customer			
Install	Remove	Install	Remove		
Upgrade 2				150W HPS Cobraheads	Existing poles along Brook Manor drive
Upgrade 1				150W HPS Cutoff Cobrahead	Existing pole along Brook Manor drive

EXHIBIT A

The requested modifications will change the present billing amounts as shown below:

- (a) Additions See attached \$ \_\_\_\_\_
- (b) Removals See attached \$ \_\_\_\_\_
- (c) Other \_\_\_\_\_ \$ \_\_\_\_\_
- (d) Net Change in Annual Billing \$ \_\_\_\_\_
- (e) Previous Annual Billing \$ \_\_\_\_\_
- (f) New Annual Billing \$ \_\_\_\_\_
- (g) New Monthly Billing \$ \_\_\_\_\_

<b>For Company Use Only</b>	
W. E. Number	<input type="checkbox"/> W. E. Not required
Estimate Number	Date

Alabama Power Company

Signed: \_\_\_\_\_

Approved: \_\_\_\_\_

By: Lawrence T. Oden

Title: \_\_\_\_\_

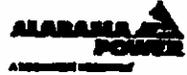
Title: Mayor

7/24/08 03:07

03-07

2015-150

**SKETCH OF PROPOSED WORK -- SIMPLIFIED W. E.**



Customer City of Mountain Brook		Location		Agreed Serv. Date		Estimate No.	
Switch		District		Town		Drawn by	
Date		Section		Township		Range	
Acquisition Agent		Date RW Agreed		Date RW Closed		Map Reference	
LOO		Transformer Loading					



- 1, 2, and 3 are existing lights that will be upgraded to 150 Watt HPS cobraheads.
- #2 will be a cutoff cobrahead.
- A 6 foot upsweep bracket will be installed on #1.

Voltage	
Pd	Sec.
PHONE CO.	
Co. Name	
CATV CO.	
Co. Name	
ACCESSIBLE	
TREE CROW	
ROCKHOLE	
PEPERS REQ'D	
RW	
CITY	
COUNTY	
STATE	
MIRBALL #	
OTHER	
SCALE	
Pt. Per Inch	

EXHIBIT A

Drawn by

Date

2015-150

**Lighting Proposal**  
**City of Mountain Brook**  
**Brook Manor Drive**  
**Lighting Upgrade**  
**October 21, 2015**

**Install:**

<b>2 – 150 watt HPS Cobraheads</b>	<b>@ \$13.78 ea.</b>	<b>= \$27.56</b>
<b>1 – 150 watt HPS Cutoff Cobrahead</b>	<b>@ \$15.99 ea.</b>	<b>= \$13.78</b>
<b>1 – 6' Upsweep Bracket</b>	<b>@ \$6.00 ea.</b>	<b>= \$ 6.00</b>
<b>Total Monthly Lighting Cost</b>		<b>= \$47.34</b>

The two cobrahead fixtures on Brook Manor Drive will be a "bronze" color & the Cobrahead near the entrance to Brook Manor Drive will be a "gray" color.

Thank you for the opportunity to provide this quote. If I can be of further assistance you may contact me at 205-257-0115 or [danjohns@southernco.com](mailto:danjohns@southernco.com).

Sincerely,

Dan Johnson

Alabama Power Company

Lighting Services



- 1, 2, and 3 are existing lights that will be upgraded to 150 Watt HPS cobraheads.
- #2 will be a cutoff cobrahead.
- A 6 foot upsweep bracket will be installed on #1.



1



2



3

**RESOLUTION NO. 2015-151**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into an agreement with the Jefferson-Blount-St. Clair Mental Health Authority, in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 2015.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

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

\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**OFFICE OF THE MAYOR**

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3802  
Fax: 205.870.3577  
epsteinc@mtnbrook.org  
personal email - LastValhalla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Richard Craig, Ph.D.  
Executive Director  
JBS-MH Authority  
940 Montclair Road, Ste 200  
Birmingham, AL 35213

Dear Dr. Craig:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of \$2,100 for FY-2016. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015-151

**STATE OF ALABAMA)**

**COUNTY OF JEFFERSON)**

**CONTRACT AGREEMENT**

**THIS AGREEMENT** is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and between the City of Mountain Brook (hereinafter referred to as “City”) and the Jefferson – Blount – St. Clair Mental Health Authority (hereinafter referred to as “Contractor”):

**WHEREAS**, municipalities in the State of Alabama are authorized to promote the public health, safety, morals, security, prosperity, contentment and the general welfare of the community;

**WHEREAS**, Jefferson – Blount – St. Clair Mental Health Authority, is an organization which has as one of its goals the promotion of public health, safety, morals, security, prosperity, contentment and the general welfare in the City of Mountain Brook;

**WHEREAS**, the City Council of the City of Mountain Brook, Alabama desires to enter into a contract with the Contractor for the purpose of providing mental health services to residents of the City of Mountain Brook;

**WITNESSETH,**

1. That the City, for and in consideration of the covenants and agreements hereinafter set out to be kept and performed by the Contractor, does hereby agree to pay the Contractor the sum of TWO THOUSAND ONE HUNDRED and NO/100 (\$2,100.<sup>00</sup>) Dollars, for performing the services herein provided for the period beginning October 1, 2015 through September 30, 2016).

**2. SCOPE OF SERVICES:**

In consideration of the covenants and agreements made herein by the City, the Contractor agrees that it shall be totally responsible for, and shall have exclusive control over the management and disbursement of all such monies received from the City, and that all monies received under this contract shall be used only for the purposes herein described:

- a. Provide relief for residents who are in need of crisis stabilization for uninsured mentally ill persons;
- b. Provide medication and outpatient therapy for mentally ill persons;
- c. Provide housing and treatment for mentally ill persons;
- d. Provide in – home therapy for at – risk youths who are in danger of being removed from their homes;
- e. Provide case management to access housing and other supports to avoid unnecessary admissions to state hospitals;
- f. Provide social work assistance to families; and
- g. Contractor agrees to provide any and all personnel, supplies, equipment necessary for the services herein to be provided.

3. The Contractor agrees to provide to the City at all reasonable times and places an accounting for the expenditure of funds granted herein.

4. The Contractor shall not transfer or assign this contract or the license or any of the rights and privileges granted herein without the prior written consent of the City.

5. The Contractor agrees that upon violation of any of the covenants and agreements



Any time period stated in a notice will be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as party as provided in this paragraph.

No verbal agreement or conversation with any officer, agent, employee, or consultant of the City either before or after execution of this Agreement, will affect or modify any of the terms or obligations contained in this Agreement. Any such verbal agreement or conversation will be considered as unofficial information and in no way binding upon City or Contractor. Any amendment to this Agreement must be in writing and signed by both parties.

**IN WITNESS WHEREOF**, we have hereunto set our hands and seals on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF MOUNTAIN BROOK,  
A Municipal Corporation**

BY: \_\_\_\_\_  
Lawrence Terry Oden  
Mayor, City of Mountain Brook

**WITNESSED:**

BY: \_\_\_\_\_

**JEFFERSON – BLOUNT – ST. CLAIR MENTAL  
HEALTH AUTHORITY**

BY: \_\_\_\_\_  
Its Authorized Agent  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, \_\_\_\_\_ a notary public in and for said County in said State, hereby certify that \_\_\_\_\_ whose name as Authorized Agent of the **JEFFERSON – BLOUNT – ST. CLAIR MENTAL HEALTH AUTHORITY**, a nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
**NOTARY PUBLIC**

My Commission Expires

**RESOLUTION NO. 2015-152**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Exceptional Foundation, subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 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 meeting held on November 9, 2015, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**OFFICE OF THE MAYOR**

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone 205 802 3802  
Fax 205 870 3577  
epsteinc@mtnbrook.org  
personal email - lastvalhalla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Tricia Kirk  
The Exceptional Foundation  
1626 Oxmoor Road  
Homewood, AL 35209

Dear Ms. Kirk:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of \$7,500 for FY-2016. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015-152



**BOARD OFFICERS**

ROB CONRAD  
President

DIANNE KENDRICK  
Vice President

CARMINE JORDAN  
Secretary

BETH ARNETT  
Treasurer

**BOARD MEMBERS**

TRISH ACTON

CHARLIE CARPER

BING EDWARDS

CINDY FRAVERT

MARGIE GRAY

MATT GRILL

COBB HAGAN

GREG JAMES

BILL MCCARTY

BILLY MAGRUDER

CONNIE PRUETT

ADAM RHOADES

KEN SANDERS

RUSHA SMITH

ELLEN WALKER

T.J. WILLINGS

October 29, 2015

Mr. Steven Boone  
City of Mountain Brook  
P. O. Box 130009  
Mountain Brook, AL 35213-0009

Dear Mr. Boone,

The Exceptional Foundation is grateful for the ongoing support of our program from the City of Mountain Brook. We would like to request the 2015-2016 budget appropriation of \$7,500.00 at the city's earliest convenience. A check may be mailed to the attention of Tricia Kirk, Executive Director, at The Exceptional Foundation, 1616 Oxmoor Road, Homewood, AL 35209.

Please let me know if additional information is required.

Thank you,

Amanda Terry  
Grant Writer

STATE OF ALABAMA

JEFFERSON COUNTY

WITNESS this contract entered into this 29<sup>th</sup> day of October 2015, by and between the City of Mountain Brook, Alabama, hereinafter referred to as "City", and The Exceptional Foundation, Federal ID # 63-1096855 hereinafter referred to as "Contractor":

WHEREAS, Contractor is a duly incorporated non-profit corporation, incorporated under the laws of the State of Alabama

WHEREAS, Contractor has agreed to accept a General Fund appropriation from City hereinafter designated and to thereafter perform in consideration thereof, the herein described public services and the provisions of this contract:

NOW, THEREFORE, in consideration of the above premises and consideration of mutual covenants and agreements contained herein, the parties hereto do hereby agree, covenant and contract as follows:

1. For the fiscal year ending September 30, 2016, City will pay to Contractor the following amount: **\$7,500.**
2. That upon receipt by Contractor of the contract funds contemplated herein, Contractor shall be responsible for providing the personnel, supplies, equipment and expertise necessary to comply with all provisions, stipulations, terms and conditions of this contract.
3. Contractor is an independent contractor and none of its agents, servants or employees shall be deemed to be under control of City nor in any way shall any of its agents, servants or employees or other persons, firms or corporations conducting business for Contractor be deemed to be employees or agents, servants or employees of City.
4. Contractor shall indemnify and save City safe and harmless from any claims made by any person, firm or corporation against City for injury to property or person arising directly or indirectly out of any activity or pursuit of Contractor, which said obligation of indemnity shall include the payment by Contractor to City of any and all attorneys' fees, costs of defense and judgments rendered, if any, in favor of such person, firm or corporation.
5. Contractor shall:  
**(a) Provide to the City and to the citizens of the City the following public services during the applicable fiscal year: (Here list and describe all public services to be performed by Contractor)**  
**To provide social and recreational activities to individuals who are mentally challenged.**
6. Contractor shall be responsible for providing its eligible employees medical, dental, life and disability insurance as Contractor shall deem advisable. No agents, servants or employees of Contractor shall be provided nor be eligible for medical, dental, life or disability insurance under any policy or policies offered or provided by or in the name of City or any of its agencies. No employees of Contractor will be carried as an insured on any City insurance policy nor will any Contractor employee be eligible for retirement or other benefits offered by City to City employees.
7. Contractor shall be responsible for all filing and accounting responsibilities for its corporation and its employees, including but not being limited to Social Security, all federal and state tax reporting, unemployment compensation and retirement benefits.
8. Contractor will keep complete records of all sums of money received from City and complete records of all disbursements and purchases from such funds. Contractor will submit upon request, and in no event less than quarterly, itemized statements to the City listing all purchases and expenditures from

the contract funds provided by City.

9. Audit of Funds: Contractor agrees to employ accounting procedures which are appropriate to the type of operation conducted and which are customary to similar operations. All records pertaining to this agreement shall be maintained by Contractor for a period of three (3) years after termination of this contract. Contractor agrees to arrange and assume all financial obligations for required audits provided for in grant application or the grant itself, utilizing the normal City Auditing Procedures.

Contractor agrees that upon request from City, Contractor will submit to and cooperate with periodic audits by the City Auditors or other City requested audit procedures.

10. Contractor agrees that it will establish and maintain all accounting records, document all project costs and keep all invoices, checks and financial records separate, will make progress reports as required by the City or other applicable agency or governmental entity and otherwise do all things undertaken by City in connection with any such grant, payment or other contract by which such funds are supplied.

11. Contractor will retain all books, records and other documents relative to this agreement, or any part thereof, for a period of three (3) years after project termination or close out. City or any other parties entitled to such records provided in any separate grant document or contract executed by and between the City and any other supplier of funds which are ultimately paid to or for the use and benefit of Contractor, shall have full access to and right to examine any of said materials at all reasonable times during said period.

12. In the event that Contractor shall in any manner fail to comply with any provisions or requirement of any grant document or contract or provisions of this agreement, such failure will constitute a default and unless corrected by Contractor within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this agreement and City shall have a right to terminate this agreement by giving ten (10) days written notice of such termination.

ATTEST:

CITY OF MOUNTAIN BROOK

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Mayor

ATTEST:

Amanda Jung  
Witness

Contractor (Exceptional Foundation)

By Tricia Kish

As Its Executive Director

**RESOLUTION NO. 2015-153**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into an agreement with the Jefferson County Historical Commission, in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 2015.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

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

\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**OFFICE OF THE MAYOR**

56 Church Street  
PO Box 130009  
Mountain Brook, Alabama 35213  
Telephone 205 802.3802  
Fax: 205 870 3577  
epsteinc@mtnbrook.org  
personal email - LastValhalla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Linda Nelson  
Jefferson County Historical Commission  
4700 Seventh Ct. South  
Birmingham, AL 35222

Dear Ms. Nelson:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of **\$1,000 for FY-2016**. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015-153

## CONTRACT FOR SERVICES

This Contract for Services ("Contract") is entered into between the City of Mountain Brook, an Alabama municipal corporation ("City") and the Jefferson County Historical Commission ("Commission").

**WHEREAS**, the Commission was established in 1971 by a act of the Alabama Legislature; and

**WHEREAS**, the Commission sponsors publications on Jefferson County history and works with other organizations and agencies to further historic preservation and the documentation and protection of the historic resources of the City of Mountain Brook.

**NOW THEREFORE**, in consideration of the premises and in consideration of the covenants and agreements contained herein, the City and the Commission hereby agree as follows:

1. This contract shall be effective on the 1st day of October, 2015, and will continue in effect until September 30, 2016, unless terminated sooner by either party.
2. The City shall pay to the Commission the sum of One Thousand Dollars (\$1,000.00), upon execution of this contract for services.
3. In consideration of the payment of the contract fund as provided herein, the Commission shall provide at least the following services to the City ("Services"):
  - a. The Commission, through its Historic Marker Program, shall identify and recognize houses, commercial, or public buildings, churches, and sites of historic interest and integrity, encouraging the preservation of these historically important places.
  - b. The Commission shall sponsor publications on Jefferson County history and cooperate with property owners, historical societies and authors in the publication of books, videotapes and audiotapes concerning the City of Mountain Brook and Jefferson County.
  - c. The Commission shall furnish information concerning advantages of preservation/restoration and provide assistance for architectural/preservation/ design interns, teachers, students, and other citizen groups.
  - d. The Commission shall furnish speakers for civic clubs, parent-teacher associations, and school groups about history and historic preservation and its importance to the past, present, and future.
4. The Commission shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Contract. The Commission is an independent contractor and none of its agents or employees shall be deemed to be under the control of the City, nor shall any of the agents or employees of other persons, firms, or corporations conducting business for or on behalf of the Commission be deemed to be agents or employees of the City.

5. The Commission shall indemnify and hold harmless the City and its agents, employees, and elected officials, from and against any and all actions, causes of actions, claims, demands, damages, losses, and expenses of any kind, including but not limited to attorney's fees and court cost, which may be asserted against, or suffered by, the City or its agents and employees arising out of, or in connection with: (a) the performance or attempted performance, by the Commission or its agents or employees of the Commission's obligations under this Contract; and (b) any claim that the Contract Funds were improperly paid by the City to the Commission.

6. The Commission agrees to employ accounting procedures which are appropriate to the types of operations conducted by the Commission and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by the Commission for a period of three (3) years after the expiration or termination of this Contract. The City shall have full access to, and the right to examine any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. The Commission agrees that upon request from the City, the Commission will submit to, and cooperate with, periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.

7. If the Commission fails to comply with the provisions of this Contract, such failure shall constitute a default under this Contract and, unless corrected by the Commission within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this Contract and the City shall have the right to terminate this Contract by giving the Commission twelve (12) days prior written notice of such termination. Such termination of this Contract by the City shall not relieve the Commission of any of its obligations or liabilities to the City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.

**IN WITNESS WHEREOF**, the Jefferson County Historical Commission has caused this Contract to be executed by its duly authorized Executive Director on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 and the City of Mountain Brook has caused this Contract to be executed by its duly authorized representative, on the \_\_\_\_ day of \_\_\_\_\_, 2015.

**ATTEST:**

**JEFFERSON COUNTY HISTORICAL  
COMMISSION**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

**CITY OF MOUNTAIN BROOK, ALABAMA**

\_\_\_\_\_

\_\_\_\_\_

By: Lawrence T. Oden

Its: Mayor

**RESOLUTION NO. 2015-154**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into an agreement with the Alabama Veterans' Memorial Foundation, in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 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 meeting held on November 9, 2015, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**OFFICE OF THE MAYOR**

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3802  
Fax: 205.870.3577  
epste:nc@minbrook.org  
personal email - LastValhalla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Mr. Robert Mosca  
AL Veterans Memorial Foundation  
PO Box 366972  
Birmingham, AL 35216

Dear Mr. Mosca:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of **\$1,000 for FY-2016**. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015-154

## CONTRACT FOR SERVICES

This Contract for Services ("Contract") is entered into between the City of Mountain Brook, an Alabama municipal corporation ("City") and the Alabama Veterans Memorial Foundation ("Foundation").

**WHEREAS**, the City desires to promote learning opportunities and resources for its citizens; and

**WHEREAS**, the Foundation provides educational resources to the citizens of the City by operating and maintaining a park which honors Alabama veterans; and

**WHEREAS**, the City has determined that it is in the public interest to engage the Foundation in order to assist in the development and promotion of said educational resources.

**NOW THEREFORE**, in consideration of the premises and in consideration of the covenants and agreements contained herein, the City and the Foundation hereby agree as follows:

1. This contract shall be effective on the 1st day of October, 2015, and will continue in effect until September 30, 2016, unless terminated sooner by either party.
2. The City shall pay to the Foundation the sum of One Thousand Dollars (\$1,000.00) upon execution of this contract for services.
3. In consideration of the payment of the funds as provided herein, the Foundation shall provide at least the following services to the City ("Services"):
  - a. The Foundation will continue to operate and maintain the Alabama Veterans Memorial Park so that the park will remain a symbol of our servicemen's and servicewomen's dedication to their country.
  - b. The Foundation will provide educational resources to the citizens of the City through the Alabama Veterans Memorial Park that will not only teach the high cost of war, but celebrate peace and democracy.
4. The Foundation shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Contract. The Foundation is an independent contractor and none of its agents or employees shall be deemed to be under the control of the City, nor shall any of the agents or employees of other persons, firms, or corporations conducting business for or on behalf of the Foundation be deemed to be agents or employees of the City.
5. The Foundation shall indemnify and hold harmless the City and its agents, employees, and elected officials, from and against any and all actions, causes of actions, claims, demands, damages, losses, and expenses of any kind, including but not limited to attorney's fees and court cost, which may be asserted against, or suffered by, the City or its agents and employees arising out of, or in connection with: (a) the performance or attempted performance, by the Foundation or its agents or employees of the Foundation's obligations under this Contract; and (b) any claim that the Contract Funds were improperly paid by the City to the Foundation.

6. The Foundation agrees to employ accounting procedures which are appropriate to the types of operations conducted by the Foundation and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by the Foundation for a period of three (3) years after the expiration or termination of this Contract. The City shall have full access to, and the right to examine any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. The Foundation agrees that upon request from the City, the Foundation will submit to, and cooperate with, periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.

7. If the Foundation fails to comply with the provisions of this Contract, such failure shall constitute a default under this Contract and, unless corrected by the Foundation within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this Contract and the City shall have the right to terminate this Contract by giving the Foundation twelve (12) days prior written notice of such termination. Such termination of this Contract by the City shall not relieve the Foundation of any of its obligations or liabilities to the City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.

IN WITNESS WHEREOF, the Alabama Veterans Memorial Foundation has caused this Contract to be executed by its duly authorized Executive Director on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 and the City of Mountain Brook has caused this Contract to be executed by its duly authorized Mayor, on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

ALABAMA VETERANS  
MEMORIAL FOUNDATION

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Its: Executive Director

ATTEST:  
ALABAMA

CITY OF MOUNTAIN BROOK,

\_\_\_\_\_  
Steven Boone, City Clerk

\_\_\_\_\_  
By: Lawrence T. Oden  
Its: Mayor

**RESOLUTION NO. 2015-155**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Birmingham Museum of Art subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 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 meeting held on November 9, 2015, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**OFFICE OF THE MAYOR**

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3802  
Fax: 205.870.3577  
epsteinc@mtnbrook.org  
personal email - LastVolhalla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Gail Andrews  
Birmingham Museum of art  
2000 8<sup>th</sup> Avenue North  
Birmingham, AL 35203

Dear Ms. Andrews:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of **\$11,500 for FY-2016**. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

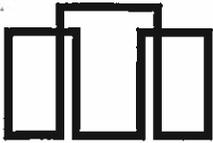
Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015-155



June 5, 2015

Mayor Terry Oden  
c/o Sam Gaston, City Manager  
City of Mountain Brook  
Post Office Box 130009  
Mountain Brook, AL 35213

Dear Terry,

For more than 15 years the City of Mountain Brook has supported the Birmingham Museum of Art (BMA), helping the BMA continue its mission of providing quality and exciting educational opportunities to our community. We are grateful to the City of Mountain Brook, not just for its financial support of our educational endeavors, but also for its leadership role in providing municipal support to our agency. This year we respectfully request continuing support from the City of Mountain Brook and we ask you to consider reinstating our appropriation level to \$13,000 for the educational services we provide to the community.

Our strong partnership with Mountain Brook has allowed us to work together to provide a higher quality of life for our community, and provide residents of Mountain Brook with unique and unparalleled educational opportunities. In 2014-2015, we welcomed more than 140,000 individuals to the Museum, provided arts education experiences to more than 50,000 children in the Greater Birmingham area, and offered more than 1,100 programs and services. This past year, the BMA welcomed 208 Mountain Brook students for guided tours, had 28 students participate in student classes or art camp at the Museum, and had 132 students involved in student art exhibitions. Additionally, we had more than 1,000 Mountain Brook residents come to our recent exhibition, *Small Treasures: Rembrandt, Vermeer, Hals and Their Contemporaries*, and currently 32% of our membership base lives within the City of Mountain Brook.

In 2015-2016, the BMA plans to present a wide range of exhibitions and programming that highlight our permanent collection of over 27,000 objects while also bringing in new works for our community to enjoy. The BMA will open the summer with the exhibition *Rising Up: Hale Woodruff's Murals at Talladega College* (6/13/15 – 9/6/15). *Rising Up* will include works that span Woodruff's career, with a particular focus on his important work as a muralist. Commissioned in 1938 to both commemorate the 1867 founding of Talladega College and celebrate its success as one of the nation's first all-black colleges, Woodruff's Talladega murals, comprised of six monumental canvases, are considered among his greatest achievements. This exhibition will continue the Museum's efforts to recognize the struggle for civil rights, provide new ways to reflect on African American history, and highlight the Museum's focus on African American artists.

The BMA will also have two exhibitions consisting primarily of works from our permanent collection, *Black Like Who? Exploring Race and Representation in American Art* (7/11/15 – 11/1/15) and *Haitian Flags* (12/19/15-4/10/16). Exhibitions currently on display that will remain free and open to the public include *David Puxley: Wedgwood's First Studio Potter* (4/18/15 – 12/6/15); *So Close to Heaven: Sacred Sculpture of Asia from the collection of June "Jimmy" DeH. and Henry H. Weldon* (10/25/14 - Fall 2015); and *Frank Fleming: Between Fantasy and Reality* (2/27/15 – 8/9/15). The BMA will end its exhibition year with *Every Color of the Rainbow: Uzbekistan Ikats from*

*the Collection of Peggy Slappey.* The exhibition will include a variety of colorful 19th-century robes from the Russian Empire woven using the ikat technique, as well as a number of other garments and accessories, including hats, boots, crowns, bags, and jewelry.

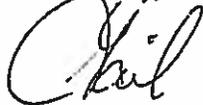
Per our agreement with the City of Mountain Brook, and as is our goal, we will continue to provide Mountain Brook schools and residents with a wide variety of educational services and resources. These will include opportunities for tours and art activities for students, educational workshops for teachers, educational materials which can be borrowed for use in the classroom, an artmaking outreach event at a Mountain Brook school or library, a "Mountain Brook Night" at the museum, and a wide variety of lectures and programs relating to the permanent collection and special exhibitions, all of which will be available to the City and its residents free of charge. By working in partnership with cities like Mountain Brook, we are able to expand the role we play in our community, increasing participation, encouraging a sense of ownership in the Museum, and making the visual arts more accessible. In the coming year, we look forward to even greater success. The 2015-2016 exhibition and program schedule promises a variety of opportunities for visitors to become engaged with the Museum, learn about the diverse cultures within our community and connect those local communities to the wider cultural and intellectual worlds represented by our collection.

The Museum offers opportunities for a variety of audiences, from studio classes and workshops, to lectures and film series, and musical and dance performances. Adult programs will continue to be a mainstay of the Department's schedule, with efforts dedicated to maintaining its current level of offerings, while diversifying its audience through new programs, workshops, and lectures. Continuing free programs include Bart's ArtVenture, Bart's Books, Family Days, ArtBreaks, lectures, BMA Speaks, First Thursdays, and Teen BMA.

The City of Mountain Brook's partnership and support is greatly valued by the Museum, as well as the participation of its residents. Your past appropriations have been a direct investment in arts education, improving the quality of life for our community, and the patronage of your citizens encourages us to continue presenting the best in visual arts opportunities.

Thank you for your consideration of this request, and if you have any additional questions or would like to discuss further, please feel free to contact me or Meghan Ann Hellenga, Development Officer for Grants and Individual Giving, at [mhellenga@artsbma.org](mailto:mhellenga@artsbma.org). We look forward to welcoming you to the Museum again soon and to continuing to provide a wide variety of educational opportunities and resources to Mountain Brook students and residents in the coming year.

Sincerely,



Gail Andrews  
The R. Hugh Daniel Director  
205.254.2855 // [gandrews@artsbma.org](mailto:gandrews@artsbma.org)

*Thank you so much for your support & that of the citizens of M. Brook, Thank you!*

## **CONTRACT FOR SERVICES**

**Fiscal Year 2016**

This contract for services ("Contract") is entered into by and between City of Mountain Brook, an Alabama municipal corporation ("City") and the Birmingham Museum of Art, a non-profit corporation organized under the laws of the State of Alabama ("Contractor").

Whereas, City desires to increase the learning opportunities for students in its school system; and

Whereas, Contractor has developed certain programs, exhibitions and learning laboratories which, in City's opinion, will be helpful and instructive to such students; and

Whereas, such programs, exhibitions and learning laboratories are not available in the Mountain Brook school system; and

Whereas, City has agreed to pay Contractor the sum of eleven thousand five hundred dollars (\$11,500.00) in consideration of Contractor providing City the services referred to in this Contract.

Now, therefore, in consideration of the premises and in consideration of the covenants and agreements contained herein, City and Contractor hereby agree as follows:

1. City shall pay to Contractor the sum of eleven thousand five hundred dollars (\$11,500.00), upon execution of this contract for services for one year from the date of execution.
2. In consideration of the payment of the Contract Funds as provided herein, Contractor shall provide at least the following services to City ("Services"):
  - a. Contractor will continue to provide, free of charge, tours of the permanent collection to all students in the Mountain Brook Education system.
  - b. Teachers of the Mountain Brook school system will be permitted to attend teacher-training seminars and special in-service workshops conducted by Contractor. In addition, teachers will have access without charge to materials in the Contractor's Teacher Resource Center. The Contractor will also make *Culture Cases*, poster sets, and other educational materials available to teachers for curriculum enhancement. Teachers also have the option for interdisciplinary museum tours and studio classes. These offerings focus on the Museum's permanent collection and complement and enhance core curricula of language arts, social studies, science and math. Tours may include hand-on art lessons that tie into these various curricula.

- c. Contractor will offer the opportunity for an art-making outreach program onsite at a Mountain Brook City school or Emmet O'Neal Library targeting elementary, middle school and high school students.
  - d. During each year of the term of this Contract, Contractor will make available a series of lectures and other programs relating to the Museum's permanent collection and special exhibitions as a part of the programs conducted by the Emmet O'Neal Library, or other locations, in the City of Mountain Brook.
  - e. The City will have the opportunity to host one "Mountain Brook Night" at the Museum, during the year of its contract for services. Museum rental fee will be waived for the event (overhead charges for security and catering will be the responsibility of the City).
3. Contractor shall provide the personnel, supplies, equipment and expertise necessary to fulfill its obligations under this Contract. Contractor is an independent contractor and none of its agents or employees shall be deemed to be under the control of City nor shall any of the agents, or employees of other persons, firms or corporations conducting business for or on behalf of Contractor be deemed to be agents or employees of City.
4. Contractor shall indemnify and hold harmless the City and its agents, employees and elected officials, from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including but not limited to attorneys' fees and court costs, which may be asserted against, or suffered by, City or its agents and employees arising out of, or in connection with: (a) the performance, or attempted performance, by Contractor or its agents or employees of Contractor's obligations under this Contract; and (b) any claim that the Contract Funds were improperly paid by City to Contractor.
5. Contractor agrees to employ accounting procedures which are appropriate to the types of operations conducted by Contractor and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by Contractor for a period of three (3) years after the expiration or termination of this Contract. City shall have full access to, and the right to examine, any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. Contractor agrees that upon request from the City, Contractor will submit to, and cooperate with, periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.
6. If Contractor fails to comply with the provisions of this Contract, such failure shall constitute a default under this Contract and, unless corrected by Contractor within thirty (30) days following receipt of written notice from City of such

default, shall be deemed a breach of this Contract and City shall have a right to terminate this Contract by giving Contractor twelve (12) days prior written notice of such termination, and City shall not be obligated to make any additional payments to Contractor. Such termination of this Contract by City shall not relieve Contractor of any of its obligations or liabilities to City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.

In witness whereof, the Birmingham Museum of Art has caused this Contract to be executed by its duly authorized Director and City of Mountain Brook has caused this Contract to be executed by its duly authorized Mayor, all as of the \_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

**Birmingham Museum of Art**

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Its Director

ATTEST:

**City of Mountain Brook**

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Its Mayor

**RESOLUTION NO. 2015-156**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Alabama Symphonic Association subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 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 meeting held on November 9, 2015, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**OFFICE OF THE MAYOR**

56 Church Street  
PO Box 130009  
Mountain Brook, Alabama 35213  
Telephone 205.802.3802  
Fax 205.870.3577  
epste.nc@mtnbrook.org  
personal email - LastValhalla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Susan Barclay  
Alabama Symphonic Association  
3621 Sixth Avenue South  
Birmingham, AL 35222

Dear Ms. Barclay:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of \$12,000 for FY-2016. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015-158

## CONTRACT FOR GENERAL SERVICES

This contract for services ("Contract") is entered into by and between City of Mountain Brook, an Alabama municipal corporation ("City"), and the Alabama Symphonic Association, a nonprofit corporation organized under the laws of the State of Alabama ("Association").

Whereas, City desires to increase the learning opportunities for students in its school system, including music and other arts-related subjects; and

Whereas, City also desires to enrich the cultural life of its residents by providing opportunities for them to participate in musical and other arts-related events, recognizing that exposure to educational and cultural experiences is valuable to the residents of the City of Mountain Brook; and

Whereas, in consideration of the payment referred to hereinafter, the Association has agreed to provide musical programs and to perform services for the students of City's school system and for the residents of the City.

Now therefore, in consideration of the premises and in consideration of the covenants and agreements contained herein, City and Contractor hereby agree as follows:

1. City shall pay to the Association the sum of ten thousand dollars (\$12,000.00) for services for the one-year period from October 1, 2015 through September 30, 2016 ("Contract Funds").
2. In consideration of the payment of the Contract Funds by City, the Association shall provide the following services to the students of City's school system and to the residents of City:
  - a. The Association will perform a concert at a City of Mountain Brook school:
    - Crestline Elementary School before September 30, 2016
  - b. The Association will provide up to 300 tickets for Mountain Brook students to attend an ASO Coffee Concert, Young People's Concert or Explorer Concert during the 2015-16 academic school year.
  - c. The Association will provide Mountain Brook school teachers with access to innovative music education lesson plans associated with the ASO Young People's Concerts.
  - d. The Association will provide lectures, demonstrations, and educational programs for the teachers and students of the Mountain Brook school system on request, schedules permitting.

- e. The Association will provide opportunities for young musicians from the Mountain Brook school system to participate in pre-concert performances and special masterclass offerings, and audition for the Alabama Symphony Youth Orchestra (ASYO).
3. The Association shall deliver to City's Finance Department a detailed report describing the Association's use of the Contract Funds by the earlier of sixty days following the expenditures or November 30, 2016.
4. The Association shall provide the personnel, supplies, equipment and expertise necessary to fulfill its obligations under this Contract. The Association is an independent contractor and none of its agents, or employees shall be deemed to be under the control of City, nor shall any of the agents or employees or other persons, firms or corporations conducting business for, or on behalf of, the Association be deemed to be agents or employees of City.
5. The Association shall indemnify City and its employees and elected officials, and hold them harmless from and against, all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to, attorneys' fees and court costs, which may be asserted against, or suffered by, City or its employees or elected officials arising out of, or in connection with:
  - (a) the performance, or attempted performance, by the Association or its agents or employees of the Association's obligations under this contract; and
  - (b) any claim that the Contract Funds were improperly paid by City to the Association.
6. The Association agrees to employ accounting procedures which are appropriate to the types of operations conducted by the Association and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by the Association for a period of three (3) years after the expiration or termination of this Contract. City shall have full access to, and the right to examine, such financial records and other documents at all reasonable times during the term of this Contract and during said three (3) year period. The Association agrees that, upon request from City, the Association will submit to, and cooperate with, periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by City.
7. The Association and the representative of the Association, who executes this Contract, by the execution of this Contract, certify that:
  - a. no part of the Contract Funds paid by City pursuant to this Contract shall be paid to, or used in any way for the personal benefit of, any elected official, employee or representative of any government or any family member of any such official, employee or representative, including federal, state, county and municipal governments and any agency of any such government;

- b. neither the Association nor any of its officers, agents, representatives or employees has in any way colluded, conspired or connived with any elected official, employee, or representative of City, or any other elected official or public employee, in any manner whatsoever, to secure or obtain this Contract; and
- c. except as expressly set out in this scope of services of this Contract, no promise or commitment of any nature whatsoever of any thing of value whatsoever has been made to any such elected official, employee or representative of City as an inducement or consideration for this Contract.

Any violation of this certification shall constitute a breach and default of this Contract which shall be cause for termination. Upon such termination, the Association shall immediately refund to City all amounts paid by City pursuant to this Contract.

In witness whereof, the Alabama Symphonic Association has caused this Contract to be executed by it duly authorized Executive Director on (date) \_\_\_\_\_, and City of Mountain Brook has caused this Contract to be executed by its duly authorized representative, on (date) \_\_\_\_\_, but this contract shall be effective as of (date) \_\_\_\_\_.

ATTEST:

Alabama Symphonic Association

\_\_\_\_\_  
 Susan Barclay  
 Its Government Relations Manager

By: \_\_\_\_\_  
 Curt Long  
 Its Executive Director

ATTEST:

City of Mountain Brook

\_\_\_\_\_  
 City Clerk

By: \_\_\_\_\_  
 Sam S. Gaston  
 Its City Manager

**RESOLUTION NO. 2015-157**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Birmingham Botanical Society subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 2015.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

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

\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**OFFICE OF THE MAYOR**

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3802  
Fax: 205.870.3577  
epsteinc@mtnbrook.org  
personal email - LastValthalla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Fred Spicer  
Birmingham Botanical Society  
2612 Lane Park Road  
Birmingham, AL 35223

Dear Mr. Spicer:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of \$20,000 for FY-2016. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015-157

## Contract for Services Fiscal Year 2016

This contract for services ("Contract") is entered into by and between City of Mt. Brook, an Alabama Municipal corporation ("City"), and the Birmingham Botanical Society, a nonprofit corporation organized under the laws of the State of Alabama ("Association").

Whereas, City desires to increase the learning opportunities for students in its school system including: and

Whereas, Contractor has developed certain programs, exhibits, and learning laboratories which, in the City's opinion, will be helpful and instructive to such students; and

Whereas, such programs, exhibits and learning laboratories are not available in the Mt. Brook school system; and

Whereas, City has agreed to pay contractor the sum of twenty thousand dollars (\$20,000.00) in consideration of Contractor providing City services referred to in the Contract.

Now, therefore, in consideration of the premises and in consideration of the covenants and agreements contained herein, City and Contractor hereby agree as follows:

1. City shall pay to Contractor the sum of twenty thousand dollars (\$20,000.00), upon execution of this contract for services for one year from date of execution.
2. In consideration of the payment of the Contract Funds as provided herein, Contractor shall provide at least the following services to City ("Services"):
  - a. Contractor will continue to provide city students with a variety of free science curriculum-based field trips. The trained docents provide activities which are based on Alabama Course of Study: Science.
  - b. Contractor agrees to inform the teachers about the Contractor's field trips and invite their participation.
  - c. Field trips are for students in grades Kindergarten (K) through High School, inclusive.
  - d. The following field trips are available during the following months:

Native American Area	September-November March-May
Dr. George Washington Carver	September-November
Garden Gates Workshop	January-February

(Plant Propagation)	
Tropical Rain Forest	March-May
Alabama Woodlands (Interdependence)	September-November March-May
Secret Life of Trees	September-November March-May
Plants: Inside Out	September-November March-May

- e. Field Trips are available Monday through Friday, inclusive, from 9:30-11:30am. No field trips are offered on federal and state holidays.
  - f. Schools shall select the students that will attend the contractors' field trips. The Contractor shall not be responsible for providing transportation.
  - g. Schools shall contact the contractor at least ten (10) business days in advance of a proposed field trip to schedule a date that shall be reasonably convenient for schools and the contractor.
  - h. The Contractor requires the presence of one (1) adult per ten (10) children for the duration of each field trip.
  - i. The city and the contractor shall each monitor the number of students that attend the contractor's field trips and shall agree to reconcile the number at the end of the contract period.
  - j. The Contractor will engage with sophomore-through-senior city high school students in a field study program
  - k. City Chamber of Commerce shall seek additional opportunities with the contractor.
3. Contractor shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Contract. Contractor is an independent contractor and none of its agents or employees shall be deemed to be under the control of City nor shall any of the agents, or employees or other persons, firms, or corporations conducting business for or on behalf of Contractor be deemed to be agents, or employees of City.
  4. Contractor shall indemnify City and its agents, employees and elected officials harmless, from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs which may be asserted against, or suffered by, City or its agents and employees arising out of, or in connection with: (a) the performance, or attempted performance, by Contractor or its agents or employees of Contractor's obligations under this contract; and (b) any claim that the Contract Funds were improperly paid by City to Contractor.

5. Contractor agrees to employ accounting procedures which are appropriate to the types of operations conducted by Contractor and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by Contractor for a period of three (3) years after the expiration or termination of the Contract. City shall have full access to, and the right to examine, any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. Contractor agrees that upon request from City, Contractor will submit to, and cooperate with, periodic audits by Alabama Department of Public Examiners or other audit procedures requested by the city.
6. If Contractor fails to comply with the provisions of the Contract, such failure shall constitute a default under this Contract and, unless corrected by Contractor within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this Contract and City shall have a right to terminate this Contract by giving Contractor ten (10) days prior written notice of such termination, and City shall not be obligated to make any additional payments to Contractor. Such termination of this Contract by City shall not relieve Contractor of any of its obligations or liabilities to City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.
7. The Association and the representative of the Association who executes this Contract, by the execution of the Contract, certify that:
  - a. no part of the Contract Funds paid by City pursuant to this Contract shall be paid to, or used in any way for personal benefit of, any elected official, employee or representative of any government or any family member of any such official, employee or representative, including federal, state, county and municipal governments and any agency of any such government;
  - b. neither the Association nor any of its officers, agents, representatives or employees has in any way colluded, conspired or connived with any elected official, employee, or representative of City, or any other elected official or public employee, in any manner whatsoever to secure or obtain the Contract; and
  - c. except as expressly set out in this scope of services of this Contract, no promise or commitment of any nature whatsoever of any thing of value whatsoever has been made to any such elected official, employee or representative of City as an inducement or consideration for this Contract.

Any violation of the certification shall constitute a breach and default of this Contract which shall be cause for termination. Upon such

termination, the Association shall immediately refund to City all amounts paid by City pursuant to this Contract.

In witness whereof, the Birmingham Botanical Society has caused this Contract to be executed by its duly authorized Executive Director on Nov. 6, 2015, and City of Mt. Brook has caused this Contract to be executed by its duly authorized representative, on \_\_\_\_\_, 2015, but this Contract shall be effective as of October 1, 2015.

Birmingham Botanical Society, Inc.

By:  \_\_\_\_\_  
Its Chief Executive Officer

City of Mt. Brook

By: \_\_\_\_\_  
Its Mayor



November 2, 2015

Mr. Sam S. Gaston  
City Manager  
City of Mountain Brook  
56 Church Street  
Birmingham, AL 35213

Dear Mr. Gaston:

Thank you and everyone with the City of Mountain Brook for everything you have done for Birmingham Botanical Gardens over our more than 50 years as a cultural and educational landmark. It is only thanks to great partners like the City of Mountain Brook that we are able to celebrate this milestone and all of our accomplishments.

Discovery Field Trips are once again in full swing with several Mountain Brook schools already scheduled to partake in these science curriculum-based experiences at The Gardens. We are so happy to provide these educational experiences to thousands of Mountain Brook students over the more than 16 years of Discovery Field Trips. The City of Mountain Brook's funding helps to ensure that this program remains free and of the highest quality for your students, and for that, we are grateful.

With the city's continued support in 2015, we hope to continue our great tradition of providing free, hands-on science curriculum-based education to Mountain Brook students as well as expanding those offerings. This year we look to introduce an environmental science field study focused on soil science and plant-soil relationships to Mountain Brook high school students.

We are well aware that there are many worthy organizations to partner with and we continue to be truly grateful that Mountain Brook has chosen to partner with us. While participation continues to increase, so do the costs. With that reality in mind, we hope that you and the City of Mountain Brook will consider increasing our contract for services to a \$20,000 gift for Discovery Field Trips, the new high school science field study program and to allow us to explore new opportunities to partner with the Mountain Brook Chamber of Commerce.

We cannot overstate the importance of the City of Mountain Brook's continued funding for our programs, and we sincerely appreciate your consideration.

For The Gardens,

A blue ink signature of Frederick R. Spicer, Jr. with the handwritten note "THANK YOU!" written above it in blue ink.

Frederick R. Spicer, Jr.  
Executive Director  
205.414.3903

A blue ink signature of Drew Rickel.

Drew Rickel  
Donor Relations Officer  
205.414.3955

**2015 Board of Directors**

**President**  
Brian Barr

**President-Elect**  
Beverley Hoyt

**Past President**  
B. Hanson Slaughter

**Treasurer**  
Scott Walton

**Secretary**  
Paul Jones

**VP Development**  
Beverley Hoyt

**VP Gardens and Buildings**  
Elizabeth Broughton

**Governance Chair**  
Charles Goodrich

**Officers**  
Wally Evans  
Houston Gillespy

**Junior Board President**  
Amanda Foshee

**At Large**  
Cathy Adams  
Craig Beatty  
Mary Boehm  
Chris Boles  
Emily Bowron  
Maggie Brooke  
Clarke Gillespy  
John Hudson  
John Hurst  
J. Turner Insee  
Bill Ireland  
Elizabeth Jernigan  
Carl Jones  
Natalie Kelly  
Katie Baker Lasker  
John Miller  
John Smith T

Enclosures: Proposal and Education Impact Statement

**Friends of Birmingham Botanical Gardens\***  
**Funding Request**  
**City of Mountain Brook**



Birmingham Botanical Gardens features 67.5 acres of breathtaking gardens which include over 3,000 types of plants, a large conservatory (recently improved and reopened) and more than 30 works of outdoor sculpture, all enjoyed by over 350,000 annual visitors. With more than 25 separate specialty gardens and woodland areas representing the best of Alabama's horticultural and natural wonders, The Gardens is an important part of our region's biodiversity as well as a beautiful asset to Alabama and our neighbors in Mountain Brook.

Friends of Birmingham Botanical Gardens (The Friends) provides staff, volunteers and funding for educational programming, garden maintenance, plant and library collections expansion, long-range planning and physical development. The Friends is also responsible for direction and day to day management of all Gardens' employees. Most importantly, The Friends raises and administers funds that provide year-round educational programming for children and adults, helps to keep The Gardens – the most visited free attraction in the state – clean and green, and assists in maintaining the most extensive living plant collection in the region.

Science education is the keystone of The Friends' mission. The benefits of involvement in horticultural activities and exposure to nature can be seen in cognitive, psychological, social, and physical realms and research continues to reveal these connections across many groups of people. Friends of Birmingham Botanical Gardens was the first area organization to base its children's education programs, Discovery Field Trips, on the approved state science curriculum. We are proud to see that our model has been so successful that it has been adapted by other local non-profits, expanding the number of hands-on education opportunities to Mountain Brook school children.

Discovery Field Trips are hands-on science curriculum-based field trips for students from preschool through high school. Participants learn about interdependence of plants and animals in the ecosystem, basic plant and flower parts and methods of propagation, photosynthesis and plant respiration, the life and scientific contributions of Dr. George Washington Carver, varieties of plants utilized by Native Americans, plant adaptation in tropical rain forests, and "The Secret Life of Trees." Discovery Field Trips are available free-of-charge to City of Mountain Brook students. Over its more than 16-year history, thousands of Mountain Brook students have engaged in these interactive learning experiences. We thank the City of Mountain Brook for helping us connect these children to nature.

We are also looking to expand our educational offerings to Mountain Brook students by engaging sophomore-through-senior high school students in a hands-on, science curriculum-based environmental science field study focused on soil science and plant-soil relationships. These on-site field studies will last approximately 40 minutes and cover topics such as soil formation, particle size, pore space, watering, mineral and organic content, root growth zone, soil development, tree growth response to landscape position and soil depth, erosion mitigation, and more. All topics coordinate with state curricula for those grade levels.

In addition, as you know, The Gardens attracts many visitors to the area, acting as an economic catalyst for Mountain Brook Village, Crestline Village, the Grand Bohemian Hotel, and more. As such, we look to foster our relationship with the City of Mountain Brook's Chamber of Commerce. As funding allows, we will investigate further opportunities for us to partner with the chamber and work with your city.

**Friends of Birmingham Botanical Gardens respectfully requests continued support in the amount of \$20,000 from the City of Mountain Brook to help underwrite Discovery Field Trips, the new environmental field study program, and our work with the Mountain Brook Chamber of Commerce for the 2015/2016 academic year. Funds provided by the City of Mountain Brook will support the administrative, training and coordination costs, materials and equipment for the field trips, maintenance of gardens where trips take place and professional development workshops.**

With your help, The Friends will continue to expand educational programming, environmental science, facilities maintenance and development, as well as horticultural health and diversity. Birmingham Botanical Gardens constitutes a valuable resource for our community which must be maintained and enhanced for present and future visitors.

**RESOLUTION NO. 2015-158**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Birmingham Children's Theatre subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 2015.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

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

\_\_\_\_\_  
City Clerk



OFFICE OF THE MAYOR

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone 205.802.3802  
Fax: 205.870.3577  
epste.nc@mtnbrook.org  
personal email - LastVa'halla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Ricky Strickland  
Birmingham Children's Theatre  
PO Box 1362  
Birmingham, AL 35201

Dear Mr. Strickland:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of \$5,000 for FY-2016. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015-158



BIRMINGHAM  
CHILDREN'S  
THEATRE

**AGREEMENT**

This Agreement (Agreement) is entered into by the **City of Mountain Brook, Alabama**, a municipal corporation (City) and **Birmingham Children's Theatre (BCT)**, a not-for-profit corporation organized under the laws of the State of Alabama, effective as of the date last signed below by a party.

WHEREAS, BCT offers professional theatre for children in the Greater Birmingham Area and associated educational and instruction services aligned to the Alabama Course of Study used in public schools for children who attend its productions (collectively, the Services);

WHEREAS, the Services provided by BCT provide unique educational and enrichment experiences for children living in any community;

WHEREAS, pursuant to the term, conditions and understandings in this Agreement, the City desires that the BCT provides Services that benefit students who attend elementary schools located in the City of Mountain Brook; and

WHEREAS, BCT's performance of Services for students who attend elementary schools in the City enhances the quality of life therein and serves a public purpose for its citizens.

Witnesseth

In consideration of the mutual covenants herein and other consideration, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the City and BCT agree as follows:

1. BCT shall offer the following productions and provide Services in connection therewith for students who attend elementary schools located in the City:

**MainStage productions - for students in grades 2-8 include:**

<i>Seussical</i>	<i>December 2 - 19, 2015</i>	<i>28 performances</i>
<i>Tuxedo Junction+</i>	<i>February 3 - 20, 2016</i>	<i>30 performances</i>
<i>Pinocchio</i>	<i>April 3 - 27, 2016</i>	<i>34 performances</i>

**Wee Folks Productions - for students in grades preK-1 include:**

<i>Dear Santa</i>	Nov. 23 - 30; Dec. 1 - 18, 2015	42 performances
<i>The Jack and the Beanstalk +</i>	Feb. 2 - 20; April 13 - 24, 2016	60 performances

+ *Will also tour with BCT On Tour*

Additional information and commitments by BCT about the Services it will provide are set forth on BCT's Request for Contract for Service that is attached hereto and incorporated by reference herein.

2. As part of BCT's mission to integrate the arts into classroom academics, BCT also will provide, at no additional charge other than set forth herein, an on-site Study Guide Live for one grade level at each Mountain Brook elementary school for a BCT production of their choice.

3. In consideration for BCT providing the Services and performing its other obligations set forth herein, the City will pay BCT five thousand dollars (\$5,000) for its fiscal year October 1, 2015 – September 30, 2016. These funds will be paid to BCT on or before December 31, 2015.

4. Other Terms and Conditions.

- (a) At its expense, BCT shall provide all personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Agreement.
- (b) BCT is an independent contractor of the City. The City has no right to control the persons, agents or employees of BCT who provide the Services, and none of them are agents or employees of the City.
- (c) BCT shall indemnify and hold harmless City and its agents, employees, and elected officials (collectively the City) from and against all actions, causes, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs which may be asserted against, or suffered by the City arising out of, or in connection with the acts or conduct of BCT, and its agents, employees and representatives, in performing or failing to perform any of their obligations under this Agreement. The indemnification obligations in this provision shall survive the expiration or early termination of this Agreement for a period of three years.
- (d) BCT agrees to utilize commercially reasonable accounting procedures which are customary to similar operations. BCT shall maintain all financial records and other documents pertaining to its performance of obligations under this Agreement for a period of three (3) years after its expiration or termination. Upon advance request by the City, BCT agrees to provide the City full access to, and the right to examine and audit, any of such financial records and other documents at reasonable times during the term of this Agreement or during the three-year period following its expiration or termination.
- (e) If BCT fails to perform or comply with any of its material obligations under this Agreement, any such failure shall constitute a default hereunder unless corrected by BCT within thirty (30) days following its receipt of written notice of such default from the City. Upon the

occurrence of any such default, the City shall have a right to terminate this Agreement before its expiration by giving BCT written notice of such termination effective as of the time designated in that notice. Any such termination by City shall not relieve BCT of its obligations or liability to City arising hereunder that relate to or arise from events occurring before the termination or early expiration of this Contract.

- (f) This Agreement contains the complete terms, conditions, understandings, representations and covenants between the City and BCT concerning the matters set forth herein. Unless stated herein, any prior negotiations or understandings concerning these matters are merger herein and of no effect.

In witness whereof, the undersigned, duly authorized representatives of the parties have affixed their signatures with the intent to bind their respective entities to the obligations in this Agreement.

**BIRMINGHAM CHILDREN'S THEATRE**

By: \_\_\_\_\_  
Printed Name: Ricky Strickland  
Its: Executive Director  
Date: \_\_\_\_\_

**CITY OF MOUNTAIN BROOK, ALABAMA**

By: \_\_\_\_\_  
Printed Name: Lawrence T. Oden  
Its: Mayor  
Date: \_\_\_\_\_

**BIRMINGHAM CHILDREN'S THEATRE**  
**City of Mountain Brook Request for Contract of Services**

**Name of the Organization:**

Birmingham Children's Theatre

**Mission of the Organization:**

To educate, entertain and enrich the lives of children through the magic of professional theatre.

**Request:**

Birmingham Children's Theatre requests a \$5,000 contract for funds from City of Mountain Brook to provide services that create and increase access to live theatre to Mountain Brook school students, parents and teachers. BCT will also provide on-site Study Guide Live to one grade level of the elementary schools in the city.

**Agency Background:**

Birmingham Children's Theatre (BCT), established in 1947, is one of the nation's oldest and largest professional theatre companies for young audiences. The mission of Birmingham Children's Theatre (BCT) is to educate, entertain and enrich the lives of children through the magic of professional theatre. BCT produces high-quality, professional theatrical entertainment and curriculum-relevant arts education experiences for children and families. BCT reaches upwards of 150,000 young people annually through its performances in Birmingham and on tour throughout Alabama and the Southeast. In its seven decades, BCT has touched the lives of more than 12 million children.

BCT celebrates the connection between literature and theatre and bridges professional theatrical entertainment with relevant curriculum-based education experiences for children. Research has shown that when students have access to arts education they perform better academically, participate more actively in extracurricular activities and are more likely to pursue higher education. BCT is committed to live theatre for young audiences within a professional theatre setting.

BCT is second largest employer of professional theatre artists in Alabama. As the resident professional theatre of the Birmingham-Jefferson Convention Complex (BJCC), BCT operates the 150-seat Dominick Studio Theatre, the intimate 250-seat Wee Folks Theatre for students ages 3-6 and the larger 900-seat MainStage Theatre for students ages 6-up.

For the 2015-2016 season, Birmingham Children's Theatre is producing eight works including a new commissioned script and an Alabama premiere. BCT On Tour will tour four productions to rural Alabama and the Southeastern United States; the Academy will offer workshops and master classes; and we will provide additional community education programming. BCT's Academy of Performing Arts workshops and camps provide individualized instruction and theatre training for students ages 4-16 each year.

BCT's ongoing *New Voices Project* has commissioned more than 50 original scripts, stories, musicals and adaptations for young audiences since 1982. BCT maintains a commitment to discovering new voices among playwrights, and the presentation and experimentation in dramatic literature for youth. It is Alabama's only ongoing new play development project that focuses specifically on theatre for young audiences.

**BIRMINGHAM CHILDREN'S THEATRE**  
**City of Mountain Brook Request for Contract of Services**

**2015-2016 Season Request for Services:**

Birmingham Children's Theatre desires to enter into a contract for services with the City of Mountain Brook thereby increasing opportunities for learning in the Mountain Brook School System. BCT is a community resource that provides the City of Mountain Brook students, parents and teachers access to live theatre within a professional theatre setting. The children benefit from the exposure, immersion and integration of arts education. At BCT, we are "education" wrapped in amazing, inspiring productions that engage your students. The productions that BCT chooses to present are relevant, fresh stories covering a variety of topics and classroom literature suggestions and requirements. Generation after generation of Mountain Brook residents have attended performances – children, parents, grandparents, great grandparents. Yearly, all four of the Mountain Brook elementary schools attend BCT with over 1,800 elementary students attending a BCT performance during the 2014-2015 season. This does not include children attending from Mountain Brook daycares, performances at the Emmett O'Neal library and public performances.

As part of BCT's mission to integrate the arts into classroom academics, BCT will provide an on-site Study Guide Live for one grade level at each Mountain Brook elementary school for a BCT production of their choice. The Study Guide Live Program is a supplement to the Study Guide offered to teachers for each show, but taken to the next level. All BCT Study Guides are tailored for each PreK-8th grade classroom and are carefully designed to include both National Arts Standards and State curriculum standards outlined by the Alabama Course of Study.

Study Guide Live focuses on the merit of language arts, its relevance in everyday life and it's usefulness in the career field. It is an interactive program that seeks to educate children through the art of theatre with a focus on communication, imagination and team-work. Prior to attending the BCT production, BCT staff and teachers work together to create an age appropriate and relevant curriculum, based on state standards with focuses on subjects such as history, language arts and theatre craft. Students will participate in theatre games and warm ups, and they will also be introduced to various theatre careers, practices and etiquette. These activities will stimulate lively responses and multi-sensory explorations of concepts in order to use the theatrical event as a vehicle for cross-curriculum and language arts learning. Session will last approximately one hour at a time designated by the teacher and school.

Birmingham Children's Theatre also provides access to Study Guides that empower teachers and parents with customized lesson plans, concrete examples of cross-curriculum learning and specified arts integration techniques, while challenging students of all ages to bridge their arts experiences with current educational standards. These well researched resources will be available for all BCT productions and are sure to become a key in-school component for supporting and sustaining arts education both in and out of the classroom.

Birmingham Children's Theatre's actors and teachers attended and brought study guides to all four elementary schools this year. Audience reaction to the productions and Study Guide Live was extremely positive and well received, by both student and teachers. Some of the teacher's comments were, "very interactive and engaging; good for active 1st graders", "I feel the students will get more out of the play because of the presentation", "children asked good questions – had our children thinking" and "went along with our Reader's Theatre".

BCT instills a love of theatre while imparting important life lessons and addressing issues facing our children. BCT's MainStage productions will stimulate the creativity and innovation that will prove critical to classroom learning. These series of productions are carefully constructed to provide curriculum-based entertainment, offering productions, often based in literature or history. BCT puts great importance into integrating important social issues, such as bullying and greed, into each season's shows.

**BIRMINGHAM CHILDREN'S THEATRE**  
**City of Mountain Brook Request for Contract of Services**

This season, MainStage Productions will share the lessons of love and appreciation of reading and books, the consequences of cyber bullying and the effects of technology, the value of people and the powers of friendship, loyalty, family and community.

**MainStage productions - for students in grades 2-8 include:**

<i>The Reluctant Dragon +</i>	September 29 - October 9, 2015	18 performances
<i>Seussical</i>	December 2 - 19, 2015	28 performances
<i>Face/ Time *+</i>	February 3 - 20, 2016	30 performances
<i>Pinocchio</i>	April 3 - 27, 2016	34 performances

**Summer Series -productions for families:**

<i>Gingerbread Boy</i>	June 2 – 13; July 20 – Aug. 1, 2015	40 performances
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Wee Folks productions will share messages and principles such as the value of hard work, the difference in doing all you can and doing nothing at all, the value of friendship, that nothing is ever hopeless and any problem can be solved with a little bit of thinking.

**Wee Folks Productions - for students in grades preK-1 include:**

<i>The Little Red Hen +</i>	Sept. 15 - Oct. 2, 2015	31 performances
<i>Dear Santa</i>	Nov. 23 - 30; Dec. 1 - 18, 2015	42 performances
<i>The Jack and the Beanstalk +</i>	Feb. 2 - 20; April 13 - 24, 2016	60 performances
* <i>New commissioned work</i>		
+ <i>Will also tour with BCT On Tour</i>		

**Goals and Objectives**

Birmingham Children's Theatre strives to meet the following goals each and every season: (1) Provide ideas and tools for teachers to utilize in their existing programs along with ways to use theatre arts in other areas of study, such as history, social studies and language arts; (2) To help students gain a better understanding of theatrical arts, which research has shown brings overall improvement in their other educational studies; and (3) ) To introduce theatre arts to students who may never have attended a professional live theatre performance.

**Key Personnel**

Ricky Stricklin (Executive Director) is a CPA and retired as Vice President of Finance for Shook and Fletcher Insulation Company. He holds a degree in business and accounting from the University of Alabama. He previously was the Director of Finance and Administration at BCT. His experience in strategic planning, visioning, and managing financial operations and human resources in a senior management position combined with his longtime support and love of the arts community make him a great addition to Birmingham Children's Theatre.

Leah Luker (Production Manager) has written, directed, stage managed and starred in many BCT productions over the past eight years. Leah has a degree in theatre and is a proud member of the Actors' Equity Association.

Merelee Robinson (Director of Touring) holds a BA in Theatre Technical and a BA in Theatre Performance. She has been working in theatre for the past ten years and has spent the past four years touring professionally with several different theatre companies.

Staff: BCT maintains a full-time administrative and production staff of 15, and will employ over 100 professional theatre artists in 2015-2016 including actors, directors, choreographers, designers, costumers, musicians, technicians and teaching artists.

**BIRMINGHAM CHILDREN'S THEATRE**  
**City of Mountain Brook Request for Contract of Services**

**Need**

Arts education plays an important role in providing Alabama students with a well-rounded education. "The arts provide a vehicle through which to learn almost any subject currently taught in public schools today, but regrettably arts education is one of the first programs to be lost when budgets are limited," said Tommy Bice, State Superintendent of Education, in a statement. "It is imperative that we create a priority for the arts in our total school program for it is through this creative learning experience so many of our students find their 'voice' -- in its broadest sense."

U.S. Secretary of Education Arne Duncan remarks that "arts education can help build the case for the importance of a well-rounded, content-rich curriculum in at least three ways. First, the arts significantly boost student achievement, reduce discipline problems and increase the odds that students will go on to graduate from college. Second, arts education is essential to stimulating the creativity and innovation that will prove critical to young Americans competing in a global economy. And last, but not least, the arts are valuable for their own sake, and they empower students to create and appreciate aesthetic works."

Every season, BCT performs a series of shows for local school children and the general public giving children and families the opportunity to share the total theatre experience. BCT is open to all children, regardless of age, race, religion or nationality. Over 50% of the youth that attend BCT performances are from culturally and financially underserved communities. BCT seeks to expose its youth-centric audiences to new heritages, traditions and art forms by producing works that elevate the public perception of art and continue to reinforce the artistic merit of live theatre for young audiences. Regardless of the need, BCT continues to maintain a policy of ensuring that children can attend a performance and works closely with many schools and families to provide complimentary tickets or subsidized tickets to the underserved communities. Through generous contributions from institutional donors and individuals, BCT makes performances available to all students in the Greater Birmingham metropolitan area.

**Project Evaluation**

BCT will evaluate the entire season by collecting standard metrics of participation including numbers of teachers served through the utilization of BCT Study Guides, number of students served through in-school theatre education workshops and overall number of schools, teachers, students and individuals reached by BCT's performances at home and on tour. Beyond these standard attendance measures, BCT's Director of Production and Education will oversee formal and informal evaluation of all education programs and activities. Both written and electronic surveys will be distributed to attendees to collect feedback regarding the quality of work presented, professionalism and instructional techniques displayed by teaching artists and staff and the overall degree to which attendees benefited and felt engaged. Additionally, both anecdotal and formal survey feedback will be sought from home season and tour performance attendees from which all formal evaluation and statistical analysis will occur, and if BCT is meeting its specific objectives by producing a long-term impact on attendees. All evaluations inform BCT staff and board committees in determining future programming.

**RESOLUTION NO. 2015-159**

**WHEREAS**, the Birmingham Zoo (“Zoo”) is a regional educational and entertainment attraction located adjacent to the municipal limits of the City of Mountain Brook (“City”); and

**WHEREAS**, the Zoo serves the Mountain Brook community and its citizens through educational and informational programs, offering educational and family entertainment options, and through its cooperation in the City’s recent flood control efforts; and

**WHEREAS**, the City, as a community partner, supports the mission and purpose of the Zoo, and has provided financial commitments to the Zoo as a result of the Zoo’s commitments and service to the City; and

**WHEREAS**, the City Council of the City of Mountain Brook wishes to extend those financial commitments to the Zoo for an additional year, all as set forth in the attached Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mountain Brook that the City’s financial commitments to the Zoo shall be and hereby is extended for an additional year as set forth in the attached Agreement.

**BE IT FURTHER RESOLVED** that the commitments between the parties expressed in the Agreement are deemed to be fair and adequate and serve a public purpose, and the Mayor is hereby authorized to execute the Agreement on behalf of the City.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 2015.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

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

\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**OFFICE OF THE MAYOR**

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3802  
Fax: 205.870.3577  
epsteinc@mtnbrook.org  
personal email - LastValhalla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Dr. Bill Foster, CEO  
Birmingham Zoo  
1 Wild Place  
Birmingham, AL 35223

Dear Dr. Foster:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of \$20,000 for FY-2016. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015/159

## AGREEMENT FOR SERVICES

THIS AGREEMENT made this 9th day of November, 2015 by and between the CITY OF MOUNTAIN BROOK, ALABAMA ("Mountain Brook"), a municipal corporation of the State of Alabama, and the BIRMINGHAM ZOO, INC. ("Zoo"), an Alabama non-profit corporation.

WHEREAS, the City desires to increase the learning opportunities for students who attend Mountain Brook City Schools; and

WHEREAS, the Zoo has developed certain programs, exhibits, and learning opportunities which, in the City's opinion, will be helpful and instructive to said students; and

WHEREAS, such programs, exhibits, and learning laboratories are not available at Mountain Brook City Schools; and

WHEREAS, the Zoo has agreed to work cooperatively with and assist the City with future public works projects; and

WHEREAS, the City has agreed to pay the Zoo the sum of Twenty Thousand Dollars (\$20,000.00), in consideration of the Zoo providing the City the services referred to in this Agreement.

NOW, THEREFORE, consideration of the premises and in consideration of the covenants and agreements contained herein, the City and the Zoo hereby agree as follows:

1. The City shall pay to the Zoo Seventy-Five Thousand Dollars (\$20,000.00) in April of 2016.

2. In consideration of the payment of the funds as provided herein, the Zoo shall provide at least the following services to the City ("Services");

- a. The Zoo will provide guides and educational enrichment for all pre-scheduled field trips to the Zoo from Mountain Brook City Schools for one (1) year from the date of execution of this Agreement. In addition, all participants in pre-scheduled field trips from Mountain Brook City Schools to the Zoo will be eligible to participate in the Zoo's group discount admission program.
- b. The Zoo will provide to Mountain Brook City Schools a series of educational programming and classes targeting elementary, middle, and high school students free of charge for one (1) year from the date of execution of this Agreement.
- c. The Zoo will use its best efforts to work cooperatively with the City and provide assistance and support to the City with the City's future public works projects that are located near the Zoo.

3. Effective upon the execution of this agreement, the City conveys and the Zoo accepts title and interest in the soil, dirt, earth and other excavated material that was removed as a result of the City's Flood Control Project ("Materials") with no further obligation on the City's part with respect to the storage, removal, or redistribution of such materials.

4. The Zoo shall provide the personnel, supplies, equipment, and expertise necessary to fulfill

its obligations to Mountain Brook City Schools under the terms of this Agreement. The Zoo is an independent contractor and none of its agents or employees shall be deemed to be under the control of the City nor shall any of the agents or employees, or other persons, firms, or corporations conducting business for or on behalf of the Zoo be deemed to be agents or employees of the City.

5. The Zoo shall indemnify the City and its agents, employees, and elected officials and hold them harmless from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs, which may be asserted against, or suffered by the City or its agents and employees arising out of, or in connection with: (a) the performance or attempted performance by the Zoo or its agents or employees of the Zoo's obligations under this Agreement; and (b) any claim that the payments described herein were improperly paid by the City to the Zoo.

6. The Zoo agrees to employ accounting procedures which are appropriate to the types of operation conducted by the Zoo and which are customary to similar operations. All financial records and other documents pertaining to this Agreement shall be maintained by the Zoo for a period of three (3) years after the expiration or termination of this Agreement. The City shall have full access to, and the right to examine any of such financial records and other documents at all reasonable times during the term of this Agreement and during said three-year period. The Zoo agrees that upon request from the City, the Zoo will submit to and cooperate with periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.

7. If the Zoo fails to comply with the provisions of this Agreement, such failure shall constitute a default under this Agreement and, unless corrected by the Zoo within thirty (30) days following receipt of written notice for the City of such default, shall be deemed a breach of this Agreement and the City shall have a right to terminate this Agreement by giving The Zoo twelve (12) days prior written notice of such termination, and the City shall not be obligated to make any additional payments to the Zoo. Such termination of this Agreement by the City shall not relieve the Zoo of any of its obligations or liabilities to the City under the provisions of paragraph 4 of this Agreement, whether such obligations or liabilities occur or accrue before or after the termination of this Agreement.

In witness whereof, the Birmingham Zoo, Inc. has caused this Agreement to be executed by its duly authorized Chief Executive Officer and the City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor, all as of the \_\_\_ day of November, 2015.

**CITY OF MOUNTAIN BROOK**

**BIRMINGHAM ZOO, INC.**

\_\_\_\_\_  
Lawrence T. Oden  
Mayor, City of Mountain Brook

\_\_\_\_\_  
William R. Foster  
Chief Executive Officer, Birmingham Zoo, Inc.

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Name/Title: \_\_\_\_\_

**RESOLUTION NO. 2015-160**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Prescott House subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 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 meeting held on November 9, 2015, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**OFFICE OF THE MAYOR**

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3802  
Fax: 205.870.3577  
epsteinc@mtnbrook.org  
personal email - LastValhalla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Mr. David Barber  
Prescott House  
1730 14<sup>th</sup> Avenue South  
Birmingham, AL 35205

Dear Mr. Barber:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of \$5,000 for FY-2016. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015-160

**From:** Barber, David [mailto:[barberd@jccal.org](mailto:barberd@jccal.org)]  
**Sent:** Monday, November 02, 2015 8:51 PM  
**To:** Sam Gaston  
**Cc:** Barber, David  
**Subject:** Fwd: Service Contract for City of Mt. Brook, 2016

Sam, THANK YOU for your help in securing this funding for Prescott House for the new FY!

My Executive Director called me this morning with the good news, so attached is the contract you requested. Prosecutors are not known for their contract drafting skills, so if the City Attorney wants to tweak the attached document that is perfectly acceptable to me - no pride of authorship here!

Let me know if this document is acceptable and I will come by City Hall and sign it.

Thanks again!

David Barber  
[205-531-3375](tel:205-531-3375) (Cell)

## CONTRACT

WHEREAS, Prescott House provides forensic interviews for law enforcement agencies in reported cases of reported, or suspected, child physical abuse and sexual abuse; and

WHEREAS, Prescott House has been providing said services to law enforcement agencies in the Birmingham Division of Jefferson County, Alabama, including the Mountain Brook Police Department, since Prescott House began operation in March, 1987; and

WHEREAS, Prescott House provides these services at no cost to the child, the child's family, or to the Mountain Brook Police Department; and

WHEREAS, Prescott House is a not-for-profit corporation under the laws of the State of Alabama, and has been granted non-profit status under Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, Prescott House has never received any financial support from the City of Mountain Brook, Alabama, in support of it's continuous services to the City;

PRESCOTT HOUSE offers to enter into an agreement with the City of Mountain Brook whereby Prescott House will continue to provide such services to the citizens of Mountain Brook, and the Mountain Brook Police Department, as needed, for FY 2016 in consideration of Five Thousand dollars (\$5,000.00) to be paid to Prescott House during FY 2016.

Done this \_\_\_\_ day of \_\_\_\_\_, 2015, by

\_\_\_\_\_  
For the City of Mountain Brook, AL

\_\_\_\_\_  
David Barber, Founder & President of the Board  
On behalf of Prescott House

**RESOLUTION NO. 2015-161**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the McWane Science Center, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 2015.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

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

\_\_\_\_\_  
City Clerk



OFFICE OF THE MAYOR

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3802  
Fax: 205.870.3577  
epsteinc@mtnbrook.org  
personal email - LastValhalla@cat.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Susan Tipton  
The McWane Center  
200 19<sup>th</sup> Street North  
Birmingham, AL 35203

Dear Ms. Tipton:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of \$10,000 for FY-2016. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President



November 4<sup>th</sup>, 2015

Amy W. Templeton  
President & CEO

Board of Trustees  
2015

D. Scott Adams  
*Chairman*

Gordon G. Martin  
*Chairman Elect*

Dorothy D. Pak  
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Geeta Lakhanpal

Danny Markstem

Charles G. Mason

John W. McCullough

C. Phillip McWane

Chad Webb

Forest W. Whatley, Jr.

Nicholas O. Willis

Gary York

Mr. Steven Boone  
Finance Director  
City of Mountain Brook  
P.O. Box 130009  
Mountain Brook, AL 35213-0009

Mr. Boone,

Thank you and the City of Mountain Brook for awarding funding to McWane Science Center for fiscal year 2016. This funding will not only assist with science education opportunities for Mountain Brook residents but also help us continue to serve as a positive extension of your school classrooms. Science education is essential for the overall development of our children. Together we can continue to "change lives through science and wonder."

Included, as requested, please find the contract signed by our President & CEO, Amy Templeton. A complete list of Mountain Brook school field trips and Outreaches from the 2014-15 school year has been included for your review.

If I can be of any further services, please do not hesitate to ask.

Sincerely,

Clay Shannon  
Development Office  
(205) 714-8220  
cshannon@mcwane.org



***A Contract for Funds to support services provided by  
McWane Science Center to the students of Mountain Brook  
October 2015 – September 2016***

***Submitted to:  
The City of Mountain Brook***

**by  
McWane Science Center  
200 Nineteenth Street North  
Birmingham, AL 35203  
Phone: (205) 714-8300  
Fax: (205) 714-8400**

# **McWane Science Center - City of Mountain Brook Contract**

## **The Overview**

This contract is entered into by the City of Mountain Brook and McWane Science Center, a non-profit corporation organized under the laws of the State of Alabama.

Both the City of Mountain Brook and McWane Science Center desire to increase the opportunities for learning in the Mountain Brook School System. McWane Science Center serves as a community resource unlike any other educational institution in the Greater Birmingham Area offering hands-on interactive information science and technology education programs. These programs are directly aligned to the Alabama Course of Study Science Education Curriculum and the National Science Standards.

Therefore, due to the ability to enhance science education for school children, the City of Mountain Brook has agreed to pay McWane Science Center \$10,000 for use of the Center and its programs by the students in the Mountain Brook School System for fiscal year October 2015 – September 2016.

## **McWane Science Center services supported through this contract**

This contract supports three different science education programs provided by McWane Science Center. In consideration of this support, students may visit the science center and participate in its programs or participate in our outreach program.

This contract supports services up to \$10,000 for the fiscal year. Each student fee for visits to the science center is \$12 for Adventure Halls and a Reserved School Program. The student fee for both the Adventure Halls and an IMAX film is \$15. Teachers and chaperones are admitted free to Adventure Halls, \$5 for only an IMAX film and \$5 for both the Adventure Halls and an IMAX film.

Fees for outreach programs vary depending on the type of program and classroom size. A classroom outreach of up to 32 students is \$125. An assembly outreach, which accommodate a larger number of students (100 +) is \$250.

McWane Science Center shall provide Teacher Guides for each school for the duration of this contract. Educators from McWane Science Center shall be available at least two times each year to participate in teacher professional development workshops, training sessions, and in-service programs. During this time, McWane Science Center educators shall provide Mountain Brook teachers with information about the outreach programs, permanent exhibits, traveling exhibits, and science education programs and demonstrations that tie directly into the Alabama Course of Study Science Education Curriculum.

Other services such as food services, parking and bus parking are available for classes during their visits to McWane Science Center at advertised prices.

## **Support from Mountain Brook City Schools in consideration of this contract**

In coordination with the Mountain Brook Superintendent, Mountain Brook Schools shall select the students and the programs in which these students will participate. Each Mountain Brook City School and the Superintendent's office shall select a liaison for this contract. The liaison shall coordinate this

contract for his/her particular school and work with a designated McWane Science Center Visitor Services representative or Groups Sales staff member.

Each Mountain Brook City School shall be responsible for providing transportation to the science center for both visits to the science center and participation in the Challenger Learning Center. Adult chaperones shall be provided by Mountain Brook City Schools for students at McWane Science Center. McWane Science Center requires one chaperone for every six students in grades K-8.

Each Mountain Brook School liaison shall contact the McWane Science Center Grants Administrator at least 12 school days prior to a proposed visit to the science center.

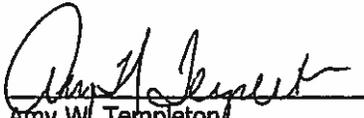
During the late spring, McWane Science Center can have over 1,500 students a day. McWane Science Center would like to strongly encourage a visit, mission or a program early in the spring term so that the students can take full advantage of this contract.

Both the Mountain Brook City Schools and McWane Science Center shall keep a record of the number of students who have participated in programs through the use of this contract and the programs in which they have participated. They shall work together to reconcile these numbers each year and report these numbers to the Mountain Brook Superintendent, the Mayor of the City of Mountain Brook and the Mountain Brook City Council.

Any fees for services over the allotted amount of \$10,000 shall be covered by either the schools or the students.

#### **Agreement**

This agreement represents the entire contract between the City of Mountain Brook and McWane Science Center. The signatures listed below attest to the agreement of the contract as stated.

  
Amy W. Templeton  
President and CEO, McWane Science Center

11/4/15  
Date

\_\_\_\_\_  
Lawrence T. Oden  
Mayor of Mountain Brook

\_\_\_\_\_  
Date



## Mountain Brook Involvement With McWane Science Center

**City of Mountain Brook**  
**June 1, 2014 – May 31, 2015**

**# of General Visitors** (based on zip codes: 35213, 35223 and 35243) – 13,572

**City of Mountain Brook Field Trips** – 436

*Mountain Brook Elementary School – 275*

Adventure Halls / Robotics Challenge program / IMAX – Mysteries of the Unseen World	91
Adventure Halls / IMAX – Journey into Space	86
Adventure Halls / Electrifying Experiences / IMAX – Mysteries of the Unseen World	98

*Mountain Brook High School – 20*

Adventure Halls	20
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*Crestline Elementary School – 141*

Adventure Halls / IMAX – Mysteries of the Unseen World	141
--	-----

**City of Mountain Brook Outreach Program** – 1,358

*Brookwood Forest Elementary School - 194*

Star Dome	139
Marvels of Magnets	55

*Cherokee Bend Elementary School – 526*

Liquid Lab	99
Light Bright	48
Amazing Animals	46
Marvels of Magnets	50
Reactions in Action	110
Dinosaur Detectives	40
Rocks and Minerals	59

Star Dome 74

*Crestline Elementary School - 489*

Rocks and Minerals 107  
Liquid Lab 116  
Marvels of Magnets 88  
Reactions in Action 127  
Reactions in Action 51

*Mountain Brook Elementary School – 149*

Marvels of Magnets 70  
Star Dome 79

**Other Groups (based on zip codes: 35213, 35223 and 35243) – 1,723**

Camp Gan Israel	James Rushton Foundation
Juvenile Diabetes Research Foundation	YMCA
Youth Serve	Be Kare Child Development Center
Lifetime Fitness Summer Camp	Canterbury Child Development Center
Canterbury United Methodist Church	Country Club of Birmingham
Jewish Levite Community Center	JBS Mental Health Authority
Highland School	Crestline Early Learning Center

**RESOLUTION NO. 2015-168**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Alabama Ballet subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 9th day of November 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November 2015.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

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

\_\_\_\_\_  
City Clerk



OFFICE OF THE MAYOR

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3802  
Fax: 205.870.3577  
epssteinc@mtnbrook.org  
personal email - LastVolhalla@aol.com

LAWRENCE T. ODEN  
MAYOR

October 28, 2015

Melanie Mooney  
Alabama Ballet  
2726 First Avenue South  
Birmingham, AL 35223

Dear Ms. Mooney:

The City of Mountain Brook would like to thank you for making a presentation to our City Council on October 7<sup>th</sup>. We appreciate your interest in partnering with the City to improve the quality of life in our community for our residents.

After much discussion and deliberation, the City of Mountain Brook has decided to enter into a contract for services with your organization in the amount of \$2,500 for FY-2016. If you haven't already done so, please email a proposed contract for services for FY-2016 (October 1, 2015 to September 30, 2016) to our City Manager, Sam Gaston, at [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org). The City Council will consider your contract for services at its November 9<sup>th</sup> or 23<sup>rd</sup> meetings.

Again, thank you for your interest in our community and city government. We look forward to a productive and successful relationship with you in FY-2016.

Sincerely,

Lawrence T. Oden  
Mayor

Virginia C. Smith  
Council President

2015-168



## **Contract for Services - Fiscal Year 2015-16**

This **Contract for Services** ("Contract") is entered into by and between the City of Mountain Brook, an Alabama municipal corporation ("City") and the Alabama Ballet, a not-for-profit corporation organized under the laws of the State of Alabama ("Contractor"), effective as of the date last signed below by a party ("Effective Date").

WHEREAS, the Contractor offers educational and artistic programming and services through professional performances, in-school programs and meaningful outreach efforts at no or below cost; and

WHEREAS, the City desires to increase learning opportunities and provide unique enrichment experiences for students who attend schools in the Mountain Brook system by entering into this Contract pursuant to which the Contractor will perform the educational services contemplated herein; and

WHEREAS, the Contractor's performance of the contemplated services for students who attend schools in the City will enhance the quality of life and serve a public purpose for all its citizens; and

WHEREAS, pursuant to the term, conditions and understandings in this Contract, the City desires that the Contractor provide the educational services for students provided herein.

Now wherefore, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the City and Contractor agree as follows:

1. The City shall pay Contractor the sum of two thousand twenty-five hundred dollars (\$2,500.00), within fifteen (15) days following the Effective Date of this Contract.
2. The Contractor shall provide the following minimum level of services during the City's fiscal year beginning October 1, 2015 and ending September 30, 2016 (collectively, the "Services"):
  - a. Contractor will provide free tickets to students in the City who attend school productions.
  - b. Contractor will provide one Dance Discovery Workshop at a Mountain Brook City School designated by the City Council or the City of Mountain Brook Board of Education. Grade level to be decided.
  - c. Contractor will provide one public performance or one school performance of a repertory program at a venue to be approved by both parties.
  - d. Contractor will provide PDF versions of curriculum guides for all major productions to Mountain Brook public school teachers. The curriculum guide includes the production's plot history, facts, ballet theatre etiquette, ballet vocabulary and a guide for teachers to use to supplement lesson plans regarding the ballet before and after attending the performance.
  - e. Contractor will keep its ballet school tuition at current rates and maintain scholarship levels for students who attend City Schools.
  - f. If students are charged to attend school productions, Contractor will keep its ticket prices at \$20.00 per ticket for students who attend schools in the City.
3. Contractor shall provide all personnel, supplies, equipment and expertise necessary to fulfill its obligations under this Contract.

2015-168

4. The Contractor is an independent contractor of the City. The City has no right to control the persons, agents or employees of the Contractor who provide the Services, and none of them are agents or employees of the City.
5. The Contractor shall indemnify and hold harmless the City and its agents, employees, and elected officials (collectively the "City") from and against all actions, causes, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs which may be asserted against, or suffered by the City, arising out of, or in connection with the acts or conduct of the Contractor, and its agents, employees and representatives, in performing or failing to perform any of their obligations or Services under this Agreement. The indemnification obligations in this provision shall survive the expiration or early termination of this Agreement for a period of three years.
6. The Contractor agrees to utilize commercially reasonable accounting procedures which are customary to similar operations. The Contractor shall maintain all financial records and other documents pertaining to its performance of obligations under this Contract for a period of three (3) years after its expiration or termination. Upon advance request by the City, the Contractor agrees to provide the City full access to, and the right to examine and audit, any of such financial records and other documents at reasonable times during the term of this Contract or during the three-year period following its expiration or termination.
7. If the Contractor fails to perform or comply with any of its material obligations under this Contract, any such failure shall constitute a default hereunder unless corrected by Contractor within thirty (30) days following its receipt of written notice of such default from the City. Upon the occurrence of any such default, the City shall have a right to terminate this Agreement before its expiration by giving Contractor written notice of such termination effective as of the time designated in that notice. Any such termination by City shall not relieve Contractor of its obligations or liability to the City arising hereunder that relate to or arise from events occurring before the termination or early expiration of this Contract.
8. This Contract contains the complete terms, conditions, understandings, representations and covenants between the City and the Contractor concerning the matters set forth herein. Unless stated herein, any prior negotiations or understandings concerning these matters are merged herein and of no effect.

In witness whereof, the undersigned, duly authorized representatives of the parties have affixed their signatures with the intent to bind their respective entities to the obligations in this Contract.

**ALABAMA BALLET**

**CITY OF MOUNTAIN BROOK, ALABAMA**

By: \_\_\_\_\_  
 Printed Name: Melanie Mooney

By: \_\_\_\_\_  
 Printed Name: Lawrence T. Oden

Its Director  
 Date: \_\_\_\_\_

Its: Mayor  
 Date: \_\_\_\_\_

**Alabama Ballet Company**

The Alabama Ballet Company (AB), formed in 1981 is second-to-none in artistic excellence as Birmingham's second largest performing arts organization and Alabama's largest professional ballet company. The mission of AB is to promote and foster the development of classical and contemporary ballet through high quality performances, dance education and community outreach. The company is made up of 42 professional dancers from around the world. Under the artistic direction of Tracey Alvey, the AB performs five major programs during its regular season and tours throughout the state. This includes performances in Anniston, Montgomery, and Rainsville. The Alabama Ballet Center for Dance is a 21,500 square-foot facility with six studios which houses the company's administrative and artistic offices, the costume shop (with more than 750 costumes) and the Alabama Ballet School of Dance – Alabama's only ballet school accredited by the Royal Academy of Dance (RAD). In 2009, the Alabama Ballet rounded out its programming by becoming the home of the Alabama Ballet Tappers, a tap group with ages ranging from 3 to 82, with an annual performance in May at the Virginia Samford Theatre. Each year, the AB touches the lives of more than 30,000 people, including 15,000 youth in Alabama through its education and outreach programs.

There is a long history of ballet in Alabama, and the AB is proud to be the state's premier, professional ballet company. AB is one of only 56 ballet companies in America with budgets of \$1 million or more. AB provides the highest standard for professional dance in Alabama backed by its national reputation of being only one of eight companies licensed to perform George Balanchine's *The Nutcracker*. AB was the first ballet company in the state to offer full-time contracts to its professional dancers. AB also offers the strongest training environment for young professional ballerinas through its apprenticeship program and the Alabama Ballet School of Dance. AB provides a leadership role in strengthening and sharing the state's rich heritage of ballet, giving professional dancers the opportunity to remain in the state and pursue their careers. AB has strong community support and partnerships with numerous organizations including Samford University and the Alabama School of Fine Arts (ASFA) as our primary performance venues are at Samford's Wright Center (WC) and ASFA's Dorothy Jemison Day Theater. Southern Danceworks (SDW) uses our facility for rehearsal space, and AB also provides free office space to the Alabama Dance Council as we partner with them on numerous educational projects. AB is proud to serve Alabama through dance, having a \$2.5 million positive impact on Alabama's economy and strengthening the cultural fabric of the community we serve.

2015/16 is our 34<sup>th</sup> Season, and it includes five major programs on the home season and a statewide tour, with appearances in Anniston, Rainsville and Montgomery, in addition to returning for two productions at the new Alabama School of Fine Arts (ASFA) Dorothy Jemison Day Theatre.

The Alabama Ballet (AB), consisting of 42 professional company dancers, is led by Artistic Director Tracey Alvey. AB will perform 5 major performances in the 2015-16 Season, with appearances in Birmingham, Anniston, Montgomery, and Rainsville, Alabama. An additional tour in Oxford is also under review.

There are a total of 41 season performances, and 11 school performances, with a pending tour that would provide 3 additional performances. The 2015-16 Season schedule includes *At Home* (aptly named after AB's home facility, the Alabama Ballet School of Dance), September 25-27 and October 1-4; *American Horror Stories*, October 29-31 and November 1, which include Agnes DeMille's *Fall River Legend* and Frank Staff's *Transfigured Night*, Alabama School of Fine Arts (ASFA); *Snow White*, October 30, (ASFA); George Balanchine's *The Nutcracker*, December 3-6, Anniston Performing Arts Center (APAC) and December 11-13 and 18-20, Samford Wright Center (WC), *Don Quixote*, February 13, Northeast Alabama Community Center (NACC), February 18-21 (WC), and March 4-5, Montgomery Performing Arts Center (MPAC); and *Coppélia and the Toymaker*, April 7-10 (ASFA).

### **Request for Contract Services**

The Alabama Ballet respectfully requests \$10,000 from the City of Mountain Brook, which includes:

- free school show tickets to Mountain Brook City School children
- Dance Discovery Workshops to a Mountain Brook City School of the council's choosing
- an opportunity for a performance in a Mountain Brook City School of the council's choosing
- access to curriculum guides for all our major productions to Mountain Brook public school teachers
- keeping Alabama Ballet ticketing pricing below production costs

### **Alabama Ballet's Current Service Numbers to Mountain Brook Residents**

- 24% of the Alabama Ballet ticket buyers live in Mountain Brook
- 15% of the students in our RAD Accredited Ballet School reside in Mountain Brook
- Mountain Brook public schools attend our free school performances such as Cherokee Bend Elementary, Crestline Elementary and Mountain Brook Elementary
- The Alabama Ballet is part of the strong cultural sector of the greater Birmingham area, which makes Mountain Brook an attractive place to live and work as well as has a positive impact on the economy

### **AB's Current Programs**

**Professional Dance Company-** AB employs forty-two professional dancers for 30 weeks a year. AB members perform classical and modern ballet for thousands of Alabama residents each year. They have classes and rehearsals five to six days a week and many serve as faculty members at numerous colleges and universities throughout the Birmingham area as well as teach students in our own Alabama Ballet School of Dance.

**Alabama Ballet School of Dance (ABSD)-** The ABSD opened in September 1999 at the new Alabama Ballet Center for Dance. In September 2008, the ABSD became the state's only dance school accredited by the Royal Academy of Dance (RAD). The school's faculty receives several weeks of training in order to offer a unified curriculum and students take annual RAD exams which are developed at the international level. The ABSD provides the highest quality training to aspiring artists, which are specifically designed to be artistically challenging at all ages and skill levels.

**Education and Community Programming-** The benefits of educational and outreach programs extend beyond exposing children to the arts. Dance education improves learning, specifically math, and helps to develop social skills as well as building self-esteem. The art form also benefits because it brings in new talent that otherwise might never have made its way to a ballet class. Tracey Alvey, Alabama Ballet's Artistic Director, said, "If we didn't have education outreach, we might miss the next ballet star." AB offers numerous education and community programs including:

**Dance Discovery Workshops** are presented in schools for students in an assembly atmosphere to introduce basic ballet repertoire and discuss the historical context of the choreography, costumes and music. The Dance Discovery Workshops are designed for groups of 50 to 100 students where company dancers engage children in the basic history of ballet, dance terms and techniques while performing brief excerpts of work that showcase the depth and variety of the ballet repertoire. These programs are targeted for students K-8.

**Free School Show Tickets** are awarded to at-risk schools for each major production of the season. AB performs school shows for each major production we present throughout the season. These school shows serve more than 10,000 children from around the state. All students are provided a ticket at no cost and priority is given to students from underserved areas. More than 100 schools representing 15 counties in Alabama take advantage of our Free School Shows each year.

**2nd Tuesday** is a free educational program in which performances are held at the Alabama Ballet Center for Dance. Our 2nd Tuesday Series is an informal AB performance and "studio chat" with Artistic Director Tracey Alvey. These performances are free and open to the public and give a behind the scenes glimpse of our season productions.

**Summer Programs** include skill based programs designed to fit the needs to young dancers. Summer Intensive programs for ages 12-19 are for ballet students who wish to continue their training over the summer break and focus on transitioning into higher level ballet curriculum. Junior Ballet Camp is offered for students 8-12 and Dance Camps for ages 4-7 called "Tutus and Tiaras" give younger ballet students and those new to the art form a week-long experience which culminates with an in-studio performance for participants' family and friends.

**Touring Programming-** AB is the state's premier, professional ballet company and brings its productions to venues throughout the state. Each year, we partner with Knox Concert Series to present George Balanchine's *The Nutcracker* in Anniston. This year, we are also performing *Don Quixote* in Rainsville and Montgomery.

### Evaluation

The Alabama Ballet is a strong believer in the importance of evaluating how we meet the needs of the constituents we serve. Our goals are measured by audience attendance, number of services provided and the quality of the performances and the accomplishment of our students. Also considered are factors such as continual development of new ballet works and the presentation of works never performed in Alabama, number and attendance of community outreach programs and the feedback from constituents participating in education programs. A thorough evaluation by our Board of Trustees and staff includes a review of our organization's mission and goals, and a realistic assessment of whether or not our activities serve the core values of the organization. The Alabama Ballet education and artistic staff adhere to the standards of the Royal Academy of Dance (RAD) Curriculum, and our students and school faculty are evaluated annually by RAD representatives. This provides an annual outside assessment of the quality of educational programs.

### Financial Information

- Please see attached Line Item Budget
- Other funding sources:

<u>Source</u>	<u>Amount</u>	<u>Status</u>
Alabama Power Foundation	\$10,000	Received
Alabama State Council of the Arts	\$48,200	Received
Mike and Gillian Goodrich Foundation	\$50,000	Pending
Blue Cross Blue Shield of Alabama	\$35,000	Received
Robert R. Meyer Foundation	\$35,000	Pending
Protective Life Foundation	\$10,000	Pending
Comer Foundation	\$30,000	Pending

- Please see attached Audit for the fiscal year ending on July 31, 2014
- IRS Determination letter is attached

### Conclusion

The generous past support of the City of Mountain Brook and the residents of Mountain Brook have helped the Alabama Ballet carry out its purpose to change lives through dance. We promote and foster the development of classical and contemporary ballet through high quality performance, dance education and community outreach. With renewed contracted service funding from the City of Mountain Brook, the Alabama Ballet will maintain the highest possible standards of artistic excellence and sustain its commitment to delivering exhilarating performances, innovative educational programs and enriching community engagement programs for all the citizens of the City of Mountain Brook. Funding from local government agencies is vital to the AB as it serves as matching funds for our Operating Grant from the Alabama State Council on the Arts. Thank you for your consideration.

## 2015/16 Board of Trustees

### Executive Committee

Page Naftel  
*Chairman*  
Teresa C. Shufflebarger  
*Past Chairman*  
Mary Goodrich  
*Chairman Elect*  
Eric Pruitt  
*Secretary*  
David Woodall  
*Treasurer*  
Glenda Cochran  
Tom Fox  
Mary Virginia Mandell  
Eileen Markstein  
Colin Mitchell  
Scott Vowell

Ram Tool & Supply Company  
Baptist Health Systems  
Community Volunteer  
Baker Donelson Bearman Caldwell & Berkowitz, PC  
PricewaterhouseCoopers, LLP  
Cochran & Associates  
National Tube Holding Co.  
Community Volunteer  
Markstein Consulting  
Community Volunteer  
Retired 10<sup>th</sup> Circuit Court Judge

\* Honorary Trustee Emeritus  
= Lifetime Board Members

### Board of Trustees

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Southeastern Conference  
Community Volunteer  
Birmingham Zoo  
Community Volunteer  
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Maynard, Cooper & Gale, P.C.  
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Drummond Coal Sales, Inc.  
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Bradley Arant Boult Cummings LLP  
Community Volunteer  
Bradley Arant Boult Cummings LLP  
Ernst & Young LLP  
Regions Bank  
Retired Haskell Slaughter Young & Rediker, LLC  
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Balch & Bingham LLP  
Spolswood Sansom & Sansbury LLC  
Burr & Forman LLP  
Community Volunteer  
Community Volunteer  
Bradley Arant Boult Cummings LLP  
Community Volunteer  
Drummond Coal Sales, Inc.

### Honorary Board Members

Gage Bush\*  
Jane S. Comer  
Penelope Cunningham\*  
Clara Gerhardt  
Barbara G. Gottlieb  
Melissa Lassiter  
Jeh Jeh Pruitt  
Dudley Reynolds  
Tammy Towns  
Rebecca Wise

Honorary Trustee Emeritus  
Community Volunteer  
Honorary Trustee Emeritus  
Samford University  
Community Volunteer  
Ballet Women's Committee  
Fox 6  
Jackie O'Neal Dance Studio  
Ballet Guild of Birmingham

**RESOLUTION NO. 2015-162**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, as follows:

1. That the Alabama Power Company be requested to install a street light on an existing pole between 2720 and 2724 Mount Royal Circle (see attached map/ illustration - Exhibit A).
2. That the City Clerk be directed to furnish the Alabama Power Company a certified copy of this resolution.

**ADOPTED:** This 9th day of November, 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November, 2015.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

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

\_\_\_\_\_  
City Clerk

-----Original Message-----

From: rusty hyde [mailto:[rusty@hyde-egr.com](mailto:rusty@hyde-egr.com)]  
Sent: Thursday, November 05, 2015 8:51 AM  
To: 'Sam Gaston'; Therrell, Deborah L.  
Subject: RE: Street Light Request

Sam,

The fixture Debbie mentions is a HPS cobra head and it is pretty ugly. Typical of HPS, it has a ghastly orange hue with a lot of spill. I would definitely oppose that fixture at our location because of a) lamp color and b) light trespass.

I'd prefer a 100W (5000 lumens) metal halide with an improved head. Better yet, a 5000 lumen LED.

Debbie- Hey, I haven't talked with you in a while.

Rusty

Russell Hyde, P.E.  
Hyde Engineering  
3120 8th Avenue South  
Birmingham, Alabama 35233

205.982.0900

-----Original Message-----

From: Sam Gaston [mailto:[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)]  
Sent: Thursday, November 05, 2015 8:41 AM  
To: rusty hyde  
Subject: FW: Street Light Request

See the comments below from APCO. Could be a 100watt although the one on Mount Royal Place is a 150 watt.  
Suggestions?

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

-----Original Message-----

From: Therrell, Deborah L. [mailto:[DLTHERRE@southernco.com](mailto:DLTHERRE@southernco.com)]  
Sent: Tuesday, November 03, 2015 10:12 AM  
To: Sam Gaston  
Subject: Re: Street Light Request

The pole around the corner that has a 150 watt light at street is on Mount Royal Place.

Sent from my iPhone

**Street Lighting Modifications**



Alabama Power Company

Alabama

Gentlemen:

This to advise that CITY  Council City of Mountain Brook, Alabama

on the 9th day of November 2015, adopted resolutions which appear in the minutes of this meeting, authorizing the following street lighting modifications:

Fixture Ownership				Site Lamp (Lumens)	Location
Number of Fixtures Owned by Co.		Number of Fixtures Owned by Customer			
Install	Remove	Install	Remove		
1				150W HPS Cobrahead	Existing pole between 2720 and 2724 Mount Royal Circle

The requested modifications will change the present billing amounts as shown below:

- (a) Additions 'See attached \$ \_\_\_\_\_
- (b) Removals See attached \$ \_\_\_\_\_
- (c) Other \_\_\_\_\_ \$ \_\_\_\_\_
- (d) Net Change in Annual Billing \$ \_\_\_\_\_
- (e) Previous Annual Billing \$ \_\_\_\_\_
- (f) New Annual Billing \$ \_\_\_\_\_
- (g) New Monthly Billing \$ \_\_\_\_\_

<b>For Company Use Only</b>	
W. E. Number	<input type="checkbox"/> W. E. Not required
Est. Order Number	Date

Alabama Power Company

Signed: \_\_\_\_\_

Approved: \_\_\_\_\_

By: Lawrence T. Oden

Title: \_\_\_\_\_

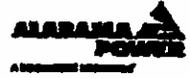
Title: Mayor

Form 3-1100 Rev. 3/08

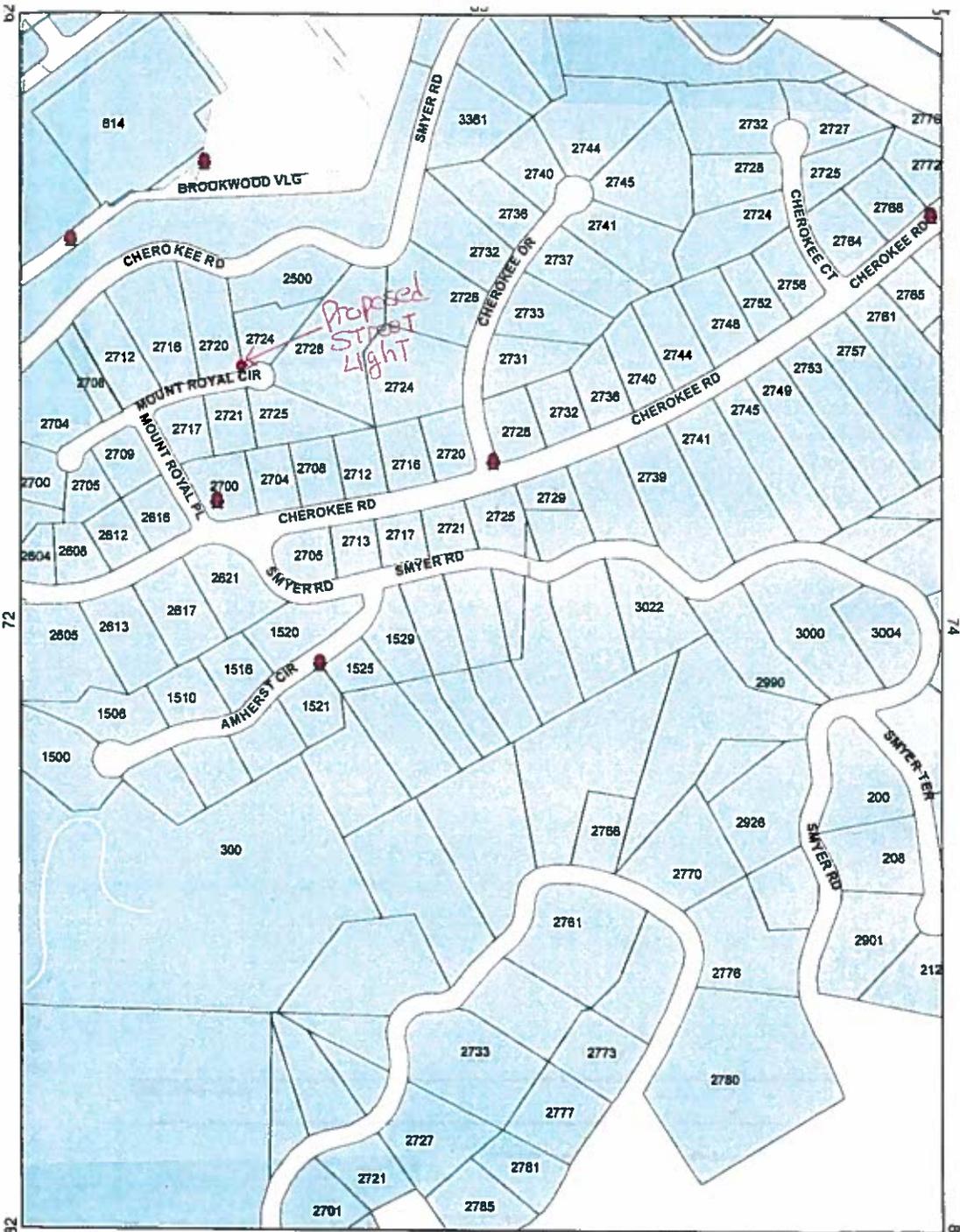
44-11200

EXHIBIT A

# SKETCH OF PROPOSED WORK -- SIMPLIFIED W. E.



Customer City of Mountain Brook		Location		Agreed Serv. Date		Estimate No.	
District		District		Town		Drawn by	
Date		Date		Date		Date	
County	Section	Township	Range	Acct Info			
Acquisition Agent	Date F/W Assigned	Date F/W Cleared	Map Reference		LOC	Transformer Loading	



Voltage	
PI	Rec.
PHONE CO.	
Co. Name	
CATV CO.	
Co. Name	
ACCESSIBLE	
TREE CREW	
ROCK HOLE	
PERMITS REQ'D	
F/W	
CITY	
COUNTY	
STATE	
MISCELL	
OTHER	
SCALE	
P. Per Inch	
Date	

EXHIBIT A



**CITY OF MOUNTAIN BROOK**

56 Church Street  
P.O. Box 130009  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3803  
Fax: 205.870.3577  
[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)

---

SAM S. GASTON  
CITY MANAGER

November 3, 2015

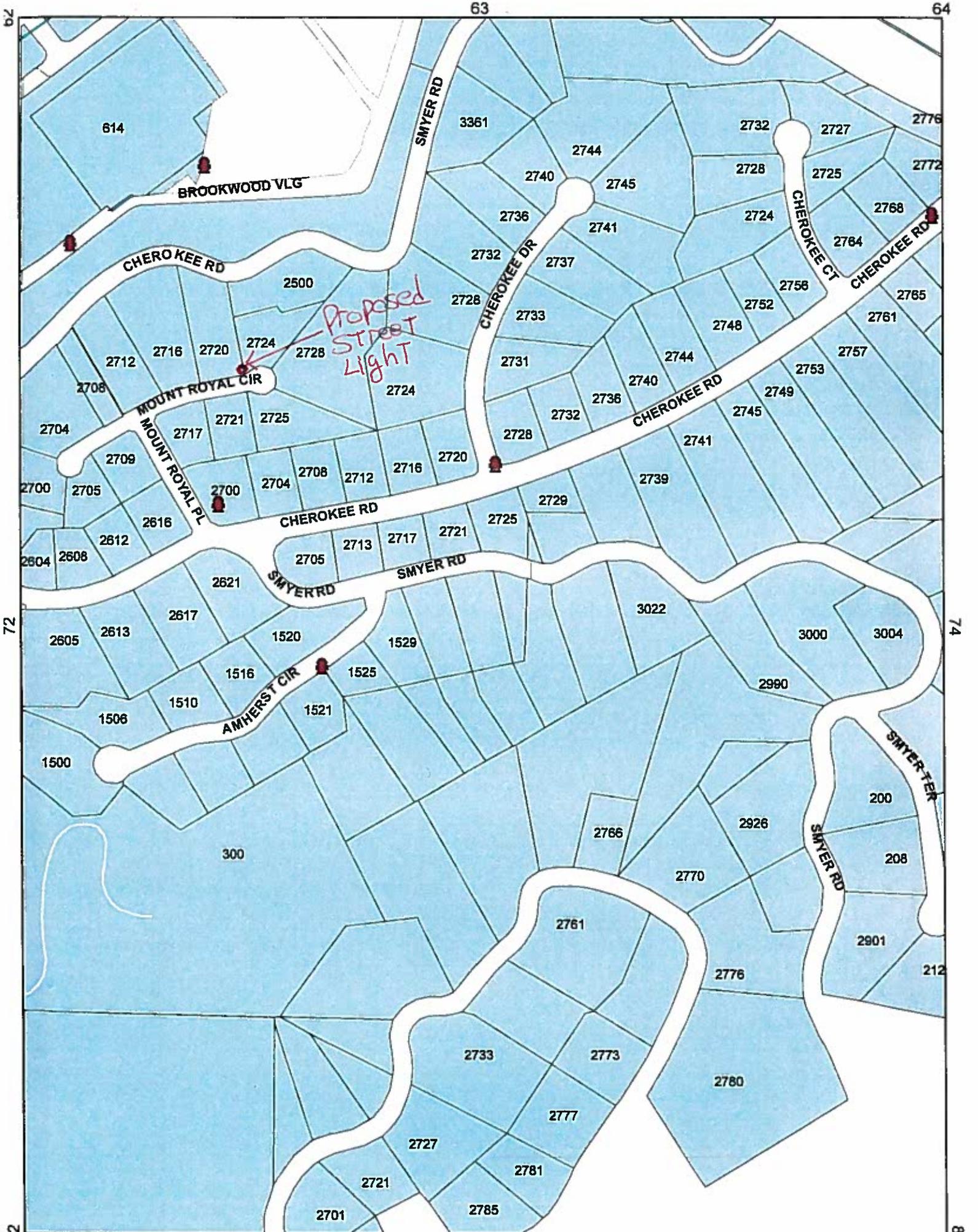
Dear Resident,

The City of Mountain Brook has received a request for a street light between 2720 and 2724 Mount Royal Circle. Alabama Power Company recommends a 150-watt street light to be mounted on an existing utility pole at this location. (See attached map.)

The Mountain Brook City Council will consider this request at its November 9<sup>th</sup> meeting which begins at 7:00 p.m. You are invited to attend this meeting to offer your comments on this proposed street light. If you cannot attend the City Council meeting on November 9<sup>th</sup> but would like to comment, please contact me at 802-3803 or [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org).

Sincerely,

Sam S. Gaston  
City Manager



*Proposed  
Street  
Light*

**RESOLUTION NO. 2015-163**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contract for services between the City and ETC Institute to design and administer a citizen survey, in the form as attached hereto as Exhibit A, subject to such minor revisions as may be determined appropriate by the City Attorney.

**ADOPTED:** This 9th day of November, 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November, 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 November 9, 2015, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

# **Contract for Services and Scope of Work**

## **Between ETC Institute and the City of Mountain Brook, AL**

### **ARTICLE I: SCOPE OF SERVICES**

1. **Overview of Services to Be Performed.** ETC Institute will design and administer a citizen survey for the City of Mountain Brook, AL. The survey will be designed and administered in 2016. ETC Institute will provide a draft report within 8 weeks of the time the survey is approved by the City. ETC Institute will provide a final report within 1 week of receiving feedback from the City on the draft report.
2. **Maximum fixed fee.** The total fee for the project is \$15,700. This includes \$13,200 to design and administer the survey and provide a formal report and summary, and \$2,500 to provide GIS mapping.
3. **ETC Institute's responsibilities.** The tasks that will be performed by ETC Institute as part of this agreement include the following:
  - a. finalizing the methodology for administering the survey based on input from the City.
  - b. designing a resident survey instrument that is up to 15 minutes in length (6-7 pages).
  - c. selecting a random sample of households to be surveyed
  - d. setting up the database
  - e. conducting a pretest of the survey instrument
  - f. completing 400 surveys by a combination of mail, phone, and internet (ETC Institute's costs include all labor, postage and printing associated with the administration of the survey). The results of a random sample of 400 completed surveys will have a precision of at least +/-5% at the 95% level of confidence.
  - g. conducting data entry and quality control review for all completed surveys
  - h. providing complete printouts of the data
  - i. conducting benchmarking analysis that shows how the results for Mountain Brook compare to other cities in the US, the mid-west region, and in Missouri.

- j. conducting importance-satisfaction analysis to identify the types of improvements that will have the most impact on satisfaction with city services.
  - k. completing a final report that will include an executive summary, charts and graphs, GIS mapping, benchmarking analysis, importance-satisfaction analysis, tables showing the results to all questions on the survey, and a copy of the survey instrument.
  - l. making one on-site presentation of the survey results to the City.
4. Responsibilities for the City of Mountain Brook will include the following:
    - a. approving the survey instrument
    - b. providing a cover letter for the mail version of resident surveys

## **ARTICLE II: PAYMENT FOR SERVICES**

1. Invoices will be submitted as follows:
  - ✓ Invoice 1: 1<sup>st</sup> Draft of the Survey Submitted (\$2,300)
  - ✓ Invoice 2: Final Survey Approved by the City (\$2,300)
  - ✓ Invoice 3: Survey Printing and Mailing Complete (\$3,500)
  - ✓ Invoice 4: Survey Administration Complete and Results Submitted (\$5,800)
  - ✓ Invoice 5: Final Report Delivered (\$1,800)

## **ARTICLE III: MISCELLANEOUS PROVISIONS**

1. **Change in Scope.** The Scope of Services for this contract shall be subject to modification or supplement upon the written agreement of the contracting parties. Any such modification in the Scope of Services shall be incorporated in this agreement by supplemental agreement executed by the parties.

2. **Termination of Contract.** This agreement may be terminated by either party upon 14 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. If the contract is terminated by the City, the City shall reimburse ETC Institute for the full value of any tasks that have been initiated, up to the total amount of the next scheduled invoice.
  
3. **Rights to Use the Data.** ETC Institute has the right to use the data as a component of ETC Institute's DirectionFinder® benchmarks, but ETC Institute will not release specific results for the City of Mountain Brook without written approval from the City.

**IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed by their duly authorized officers.**

\_\_\_\_\_ Date \_\_\_\_\_  
City of Mountain Brook

\_\_\_\_\_  
  
Chris Tatham, CEO  
ETC Institute

\_\_\_\_\_ Date \_\_\_\_\_

**ADDENDUM TO AGREEMENT BETWEEN  
THE CITY OF MOUNTAIN BROOK AND  
ETC INSTITUTE  
DATED NOVEMBER 9, 2015**

**THIS ADDENDUM** (“the/this Addendum”) to the principal agreement between the City of Mountain Brook, Alabama (“the City”) and ETC Institute (“the Contractor”) dated November 9, 2015.

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

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

and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

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

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

**DATED** this 9th day of November, 2015.

**ETC Institute**

**City of Mountain Brook, Alabama**

By : \_\_\_\_\_

By : \_\_\_\_\_

Its : \_\_\_\_\_

Its : \_\_\_\_\_

2015-164

**RE: Roundabout Improvement Project at Intersections Near Lane Park- Final Nov 5 Version of Agreement for Cost Sharing Between Bir and Mt Brook**

Inbox x

**Steve Stine**

10:14 AM (1 hour ago)

to Tracy, James, Andre, Fred, Sam, me

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

Thanks guys. Attached is what should be the final Nov 5 version of the Agreement for Cost Sharing, along with a red-line that shows the final few changes. In the dispute resolution section, I inserted Tracy's language about mediation, and added provisions stating that the costs of mediation would be shared, and that if mediation fails, the Parties would resolve the Dispute through non-jury litigation in Jeffco Cir Ct with the prevailing party having the right to recover its reasonable attorney fees and costs of court in that litigation.

Tracy, by copy of this Sam Gaston, the City Manager for Mt Brook and Steve Boone (Mt. Brook's City Clerk), I am suggesting to them that the Nov 5 final form of the Agrmt for Cost Sharing be given to the Mt. Brook City Council for its approval at its next Council meeting. Please let us know how the COB's consideration of this goes at the upcoming Budget and Finance Committee meeting, and what else I can do to help us finish this.

Steve

**From:** Roberts, Tracy L [<mailto:Tracy.Roberts@birminghamal.gov>]

**Sent:** Thursday, November 5, 2015 9:21 AM

**To:** Steve Stine; Stanley, James C.

**Subject:** RE: Roundabout Improvement Project at Intersections Near Lane Park- Oct 23 Version of Agrmt for Cost Sharing

Steve,

We attempted to call you at 9:00 am as scheduled. Jim and I discussed revisions to the second paragraph of Section VII (ii) and suggest the following:

"If any dispute, disagreement or conflict arises between the Parties as to (a) the refusal or failure by Birmingham to certify or approve payment by Mountain Brook of a Local Expense or (b) whether Mountain Brook should make a Local Expense payment that it is ~~requested~~ **required** by ALDOT ~~or other third party~~ to make (collectively, a "Payment Dispute"), the Parties agree to resolve such Payment Dispute as follows. The Payment Dispute first shall be submitted to the Mayor of Birmingham and City Manager of Mountain Brook for consideration and potential resolution by those officials. If the Payment Dispute is not resolved by those officials within twenty (20) days after submission to them, either Party may request that the Payment Dispute be submitted to ~~binding arbitration non-binding mediation, by a neutral third party~~, for resolution. The ~~rules and procedures of the American Arbitration Association~~ provisions of §6-6-20, Code of Alabama 1975, shall apply with respect to any such mediation; provided that the expense of any such arbitration shall be equally shared between the Parties and each Party shall be responsible for its own attorney fees' and other costs in such proceeding."

*Tracy L. Roberts*

**Assistant City Attorney**  
**City of Birmingham - Law Department**  
710 North 20th Street - 6th Floor  
Birmingham, Alabama 35203  
Office: [\(205\) 254-2369](tel:(205)254-2369)  
Fax: [\(205\) 254-2502](tel:(205)254-2502)  
[Tracy.Roberts@BirminghamAL.gov](mailto:Tracy.Roberts@BirminghamAL.gov)

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521 and is legally privileged. This email and any files transmitted with it are also subject to the attorney-client privilege and attorney work-product doctrine, and contain confidential information intended only for the person or persons addressed above. If you have received this email message in error, please notify the sender immediately and destroy all copies of the original message. Please do not forward, disseminate, distribute or duplicate this message without the consent of the original sender.

**From:** Steve Stine [mailto:[sstine@bishopcolvin.com](mailto:sstine@bishopcolvin.com)]  
**Sent:** Friday, October 23, 2015 3:36 PM  
**To:** Roberts, Tracy L.; Stanley, James C.; Bittas, Andre V.; Hawkins, Fred T.  
**Cc:** 'Sam Gaston'; [whitcolvin@bishopcolvin.com](mailto:whitcolvin@bishopcolvin.com)  
**Subject:** RE: Roundabout Improvement Project at Intersections Near Lane Park- Oct 23 Version of Agrmt for Cost Sharing

Tracy, Jim, Andre and Fred, this is to follow up on the meeting we had last week and the information/legal guidance that the lawyers received from the Attorney General's Office earlier this week on a conference call that the lawyers had with that Office.

Attached is what I trust is the final Oct 23 version of the Agreement for Cost Sharing between the COB and Mt. Brook on this Project. This Oct 23 version incorporates the matters that have been discussed to date. Tracy, in preparing this, I worked from the last Sept 15 version that I sent you; all the matters that are specified by Act 1969-916 in Section 3(c) appear in this version. Also, where appropriate, I incorporated into this Oct 23 Version several of the provisions that you had in your Sept 16 draft. For your convenience, I have attached a redline version that compares the Oct 23 version v the Sept 15 draft.

Jim and Tracy, you will see that, at the end of Section VII(ii), I inserted new dispute-resolution provision to resolve any dispute that might arise as to whether the COB should approve a payment or Mt. Brook should pay an expense. If the senior administrators for both cities cannot resolve any such payment dispute, the dispute resolution mechanism I selected is binding arbitration because that is the fastest way to resolve the dispute and move forward.

Please advise if the Oct 23 version is acceptable and when you think the Birmingham City Council might approve it. When we know the COB's time frame for approval, Mr. Gaston and I will submit the final agreed version of the Agreement for Cost Sharing to the Mountain Brook City Council to get its blessing on the revised version. Because the Mt. Brook City Council has already considered these matters, the approval of the final version should happen quickly on the Mt. Brook end.

Thanks again for your help on this. I know that we all look forward to finishing this and our clients getting started on the Project.

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: [sstine@bishopcolvin.com](mailto:sstine@bishopcolvin.com)

**From:** Steve Stine [<mailto:ssstine@bishopcolvin.com>]

**Sent:** Friday, September 25, 2015 4:37 PM

**To:** 'Roberts, Tracy L'; 'Stanley, James C.'; 'Bittas, Andre V.'; 'Hawkins, Fred T.'

**Cc:** 'Sam Gaston'; '[whitcolvin@bishopcolvin.com](mailto:whitcolvin@bishopcolvin.com)'

**Subject:** RE: Roundabout Improvement Project at Intersections Near Lane Park- Agreements that Need to be Approved by Mt. Brook & City of Birmingham

Tracy, it appears that we need to have a meeting of clients and lawyers to see if we can agree on the final form of the Cost Sharing Agreement and how to move forward. Based on the information you provided, it appears this meeting needs to be after October 12. Mt Brook's City Manager and I are available to meet on the following dates: Oct 13 – Afternoon (1-5 pm); Oct 14 – Late Afternoon (3-5 pm) ; Oct 15 – Afternoon (1-5 pm). Can you coordinate on your end and see if you, Jim, Fred and Andre can meet at any of these times?

As previously mentioned, the Sept 15 version of the Cost Sharing Agmt has already been thoroughly considered and approved by the City Council. I reviewed your Sept 16 draft of this Agreement in which you made changes in or did not accept provisions in the Sept 15version. For everyone's benefit, I have created and attach a red-lined version that shows the changes you made to Mt. Brook's Version. It looks to me that we have 3 open questions:

(i) Open Legal Question: What approval process is legally required with respect to the Cost Sharing Agreement? I see two options to get off dead center on this legal matter: (a) as previously mentioned, Birmingham could ask the AG for an opinion on whether we must comply with both laws (as you believe) or if we have authority to act if only comply with the general act and we pass parallel ordinances (as we believe) or (b) If Birmingham believes that we have to comply with two different statutes ( both of which authorize the cities to sign the Cost Sharing Agreement), I guess we can do that with this proviso: Birmingham should take the lead and assume the responsibility to get approval from the Attorney General, and to filing and record the agreement everywhere that is mentioned in the 1969 Local Act. We still don't think it is necessary to take all those actions.

(ii) Open Business Question: What is a Local Expense? As I understand your concept of what is a local expense, it is an expenditure related to the ALDOT agreements. In your Sept 16 draft you struck the section and definition of " Local Expense" that I included on pages 2-3 of Mt. Brook's Sept 15 Draft. There are 3 attorneys on the Mt. Brook City Council (including a retired Circuit Judge), and the Council specifically instructed me to add this very language that you struck. The point of broadening the concept of what is a Local Expenses is this: local expenses may need to be incurred by the two cities to build the roundabout that are not contemplated in or do not arise from the ALDOT agreements. The parties will need to share all type expenses on the project regardless if they relate to or arise from the ALDOT agreements or not. Also, please recall that, in the Section of my Sept 15 Draft titled " PROCESS FOR APPROVING, PAYMENT AND REIMBURSEMENT OF MOUNTAIN BROOK FOR LOCAL EXPENSE", we have language providing that Mt. Brook cannot unilaterally pay or incur any Local Expense without the concurrence of the COB. We can talk about this more when we meet and see if Fred and Andre are comfortable with Mt. Brook's language.

(iii) Open Business Question. In your Sept 16 draft you changed the language of the Term of the Agreement to limit the maximum length of this cost sharing agreement to the sooner of (a) 3 years or (b) the completion of the Project. I do not know the precise project schedule, but I doubt it will be constructed and finished in 3 years. In any event, if the project is not totally completed in 3 years, certainly both cities will want to extend the Agreement in order to finish the work. This is why we

put language in the Sept 15 version providing that the Agreement could be extended beyond 3 years.

Please let me and Mr. Gaston know if the any of the suggested dates and times work for the Birmingham Team.

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: [sstine@bishopcolvin.com](mailto:ssstine@bishopcolvin.com)

**From:** Roberts, Tracy L [<mailto:Tracy.Roberts@birminghamal.gov>]  
**Sent:** Thursday, September 24, 2015 4:54 PM  
**To:** Steve Stine  
**Cc:** Stanley, James C.; Bittas, Andre V.; Hawkins, Fred T.  
**Subject:** RE: Roundabout Improvement Project at Intersections Near Lane Park- Agreements that Need to be Approved by Mt. Brook & City of Birmingham

Steve,

I understand that we have a disagreement as to the application of Alabama law on this type of interlocal agreement. Attached are copies of the Cost Sharing Agreement and Ordinance that I will approve as to form. Please let me know a few dates that you could meet if we need to schedule a meeting.

At this point I will not be available until after October 8<sup>th</sup>.

Jim Stanley will be out of the office After October 2 and will return October 12.

Justice Cook will be out of the office after September 29<sup>th</sup>.

Andre and Fred may be able to give times that they are available.

*Tracy L. Roberts*  
**Assistant City Attorney**  
**City of Birmingham - Law Department**  
710 North 20th Street - 6th Floor  
Birmingham, Alabama 35203  
Office: [\(205\) 254-2369](tel:(205)254-2369)  
Fax: [\(205\) 254-2502](tel:(205)254-2502)  
[Tracy.Roberts@BirminghamAL.gov](mailto:Tracy.Roberts@BirminghamAL.gov)

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**From:** Steve Stine [<mailto:ssstine@bishopcolvin.com>]  
**Sent:** Wednesday, September 23, 2015 3:20 PM  
**To:** Roberts, Tracy L

**Cc:** Stanley, James C.; Bittas, Andre V.; Hawkins, Fred T.

**Subject:** RE: Roundabout Improvement Project at Intersections Near Lane Park- Agreements that Need to be Approved by Mt. Brook & City of Birmingham

Tracy, the Mt. Brook Council is ready to sign the 3 ALDOT/MB agreements and the Cost Sharing Agreement in the form I sent you last week . What does Birmingham want to do on this project now?

Steve

**From:** Roberts, Tracy L [<mailto:Tracy.Roberts@birminghamal.gov>]

**Sent:** Thursday, September 17, 2015 10:32 AM

**To:** Steve Stine

**Cc:** Stanley, James C.; 'Sam Gaston'; Bittas, Andre V.; Hawkins, Fred T.; [whitcolvin@bishopcolvin.com](mailto:whitcolvin@bishopcolvin.com)

**Subject:** RE: Roundabout Improvement Project at Intersections Near Lane Park- Agreements that Need to be Approved by Mt. Brook & City of Birmingham

Steve,

Thank you for your thoughts.

*Tracy L. Roberts*

Assistant City Attorney

City of Birmingham - Law Department

710 North 20th Street - 6th Floor

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**From:** Steve Stine [<mailto:ssstine@bishopcolvin.com>]

**Sent:** Thursday, September 17, 2015 10:23 AM

**To:** Roberts, Tracy L

**Cc:** Stanley, James C.; 'Sam Gaston'; Bittas, Andre V.; Hawkins, Fred T.; [whitcolvin@bishopcolvin.com](mailto:whitcolvin@bishopcolvin.com)

**Subject:** RE: Roundabout Improvement Project at Intersections Near Lane Park- Agreements that Need to be Approved by Mt. Brook & City of Birmingham

Tracy, I appreciate all your help on this matter, but I respectfully disagree with your interpretation that, in order to the COB and Mt. Brook to cooperate on this Roundabout project and enter the associated Cost Sharing agreement, cities in Jefferson County must follow the procedural requirements of *both* a 1998 general act of the Legislature that authorizes the two cities to cooperate in this manner *and* an earlier 1969 local act that also authorizes the same two cities in Jefferson County to enter these type agreements.

The open question is what, from a procedural perspective, is required for the COB and Mt. Brook to enter these cooperative arrangements on this Project. The 1998 Act states that this cooperation/joint exercise of powers is authorized merely by each cooperating city passing an ordinance, while the prior 1969 Act contemplates multiple other steps (Including the agreement being submitted to and approved by the Attorney General before becoming effective, submitting the agreements to office of the Secretary of State, recording of the agreement in Probate Court

and passing resolutions). Here is why the COB and Mt. Brook only have to comply with the procedural requirements of *one* of these laws for the cooperative agreements to be effective.

As we know, the Alabama Legislature historically has passed local and general laws. In the local act passed in 1969, on its face, that law provides that **ONLY** the cities in Jefferson County (and the County) could cooperate with each other on joint-power contracts and projects. Later the Legislature passed a General Act in 1998 that allows *all* Municipalities in Alabama to cooperate and jointly exercise powers on projects like this one, and the Legislature specifically stated in the 1998 Act that the authority being bestowed to all cities in Alabama (including those in Jefferson County) was “Supplemental” – i.e., “in addition to” – whatever laws that previously existed. To me, the only interpretation of “Supplemental” that can apply here is that, after the Legislature passed the 1998 joint powers act, cities in Jefferson County now have two different, *independent* bases of authority (each with a distinct process for approval) that they can follow to jointly exercise powers like what we are doing here with these Roundabout Agreements. Stated differently, after the 1998 Act passed, the Legislature gave cities in Jefferson County another new way and mechanism to exercise joint powers, and, as long as the cities comply with the requirements in the 1998 act that each city pass ordinances authorizing their joint exercise of powers, the joint action is authorized by the 1998 act alone.

It would be best for everyone if we did not have this patchwork of general and local laws that address the same subject. Ideally, in 1998 when the Legislature passed the general act it should have repeal or amended any prior law on the same subject. However, it often does not do that, and instead just says – like it did here – that the most recently passed law is “Supplemental” to all other existing laws or is “cumulative.” When the Legislature does that, both laws exist and valid, and here, either one of them gives the COB and Mt. Brook the authority we need to proceed. If the Legislature had intended when it passed the 1998 general Act that cities in Jefferson County must continue to comply with the 1969 Local act, wouldn’t that intent have been expressed in the 1998 Act? In fact, the opposite intent – that additional “Supplemental” powers were being granted – was expressed when the Legislature passed the 1998 Act.

Additionally, we both know that multiple acts regarding the same subject are codified in Title 11 (the municipal authority part of the Code). Because this has occurred, you see language like this in 11-40-36 (authority of cities to demolish structures) – “This article is cumulative in nature and is in addition to any power and authority which any municipality may have under any other law.” Similarly, in 11-67-67 where, after passing multiple bills on weed abatement that gave authority to only certain class/size cities, the Legislature passed a bill that granted ALL cities weed abatement authority and stated that “This article is cumulative in its nature and in addition to any and all power and authority which a municipality may have under any other law.” “Cumulative” in these parts of Title 11 and “Supplemental” in the context of the 1998 joint powers act have the same meaning – they are intended to *expand* existing powers and give new rights to cities that they previously did not have.

I know that everyone is ready to get started on what is a good project for both the COB and Mt. Brook. Let me know if you want to schedule a meeting with me and others at the City (including Jim Stanley and Judge Cook if he is available) to further discuss this. I don’t think it is necessary and further debate on this will delay work on a Project that our clients want, but if the City Legal Staff strongly believes that we must comply with the procedural requirements in two separate statutes, the COB certainly could ask the COB City Council for authority to solicit an AG opinion and bear the expense of obtaining such an AG opinion.

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: [sstine@bishopcolvin.com](mailto:sstine@bishopcolvin.com)

**From:** Roberts, Tracy L [<mailto:Tracy.Roberts@birminghamal.gov>]

**Sent:** Wednesday, September 16, 2015 4:29 PM

**To:** Steve Stine

**Cc:** Stanley, James C.; 'Sam Gaston'; Bittas, Andre V.; Hawkins, Fred T.; [whitcolvin@bishopcolvin.com](mailto:whitcolvin@bishopcolvin.com)

**Subject:** RE: Roundabout Improvement Project at Intersections Near Lane Park- Agreements that Need to be Approved by Mt. Brook & City of Birmingham

Steve,

I have reviewed and revised your proposed agreement and the proposed ordinance for the City of Birmingham. Both Section 11-102-1 *et seq.*, Code of Alabama 1975 and Ala. Act 1969-916 require similar ordinances to be passed by each municipality.

Ala. Act 98-471 (codified as Section 11-102-1 *et seq.*, Code of Alabama 1975) states "Nothing in this chapter shall be construed to affect or alter any other law which authorizes joint cooperative power between any public entities and this chapter shall be supplemental to these laws." See §11-102-6, Code of Alabama 1975. Accordingly, municipalities in Jefferson County must comply with both Act 98-471 and Act 1969-916 in order to have a legally binding agreement, even though it may be complicated and rarely used.

Please let me know your thoughts on my suggested revisions.

Thanks

*Tracy L. Roberts*

Assistant City Attorney  
City of Birmingham - Law Department  
710 North 20th Street - 6th Floor  
Birmingham, Alabama 35203  
Office: [\(205\) 254-2369](tel:2052542369)  
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**From:** Steve Stine [<mailto:sstine@bishopcolvin.com>]  
**Sent:** Thursday, September 10, 2015 1:02 PM  
**To:** Roberts, Tracy L; Bittas, Andre V.; Hawkins, Fred T.  
**Cc:** Stanley, James C.; 'Sam Gaston'  
**Subject:** Roundabout Improvement Project at Intersections Near Lane Park- Agreements that Need to be Approved by Mt. Brook & City of Birmingham

Gentleman, I appreciate that the COB is working through several issues involving public works projects right now. However, in an effort to keep the Roundabout Road project moving and assuming that the Bir. City Council ultimately will authorize the COB to participate in it, we are submitting the following documents concerning this Project to the Mt. Brook City Council for its consideration and potential approval at its next regular Council meeting at 6 pm this upcoming Monday (Sept 14):

1. The 3 attached ALDOT/MB Agreements that Mt. Brook will enter with ALDOT for ALDOT to perform administrative services required to construct the Roundabout;

2. A Sept 10 Version of the Cost Sharing Agreement between the COB and Mt. Brook. Tracy, the terms in this are consistent with first draft, but I have changed the format in places, rearranged some of the provisions and polished it up in places. Please note that in reimbursement section, I did change the time for Birmingham to more promptly reimburse Mt. Brook (in 10 days not 30 days), and that I have included a delinquent interest provision and some other provisions that apply if either party breach its responsibilities. I have also attached a red-line that shows the changes between your first draft and the attached Sept 10 version; this looks busy, but there are only a few substantive differences in the two versions.

3. A Draft of the Ordinance that the Mt. Brook City Council will pass concerning these Agreements.

Also, I have attached a revised "Cover Page" of the draft of the Birmingham's Ordinance that you sent me in which I made a few changes in terminology so the cover page will be consistent with the Cost Sharing Agmt. I did not attempt to revise the main text of your version of the lengthy Ordinance that you have drafted for the Birmingham City Council as the form of that in largely in your discretion, but at some point you may want to make a few changes to the text of your Ordinance so it is consistent with those in the attached Cost Sharing Agreement.

Tracy, I understand that you have talked to Jim about the subject of what "authority" for Mt. Brook and COB to enter into these arrangements. Ala. Act 98-471 - which is codified at Ala. Code Sections 11-102-1 et. seq. and authorizes the very type joint service/joint power arrangements involving multiple cities - gives both Mt. Brook and Birmingham ALL the authority that either need to enter into the ALDOT/MB Agreements and Cost Sharing Agreement. In the ALDOT/MB Agreements, ALDOT will perform administrative and other services for a project that lies in both jurisdictions and clearly benefits both cities; in fact, both Mt. Brook and COB could be, and probably should be, parties to the Agreements with ALDOT, but for administrative reasons ALDOT only wants to deal with one city as its point of contact. Further, the Cost Sharing Agreement flows from and is intertwined with the ALDOT Agreements as it delineates Birmingham's obligation to reimburse Mt. Brook for the benefits that flow to the COB from Mt. Brook entering and receiving services from ALDOT pursuant to the ALDOT Agreements. Because Act 98-471 gives both of our cities all the authority that is needed to move forward if they both pass Ordinances, we do not need to comply with the complicated and rarely used approval process contemplated in the JeffCo intra-governmental Local Cooperation Act (Ala Act 1969-916) that was enacted almost 3 decades before the Legislature passed general Act 98-471 and gave all municipalities in the state the broad authority to enter joint service agreements like those on this Roundabout project.

I will let you know if the Mountain Brook City Council approves the Agreements. Of course, none of these Agreements will become effective until and unless the Birmingham City Council also approves (and passes an Ordinance concerning) the Cost Sharing Agreement.

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: [sstine@bishopcolvin.com](mailto:sstine@bishopcolvin.com)

2015-164

**AGREEMENT FOR COST SHARING**

*Oct-23-Draft*

Nov 5

**Roundabout Improvement –Intersection  
Cahaba Road/US-280/Culver Road/Lane Park Road  
ALDOT Project # CMAQ-3715**

The CITY OF BIRMINGHAM, ALABAMA (“Birmingham”), a municipal corporation and the CITY OF MOUNTAIN BROOK, ALABAMA (“Mountain Brook”), a municipal corporation, enter into this AGREEMENT FOR COST SHARING (“Agreement”). Mountain Brook and Birmingham individually may be referred to as a “Party” and collectively as “Parties.”

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization, and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program Funds (“Federal CMAQ Funds”); and

WHEREAS, Birmingham and Mountain Brook desire to construct a roundabout road improvement (the “Roundabout”) at or near the intersections of Lane Park Road, Cahaba Road, Culver Road and a road that connects to U.S. Highway 280 in order to facilitate the flow of traffic in that area (the “Project”); and

WHEREAS, the intersections in question are important connectors for visitors to the Birmingham Zoo, the Birmingham Botanical Gardens, Mountain Brook Village and other points in that area that are regularly accessed by the citizens of both Birmingham and Mountain Brook; and

WHEREAS, the State of Alabama, acting through the Alabama Department of Transportation (“ALDOT”) has designated the Roundabout Project as Project # CMAQ-3715, and Federal CMAQ Funds have been identified for use in conjunction with its construction; and

WHEREAS, in order to administer and implement Project # CMAQ-3715, ALDOT has requested that Mountain Brook enter into the following three (3) agreements with ALDOT: (i) an Agreement for Right of Way Acquisition that estimates the total right of way (“ROW”) acquisition costs at \$360,000 and estimates the local share of that expense as \$72,000; (ii) an Agreement for Preliminary Engineering that reflects a total estimate of \$515,000 for engineering expense and estimates the local share of \$103,000 for those costs; and (iii) an Agreement for Utility and Construction that reflects a total estimate \$2,616,000 to construct the Project and estimates a local share of \$523,200 to build the Roundabout (collectively, the “ALDOT/MB Agreements”); and

**WHEREAS**, Mountain Brook will enter the ALDOT/MB Agreements if Birmingham enters into this Agreement and agrees to equally share the Local Expense (as defined in Section I below) incurred by Mountain Brook on the Project; and

**WHEREAS**, pursuant to the terms of this Agreement, Birmingham agrees to reimburse Mountain Brook for one half (1/2) of the Local Expense; and

**WHEREAS**, it is in the public interest for the Parties and their respective citizens to cooperate on the implementation of the Project; and

**WHEREAS**, Act 1969-916 of the Acts of Alabama ("Act 1969-916") authorizes municipalities in Jefferson County to make the most efficient use of their powers by enabling them to cooperate with the state, the federal government and with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and developments of the county and municipalities and other governmental units and agencies therein; and

**WHEREAS**, as is contemplated and authorized by Act 1969-916, the joint interests of Mountain Brook and Birmingham are promoted by Mountain Brook entering the ALDOT/MB Agreements whereby ALDOT will perform services that jointly benefit each of the two municipalities, Mountain Brook will compensate ALDOT for those services pursuant to the terms in those Agreements, and Mountain Brook and Birmingham enter into this related Cost Sharing Agreement to equally share the Local Expense of the Project.

#### **NOW WHEREFORE**

In consideration of the premises and mutual covenants stated herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Birmingham and Mountain Brook agree as follows:

- I. **LOCAL EXPENSE:** For purposes of this Agreement, "Local Expense" means any expense, cost or expenditure that Mountain Brook pays, incurs, suffers or expends following the Effective Date (as is defined below in Section IV) for the Project that is not covered by, or reimbursed to Mountain Brook through Federal CMAQ Funds. Local Expense includes, but is not limited to, any amount that Mountain Brook pays with respect to any invoice, bill or any other request, demand, action or claim by ALDOT that Mountain Brook owes ALDOT, the Federal Highway Administration ("FHWA") or any other governmental agency, entity or person a monetary sum or other obligation by reason of Mountain Brook entering the ALDOT/MB Agreements. Local Expense does not include ordinary and usual expenses incurred by the employees, officials or the staff of either Party to administer this Agreement, to administer the ALDOT/MB Agreements, or that may be expended to secure approval of this Agreement.

Nothing in this Section I or elsewhere in this Agreement is intended to authorize Mountain Brook to pay any Local Expense unless and until the Parties have complied

with the processes for approving payment of Local Expenses that is set forth in Section VII(ii) below.

- II. **IMPLEMENTATION OF PROJECT:** The Project will be administered by ALDOT and the costs thereof will be financed, when eligible for Federal participation, on the basis of 80% federal CMAQ Funds and 20% local funds. Mountain Brook agrees to enter the ALDOT/MB Agreements and make the payments to ALDOT contemplated in such Agreements or incur other Local Expense, subject to the terms and covenants herein.
- III. **PURPOSE/SHARING OF LOCAL EXPENSE.** The Parties agree that, for purposes of this Agreement, the benefits of the Project are equally proportionate to both jurisdictions. Accordingly, Birmingham will equally share the Local Expense incurred by Mountain Brook on the Project and reimburse it for 50% of those costs.
- IV. **EFFECTIVE DATE:** This Agreement will become effective on the date on which the last of all of the following has occurred: (1) Birmingham's City Council has approved an ordinance authorizing Birmingham to enter into this Agreement; (2) Mountain Brook's City Council has approved an ordinance authorizing Mountain Brook to enter into this Agreement; (3) the respective, duly authorized representatives of the Parties have executed this Agreement; (4) Mountain Brook has executed the ALDOT/MB Agreements; and (5) as contemplated in Act 1969-916, a copy of this Agreement, fully executed, is properly filed with the Judge of Probate of Jefferson County, Alabama and with the Alabama Secretary of State (the "Effective Date").
- V. **TERM.** This Agreement shall commence on its Effective Date and continue in effect for five (5) years thereafter or until Project is completed, whichever first occurs; provided that, if the Project is not completed at the end of the initial five year term, this Agreement will be automatically renewed on the terms stated herein for an additional renewal period of three (3) years. If the Project is not completed by the end of the first renewal term, the Parties will engage in good faith negotiations to further extend this Agreement for the period required to complete the Project.
- VI. **ESTIMATED COSTS OF PROJECT.** As of the Effective Date, the estimated costs and expected sources of funding for design, plan and construct the Project are as follows:

Type Expense	Total Estimated	Estimated Fed. CMAQ Funding	Estimated Bham Funding	Estimated Mt. Bk. Funding
ROW Acquisit.	\$360,000	\$288,000	\$36,000	\$36,000
Preliminary Engineering	\$515,000	\$412,000	\$51,500	\$51,500
Utilities	\$500,000	\$400,000	\$50,000	\$50,000
Construction (incl inspection)	\$2,116,000	\$1,692,800	\$211,600	\$211,600
<b>TOTAL</b>	<b>\$3,491,000</b>	<b>\$2,792,800</b>	<b>\$349,100</b>	<b>\$349,100</b>

The Parties acknowledge and understand that the above amounts are estimates only. In the event the final costs of the Project exceed the estimated levels, Birmingham and Mountain Brook will be responsible for sharing in and paying the actual expenses incurred on the Project and sharing the Local Expense on the proportional basis and utilizing the process described below.

VII. PROCESS FOR APPROVING, PAYMENT AND REIMBURSEMENT OF MOUNTAIN BROOK FOR LOCAL EXPENSE.

- (i) Each Party will designate a senior level representative who will be responsible for administration of its respective organization's responsibilities under this Agreement (the "Contract Administrator").
- (ii) Mountain Brook promptly will forward to Birmingham's Contract Administrator any invoices or other requests for payment that it receives from ALDOT, and provide Birmingham advance written notice of any other Local Expense amount it anticipates spending on the Project. Prior to any payment of those amounts by Mountain Brook, the Contract Administrators for each Party will consult and certify in writing that the invoiced amount or other amount that Mountain Brook intends to pay is proper and should be paid by Mountain Brook. Such consultation and certification shall occur not less than 10 days before any such payment is due.

If any dispute, disagreement or conflict arises between the Parties as to (a) the refusal or failure by Birmingham to certify or approve payment by Mountain Brook of a Local Expense or (b) whether Mountain Brook should make a Local Expense payment that it is ~~requested~~required by ALDOT ~~or other third party~~ to make (collectively, a "Payment Dispute"), the Parties agree to resolve such Payment Dispute as follows. ~~The Payment Dispute first shall be submitted to the Mayor of Birmingham and City Manager of Mountain Brook for consideration and potential resolution by those officials. -If those officials do not resolve the Payment Dispute -is not resolved by those officials~~ within twenty (20) days after submission to them, either Party may request that the Payment Dispute be submitted ~~to binding arbitration~~ for resolution ~~- in a non-binding mediation before a neutral third party that is mutually acceptable to the Parties.~~ The ~~rules and procedures provisions~~ of the American Arbitration Association § 6-6-20, Code of Alabama, 1975, shall apply with respect to any such ~~arbitration; provided mediation, except~~ that the expense of any such ~~arbitration mediation~~ shall be equally shared between the Parties and each Party shall be responsible for its own attorney ~~fees' and other costs in such proceeding; fees and other costs in such mediation.~~ If the Payment Dispute is not resolved mediation, the dispute resolution process shall be litigation in Jefferson County Circuit Court; provided that, in any such litigation, each Party agrees to waive any right to a jury trial and the prevailing Party

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in any such litigation shall be entitled to recover from the other Party the reasonable attorney fees and any costs of court that the prevailing party incurs in that action.

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- (iii) Following the above-described confirmation and certification or the resolution of a Payment Dispute determining that Mountain Brook should pay the Local Expense amount in dispute, Mountain Brook will pay the amount due ALDOT under the ALDOT/MB Agreements or due others for any Local Expense and promptly notify Birmingham, in writing, upon making any such payment.
- (iv) No later than ten (10) days following each such payment, Birmingham will remit to Mountain Brook 50% of the amount of any Local Expense payment made by it. If requested by Birmingham, Mountain Brook will submit and deliver to Birmingham's Contract Representative an invoice evidencing the amount to be remitted by Birmingham.

VIII. **DEFAULT.** The Parties acknowledge and agree that any material breach, delay or other failure by either of them to perform their respective obligations hereunder (a "Default", which includes, but is not limited to, any delay by Birmingham in reimbursing Mountain Brook for amounts payable by Birmingham hereunder) will have a detrimental impact on the operations of the other Party. Consequently, in the event of a Default by either Party hereunder, the following understandings apply:

- (i) **Default Interest.** Simple interest shall accrue on any delinquent amount payable by one Party to the other hereunder at the rate of 6% per annum until the delinquency is satisfied; and
- (ii) If the non-defaulting Party files litigation to enforce its rights hereunder and prevails in that proceeding, the defaulting Party shall reimburse the non-defaulting Party for all reasonable attorney's fees and costs of litigation that it incurs to remedy any such Default; and
- (iii) If the defaulting Party fails to cure the Default within sixty (60) days after receipt of written notice thereof from the non-defaulting Party, the non-defaulting Party, in addition to all other remedies available to it at law or provided herein, may terminate this Agreement effective immediately upon its provision of a second written notice.

IX. **MISCELLANEOUS.**

- a. Each municipality shall duly appropriate and finance their anticipated respective costs for the Local Expense of the Project from their Capital Improvement Funds, Gasoline Tax Funds, General Fund or other sources they deem appropriate. The failure of either Party

to make such appropriations shall not relieve Mountain Brook of its obligations to make payments for Local Expense due ALDOT under the ALDOT/MB Agreements or Birmingham of its obligation to pay and reimburse Mountain Brook for amounts owed and due it hereunder.

- b. Unless otherwise agreed in writing, the Parties expressly agree that, following the construction of the Project, neither of them assume any risk or future liability, or any future responsibility for maintaining any portion of the Roundabout improvement that is located outside their respective jurisdiction.
- c. Except as expressly provided in this Agreement, no Party shall have any power to incur any debt which shall become the responsibility of any other contracting party.
- d. The execution of this Agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the Parties the relationship of principal or agent or of partnership or of joint venture.
- e. Except as otherwise provided by law and as limited by this Agreement between the parties, any entity which contracts to perform or exercise any service or power pursuant to this chapter shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the Agreement.
- f. This Agreement shall not take effect until it has been approved by the governing body of each Party. Approval shall be by adoption of an ordinance of general and permanent operation.
- g. 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.
- h. With respect to immigration law compliance, the Parties represent and warrant to the other that:
  - (i) they do not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the "Act");
  - (ii) they will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that the Party is enrolled in the E-Verify program. During the performance of this Agreement, Parties shall participate in the E-Verify program as required under the terms of the Act and shall verify

every employee in Alabama that is required to be verified according to the applicable federal rules and regulations;

- (iii) they will comply with all applicable provisions of the Act with respect to subcontractors, if any, that they engage on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work for the Party on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Parties represent and warrant that they shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which the Party knows is not in compliance with the Act; and
  - (iv) by signing this ~~Agreement~~contract, the contracting Parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore a Party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- i. SEVERABILITY: If any provision of this agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid.
  - j. GOVERNING LAW: This agreement shall be governed by and construed in accordance with the laws of the State of Alabama as interpreted by Alabama Courts.
  - k. ADDITIONAL UNDERSTANDING ON ROW ACQUISITION SERVICES. Notwithstanding any terms or provisions in the Agreement for Right of Way Acquisition to be executed by Mountain Brook, ALDOT representatives have expressed a willingness to perform the ROW acquisition function for the Project that is needed to acquire land that lies in Birmingham and Mountain Brook. If ALDOT performs those services, the Parties agree that ALDOT will be paid the Local Expense portion of costs incurred in those operations in a manner that is consistent with the payment process contemplated herein. However, if ALDOT does not perform the ROW acquisition services for the Project, the Parties agree to jointly contract with a mutually acceptable third party contractor to obtain those services from that contractor.

*(Signature Page Follows)*

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

**CITY OF BIRMINGHAM, ALABAMA**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
William A. Bell, Sr., Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT:

\_\_\_\_\_  
Assistant City Attorney / Date

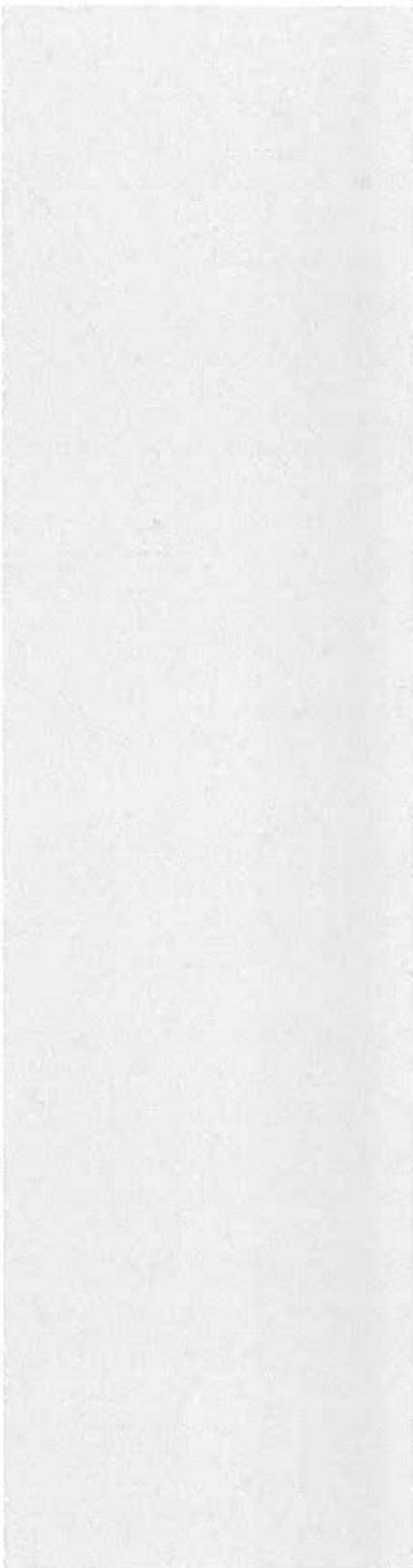
**CITY OF MOUNTAIN BROOK, ALABAMA**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Lawrence Terry Oden, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



**RESOLUTION NO. 2015-164**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of an Agreement for Cost Sharing between the City of Mountain Brook and City of Birmingham, in the form as attached hereto as Exhibit A subject to such minor revisions as may be determined appropriate by the City Attorney, with respect to the roundabout improvements at the intersection of Cahaba Road/US Highway 280/Culver Road/Lane Park Road (ALDOT Project CMAQ-3715( )).

**ADOPTED:** This 9th day of November, 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November, 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 November 9, 2015, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**AGREEMENT FOR COST SHARING**

*Nov 5*

**Roundabout Improvement –Intersection  
Cahaba Road/US-280/Culver Road/Lane Park Road  
ALDOT Project # CMAQ-3715**

The **CITY OF BIRMINGHAM, ALABAMA** (“Birmingham”), a municipal corporation and the **CITY OF MOUNTAIN BROOK, ALABAMA** (“Mountain Brook”), a municipal corporation, enter into this **AGREEMENT FOR COST SHARING** (“Agreement”). Mountain Brook and Birmingham individually may be referred to as a “Party” and collectively as “Parties.”

**WHEREAS**, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

**WHEREAS**, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization, and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program Funds (“Federal CMAQ Funds”); and

**WHEREAS**, Birmingham and Mountain Brook desire to construct a roundabout road improvement (the “Roundabout”) at or near the intersections of Lane Park Road, Cahaba Road, Culver Road and a road that connects to U.S. Highway 280 in order to facilitate the flow of traffic in that area (the “Project”); and

**WHEREAS**, the intersections in question are important connectors for visitors to the Birmingham Zoo, the Birmingham Botanical Gardens, Mountain Brook Village and other points in that area that are regularly accessed by the citizens of both Birmingham and Mountain Brook; and

**WHEREAS**, the State of Alabama, acting through the Alabama Department of Transportation (“ALDOT”) has designated the Roundabout Project as Project # CMAQ-3715, and Federal CMAQ Funds have been identified for use in conjunction with its construction; and

**WHEREAS**, in order to administer and implement Project # CMAQ-3715, ALDOT has requested that Mountain Brook enter into the following three (3) agreements with ALDOT: (i) an Agreement for Right of Way Acquisition that estimates the total right of way (“ROW”) acquisition costs at \$360,000 and estimates the local share of that expense as \$72,000; (ii) an Agreement for Preliminary Engineering that reflects a total estimate of \$515,000 for engineering expense and estimates the local share of \$103,000 for those costs; and (iii) an Agreement for Utility and Construction that reflects a total estimate \$2,616,000 to construct the Project and estimates a local share of \$523,200 to build the Roundabout (collectively, the “ALDOT/MB Agreements”); and

**WHEREAS**, Mountain Brook will enter the ALDOT/MB Agreements if Birmingham enters into this Agreement and agrees to equally share the Local Expense (as defined in Section I below) incurred by Mountain Brook on the Project; and

**WHEREAS**, pursuant to the terms of this Agreement, Birmingham agrees to reimburse Mountain Brook for one half (1/2) of the Local Expense; and

**WHEREAS**, it is in the public interest for the Parties and their respective citizens to cooperate on the implementation of the Project; and

**WHEREAS**, Act 1969-916 of the Acts of Alabama (“Act 1969-916”) authorizes municipalities in Jefferson County to make the most efficient use of their powers by enabling them to cooperate with the state, the federal government and with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and developments of the county and municipalities and other governmental units and agencies therein; and

**WHEREAS**, as is contemplated and authorized by Act 1969-916, the joint interests of Mountain Brook and Birmingham are promoted by Mountain Brook entering the ALDOT/MB Agreements whereby ALDOT will perform services that jointly benefit each of the two municipalities, Mountain Brook will compensate ALDOT for those services pursuant to the terms in those Agreements, and Mountain Brook and Birmingham enter into this related Cost Sharing Agreement to equally share the Local Expense of the Project.

#### **NOW WHEREFORE**

In consideration of the premises and mutual covenants stated herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Birmingham and Mountain Brook agree as follows:

- I. **LOCAL EXPENSE:** For purposes of this Agreement, “Local Expense” means any expense, cost or expenditure that Mountain Brook pays, incurs, suffers or expends following the Effective Date (as is defined below in Section IV) for the Project that is not covered by, or reimbursed to Mountain Brook through Federal CMAQ Funds. Local Expense includes, but is not limited to, any amount that Mountain Brook pays with respect to any invoice, bill or any other request, demand, action or claim by ALDOT that Mountain Brook owes ALDOT, the Federal Highway Administration (“FHWA”) or any other governmental agency, entity or person a monetary sum or other obligation by reason of Mountain Brook entering the ALDOT/MB Agreements. Local Expense does not include ordinary and usual expenses incurred by the employees, officials or the staff of either Party to administer this Agreement, to administer the ALDOT/MB Agreements, or that may be expended to secure approval of this Agreement.

Nothing in this Section 1 or elsewhere in this Agreement is intended to authorize Mountain Brook to pay any Local Expense unless and until the Parties have complied

with the processes for approving payment of Local Expenses that is set forth in Section VII(ii) below.

- II. **IMPLEMENTATION OF PROJECT:** The Project will be administered by ALDOT and the costs thereof will be financed, when eligible for Federal participation, on the basis of 80% federal CMAQ Funds and 20% local funds. Mountain Brook agrees to enter the ALDOT/MB Agreements and make the payments to ALDOT contemplated in such Agreements or incur other Local Expense, subject to the terms and covenants herein.
- III. **PURPOSE/SHARING OF LOCAL EXPENSE.** The Parties agree that, for purposes of this Agreement, the benefits of the Project are equally proportionate to both jurisdictions. Accordingly, Birmingham will equally share the Local Expense incurred by Mountain Brook on the Project and reimburse it for 50% of those costs.
- IV. **EFFECTIVE DATE:** This Agreement will become effective on the date on which the last of all of the following has occurred: (1) Birmingham’s City Council has approved an ordinance authorizing Birmingham to enter into this Agreement; (2) Mountain Brook’s City Council has approved an ordinance authorizing Mountain Brook to enter into this Agreement; (3) the respective, duly authorized representatives of the Parties have executed this Agreement; (4) Mountain Brook has executed the ALDOT/MB Agreements; and (5) as contemplated in Act 1969-916, a copy of this Agreement, fully executed, is properly filed with the Judge of Probate of Jefferson County, Alabama and with the Alabama Secretary of State (the “Effective Date”).
- V. **TERM.** This Agreement shall commence on its Effective Date and continue in effect for five (5) years thereafter or until Project is completed, whichever first occurs; provided that, if the Project is not completed at the end of the initial five year term, this Agreement will be automatically renewed on the terms stated herein for an additional renewal period of three (3) years. If the Project is not completed by the end of the first renewal term, the Parties will engage in good faith negotiations to further extend this Agreement for the period required to complete the Project.
- VI. **ESTIMATED COSTS OF PROJECT.** As of the Effective Date, the estimated costs and expected sources of funding for design, plan and construct the Project are as follows:

<b>Type Expense</b>	<b>Total Estimated</b>	<b>Estimated Fed. CMAQ Funding</b>	<b>Estimated Bham Funding</b>	<b>Estimated Mt. Bk. Funding</b>
ROW Acquisit.	\$360,000	\$288,000	\$36,000	\$36,000
Preliminary Engineering	\$515,000	\$412,000	\$51,500	\$51,500
Utilities	\$500,000	\$400,000	\$50,000	\$50,000
Construction (incl inspection)	\$2,116,000	\$1,692,800	\$211,600	\$211,600
<b>TOTAL</b>	<b>\$3,491,000</b>	<b>\$2,792,800</b>	<b>\$349,100</b>	<b>\$349,100</b>

The Parties acknowledge and understand that the above amounts are estimates only. In the event the final costs of the Project exceed the estimated levels, Birmingham and Mountain Brook will be responsible for sharing in and paying the actual expenses incurred on the Project and sharing the Local Expense on the proportional basis and utilizing the process described below.

VII. PROCESS FOR APPROVING, PAYMENT AND REIMBURSEMENT OF MOUNTAIN BROOK FOR LOCAL EXPENSE.

- (i) Each Party will designate a senior level representative who will be responsible for administration of its respective organization's responsibilities under this Agreement (the "Contract Administrator").
- (ii) Mountain Brook promptly will forward to Birmingham's Contract Administrator any invoices or other requests for payment that it receives from ALDOT, and provide Birmingham advance written notice of any other Local Expense amount it anticipates spending on the Project. Prior to any payment of those amounts by Mountain Brook, the Contract Administrators for each Party will consult and certify in writing that the invoiced amount or other amount that Mountain Brook intends to pay is proper and should be paid by Mountain Brook. Such consultation and certification shall occur not less than 10 days before any such payment is due.

If any dispute, disagreement or conflict arises between the Parties as to (a) the refusal or failure by Birmingham to certify or approve payment by Mountain Brook of a Local Expense or (b) whether Mountain Brook should make a Local Expense payment that it is required by ALDOT to make (collectively, a "Payment Dispute"), the Parties agree to resolve such Payment Dispute as follows. The Payment Dispute first shall be submitted to the Mayor of Birmingham and City Manager of Mountain Brook for consideration and potential resolution by those officials. If those officials do not resolve the Payment Dispute within twenty (20) days after submission to them, either Party may request that the Payment Dispute be submitted for resolution in a non-binding mediation before a neutral third party that is mutually acceptable to the Parties. The provisions of § 6-6-20, Code of Alabama, 1975, shall apply with respect to any such mediation, except that the expense of any such mediation shall be equally shared between the Parties and each Party shall be responsible for its own attorney fees and other costs in such mediation. If the Payment Dispute is not resolved mediation, the dispute resolution process shall be litigation in Jefferson County Circuit Court; provided that, in any such litigation, each Party agrees to waive any right to a jury trial and the prevailing Party in any such litigation shall be entitled to recover from the other Party the reasonable attorney fees and any costs of court that the prevailing party incurs in that action.

- (iii) Following the above-described confirmation and certification or the resolution of a Payment Dispute determining that Mountain Brook should pay the Local Expense amount in dispute, Mountain Brook will pay the amount due ALDOT under the ALDOT/MB Agreements or due others for any Local Expense and promptly notify Birmingham, in writing, upon making any such payment.
- (iv) No later than ten (10) days following each such payment, Birmingham will remit to Mountain Brook 50% of the amount of any Local Expense payment made by it. If requested by Birmingham, Mountain Brook will submit and deliver to Birmingham's Contract Representative an invoice evidencing the amount to be remitted by Birmingham.

VIII. **DEFAULT.** The Parties acknowledge and agree that any material breach, delay or other failure by either of them to perform their respective obligations hereunder (a "Default", which includes, but is not limited to, any delay by Birmingham in reimbursing Mountain Brook for amounts payable by Birmingham hereunder) will have a detrimental impact on the operations of the other Party. Consequently, in the event of a Default by either Party hereunder, the following understandings apply:

- (i) **Default Interest.** Simple interest shall accrue on any delinquent amount payable by one Party to the other hereunder at the rate of 6% per annum until the delinquency is satisfied; and
- (ii) If the non-defaulting Party files litigation to enforce its rights hereunder and prevails in that proceeding, the defaulting Party shall reimburse the non-defaulting Party for all reasonable attorney's fees and costs of litigation that it incurs to remedy any such Default; and
- (iii) If the defaulting Party fails to cure the Default within sixty (60) days after receipt of written notice thereof from the non-defaulting Party, the non-defaulting Party, in addition to all other remedies available to it at law or provided herein, may terminate this Agreement effective immediately upon its provision of a second written notice.

IX. **MISCELLANEOUS.**

- a. Each municipality shall duly appropriate and finance their anticipated respective costs for the Local Expense of the Project from their Capital Improvement Funds, Gasoline Tax Funds, General Fund or other sources they deem appropriate. The failure of either Party to make such appropriations shall not relieve Mountain Brook of its obligations to make payments for Local Expense due ALDOT under the ALDOT/MB Agreements or Birmingham of its obligation to pay and reimburse Mountain Brook for amounts owed and due it hereunder.

- b. Unless otherwise agreed in writing, the Parties expressly agree that, following the construction of the Project, neither of them assume any risk or future liability, or any future responsibility for maintaining any portion of the Roundabout improvement that is located outside their respective jurisdiction.
- c. Except as expressly provided in this Agreement, no Party shall have any power to incur any debt which shall become the responsibility of any other contracting party.
- d. The execution of this Agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the Parties the relationship of principal or agent or of partnership or of joint venture.
- e. Except as otherwise provided by law and as limited by this Agreement between the parties, any entity which contracts to perform or exercise any service or power pursuant to this chapter shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the Agreement.
- f. This Agreement shall not take effect until it has been approved by the governing body of each Party. Approval shall be by adoption of an ordinance of general and permanent operation.
- g. 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.
- h. With respect to immigration law compliance, the Parties represent and warrant to the other that:
  - (i) they do not knowingly employ, hire for employment, or continue to employ, in Alabama, an “unauthorized alien,” as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the “Act”);
  - (ii) they will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that the Party is enrolled in the E-Verify program. During the performance of this Agreement, Parties shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations;
  - (iii) they will comply with all applicable provisions of the Act with respect to subcontractors, if any, that they engage on the Project by entering

into an agreement with or by obtaining an affidavit from such subcontractors providing work for the Party on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Parties represent and warrant that they shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which the Party knows is not in compliance with the Act; and

- (iv) by signing this contract, the contracting Parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore a Party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- i. SEVERABILITY: If any provision of this agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid.
- j. GOVERNING LAW: This agreement shall be governed by and construed in accordance with the laws of the State of Alabama as interpreted by Alabama Courts.
- k. ADDITIONAL UNDERSTANDING ON ROW ACQUISITION SERVICES. Notwithstanding any terms or provisions in the Agreement for Right of Way Acquisition to be executed by Mountain Brook, ALDOT representatives have expressed a willingness to perform the ROW acquisition function for the Project that is needed to acquire land that lies in Birmingham and Mountain Brook. If ALDOT performs those services, the Parties agree that ALDOT will be paid the Local Expense portion of costs incurred in those operations in a manner that is consistent with the payment process contemplated herein. However, if ALDOT does not perform the ROW acquisition services for the Project, the Parties agree to jointly contract with a mutually acceptable third party contractor to obtain those services from that contractor.

*(Signature Page Follows)*

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

**CITY OF BIRMINGHAM, ALABAMA**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
William A. Bell, Sr., Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT:

\_\_\_\_\_  
Assistant City Attorney / Date

**CITY OF MOUNTAIN BROOK, ALABAMA**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Lawrence Terry Oden, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

2015-165



Robert Bentley  
GOVERNOR

**ALABAMA  
DEPARTMENT OF TRANSPORTATION**

EAST CENTRAL REGION  
100 CORPORATE PARKWAY  
SUITE 450  
HOOVER, AL 35242  
P.O. BOX 382348  
BIRMINGHAM, AL 35238-2348  
TELEPHONE: (205) 327-4962

June 24, 2015



John R. Cooper  
TRANSPORTATION DIRECTOR

The Honorable Lawrence T. Oden  
Mayor, City of Mountain Brook  
City Hall  
P.O. Box 130009  
Mountain Brook, Alabama 35213

RE: Jefferson County  
Project No. CMAQ-3715( )  
Proj. Ref. No. 100064199  
Intersection Improvements Cahaba Road/  
US-280/Culver Road/Lane Park Road

Dear Mayor Oden:

I have enclosed the original Preliminary Engineering Agreement (and one copy) between the State of Alabama and the City of Mountain Brook, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signature and the City Seal affixed to both to this office for further handing. A certified resolution, which authorizes the Mayor to sign the Agreement, affixed with the City Seal should be included with the original Agreement, as well as with the copy.

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeJarvis Leonard, P.E.  
East Central Region Engineer

By:   
Lance Taylor, P.E.  
Asst. Region Engineer, Pre-Construction

LAT/trs  
Enclosure

C: Mrs. Sandra F. P. Bonner  
File w/encl.

**AGREEMENT  
FOR  
PRELIMINARY ENGINEERING**

**BETWEEN THE STATE OF ALABAMA  
AND  
THE CITY OF MOUNTAIN BROOK, ALABAMA**

15 JUN 15 4:48:42

**Project CMAQ-3715 ( )  
Project Reference Number 100064199  
Intersection Improvements Cahaba Road/US-280/Culver Road/Lane Park Road  
in the City of Mountain Brook**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and the CITY desire to cooperate in a preliminary engineering program for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvements Program Funds (CMAQ).

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) The CITY will perform or have performed all services required to fulfill the purposes of this Agreement. The East Central Region of the Department of Transportation will be the lead agency for the STATE relative to the work under this Agreement and will be point of contact for the CITY.
- (2) This Agreement will cover only the preliminary engineering phase of the work.
- (3) The preliminary engineering phase is hereby defined as that work necessary to advance the development of the Project through construction authorization by the FHWA. The preliminary engineering will be performed by or for the CITY and will include all environmental studies and documentation required by FHWA.
- (4) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA.
- (5) The project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties is as follows:

	<u>Total Estimated Cost</u>	<u>Estimated Federal Funds</u>	<u>Estimated CITY Funds</u>
Preliminary Engineering	<u>\$515,000</u>	<u>\$412,000</u>	<u>\$103,000</u>
TOTAL	\$515,000	\$412,000	\$103,000

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share of the final cost. It is expressly understood by both parties of this Agreement that all Federal funds will be CMAQ funds, attributable to the Birmingham area.

- (6) The STATE will assist the CITY in any public involvement action that may be required.
- (7) The CITY will invoice the STATE for the Federal share of the preliminary engineering costs not more frequently than monthly. Requests for reimbursements will be made on forms provided by the STATE and submitted through the East Central Region Engineer for payment.
- (8) Invoices for any phase of work performed by the CITY under the terms of this Agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- (9) Any cost for work not eligible for Federal participation will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- (10) The CITY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) that the Federal funds expended on this Project must be refunded to the FHWA, the CITY will reimburse and pay to the STATE a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (11) Any services of the STATE necessary to carry out the intent of this Agreement will be paid as provided for herein.
- (12) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (13) The STATE will provide without cost to the CITY information available from its records that will facilitate the performance of the work.

- (14) It is clearly understood by both parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein and that a separate agreement will be required for the construction of the proposed improvement.
- (15) A final audit will be made of all project records after the completion of the project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the final audit and this Agreement.
- (16) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- (17) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (18) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (19) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (20) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (21) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24<sup>th</sup> Law).
- (22) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Governor of Alabama.

SEAL

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

\_\_\_\_\_  
City Clerk (Signature)

By: \_\_\_\_\_  
Mayor (Signature)

\_\_\_\_\_  
Type name of Clerk

\_\_\_\_\_  
Type name of Mayor

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED  
AND APPROVED AS TO FORM AND CONTENT:

By: \_\_\_\_\_  
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
East Central Region Engineer, DeJarvis Leonard, P. E.

\_\_\_\_\_  
Multimodal Transportation Engineer,  
Robert J. Jilla

\_\_\_\_\_  
Chief Engineer, Ronald L. Baldwin, P. E.

STATE OF ALABAMA  
ACTING BY AND THROUGH THE  
ALABAMA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama  
this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_  
GOVERNOR OF ALABAMA, ROBERT BENTLEY

## CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

07/01/2002

## EXHIBIT N

### FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

### TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

### ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

RESOLUTION NUMBER 2015-165

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

1. That the City enter into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Preliminary engineering program, Project CMAQ-3715 ( ), Project Reference Number 100064199 for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook; which Agreement is before this Council.

2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted and approved this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

ATTESTED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

I, the undersigned qualified and acting clerk of the City of Mountain Brook, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, and that such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
City Clerk

2015-166



Robert Bentley  
GOVERNOR

**ALABAMA  
DEPARTMENT OF TRANSPORTATION**

EAST CENTRAL REGION  
100 CORPORATE PARKWAY  
SUITE 450  
HOOVER, AL 35242  
P.O. BOX 382348  
BIRMINGHAM, AL 35238-2348  
TELEPHONE: (205) 327-4962

June 24, 2015



John R. Cooper  
TRANSPORTATION DIRECTOR

The Honorable Lawrence T. Oden  
Mayor, City of Mountain Brook  
City Hall  
P.O. Box 130009  
Mountain Brook, Alabama 35213

RE: Jefferson County  
Project No. CMAQ-3715( )  
Proj. Ref. No. 100064200  
Intersection Improvements Cahaba Road/  
US-280/Culver Road/Lane Park Road

Dear Mayor Oden:

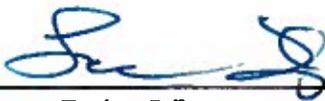
I have enclosed the original Right of Way Acquisition Agreement (and one copy) between the State of Alabama and the City of Mountain Brook, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signature and the City Seal affixed to both to this office for further handing. A certified resolution, which authorizes the Mayor to sign the Agreement, affixed with the City Seal should be included with the original Agreement, as well as with the copy.

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeJarvis Leonard, P.E.  
East Central Region Engineer

By:   
Lance Taylor, P.E.  
Asst. Region Engineer, Pre-Construction

LAT/trs  
Enclosure

C: Mrs. Sandra F. P. Bonner  
File w/enci.

**AGREEMENT  
FOR  
RIGHT-OF-WAY ACQUISITION**

**BETWEEN THE STATE OF ALABAMA  
AND  
THE CITY OF MOUNTAIN BROOK, ALABAMA**

**Project CMAQ-3715 ( )  
Project Reference Number 100064200  
Intersection Improvements Cahaba Road/US-280/Culver Road/Lane Park Road  
in the City of Mountain Brook**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a right-of-way acquisition program for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program Funds (CMAQ).

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) This Agreement will cover only the right-of-way acquisition phase of the work.
- (2) The right-of-way purchased under terms of this Agreement will be acquired by the CITY and in accordance with current regulations of the STATE and FHWA. The CITY will adhere to all STATE and FHWA regulations pertaining to the acquisition of ROW and will coordinate their activities with the Region Acquisition Manager for guidance. The property will be acquired in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.
- (3) The STATE shall follow all Federal regulations related to the Management, Leasing, and Disposal of right-of-way, uneconomic remnants and excess right-of-way as found in CFR 23 §710 Subpart D. Proceeds from Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.
- (4) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overrun in the Project costs will be borne by the CITY. In the event of an under run in the Project costs, the amount of Federal Aid funds will be 80 percent of eligible costs.
- (5) This Project will be administered by the STATE and all costs will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties are as follows:

	<u>Total Estimated</u>	<u>Estimated Federal Funds</u>	<u>Estimated CITY Funds</u>
Right-of-way acquisition	<u>\$360,000</u>	<u>\$288,000</u>	<u>\$72,000</u>
TOTAL	\$360,000	\$288,000	\$72,000

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share. It is expressly understood by both parties of this Agreement that all Federal funds will be CMAQ funds, attributable to the Birmingham area.

- (6) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- (7) The CITY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) that Federal funds expended on this Project must be refunded to the FHWA, the CITY will reimburse and pay to the STATE a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (8) The CITY will invoice the STATE for the Federal share of right-of-way acquisition costs not more frequently than monthly. Requests for reimbursements will be made on forms provided by the STATE and submitted through the East Central Region Engineer for payment.
- (9) Invoices for any phase of work performed by the CITY under the terms of this Agreement will be submitted within twelve (12) months after completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- (10) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (11) The CITY will assist the STATE, if necessary, in any public involvement actions that may be required.

- (12) The CITY will provide without cost to the STATE, information available from its records that will facilitate the performance of the work.
- (13) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein and that a separate Agreement will be required for the construction of the proposed improvement.
- (14) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- (15) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- (16) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (17) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be

deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (18) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (19) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (20) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24<sup>th</sup> Law).
- (21) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of approval of the Governor of Alabama.

SEAL

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

\_\_\_\_\_  
City Clerk (Signature)

BY: \_\_\_\_\_  
Mayor (Signature)

\_\_\_\_\_  
Type name of Clerk

\_\_\_\_\_  
Type name of Mayor

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED  
AND APPROVED AS TO FORM AND CONTENT:

BY: \_\_\_\_\_  
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
East Central Region Engineer, DeJarvis Leonard, P. E.

\_\_\_\_\_  
Multimodal Transportation Engineer,  
Robert J. Jilla

\_\_\_\_\_  
Chief Engineer, Ronald L. Baldwin, P. E.

STATE OF ALABAMA  
ACTING BY AND THROUGH THE  
ALABAMA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
GOVERNOR OF ALABAMA, ROBERT BENTLEY

**CERTIFICATION**

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

07/01/2002

EXHIBIT N

**FUNDS SHALL NOT BE CONSTITUTED AS A DEBT**

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

**TERMINATION DUE TO INSUFFICIENT FUNDS**

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

**ADR CLAUSE**

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

RESOLUTION NUMBER 2015-166

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

1. That the City enters into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Right-of-way acquisition program for Project CMAQ-3715 ( ), Project Reference Number 100064200 for intersections improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook; which Agreement is before this Council.

2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted and approved this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

ATTESTED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

I, the undersigned qualified and acting clerk of the City of Mountain Brook, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, and that such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
City Clerk



Robert Bentley  
GOVERNOR

**ALABAMA  
DEPARTMENT OF TRANSPORTATION**

EAST CENTRAL REGION  
100 CORPORATE PARKWAY  
SUITE 450  
HOOVER, AL 35242  
P.O. BOX 382348  
BIRMINGHAM, AL 35238-2348  
TELEPHONE: (205) 327-4962

June 24, 2015

2015-167



John R. Cooper  
TRANSPORTATION DIRECTOR

The Honorable Lawrence T. Oden  
Mayor, City of Mountain Brook  
City Hall  
P.O. Box 130009  
Mountain Brook, Alabama 35213

RE: Jefferson County  
Project No. CMAQ-3715( )  
Proj. Ref. No. 100064201  
Proj. Ref. No. 100064202  
Intersection Improvements Cahaba Road/  
US-280/Culver Road/Lane Park Road

Dear Mayor Oden:

I have enclosed the original Utility and Construction Agreement (and one copy) between the State of Alabama and the City of Mountain Brook, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signature and the City Seal affixed to both to this office for further handing. A certified resolution, which authorizes the Mayor to sign the Agreement, affixed with the City Seal should be included with the original Agreement, as well as with the copy.

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeJarvis Leonard, P.E.  
East Central Region Engineer

By:   
Lance Taylor, P.E.  
Asst. Region Engineer, Pre-Construction

LAT/trs  
Enclosure

C: Mrs. Sandra F. P. Bonner  
File w/encl.

**AGREEMENT  
FOR  
UTILITY AND CONSTRUCTION**

**BETWEEN THE STATE OF ALABAMA** 15 JUN 15 2:08:42  
**AND**  
**THE CITY OF MOUNTAIN BROOK, ALABAMA**

**Project CMAQ-3715 ( )**  
**Project Reference Number 100064201**  
**Project Reference Number 100064202**  
**Intersection Improvements Cahaba Road/US-280/Culver Road/Lane Park Road**  
**in the City of Mountain Brook**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a utility and construction program for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program Funds (CMAQ).

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) This Agreement will cover utilities and all aspects of construction for the proposed improvements, including construction engineering and inspection during the course of the work, all in accordance with plans approved by the STATE.
- (2) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overrun in construction costs will be borne by the CITY. In the event of an under run in construction costs, the amount of Federal Aid funds will be 80 percent of eligible costs.
- (3) The Project will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds.

The estimated cost and participation by the various parties are as follows:

	<u>Total Estimated</u>	<u>Estimated Federal Funds</u>	<u>Estimated CITY Funds</u>
Utilities construction, including engineering and inspection	\$500,000	\$400,000	\$100,000
	<u>\$2,116,000</u>	<u>\$1,692,800</u>	<u>\$423,200</u>
TOTAL	\$2,616,000	\$2,092,800	\$523,200

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share as above noted and the CITY agrees to pay same to STATE; or in the event the cost is less than the estimate, the CITY will receive a refund accordingly from the STATE.

- (4) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit. It is expressly understood by both

parties of this Agreement that all Federal funds will be CMAQ funds, attributable to the Birmingham area.

- (5) The CITY will coordinate any required adjustments to utilities with the utility company involved in accordance with usual STATE procedures. Any utility expenses involved which are eligible for STATE reimbursement or payment under state law will be considered as a part of the Project cost and will be paid as provided herein, with the CITY paying its proportional share. The STATE will not be liable for utility expenses which are not eligible for STATE reimbursement or payment under state law.
- (6) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (7) The construction of the improvements will be by contract and the STATE will be responsible for advertisement and receipt of bids and for the award of the contract. Following receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its prorata share of the estimated construction cost as reflected by the bid of the successful bidder plus engineering and inspection cost, and the CITY will promptly pay this estimated cost before award of the contract. The STATE will not award the contract until it is in receipt of the estimated cost payable by the CITY as reflected by the bid of the successful bidder, plus the engineering and inspection cost.
- (8) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the facility which is not part of the State Highway Maintenance System.
- (9) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein.

- (10) The CITY agrees that in the event the FHWA determines, under its rules and/or regulations that Federal funds expended on this Project (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) must be refunded to the FHWA, the CITY shall reimburse and pay to the STATE for and on behalf of FHWA, a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (11) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- (12) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- (13) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (14) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a

contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (15) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (16) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (17) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24<sup>th</sup> Law).
- (18) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of approval of the Governor of Alabama.

SEAL

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

\_\_\_\_\_  
City Clerk (Signature)

BY: \_\_\_\_\_  
Mayor (Signature)

\_\_\_\_\_  
Type name of Clerk

\_\_\_\_\_  
Type name of Mayor

THIS AGREEMENT AS BEEN LEGALLY REVIEWED  
AND APPROVED AS TO FORM AND CONTENT:

BY: \_\_\_\_\_  
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
East Central Region Engineer, DeJarvis Leonard, P. E.

\_\_\_\_\_  
Multimodal Transportation Engineer,  
Robert J. Jilla

\_\_\_\_\_  
Chief Engineer, Ronald L. Baldwin, P. E.

STATE OF ALABAMA  
ACTING BY AND THROUGH THE  
ALABAMA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
GOVERNOR OF ALABAMA, ROBERT BENTLEY

7/18/90

Exhibit M

## CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

07/01/2002

## EXHIBIT N

### FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

### TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

### ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

RESOLUTION NUMBER 2015-167

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

1. That the City enters into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Utility and construction program for Project CMAQ-3715 ( ), Project Reference Numbers 100064201 and 100064202 for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook; which Agreement is before this Council.

2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted, and approved this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

ATTESTED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

I, the undersigned qualified and acting clerk of the City of Mountain Brook, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, and that such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
City Clerk

**ORDINANCE NO. 1943**

**APPROVAL OF THE EDUCATIONAL DEGREE PREMIUM PAY PURSUANT TO SECTION 1.VIII.G. OF THE PERSONNEL BOARD OF JEFFERSON COUNTY "SALARY ADMINISTRATION GUIDE & PAY PLAN"**

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

**SECTION 1. EDUCATIONAL DEGREE PREMIUM PAY PLAN.** The City Council hereby approves, subject to the [re]approval of the Personnel Board of Jefferson County [amends Ordinance No. 1942 adopted on October 26, 2015], the payment of Educational Degree Premium Pay pursuant to Section 1.VIII.G. of the Personnel Board of Jefferson County "Salary Administration Guide & Pay Plan" for qualifying degrees earned from accredited institutions of higher education determined to be directly related to the responsibilities and duties of the incumbent's classified position as follows:

Class No.	Job Title	Premium Code		
		Associate 06	Bachelor 21	Graduate/ Professional 31
1082	Assistant City Manager/Finance Director			One Step
5257	Building Inspections Superintendent II			One Step
5098	Fire Chief III			One Step
5260	Director of Planning, Building and Sustainability			One Step
6093	Police Chief III			One Step
8715	Public Works Director III			One Step
8290	Park/Recreation Superintendent			One Step
	Sworn Fire and Police personnel excluding Chiefs (5098 and 6093) as specified in Fire Departmental Policy No. 106.06 and Police Departmental Policy No. 100-4-1 attached hereto as Exhibit A and B, respectively	One Step	Two Steps	

Note: Eligible employees may only receive one of the educational degree premiums; the premiums may not be combined.

**SECTION 2. REPEALER.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

**SECTION 3. SEVERABILITY.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION 4. EFFECTIVE DATE.** The effective date of this ordinance shall be November 1, 2015.

**ADOPTED:** This 9th day of November, 2015.

\_\_\_\_\_  
Council President

**APPROVED:** This 9th day of November, 2015.

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Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on November 9, 2015, as same appears in the minutes of record of said meeting, and published by posting copies thereof on November 19, 2015, at the following public places, which copies remained posted for five (5) days as required by law.

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

Overton Park, 3020 Overton Road  
The Invitation Place, 3150 Overton Road

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City Clerk