

**MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

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

JUNE 27, 2016, 7:00 P.M.

1. Update on the Lane Parke Project by John Evans of Evson Inc.
2. Approval of the minutes of the June 13, 2016 regular meeting of the City Council.
3. Consideration: Resolution recommending to the ABC Board the transfer of the 040 – Retail Beer (On or Off Premises) License and the 060 – Retail Table Wine (On or Off Premises) License of Western Supermarkets, Inc. in conjunction with its relocation from 2717 Culver Road 35223 to 1000 Jemison Lane 35223 effective early to mid-October 2016.
4. Consideration: Resolution authorizing the purchase of two ambulances through the HGAC Cooperative Purchasing Agreement, declaring two 2009 model ambulances surplus, and authorizing their trade in conjunction with said ambulance purchase.
5. Consideration: Resolution ratifying 1) the bid award for the purchase and installation of two HVAC units for the Library and 2) the issuance of a purchase order for said purchase with expedited shipping and installation thereof.
6. Consideration: Resolution establishing the compensation for municipal court justices.
7. Consideration: Motion setting a public hearing for July 25, 2016 at 7 p.m. to consider the adoption of a resolution approving the Petition for Vacation of a portion of South Cove Drive filed by St. Luke's Episcopal Church, for the vacation of a portion of the improved street (South Cove Drive).
8. Consideration: Resolution authorizing the execution of three (3) service and facility use agreements between the City and 1) Mountain Brook Athletics, 2) Mountain Brook Soccer Association, and 3) Mountain Brook Lacross.
9. Consideration: Ordinance amending Section 30-3(a) of the City Code with respect to the time and place of holding court.
10. Announcement: The next regular meeting of the City Council is July 11, 2016, 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
JUNE 13, 2016**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:00 p.m. on Monday, the 13th day of June, 2016. 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 Attorney Steve Stine, City Manager Sam Gaston and City Clerk Steven Boone.

1. AGENDA

1. Bridge assessment study–Blair Perry of Gresham, Smith and Partners (Appendix 1)
 - The Caldwell Mill Road bridge over Little Shades Creek is in very bad condition and should be replaced within the next five years
 - The Old Brook Trail bridge over Little Shades Creek is in very bad condition and should be replaced within the next five years
 - The Canterbury Road bridge over Watkins Creek should undergo major rehabilitation within the next 5–7 years
 - Other bridge replacements in their order of priority are included in the consultants’ report
 - Structures should be monitored and inspected frequently for evidence of additional deterioration
 - The consultants prepared a bridge capital improvement plan
 - The bridges are eligible for federal awards administered by the Federal Highway Administration (FHWA)
 - There is not sufficient money budgeted in the Metropolitan Planning Organization’s (MPO) projects through 2019. However, sufficient monies may be available to initiate the preliminary engineering phases of these projects [for the worst bridges]
 - If the City pursues federal funding for the preliminary engineering, the projects must commence within ten years or the federal monies must be repaid
 - Once the City utilizes federal money for the preliminary engineering the City must either pursue federal funds for the improvements as designed, use local money to fund the improvements as designed, or repay that portion of the preliminary design fees paid with federal funds
 - Council President Pro Tempore Pritchard suggested that a committee be convened to study the information after Mr. Boone has analyzed the cost and suggested staging of the improvements before deciding whether to proceed with approaching the MPO to seek federal assistance with the preliminary engineering phase of the project(s)
 - The committee assigned includes: Finance Director Steven Boone, Council member Shelton, City Manager Sam Gaston, and Public Works Superintendent Ronnie Vaughn

2. Design proposal for the roundabout project in Mountain Brook Village–Andre Bittas, engineer with the City of Birmingham (“Birmingham”) and Alicia Bailey of Sain Associates (Appendix 2)

Mr. Bittas:

- The project dates back to 2013
- Several models were considered before deciding the roundabout proposal was the best solution
- Questions remain about the total project cost
- The project budget was established based on the preliminary estimates. Any significant deviations will require additional approvals.
- Considerations that can significantly impact the estimated \$3.5 million cost of the project include: environmental impacts and right-of-way acquisitions
- Birmingham is most concerned with the final total cost and how much it may deviate from the current estimate
- Birmingham and the Zoo are concerned about how much of the zoo property will have to be converted to right-of-way to accommodate this project
- It is in the best interest of all parties to get a better handle on the unknowns in order to minimize our risk of cost overruns

Ms. Bailey:

- After meeting today, the proposal before the Council tonight will be revised to better define and stage the various phases of the project
- The overall scope of the project should not change
- The cost estimate will also be revised
- Once amended, the proposal will be sent to ALDOT for their review and approval
- Once ALDOT approves the proposal, then the proposal will be formalized in a contract
- Then we can proceed with the roundabout project

Mr. Stine:

- The cost sharing agreement as written states that Birmingham will share equally the local match
- However, the ordinance Birmingham passed limits its obligation to what Birmingham has budgeted
- If the total project cost exceeds the current estimate then re-approval by Birmingham may be necessary

3. Review of the matters to be considered at the formal [7 p.m.] meeting.

- 2016-078: Council member Carl expressed concern over the dispute resolution process described in the cost sharing agreement and asked that this matter be excluded from the consent agenda

4. Executive session

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

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

Nays: None

Council President Smith declared that the motion carried by a vote of 4—0 and then asked that the members of the audience be excused. She also announced that the City Council shall reconvene upon conclusion of the executive session at approximately 7 p.m. in the Council Chamber.

2. 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 meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on June 13, 2016, 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 meeting.

City Clerk

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA
JUNE 13, 2016**

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:00 p.m. on Monday, the 13th day of June, 2016. 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 Attorney Steve Stine, City Manager Sam Gaston and City Clerk Steven Boone.

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

1. CONSENT AGENDA

Council President Smith then 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 May 9, 2016 regular meeting of the City Council.

2016-068	Recommend to the ABC Board the issuance of an 040 – Retail Beer (On or Off Premises) and an 060 – Retail Table Wine (On or Off Premises) licenses to Crestline Piggly Wiggly, LLC	Exhibit 1, Appendix 1
2016-069	Declare a 2008 Dodge Dakota SLT truck (VIN 1D7HW48N38S638743) surplus and ratifying its sale for fair value [car was totaled by insurance carrier as a result of a fire]	Exhibit 2, Appendix 2
2016-070	Reappoint Thomas George Luckie to the Mountain Brook Board of Education, to serve without compensation through May 31, 2021	Exhibit 3
2016-071	Set a public hearing for July 11, 2016 at 7 p.m. to consider an ordinance amending Sec. 129-295 of the City Code regarding open houses, home tours, and special events in residential zoning districts	Exhibit 4
2016-072	Set a public hearing for July 11, 2016 at 7 p.m. to consider an ordinance amending Articles I, X, XI, XII of the City Code regarding office uses and medical clinics	Exhibit 5
2016-073	Approve the lunchtime restaurant conditional use [lunch service] application for Biscuit Boy at 2708 Culver Road	Exhibit 6, Appendix 3
2016-074	Appoint the City Clerk as Election Manager for the August 23, 2016 general municipal election and any related run-off election held thereafter	Exhibit 7

2016-075	Authorize the execution of an agreement with Details Communications, Inc. for website design and development services for the Emmet O'Neal Library	Exhibit 8, Appendix 4
2016-076	Authorize the execution of a release agreement with Brookwood Baptist Church with respect to the May 3, 2016 private water main rupture caused by a defective [private] fire hydrant	Exhibit 9, Appendix 5
2016-077	Approve the conditional [service] use application for Back-on-Track Chiropractic at 2031-B Cahaba Road, Mountain Brook [Local Business District]	Exhibit 10, Appendix 6

Thereupon, the foregoing minutes and resolutions were introduced by Council President Smith and their immediate adoption was moved by Council President Pro Tempore Prichard. The minutes and resolutions were then considered by the City Council. Council 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, Council President
William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton

Nays: None

Council President Smith thereupon declared that said Council minutes and resolutions (Nos. 2016-068 through 2016-077) are adopted by a vote of 4—0 and as evidence thereof he signed the same.

2. CONSIDERATION OF A RESOLUTION (NO. 2016-078) REAFFIRMING RESOLUTIONS 2015-164 THROUGH 167 ADOPTED ON NOVEMBER 9, 2015 CONCERNING THE COST SHARING AGREEMENT BETWEEN THE CITY, CITY OF BIRMINGHAM, AND ALABAMA DEPARTMENT OF TRANSPORTATION WITH RESPECT TO THE ROUNDABOUT IMPROVEMENTS, ALDOT PROJECT CMAQ-3715() (EXHIBIT 11, APPENDIX 7)

The resolution 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 member Shelton made a motion for the adoption of said resolution. 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
Lloyd C. Shelton

Nays: Jack D. Carl

The Council President Smith declared that the said resolution (No. 2016-078) is hereby adopted by a vote of 3—1 and, as evidence thereof, she signed the same.

3. CONSIDERATION OF AN ORDINANCE (NO. 1953) AMENDIUNG ARTICLE VI OF THE CITY CODE WITH RESPECT TO THE CITY'S DISASBILITY DISCRIMINATION GRIEVANCE PROCEDURE (APPENDIX 12, APPENDIX 8)

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

Nays: None

The Council President Smith declared the motion carried by a vote of 4—0.

After said ordinance had been considered in full by the Council, Council President Pro Tempore Pritchard then moved for the adoption of said ordinance. The motion was seconded by Council President Smith. 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

Nays: None

The Council President Smith declared that the said ordinance (No. 1953) is hereby adopted by a vote of 4—0 and, as evidence thereof, she signed the same.

4. 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, June 27, 2016 at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213. Please visit the City's web site (www.mtnbrook.org) for more information.

5. ADJOURNMENT

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

6. 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 June 13, 2016, 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. 2016-068

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby recommends to the State of Alabama, Alcoholic Beverage Control Board, the issuance of a 040 – Retail Beer (On or Off Premises) License and a 060 – Retail Table Wine (On or Off Premises) License to Crestline Piggly Wiggly, LLC (trade name Crestline Piggly Wiggly) located at 41 Church Street, Mountain Brook, AL 35213.

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

APPENDIX 1

EXHIBIT 2

RESOLUTION NO. 2016-069

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

WHEREAS, the City of Mountain Brook, Alabama, experienced a vehicle fire involving a 2008 Dodge Dakota SLT truck that was determined to be damaged beyond repair by the City's insurance carrier; 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 declares 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	Notes
1	13631	2008 Dodge Dakota SLT truck (VIN 1D7HW48N38S638743)	Public Works

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the sale of the totaled vehicle to Travelers Insurance in consideration of the salvage value in the amount of \$9,701.79 net of the \$1,000 deductible is hereby ratified.

APPENDIX 2

RESOLUTION NO. 2016-079

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby recommends to the State of Alabama, Alcoholic Beverage Control Board, the transfer of the 040 – Retail Beer (On or Off Premises) License and the 060 – Retail Table Wine (On or Off Premises) License of Western Supermarkets, Inc. in conjunction with its relocation from 2717 Culver Road 35223 to 1000 Jemison Lane 35223 effective early to mid-October 2016.

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

ADOPTED: This 27th day of June, 2016.

Council President

APPROVED: This 27th day of June, 2016.

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 June 27, 2016, as same appears in the minutes of record of said meeting.

City Clerk



CITY OF MOUNTAIN BROOK

P. O. Box 130009
Mountain Brook, Alabama 35213-0009
Telephone: 205.802.2400
Facsimile: 205.879.6913
www.mtnbrook.org

June 28, 2016

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

~~Facsimile: (205) 942-2102~~

Gentlemen:

Attached is a copy of a resolution passed at the June 27, 2016, City Council meeting recommending the transfer of the 040 – Retail Beer (On or Off Premises Only) and a 060 – Retail Table Wine (On or Off Premises Only) licenses of Western Supermarkets, Inc.:

To:
Western Supermarkets, Inc.
1000 Jemison Lane
Mountain Brook, AL 35223

From:
Western Supermarkets, Inc.
2717 Culver Road
Mountain Brook, AL 35223

If you have any questions, please call me at 802-3825.

Sincerely,

Steven Boone
City Clerk

Enclosure

c: D. Metcalf
c/o dmetcalf@westernsupermarkets.com

RESOLUTION NO. 2016-080

BE IT RESOLVED by the City Council of the City of Mountain Brook, that the City Council hereby authorizes the purchase of two (2) Type 1, MXP150W Ford Diesel V8 P-up 4X4 F450 150"L x 95"W x 72"HR ambulances in consideration of \$398,200 (for both units combined after trade-in(s) as more fully described herein below); and

WHEREAS, the City of Mountain Brook, Alabama, has certain personal property that is 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 declares 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	Notes
1	13853	2009 Chevrolet CC4500 Type III	1GBE4V1919F401608
2	13852	2009 Chevrolet CC4500 Type III	1GBE4V1959F401577

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the Fire Chief is hereby authorized to trade-in for consideration in the amount of \$38,000 (for both vehicles) the above vehicles in conjunction with the purchase of two replacement ambulances as described above.

ADOPTED: This 27th day of June, 2016.

Council President

APPROVED: This 27th day of June, 2016.

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 June 27, 2016, as same appears in the minutes of record of said meeting.

City Clerk

Steve Boone <boones@mtnbrook.org>

1:20 PM (0 minutes ago)

to Christopher

I will prepare resolutions for the 6/27/2016 agenda authorizing you to proceed with the purchase and the related trade-ins.

On Tue, Jun 21, 2016 at 1:15 PM, Christopher Mullins <mullinsc@mtnbrook.org> wrote:
Steve -

As you know, we have two new ambulances scheduled for purchase in the FY16 Budget. We would like to purchase the units through the HGAC cooperative purchasing agreement, which the city is a member of. By doing so we will not be required to go through the bid process. We have researched several companies and compared tentative pricing. We believe that Demers offers the best apparatus in our price range. We further believe that the price point will be better using the HGAC.

You will notice that the total price for both units is \$398,200. We only have \$350,000 budgeted. The primary reason that our budget figures are off to this degree is due to a new standard adopted by the state in July 2015 (after budgets were submitted), requiring a new type of stretcher restraint system. This mandated system adds over \$20,000 to each unit. The power stretcher that we had originally intended to purchase separately (\$15,000) is also included in this price.

I will need to carry this over into the FY17 budget because of the uncertainty of a delivery date. The manufacturer anticipates having the units ready by September but said that there was a possibility that it could run into October.

I would assume that we will need to go ahead and declare the two units that we will be trading in as "surplus". See info below.

2009 Chevrolet CC4500 Type III - VIN 1GBE4V1919F401608
2009 Chevrolet CC4500 Type III - VIN 1GBE4V1959F401577

Link to HGAC
<https://www.hgacbuy.org/home/>
Our password is 14-4302

Thanks and let me know if you have any questions.

----- Forwarded message -----

From: Brad Appleton <appletonb@mtnbrook.org>
Date: Fri, Jun 17, 2016 at 1:33 PM
Subject: Fwd: HGAC contract: Revised
To: Adam Bomar <bomara@mtnbrook.org>, Heathe Watkins <watkinsh@mtnbrook.org>, Jonathan King <kingj@mtnbrook.org>, Andrew Gidley <gidleya@mtnbrook.org>, Stacey Cole <coles@mtnbrook.org>, Christopher Mullins <mullinsc@mtnbrook.org>, David Kennedy <kennedyd@mtnbrook.org>

----- Forwarded message -----

From: Rob Cartee <rcartee@eeprinc.com>
Date: Fri, Jun 17, 2016 at 1:00 PM
Subject: HGAC contract: Revised
To: Brad Appleton <appletonb@mtnbrook.org>

Brad, we got it done! Your total HGAC contract price is \$398,200 as requested.

- I'm showing the reduction as a "volume" discount in the bottom left section and I didn't remove anything else from your unpublished options. I really want you to get what you want.
- Stryker Power Load with ball charger options is included in Demers base price contract of \$160,560: Product code EA03 noted on the sheet.

What's next:

- Send the attached HGAC forms to Jackie Palmer at HGAC: jackie.palmer@h-gac.com
/ Direct: [713-993-2466](tel:713-993-2466) / Fax: [713-993-4548](tel:713-993-4548)
- Jackie will send me or you an order confirmation after she reviews.
- Upon receiving the order I will submit it for build with Demers (to get a head start I have already requested drawings)

I look forward to hearing from Jackie at HGAC soon!
Rob

robcartee
Ambulance Product Sales Manager
cell [256.466.2772](tel:256-466-2772)
rcartee@eeprinc.com



CONTRACT PRICING WORKSHEET
For MOTOR VEHICLES Only

Contract No.:

AM10-14

Date Prepared:

6/17/2016

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City Of Mountain Brook , Alabama	Contractor:	Demers, USA, Inc / Emergency Equipment Professionals, Inc.
Contact Person:	Brad Appleton	Prepared By:	John Scullin: Demers / Rob Cartee: EEP
Phone:	205-602-3473	Phone:	256-466-2772
Fax:		Fax:	
Email:	appletonb@mtnbrook.org	Email:	jscullin@demers-ambulances.com / rcartee@eeproinc.com

Product Code:	EA03	Description:	Type I, MXP150E FORD Diesel V8 P-up 4x4 F450 150"L x 95"W x 72" HR
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A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 160560

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
wiring prep for 2 way radio with antenna cables	85	fire extinguisher with bracket mounted	100
stairchair holder on electrical compartment door and half shelf	215	aluminum rub rails each side	260
hydraulic oxygen cylinder lift	2565	chrome license plate holder	95
oxygen regulator 50PSI manual	240	air ride: kelderman	6970
additional oxygen outlet curbside wall	205	Seven (7) 7x9 LED emergency lights on front of module	515
flowmeter quick connect	80	Two (2) grill mounted clear LED - wig wag X pattern	310
D cylinder storage (2) on side entry door	485	Two (2) LED lights at window height - rear	515
Inverter with battery charger: Xantrex 1000W	990	Two (2) amber LED, (2) red LED brake, (2) LED backup	1230
Shoreline: super auto eject 20 amp	105	Eight (8) red LED lights on door panels	1025
yellow grab bar package - with additional 90" ceiling rail	260	Mobility seat with cabinet, net, aux console	3280
attendant thermo formed seat with child safety device	275	Subtotal From Additional Sheet(s):	0
digital clock over rear doors with driver intention lights	410	Subtotal B:	20215

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
SEE ATTACHED SHEET: Un-Published Options worksheet			
		Subtotal From Additional Sheet(s):	37695
		Subtotal C:	37695

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 21%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	2	X Subtotal of A + B + C:	218470	=	Subtotal D:	436940
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E. H-GAC Order Processing Charge (Amount Per Current Policy) **Subtotal E:** 1000

F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
Trade in credit: for (2) Wheeled Coach / C4500 Ambul	-38000	Inspection Trip: (up to 3 people), Freight, admin, PDI	10200
Discounts: Volume disc, Ford GPC, 2014 chassis disc	-27869.2	NOTE! Stryker Power Load included in base cost: EA03	
Loose Equipment: (1)Stryker Power Pro &(1)compt kit	15929.2	Subtotal F:	-39740

Delivery Date: December 2016 (est)

G. Total Purchase Price (D+E+F): 398200

Demers Un-Published Options Worksheet: Mountain Brook Fire, Alabama

rev 2

	Un-Published Options:	Cost Per Truck:
UNPUBLISHED	Upgrade to LiquidSpring suspension	\$ 3,490.00
UNPUBLISHED	Two (2) amber LED turning arrows direction lights (intermediate side mounted)	\$ 365.00
UNPUBLISHED	Two (2) rear mid height red LED marker lights	\$ 155.00
UNPUBLISHED	Two (2) clear/red LED intersection lights with turning priority	\$ 315.00
UNPUBLISHED	Two (2) rear loading LED lights	\$ 365.00
UNPUBLISHED	Storage cabinet with LED strip lighting and flip up door	\$ 770.00
UNPUBLISHED	Custom radio communication installation	\$ 350.00
UNPUBLISHED	Buell - Air horns: to be mounted in valance below front bumper as high as possible.	\$ 2,600.00
UNPUBLISHED	Whelen Pioneer- Front Center - PFP1 - Flood FRONT: R / W / R / PIONEER / R / W / R	\$ 1,040.00
UNPUBLISHED	Federal EQ2B electronic Q	\$ 1,850.00
UNPUBLISHED	Glove storage in cab chassis doors - each side	\$ 450.00
UNPUBLISHED	Ground lighting - under entire module	\$ 555.00
UNPUBLISHED	PAIR of Whelen PIONEER scene lights, (1) each side, center, on separate switch 15degree	\$ 1,980.00
UNPUBLISHED	Diamond plate up entire front of extrusions see photo (Wraps corners)	\$ 900.00
UNPUBLISHED	Tablet mount in ECC for iPad (Ipad cradle and swivelpedestal mount)	\$ 850.00
UNPUBLISHED	1 Streamlight mounted in S2 - Fie Vulcan - Orange. Up high E504025	\$ 440.00
UNPUBLISHED	Holligan with Pac bracket in S1 on door - Florisant	\$ 225.00
UNPUBLISHED	TNT axe sledge tool with PAC mount	\$ 225.00
UNPUBLISHED	S3 - 1 SCBA mount, back wall, toward rear. For Scott. 45 minute bottle	\$ 280.00
UNPUBLISHED	S3 - 2 coat hooks on door - Phoenix	\$ 125.00
UNPUBLISHED	C3 - Solid divider with room for 3 backboards toward rear, 2 fixed shelves to front	\$ 950.00
UNPUBLISHED	Opticom - FrontCenter under white 9 series. Switched separate. HOT with DRIVE	\$ 2,450.00

UNPUBLISHED	Camera system - DVR - Backup, Interior, Forward and C/S blindspot- ROSCO Brand DV-231Camera	\$ 2,450.00
UNPUBLISHED	Put 2 map book slots in cab area. Florissant design	\$ 725.00
UNPUBLISHED	Mobility - Flip down, Second Patient HEAD SUPPORT YES, No foot support on S3 wall	\$ 890.00
UNPUBLISHED	Cardiac monitor tray, sliding and turning with ZOLL X Bracket on medical cabinet AFT CPR	\$ 1,635.00
UNPUBLISHED	Gloves over CPR seat	\$ 450.00
UNPUBLISHED	Additional condensor, C/S underneath	\$ 2,025.00
UNPUBLISHED	Chassis and module RED - PPG 71528 / GRAY - PPG 906254 (based on current unit layout only)	\$ 7,125.00
UNPUBLISHED	ADDITIONAL 110V outlet in Cardiac monitor area (quad outlet)	\$ 65.00
UNPUBLISHED	COMPX 200 (not 300) digital lock on narc box - upper ALS. Metal door with shocks. - Florissant	\$ 1,200.00
UNPUBLISHED	Fuse block in front ECC to wire in radios and other power. (YUMA Design- G16C-1049)	\$ 250.00
UNPUBLISHED	Intercom system between cab and patient compartment	\$ 150.00
	Total UNPUBLISHED OPTIONS:	\$ 37,695.00

RESOLUTION NO. 2016-081

WHEREAS, the City of Mountain Brook has issued an invitation to bid for the purchase and installation of two HVAC units on top of the roof of the Emmet O’Neal Library; and

WHEREAS, bids were received and opened at 10:00 a.m. on June 14, 2016, and the City received three bids:

Brown Mechanical Contractors, Inc.	– \$196,950.00
Metro Mechanical Services, Inc.	– \$207,097.00
Hardy Services	– \$212,373.00

WHEREAS, after examination of the bids, the City Council finds and determines that the bid of Brown Mechanical Contractors, Inc. is the lowest responsible bid; and

WHEREAS, the City finds and determines that the alternate bid for the purchase of an extended warranty (years 6–10) should also be awarded in the amount of \$7,000 (\$1,400/year); and

WHEREAS, the City finds that a change-order for expedited shipping of the 105-ton HVAC unit in consideration of a 5% (\$7,500) premium is warranted; now, therefore,

BE IT RESOLVED that the City Council hereby ratifies 1) the bid award to Brown Mechanical Contractors, Inc., 2) the purchase of an extended (years 6–10) warranty, and 3) expedited shipping of the 105-ton HVAC unit (to reduce the shipping time from eight to five weeks).

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to issue a purchase order for the purchase and installation of HVAC units in accordance with the terms of this Resolution and related bid specifications (Re: B-20160412-050).

ADOPTED: This 27th day of June, 2016.

Council President

APPROVED: This 27th day of June 2016.

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 June 27, 2016, as same appears in the minutes of record of said meeting.

City Clerk

Emmet O'Neal Library HVAC Bid



Thomas, Michael

Jun 14 (7 days ago)

to me

I have reviewed the bid proposals from Metro Mechanical, Brown Mechanical, and Hardy Services that were received today for the 10:00 A.M. bid opening. All three proposals contained requested information, pricing and documentation to confirm the scope of work was covered.

Of the three proposals, Brown Mechanical had the lowest base bid price of \$196,950.00. (Metro was \$207,097.00 and Hardy Services was \$212,373.00)

I spoke with Chip Pierce at Brown Mechanical confirming the manufacturer of equipment being proposed (Trane), and second tier contractors that will be utilized for electrical work (Summit) and crane hoisting of the units (Crane Works). We also discussed some general "means and methods" that will be implemented for the project and felt very comfortable with their initial direction and planning.

There was one bid add alternate that included the cost for extending the unit(s) compressor(s) warranty for years 6 thru 10 at \$1,400.00 per year. I would recommend accepting this alternate to assure coverage of the compressor cost for this extended period of time.

Therefore, after reviewing all information, I recommend the contract for the roof top equipment replacement at Emmet O'Neal Library be awarded to Brown Mechanical.

Respectfully

Michael Thomas, CHC
MEP Group Manager

mithomas@brasfieldgorrie.com
d: [205.714.1450](tel:205.714.1450) m: [205.229.0088](tel:205.229.0088)
o: [205.328.4000](tel:205.328.4000)

BRASFIELD & GORRIE, L.L.C.
3021 7th Avenue South
Birmingham, Alabama 35233

brasfieldgorrie.com

RE: Mountain Brook library electrical

Thomas, Michael

to chip, me

In accordance with the Invitation to Bid document dated May 25, 2016 from the City of Mountain Brook, Section C (Specific Requirements) listed details of the existing units for replacement. In addition, original contract drawings were e-mailed to bidding contractors June 1, 2016 for the benefit of matching replacement equipment for the bid. Therefore, the ultimate task of providing the correct replacement equipment will be the responsibility of the awarded contractor for the project.

In reviewing the Trane submittals for the replacement units for the above referenced project, please find the following comments: (These comments are not to be all inclusive of the overall intent to provide a complete and functioning system, but rather inquiries based on comparing numbers from the original contract documents and the unit data provided as the replacement units for the project.)

RTU-1

The original design documents for the library listed the leaving dry bulb (LDB) temperature at 56.0 degrees and the leaving dry bulb (LDB) temperature at 52.8 degrees. The proposed submittal lists the LDB at 59.1 degrees and the LWB at 57.53 degrees.

RTU-2

The original design documents for the library listed the leaving dry bulb (LDB) temperature at 55.4 degrees and the leaving dry bulb (LDB) temperature at 53.4 degrees. The proposed submittal lists the LDB at 64.22 degrees and the LWB at 61.12 degrees.

The original design sensible load was listed at 192 MBH and the new proposed unit is listed at 189.83 MBH

The original powered exhaust was listed at 5,500 CFM and the new proposed unit does not currently list the powered exhaust CFM.

Although there is not a formal Engineer Review of the submittals, please provide responses from Trane to the above comments to verify proposed units will provide expected results based on information provided during the bidding process.

We look forward to working with you on this project.

Respectfully

Mike Thomas, CHC
MEP Group Manager
Brasfield & Gorrie

RESOLUTION NO. 2016-082

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the compensation for service for municipal court justices shall be \$900 monthly for each judge effective July 1, 2016 and the judges shall balance their court schedules administratively.

ADOPTED: This 27th day of June, 2016.

Council President

APPROVED: This 27th day of June, 2016.

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 June 27, 2016, as same appears in the minutes of record of said meeting.

City Clerk

RESOLUTION NO. 2013-135

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the compensation for service for municipal court justices shall be \$450/[court] day effective October 1, 2013; and

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the compensation for service as a municipal prosecutor shall be \$110 per hour (plus out-of-pocket expenses) effective October 1, 2013.

ADOPTED: This 23rd day of September, 2013.



Council President

APPROVED: This 23rd day of September, 2013.



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 September 23, 2013, as same appears in the minutes of record of said meeting.



City Clerk

2013-135

M e m o

TO: Mayor Terry Oden

FROM: Carl Johnson, Burgin Kent, Massey Relfe and Steve Shaw

**RE: Municipal Court Compensation for Judges and Prosecutor
2013-2014**

DATE: August 22, 2013

Dear Mayor Oden:

Thank you for allowing us the opportunity to review the current compensation for the Municipal Court for the City of Mountain Brook for the Judges and the Prosecutor. We have had the opportunity to discuss this matter and have talked with several present and former Prosecutors and Judges for various cities in the area regarding their compensation. We have either talked directly with individuals or they have advised of their understanding of the various pay levels for cities such as Irondale, Leeds, Warrior, Trussville, Hoover, Vestavia and Homewood. We have also had the opportunity to review payments from the City of Mountain Brook for the year 2012. It is our understanding that at present the Judges are paid \$288.00 per day and the Prosecutor is paid \$90.00 per hour. We have outlined below our recommendation for consideration by the City for compensation for 2013-2014 fiscal year.

1. Judges - We would recommend consideration of an increase to \$450.00 per day. Based on our understanding for the payments for Judges Johnson and Williams (this excludes any pay for any other Judges who may have served) if the daily compensation was increased to \$450.00 this would result in a budget increase of the payment to the Judges in the amount of a \$8,454.00, for 2013-14.
2. Prosecutor - We would recommend consideration of an increase in the hourly rate to \$110.00 per hour. Upon reviewing the pay for the Prosecutor we reviewed a difference in pay at the current rate of \$90.00 per hour and a proposed recommendation of \$110.00 per hour. If the same number of hours were billed for 2013 as in 2012, this would result in a budget increase in the amount of a \$7,301.00, for 2013-14.
3. Combined Budget Increase - Assuming the number of days and hours are the same for 2013-14 as they were calendar year 2012, the combined increase in the budget would be approximately \$15,755.00.

If you wish for us to review further matters, we will be glad to do so but we wanted to go ahead and get this information to you for your consideration.

**MOUNTAIN BROOK CITY COUNCIL
MOUNTAIN BROOK, ALABAMA**

NOTICE OF PUBLIC HEARING

Notice is hereby given that, at its regular meeting on Monday, July 25, 2016, to be held at 7:00 p.m. at Mountain Brook City Hall, 56 Church Street, Mountain Brook, Alabama, 35213, the City Council of Mountain Brook, Alabama ("City Council") will consider the adoption of a resolution approving the Petition for Vacation of a portion of South Cove Drive filed by St. Luke's Episcopal Church, for the vacation of a portion of the improved street (South Cove Drive) as described herein below and identified on Exhibit A attached hereto:

A PART OF SOUTH COVE DRIVE SITUATED IN THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 4 , TOWNSHIP 18 SOUTH, RANGE 2 WEST , JEFFERSON COUNTY , ALABAMA , ACCORDING TO THE MAP OF SOUTH COVE ADDITION, AS RECORDED IN MAP BOOK 36, PAGE 75 IN THE PROBATE OFFICE OF JEFFERSON COUNTY , ALABAMA.

COMMENCE AT THE NORTHEAST CORNER OF LOT 2 ACCORDING TO SOUTH COVE ADDITION AS RECORDED IN MAP BOOK 36 PAGE 75, IN THE PROBATE OFFICE OF JEFFERSON COUNTY , ALABAMA; THENCE RUN SOUTHERLY ALONG THE WEST LINE OF SAID LOT 2 FOR 158.86 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2 AND A POINT ON THE NORTHERLY RIGHT OF WAY OF SOUTH COVE DRIVE AND THE POINT OF BEGINNING OF THE VACATION HEREIN DESCRIBED; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE AND ALONG SAID RIGHT OF WAY FOR 71.14 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SOUTH COVE DRIVE, AND THE NORTHWEST CORNER OF LOT 3 OF SAID RECORD MAP; THENCE TURN 90°00'00" LEFT AND RUN EASTERLY ALONG SAID RIGHT OF WAY FOR 23.25 FEET , TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 193.3 FEET, AND A CENTRAL ANGLE OF 32°00'00" ; THENCE RUN ALONG THE ARC OF SAID CURVE, AND RIGHT OF WAY FOR 83.78 FEET TO THE NORTHEAST CORNER OF LOT 3 OF SAID RECORD MAP; THENCE TURN 74°49'02" LEFT FROM THE TANGENT OF SAID CURVE AND RUN NORTHWESTERLY FOR 50.50 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE SOUTH COVE DRIVE AND THE SOUTHEAST CORNER OF LOT 2 OF SAID RECORD MAP, AND THE POINT OF BEGINNING OF A CURVE TO THE RIGHT; SAID CURVE HAVING A RADIUS OF 143.30 FEET, A CENTRAL ANGLE 22°24'49" AND A CHORD BEARING OF SOUTH 72°35'58" WEST; THENCE RUN ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT OF WAY FOR 56.06 FEET, TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 97°48'00' AND A CHORD BEARING OF SOUTH 72°35'38" WEST ; THENCE RUN ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY FOR 34.14 FEET; THENCE TURN 90°00'00" LEFT FROM THE TANGENT OF SAID CURVE AND RUN WESTERLY ALONG SAID RIGHT OF WAY FOR 20.00 FEET TO THE SOUTHWEST CORNER OF LOT 2 OF SAID RECORD MAP, AND THE POINT OF BEGINNING OF THE STREET VACATION HEREIN DESCRIBED. CONTAINING 5625 SQUARE FEET OR 0.13 ACRES, MORE OR LESS.

2016-083

St. Luke's Episcopal Church is the owner of Lots 2 and 3 South Cove Addition, as recorded in Map Book 36, Page 75, in the Office of the Judge of Probate of Jefferson County, Alabama, both of which abut that portion of the improved Street (South Cove Drive) proposed to be vacated pursuant to the petition.

At the time and place set forth above, the City Council will receive public comment with regard to the Petition for Vacation. Any citizen alleging to be affected by the proposed vacation may submit a written objection to the City Council prior to or may request an opportunity to be heard at the public hearing.

Questions regarding the matters that are the subject of this Notice may be directed to the undersigned in person or by telephone.

Dana Hazen
Director of Planning, Building & Sustainability
City of Mountain Brook, Alabama
Mountain City Hall
56 Church Street
Mountain Brook, Alabama 35213
(205) 802-3821

Published by posting at the following locations:

City Hall, 56 Church Street
Gilchrist Pharmacy, 2805 Cahaba Road
Overton Park, 3020 Overton Road
Cahaba River Walk, 3503 Overton Road
Jefferson County Courthouse

EXHIBIT A

Copy of Map

See attached.

SAINT LUKES EPISCOPAL CHURCH
RIGHT OF WAY VACATION EXHIBIT

1 5
BECKHAM'S RESURVEY OF
ACREAGE "C" OF GLENBROOK
MAP BOOK 34 PAGE 38

1
SOUTH COVE ADDITION
MAP BOOK 36 PAGE 75

POINT OF
COMMENCEMENT
ROW VACATION

POINT OF
BEGINNING
ROW VACATION

L=34.14'
R=20.00'
DELTA 87°48'00"

L=56.08'
R=143.30'
CB=S 72°30'36" W
DELTA = 22°24'49"

90°00'00"
20.00'
90°00'00"
TO TAN

SOUTH COVE DRIVE
50' R.O.W.

74°48'00"
TO TAN

VACATED RIGHT OF WAY

L=43.78'
R=183.30'
DELTA= 32°00'00"

SOUTH COVE ADDITION
MAP BOOK 36 PAGE 75

SCALE: 1" = 50'

ARRINGTON ENGINEERING
Civil Engineers - Surveyors - Land Planners
Office: 205-985-3215 Fax: 205-985-3216
2052 Veterans Road Birmingham AL 35244

03668522.1

RESOLUTION NO. 2016-084

BE IT RESOLVED that the City Council hereby authorizes the execution of three (3) service and facility use agreements, in the form as attached hereto subject to such minor changes as may be determined appropriate by parties to said agreements:

1. Mountain Brook Athletics, Inc. – Exhibit 1
2. Mountain Brook Soccer Association – Exhibit 2
3. Mountain Brook Lacrosse – Exhibit 3

ADOPTED: This 27th day of June, 2016.

Council President

APPROVED: This 27th day of June 2016.

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 June 27, 2016, as same appears in the minutes of record of said meeting.

City Clerk

EXHIBIT 1

STATE OF ALABAMA)
JEFFERSON COUNTY)

FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT ("Agreement") is made and entered into as of June 27, 2016, by and between MOUNTAIN BROOK ATHLETICS, INC., a not-for-profit corporation ("MBA"), and THE CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation organized under the laws of the State of Alabama ("City").

WHEREAS, the City has leased certain improved property (the "Premises") for recreational and athletic use by residents of the City under terms and conditions set forth in the lease between the City and the Board dated February 9, 2015, attached as Exhibit A (the "Lease"); and

WHEREAS, MBA has requested that City allow it to use portions of the Premises, from time to time, for its community athletic programs, and City has agreed to do so, subject to the terms and conditions of this Agreement, all of which are satisfactory to, and have been approved by MBA.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and covenants contained herein, MBA and City agree as follows:

1. **MBA Premises.** City agrees to grant MBA the right to use that portion of the Premises identified on Exhibit B to this Agreement (the "MBA Premises") upon the terms and conditions contained in this Agreement. MBA's rights hereunder shall be subject and subordinate to the terms and conditions of the Lease. To the extent that the terms and conditions of the Lease are inconsistent with the terms and conditions of this Agreement, the terms and conditions of the Lease shall be controlling.
2. **Term.** The term of this Agreement shall be for an initial term of five years beginning January 1, 2016, and ending on December 31, 2021, and shall be automatically extended from year to year thereafter unless prior to July 1 of any year, either of the parties has given written notice to the other party that it wishes to terminate this Agreement; provided, that in no event shall the term of this Agreement extend beyond the term of the Lease, even if such notice of termination has not been given. The terms and provisions of this Agreement shall apply to all extended terms of this Agreement. Either party shall have the right, at its expense, to record a memorandum of this Agreement in the office of the Judge of Probate of Jefferson County, Alabama.
3. **Annual Maintenance Fee.** In consideration of City permitting MBA to use the MBA Premises, as provided herein, and in consideration of City agreeing to maintain the MBA Premises as provided hereinafter, MBA shall pay City an annual maintenance

EXHIBIT 1

fee ("Annual Maintenance Fee"). The amount of the MBA Annual Maintenance Fee shall be \$60,261.16 per year and shall be increased to account for inflation every five (5) years by ten percent (10%) (the "Inflation Adjustment"). The first Inflation Adjustment shall be applied to the Annual Maintenance Fee due and payable on December 15, 2021. The Annual Maintenance Fee shall be due and payable on December 15 of each year this Agreement (or renewal thereof) is in effect. The first such Annual Maintenance Fee is due and payable on December 15, 2016.

City shall keep reasonably detailed records of the cost of maintaining the MBA Premises, and the records may be inspected by MBA, at its request.

In the event that this Agreement is terminated prior to the payment of the Annual Maintenance Fee for the year during which the termination occurs, MBA shall pay to City the Annual Maintenance Fee prorated as of the termination date on or before December 15 of the year in which termination occurs.

4. Use of Premises. The MBA Premises may be used by MBA and by its invitees, guests and those who participate in its athletic programs and other MBA sanctioned events ("MBA Activities"). With respect to any events sanctioned by MBA other than baseball, softball, tennis, or football events, prior approval must be obtained by MBA from City for said use.
5. Priority of Use. During the term of this Agreement, MBA shall have priority for the scheduling and use of the athletic facilities located on the MBA Premises, subject to the rights of the Board referred to in paragraph eleven in the Lease. The City hereby appoints MBA to act on City's behalf with respect to rights, duties, responsibilities and obligations set forth in paragraph 11 of the Lease; provided, that City may revoke such appointment, at any time, by written notice to MBA.
6. Construction of Improvements. Subject to the prior written approval of City, MBA may, at its expense, install or construct upon the MBA Premises such equipment, buildings, structures and other improvements as MBA may desire, including, but not limited to, athletic fields and related equipment, fences, roads, outdoor lighting equipment and grandstands, bleachers, and other seating facilities for spectators (hereinafter collectively called "Improvements"), provided such Improvements comply with all applicable ordinances, laws, regulations and building codes. The size of, type of, and materials used in, the Improvements shall be in the discretion of MBA, subject to the prior approval of City. During the term of this Agreement, City shall have the right to maintain, repair, alter, remove and replace any or all of the Improvements without the approval of MBA, provided, that all such work and construction shall be done in a manner and at times that will not unreasonably interfere with the operations of MBA.

EXHIBIT 1

7. Removal of Improvements. At any time within sixty (60) days after the expiration or early termination of this Agreement, MBA shall have the right to remove from the MBA Premises, at its expense, any or all of the Improvements then located upon the MBA Premises that which were constructed entirely by MBA or solely with MBA funds. City shall have the right to require MBA to remove any such Improvements, at any time prior to expiration or termination of this Agreement upon thirty (30) days written notice. If MBA does not do so, City may remove such Improvements at the cost of MBA. Any Improvements which are not removed by MBA from the MBA Premises after said notice shall become the property of City upon the expiration of said sixty-day period.
8. Maintenance and Repair of Premises and Grounds.
 - a. City shall generally maintain the MBA Premises in a clean and orderly condition and shall likewise generally maintain the Improvements. Such maintenance shall include lining the playing field, planting grass on the fields, cutting grass and providing landscaping. Any maintenance or repair work which is the obligation of City to perform may be performed by employees of City or, at the option of City, may be performed by another party who is an independent contractor or is acting in any other capacity.
 - b. Upon the termination or expiration of this Agreement, City shall thereafter have no further obligation to MBA to maintain the MBA Premises.
 - c. On or about November 1st of each year, MBA shall deliver to City a list of work which it would like for City to consider during the period between November 1st and the following January 15th. City may undertake such work in its sole discretion.
 - d. MBA will request parents of participants in its programs to assist in keeping the MBA Premises clean, and MBA will require the participants to remove and dispose of loose trash from dugouts, fence lines and fields after each game held on MBA Premises.
9. Rules and Regulations. MBA may adopt rules and regulations for the use of the MBA Premises by MBA. Any such rules and regulations shall be submitted to the City for its review and approval. City may adopt or implement such additional rules and regulations concerning use of the MBA Premises from time to time in its discretion.
10. Utilities. Utility service, including field lighting to the MBA Premises, is included in the Annual Maintenance Fee and MBA shall not be required to pay directly for utility services which are furnished to the MBA Premises, except for telephone service to the concession stand, which shall be paid for by MBA. Field lighting will be provided for scheduled practices and games only, unless special permission is obtained from City.

EXHIBIT 1

11. Concession Operations. MBA may operate and receive any profits from the sale of concessions on the MBA Premises during MBA Activities.
12. Tournaments. The MBA Premises may be used for Tournaments. All applications for Tournaments to be held on the MBA Premises must be submitted to City no later than thirty days before the beginning of such Tournament. "Tournaments" are defined as state, national, or regional tournaments involving teams other than those organized and operating under the supervision of MBA. If it is determined by City that the notice for any Tournament is not adequate, City shall not be obligated to prepare the field or fields which will be used for such Tournament.
13. Profits From Tournaments and other Activities of MBA. All profits derived from Tournaments and MBA Activities shall be used for the maintenance, repair, improvement and benefit of the MBA Premises ("the Improvement of the MBA Premises") or for MBA operations. Profits derived from Tournaments and MBA Activities in each year shall be used for the Improvement of the MBA Premises or operations during the calendar year in which such profits were earned or during the following calendar year. Notwithstanding the foregoing, MBA and City may agree that some or all of the profits from any year may be retained and spent during succeeding calendar years if specifically agreed upon in writing by MBA and City. MBA shall maintain true and accurate accounting records which will show its revenues, expenditures and profits for each fiscal year and which shall be made available for inspection by City upon request. If the MBA Activities are not exclusively held on the MBA Premises and involve facilities in other cities or jurisdictions, for the purposes of this paragraph, profits shall include only those profits specifically derived from use of the MBA Premises (if such can be identified) or the portion of the overall profits from MBA Activities attributable to use of such facilities.
14. Public Liability Insurance. During the entire term of this Agreement, MBA shall maintain, at its expense, general public liability insurance or similar insurance as it may consider necessary in connection with the MBA Premises (but in an amount of at least \$1,000,000.00). The City and the Board shall be named as additional insureds on such policy. The policy and the issuer of the policy shall be subject to the written approval of City, which approval shall not be unreasonably withheld. The policy shall provide that it may not be cancelled or any coverage thereunder reduced unless City and Board are given at least thirty days prior written notice of such cancellation or change. A copy of each such policy shall be delivered to the City Manager of City promptly upon its issuance.
15. Assignment. MBA shall not have the right, without the specific written permission of City, to assign its rights under this Agreement; provided, however, that MBA may assign its right to use some or all of the MBA Premises to Mountain Brook Soccer, Mountain Brook Lacrosse or other athletic entities or associations which have in place

EXHIBIT 1

a Facility Use Agreement with City upon notice to City. Any such assignment shall not relieve MBA of its obligations under this Agreement without the prior written consent of City. MBA shall have the right to permit a party or parties which are not boards or agencies of, or otherwise related to, City or MBA to manage or operate concession operations on the MBA Premises in any manner which is satisfactory to City and MBA.

16. Damages to Improvements; Fire Insurance. Neither City nor MBA will have the obligation to obtain fire or other casualty insurance on the Premises or Improvements thereupon. If the City insures the improvements and if some of the Premises shall be damaged by any casualty that is insurable under City's insurance policy on the Premises, City shall be entitled to receive the insurance proceeds therefrom and may elect to either retain the proceeds or restore the Premises. Nothing contained herein shall render MBA liable for any repairs to, rebuilding, or replacement of City's property on or about the Premises or shall otherwise obligate City to repair, replace, or restore the Premises or any Improvements thereupon.
17. Default. This Agreement may be terminated by either party if the other party commits a default hereunder and does not cure the default within the time periods specified hereinafter. In the event of any such default, the non-defaulting party may give written notice of such default to the defaulting party. If the defaulting party does not cure such default within thirty days of its receipt of such notice, this Agreement shall be considered terminated, except that, if the nature of the default is such that it cannot reasonably be cured within said thirty-day period, the non-defaulting party may not terminate this Agreement if the defaulting party begins the cure of the default within said thirty-day period and proceeds to complete the cure of such default with due diligence and within a reasonable period of time.
18. Laws and Regulations. MBA agrees to comply with all applicable laws, ordinances, orders, rules and regulations relating to the manner of their use and occupancy of the MBA Premises.
19. Covenants of City; Quiet Enjoyment. City warrants and represents to MBA that it has the right to permit MBA to use the MBA Premises under the terms of this Agreement, that the Lease has been duly executed by City, that Board has not given City any notice of default under the Lease, and that to the best of the knowledge, information, and belief of City, the Lease is a valid and binding obligation of the Board and City. City covenants to keep MBA in possession of the MBA Premises during the term of this Agreement, but City shall not be liable for the loss of use of the MBA Premises by the exercise of the power of eminent domain, and City agrees that it shall not exercise the power of eminent domain to terminate this Agreement or to obtain the MBA Premises or to terminate MBA's right to use the MBA Premises.

EXHIBIT 1

20. Covenants of City. MBA represents and warrants to City that it has the right to enter into this Agreement and that this Agreement has been duly authorized and approved by MBA.
21. Entry by City and Board. City and Board may enter and inspect the MBA Premises at any reasonable time for any reason.
22. Amendment of Agreement. This Agreement, including attachments, constitute the entire agreement between the parties hereto and may not be amended, modified, altered or changed in any respect except by an instrument in writing signed on behalf of the parties hereto.
23. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.
24. Notices. When any notice is required or permitted to be given in connection with this Agreement, such notice shall be given by depositing it in the United States mail (either certified mail or registered mail), postage prepaid and addressed as follows, or to any other address of which either party gives the other party written notice by the method provided herein:

to MBA:

Mountain Brook Athletics, Inc.
P.O. Box 530774
Birmingham, AL 35253
Attention: President

to City:

City of Mountain Brook
56 Church Street
Mountain Brook, Alabama 35213
Attention: City Manager
25. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, MBA and City, and their respective successors and assigns.
26. Captions. The captions used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.

EXHIBIT 1

- 27. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.
- 28. Administration of Contract by Park and Recreation Board. The City designates its Park and Recreation Board as the Administrator of this Agreement on behalf of City.

IN WITNESS WHEREOF, Mountain Brook Athletics, Inc. has caused this Agreement to be executed by its duly authorized President, and City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor, all as of the day and year first above written.

MOUNTAIN BROOK ATHLETICS, INC.

By: _____
Its President

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____
Lawrence T. Oden
Mayor

ATTEST:

EXHIBIT 1

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Richard Keller, whose name as President of Mountain Brook Athletics, Inc. is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of Mountain Brook Athletics, Inc.

Given under my hand and official seal, this the ____ day of _____, 2016.

Notary Public

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Lawrence T. Oden whose name as Mayor of the City of Mountain Brook, Alabama, is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of the City of Mountain Brook, Alabama.

Given under my hand and official seal, this the ____ day of _____, 2016.

Notary Public

EXHIBIT 1



20150325000302800 1/17
Bk: LR201511 Pg:27633
Jefferson County, Alabama
I certify this instrument filed on:
03/25/2015 01:00:21 PM LEASE
Judge of Probate- Alan L. King

STATE OF ALABAMA
JEFFERSON COUNTY

THIS INSTRUMENT PREPARED BY:
Whit Colvin
Bishop, Colvin, Johnson & Kent, LLC
1910 First Avenue North
Birmingham, AL 35203

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into as of the 9th day of February, 2015, by and between the BOARD OF EDUCATION OF THE CITY OF MOUNTAIN BROOK, a board of education in the State of Alabama (hereinafter called "Board") and the CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation organized under the laws of the State of Alabama (hereinafter called "City").

WHEREAS, the Board owns certain real estate adjacent to its school buildings upon which have been constructed recreational and athletic facilities; and

WHEREAS, City has contributed significant financial support for such recreational and athletic facilities; and

WHEREAS, City and Board entered into a lease dated October 1, 1989 whereby City and Board agreed to make the recreational and athletic facilities available, through the City, for recreational and athletic use by residents of the City under the terms and conditions set forth therein; and

WHEREAS, the lease has been beneficial to both City and Board, as well as students and residents and both City and Board desire to enter into a new lease to replace the original lease and its amendments.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, City and Board agree as follows:

1. Leased Premises. The Board leases to City, and City leases from Board, that certain real property in the City of Mountain Brook, Jefferson County, Alabama, outlined in yellow on Exhibits A-1 through A-6, which are attached hereto and incorporated herein, together with all buildings, improvements, rights-of-ways, licenses and other rights appurtenant thereto (the "Premises"), for and during the Initial Term (as hereinafter defined) and as may be extended as provided in this Lease. Board covenants to keep City in quiet possession of the Premises during the Term (but shall not be liable for the loss of use by eminent domain), subject, nevertheless, to the terms of this Lease.
2. Rent. City will pay Board, as rent for the Premises, the sum of One Dollar (\$1.00) per year.
3. Initial Term. The term of this Lease will commence on October 1, 2014 and will continue through the 30th day of September, 2024 (the "Initial Term").
4. Additional Terms. After the conclusion of the Initial Term, this Lease will automatically renew itself for additional successive terms of ten (10) years up to a maximum cumulative lease period of

2015-076

eighty (80) years ("Renewal Terms"). Notwithstanding the above, either City or Board may elect to terminate the Lease prior to the end of the Initial Term or any Renewal Term by giving the other party written notice no later than one hundred eighty (180) days before the end of the then current term, but only for the following reasons:

- a. Funds are not available to meet the obligations set forth in this Lease; or
- b. The Premises are no longer suitable or needed for City recreational purposes; or
- c. The Premises are needed by Board for construction of school buildings.

In the event of any of the foregoing and upon the provision of the specified notice, the Lease will be terminated as of the end of the then current term.

5. Use of Premises. City covenants and agrees to use and occupy the Premises for recreational and related municipal purposes, for community activities, and for other related activities as may be deemed by the City of Mountain Brook to be beneficial to its residents, licensees, invitees, and guests. The Premises may further be utilized as a location for the City's Park and Recreation Department; to store materials and items used to maintain the Premises; for communication facilities for the City, including telecommunication equipment and towers, radio facilities and similar facilities; and other uses ancillary to the primary recreational use of the Premises.

City will have the right to establish rules and regulations for use of the Premises for all purposes except for the Board related use described in Paragraph 11 of this Lease. City will have the discretion to determine applicable charges and fees in conjunction with its own activities and programs. Board will not be required to pay any such charges or fees for use of the Premises, except as is otherwise provided in this Lease. City will not be obligated to permit the use of the Premises, or any part thereof, for any program or event of the Community Education Program, or any other entity, which, in City's discretion, it cannot reasonably accommodate.

6. Condition of the Premises. The Premises are leased to City subject to existing easements, if any, and all laws, ordinances, orders and regulations of any lawful governmental authority having jurisdiction over the Premises. Nothing herein contained shall be construed as a warranty that the Premises are in good condition or are fit or suitable for the uses or purposes for which they are leased, and Board has made no representation or promises with respect to the Premises except as expressly set forth in this Lease. City has examined the Premises and accepts them in the physical condition that now exists (except as otherwise expressly provided in this Lease). The Premises are being leased "AS IS" and it is acknowledged that the City may need to make additional improvements to the Premises to make them suitable for the City's continued use.

Without limitation of the foregoing, Board specifically disclaims any express or implied covenants, warranties or representations (a) as to the past, present or future existence of any toxic substances or hazardous waste on or under the Premises or the improvements located thereon, (b) as to the compliance by the Premises or the use thereof with any applicable building or zoning codes or other land use regulations, any applicable environmental laws or regulations, or any other applicable laws or regulations, or (c) as to fitness for a particular purpose or of habitability of the Premises. City will be

responsible for any hazardous materials stored or utilized in the City's operations on the Premises and City's use of the Premises shall fully comply with all applicable building and zoning codes and other land use regulations, any applicable environmental laws or regulations and any other applicable laws or regulations. The foregoing covenants, warranties, and representations of the City shall survive the termination of this Lease.

7. Maintenance and Repairs. City will, throughout the Initial Term or Renewal Terms of this Lease, be responsible for all utility, operational, construction, maintenance and repair costs with respect to the Premises and any improvements thereupon, except as provided herein.

8. Annual Maintenance Fee. In consideration of City's agreement to maintain the Premises, Board will pay City an Annual Maintenance Fee. The Annual Maintenance Fee shall be ninety two thousand two hundred dollars (\$92,200.00) per year (unless otherwise adjusted pursuant to the provisions concerning extraordinary adjustment set forth below) and shall be increased to account for inflation every five (5) years by ten percent (10%) (the "Inflation Adjustment").

In any year that Board's Share of Operating Expenses, as defined on Exhibit B hereto, exceeds the Annual Maintenance Fee (including the Inflation Adjustment) for that year by twenty percent (20%) or more, the Board shall pay the Board's Share of Operating Expenses for that year and such shall be considered the Annual Maintenance Fee for that year.

The Annual Maintenance Fee shall be due and payable on December 15 of each year and shall cover the period from October 1 of the preceding year through September 30 of the year in which the payment is due. In the event that this Lease is terminated prior to the payment of the Annual Maintenance Fee for the Lease Year during which the termination occurs, Board shall pay to City the Annual Maintenance Fee prorated as of the termination date on or before December 15 of the year in which termination occurs. City shall keep records of all costs attributed to the Premises and will make those records available for inspection by the Board upon request.

9. Alterations and Improvements. City may make, at its expense, improvements, modifications, and alterations to the Premises including but not limited to the athletic fields and related equipment; fences; paved or unpaved driveways, roads and parking areas; outdoor lighting equipment; grandstands, bleachers and other seating facilities; restrooms, field houses, concession stands, press boxes, and other buildings; and playgrounds or similar facilities (collectively "Improvements"). The size and type of the materials used in the Improvements shall be in the discretion of the City. City shall have the right to maintain, repair, alter, remove, or replace the Improvements without the approval of the Board, provided that:

- a. All such work and construction shall be done in a manner and at such times that will not unreasonably interfere with the operation of any school now or hereafter located on the Board's property; and
- b. Such Improvements are consistent with the permitted uses for the Premises.

Notwithstanding the foregoing, the removal of any building from the Premises shall require the prior written consent of the Board, which consent shall not be unreasonably withheld.

No new Improvement that exceeds \$20,000.00 in cost will be constructed without the Board's approval. For such Improvements, the Board will pay one-third of the cost or as otherwise may be agreed upon by the parties. No new Improvement that exceeds \$5,000.00 in cost will be constructed without first notifying the Board in writing. At the end of each fiscal year, City shall provide Board with a written summary of the nature and value of any and all Improvements, and alterations to the Premises made by City during the preceding fiscal year (if any). City further agrees to provide, upon request, financial records and documents related to all such Improvements.

All improvements, modifications and alterations to the Premises shall adhere thereto and become the property of Board, with the exception of: machinery, playground equipment, equipment, outdoor recreational equipment and items, such items as are usually classified as furniture and trade fixtures, and such other items (other than leasehold improvements) which have been brought onto the Premises by and at the expense of City (collectively, "City Property"). Any such City Property shall remain the property of City, and City may remove the City Property provided all terms and conditions of this Lease have been complied with by City. In the event this Lease is terminated, as provided for in paragraph four (4) of this Lease, City shall be entitled to remove the City Property prior to the date of termination. Any City Property remaining on the Premises as of the date of termination shall become the property of the Board.

10. Care and Maintenance of Premises. City shall generally maintain the Premises in a clean and orderly manner and shall likewise generally maintain the Improvements and keep them in good repair during the term of this Lease. City will comply, at all times and in all respects, with all the applicable laws and ordinances relating to nuisance on or about the Premises, and the City will not by any act or omission render the Board liable for any violation thereof. City agrees to permit no waste of the Premises, but on the contrary to take good care of same, and upon termination of this Lease to surrender possession of same without notice.

11. Continued Use by Board. Board, its agents and representatives may enter the Premises at all reasonable times for the purpose of inspection thereof. The Board will have priority of use of the entire Premises for School Related Use. For the purposes of this Lease, "School Related Use" means Board directed or supervised programs and activities occurring during school hours while school is in session. The Board will also have priority of use for the following portions of the Premises for use other than School Related Use as provided herein:

Mountain Brook High School

Mountain Brook Jr. High School

Field # 7 and Softball Field House
Field # 1
Upper Soccer Field
Tennis Courts
Lower Soccer Fields

Football Field

The Board agrees, with respect to the portions of the Premises for which it maintains priority of use, to either provide City with a schedule of all events by July 1 of each year or to provide no less than forty-five days' notice as to the dates and times that it will use those portions of the Premises.

City has priority of use of the Premises during all times and for all purposes other than those specifically described above.

Board may continue to use the Premises from time to time for events and for other occasions upon reasonable notice to City, provided that such use does not conflict with any prior-scheduled event, meeting or gathering of the City or any of its sub-lessees. In the event the Board needs to utilize any part of the Premises during times when the City has priority of use due to exigent circumstances, the City agrees to make reasonable attempts to accommodate such need if it can be accommodated without undue hardship on the City.

12. Payment of Charges. City will furnish or arrange for the furnishing of all necessary utility services to the Premises and will pay promptly all related charges. Likewise, City agrees to pay all sewer rentals and other charges becoming due, levied under the authority of the laws of the State of Alabama or any laws approved subsequent to the execution of this lease, provided that said charges are allocable in whole or in part to the Premises. Notwithstanding the foregoing, each party will remain responsible for the payment for power and water services to the Premises pursuant to Exhibit C to this Lease. If Board elects to transfer to the City any utility service for which it has responsibility as set forth in Exhibit C, City will assume such responsibility and the Annual Maintenance Fee shall be increased by a utility supplement consisting of the annual cost of the utility being transferred averaged over the two fiscal years prior to the year of transfer.

Board and City shall each at its own expense and for its own benefit obtain and maintain whatever general public liability insurance or similar insurance each considers necessary in connection with the Premises. Neither City nor Board shall be obligated to obtain any such insurance by this Lease.

13. Destruction or Damages to Improvements. Neither City nor Board will have the obligation to obtain fire or other casualty insurance on the Premises or Improvements thereupon. If the City insures the Improvements and if some of the Premises shall be damaged by any casualty that is insurable under City's insurance policy on the Premises, City shall be entitled to receive the insurance proceeds therefrom and may elect to either retain the proceeds or restore the Premises. Nothing contained herein shall render Board liable for any repairs to, rebuilding, or replacement of City's property on or about the Premises or shall otherwise obligate City to repair, replace, restore the Premises or any Improvements thereupon.

14. Notices. All notices and demands authorized or required to be given to the City under any provision hereof must be in writing and given by certified mail or hand delivery addressed to the City at its principal office as follows:

City of Mountain Brook
Attn: Its City Manager
56 Church Street
Mountain Brook, Alabama 35213

All notices herein authorized or required to be given to the Board under any provision hereof must be in writing and given by certified mail or hand delivery addressed to the Board at its principal office as follows:

Mountain Brook Board of Education
Attn: Its Superintendent
32 Vine Street
Mountain Brook, Alabama 35213

15. Assignment or Subletting. City shall have the right to assign this Lease in part or in whole or to sublet the Premises or parts thereof to duly constituted boards, departments or agencies of the City or affiliates thereof and to the following corporations, groups or entities, their successors and assigns (collectively "Approved Sublessees"):

- a. Mountain Brook Athletics, Inc.
- b. Mountain Brook Soccer Association
- c. Mountain Brook Lacrosse Association
- d. American Tower Corporation (limited to the existing cell tower at Mountain Brook High School)
- e. Persons or Groups using Premises pursuant to City's Standard Rental Agreement, (current agreement attached as Exhibit D), as may be amended.

City may not assign its rights under this Lease or sublet all or any part of the Premises, permit occupation of the Premises or any part thereof, or grant any license for use of all or any of the Premises, to or by corporations, groups, entities or persons other than Approved Sublessees without the written consent of Board. As a condition precedent to such sub-letting, the sub-lessee must assume, in writing, all the obligations of the City hereunder, including, but not limited to, those obligations pertaining to use of the Premises under Paragraph 5. Unless stated otherwise herein, such assumption shall not operate to release City from any agreement or understanding on the part of City expressed or implied in this Lease. Notwithstanding the foregoing, City shall have the right to permit a party or parties other than Approved Sublessees to manage or operate one or more concession operations on Premises whether as a sublicensee, licensee, independent contractor or otherwise.

16. Waste Treatment Plant. The City currently operates and maintains a Waste Treatment Plant ("Plant") on the Premises to serve the Premises and some of the Board's facilities. City will continue to operate, inspect, maintain, repair, replace or improve the Plant, any related buildings and improvements as needed to serve the Premises. City may enlarge or improve the Plant as needed to serve the Premises; provided, however, that the City shall not be obligated to increase the Plant capacity due to Board use. Board will adopt or implement measures, as recommended by City, to ensure that its use of Plant does not compromise Plant operations or increase maintenance or operational costs by City.

17. Waiver. The failure of City or Board to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment of any such covenants, conditions or

options, but the same shall be and remain in full force and effect.

18. Binding Effect. The agreements, covenants, conditions and terms contained in this Lease shall bind and inure to the benefit of City and Board and their respective successors and permitted assigns.

19. Entire Agreement. This Lease contains the entire agreement between the parties hereto, and neither party is bound by any representation or agreements of any kind except as herein contained, and no amendments hereto shall be considered as effective unless and until the same shall be reduced to writing and executed by all the parties hereto.

20. Construction. The captions or headings in this Lease are provided for convenience only and shall not affect its construction or interpretation. All words used in this Lease shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The terms "herein", "hereof", "hereto" or "hereunder" or similar terms shall be deemed to refer to this Lease as a whole and not to a particular paragraph or section. The recitals and exhibits attached hereto shall be considered a part of this Lease.

21. Severability. If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Lease shall remain in full force and effect. Any provision of this Lease held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

22. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Lease and all of which, when taken together, shall be deemed to constitute one and the same instrument.

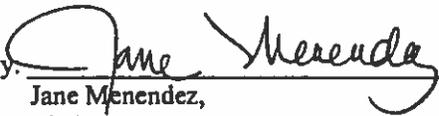
23. Force Majeure. The parties hereto shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond such party's control which shall include without limitation, civil commotion, war, warlike operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire and other casualty, inability to obtain any material services or financing or through acts of God.

IN WITNESS WHEREOF, City and Board have executed and delivered this Lease through their respective duly authorized representatives as of the date first above written. It is understood and agreed by the parties hereto that this Lease shall be binding upon the City and Board, and their assigns or successors in interest.

MOUNTAIN BROOK BOARD OF EDUCATION

ATTEST:


Mr. Richard Barlow
Superintendent and Secretary

By: 
Jane Menendez,
Chairman

CITY OF MOUNTAIN BROOK, ALABAMA

By: Virginia C. Smith
Virginia C. Smith
President, City Council

ATTEST:

Lawrence T. Oden
Lawrence T. Oden
Mayor

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Jane Menendez, whose name as Chairman of the Mountain Brook Board of Education is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, as such officer, and with full authority, executed the same voluntarily for and as the act of the Mountain Brook Board of Education.

Given under my hand and official seal, this the 23 day of March, 2015.

Steven A. Boone
Notary Public

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Virginia C. Smith, whose name as President of the City Council of the City of Mountain Brook, Alabama is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, as such officer, and with full authority, executed the same voluntarily for and as the act of the City of Mountain Brook, Alabama.

Given under my hand and official seal, this the 23 day of March, 2015.

Steven A. Boone
Notary Public

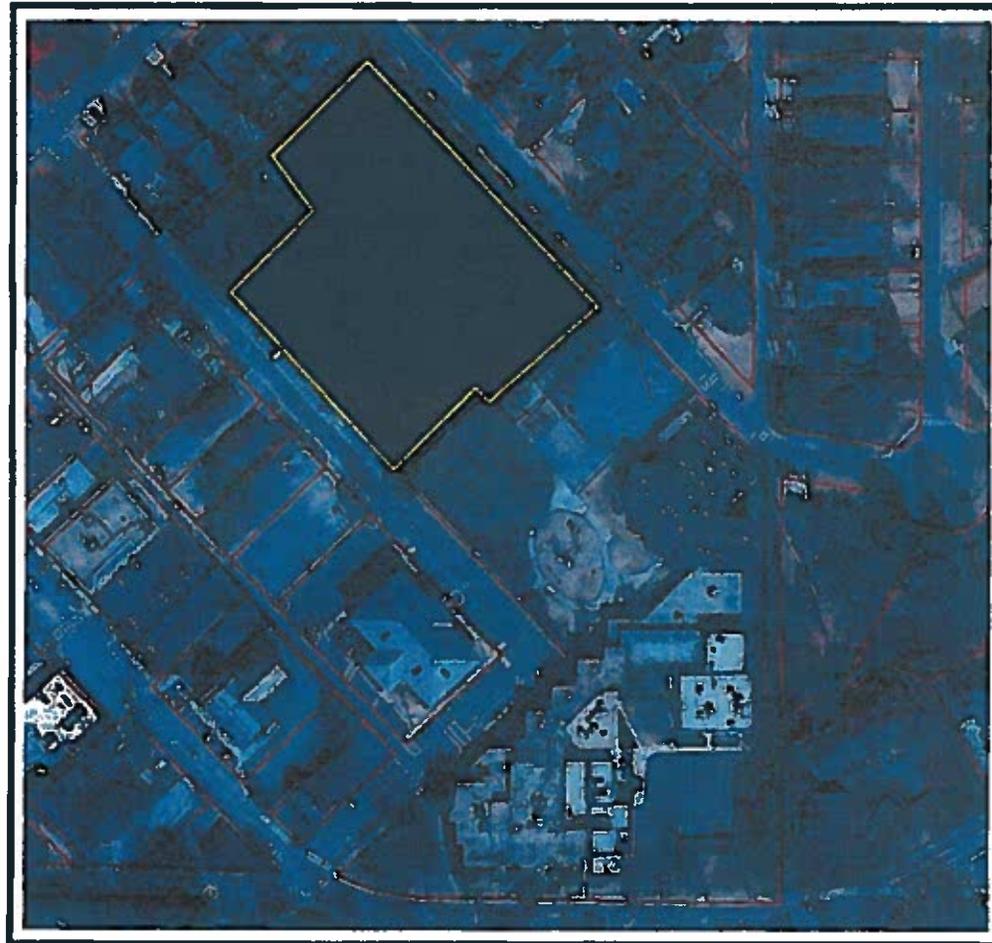
Mountain Brook High School



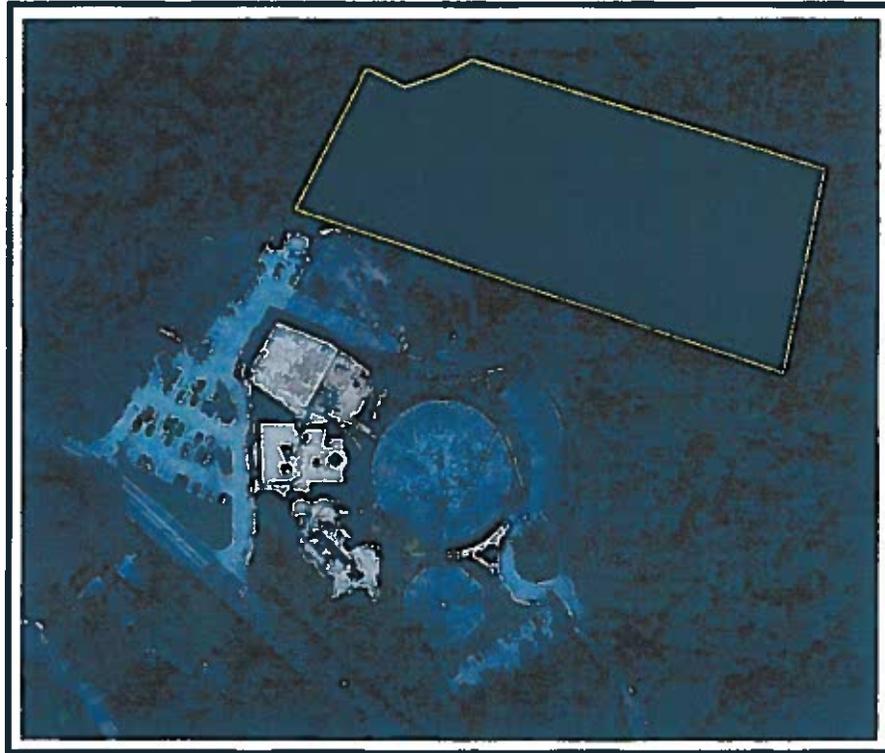
Mountain Brook Junior High



Crestline Elementary



Brookwood Forest Elementary



Cherokee Bend Elementary



Mountain Brook Elementary



EXHIBIT 1

Exhibit B

Board's Share of Operating Costs

The "Board's Share of Operating Costs" will be determined by adding the following components:

- a. Base Fee of \$30,000.00
- b. Phase 3 Fiscal Year Operating and Capital Expenses divided by 3
- c. Average Salary and Benefits of City Park Employees Assigned to Premises less \$30,000.00, divided by 3
- d. Chemical Costs less \$8,000.00, divided by 3
- e. Lighting Maintenance Costs divided by 10.

Exhibit C

Utility Payment Responsibility - Community Athletic Facilities

Location	Account No.	Meter No.	Responsible Party	
			City	BOE
Mountain Brook Elementary				
Water	270953-0	22022596	X	
Power	26936-41013	3063762		X
Cherokee Bend Elementary				
Water	167634-0	30040175		X
Power	16236-79015	3225430		X
Crestline Elementary				
Water	265441-1	22022958		X
Power	74012-21017	3063305		X
Brookwood Forest Elementary				
Water	146953-0	30039897		X
Power	07111-40000 Lite	3033941	X	
Junior High				
Water	976350-0	22022583		X
Power	00512-22005	3225437		X
High School				
Lower Soccer Fields				
Water	273801-0	30041251		X
Power	59112-72006 Soccer	30336937	X	
Upper Soccer Fields				
Water	Unable to determine which meter			X
Power	60162-72018	3032814		X
Athletic Complex				
Water	297542-0	9092185		X
Power	06118-70010 Field Lights	X40398	X	
	59322-72006 Baseball Field	303393	X	
Tennis Courts				
Water	N/A			N/A
Power:	34323-33002 Lighting	Unmetered	X	
	39000-32021 New Shop	3098098	X	
	58902-72004 Oakdale	3276539	X	
	49872-72000 SLM Sports Park	Unmetered	X	

EXHIBIT 1

CITY OF MOUNTAIN BROOK
JEFFERSON COUNTY, ALABAMA

RENTAL AGREEMENT

This agreement is entered into on this _____ day, of _____ 20____, by and between the City of Mountain Brook "City" through its Parks & Recreation Dept. as "Lessor", and _____ as "Lessee", for facilities owned and operated by City located at _____ "Facilities" Rental privileges are available to residents and groups where the majority of the group's memberships are Mountain Brook residents. All teams must submit a roster of team members that includes name, address, and phone number.

1. City hereby agrees that Lessee may use the facilities for the purpose of _____ during the period beginning on _____ / _____ / _____ from _____ o'clock until _____ A.M./P.M. (All activities shall cease at dusk in parks with no lighting and no later than 9:00 p.m. at lighted facilities.) (Except tennis courts - 10:00 p.m.).
2. During this period Lessee shall have full and complete use of the noted facilities for said purpose.
3. Alcoholic beverages and gambling strictly prohibited at all Parks & Recreation Board facilities.
4. All trash and litter must be disposed of before leaving facility.
5. Lessee agrees to pay the City the sum of \$ _____, which sum shall be paid to Lessor, upon the execution of this agreement at the M.B. Parks & Recreation office in accordance with the following fee schedule. Refunds are only available should the event be canceled by the Lessor:

Playing Fields: Football, Soccer, Baseball & Softball.	
Daytime	\$30/ hr. per field
Lighted	\$40/ hr. per field
Setup/lined off	\$15/ ea. per field
Tennis Courts	\$12/ hr. per court
Overton Pavilion	\$35/ 2 hrs. (Residents of Mountain Brook)
	\$70/ 2 hrs. (Non-Residents of Mountain Brook)

PAYMENT - Make Check or Money Order Payable to: City of Mountain Brook

To reserve the above facilities, contact the following:

LaTorya Mines, Parks & Recreation Dept.	(205) 802-3877	Overton Park
Allen Jones, Parks & Recreation Dept.	(205) 802-4018	Turf Grass Fields
Brad Hart, Mtn. Brook Athletics	(205) 414-3854	Baseball, Softball, Football

6. Lessee agrees to indemnify and hold harmless Lessor, its officials, officers, employees and agents against all actions, causes of action, demands, damages, losses and expenses of any kind, including but not limited to, attorney's fees and court costs which may be asserted against, or suffered by, City on account of, or rising out of, this agreement or the use of facilities by Lessee. In addition, Lessee assumes all risks in connection with its use of the facilities.
7. The term of this agreement may not be extended or modified except by a written agreement between City and Lessee.
8. By using the facilities, Lessee agrees that it shall comply with all applicable laws, ordinances, rules and regulations and that it shall not allow any activities to be conducted at the Facilities, which are unsafe, dangerous or improper in any manner.
9. If Lessee breaches any term of this agreement, City shall have the right to terminate this agreement by written or verbal notice to Lessee.

Executed on this _____ day of _____, 20_____

Signature: _____ Print Name: _____
 Title: _____ Phone: _____
 Email: _____ Witness: _____

20150325000302800 17/17
 Bk: LR201511 Pg:27633
 Jefferson County, Alabama
 03/25/2015 01:00:21 PM LEASE
 Fee - \$65.00

Total of Fees and Taxes-\$65.00
 MORTES

EXHIBIT 1

EXHIBIT B

MBA Premises

Mountain Brook High School

All Baseball and Softball Fields except High School Baseball Field

Mountain Brook Junior High School

Football Field - Fall only

Cherokee Bend Elementary

All Playing Fields

Crestline Elementary School

All Playing Fields

Mountain Brook Elementary School

Playing Field – Fall: Sunday through Wednesday

EXHIBIT 1

EXHIBIT C

MBA's Annual Maintenance Fee

The MBA Annual Maintenance Fee will be calculated by adding the following components:

- a. Base Fee of \$25,000.00
- b. Phase 3 (Mountain Brook Elementary, Cherokee Bend Elementary and Brookwood Forest Elementary) Fiscal Year Operating and Capital Expenses divided by 6
- c. Average Salary and Benefits of City Park Employees Assigned to Premises divided by 6
- d. Chemical Costs incurred by City divided by 6
- e. Lighting Maintenance Costs multiplied by 23%

EXHIBIT 2

STATE OF ALABAMA)
JEFFERSON COUNTY)

FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT ("Agreement") is made and entered into as of June 27, 2016, by and between MOUNTAIN BROOK SOCCER ASSOCIATION, a not-for-profit corporation ("MB Soccer"), and THE CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation organized under the laws of the State of Alabama ("City").

WHEREAS, the City has leased certain improved property (the "Premises") for recreational and athletic use by residents of the City under terms and conditions set forth in the lease between the City and the Board dated February 9, 2015, attached as Exhibit A (the "Lease"); and

WHEREAS, MB Soccer has requested that City allow it to use portions of Premises from time to time, for its community athletic programs, and City has agreed to do so, subject to the terms and conditions of this Agreement, all of which are satisfactory to, and have been approved by MB Soccer.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and covenants contained herein, MB Soccer and City agree as follows:

1. MB Soccer Premises. City agrees to grant MB Soccer the right to use that portion of the Premises identified on Exhibit B to this Agreement (the "MB Soccer Premises") upon the terms and conditions contained in this Agreement. MB Soccer's rights hereunder shall be subject and subordinate to the terms and conditions of the Lease. To the extent that the terms and conditions of the Lease are inconsistent with the terms and conditions of this Agreement, the terms and conditions of the Lease shall be controlling.
2. Term. The term of this Agreement shall be for an initial term of five years beginning January 1, 2016, and ending on December 31, 2021, and shall be automatically extended from year to year thereafter unless prior to July 1 of any year, either of the parties has given written notice to the other party that it wishes to terminate this Agreement; provided, that in no event shall the term of this Agreement extend beyond the term of the Lease, even if such notice of termination has not been given. The terms and provisions of this Agreement shall apply to all extended terms of this Agreement. Either party shall have the right, at its expense, to record a memorandum of this Agreement in the office of the Judge of Probate of Jefferson County, Alabama.
3. Annual Maintenance Fee. In consideration of City permitting MB Soccer to use the MB Soccer Premises, as provided herein, and in consideration of City agreeing to

EXHIBIT 2

maintain the MB Soccer Premises as provided hereinafter, MB Soccer shall pay City an annual maintenance fee ("Annual Maintenance Fee"). The amount of the MB Soccer Annual Maintenance Fee shall be \$45,140.79 per year and shall be increased to account for inflation every five (5) years by ten percent (10%) (the "Inflation Adjustment"). The first Inflation Adjustment shall be applied to the Annual Maintenance Fee due and payable on December 15, 2021. The Annual Maintenance Fee shall be due and payable on December 15 of each year this Agreement (or renewal thereof) is in effect. The first such Annual Maintenance Fee is due and payable on December 15, 2016.

City shall keep reasonably detailed records of the cost of maintaining the MB Soccer Premises, and the records may be inspected by MB Soccer, at its request.

In the event that this Agreement is terminated prior to the payment of the Annual Maintenance Fee for the year during which the termination occurs, MB Soccer shall pay to City the Annual Maintenance Fee prorated as of the termination date on or before December 15 of the year in which termination occurs.

4. Use of Premises. The MB Soccer Premises may be used by MB Soccer and by its invitees, guests and those who participate in its athletic programs and other MB Soccer sanctioned events ("MB Soccer Activities"). With respect to any events sanctioned by MB Soccer other than soccer events, prior approval must be obtained by MB Soccer from City for said use.
5. Priority of Use. During the term of this Agreement, MB Soccer shall have priority for the scheduling and use of the athletic facilities located on the MB Soccer Premises, subject to the rights of the Board referred to in paragraph eleven in the Lease. The City hereby appoints MB Soccer to act on City's behalf with respect to rights, duties, responsibilities and obligations set forth in paragraph 11 of the Lease; provided, that City may revoke such appointment, at any time, by written notice to MB Soccer.
6. Construction of Improvements. Subject to the prior written approval of City, MB Soccer may, at its expense, install or construct upon the MB Soccer Premises such equipment, buildings, structures and other improvements as MB Soccer may desire, including, but not limited to, athletic fields and related equipment, fences, roads, outdoor lighting equipment and grandstands, bleachers, and other seating facilities for spectators (hereinafter collectively called "Improvements"), provided such Improvements comply with all applicable ordinances, laws, regulations and building codes. The size of, type of, and materials used in, the Improvements shall be in the discretion of MB Soccer, subject to the prior approval of City. During the term of this Agreement, City shall have the right to maintain, repair, alter, remove and replace any or all of the Improvements without the approval of MB Soccer, provided, that all such

EXHIBIT 2

work and construction shall be done in a manner and at times that will not unreasonably interfere with the operations of MB Soccer.

7. Removal of Improvements. At any time within sixty (60) days after the expiration or early termination of this Agreement, MB Soccer shall have the right to remove from the MB Soccer Premises, at its expense, any or all of the Improvements which are located upon the MB Soccer Premises at that time, which were constructed entirely by MB Soccer, or solely with MB Soccer funds. City shall have the right to require MB Soccer to remove any such Improvements at any time prior to expiration or termination of this Agreement, upon thirty (30) days written notice. If MB Soccer does not do so, City may remove such Improvements at the cost of MB Soccer. Any Improvements which are not removed by MB Soccer from the MB Soccer Premises after said notice shall become the property of City upon the expiration of said sixty-day period.
8. Maintenance and Repair of Premises and Grounds.
 - a. City shall generally maintain the MB Soccer Premises in a clean and orderly condition and shall likewise generally maintain the Improvements. Such maintenance shall include lining the playing fields (if requested), planting grass on the fields, cutting grass and providing landscaping. Any maintenance or repair work which is the obligation of City to perform may be performed by employees of City or, at the option of City, may be performed by another party who is an independent contractor or is acting in any other capacity.
 - b. Upon the termination or expiration of this Agreement, City shall thereafter have no further obligation to MB Soccer to maintain the MB Soccer Premises.
 - c. On or about November 1st of each year, MB Soccer shall deliver to City a list of work which it would like for City to consider during the period between November 1st and the following January 15th. City may undertake such work in its sole discretion.
 - d. MB Soccer will request parents of participants in its programs to assist in keeping the MB Soccer Premises clean, and MB Soccer will require the participants to remove and dispose of loose trash from fence lines, fields and other parts of the MB Soccer Premises after each game or event held thereupon.
9. Rules and Regulations. MB Soccer Rules may adopt rules and regulations for the use of the MB Soccer Premises by MB Soccer. Any such rules and regulations shall be submitted to the City for its review and approval. City may adopt or implement such

EXHIBIT 2

additional rules and regulations concerning use of the MB Soccer Premises from time to time in its discretion.

10. Utilities. Utility service, including field lighting to the MB Soccer Premises, is included in the Annual Maintenance Fee and MB Soccer shall not be required to pay directly for utility services which are furnished to the MB Soccer Premises which shall be paid for by MB Soccer. Field lighting will be provided for scheduled practices and games only, unless special permission is obtained from City.
11. Concession Operations. MB Soccer may operate and receive any profits from the sale of concessions on the MB Soccer Premises during MB Soccer Activities.
12. Tournaments. The MB Soccer Premises may be used for Tournaments. All applications for Tournaments to be held on the MB Soccer Premises must be submitted to City no later than thirty days before the beginning of such Tournament. "Tournaments" are defined as state, national, or regional Tournaments involving teams other than those organized and operating under the supervision of MB Soccer. If it is determined by City that the notice for any Tournament is not adequate, City shall not be obligated to prepare the field or fields which will be used for such Tournament.
13. Profits From Tournaments and other Activities of MB Soccer. All profits derived from tournaments and MB Soccer Activities shall be used for the maintenance, repair, improvement and benefit of the MB Soccer Premises ("the Improvement of the MB Soccer Premises") or for MB Soccer operations. Profits derived from tournaments or MB Soccer Activities in each year shall be used for the Improvement of the MB Soccer Premises or operations during the calendar year in which such profits were earned or during the following calendar year. Notwithstanding the foregoing, MB Soccer and City may agree that some or all of the profits from any year may be retained and spent during succeeding calendar years if specifically agreed upon in writing by MB Soccer and City. MB Soccer shall maintain true and accurate accounting records which will show its revenues, expenditures and profits for each fiscal year and which shall be made available for inspection by City upon request. If the MB Soccer Activities are not exclusively held on the MB Soccer Premises and involve facilities in other cities or jurisdictions, for the purposes of this paragraph, profits shall include only those profits specifically derived from use of the MB Soccer Premises (if such can be identified) or the portion of the overall profits from MB Soccer Activities attributable to use of such facilities.
14. Public Liability Insurance. During the entire term of this Agreement, MB Soccer shall maintain, at its expense, general public liability insurance or similar insurance as it may consider necessary in connection with the MB Soccer Premises (but in an amount of at least \$1,000,000.00). The City and the Board shall be named as additional insureds on such policy. The policy and the issuer of the policy shall be subject to the

EXHIBIT 2

written approval of City, which approval shall not be unreasonably withheld. The policy shall provide that it may not be cancelled or any coverage thereunder reduced unless City and Board are given at least thirty days prior written notice of such cancellation or change. A copy of each such policy shall be delivered to the City Manager of City promptly upon its issuance.

15. Assignment. MB Soccer shall not have the right, without the specific written permission of City, to assign its rights under this Agreement provided, however, that MB Soccer may assign its right to use some or all of the MB Soccer Premises to Mountain Brook Athletics, Inc., Mountain Brook Lacrosse or other athletic entities or associations which have in place a Facility Use Agreement with City, upon notice to City. Any such assignment shall not relieve MB Soccer of its obligations under this Agreement without the prior written consent of City. Provided, however, MB Soccer shall have the right to permit a party or parties which are not boards or agencies of, or otherwise related to, City or MB Soccer to manage or operate concession operations on the MB Soccer Premises in any manner which is satisfactory to City and MB Soccer.
16. Damages to Improvements; Fire Insurance. Neither City nor MB Soccer will have the obligation to obtain fire or other casualty insurance on the Premises or Improvements thereupon. If the City insures the improvements and if some of the Premises shall be damaged by any casualty that is insurable under City's insurance policy on the Premises, City shall be entitled to receive the insurance proceeds therefrom and may elect to either retain the proceeds or restore the Premises. Nothing contained herein shall render MB Soccer liable for any repairs to, rebuilding, or replacement of City's property on or about the Premises or shall otherwise obligate City to repair, replace, or restore the Premises or any Improvements thereupon.
17. Default. This Agreement may be terminated by either party if the other party commits a default hereunder and does not cure the default within the time periods specified hereinafter. In the event of any such default, the non-defaulting party may give written notice of such default to the defaulting party. If the defaulting party does not cure such default within thirty days of its receipt of such notice, this Agreement shall be considered terminated, except that, if the nature of the default is such that it cannot reasonably be cured within said thirty-day period, the non-defaulting party may not terminate this Agreement if the defaulting party begins the cure of the default within said thirty-day period and proceeds to complete the cure of such default with due diligence and within a reasonable period of time.
18. Laws and Regulations. MB Soccer agrees to comply with all applicable laws, ordinances, orders, rules and regulations relating to the manner of their use and occupancy of the MB Soccer Premises.

EXHIBIT 2

19. Covenants of City: Quiet Enjoyment. City warrants and represents to MB Soccer that it has the right to permit MB Soccer to use the MB Soccer Premises under the terms of this Agreement, that the Lease has been duly executed by City, that Board has not given City any notice of default under the Lease, and that to the best of the knowledge, information, and belief of City, the Lease is a valid and binding obligation of the Board and City. City covenants to keep MB Soccer in possession of the MB Soccer Premises during the term of this Agreement, but City shall not be liable for the loss of use of the MB Soccer Premises by the exercise of the power of eminent domain, and City agrees that it shall not exercise the power of eminent domain to terminate this Agreement or to obtain the MB Soccer Premises or to terminate MB Soccer's right to use the MB Soccer Premises.
20. Covenants of City. MB Soccer represents and warrants to City that it has the right to enter into this Agreement and that this Agreement has been duly authorized and approved by MB Soccer.
21. Entry by City and Board. City and Board may enter and inspect the MB Soccer Premises at any reasonable time.
22. Amendment of Agreement. This Agreement, including attachments, constitute the entire agreement between the parties hereto and may not be amended, modified, altered or changed in any respect except by an instrument in writing signed on behalf of the parties hereto.
23. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.
24. Notices. When any notice is required or permitted to be given in connection with this Agreement, such notice shall be given by depositing it in the United States mail (either certified mail or registered mail), postage prepaid and addressed as follows, or to any other address of which either party gives the other party written notice by the method provided herein:

to MB Soccer:

Mountain Brook Soccer Association
3976 East Street
Birmingham, AL 35243
Attention: President

EXHIBIT 2

to City:

City of Mountain Brook
56 Church Street
Mountain Brook, Alabama 35213
Attention: City Manager

- 25. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, MB Soccer and City, and their respective successors and assigns.
- 26. Captions. The captions used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.
- 27. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.
- 28. Administration of Contract by Park and Recreation Board. The City designates its Park and Recreation Board as the Administrator of this Agreement on behalf of City.

IN WITNESS WHEREOF, Mountain Brook Soccer Association has caused this Agreement to be executed by its duly authorized President, and City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor, all as of the day and year first above written.

MOUNTAIN BROOK SOCCER ASSOCIATION

By: _____
Its President

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____
Lawrence T. Oden
Mayor

ATTEST:

EXHIBIT 2

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that _____, whose name as President of Mountain Brook Soccer Association is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of Mountain Brook Soccer Association

Given under my hand and official seal, this the ____ day of _____, 2016.

Notary Public

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Lawrence T. Oden whose name as Mayor of the City of Mountain Brook, Alabama, is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of the City of Mountain Brook, Alabama.

Given under my hand and official seal, this the ____ day of _____, 2016.

Notary Public

EXHIBIT 2



20150325000302000 1/17
Bk: LR201511 Pg: 27633
Jefferson County, Alabama
I certify this instrument filed on:
03/25/2015 01:00:21 PM LEASE
Judge of Probate- Alan L. King

STATE OF ALABAMA
JEFFERSON COUNTY

THIS INSTRUMENT PREPARED BY:
Whit Colvin
Bishop, Colvin, Johnson & Kent, LLC
1910 First Avenue North
Birmingham, AL 35203

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into as of the 9th day of February, 2015, by and between the BOARD OF EDUCATION OF THE CITY OF MOUNTAIN BROOK, a board of education in the State of Alabama (hereinafter called "Board") and the CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation organized under the laws of the State of Alabama (hereinafter called "City").

WHEREAS, the Board owns certain real estate adjacent to its school buildings upon which have been constructed recreational and athletic facilities; and

WHEREAS, City has contributed significant financial support for such recreational and athletic facilities; and

WHEREAS, City and Board entered into a lease dated October 1, 1989 whereby City and Board agreed to make the recreational and athletic facilities available, through the City, for recreational and athletic use by residents of the City under the terms and conditions set forth therein; and

WHEREAS, the lease has been beneficial to both City and Board, as well as students and residents and both City and Board desire to enter into a new lease to replace the original lease and its amendments.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, City and Board agree as follows:

1. Leased Premises. The Board leases to City, and City leases from Board, that certain real property in the City of Mountain Brook, Jefferson County, Alabama, outlined in yellow on Exhibits A-1 through A-6, which are attached hereto and incorporated herein, together with all buildings, improvements, rights-of-ways, licenses and other rights appurtenant thereto (the "Premises"), for and during the Initial Term (as hereinafter defined) and as may be extended as provided in this Lease. Board covenants to keep City in quiet possession of the Premises during the Term (but shall not be liable for the loss of use by eminent domain), subject, nevertheless, to the terms of this Lease.
2. Rent. City will pay Board, as rent for the Premises, the sum of One Dollar (\$1.00) per year.
3. Initial Term. The term of this Lease will commence on October 1, 2014 and will continue through the 30th day of September, 2024 (the "Initial Term").
4. Additional Terms. After the conclusion of the Initial Term, this Lease will automatically renew itself for additional successive terms of ten (10) years up to a maximum cumulative lease period of

2015-076

eighty (80) years ("Renewal Terms"). Notwithstanding the above, either City or Board may elect to terminate the Lease prior to the end of the Initial Term or any Renewal Term by giving the other party written notice no later than one hundred eighty (180) days before the end of the then current term, but only for the following reasons:

- a. Funds are not available to meet the obligations set forth in this Lease; or
- b. The Premises are no longer suitable or needed for City recreational purposes; or
- c. The Premises are needed by Board for construction of school buildings.

In the event of any of the foregoing and upon the provision of the specified notice, the Lease will be terminated as of the end of the then current term.

5. Use of Premises. City covenants and agrees to use and occupy the Premises for recreational and related municipal purposes, for community activities, and for other related activities as may be deemed by the City of Mountain Brook to be beneficial to its residents, licensees, invitees, and guests. The Premises may further be utilized as a location for the City's Park and Recreation Department; to store materials and items used to maintain the Premises; for communication facilities for the City, including telecommunication equipment and towers, radio facilities and similar facilities; and other uses ancillary to the primary recreational use of the Premises.

City will have the right to establish rules and regulations for use of the Premises for all purposes except for the Board related use described in Paragraph 11 of this Lease. City will have the discretion to determine applicable charges and fees in conjunction with its own activities and programs. Board will not be required to pay any such charges or fees for use of the Premises, except as is otherwise provided in this Lease. City will not be obligated to permit the use of the Premises, or any part thereof, for any program or event of the Community Education Program, or any other entity, which, in City's discretion, it cannot reasonably accommodate.

6. Condition of the Premises. The Premises are leased to City subject to existing easements, if any, and all laws, ordinances, orders and regulations of any lawful governmental authority having jurisdiction over the Premises. Nothing herein contained shall be construed as a warranty that the Premises are in good condition or are fit or suitable for the uses or purposes for which they are leased, and Board has made no representation or promises with respect to the Premises except as expressly set forth in this Lease. City has examined the Premises and accepts them in the physical condition that now exists (except as otherwise expressly provided in this Lease). The Premises are being leased "AS IS" and it is acknowledged that the City may need to make additional improvements to the Premises to make them suitable for the City's continued use.

Without limitation of the foregoing, Board specifically disclaims any express or implied covenants, warranties or representations (a) as to the past, present or future existence of any toxic substances or hazardous waste on or under the Premises or the improvements located thereon, (b) as to the compliance by the Premises or the use thereof with any applicable building or zoning codes or other land use regulations, any applicable environmental laws or regulations, or any other applicable laws or regulations, or (c) as to fitness for a particular purpose or of habitability of the Premises. City will be

responsible for any hazardous materials stored or utilized in the City's operations on the Premises and City's use of the Premises shall fully comply with all applicable building and zoning codes and other land use regulations, any applicable environmental laws or regulations and any other applicable laws or regulations. The foregoing covenants, warranties, and representations of the City shall survive the termination of this Lease.

7. Maintenance and Repairs. City will, throughout the Initial Term or Renewal Terms of this Lease, be responsible for all utility, operational, construction, maintenance and repair costs with respect to the Premises and any improvements thereupon, except as provided herein.

8. Annual Maintenance Fee. In consideration of City's agreement to maintain the Premises, Board will pay City an Annual Maintenance Fee. The Annual Maintenance Fee shall be ninety two thousand two hundred dollars (\$92,200.00) per year (unless otherwise adjusted pursuant to the provisions concerning extraordinary adjustment set forth below) and shall be increased to account for inflation every five (5) years by ten percent (10%) (the "Inflation Adjustment").

In any year that Board's Share of Operating Expenses, as defined on Exhibit B hereto, exceeds the Annual Maintenance Fee (including the Inflation Adjustment) for that year by twenty percent (20%) or more, the Board shall pay the Board's Share of Operating Expenses for that year and such shall be considered the Annual Maintenance Fee for that year.

The Annual Maintenance Fee shall be due and payable on December 15 of each year and shall cover the period from October 1 of the preceding year through September 30 of the year in which the payment is due. In the event that this Lease is terminated prior to the payment of the Annual Maintenance Fee for the Lease Year during which the termination occurs, Board shall pay to City the Annual Maintenance Fee prorated as of the termination date on or before December 15 of the year in which termination occurs. City shall keep records of all costs attributed to the Premises and will make those records available for inspection by the Board upon request.

9. Alterations and Improvements. City may make, at its expense, improvements, modifications, and alterations to the Premises including but not limited to the athletic fields and related equipment; fences; paved or unpaved driveways, roads and parking areas; outdoor lighting equipment; grandstands, bleachers and other seating facilities; restrooms, field houses, concession stands, press boxes, and other buildings; and playgrounds or similar facilities (collectively "Improvements"). The size and type of the materials used in the Improvements shall be in the discretion of the City. City shall have the right to maintain, repair, alter, remove, or replace the Improvements without the approval of the Board, provided that:

- a. All such work and construction shall be done in a manner and at such times that will not unreasonably interfere with the operation of any school now or hereafter located on the Board's property; and
- b. Such Improvements are consistent with the permitted uses for the Premises.

Notwithstanding the foregoing, the removal of any building from the Premises shall require the prior written consent of the Board, which consent shall not be unreasonably withheld.

No new Improvement that exceeds \$20,000.00 in cost will be constructed without the Board's approval. For such Improvements, the Board will pay one-third of the cost or as otherwise may be agreed upon by the parties. No new Improvement that exceeds \$5,000.00 in cost will be constructed without first notifying the Board in writing. At the end of each fiscal year, City shall provide Board with a written summary of the nature and value of any and all Improvements, and alterations to the Premises made by City during the preceding fiscal year (if any). City further agrees to provide, upon request, financial records and documents related to all such Improvements.

All improvements, modifications and alterations to the Premises shall adhere thereto and become the property of Board, with the exception of: machinery, playground equipment, equipment, outdoor recreational equipment and items, such items as are usually classified as furniture and trade fixtures, and such other items (other than leasehold improvements) which have been brought onto the Premises by and at the expense of City (collectively, "City Property"). Any such City Property shall remain the property of City, and City may remove the City Property provided all terms and conditions of this Lease have been complied with by City. In the event this Lease is terminated, as provided for in paragraph four (4) of this Lease, City shall be entitled to remove the City Property prior to the date of termination. Any City Property remaining on the Premises as of the date of termination shall become the property of the Board.

10. Care and Maintenance of Premises. City shall generally maintain the Premises in a clean and orderly manner and shall likewise generally maintain the Improvements and keep them in good repair during the term of this Lease. City will comply, at all times and in all respects, with all the applicable laws and ordinances relating to nuisance on or about the Premises, and the City will not by any act or omission render the Board liable for any violation thereof. City agrees to permit no waste of the Premises, but on the contrary to take good care of same, and upon termination of this Lease to surrender possession of same without notice.

11. Continued Use by Board. Board, its agents and representatives may enter the Premises at all reasonable times for the purpose of inspection thereof. The Board will have priority of use of the entire Premises for School Related Use. For the purposes of this Lease, "School Related Use" means Board directed or supervised programs and activities occurring during school hours while school is in session. The Board will also have priority of use for the following portions of the Premises for use other than School Related Use as provided herein:

Mountain Brook High School

Mountain Brook Jr. High School

- Field # 7 and Softball Field House
- Field # 1
- Upper Soccer Field
- Tennis Courts
- Lower Soccer Fields

- Football Field

The Board agrees, with respect to the portions of the Premises for which it maintains priority of use, to either provide City with a schedule of all events by July 1 of each year or to provide no less than forty-five days' notice as to the dates and times that it will use those portions of the Premises.

City has priority of use of the Premises during all times and for all purposes other than those specifically described above.

Board may continue to use the Premises from time to time for events and for other occasions upon reasonable notice to City, provided that such use does not conflict with any prior-scheduled event, meeting or gathering of the City or any of its sub-lessees. In the event the Board needs to utilize any part of the Premises during times when the City has priority of use due to exigent circumstances, the City agrees to make reasonable attempts to accommodate such need if it can be accommodated without undue hardship on the City.

12. Payment of Charges. City will furnish or arrange for the furnishing of all necessary utility services to the Premises and will pay promptly all related charges. Likewise, City agrees to pay all sewer rentals and other charges becoming due, levied under the authority of the laws of the State of Alabama or any laws approved subsequent to the execution of this lease, provided that said charges are allocable in whole or in part to the Premises. Notwithstanding the foregoing, each party will remain responsible for the payment for power and water services to the Premises pursuant to Exhibit C to this Lease. If Board elects to transfer to the City any utility service for which it has responsibility as set forth in Exhibit C, City will assume such responsibility and the Annual Maintenance Fee shall be increased by a utility supplement consisting of the annual cost of the utility being transferred averaged over the two fiscal years prior to the year of transfer.

Board and City shall each at its own expense and for its own benefit obtain and maintain whatever general public liability insurance or similar insurance each considers necessary in connection with the Premises. Neither City nor Board shall be obligated to obtain any such insurance by this Lease.

13. Destruction or Damages to Improvements. Neither City nor Board will have the obligation to obtain fire or other casualty insurance on the Premises or Improvements thereupon. If the City insures the Improvements and if some of the Premises shall be damaged by any casualty that is insurable under City's insurance policy on the Premises, City shall be entitled to receive the insurance proceeds therefrom and may elect to either retain the proceeds or restore the Premises. Nothing contained herein shall render Board liable for any repairs to, rebuilding, or replacement of City's property on or about the Premises or shall otherwise obligate City to repair, replace, restore the Premises or any Improvements thereupon.

14. Notices. All notices and demands authorized or required to be given to the City under any provision hereof must be in writing and given by certified mail or hand delivery addressed to the City at its principal office as follows:

City of Mountain Brook
Attn: Its City Manager
56 Church Street
Mountain Brook, Alabama 35213

All notices herein authorized or required to be given to the Board under any provision hereof must be in writing and given by certified mail or hand delivery addressed to the Board at its principal office as follows:

Mountain Brook Board of Education
Attn: Its Superintendent
32 Vine Street
Mountain Brook, Alabama 35213

15. Assignment or Subletting. City shall have the right to assign this Lease in part or in whole or to sublet the Premises or parts thereof to duly constituted boards, departments or agencies of the City or affiliates thereof and to the following corporations, groups or entities, their successors and assigns (collectively "Approved Sublessees"):

- a. Mountain Brook Athletics, Inc.
- b. Mountain Brook Soccer Association
- c. Mountain Brook Lacrosse Association
- d. American Tower Corporation (limited to the existing cell tower at Mountain Brook High School)
- e. Persons or Groups using Premises pursuant to City's Standard Rental Agreement, (current agreement attached as Exhibit D), as may be amended.

City may not assign its rights under this Lease or sublet all or any part of the Premises, permit occupation of the Premises or any part thereof, or grant any license for use of all or any of the Premises, to or by corporations, groups, entities or persons other than Approved Sublessees without the written consent of Board. As a condition precedent to such sub-letting, the sub-lessee must assume, in writing, all the obligations of the City hereunder, including, but not limited to, those obligations pertaining to use of the Premises under Paragraph 5. Unless stated otherwise herein, such assumption shall not operate to release City from any agreement or understanding on the part of City expressed or implied in this Lease. Notwithstanding the foregoing, City shall have the right to permit a party or parties other than Approved Sublessees to manage or operate one or more concession operations on Premises whether as a sublicensee, licensee, independent contractor or otherwise.

16. Waste Treatment Plant. The City currently operates and maintains a Waste Treatment Plant ("Plant") on the Premises to serve the Premises and some of the Board's facilities. City will continue to operate, inspect, maintain, repair, replace or improve the Plant, any related buildings and improvements as needed to serve the Premises. City may enlarge or improve the Plant as needed to serve the Premises; provided, however, that the City shall not be obligated to increase the Plant capacity due to Board use. Board will adopt or implement measures, as recommended by City, to ensure that its use of Plant does not compromise Plant operations or increase maintenance or operational costs by City.

17. Waiver. The failure of City or Board to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment of any such covenants, conditions or

options, but the same shall be and remain in full force and effect.

18. Binding Effect. The agreements, covenants, conditions and terms contained in this Lease shall bind and inure to the benefit of City and Board and their respective successors and permitted assigns.

19. Entire Agreement. This Lease contains the entire agreement between the parties hereto, and neither party is bound by any representation or agreements of any kind except as herein contained, and no amendments hereto shall be considered as effective unless and until the same shall be reduced to writing and executed by all the parties hereto.

20. Construction. The captions or headings in this Lease are provided for convenience only and shall not affect its construction or interpretation. All words used in this Lease shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The terms "herein", "hereof", "hereto" or "hereunder" or similar terms shall be deemed to refer to this Lease as a whole and not to a particular paragraph or section. The recitals and exhibits attached hereto shall be considered a part of this Lease.

21. Severability. If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Lease shall remain in full force and effect. Any provision of this Lease held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

22. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Lease and all of which, when taken together, shall be deemed to constitute one and the same instrument.

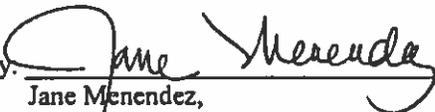
23. Force Majeure. The parties hereto shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond such party's control which shall include without limitation, civil commotion, war, warlike operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire and other casualty, inability to obtain any material services or financing or through acts of God.

IN WITNESS WHEREOF, City and Board have executed and delivered this Lease through their respective duly authorized representatives as of the date first above written. It is understood and agreed by the parties hereto that this Lease shall be binding upon the City and Board, and their assigns or successors in interest.

MOUNTAIN BROOK BOARD OF EDUCATION

ATTEST:


Mr. Richard Barlow
Superintendent and Secretary

By: 
Jane Menendez,
Chairman

CITY OF MOUNTAIN BROOK, ALABAMA

ATTEST:

By: Virginia C. Smith
Virginia C. Smith
President, City Council

Lawrence T. Oden
Lawrence T. Oden
Mayor

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Jane Menendez, whose name as Chairman of the Mountain Brook Board of Education is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, as such officer, and with full authority, executed the same voluntarily for and as the act of the Mountain Brook Board of Education.

Given under my hand and official seal, this the 23 day of March, 2015.

Steven A. Boone
Notary Public

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Virginia C. Smith, whose name as President of the City Council of the City of Mountain Brook, Alabama is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, as such officer, and with full authority, executed the same voluntarily for and as the act of the City of Mountain Brook, Alabama.

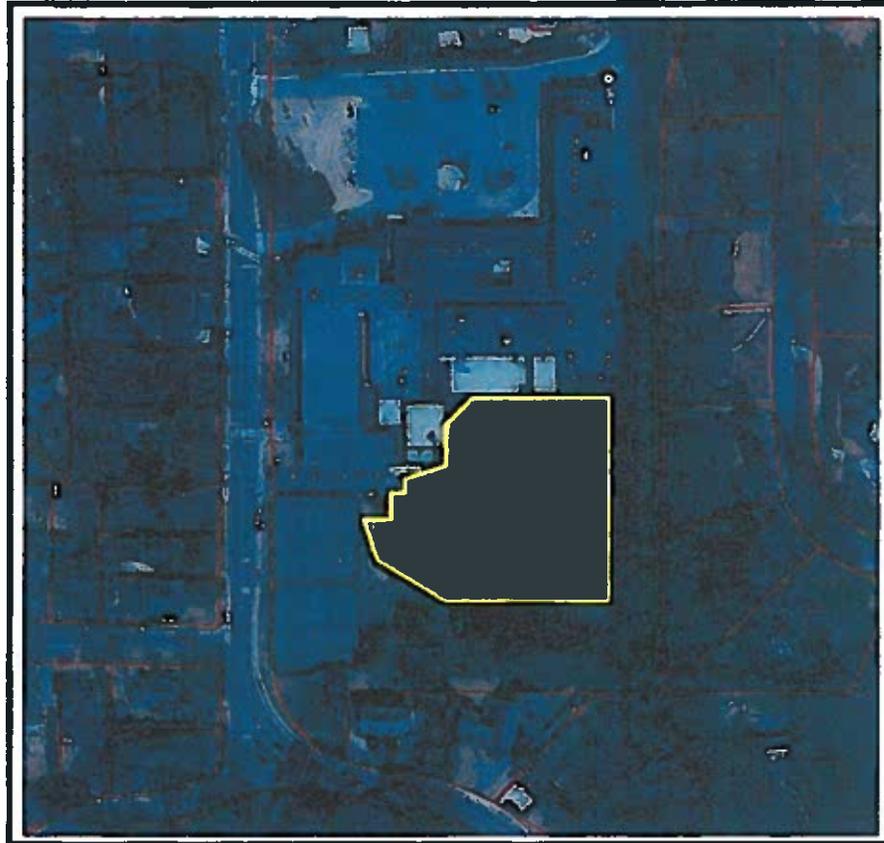
Given under my hand and official seal, this the 23 day of March, 2015.

Steven A. Boone
Notary Public

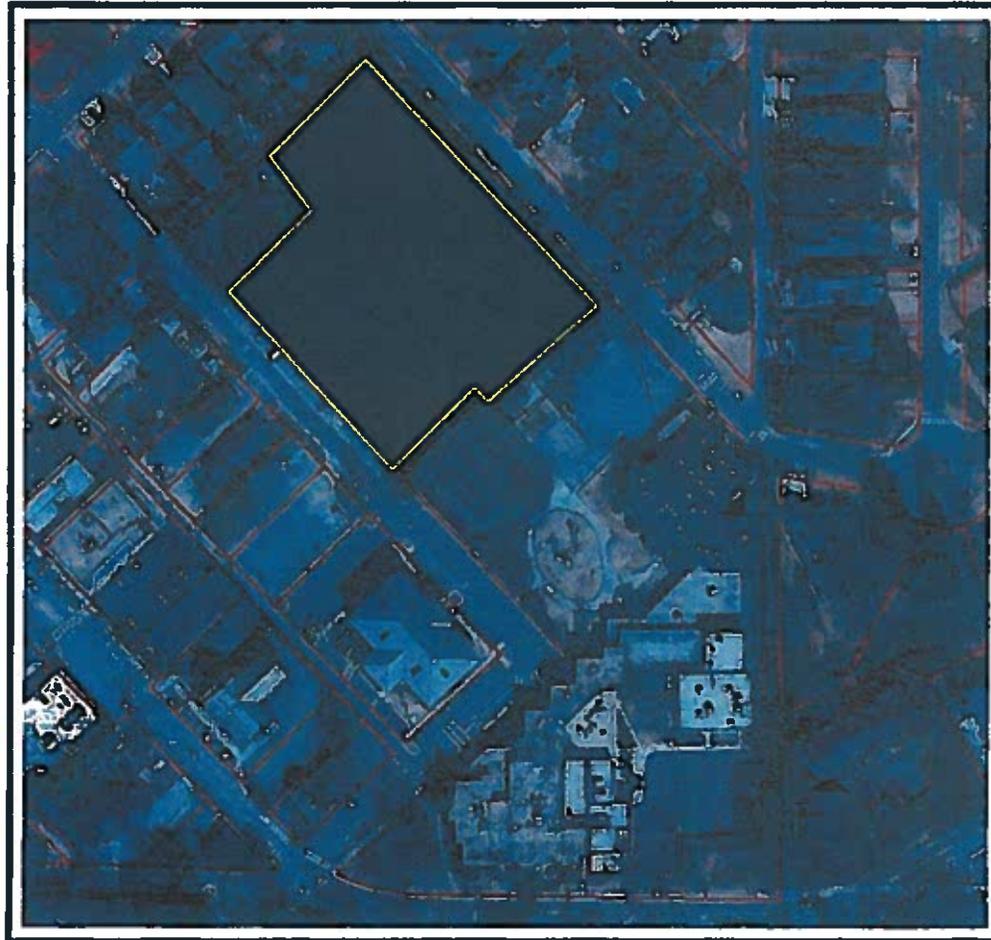
Mountain Brook High School



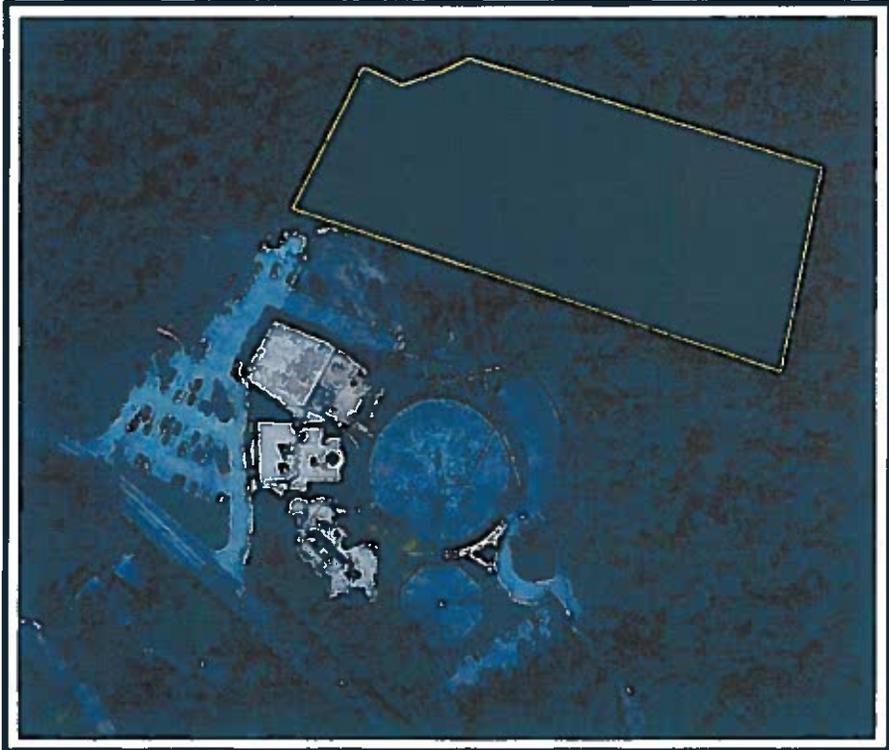
Mountain Brook Junior High



Crestline Elementary



Brookwood Forest Elementary



Cherokee Bend Elementary



Mountain Brook Elementary



EXHIBIT 2

Exhibit B

Board's Share of Operating Costs

The "Board's Share of Operating Costs" will be determined by adding the following components:

- a. Base Fee of \$30,000.00
- b. Phase 3 Fiscal Year Operating and Capital Expenses divided by 3
- c. Average Salary and Benefits of City Park Employees Assigned to Premises less \$30,000.00, divided by 3
- d. Chemical Costs less \$8,000.00, divided by 3
- e. Lighting Maintenance Costs divided by 10.

Exhibit C

Utility Payment Responsibility - Community Athletic Facilities

Location	Account No.	Meter No.	Responsible Party	
			City	BOE
Mountain Brook Elementary				
Water	270953-0	22022596	X	
Power	26936-41013	3063762		X
Cherokee Bend Elementary				
Water	167634-0	30040175		X
Power	16236-79015	3225430		X
Crestline Elementary				
Water	265441-1	22022958		X
Power	74012-21017	3063305		X
Brookwood Forest Elementary				
Water	146953-0	30039897		X
Power	07111-40000 Lite	3033941	X	
Junior High				
Water	976350-0	22022583		X
Power	00512-22005	3225437		X
High School				
Lower Soccer Fields				
Water	273801-0	30041251		X
Power	59112-72006 Soccer	30336937	X	
Upper Soccer Fields				
Water	Unable to determine which meter			X
Power	60162-72018	3032814		X
Athletic Complex				
Water	297542-0	9092185		X
Power	06118-70010 Field Lights	X40398	X	
	59322-72006 Baseball Field	303393	X	
Tennis Courts				
Water	N/A			N/A
Power:	34323-33002 Lighting	Unmetered	X	
	39000-32021 New Shop	3098098	X	
	58902-72004 Oakdale	3276539	X	
	49872-72000 SLM Sports Park	Unmetered	X	

EXHIBIT 2

EXHIBIT 2

Exhibit D

CITY OF MOUNTAIN BROOK
JEFFERSON COUNTY, ALABAMA

RENTAL AGREEMENT

This agreement is entered into on this ___ day, of _____ 20___, by and between the City of Mountain Brook "City" through its Parks & Recreation Dept. as "Lessor", and _____ "Facilities" Rental privileges are available to residents and groups where the majority of the group's memberships are Mountain Brook residents. All teams must submit a roster of team members that includes name, address, and phone number.

- 1. City hereby agrees that Lessee may use the facilities for the purpose of _____ during the period beginning on ___/___/___ from ___ o'clock until ___ A.M./P.M. (All activities shall cease at dusk in parks with no lighting and no later than 9:00 p.m. at lighted facilities.) (Except tennis courts - 10:00 p.m.)
2. During this period Lessee shall have full and complete use of the noted facilities for said purpose.
3. Alcoholic beverages and gambling strictly prohibited at all Parks & Recreation Board facilities.
4. All trash and litter must be disposed of before leaving facility.
5. Lessee agrees to pay the City the sum of \$_____, which sum shall be paid to Lessor, upon the execution of this agreement at the M.B. Parks & Recreation office in accordance with the following fee schedule. Refunds are only available should the event be canceled by the Lessor:

Table with 2 columns: Facility Name and Rate. Includes Playing Fields (Football, Soccer, Baseball & Softball), Daytime (\$30/hr), Lighted (\$40/hr), Setup/lined off (\$15/ea), Tennis Courts (\$12/hr), and Overton Pavilion (\$35/2 hrs for residents, \$70/2 hrs for non-residents).

PAYMENT - Make Check or Money Order Payable to: City of Mountain Brook

To reserve the above facilities, contact the following:

Contact information table with 3 columns: Name, Phone Number, and Facility Type. Includes LaTorya Mines, Allen Jones, Brad Hart, Overton Park, Turf Grass Fields, and Baseball, Softball, Football.

- 6. Lessee agrees to indemnify and hold harmless Lessor, its officials, officers, employees and agents against all actions, causes of action, demands, damages, losses and expenses of any kind, including but not limited to, attorney's fees and court costs which may be asserted against, or suffered by, City on account of, or rising out of, this agreement or the use of facilities by Lessee.
7. The term of this agreement may not be extended or modified except by a written agreement between City and Lessee.
8. By using the facilities, Lessee agrees that it shall comply with all applicable laws, ordinances, rules and regulations and that it shall not allow any activities to be conducted at the Facilities, which are unsafe, dangerous or improper in any manner.
9. If Lessee breaches any term of this agreement, City shall have the right to terminate this agreement by written or verbal notice to Lessee.

Executed on this ___ day of _____, 20___

Signature: _____ Print Name: _____
Title: _____ Phone: _____
Email: _____ Witness: _____

20150325000302880 17/17
Bk: LR201511 Pg:27633
Jefferson County, Alabama
03/25/2015 01:00:21 PM LEASE
Fee - \$65.00

Total of Fees and Taxes-\$65.00
MORTES

EXHIBIT 2

EXHIBIT B

MB Soccer Premises

Mountain Brook High School

All Soccer Fields

Brookwood Forest Elementary School

All Fields

Mountain Brook Elementary School

Playing Field – Fall: Thursday, Friday and Saturday of each week

EXHIBIT 2

EXHIBIT C

MB Soccer Annual Maintenance Fee

The MB Soccer Annual Maintenance Fee will be calculated by adding the following components:

- a. Base Fee of \$10,000.00
- b. Phase 3 (Mountain Brook Elementary, Cherokee Bend Elementary and Brookwood Forest Elementary) Fiscal Year Operating and Capital Expenses divided by 6
- c. Average Salary and Benefits of City Park Employees Assigned to Premises divided by 6
- d. Chemical Costs incurred by City divided by 6
- e. Lighting Maintenance Costs multiplied by 22%

EXHIBIT 3

STATE OF ALABAMA)
JEFFERSON COUNTY)

FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT ("Agreement") is made and entered into as of June 27, 2016, by and between MOUNTAIN BROOK LACROSSE, a not-for-profit corporation ("MBLAX"), and THE CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation organized under the laws of the State of Alabama ("City").

WHEREAS, the City has leased certain improved property (the "Premises") for recreational and athletic use by residents of the City under terms and conditions set forth in the lease between the City and the Board dated February 9, 2015, attached as Exhibit A (the "Lease"); and

WHEREAS, MBLAX has requested that City allow it to use portions of the Premises, from time to time, for its community athletic programs, and City has agreed to do so, subject to the terms and conditions of this Agreement, all of which are satisfactory to, and have been approved by MBLAX.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and covenants contained herein, MBLAX and City agree as follows:

1. **MBLAX Premises.** City agrees to grant MBLAX the right to use that portion of the Premises identified on Exhibit B to this Agreement (the "MBLAX Premises") upon the terms and conditions contained in this Agreement. MBLAX's rights hereunder shall be subject and subordinate to the terms and conditions of the Lease. To the extent that the terms and conditions of the Lease are inconsistent with the terms and conditions of this Agreement, the terms and conditions of the Lease shall be controlling.
2. **Term.** The term of this Agreement shall be for an initial term of five years beginning January 1, 2016, and ending on December 31, 2021, and shall be automatically extended from year to year thereafter unless prior to July 1 of any year, either of the parties has given written notice to the other party that it wishes to terminate this Agreement; provided, that in no event shall the term of this Agreement extend beyond the term of the Lease, even if such notice of termination has not been given. The terms and provisions of this Agreement shall apply to all extended terms of this Agreement. Either party shall have the right, at its expense, to record a memorandum of this Agreement in the office of the Judge of Probate of Jefferson County, Alabama.
3. **Annual Maintenance Fee.** In consideration of City permitting MBLAX to use the MBLAX Premises, as provided herein, and in consideration of City agreeing to maintain the MBLAX Premises as provided hereinafter, MBLAX shall pay City an

EXHIBIT 3

annual maintenance fee ("Annual Maintenance Fee"). The amount of the MBLAX Annual Maintenance Fee shall be \$6,955.00 per year and shall be increased to account for inflation every five (5) years by ten percent (10%) (the "Inflation Adjustment"). The first Inflation Adjustment shall be applied to the Annual Maintenance Fee due and payable on December 15, 2021. The Annual Maintenance Fee shall be due and payable on December 15 of each year this Agreement (or renewal thereof) is in effect. The first such Annual Maintenance Fee is due and payable on December 15, 2016.

City shall keep reasonably detailed records of the cost of maintaining the MBLAX Premises, and the records may be inspected by MBLAX, at its request.

In the event that this Agreement is terminated prior to the payment of the Annual Maintenance Fee for the year during which the termination occurs, MBLAX shall pay to City the Annual Maintenance Fee prorated as of the termination date on or before December 15 of the year in which termination occurs.

4. Use of Premises. The MBLAX Premises may be used by MBLAX and by its invitees, guests and those who participate in its athletic programs and other MBLAX sanctioned events ("MBLAX Activities"). With respect to any events sanctioned by MBLAX other than lacrosse events, prior approval must be obtained by MBLAX from City for said use.
5. Priority of Use. During the term of this Agreement, MBLAX shall have priority for the scheduling and use of the athletic facilities located on the MBLAX Premises, subject to the rights of the Board referred to in paragraph eleven in the Lease. The City hereby appoints MBLAX to act on City's behalf with respect to rights, duties, responsibilities and obligations set forth in paragraph 11 of the Lease; provided, that City may revoke such appointment, at any time, by written notice to MBLAX.
6. Construction of Improvements. Subject to the prior written approval of City, MBLAX may, at its expense, install or construct upon the MBLAX Premises such equipment, buildings, structures and other improvements as MBLAX may desire, including, but not limited to, athletic fields and related equipment, fences, roads, outdoor lighting equipment and grandstands, bleachers, and other seating facilities for spectators (hereinafter collectively called "Improvements"), provided such Improvements comply with all applicable ordinances, laws, regulations and building codes and provided that such Improvements do not impair use of the MBLAX Premises by the Board or other authorized users. The size of, type of, and materials used in, the Improvements shall be in the discretion of MBLAX, subject to the prior approval of City. During the term of this Agreement, City shall have the right to maintain, repair, alter, remove and replace any or all of the Improvements without the approval of MBLAX, provided, that all such work and construction shall be done in a manner and at times that will not unreasonably interfere with the operations of MBLAX.

EXHIBIT 3

7. **Removal of Improvements.** At any time within sixty days after the expiration or early termination of this Agreement, MBLAX shall have the right to remove from the MBLAX Premises, at its expense, any or all of the Improvements which are located upon the MBLAX Premises at that time, which were constructed entirely by MBLAX, or solely with MBLAX funds. City shall have the right to require MBLAX to remove any such Improvements at any time prior to expiration or termination of this Agreement, upon thirty (30) day written notice. If MBLAX does not do so, City may remove such Improvements at the cost of MBLAX. Any Improvements which are not removed by MBLAX from the MBLAX Premises after said notice shall become the property of City upon the expiration of said sixty-day period.
8. **Maintenance and Repair of Premises and Grounds.**
 - a. City shall generally maintain the MBLAX Premises in a clean and orderly condition and shall likewise generally maintain the Improvements. Such maintenance shall include planting grass on the fields, cutting grass and providing landscaping. Any maintenance or repair work which is the obligation of City to perform may be performed by employees of City or, at the option of City, may be performed by another party who is an independent contractor or is acting in any other capacity.
 - b. Upon the termination or expiration of this Agreement, City shall thereafter have no further obligation to MBLAX to maintain the MBLAX Premises.
 - c. On or about November 1st of each year, MBLAX shall deliver to City a list of work which it would like for City to consider during the period between November 1st and the following January 15th. City may undertake such work in its sole discretion.
 - d. MBLAX will request parents of participants in its programs to assist in keeping the MBLAX Premises clean, and MBLAX will require the participants to remove and dispose of loose trash from fence lines and fields after each game held on MBLAX Premises.
9. **Rules and Regulations.** MBLAX may adopt rules and regulations for the use of the MBLAX Premises by MBLAX. Any such rules and regulations shall be submitted to the City for its review and approval. City may adopt or implement such additional rules and regulations concerning use of the MBLAX Premises from time to time in its discretion.
10. **Utilities.** Utility service, including field lighting to the MBLAX Premises, is included in the Annual Maintenance Fee and MBLAX shall not be required to pay directly for utility services which are furnished to the MBLAX Premises. Field lighting will be

EXHIBIT 3

provided for scheduled practices and games only, unless special permission is obtained from City.

11. Concession Operations. MBLAX may operate and receive any profits from the sale of concessions on the MBLAX Premises during MBLAX Activities
12. Tournaments. The MBLAX Premises may be used for Tournaments. All applications for Tournaments to be held on the MBLAX Premises must be submitted to City no later than thirty days before the beginning of such Tournament. "Tournaments" are defined as state, national, or regional Tournaments involving teams other than those organized and operating under the supervision of MBLAX. If it is determined by City that the notice for any Tournament is not adequate, City shall not be obligated to prepare the field or fields which will be used for such Tournament.
13. Profits From Tournaments and other Activities of MBLAX. All profits derived from tournaments and MBLAX Activities shall be used for the maintenance, repair, improvement and benefit of the MBLAX Premises (hereinafter referred to as "the Improvement of the MBLAX Premises") or for MBLAX operations. Profits derived from tournaments and MBLAX Activities in each year shall be used for the Improvement of the MBLAX Premises or operations during the calendar year in which such profits were earned or during the following calendar year. Notwithstanding the foregoing, MBLAX and City may agree that some or all of the profits from any year may be retained and spent during succeeding calendar years if specifically agreed upon in writing by MBLAX and City. MBLAX shall maintain true and accurate accounting records which will show its revenues, expenditures and profits for each fiscal year and which shall be made available for inspection by City upon request. If the MBLAX Activities are not exclusively held on the MBLAX Premises and involve facilities in other cities or jurisdictions, for the purposes of this paragraph, profits shall include only those profits specifically derived from use of the MBLAX Premises (if such can be identified) or the portion of the overall profits from MBLAX Activities attributable to use of such facilities.
14. Public Liability Insurance. During the entire term of this Agreement, MBLAX shall maintain, at its expense, general public liability insurance or similar insurance as it may consider necessary in connection with the MBLAX Premises (but in an amount of at least \$1,000,000.00). The City and the Board shall be named as additional insureds on such policy. The policy and the issuer of the policy shall be subject to the written approval of City, which approval shall not be unreasonably withheld. The policy shall provide that it may not be cancelled or any coverage thereunder reduced unless City and Board are given at least thirty days prior written notice of such cancellation or change. A copy of each such policy shall be delivered to the City Manager of City promptly upon its issuance.

EXHIBIT 3

15. Assignment. MBLAX shall not have the right, without the specific written permission of City, to assign its rights under this Agreement; provided, however, that MBLAX may assign its right to use some or all of the MBLAX Premises to Mountain Brook Soccer, Mountain Brook Athletics or other athletic entities or associations which have in place a Facility Use Agreement with City upon notice to City. Any such assignment shall not relieve MBLAX of its obligations under this Agreement without the prior written consent of City. MBLAX shall have the right to permit a party or parties which are not boards or agencies of, or otherwise related to, City or MBLAX to manage or operate concession operations on the MBLAX Premises in any manner which is satisfactory to City and MBLAX.
16. Damages to Improvements: Fire Insurance. Neither City nor MBLAX will have the obligation to obtain fire or other casualty insurance on the Premises or Improvements thereupon. If the City insures the improvements and if some of the Premises shall be damaged by any casualty that is insurable under City's insurance policy on the Premises, City shall be entitled to receive the insurance proceeds therefrom and may elect to either retain the proceeds or restore the Premises. Nothing contained herein shall render MBLAX liable for any repairs to, rebuilding, or replacement of City's property on or about the Premises or shall otherwise obligate City to repair, replace, or restore the Premises or any Improvements thereupon.
17. Default. This Agreement may be terminated by either party if the other party commits a default hereunder and does not cure the default within the time periods specified hereinafter. In the event of any such default, the non-defaulting party may give written notice of such default to the defaulting party. If the defaulting party does not cure such default within thirty days of its receipt of such notice, this Agreement shall be considered terminated, except that, if the nature of the default is such that it cannot reasonably be cured within said thirty-day period, the non-defaulting party may not terminate this Agreement if the defaulting party begins the cure of the default within said thirty-day period and proceeds to complete the cure of such default with due diligence and within a reasonable period of time.
18. Laws and Regulations. MBLAX agrees to comply with all applicable laws, ordinances, orders, rules and regulations relating to the manner of their use and occupancy of the MBLAX Premises.
19. Covenants of City: Quiet Enjoyment. City warrants and represents to MBLAX that it has the right to permit MBLAX to use the MBLAX Premises under the terms of this Agreement, that the Lease has been duly executed by City, that Board has not given City any notice of default under the Lease, and that to the best of the knowledge, information, and belief of City, the Lease is a valid and binding obligation of the Board and City. City covenants to keep MBLAX in possession of the MBLAX Premises during the term of this Agreement, but City shall not be liable for the loss of

EXHIBIT 3

use of the MBLAX Premises by the exercise of the power of eminent domain, and City agrees that it shall not exercise the power of eminent domain to terminate this Agreement or to obtain the MBLAX Premises or to terminate MBLAX's right to use the MBLAX Premises.

20. Covenants of City. MBLAX represents and warrants to City that it has the right to enter into this Agreement and that this Agreement has been duly authorized and approved by MBLAX.
21. Entry by City and Board. City and Board may enter and inspect the MBLAX Premises at any reasonable time for any reason.
22. Amendment of Agreement. This Agreement, including attachments, constitute the entire agreement between the parties hereto and may not be amended, modified, altered or changed in any respect except by an instrument in writing signed on behalf of the parties hereto.
23. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.
24. Notices. When any notice is required or permitted to be given in connection with this Agreement, such notice shall be given by depositing it in the United States mail (either certified mail or registered mail), postage prepaid and addressed as follows, or to any other address of which either party gives the other party written notice by the method provided herein:

to MBLAX:

Mountain Brook Lacrosse
2501 20th Place South
Suite 450
Birmingham, AL 35223
Attention: James A. Harris, III

to City:

City of Mountain Brook
56 Church Street
Mountain Brook, Alabama 35213
Attention: City Manager

EXHIBIT 3

- 25. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, MBLAX and City, and their respective successors and assigns.
- 26. Captions. The captions used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.
- 27. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.
- 28. Administration of Contract by Park and Recreation Board. The City designates its Park and Recreation Board as the Administrator of this Agreement on behalf of City.

IN WITNESS WHEREOF, Mountain Brook Lacrosse has caused this Agreement to be executed by its duly authorized President, and City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor, all as of the day and year first above written.

MOUNTAIN BROOK LACROSSE

By: _____
Its President

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____
Lawrence T. Oden
Mayor

ATTEST:

EXHIBIT 3

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Richard Keller, whose name as President of Mountain Brook Lacrosse is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of Mountain Brook Lacrosse.

Given under my hand and official seal, this the ____ day of _____, 2016.

Notary Public

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Lawrence T. Oden whose name as Mayor of the City of Mountain Brook, Alabama, is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of the City of Mountain Brook, Alabama.

Given under my hand and official seal, this the ____ day of _____, 2016.

Notary Public

EXHIBIT 3



20150325000302880 1/17
 Bk: LR201511 Pg: 27633
 Jefferson County, Alabama
 I certify this instrument filed on:
 03/25/2015 01:00:21 PM LEASE
 Judge of Probate- Alan L. King

STATE OF ALABAMA

JEFFERSON COUNTY

THIS INSTRUMENT PREPARED BY:

Whit Colvin
 Bishop, Colvin, Johnson & Kent, LLC
 1910 First Avenue North
 Birmingham, AL 35203

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into as of the 9th day of February, 2015, by and between the BOARD OF EDUCATION OF THE CITY OF MOUNTAIN BROOK, a board of education in the State of Alabama (hereinafter called "Board") and the CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation organized under the laws of the State of Alabama (hereinafter called "City").

WHEREAS, the Board owns certain real estate adjacent to its school buildings upon which have been constructed recreational and athletic facilities; and

WHEREAS, City has contributed significant financial support for such recreational and athletic facilities; and

WHEREAS, City and Board entered into a lease dated October 1, 1989 whereby City and Board agreed to make the recreational and athletic facilities available, through the City, for recreational and athletic use by residents of the City under the terms and conditions set forth therein; and

WHEREAS, the lease has been beneficial to both City and Board, as well as students and residents and both City and Board desire to enter into a new lease to replace the original lease and its amendments.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, City and Board agree as follows:

1. Leased Premises. The Board leases to City, and City leases from Board, that certain real property in the City of Mountain Brook, Jefferson County, Alabama, outlined in yellow on Exhibits A-1 through A-6, which are attached hereto and incorporated herein, together with all buildings, improvements, rights-of-ways, licenses and other rights appurtenant thereto (the "Premises"), for and during the Initial Term (as hereinafter defined) and as may be extended as provided in this Lease. Board covenants to keep City in quiet possession of the Premises during the Term (but shall not be liable for the loss of use by eminent domain), subject, nevertheless, to the terms of this Lease.
2. Rent. City will pay Board, as rent for the Premises, the sum of One Dollar (\$1.00) per year.
3. Initial Term. The term of this Lease will commence on October 1, 2014 and will continue through the 30th day of September, 2024 (the "Initial Term").
4. Additional Terms. After the conclusion of the Initial Term, this Lease will automatically renew itself for additional successive terms of ten (10) years up to a maximum cumulative lease period of

2015-076

eighty (80) years ("Renewal Terms"). Notwithstanding the above, either City or Board may elect to terminate the Lease prior to the end of the Initial Term or any Renewal Term by giving the other party written notice no later than one hundred eighty (180) days before the end of the then current term, but only for the following reasons:

- a. Funds are not available to meet the obligations set forth in this Lease; or
- b. The Premises are no longer suitable or needed for City recreational purposes; or
- c. The Premises are needed by Board for construction of school buildings.

In the event of any of the foregoing and upon the provision of the specified notice, the Lease will be terminated as of the end of the then current term.

5. Use of Premises. City covenants and agrees to use and occupy the Premises for recreational and related municipal purposes, for community activities, and for other related activities as may be deemed by the City of Mountain Brook to be beneficial to its residents, licensees, invitees, and guests. The Premises may further be utilized as a location for the City's Park and Recreation Department; to store materials and items used to maintain the Premises; for communication facilities for the City, including telecommunication equipment and towers, radio facilities and similar facilities; and other uses ancillary to the primary recreational use of the Premises.

City will have the right to establish rules and regulations for use of the Premises for all purposes except for the Board related use described in Paragraph 11 of this Lease. City will have the discretion to determine applicable charges and fees in conjunction with its own activities and programs. Board will not be required to pay any such charges or fees for use of the Premises, except as is otherwise provided in this Lease. City will not be obligated to permit the use of the Premises, or any part thereof, for any program or event of the Community Education Program, or any other entity, which, in City's discretion, it cannot reasonably accommodate.

6. Condition of the Premises. The Premises are leased to City subject to existing easements, if any, and all laws, ordinances, orders and regulations of any lawful governmental authority having jurisdiction over the Premises. Nothing herein contained shall be construed as a warranty that the Premises are in good condition or are fit or suitable for the uses or purposes for which they are leased, and Board has made no representation or promises with respect to the Premises except as expressly set forth in this Lease. City has examined the Premises and accepts them in the physical condition that now exists (except as otherwise expressly provided in this Lease). The Premises are being leased "AS IS" and it is acknowledged that the City may need to make additional improvements to the Premises to make them suitable for the City's continued use.

Without limitation of the foregoing, Board specifically disclaims any express or implied covenants, warranties or representations (a) as to the past, present or future existence of any toxic substances or hazardous waste on or under the Premises or the improvements located thereon, (b) as to the compliance by the Premises or the use thereof with any applicable building or zoning codes or other land use regulations, any applicable environmental laws or regulations, or any other applicable laws or regulations, or (c) as to fitness for a particular purpose or of habitability of the Premises. City will be

responsible for any hazardous materials stored or utilized in the City's operations on the Premises and City's use of the Premises shall fully comply with all applicable building and zoning codes and other land use regulations, any applicable environmental laws or regulations and any other applicable laws or regulations. The foregoing covenants, warranties, and representations of the City shall survive the termination of this Lease.

7. Maintenance and Repairs. City will, throughout the Initial Term or Renewal Terms of this Lease, be responsible for all utility, operational, construction, maintenance and repair costs with respect to the Premises and any improvements thereupon, except as provided herein.

8. Annual Maintenance Fee. In consideration of City's agreement to maintain the Premises, Board will pay City an Annual Maintenance Fee. The Annual Maintenance Fee shall be ninety two thousand two hundred dollars (\$92,200.00) per year (unless otherwise adjusted pursuant to the provisions concerning extraordinary adjustment set forth below) and shall be increased to account for inflation every five (5) years by ten percent (10%) (the "Inflation Adjustment").

In any year that Board's Share of Operating Expenses, as defined on Exhibit B hereto, exceeds the Annual Maintenance Fee (including the Inflation Adjustment) for that year by twenty percent (20%) or more, the Board shall pay the Board's Share of Operating Expenses for that year and such shall be considered the Annual Maintenance Fee for that year.

The Annual Maintenance Fee shall be due and payable on December 15 of each year and shall cover the period from October 1 of the preceding year through September 30 of the year in which the payment is due. In the event that this Lease is terminated prior to the payment of the Annual Maintenance Fee for the Lease Year during which the termination occurs, Board shall pay to City the Annual Maintenance Fee prorated as of the termination date on or before December 15 of the year in which termination occurs. City shall keep records of all costs attributed to the Premises and will make those records available for inspection by the Board upon request.

9. Alterations and Improvements. City may make, at its expense, improvements, modifications, and alterations to the Premises including but not limited to the athletic fields and related equipment; fences; paved or unpaved driveways, roads and parking areas; outdoor lighting equipment; grandstands, bleachers and other seating facilities; restrooms, field houses, concession stands, press boxes, and other buildings; and playgrounds or similar facilities (collectively "Improvements"). The size and type of the materials used in the Improvements shall be in the discretion of the City. City shall have the right to maintain, repair, alter, remove, or replace the Improvements without the approval of the Board, provided that:

- a. All such work and construction shall be done in a manner and at such times that will not unreasonably interfere with the operation of any school now or hereafter located on the Board's property; and
- b. Such Improvements are consistent with the permitted uses for the Premises.

Notwithstanding the foregoing, the removal of any building from the Premises shall require the prior written consent of the Board, which consent shall not be unreasonably withheld.

No new Improvement that exceeds \$20,000.00 in cost will be constructed without the Board's approval. For such Improvements, the Board will pay one-third of the cost or as otherwise may be agreed upon by the parties. No new Improvement that exceeds \$5,000.00 in cost will be constructed without first notifying the Board in writing. At the end of each fiscal year, City shall provide Board with a written summary of the nature and value of any and all Improvements, and alterations to the Premises made by City during the preceding fiscal year (if any). City further agrees to provide, upon request, financial records and documents related to all such Improvements.

All improvements, modifications and alterations to the Premises shall adhere thereto and become the property of Board, with the exception of: machinery, playground equipment, equipment, outdoor recreational equipment and items, such items as are usually classified as furniture and trade fixtures, and such other items (other than leasehold improvements) which have been brought onto the Premises by and at the expense of City (collectively, "City Property"). Any such City Property shall remain the property of City, and City may remove the City Property provided all terms and conditions of this Lease have been complied with by City. In the event this Lease is terminated, as provided for in paragraph four (4) of this Lease, City shall be entitled to remove the City Property prior to the date of termination. Any City Property remaining on the Premises as of the date of termination shall become the property of the Board.

10. Care and Maintenance of Premises. City shall generally maintain the Premises in a clean and orderly manner and shall likewise generally maintain the Improvements and keep them in good repair during the term of this Lease. City will comply, at all times and in all respects, with all the applicable laws and ordinances relating to nuisance on or about the Premises, and the City will not by any act or omission render the Board liable for any violation thereof. City agrees to permit no waste of the Premises, but on the contrary to take good care of same, and upon termination of this Lease to surrender possession of same without notice.

11. Continued Use by Board. Board, its agents and representatives may enter the Premises at all reasonable times for the purpose of inspection thereof. The Board will have priority of use of the entire Premises for School Related Use. For the purposes of this Lease, "School Related Use" means Board directed or supervised programs and activities occurring during school hours while school is in session. The Board will also have priority of use for the following portions of the Premises for use other than School Related Use as provided herein:

Mountain Brook High School

Mountain Brook Jr. High School

Field # 7 and Softball Field House
Field # 1
Upper Soccer Field
Tennis Courts
Lower Soccer Fields

Football Field

The Board agrees, with respect to the portions of the Premises for which it maintains priority of use, to either provide City with a schedule of all events by July 1 of each year or to provide no less than forty-five days' notice as to the dates and times that it will use those portions of the Premises.

City has priority of use of the Premises during all times and for all purposes other than those specifically described above.

Board may continue to use the Premises from time to time for events and for other occasions upon reasonable notice to City, provided that such use does not conflict with any prior-scheduled event, meeting or gathering of the City or any of its sub-lessees. In the event the Board needs to utilize any part of the Premises during times when the City has priority of use due to exigent circumstances, the City agrees to make reasonable attempts to accommodate such need if it can be accommodated without undue hardship on the City.

12. Payment of Charges. City will furnish or arrange for the furnishing of all necessary utility services to the Premises and will pay promptly all related charges. Likewise, City agrees to pay all sewer rentals and other charges becoming due, levied under the authority of the laws of the State of Alabama or any laws approved subsequent to the execution of this lease, provided that said charges are allocable in whole or in part to the Premises. Notwithstanding the foregoing, each party will remain responsible for the payment for power and water services to the Premises pursuant to Exhibit C to this Lease. If Board elects to transfer to the City any utility service for which it has responsibility as set forth in Exhibit C, City will assume such responsibility and the Annual Maintenance Fee shall be increased by a utility supplement consisting of the annual cost of the utility being transferred averaged over the two fiscal years prior to the year of transfer.

Board and City shall each at its own expense and for its own benefit obtain and maintain whatever general public liability insurance or similar insurance each considers necessary in connection with the Premises. Neither City nor Board shall be obligated to obtain any such insurance by this Lease.

13. Destruction or Damages to Improvements. Neither City nor Board will have the obligation to obtain fire or other casualty insurance on the Premises or Improvements thereupon. If the City insures the Improvements and if some of the Premises shall be damaged by any casualty that is insurable under City's insurance policy on the Premises, City shall be entitled to receive the insurance proceeds therefrom and may elect to either retain the proceeds or restore the Premises. Nothing contained herein shall render Board liable for any repairs to, rebuilding, or replacement of City's property on or about the Premises or shall otherwise obligate City to repair, replace, restore the Premises or any Improvements thereupon.

14. Notices. All notices and demands authorized or required to be given to the City under any provision hereof must be in writing and given by certified mail or hand delivery addressed to the City at its principal office as follows:

City of Mountain Brook
Attn: Its City Manager
56 Church Street
Mountain Brook, Alabama 35213

All notices herein authorized or required to be given to the Board under any provision hereof must be in writing and given by certified mail or hand delivery addressed to the Board at its principal office as follows:

Mountain Brook Board of Education
Attn: Its Superintendent
32 Vine Street
Mountain Brook, Alabama 35213

15. Assignment or Subletting. City shall have the right to assign this Lease in part or in whole or to sublet the Premises or parts thereof to duly constituted boards, departments or agencies of the City or affiliates thereof and to the following corporations, groups or entities, their successors and assigns (collectively "Approved Sublessees"):

- a. Mountain Brook Athletics, Inc.
- b. Mountain Brook Soccer Association
- c. Mountain Brook Lacrosse Association
- d. American Tower Corporation (limited to the existing cell tower at Mountain Brook High School)
- e. Persons or Groups using Premises pursuant to City's Standard Rental Agreement, (current agreement attached as Exhibit D), as may be amended.

City may not assign its rights under this Lease or sublet all or any part of the Premises, permit occupation of the Premises or any part thereof, or grant any license for use of all or any of the Premises, to or by corporations, groups, entities or persons other than Approved Sublessees without the written consent of Board. As a condition precedent to such sub-letting, the sub-lessee must assume, in writing, all the obligations of the City hereunder, including, but not limited to, those obligations pertaining to use of the Premises under Paragraph 5. Unless stated otherwise herein, such assumption shall not operate to release City from any agreement or understanding on the part of City expressed or implied in this Lease. Notwithstanding the foregoing, City shall have the right to permit a party or parties other than Approved Sublessees to manage or operate one or more concession operations on Premises whether as a sublicensee, licensee, independent contractor or otherwise.

16. Waste Treatment Plant. The City currently operates and maintains a Waste Treatment Plant ("Plant") on the Premises to serve the Premises and some of the Board's facilities. City will continue to operate, inspect, maintain, repair, replace or improve the Plant, any related buildings and improvements as needed to serve the Premises. City may enlarge or improve the Plant as needed to serve the Premises; provided, however, that the City shall not be obligated to increase the Plant capacity due to Board use. Board will adopt or implement measures, as recommended by City, to ensure that its use of Plant does not compromise Plant operations or increase maintenance or operational costs by City.

17. Waiver. The failure of City or Board to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment of any such covenants, conditions or

options, but the same shall be and remain in full force and effect.

18. Binding Effect. The agreements, covenants, conditions and terms contained in this Lease shall bind and inure to the benefit of City and Board and their respective successors and permitted assigns.

19. Entire Agreement. This Lease contains the entire agreement between the parties hereto, and neither party is bound by any representation or agreements of any kind except as herein contained, and no amendments hereto shall be considered as effective unless and until the same shall be reduced to writing and executed by all the parties hereto.

20. Construction. The captions or headings in this Lease are provided for convenience only and shall not affect its construction or interpretation. All words used in this Lease shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The terms "herein", "hereof", "hereto" or "hereunder" or similar terms shall be deemed to refer to this Lease as a whole and not to a particular paragraph or section. The recitals and exhibits attached hereto shall be considered a part of this Lease.

21. Severability. If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Lease shall remain in full force and effect. Any provision of this Lease held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

22. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Lease and all of which, when taken together, shall be deemed to constitute one and the same instrument.

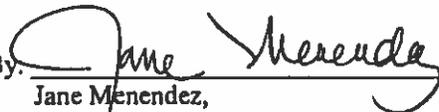
23. Force Majeure. The parties hereto shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond such party's control which shall include without limitation, civil commotion, war, warlike operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire and other casualty, inability to obtain any material services or financing or through acts of God.

IN WITNESS WHEREOF, City and Board have executed and delivered this Lease through their respective duly authorized representatives as of the date first above written. It is understood and agreed by the parties hereto that this Lease shall be binding upon the City and Board, and their assigns or successors in interest.

MOUNTAIN BROOK BOARD OF EDUCATION

ATTEST:


Mr. Richard Barlow
Superintendent and Secretary

By: 
Jane Menendez,
Chairman

CITY OF MOUNTAIN BROOK, ALABAMA

ATTEST:

By: Virginia C. Smith
Virginia C. Smith
President, City Council

Lawrence T. Oden
Lawrence T. Oden
Mayor

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Jane Menendez, whose name as Chairman of the Mountain Brook Board of Education is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, as such officer, and with full authority, executed the same voluntarily for and as the act of the Mountain Brook Board of Education.

Given under my hand and official seal, this the 23 day of March, 2015.

Steven L. Boone
Notary Public

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Virginia C. Smith, whose name as President of the City Council of the City of Mountain Brook, Alabama is signed to the foregoing Lease and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, as such officer, and with full authority, executed the same voluntarily for and as the act of the City of Mountain Brook, Alabama.

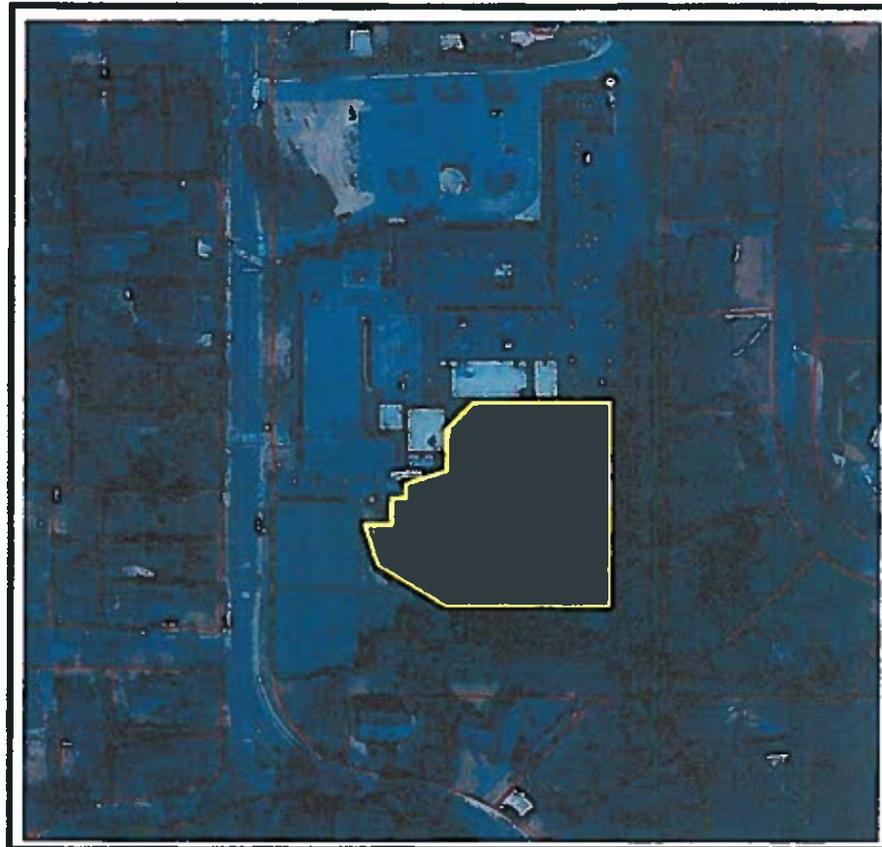
Given under my hand and official seal, this the 23 day of March, 2015.

Steven L. Boone
Notary Public

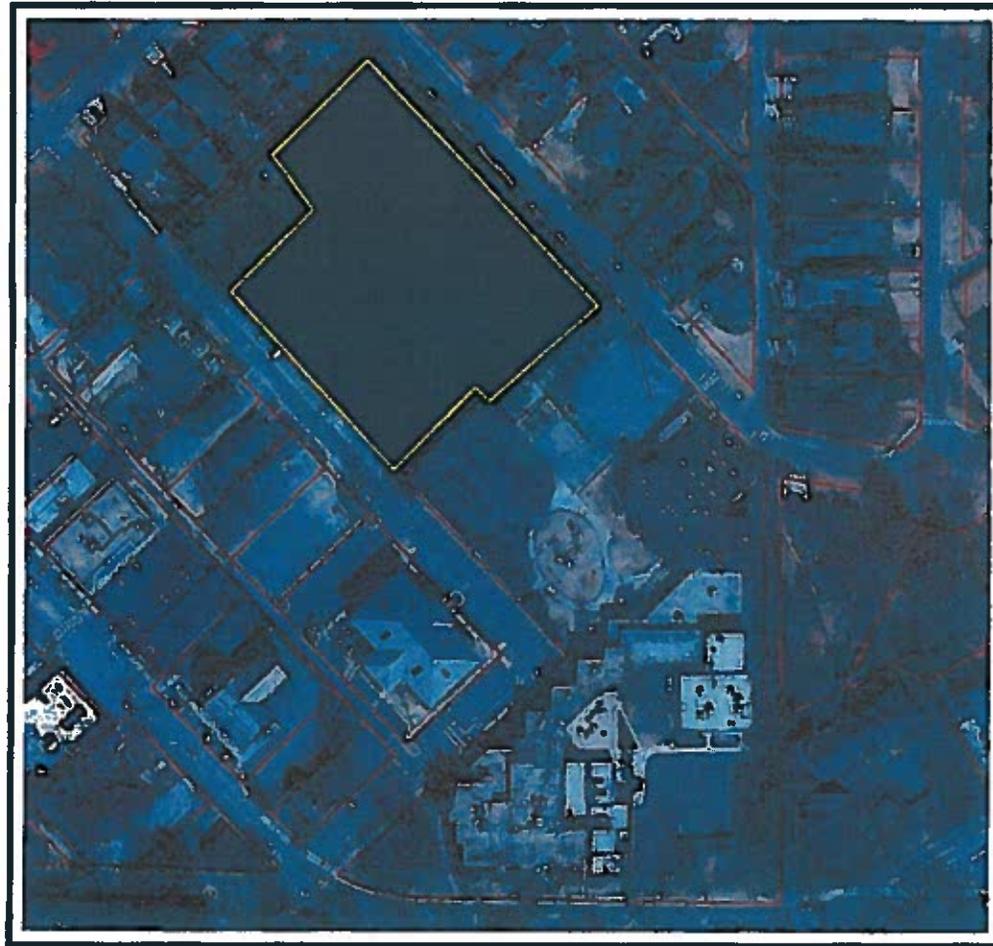
Mountain Brook High School



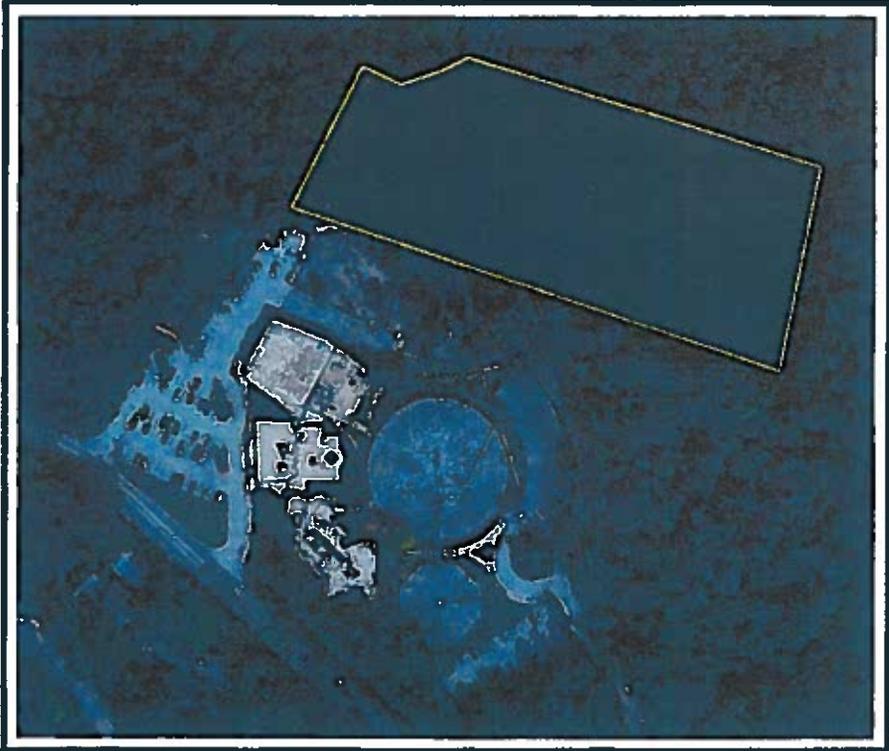
Mountain Brook Junior High



Crestline Elementary



Brookwood Forest Elementary



Cherokee Bend Elementary



Mountain Brook Elementary



EXHIBIT 3

Exhibit B

Board's Share of Operating Costs

The "Board's Share of Operating Costs" will be determined by adding the following components:

- a. Base Fee of \$30,000.00
- b. Phase 3 Fiscal Year Operating and Capital Expenses divided by 3
- c. Average Salary and Benefits of City Park Employees Assigned to Premises less \$30,000.00, divided by 3
- d. Chemical Costs less \$8,000.00, divided by 3
- e. Lighting Maintenance Costs divided by 10.

Exhibit C

Utility Payment Responsibility - Community Athletic Facilities

Location	Account No.	Meter No.	Responsible Party	
			City	BOE
Mountain Brook Elementary				
Water	270953-0	22022596	X	
Power	26936-41013	3063762		X
Cherokee Bend Elementary				
Water	167634-0	30040175		X
Power	16236-79015	3225430		X
Crestline Elementary				
Water	265441-1	22022958		X
Power	74012-21017	3063305		X
Brookwood Forest Elementary				
Water	146953-0	30039897		X
Power	07111-40000 Lite	3033941	X	
Junior High				
Water	976350-0	22022583		X
Power	00512-22005	3225437		X
High School				
Lower Soccer Fields				
Water	273801-0	30041251		X
Power	59112-72006 Soccer	30336937	X	
Upper Soccer Fields				
Water	Unable to determine which meter			X
Power	60162-72018	3032814		X
Athletic Complex				
Water	297542-0	9092185		X
Power	06118-70010 Field Lights	X40398	X	
	59322-72006 Baseball Field	303393	X	
Tennis Courts				
Water	N/A			N/A
Power:	34323-33002 Lighting	Unmetered	X	
	39000-32021 New Shop	3098098	X	
	58902-72004 Oakdale	3276539	X	
	49872-72000 SLM Sports Park	Unmetered	X	

EXHIBIT 3

CITY OF MOUNTAIN BROOK
JEFFERSON COUNTY, ALABAMA

RENTAL AGREEMENT

This agreement is entered into on this _____ day, of _____ 20____, by and between the City of Mountain Brook "City" through its Parks & Recreation Dept. as "Lessor", and _____ as "Lessee", for facilities owned and operated by City located at _____ "Facilities" Rental privileges are available to residents and groups where the majority of the group's memberships are Mountain Brook residents. All teams must submit a roster of team members that includes name, address, and phone number.

1. City hereby agrees that Lessee may use the facilities for the purpose of _____ during the period beginning on ____ / ____ / ____ from _____ o'clock until _____ A.M./P.M. (All activities shall cease at dusk in parks with no lighting and no later than 9:00 p.m. at lighted facilities.) (Except tennis courts - 10:00 p.m.)
2. During this period Lessee shall have full and complete use of the noted facilities for said purpose.
3. Alcoholic beverages and gambling strictly prohibited at all Parks & Recreation Board facilities.
4. All trash and litter must be disposed of before leaving facility.
5. Lessee agrees to pay the City the sum of \$ _____, which sum shall be paid to Lessor, upon the execution of this agreement at the M.B. Parks & Recreation office in accordance with the following fee schedule. Refunds are only available should the event be canceled by the Lessor:

Playing Fields: Football, Soccer, Baseball & Softball.	
Daytime	\$30/ hr. per field
Lighted	\$40/ hr. per field
Setup/lined off	\$15/ ea. per field
Tennis Courts	\$12/ hr. per court
Overton Pavillion	\$35/ 2 hrs. (Residents of Mountain Brook)
	\$70/ 2 hrs. (Non-Residents of Mountain Brook)

PAYMENT - Make Check or Money Order Payable to: City of Mountain Brook

To reserve the above facilities, contact the following:

LaTorya Mines, Parks & Recreation Dept. (205) 802-3877	Overton Park
Allen Jones, Parks & Recreation Dept. (205) 802-4018	Turf Grass Fields
Brad Hart, Mtn. Brook Athletics (205) 414-3854	Baseball, Softball, Football

6. Lessee agrees to indemnify and hold harmless Lessor, its officials, officers, employees and agents against all actions, causes of action, demands, damages, losses and expenses of any kind, including but not limited to, attorney's fees and court costs which may be asserted against, or suffered by, City on account of, or rising out of, this agreement or the use of facilities by Lessee. In addition, Lessee assumes all risks in connection with its use of the facilities.
7. The term of this agreement may not be extended or modified except by a written agreement between City and Lessee.
8. By using the facilities, Lessee agrees that it shall comply with all applicable laws, ordinances, rules and regulations and that it shall not allow any activities to be conducted at the Facilities, which are unsafe, dangerous or improper in any manner.
9. If Lessee breaches any term of this agreement, City shall have the right to terminate this agreement by written or verbal notice to Lessee.

Executed on this _____ day of _____, 20_____

Signature: _____ Print Name: _____
 Title: _____ Phone: _____
 Email: _____ Witness: _____

20150325000302880 17/17
 Bk: LR201511 Pg:27633
 Jefferson County, Alabama
 03/25/2015 01:00:21 PM LEASE
 Fee - \$65.00

Total of Fees and Taxes-\$65.00
 MORTES

EXHIBIT 3

Exhibit B

MBLAX Premises

Mountain Brook Junior High School

Football Field - Spring only

Mountain Brook Elementary School

Playing Field - Spring Only

**Exhibit B
MB-MBA Agreement**

ORDINANCE NO. 1954

**AN ORDINANCE AMENDING SECTION 30-3(a) OF THE CITY CODE –
TIME AND PLACE OF HOLDING COURT**

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, that Section 30-3(a) of the City Code is hereby amended as follows:

1. “Sec. 30-3. - Time and place of holding court.

(a) The municipal court of the city shall hold court commencing at 4:00 p.m. on Wednesday of each week, except 1) the fifth Wednesday in each month, 2) holiday weeks as determined by a municipal judge, and 3) other office closures (e.g., inclement weather or other unusual events) as determined by a municipal judge, in the council chamber of city hall and at such other times as a municipal judge may continue or set a case.”

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.

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.

4. Effective Date. This ordinance shall become effective immediately upon adoption and publication as provided by law.

ADOPTED: This 27th day of June, 2016.

Council President

APPROVED: This 27th day of June, 2016.

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 June __, 2016, as same appears in the minutes of record of said meeting, and published by posting copies thereof on June __, 2016, 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
Cahaba River Walk, 3503 Overton Road

City Clerk