

**MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

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

NOVEMBER 28, 2016, 7:00 P.M.

1. Consideration: Resolution recognizing Jack D. Carl for his outstanding service to the City.
2. Approval of the minutes of the November 14, 2016 regular meeting of the City Council.
3. Consideration: Resolution creating a labor supervisor position (Class no. 8064, grade 15) for the Parks and Recreation department to be filled at the discretion of the City Manager.
4. Consideration: Resolution authorizing the installation of one 91 watt LED street light across the street from the property located at 4324 Little River Road.
5. Consideration: Resolution authorizing the execution of a construction agreement between the City and Specialty Turf Supply, Inc. with respect to improvements to [softball] field no. 7 at the Athletic Complex.
6. Consideration: Resolution authorizing the execution of a 3-party expense sharing agreement between the City, Mountain Brook Board of Education and Mountain Brook Athletics with respect to improvements of the softball field at the Athletic Complex totaling \$8,480.60.
7. Consideration: Resolution authorizing the execution of an agreement with Brown Mechanical Contractors, Inc. for the relocation of a fire service line (water main) in conjunction with the Phase 5B sidewalk project.
8. Consideration: Resolution authorizing the City to participate (50:50) with the City of Homewood in an (80:20) APPLE grant funded feasibility study of [pedestrian] improvements of the Hollywood Road bridge over U. S. Highway 280 (the City's share of the 20% local match is approximately \$6,000).
9. Consideration: Resolution amending Resolution No. 2016-104 with respect to the specific location of small cell support structure BRM004 in the public right-of-way at the intersection of Montcrest Drive and Monetevallo Road and authorizes the issuance of a building permit for same.
10. Announcement: The next regular meeting of the City Council is December 12, 2016, at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
11. Comments from residents.
12. Adjourn.

RESOLUTION

WHEREAS, Jack D. Carl has served with distinction on the City Council of the City of Mountain Brook, Alabama from November 3, 2008 until November 7, 2016; and

WHEREAS, Jack D. Carl served on the Planning Commission since November 3, 2008 where his legal wisdom proved invaluable in the re-writing and adoption of the City's Subdivision Regulations, numerous amendments to the City's zoning regulations and the adoption of the Vine Street Transitional District in 2013; and

WHEREAS, Jack D. Carl played a key role in the successful redevelopment of Western Shopping Center in Mountain Brook Village into what is now known as Lane Parke and the reopening of the Piggly Wiggly grocery store in Crestline Village; and

WHEREAS, Jack D. Carl provided meticulous review and feedback in his review of minutes and expressed a keen sense of humor often providing levity to otherwise difficult discussions; and

WHEREAS, Jack D. Carl's attention to detail, specifically with respect to legal matters and contracts, was of great service and value to elected officials, appointed volunteers, and staff of the City and led to the development of the City's standard form contract addendum; and

WHEREAS, Jack D. Carl played an instrumental role in the approval, design and construction of the City's municipal complex completed in 2012; and

WHEREAS, the Governing Body, employees, and residents of The City of Mountain Brook, Alabama, greatly appreciate Jack D. Carl's leadership, dedication, and commitment to improve our City;

NOW, THEREFORE, BE IT RESOLVED that the City Council and Mayor, on behalf of the residents of Mountain Brook, do publicly thank Jack D. Carl for his exemplary service and wish him well in future endeavors.

ADOPTED: The 28th day of November, 2016.

Virginia C. Smith, Council President

APPROVED: The 28th day of November, 2016.

Stewart Welch III, Mayor

2016-191

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
NOVEMBER 14, 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 6:15 p.m. on Monday, the 14th day of November, 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
Philip E. Black
Lloyd C. Shelton
Alice B. Womack
Stewart Welch III, Mayor

Absent: None

Also present were City Attorneys Carl Johnson and Tony Davis, City Manager Sam Gaston, and City Clerk Steven Boone.

1. AGENDA

1. Restroom plans for Mountain Brook Elementary field–Shanda Williams (Appendix 1)

The project is estimated to cost \$160,000 of which the City has budgeted \$100,000 and the remaining balance is to be paid by way of donations that will be led by James Carter, Sally Legg, and Norman Johnson. The members of the City Council expressed their agreement to proceed with the preparation of the bid documents and invitations to bid in order to determine the actual cost of the project.

2. City to share costs up to \$6,000 with the City of Homewood for an Apple grant study of the bridge on Hollywood Boulevard over Highway 280–Alice Womack.

The members of the City Council expressed their general support for sharing in the cost of the study. It is contemplated that the Homewood City Council will formally consider this grant application on November 28 and that, if approved; a formal request will then be made to the Mountain Brook City Council for consideration.

3. Library roof repair, moisture abatement and window replacement project–Robert McElroy with Brasfield & Gorrie (Appendix 2).

The roof repairs will be ordered by way of the issuance of a purchase order. A committee comprised of Council members Black and Shelton, City Manager Sam Gaston, Finance Director Steven Boone, and Brasfield & Gorrie building consultant Robert McElroy will meet to consider recommending an architect to the City Council at a future meeting.

4. Review of the matters to be considered at the formal [7 p.m.] meeting. Resolution No. 2016-190 was added to the formal meeting agenda during the course of the Council's meeting agenda discussion.

5. EXECUTIVE SESSION

It was moved by Council President Pro Tempore Pritchard that the City Council convenes in executive session to discuss a matter involving threatened litigation and another matter involving a real estate negotiation. The motion was seconded by Council President Smith. 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
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Smith declared that the motion carried by a vote of 5—0 and then asked that the members of the audience be excused. She also announced that the City Council shall reconvene upon conclusion of the executive session at approximately 7 p.m. in Council Chamber (A108) of City Hall.

6. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on November 14, 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 work session.

City Clerk

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA
NOVEMBER 14, 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 14th day of November, 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
Philip E. Black
Lloyd C. Shelton
Alice B. Womack
Stewart Welch III, Mayor

Absent: None

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

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

1. CONSENT AGENDA

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

Approval of the minutes of the October 24, 2016 joint regular meeting of the City Council and Board of Commissioners of the Mountain Brook Emergency Communications District

Approval of the minutes of the November 7, 2016 organizational meeting of the City Council of the Mountain Brook

2016-183	Resolution recognizing Mayor Lawrence T. Oden for his outstanding service to the City	Exhibit 1
2016-184	Authorize the installation of a 150 watt LED street light on an existing pole located between 4040 and 4044 Royal Oak Court	Exhibit 2, Appendix 1
2016-185	Authorize the execution of an agreement with ETC Institute with respect to the City's resident survey	Exhibit 3, Appendix 2
2016-186	Authorize the execution of a professional service agreement with Sain Associates with respect to the City's Americans with Disabilities Act (ADA) Transition Plan	Exhibit 4, Appendix 3
2016-187	Recommend the State of Alabama Alcoholic Beverage Control Board the issuance of a 020 – Restaurant Retail Liquor license to CB7 of Mountain Brook, LLC (trade name Charbar No. 7) located at 900 Jemison Lane, Mountain Brook, AL 35223	Exhibit 5, Appendix 4
2016-188	Award the bid for the construction of the joint police and fire training facility and authorizing the execution of a contract for same	Exhibit 6, Appendix 5

2016-189	Accept the professional services agreement with Sain Associates with respect to a feasibility study and related services for the proposed roundabout at the intersection of Cahaba Road/Culver Road/U.S. Highway 280/Lane Park Road and authorize the execution of an agreement for same	Exhibit 7, Appendix 6
2016-190	Ratify the execution of the Preferred Pay Plan Agreement Addendum with respect to the City's workers' compensation plan effective February 1, 2016	Exhibit 8, Appendix 7

Thereupon, the foregoing minutes and resolutions were introduced by Council President Smith and a motion for their immediate adoption was made by Council member Shelton. The minutes and resolutions were then considered by the City Council. Council member Womack 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
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said minutes and resolution (Nos. 2016-183 through 190) are adopted by a vote of 5—0 and as evidence thereof she signed the same.

2. PRESENTATION AND RECOGNITION (RESOLUTION NO. 2016-183, EXHIBIT 1)

Mayor Welch read aloud and presented Resolution No. 2016-183 to Mayor Lawrence T. Oden. Afterward, City Manager Sam Gaston announced that in recognition of Mayor Oden's distinguished service and his close connection and support of the police and fire services, the City Council will name the soon to be constructed joint training facility (Resolution No. 2016-188) the "Mayor Terry Oden Police & Fire Training Facility" (Appendix 8).

3. ANNOUNCEMENT REGARDING THE NEXT MEETING OF THE CITY COUNCIL

Council President Smith announced that the next meeting of the Mountain Brook City Council will be held on Monday, November 28, 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.

4. ADJOURNMENT

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

5. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on November 14, 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

RESOLUTION NO. 2016-192

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the creation of one (1) Labor Supervisor position (Class no. 8064, G15/10) for the Parks and Recreation Department to be filled at the discretion of the City Manager in accordance with the "Rules and Regulations" of the Personnel Board of Jefferson County.

ADOPTED: This 28th day of November, 2016.

Council President

APPROVED: This 28th day of November, 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 November 28, 2016, as same appears in the minutes of record of said meeting.

City Clerk

November 22, 2016

Dear Mountain Brook City Council,

This is an explanation of the request to create a Labor Supervisor position within the Park and Recreation department.

We have had a constant need for a small crew to complete different construction projects without stopping the other crews from doing their routine duties. Because this has developed into an independent crew with their own responsibilities, I feel one of the two skilled laborers should be promoted to a labor supervisor and make it officially equal to the other crews. While this is mainly a two man crew, there are times when a third person is borrowed from another crew.

This construction crew has been installing memory benches/picnic tables/new trash cans, cutting and planting trees, repairing our concrete trails, any work with the skid steer or large equipment, maintaining our small equipment, hauling sand/8910, and other special projects. Some of their bigger projects have been preparing the foundation for the restroom at BWF, installing the steps between Overton Park and the Fire Station, and installing the pipe and rock retaining wall at the end of the Nature Trail. When they are not working on their own independent projects that I assign to them, they have been assisting the other crews, mainly Allen with aerating, fertilizing, and top dressing fields and irrigation maintenance. They also help the other crews when they are short members or just need extra help.

A Labor Supervisor is a grade 15 (max step 10) position. I did include this in my budget preparation and discussed it briefly in each budget meeting. The salary increase was approved in the FY-2017 budget. With your approval, I will create this position with the Personnel Board and fill it as quickly as the process will allow.

Please contact me if you have any questions. I also plan to be at the council meeting.

Sincerely,

Shanda Williams



Personnel Board of Jefferson County

The Foundation of Your Merit System Career

Class Title: **LABOR SUPERVISOR**

Class Number: **8064**

Grade: **15**

Min: **1** Max: **10**

Job Summary:

Work involves responsibility for supervising one to three small crews of employees engaged in skilled and unskilled manual labor in maintenance and construction activities and in the maintenance, repair and care of public works, utilities, parks and other facilities. The employee participates in the work, performing the more skilled or difficult tasks. Work involves treating a variety of problems, questions, and situations in conformance with established criteria and employees in this classification exercises discretion in determining procedures in carrying out assignments from written and oral instructions. Employees receive assignments from a supervisor, who defines objectives, priorities, and deadlines and assists the employee with unusual situations that do not have clear precedents. The employee plans and carries out successive steps and resolves problems and deviations in accordance with instructions, policies, and accepted practice. Work is reviewed for technical conformance and consistency with practice and policy and the work is reviewed by on-site observation and inspection.

Essential Functions:

Coordinates and participates in the maintenance and repair of asphalt, concrete, gravel and dirt surfaced streets, alleys and sidewalks. Monitors and participates in the maintenance and installation of water and sewer lines, catch basins, open drainage, head walls, manholes and culverts. Monitors and participates in routine maintenance of parks, cemeteries, playgrounds, athletic fields and related facilities. Coordinates and participates in the care, maintenance and removal of trees in assigned areas; trains and oversees the activities of a tree crew. Operates heavy equipment on project assignments where a full-time operator is not required. Performs more skilled tasks assigned to the crew and uses specialized machines including power and hand tools; drives service truck with equipment and crew members to and from work site. Maintains reports required of supervisors, such as time sheets, activity reports, accident and injury reports and equipment condition reports; maintains tool and equipment inventory. Receives and resolves complaints from the general public regarding specific situations pertaining to area of assignment, corresponds with the public in response to complaints. Oversees crew that collects trash, brush, garbage and debris from streets, alleys, sidewalks and lawns. Flags traffic; places and removes signs and barricades to control traffic. Responds to after hour and emergency calls such as sewer backups, fallen trees and storm damage. May receive bodies from Cooper Green Hospital, transport them to cemetery and oversee burial arrangements.

Supervision Exercised:

An employee in this class plans, organizes, schedules, assigns and evaluates the work of Laborers, Skilled Laborers, Truck Drivers, Heavy Equipment Operators, Tree Technicians and others.

Work Environment:

Work is usually performed outdoors. Work periodically exposes employee to fumes, odors, explosives, traffic hazards, heights, electrical shock, biological and chemical exposure, severe weather conditions and mechanical hazards. Work is performed on steep grades, around electrical wires, under trees, on hot pavement, in sewer collection systems or confined spaces. Employee works around traffic, heavy equipment and with hand and power tools daily.

Physical Demands:

Work requires the regular and at times sustained performance of heavier physical tasks such as walking over rough or uneven surfaces, bending, stooping, crouching, crawling, kneeling, working in restricted and/or confined spaces, climbing, balancing on ladders, working at heights and frequent lifting or carrying of moderately to heavy objects.

Knowledge-Skills:

Knowledge of materials, methods and techniques commonly used in general laboring activities. Knowledge of the tools, equipment, materials, methods and techniques commonly used in the care and maintenance of trees that includes the use of a rope and saddle to climb trees. Knowledge of the occupational hazards and standard safety precautions of the work including basic traffic control setup procedures around a work site. Knowledge of road and sewer construction and maintenance methods and practices. Knowledge of park and ground maintenance. Knowledge of basic automotive and equipment repair and maintenance. Ability to supervise subordinate personnel. Ability to deal courteously and diplomatically with the public. Ability to keep records and prepare written reports. Ability to perform heavy manual labor. Ability to operate a heavy duty truck and heavy equipment when necessary. Skill in the use of various hand and power tools related to the work.

Compensable Qualifications:

High School graduation (or GED) and four years of experience in general labor work, driving heavy duty trucks or operating heavy equipment.

License/Certification Required:

Valid Class B CDL.

Preferred Qualifications:

This Classification Specification is a summary of typical or representative duties and responsibilities inherent in the job class and is not intended to be inclusive of all duties, responsibilities, and tasks performed by incumbents.

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RESOLUTION NO. 2016-193

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

1. That Alabama Power Company is requested to install one (1) 91 LED street light at 4324 Little River Road.
2. That the City Manager is hereby authorized to execute and deliver, or cause to be executed and delivered, on behalf of the City such documents, instruments, and agreements that may be deemed necessary or appropriate with respect to said street light installation.
3. That the City Clerk is directed to furnish the Alabama Power Company a certified copy of this resolution.

ADOPTED: This 28th day of November, 2016.

Council President

APPROVED: This 28th day of November, 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 November 28, 2016, as same appears in the minutes or record of said meeting.

City Clerk

1. **Lighting Equipment Lease.** This Lighting Services Lease Agreement NESC® Governmental (“**Agreement**”) entered into as of _____ (“**Effective Date**”) states the agreed terms and conditions upon which Alabama Power Company (“**APC**”) will commence APC Activity (defined below) no later than twenty (20) days following the Effective Date of this Agreement.

Under this Agreement, APC will: (i) lease to “**Customer**” (identified on Page 1) the “**Equipment**” referenced on Page 1 for use at the stated “**Service Address**” (the “**Premises**”); (ii) provide electric service to operate the Equipment; and (iii) conduct all other APC Activity (defined below). The “**Equipment**” includes all poles, bases, wiring, conduit, fixtures, controls, and related items necessary to provide lighting service through the listed fixtures, unless otherwise expressly noted otherwise in “**Project Notes**.”

Customer acknowledges that regulatory change during the Agreement’s Term (defined in Section 3) may require APC to modify or replace some Equipment.

2. **Intent and Title.** This Agreement is not a sale of the Equipment to Customer. **Customer expressly acknowledges that APC retains title to the Equipment** and agrees that this Agreement only gives Customer the right to use the Equipment during the Agreement’s Term (defined in Section 3), so long as Customer complies with all terms and conditions. Customer acknowledges that the Equipment, even if attached to Customer’s real property, always will remain the exclusive personal property of APC and that APC may remove the Equipment when this Agreement ends. Customer authorizes APC, without further consent or action, to file any UCC financing statement or security agreement relating to the Equipment and agrees that APC may record those documents.
3. **Term.** The initial term of the Agreement for the Equipment is stated on Page 1, calculated from the date of the first monthly bill (the “**Initial Term**”). After the Initial Term, this Agreement automatically renews on a month-to-month basis (the “**Renewal Term(s)**”) and collectively with the Initial Term, the “**Term**”) until terminated by either party by providing written notice of intent to terminate to the other party at least thirty (30) days before the desired termination date. APC’s address for notice is P.O. Box 2641, Birmingham, Alabama 35203; Customer’s mailing address is noted on Page 1.
4. **Electric Service to Equipment.** The terms and conditions of electric service to the Equipment are not included within this Agreement. Alabama state law and the rules, regulations and Rate ODL, or its successor in function, as filed and may be filed with and regulated by the Alabama Public Service Commission “**Commission**” will govern electric service to the Equipment. Such laws, rules, regulations and rate schedules are subject to change as provided by law. Copies of current rules, regulations and applicable rate schedules will be provided by APC upon Customer’s request and are available for viewing on APC’s website: <http://www.alabamapower.com>.
5. **Payment.** APC will invoice Customer for the Equipment and electric service per the terms stated on Page 1, subject to any change in the electric service charge dictated by the Alabama Public Service Commission. Applicable taxes included in the Equipment price are subject to change at any time. Customer agrees to pay the amount billed by the due date (ten (10) days after billing date). If a balance is outstanding past the due date, Customer agrees to pay the greater of 1.5% of the unpaid balance or \$2.00 and acknowledges that APC may require Customer to pay a deposit of up to two times the Estimated Monthly Charge in order to continue service.
6. **Premises Activity.** Customer grants a license and right of access to APC, and its contractors and representatives, for the Term of the Agreement and for a reasonable period after the Term of the Agreement, to enter the Premises with vehicles and equipment to: (i) install and connect the Equipment and, if applicable, remove, disconnect, and dispose of existing equipment (collectively, the “**Installation**”); (ii) inspect, maintain, test, replace, repair, or remove the Equipment; (iii) provide electric service for the Equipment; or (iv) conduct any other Agreement-related activity (items (i) – (iv) collectively, the “**APC Activity**”). Customer will not cause or permit any obstruction that may interfere with APC’s access to the Equipment. Customer represents that the individual signing this Agreement on its behalf has authority to do so and that it has express authority from all Premises owners (and any other party with rights in the Premises) to enter into this Agreement and to authorize the APC Activity. **Customer is solely responsible for safety of the Premises and agrees that APC has no obligation to ensure the safety of the Premises or persons or property entering onto Customer’s Premises.**
7. **Installation.** Customer represents that: (i) the Premises’ final grade will vary no more than 6 inches from the grade existing at the time of Installation; and (ii) if applicable and required for proper Installation, Premises property lines will be clearly marked before Installation.
 - A. **Customer Work.** APC will allow Customer to perform any part of the Installation (including trenching) subject to the following: (1) Customer provides request to APC; (2) Customer warrants Customer’s work will meet APC’s specifications and timing; and (3) Customer acknowledges it is responsible for all reasonable additional costs arising from Customer’s non-compliance with APC’s specifications or delay.
 - B. **Underground Facility/Obstruction Not Subject to Dig Law.** Because APC Activity may require excavation not subject to the Alabama’s Underground Prevention Legislation (Ala. Code §§ 37-15-1 - 37-15-11) (“**Dig Law**”), **Customer must mark any private utility or facility (e.g., gas/ water/sewer line; irrigation facility; low voltage data/communication line) or other underground obstruction at the Premises that is not subject to the Dig Law.** If APC causes or incurs damage due to Customer’s failure to mark a private facility or obstruction before APC commences Installation, Customer is responsible for all damages and any resulting delay.
 - C. **Unforeseen Condition.** The estimated charges shown on Page 1 include no allowance for any subsurface rock, wetland, underground stream, buried waste, unsuitable soil, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, etc. not properly marked or identified (“**Unforeseen Condition**”). If APC encounters an Unforeseen Condition, APC, in its sole discretion, may stop all APC Activity until Customer either remedies the condition or agrees to reimburse all APC costs arising from the condition. Customer is responsible for all costs of Equipment modification or change requested by Customer or dictated by an Unforeseen Condition or circumstance outside APC’s control.
 - D. **Workmanship.** The parties agree that APC shall preform all work in accordance with the National Electric Safety Code “**NESC®**”. NESC® refers to the “**National Electric Service Code**” as revised and published in 2012, and as may be modified from time to time.
8. **Verification of Equipment Installed.** Each party will appoint representative(s) (the “**Representative**”) to verify the completion of the Installation by counting the upgraded equipment (the “**Equipment Count**”). In the event that the Equipment Count is not completed within thirty (30) days of completion, billing will be updated based on APC’s installation completion count until such time as verification can be completed. Any discrepancies will be mutually resolved and billing will be adjusted accordingly.
9. **Equipment Protection and Damage.** After Installation and throughout this Agreement’s Term, Customer will bear the risk of loss, theft, destruction of, or damage to Equipment, other than as resulting from the willful or negligent acts of Company or Representatives. In the event of any work or digging near the Equipment, Customer (or any person or entity working on Customer’s behalf) must: (i) provide notices and locate requests by calling Alabama 811 or 1-800-292-8525; and (ii) provide notices to other utilities or operators as required by the Dig Law. As between Customer and APC, Customer is responsible for all damages arising from failure to comply with applicable law or for Equipment damage caused by anyone other than APC (or an APC contractor or representative).
10. **Maintenance.** During this Agreement’s Term, APC will maintain the Equipment and will bear the cost of routine repair or replacement. **Customer must notify APC of any need for Equipment repair by calling the Business Service Center at 1-888-430-5787.**
11. **Disclaimer; Damages.** APC makes no covenant, warranty, or representation of any kind (including warranty of fitness for a particular purpose or of merchantability) regarding the Equipment or any APC Activity. Customer also acknowledges that, due to the unique characteristics of the Premises, Customer’s needs, or Equipment choice, the Equipment may not follow IESNA guidelines. “**IESNA**” shall mean Illuminating Engineering Society of North America. **Customer waives any right to consequential, special, indirect, treble, exemplary, incidental, punitive, loss of business reputation, or loss of use (including loss of revenue, profits, or capital costs) damages in connection with the Equipment, the APC Activity or this Agreement, or arising from damage, hindrance, or delay involving the Equipment, the APC Activity or Agreement, whether or not reasonable, foreseeable, contemplated, or avoidable.**
12. **Indemnity.** To the fullest extent allowed by law, Customer agrees to indemnify, release, hold harmless, and, at APC’s request, defend APC and its affiliates and contractors (and their officers, directors, employees, representatives, and agents) from or against any loss, damage, cost, expense, or liability (including actual attorneys’ fees reasonably incurred and all expenses of investigation and defense) for any damage or claim for personal or bodily injury (including death), property damage (including loss of use), monetary damage, or equitable relief caused by or arising out of any misrepresentation or act or omission of Customer involving

this Agreement, the Equipment, or the Premises, whether or not caused by or arising out of the joint, concurrent, or contributory (but not sole) negligence of APC.

13. **Default.** Customer is in default if Customer does not pay the entire amount owed within forty-five (45) days of billing. APC's waiver of any past default will not waive any other default. If default occurs, APC, at its discretion, may immediately terminate this Agreement, collect all past due amounts (including late fees) and all amounts due for the Equipment during the remaining Agreement Term, remove the Equipment from the Premises, and seek any other available remedy.
14. **Taxes.** APC makes no representation or warranty regarding treatment of this transaction by the Internal Revenue Service or the status of this Agreement under any federal or state tax law; Customer enters into this Agreement in sole reliance upon Customer's own advisors.
15. **Miscellaneous.** This Agreement contains the parties' entire agreement relating to the Equipment and replaces any prior agreement, written or oral. Only a written amendment signed by each party can modify this Agreement, except that either party may update administrative or contact information (e.g., address, phone, website) at any time by written notice to the other party. Customer will not assign, in whole or in part, this Agreement or its Agreement rights or obligations without APC's prior written consent. No assignment, whether with or without consent, relieves Customer of its Agreement obligations. Customer must provide advance notice of a change in control of all, or substantially all, of Customer's ownership or interest in the Premises. In this Agreement, "**including**" means "including, but not limited to." Alabama law governs this Agreement. If a court rules an Agreement provision unenforceable to any extent, the rest of that provision and all other provisions remain effective.
16. **Immigration Law Compliance.** (a) APC represents and warrants that it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the "**Act**"). (b) APC represents and warrants that it will enroll in the E-Verify program prior to performing any work on the project in Alabama and shall provide documentation establishing that APC is enrolled in the E-Verify program. During the performance of this Agreement, APC shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations. (c) APC agrees to comply with all applicable provisions of the Act with respect to its subcontractors by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work for APC on the project in Alabama, that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. APC represents and warrants that APC shall not hire, retain or contract with any subcontractor to work on the project in Alabama which APC knows is not in compliance with the Act. (d) By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.



L-20161118-192
CITY OF MOUNTAIN BROOK

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

SAM S. GASTON
CITY MANAGER

November 18, 2016

Dear Resident,

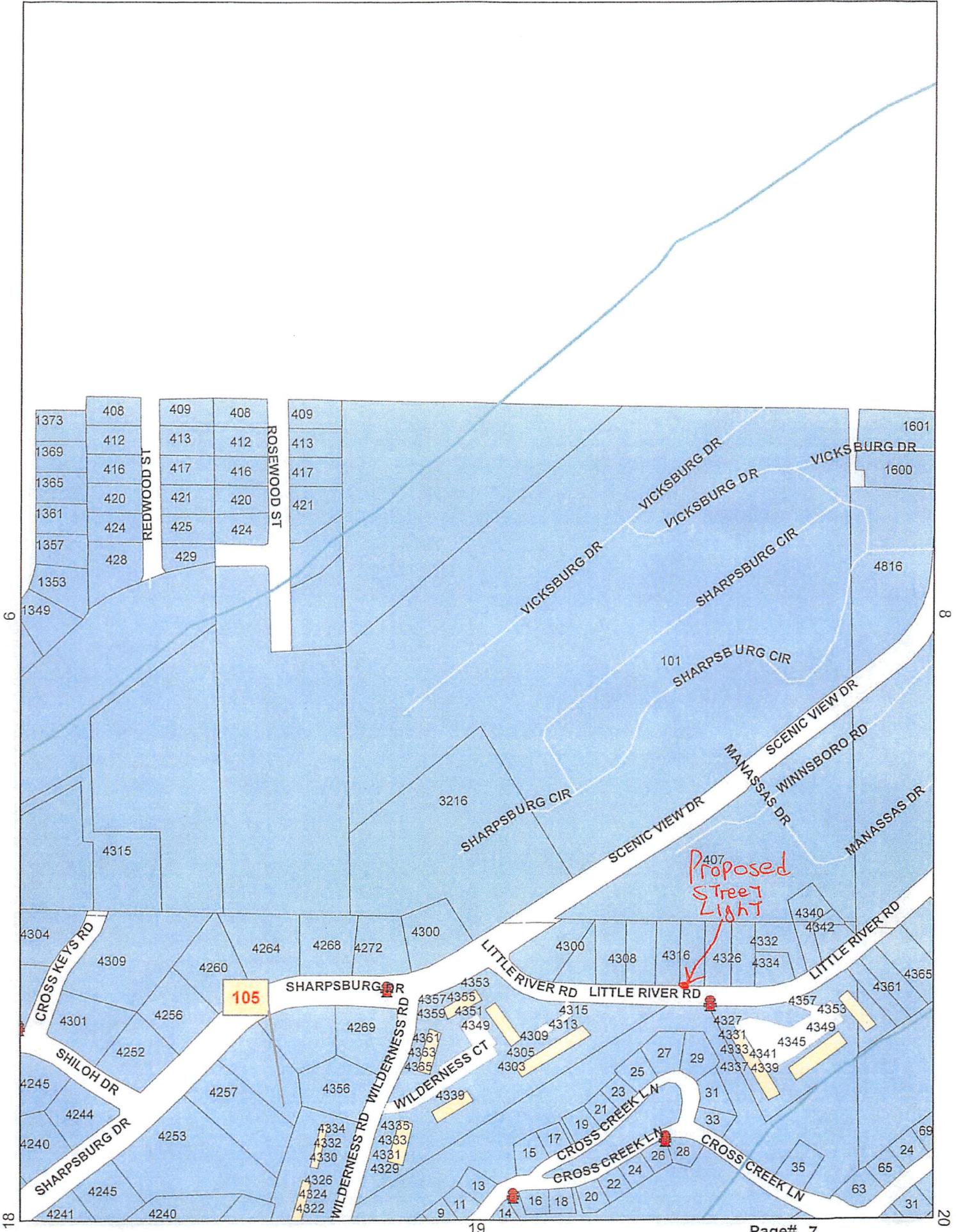
The City of Mountain Brook has received a request to place a 150 watt LED street light on an existing utility pole across from 4324 Little River Road (See attached map). The flood light on this pole has been discontinued in service.

The City Council will consider this request at its next meeting on Monday, November 28th at 7:00 pm. You are invited to attend this meeting and offer your comments on this street light request. If you cannot attend on November 28th, but would like to comment on this request, please contact me at 802-3803 or gastons@mtnbrook.org

Sincerely,

A handwritten signature in blue ink that reads "Sam S. Gaston". The signature is fluid and cursive, with the first name "Sam" being larger and more prominent than the last name "Gaston".

Sam S. Gaston
City Manager



Resident
4316 Little River Road
Mountain Brook, AL 35213

Resident
4318 Little River Road
Mountain Brook, AL 35213

Resident
4324 Little River Road
Mountain Brook, AL 35213

Resident
4326 Little River Road
Mountain Brook, AL 35213

Re: 2016-194
2016-195

November 22, 2016

Dear Mountain Brook City Council,

This is an explanation of the two agreements for improvements to the softball field at the MBHS Athletic Complex.

Karly Miller, the MBHS varsity softball coach and the varsity softball booster club requested that the infield be renovated and a warning track be added to the outfield. Brad Hart, Tommy Prewitt, and I have discussed this request with them and agree that these improvements are needed.

Since this benefits all parties, the cost will be shared between the City, the Board of Education, and Mountain Brook Athletics. After contacting several companies for quotes, we all agreed that Specialty Turf Supply (STS) was the best option. Their quote is for \$8,480.60. The BOE will pay \$4,240.30; MBA and the City will pay \$2,120.15 each. I have already included the City's portion in my budget under athletic improvements.

They will be amending the infield with additional infield mix and conditioner. They will extend the infield to the regulation 60 ft distance while removing the lip that has been created and laser grade the surface to tie into the grass. They will rebuild the pitcher's mound and replace the bases.

They will also create a 10 foot wide warning track along the outfield fence that is needed for the safety of the players. This will let them know when they are getting close to the fence while they are running to catch the ball.

Since there are multiple parties involved, it was decided that the City would take the lead on the project and enter into an agreement with the BOE and MBA for funding of the project. The other agreement is between the City and STS for the work. I have sent copies of both agreements to their respective parties and each has approved them. Once the City approves it and the agreements are signed, I will request a PO. We would like for the work to be completed before school starts back after Christmas Break. As long as the weather cooperates, this should not be a problem.

Please contact me if you have any questions. I also plan to be at the council meeting.

Sincerely,

Shanda Williams

RESOLUTION NO. 2016-194

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the Mayor or City Manager to execute and deliver, or cause to be executed and delivered, on behalf of the City an agreement between the City and Specialty Turf Supply, Inc., in the form as attached hereto as Exhibit A, with respect to improvements to [softball] field 7 located at the Athletic Complex.

ADOPTED: This 28th day of November, 2016.

Council President

APPROVED: This 28th day of November, 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 November 28, 2016, as same appears in the minutes of record of said meeting.

City Clerk

AGREEMENT TO CONSTRUCT IMPROVEMENTS TO FIELD 7

SPECIALTY TURF SUPPLY, INC. (hereinafter "Contractor") enters into this Agreement to Construct Improvements to Field 7 ("Agreement") with the **CITY OF MOUNTAIN BROOK, ALABAMA**, a municipal corporation ("City") effective as of the date last executed by a party below (the "Effective Date").

1. Scope of Project. The Contractor will provide and furnish all labor, materials, equipment, operations and services necessary to perform the following improvements to Field 7, which is located at Mountain Brook High School and leased to the City, in accordance with the terms, conditions and specifications set forth herein (the "Project"):

Scope of Project Set Forth on Attached **Exhibit A–June 23, 2016 Quote by Contractor** (which Exhibit is incorporated by reference)

All of the operations to be performed by Contractor on the Project collectively may be referenced herein as the "Work."

2. Project Schedule. The Contractor agrees to complete the Work and finish the Project within thirty (30) days after the City gives notice to proceed with the Work.

3. Termination. The City may terminate this Agreement if the Contractor defaults on a material obligation to the City hereunder (a "Default"), and, following the City's provision of written notice of Default to Contractor, the Contractor fails to correct or remedy the Default within seven (7) days after receipt of notice. The failure of the Contractor to timely perform the Work shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available by law.

4. Warranties of Contractor. The Contractor warrants each of the following with respect to its Work:

- (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;
- (b) that it, and all of its employees or subcontractors, will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;
- (c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of its work;

- (d) that it has inspected the locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those sites is reasonably suitable for Contractor to complete the Work;
- (e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;
- (f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of completion of the Project; and
- (g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of the Contractor is authorized to execute this Agreement.

5. Insurance/Safety/Indemnification.

(a) Insurance. For the duration of this Agreement and for limits not less than stated below, the Contractor, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to City:

(i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars (\$750,000), combined single limit and aggregate for bodily injury and property damage;

(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated by the Contractor with policy limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000) combined single limit and aggregate for bodily injury and property damage; and

(iii) Workers Compensation: Workers' Compensation as required by statute.

The Contractor may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before the execution of this Agreement, the Contractor shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate shall name the City, Mountain Brook Board of Education, and Mountain Brook Athletics, Inc., and their respective agents, employees and officials, as additional insureds on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

(b). **Safety.** Contractor agrees that it (a) has the sole responsibility to identify any condition or hazard that will prevent it from safely performing the Work, and (b) is exclusively responsible for performing the Work in a safe manner that does not put at risk the safety of persons or endanger property. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) its employees and all other persons who may be affected by the Work; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Work sites, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work sites or adjacent thereto.

(c). **Indemnification.** The Contractor agrees to defend, indemnify, and hold harmless the City, the Mountain Brook Board of Education, and Mountain Brook Athletics, Inc., and their respective agents, employees and officials (hereinafter collectively, the "Indemnitees") from and against all demands, actions, liabilities, expenses (including reasonable attorney's fees) or claims for damages by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") that arise out of, relate to or are caused by any negligent act, omission or conduct by Contractor or any Contractor Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.

(d). **Limitation of Liability.** In no event may Contractor recover from the City any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the City's breach of its obligations hereunder.

6. Compensation. The City will pay the Contractor the lump sum amount of Eight Thousand Four Hundred Eighty and 60/100 Dollars (the "Contract Price") to perform the Project. Notwithstanding any provision herein, unless otherwise agreed in writing, the amount payable to the Contractor for the Work shall not exceed this sum.

Upon successfully completing the Project, Contractor will submit an invoice for the Contractor Charge, and the City will remit payment for any undisputed amount of that Charge within fifteen (15) days after receipt of that invoice.

7. Project Representative. The parties appoint the following respective representative who shall coordinate with the other party on all matters related to the performance of the Work and the administration of this Agreement (the "Project Representative"):

City Project Representative: Shanda Williams
56 Church Street
Mountain Brook, AL 35213
Email: williamssh@mtnbrook.org

Contractor Project Representative: Michael O. Hill
2136 Viking Circle
Birmingham, AL 35216
Email: mikeh.sts@gmail.com

Any notice required hereunder shall be sufficiently given when sent to the appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

8. Miscellaneous Provisions.

a. This Agreement sets forth the entire understanding between the parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between the parties prior to acceptance and signing of this Agreement are deemed to have merged herein. This Agreement may not be modified or amended except in a writing that is signed by all parties.

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

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

d. The Contractor may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of the City, which consent may be withheld for any reason.

e. This Agreement is made only for the benefit of the City and Contractor. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

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

h. Immigration Law Compliance. The Contractor represents and warrants to the City that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an “unauthorized alien,” as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the “Act”); (ii) it will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Contractor shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. The Contractor further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore if Contractor is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

WHEREAS the undersigned, duly authorized representatives of the parties execute this Agreement on behalf of their respective organization on the date shown below.

SPECIALTY TURF SUPPLY, INC.

**CITY OF MOUNTAIN BROOK,
ALABAMA**

By: _____

By: _____

Its: _____

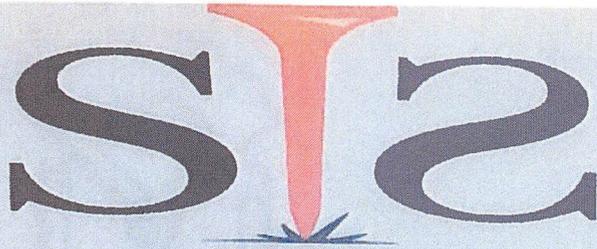
Its: Mayor

Date: _____

Date: _____

EXHIBIT A – JUNE 23, 2016 QUOTE BY CONTRACTOR

See attached.



Specialty Turf Supply, Inc.

EXHIBIT A

June 23, 2016

Shanda Williams
Mountain Brook Park and Rec
Mountain Brook Softball Field
Mnt Brook

Dear Mrs Williams,

Thank you for the opportunity to quote the work for the softball field at Mountain Brook High School. Please feel free to call me if you have any questions at 205-337-8248

Description of Work:

Mountain Brook High Softball Field
Add two Loads of Infield Mix/ Clay to the infield
Laser grade the surface and tie into the grass
Add Infield conditioner to the infield and drag it in
Add a warning track to the outfield fence
approx 300 ft by 10 ft wide
labor and materials

Total Price
\$8,480.60

Sincerely,

A handwritten signature in black ink that reads "Michael O. Hill".

Michael O. Hill
Specialty Turf Supply, Inc.

RESOLUTION NO. 2016-195

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the Mayor or City Manager to execute and deliver, or cause to be executed and delivered, on behalf of the City an expense sharing agreement between the City, Mountain Brook Board of Education, and Mountain Brook Athletics, Inc., in the form as attached hereto as Exhibit A, with respect to improvements to [softball] field 7 located at the Athletic Complex.

ADOPTED: This 28th day of November, 2016.

Council President

APPROVED: This 28th day of November, 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 November 28, 2016, as same appears in the minutes of record of said meeting.

City Clerk

EXPENSE SHARING AGREEMENT

This EXPENSE SHARING AGREEMENT (“Agreement”) is made and entered into between the **City of Mountain Brook, Alabama** (hereinafter “City”), the **Mountain Brook Board of Education** (hereinafter “BOE”) and **Mountain Brook Athletics, Inc.** (hereinafter “MBA”). This Agreement shall be effective on the date last signed below by a party.

WITNESSETH:

WHEREAS, pursuant to that certain Lease Agreement entered between the BOE and the City on or about February 9, 2015 (the “BOE/City Lease”), the City leases certain fields that are owned by the BOE and used for recreational, athletic and community purposes;

WHEREAS, the fields leased to the City include Field 7, which is located at Mountain Brook High School and used by the Mountain Brook High School Varsity Girls Softball Team (“Softball Team”) for practice and games (“Field 7”);

WHEREAS, pursuant to that certain Facility Use Agreement entered between the City and MBA on or about June 27, 2016 (the “City/MBA Use Agreement”), MBA, which organizes and operates youth recreational athletic leagues and activities for Mountain Brook citizens, also may use Field 7;

WHEREAS, supporters of the Softball Team have requested that alterations, improvements and upgrades be made to Field 7, including renovation of the infield and creation of a warning track in the outfield (the “Project”);

WHEREAS, the City will retain a contractor to construct the Project at a total, estimated cost of \$8,480.60;

WHEREAS, to help defer the City’s expense of constructing the Project, MBA will pay the City \$2,120.15 (the “MBA Share”) and BOE will pay the City \$4,240.30 (the “BOE Share”); and

WHEREAS, the completion of the Project will serve a public purpose, promote the general health and welfare of the citizens of the City, and provide tangible benefits for children and other residents of the City.

NOW, THEREFORE, the City, BOE and MBA acknowledge and agree as follows:

1. BOE hereby acknowledges receipt of notice of improvements or alterations to Field 7 that is contemplated in Section 9 of the BOE/City Lease.
2. The City assumes the responsibility to contract with and compensate a third party contractor to perform the services and work needed to construct the Project.

3. The parties anticipate that the Project will be completed within thirty (30) after the contractor commences the work.

4. No later than (10) days after receiving notice from the City that the Project has been completed, (a) BOE will remit the BOE Share to the City Clerk, and (b) MBA will remit the MBA Share to the City Clerk.

5. After the contemplated improvements and alterations are constructed, those will adhere to Field 7 and become property of the BOE, and the respective rights of the parties concerning the use, operation or maintenance of Field 7 shall continue to be subject to terms, conditions and provisions in the BOE/City Lease and City/MBA Use Agreement.

6. Nothing herein is intended to amend, modify or affect the terms, conditions and provisions in the BOE/City Lease and City/MBA Use Agreement.

7. This Agreement expresses the entire understanding between the parties with respect to the matters herein and supersedes any prior negotiation, proposal, understanding or agreement, written or oral, concerning those matters. In the event any provision in this Agreement conflicts with that in the BOE/City Lease or the City/MBA Use Agreement, the applicable term(s) in that Lease or Sublease shall control.

8. This Agreement may be executed (a) in counterparts, a complete set of which together shall constitute an original or (b) in duplicates, each of which shall constitute an original. Copies of this Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

In Witness Whereof, the undersigned, duly authorized representatives of the parties enter this Agreement on behalf of their respective organization.

(Signature Page Follows)

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____
Its: _____
Date: _____, 2016

ATTEST:

By: _____
Its: _____

MOUNTAIN BROOK BOARD OF EDUCATION

By: _____
Its: _____
Date: _____, 2016

ATTEST:

By: _____
Its: _____

MOUNTAIN BROOK ATHLETICS, INC.

By: _____
Its: _____
Date: _____, 2016

ATTEST:

By: _____
Its: _____

RESOLUTION NO. 2016-196

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the Mayor or City Manager to execute and deliver, or cause to be executed and delivered, on behalf of the City an agreement between the City and Brown Mechanical Contractors, Inc., in the form as attached hereto as Exhibit A, with respect to the fire service line relocation at 820 Shades Creek Parkway required for the Phase 5B sidewalk construction project.

ADOPTED: This 28th day of November, 2016.

Council President

APPROVED: This 28th day of November, 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 November 28, 2016, as same appears in the minutes of record of said meeting.

City Clerk

**AGREEMENT FOR RELOCATION OF FIRE SERVICE
LINE AT 820 SHADES CREEK PARKWAY**

BROWN MECHANICAL CONTRACTORS, INC. (hereinafter "Contractor") enters into this Agreement for Relocation of Fire Service Line at 820 Shades Creek Parkway ("Agreement") with the **CITY OF MOUNTAIN BROOK, ALABAMA**, a municipal corporation ("City") effective as of the date last executed by a party below (the "Effective Date").

1. **Scope of Project.** The Contractor will perform the below described scope of work at 820 Shades Creek Parkway (the "Site") in accordance with the terms, conditions and specifications set forth herein (the "Project").

In conjunction with modification of a retaining wall at the Site, at the hourly rates set forth on the attached **Exhibit A- Contractor's Work Order Estimate** (which Exhibit is incorporated by reference), Contractor will provide all labor, equipment, supervision and operations required to excavate, relocate and install a functional fire service line at a mutually agreed location at the Site (the "Scope"). Other understandings between the parties concerning the Project and Work are set forth on the attached **Exhibit B – Other Understandings Concerning Project**, which is incorporated herein by reference.

In the event that Contractor desires or is required to perform services on the Project that fall outside the Scope ("Additional Operations"), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same.

All of the work and operations to be performed by Contractor on the Project collectively may be referenced herein as the "Work."

2. **Project Schedule.** The Contractor agrees to complete the Work and finish the Project within no more than three (3) days after the City gives notice to proceed.

3. **Termination.** The City may terminate this Agreement if the Contractor defaults on a material obligation to the City hereunder (a "Default"), and, following the City's provision of written notice of Default to Contractor, the Contractor fails to correct or remedy the Default within seven (7) days after receipt of notice. The failure of the Contractor to timely perform the Work shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available by law.

4. **Warranties of Contractor.** The Contractor warrants each of the following with respect to its Work:

- (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;
- (b) that it, and all of its employees or any subcontractors, will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;
- (c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;
- (d) that it has inspected the locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those sites is reasonably suitable for Contractor to complete the Work;
- (e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;
- (f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of completion of the Project; and
- (g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of the Contractor is authorized to execute this Agreement.

5. Insurance/Safety/Indemnification.

(a) Insurance. For the duration of this Agreement and for limits not less than stated below, the Contractor, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to City:

- (i) Comprehensive General Liability: One Million Dollars (\$1,000,000), combined single limit and aggregate for bodily injury and property damage;

(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage; and

(iii) Workers Compensation: Workers' Compensation as required by statute.

The Contractor may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before the execution of this Agreement, the Contractor shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate shall name the City as an additional insured on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

(b). Safety. Contractor agrees that it (a) has the sole responsibility to identify any condition or hazard that will prevent it from safely performing the Work, and (b) is exclusively responsible for performing the Work in a safe manner that does not put at risk the safety of persons or endanger property. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) its employees and all other persons who may be affected by the Work; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Work sites, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work sites or adjacent thereto.

(c). Indemnification. Contractor agrees to defend, indemnify, and hold harmless the City and its agents, employees and officials (hereinafter collectively, the "Indemnitees") from and against all demands, actions, liabilities, expenses (including reasonable attorney's fees) or claims for damages by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") that arise out of, relate to or are caused by any negligent act, omission or conduct by Contractor or any Contractor Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.

(d). Limitation of Liability. In no event may Contractor recover from the City any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the City's breach of its obligations hereunder.

6. Compensation. As contemplated in Section 1 above and on Exhibit A, the Contractor will charge the City on an hourly basis for labor and equipment expended or used to perform the Work. Additionally, Contractor may charge the City for any

Additional Services that the City Project Representative approves in advance as being necessary to complete the Project.

Within ten (10) days following the successful completion of the Work, Contractor will submit to the City Project Representative a payment request for the total amount that it determines is due for the Work. Along with such invoice the Contractor shall submit records reasonably evidencing the hours of labor performed by type of work, the hours and type of equipment used, and other information that supports its payment request. Within five (5) days following receipt of that request, the City Project Representative will review the request, consult with Contractor and make any mutually agreed modifications to same, certify the amount of that request, and forward that certified payment request to the City. The City will remit to the Contractor the amount certified for payment within twenty (20) days after it receives that certification.

7. Project Representative. The parties appoint the following respective representatives who shall coordinate with the other party on all matters related to the performance of the Work and the administration of this Agreement (the "Project Representative"):

City Project Representative: Matt Stoops
 Sain Engineering
 100 Corporate Pkwy, Suite # 100
 Birmingham, AL 35242
 Email: mstoops@sain.com

Contractor Project Representative: Joshua Smith
 3212 6th Ave S.
 Birmingham, AL 35222
 Email: jsmith@brownmechanical.com

Any notice required hereunder shall be sufficiently given when sent to the appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

8. Miscellaneous Provisions.

a. This Agreement sets forth the entire understanding between the parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between the parties prior to acceptance and signing of this Agreement are deemed to have merged herein. This Agreement may not be modified or amended except in a writing that is signed by all parties.

b. This Agreement may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. An electronic or facsimile copy

of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

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

d. Contractor may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of the City, which consent may be withheld for any reason.

e. This Agreement is made only for the benefit of the City and Contractor. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

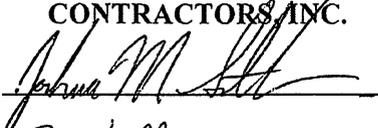
f. Contractor is an independent contractor of the City. This Agreement does not create any partnership, joint venture or principal-agent relationship between the City and Contractor. Further, the City retains no control or authority with respect to its means and methods in which the Contractor (or any of its employees or representatives) performs the Work.

h. Immigration Law Compliance. Contractor represents and warrants to the City that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an “unauthorized alien,” as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the “Act”); (ii) it will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Contractor shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Contractor further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore if Contractor is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

(Signature Page Follows)

Whereas, the undersigned, duly authorized representatives of the parties execute this Agreement on behalf of their respective organization on the date(s) shown below.

**BROWN MECHANICAL
CONTRACTORS, INC.**

By: 

Its: Project Manager

Date: 11/21/2016

**CITY OF MOUNTAIN BROOK,
ALABAMA**

By: _____

Its: Mayor

Date: _____

EXHIBIT A – CONTRACTOR’S WORK ORDER ESTIMATE

See attached.

EXHIBIT B – OTHER UNDERSTANDINGS CONCERNING WORK

1. The following items and operations are not included in the Work and Estimate of charges contemplated on Exhibit A:

- A. All cementitious work, included but not limited to, formed concrete for pads, pits, supports or associated excavation.
- B. Performance Bond.
- C. Patching of any kind, included but not limited to, concrete, asphalt, roofing, drywall, flooring, etc.
- D. Architectural work.
- E. Painting.
- F. Access Panels.
- G. Engineering fees or coordination of engineers' specifications, drawings &/or approved submittals.
- H. Scheduled overtime; provided that the rates for any overtime work by labor type that the Contractor may charge are set forth on Exhibit A of this Agreement.
- I. Exterior Louvers or door louvers of any kind.
- J. Toilet room accessories.
- K. Site security. We assume this will be provided by others.
- L. Temporary services or utilities. We assume these will be provided by others.
- M. Dumpsters and/or trash removal. We include clean-up and hauling of our trash and scrap to a central site location for removal by others.
- N. Dewatering or subsurface drainage.
- O. Block outs and framing for equipment and ductwork.
- P. Seismic restraints or supports.
- Q. Printing fees or charges for construction documents.
- R. Handling or disposal of hazardous materials (for example, Asbestos or medical waste).
- S. Lost time due to infection control. All infection control measures, unless specifically included in proposal above.
- T. Connection of owner-furnished equipment not specified on plumbing drawings.
- U. Extra work, premium time, lost time, or excessive crew sizes resulting from unforeseen or concealed conditions, work in occupied spaces, or circumstances beyond our control.
- V. Demolition not specified.
- W. Sewer impact fees, environmental fees, or use fees.
- X. Fire protection piping.
- Y. Lintels or structural steel framing necessitated by duct or pipe penetrations through any walls or building structure. Sleeves, where required, are included.

Z. Rock or concrete excavation, or replacement of unsuitable backfill. If rock excavation and removal is required, it will be charged at \$350.00 per cubic yard.

AA. Replacement of shrubs, grass or trees affected by excavation.

BB. Operation of permanent equipment for construction purposes.

CC. Disconnect switches and electrical power wiring.

DD. Confirming accuracy of work performed by others prior to performing the work under our contract.

EE. Control wiring for Medical Gas Equipment and Alarms

FF. Extra work due to other trades not following coordination drawings.

GG. Lost time due to insufficient access to the jobsite.

HH. Extra work resulting from poor planning or unreasonable sequencing of work.

2. Contractor assumes that an adequate staging area will be provided at the Site.

3. Payment for Contractor's Work will be processed and made as provided in Section 6 of the Agreement.

4. No work will be performed by others on Brown Mechanical's behalf without written notice being provided to Brown Mechanical at least three working days in advance of performing the work.

5. The venue for resolution of any dispute arising under the Agreement will be in Birmingham, Alabama.

6. Any Permit Fee is excluded and will be charged at cost if required.

RESOLUTION NO. 2016-197

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the City Manager to remit, on behalf of the City, one-half (1/2) of the 20% local match committed to by the City of Homewood, Alabama for an APPLE grant funded feasibility study of [pedestrian] improvements of the Hollywood Road bridge over U. S. Highway 280 in an amount estimated to be \$6,000.

ADOPTED: This 28th day of November, 2016.

Council President

APPROVED: This 28th day of November, 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 November 28, 2016, as same appears in the minutes of record of said meeting.

City Clerk

RESOLUTION NO. 2016-198

WHEREAS, the City Council approved the installation of three (3) small cell support structures (BRM004, BRM011 and BRM080) upon its adoption of Resolution No. 2016-104 on August 8, 2016 pursuant to the provisions of paragraph 2(b)(vii)(3) of Ordinance No. 1948; and

WHEREAS, Crown Castle NB East, LLC (applicant), has requested that the specified location of support structure BRM004 be modified for technical and/or logistical reasons; and

WHEREAS, the City officials and the affected property owner have reviewed the proposed relocation and make no objections to applicant's requested modification; now, therefore,

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby approves the installation/relocation of the proposed support structure (BRM004) in the public right-of-way at the location identified on the right-of-way survey at 4001 Montevallo Road (Exhibit A attached hereto) and the issuance of a building permit related thereto.

ADOPTED: This 28th day of November, 2016.

Council President

APPROVED: This 28th day of November, 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 November 28, 2016, as same appears in the minutes or record of said meeting.

City Clerk

RIGHT OF WAY SURVEY
AT 4001 MONTEVALLO ROAD
MOUNTAIN BROOK, AL. 35123

SITUATED IN THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$
OF SECTION 33, TOWNSHIP 17, SOUTH, RANGE 2 WEST,
JEFFERSON COUNTY, ALABAMA

PREPARED FOR:
CROWN CASTLE
1200 NORTH MEADOW PARKWAY
SUITE 180
ROSWELL, GA, 30076

I HEREBY STATE THAT ALL PARTS OF THIS SURVEY AND DRAWING HAVE BEEN COMPLETED IN ACCORDANCE WITH THE CURRENT REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR SURVEYING IN THE STATE OF ALABAMA TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

SURVEYOR:
Jeff D. Arrington 11-7-2016
JEFF D. ARRINGTON DATE
ALABAMA NO. 18664

NOTES:

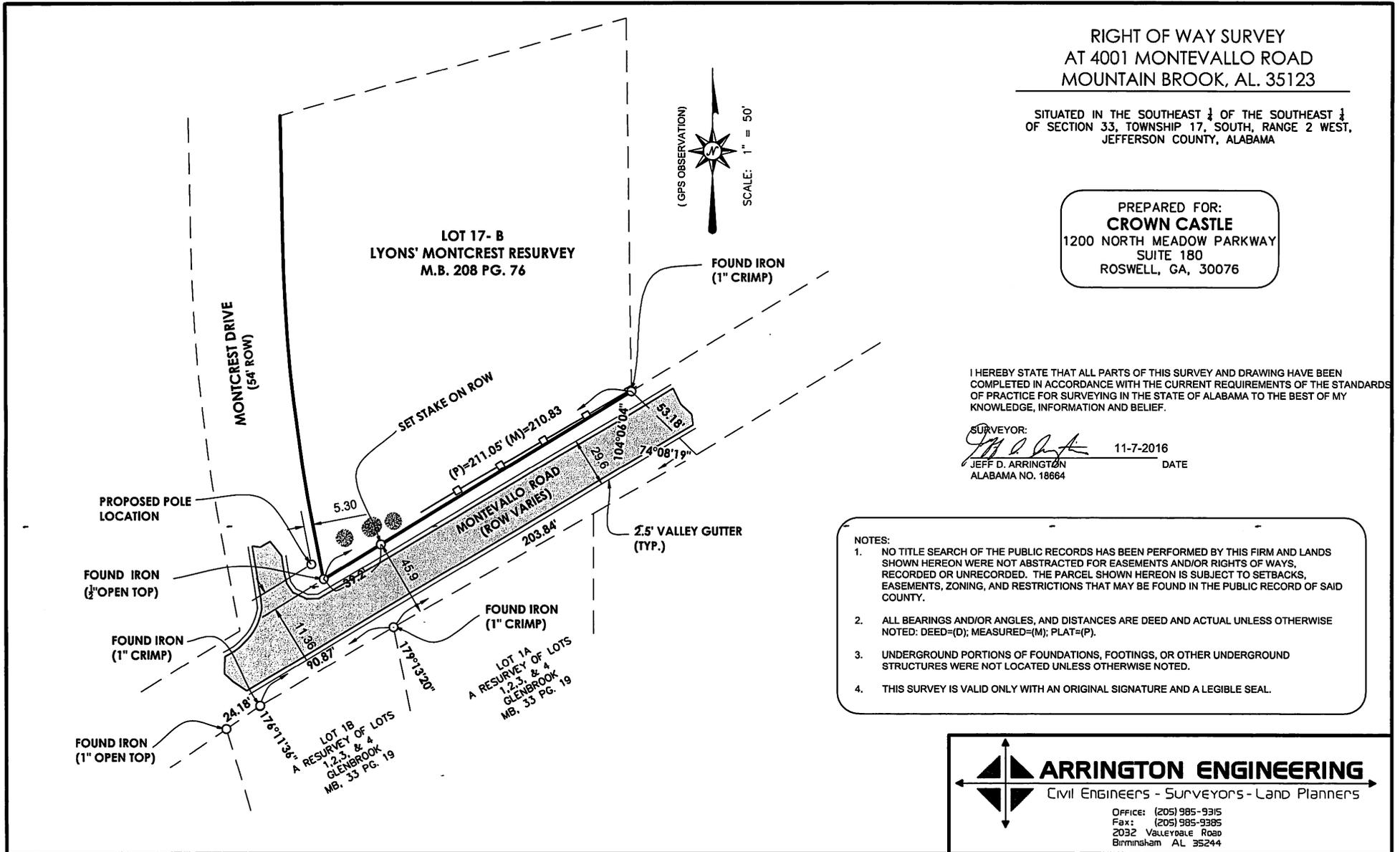
1. NO TITLE SEARCH OF THE PUBLIC RECORDS HAS BEEN PERFORMED BY THIS FIRM AND LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR EASEMENTS AND/OR RIGHTS OF WAYS, RECORDED OR UNRECORDED. THE PARCEL SHOWN HEREON IS SUBJECT TO SETBACKS, EASEMENTS, ZONING, AND RESTRICTIONS THAT MAY BE FOUND IN THE PUBLIC RECORD OF SAID COUNTY.
2. ALL BEARINGS AND/OR ANGLES, AND DISTANCES ARE DEED AND ACTUAL UNLESS OTHERWISE NOTED: DEED=(D); MEASURED=(M); PLAT=(P).
3. UNDERGROUND PORTIONS OF FOUNDATIONS, FOOTINGS, OR OTHER UNDERGROUND STRUCTURES WERE NOT LOCATED UNLESS OTHERWISE NOTED.
4. THIS SURVEY IS VALID ONLY WITH AN ORIGINAL SIGNATURE AND A LEGIBLE SEAL.

ARRINGTON ENGINEERING
Civil Engineers - Surveyors - Land Planners

Office: (205) 985-9315
Fax: (205) 985-9385
2032 Valleydale Road
Birmingham AL 35244

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EXHIBIT A





Steve Boone <boones@mtnbrook.org>

formal meeting add-on November 28

1 message

Dana Hazen <hazend@mtnbrook.org>

Thu, Nov 17, 2016 at 4:58 PM

To: Steve Boone <boones@mtnbrook.org>, Sam Gaston <gastons@mtnbrook.org>

We need to amend the attached resolution to allow a change in precise location of small cell BRM004 on Montevallo Road to be approved at the location on the attached survey.

The approved resolution was specific as to the precise location from back of curb on Montrose and Montevallo (recommended by Public Works) for sight distance purposes. This location does not work for Crown and Public Works has approved the revised location on the attached survey.

John Lyons owns property on both sides of the intersection and he is fine with the revised location.

Steve Stein says we don't need to re-notify all original neighbors.

Thanks!

--

Dana O. Hazen, MPA, AICP

Director of Planning, Building & Sustainability

205/802-3821 phone

205/879-6913 fax

City of Mountain Brook

56 Church Street

Mountain Brook, AL 35213

2 attachments**2016-104 Res to Approve the Installation of New Support Structure BRM004.pdf**

51K

**BRM004 Property Survey 20161116.pdf**

519K

RESOLUTION NO. 2016-104

WHEREAS it has been determined, based on administrative review of the application, that Crown Castle NB East, LLC has submitted a substantially complete application seeking approval for the installation of four (4) new support structures within the public right-of-way in the vicinity of Montevallo Road (BRM004), Mountain Brook Parkway (BRM011 & BRM080), and Hastings Road (BRM079), for the proposed installation/expansion of a small cell data network; and

WHEREAS, after due consideration of said application and observing first-hand each of the proposed installation sites, the City Manager hereby recommends the issuance of permits for the installation of such new support structures, and

WHEREAS the City Council has caused notices to be delivered to property owners whose property abuts the public right-of-way on which such new support structures are proposed to be installed for the purpose of informing said affected property owners that the City Council will review the City Manager's recommendation and consider whether the permits for their installation shall be issued by the City; and

WHEREAS after due consideration of the application, the recommendation of the City Manager, public comments, and the public interests promoted from the expansion of the small cell data network within the City; now, therefore,

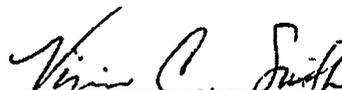
three (3)

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby approves the installation of the ~~four (4)~~ *three (3)* additional support structures as identified in the application and authorizes the City Manager or his designee to issue a permit (or permits) for such installations in accordance with the City Code, and subject to the following specific conditions:

(3) three

1. That the applicant provide a survey of each of the ~~(4) four~~ *(3) three* locations, ensuring that the proposed pole locations are in the public right-of-way; *(BRM004, BRM011, & BRM080)*
2. That the proposed pole on Montevallo Road (BRM004) be located at least 9 feet from the BOC (back of curb) on Montevallo Road and 59 feet from the BOC (back of curb) on Montcrest for vehicular sight distance.

ADOPTED: This 8th day of August, 2016.



Council President

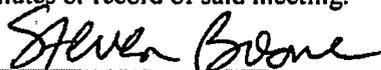
APPROVED: This 8th day of August, 2016.



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 August 8, 2016, as same appears in the minutes or record of said meeting.



City Clerk