

**MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

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

DECEMBER 12, 2016, 7:00 P.M.

1. Approval of the minutes of the November 28, 2016 regular meeting of the City Council.
2. Consideration: Resolution ratifying the transfer of cash/surplus between funds as of and for the year ended September 30, 2016.
3. Consideration: Resolution reaffirming the City's commitment to promote safe workplace guidelines with respect to the City's workers' compensation program.
4. Consideration: Resolution authorizing the execution of an agreement with Con-site Services, Inc. for the grinding and removal of trees and organic materials stockpiled at Public Works.
5. Consideration: Resolution authorizing the execution of a professional services agreement with Gresham, Smith & Partners for the design of the Caldwell Mill Road bridge replacement.
6. Consideration: Resolution setting a public hearing for January 9, 2017 at 7 p.m. to consider and ordinance amending Chapter 129 of the City of Mountain Brook Municipal Code, Articles III, IV, V, VII, VIII, XVIII, XX, XIX regarding building limitations in residential zoning districts, use exemptions, exceptions to require setbacks for architectural features and accessory buildings on residential lots.
7. Consideration: Resolution authorizing the execution of an assignment and assumption of maintenance agreement between the City and ISBI Cahaba Village, LLC and Cahaba Village Properties, LLC with respect to the "Agreement for the Cooperative Maintenance of Public Right of Way" previously authorized upon the adoption of Resolution No. 2014-118 on September 22, 2014.
8. Consideration: Resolution authorizing the execution of an agreement between the City and C. S. Beatty Construction, Inc. with respect to its donation of materials and services for the installation of a trail loop and memorial bench foundation along the Jemison Trail.
9. Announcement: The next regular meeting of the City Council is January 9, 2017, at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
10. Comments from residents.
11. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
NOVEMBER 28, 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 6:30 p.m. on Monday, the 28th 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 Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

1. AGENDA

1. Request from AT&T to extend the ground lease for the communications antenna located on Mountain Brook Parkway (Appendix 1). The City Attorney shall proceed with the preparation of the lease extension agreement for formal consideration by the City Council at a later date.
2. Update on the executive search for the replacement of retiring Library Director, Sue Debrecht (effective February 2017) – Council member Shelton. The executive search firm has received approximately 30 resumes from across the county. The search committee expects to begin interviewing up to six finalists in the coming weeks. Hopefully, the new Director can be hired before the current Director retires to facilitate the transition.
3. Review of the matters to be considered at the formal [7 p.m.] meeting.

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 work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on November 28, 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 28, 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 28th 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 Whit Colvin, 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. PRESENTATION

Mayor Welch read aloud and presented Resolution No. 2016-191 to former council member Jack D. Carl in recognition of this service to the City.

2. 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 November 14, 2016 regular meeting of the City Council of the Mountain Brook	
2016-191	Recognize Jack D. Carl for his outstanding service to the City	Exhibit 1
2016-192	Create 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	Exhibit 2, Appendix 1
2016-193	Authorize the installation of one 91 watt LED street light across the street from the property located at 4324 Little River Road	Exhibit 3, Appendix 2
2016-194	Authorize 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	Exhibit 4, Appendix 3
2016-195	Authorize 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	Exhibit 5, Appendix 4

- | | | |
|-----------------|---|--------------------------|
| 2016-196 | Authorize 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 | Exhibit 6,
Appendix 5 |
| 2016-197 | Authorize 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 not to exceed \$6,000) | Exhibit 7 |
| 2016-198 | Amend 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 Montevallo Road and authorize the issuance of a building permit for same | Exhibit 8,
Appendix 6 |

Thereupon, the foregoing minutes and resolutions were introduced by Council President Smith and a motion for their immediate adoption was made by Council President Pro Tempore Pritchard. The minutes and resolutions were then considered by the City Council. Council member Black 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. 2016-191 through 198) are adopted by a vote of 5—0 and as evidence thereof she signed the same.

3. RECOGNITION OF GUESTS

Council President Smith recognized Boy Scouts Robert and Andrew Thomason from Troop 320 in attendance to satisfy the requirements for the Communications merit badge.

4. 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, December 12, 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 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 November 28, 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. 2016-191

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.

EXHIBIT 2

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.

RESOLUTION NO. 2016-199

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes and ratifies the following fiscal 2016 [cash and surplus] intra-fund transfers:

Ledger	Description	Adopted Budget (or Current Actual)	Proposed	Additional Transfer Ratified
10011166941	Transfers-Capital	\$ 608,633 DR	808,633 DR	\$200,000 DR
10011166917	Transfers-Capital	1,036,685 DR	1,236,685 DR	200,000 DR
44134084810	Transfers-General Fund	608,633 CR	808,633 CR	200,000 CR
41734084810	Transfers-General Fund GJ 09-45 Transfer General Operations excess surplus to Capital	1,036,685 CR	1,236,685 CR	200,000 CR
60034084810	Transfers General Fund	300,000 CR	600,000 CR	300,000 CR
10011166962	Transfers Debt Service Fund GJ 09-45 Transfer General Operations excess surplus to Debt Service Fund	300,000 DR	600,000 DR	300,000 DR
10011166915	Transfers Park Board	1,131,042 DR	1,102,382 DR	28,660 CR
11534084810	Transfers General Fund	1,131,042 CR	1,102,382 CR	28,660 DR
14634084810	Transfers General Fund	25,000 CR	53,660 CR	25,338 CR
10011166946	Transfers Emergency Reserves GJ 09-45 Transfer Park Board excess surplus to Emergency Reserve Fund	25,000 DR	53,660 DR	25,338 DR

ADOPTED: This 12th day of December, 2016.

Council President

APPROVED: This 12th day of December, 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 December 12, 2016, as same appears in the minutes of record of said meeting.

City Clerk



Steve Boone <boones@mtnbrook.org>

Preliminary Sept reports

1 message

Steve Boone <boones@mtnbrook.org>

Thu, Oct 27, 2016 at 9:41 AM

To: Alice Womack <alicewomack14@gmail.com>, "Jack D. Carl" <jdcarl@bellsouth.net>, Lloyd Shelton <lshelton@go2cpa.com>, "Oden Lawrence T." <lastvalhalla@aol.com>, "Virginia C. Smith" <wood967@aol.com>, "William S. (Billy) Pritchard III" <billyp@pm-j.com>
 Cc: Sam Gaston <gastons@mtnbrook.org>, "Stewart Welch, III" <stewart@welchgroup.com>, "Phillip (Phil) Black" <phil@ssbarch.com>

Sept is a little later than normal going out as I was holding off to make some preliminary revenue accruals that could not be done until after the sales taxes were posted for Oct. The final revenue accruals will not be known until after the Nov. collections are posted and expenses continue to be posted.

To date, the General Fund stands at about \$1.4 million surplus compared to a budgeted surplus of \$651,000.

I am suggesting the following year end transfers:

Park Board (General Fund) to Emergency Reserves (General Fund)	\$ 24,340.74	→ \$ 28,660.24
General Fund to Capital (Infrastructure for bridge rehab)	\$200,000.00	GS09-45 ✓
General Fund to Capital (Bldgs & Equip)	\$200,000.00	✓
General Fund to Debt Service Fund (pension)	\$300,000.00	✓

These transfers will reduce the General Fund surplus to \$718,000.

Steven Boone
 City of Mountain Brook
 P. O. Box 130009
 Mountain Brook, AL 35213-0009
 Direct: (205) 802-3825
 Facsimile: (205) 874-0611

www.mtnbrook.org
<http://mtnbrookcity.blogspot.com/>
 Twitter@: @mountain_brook

2016-09-30 Council (Preliminary).pdf
 198K

100	\$ 613,571.57
115	28,660.24
132	< 1,157.40
142	- 0 -
146	34,662.31
149	- 0 -
153	- 0 -
701	- 0 -
702	36851.89
703	89.02
	<u>\$ 712,677.63</u>

DUE TO ACCOUNTS PAYABLE
 POSTINGS SINCE 10/27/16
 THRU 12/5/16.

RESOLUTION NO. 2016-200

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby reaffirms the City's commitment to promote safe workplace guidelines with respect to the City's workers' compensation program (Exhibit A attached hereto).

ADOPTED: This 12th day of December, 2016.

Council President

APPROVED: This 12th day of December, 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 December 12, 2016, as same appears in the minutes of record of said meeting.

City Clerk



MUNICIPAL WORKERS COMPENSATION FUND, INC.

P.O. Box 1270 • 535 ADAMS AVENUE • MONTGOMERY, AL 36102
334-262-2566 • FAX 334-263-0200
CLAIMS 1-888-736-0210

TOM HENDERSON
Mayor, Center Point
President

SADIE BRITT
Councilmember, Lincoln
Vice President

JESSE MATTHEWS
Councilmember, Bessemer
Secretary/Treasurer

TOM WILLIAMS
Mayor, Satsuma
Director

MICKEY MURDOCH
Mayor, Elba
Director

KEN SMITH
General Manager

RICHARD BUTTENSCHAW
Operations Manager

STEVE MARTIN
Finance Director

DATE: November 7, 2016

TO: All Members of MWCF, Inc.

FROM: Richard Buttenshaw
MWCF Operations Manager

SUBJECT: Premium Discounts for the 2017 Fund Year

The Board of Directors of the Municipal Workers Compensation Fund, Inc. (MWCF) met on October 19th and approved premium discounts for those members that commit to certain safety guidelines, establish a medical protocol and adopt a drug and alcohol testing program that is 4th amendment compliant. A three (3) percent discount will be given for each program. Members that adopt all three programs will receive a ten (10) percent discount instead of nine (9) percent. For this past year, 55% of MWCF members took advantage of this 10% discount! For those members who have already adopted a medical protocol and/or a drug and alcohol testing program in prior years no action needs to be taken to receive the discounts for these programs. The Safe Workplace Guidelines however, must be renewed annually. **If it is signed and returned by December 15th, the discount will appear on the initial billing for 2017-2018.** We encourage each member to review the enclosed document(s) carefully. Please make a copy for your file and then completed forms should be returned to MWCF at the above address or faxed to 334-263-0200. **No discount will be issued after February 1, 2017 for Safe Workplace Guidelines received after that date.**

If your municipality or municipal entity does not presently participate in the Drug and Alcohol testing program or have a Medical Protocol on file, that information has also been enclosed for your review.

For more details, see the article in the Fall 2016 issue of *Risk Management Solutions* mailed to you last month or download at www.almwcf.org.



MUNICIPAL WORKERS COMPENSATION FUND

2017 SAFE WORKPLACE GUIDELINES

Name of Municipality or Agency: City of Mountain Brook, Alabama

Name of Safety Coordinator: Battalion Chief David Kennedy Email Address: kennyd@mtnbrook.org

Safety Coordinator Phone Number: (205) 802-3833 Fax Number: (205) 874-0653

The undersigned hereby confirms to the Municipal Workers Compensation Fund, Inc., our intent to implement the following safety standards relevant to our municipal entity:

GENERAL SAFETY GUIDELINES

1. Adopt and implement a written safety manual or a statement of safety standards.
2. Establish a Safety Committee to recommend new safety policies, review and update existing safety policies, review accidents and establish methods to help prevent accidents, injuries and damages to equipment.
3. Have quality safety meetings for all employees once a month. At least one of these meetings each year should be a training session on proper lifting techniques and back wellness. Consider integrating health & wellness topics such as smoking, diabetes, management of stress and weight into these meetings. Document attendance, date, time and issues covered. Quality safety training can be provided utilizing tools such as the MWCF video library and/or LocalGovU online training center. These and other excellent free resources can be found at www.losscontrol.org.
4. Have the designated Safety Coordinator or City Clerk meet with the designated Loss Control representative and review loss run reports. During this review, reports should be analyzed to make sure the records are correct. The Safety Coordinator or City Clerk should present a summary of the report to the Mayor or other Chief Executive Officer and all department heads.
5. Investigate all job related injuries regardless of the severity, determine the cause, maintain investigation records, and report all job related injuries immediately by completing a First Report of Injury Form at www.almwcf.org. Confer with any employee who has filed two or more claims in a 12 month period as to how their job can be made safer.
6. Provide a safety orientation for all new employees (including temporary and part-time) on how to do job tasks safely and document that this has been done.
7. Designate a doctor or medical group to be used by employees for non-emergency job-related injuries. This can be done via completion of the Medical Protocol Document (if not previously submitted) which also provides an additional premium discount. It is highly recommended that a supervisor or manager accompany injured employees to the medical facility on the initial visit. In life threatening emergencies, employee should be taken to the nearest medical facility.

TRAINING AND PROCEDURES

8. Issue safety equipment where necessary, and provide proper tools for a job to employees to help prevent accidents and require the use of such safety equipment through a written policy.

9. Adopt a written infectious disease policy and consider providing hepatitis B shots for all police, fire, emergency medical technician, sanitation personnel, or any employee who has a high possibility of exposure.
10. Consider providing CPR/AED and first aid training to employees.
11. Emphasize the significance of good maintenance and housekeeping of equipment, work areas, building and grounds. Documented inspections of all equipment, work areas, building and grounds for safety hazards, including electrical, fire and life safety hazards should be done at least quarterly. Any problems discovered should be corrected immediately and documented.
12. Evaluate all excavations to insure proper trenching and shoring procedures are in place and provide employee training on the proper use of excavating equipment.
13. Part-time, seasonal and temporary employees should comply with the same safety standards and policies as permanent employees.
14. As violence in the workplace is increasing annually, consider implementing a Workplace Violence policy/Emergency Action Plan.

MOTOR VEHICLES

15. Establish a written policy instructing operators of motor vehicles to be observant of any malfunction and seek immediate repair when such malfunction is apparent. A record of any action taken should be maintained.
16. Evaluate traffic safety programs using the DOT guidelines when working near roadways and insure conformance with safety guidelines. These guidelines are available in the *Manual on Uniform Traffic Control Devices for Streets and Highways* and is available free of charge on our loss control website www.losscontrol.org. (WZSF-001)
17. Consider defensive driving courses for those employees who drive vehicles. It is recommended that all drivers attend a defensive driving course every two years. MWCF provides a Skid Car Training Program for operators of all municipal vehicles.
18. Have a written vehicle operations policy that details the requirements and responsibilities of safely operating a municipal vehicle, mandates seat belt use for driver and all passengers, and prohibits the use of any non-job essential electronic device while driving.
19. Consider establishing a Vehicle Accident Review Board to help determine cause of vehicle crashes and make recommendations. A sample Accident Review policy can be downloaded at www.losscontrol.org under Reference Documents.

POLICE DEPARTMENTS (WHERE APPLICABLE)

20. Consider requiring that all Police Officers wear bullet resistant vests and wear reflective vests when involved in traffic control duty.
21. Implement a written police and jail procedure manual (where applicable) with rules and regulations updated periodically.
22. Consider utilizing available law enforcement training aids such as the Firearms Training System (FATS) available through MWCF.
23. Consider providing coverage for all volunteer firemen and reserve police officers through MWCF.

Number of **non-elected paid employees** approx 237.

Sam Gaston, City Manager
Mayor or Chief Executive Officer (Please Print)

Mayor or Chief Executive Officer (Signature)

City of Mountain Brook, Alabama
Municipality or Agency

David Kennedy, Battalion Chief
Safety Coordinator (Please Print)

Safety Coordinator (Signature)

December 12, 2016
Date

A safety meeting to discuss these Safe Workplace Guidelines should be held with all department heads once it has been signed. Document the time, place and attendees at this meeting. MWCF should be notified immediately of changes in the Safety Coordinator position by contacting Donna Wagner at (334) 262-2566 or donnaw@alalm.org.

RESOLUTION NO. 2016-201

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the City Manager or Mayor to execute and deliver, or cause to be executed and delivered, on behalf of the City an agreement , in the form as attached hereto as Exhibit A, and such other documents, and instruments that may be deemed necessary or appropriate with respect to engagement of Con-Site Services, Inc. to grind wood debris and vegetation currently stockpiled at the City's Public Works facility and haul away for disposal.

ADOPTED: This 12th day of December, 2016.

Council President

APPROVED: This 12th day of December, 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 December 12, 2016, as same appears in the minutes of record of said meeting.

City Clerk

CONTRACTOR AGREEMENT

Con-Site Services, Inc. (hereinafter the “Contractor”) enters this Contractor Agreement (“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”). Contractor and City may be individually referenced herein as “Party” or collectively as “Parties.”

1. **Project.** Unless otherwise stated on the attached Exhibit A - Specifications (which is incorporated by reference), Contractor, at its expense, will furnish all the labor, materials, supplies, supervision, and equipment needed to perform the work, services and operations (collectively, the “Work”) at City’s Public Works Lower Yard (the “Site”) in accordance with the terms, conditions and specifications in this Agreement and on Exhibit A (the “Project”).

2. **Term/Termination.** The term of this Agreement shall commence on the Effective Date and thereafter continue in effect for twelve (12) months (the “Term”). The period in which Contractor will complete the Project is set forth on Exhibit A.

Notwithstanding the provision immediately above or any other language herein, City may terminate this Agreement before the expiration of its Term at the time designated in a written notice to Contractor if each of the following have occurred: (a) Contractor has defaulted on a material obligation to the City hereunder (a “Default”); and (b) following the City’s provision of written notice of Default to Contractor, the Contractor fails to correct or remedy that Default within fifteen (15) days after receipt of that 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 to City under law or in equity.

3. **Contract Price/Invoice/Certification.** Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of Nineteen Thousand Two Hundred Fifty Dollars (\$19,250.00) as compensation for performing the Work (the “Contract Price”). Further, unless agreed in a writing or amendment to this Agreement that is signed by duly authorized representatives of both Parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price.

Within ten (10) days following the successful completion of the Project, Contractor will submit to City Project Representative an invoice for the Contract Price (as adjusted by any mutually agreed change orders signed by both parties). With such invoice Contractor shall submit records reasonably supporting its payment. Within five (5) days following receipt of that invoice, City Project Representative will review same, consult with Contractor and make any mutually agreed modifications to it, certify that the invoice is due to be paid, and forward that certified invoice to the City Clerk. The City Clerk will remit to the Contractor the amount certified for payment within twenty (20) days after it receives that certification.

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 (if authorized), 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 Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations 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 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, 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 (\$750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;

(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) combined single limit and aggregate for bodily injury and property damage;

(iii) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.

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 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 at the Site or other locations on City property 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 Site, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work Site or adjacent thereto.

(c). Indemnification. Contractor agrees to defend, indemnify, and hold harmless 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.

7. Project Representative. Each Party shall appoint and indicate on Exhibit A its 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"). . 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 (which is comprised of this instrument and Exhibit A) 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 them prior to acceptance and signing of this Agreement are deemed to have merged herein.

In the event of any conflict in the terms, provisions and language in the main body of this Agreement and those in any Exhibit hereto, the language in the main body of this Agreement will control.

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 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 City, which consent may be withheld for any reason.

e. This Agreement is made only for the benefit of the Parties. 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 City. This Agreement does not create any partnership, joint venture or principal-agent relationship between the Parties. Further, City retains no control or authority with respect to its means and methods in which 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.

i. **Amendment.** Neither this Agreement nor any of the provisions herein (including, without limitation, those concerning the Scope, Project Schedule and Contract Price) may be amended or modified except in accordance with the terms of a written instrument (or change order) signed by both Parties.

j. **Delayed Performance/Force Majeure Events.** Neither Party shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under this Agreement during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed Party must promptly provide the other with written notice of the Force Majeure Event, the delayed Party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other Party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed Party.

k. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

(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.

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

Its: Mayor

Date: _____

CON-SITE SERVICES, INC.

By: _____

Its: _____

Date: _____

EXHIBIT A – SPECIFICATIONS

1. Scope of Work (Describe Project Below)

Grinding of Wood Debris Stockpiled at Public Works Lower Yard located at 3579 East Street, Mountain Brook, Alabama. Other terms applicable to the performance of the Work are set forth on the attached Quote dated October 26, 2016, which is incorporated by reference.

(the “Scope”). If 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.

2. Project Schedule. Contractor will commence performing the Work within no more than two (2) days after the City gives written or verbal notice to proceed, and successfully complete the Project within Ninety (90) days following its receipt of that notice.

3. Project Representatives.

City Project Representative:

Ronnie Vaughn, Director
Public Works Dept.
3579 East Street
Mountain Brook, AL 35243
Email: vaughnr@mtnbrook.org
Day Tel #: 205-802-3865

Contractor Project Representative:

Richard M. Woods
P.O. Box 358
Chelsea, AL 35043
Email: _____
Day Tel #: 205-980-1305

4. Special Conditions. None.

Con-Site Services, Inc.

P.O. Box 358
Chelsea, Alabama 35043
PHONE#: 980 - 1306 CELL # 902-0269

Customer : **City of Mountain Brook
Public Works Department
3579 East Street
Mountain Brook, Alabama 35243**

ATTN: **Ronnie Vaughn
Fax#: 967-2631**

Project: **Grinding of Wood Debris stockpiled at Public Works Lower Yard**

**Proposal
10/26/2016**

Con - Site Services appreciates the opportunity to submit the following pricing for the subject project:

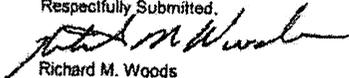
Item	Description Unit Rates	Estimated Quantity	Unit	Rate	Estimated Totals
1.0	Mobilize, Grind Wood Debris & Vegetation as stockpiled using 4" screens.	1.0	ls	\$14,000.00	\$14,000.00
2.0	Hauloff and Disposal of ground up materials	15	100 cy loads	\$350.00	\$5,250.00

Notes:

- 1 Price is good for 30 days.
- 2 Terms of Payment are net 30 days from date of invoice. 2% discount if paid in 10 days.
- 3 The paper mill market for chips/fuel wood has dried up. It now costs us to hauloff and dispose of these materials.

We appreciate the opportunity to submit this pricing. If there are any questions please call me at 902 - 0269. Again, thanks for this opportunity!

Respectfully Submitted,



Richard M. Woods

RESOLUTION NO. 2016-202

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute, for and on behalf of the City, a professional services agreement between the City and Gresham, Smith and Partners for engineering services with respect to the Caldwell Mill Road bridge replacement.

ADOPTED: This 12th day of December, 2016.

Council President

APPROVED: This 12th day of December, 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 December 12, 2016, as same appears in the minutes of record of said meeting.

City Clerk

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

OWNER: City of Mountain Brook
56 Church Street
Mountain Brook, AL 35213

ENGINEER: GRESHAM, SMITH AND PARTNERS
3595 Grandview Parkway, Suite 300
Birmingham, AL 35080

PROJECT: Design Services for Bridge Replacement on Caldwell Mill
Road over Little Shades Creek.



**GRESHAM
SMITH AND
PARTNERS**

Design Services for the Built Environment

www.gspnet.com

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**AGREEMENT BETWEEN OWNER AND ENGINEER
FOR ENGINEERING PROFESSIONAL SERVICES**

THIS AGREEMENT BETWEEN OWNER AND ENGINEER FOR ENGINEERING PROFESSIONAL SERVICES (“Agreement”) is entered between the **CITY OF MOUNTAIN BROOK, ALABAMA** (“Owner”) and **GRESHAM, SMITH AND PARTNERS** (“Engineer”) as of the Effective Date. Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows:

Replacement of Bridge on Caldwell Mill Road over Little Shades Creek
 (“Project”).

In consideration for the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by both parties, Owner and Engineer agree as follows.

ARTICLE 1 - SCOPE OF ENGINEER’S SERVICES/FEES. Engineer shall provide, or cause to be provided, the following professional design and other services for the Project.

(a) Basic Services. Engineer shall perform professional design services in the following sequential phases: (a) Schematic Design; (b) Design Development; (c) Construction Documents; (d) Advertising and Bidding; and (e) Construction Contract Administration (including Project Closeout) (all phases being collectively referenced herein as “Basic Services”). Notwithstanding any prior understanding or any provisions in the Engineer’s November 2, 2016 Proposal to Owner (“Proposal”), which Proposal is attached as **Exhibit A** and incorporated herein, Engineer will perform all phases of customary Basic Services for the Project. Engineer shall perform its services in an orderly manner consistent with the progress of the Project, shall not undertake to perform any phase of Basic Services until work in the preceding phase has been completed and approved by the Owner’s Project representative, and shall not move from one phase of the Basic Services into another phase without the written authorization of Owner.

The total fee payable to Engineer for Basic Services (inclusive of all expenses) is shown in Exhibit A.

(b) Additional Services. Services other than Basic Services that the Owner may authorize Engineer (or its consultants) to perform on the Project are referenced herein as “Additional Services”. Owner hereby authorizes Engineer to perform or to retain the consultants reflected in the Proposal who will provide the following Additional Services on the Project at the expense to the Owner noted below: (a) Bridge Hydraulic Design & FEMA Flood Study and Report - \$12,200; (b) Field Survey - \$18,900; (c) Geotechnical Subsurface Exploration & Recommendations - \$15,100; and (d) Public Meeting and coordination with the Cahaba Riverkeepers - \$2,400. In the event that Owner desires to retain Engineer (or any other Consultant that it authorizes) to perform Construction Engineering & Inspection or Additional Services for the Project, the parties will agree in advance with respect to the scope and cost to Owner prior to the performance of such additional work.

1. Engineer's services and those furnished to it by authorized Consultants shall be performed in compliance with all applicable Laws and Regulations, building codes and professional guidelines or standards in Engineer's industry pertinent to the Project or the design of any structures contemplated for the Project.
 2. Prior to the Effective Date, Owner has provided to Engineer in writing any policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. The performance of Engineer's services pursuant to this Agreement is based on Laws and Regulations and Owner-provided written policies and procedures (if any) as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. Unless otherwise agreed by the parties, the general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition); provided that Owner may modify those General Conditions to comply with laws and regulations applicable to its governmental status or regular contracting practices.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any construction Work by the Contractor nor assumes responsibility for any Contractor's failure to furnish and perform that Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility on the Project for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their employees or of any other persons (except Engineer's own employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or

any application, interpretation, or clarification of the Contract Documents other than those made by Engineer.

- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed in writing.
- M. Engineer represents that it and its Consultants will perform all services in the orderly progress of the Project.
- N. Because Engineer will perform customary Construction Contract Administration services for the Project, nothing in this Section 6 or elsewhere in this Agreement shall relieve Engineer of its responsibilities to evaluate and determine whether the Contractor has performed the Work in compliance with the specifications in the Engineer's plans, Drawings and Documents, whether applications for progress payment should be processed, interpret the Contract Documents as reasonably needed, and provide other customary Construction Administration services (including, but limited to, corrections or modifications of plans and Drawings arising from the Engineer's actions and review of the Contractor's as-built plans).

6.02 *Intentionally Omitted.*

6.03 Use of Documents/Instruments of Service

- A. All Drawings, plans, data, calculations, reports, specifications or data and Documents created by Engineer and its Consultants in connection with the Project (collectively, "Instruments of Service" or "Instruments") shall be jointly owned by the Owner and the Engineer, provided that the Owner has paid to Engineer all amounts then due for those Instruments in accordance with the terms of this Agreement.

The Instruments of Services may be distributed to third parties or otherwise used at the discretion of either party. The Engineer expressly consents to sharing the copyright, proprietary (intellectual or otherwise) rights, titles and interests in the Instruments with the Owner, and represents that same are free from lien or encumbrance. Owner and Engineer shall each have the right to apply for copyright registration and future renewals or extensions of copyright terms as joint owners, and the right to sue for copyright infringement, each at its own expense.

Engineer may reuse the Instruments for any and all purposes that are reasonably related to its commercial enterprises. Specifically, it may reuse elements of the Instruments of Service on other projects, provided that the reused aesthetic design or a major element of shall not infringe the copyright in the original work created in connection with the Project. Engineer also may use the Instruments of Service for advertising and promotion when such use is approved in writing by Owner, which approval shall not be unreasonably withheld.

The Owner acknowledges that Engineer will prepare the Documents solely for use on the Project contemplated in this Agreement, and that it does not represent, and specifically disclaims any warranty (express or implied), concerning the feasibility or appropriateness of using the Documents for any purpose other than use on the Project. In the event that Owner uses the Instruments on any other project that is constructed without the Engineer's involvement, Owner acknowledges that (i) the Documents are not intended or represented

to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (ii) Engineer shall not be responsible to the Owner regarding the use or workability of such Documents in connection with any project other than the Project; (iii) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, employees, and Consultants; and (iv) the Owner shall release the Engineer and its Consultants from any claims, causes of actions, expenses or loss arising from that re-use.

If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

- B. Either party to this Agreement may rely on data or information set forth on paper (also known as hard copies) that it receives from the other party by mail, hand delivery, or facsimile. With respect to Documents, Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- C. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

6.04 Insurance

- A. The Engineer shall procure and maintain insurance as set forth herein. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer. Before commencing its services and at renewals thereafter during the life of the Agreement, Engineer shall deliver a certificate(s) of insurance evidencing the coverages indicated in Paragraph 6.04 F.
- B. At the contracting phase of the Project, the parties will require Contractor to (i) purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project; and (ii) list Owner and Engineer as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- C. All policies of property insurance relating to the Project that are supplied by the Engineer shall contain provisions to the effect that Owner's interests are covered and that in the event

of payment of any loss or damage the insurers will have no rights of recovery against Owner or any insureds, additional insureds, or loss payees thereunder.

- D. All policies of insurance contemplated in the Section shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, without prior written notice pursuant to the policy provisions.
- E. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Paragraph 6.04 F. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Paragraph 6.04 F will be supplemented to incorporate these requirements.
- F. The Engineer is required to furnish the following types of insurance with at least the minimum limits indicated below:

a. Workers' Compensation:	Statutory
b. Employer's Liability:	
Each Accident	\$1,000,000
Disease, Policy Limit	\$1,000,000
Disease, Each Employee	\$1,000,000
c. General Liability:	
Each Occurrence (Bodily Injury/Property Damage):	\$1,000,000
General Aggregate:	\$2,000,000
d. Excess or Umbrella Liability:	
Each Occurrence	\$3,000,000
General Aggregate	\$3,000,000
e. Automobile Liability:	
Combined Single Limit (Bodily Injury/Property Damage)	
Each Accident	\$1,000,000
f. Professional Liability:	
Each Claim Made	\$1,000,000
Annual Aggregate	\$1,000,000

6.05 Suspension and Termination

A. Suspension:

1. By Owner: Owner may suspend the Project or the Engineer's performance of services thereon for up to 90 days upon seven days written notice to Engineer. If the Project is suspended by the Owner for more than thirty (30) consecutive days, the Engineer shall be compensated for services performed prior to notice of such suspension if it does not occur as the result of a failure by the Engineer to perform its obligations hereunder. When the Project is resumed, the Engineer shall be compensated for direct expenses incurred (if any) in the interruption and resumption

of its services, and the fees for the remaining services and the time schedules shall be equitably adjusted.

2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through a Force Majeure Event (as defined below).

B. Termination: The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days due to a Force Majeure Event.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under this Paragraph 6.05.B if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner if it desires to terminate or totally abandon the Project effective upon Engineer's receipt of notice from Owner. If the Project is so abandoned, the Engineer shall be entitled to received full payment for all services performed or furnished in accordance with this Agreement and Reimbursable Expenses (if any are payable hereunder) incurred through the effective date of termination. The fee for Basic Services payable to the Engineer at the time of such termination will be calculated in proportion to services actually performed by the Engineer effective when the Owner provides notice of termination. Engineer acknowledges that the payment of this compensation is its sole and exclusive remedy arising from the Owner's termination of this Agreement pursuant to this paragraph, and that it is not entitled to receive any compensation for lost profits, lost opportunity or amounts such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs resulting from that termination; provided that, in the event of any termination for convenience contemplated in this provision, the parties may agree to compensate Engineer following the effective time thereof to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Upon making the payments contemplated

herein, Owner, at its risk and subject to the provisions of Paragraph 6.03, shall have the right to use the Documents.

- C. **Payments Upon Termination for Cause:** In the event of termination of this Agreement for either party for cause, the non-defaulting party shall be entitled to recover from the other any direct damages arising from such default.

6.06 Controlling Law - This Agreement is to be governed by the law of the State of Alabama.

6.07 Successors, Assigns, and Beneficiaries

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither the Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any third party, including, without limitation, any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. The parties intend that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 Claims and Dispute Resolution

A. If a disagreement, claim, issue or disagreement arises between the parties with respect to the performance of this Agreement or the failure of a party to perform or their respective rights or obligations hereunder (a "Dispute"), the parties will use reasonable efforts to resolve any Dispute at the Project representative level. If the parties are unable to amicably resolve any Dispute at that level, each agree to escalate that matter to senior managers or senior officials for consideration by and potential resolution by them. If the Dispute is not resolved at the senior level, the parties may, but are not obligated to, mediate the Dispute before a mutually agreed mediator and equally share the costs of that mediation. If the Dispute is not resolved by any of the above methods, the dispute resolution mechanism shall be litigation in a court with competent jurisdiction that is located in Jefferson County, Alabama.

- B. If (i) either party should employ attorneys or incur other expenses in any legal action regarding a Dispute between them concerning this Agreement, and (ii) one party secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the other party, the losing party will pay the prevailing party its reasonable attorneys' fees and other reasonable expenses it incurs in that action.

6.09 Environmental Condition of Site

- A. To its knowledge, Owner is unaware of the existence of any known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site.
- B. *Intentionally Omitted.*
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. The parties acknowledge that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner takes commercially reasonable actions to address such conditions.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the parties will consult about such conditions and determine if commercially reasonable actions can be taken by the Owner to permit Engineer to perform its services.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 Allocation of Risk

- A. Indemnification. To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, consultants, and employees from costs, losses, and damages arising out of or relating to the Project or the Engineer's performance or failure to perform its obligations under this Agreement, provided that any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or its officers, directors, members, partners, employees, or Consultants.

- B. Mutual Waiver of Consequential Damages: TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE PARTIES AGREE THAT, IN THE EVENT EITHER MAKES OR ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE OTHER PARTY ARISING FROM THE OTHER'S ALLEGED BREACH OF ITS OBLIGATIONS IN THIS AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER, THE MAXIMUM AMOUNT THAT EITHER PARTY MAY RECOVER FROM THE OTHER PARTY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE ACTUAL, DIRECT DAMAGES ARISING FROM THE ACTS OR OMISSIONS OF THE BREACH PARTY. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY THE OTHER PARTY.
- C. Limitation of Liability. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the limits of the General Liability Insurance Policy furnished by Engineer pursuant to Section 6.04 of this Agreement.
- D. Premium Cost. If, after the construction has begun, an error or omission is discovered and the item can still be provided in the planned sequence of construction without a premium cost to the Owner; then the Owner will pay for this entire item just as if it had been included in the original contract documents. If this error or omission is discovered out of sequence with the planned construction schedule resulting in a premium cost, then the Engineer will pay the premium cost to have this item corrected or included, while the Owner will pay the value of the item as if it had been included in the original contract documents.

6.11 Miscellaneous Provisions

- A. Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. Survival: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and

enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Accrual of Claims: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of the Project.
- F. Conflicting Provisions. In the event of any conflict between the provisions in this Agreement and those in any Exhibit, the terms and provisions in this Agreement shall control, supersede and govern.
- G. This Agreement may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete 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, and shall have the same legal force and effect as an original document.
- H. Delayed Performance/Force Majeure Events. Neither party shall be liable to the other for any failure to perform any of their respective obligations (including payment obligations) under this Agreement during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed party must promptly provide the other party with written notice of the Force Majeure Event, the delayed party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed party.
- K. Immigration Law Compliance. The Engineer represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien," as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the "Act") and that, during the performance of the services and Project, it shall participate in the E-Verify program as required under the terms of the Act; (b) it will comply with all applicable provisions of the Act with respect to its consultants by entering into an agreement with or by obtaining an affidavit from them providing that they are in compliance with the Act with respect to their participation in the E-verify program; and (c) it shall not hire, retain or contract with any consultant that it knows is not in compliance with the Act. The Engineer further agrees and warrants that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, in its hiring and employment practices, and that if it receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the Owner and shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If the Engineer violates any term of this paragraph, this Agreement will be subject to immediate termination by the Owner. To the fullest extent permitted by

law, Engineer shall defend, indemnify and hold harmless the Owner from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Owner's failure to fulfill its obligations contained in this provision.

6.12 Special Provisions:

- A. Owner, at its expense, shall furnish tests, inspections and reports of construction materials, or tests at the Project site for hazardous or toxic materials.
- B. Owner is responsible for printing, advertising and distributing the construction documents that Engineer will furnish and that will be used to bid and award the construction contract for the Project.
- C. Engineer, at its expense, will accommodate the Owner's reasonable requests to produce media pertinent to the Project.

ARTICLE 7 - DEFINITIONS

7.01 Defined Terms. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:

- 1. Additional Services – The services to be performed for or furnished to Owner by Engineer as described in Article I of this Agreement.
- 2. Agreement – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
- 3. Asbestos – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 4. Basic Services – The services to be performed for or furnished to Owner by Engineer in accordance with Article I of the Agreement.
- 5. Construction Contract – The entire and integrated written agreement between Owner and Contractor concerning the Work.
- 6. Construction Cost – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
- 7. Constituent of Concern – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal,

- state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. Consultants – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
 9. Contract Documents – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
 10. Contractor – The entity or individual with which Owner has entered into a Construction Contract.
 11. Documents – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
 12. Drawings – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
 13. Effective Date – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
 14. Engineer – The individual or entity named as such in this Agreement.
 15. Hazardous Waste – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
 16. Laws and Regulations; Laws or Regulations – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 17. Owner – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
 18. PCBs – Polychlorinated biphenyls.
 19. Petroleum – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
 20. Project – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
 21. Radioactive Material – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
 22. Record Drawings – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
 23. Reimbursable Expenses – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

24. Resident Project Representative – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. Site – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. Specifications – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. Subcontractor – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. Substantial Completion – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. Supplier – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. Total Project Costs – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 - OTHER PROVISIONS

8.01 Agreement. This Agreement is comprised of the following instruments: (i) this Agreement; and (ii) Exhibit A – Engineer’s Proposal. These writings are the entire and integrated agreement between the Owner and the Engineer, and supersede all prior negotiations, representations or agreements, either written or oral, concerning the Project or subject matters herein. Any prior understandings or agreements concerning the matters herein that are expressed herein are of no effect and are merged into this Agreement.

8.02 Amendments. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument executed by duly authorized representatives of both parties.

8.03 Designated Representatives. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 Engineer's Certifications. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04: "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution; "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition; and "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized, undersigned representatives.

OWNER: CITY OF MOUNTAIN BROOK, AL

Designated Representative (8.03A)

By: _____

Name: Ronnie Vaughn

Title: _____

Title: Director, Public Works

Date: _____

Phone: 205-298-3865

Email: vaughnr@mtnbrook.org

Address for Giving Notices:

**ENGINEER:
GRESHAM, SMITH AND PARTNERS**

Designated Representative (8.03A)

By: Blair Perry

Name: Blair Perry, P.E.

Title: Senior Transportation Engineer

Title: Project Manager

Date: 11/28/16

Phone: 205.298.9232

Email: blair_perry@gspnet.com

Address for Giving Notices:

1400 Nashville City Center
511 Union Street
Nashville, TN 37219-1733

Exhibit A – November 2, 2016 Proposal

See attached.

EXHIBIT A



G R E S H A M
S M I T H A N D
P A R T N E R S

November 2, 2016

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

**Subject: Revised Proposal for Professional Engineering Services
 Bridge Replacement on Caldwell Mill Road over Little Shades Creek
 Mountain Brook, AL**

Dear Mr. Gaston:

As requested, attached is our revised proposal to provide professional engineering design and construction phase services for the proposed bridge replacement on Caldwell Mill Road over Little Shades Creek. As identified in our APPLE study, the replacement of this bridge is a top priority in the City of Mountain Brook bridge inventory. The existing bridge is load posted for only four (4) tons which will not allow any emergency vehicles or vehicles heavier than a large SUV to cross the existing bridge. The existing structure has deteriorated to the point that major rehabilitation is not recommended and will not be cost effective. The proposed replacement structure will provide improvements to the roadway approaches, hydraulic improvements to the crossing, remove the load posting on the bridge, and provide a pedestrian walkway on one side of the bridge.

PROJECT DESCRIPTION

The proposed bridge will be single span structure on two abutments. The existing bridge is proposed to be removed. The existing bridge abutment on the north bank will be replaced in the same general location. The south bank abutment will be replaced approximately 15' south so that it is relocated outside the creek's natural drainage channel bottom. The proposed bridge deck will include a 5' wide pedestrian walkway on one side and be overbuilt slightly to allow some adjustment to the radius of the southern approach. The wider bridge will allow a portion of the approaching horizontal curve to be on the bridge, which limits impacts on the approach farther to the south. The proposed bridge will include a stone veneer similar to what is used on bridges throughout the City of Mountain Brook. Additional details regarding the bridge will be determined during the design process.

Approach work on both sides of the bridge is anticipated to be minimal. The approach work will consist of widening to allow the existing roadway width of approximately 18' to meet the 24' proposed roadway width across the bridge. The guardrail and anchors have recently been replaced at this bridge, however these items will likely have to be replaced or reset within the limits of this project.

It is our understanding, this project will be 100% locally funded. ALDOT has advised that they will be reviewing the bridge plans (30% and final), but they have indicated that their review will not be an extensive or time-consuming review. Following ALDOT's normal plan development and review process will not be required for this project.

GS&P will prepare construction contract and bidding documents and assist the City with the advertisement and bidding of this project in accordance with Alabama bid laws.

Design Services For The Built Environment

EXHIBIT A



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November 2, 2016
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SCOPE OF SERVICES

GS&P's scope of services for this project includes: Survey, Geotechnical Exploration and Bridge Foundation Recommendations, Design and Preparation of Bridge & Roadway Approach Plans, Bridge Hydraulic Design and FEMA Flood Study Report, two (2) Coordination Meetings with the City of Mountain Brook, one (1) Meeting and Coordination with US Corps of Engineers, two (2) Site Visits, one (1) public meeting, Engineer's Construction Cost Estimate, Preparation of Bidding & Construction Contract Documents, Advertising & Bidding Services, and Construction Contract Administration services.

Basic Services

Design and Preparation of Bridge & Roadway Approach Plans – GS&P will design and prepare the construction plans for the proposed bridge replacement in accordance with City of Mountain Brook requirements. It is our understanding that the project will be fully funded by the City of Mountain Brook, and no federal funds will be utilized for design or construction of the project. Therefore, the construction plans will not be subject to ALDOT's plan development process, nor will they require city/county land disturbance permit. ALDOT's Bridge Bureau will perform reviews of the 30% and final bridge plans. The plans are anticipated to consist of the following sheets:

- Title Sheet
- Existing Conditions Sheet
- Demolition and Initial Erosion Control Plan
- Geometric Layout / Survey Control Sheet
- Typical Sections
- Project Notes
- Bridge General Plan & Elevation
- Bridge Superstructure Design & Detail
- Bridge Substructure Design & Detail
- Roadway Plan Sheet (anticipate 1)
- Roadway Profile Sheet (anticipate 1)
- Erosion Control Plan Sheet (Construction Phase)
- Traffic Control Sequence and Notes
- Traffic Control Detour Plan
- Cross-Sections (25' interval)

GS&P will develop a typical section for the roadway that varies from approximately 18' to 24' wide. The shoulders will match the existing shoulder width, and the roadway will be crowned in the middle with ditches on both sides.

The proposed plan sheets will detail the construction activities required to build the proposed roadway approaches. This will include establishing the horizontal alignment, vertical alignment, and centerline information.

The information needed for construction of the Bridge will be in the Bridge Superstructure Design & Detail sheets and the Bridge Substructure Design & Detail sheets.

Only minor drainage modifications are anticipated for this project.

Utility Coordination - GS&P will coordinate with the local utility companies to determine if there are any utility conflicts, adjustments or relocations needed. Details of any minor utility adjustments such as adjusting water meters will be included in the plans. We have reviewed

EXHIBIT A



Mr. Sam Gaston
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Page 3

record drawings of an existing 21" sewer line location running parallel to the creek on the north side of the creek. We are currently anticipating that this sewer line will not require relocation as it is offset far enough to the north that removal of the existing buttress will not encroach upon the sewer lines current location. Birmingham Water Works Board record drawings show an existing 8" water line that runs parallel to Caldwell Mill Road through this crossing. However, we will not know if relocation is needed until we obtain a more accurate location of the water line complete the design of the proposed bridge. The preparation of separate utility relocation plans is outside this scope of services and would be handled as additional services by formal amendment of the agreement by the City and GS&P.

Site Visits – GS&P has included two (2) site visits in the scope of services; one site visit to review the field survey and another to assist in development of preliminary plans.

Engineer's Construction Cost Estimate - GS&P will prepare an Engineer's construction cost estimate for the project.

Two (2) Coordination Meetings – GS&P anticipates that two (2) coordination meetings with the City will be needed for the project. GS&P will attend these meetings and provide meeting minutes within one week after the meeting.

One (1) Meeting and Coordination with US Army Corps of Engineers - ALDOT has advised that this Bridge Replacement is covered as maintenance activity under a US Army Corps of Engineers Nationwide permit. We have reviewed and confirmed the language in the Corps of Engineers nationwide permit for maintenance activities. No notification is required to be provided to the US Corps of Engineers, but we intend to consult with the US Corps of Engineers once we have a preliminary bridge design to confirm no additional action is needed. Should additional action be required by the Corps, this will be out of the scope of this proposal, and require formal amendment to the agreement as additional services.

Prepare Bid and Construction Contract Documents – GS&P will coordinate with the City and develop bidding and construct contract documents for the project to publicly bid in accordance with Alabama bid laws. GS&P anticipates using the industry standard EJCDC (Engineers Joint Contract Documents Committee) contract documents and/or City-supplied documents. We plan to reference the ALDOT *Standard Specifications for Highway and Bridge Construction* for the technical specifications. GS&P will provide any required supplemental specifications needed in the bidding/contract documents. Prior to advertising the project, GS&P will coordinate with the City and determine the method of payment to the contractor (lump sum vs. unit cost).

Bid Phase Services – GS&P will assist the City of Mountain Brook with the coordination getting the project advertised in accordance with State of Alabama bid laws. The City will be responsible for the printing, advertising and distributing the construction documents. GS&P will review and respond to any questions from prospective bidders or suppliers, prepare any bid addenda as necessary, conduct the bid opening and provide bid award recommendations to the City.

Construction Contract Administration Services – As requested by the City, GS&P will provide construction contract administration services during the construction phase of the project. Our scope of these services is based on the scope outlined in the Alabama Building Commission (ABC) *Standard Articles of the Agreement Between Owner and Architect*. This scope includes:



Mr. Sam Gaston
November 2, 2016

The Engineer shall notify the Owner if it recommends that any Additional Services (including those to be performed by Consultants) that was not initially contemplated be performed for the Project. If the Owner rejects the Engineer's recommendation, the Owner shall give prompt written notice to the Engineer and it will not provide that additional work. If the Owner agrees that the additional work identified by the Engineers is appropriate, the parties will agree on the additional compensation to be paid for that work. Without prior written approval by the Owner, it will not pay Engineer for Additional Services not contemplated herein.

(c) Change in Service. The parties acknowledge that, over the course of the Project, developments may occur that may necessitate changes in deliverables furnished by the Engineer or other additional support by the Engineer for which an adjustment in compensation should be paid to Engineer (a "Change in Service"). For purposes of this Agreement, the following occurrences shall be considered a Change in Service:

(i) The making of revisions in Drawings, specifications, or Documents when such revisions are:

1. required by a significant change in the Project that is inconsistent with the approvals or instructions previously given by the Owner, including, but not limited to, significant changes in the size, quality, complexity of the Project, or the Owner's schedule, budget, or procurement method;
2. required by the enactment or revision of Laws or Regulations subsequent to the preparation of such documents;
3. required as a result of the Owner's, ALDOT's or any regulatory agency's failure to render decisions in a timely manner, or the failure of performance on the part of the Owners or its consultants or contractors;
4. required in connection with the evaluation and subsequent revisions of documentation resulting from substitutions proposed by the Contractor; or
5. required in connection with any change orders or construction change directives in any contract between the Owner and its construction contractor.

(ii) Providing consultation concerning replacement of work on the Project that is damaged by fire, flood, or other casualty during construction, and furnishing services required in connection with the replacement of such work; or

(iii) Providing services in connection with a public hearing or legal proceeding, except where the Engineer is a party thereto.

If a Change of Service occurs as provided above, additional compensation for that work will be calculated and paid to the Engineer based on the Hourly Billing Rate Schedule that is attached to Exhibit A and invoiced on a monthly basis.

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bridge. This is also required by FEMA's National Flood Insurance Program (NFIP) since Little Shades Creek is a designated floodway in this area. GS&P's hydraulic engineer will conduct a site visit and develop hydraulic models to perform a flood analysis of the existing and proposed conditions. It is anticipated a No-Rise Certification and Hydraulic Analysis Summary will be appropriate for the project.

Public Involvement Meeting – GS&P will prepare exhibits of the proposed bridge, bridge aesthetic features, the proposed detour that will be used during the construction of the bridge, and other exhibits as necessary to present to the public during a City of Mountain Brook City Council meeting. This public involvement meeting is anticipated to be held prior to finalizing the plans and advertising the project for bids.

DELIVERABLES

1. One set of full size (22" x 34") set of Construction plans
2. One set of construction contract and bidding documents
3. FEMA No-Rise Certification
4. Hydraulic Analysis Summary
5. Engineer's Construction Cost Estimate

EXCLUSIONS

- Irrigation Design or Layout. Contractor will restore existing irrigation if required.
- Additional landscaping plans. We will include plans and details for the replacement of any landscaping that is impacted by the construction of the project.
- National Environmental Policy Act (NEPA) Environmental Studies, Coordination & Documentation. This is not required since no federal funds are being used.
- Archaeological, historical or cultural resources studies
- Environmental related permits.
- NPDES Stormwater Permit, Notice of Intent (NOI) and CBMPP. These are not required due to disturbance less than one (1) acre.
- Additional Geotechnical Investigation & Recommendations
- Additional Hydraulic Studies
- ROW or Easement Acquisition Documents or acquisition
- Increased or full time construction engineering & inspection (CE&I) services – if the City elects to utilize a unit cost construction contract and requests that GS&P provide increased or full time construction/CE&I services, GS&P will submit a proposal for those additional construction phase services, and the agreement will be formally amended to include these additional services.

GS&P can provide any of the above additional services upon written authorization from the City of Mountain Brook as additional services on an hourly basis (see attached hourly rate schedule) or for a negotiated lump sum fee. Reimbursable expenses (mileage, printing/plotting, shipping, subconsultant fees, etc.) will be billed at cost plus 10%.

COMPENSATION

EXHIBIT A



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GS&P proposes to perform the scope of services described for the following lump sum fees:

Basic Services

Phase	Fee
Roadway/Contract Plans	\$22,600
Bridge Plans	\$47,100
Prepare Bidding & Construction Contract Documents	\$3,600
Bid Phase Services	\$2,500
Construction Contract Administration	\$35,500
TOTAL	\$111,300

Additional Required Services

Phase	Fee
Survey	\$18,900
Geotechnical Exploration & Bridge Foundation Recommendations	\$15,100
Bridge Hydraulic Design & FEMA Flood Study Report	\$12,200
Public Meeting & Cahaba Riverkeepers Coordination	\$2,400
TOTAL	\$48,600

The lump sum fees above include all labor, overhead, profit, and subconsultants.

Basic expenses for printing, travel, obtaining traffic counts, postage/shipping, etc. are included in the fees above with the following exceptions:

- All advertisement costs for publicly advertising the project in accordance with the State of Alabama bid laws shall be paid by the City.
- All costs for printing plans and contract/bidding documents for prospective bidders in accordance with the State of Alabama bid laws shall be paid by the City.
- The City shall pay for all printing costs and permitting fees associated with any regulatory agency or permit approvals required.

The expenses above will either be paid directly by the City or considered reimbursable expenses, which will be billed at cost plus 10%.

If requested by the City of Mountain Brook, GS&P proposes to provide the following services on an hourly basis plus reimbursable expenses.

- Right of Way/Easement Negotiation and Acquisition Services – preparing ROW/Easement exhibits; meetings/negotiations with property owners; obtain signed ROW/easement documents; recording of ROW/easement documents
- Utility Relocation Design

AGREEMENT

We will utilize a negotiated *Agreement Between Owner and Engineer For Professional Services* for this project. We can begin work on this project as soon as we receive the signed agreement back from the City.

If you have any questions about this proposal, please don't hesitate to contact me at 205.298.9232 or by email at blair_perry@gspnet.com.

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Mr. Sam Gaston
November 2, 2016
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We look forward to completing this important project for City of Mountain Brook.

Sincerely,



Blair C. Perry, P.E.
Senior Transportation Engineer/Project Manager
Senior Associate

BCP/BMG

Attachments Project Area Exhibit
 Hourly Rate Schedule
 ALDOT Fee Proposal Spreadsheet
 Agreement Between Owner and Engineer for Professional Services

Copy Ronnie Vaughn – City of Mountain Brook

**ADDENDUM TO AGREEMENT BETWEEN
THE CITY OF MOUNTAIN BROOK AND
GRESHAM , SMITH AND PARTNERS
DATED DECEMBER 12, 2016**

THIS ADDENDUM (“the/this Addendum”) to the principal agreement between the City of Mountain Brook, Alabama (“the City”) and Gresham, Smith and Partners (“the Contractor”) dated December 12, 2016.

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

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

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

4. ***Late Payment Charges; Fees; Interest.*** The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services at a rate higher than two-thirds of one percent per month (eight percent per annum), but bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be subject to late payment charges pending resolution of the dispute.
5. ***Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies.*** The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.
6. ***Choice of Law; Choice of Venue or Forum.*** The meaning, legal effect, and enforcement of terms and provisions of the agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.
7. ***Construction of Addendum.*** Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal agreement or as a matter of law.
8. ***Alabama Immigration Law Compliance Contract.*** Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the 1-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplied by the Board and return the same to the City. Contractor shall also enroll in the E-Verify

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

DATED this 12th day of December, 2016.

Gresham, Smith and Partners

City of Mountain Brook, Alabama

By : _____

By : _____

Its : _____

Its : _____

RESOLUTION NO. 2016-203

BE IT RESOLVED by the City Council of the City of Mountain Brook that, at the meeting of the City Council to be held on Monday, January 9, 2017, at 7:00 p.m., in the Council Chamber of the Mountain Brook City Hall, the City Council will hold a public hearing regarding the adoption of an ordinances amending Articles III, IV, V, VII, VIII, XVIII, XX, XIX of the City's Municipal Code regarding building limitations in residential zoning districts, use exemptions, exceptions to required setbacks for architectural features, and accessory buildings on residential lots.

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook that the City Clerk be, and he hereby is, authorized and directed to cause to be published not fewer than twenty-two (22) days prior to January 9, 2017, by posting in four (4) conspicuous places within the City of Mountain Brook, as follows: City Hall – 56 Church Street, Gilchrist Drug Company - 2805 Cahaba Road, Overton Park – 3020 Overton Road and Cahaba River Walk, 3503 Overton Road notices of said public hearing in words and figures substantially as follows:

“NOTICE OF PUBLIC HEARING

PROPOSED ZONING CODE NOTICE

Notice is hereby given that at a regular meeting of the City Council of the City of Mountain Brook to be held on Monday, January 9, 2017, at 7:00 p.m., in the Council Chamber of the Mountain Brook City Hall located at 56 Church Street, Mountain Brook, Alabama 35213, the City Council will hold a public hearing regarding a proposal that the City Council adopt an ordinance in words and figures substantially as follows:

‘ORDINANCE NO.

AN ORDINANCE AMENDING ARTICLES III, IV, V, VII, VIII, XVIII, XX, XIX OF THE CITY CODE REGARDING BUILDING LIMITATIONS IN RESIDENTIAL ZONING DISTRICTS, USE EXEMPTIONS, EXCEPTIONS TO REQUIRED SETBACKS FOR ARCHITECTURAL FEATURES, AND ACCESSORY BUILDINGS ON RESIDENTIAL LOTS

BE IT ORDAINED by the City Council of the City of the City of Mountain Brook, Alabama, that Articles III, IV, V, VII, VIII, XVIII, XX, XIX of the City Code are hereby amended to as follows:

Section 1.

“Article III. – Residence A District

Sec. 129-34. - Area and dimensional requirements.

(c)Building limitations.

(1)Maximum building area25 percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

2016-203

Article IV. – Residence B District

Sec. 129-52. - Area and dimensional requirements.

(c) Building limitations.

(1) Maximum building area35 percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Article V. – Residence C District

Sec. 129-62. - Area and dimensional requirements.

(c) Building limitations.

(1) Maximum building area35 percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Article VII. – Residence D District

Sec. 129-92. - Area and dimensional requirements for townhouses.

(d) Building limitations.

(1) Maximum building area50 percent of the total site area.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Sec. 129-93. - Area and dimensional requirements for duplexes and apartment houses.

(d) Building limitations.

(1) Maximum building area37½ percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Article VIII. – Residence E District

Sec. 129-112. - Area and dimensional requirements for townhouses only.

(d) Building limitations.

(1) Maximum building area:40 percent of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Article XVIII. – General Regulations and Provisions

Sec. 129-292. - Use exemptions.

Notwithstanding any other provision of this chapter, there may be constructed or installed in or upon a parcel located within any zoning district, such equipment and minor structures and improvements incidental to the provision and distribution of gas, electricity, water and telecommunication services, including, but not limited to, gas regulators, fogging stations,

electric transformer stations without major rotating equipment, solar panel systems, poles, cables and towers for the transmission of electricity, water pressure regulator stations, water pumping stations, telephone exchanges, cables, poles, antennas and masts for antennas as may be approved by the planning commission.

Article XX. – Exceptions to General Area and Dimensional Requirements

Sec. 129-336 – Exceptions to required setbacks for architectural features.

Encroachments of certain architectural features may be allowed into required front, side, and/or rear setbacks in accordance with the standards of this subsection.

- (a) Cantilevered awnings and canopies may project into a required front, side, and/or rear setback no more than three (3) feet.
- (b) Bay windows and greenhouse windows may project into a required front, side, and/or rear setback no more than two (2) feet, including the drip line, with a maximum width of eight (8) feet.
- (c) Chimneys may project into a required front, side, and/or rear setback, no more than two (2) feet, with a maximum width of eight (8) feet.
- (d) Cornices, pilasters, sills, and other similar decorative architectural features may project into a front, side, and/or rear yard no more than one (1) foot.
- (e) Eaves may project into a front, side, and/or rear yard no more than two (2) feet, with a minimum of two (2) feet maintained to any adjoining lot line.

Article XIX. – General Area and Dimensional Requirements

Sec. 129-314. - Accessory structures and accessory buildings on residential lots

- (a) *Size.* Accessory buildings may not contain more than the greater of 800 square feet of floor area or 20 percent of the floor area of the principal building on the lot. The height of an accessory building may not exceed the height of the principal building on the lot.
- (b) *Relationship to parcel and dwelling.* No accessory structure or accessory building in a residential district may be erected in any actual or required front yard. An accessory building may not be located closer than ~~ten~~ 10 feet to any other structure on the same parcel and may not occupy more than 15 percent of any actual or required rear or side yard. An accessory structure or accessory building must be located at least ~~five~~ 5 feet from the dwelling on the parcel on which the accessory structure or building is located, and may be attached to the principle structure by means of a covered, open breezeway that is no wider than 8 feet, is not enclosed (contains no more than two (2) walls) and is not heated nor cooled. Notwithstanding the foregoing, fences or walls can be

erected up to the property line, and may be erected directly adjacent to the principal structure.

- (c) *Setback requirements.* All accessory buildings which do not exceed ~~400~~ 625 square feet and ~~15~~ 25 feet in height (or the height of the principle structure on the lot, whichever is lower), must be at least ~~ten~~ 10 feet from all lot lines, except that such buildings may be allowed to conform to the required side setbacks for principal buildings on non-conforming Residence B and Residence C lots, as specified in sections 129-53 and 129-63 of this chapter. Accessory buildings exceeding ~~400~~ 625 square feet or ~~15~~ 25 feet (or the height of the principle structure on the lot, whichever is lower) shall be subject to the regular setbacks specified in the regulations for each zoning district. Notwithstanding any other provision contained in this chapter, no accessory structure or accessory building may be located in a front yard or nearer than 60 feet to the front street line of the parcel on which the accessory structure or accessory building is located.’
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.”

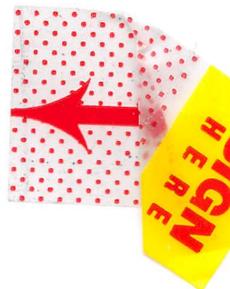
At the aforesaid time and place, all interested parties will be heard in relation to the changes proposed by said ordinance.”

ADOPTED: This 12th day of December, 2016.

Council President

APPROVED: This 12th day of December, 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 December 12, 2016, as same appears in the minutes or record of said meeting.

I further certify that copies of the resolution above were posted on December ____, 2016 in four (4) conspicuous places within the City of Mountain Brook, as follows:

- City Hall – 56 Church Street
- Gilchrist Drug Company - 2805 Cahaba Road
- Overton Park – 3020 Overton Road
- Cahaba River Walk, 3503 Overton Road

City Clerk

RESOLUTION NO. 2016-204

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute, for and on behalf of the City, an assignment and assumption of maintenance agreement between the City and ISBI Cahaba Village, LLC and Cahaba Village Properties, LLC, in the form as attached hereto as Exhibit A, with respect to the “Agreement for the Cooperative Maintenance of Public Right of Way” previously authorized upon the adoption of Resolution No. 2014-118 on September 22, 2014.

ADOPTED: This 12th day of December, 2016.

Council President

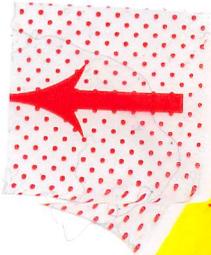
APPROVED: This 12th day of December, 2016.

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 December 12, 2016, as same appears in the minutes of record of said meeting.

City Clerk



From: Pickering, John [mailto:jpickering@balch.com]
Sent: Wednesday, December 7, 2016 3:29 PM
To: 'carljohnson@bishopcolvin.com'
Subject: RE: Cahaba Village -- City of Mountain Brook maintenance agreement

Carl,

Please use the attached version of the assumption document instead of the one I sent you earlier – I was just notified this afternoon of a change in the name of the party signing the purchase agreement, and I have corrected the reference in the assumption document.

Thanks,

From: Pickering, John
Sent: Wednesday, December 07, 2016 10:37 AM
To: 'carljohnson@bishopcolvin.com'
Subject: Cahaba Village -- City of Mountain Brook maintenance agreement

Carl,

As we discussed last week, I represent ISBI Cahaba Village, LLC, the owner of the Cahaba Village center on Highway 280. My client is negotiating to sell the center to Cahaba Village Properties, LLC. The extra parking that was added a few months ago sits in the right-of-way belong to ALDOT, so my client entered into the attached lease with ALDOT. As a condition of approving that lease, ALDOT required the City of Mountain Brook to take on certain maintenance obligations through the attached ALDOT “Agreement for the Cooperative Maintenance of Public Right of Way,” which obligations the City passed on to my client through the attached “Agreement” with the City of Mountain Brook.

ALDOT has indicated its willingness to permit the buyer of the center to assume my client’s obligations under the Lease. We would like for the City of Mountain Brook to agree to the same approach. A proposed “Assumption of Maintenance Agreement” is attached in Word format. Please look it over and let me know if you have any questions or revisions. We’re hoping to close the sale by the end of the year, so we’d appreciate it if any city council consideration that is needed could occur at this coming Monday’s meeting (December 12).

Thanks, and I look forward to hearing from you.

2016-204

ASSIGNMENT AND ASSUMPTION OF MAINTENANCE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF MAINTENANCE AGREEMENT (this "Agreement") is effective as of _____, 201__ (the "Effective Date") by and between ISBI Cahaba Village, LLC, a Delaware limited liability company ("Assignor"), and Cahaba Village Properties, LLC, a Delaware limited liability company (the "Assignee"). The parties hereto hereby recite, provide and agree as follows:

Pursuant to a certain Agreement dated as of _____, 2014, by and between the City of Mountain Brook, Alabama (the "City"), and the Assignor (the "Maintenance Agreement"), Assignor assumed full responsibility for the City's compliance with the terms of a cooperative maintenance agreement between the City and the Alabama Department of Transportation relating to the Cahaba Village shopping center located in the City, as more particularly described in the Maintenance Agreement. A true, correct and complete copy of the Maintenance Agreement is attached hereto as Exhibit A.

Pursuant to that certain Agreement of Purchase and Sale dated as of _____, 2016, by and between Assignor and Assignee (the "Purchase Agreement"), Assignor has agreed to assign to Assignee all of Assignor's right, title and interest in, to and under the Maintenance Agreement, and Assignee has agreed to assume all such rights, duties and obligations.

NOW, THEREFORE, for and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment. Assignor hereby assigns, grants and conveys, without limitation, to Assignee all of Assignor's right, title and interest in and to the Lease.
2. Assumption. Assignee hereby assumes, and agrees to make all payments and to perform and keep all promises, covenants, conditions, obligations and agreements of Assignor under the Maintenance Agreement commencing as of the Effective Date of this Agreement.
3. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
4. Miscellaneous. This Agreement is governed by and shall be construed in accordance with the laws of the State of Alabama without regard to the conflict of laws or choice of law principles thereof. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Lease.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption of Maintenance Agreement on the date hereinbefore first written.

ASSIGNOR:

ISBI CAHABA VILLAGE, LLC, a Delaware limited liability company

By Clarion Partners, LLC, a New York limited liability company, its Manager

By: _____
Name: _____
Title: Authorized Signatory

ASSIGNEE:

CAHABA VILLAGE PROPERTIES, LLC

By: _____
Name: _____
Title: _____

CONSENT OF CITY

The City of Mountain Brook, Alabama (the "City"), hereby consents to the assignment of the Maintenance Agreement to and the assumption of the Maintenance Agreement by Cahaba Village Properties, LLC, effective as of the Effective Date on the terms and conditions stated above and releases ISBI Cahaba Village, LLC, from any and all obligations and liabilities arising under the Maintenance Agreement on or after the Effective Date. The City is not aware of any defaults under the Maintenance Agreement.

**THE CITY OF MOUNTAIN BROOK,
ALABAMA**

By: _____
Name: _____
Title: _____

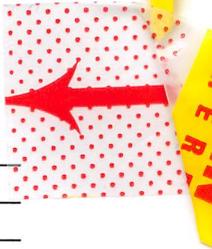


EXHIBIT A

The Maintenance Agreement

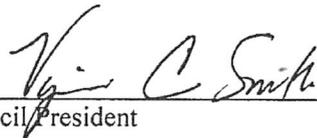
See attached.

RESOLUTION NO. 2014-118

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of an agreement between the City and the Alabama Department of Transportation, in the form as attached hereto as Exhibit A, with respect to the cooperative maintenance of U. S. Highway 280 public right-of-way between mileposts 2.628 and 2.866.

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of an agreement between the City and ISBI Cahaba Village, LLC and the City, in the form at attached hereto as Exhibit B, with respect to the aforementioned cooperative maintenance agreement with the Alabama Department of Transportation.

ADOPTED: This 22nd day of September, 2014.



Council President

APPROVED: This 22nd day of September, 2014.



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 September 22, 2014, as same appears in the minutes of record of said meeting.



City Clerk

EXHIBIT A

**ALABAMA DEPARTMENT OF TRANSPORTATION
AGREEMENT FOR THE COOPERATIVE MAINTENANCE
OF PUBLIC RIGHT OF WAY**

Permit No. _____

REGION / DIVISION 3rd DISTRICT 1

THIS AGREEMENT, entered into this the 22nd day of September, 2014, by and between the Alabama Department of Transportation acting by and through its Transportation Director hereinafter referred to as the STATE and The City of Mountain Brook, in an effort to maintain an aesthetically pleasing area at the Cahaba Village in the city limits of Mountain Brook along Route US-280, the The City of Mountain Brook agrees to maintain the landscaping, parking lot, curb and gutter, drainage, lighting, and irrigation as which pertains to the Cahaba Village Development as denoted on the attached plans that is within the state right-of-way from milepost 2.628 to 2.866,

All maintenance shall conform to standards and specifications of the Alabama Department of Transportation and the Manual on Uniform Traffic Control Devices. Any subsequent construction beyond the limits of this agreement shall be requested by permit and be subject to approval by the Alabama Department of Transportation. It is furthermore understood by the parties that the plan sheets attached hereto describes the maintained area. The parties understand that this agreement and the plan sheets attached hereto may be amended by the mutual agreement of the parties.

In accepting the above, the Department of Transportation and APPLICANT agree to do the following:

1. Adequate sight distances must be maintained for maximum public safety; otherwise the Department of Transportation reserves the right to remedy this situation in the most expedient manner.

2. The Department of Transportation is not responsible for the safety of the individual involved or taking part in this work during maintenance operations performed by or on the behalf of the APPLICANT.

3. If Department of Transportation construction (repair of drainage and traffic structures, crossovers and other minor construction) is done in the subject area, it will be the responsibility of the Department of Transportation to establish a stand of vegetative cover if deemed necessary by the Department of Transportation and then the APPLICANT'S responsibility to maintain the vegetative cover as stipulated herein. In the event of major construction in the subject area, this Agreement shall be voided at a time designated by the Department of Transportation.

4. All work shall be subject to the inspection and approval of the Alabama Department of Transportation. Description of the proposed work must accompany this and any associated proposal. If the maintenance is not conducted as specified herein, the Department of Transportation shall assume maintenance and this Agreement will be invalid. A copy of this Agreement must be kept by all parties that sign the Agreement. The State of Alabama does not grant applicant any right, title, or claim on any highway right-of-way.

5. The APPLICANT agrees to store no equipment, materials, or debris of any kind on the shoulders of pavement and in the case of multi-lane highways, in the median strips. The pavement will be kept free from waste and equipment.

6. The APPLICANT shall be solely responsible for and hold harmless the Alabama Department of Transportation for any claim for damage done to existing private property, public utility, or the traveling public in connection with the performance of the APPLICANT'S obligations under this Agreement.

7. The APPLICANT will be responsible at all times for all of the work performed under this agreement and, the APPLICANT will protect, defend, indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/ or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.

8. This Agreement is executed with the understanding that it is not valid until the APPLICANT has complied with all existing ordinances, laws and zoning boards that have jurisdiction in the county, city, or municipality.

9. By entering into this agreement, the APPLICANT is not an agent of the State, its officers, employees, agents or assigns. The APPLICANT is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.

10. Failure of the APPLICANT to conform to the provisions of this Agreement will be cause to terminate this Agreement. Notification prior to termination will be made by the Department of Transportation.

The above conditions are agreed upon:

Name of Club, Group, Business or Municipality:

BY _____
Name and Title Date

BY _____
Name and Title Date

BY *Lawrence T. Oden* 9/22/2014
Lawrence T. Oden, Mayor Date

205/802-3800
Telephone Number

Reviewed as to Form

Counsel – State of Alabama
Department of Transportation

For the Alabama Department of Transportation:

District Manager Date

Maintenance / Region / Division Engineer Date

10. Failure of the APPLICANT to conform to the provisions of this Agreement will be cause to terminate this Agreement. Notification prior to termination will be made by the Department of Transportation.

The above conditions are agreed upon:

Name of Club, Group, Business or Municipality:

BY _____
Name and Title Date

BY _____
Name and Title Date

BY _____
Name and Title Date

Telephone Number

Reviewed as to Form

Counsel – State of Alabama
Department of Transportation

For the Alabama Department of Transportation:

District Manager Date

Maintenance / Region / Division Engineer Date

EXHIBIT B

AGREEMENT

THIS AGREEMENT made between ISBI CAHABA VILLAGE, LLC, a Delaware limited liability company ("ISBI"), as successor to Bayer Construction Company, LLC, and THE CITY OF MOUNTAIN BROOK (the "City").

WHEREAS, the City has heretofore approved an application filed by ISBI for an amendment to the Development Plan for property located at or near the intersection of U. S. Highway 280 and Green Valley Road known as Cahaba Village (the "Property"); and

WHEREAS, the City has, in conjunction therewith, approved an expansion of the parking area and certain access improvements; and

WHEREAS, in connection therewith, at the request of the Alabama Department of Transportation ("ALDOT"), the City has agreed to enter into an agreement with ALDOT for the cooperative maintenance of public right of way abutting the Property; and

WHEREAS, ISBI has agreed to assume all expenses, liabilities, costs, and obligations embraced within, associated with, or imposed on the City under or by virtue of such agreement; and

WHEREAS, the City and ISBI desire to appropriately memorialize such assignment and assumption of obligations;

NOW, THEREFORE, the City and ISBI agree as follows:

1. In exchange for the City's agreement to enter into the cooperative maintenance agreement with ALDOT described hereinabove, which agreement has been included within Resolution No. 2014-118, ISBI agrees that, upon execution and/or approval thereof by ALDOT (or its assignee), it shall assume full responsibility for compliance with every term, condition, and provision set forth therein or made a part thereof and shall indemnify and hold the City harmless to the full extent of any costs, liability, obligation, or expense incurred by the City in conjunction therewith; provided, however, that nothing herein shall be construed to modify the terms of the existing development agreement between the City and ISBI or to relieve either party of any obligation thereunder.

2. This agreement supercedes and replaces that certain agreement made between Bayer Construction Company, LLC, and The City of Mountain Brook dated February 1, 2005, a copy of which is attached hereto as **Exhibit A**.

DATED this _____ day of 2014.

ISBI CAHABA VILLAGE, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

THE CITY OF MOUNTAIN BROOK, ALABAMA

By: *Lawrence T. Oden*

Name: *Lawrence T. Oden, Mayor*

Title: *9/22/2014*

EXHIBIT A

See attached.

ALABAMA DEPARTMENT OF TRANSPORTATION
AGREEMENT FOR THE COOPERATIVE MAINTENANCE
OF PUBLIC RIGHT OF WAY

Permit No. _____

DIVISION 3

DISTRICT 1

THIS AGREEMENT, entered into this the 25 day of January, 2005, by and between the Alabama Department of Transportation acting by and through its Transportation Director hereinafter referred to as the STATE and City of Mountain Brook, in an effort to secure a more pleasing appearance on the roadside between Green Valley Road & Pump House Road overpass along Applicant's property known as Cahaba Village

on Route 280, the Applicant

_____ agrees to maintain the vegetative cover in the Northern shoulder and median by means of mowing with a flail or rotary mower and hand trimming such that a clean and attractive appearance is obtained. Mowing operations shall be conducted when the height of the vegetative cover reaches 6 inches. Reschedule mowing operations in accordance with the planned frequency. In the event that shrubs and/or minor trees are planted within the area, trimming around the plant materials shall be done in conjunction with mowing to obtain a clean and attractive appearance. Clippings or other incidental debris (such as branches, trash, etc.) shall be removed if mounting of the clippings or other incidental debris occurs.

EXHIBIT A

05-007

In accepting the above, the Department of Transportation and club, group, business, or municipality agree to do the following:

1. The Department of Transportation will see that adequate sight distances are maintained for maximum public safety; otherwise the Department of Transportation reserves the right to remedy this situation in the most expedient manner.
2. The Department of Transportation is not responsible for the safety of the individual involved or taking part in this work during maintenance operations.
3. If Department of Transportation construction (repair of drainage and traffic structures, crossovers and other minor construction) is done in the subject area, it will be the responsibility of the Department of Transportation to establish a stand of vegetative cover if deemed necessary by the Department of Transportation and then the groups', clubs', business', or municipalities' responsibility to maintain the vegetative cover as stipulated herein. In the event of major construction in the subject area, this Agreement shall be voided at a time designated by the Department of Transportation.
4. All work shall be subject to the inspection and approval of the Alabama Department of Transportation. Description of the proposed work must accompany this and any associated proposal. If the maintenance is not conducted as specified herein, the Department of Transportation shall assume maintenance and this Agreement will be invalid. A copy of this Agreement must be kept by all parties that sign the Agreement. The State of Alabama does not grant applicant any right, title, or claim on any highway right-of-way.
5. The club, group, business or municipality agrees to store no equipment, branches, mounds of clippings or plant debris of any kind or any other material on the shoulders of pavement and in the case of multi-lane highways, in the median strips. The pavement will be kept free from waste (clippings, mud and other debris) and equipment.
6. The group, club, business or municipality shall be solely responsible for and hold harmless the Alabama Department of Transportation for any claim for damage done to existing private property, public utility, or the traveling public.
7. This Agreement is executed with the understanding that it is not valid until the club, group, business or municipality has complied with all existing ordinances, laws and zoning boards that have jurisdiction in the county, city or municipality.
8. Failure of the club, group, business or municipality to conform to the provisions of this Agreement will be cause to terminate this Agreement. Notification prior to termination will be made by the Department of Transportation.

EXHIBIT A

05-007

The above conditions are agreed upon:

City of Mountain Brook
Name of Club, Group, Business or Municipality:

For the Alabama Department of
Transportation:

BY *Adam D. Aston* *1-25-05*
Name and Title *City* Date
Manager

ATTEST:

BY *Erver Boone* *1-25-05*
Name and Title *City Clerk* Date



Date _____

EXHIBIT A

District Engineer Date

Division Engineer Date

Maintenance Engineer Date

05-007

RESOLUTION NO. 2016-205

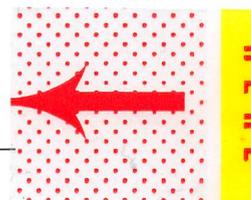
BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute, for and on behalf of the City, an agreement between the City and C. S. Beatty Construction, Inc., in the form as attached hereto as Exhibit A, with respect to its donation of materials and services for the installation of a trail loop and memorial bench foundation along the Jemison Trail.

ADOPTED: This 12th day of December, 2016.

Council President

APPROVED: This 12th day of December, 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 December 12, 2016, as same appears in the minutes of record of said meeting.

City Clerk

STATE OF ALABAMA)

JEFFERSON COUNTY)

LICENSE AGREEMENT

THIS AGREEMENT made this ___ day of December, 2016, by and between THE CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation (“the City”) and C.S. BEATTY CONSTRUCTION COMPANY, INC. (“Licensee”).

FOR AND IN CONSIDERATION OF the sum of One Dollar (\$1.00) and other good and valuable consideration, the above-named parties hereby agree as follows:

1. The City confers upon Licensee the authority, permission, and privilege of constructing a memorial bench, access path, and related improvements along, over, and across the City’s property more particularly described and shown on Exhibit A attached hereto in accordance with plans heretofore submitted to and approved by the City. The right of access to the property conferred on Licensee by this agreement shall expire upon completion of the project; However, Licensee’s obligations and covenants hereunder shall survive completion of the project.

2. Licensee agrees and covenants that it shall not claim or retain any ownership interest in the improvements that are the subject and object of this agreement, which improvements shall be deemed conveyed and donated to the City of Mountain Brook upon completion. Further, the authority, permission and privilege conferred by this agreement shall not be construed as a right to maintain or require the City to maintain the improvements to be installed on the City’s property indefinitely or in perpetuity. Licensee’s exercise of the authority, privilege, and permission hereby conferred shall not impede the City’s access to City property.

3. Licensee acknowledges and agrees that the authority, permission, and privilege hereby conferred (a) does not constitute or evidence a grant or conveyance of an equitable, legal or other ownership right or interest in any real estate owned or controlled by the City of Mountain Brook; and (b) shall be subordinate for all purposes to the right and interest of the City of Mountain Brook in the use, enjoyment, ownership, and control of the property that is or may be subject to the exercise of that privilege. Licensee shall exercise the authority, privilege and permission hereby conferred at its sole risk and shall assume sole responsibility for the installation and construction of the improvements contemplated hereby in accordance with applicable municipal regulations and requirements. Licensee agrees to assume all costs, expenses, or liabilities associated therewith. The City assumes no obligation to maintain or repair the improvements upon their completion.

4. Licensee shall defend, indemnify and hold the City harmless from and against all claims, demands, suits, actions, costs, expenses and judgments arising out of or based upon its exercise of the authority, permission, and privilege hereby conferred.

5. Licensee shall not be deemed the City's agent for any purpose under or by reason of this agreement.

6. In consideration of the enhanced use and enjoyment of public property that will be realized by the City and the charitable nature of the project hereby authorized, the City agrees to waive all municipal permitting fees that would otherwise be imposed on Licensee or its subcontractors in conjunction with the project.

IN WITNESS WHEREOF, the parties have executed this instrument on this the ___ day of December, 2016.

THE CITY OF MOUNTAIN BROOK

By: _____
Its: _____

C.S. BEATTY CONSTRUCTION, INC.

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority in and for said county and state hereby certify that _____, whose name is signed to the foregoing Agreement, as _____ of the City of Mountain Brook, Alabama, a municipal corporation, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, he, as such officer and with full authority, executed the same voluntarily, for and as the act of the said City of Mountain Brook, Alabama.

Given under my hand and official seal on this the ___ day of December, 2016.

Notary Public

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority in and for said county and state hereby certify that _____, whose name is signed to the foregoing Agreement, as _____ of C.S. Beatty Construction, Inc., and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, he, as such officer and with full authority, executed the same voluntarily, for and as the act of C.S. Beatty Construction, Inc.

Given under my hand and official seal on this the ___ day of December, 2016.

Notary Public

Fwd: Beatty trail

Shanda Williams <williamssh@mtnbrook.org>
To: Carl Johnson <carljohnson@bishopcolvin.com>

Thu, Dec 8, 2016 at 3:09 PM

This is the project description I have

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

From: Nimrod Long <nimrod@nimrodlong.com>
Date: Tue, Dec 6, 2016 at 11:41 AM
Subject: Re: Beatty trail
To: Shanda Williams <williamssh@mtnbrook.org>

Loop Trail-

- 1). 5' wide crushed stone path about 425' long. Similar in scope to the Eagle Scout loop trail projects on Mountain Brook Parkway.
- 2). Bench location with beautiful view up Shades Creek
- 3). Stone steps and cedar rail just like the steps in Louise Wrinkle's Garden.
- 4). Path construction is protective of existing trees
- 5). CS Beatty will also remove the privet and other invasive species by hand.

Nim

Nimrod W.E. Long III

FASLA
Nimrod Long and Associates
Land Planners | Landscape Architects | Urban Designers
880 Montclair Road, Suite 235
Birmingham, AL 35213
205-323-6072 Voice
205-910-8730 Cell
205-324-6128 Fax

EXHIBIT A

