

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
JANUARY 11, 2015**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 5:00 p.m. on Monday, the 11th day of January, 2016. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: Lloyd C. Shelton

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

1. AGENDA

1. Public Assembly Ordinance amendments (Appendix 1). The following persons will serve on a committee to study the matter further and report back to the City Council at a later date with a recommendation:

Sam Gaston (committee coordinator)	Terry Oden
Alice Womack	Virginia Smith
Whit Colvin	Chief Ted Cook

2. Request for an ordinance to prohibit use of cell phones in school zones during car pool times – Dale Wisely of the Mountain Brook School System (Appendix 2). The following persons will serve on a committee to study the matter further and report back to the City Council at a later date with a recommendation:

Dale Wisely (committee coordinator)	Chief Ted Cook
Jack Carl	Billy Pritchard
Whit Colvin	

3. Pedestrian bridge over Highway 280 on Hollywood Blvd (Appendix 3). The consensus of the members present was that the matter be studied further and then reconsidered once more details are available.
4. Review of matters to be considered at the 5:30 p.m. (official) meeting. The consensus of the members present was that the resolutions appeared to be in order and routine in nature and will be considered at one time on the consent agenda and that the ordinances pertaining to the small cell antenna regulations and fees were also in order and ready for consideration. Regarding the small cell franchise and related regulations, representatives of Crown Castle stated that the system will be implemented during 2016.

2. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on January 11, 2016, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said meeting.

A handwritten signature in blue ink that reads "Steven Boone". The signature is written in a cursive style and is positioned above a horizontal line.

City Clerk

a public corporation and to the water works engineer of the Birmingham Industrial Water Supply System. (Code 1996, § 18-20; Ord. No. 557, § 8)

Sec. 46-84. Same--Duty of affected utilities and landowners to act.

Within 30 days after the date of any notice mailed as provided in section 46-83, it shall be the duty of each public utility to which the city clerk has mailed such notice to install all sewers, mains, conduits and other necessary utility installations and to make all needed repairs thereto then necessary or contemplated to be necessary within five years. In the event any abutting property owner to whom a notice is sent pursuant to section 46-83 shall fail, within 30 days after the date of such notice, to install all necessary service lines connecting with any mains, sewers, conduits or other utility installations or to stub out or extend such connections to the property lines, all rights of such owner or his successors in title to make any such installation, except as otherwise provided in this article, shall be forfeited for a period of five years after the date of completion of such new paving. (Code 1996, § 18-31; Ord. No. 557, § 9)

Sec. 46-85. Same--Fences beyond applicant's control; charges where notice was not mailed.

(a) In the event that the city manager shall, in his sound discretion, determine that due to circumstances beyond the control of any person who owns such property as to which notice was mailed as provided in section 46-83, which abuts on or is in any street or alley which has been paved or repaved within five years next preceding the application for a pavement not permit, improvements on such property have been damaged or destroyed in such manner as to require a permit for a pavement cut to be issued pursuant to the rebuilding or repair of such destroyed or damaged improvements, then the city manager may approve the issuance of a permit for such pavement cut without requiring the payment of such special charge as provided in section 46-83.

(b) In no case shall such special charge be required where notice was not mailed as provided in section 46-83. (Code 1996, § 18-32; Ord. No. 557, § 10)

Sec. 46-86. Applicability of article to electric, gas, building and plumbing codes.

Any and all provisions of the electrical code, gas code, building code and plumbing code of the city relating to excavation in streets or alleys and relating to connections with or use of sewers and utilities requiring a permit for pavement, sidewalk or curb cuts as provided in this article shall be subject to all applicable provisions of this article. (Code 1996, § 18-23; Ord. No. 557, § 10)

Sec. 46-87. Costs of restoration on violation of article.

In addition to any other penalty imposed by the provisions of this Code or other ordinances of the city, any person violating the provisions of this article shall pay all costs of restoring any street, sidewalk, alley or other public way necessitated by such violation. (Code 1996, § 18-34)

Sec. 46-88--46-117. Reserved.

ARTICLE IV. PUBLIC ASSEMBLIES

Sec. 46-118. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public assembly means any parade, march, formation, procession, group of pickets, picket line, public demonstration, movement, assembly, gathering or display of persons, animals, fleets, motor vehicles, or combination thereof including any and all runs, walks, or races, whether for charitable or competitive purposes involving persons or motorized or nonmotorized vehicles on the public ways, which requires and necessitates, or may require and necessitate, substantial traffic

control and rerouting of traffic, extraordinary police protection and crowd control or substantial prior planning, whether or not it is for the purpose of presenting a cause, or for the purpose of expressing an opinion before the general public on any particular issue, or for the purpose of protesting or influencing any state of affairs or decision rendered or to be rendered thereon whether political, economic, or social, or for the purpose of celebrating or commemorating any past, present or future event or occurrence, whether historical or otherwise; notwithstanding that such public assembly may be peaceful and devoid of noise and does not disturb the public peace; and regardless of whether the persons participating and engaging therein march, move about, or patrol, display signs, placards, flags, banners, cards or combinations thereof, or sing, shout, chant, yell or clap their hands; provided, however, that a funeral procession and service shall not be considered a public assembly.

Residential area means all districts zoned residence A, residence B, residence C, residence D, residence E, or estate, under the city code, including all public ways located within such districts. (Code 1996, § 18-32; Ord. No. 521, § 1-2, 5-13-1986; Ord. No. 1585, § 1, 8-23-2003)

Sec. 46-119. Permit for parade, procession, or other public assembly required.

It is and shall be unlawful to promote, organize, or hold or to assist in promoting, organizing or holding, or to take part or to participate in, any parade, procession, public demonstration, or other public assembly, as hereinafter defined, on the sidewalks, streets, highways or other public ways of the city, unless a permit therefor has been secured from the city manager. To secure such a permit, written application as hereinafter provided shall be made to the city manager, setting forth the information required by section 46-131(1). This application shall be submitted to the city manager's office at least 30 days before the date of the proposed parade, procession, public demonstration or other public assembly. For good cause shown, the city manager may, at his discretion, accept applications past the 30-day deadline. Within five days of receipt of an application, the city

manager shall review said application and make a recommendation as to approval or disapproval of the application. The city manager then will send the application with his recommendation to the mayor for his review. The mayor shall have the discretion to approve or disapprove the application. If the mayor fails to act within 48 hours of receipt of the application, the city manager's recommendation shall be deemed final. If the mayor acts within 48 hours, then the city manager shall follow the mayor's decision. In either case, if a permit is to be granted, the city manager as hereinafter provided shall grant a written permit for such parade, procession, public demonstration or public assembly unless the application violates any provision of this article; provided, however, that the city manager, upon recommendation of the chief of police, may prescribe that streets, sidewalks, highways or public ways (all of which shall be referred to hereinafter in the article as "public ways") be used, which differ from those requested in the application, or that a different date or hour be used, for reasons of traffic safety, or public safety or convenience in the use of the public ways or as provided in section 46-124; further provided that a permit shall not be issued or approved for a public assembly to be conducted in a residential district of the city unless the city manager and/or the mayor (as herein provided) shall determine that the nature and extent of the activity does not pose a significant threat of public noise, disturbance, disruption of traffic, public disorder, or otherwise adversely affect the public safety and welfare. It shall be unlawful to use for such purposes any other public ways, or to hold the parade, procession, public demonstration or public assembly at any other day or hour, than those set out in such permit as approved by the city manager. This section shall not apply to funeral processions. (Code 1996, § 18-31; Ord. No. 521, § 1-1, 8-12-1986; Ord. No. 1585, § 1, 8-23-2003)

Sec. 46-120. City manager to issue permit.

The city manager shall issue a permit in writing to any person, organized group or unincorporated association of persons or to any corporation organized and existing under the laws of the state or any other state, provided such corporation is

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APPENDIX 1

qualified to do business within the state, upon proper application therefor as hereinafter provided, permitting participation in a public assembly within the city, on the terms and conditions and pursuant to the procedure hereinafter declared. (Code 1996, § 18-33; Ord. No. 521, § 1-3, 5-13-1986; Ord. No. 1585, § 1, 8-23-2003)

Sec. 46-121. Form of application for permit.

The application for a permit shall be directed to the city manager in writing, in accordance with the following provisions:

- (1) Contents of application. The application for permit shall contain the following items of information:
a. The purpose of the public assembly;
b. The type, nature and character of the public assembly;
c. The requested date of the public assembly;
d. The requested inclusive times of the public assembly;
e. The date submitted to the city manager's office;
f. The probable number of persons, animals, fleets, and motorized vehicles which will participate or engage in the public assembly;
g. The requested place, area, locality and route of the public assembly; and
h. Any information requested by the city manager for the purpose of evaluating and addressing matters bearing on public safety and security.

- (2) Execution of application for permit. Where the proposed public assembly is sponsored by a corporation, an organized group or unincorporated association, the application must be executed in the name of the corporation, organized group or un-

incorporated association of persons by one having the authority of an officer or a general agent thereof. (Code 1996, § 18-34; Ord. No. 521, § 1-4, 5-13-1986; Ord. No. 1585, § 1, 8-23-2003)

Sec. 46-122. Contents of permit.

The permit for a public assembly shall be issued in substantial conformity with terms proposed in the application except as otherwise provided by this article. No other terms or conditions shall be placed in the permit except for reasons of public safety, the protection of those engaging or participating in such public assembly, or the convenience of public use of public ways, as stated in sections 46-119 and 46-124. It shall be a violation of this section for any person participating or engaging in such public assembly to disregard or fail or refuse to obey any term or condition in the permit. (Code 1996, § 18-32; Ord. No. 521, § 1-5, 5-13-1986; Ord. No. 1585, § 1, 8-23-2003)

Sec. 46-123. Offenses while participating or engaging in, or observing the public assembly.

It shall be a violation of this article for any person, while participating or engaging in, or observing a public assembly as defined in and permitted by this article, to disobey or disregard any traffic control device, signal or regulation, except when ordered to do so by an officer of the department of police; to utter any insulting or fighting words or abusive language to any person; willfully and intentionally to disobey or disregard any lawful order of any officer of said department of police; to encourage by word or act, or both, the commission of any crime; to attempt to cordon off or assist or participate in cordoning off a public way, or entrance to any building, public or private, allowing no one else to pass; to lie prostrate or sit upon any public way so as to obstruct, impede, hinder, stifle, retard or restrain passage of traffic thereon; to assault, spit on or at or throw any object at any police officer; or to fail or refuse to disperse quickly and quietly at the expiration of the time at which the permit expires. (Code 1996, § 18-34; Ord. No. 521, § 1-6, 5-13-1986; Ord. No. 1585, § 1, 8-23-2003)

Sec. 46-124. Conditions on which permit is to be refused.

The city manager shall refuse to issue a permit for public assembly when any one or more of the following conditions is apparent from clear and convincing evidence or is evident from the application. However, the city manager may, pursuant to section 46-119, issue a permit containing different terms from those in the application where the substituted terms will permit issuance of the permit.

- (1) The purpose of the public assembly, whether so stated in the application or not, is the encouragement of the commission of a crime or is the accomplishment of an unlawful demand, purpose, end or objective.
(2) The signs, placards, banners, flags or cards to be carried, or the songs to be sung, or the chants to be chanted, encourage or advocate the commission of a crime or the accomplishment of an unlawful demand, purpose, end or objective, or are to be used in such circumstances or are of such nature as to create and present danger of a riot or a disorderly group of persons; but nothing herein contained shall cause words or language merely expressing unpopular views to be so construed.
(3) The proposed public assembly is so large as to prohibit its control and protection by the department of police; or is so large or is such that it will substantially and materially interrupt and interfere with the free flow of commerce and trade and the use of the public ways of the city for an appreciable period of time.
(4) The proposed public assembly is in an area prohibited by this article.
(5) The proposed public assembly presents a clear and present danger of destruction of life or property, or serious invasions of rights of privacy or branches of the peace, and that danger is imminent and aggravated and amounts to more than slight inconvenience or annoyance.

(6) The proposed public assembly is at a date or hour, and/or on particular public ways, which will substantially and materially interrupt and interfere with the free flow of commerce and trade and use of the public ways of the city for an appreciable period of time, or which will substantially and materially affect public safety or convenience in the use of the public ways. (Code 1996, § 18-37; Ord. No. 521, § 1-8, 5-13-1986; Ord. No. 1585, § 1, 8-23-2003)

Sec. 46-125. Violation of article.

It shall be a violation of this article to participate or engage in, or to aid, abet, command, counsel or induce any person to participate or engage in a public assembly as herein defined, in the city, without there having been obtained prior thereto a permit for such public assembly. (Code 1996, § 18-38; Ord. No. 521, § 7-9, 5-13-1986; Ord. No. 1585, § 1, 8-23-2003)

Sec. 46-126. Action upon public assembly becoming violent.

Upon any public assembly becoming violent, the senior ranking officer of the department of police who is present shall notify call a halt to such public assembly and shall cause it to forthwith disperse; and it shall be a violation of this section for any person who having been so ordered, willfully and intentionally to fail or refuse to disperse quickly and quietly. (Code 1996, § 18-39; Ord. No. 521, § 1-10, 5-13-1986; Ord. No. 1585, § 1, 8-23-2003)

Sec. 46-127. Presumption of evidence.

When any object is thrown at any police officer of the city, or at any other person, it shall be presumed that such public assembly has become violent. (Code 1996, § 18-40; Ord. No. 521, § 1-11, 5-13-1986; Ord. No. 1585, § 1, 8-23-2003)

Sec. 46-128. Annual Mountain Brook High School homecoming parade.

Section 46-124(4) shall not apply to the annual Mountain Brook High School homecoming parade, because of the established tradition of said

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Sam Gaston

From: WISELY, DALE
Sent: Friday, January 08, 2016 8:57 AM
To: 'gastons@mountainbrook.org'
Subject: FW: possible ordinance
Attachments: ORDINANCE.docx

To Members of the City Council:

A few years ago, I spoke to a Dr. Dicky Berlew, Chief Cook and Billy Fritchard about the possibility of asking the City Council to consider an ordinance prohibiting the use of cell phones by motorists in school zones during car pool hours. I went to respectfully ask you to consider this matter.

This was prompted by my having recently observed a driver, on a cell phone, sail through a red light, in the middle of kids walking to for school, on Montevalle and Church. Fortunately, she did not collide with any of our students and it was a non-event. But, we routinely see drivers in carpools with phones to their ears, with large SUVs full of children.

I have taken the liberty of drafting an ordinance which is attached. It would grieve me if you were to find this presumptuous. I thought it might be useful to you to see what an ordinance like this might look like. I used an existing MB ordinance as a model. The language of the draft is based on a state law in Louisiana, where it is illegal to use a cell phone in school zones. I am sure it would have to be extensively reworded by people who actually know what they are doing.

I think most people are now aware of the role of distracted driving in causing accidents. As you may know, for 15 years I have been studying teenage driving in order to provide workshops for parents on teenage driving. This has caused me to try to keep up with the research on distracted driving. Much of the national conversation around this has properly been focused on texting while driving. If you were to consider some kind of action regarding cell phone use in school zones, I am sure you would want to consider that it already illegal, statewide to text while driving.

One unfortunate and unintended consequence of the focus on texting while driving is that it has caused people to underestimate the risk of talking on the telephone while driving. A fair way to summarize the research is to say that texting while driving increases a driver's risk of causing an accident about tenfold. Talking on one's phone while driving increases the chances of accident about fourfold. That is not a trivial increase in the risk of accidents which could cause severe injury or death, including injury and death of school children. The benchmark's often employed by researchers to evaluate the risk of distracted driving is to compare it to DUI. In many studies, the impairment of a driver from use of a cellphone while driving is similar to the impairment of drivers under the influence of alcohol. Given that, I do not see a way around a conclusion that when motorists are on their phones, in school zones, during car pool times, our students are at greater risk of injury or death than otherwise.

Finally, let me address the question of enforcement. It is clear to me that there are problems associated with enforcing measures of this kind. First, I do believe there would be ample opportunities to cite drivers who are on their phones during car pool times in school zones. But, even if there were not, I do think laws and ordinances of this kind have an educational value, not to mention that there actually are people who obey laws even when the risk of getting caught are low!

I am at your service and looking forward to any conversations about this matter you find appropriate.

Thanks,

Dale Wisely

1/8/2016

ORDINANCE

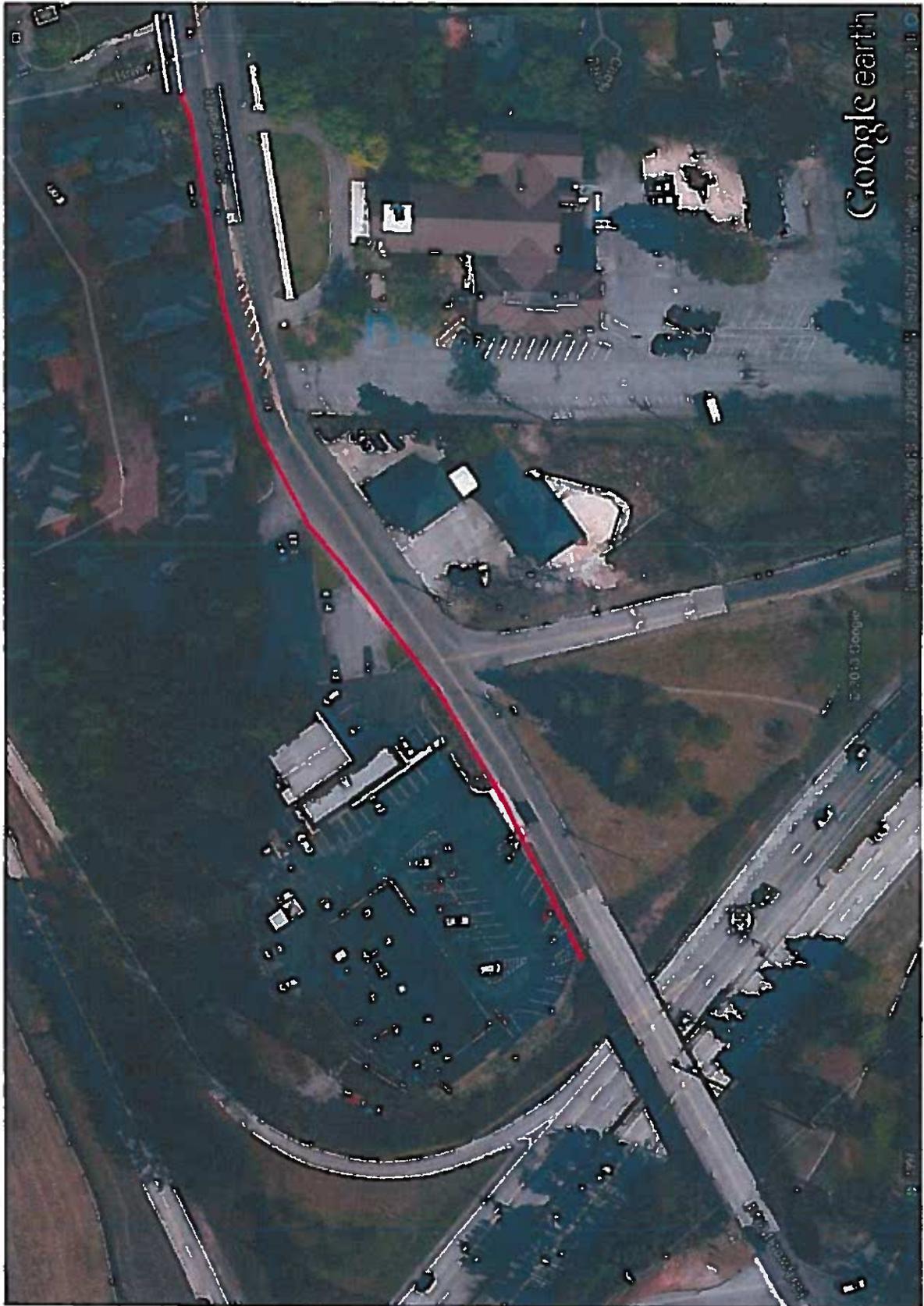
AN ORDINANCE TO PROHIBIT THE USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE IN SCHOOL ZONES BETWEEN THE HOURS OF 7:30 A.M. AND 8:00 A.M. AND BETWEEN THE HOURS OF 2:30 P.M. AND 3:00 P.M. AND WHEN PEDESTRIANS, WHO ARE MINORS, ARE VISIBLE IN SCHOOL ZONES.

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

1. Provisions. It shall be unlawful for the driver of a motor vehicle in a School Zone to operate a wireless communication device between the hours of 7:30 A.M. and 8:00 A.M. and between the hours of 2:30 P.M. and 3:15 P.M. and when pedestrians, who are minors, are visible in school zones. Operating a wireless communication device shall include engaging in a call; writing, sending, or reading text-based communications; accessing, reading, or posting to a social network site or accessing or adding any information to the wireless communication device. The provisions of this Section shall only apply within a school zone upon a public road or highway during posted hours when signs are located in a visible manner in each direction that indicate the use of a hand-held wireless communications device is prohibited while operating a motor vehicle.
2. "Wireless telecommunications device" defined. "Wireless telecommunications device" means a cellular telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, or any other substantially similar wireless device that is readily removable from the vehicle and is used to write, send, or read text or data through manual input. A "wireless telecommunications device" shall not include any device or component that is permanently affixed to a motor vehicle. It does not include a hands-free wireless telephone, an electronic communication device used hands-free, citizens band radios, citizens band radio hybrids, commercial two-way radio communications devices, two-way radio transmitters or receivers used by licensees of the Federal Communication Commission in the Amateur Radio Service, or electronic communication devices with a push-to-talk function.
3. Violations.
 - (1) Violations of this ordinance shall constitute a moving violation.
 - (2) The first violation of the provisions of this ordinance shall be punishable for a fine of not more than \$100.
 - (3) Each subsequent violation shall be punishable by a fine of not more than \$100.
 - (4) If a person is involved in a collision at the time of the violation, then the fine shall be equal to double the amount of the standard fine imposed in this ordinance and the law enforcement officer investigating the collision shall indicate on the written report that the person was using a wireless communication device at the time of the collision.
4. Exceptions: The provisions of this ordinance shall not apply to a person who uses a wireless telecommunications device and does any of the following:
 - (1) Reports a traffic collision, medical emergency, or serious road hazard.

APPENDIX 2

- (2) Reports a situation in which the person believes his personal safety is in 24 jeopardy.
 - (3) Reports or averts the perpetration or potential perpetration of a criminal act against the driver or another person.
 - (4) Operates a wireless telecommunications device while the motor vehicle is lawfully parked.
 - (5) Uses a wireless telecommunications device in an official capacity as an operator of an authorized emergency vehicle.
5. 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.
 6. 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.
 7. Effective Date. This ordinance shall become effective immediately upon adoption, publication as provided by law, and the installation of appropriate traffic signage indicating that such turns are prohibited.



APPENDIX 3

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA
JANUARY 11, 2016**

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 5:00 p.m. on Monday, the 11th day of January, 2016. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: Lloyd C. Shelton

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. 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 December 14, 2015 regular meeting of the City Council.

2016-001	Reappoint Keehn Berry to the Park and Recreation Board, to serve without compensation, the term to end January 9, 2021	Exhibit 1
2016-002	Reappoint Lynn Ritchie to the Villages Design Review Committee, to serve without compensation, the term to end February 12, 2019	Exhibit 2
2016-003	Authorize the installation and rental of four (4) fire hydrants on Rock Hill Road and Riverbend Road and the related payment to the Birmingham Water Works Board for installation costs related thereto in the amount of \$10,804	Exhibit 3
2016-004	Reject all bids with respect to the removal and management of invasive plants and noxious weeds at Jemison Park dated December 15, 2015	Exhibit 4, Appendix 1
2016-005	Authorize the execution of an agreement with the Birmingham-Jefferson County Transit Authority (MAX) for their provision of public transportation services in the City for fiscal year ending September 30, 2016	Exhibit 5, Appendix 2
2016-006	Approve the conditional use application submitted by Meta Fitness [service use] for 3150 Overton Road [Local Business District]	Exhibit 6, Appendix 3

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|-----------------|---|--------------------------|
| 2016-007 | Authorize the issuance of a purchase order and execution of such other documents that may be determined necessary with respect to the purchase of telecommunication services (Layer 2 Ethernet, Internet, and SIP Trunking) from AT&T based on the pricing as awarded by the State of Alabama | Exhibit 7,
Appendix 4 |
| 2016-008 | Authorize the execution of a franchise agreement between the City and Crown Castle with respect to their installation of small cell antenna in the public right-of-way | Exhibit 8,
Appendix 5 |

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

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

Nays: None

Council President Smith thereupon declared that said Council minutes and resolutions (Nos. 2016-001 through 008) are adopted by a vote of 4—0 and as evidence thereof she signed the same.

2. CONSIDERATION: ORDINANCE (NO. 1948) REGULATING THE INSTALLATION AND OPERATION OF SMALL CELL ANTENNA IN THE PUBLIC RIGHT-OF-WAY AND PRIVATE PROPERTY (EXHIBIT 9, APPENDIX 6)

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

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

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

Nays: None

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

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

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

Nays: None

The Council President Smith declared that the said ordinance (No. 1948) is hereby adopted by a vote of 4–0 and, as evidence thereof, she signed the same.

3. CONSIDERATION: ORDINANCE (NO. 1949) AMENDING CHAPTER 14 OF THE CITY CODE WITH RESPECT TO FEES ASSOCIATED WITH SMALL CELL ANTENNA INSTALLATIONS (EXHIBIT 10)

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

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

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

Nays: None

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

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

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

Nays: None

The Council President Smith declared that the said ordinance (No. 1949) is hereby adopted by a vote of 4–0 and, as evidence thereof, she signed the same.

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

Council President Smith announced that the next meeting of the Mountain Brook City Council will be held on Monday, January 25, 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 January 11, 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. 2016-001

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Keehn Berry is hereby reappointed to the Park and Recreation Board, to serve without compensation, with the term of office to end January 9, 2021.

EXHIBIT 2

RESOLUTION NO. 2016-002

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Lynn Ritchie is hereby reappointed to the Village Design Review Committee, to serve without compensation, with the term of office to end February 12, 2019.

EXHIBIT 3

RESOLUTION NO. 2016-003

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

1. That the Water Works and Sewer Board of the City of Birmingham, Alabama, be requested to install two fire hydrants to service the residents on Rockhill Road and two fire hydrants to service the residents on Riverbend Road, at the following locations:
 - (1) Approximately 738' East of the intersection of Rockhill Road and Belle Meade Lane on the property line of 3629 and 3633 Rockhill Road. and,
 - (2) Approximately 1308' East of the intersection of Rockhill Road and Belle Meade Lane on the property line of 3641 and 3645 Rockhill Road.
 - (3) Approximately 960' Southeast of the intersection of Riverbend Road and Dunbrooke Drive near the property line of 3530 and 3540 Riverbend Road.
 - (4) Approximately 1525' Southeast of the intersection of Riverbend Road and Dunbrooke Drive on the property of 3560 Riverbend Road.
2. That the City of Mountain Brook will pay the Water Works and Sewer Board of the City of Birmingham, Alabama, the total cost of \$2,701.00 each for a total of \$10,804.00.
3. That the Water Works and Sewer Board of the City of Birmingham, Alabama, be authorized to charge additional rental charges for four fire hydrants to service the residents of Rockhill Road and Riverbend Road.
3. That the City Clerk be hereby directed to furnish the Water Works and Sewer Board of the City of Birmingham a certified copy of the resolution.

EXHIBIT 4
RESOLUTION NO. 2016-004

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby rejects all bids (publicly opened on December 30, 2015) with respect to removal and management of invasive plants and noxious weeds at Jemison Park.

APPENDIX 1

EXHIBIT 5
RESOLUTION NO. 2016-005

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution the Birmingham-Jefferson County Transit Authority (MAX) fiscal 2016 Transit Service Agreement, in the form as attached hereto as Exhibit A.

APPENDIX 2

EXHIBIT 6
RESOLUTION NO. 2016-006

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the conditional use application submitted by Meta Fitness [service use] for 3150 Overton Road [Local Business District].

APPENDIX 3

EXHIBIT 7
RESOLUTION NO. 2016-007

BE IT RESOLVED by the City Council of the City of Mountain Brook that the City Council hereby authorizes the issuance of a purchase order and execution of such other documents that may be determined necessary with respect to the purchase of telecommunication services from AT&T based on the pricing as awarded by the State of Alabama as follows:

	Service	State Bid Contract No.	Expiration
1.	Layer 2 Ethernet 14-X-2259024	T-413	Oct. 26, 2017
2.	Internet 14-X-2259048	T-415	Oct. 26, 2016
3.	SIP Trucking 14-X-2259049	T-416	Oct. 26, 2017

APPENDIX 4

EXHIBIT 8**RESOLUTION NO. 2016-008**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or City Manager of the City is hereby authorized and directed, on behalf of, and in the name of the City of Mountain Brook, Alabama ("City"), to execute the Franchise Agreement between the City and Crown Castle NG East Inc., in the form as attached hereto as Exhibit A, with such minor changes thereto as may be approved by the Mayor, whose approval of such changes shall be evidenced by his execution of said Franchise Agreement.

APPENDIX 5**EXHIBIT 9****ORDINANCE NO. 1948**

AN ORDINANCE TO ADOPT REGULATIONS FOR SMALL CELL TECHNOLOGY FACILITIES IN THE CITY OF MOUNTAIN BROOK, ALABAMA

WHEREAS, the City Council of the City of Mountain Brook, Alabama, seeks to facilitate the availability of reliable, personal wireless communication services for its citizens and the public by permitting the placement of Small Cell Technology Facilities and associated structures along the Right of Way and on private properties in the City; and

WHEREAS, the installation, expansion, and maintenance of Small Cell Technology Facilities and associated structures on or along the Right of Way and on private properties might have significant impact upon: (1) the aesthetic values and historic character of the City; (2) safe use and passage on or along the Rights of Way by the public; and (3) properties and property values in the City in areas where such structures are placed; and

WHEREAS, the federal Telecommunications Act of 1996 (the "Act") and regulations promulgated with respect to the Act by the Federal Communications Commission ("FCC") authorize local governments to enact reasonable regulations for the placement, expansion, height, and maintenance of Small Cell Technologies Facilities and associated structures; and

WHEREAS, as provided in this ordinance, the City seeks to mandate, where feasible, the collocation of Small Cell Technology Facilities on existing poles and other Support Structures as opposed to installation of new structures; and

WHEREAS, the above-noted collocation and other provisions of this ordinance are intended to be consistent with the Act and its associated regulations; and

WHEREAS, the adoption of the regulations, procedures and requirements in this ordinance will permit Applicants and Providers to enhance the provision of personal wireless service and protect the public welfare, health, safety and interests of the City's citizens.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

A new Chapter 126, which reads as follows, is hereby adopted and shall be inserted in the Mountain Brook Municipal Code:

Chapter 126 - Small Cell Technology Facilities

Section 1. Definitions

The terms below have the following meanings for purposes of this ordinance.

(1) "Abandonment" or "Abandon(s)" means that, following the placement of Small Cell Technologies Facilities (and associated Accessory Equipment) or Support Structures in the City pursuant to a permit issued to a Provider or an Applicant, any of the following has occurred: (a) for any reason the Facilities cease to be used to transmit signals, data or messages or otherwise be used for their intended purposes for a period of ninety (90) days; (b) the City revokes the permit for placement and use of those Facilities due to nonpayment of applicable fees, the failure of the Provider or Applicant to comply with conditions in the permit or in this ordinance concerning them, or other valid reason; or (c) the Provider or Applicant fails to perform any of its responsibilities, obligations and requirements in this ordinance or in a permit that relate to the installation, construction, maintenance, use or operation of the Facilities, Accessory Equipment or Support Structures, and that breach remains uncured for a period of sixty (60) days after the City provides written notice of the breach to the Provider or Applicant.

(2) "Accessory Equipment" means any equipment other than an antenna that is used in conjunction with Small Cell Technology Facility arrangements. This equipment may be attached to or detached from a Small Cell Technology Wireless Support Structure, and includes, but, is not limited to, cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, microcells, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment on or in the immediate vicinity of a Support Structure.

(3) "Antenna" means communications equipment that transmits and receives electromagnetic radio signals, is attached to a Small Cell Technology Wireless Support Structure and is used to communicate wireless service.

(4) "Applicant", whether singular or plural, means a personal wireless service provider, an entity that is authorized by a personal wireless service provider to apply for or receive a permit to install, construct, modify or maintain a Small Cell Technology Facility and related Accessory Equipment or Support Structure in the City, or an entity certificated by the Alabama Public Service Commission to provide telecommunication service.

(5) "Application" means a formal request submitted to the City for a permit to install, construct, modify or maintain a Small Cell Technology Facility and related Accessory Equipment or Support Structure.

(6) "City" means the City of Mountain Brook, Alabama.

(7) "City Council" means the City Council of the City of Mountain Brook, Alabama.

(8) "City Manager" means the person appointed by the City Council as the City Manager of the City. The City Manager includes any employee of the City or other person designated by that Manager to perform the responsibilities in this ordinance.

(9) "Collocation" means the placement or installation of a new Small Cell Wireless Technology Facility or related Accessory Equipment on an existing pole or other Support Structure that is owned, controlled or leased by a utility, the City, or other person or entity.

(10) "Personal Wireless Service Provider" or "Provider" means an entity that provides personal wireless communication services to the public or citizens of the City on a commercial basis and is authorized by the FCC to provide those services.

(11) "Private Property" means real property located in the City that does not lie within the Right of Way.

(12) "Right of Way", whether singular or plural, means the surface and space in, upon, above, along, across, over and below any public streets, avenues, highways, roads, courts, lanes, alleys, boulevards, ways, sidewalks, and bicycle lanes, including all public utility easements and public service easements within those places, as the same now or may hereafter exist, that are within the City's corporate boundaries and under the

jurisdiction of the City. This term shall not include county, state or federal rights of way or any property owned by any person or entity other than the City.

(13) "Small Cell Technology Facility(ies)" or "Facilities", whether singular or plural, means and includes the following types of structures: (a) antenna; and (b) associated Accessory Equipment. Photographs and illustrations of the types, relative dimensions and scale of these facilities that are currently contemplated by this ordinance are attached as Attachment A to the permanent record of this ordinance that is maintained by the City Clerk.

(14) "Small Cell Technology Wireless Support Structure" or "Support Structure", whether singular or plural, means a freestanding structure designed or used to support, or capable of supporting, Small Cell Technology Facilities, including, but not limited to, utility poles, street light poles, traffic signal structures, rooftops, attics, or other enclosed or open areas of a building or accessory structure, a sign, or a flag pole. These terms do not include the City's decorative and architecturally significant street light poles as those decorative lights are inappropriate for use as a Support Structure.

(15) "Stealth Technology" means a method(s) of concealing or minimizing the visual impact of a Small Cell Technology Facility (and associated Accessory Equipment) and Support Structure by incorporating features or design elements which either totally or partially conceal such Facilities or equipment. The use of these design elements is intended to produce the result of having said Facilities and associated structures blend into the surrounding environment and/or disguise, shield, hide or create the appearance that the Facilities are an architectural component of the support structure. Photographs and illustrations of examples of the types of Stealth Technology that may be used when buildings are utilized as Support Structures and other applications of Stealth Technology that are currently contemplated are attached as Attachment B to the permanent record of this ordinance that is maintained by the City Clerk.

Section 2. Permit Required to Place Small Cell Technology Facilities in Right-of-Way

(a) A Provider or Applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on the Right of Way, or substantially modifying the position or characteristics of any such existing Facility thereon.

(b) The City Manager will review and administratively process any request for a permit to determine whether, in the exercise of the City Manager's reasonable discretion, it should be issued for the location and in the manner requested by the Applicant. In this process, the burden is on the Provider or Applicant to demonstrate that the placement of the proposed Small Cell Technology Facility and associated Accessory Equipment or Support Structure on the Right of Way is the minimal physical installation which will achieve the goal of enhancing the provision of personal wireless services when considering all pertinent factors discussed in the provision immediately below. Except as set forth in this section, this permitting process will be administrative and not require the approval of any City Board or City official other than the City Manager.

The factors, requirements and guidelines that the City Manager may consider and will apply when determining whether to issue a permit for placement of Small Cell Technology Facilities and associated structures on the Right of Way include, but are not limited to, the following:

- (i) the demonstrated need for placing the structures at the requested location and geographic area in order to deliver or enhance personal wireless service;
- (ii) the visual impact of placing the Support Structures or Facilities in the subject area;
- (iii) the character of the area in which the structures are requested, including surrounding buildings, properties and uses;
- (iv) whether the appearance and placement of the requested structures is aesthetically consistent with the immediate area;

(v) whether the structures are consistent with the historic nature and characteristics of the requested location;

(vi) the Applicant's or Provider's network coverage objective and whether the Applicant or Provider should use available or previously unconsidered alternative locations to place the Support Structures or Facilities;

(vii) Colocation. To the extent practical, all Facilities and associated Accessory Equipment that are placed in the City shall be attached to a pre-existing Support Structure that is owned, controlled or leased by a utility, franchisee, the City or other entity. If the Applicant demonstrates that no colocation opportunities exist in the area where a technologically documented need for a facility exists, the Applicant may request that a new pole or other Support Structure be installed in that area for purposes of constructing the Facilities. Before any new Support Structure is permitted, each of the following must occur:

- (1) the Applicant must have provided the City written evidence that no practical colocation opportunity exists. This evidence shall include, but not be limited to, affidavits, correspondence, or other written information that demonstrates that the Applicant has taken all commercially reasonable actions to achieve colocation in the requested location or area, that the Applicant has pursued but been denied access to all potential colocation sites in the subject area (and the reasons any such denial(s)), and otherwise show that the Applicant is unable to collocate on an existing Support Structure;
- (2) the City Manager must recommend the placement of a new Support Structure in the Right of Way; and
- (3) the City Council must approve the recommendation of the City Manager to issue a permit that includes the placement of a new Support Structure in the Right of Way. The City Council will consider whether to approve any such new structure at a regular Council meeting that will be conducted as soon as practical after the City Manager's recommendation is made.

(viii) if a facility is attached to a utility pole or other Support Structure in the Right of Way, no antenna or other part of the facility shall extend more than five (5) feet above the height of that structure; provided that, in the event that the Applicant demonstrates that National Electric Safety Code regulations or other factors create an undue hardship in complying with this height requirement, the City Manager may permit a facility to extend up to ten (10) feet above the height of such Support Structure;

(ix) the Accessory Equipment shall, if reasonably possible, be placed at least 10 feet above the ground;

(x) the color of antenna and Accessory Equipment shall be compatible with that of the Support Structure;

(xi) the Facility (including the Accessory Equipment) shall not be illuminated;

(xii) whether the proposed installation could cause harm to the public or pose any undue risk to public safety;

(xiv) whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the Right of Way by the public; and

(xv) if the proposed installation will disturb conditions on the Right of Way, whether the Applicant can demonstrate its ability and financial resources to restore the subject area to its pre-existing condition following installation.

(c) Application Process.

(i) At a minimum, each application for a permit shall contain all of the following:

- (1) engineering drawings depicting the type of Facilities, Support Structure, and means and points at which such Facilities and associated Accessory Equipment will be attached to a Support Structure;
- (2) map(s) designating with specificity the location(s) of the requested Facilities;
- (3) the geographic coordinates of all antenna and other proposed Facilities;
- (4) if the Facilities will be located on a Support Structure on the Right of Way that is owned by any entity other than the City or the Applicant, a copy of any license, lease, agreement or other documentation evidencing that the owner of that Support Structure authorizes the Facilities to be attached thereto or agrees in principle to authorize that attachment; provided that, if a representation is made to the City that the attachment has been authorized in principle by the owner of the Support Structure but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until that documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit may be revoked and any license to use that part of the Right of Way be rescinded.
- (5) if the Applicant requests permission to place Facilities on a new Support Structure, the substantiation therefor required by Section 2(b) (vii) in this ordinance.

An application shall not be deemed complete until the Applicant has submitted all documents, information, forms and fees specifically enumerated in this ordinance that pertain to the location, construction, or configuration of the Facilities or Support Structures at the requested location(s). Within 30 calendar days after an application for permit is submitted, the City shall notify the applicant in writing if any additional information is needed to complete that application or supplemental information is required to process the request. If the City does not notify the applicant in writing that the application is incomplete within 30 days following its receipt, the application is deemed complete.

(ii) Time for Processing Application.

Unless another date is specified in a written agreement between the City and the Applicant, the City, will have the following time periods to make its final decision to approve or disapprove an application for a permit contemplated in this ordinance and advise the Applicant in writing of that determination:

- (1) sixty (60) calendar days from the date an application for a permit is filed with respect to a request to co-locate Facilities on an existing Support Structure; and

- (2) ninety (90) calendar days from the date an application for a permit is filed with respect to a request to attach Facilities to a new Support Structure.

To the extent additional information is required to complete the application after it is filed, the applicable calendar day review period set forth in this subsection shall be tolled and not continue to run until the Applicant has provided any missing or requested supplemental information; provided that tolling shall not occur if the City does not advise the Applicant in writing of the incompleteness of a submitted application within 30 days after that submission.

(iii) Reconsideration/Appeal. Any Applicant that desires reconsideration of an administrative decision by the City Manager to deny a request for a permit to place a Facility or Support Structure on the Right of Way may seek review, modification or reversal of that decision by the City Council by submitting a request for reconsideration with the City Clerk within twenty one (21) calendar days following the City Manager's decision. That request for reconsideration will be considered by the City Council at a regular Council meeting that will be conducted as soon as practical after the request for reconsideration is made. If no request for reconsideration is submitted, the decision of the City Manager will be final.

Additionally, the Applicant, within (30) days following a decision by the City Council to deny either (i) a request for reconsideration or (b) a decision by the City Council to not approve the placement of a new Support Structure on the Right of Way, may appeal either of those decisions by the City Council to the Circuit Court of Jefferson County, Alabama. If no appeal of those decisions of the City Council is made, those will be deemed final.

(d) Additional Requirements. Any Provider or Applicant to whom a permit is issued and that places Facilities and associated Support Structures on the Right of Way also shall comply with the following requirements as long as those Facilities and Support Structures are on or under the Right of Way:

(i) Prior to installing the Facilities or Support Structures, the Applicant shall provide the City a certificate(s) of insurance evidencing that it has obtained and will maintain the following types of insurance in connection with its operations on or use of the Right of Way: (1) General Liability coverage insuring the risk of claims for damages to persons or property arising from or related to the installation, construction, maintenance, operation or any use of Facility or Support Structure placed on or along the Right of Way by the Applicant (or any of their contractors) with minimum limits of \$1,000,000 per occurrence; and (2) Workers Compensation Insurance as required by statute. The General Liability coverage shall list the City as an additional insured, and may be provided through a combination of a primary and umbrella policies. All insurance policies shall be furnished by insurers who are reasonable acceptable to the City and authorized to transact business in the State of Alabama. On an annual basis following initial installation, the Applicant also shall furnish the City a Certificate indicating that the above-noted coverage remains and will remain in effect.

(ii) All Facilities and associated Support Structures shall be installed, erected, maintained and operated in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC.

(iii) Following the installation of any Facilities and associated Support Structures, the Provider or Applicant, upon reasonable request and for good cause, shall furnish the City Manager a written certification from a licensed professional engineer in the State of Alabama stating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals.

For purposes of this provision, “good cause” shall mean circumstances have arisen that indicate the Facilities and associated Support Structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those Support Structures should fail at any time to comply with applicable laws and regulations, the Provider or Applicant, at either of their expense, shall cause those structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to them from the City Manager of non-compliance, or cease all personal wireless service operations related to those structures until the Applicant or Provider comes into full compliance with said laws and regulations.

(iv) The Facilities and associated Support Structures must at all times be maintained in good and safe condition. On no more frequent than a triennial basis, the City Manager may request that the Provider or Applicant, at either of their expense, furnish certification from a professional engineer who is licensed in the State of Alabama that the Facilities and Support Structures are in sound condition. Should that engineer deem those structures unsound, the Provider or Applicant shall furnish to the City Manager a plan to remedy any unsafe conditions or structural defect(s) and take that remedial action at the Provider or Applicant’s expense.

(v) Each Applicant or Provider that applies for a permit to place Facilities (including the Accessory Equipment) and Support Structures on the Right of Way and installs and utilizes those structures shall defend, indemnify and hold the City and its employees or officials, harmless from all demands, losses, expenses (including attorney’s fees and court costs), claims for personal injury or property damage, judgments or liabilities of any type that may be asserted or claimed against the City (or its employees or officials) by any third person, firm or entity that arise out of or relate in any manner to the following: (1) the installation, construction, maintenance, use or operation of the permitted Facilities, Accessory Equipment or any Support Structure on or about the Right of Way; and (2) the failure of the Provider or Applicant to perform any of their respective responsibilities, obligations and permit requirements in this ordinance. Notwithstanding the foregoing, the Provider or Applicant shall not be obligated to indemnify the City for City claims resulting from the sole negligence or willful acts of the City (or its representatives).

(e) Permit and License Fees. The Applicant for a permit to place Facilities and associated Support Structures on the Right of Way shall pay the following types of fees that are enumerated in Chapter 14 of the City Code of Ordinances, as amended:

(i) a permit application and review fee to be paid when an application is submitted;

(ii) a permit issuance fee per each Support Structure on the Right of Way contemplated for attachment; and

(iii) an annual license fee per each Support Structure on the Right of Way pertaining to the ongoing use of public property.

(f) Franchise Agreements for Other Uses of Right of Way. This Section 2 regulates the placement of Small Cell Technology Facilities (and associated Accessory Equipment) on or in the immediate vicinity of Support Structures that are located or proposed to be located on the Right of Way. No provision in this Section 2 or elsewhere in this ordinance is intended to permit, regulate or authorize the placement by a Provider or Applicant of fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that is used to transport telecommunication signals, data or messages between Support Structures or between any other points on the Right of Way. In the event any such Provider or Applicant desires to place telecommunications equipment or Facilities along the Right of Way at points not regulated by this ordinance, the City may enter into franchise or similar agreement that authorize, govern and apply to such use of other locations on or along the Right of Way.

Section 3. Placement of Small Cell Technology Facilities on Private Property

(a) A Provider or Applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on private property, or substantially modifying the position or characteristics of any such existing facility thereon.

(b) The City Manager will review and administratively process any request for a permit to determine whether, in the exercise of the City Manager’s reasonable discretion, it should be issued for the location and in the manner requested. In this process, the burden is on the Applicant to demonstrate that the placement of the proposed Small Cell Technology Facility and associated Accessory Equipment or Support Structure on private property is the minimal physical installation which will achieve the technological goal of enhancing the provision of personal wireless services. Except as set forth in this section, this permitting process will not require the approval of any City Board or City official other than the City Manager.

The factors, guidelines and requirements that the City Manager may consider and will apply when determining whether to issue a permit for placement of Facilities and any associated Accessory Equipment or Support Structure on private property include, but are not limited to, the following:

- (i) the factors and requirements set forth in Section 2(b)(i)-(xi);
- (ii) Colocation. The guidelines in Section 2(b) (vii) to utilize existing poles and Support Structures for the placement of Facilities and Accessory Equipment are also applicable when considering whether to permit the installation of those Facilities and Support Structures on private property, provided that City Council approval is not required before a permit is issued to place a new pole or other Support Structure on private property if that action is appropriate.
- (iii) The Provider or Applicant shall use Stealth Technology when installing the Facilities and associated Accessory Equipment on any building or accessory to that building that is located on private property. Further, Stealth Technology should be used when placing Facilities on other types of Support Structures on private property unless the Applicant can reasonably demonstrate that, given the nature of the requested application, the use of such Technology is (a) unnecessary; or (b) impractical.
- (iv) If Facilities are placed on an existing or new building or accessory to that building, the following dimensional regulations shall apply:
 - (1) Façade-mounted antennas shall not extend above the face of any wall or exterior surface of the building.
 - (2) Roof-mounted antennas and Accessory Equipment may be permitted on buildings in a accordance with the following table:

Height of Building	Maximum Height of Facility above Highest Point of Roof	Required Setback from Edge of Roof of Building
Up to 15 feet	8 feet, including antenna	1 foot for every foot of height of equipment
15-35 feet	10 feet, including antenna	1 foot for every foot of height of equipment

More than 35 feet	12 feet, including antenna	1 foot for every foot of height of equipment
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(3) The antenna component of the Facilities shall be limited to a maximum height of three (3) feet and a maximum width of two (2) feet; provided that authorization to install antenna up to six (6) feet in height may be permitted if a showing of the technological need for such equipment is made and other requirements of this Section are met.

(4) Accessory Equipment must be located in an equipment cabinet, equipment room in an existing building or in an unmanned equipment building. If the equipment building is freestanding, it shall conform to Section 129-314 of the Mountain Brook Municipal Code with respect to building setbacks, that building shall not exceed 400 square feet, and its overall height shall be limited to 15 feet (if located on the ground) measured from the finished grade. Further, if an equipment building or cabinet is located in a residential zone, or the nearest adjoining property is in a residential zone, that building or cabinet shall be surrounded by landscaping to provide a screen of the same height as the building or cabinet.

(v) Application Process. Except as provided in subparts (1) and (2) immediately below, the same application process that is set forth in Section 2(c) will be utilized when processing any request for a permit to place Facilities or Support Structures on private property, except that:

(1) City Council approval to install a new Support Structure on private property is not a condition for a permit to place Facilities thereon; and

(2) If the Facilities are located on private property that is not owned or exclusively used by the Applicant, instead of providing the documentation contemplated in Section 2(c) (i)(4), the Applicant shall present a license, lease, agreement or other documentation indicating that owner of said property authorizes the Applicant the rights to place the Facilities thereon and access thereto, or that such owner agrees in principle to grant the Applicant those rights; provided that, if a representation is made to the City that the owner of private property has agreed in principle to grant those rights but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until that documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit and license may be revoked.

(vi) Additional Requirements. Any Provider or Applicant to whom a permit is issued and that places Facilities and associated Support Structures on private property also shall comply with the following requirements as long as those Facilities and Support Structures are located thereon:

(1) All Facilities and Support Structures shall be installed, erected, and maintained in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC.

(2) At least triennially following the installation of the Facilities or associated Support Structures, upon reasonable request and for good cause, the applicant shall furnish the City Manager a written

certification from a professional engineer licensed in the State of Alabama indicating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the Facilities and associated Support Structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those structures fail at any time to comply with said laws and regulations, the Provider or Applicant shall cause those structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to either of them of such non-compliance, or cease all personal wireless communications operations related to those structures until the Provider or Applicant comes into full compliance with applicable laws and regulations.

- (3) The Facilities and associated Support Structures on private property must at all times be maintained in good and safe condition.

(c) **Permit and License Fees.** The provider or applicant for a permit to place Facilities and associated Support Structures on private property shall pay the following types of fees that are enumerated in Chapter 14 of the City Code of Ordinances, as amended:

- (i) a permit application and review fee to be paid when an application is submitted; and,
- (ii) a permit issuance fee per each Support Structure on private property contemplated for attachment.

Section 4. Abandonment of Facilities on Right of Way.

If a Provider or Applicant abandons any Facility (including the Accessory Equipment) or an associated Support Structure (collectively "Facilities" for purposes of this Section) that is located on the Right of Way, the following rights and obligations shall exist. The City may require the Provider or Applicant, at their expense, to remove and reclaim the abandoned Facilities within sixty (60) days from the date of written notice of abandonment given by the City to them and to reasonably restore the condition of the property at which the Facilities are located to that existing before they were installed. If the Provider or Applicant fails to remove and reclaim its abandoned Facilities within such 60-day period and the Facilities are located on the Right of Way, the City shall have the rights to (a) remove them and charge its expense of any such removal operation to the account of the Provider or Applicant, (b) purchase all abandoned Facilities at the subject location from the Provider or Applicant in consideration for \$1.00, (c) at the City's discretion, either resell the abandoned Facilities to a third party or dispose and salvage them; provided that the proceeds of any resale of abandoned Facilities by the City to a third party shall be credited to the account of the Applicant or Provider that used those Facilities before the abandonment, and (d) charge any expense incurred by the City to restore the Right of Way to the account of the Provider or Applicant.

Section 5. Co-Location. To promote the public interest that is served by co-locating Facilities and associated Accessory Equipment on existing Support Structures and thereby mitigating the installation of additional Support Structures throughout the City, no person or entity (including any Provider, Applicant, utility, or franchisee) that utilizes an existing Support Structure that is located on Right of Way or on private property in the City and has space available thereon may deny a Provider or Applicant the right to use or access an existing Support Structure for purposes of attaching Facilities permitted by this ordinance without sound operational, technological or other good reason.

Section 6. Non-Applicability. The placement of an antenna(s), facilities or equipment related to the following types of wireless communication services are exempt from regulation under this ordinance:

(a) amateur radio service that is licensed by the FCC if the facilities related thereto are not used or licensed for any commercial purpose; and (b) facilities used by any federal, state or local government or agency to provide safety or emergency services. Further, the provisions in this Chapter are supplemental to, and not intended to alter, affect or modify the provisions in Chapter 125 pertaining to the placement or use of macro Telecommunications Towers.

Section 7. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

Section 8. Severability. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

Section 9. Effective Date. This ordinance shall become effective immediately upon adoption and publication as provided by law.'

APPENDIX 6

EXHIBIT 10

ORDINANCE NO. 1949

AN ORDINANCE TO AMEND CHAPTER 14 OF THE MOUNTAIN BROOK MUNICIPAL CODE

WHEREAS, in Ordinance No. 1948 the City Council of the City of Mountain Brook, Alabama ("City Council") has enacted new regulations that apply to placement of Small Cell Technology Facilities ("Facilities", as defined in Ordinance No. 1948 and used herein) along public right of ways and on private properties within the City;

WHEREAS, the regulations in Ordinance No. 1948 will be codified in a new Chapter 126 of the Mountain Brook Municipal Code; and

WHEREAS, Sections 2(e) and 3(c) of Ordinance No. 1948 provide that certain fees be paid by personal wireless service providers or applicants in connection with the review of applications, initial issuance and annual reissuance of permits required to construct, place, maintain and operate Facilities in the City;

WHEREAS, the City Council herein amends Chapter 14 of the Mountain Brook Municipal Code to set forth the level of fees contemplated in Sections 2(e) and 3(c) of Ordinance No. 1948.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

Section 1.

Chapter 14 of the Mountain Brook Municipal Code is amended to add the following:

CHAPTER 126**SMALL CELL TECHNOLOGY FACILITIES**

Section of Code	Description	Fee
26-	Permits to Place & Operate Facilities on Public Right of Way	
	Permit Application & Review Fee (Ord. No. 1948 § 2(e)(i), January 11, 2016)	\$200.00
	Initial Permit Issuance Fee per Support Structure (Ord. No. 1948 § 2(e)(ii), January 11, 2016)	\$100.00
	Annual License Fee per Support Structure (Ord. No. 1948 § 2(e)(iii), January 11, 2016)	\$500.00
	Permit Application & Review Fee (Ord. No. 1948 § 3(c)(i), January 11, 2016)	\$200.00
	Initial Permit Issuance Fee per Support Structure (Ord. No. 1948 § 3(c)(ii), January 11, 2016)	\$100.00

Section 2. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

Section 3. Severability. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

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



CITY OF MOUNTAIN BROOK
P. O. Box 120808
Mountain Brook, Alabama 35213-0028
Telephone: 205.933.2400
www.mtbrook.org

January 4, 2016

Sam Gaston, City Manager

An RFP was posted for removal of invasive plants in Jenison Park. Only one response was submitted. It was from Father Nature Landscapes for a total of \$47,365.00. Because they did not meet the listed minimum qualifications in the RFP, the bid will need to be rejected.

Shanda Williams

c. Bid file

2016-004

RESPONSE FORM - INVASIVE PLANT MANAGEMENT RFP

We (I) propose to furnish the following services at the price(s) stated below and comply with all conditions, specifications and terms in this RFP.

Respondent: FATHER NATURE LANDSCAPES & BIRMINGHAM, INC

Business Address of Respondent: 4131 Poplar Grove Drive
Birmingham, AL 35226

Contact for Respondent: Name: David L. McCreary
Day Tel # 205-933-4024
Email: david@fathernaturelandscapes.com

a. \$ 4,915 All Inclusive Hourly Charge for a 3-Person Crew to perform the first phase of services to remove and spray invasive plant species in the specified areas shown on attached maps of trails at Jenison Park. Approximately 350 hours* are estimated to be required for these initial operations by a 3 person crew. The price quoted for these operations shall be the total price per hour per crew of 3 people, and include expenses that the contractor will incur for all labor, material, equipment, supplies, reporting and administrative costs during this initial phase.

Comments: Estimated Hours 700
Equipment & Material Inventory Attached

b. \$ 5400 All Inclusive Hourly Charge for a One Person to perform follow up work in phase two of the project to treat and spray any regrowth of invasive plant species in the specified areas shown on attached maps of trails at Jenison Park. Approximately 110 hours* are estimated to be required for one person to perform this second phase of the project. The price quoted for these operations shall be the total price per hour per person to be performed by one person, and include all labor, material, equipment, supplies, reporting and administrative expenses that the contractor will incur in performing its contract obligations during this second phase of the project.

Comments: Price includes material & labor.

* The hours listed above are estimates only. The Respondent is responsible for assessing the amount of time that it determines will be needed to complete the two phases of the project at Jenison Park. By estimating these hours, the City does not guarantee that the contractor will receive any guaranteed amount of compensation as it will be paid only for hours actually worked.

APPENDIX 1

c. Additional Crew Members/Workers: If known at this time, list the price per person per hour of each additional crew member or worker that you believe would be required to assist in performing the work during the two phases of the project at Jenison Park. (This hourly price includes all extra equipment, supplies, labor and administrative costs related to any such additional worker).

- \$ 50 All Inclusive Hourly Charge for each Additional Crew Member needed during Phase One of project.
- \$ 10 All Inclusive Hourly Charge for each Additional Worker needed during Phase Two of project.

Comments: Price per crew & All inclusive of equipment & support

d. Please note any exceptions to the Specifications. (Attach a supplemental page if additional space is needed).

Exceptions: Location in other areas where the water table needs to be considered. This could be a practical bid item concerning to the city.

Certification

The undersigned representative of the Respondent submitting this proposal certifies that herein is authorized to sign below and submit this Response Form on its behalf, and that the submitted information is current, accurate, true and substantially complete so as not to be misleading.

Name of Respondent: FATHER NATURE LANDSCAPES & BIRMINGHAM, INC
By: [Signature]
Signature of Representative
Printed Name of Representative
is: DAVID L. MCCREARY
Title Authorized Representative

Sworn to and subscribed before me this date December 31, 2015

Notary Public: [Signature] (Seal)
My commission expires: [Signature]

CHECKLIST

A complete bid packet will consist of the items listed below. Place an "X" next to each item that you are submitting to the City. Failure to submit the requested information could result in the City not accepting your proposal.

- Response Form (Pages 12-13)
- Checklist (this page)
- Information Requested on Other Required Information Form (Pages 14-16).

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1. As references, please identify (1) customers that have received invasive plant removal and weed control services similar to those specified in the RFP. Please include the following information as to each reference (Section 3.1(f)): Business Name, Address, Contact Person, Telephone Number, Email Address, Date of Service, Nature of Project/Description of Services and Cost of Service.

I. Enterprise Land Trust
2508 1st Avenue NW
Brooklyn, MI 48323
For Paper 205 531 7799
200 Superior Fishkillers/land trust
12 occasions from December 2011 - December 2014
Price sheet for \$705 - \$5,000 clean-ups

2. Please describe the experience and training that the members of the crew you proposed using in the first phase of the project have in identifying invasive and native plants in an area. (Section 3.1(e))

Former Nature Center staff have been trained in identifying invasive plants. These crews were working for that organization in other local projects.

11

2. Generally describe the experience that your company or firm possesses as an applicator of both manual and agricultural herbicides. (Section 3.1(b))

Former Nature Center staff have been trained in identifying invasive plants. These crews were working for that organization in other local projects.

3. Let the experience that your company or firm has experience in providing invasive plant and noxious weed control services to the public in the RFP. As to each the project, describe the nature of the services provided. (Section 3.1(a))

Former Nature Center staff have been trained in identifying invasive plants. These crews were working for that organization in other local projects.

4. Let the licensee your firm holds on a commercial pesticide applicator in the following categories: Commercial and Turf (or Forestry) and Aquatic. A copy of these licenses shall be furnished with the response. (Section 3.1(c))

OTPS - Commercial & Turf Pesticide Applicator (State Certification)

5. Let the herbicides you propose to use in your work for the City. (Section 3.1(d))

Procytop + water spray

11

II. The Nature Conservancy
2100 1st Avenue N
Brooklyn, MI 48323
Phone: 205 704 7461
Pressure Inc. 2015
Close out area of invasive using all chemical methods & pull a herbicide, wood tick, snake, etc. control
pathway and avoid prevention work next to roads.
824,957-

III. Lakeview Quest
2271 Lakeland Drive
Manitou Beach, MI 49223
Upon request:
Detail report of invasive species in 2-3 acre wooded area, bill of materials with list of materials, and photos of all off activities and water plantings to reduce fire risk.
\$110,000

11

4. Let the licensee your firm holds on a commercial pesticide applicator in the following categories: Commercial and Turf (or Forestry) and Aquatic. A copy of these licenses shall be furnished with the response. (Section 3.1(c))

OTPS - Commercial & Turf Pesticide Applicator (State Certification)

5. Let the herbicides you propose to use in your work for the City. (Section 3.1(d))

Procytop + water spray

APPENDIX I



City of Mountain Brook
56 Church Street
Mountain Brook, AL 35213
(205) 802-3800
www.mtnbrook.org

Request for Proposals (RFP)

Date: December 15, 2015
To: Landscape and Forestry Management Professionals
From: The City of Mountain Brook Department of Parks & Recreation
Re: Removal & Management of Invasive Plants & Noxious Weeds at Jenison Park

I. GENERAL INFORMATION

This Request for Proposals (RFP) invites responses from qualified professionals to submit a proposal to assist the City of Mountain Brook Department of Parks & Recreation for the removal and subsequent management of invasive plant species and noxious weeds at Jenison Park.

- RFP Issue date: No later than Tuesday, December 15, 2015
-Final Questions due: Tuesday, December 22, 2015 by 4:00 PM
-Final Answers posted by: Wednesday, December 23, 2015 by 3:00 PM
-Submitted Proposals due: Wednesday, December 30, 2015 by 12:00 PM
-Expected Date for City Announce Successful Respondent(s): January 11, 2016

Completed responses to this RFP should be delivered or mailed in time to be actually received at the following address on or before Wednesday, December 30, 2015 at 12:00 P.M.: City of Mountain Brook - Department of Parks and Recreation, ATTENTION: Shanda Williams, Superintendent, 3698 Bethune Drive, Mountain Brook, AL 35223 williamsh@mtbrook.org

Thank you for your interest in this RFP.

Sam Gaston, City Manager

II. INVASIVE PLANT MANAGEMENT RFP SPECIFICATIONS AND INSTRUCTIONS

1.0 Scope/Nature of Requested Services

1.1 Scope: This proposal is to provide the City of Mountain Brook with services to remove select invasive plant and noxious weed species from multiple trails within Jenison Park, treat any stumps in the removal areas with appropriate herbicides to prevent or retard subsequent regrowth and subsequent management efforts.

The two phases for performing these services at Jenison Park are as follows:

(a) Phase One: The initial removal of invasive plant and noxious weed growth and application work will need to be performed and completed by February 20, 2016 in the designated areas along the trails at Jenison Park.

(b) Phase Two: A follow-up application operation in the areas in which invasive plants and weeds initially were removed will need to be completed by February 20, 2017.

1.2 The services will be provided around or near creeks, so commercially reasonable practices and precautions must be taken to avoid contamination of water in those areas at Jenison Park or in the surrounding areas.

1.3 The goal of the City of Mountain Brook is to remove invasive species from the land surrounding the walking trails at Jenison Park. The areas are bordered by a creek and property lines/roadways. This is not an all-inclusive list of areas at Jenison Park and may be altered at the discretion of the City.

- A. Jenison Trail
B. Nethers Trail
C. Trail off of Woodhill Road
D. Watkins Trace Trail

Four (4) maps of the different trails at Jenison Park are located at the end of this RFP. The striped areas on these maps are the locations where the invasive plants will need to be removed. Any boundary line not defined by a creek, road, or fence will be flagged by the City.

1.4 Area Estimate: The City estimates that project will require specific invasive plant and noxious weed removal and management over approximately thirty-seven (37) acres at Jenison Park.

1.5 Invasive Plant and Noxious Weed Species to be Removed, Treated and Managed: The following are the plant species to be removed, treated and managed. Species occur at varying rates and sizes and all do not occur at each site.

- Brush/Trees
Privet
Mimosa
Chinese Parasol
Eleagnus
Ailanthus
Mahonia
Cherry Laurel
Chinese Holly
Vines
Kudzu
Ivy
Wisteria
Poison Ivy
Japanese Honeyuckle

1.6 Native and Other Plants to Remain in Place and Not Be Removed or Treated: Employees of the successful contractor shall not remove or treat any native plants or plants other than those above in Section 1.5. Those employees must be trained and capable of identifying and distinguishing the invasive plants/weeds from those that shall remain in place, unharmed and not treated.

- Wild Ginger
Trillium
Native Eustoma/Hearts a Bursting
Buckeye
Oakleaf Hydrangea
Native Azalea

This is not a comprehensive list of all native plants. As a penalty for any removal of a native plant, tree or shrub that is one (1) inch in diameter or greater, a

\$100.00 per inch diameter replacement cost will be charged to the contractor and deducted by the City from the amounts otherwise payable to the contractor for its invoices.

1.7 Herbicide Products: All herbicides that are used (including aquatic approved herbicides applied around the creeks) must be labeled for use in the areas where they are applied. A list of proposed herbicides should be provided on the attached Response Form. All herbicides used must first be approved by the City.

1.8 Pricing: Each respondent shall submit on the attached Response Form its firm, hourly price for the operations contemplated in this RFP. The quoted hourly prices are intended to cover all of the contractor's expenses for equipment, tools, herbicides, labor and supervision to complete the work.

To assist the interested respondents in preparing their responses, the City is estimating that the hours specified on the attached Response Form will be expended to complete the work at Jenison Park. The stated hours are estimates only, and are not intended to guarantee that the successful contractor will receive any minimum amount or level of compensation from the City for its services.

1.9 Scheduling of Work: One week prior to any invasive species removal the contractor must submit a schedule to the City representative of the week's anticipated work schedule and locations (s). Also, one week prior to any foliar treatment, the contractor shall submit a schedule detailing when each site is anticipated to be sprayed.

1.10 Cutting, removal, hauling and disposal of trunks, limbs, logs, brush and vegetation and stump spraying: When the initial removal and treatment operations are conducted, it is recommended that a minimum of three (3) workers be present to provide continuous production during the day. The quoted price for this work includes the expense of all equipment, chainsaws, chippers, supplies, herbicides, dumping fees, etc. needed by the successful respondent to complete its operations.

Identification. Trucks must be equipped to ensure no spillage of debris when hauling for disposal. Proper safety signage and/or cones marking the work area shall be the responsibility of the service provider. Absolutely no vehicles or machinery will be allowed off of the trails except chainsaws and similar hand tools as needed. Care must be taken to not damage any open turf area with ruts from trucks and chipping equipment used at the sites. Repairs of any turf damage at the sites will be the responsibility of the service provider. All cuttings and debris are to be removed from City property and properly discarded.

- 1.11 **Foliar treatment of regrowth:** Following the initial removal and treatment of invasive vegetation, spraying of herbicides to retreat the designated areas along the trails at Jemison Park will be performed within twelve (12) months after the initial phase of the project is completed. This work will also entail removal of any invasive plant/weeds that were "missed" (i.e., not removed) by the contractor in the initial phase. All treatment for regrowth of the select invasive plant and noxious weed species must be done by a Certified Pesticide Applicator. The treatment of regrowth shall be done with an herbicide approved by the City and must be used in compliance with the labeled directions. The herbicide chosen shall be approved for use near water ways when used by the creeks.
- 1.12 **Additional Crew Workers:** As noted above, the hourly price per hour authorized by the representative assumes a three man crew during the initial removal and treatment phase, and one person during the foliar treatment of regrowth stage. The contractor may ask the City representative to approve compensate the contractor to use additional workers to complete the work, but that compensation will be paid only if that City representative grants the request and the additional charges for those additional workers are invoiced at the rates and amounts agreed by the parties.
- 1.13 **Working Days and Hours:** Work shall be performed Monday through Friday, between the hours of 7:00 am and 3:30 pm while the temperatures are above forty (40) degrees. The performance of work outside those days, hours and conditions must be approved by the City Representative.
- 1.14 **Traffic:** The contractor shall conduct work so that it does not interfere with the safe flow of traffic on the roadways and driveways on and off City property, or unreasonably interfere with pedestrian traffic on the trails at City parks.
- 1.15 **Daily Progress Reports:** The contractor shall submit an email report each day to the City Representative of the work performed the previous day. The daily report must include: start and stop times, location of work performed, acres or work performed, a brief description of the work performed, general spray record, and photos of before and after to document the progress. The cost of the daily report must be included in the 3 person crew costs.

- 1.16 **Documentation of Herbicide Application:** The contractor shall submit to the Department copies of all spray records for work performed upon the City property within fourteen (14) days of work performed.
- 1.17 **Inspections:** The Park and Recreation Department will conduct periodic site inspection for the removal or foliar treatment of the select invasive plant and noxious weed species. A representative from that Department will be onsite the first week of work. If the City determines in its inspections that removal, touch up or extra spot herbicide applications are needed due to insufficient removal or foliar application by the contractor during its initial work, the contractor shall furnish such services at no additional cost to the City.

2.0 General Requirements

- 2.1 **Contract:** The successful contractor agrees to perform the work according to the Specifications and requirements herein.
- 2.2 **Initial Term of Contract:** The proposed contract shall become effective on the date of its execution by the City and expire on February 20, 2017.
- 2.3 **Extension of Contract:** Subject to mutual agreement, the initial term of the contract can be extended for up to two (2) annual periods of one year each (or portions thereof) at the same pricing (except if the parties agree to adjusted prices in the extension periods) and under the same terms and conditions stated herein; provided, that the total amount payable to the successful respondent shall not exceed \$50,000 over the life of the contract, and, notwithstanding any other provision in this RFP, the performance of services under the contract will terminate when the value of all services provided pursuant to such contract reaches that amount.
- 2.4 Upon mutual agreement of the City and the successful respondent, the scope of services for the contract to be awarded for work at Jemison Park may be expanded to perform similar services at other City parks upon the terms of this RFP.
- 2.5 **Price Adjustment Clause:** The quoted hourly price shall remain firm for the initial term of the contract. Thereafter, if parties desire to extend the contract, the successful respondent may request that it receive an hourly price increase during any extended term due to the escalation of its costs for supplies, raw material, labor, freight, etc. The City is under no obligation to grant any such increase. If the request is not granted, the contractor may terminate the contract. If the City approves any such increase, it shall apply during any extended term of the contract. No more than one price increase shall be granted during any annual contract period.

- 2.6 **Non-Exclusive Contract:** The contract between the City and successful respondent is non-exclusive. The City reserves the right to award more than one contract for the services contemplated in the RFP if it determines that action is in its best interest.
- 2.7 After reviewing all responses, the City reserves the right to not award a contract to any of the respondents.
- 2.8 **Compliance with Immigration Laws.** If awarded the contemplated contract, the successful contractor agrees, represents and warrants that it will not knowingly employ, hire for employment, or continue to employ within the State of Alabama an "unauthorized alien," as defined by the *Evason-Harmon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 54), as amended from time to time (the "Act") and that, during the performance of this contract, it shall participate in the E-Verify program as required under the terms of the Act. The contractor also agrees to comply with all applicable provisions of the Act with respect to its contractors in the State of Alabama by entering into an agreement with or by obtaining an affidavit from such contractors providing work for the contractor providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program. The contractor represents and warrants that it shall not hire, retain or contract with any contractor in the State of Alabama that it knows is not in compliance with the Act.

By entering the contract, the contractor also affirms that, for its duration of the contract, 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. If the contractor violates these provisions of the Contract, it shall be deemed in breach and shall be responsible for all damages resulting therefrom.

- 2.9 The successful respondent must supply the City with a copy of its W-9 and E-verify MOU. The E-verify document can be printed from www.uscis.gov/e-verify.
- 2.10 **Miscellaneous:** Before commencing the work, the successful contractor, at its expense, must obtain and maintain a business license with the City of Mountain Brook and all other licenses related to the performance of the work and maintain all of those licenses throughout the term of the contract.
- 2.11 **Contractor Insurance Requirements:** The successful contractor must provide and maintain the following policies of insurance throughout the term of the contract:
 - (a) **Comprehensive General Liability:** This insurance shall cover all operations performed by or on behalf of the contractor with limits of not less than Two Million Dollars (\$2,000,000) combined single limit and aggregate for bodily injury and property damage per occurrence. This insurance shall include coverage for the following: (i) completed operations; (ii) assumed contractual liabilities; (iii)

damages to third parties for personal injury, death and property damage; (iv) damage and injury to City property and City personnel cause by or resulting from the negligent acts, operations, or omissions of the Contractor or its employees or representatives in performing its services and work contemplated in the contract; and (v) coverage for claims against the City for damage to environmental conditions resulting from alleged or actual violations of Environmental Laws (as defined in these Specifications) occurring at Jemison Park or other City parks in the course of performing contractor's services.

- (b) **Workers' Compensation** as required by statute;
- (c) **Employee's Liability** with limits of \$500,000 per occurrence; and
- (d) **Automobile and Vehicle Insurance:** This insurance shall cover all vehicles (owned and rented) used by the contractor in connection with the performance of the work with limits of not less than \$500,000 combined single limit and aggregate for bodily injury and property damage per occurrence.

All required insurance shall be provided by a policy(ies) issued by a company or companies qualified to engage in the insurance business in the State of Alabama with a rating reasonably acceptable to the City. These insurance requirements are in addition to and do not affect any indemnification obligation of the Contractor herein. Except for the Workers Compensation coverage, all coverage shall contain endorsements naming the City of Mountain Brook and its officers, employees, and agents, as additional insureds with respect to liabilities that arise out of and result from the operations of the contractor or the performance of its work. Before the commencement of work hereunder, the contractor shall provide the City with a certificate of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section.

- 2.12 **Contractor's Warranties on Use of Hazardous Substances.** For purposes of the contract and this provision, the following definitions apply: (a) "Hazardous Substances" are toxic or hazardous substances, pollutants, or wastes pursuant to Environmental Laws, and include the following substances: toxic pesticides and herbicides, gasoline, kerosene, other flammable or toxic petroleum products, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Laws" means federal laws and laws of the jurisdiction where the work site(s) is located and associated regulations that relate to health, safety or environmental protection (including, but not limited to, laws, regulations and rules that protect the quality of water and air or public health, safety and welfare that are promulgated by the EPA and the Alabama Department of Environmental Management); (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental

Laws; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

The herbicides that the contractor will store, apply and use on City property and work sites (the "Property") are Hazardous Substances within the meaning of applicable Environmental Laws. Except as is commercially reasonable in the use of herbicides to treat invasive plants and noxious weeds, the Contractor shall not cause or permit disposal or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Further, the Contractor warrants that it shall use commercially reasonable practices when applying herbicides, shall not violate any Environmental Laws in the process of performing its services and shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Laws, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the Property. The preceding sentences shall not prevent the presence, use, or storage on the Property of quantities of Hazardous Substances that are generally recognized to be appropriate for the conduct of the services that the contractor will provide to the City and comply with Environmental Laws.

The contractor shall promptly give the City written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which the contractor has actual knowledge, (b) any Environmental Condition, including, but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of any hazardous substance which adversely affects the Property. If the contractor learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary as a result of the contractor's operations on the Property, contractor shall promptly take all necessary remedial actions in accordance with Environmental Laws.

- 2.13 Compliance with Laws. The contractor warrants that it will perform its services in compliance with all federal, state and local laws that are applicable to its operations and performance of its services, including, but not limited to, any Environmental Laws (as defined above).
- 2.14 Indemnification of City by Contractor. The contractor shall defend, indemnify, and hold harmless the City, and its agents, employees and officials (hereinafter an "Indemnitee" or collectively "Indemnitees") from and against all demands, actions, damages, judgments, losses, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs) and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property) (collectively hereinafter "Loss" or

copies of the licenses held by them must be submitted with the respondent's response;

(g) that, with respect to the work crew members who will perform the services, information indicating that these crew members have been trained, have experience and are proficient in plant identification to ensure that only the target, invasive plant species are removed from and treated. The Response Form that is attached contains a section on which the crew members can be identified and their respective training and experience be demonstrated; and

(h) references from at least three (3) customers that have received services from the respondent that are similar in scope and complexity of those contemplated in this RFP. Contact information shall be provided for each of these customers to include the customer name, email address, street address, telephone number, fax number, contact name, a statement about the nature, location and cost of project performed for each customer, and dates of service.

- 3.2 Award Selection Criteria: The City intends to award the contract to the respondent that the City, considering the respondent's experience, references, pricing and all other pertinent factors, determines in its good faith discretion to have made submitted the most advantageous proposal to the City.
- 3.3 Questions about Specifications: Questions regarding this RFP should be sent in writing via email to williamsh@mtnbrook.org no later than 9:00 am CST on Tuesday, December 22, 2015. Responses and any necessary addenda will be posted as an addendum to this RFP on the City's website, www.mtnbrook.org, no later than 4:00 pm CST on Wednesday, December 23, 2015. The City strongly encourages respondent to submit any exceptions to the project specification during this stage of the process to prevent the likelihood of their response being rejected as non-compliant.
- 3.4 Site Visit. A site visit to Jemison Park may be scheduled with the Park Superintendent before Wednesday, December 23, 2015 for the purpose of assisting interested respondents to prepare their responses. Appointments for these visits can be made by emailing Shanda Williams at williamsh@mtnbrook.org or calling her at 802-3879.
- 3.5 Response Form: Interested respondents should complete the attached Response Form and provide the information noted herein. A checklist of required information is also provided.

"Losses") arising out of, related to, or resulting from (i) contractor's failure to perform its obligations under the contemplated contract, (ii) contractor's breach of any of its warranties in the specifications for the RFP or contract; (iii) the alleged or actual violation of Environmental Laws by contractor in the course of providing its services, and (iv) Losses arising in whole or part from the acts or omissions of the contractor and its employees, agents, and representatives in performing its services, regardless whether the Loss is caused in part by the negligence or other fault of an Indemnitee. The Contractor is not obligated under this provision to indemnify an Indemnitee to the extent that a Loss is caused by the sole negligence or willful misconduct of an Indemnitee(s).

2.15 Compensation for Services. The contractor will submit invoices and be compensated for its services on the following basis:

- (a) One (1) invoice shall be submitted for upon completion of the initial removal and treatment service at Jemison Park;
- (b) Subsequent invoices for work on phase two of the project shall be submitted on a monthly basis;
- (c) Each invoice shall include the date of service, list each site serviced, state a subtotal for each site, and state the total amount billed; and
- (d) The City will remit payment for uncontested amounts invoiced and due for services successfully completed within thirty (30) days after the receipt of such invoice.

3.0 Selection of Contractor

3.1 Qualifications: The successful respondent must satisfy certain minimum qualifications in order to be awarded the contemplated contract. On the attached Response Form each respondent should submit information and/or documentation demonstrating the following requirements:

- (a) that it has experience in providing invasive plant and noxious weed species management services of the nature in this RFP;
- (b) that it has experience as an applicator of both industrial and agricultural herbicides;
- (c) that the respondent has a valid license issued by the State of Alabama as a commercial pesticide applicator in the following categories: Ornamental and Turf (or Forestry) and Aquatic. A copy of this license shall be furnished with the response;
- (d) that the workers employed by the contractor who will be performing application duties hold licenses for the application and treatment of invasive plants. The names of these workers and

RESPONSE FORM - INVASIVE PLANT MANAGEMENT RFP

We (I) propose to furnish the following services at the price(s) stated below and comply with all conditions, specifications and terms in this RFP.

Respondent: _____

Business Address of Respondent _____

Contact for Respondent: Name: _____
Day Tel # _____
Email: _____

a. \$ _____ All Inclusive Hourly Charge for a 3-Person Crew to perform the first phase of services to remove and spray invasive plant species in the specified areas shown on attached maps of trails at Jemison Park. Approximately 350 hours* are estimated to be required for these initial operations by a 3 person crew. The price quoted for these operations shall be the total price per hour per crew of 3 people, and include expenses that the contractor will incur for all labor, material, equipment, supplies, reporting and administrative costs during this initial phase.

Comments: _____

b. \$ _____ All Inclusive Hourly Charge for a One Person to perform follow up work in phase two of the project to treat and spray any regrowth of invasive plant species in the specified areas shown on attached maps of trails at Jemison Park. Approximately 110 hours* are estimated to be required for one person to perform this second phase of the project. The price quoted for these operations shall be the total price per hour per person to be performed by one person, and include all labor, material, equipment, supplies, reporting and administrative expenses that the contractor will incur in performing its contract obligations during this second phase of the project.

Comments: _____

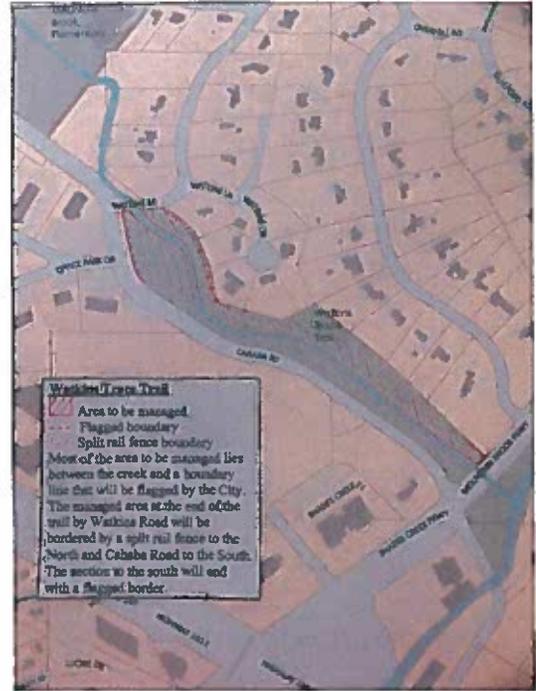
*The hours listed above are estimates only. The Respondent is responsible for assessing the amount of time that it determines will be needed to complete the two phases of the project at Jemison Park. By estimating those hours, the City does not guarantee that the contractor will receive any guaranteed amount of compensation as it will be paid only for hours actually worked.

CHECKLIST

A complete bid packet will consist of the items listed below. Place an "X" next to each item that you are submitting to the City. Failure to submit the requested information could result in the City not accepting your proposal.

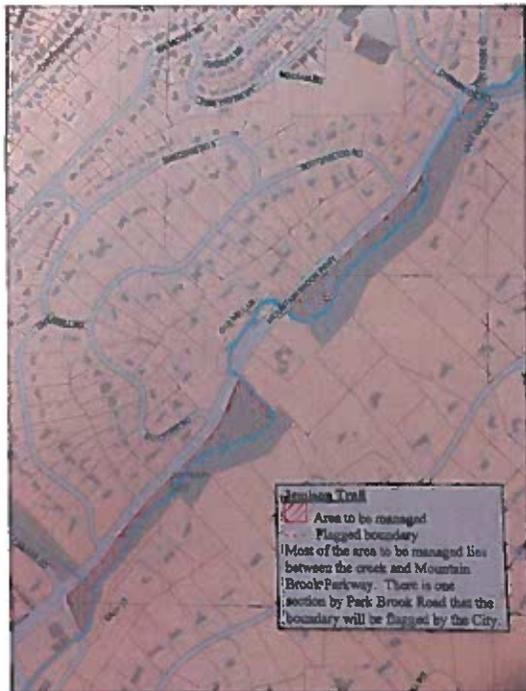
- Response Form (Pages 12-13)
- Checklist (this page)
- Information Requested on Other Required Information Form (Pages 14-16).

17

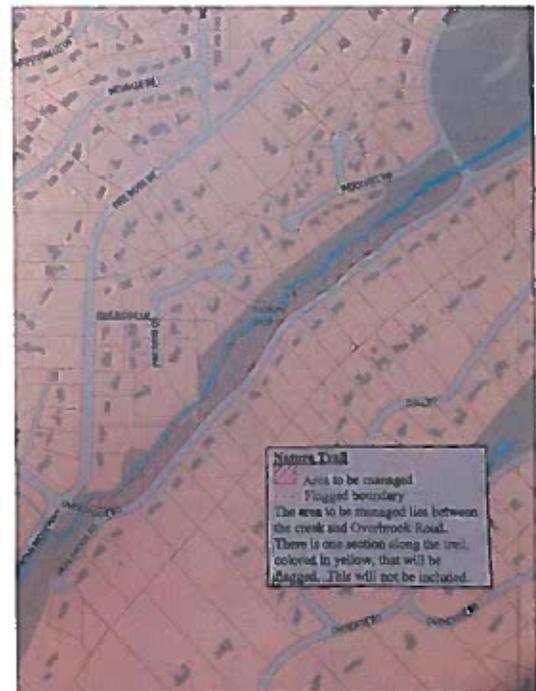


APPENDIX 1

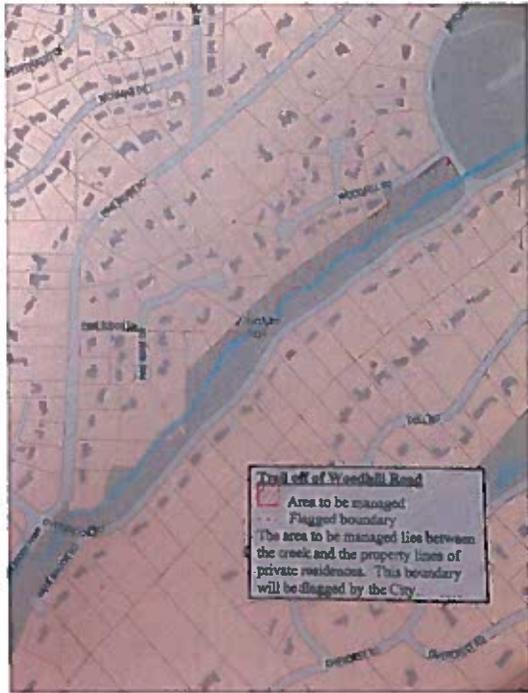
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8. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein, and no amendments or modifications hereof shall be effective unless executed in writing by duly authorized personnel of the Parties hereto. All previous communications between the Parties whether verbal or written, with reference to the subject matter herein are null and void and are hereby superseded by this Agreement.

9. Either Party's delay in enforcing or exercising or failure to enforce or exercise any provision of this Agreement or rights existing hereunder shall not in any way be construed as or constitute a waiver of any such provision or right, or prevent that Party thereafter from enforcing each and every other provision or right of this Agreement. Any express waiver of any obligation by either Party in any one instance shall not limit or waive in any other instance.

10. All provisions, terms, and conditions of this Agreement shall be deemed severable in nature. If, for any reason, the provisions contained herein are held to be in any extent invalid or contrary to the Constitution of the State of Alabama or any federal statute or applicable law, then to the extent that such provisions are, or shall be, valid and enforceable under applicable law, then this Agreement shall be construed and interpreted to provide for maximum enforceability under applicable law.

11. In performance of the City's obligations pursuant to this Agreement and pursuant to federal, state, and local law, the City agrees to comply with all applicable provisions of federal, state, and local laws, regulations, including but not limited to all Federal Transit Administration ("FTA") laws, rules, regulations, directives, as amended and all amendments to FTA's Grant Cooperative Agreement and its Master Agreement that may be subsequently adopted, as applicable to the Agreement to the maximum extent feasible, unless FTA provides otherwise in writing.

12. This Agreement shall be governed by the laws of the state of Alabama.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by its duly authorized representatives.

BIRMINGHAM/JEFFERSON COUNTY
TRANSIT AUTHORITY

[Signature]
Its Interim Executive Director

ATTEST:

[Signature]
City Clerk

CITY OF MOUNTAIN BROOK,
ALABAMA

[Signature]
Its Mayor

APPENDIX 2

ATTACHMENT A
TRANSIT SERVICES

Effective February 1, 2015

Locations Served:
 Downtown Birmingham
 UAB
 Kirklin Clinic
 Erling Ramsey Park
 Downtown Mountain Brook
 Parkville
 Hwy 290

How to read this Bus Schedule
 To follow a bus trip you need know the steps:
 1. Know the route.
 2. Know the times.
 3. Know the stops.
 4. Know the fare.
 5. Know the rules.
 6. Know the schedule.
 7. Know the location.
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Dana O. Hazen, AICP
Director of Planning,
Building & Sustainability
56 Church Street
Mountain Brook, Alabama 35213
Telephone: 205/802-3821
Fax: 205.879.6913
hazend@mtnbrook.org
www.mtnbrook.org

2016-006

MEMO

DATE: January 7, 2016
TO: Mayor, City Council, City Manager, City Attorney
FROM: Dana Hazen

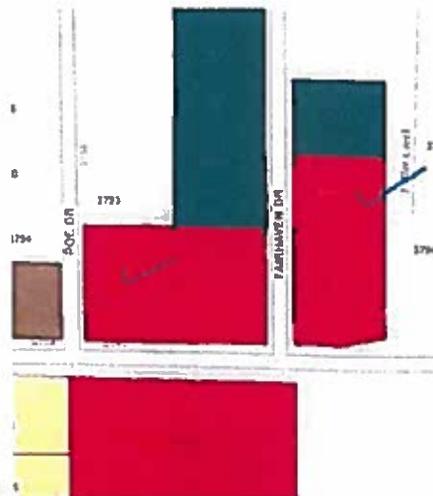
Conditional Use: Personal Training in previous Invitation Place
Overton Road Shopping Center

The proposed use is a fitness studio with one-on-one training (no group classes). The studio will initially utilize three (3) trainers at one time, with the possibility of increasing to five (5). The proposed hours of operation are M-F from 5am-8:00pm, Saturday 6am- 2pm, and Sunday by appointment only.

The village overlay standards require a parking ratio of 5/1000 for this type of service use. Since this shopping center was constructed before incorporation into the City of Mountain Brook, it is nonconforming with respect to parking, with fifty-three (53) on-site parking spaces where seventy-two (72) would be required for a retail parking ratio by today's code.

In 2011, the council approved an off-site parking agreement for this property, binding the on-site uses to the parking lot on the opposite side of Fairhaven Drive. Twenty-four (24) of the off-site parking spaces are credited to the nail salon, leaving (24) twenty-four surplus parking spaces for employees and patrons of the shopping center.

It appears that adequate parking exists between the on-site and off-site parking for the subject use.



APPENDIX 3



CITY OF MOUNTAIN BROOK
P. O. Box 130000
Mountain Brook, Alabama 35113-0000
Telephone: 755.852.7400
www.mountainbrook.org

To: Sam Gaston, City Manager
From: Steven Boone
Date: January 5, 2016
Subject: ATT services/contracts

2016-007

In 2012, the City solicited bids for telecommunication, network, and internet services. To assist with the project, the City engaged a telecommunications consultant who prepared the bid specifications, the invitation to bid and evaluated the proposals. The bid was awarded to AT&T in December 2012 (Resolution No. 2012-202) and the contracts were for three years terms.

ATT was awarded the State contract in November 2014. Rather than rebidding, I am recommending that the City purchase these services off of the State contract. The City can achieve enhanced services at a lower cost than it has under the recently expired contract.

ATT is not requiring a separate contract. Accordingly, I have prepared a resolution for the Council's consideration on January 11, 2016.

Table with 4 columns: Description, Proposed Monthly Cost, Current Monthly Cost, Service. Rows include Internet, Network Ethernet, and ISDN lines.

APPENDIX 4

Resolution 2016-007 text regarding the purchase of Alabama government services from AT&T. Includes sections for 'PURCHASE', 'TERMS AND CONDITIONS', and 'NON-APPROPRIATION OF FUNDS'.

Resolution 2016-007 text regarding the purchase of Alabama government services from AT&T. Includes sections for 'PURCHASE', 'TERMS AND CONDITIONS', and 'NON-APPROPRIATION OF FUNDS'.

purchase Alabama.gov/contracts/15 bid

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401815 0000 015-70-07410 NET

401816 0000 015-70-07410 NET

401814 0000 015-70-07411 NET

Division of Purchasing
Contract Notice of Award

CONTRACT LISTING

CONTRACT NUMBER 015-70-07411

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Division of Purchasing
Contract Notice of Award

IF YOU HAVE ASSISTANCE CONCERNING THIS CONTRACT, PLEASE CONTACT THE BUYER LISTED ON THE COVER PAGE.

THIS CONTRACT CONTAINS 9 PAGES.

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purchase Alabama.gov/contracts/15 bid

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THIS CONTRACT CONTAINS 9 PAGES.

http://purchase.alabama.gov/contracts/15 bid 3/3

State of Alaska Research Service
Northwest Census Bureau
Page 1 of 2

Table with multiple columns and rows, containing data and text. Includes a header section with 'City/County' and 'State'.

Page 1 of 2

State of Alaska Research Service
Northwest Census Bureau
Page 1 of 2

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Page 1 of 2

APPENDIX 4

State of Alaska Research Service
Northwest Census Bureau
Page 1 of 2

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Page 1 of 2

State of Alaska Research Service
Northwest Census Bureau
Page 1 of 2

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Page 1 of 2

State of Nevada County Board
Nevada County Board Meeting Agenda
Page 14 of 14

Item	Description	Amount	Source	Account	Balance	Encumbrance	Available
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APPENDIX 4

City of Mountain Brook Mail - FY17 - Finance Small Law Technology Facilities Documents for Council Meeting Jan 11, 2016

420 20th Street North
Birmingham, AL 35203
Direct: 205.250.6304
Cell: 205.401.1479
Fax: 205.468.3704
E-mail: nar@bakerdonelson.com
www.bakerdonelson.com

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http://www.cityofmountainbrook.com/finance/2016/01/11/20160111%20Council%20Meeting%20Agenda%20-%20FY17%20-%20Small%20Law%20Technology%20Facilities%20Documents

6/8

City of Mountain Brook Mail - FY17 - Finance Small Law Technology Facilities Documents for Council Meeting Jan 11, 2016

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4 attachments

- Facilities Ordinance - Final Jan 7 City_wattachedphotos.docx
16564K
- ORDINANCE Amend Chapter 14 Fees_Final_For Council Jan 11.docx
23K
- Franchise Agmt Final 1_7_16.DOCX
84K
- Resolution Approving Franchise Agmt.docx
15K

http://www.cityofmountainbrook.com/finance/2016/01/11/20160111%20Council%20Meeting%20Agenda%20-%20FY17%20-%20Small%20Law%20Technology%20Facilities%20Documents

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ATTACHMENT A**PHOTOGRAPHS AND ILLUSTRATIONS DEPICTING TYPES, RELATIVE DIMENSIONS AND NATURE OF SMALL CELL TECHNOLOGY FACILITIES AND ASSOCIATED SUPPORT STRUCTURES REGULATED BY THIS ORDINANCE**

These photographs and illustrations are attached to the permanent record of this Ordinance that is maintained by the City Clerk and available upon request to that office.

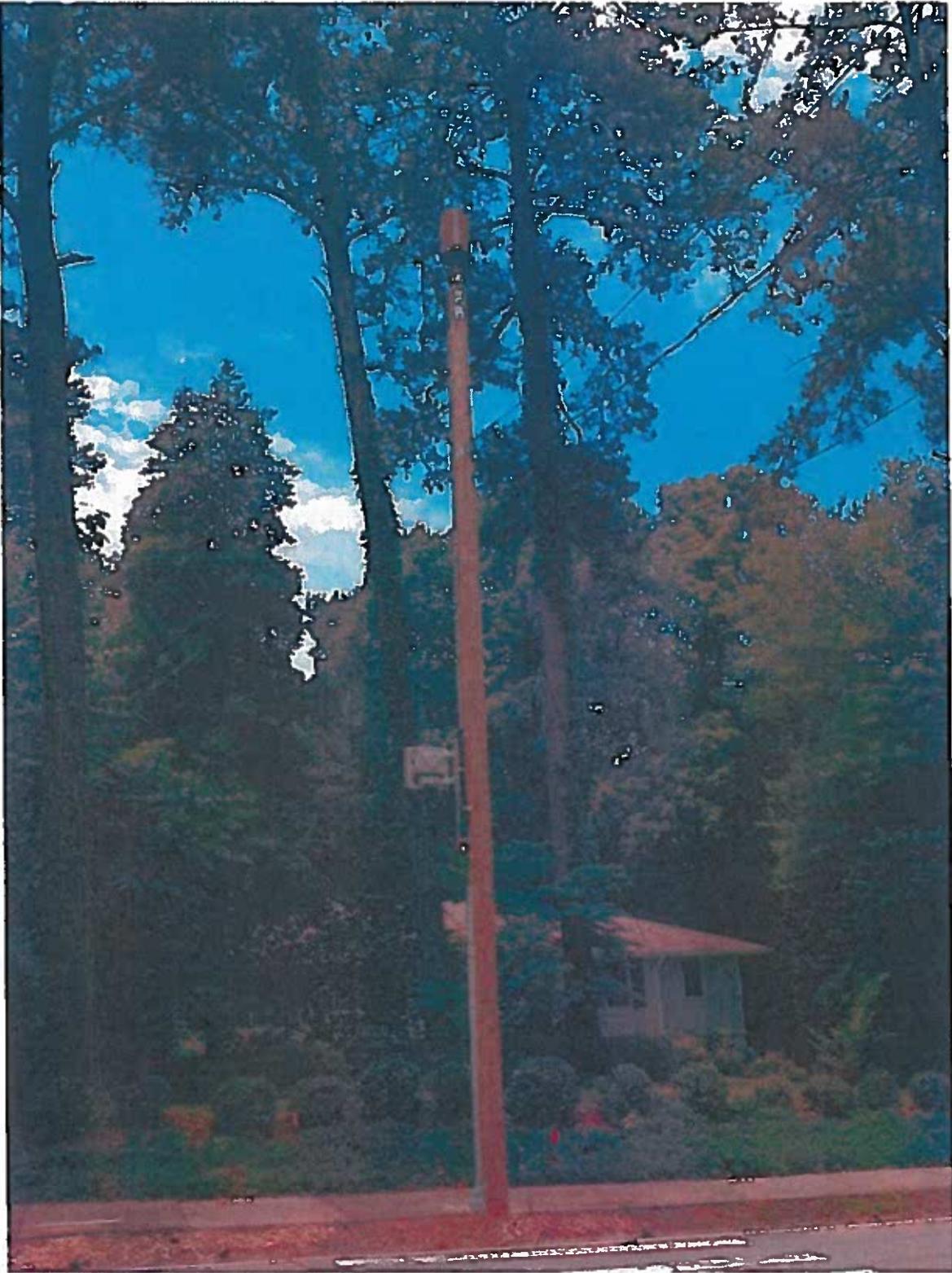
APPENDIX 6



APPENDIX 6



APPENDIX 6



APPENDIX 6



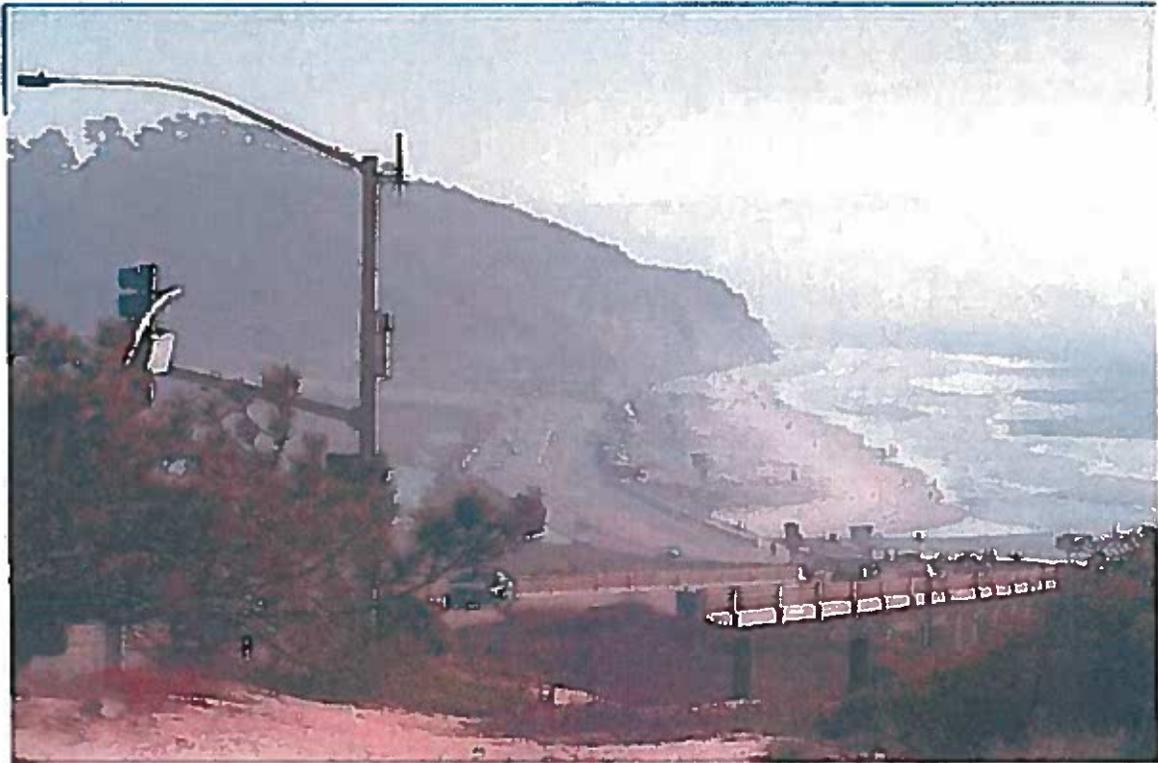
APPENDIX 6



APPENDIX 6



APPENDIX 6

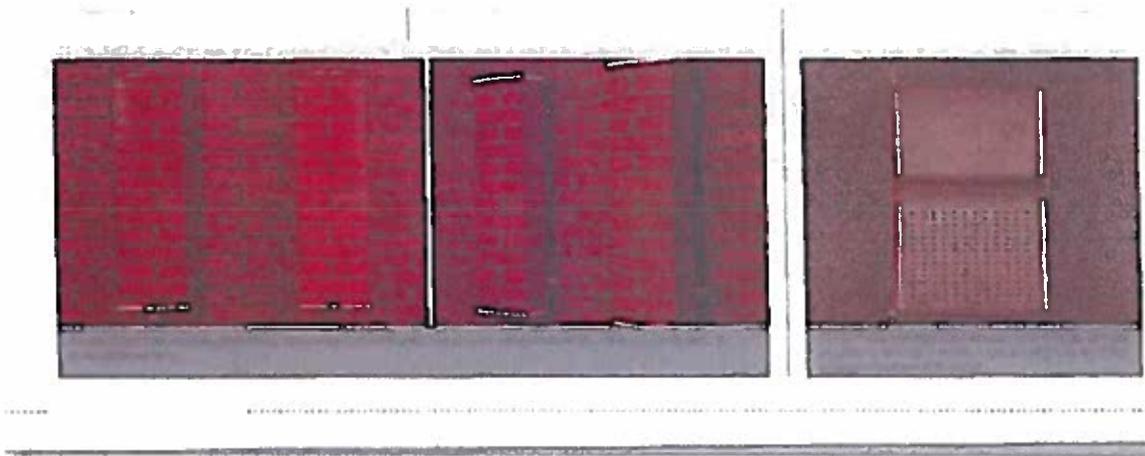


APPENDIX 6

ATTACHMENT B

PHOTOGRAPHS AND ILLUSTRATIONS DEPICTING EXAMPLES OF STEALTH TECHNOLOGY FOR SMALL CELL TECHNOLOGY FACILITIES LOCATED ON BUILDINGS

These photographs and illustrations are attached to the permanent record of this Ordinance that is maintained by the City Clerk and available upon request to that office.



APPENDIX 6