

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
DECEMBER 10, 2018**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 5:30 p.m. on the 10th day of December, 2018. 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  
Lloyd C. Shelton  
Alice B. Womack  
Stewart Welch III, Mayor

Absent: Philip E. Black

Also present were City Attorneys Whit Colvin and Steve Stine, City Manager Sam Gaston and City Clerk Steven Boone.

**1. EXECUTIVE SESSION**

Council President Pro Tempore Pritchard made a motion that the City Council convene in executive session to discuss a matter involving pending litigation. The City Attorney certified that the subject matter of the executive session is permissible under the Open Meetings Act. The motion was seconded by Council President Smith. There being no further discussion, the vote was called with the following results:

Ayes: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said motion carried by a vote of 4—0, excused those in attendance at the meeting, and announced that the pre-meeting shall reconvene upon conclusion of the execution session in 15—30 minutes.

[The pre-meeting reconvened at approximately 6:25 p.m.]

**2. AGENDA**

1. Revised Mutual Aid Agreement (Appendix 1) with City of Hoover—Chief Cook (The Police Chief informed the City Council that the metropolitan-area police chiefs and Sheriff will attempt to draft a community-wide mutual agreement.)
2. Flashing crosswalk signage around Cherokee Bend Elementary School—Richard Caudle of Skipper Consultants and Chief Cook—Appendix 2 (Mr. Caudle suggested that a small committee convene to discuss the options to determine the optimal one with costs ranging from \$3,000 for a solar-powered flashing LED signal up to \$19,000 for a wired, more robust LED signal. Consequently, this matter shall be reconsidered at a later date.)
3. APPLE grant participation with City of Vestavia Hills for a comprehensive traffic study of Overton Road— Mike Kaczorowski of the Regional Planning Commission of Greater Birmingham (Motion No. 2018-175 was added to the formal agenda.)

4. Parking lease renewal with The Chabad of Alabama for overflowing parking for Overton Park—Sam Gaston (Resolution No. 2018-174 was added to the formal agenda.)
5. Re-landscaping plan and costs for the Jemison Park pedestrian bridge area—Simeon Johnson of The Friends of Jemison Park (Motion No. 2018-176 was added to the formal agenda.)
6. Review of the matters to be considered at the formal (7 p.m.) meeting

**3. ADJOURNMENT**

There being no further matters to be discussed, Council President Smith adjourned the pre-meeting at approximately 7:00 p.m.

**4. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on December 10, 2018, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

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



Sam Gaston

From: Ted Cook  
Sent: Tuesday, December 04, 2018 1:48 PM  
To: Richard Caudle; Sam Gaston  
Cc: Greg Hagood; Jason Carmack; Ronald Vaughn  
Subject: Re: Warning lights on Wilderness Road

Sam  
This was Richard's remarks when asked about this last month. #7 is the alternative I was mentioning I thought best to go with and meets Bryan's request. We can have Richard do a study if you like.

Chief Ted Cook  
Mountain Brook Police Department  
101 Tibbett St.  
Mountain Brook, AL 35213  
(205) 802-3852



On Mon, Nov 19, 2018 at 3:47 PM Richard Caudle <richard@skipperinc.com> wrote:

A few thoughts and comments on this matter:

1. All of the work which I have undertaken for Cherokee Bend Elementary, except for placing the NO CELL PHONE ZONE signs, has been on Kennesaw Drive, not on Wilderness Road, so I do not have any traffic information for Wilderness Road.
2. The flashing lights which were installed on Overbrook Road at MBJH were for the school zone speed limit. The best I can tell, there is no school zone speed limit on Wilderness Road.
3. Since there appears to be no school zone speed limit, we would have to decide what would be the primary sign...perhaps a school crossing sign with a SCHOOL placard.
4. The flashing lights which were installed on Overbrook Road at MBJH have specific time clocks in them. Would these new signs flash all the time or just during school inbound and outbound times?
5. The flashing lights which were installed on Overbrook Road at MBJH were solar powered. We would need to find good locations for these new signs if we want to use solar power. There are power lines south of Fair Oaks Drive and north of Kennesaw Drive where we could get power from if we don't want to use (or can't use) solar power. Solar power is not a good option if we expect these to flash all the time.
6. The total cost for both of the signs would be around \$16,000 for APCO-powered signs or \$19,000 for solar-powered signs.
7. An alternative to the proposed signs would be for the signs with flashing LED's around the border like we installed on Euclid Avenue at West Montcrest Drive. This option would be around \$3000. These

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would be solar powered signs and could either flash at school inbound/outbound times or through most of the day and early evening. The signs as proposed below would have to be installed by a contractor. I think Ronnie could install the signs with the LED flashing border.  
8. Please do not take any of the above thoughts or comments as my being opposed to the idea. I see no problem with installing flashing lights and signs in the locations as proposed as long as we can work out the details.

Richard L. Caudle, P.E.  
Skipper Consulting, Inc.

3644 Vann Road Suite 100  
Birmingham, Alabama 35235  
richard@skipperinc.com  
(205) 655-8855 fax (205) 655-8825  
Cell (205) 790-4307 home (205) 594-4708

From: Ted Cook <cook@mtnbrook.org>  
Sent: Monday, November 19, 2018 9:34 AM  
To: Richard Caudle <richard@skipperinc.com>  
Cc: Greg Hagood <hagood@mtnbrook.org>; Jason Carmack <carmackj@mtnbrook.org>  
Subject: Fwd: Warning lights on Wilderness Road

Richard,

I know the schools have been studied a number of times for traffic patterns, safety, etc.

Our SRO at Cherokee Bend Elementary has made some recommendations for signage and lights. These I don't think have been recommended before.

Sam asked that I ask your opinion. Please see Officer Kelley's email below.

Thanks

Ted

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APPENDIX 2

Chief Ted Cook  
Mountain Brook Police Department  
101 Tibbett St.  
Mountain Brook, AL 35213  
(205) 802-3852



----- Forwarded message -----  
From: Jason Carmack <carmackj@mtnbrook.org>  
Date: Mon, Nov 5, 2018 at 7:59 AM  
Subject: Fwd: Warning lights on Wilderness Road  
To: Ted Cook <cook@mtnbrook.org>  
Cc: Greg Hagood <hagood@mtnbrook.org>

Lt. Jason Carmack  
Patrol Division  
Mountain Brook Police Department  
101 Tibbett Street  
Mountain Brook, AL 35213  
(205) 802-3858

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----- Forwarded message -----  
From: Bryan Kelley <kelleyb@mtnbrook.org>  
Date: Fri, Nov 2, 2018 at 8:00 AM  
Subject: Warning lights on Wilderness Road  
To: Jason Carmack <carmackj@mtnbrook.org>  
Cc: <ritchey@mtnbrook.k12.al.us>

Lt.

After discussing this with the Principal at Cherokee Bend, I would like to make the following recommendations:

Recently, there was a near miss involving a small child crossing Wilderness Road at Kennesaw Drive. Parents have requested flashing lights/signage to warn of that crossing as well as the one at Fair Oaks Drive. After speaking with the Principal (Sandy Ritehey) at Cherokee Bend, I would recommend placing one sign with the flashing amber lights just south of Fair Oaks on Wilderness, facing north bound traffic. I would recommend placing a second one on Wilderness, just north of Kennesaw Drive, facing south bound traffic. I would recommend using ones similar to the ones on Overbrook Road near the Jr High.

If you approve, could you pass this along to the appropriate people?

Thanks

--  
Bryan Kelley  
Mountain Brook Police Department  
(205)879-0486

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PROPOSED CROSSWALK WARNING SIGNS WITH LED FLASHING LIGHTS  
WILDERNESS ROAD/CHEROKEE BEND ELEMENTARY SCHOOL



Yellow Flashir  
LED Light (ty  
S1-1  
36"x36"  
S4-3  
24"x8"

Google Maps



Imagery ©2018 Google, Map data ©2018 Google 20 m

APPENDIX 2

m/maps/@33.508419,-85.719945,178m/data=!3m1!1e3

1/1

Northbound Wilderness Road Approaching Fair Oaks Drive



Page 1

Southbound Wilderness Road Approaching Fair Oaks Drive



Page 2

Northbound Wilderness Road Approaching Kennesaw Drive



Page 3

Southbound Wilderness Road Approaching Kennesaw Drive



Page 4

APPENDIX 2

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
DECEMBER 10, 2018**

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The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:00 p.m. on the 10th day of December, 2018. 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  
Lloyd C. Shelton  
Alice B. Womack  
Stewart Welch III, Mayor

Absent: Philip E. Black

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

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

**1. PRESENTATION**

Mayor Welch presented the Human Trafficking Awareness proclamation (No. 2018-164, Exhibit 1) to Ms. Brandi Yaghamai, of the Junior League of Birmingham.

**2. CONSENT AGENDA**

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

Approval of the minutes of the November 26, 2018, regular meeting of the City Council.

Approval of the minutes of the December 5, 2018, special meeting of the City Council.

<b>2018-164 Proclamation</b>	Human Trafficking Awareness proclamation	Exhibit 1
<b>2018-165</b>	Appoint Thomas Amason to the Board of Landscape Design (to fill the unexpired term of Jason Comer), to serve without compensation through December 12, 2020	Exhibit 2, Appendix 1
<b>2018-166</b>	Appoint Vince Schilleci to the Editorial Board (to fill the unexpired term of Graham Leigh Smith), to serve without compensation, with the term of office to end August 8, 2020	Exhibit 3
<b>2018-167</b>	Authorize the expenditure of up to \$1,000 for island improvements on Lewis Circle	Exhibit 4, Appendix 2
<b>2018-168</b>	Authorize the purchase of LED fixtures and lights from the Sourcewell (formerly NJPA) governmental purchasing cooperative contract 082114-MSL with respect to the Athletic Complex improvements	Exhibit 5, Appendix 3

<b>2018-169</b>	Authorize the execution of an agreement with Stone & Sons Electrical Contractors, Inc. with respect to the Athletic Complex LED lighting improvement project	Exhibit 6, Appendix 4
<b>2018-170</b>	Authorize the renewal of a franchise agreement between the City and Marcus Cable of Alabama, L.L.C., a Delaware limited liability company and successor to Marcus Cable of Alabama, L.P. (dba Charter Communications) with respect to their operation of a cable system in the City	Exhibit 7, Appendix 5
<b>2018-171</b>	Authorize the execution of the second amendment to the franchise agreement with AT&T (Resolution No. 2011-193) with respect to their provision of television programming in the City (U-verse)	Exhibit 8, Appendix 6
<b>2018-172</b>	Authorize the execution of an amendment to the field use/maintenance agreement between the City and Birmingham Levite Jewish Community Center with respect to the use of gym space	Exhibit 9, Appendix 7
<b>2018-173</b>	Authorize the execution of an agreement between the City and G & A Electrical Services for electrical work with respect to the Mountain Brook Elementary School athletic field restroom project	Exhibit 10, Appendix 8
<b>2018-174</b>	Authorize the execution/renewal of a 3-year agreement between the City and Merkos L' Inyonie Chinuch of Alabama (Chabad of Alabama) located on Overton Road for the use by the City of its parking lot	Exhibit 11, Appendix 9
<b>2018-175 Motion</b>	Authorize the application for an APPLE grant between the City and Regional Planning Commission of Greater Birmingham for the joint study by the Cities of Mountain Brook and Vestavia Hills of Overton Road from Liberty Park to U. S. Highway 280 with the scope to be determined and formal agreement to be authorized at a future meeting of the City Council	Appendix 10
<b>2018-176 Motion</b>	Authorize the City's participation of up to \$49,000 with respect to the bank stabilization and related improvements of Jemison Park in the vicinity of the new pedestrian bridge said improvements to be administered and performed by the Friends of Jemison Park with said agreement related thereto to be considered at a future meeting of the City Council	Appendix 11
<b>2018-177</b>	[Re]authorize (Resolution No. 2018-106) the City's participation in the creation of the Highway 280 Public Road Cooperative District by the Cities of Birmingham, Mountain Brook, Homewood and Jefferson County with respect to the planned construction of a pedestrian pathway along Hollywood Boulevard overpass at U. S. Highway 280	Exhibit 12

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

Nays: None

Council President Smith thereupon declared that said minutes, proclamation (No. 2018-164), resolutions (Nos. 2018-165 through 2018-174, 2018-178 and 2018-179) are adopted by a vote of 4—0 and as evidence thereof signed the same.

**3. CONSIDERATION: RESOLUTION (NO. 2018-178) AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY ENCROACHMENT (DRIVEWAY IN THE UNIMPROVED RIGHT-OF-WAY) AGREEMENT BETWEEN THE CITY AND TJB, LLC WITH RESPECT TO THE PROPERTY LOCATED AT 142 SPRING STREET (EXHIBIT 13, APPENDIX 12)**

Council President Smith introduced the resolution in writing and commented that since the last council meeting, each elected official has inspected the area. Also, at 5 p.m. today, she and Council member Shelton met with several interested property owners and then invited comments from Council member Shelton.

Council member Shelton:

- Everyone agrees that with three homes under construction, there is a lot of activity on Spring Street
- There appears to be a consensus that the proposed right-of-way improvement will provide some relief with respect to parking and a turnaround area but, by no means, does it offer a solution to the width and congestion issues
- The City agrees that more consideration needs to be given to determine if other improvements can be implemented to improve conditions
- Urged the contractor to continue to be a good neighbor considering the disruption the construction work causes for the residents

David Allen of 134 Spring Street:

- Reiterated his objection (from the December 5, 2018 meeting) to the approval of this agreement pending further study and evaluation by the City

Casey Wheeler, developer, of 8343 Dogwood Lane, Morris, AL:

- Seeks only to provide additional parking which should help the entire street
- Understands that the land will remain under the control of the City, merely wants to improve the right-of-way
- Has observed that more people turn around in Mr. Allen's driveway than anywhere else

Whit Colvin, City Attorney:

- The proposed agreement is non-exclusive meaning anyone can use the improved area

John Barnhart, 146 Spring Street:

- Does not think any of the neighbors object to the proposed improvement
- Their greatest concern is safety
- They want to work with the City to determine the various options

Council President stated that the City will look at the right-of-way areas to determine what reasonable improvements can be made and then then called for a motion. Council member Womack made a motion that the City Council approves the right-of-way encroachment agreement as presented. After the matter had been considered by the City Council, Council President Pro Tempore Pritchard seconded the motion. 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  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said resolution (No. 2018-178) is adopted by a vote of 4—0 and as evidence thereof signed the same.

**4. CONSIDERATION: HARDSHIP APPEAL BY THE OWNER OF 401 MICHAEL LANE WITH RESPECT TO THE MORATORIUM IMPOSED ON THE DEVELOPMENT OF NON-CONFOMRING RESIDENCE A LOTS (RESOLUTION NOS. 2018-150 AND 2018-163) (APPENDIX 13)**

Council President Smith introduced the appeal and invited comments from the applicants or their representative.

Michael Staff, 401 Michael Lane:

- Acquired the property from his siblings
- The house is under contract but fears the contract may be voided due to the moratorium
- Views the future redevelopment of the parcels will enhance the City's tax base

Council President Smith:

- Agrees that a financial hardship exists
- Understands that the property was marketed as three lots based on representations from City officials
- Agrees that this property should be granted an exception to the moratorium

Dana Hazen, City Planner:

- Pointed out that Lot 5 (center parcel) was under contract prior to the moratorium
- Individually, the three parcels are non-conforming as they are each approximately 20,000 square feet

Amanda Davis, 209 Montevallo Lane, realtor for Mr. Staff:

- The parcels were being marketed separately prior to the moratorium
- Lot 5 is under contract but she fears the prospective buyer may withdraw their offer due to the moratorium
- There are no contingencies
- The prospective buyer is performing their due diligence which revealed the moratorium

Council member Womack:

- Agrees with Council President Smith that this property should be released from the moratorium

Council President Pro Tempore Pritchard:

- Considering there is a contract, views this as a legitimate hardship

There being no further comments or questions, Council President Smith invited a motion from the City Council. It was then moved by Council President Pro Tempore Pritchard that this property be granted an exemption to the moratorium based on the hardship it imposes on the property owner. The motion was seconded by Council President Smith. Thereupon, Council resident Smith called for vote with the following results:

Ayes: Virginia C. Smith, Council President  
 William S. Pritchard III, Council President Pro Tempore  
 Lloyd C. Shelton  
 Alice B. Womack

Nays: None

Council President Smith declared that the motion (No. 2018-179) is hereby adopted by a vote of 4—0.

## 5. ANNOUNCEMENT

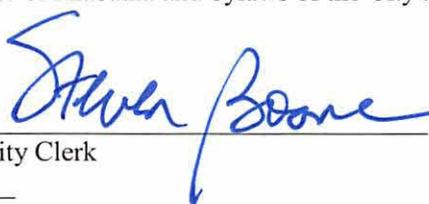
The next regular meeting of the City Council will be Monday, January 14, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

## 6. ADJOURNMENT

There being no further business to come before the City Council, Council President Smith adjourned the meeting at approximately 7:25 p.m.

## 7. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the joint, regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on December 10, 2018, 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

### Human Trafficking Awareness Month

**WHEREAS, human trafficking** is a very real problem facing the world today. Although it can take many forms, including debt bondage, forced marriage, slavery and commercial sexual exploitation, in every case it goes against the core principles of individual freedom and civil rights that our state and nation stand for. The City of Mountain Brook, Alabama is committed to ensuring that our community remains on the front lines in combating this deplorable crime, and

**WHEREAS,** due to its secretive and illegal nature, it is difficult to accurately quantify the extent of **human trafficking**. However, the U.S. Department of State estimates that anywhere from 600,000 to 800,000 people are trafficked across international borders each year. Most victims of **human trafficking** are women or children who have been marginalized and isolated from society. The difficulty in grasping the full scope of this problem can be further compounded because people often turn a blind eye to it, and

**WHEREAS,** the first step in eliminating **human trafficking** is to educate others. We must work to ensure that all our residents are aware of this problem and how to spot it. We must work together as a community so that human traffickers are punished and to protect and assist their victims. Through the vigilance and perseverance of our citizens, effective enforcement of justice will someday be a reality, and

**WHEREAS,** we ask all residents of this community to join us in raising the visibility of this crime whose victims are all too often invisible. Together, we can become more informed about this pressing issue and work to combat its injustices.

**NOW, THEREFORE, I, Stewart H. Welch III, Mayor of the City of Mountain Brook, do hereby proclaim January 2019, as "Human Trafficking Awareness Month" in Mountain Brook, Alabama.**

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**EXHIBIT 2**

**RESOLUTION NO. 2018-165**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Thomas Amason is hereby appointed to the Board of Landscape Design, to fill the unexpired term of Jason Comer and serve without compensation, with the term of office to end December 12, 2020.

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**APPENDIX 1**

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**EXHIBIT 3**

**RESOLUTION NO. 2018-166**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Vince Schilleci is hereby appointed as a member of the Editorial Board of the City of Mountain Brook (to fill the unexpired term of Graham Leigh Smith), to serve without compensation, with the term of office to end August 8, 2020.

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**EXHIBIT 4**

**RESOLUTION NO. 2018-167**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes City Manager to pay, or cause to be paid for and on behalf of the City, up to \$1,000 for materials and provide City labor and equipment to install beautification improvements at the Lewis Circle traffic island as illustrated in Exhibit A attached hereto.

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**APPENDIX 2**

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**EXHIBIT 5**

**RESOLUTION NO. 2018-168**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes City Manager to issue a purchase order and to execute such other documents that may be determined necessary for the purchase of LED lighting from the Alabama Department of Examiners' approved Sourcewell (formerly NJPA) purchasing cooperative contract 082114-MSL with respect to the Athletic Complex (see Exhibit A attached hereto).

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**APPENDIX 3**

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**EXHIBIT 6**

**RESOLUTION NO. 2018-169**

**BE IT RESOLVED** that the City Council hereby authorizes the execution of a contract between the City and Stone & Sons Electrical Contractors, Inc., in the form as attached hereto as Exhibit A, with respect to the installation of LED lighting at the Athletic Complex.

**APPENDIX 4**

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**EXHIBIT 7**

**RESOLUTION NO. 2018-170**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the Mayor of the City is hereby authorized and directed, on behalf of, and in the name of, the City of Mountain Brook ("City"), to execute the Franchise Agreement, in the form as attached hereto as Exhibit A with such minor changes thereto as may be recommended by the City Attorney, between the City and Marcus Cable of Alabama, LLC (locally known as Charter Communications).

**APPENDIX 5**

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**EXHIBIT 8**

**RESOLUTION NO. 2018-171**

**AMENDMENT TO RESOLUTION NO. 2011-193 TO FURTHER EXTEND AGREEMENT WITH AT&T FOR IP VIDEO SERVICES**

**WHEREAS**, the City Council of the City of Mountain Brook ("City Council") adopted Resolution No. 2011-193 on December 12, 2011, regarding the provision by Bellsouth Telecommunications, Inc. d/b/a AT&T Alabama, a Georgia corporation ("AT&T Alabama") within the City of Mountain Brook, Alabama ("City"), of broadband platform of voice, data and video services ("IP Video Services");

**WHEREAS**, effective on or about December 15, 2011, the City and AT&T Alabama entered an Agreement concerning its provision of the IP Video Service contemplated in City Resolution No. 2011-93 (the "Agreement");

**WHEREAS**, paragraph 3 of the Agreement states that its term would expire December 31, 2016, but allows for extensions of the Agreement upon written mutual agreement of the parties;

**WHEREAS**, City Council Resolution No. 2016-093, which was adopted on or about July 25, 2016, authorized, among other matters, an extension of the Agreement into 2018, and, by agreement of the parties, it remains in effect through the end of calendar year 2018;

**WHEREAS**, the City and AT&T Alabama desire to further amend the Agreement so that, effective as of January 1, 2019, its term will be further extended for a five year term followed by an automatic renewal of such term for an additional five year period; and

**WHEREAS**, further extension of the Agreement in the public interest as it will permit the continued provision of AT&T Alabama's IP Video Services in the City.

**BE IT RESOLVED** by the City Council of the City of Mountain Brook that Resolution No. 2011-135 is hereby amended to authorize the Mayor or the City Manager is hereby to enter into the Second Amendment to Agreement with AT&T Alabama for IP Services in substantially the form attached to this Resolution, subject to such minor changes as may be approved by the City Attorney.

**SECOND AMENDMENT TO AGREEMENT WITH AT&T ALABAMA FOR IP VIDEO SERVICES**

THIS SECOND AMENDMENT TO AGREEMENT WITH AT&T ALABAMA FOR IP SERVICES (the "Second Amendment") dated December \_\_, 2018, is made by and between BellSouth Telecommunications, LLC d/b/a AT&T Alabama ("AT&T Alabama"), and the City of Mountain Brook,

Alabama, a municipal corporation (“City”). AT&T Alabama and City shall sometimes be referred to separately as a “Party,” and collectively as the “Parties.”

**RECITALS**

WHEREAS, City and AT&T Alabama entered an Agreement on December 15, 2011 (the “Agreement”), regarding the provision by AT&T Alabama of a broadband platform of voice, data and video services in the City (“IP Video Service”);

WHEREAS, paragraph 3 states that the Agreement will expire effective December 31, 2016, but allows for extension upon written mutual agreement of the Parties;

WHEREAS, on or about July 25, 2016, the Parties entered that Amendment to Agreement with AT&T Alabama for IP Video Services (the “Amendment”), which, among other matters, extended the Agreement into 2018, and, by agreement of the parties, it remains in effect through the end of calendar year 2018; and

WHEREAS, the Parties hereby desire to enter into this Second Amendment to further extend the Agreement beyond 2018.

**AGREEMENT**

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

1. The first sentence of Paragraph 3 of the Agreement, as amended, is further revised as follows:

“Term. The term of this Agreement shall be from January 1, 2019 through December 31, 2024; thereafter, unless otherwise in a subsequent amendment hereto, it shall be automatically renewed for an additional term of five (5) years.”

2. Unless expressed in the Amendment or this Second Amendment, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect throughout the extended term. In the event the terms and conditions of the Agreement, as amended, conflict with the terms of this Second Amendment, the terms in this Second Amendment shall be deemed to supersede, override and control.

IN WITNESS WHEREOF, the Parties hereto, by their undersigned duly authorized representatives, have executed this Second Agreement and made the same as of the date stated above.

**BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T ALABAMA**

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

Name: \_\_\_\_\_

Title: President – AT&T Alabama

**CITY OF MOUNTAIN BROOK, ALABAMA**

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

Name: Sam Gaston

Title: City Manager

**APPENDIX 6**

**EXHIBIT 9****RESOLUTION NO. 2018-172**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of the First Amendment to License Agreement (Resolution No. 2018-139) between the City and Birmingham Levite Jewish Community Center, in the form as attached hereto as Exhibit A, with respect to the City's use of gymnasium facilities.

**APPENDIX 7**  

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**EXHIBIT 10****RESOLUTION NO. 2018-173**

**BE IT RESOLVED** that the City Council hereby authorizes the execution of a contract between the City and G & A Electrical Services, in the form as attached hereto as Exhibit A, with respect to electrical work for the Mountain Brook Elementary playing field restroom project.

**APPENDIX 8**  

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**EXHIBIT 11****RESOLUTION NO. 2018-174**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the Mayor or City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute a 3-year extension of the lease agreement with Merkos L'Inyonie Chinuch of Alabama (Chaba'd of Alabama) granting the City use of Chaba'd of Alabama's parking lot on Overton Road, in the form attached hereto as Exhibit A, with such minor changes thereto as may be approved by the Mayor or City Manager, whose approval of such changes shall be conclusively evidenced by either of their execution of such agreement.

**APPENDIX 9**  

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**EXHIBIT 12**

**ADOPTION OF RESOLUTION (2018-177) BY CITY COUNCIL OF MOUNTAIN BROOK  
CREATING THE HIGHWAY 280 PUBLIC ROAD COOPERATIVE DISTRICT**

**A RESOLUTION APPROVING AN APPLICATION SEEKING  
PERMISSION TO INCORPORATE A CAPITAL IMPROVEMENT  
COOPERATIVE DISTRICT AND AUTHORIZING SUCH  
INCORPORATION**

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**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK,  
ALABAMA,** as follows:

Section 1. That the City Council, upon evidence duly submitted to and considered by it, hereby finds and determines that the following application has been duly filed with the governing body of the City of Mountain Brook, that such application was signed by not less than three natural persons, and that each of said persons is over the age of 21 years and is a duly qualified elector of Jefferson County, Alabama:

*[Application for Authority to Form a Capital Improvement Cooperative District follows]*

**APPLICATION FOR AUTHORITY  
TO FORM A CAPITAL IMPROVEMENT COOPERATIVE DISTRICT**

**TO THE GOVERNING BODIES OF THE CITIES OF HOMEWOOD, MOUNTAIN BROOK, BIRMINGHAM AND JEFFERSON COUNTY, ALABAMA:**

We, the undersigned natural persons, each of whom is over the age of 21 years and is a duly qualified elector of Jefferson County, Alabama, do hereby make application in writing seeking permission to incorporate a capital improvement cooperative district (the "District") under the provisions of Chapter 99B of Title 11 of the Code of Alabama 1975 and file this Application:

1. The District proposes to acquire real property and construct capital improvements and public infrastructure, consisting primarily of an approximately eight foot pedestrian bridge immediately adjacent and north of the Highway 280 bridge on Hollywood Blvd. across Highway 280 (the "Project").
2. The area in which the District proposes to construct the Project is described on Exhibit A hereto, which is within the boundaries of Jefferson County, Alabama.
3. The proposed members of the District are the Cities of Homewood, Mountain Brook, Birmingham, Alabama and Jefferson County, Alabama.
4. The District shall be governed by a board of directors which shall be comprised of seven (7) persons.

The number of directors which the governing body of each authorizing subdivision shall be entitled to elect, and the proportional voting power of the respective directors elected by each such authorizing subdivision are as follows:

<u>Authorizing Subdivision</u>	<u>Number of Directors</u>
The City of Birmingham, Alabama	2
The City of Mountain Brook, Alabama	2
The City of Homewood, Alabama	2
Jefferson County, Alabama	1

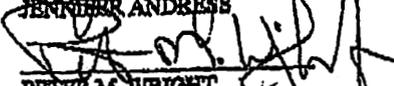
5. The proposed location of the principal office of the District shall be at City Hall, Homewood, Alabama, 2850 19<sup>th</sup> St. S., Homewood, Alabama 35209.
6. Each of the applicants is a duly qualified elector of Jefferson County, Alabama.
7. Upon dissolution of the District as permitted in the Enabling Law, title to all property (real, personal and mixed) shall pass to and be vested in Jefferson County, Alabama.
8. The undersigned hereby request that each of the governing bodies of the Cities of Homewood, Mountain Brook and Birmingham, Alabama and Jefferson County, Alabama adopt a resolution

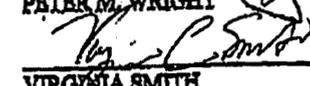
declaring it is wise, expedient, and necessary that the proposed District be formed and authorizing the undersigned to proceed to form the proposed District by the filing for record a certificate of incorporation in accordance with the provisions of Section 11-99B-4 of the CODE OF ALABAMA 1975.

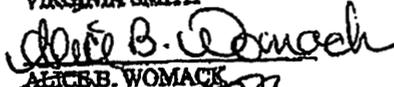
9. A copy of the proposed form of certificate of incorporation for such District is attached hereto as Exhibit B and made a part hereof.

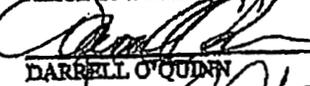
WITNESS OUR SIGNATURES this 29<sup>th</sup> day of November, 2018

  
 JENNIFER ANDRESE

  
 PETER M. WRIGHT

  
 VIRGINIA SMITH

  
 ARCE B. WOMACK

  
 DARRELL O'QUINN

  
 VALERIE A. ABBOTT

  
 STEVE AMMONS

**Exhibit A****Project Site**

Capital improvements and public infrastructure, consisting primarily of an approximately eight foot pedestrian bridge immediately adjacent and north of the Highway 280 bridge on Hollywood Blvd. across Highway 280 (the "Project").

**Exhibit B**

**Proposed Certificate of Incorporation**

**CERTIFICATE OF INCORPORATION  
OF  
THE HIGHWAY 280 PUBLIC ROAD COOPERATIVE DISTRICT**

**KNOW ALL MEN BY THESE PRESENTS:**

That the undersigned, in order to form a public corporation as a cooperative district under and pursuant to the provisions of Chapter 99B of Title 11 of the Code of Alabama 1975 (hereinafter called the "Enabling Law"), do hereby make, sign, execute, acknowledge and file this certificate of incorporation:

**ARTICLE ONE**

The names of the persons forming this public corporation, together with the residence of each of such persons, are:

<u>Name</u>	<u>Residence</u>
Jennifer Andress	421 Windsor Dr. Homewood, Alabama 35209
Peter M. Wright	219 Malaga Avenue Homewood, Alabama 35209
Virginia Smith	3015 Brookwood Road Mountain Brook, Alabama 35223
Alice B. Womack	3712 Spring Valley Road Mountain Brook, Alabama 35223
Darrell O'Quinn	5605 6 <sup>th</sup> Ave S. Birmingham, Alabama 35212
Steve Ammons	3341 Panorama Brook Dr. Vestavia, Alabama 35216
Valerie A. Abbott	15 Glen Iris Park Birmingham, Alabama 35205

Each of the foregoing named persons is over the age of 21 years and is a duly qualified elector of Jefferson County, Alabama.

**ARTICLE TWO**

The period for the duration of the district shall be perpetual, subject to the provisions of the Enabling Law.

**ARTICLE THREE**

The authorizing subdivisions are Cities of Homewood, Mountain Brook, Birmingham and Jefferson County, Alabama: On the \_\_\_\_\_ day of \_\_\_\_\_, 2018 the governing body of the City of

Homewood adopted a resolution and order approving and authorizing the incorporation of the district in accordance with the Enabling Law, a certified copy of which is attached hereto as Exhibit A and made a part hereof. On the \_\_\_\_ day of \_\_\_\_\_, 2018 the governing body of the City of Mountain Brook adopted a resolution and order approving and authorizing the incorporation of the district in accordance with the Enabling Law, a certified copy of which is attached hereto as Exhibit B and made a part hereof. On the \_\_\_\_ day of \_\_\_\_\_, 2018 the governing body of the City of Birmingham adopted a resolution and order approving and authorizing the incorporation of the district in accordance with the Enabling Law, a certified copy of which is attached hereto as Exhibit C and made a part hereof. On the \_\_\_\_ day of \_\_\_\_\_, 2018 the governing body of Jefferson County adopted a resolution and order approving and authorizing the incorporation of the district in accordance with the Enabling Law, a certified copy of which is attached hereto as Exhibit D and made a part hereof.

#### ARTICLE FOUR

The name of the district shall be "The Highway 280 Public Road Cooperative District" (hereinafter called the "District"). Attached hereto as Exhibit E and made a part hereof is a certificate by the Secretary of State of the State of Alabama stating that the name proposed for the district is not identical to that of any other corporation organized under the laws of the State of Alabama or so nearly similar thereto as to lead to confusion and uncertainty.

The location of the principal office of the District (and its post office address) shall be at City Hall in the City of Homewood, 2850 19<sup>th</sup> St. S., Homewood, Alabama 35209.

#### ARTICLE FIVE

The District proposes to acquire real property and construct capital improvements and public infrastructure thereon (the "Project").

The area in which the District proposes to construct the Project is described on Exhibit F hereto, which is within the boundaries of Jefferson County, Alabama.

#### ARTICLE SIX

The District shall be governed by a board of directors which shall be comprised of seven (7) persons.

The number of directors which the governing body of each authorizing subdivision shall be entitled to elect, and the proportional voting power of the respective directors elected by each such authorizing subdivision are as follows:

<u>Authorizing Subdivision</u>	<u>Number of Directors</u>
The City of Birmingham, Alabama	2
The City of Mountain Brook, Alabama	2
The City of Homewood, Alabama	2
Jefferson County, Alabama	1

ARTICLE SEVEN

The proposed name of the District is "The Highway 280 Public Road Cooperative District."

ARTICLE EIGHT

Upon dissolution of the District as permitted in the Enabling Law, title to all property (real, personal and mixed) shall pass to and be vested in Jefferson County, Alabama.

ARTICLE NINE

The application filed with the governing body of each of the authorizing subdivisions in accordance with 11-99B-3 of the Code of Alabama (1975) was identical to the copy thereof attached to this certificate of incorporation as Exhibit G.

ARTICLE TEN

The District shall have all powers conferred on corporations of like nature by the Enabling Law, and any amendment thereof heretofore or hereafter made, and all other powers conferred upon corporations generally by the laws of Alabama not in conflict with the Enabling Law, as heretofore or hereafter amended.

ARTICLE ELEVEN

The District shall be a non-profit corporation and no part of the net earnings thereof shall inure to the benefit of any private person or entity of any nature whatsoever.

IN WITNESS WHEREOF, the undersigned incorporators have hereunto subscribed their signatures on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
JENNIFER ANDRESS

\_\_\_\_\_  
PETER M. WRIGHT

\_\_\_\_\_  
VIRGENIA SMITH

\_\_\_\_\_  
ALICE B. WOMACK

\_\_\_\_\_  
DARRELL O'QUINN

\_\_\_\_\_  
STEVE AMMONS

\_\_\_\_\_  
VALERIE A. ABBOTT

STATE OF ALABAMA )  
 )  
JEFFERSON COUNTY )

I, the undersigned Notary Public in and for said County and said State, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing Certificate of Incorporation and who is known to me, acknowledged before me on this day that, being informed of the contents of the said Certificate, she/he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal of office on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_

STATE OF ALABAMA )  
 )  
JEFFERSON COUNTY )

I, the undersigned Notary Public in and for said County and said State, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing Certificate of Incorporation and who is known to me, acknowledged before me on this day that, being informed of the contents of the said Certificate, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal of office on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_

STATE OF ALABAMA )  
 )  
JEFFERSON COUNTY )

I, the undersigned Notary Public in and for said County and said State, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing Certificate of Incorporation and who is known to me, acknowledged before me on this day that, being informed of the contents of the said Certificate, she/he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal of office on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_

STATE OF ALABAMA        )  
                                  )  
JEFFERSON COUNTY        )

I, the undersigned Notary Public in and for said County and said State, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing Certificate of Incorporation and who is known to me, acknowledged before me on this day that, being informed of the contents of the said Certificate, she/he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal of office on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_

STATE OF ALABAMA        )  
                                  )  
JEFFERSON COUNTY        )

I, the undersigned Notary Public in and for said County and said State, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing Certificate of Incorporation and who is known to me, acknowledged before me on this day that, being informed of the contents of the said Certificate, she/he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal of office on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_

STATE OF ALABAMA )  
 )  
JEFFERSON COUNTY )

I, the undersigned Notary Public in and for said County and said State, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing Certificate of Incorporation and who is known to me, acknowledged before me on this day that, being informed of the contents of the said Certificate, she/he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal of office on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_

STATE OF ALABAMA )  
 )  
JEFFERSON COUNTY )

I, the undersigned Notary Public in and for said County and said State, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing Certificate of Incorporation and who is known to me, acknowledged before me on this day that, being informed of the contents of the said Certificate, she/he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal of office on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_

Section 2. That the City Council has reviewed and considered the foregoing application and has found and determined and does hereby find and determine as a matter of fact that it is wise, expedient, and necessary that the district be formed.

Section 3. That the City Council does hereby approve the proposed form of certificate of incorporation of the district attached to the foregoing application as hereinabove set forth.

Section 4. That the City Council does hereby grant permission to incorporate the district and does hereby authorize the persons making such application to form such district.

Section 5. That the City Council does hereby elect and appoint the following named persons as a directors of The Highway 280 Public Road Cooperative District for the term of office ending on the date set opposite his name or on such date as the respective successor thereof is elected and qualified in his stead:

<u>Name</u>	<u>Date of End of Term</u>
Virginia Smith	Fourth anniversary of the date of filing for record the certificate of incorporation for the cooperative district
Alice Womack	Fourth anniversary of the date of filing for record the certificate of incorporation for the cooperative district

---

**EXHIBIT 13**

**RESOLUTION NO. 2018-178**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that City Council hereby authorizes the execution of a right-of-way encroachment agreement between the he City and TJB, LLC, in the form as attached hereto as Exhibit A, with respect to the property located at 142 Spring Street.

**APPENDIX 12**

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2018-165

Tommy Amason bio for BLD appointment

### Simeon Johnson

to Janet, Tommy, Sam, Virginia, me

Janet,

Please find below Tommy Amason's bio for the city council's consideration at their December 10, 2018 meeting. The Board of Landscape Design voted unanimously at its November meeting to recommend the city council appoint Tommy to serve the remainder of the BLD term vacated by Jason Comer. Please let me know if anything more is needed from me or Tommy for the city council's consideration. Thank you all

Sim S.W. Johnson  
Chair, Mountain Brook Board of Landscape Design  
cell [205.215.8621](tel:205.215.8621)  
Instagram @simswjohnson

Begin forwarded message:

**From:** "Amason, Thomas DDS Birmingham" <[Thomas.Amason@ssa.gov](mailto:Thomas.Amason@ssa.gov)>  
**Date:** December 4, 2018 at 10:55:20 AM CST  
**To:** "[SIMEONJOHNSON@MSN.COM](mailto:SIMEONJOHNSON@MSN.COM)" <[SIMEONJOHNSON@MSN.COM](mailto:SIMEONJOHNSON@MSN.COM)>  
**Subject:** BRIEF CV FOR TOMMY AMASON

THOMAS GILBERT AMASON, JR, M.D. (TOMMY)  
DOB 3/28/40  
MARRIED TO THE FORMER CAROLINE YATES MIDDLETON FOR 50 YEARS.  
TWO ADULT CHILDREN: CAROLINE AMASON ADAMS (RUSSELL), THOMAS GILBERT "BERT"  
AMASON, III (VIRGINIA)  
BS DEGREE AUBURN UNIVERSITY 1962  
MD DEGREE U OF AL, 1966  
PEDIATRIC TRAINING UAB 1966-1968  
US NAVY, LT. COMMANDER 1968-1970, NUCLEAR SUBMARINE PHYSICIAN  
PEDIATRIC TRAINING 1970-1971, MONTEFIORE HOSPITAL OF ALBERT EINSTEIN MEDICAL SCHOOL,  
NY,NY  
MASTER GARDENER PROGRAM GRADUATE 1993

PRIVATE PRACTICE AT MAYFAIR MEDICAL GROUP PEDIATRICS, 1971-2015 (44YRS)  
CURRENTLY EMPLOYED AS A MEDICAL CONSULTANT FOR THE STATE OF AL AT DDS

TRUSTEE AT BBG AND LONG TIME BOARD MEMBER, PAST PRESIDENT OF FRIENDS OF BBG BOARD  
AMERICAN HORTICULTURE SOCIETY NATIONAL BOARD MEMBER FOR THREE YEARS  
SPEAKER AT WILLIAMSBURG SPRING GARDEN SYMPOSIUM  
SPEAKER FOR LOCAL GARDEN CLUBS MANY TIMES  
AMASON PRIVATE RESIDENCE GARDENS ON TOUR TWICE FOR BBG GLORIOUS GARDENS TOURS

PAST VESTRY MEMBER AT SAINT MARY'S ON THE HIGHLANDS EPISCOPAL CHURCH AND  
LAYREADER  
MEMBER OF THE ST. ANDREWS SOCIETY OF THE MIDDLE SOUTH  
PAST PRESIDENT OF THE MEDICAL STAFF AT CHILDREN'S OF ALABAMA  
FOUNDER COMMITTEE FOR THE DISCOVERY PLACE FOR CHILDREN, NOW THE MC WANE SCIENCE  
CENTER

12/4/18

2018-165

APPENDIX 1

2018-167

Traffic Island Policy Worksheet

Island Location Lewis Circle  
Area of Island 1590 sq ft Max City Contribution \$1,000  
(< 3,000 sq ft = \$1,000; 3,000-6,000 sq ft = \$2,000; > 6,000 sq ft = \$3,000)

Sketch of Design

Design attached for new construction

Materials needed	Quantity	Cost
Sugar Kettle		
Pavers		
Crushed stone		
Blue stone		
Mondo		
Total Cost		

Resident Contact Information:

Name Andy Sink Email Andy.Sink@collins.com Phone \_\_\_\_\_

2018-167

Traffic Island Policy Worksheet

Partnership Agreement

Mr Sink will install and maintain the island

Island Committee Comments

Date 12/2/18

The plan was approved with the suggestion to plant mono grass instead of hedges in the green space. It was also suggested to plant a variety of native trees along the street leading up to and around the island.  
Tree Commission Members: E. Poyner R. Hinton (Assistant)  
Park Board Members: H. Drannen A. Luce  
Others Present: V. Smith S. Williams H. Sink

Police Department Comments

Date 11/28/18

It was suggested that the sugar kettle room a corner 4ft where it is in the way of the plan.

Council Comments:

Date: 12/10/18

Amount approved:

APPENDIX 2

2018-167

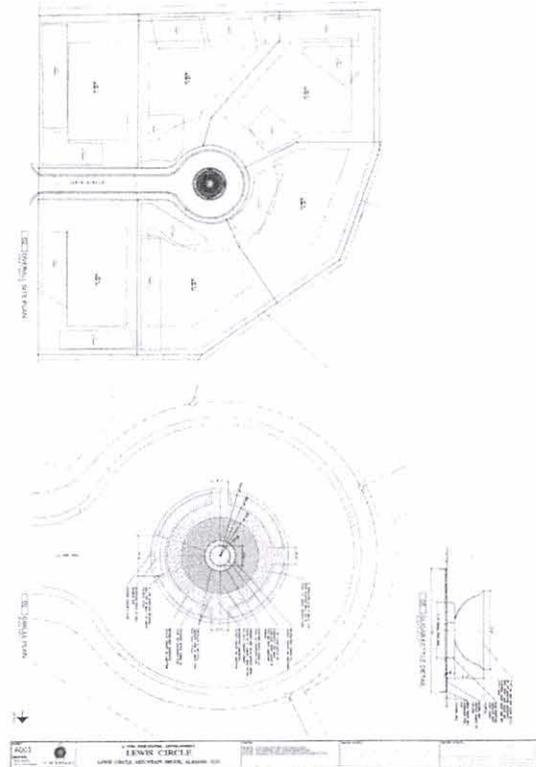
Traffic Island Policy Worksheet

Construction Issues/Comments/Adjustments

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2018-167

2018-167



2018-168 Minute Book 90



State of Alabama  
Department of  
Examiners of Public Accounts

Act 2018-413 provides for certain exceptions to the Alabama Public Works Law. As a result, effective June 1, 2018, air conditioning and heating units and systems may not be purchased from this cooperative until further notice.

Ronald L. Jones  
Chief Examiner  
Mailing Address  
P.O. Box 102251  
Montgomery, AL 36102-2151

7-minute  
Candler Plaza Building  
415 North Public Street, Room 4221  
Montgomery, AL 36104-3473

October 30, 2017

Alabama Municipalities  
Alabama County Commissions  
Alabama City and County Boards of Education  
Alabama Community College System  
Other Entities subject to the Code of Alabama 1975, Section 41-16-50

To whom it may concern,

In accordance with the Code of Alabama 1975, Section 41-16-51 and the Code of Alabama 1975, Section 16-13B-2, we have reviewed the competitive bidding process used by the National Joint Powers Alliance ("NJPA"), a national governmental purchasing cooperative for the contracts awarded as of the date of this letter. We noted no matters we felt were contrary to proper purchasing procedures or routine governmental procurement practices. These contracts were awarded by NJPA, which is a governmental entity, based on competitive bid requirements of the State of Minnesota.

Based on our review, we approve the competitive bidding process used by NJPA through November 30, 2019, for the purchase of goods or services.

The Code of Alabama 1975, Sections 41-16-51 and 16-13B-2 authorizes the purchases of goods or services, other than voice or data wireless communication services utilizing purchasing cooperatives when certain conditions are met. Therefore, you are not authorized to use this purchasing cooperative for the purchase of voice or data wireless communication services.

Prior to utilizing this purchasing cooperative, you must ensure your entity's compliance with the Alabama Competitive Bid Law. The Code of Alabama 1975, Sections 41-16-51 and 16-13B-2, requires that you verify that the goods or services are not at the time available on the state purchasing program, or that they are available at a price equal to or less than that on the state purchasing program. Additionally, you must verify that the purchase is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.

Note - This approval does not apply to State Public Four-Year Universities within the State of Alabama.

Sincerely,  
*Ronald L. Jones*  
Ronald L. Jones  
CHIEF EXAMINER

RLJ:jb

Formerly NJPA

Vendors & Contracts

By Category All Vendors

Athletics & Playgrounds

Lighting & Electronics

Clear All

Grainger - MRO

Facility Maintenance Products & Services

#091214-WWG

Office & Technology Facilities (MRO)

Athletics & Playgrounds Food Roads & Airports

Grounds & Ag Public Safety Fleet & Related

APPENDIX 3

Grainger - Public Safety

Public Safety Equipment, Supplies & Apparel

#121416-WWG

Office & Technology Facilities (MRO)

Athletics & Playgrounds Health & Science Food

Roads & Airports Public Safety Fleet & Related

Musco Sports Lighting, LLC

Sporting Lighting Solutions

#092114-MSL

Athletics & Playgrounds

Nevco, Inc.

Video Display & Scoring Solutions

#082114-NVC

Athletics & Playgrounds



Sourcewell for Vendors →

Terms & Conditions

Sitemap

Privacy Policy

Accessibility

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Quote

Mountain Brook Sports Complex Fields 3, 4, 6 and 7 – Mountain Brook, AL  
October 8, 2018

To: Sam Gaston

Sourcewell (Formerly NIPA)  
Master Project: 170558, Contract Number: 082114-mtl, Expiration: 09/16/2019  
Category: Facility, B,M&O, Sub-Category: Athletic Field / Court and Parking Lot Lighting Systems

Sales tax, bonding, labor, and unloading of the equipment are not included.  
Pricing furnished is effective for 60 days unless otherwise noted and is considered confidential.

Quotation Price – Materials Only Delivered to Job Site

Field 3: Coca Cola ..... \$ 44,920.00

System Description

- (17) Factory aimed and assembled luminaires, including BallTracker™ luminaires
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Mounting hardware for poletop luminaire assemblies and electrical components enclosures
- Disconnects
- UL listed as a system

Field 4: Coke Zero ..... \$ 44,375.00

System Description

- (16) Factory aimed and assembled luminaires, including BallTracker™ luminaires
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Mounting hardware for poletop luminaire assemblies and electrical components enclosures
- Disconnects
- UL listed as a system

Field 6: Sprite ..... \$ 66,500.00

System Description

- (25) Factory aimed and assembled luminaires, including BallTracker™ luminaires
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Mounting hardware for poletop luminaire assemblies and electrical components enclosures
- Disconnects
- UL listed as a system

Field 7: Dasani ..... \$ 60,775.00

System Description

- (25) Factory aimed and assembled luminaires, including BallTracker™ luminaires
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Mounting hardware for poletop luminaire assemblies and electrical components enclosures
- Disconnects
- UL listed as a system

SportsCluster System with Total Light Control – TLC for LED™ technology

Control Systems and Services

- Control-Link® system with contractors for remote on/off control and performance monitoring with 24/7 customer support

Operation and Warranty Services

- Reduction of energy and maintenance costs by 50% to 85% over typical 1500W metal halide equipment
- Product assurance and warranty program that covers materials and onsite labor, eliminating 100% of your



Quote

- maintenance costs for 10 years
- Support from Musco's Lighting Services Team – over 170 Team members dedicated to operating and maintaining your lighting system – plus a network of 1800+ contractors

Payment Terms

Musco's Credit Department will provide payment terms.

Upon approval Email a copy of the Purchase Order to Musco Sports Lighting, LLC.

Musco Sports Lighting, LLC  
Attn: Jimmy Jumper  
Fax: 800-374-6412  
Email: Jimmy.Jumper@musco.com

All purchase orders should note the following:  
Sourcewell (Formerly NIPA) purchase – Contract Number: 082114-MSL

Delivery Timing

6 - 8 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole locations.

Due to the built-in custom light control per luminaire, pole locations need to be confirmed prior to production. Changes to pole locations after the product is sent to production could result in additional charges.

Notes

Quote is based on:

- Shipment of entire project together to one location
- Structural code and wind speed = 2009 IBC, 90MPH, Importance Factor 1.0
- Owner is responsible for getting electrical power to the site, coordination with the utility, and any power company fees.
- Standard soil conditions – rock, bottomless, wet or unsuitable soil may require additional engineering, special installation methods and additional cost.
- Confirmation of pole locations prior to production.
- Product assurance and warranty program is contingent upon site review and compatibility with Musco's lighting system
- The owner of the field is responsible for the structural integrity of the existing poles (Sports Cluster only).

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Jimmy Jumper  
Field Sales Representative  
Musco Sports Lighting, LLC  
Phone: 256-483-5433  
E-mail: jimmy.jumper



APPENDIX 3



State of Alabama  
Department of  
Examiners of Public Accounts

Telephone (334) 242-9200  
FAX (334) 242-1775

Ronald L. Jones  
Chief Examiner  
Mailing Address:  
P.O. Box 302251  
Montgomery, AL 36103-2251

Location:  
Gordon Parson Building  
50 North Ripley Street, Room 2201  
Montgomery, AL 36104-3823

March 29, 2012

To: Alabama Municipalities  
Alabama County Commissions  
Alabama Community College System  
Other Entities subject to the Code of Alabama 1975, Section 41-16-50

The Alabama Legislature passed Act No. 2011-530 (the "Act") allowing governmental entities to purchase items through certain purchasing cooperatives. Portions of the Act applicable to purchasing cooperatives have been codified in the Code of Alabama 1975, Section 41-16-51. Among other things, the Act provides that the purchases may be made if the goods being purchased are available as a result of a competitive bid process conducted by a governmental entity and approved by the Alabama Department of Examiners of Public Accounts ("EPA").

In order to receive this approval, the governmental entity wishing to purchase from one of the cooperative programs not already approved and posted on the EPA website should send a letter to EPA requesting approval. The letter should reference the cooperative program and the type of items to be purchased. The EPA will then review the cooperative program's purchasing procedures and determine whether it is approved. It should be noted that there are other provisions with which the governmental entity wishing to make purchases utilizing a purchasing cooperative should also comply. These additional provisions are contained in the Code of Alabama 1975 Section 41-16-51.

These provisions do not currently apply to State Public Four-Year Universities or City and County Boards of Education within the State of Alabama.

Sincerely,

Ronald L. Jones  
CHIEF EXAMINER

RLJ/SR



Alabama Department of  
EXAMINERS OF PUBLIC ACCOUNTS

Home | About | Audits | Information & Resources | 911 Districts | Purchasing Co-Ops | Sunset Committee | Board Training

Purchasing Cooperatives

Cooperative Approval Procedures - General

Cooperative Approval Procedures - BOEs

US Communities

TCPN Cooperative - General

TCPN Cooperative - BOEs

National IPA Cooperative - General

National IPA Cooperative - BOEs

NIPA Cooperative - General

NIPA Cooperative - BOEs

H-GAC Cooperatives - General

H-GAC Cooperatives - BOEs

Public Sourcing Solutions (PSS)

Home | Admin

Top

Sam Gaston

From: Jimmy Jumper  
 Sent: Tuesday, October 09, 2018 4:17 PM  
 To: gastons@mtnbrook.org  
 Cc: williams@mtnbrook.org  
 Subject: Fwd: Mountain Brook Lighting Upgrade  
 Attachments: State Of Alabama Legislation Approving Purchasing Cooperatives.pdf; State Of Alabama Approved Purchasing Cooperatives List.pdf; Mountain Brook Revised Lighting Sourcewell Direct Purchase quote 10-8-18.pdf

Mr. Gaston:

Good afternoon. It has been some time since we spoke so I hope all is well with you. I am emailing you as I received a call this afternoon from Mr. Shea about upgrading the lighting on fields 3, 4, 6, and 7 at your Mountain Brook youth athletic fields. I know you all have been discussing this for some time. But, In talking with Mr. Shea today he stated that in his conversations with you today it was stated that the City would have to bid the lighting materials out. I certainly understand that and the bid laws which would require this item to be publicly bid.

However, I did mention to Mr. Shea there is another option that would allow the City of Mountain Brook to purchase the lighting materials direct. As you know in Alabama the State of Legislature has passed legislation that allows cities to purchase materials direct under one of the State of Alabama Approved Purchasing Cooperatives.(See attached Legislative Act)

Upon approving this legislation the State of Alabama approved approximately 10 Purchasing Cooperatives.(See attached list of Approved Cooperatives) Each of these cooperatives sent out specifications, for vendors to supply materials which were approved by the state. Two of these cooperatives, US Communities and NJPA which has changed its name to Sourcewell, sell sports lighting. For both of these cooperatives Musco was selected as the approved sports lighting vendor.

So, if the City wanted they could using one of these cooperatives to purchase our Musco Sports Lighting direct and be within the bids laws of The state of Alabama. In fact most cities now use these cooperatives to purchase our lighting instead of going through the bid process. Neighboring cities such as Homewood, Hoover, Pelham, Springville, Alabaster and many others have upgraded there lighting and purchased our lighting direct under the NJPA/Sourcewell Purchasing Cooperative. I hope you will realize that with so many cities purchasing our Musco Lighting direct there is a reason why they are doing this instead of bidding out the sports lighting.

Using this cooperative expedites the process and allows cities to get the lighting they want. In fact the quote I prepared for your lighting upgrades(See attached Quote) was based on the City of Mountain Brook purchasing the lighting direct under the NJPA/Sourcewell cooperative. I knew outside of Mr. Shea purchasing the lighting direct this would be the only way the City of Mountain Brook could do this. Thus, as stated that is why I prepared our quote under the Sourcewell Purchasing Cooperative.

I also understand that even though the City of Mountain Brook could purchase the lighting direct the legislative act does not allow for the install to be included or purchased direct. However, most other cities are either doing a self install, paying for the install with private funding, or if the install is under \$50,000 dollars it could be considered a public works project and thus the install can move forward without having to go through the bid process. I know cities who have done small projects have done this if the install under the \$50,000 threshold. Or if none of this works cities are buying our materials direct and only bidding the install. Also, as for the install I think Mr. Shea is willing to help with the install cost but I will let you and him discuss that.

So, as for the install I am not sure if any of the above mentioned options, outside of bidding the install, would work for your application. I will let you and Mr. Shea discuss this further to see if there are any options that might work on getting the install completed.

In closing upon your review of this info I certainly hope the City will explore purchasing our Musco lighting direct under the Sourcewell Purchasing Cooperative. This is a great program and as stated is how most cities are buying there lighting. As you know the sports field lighting is a critical part of any complex and most cities do NOT want to leave the decision of whose sports lighting they get in the hands of a contractor under a public bid application.

As always thanks for your time and I if you have any questions I would be glad to discuss this further with you. Or, I would really enjoy the opportunity to sit down in person and discuss this further with you. There are some key items I would really like to discuss with you that I think would be very helpful.

Thanks so much for your time.

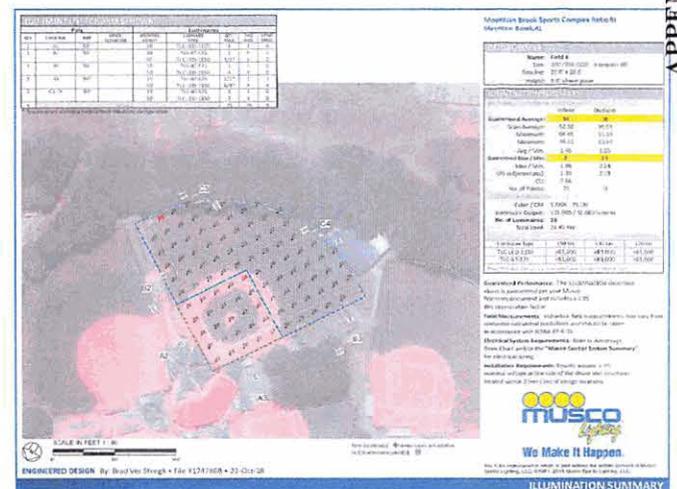
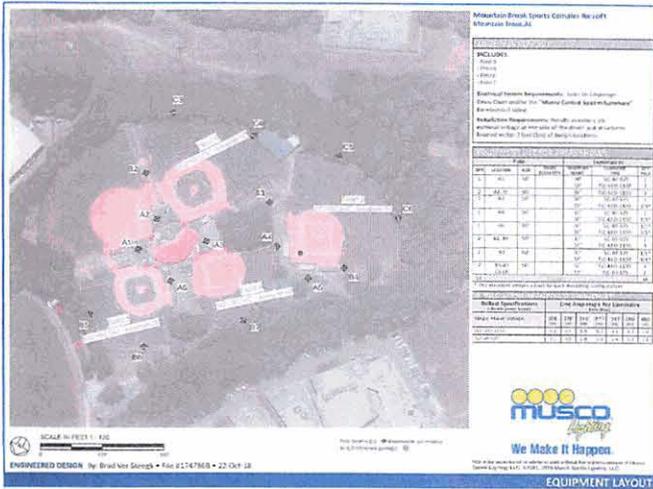
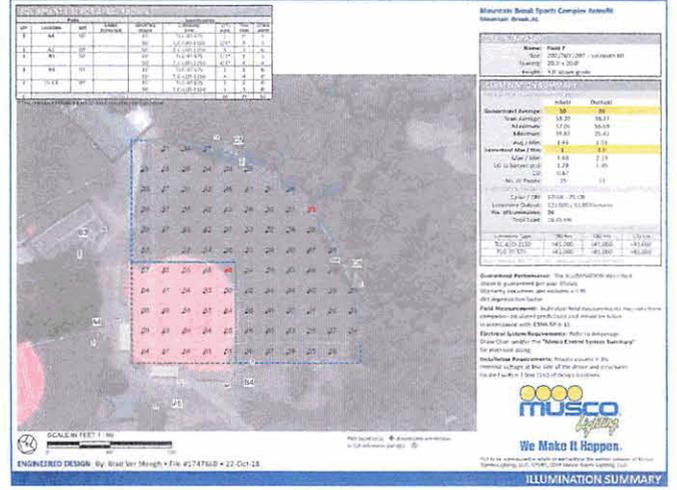
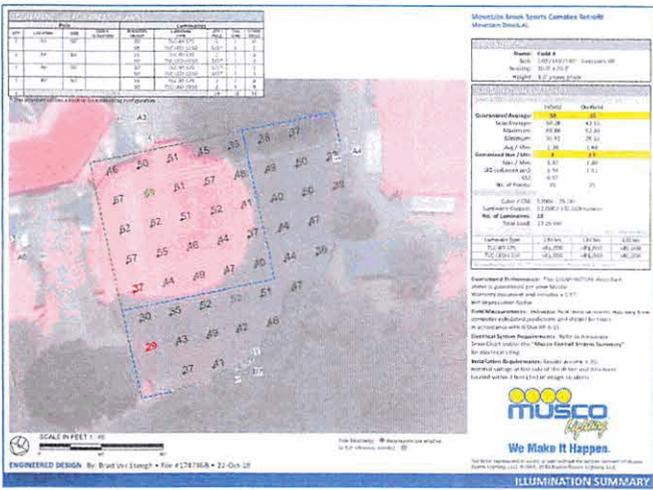
Sincerely,  
 Jimmy Jumper  
 Musco Sports Lighting  
 256-483-5433

APPENDIX 3

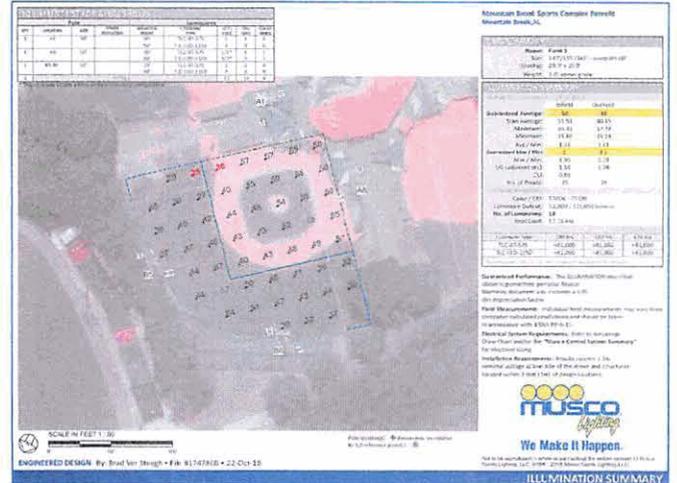
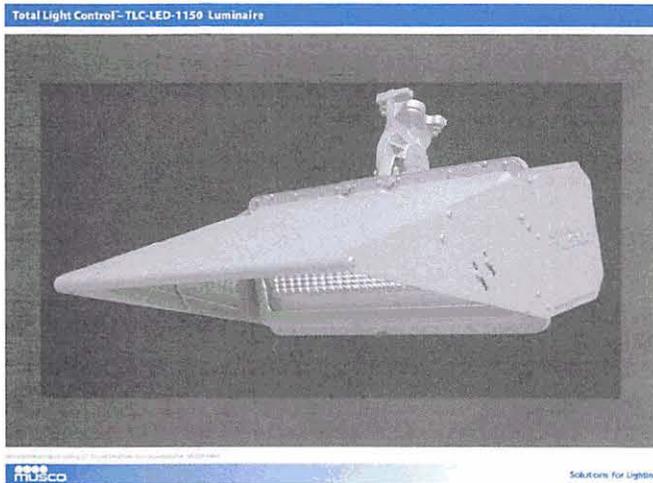








APPENDIX 4





FRANCHISE AGREEMENT

This Franchise Agreement ("the Agreement") is made between the City of Mountain Brook, Alabama (hereinafter the "Grantor" or "City"), and Spectrum Southeast, LLC, which was heretofore been locally known as Grantee Communications (hereinafter referred to as the "Grantee"). The City and Grantee may be referenced herein separately as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, pursuant to City Ordinance No. 1302 enacted on or about March 23, 1998, the Grantor granted Marcus Cable of Alabama, LLC the franchise and right to offer cable services to customers throughout the City (the "Existing Agreement with Marcus Cable");

WHEREAS, subsequent to said Ordinance No. 1302, Grantee (or its predecessor in interest) acquired the interest of Marcus Cable of Alabama, LLC and has succeeded to the rights and obligations in the Existing Agreement with Marcus Cable;

WHEREAS, pursuant to City Resolution No. 2013-108 adopted on or about July 22, 2013, the Grantor granted Bright House Networks, LLC the franchise and right to offer cable services to customers throughout the City (the "Existing Agreement with Bright House");

WHEREAS, subsequent to said Resolution No. 2013-108, Grantee (or its predecessor in interest) acquired the interest of Bright House Networks LLC and succeeded to the rights and obligations in the Existing Agreement with Bright House Cable;

WHEREAS, the Parties desire that, as of the Effective Date,

- (a) the Existing Agreement with Marcus Cable and the Existing Agreement with Bright House Cable (which collectively may be referenced hereinafter as the "Existing Agreements") terminate; provided that the respective obligations of the Parties that arise under those Agreements and by their nature survive termination shall continue in effect following such termination;
(b) the provisions in this Agreement shall apply to Grantee's cable service operations in the City;
(c) the terms, conditions and provisions in this Agreement supersede those in the Existing Agreements and previously enacted Ordinance and Resolution applicable to the cable service operations of Marcus Cable of Alabama, LLC and Bright House Networks, LLC (collectively, "Grantee's Predecessors in Interest in the City"); and
(d) the Parties desire that Grantee hold the Franchise (as defined below) to provide Cable Service (as defined below) within the geographic limits of the City.

WHEREAS, the City acknowledges that Grantee's Predecessors in Interest in the City have substantially complied with the material terms of the Existing Agreements under applicable law, and Grantee represents that it has the financial, legal, and technical ability that is reasonably sufficient to provide cable-related services, facilities, and equipment to meet the future needs of the community; and

WHEREAS, the Parties desire to enter into this Agreement whereby, as of the Effective Date, Grantee will operate a Cable System (as defined below) in the City on the terms set forth herein.

WITNESSETH

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

1. Definitions.

- a. "Cable Act" means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.
b. "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act.
c. "Franchise" means the authorization granted hereunder of the privilege, permit, license or other right to construct, operate and maintain a Cable System and provide Cable Services to Subscribers within the Service Area.
d. "Gross Revenues" shall mean all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Grantee that arises out of the provision of Cable Service within the City. Gross Revenues include, but are not limited to, the following:
i. All subscription fees paid by Subscribers in the City for the provision of Cable Services;
ii. All revenue derived from advertising sales and home shopping (including Home Shopping Network and any comparable shopping from home network) sales derived from the operation of the Service within the City. Advertising commissions paid to third parties shall be deducted from advertising revenue included in Gross Revenues. The allocation of advertising and home shopping revenue shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant region or national compensation arrangement; and

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- iii. All revenue arising from or attributable to the provision of Cable Services that are charged Subscribers in the City for any basic, optional, premium, per-channel or per-program, on-demand or video or audio service; cable service provider fees; installation and re-connection fees; charges for converter boxes, DVRs and other equipment rentals and/or sales; and upgrade, downgrade or other change-in-service fees.

Gross Revenues do not include:

- i. uncollectible fees; provided that, all or part of uncollectible fees that are written off as bad debt but subsequently collected, less expenses of collection, shall be included in Gross Revenues in the period collected;
ii. insufficient funds (returned checks);
iii. late payment fees;
iv. maintenance charges for equipment and wire-maintenance plans;
v. discounts, refunds, and other price adjustments that reduce the amount of compensation received by Grantee;
vi. revenue from Grantee's sale of capital assets or surplus equipment;
vii. revenues for voice or telecommunication services, data transmission, information services, or the provision of directory or Internet advertising that are aggregated or bundled with amounts billed to Subscribers for Cable Services; provided the Parties acknowledge and agree that the part of any bundled charge that is payable by Subscribers for such bundled services that is attributable to Cable Services shall be included in Gross Revenues for purposes of this Agreement; or
viii. amounts billed to Subscribers to recover government-imposed taxes, fees, or surcharges in connection with the provision of Cable Service, including the Franchise Fee and any educational/governmental channel fee contemplated hereunder.

c. "Service Area" shall mean the territory comprising the entire municipal limits of the City; this term may be used interchangeably with the term "Franchise Area."

f. "Streets" means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, and the public grounds, places or water within the geographic boundaries of the City.

g. "Subscriber" means any person in the City lawfully receiving any Cable Service from Grantee.

2. Granting of Franchise.

The City hereby grants to Grantee a non-exclusive Franchise for the use of the Streets within the Service Area for the construction, operation and maintenance of its Cable System, upon the terms and conditions set forth herein. Nothing in this Franchise shall be construed to prohibit Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

3. Effective Date/Term.

This Agreement will become effective on January 1, 2019 (the "Effective Date").

Unless otherwise mutually agreed, this Agreement and the Franchise granted herein shall be in effect for an initial term of five (5) years that commences on the Effective Date. Following this initial term, this Agreement and Franchise will be automatically extended for an additional term of five (5) years, unless any of the following occur:

- a. the City initiates renewal procedures in accordance with Section 546 of the Cable Act before the expiration of the term of this Agreement;
b. the City submits a proposal for the renewal of the Franchise under the alternative renewal procedures specified in Section 546(h) of the Cable Act; or
c. Proceedings to terminate or revoke the Franchise are initiated in accordance with the requirements of the Cable Act and this Agreement.

4. Use of Streets.

a. Grantee shall have the right to use the Streets of the City for the construction, operation and maintenance of the Cable System, including the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities whenever practicable.

b. Grantee's facilities shall be installed underground in any part of the Service Area where existing telephone and electric services are both underground at the time of construction of the Cable System. In areas where either telephone or electric utility facilities are installed aerially at the time of Grantee's construction, it may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, the Grantee shall likewise place its facilities underground.

c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets of the City, but shall do so only after reasonable consultation with the City through its Arborist or other City official acting in such capacity.

d. Grantee, at no cost to the City, shall promptly repair or replace any facility, service or public improvement in the City (including but not limited to any Street, sewer, electric facility, water main or fire alarm, police communication or traffic control equipment) that Grantee damages in the course of exercising its Franchise privileges.

5. Standards for Operation of Cable System.

a. At all times Grantee shall employ ordinary care in the maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the City, the property or improvements of the City or the life, health or property of third parties that may be affected by Grantee's operations.

b. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may, from time to time, be amended.

c. In the course of designing, constructing, maintaining and operating its Cable System in the City, Grantee further agrees to:

i. comply with all applicable sections of the National Electric Safety Code;

ii. comply with all federal, state and local laws, codes, rules and regulations (collectively hereinafter "Laws") applicable to its operations, including, but not limited to, the following: Laws regarding safety in the workplace and protection of workers; Laws for use of the roads and operation of vehicles; and Laws that protect the environment, air or water quality or the public health, safety and welfare (including, without limitation, those issued by the Alabama Department of Environmental Management and Environmental Protection Agency); and

iii. perform its operations in accordance with industry standards for Cable Service providers.

6. Service for Subscribers.

a. Grantee shall continue to offer and provide Cable Service to all residences and locations within the Service Area where Grantee currently provides Cable Service. Its offering of Cable Service to Subscribers is conditioned upon Grantee having legal access to any such Subscriber's dwelling or other unit wherein such Cable Service is provided.

b. If the City annexes any territory outside the current Service Area in which Grantee (or any of its affiliates) is providing Cable Service, such annexed area will be subject to the provisions of this Agreement (including the obligation to remit the Franchise Fee to City) within ninety (90) days after the City provides Grantee notice of that annexation.

c. During the term of this Agreement, Grantee agrees that, with respect to its provision of service, it will comply with all Customer Service Standards set forth by the FCC in 47 C.F.R. § 76.309 or elsewhere in Part 76 of its rules and regulations (including those applicable to cable office hours, availability of telephone service, installation, outages, service calls, refunds, credits and customer notices), as may from time to time be amended.

d. Grantee shall provide its Subscribers and City any notices of changes in rates, programming services or channel positions or other information as may be required by the FCC in Part 76 of its rules and regulations, as may from time to time be amended.

e. Grantee shall not refuse to provide or deploy Cable Services to any customer (or a group of potential customers) in the City because of the income, race, gender, national origin, disability or other status of any of those customers.

7. Public Services.

a. Grantee shall provide one (1) channel on the Cable System for the use by the Grantor for original, locally-produced, non-commercial, video programming for Government access programming. Programming shall be produced in Mountain Brook, AL. The Government access channel may be placed on any tier of service available to all Subscribers, including the digital tier.

b. If the City Council, the governing body for the Grantor, approves collection from Grantee Subscribers of a monthly PEG support fee (the "PEG Fee"), Grantee agrees to commence collecting that Fee from its Subscribers within sixty (60) days after the City Manager provides Grantee notice of the City's intent to commence collection of those Fees. In no event will the amount of the PEG Fee exceed \$0.25 cents per Subscriber. The City will use these PEG Fees to defray expenses incurred for repairs, maintenance, upgrades, or replacement of equipment or operating facilities used to produce or deliver programming over the PEG Channel. Grantee will remit to the City any PEG Fees that it collects from the Grantee's Subscribers on the same frequency as the Franchise Fee.

c. Basic Service for Public Buildings. At its expense, Grantee shall install and provide complimentary monthly basic cable service to one outlet at each public school, and at each municipal, fire station, police station, library or other government building within the Service Area that passes within 125 feet of Grantee's distribution cable.

d. Emergency Broadcast. Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS").

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8. Insurance/Indemnification.

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

Table with 2 columns: Insurance Type and Statutory Limits. Includes Workers' Compensation, Commercial General Liability, and Automobile Liability.

Grantee may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

Before the Effective Date, the Grantee shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate(s) shall indicate that the City has been named as an additional insured on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies, with respect to all of Grantee's operations contemplated by this Agreement. Thereafter, upon request of City, Grantee shall furnish a current certificate(s) of insurance evidencing such coverage. Should any of the policies required herein be cancelled before the expiration date thereof, the Insurer affording coverage will endeavor to mail 30 days written notice of that cancellation to the City, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer affording coverage, its agents, or representatives, or the issuer of this certificate.

b. Indemnification. Grantee agrees to defend, indemnify and hold the City, and its agents, employees, officials and representatives, harmless from all suits, claims for damages (including personal injury or death and property damage), judgments, losses, expenses (including but not limited to reasonable attorneys' fees, court costs and other litigation costs) and liabilities (hereinafter collectively "Claims") resulting from the following acts or omissions of Grantee (or its employees, representatives, officials, or contractors): (i) its construction, operation or maintenance of the Cable System, (ii) its provision of Cable Services in or about the Service Area, (iii) its use of the Franchise, or (iv) its failure to perform its obligations under this Agreement. City agrees to furnish Grantee written notice of any requests for indemnification pursuant to this Section. Notwithstanding the foregoing, Grantee shall not be obligated to indemnify the City (or its representatives) for Claims resulting from the independent willful or negligent acts of the City (or its representatives), the City's use of the Cable System, or from the activity or conduct of the City or any person or entity other than Grantee in connection with PEG Channel programming.

9. Revocation of Franchise/Early Termination of Agreement.

Prior to the revocation of the Franchise or the early termination of this Agreement by the City, it shall give written notice to Grantee of its intent to so revoke or terminate based on a pattern of substantial noncompliance by Grantee with one or more material provisions of this Agreement, or for other lawful cause. The notice shall specify the noncompliance that the City has identified as the basis for its proposed revocation or termination. Grantee shall have sixty (60) days from such notice to (a) object in writing to the alleged noncompliance and state its reasons for such objection, (b) provide the City a written explanation for the alleged noncompliance that the City subsequently acknowledges in writing satisfies the noncompliant condition, or (c) cure the noncompliance. If Grantee has not cured the noncompliance or otherwise resolved it to City's satisfaction during that sixty (60) day time period, the City then may seek to revoke the Franchise or terminate the Agreement following a public hearing in which it considers those actions (the "Revocation Hearing").

The City shall provide Grantee at least thirty (30) days prior written notice of the Revocation Hearing; that notice shall specify the time, place and purpose of such Hearing. At any such Revocation Hearing will be on the record, and during it the City shall give Grantee an opportunity to state its position, present evidence and question witnesses on any noncompliance matters. Following the Revocation Hearing, the governing body for the City will determine whether it will revoke the Franchise and terminate this Agreement: if that action is taken, a written transcript or video record of the Hearing shall be made available to Grantee within twenty-one (21) business days following that determination. Grantee reserves the right to challenge a revocation determination made by the City in a court or tribunal of competent jurisdiction on such grounds as may be available to it under the Cable Act, or otherwise by law. In such instance, the decision of the City shall be entitled to such weight as is appropriate under the applicable principle(s) of legal review, but nothing in this Agreement shall be deemed to deny Grantee any right that is otherwise available to it to present additional evidence or argument to the reviewing court, tribunal, or agency. Likewise, nothing in this Agreement or in any action taken by the City under authority of this Agreement shall be deemed to confer, expand, deny, or restrict the nature, scope, or type of judicial review applicable to the challenged revocation.

Upon revocation of the Franchise or early termination of this Agreement for any reason, Grantee, at its expense, may remove the Cable System from the Streets, or abandon the Cable System in place. Further, although Grantee shall no longer be obligated to provide Cable Service in the City following the revocation of its Franchise or the termination of this Agreement, all of Grantee's obligations hereunder that relate to or arise from events occurring before the effective time of the revocation (or termination) will survive those actions.

10. Franchise Fee/Records Retention/City's Audit Right.

a. Franchise Fee. Throughout the term of the Agreement, Grantee shall pay City an amount equal to five percent (5%) of the Gross Revenues (as defined in Section 1 above) related to the provision of cable service to Subscribers (the "Franchise Fee"). No later than forty-five (45) days following each quarter of the Agreement, Grantee will calculate and pay the City the

Franchise Fee owed for the previous quarter by electronic fund transfer to a bank account it designates. At the time of each such payment, Grantee also will furnish City with an accounting report or statement that, in a summary form, discloses the total Gross Revenues derived from the Cable System for the previous quarter, the methodology used to calculate the Franchise Fee and other bases on which Grantee determined the amount of each payment.

b. **Records Retention.** For a rolling period not less than six (6) years following the generation of the following records, Grantee agrees to retain and make the same available for inspection by the City (or its designated representative):

- i. its databases and books, reports, statements or accounting records indicating cable and other types of services provided to Subscribers during the term of the Agreement;
- ii. its databases and books, reports, statements and accounting records indicating the revenues charged and collected for cable and other types of services provided to Subscribers during the Agreement; and
- iii. all records, reports or other data generated, used or reviewed by Grantee to compute its Gross Revenues or in the process of calculating the amounts of Franchise Fees paid to the City.

c. **Audit of Grantee Records.** Grantee acknowledges and agrees that, to the extent necessary to ensure proper payment of Franchise Fees and other amounts owed City hereunder, the City (or its designated representative), upon the provision of reasonable advance notice to Grantee during the rolling, six-year record retention period for the records listed above in subsections (i), (ii) and (iii), shall have the right to audit, examine, review and receive copies of those records. At its expense, Grantee agrees to furnish access to these records and reasonably cooperate with City in any such review or audit.

d. The City's acceptance of periodic Franchise Fee payments shall not be construed as a release of or an accord or satisfaction of any claim that City might have for further or additional sums payable under the terms of the Agreement.

e. City understands that, on Grantee's bills to its Subscribers, Grantee separately will identify and subsequently pass through the Franchise Fee, any PEG Fee authorized by this Agreement and other government-imposed taxes, fees, or surcharges payable and collected from Subscribers in connection with the provision of Cable Services.

**11. Equitable Modification.**

If any entity other than Grantee is authorized by the City to provide Cable Service or video services of the type provided by Grantee (without regard to the technology used to deliver such services) using facilities located wholly or partly in its Streets (a "Grantee Competitor(s)"), which Competitors specifically include, but are not limited to AT&T Corporation or its affiliates), and if Grantee alleges that the material obligations applicable to Grantee in this

Franchise are more burdensome or less favorable than those imposed on any such Grantee Competitor, then Grantee may request that the Grantor modify this Franchise as reasonably necessary to ensure that the alleged inequity applicable to Grantee is rectified, and Grantor shall not unreasonably deny such a request. In the event Grantor denies the request by Grantee to so correct an alleged inequity and the parties are unable to resolve that dispute, Grantee may, at its option, (i) request that the Grantor agree to mediate that dispute before a mutually agreeable mediator; (ii) deem this Franchise expired thirty-six (36) months from the date of the above written notice; or (iii) terminate this Franchise and replace it with the franchise arrangement offered by the City to the Grantee Competitor that allegedly benefits from the claimed inequity.

**12. Confidentiality.**

During the term of this Agreement, either Party may provide the other books, records, documents and information that the disclosing Party considers and designates as confidential ("Confidential Information"). The Parties agree to take reasonable measures to prevent disclosure to third parties of any Confidential Information that the other so designates.

Notwithstanding the above provision or any other herein, Grantee acknowledges that the City is a governmental entity that is obligated to comply with the public record laws of the State of Alabama, and that it may be required hereunder to disclose to third parties certain information that Grantee may designate as Confidential. Accordingly, the City does not represent that it can or will undertake or protect from disclosure to third parties any Confidential Information supplied by Grantee in connection with this Agreement; provided that, if the City receives a request from a third party to disclose information received from Grantee that it has designated as Confidential Information, the City, before disclosing that information to the third party, will notify the party requesting disclosure of Grantee's desire to protect the confidentiality of such information and promptly notify Grantee so that it, at its own expense, will be afforded an opportunity to oppose the disclosure in court. If Grantee does not so oppose disclosure, the City will comply with the request of the third party and release the requested information to it.

**13. Designated Representatives/Notices.**

The Parties appoint their respective representatives below to coordinate with the other on all matters pertinent to the administration of this Agreement (the "Designated Representative").

Designated Representative for City:

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

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**Designated Representative for Spectrum Southeast, LLC**

Director, Government Affairs  
Charter Communications  
151 London Parkway  
Birmingham, AL 35211

Each Designated Representative also shall have the authority to act on behalf of its respective organization to transmit instructions and receive information. Either Party may substitute a Designated Representative other than the person named above upon provision of written notice.

Any notice required hereunder to be sent in writing to the other Party shall be sufficiently given when sent to the Designated Representative for the intended recipient (i) via United States certified mail, return receipt requested, (ii) via overnight courier with receipt verification to the address set forth herein, or (iii) by personally delivering such notice to the recipient's Designated Representative. Additionally, copies of any notices to Grantee shall be sent to:

Charter Communications  
Attention: Vice President, Local Gov. Affairs & Franchising  
601 Massachusetts Ave. NW, Suite 400W  
Washington, DC 20001

**14. Force Majeure.**

If a Party is unable to perform its obligations hereunder due to the occurrence of an event(s), conditions or circumstances that are beyond that Party's reasonable control (a "Force Majeure Event"), the non-performing Party shall not be deemed in default to the other, nor suffer any penalty related thereto, during the period that the Force Majeure Event causes the noncompliance. A Force Majeure Event includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, and work delays caused by failure of other utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System may be attached.

**15. Dispute Resolution.**

Including any competitive disadvantage claim that is discussed above in Section 11, the Designated Representatives of the Parties will use their good faith efforts to resolve any other type of dispute or claim between them arising from the performance or failure to perform their respective obligations under this Agreement (a "Dispute"). If the Designated Representatives are unable to amicably resolve a Dispute, it will be escalated to the official or senior level of each Party for consideration. If a Dispute cannot be resolved at the official or senior level, either Party may request that the Dispute be mediated; if the Parties agree to mediate, each will bear its own costs of mediation, including attorneys' fees. However, if the parties are unable to amicably resolve any Dispute, either party may commence litigation in a court that is located in or has venue for Jefferson County, Alabama. If (i) either Party should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) one Party secures a final judgment

before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the other Party, the losing Party will pay the prevailing Party its reasonable attorneys' fees and other reasonable expenses that are incurred in that action; provided that the maximum amount of such attorneys' fees and expenses that the prevailing Party may recover from the losing Party shall not exceed Twenty Thousand Dollars (\$20,000).

**16. Miscellaneous.**

a. **Amendment.** Except as provided in the provision immediately below, this Agreement may be amended or modified only by a written instrument executed by duly authorized representatives of both Parties.

b. **Obligations Under Existing Agreement Not Discharged.** Nothing in this Agreement shall discharge or release Grantee from its obligations to pay Franchise Fees or otherwise perform its obligations to the City that relate to or arise out of events that occurred (or failed to occur) before the termination of the Existing Agreements.

c. **Entire Agreement.** This Agreement constitutes the entire agreement between the City and Grantee with respect to the matters contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between the City and Grantee, whether oral or written, regarding the subject matter hereof.

d. **No Waiver.** The failure on the part of either Party to enforce any of the terms, conditions or provisions of this Agreement shall not be construed as a waiver of the right to subsequently compel enforcement of that or any other term, condition or provision herein. The respective rights, benefits and obligations under this Agreement may be waived only in a writing signed by the Parties.

e. **Binding Effect.** This Agreement shall be binding upon and for the benefit of each of the Parties and their respective principals, managers, officials, offices, directors, shareholders, agents, employees, attorneys, successors and authorized assigns.

f. **Counterpart Execution.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

g. **Choice of Law.** This Agreement shall be construed and interpreted according to the laws of the State of Alabama.

h. **Assignment.** This Agreement and the Franchise granted hereunder may not be assigned by Grantee unless (i) it obtains the written consent of City, which consent may be withheld for any reason, or (ii) such assignment is authorized by law.

i. **Independent Contractors.** The City and Grantee are independent contractors. Grantee exclusively controls the methods and means by which it conducts its cable service operations

within the City. Further, neither this Agreement nor any provision herein is intended make either Party the agent, fiduciary or partner of the other, or grant either Party any authority to bind the other to any obligation with a third party.

j. Other Representations. Grantee and the City represent that each has secured all necessary board, corporate or other approval required to enter this Agreement, and that its undersigned representatives are authorized to execute it on behalf of their respective organization.

k. Headings. The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

l. Cooperation. Grantee and the City shall cooperate fully with one another to execute any and all other documents and take whatever any additional actions (including, without limitation, the processing of permits) that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

m. No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a Party to this Agreement.

(Signature Page Follows)

Considered and approved this 10 day of Dec., 2018

City of Mountain Brook, Alabama  
Signature: Stewart Welch III  
Name/Title: Mayor

Accepted this \_\_\_ day of \_\_\_, 201\_\_\_, subject to applicable federal, state and local law.

Spectrum Southeast LLC  
By: \_\_\_\_\_, its Manager  
Signature: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

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AGREEMENT

THIS AGREEMENT ("Agreement") dated December 15, 2011 ("Effective Date") is made by and between BellSouth Telecommunications, Inc., d/b/a AT&T Alabama ("AT&T Alabama"), a Georgia corporation, and the City of Mountain Brook, Alabama, a municipal corporation ("City"). AT&T Alabama and City shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, AT&T Alabama is in the process of modifying its existing telecommunications network to provide an integrated Internet Protocol ("IP") enabled broadband platform of voice, data, and video services ("IP Network"), the video component of which is a switched, two-way, point-to-point and interactive service ("IP enabled Video Service"). The IP Network upgrade will involve the use of the public right-of-way in the City ("ROW").

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, City and AT&T Alabama agree as follows:

1. **Definition of Gross Revenues.** For purposes of this Agreement, "Gross Revenues" means all revenues, as determined in accordance with generally accepted accounting principles, actually received by AT&T Alabama from subscribers within the Service Area for IP Video Services purchased by such subscribers, but shall not include revenues from any source that are not properly includable for purposes of determining such fee under any provision of applicable federal or state law or by common custom and generally accepted industry practice. "Gross Revenues" include, but are not limited to, amounts billed to and collected from AT&T Alabama IP Video Services product subscribers for the following:

- (a) recurring charges for IP Video Services;
- (b) event-based charges for IP Video Services, including pay-per-view and video-on-demand charges;
- (c) rental of set top boxes and other IP Video Services equipment;
- (d) service charges related to the provision of IP Video Services, activation, installation, and repair; and
- (e) administrative charges related to the provision of IP Video Services, including service order and service termination charges.

For purposes of this Agreement, Gross Revenues do not include:

- (i) uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected fees, less expenses of collection, shall be included in Gross Revenues in the period collected;
- (ii) insufficient funds (returned checks);

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- (iii) late payment fees;
- (iv) maintenance charges and wire-maintenance plans;
- (v) amounts billed to IP Video Services customers to recover taxes, fees, or surcharges imposed on IP Video Services subscribers in connection with the provision of IP Video Services, including the IP Video Services Provider fee authorized by this Agreement;
- (vi) discounts, refunds, and other price adjustments that reduce the amount of compensation received by AT&T Alabama;
- (vii) revenue from the sale of capital assets or surplus equipment; or
- (viii) charges, other than those described in subsection 1(a)-(e), that are aggregated or bundled with amounts billed to IP System subscribers including but not limited to any revenues received by AT&T Alabama or its affiliates for telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing.

2. **Emergency Message.** AT&T Alabama shall carry all federal, state, and local alerts provided over the "Federal Emergency Alert System" through AT&T Alabama's IP-enabled Video Services in the event of a public safety emergency, which at a minimum will include the concurrent rebroadcast of local broadcast channels.

3. **Term.** The term of this Agreement shall be from December 15, 2011 through December 31, 2016. The term may be extended upon mutual agreement of the Parties.

- A. The Parties agree to consult in the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of controlling jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appellable, and binding upon either City or AT&T Alabama, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either Party, within thirty (30) days of receipt of the finding, provides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the Parties mutually may agree. Where the effect of a finding is a modification, the Parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the Parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either Party to terminate the Agreement on the provision of thirty (30) days' written notice.
- B. In addition to the termination rights set forth in Section 3(A) above, AT&T Alabama shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days notice to the City, if (a) AT&T

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Alabama concludes in its reasonable business judgment that IP Video Service in the City is no longer technically, economically or financially consistent with AT&T Alabama's business objectives; (b) Title VI of the Communications Act of 1934, as amended obligations or any similar obligations are imposed on AT&T Alabama; or (c) it becomes clear that AT&T Alabama must offer or provide IP Video Service pursuant to a franchise (cable or otherwise) and/or franchise-like requirements or other local authorization.

4. **Obligations.**

During the term of this Agreement, City agrees:

- A. To subject the construction and installation of the IP Network to the same process and review as it subjects the installation and construction of AT&T Alabama's existing telecommunications infrastructure.
- B. Not to unreasonably block, restrict, or limit the construction and installation of the IP Network.
- C. To process any and all applicable permits for the installation, construction, maintenance, repair, removal and other activities associated with the IP Network in a timely and prompt manner.

5. **Maintenance of the System.**

- A. AT&T Alabama shall at all times employ ordinary care in the maintenance and operation of the IP Network so as not to endanger the life, health or property of any citizen of the City or the property of the City.
- B. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

6. **Customer Service.** AT&T Alabama shall comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c).

7. **PEG Channel.**

- A. AT&T shall, at City's request, provide capacity for the City's public, educational and governmental ("PEG") programming through AT&T's IP-enabled Video Service, including sufficient bandwidth capacity to carry PEG channels required by the City. The City may be required to support a change in or addition to current City equipment now in use for PEG programming to make it compatible with AT&T's IP-enabled video technology.

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B. Any operation of any PEG access channel by City shall be the responsibility of City, and AT&T Alabama's only obligation, if any, is the responsibility for the transmission of such channel. The City will be responsible to ensure that all transmissions, retransmissions, content, or programming that may be requested to be transmitted over a channel or facility by AT&T Alabama in the future, if any, are provided or submitted to AT&T Alabama, at the AT&T Alabama designated connection point, in a manner or form that is capable of being accepted and transmitted by AT&T Alabama, without requirement for additional alteration or change in the format or content by AT&T Alabama, over the network of AT&T Alabama, and which is compatible with the technology or protocol utilized by AT&T Alabama to deliver IP Video Service. City may use a provider of its choosing, including self-provisioning, to deliver PEG content to AT&T's designated connection point, provided that the bandwidth and streaming specifications are followed.

C. AT&T shall collect from its IP Video subscribers and pay to the City a PEG fee of twenty-five cents per subscriber per month for PEG and institutional network support. The City shall provide AT&T written notice forty-five (45) days in advance of the date on which it seeks to start collecting the fee. All fees remitted to the City may be used by the City as allowed by federal law; further, the PEG fee shall not be offset, deducted or chargeable as a credit against franchise fee payments required by section 10 of this Agreement. Payments made for PEG and institutional network support shall be collected and paid in the same manner as outlined in Section 10 of this Agreement. Except as provided above, any operation of any PEG access channel by City shall be the responsibility of City, and AT&T Alabama's only obligation, if any, is the responsibility for the transmission of such channel. The City will be responsible to ensure that all transmissions, retransmissions, content, or programming that may be requested to be transmitted over a channel or facility by AT&T Alabama in the future, if any, are provided or submitted to AT&T Alabama, at the AT&T Alabama's designated connection point in a manner or form that is capable of being accepted and transmitted by AT&T Alabama, without requirement for additional alteration or change in the format or content by AT&T Alabama, over the network of the AT&T Alabama, and which is compatible with the technology or protocol utilized by AT&T Alabama to deliver IP Video Services.

If technically and economically feasible, AT&T Alabama will, at its discretion, use reasonable efforts to interconnect with the incumbent cable provider to provide PEG programming.

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8. Indemnification and Insurance.

- A. AT&T Alabama hereby agrees to indemnify and hold the City, including its agents and employees, harmless from any claims or damages resulting from the actions of AT&T Alabama in constructing, operating or maintaining the IP Network. The City agrees to give AT&T Alabama written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this section.
- B. Notwithstanding the foregoing, AT&T Alabama shall maintain no responsibility or liability for any damages, liability or claims resulting from the negligence or willful misconduct of City, its officers, agents, employees, attorneys, consultants, or independent contractors or third parties or for any activity or function conducted by any person or entity other than AT&T Alabama in connection with PEO programming, or for other independent acts of City, its agents, employees, or assigns.
- C. AT&T Alabama shall maintain in full force and effect, at its own cost and expense, during the term of the Agreement, commercial general liability insurance in the amount of \$3,000,000 combined single limit for bodily injury and property damage and auto liability insurance in the amount of \$1,000,000 single limit of liability. The requirements set forth may be satisfied by a combination of primary insurance, excess/umbrella coverage, or self-insurance. The City shall be added as an additional insured, arising out of work performed by AT&T Alabama for IP video service, to the insurance coverage. Upon written request, the AT&T Alabama shall provide a Certificate of Insurance or Coverage showing evidence of the coverage required by this subsection. Should any of the policies described herein be cancelled before the expiration date thereof, the insurer affording coverage will endeavor to mail 30 days written notice to the certificate holder named herein, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer affording coverage, its agents, or representatives, or the issuer of this certificate.

9. Breach of Agreement and Dispute Resolution.

- A. Should either party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other party shall cure such breach within ninety (90) days.
- B. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated

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representatives of the Parties and use of a mediator when such discussions have failed.

10. Compensation to City.

- A. During the term of this Agreement, AT&T Alabama shall pay to City a fee equal to five percent (5%) of the Gross Revenues as defined above collected from each subscriber to AT&T Alabama's IP Video Services product delivered over the IP Network in the City's ROW. The fee ("IP Video Services Provider Fee") will be identified and passed through on any subscriber bill by AT&T Alabama, and all such fees collected will be forwarded to City quarterly and shall be due forty-five (45) days after the end of each quarter. AT&T Alabama agrees to submit to City an annual report or analysis specifying the separate sources of revenue that, in total, comprise the Gross Revenues and the amount of revenue allocable to each source for the preceding year no later than January 30 of the following year.
- B. AT&T Alabama shall provide one free installation and free monthly service to one outlet at each public school, municipal or government-owned building, fire station, police station, and library building that is within 125 feet of the IP Network.

11. Inspection. City shall have the right to inspect, upon reasonable notice, AT&T Alabama's books and records showing its gross revenues for any of the services provided herein from which the fee specified herein is computed. No acceptance of any such fee by City shall be construed as a release of or an accord or satisfaction of any claim City might have for further or additional sums payable under the terms of the Agreement.

12. Confidentiality. If AT&T Alabama provides any books and records to the City, the City agrees to treat as confidential such books, records, or maps that constitute proprietary or confidential information. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by state and federal law, it shall deny access to any of AT&T Alabama's books and records marked confidential to any person.

13. Notice. Any notice to be given under this Agreement shall be in writing and may be delivered either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to City:

City Manager  
City of Mountain Brook  
P.O. Box 130009  
Mountain Brook, Alabama 35213-0009

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If to AT&T Alabama:

AT&T Alabama  
General Counsel -Alabama  
Suite 28A2  
600 19th Street North  
Birmingham, Alabama 35203

14. Force Majeure. AT&T Alabama shall not be held in default under, or in noncompliance with the provisions of the Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of AT&T Alabama to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the IP Network is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

15. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

16. Entire Agreement. This Agreement constitutes the entire agreement between City and AT&T Alabama with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and AT&T Alabama regarding the subject matter hereof.

17. Assignment. AT&T Alabama may not assign or transfer this Agreement or any interest herein without the prior consent of City, which consent will not unreasonably be withheld or delayed. No consent shall be required, however, for (1) a transfer of an agreement or any interest therein to an Affiliate, (2) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of AT&T in this Agreement or the system in order to secure indebtedness, or (3) for a transaction that is approved by the Federal Communications Commission. Any request for consent to a transfer of this Agreement or change in control of AT&T shall be handled by the City in accordance with applicable federal and state law.

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and City of Mountain Brook, Alabama

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18. Miscellaneous.

A. AT&T Alabama and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

B. The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

C. AT&T Alabama and City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

D. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

19. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective successors and assigns. If any particular section of this Agreement shall be held invalid, the remaining provisions and their application shall not be affected thereby.

20. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

21. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

22. Non-discrimination. AT&T Alabama shall not deny access to its IP Video Services to any group of potential residential customers because of the income of the residents of the local area in which the group resides.

23. Applicable Law and Venue. This Agreement shall be construed and interpreted according to the laws of the United States and the State of Alabama, and shall be enforced in the Circuit Court of Jefferson County, Alabama, or in the United States District Court for the Northern District of Alabama.

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Agreement between AT&T Alabama  
and City of Mountain Brook, Alabama

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IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of this 12 day of Dec, 2011.

AT&T ALABAMA

By: [Signature]  
Thomas L. Hamby - Fred McCallum, Jr.  
Its: President-AT&T Alabama

State of Alabama )  
Jefferson County )

Sworn to and subscribed before me this 15 day of December, 2011.

[Signature]  
Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: May 19, 2013  
BOARD OF NOTARY PUBLIC REGISTRATION

CITY OF MOUNTAIN BROOK, ALABAMA

By: [Signature]  
Lawrence T. Oden  
Its: Mayor

State of Alabama )  
Jefferson County )

Sworn to and subscribed before me this 12 day of Dec., 2011.

[Signature]  
Notary Public

Commission expires  
April 12, 2013

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STATE OF ALABAMA )  
JEFFERSON COUNTY )

**FIRST AMENDMENT TO LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO LICENSE AGREEMENT ("Amendment") is made and entered into as of Nov. 1, 2018, by and between the BIRMINGHAM LEVITE JEWISH COMMUNITY CENTER, whose address is 3960 Montclair Road, Birmingham, Alabama 35213 ("Owner") and THE CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation organized under the laws of the State of Alabama ("Licensee").

WHEREAS, the Owner and Licensee entered into a License Agreement dated June 29, 2018 ("License Agreement") (attached hereto as Exhibit 1) whereby Owner granted a limited non-exclusive and non-transferrable license to use certain portions of its property (the "Licensed Space") for recreational and athletic use by participants in Licensee's youth athletic programs (the "Approved Purposes"); and

WHEREAS, under the License Agreement, the Licensed Space is designated as the outdoor recreational field more particularly depicted on Exhibit A to the License Agreement; and

WHEREAS, Licensee has requested to use Owner's Gymnasium in conjunction with its winter basketball program on Tuesdays and Thursdays from 4:45 p.m. to 8:45 p.m. and on Saturdays from 8:15 a.m. to 5:45 p.m. during the term from November 1, 2018 to February 16, 2019, and

WHEREAS, the parties have agreed to amend the License Agreement to include the Owner's Gymnasium as part of the Licensed Space, to provide for terms related to its use by the Licensee, and to include provisions relating to payment for its use.

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

1. *Licensed Space to Include Birmingham Levite Jewish Community Center.* The License Agreement shall be amended to include within the Licensed Space the Birmingham Levite Jewish Community Center Gymnasium and appurtenant areas necessary for its use as part of the Licensed Space.
2. *Term and Priority of Use.* Owner grants Licensee and its Sub Licensee, Mountain Brook Athletics, Inc., a limited, non-exclusive and non-transferable license to use the Birmingham Levite Jewish Community Center Gymnasium during the term from November 1, 2018 to February 16, 2019 on the following days and times:

<u>Day</u>	<u>Time</u>
Tuesday	4:45 p.m. to 8:45 p.m.
Thursdays	4:45 p.m. to 8:45 p.m.
Saturdays	8:15 a.m. to 5:45 p.m.

While such use is non-exclusive, Licensee shall have priority of use during such time periods and no use which unreasonably interferes with Licensee's use at the aforementioned times shall be permitted.

3. *Usage Fee.* Licensee agrees to pay a usage fee of \$5,000.00 for use of Owner's Gymnasium.
4. Except as is specifically amended hereby, the License Agreement shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the Birmingham Levite Jewish Community Center has caused this First Amendment to License Agreement to be executed by its duly authorized Executive Director and City of Mountain Brook has caused this Amendment to be executed by its duly authorized City Manager, all as of the day and year first written above.

BIRMINGHAM LEVITE JEWISH  
COMMUNITY CENTER

By: Richard Friedman  
Richard Friedman  
Executive Director

CITY OF MOUNTAIN BROOK, ALABAMA

By: Sam S. Gaston  
Sam S. Gaston  
City Manager

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CONTRACTOR AGREEMENT

G & A Electrical Services (hereinafter the "Contractor") enters this Contractor Agreement ("Agreement") with the City of Mountain Brook, Alabama, a municipal corporation ("City"), effective as of the date last executed by a party below (the "Effective Date"). Contractor and City may be individually referenced herein as "Party" or collectively as "Parties."

1. Project. Unless otherwise stated on the attached Exhibit A - Specifications (which is incorporated by reference), Contractor, at its expense, will furnish all the labor, materials, supplies, supervision, and equipment needed to perform the work, services and operations (collectively, the "Work") on the understated project (the "Project")

Name of Project: Install New Electrical Services for MBE Restroom  
B-20180626-429

Site of Project: Mountain Brook Elementary Field  
3041 Cahaba Road  
Mountain Brook, AL 35223

2. Scope of Work. See Exhibit A (which includes the City Scope of Work and December 5, 2018 Contractor Proposal) that is attached and incorporated herein.

3. Undertaking of Parties. Contractor agrees to perform the Work in accordance with the terms, conditions and specification in this Agreement and on Exhibit A. City agrees to compensate Contractor and perform its other responsibilities set forth in the Contract Documents.

4. Term/Termination. The term of this Agreement shall commence on the Effective Date and thereafter continue in effect up to four ( 4 ) months (the "Term"). The period in which Contractor will complete the Project is set forth on Exhibit A.

Notwithstanding the provision immediately above or any other language herein, City may terminate this Agreement before the expiration of its Term at the time designated in a written notice to Contractor if each of the following have occurred: (a) Contractor has defaulted on a material obligation to the City hereunder (a "Default"); and (b) following the City's provision of written notice of Default to Contractor, the Contractor fails to correct or remedy that Default within fifteen (15) days after receipt of that notice. The failure of the Contractor to timely perform the Work shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available to City under law or in equity.

5. Contract Price/Invoice/Certification. Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of Eight Thousand Eight Hundred Seventy Five Dollars (\$8,875.00) as compensation for performing the Work (the "Contract Price"). Unless

agreed in a writing or amendment to this Agreement that is signed by duly authorized representatives of both Parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price.

The City will pay the Contract Price on this Project as follows:

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

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

- (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;
- (b) that it, and all of its employees or any subcontractors (if authorized), will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;
- (c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;
- (d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;
- (e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;

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(f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of completion of the Project; and

(g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of Contractor is authorized to execute this Agreement.

7. Insurance/Safety/Indemnification.

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

(i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars (\$750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;

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

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

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

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

control of the Contractor or any of its representatives; and (iii) other property at the Work Site or adjacent thereto.

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

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

8. Project Representative. Each Party shall appoint and indicate on Exhibit A its representative who shall coordinate with the other Party on all matters related to the performance of the Work and the administration of this Agreement (the "Project Representative"). Any notice required hereunder shall be sufficiently given when sent to the appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

9. Miscellaneous Provisions.

a. This Agreement which is comprised of this instrument, the City Scope of Work and the December 5, 2018 Contractor Proposal (collectively, the "Contract Documents") sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein.

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

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

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

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

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

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

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

j. Delayed Performance/Force Majeure Events. Neither Party shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under this Agreement during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed Party must promptly provide the other with written notice of the

Force Majeure Event, the delayed Party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other Party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed Party.

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

(Signature Page Follows)

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

CITY OF MOUNTAIN BROOK, ALABAMA

By: 

Its: Mayor

Date: 12/10/2018

G & A Electrical Services

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

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

Date: \_\_\_\_\_

EXHIBIT A - SPECIFICATIONS

1. Scope of Work

See attached City Scope of Work and December 5, 2018 Contractor Proposal

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

2. Project Schedule. Weather permitting, Contractor expects to complete the Work within an approximate 6 week period after execution of the Agreement and the City provides it a Notice to Proceed.

3. Project Representatives.

City Project Representative:  
Shanda Williams  
3698 Bethune Drive  
Birmingham, AL 35223  
Email: williamssh@mtnbrook.org  
Day Tel #: 205-802-3879

Contractor Project Representative:  
Dennis Griffin  
PO Box 171  
Trussville, AL 35173  
Email: gaelectrical171@gmail.com  
Day Tel #: 205-902-7866

4. Special Conditions.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

G&A Electrical Services  
 P.O. Box 171, Trussville, AL 35173  
 (205) 902-7866

**Job Invoice**

**Electrical Quote for a Pre-fabricated Restroom  
 At the field by Mountain Brook Elementary**

DATE ORDERED: 12-5-18  
 ORDER TAKEN BY: Dennis Giffin  
 PHONE NO: 18-12501-0  
 SOLD TO: City of Mountain Brook  
 JOB LOCATION:  
 JOB PHONE:  
 STARTING DATE:  
 TERMS:

QTY	MATERIAL	UNIT	AMOUNT	DESCRIPTION OF WORK
①	Install 200 amp, 240 volt service to new pre-fab restroom. Alabama Power will set new pole and we will install new pole for service panel and install underground service to restroom.			Electrical quote to install power to new pre-fabricated restroom at the athletic field by MBE school.
②	Price includes all materials, labor, and licenses needed to complete the job.			
③	All work will be performed to code and will be provided with a 1-year warranty from date of completion.			
TOTAL MATERIALS				
TOTAL LABOR				

**MISCELLANEOUS CHARGES**

Total Parts + labor	8875.00
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**TOTAL MISCELLANEOUS**

LABOR	HRS.	RATE	AMOUNT

WORK ORDERED: \_\_\_\_\_  
 DATE ORDERED: \_\_\_\_\_  
 DATE COMPLETED: \_\_\_\_\_  
 CUSTOMER APPROVAL SIGNATURE: \_\_\_\_\_  
 AUTHORIZED SIGNATURE: *Dennis Giffin*  
 A-0817-0411 / T-0006

TOTAL LABOR	
TOTAL MATERIALS	
TOTAL MISCELLANEOUS	
SUBTOTAL	
TAX	
GRAND TOTAL	8875.00

The City of Mountain Brook requested quotes to run a new 200 amp electrical line to a pre-fabricated restroom that is to be placed by the athletic field by Mountain Brook Elementary.

A new service will need to be installed from a new pole set by Alabama Power near the portalets. The electrician will need to set a 30 foot wooden service pole and connect a new meter socket. Power will need to run underground from the meter to the restroom location.

A site map and detailed drawings of the pre-fabricated restroom is included. The electrical details are on or about page 20. The provided plans are a generic set for the type of building we are purchasing. A final set of plans will be provided so actual stub up locations can be determined.

The restroom will be placed on a 4.5-5 foot mound that is yet to be built. The grading, plumbing, and electrical work will be contracted separately and coordinated with the City.

The company will need to be present when the building is delivered to make any needed adjustments and final connections.

All work must be in compliance with current city and state codes.

The chosen company will be required to purchase a Mountain Brook Business License if one is not currently held.

A work permit will need to be pulled, but no fees will be charged since it is a City project.

**Project Details**

Install new pole, meter, and service for 200 amp power to be supplied underground to the restroom according to the provided specifications.

**City Contacts:**

Shanda Williams  
 Mountain Brook Parks and Recreation  
 205-802-3879  
[williamssh@mtnbrook.org](mailto:williamssh@mtnbrook.org)

Glen Merchant  
 Mountain Brook Inspections  
 205-802-3812  
[merchant@mtnbrook.org](mailto:merchant@mtnbrook.org)

MBE Athletic Field Restroom B-20180626-429

2018-174

**EXTENSION OF LEASE AGREEMENT**

This is an Extension of the Lease Agreement ("Extension") originally executed by and between the CITY OF MOUNTAIN BROOK, ALABAMA (the "City") and the MERKOS L'INYONIE CHINUCH OF ALABAMA ("Chaba'd of Alabama" or "Chaba'd") granting, under the terms of the original lease ("Lease"), the City the right to use Chaba'd's parking lot on Overton Road. The Lease was originally executed by the parties on August 11, 2003 and was renewed as provided for in the Lease. The current term is scheduled to terminate on December 31, 2018. By and through this Extension, the parties agree to extend the terms and conditions of the Lease for an additional period of three successive terms of one year each, to commence on January 1, 2019.

This Extension is granted on the condition that the parties shall comply with all terms and conditions of the original Lease, which remain in full force and effect, and are not modified, altered, or amended in any manner by this Extension except for the term.

This Extension, in conjunction with the original Lease and all amendments thereto, sets forth the entire agreement between the parties. The Lease, as extended and supplemented, shall not be altered or modified except by a written memorandum signed by the parties.

DATED this \_\_\_\_ day of December, 2018.

**CHABA'D OF ALABAMA**

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

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

**THE CITY OF MOUNTAIN BROOK**

By: Sam Weston

Its: City Manager

APPENDIX 9

**EXHIBIT A**

2018-175

DRAFT - AGREEMENT FOR SERVICES

This Agreement for Services (the "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and between the Regional Planning Commission of Greater Birmingham, a regional planning and development commission organized and existing under the laws of the State of Alabama ("RPCGB"), and the City of Mountain Brook, Alabama, a municipal corporation (the "Governmental Entity" or "City").

WITNESSETH:

WHEREAS, the Governmental Entity has applied to receive funding under the Advanced Planning Program and Logical Engineering (APPLE) program for a "Overton Road Traffic Study" (the "Project");

WHEREAS, the Project has been selected for funding under the APPLE program;

WHEREAS, the APPLE grant for the Project will fund 80% (or \$48,000) of the total Project cost of \$60,000, and the Governmental Entity will provide a local match in the amount of \$12,000 (or 20%) of the total Project cost;

WHEREAS, pursuant to the terms of this Agreement, RPCGB is being engaged by the City to perform the services contemplated for the Project; and

WHEREAS, the parties agree to work in good faith to complete the Project in a timely and professional manner.

NOW THEREFORE, in consideration of the premises and the mutual covenants, agreements, representations and warranties hereinafter set forth, the RPCGB and the Governmental Entity agree as follows:

1. **Engagement of RPCGB.** The Governmental Entity hereby agrees to engage RPCGB to perform the Project and services which are identified and described in the "Scope of Work" set forth on Exhibit A, which is attached hereto and incorporated herein by reference. RPCGB, from time to time, may request changes in the Scope of services to be performed. Such changes shall be memorialized by written amendments to this Agreement that is signed by both parties; these changes may include an increase or decrease in the amount of Governmental Entity's local match.

The Governmental Entity authorizes RPCGB to engage a third party consultant(s) that has been approved by the City to assist in performing the Scope of Work. The RPCGB is responsible for supervising, managing and paying any third party consultant for any services it performs so that the Project may be completed in the orderly flow of the work.

2. **Compensation.** The parties agree that the total Project cost is \$60,000 (including the local match), and that the RPCGB will receive that total amount in consideration for its performance of the services contemplated herein. The payment of this amount shall constitute full and complete compensation for the services to be provided by RPCGB directly, by its consultants or otherwise secured by RPCGB for the Project, and includes all expenses arising from the performance of this Agreement.

the RPCGB and Governmental Entity agree that their agents, servants, officers, officials, and employees, in both their official and individual capacities, shall not discuss, disclose, use, publish, or release the data provided pursuant to the above referenced request without prior written consent of ALDOT. Furthermore, if the data should be released or published without the consent of ALDOT, or should an attempt be made to use the data in an action for damages against the State of Alabama, ALDOT, its officials or employees' access to data shall terminate immediately. The State of Alabama and ALDOT expressly reserve the right under 23 U.S.C. § 409 to object to the use of the data, any opinions drawn from the data, and to recover damages caused by the improper and unauthorized release of the data.

9. **Ownership of Data.** The Governmental Entity shall retain title to and all ownership rights of all data and content provided by it to RPCGB for the Project, including but not limited to geographic information systems, databases, maps, multimedia or images (graphics, audio and video), text and the like provided by the Governmental Entity. The City grants RPCGB the right to access and use this content for the purpose of complying with its obligations under this Agreement.

10. **Ownership of Work Product.** Upon completion of the work or elements thereof that are described in the attached Scope of Work, all reports, data, artwork, maps, stencils, negatives, plates and other supporting materials prepared by RPCGB as a part of such work shall become the exclusive property of Governmental Entity, and any reproduction or other uses of such materials shall be approved by appropriate officials of the Governmental Entity.

11. **Substantial Changes by City in Final Work Product.** If the City makes any substantial changes to the final work product after the Governmental Entity has taken delivery and accepted that product, those changes shall not be attributed by the City to the RPCGB. Substantial changes are defined as changes to plan content, policy and physical development recommendations, regulations, codes, and ordinances that diminish the intent and ability of the plan document to achieve its stated goals as agreed to and accepted by the Governmental Entity.

12. **Assignment/No Third Party Beneficiaries.** Neither party may assign this Agreement, or any of its rights, benefits or obligations herein, without the prior written consent of the other party. Further, this Agreement does not confer, and is not intended to create, any rights or benefits for any third party that is not a signatory to this Agreement.

13. **Equal Employment Opportunity.** In performing the work, RPCGB and its third party consultant(s) shall not discriminate against any employee or applicant for employment because of race, religion, national origin, sex, age or disability.

14. **Termination.** If RPCGB fails to perform any of its material obligations under this Agreement in a timely and proper manner, or if RPCGB shall violate any of the covenants, agreements, or stipulations of this Agreement, the Governmental Entity may give written notice of that breach to RPCGB. In the event RPCGB fails to cure such breach to the reasonable satisfaction of Governmental Entity within thirty (30) days following RPCGB's receipt of such written notice, Governmental Entity may terminate this Agreement upon written notice to RPCGB. In the event of such termination, the Governmental Entity shall be entitled to a refund from RPCGB of any compensation paid by the City that is not earned by RPCGB for services that it did not perform by the effective date of termination.

15. **Relationship of the Parties.** The RPCGB is an independent contractor of the City, and nothing contained in this Agreement shall be deemed to create any agency, joint venture, partnership or employer/employee relationship between them. Neither party shall

3. **Payment by City.** The City shall make payment to RPCGB for services in one (1) lump sum installment of \$12,000 (the local match) within thirty (30) days after the receipt of invoice from the RPCGB. If this compensation is not paid when due, RPCGB shall not engage in the provision of the contemplated services nor shall RPCGB employ third party consultant(s) for the Project until such time as payment is made. If after a period of sixty (60) days from the date of invoice the compensation is not paid, the Governmental Entity acknowledges that it may forfeit all claims to the awarded amount for the Apple grant for the Project.

Upon the successful completion of the Project and the generation of the contemplated grant funds, the City agrees to execute appropriate documents and otherwise cooperate with the RPCGB so it can receive those funds in consideration for the balance of the total Project costs payable to it for its services.

4. **Time of Performance.** The RPCGB shall commence its performance of services immediately after the receipt of payment by the Governmental Entity, and the RPCGB shall complete Project in accordance with the schedule set forth in Exhibit A.

5. **Financial Records.** RPCGB shall keep and maintain complete and accurate books, records, and procedures to account for all funds paid by the Governmental Entity in accordance with this Agreement. RPCGB shall allow the Governmental Entity to examine, copy, and audit all such books, records and procedures upon advance notice and during RPCGB's normal business hours. Any such examination or audit shall be conducted at the sole cost and expense of the requesting party.

RPCGB shall retain all records with respect to the matters made the subject of this Agreement for three (3) years following the termination or completion of this Agreement. The obligations in this provision shall survive the termination of this Agreement.

6. **Political Activity.** No portion of any funds to be paid by the Governmental Entity to RPCGB for the services contemplated herein shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

7. **Qualified Personnel.** RPCGB represents that it employs or will engage all personnel required to perform the services made the subject to this Agreement. Any such personnel shall not be employees of or have any contractual relationships with the Governmental Entity relative to the Project, and all such personnel shall be reasonably qualified to perform the services assigned to them.

8. **Cooperation.** All information, data, reports, records and maps as are available, existing and necessary for performing the contemplated work shall be assembled for the Governmental Entity by RPCGB or the third party consultant(s) employed by it. The Governmental Entity agrees to cooperate with RPCGB and the third party consultant(s) employed by RPCGB in all reasonable ways to allow them to conduct their planning and development work without undue delay.

The RPCGB and Governmental Entity will ensure that all accident and traffic data provided by ALDOT or any agency or political subdivision of the State of Alabama and used for safety enhancement are kept confidential under 23 U.S.C. § 409 and not disclosed to third parties without the express written permission of ALDOT. The data shall not be referenced, disclosed, discussed, or otherwise made public. The provision of this data shall not be considered as a waiver of the provision of 23 U.S.C. § 409. Upon execution of this Agreement,

-2-

have the right or power to commit, contract for or otherwise obligate the other party to any third person or entity. RPCGB shall be responsible for the collection, filing, and payment of social security and other federal, state or local taxes or withholdings for RPCGB's employees. Governmental Entity shall have no right to control or direct the details, manner or means by which RPCGB accomplishes the results of the services to be performed pursuant to this Agreement.

16. **Notices.** Any notice to a party hereunder that is contemplated in this Agreement shall be in writing and deemed given when it is either (a) personally delivered, or (b) sent by certified or registered mail, return receipt requested, to

If to RPCGB:  
Regional Planning Commission of Greater Birmingham  
Center for Regional Planning and Design  
Two 20th Street North, Suite 1200  
Birmingham, Alabama 35203  
Attention: Michael Kaczorowski

If to Governmental Entity:  
City of Mountain Brook  
56 Church Street  
Mountain Brook, AL 35213  
Attention: Sam Gaston - City Manager

or at such other address as either party may advise the other in writing. Any such notice shall be deemed delivered when placed in the mail, properly addressed, with postage prepaid.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters herein, and there are no agreements, understandings, restrictions, warranties or representations between the parties other than those set forth herein. The foregoing supersedes all prior agreements, negotiations and understandings relating to the subject matter hereof.

IN WITNESS WHEREOF the undersigned, duly authorized representatives of the parties have executed this Agreement effective as of the date and year first above written.

City of Mountain Brook, Alabama

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

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

Regional Planning Commission of Greater Birmingham

By: Charles E. Ball

Its: Executive Director

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APPENDIX 10

Exhibit A – Scope of Work

Mountain Brook/Vestavia Hills – Overton Road Traffic Study  
Feasibility Study: APPLE

**Project Summary**

The Overton Road Traffic Study will conduct traffic and safety operational evaluations of selected intersections throughout the Overton Road corridor between US-280 and Liberty Parkway. Vestavia Hills is expecting significant residential and commercial growth in Liberty Park. This growth will add to the existing congestion along the Overton Road corridor. The study will perform the analyses necessary to identify both near-term and long-term improvements to correct current and future deficiencies in intersection capacity and safety. The study will develop conceptual drawings that illustrate recommended improvements and develop an estimate of probable construction costs.



**PROJECT TASKS**

The project tasks and subtasks required to address the scope of work shall include the following:

**Task 1: Existing Conditions**

- A. Solicit input/comments from City officials to determine the locations to be studied
- B. Finalize a list of potential locations to be studied with the City
- C. Develop base maps using GIS data and aerial photography.
- D. Collect appropriate traffic data as necessary to analyze traffic operations.
- E. Conduct field reviews and observe existing traffic conditions.
- F. Review and analyze crash data.

Exhibit A – Scope of Work

**Task 2: Concept Plan Development and Evaluation**

- A. Collect appropriate data on future developments from both Cities.
- B. Forecast future traffic volumes on the corridor.
- C. Identify and analyze potential improvements.
- D. Prepare conceptual drawings illustrating potential improvements.
- E. Prepare a preliminary estimate of planning level costs.
- F. Prepare for and attend two meetings (potentially one with each City) to present findings.
- G. Revise plans to incorporate comments that may be received.
- H. Prepare a draft Advanced Planning Report document.
- I. Submit the draft document for review.
- J. Revise the Advanced Planning Report document based on comments that may be received.
- K. Submit the final Advanced Planning Report document.

**Project Schedule**

It is intended that the study will progress according to the schedule as shown in the figure below.

Task	Months					
	1	2	3	4	5	6
1. Existing Conditions						
2. Concept Plan Development and Evaluation						

**Exclusions from Scope of Work**

The following services are not included in the scope of services: construction drawings, road or utility engineering designs, and any other services not specifically listed in the project scope. Any Government Entity directed changes to the final plan after the Government Entity's approval of the draft revisions shall be reimbursed in accordance with allocated billing rates in effect at the time the services are performed.

**Crash Data Restrictions**

The Alabama Department of Transportation has directed that accident, incident, crash, injury, or fatality locations not be shown or presented in association with descriptions of transportation projects, facilities, or locations within the State of Alabama. This prohibition extends to all formal planning documents (UPWP, Long Range Plan, TIP, Bicycle and Pedestrian Plans, Congestion Management Process or Plan), and other documents that include narrative or tabular project listings or descriptions. [See Article 8 of the Agreement.]

MOTION NO. 2018-176

Council member Shelton made a motion that the City Council authorize the City's participation of up to \$49,000 with respect to the bank stabilization and related improvements of Jemison Park in the vicinity of the new pedestrian bridge said improvements to be administered and performed by the Friends of Jemison Park with said agreement related thereto to be considered at a future meeting of the City Council. The motion was seconded by Council member Womack.

There being no further discussion or comments or questions from the audience, Council President Smith called for a vote with the following results:

Ayes: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said motion (No. 2018-176) is adopted by a vote of 4-0.

ADOPTED: This 10th day of December, 2018.

*Virginia C. Smith*  
Council President

APPROVED: This 10th day of December, 2018

*Stewart White*  
Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct synopsis of a motion approved by the City Council of the City of Mountain Brook at its regular meeting held on December 10, 2018, as same appears in the minutes of record of said meeting.

*Steven Boone*  
City Clerk

Motion - Participation in Jemison Park Improvements

2018-176

Sam Gaston

From: Simson Johnson  
Sent: Thursday, December 06, 2018 8:47 PM  
To: Sam Gaston; Janet Forbes; boones@mtbrook.org  
Cc: Virginia Caruthers Smith; Nim Long; John Wilson; Shanda Williams; Billy Pritchard; Stewart Welch; Whit Colvin  
Subject: FJP Shades Creek pedestrian bridge landscaping request  
Attachments: FJP\_BID SET\_110918.pdf

Sam,

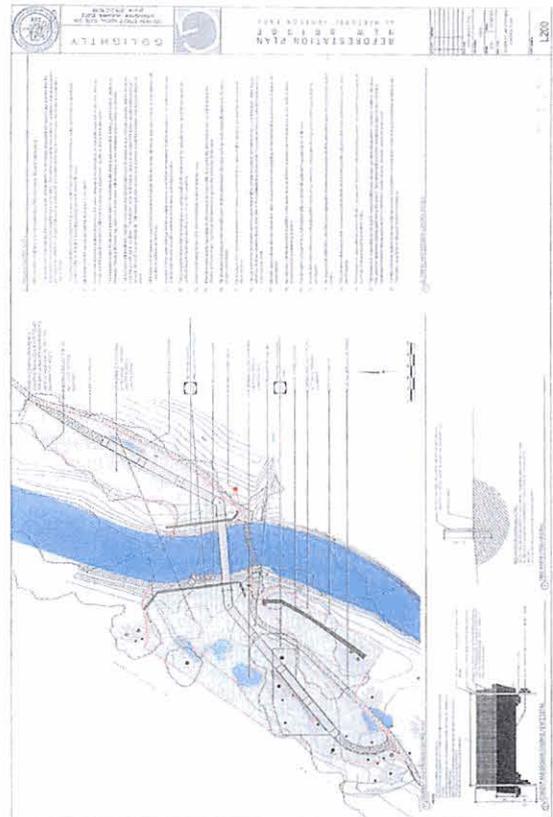
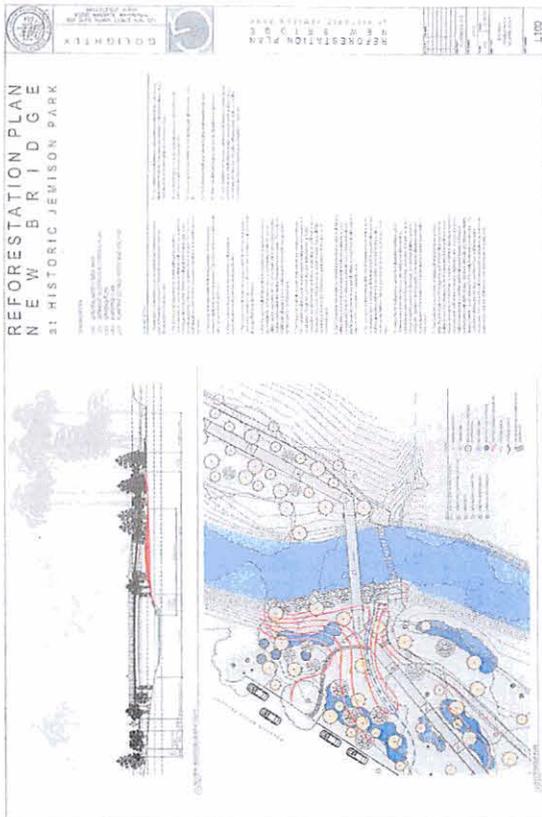
The Friends of Jemison Park are pleased to inform you and the city council that we have raised \$36,000 towards reforesting the Shades Creek pedestrian bridge site. Dick Shea and his crew did an exceptional job constructing the bridge and I have heard nothing but positive comments since its completion about how well the bridge itself turned out. The FJP now seeks to landscape the site so that the bridge may begin to visually settle into the natural preserve that is Jemison Park.

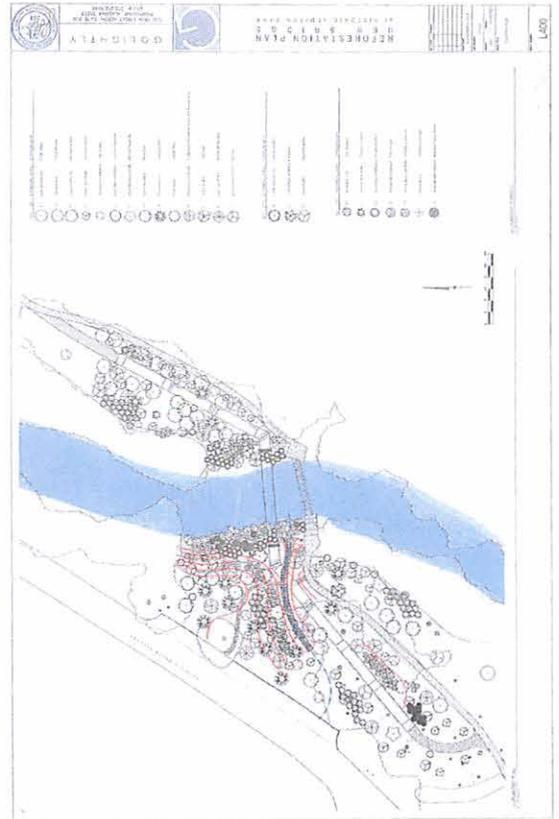
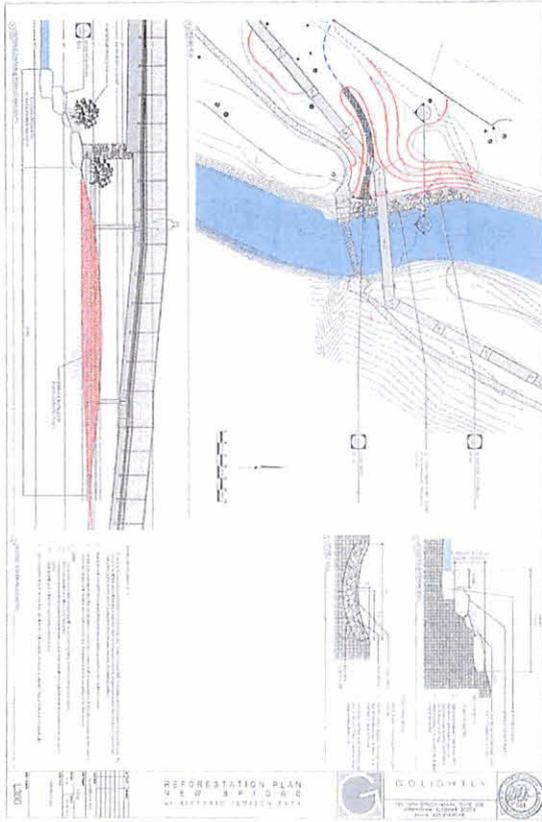
Please find attached the master plan for the bridge site which John Wilson of Golightly Landscape Architecture designed for the FJP. Some of the master plan can be added in phases, like much of the shrub and understory layer. However, much of the work must be done now to not only begin to reforest the site, but also to address streambank erosion and drainage. John has been discussing the plans with contractors to see what the cost will be for all of the dirt work, streambank stabilization, irrigation, and tree plantings that must be done now and the expected cost is \$85,000. The FJP requests that the City of Mountain Brook contribute \$49,000 to the Friends of Jemison Park so that the FJP may as soon as possible contract to have this essential work performed.

Thank you and the city council for your consideration of the FJP's request. I look forward to answering any questions you and the city council have at Monday's Pre-Meeting.

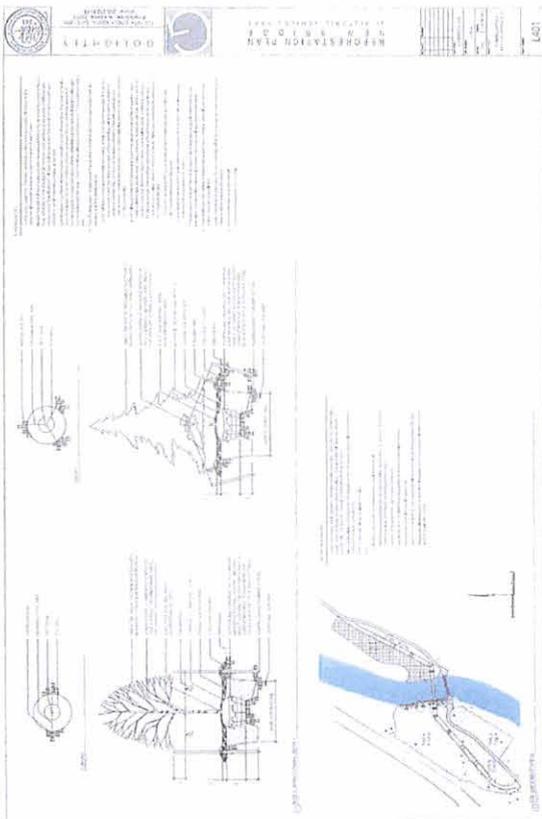
Sincerely,  
Sim S.W. Johnson  
President, Friends of Jemison Park

APPENDIX 11





APPENDIX 11





STATE OF ALABAMA ) (For Use if Licensee is Individual)  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Stewart H. Welch III, Mayor whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed same voluntarily.

Given under my hand and official seal this 10th day of Dec, 2018

Stewart Welch III  
NOTARY PUBLIC  
My Commission expires: 4/13/2021

STATE OF ALABAMA ) (For Use if Licensee is Individual)  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that \_\_\_\_\_ whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed same voluntarily.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_

STATE OF ALABAMA ) (For Use if Licensee is Entity)  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Tony Strickland whose name as owner of TJL LLC is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she as such officer and with full authority, executed same voluntarily for and as the act of said entity.

Given under my hand and official seal this 5th day of Nov, 2018

Blake Haynes  
NOTARY PUBLIC  
My Commission expires: 3-3-20



Aug 2014

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EXHIBIT A - DEPICTION OF ENCROACHMENT AREA

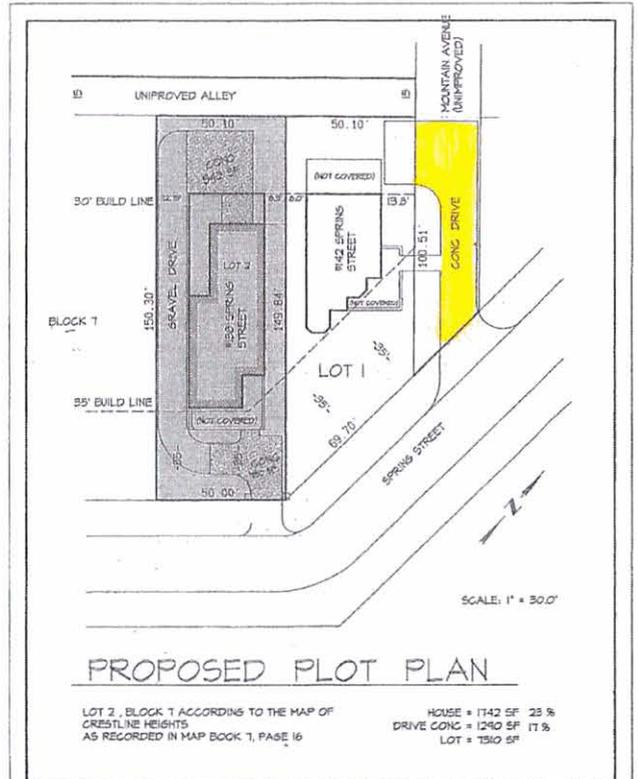
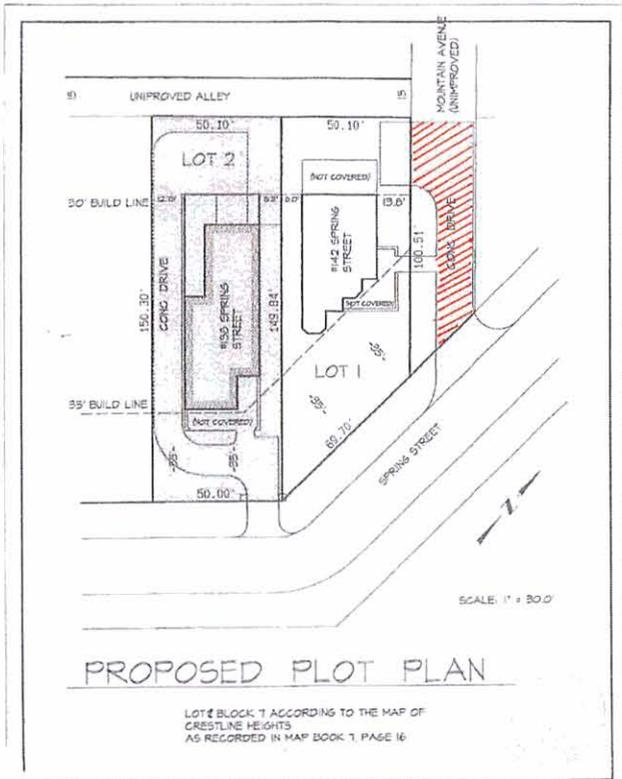
See attached.



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APPENDIX 12

192 Spring St



2018-179

The Michael Lane property is owned by Michael Staff, for whom the street is named. His father, Meyer Staff, was a founding developer of Mountain Brook and developed much of the area, retaining the subject property for his residence. There is no resident more familiar with the intended character and residential development standards than Mike Staff.

Issues for the moratorium/ possible regulation changes depend on the finalization/ consideration of the Study commissioned by the Council. The study is limited to Landmark Streets. Michael Lane is not a Landmark Street, is not being studied, and any finding by the Study will not be relevant to Michael Lane. It is misguided and unfair for the City to restrict development of properties which are not relevant to the Study.

2018-179



401 Michael Ln

Michael Lane is exempted from the moratorium, or the moratorium is terminated.

Specific to this situation, the Michael Lane property is located on the corner of Michael Lane, a dead-end street, and Mountain Park Drive, in a location far from any landmark or gateway street. Mike Staff, owner of the Michael Lane property, made financial arrangements, and invested a great deal of time and resources in reliance on the City's promise that the Michael Lane lots could be marketed, sold, and developed as is. It is an extreme hardship that simply due to bad luck and the timing of the moratorium, that the Michael Lane lots are being prevented from development consistent with the current planning and zoning laws.

APPENDIX 13

MOTION NO. 2018-179

Council President Pro Tempore Brinkman made a motion that the City Council grant an exception to the development moratorium imposed upon the adoption of Resolution No. 2018-159 and establish upon the adoption of Resolution No. 2018-180 with respect to the hardship aspect of Michael Staff owner of 401 Michael Lane. The motion was seconded by Council President Smith.

There being no further discussion or comments in opposition from the audience, Council President Smith called for a vote with the following result:

Ayes: Virginia C. Smith, Council President  
William S. Dinkard III, Council President Pro Tempore  
Lloyd G. Gresham  
Steve W. Womack

Nays: None

Council President Smith thereupon declared that said motion (No. 2018-179) is adopted by a vote of 4-0.

ADOPTED: This 10th day of December, 2018.

APPROVED: This 12th day of December, 2018.

*Virginia C. Smith*  
Council President

CERTIFICATION

I, Steven Roberts, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a motion approved by the City Council of the City of Mountain Brook at its regular meeting held on December 10, 2018, as same appears in the minutes of record of said meeting.

*Steven Roberts*  
City Clerk

Motion - Hardship Exception to Development Moratorium 2018-179

As Ms. Hazen pointed out in the Planning Commission meeting, in order to develop the Country Club Road non-conforming lot, a resurvey is required. With Michael Lane, no resurvey is required before developing each lot as planned. As Dana Hazen confirmed with the owner and their real estate agents, the lots may be sold and developed as is.

In the pre-meeting, Carey Hollingsworth stated that there was no real hardship for the Michael Lane property since it had been "on the market for 1-2 years" and hadn't sold, attempting to say that 90 days extension of the moratorium doesn't matter. The Michael Lane lots, in fact, were not marketed and listed for sale until October 18, 2018. One lot went under contract, but upon discovering the moratorium, the Buyer may back out, and Mike Staff will be unable to market any of the lots until

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