

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
MAY 28, 2019**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:15 p.m. on the 28th day of May, 2019. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Philip E. Black
Lloyd C. Shelton
Alice B. Womack
Stewart Welch III, Mayor

Absent: None

Also present were City Attorney Steve Stine, City Manager Sam Gaston and City Clerk Steven Boone.

1. AGENDA

1. Westchester Road parking situation—Police Chief Cook.

The residents have complained again about high school students parking along their street. Recently, there were 26-27 student cars parked along the street. The situation occurs each spring as the newly licensed sophomore motorists start driving to school where there are no available parking spaces. The residents do not want the students parking along their street but don't want to restrict all parking either as residents need parking access. Next school year, the police department may install some covert cameras to identify students entering the campus through unauthorized entrances which can then be turned over to school officials for discipline. The suggested proposal is a residential parking permit currently under review by the City Attorney. This matter may be reintroduced at an upcoming meeting of the City Council.

2. Request by Red Mountain Search Dog Association (RMSDA) to utilize some of our Public Works/Fire Tower area for Training—Kenny Powell

The members of the City Council expressed their general agreement with the request provided the proper release and indemnification agreements are drafted by legal counsel. The City Manager shall serve as the primary point of contract for RMSDA and collect the necessary forms each time they schedule a training event.

3. Poe Drive sidewalk update—Sam Gaston [The City's requested participation is \$20,000 for the Mountain Brook portion of the public improvements by the developer.]

Mr. Kessler stated that the request has been discussed with Jeffrey Weissman, DMD (property owner on the corner of Overton Road and Poe Drive). Mr. Weissman has expressed no opposition but has not provided written consent either. The members of the City Council expressed their preference that the matter not be formally considered until Mr. Weissman has rendered his decision. Accordingly, this matter may be reintroduced on June 10, 2019 (or later).

4. Review of the matters to be considered at the formal (7 p.m.) meeting

2. EXECUTIVE SESSION

There being no further matters for discussion, Council President Smith made a motion that the City Council convene in executive session to discuss 1) good name and character and 2) a real estate negotiation. The City Attorney verbally certified that the subject matter of the executive session is permissible under the Open Meetings Act. The motion was seconded by Council member Shelton. 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
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said motion carried by a vote of 5—0.

3. ADJOURNMENT

There being no further matters to be discussed, Council President Smith excused those in attendance at the meeting, announced that the City Council shall reconvene in the Council Chamber upon conclusion of the execution session at 7 p.m. and adjourned the pre-meeting at approximately 6:40 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 May 28, 2019, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.



City Clerk

**MINUTES OF THE REGULAR OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
MAY 28, 2019**

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at approximately 7:00 p.m. on the 28th day of May, 2019. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Philip E. Black
Lloyd C. Shelton
Alice B. Womack
Stewart Welch III, Mayor

Absent: None

Also present were City Attorney Steve Stine, 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. 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 May 13, 2019, regular meeting of the City Council

- | | | |
|-----------------|--|--------------------------|
| 2019-074 | Appoint Jeffrey Brewer to the Mountain Brook City Board of Education, filling the unexpired term of Richard Murry IV and to serve without compensation, with a term of office to May 31, 2023 | Exhibit 1,
Appendix 1 |
| 2019-075 | CMAQ-3715(268) Zoo Sidewalk Connector from Poinciana Drive to 20th Place South, Along 20th Place South to Cahaba Road—granting ALDOT full access to existing streets for the construction of the project, not permit future encroachments upon the subject right-of-way nor impose speed limit restrictions contrary to those provided in Title 32, Chapter 5, Code of Alabama 1975, as amended, permit other than parallel parking in areas where parking is permitted or placement of signage, medians crossover, curb or pavement without prior approval of ALDOT and maintenance related thereto | Appendix 2 |
| 2019-076 | CMAQ-3715(268) Zoo Sidewalk Connector from Poinciana Drive to 20th Place South, Along 20th Place South to Cahaba Road— approving ALDOT's installation of traffic control and/or street lighting | Appendix 2 |
| 2019-077 | Authorize the execution of a contractor agreement between the City and Gray's Tree Service for the removal of trees between Fields 2 and 3 at the Athletic Complex (Project No. C-2190516-514) subject to approval of the project by the Mountain Brook City Board of Education | Exhibit 2,
Appendix 3 |

- 2019-078** Authorize the execution of a contractor agreement between the City and Morris-Shea Bridge Company for grading and drainage work at the Athletic Complex subject to approval of the project by the Mountain Brook City Board of Education
- Exhibit 3,
Appendix 4

Thereupon, the foregoing minutes and resolutions were introduced by Council President Smith and a motion for their immediate adoption made by Council member Shelton. Council member Black announced that he shall recuse himself with respect to Resolution No. 2019-074. The minutes and resolutions were then considered by the City Council. Council member Womack seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Philip E. Black, with the exception of Resolution No. 2019-074
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said minutes and resolutions (Nos. 2019-075 through 2019-078) are adopted by a vote of 5—0 and Resolution No. 2019-074 is adopted by a vote of 4—0 and as evidence thereof she signed the same.

2. MAYORAL ANNOUNCEMENT (NO. 2019-079) (EXHIBIT 4)

Mayor Welch announced his reappointment of Alice Williams to the Planning Commission to serve without compensation through May 15, 2025

3. ANNOUNCEMENTS

The next regular meeting of the City Council will be June 10, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

4. ADJOURNMENT

There being no further business to come before the City Council, Council President Smith adjourned the meeting at approximately 7:05 p.m.

5. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on May 28, 2019, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.



City Clerk

EXHIBIT 1**RESOLUTION NO. 2019-074**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Mr. Jeffrey Brewer is hereby appointed as a member of the Mountain Brook City Board of Education, to fill the unexpired term of Richard Murray IV and serve without compensation, with the term of office to end May 31, 2023.

APPENDIX 1**EXHIBIT 2****RESOLUTION NO. 2019-077**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute, for and on behalf of the City Council, a contractor agreement between the City and Grays's Tree Service, in the form as attached hereto as Exhibit A subject to such minor revisions recommended by legal counsel, with respect to the removal of trees between Fields 2 and 3 at the Athletic Complex (Project No. C-20190516-514) and approval of the projects by the Mountain Brook City Board of Education.

APPENDIX 3**EXHIBIT 3****RESOLUTION NO. 2019-078**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute, for and on behalf of the City Council, a contractor agreement between the City and Morris-Shea Bridge Company, in the form as attached hereto as Exhibit A subject to such minor revisions recommended by legal counsel and approval of the projects by the Mountain Brook City Board of Education, with respect to grading and drainage work at the Athletic Complex.

APPENDIX 3**EXHIBIT 4****MAYORAL APPOINTMENT 2019-079**

Mayoral Welch announced that he has reappointed Alice M. Williams to serve on the Planning Commission to serve without compensation through May 15, 2025.

Stewart H. Welch, Mayor

2019-074



Elizabeth Dunn
Direct Dial: (205) 777-7146
Email: elizabeth.m.dunn@gmail.com

May 1, 2019

Honorable Stewart Welch, Mayor
Virginia C. Smith, President
Alice Womack
Lloyd Shelton
William S. Pritchard, III
Philip Black
Mountain Brook City Council
56 Church Street
Mountain Brook, Alabama 35213

Re: Mountain Brook Board of Education Recommendation

Dear Mayor and Council Members:

Richard Murray has informed the Mountain Brook City Board of Education (the "Board") that he wishes to resign his position on the Board prior to the end of his term. Mr. Murray has been an outstanding member of our Board, and he will be greatly missed.

This letter is to inform you of the resignation and vacancy pursuant to Section 16-11-3 of the Code of Alabama which states "(i) in the event of a vacancy in the membership of the city board of education by resignation or otherwise, the fact shall be reported to the city council or commission by the board, and the council or commission shall elect a person to fill the vacancy for the unexpired term."

The Board is unanimously and enthusiastically recommending that you consider Jeffrey Brewer to replace Richard Murray.

Mr. Brewer is a licensed architect and the CEO of Goodwyn, Mills and Cawood (GMC). His leadership of the firm is focused on leaving a legacy of good and recognizing the opportunities we have to make people's lives better. He is a member of the American Institute of Architects,

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WWW.MBSCHOOLS.COM | WWW.GMCAED.COM

the Alabama Association of School Boards, Alabama Association of School Administrators, and the Economic Development Association of Alabama. His civic and community leadership activities include the United Way of Greater Birmingham Campaign Chair, and Leadership Birmingham Class of 2012.

As a long-time resident, he is deeply invested in the Mountain Brook community personally and professionally through several local projects that include the redevelopment of Lane Parke, the design and plan of the Piggly Wiggly in Crestline, and improvements around the Zoo renovation. The Board believes that Mr. Brewer will make an excellent Board member not only because of his outstanding resume, but also because of his commitment to the Mountain Brook community.

Mr. Brewer's background in design and architecture would serve the Board well with multiple facility projects on the school system's horizon. Additionally Mr. Brewer and his wife, Jennifer, have Campbell, a 6th grader, at Crestline Elementary; Bentley and Liza, 7th graders at the junior high; and Logan an 11th grader at the high school, so he will have a personal interest in the success of the school system for many years to come.

Mr. Brewer has met with Board members and is available to meet with each City Council member for an interview at your convenience. Thank you for your consideration of this Board recommendation, and if you should have any further questions, please contact me or Superintendent Barlow.

Very truly yours,

Elizabeth Dunn

ED/cm
Enclosure

cc: Board of Education
Dr. Dicky Barlow

APPENDIX I



Jeffrey Brewer and his wife, Jennifer, have lived in Mountain Brook, Alabama since 1998. They have three daughters and one son, all enrolled in Mountain Brook Schools. They are active supporters of the school system and the many Mountain Brook sports teams and activities in which their children participate.

Mr. Brewer is a licensed Architect and the CEO of Goodwyn, Mills and Cawood (GMC) a multi-disciplined Architecture and Engineering with offices in 5 States. In his more than 20 years of practice and leadership of the Birmingham office since 1998, he has been instrumental to the firm's record growth and impact across the Southeast as one of the largest privately held design firms. His leadership of the firm is focused on leaving a legacy of good and recognizing the opportunities we have to make people's lives better with good design, civic leadership, and stewardship of the built environment.

As a long-time resident he is deeply invested in the Mountain Brook community personally and professionally through several local projects which include the redevelopment of Lane Parke, the Piggly Wiggly in Crestline, and improvements around the Zoo renovation including the new entrance building among many others.

He is a member of the American Institute of Architects, the Alabama Association of School Boards, Alabama Association of School Administrators, Economic Development Association of Alabama, National League of Cities and the National Association of Industrial and Office Properties. His civic and community leadership activities include the United Way of Greater Birmingham Campaign Chair; Board Member of Restoration Academy; Oakworth Capital Bank Advisory Board; and Leadership Birmingham Class of 2012.

Mr. Brewer graduated with a Bachelor Degree in Architecture from Auburn University, Magna Cum Laude, in addition to specific studies at the Boston Architectural Center and Auburn Center for Urban Studies. He was honored with Auburn University's Young Alumni Achievement Award in 2012.

2019-075/076



Kay Ivey
Governor

ALABAMA
DEPARTMENT OF TRANSPORTATION

EAST CENTRAL REGION
OFFICE OF REGION ENGINEER
100 CORPORATE PARKWAY
SUITE 600
HOOVER, AL 35247
P.O. BOX 282248
BIRMINGHAM, AL 35288-2248
TELEPHONE (205) 337-4962



John R. Cooper
Transportation Director

May 17, 2019

The Honorable Stewart H. Welch, III
Mayor, City of Mountain Brook, AL
56 Church Street
Mountain Brook, Alabama 35213

Attn: Mr. Sam Gaston, City Administrator

RE: Jefferson County
Project Number: CMAQ-3715(268)
Zoo Sidewalk Connector from Poinciana Drive
To 20th Place South, Along 20th Place South to
Cahaba Road, Birmingham, Alabama

Dear Mayor Welch:

Attached you will find the Standard Project Resolution, Traffic Signal/Lighting Maintenance Agreement and Plans concerning the above referenced project.

Please review these documents and, if all is in order, present them to the City Council of Mountain Brook for consideration and approval. It is important to emboss the official City of Mountain Brook Seal on each signature sheet. A certified resolution, which authorizes the Mayor to sign the agreement, affixed with the City Seal should also be included with the agreement. After execution, please return this document, with original signatures (no stamps), to this office, ATTN: Mrs. Sandra F. P. Bommer to avoid possible delays to the letting schedule.

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeLavis Leonard, P.E.
East Central Region Engineer

By: *John S. Haynes*
John S. Haynes, P.E.
Asst. Region Engineer - Pre-Construction

DJ:JSH/je
Attachment
C: Mrs. Sandra F. P. Bommer
File w/att

2019-075
2019-076

RESOLUTION No. 2019-075

WHEREAS, the City of Mountain Brook, Alabama (hereinafter at times referred to as City) is desirous of having certain improvements made, within the City limits of Mountain Brook, in accordance with plans prepared by the Alabama Department of Transportation and designated as Project Number: CMAQ-3715(268), Zoo Sidewalk Connector from Poinciana Drive to 20th Place South, Along 20th Place South to Cahaba Road.

WHEREAS, The Alabama Department of Transportation is now or may later be desirous of receiving Federal Aid for improvement of said highway; and

WHEREAS, The Federal Highway Administration, an agency of the United States of America, will not participate in any funding for the construction of said project until and unless the City will agree to certain requirements of the Federal Highway Administration. The City for the purpose of complying with requirements of the Federal Highway Administration in regard to its funding of improvements of the type and kind in this agreement provided for, does hereby pass and adopt the following resolution:

BE IT RESOLVED by the City Council of Mountain Brook, that the plans of said project including alignment, profile, grades, typical sections and paving layouts as submitted to this City and which are now on file in the office of the City Clerk are hereby approved and that the location of said project as staked out by the Alabama Department of Transportation and as shown by said plans referred to are hereby approved and the Alabama Department of Transportation, in cooperation with the Federal Highway Administration, is hereby authorized to proceed with the grading, draining, paving, and otherwise improving and construction of said project in accordance with said plans.

The City by and through its Council hereby grants to the Alabama Department of Transportation the full use of and access to the dedicated widths of any existing streets for the construction of said

APPENDIX 2

project and hereby agrees to permit and allow the Alabama Department of Transportation to close and barricade the said project and intersecting streets for as long as necessary while the said project is being graded, drained, paved, and otherwise improved, and hereby agrees that the use of any street or highway for parking within an interchange area will not at any time be permitted.

The City hereby further agrees to adopt or pass such legally effective ordinances and/or laws as will permanently barricade and/or relocate certain intersecting streets as required by the State and to permanently deny or limit access at certain locations as required by the State along said improvements, all of which are more specifically stated as follows:

- N/A - This project does not permanently barricade or relocate any intersecting streets.
- Please refer to: Project Notes Sheet (Sheet 2C)
- Please refer to: Traffic Signal Plan Notes (Sheet 2D)
- Please refer to: General Traffic Control Plan Notes (Sheet 2E)
- Please refer to: Traffic Control Plan and Sequence of Construction (Sheets 18 - 22C)

BE IT FURTHER RESOLVED by the City Council, that for and in consideration of the Alabama Department of Transportation in cooperation with the Federal Highway Administration, constructing said highway and routing traffic along the same through the City over said project, such City hereby agrees with the Alabama Department of Transportation and for the benefit of the Federal Highway Administration, that on the above mentioned project the City will not in the future permit encroachments upon the right of way; nor will it pass any ordinances or laws fixing a speed limit contrary to those limits provided for in Title 32, Chapter 5, Code of Alabama 1975, as amended, and other laws of Alabama; nor

will it permit other than parallel parking in areas where parking is permitted; nor will it allow the placing of any informational, regulatory, or warning signs, signals, median crossover, curb and pavement or other markings, and traffic signals without written approval of the Alabama Department of Transportation and the Federal Highway Administration, of the location, form and character of such installations. The traffic control devices and signs installed during construction, and those installed after completion of this project shall be in accordance with the latest edition of the national Manual on Uniform Traffic Control Devices and accepted standards adopted by the Alabama Department of Transportation of the State of Alabama and by the Federal Highway Administration. The City further agrees that subsequent traffic control devices deemed necessary by it in keeping with applicable statutes, rules and regulations to promote the safe and efficient utilization of the highway under the authority of Title 32, Chapter 5, Code of Alabama 1975, and all other applicable laws of Alabama, shall be subject to and must have the approval of the Alabama Department of Transportation of the State of Alabama and of the Federal Highway Administration, prior to installation and the City further agrees that it will enforce traffic and control the same under the provisions of Title 32, Chapter 5, Code of Alabama 1975, and other applicable laws of Alabama.

BE IT FURTHER RESOLVED by this City Council:

1. That the City agrees to perform all maintenance on crossroads, service drives, or relocated roads that are not designated Federal or State highways that are in the jurisdiction of the City.
2. That the City agrees to perform all maintenance on any existing road which has been replaced by a new road; or, if the existing road is not used, the City has the option of vacating same.
3. That the City agrees to perform all maintenance on interchanges to the theoretical crossing of the denied access line.
4. That the City agrees to perform all maintenance on grade separations along the roadway to the end of the bridge, or the denied access fence, whichever the case.

It is understood and agreed that no changes in this Resolution or Agreement shall in the future be made without having obtained the prior approval of the Federal Highway Administration.

THIS RESOLUTION PASSED, ADOPTED, AND APPROVED this the 28th day of

May, 2019.

ATTEST

Stevan Boone
City Clerk

Robert Welch III
Mayor

I, the undersigned, Clerk of the City of Mountain Brook, do hereby certify that the above and foregoing is a true and correct copy of a resolution duly and lawfully adopted by the Council of the foregoing City, at its regular meeting held on the 28th day of May, 2019, which resolution is on file in the office of the City Clerk.

Given under my hand and the official seal of such City this 28th day of

May, 2019.

Stevan Boone
CITY CLERK

For Official Use Only: ALDOT Agreement Number: _____

Region Tracking Number: _____ Project Number: CMAQ-3715(268)

Region: ECR - Birmingham County: JEFFERSON

STATE OF ALABAMA acting by and through the
ALABAMA DEPARTMENT OF TRANSPORTATION: AGREEMENT for the
INSTALLATION and/or OPERATION and/or MAINTENANCE OF TRAFFIC CONTROL SIGNALS and/or
ROADWAY LIGHTING

This Agreement, in accordance with resolution number _____ dated (or minutes dated) _____ attached hereto and made part of this Agreement, is made and entered into by and between the Alabama Department of Transportation (herein referred to as STATE) and the CITY OF MOUNTAIN BROOK (herein referred to as MAINTAINING AGENCY) for the accomplishment of the following work as hereinafter indicated by the alphabetic letter of "X" marked in the check-boxes below, to wit:

	(A) New Installation	(B) Equipment Upgrade	(C) Complete Removal	(D) Operation	(E) Maintenance
Traffic Control Signal:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Intersection Flashing Signal/Beacon:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roadway Lighting:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: Pedestrian Signal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

The accomplishment of the work indicated by the alphabetic letter of "X" marked in the check-box(es) above and hereinafter signified by the use of the corresponding alphabetic letter A, B, C, D, and/or E as applicable, will be at the following location(s): [Example: AL-3/US-31 @ Main Street [A, D, & E] denotes the installation, operation, and maintenance of the equipment installed] NOTE - If more space is needed, please use continuation sheets.

Pedestrian Signal: At Intersection of Cahaba Road and Lane Park Road - A - D & E

1. In the event the work to be accomplished above is identified by (A) and/or (B), the STATE MAINTAINING AGENCY will furnish and the STATE MAINTAINING AGENCY will install the equipment and/or associated hardware utilized in the accomplishment of the work. In the event the STATE contributes funds to the work and the MAINTAINING AGENCY will be credited or debited for under-runs or overruns respectively, the "Exhibit O" is attached to and made part of this Agreement.

APPENDIX 2

2. The equipment and/or associated hardware shall be installed in accordance with the applicable portions of the:
 - A. Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), current ALDOT approved edition.
 - B. State of Alabama Project Details and Special and Standard Highway Drawings, current year version.
 - C. National Electrical Code, current edition.
 - D. Alabama Department of Transportation (ALDOT) Standard Specifications for Highway Construction, current edition and applicable special provisions.
 - E. Code of Alabama, 1975 (as Amended) with specific reference to:
 - (1) §27-1-113, Municipal Connecting Link Roads - Stipulations and Conditions [specifically sub-paragraphs (6) and (7)].
 - (2) §37-5A-32, Traffic - Control signal legend.
 - (3) §37-5A-33, Pedestrian - Control signals.
 - (4) §37-5A-34, Flashing signals.
 - (5) §37-5A-35, Lane - Direction - Control signals.
3. The STATE shall determine the quantity of the equipment and/or associated hardware to be utilized in the accomplishment of the work identified by (A) and/or (B) above. In the event the MAINTAINING AGENCY furnishes the equipment and/or associated hardware to be utilized in the accomplishment of the work identified by (A) and/or (B) above, the MAINTAINING AGENCY shall ascertain that the type and quality of the equipment and/or associated hardware is in accordance with the STATE's Materials, Sources, and Devices with Special Acceptance Requirements (AM) as maintained by the STATE's Bureau of Materials and Tests.
4. Title to any and all equipment and/or associated hardware furnished by the STATE shall remain in the STATE and the STATE is deemed to be the sole owner of such equipment and/or hardware.
5. The equipment and/or associated hardware shall be operated and maintained at the sole expense of the MAINTAINING AGENCY. The MAINTAINING AGENCY agrees to provide electrical energy on a continuing basis as required, beginning at the time of the initial electrical service connection during the construction of the system. The MAINTAINING AGENCY agrees further to maintain the equipment and/or associated hardware in a good state of repair at all times, as required in accordance with the applicable documents: Manual on Uniform Traffic Control Devices for Streets and Highways and the Alabama Department of Transportation Standard Specifications for Highway Construction and applicable special provisions. Any traffic control signal equipment and/or associated hardware must also be maintained in accordance with any traffic signal operating plan of the STATE which is in effect at the applicable time of the maintenance. If a malfunction of the equipment and/or associated hardware should ever occur, the MAINTAINING AGENCY shall make or cause to be made any repairs immediately. If a malfunction presents a potential hazard to the motoring public and the MAINTAINING AGENCY is unable to repair the equipment and/or associated hardware in a timely manner as determined by the STATE, the MAINTAINING AGENCY agrees that the STATE reserves the right to and may repair the equipment and/or associated hardware, and invoice the MAINTAINING AGENCY for all costs incurred. The MAINTAINING AGENCY agrees to pay the STATE all such costs incurred by the STATE promptly upon receipt of the invoice from the STATE.

- 5a. In instances where ALDOT maintains a fiber-optic trunk line that is used in conjunction with a closed-loop signal system, the MAINTAINING AGENCY shall maintain the fiber-optic cable from the splice point in the trunk line out to the traffic control equipment.
6. A. Unwarranted traffic control signal. (Mark with "X" if applicable in check-box)

If the installation is identified on page one as (A) "New Installation" or (B) "Equipment Upgrade" with "Traffic Control Signal" marked, and this installation is requested by the MAINTAINING AGENCY and the signal is unwarranted as marked above, then upon installation of the equipment and/or associated hardware, the MAINTAINING AGENCY agrees to accept any and all responsibility for any damage or injury that may be caused by or related to the installation, location, operation, sequencing, and/or maintenance of the equipment and/or associated hardware and shall defend, indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, and its agents, servants, employees, in their official or individual capacities and/or facilities from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the installation, operation, and maintenance of the equipment and/or associated hardware, or any claim, damage, loss, or expense to the person or property caused.
- B. All other work. (Mark with "X" for the appropriate type of MAINTAINING AGENCY in appropriate check-box)

The CITY (Incorporated Municipality)

Subject to the limitations on damages applicable to municipal corporations under Alabama Code § 11-47-190(1975), the CITY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorney's fees arising out of, connected with, resulting from, or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction or tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorney's fees, caused by the negligent, careless, or unskillful acts of the CITY, its agents, servants, representatives, or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation, or reimbursement by the CITY, its agents, servants, representatives, or employees, or anyone for whose acts the CITY may be liable.

The COUNTY (County Government or Agency)

The COUNTY shall be responsible at all times for all of the work performed under this agreement and, as provided in Alabama Code § 11-93-2(1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees.

For all claims not subject to Alabama Code § 11-93-2(1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against any and all damages, claims, loss, liabilities, attorney's fees or expense whatsoever, or any amount paid in compromise thereof arising out of, connected with, or related to (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the COUNTY pursuant to the terms of this Agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its officers, officials, agents, servants, and employees.

The term "hold harmless" includes the obligation of the MAINTAINING AGENCY to pay damages on behalf of the State of Alabama, the Alabama Department of Transportation, and its agents, servants, and/or employees.

- 7. Complete removal of the equipment and/or associated hardware, hereinabove identified by (C), will be at the sole expense of the STATE MAINTAINING AGENCY.
- 8. The STATE reserves the right to demand the removal of the equipment and/or associated hardware should the STATE determine that the signal is no longer required or deem its condition or operation hazardous. Further, the STATE shall have the right to remove the equipment and/or associated hardware should the MAINTAINING AGENCY fail to do so upon demand by the STATE. The MAINTAINING AGENCY agrees to reimburse the STATE for its costs associated with the removal. Any equipment and/or associated hardware which is deemed by the STATE to be non-uniform or obsolete will be removed and disposed of by the MAINTAINING AGENCY. None of the non-uniform or obsolete equipment and/or associated hardware which has been removed shall be reused on the STATE Highway system.
- 9. If future traffic conditions require changes and/or adjustments to said equipment and/or associated hardware (other than ordinary timing), the MAINTAINING AGENCY shall obtain the approval of the STATE before such changes are implemented and the STATE shall make a determination on whether a new Agreement is required to be submitted for the UPGRADE, OPERATION, and MAINTENANCE of the new equipment and/or associated hardware. All such changes shall be at the sole cost and expense of the MAINTAINING AGENCY.

10. In the event Federal funds are utilized in the accomplishment of the work hereinbefore described, "Exhibit M" is attached to and made a part of this Agreement.

11. FUNDS SHALL NOT BE CONSTITUTED AS A DEBT
It is agreed that the terms and commitments contained herein shall not be construed as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this Agreement shall contravene any statute or Constitutional Provision or Amendment, then the conflicting provision in this Agreement shall be deemed null and void.

For any and all disputes arising under the terms of this Agreement, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative Hearings or where appropriate, private mediators.

- 12. The type and number of signal & pedestrian heads per intersection or roadway lighting hardware are as follows: (Example: 5 - 3 sec, 12", red ball, yellow/green left arrow. OPTION: If plans are available to convey information below, just enter "SEE ATTACHED PLANS".) NOTE - If more space is needed, please use continuation sheets.

See attached plans -

Pedestrian Signal

TYPE OF SIGNAL		CONTROLLER	
<input type="checkbox"/> Traffic Control	<input type="checkbox"/> Pedestrian Control	Make:	Model #:
<input type="checkbox"/> Flashing	<input type="checkbox"/> Lane Control	<input type="checkbox"/> Fixed Time	<input type="checkbox"/> Two Phase
<input type="checkbox"/> School Flasher	<input type="checkbox"/> Railroad Crossing	<input type="checkbox"/> Semi Actuated	<input type="checkbox"/> Four Phase
<input checked="" type="checkbox"/> Other: PEDESTRIAN SIGNAL		<input type="checkbox"/> Full Actuated	<input checked="" type="checkbox"/> Eight Phase
		<input type="checkbox"/> Other:	
		SYSTEM <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

- 13. In the event the work to be accomplished is identified by (A), (B), and/or (C) and (1) in part or wholly constitutes an interconnected, coordinated, fixed time relationship, signal control operation between two or more intersections (herein referred to as a SYSTEM and hereinabove indicated by the SYSTEM check-box for YES marked in the controller box above), (2) is located within the limits of a SYSTEM, or (3) is within close proximity as to adjoin a SYSTEM, the STATE MAINTAINING AGENCY shall substantiate the work identified by (A), (B), and/or (C) to be SYSTEM compatible.
- 14. By entering into this agreement, the MAINTAINING AGENCY is not an agent of the State, its officers, employees, agents or assigns. The MAINTAINING AGENCY is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.
- 15. By signing this contract, the contracting parties affirm, for the duration of this agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of this agreement and shall be responsible for all damages resulting therefrom.

APPENDIX 2

WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials, and persons thereto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Region Engineer.

(Seal of OWNER)

Attest: Steven Boone
(Seal or notary signature)
Steven Boone, Commission Expires
03/13/2022

CITY OF MOUNTAIN BROOK
Legal Name of MAINTAINING AGENCY
By: Stewart Welch III
Authorized Signature for MAINTAINING AGENCY
Stewart Welch III, Mayor

Agreement Recommended for approval:

By: _____
Area Traffic Engineer Signature

STATE OF ALABAMA acting by and through the ALABAMA DEPARTMENT OF TRANSPORTATION
The within and foregoing Agreement is hereby approved on this _____ day of _____, 20____.

APPROVED: _____
By: _____
Region Engineer Signature

RECORDED: _____
By: _____
State Traffic Engineer Signature
Date: _____
(Added to Archive)

RESOLUTION NUMBER 2019-076

BE IT RESOLVED, by the City Council of Mountain Brook, Alabama, that the City enter into an agreement with the State of Alabama acting by and through the Alabama Department of Transportation for:

The Installation and/or Maintenance of Traffic Control Signals and/or Street Lighting for:

Project Number: CMAQ-3715(268)
Zoo Sidewalk Connector from Poincianna Drive to 20th Place South, Along 20th Place South to Cahaba Road.

which agreement is before this Council, and that the agreement be executed in the name of the City, by the Mayor for and in its behalf and that it be attested by the City Clerk and the seal of the City be affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City Clerk.

Adopted and approved this 28th day of May, 2019.

ATTESTED:
(SEAL)

Steven Boone City Clerk
Stewart Welch III Mayor

I, the undersigned qualified and acting clerk of the City of Mountain Brook, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council of the City, named therein, at a regular meeting of such Council held on the 28th day of May, 2019, and that such resolution is on file in the office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 28th day of May, 2019.

Steven Boone
City Clerk

Permit Number _____ Project Number CMAQ-3718248
 Division EAST CENTRAL REGION County JEFFERSON

7/18/90

EXHIBIT M

CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the making of any Federal grant, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, the prospective participant/recipient shall complete and submit Standard Form-L.L.L., "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

402282

APPENDIX 2

CONTRACTOR AGREEMENT

Gray's Tree Service ("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: Remove Trees from between Fields 2 and 3 C-20190516-514

Site of Project: Mountain Brook High School Athletic Complex 3650 Bethune Drive Mountain Brook, AL 35223

2. Scope of Work. See Exhibit A (which includes the City Scope of Work and May 16, 2019 Contractor Proposal, hereinafter the "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 for six (6) 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.

Contractor's obligations herein shall survive the termination or expiration of the Term for these periods: Section 6(f) (Warranty on workmanship and materials) for one

year following Project acceptance; other warranties in Section 6 for a period of one year, and Section 7(c) (Indemnification) for a period of two (2) years.

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 Seven Thousand Five Hundred Dollars (\$7,500.00) as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing signed by duly authorized representatives of both parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price (and agreed sum(s) payable for any Additional Operations contemplated on Exhibit A). In no event will the total amount paid to Contractor for its Work (including the Contract Price or any amount paid for Additional Operations) exceed \$50,000.00.

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;

APPENDIX 3

(e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;

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

The City will not furnish any type, form, coverage or amount of insurance in connection with the Project.

(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.

The City will not indemnify Contractor (or any of its representatives or authorized subcontractors) for any claims that relate to or arise out of the Project.

(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 May 16, 2019 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. In the event of any conflict or inconsistency between provisions in the various Contract Documents, the provision(s) in the document in the order below shall control and take precedence: (1) this Agreement; (2) the City Scope of Work; and (3) the Contractor Proposal.

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.

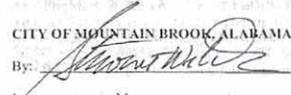
k. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

(Signature Page Follows)

APPENDIX 3

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: 

Is: Mayor

Date: 5/28/2019

GRAY'S TREE SERVICE

By: _____

Is: _____

Date: _____

EXHIBIT A - SPECIFICATIONS

1. Scope of Work

See attached City Scope of Work and May 16, 2019 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. No compensation for Additional Operations will be paid unless those Operations are approved in advance.

2. Project Schedule. Weather permitting, Contractor expects to complete the Work within an approximate 4 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:
Gil Gray
3685 Parkwood Road
Bessemer, AL 35022
gil_gray@hotmail.com
Day Tel #: 205-368-9882

4. Special Conditions

GAGB LLC

Estimate (Good for 30 days)

Gray's Tree Service
3685 Parkwood Road
Birmingham, AL 35222
205-945-2006 Fax # 205-453-4906

Date	Estimate #
5/16/2019	6510

Mountain Brook Athletic Complex

Crane	Bucket	Grapple	Grader
Bobcat	Mulcher	Climber	
PoleSaw	Boxer	MiniEx	

Project Address

Mon ___ Tue ___ Wed ___ Thur ___ Fri ___ Sat ___
Date Sch ___ Emp ___

Description	Qty	Cost	Total
Cut and remove 68 trees located on the hillside.		7,500.00	7,500.00
		Total	\$7,500.00

Tree Removal at the Athletic Complex
May 2019

The Mountain Brook Park and Recreation Department requested quotes to have approximately 68 trees removed from the bank between Field 2 and Field 3.



APPENDIX 3

2019-078

CONTRACTOR AGREEMENT

Morris Shea Building Company ("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").

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: Grading and Drainage Project by Fields 3, 4, and 7

Site of Project: Mountain Brook High School Athletic Complex
3650 Bethune Drive
Mountain Brook, AL 35223

2. Scope of Work. See Exhibit A (which includes the City Scope of Work and May 13, 2019 Site Plans, hereinafter the "Site Plans") 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 for six (6) 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.

Contractor's obligations herein shall survive the termination or expiration of the Term for these periods: Section 6(f) (Warranty on workmanship and materials) for one year following Project acceptance; other warranties in Section 6 for a period of one year, and Section 7(c) (Indemnification) for a period of two (2) years.

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.

The City will not furnish any type, form, coverage or amount of insurance in connection with the Project.

(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.

5. Donation of Work. In its public minded spirit and as an act of generosity to the City and its citizens, the Contractor is donating its services and will perform the Work and complete the Project at no charge to the City. As part of this donation, Contractor will compensate its workers and personnel for any wages, salaries or other benefits afforded them as employees of the Contractor for their services.

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, except for municipal permitting expenses that the City will waive for this Project, before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;

(d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;

(e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;

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

(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.

The City will not indemnify Contractor (or any of its representatives or authorized subcontractors) for any claims that relate to or arise out of the Project.

(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 May 13, 2019 Site Plan (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. In the event of any conflict or inconsistency between provisions in the various Contract Documents, the provision(s) in the document in the order below shall control and take precedence: (1) this Agreement; (2) the City Scope of Work; and (3) the Site Plans.

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.

APPENDIX 4

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 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.

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: [Signature]
Its: Mayor
Date: 5/28/2019

MORRIS SHEA BUILDING COMPANY
By: _____
Its: _____
Date: _____

APPENDIX 4

EXHIBIT A - SPECIFICATIONS

1. Scope of Work

See attached City Scope of Work and May 13, 2019 Site Plans.

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. No compensation for Additional Operations will be paid unless those Operations are approved in advance.

2. Project Schedule. Weather permitting, Contractor expects to complete the Work within an approximate 12 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@mtbrook.org
Day Tel #: 205-802-3879

Contractor Project Representative:
Dick Shea
609 South 20th Street
Birmingham, AL 35210
Email: dshea@morrisshea.com
Day Tel #: 205-956-9518

4. Special Conditions

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