

**REGULAR MEETING AGENDA OF THE
MOUNTAIN BROOK CITY COUNCIL**

JUNE 22, 2020, 7:00 P.M.

As authorized by the Governor of the State of Alabama on March 18, 2020, elected officials may deliberate by means of telephone conference, video conference or other similar means of communication. Members of the public are also invited to listen, observe and participate in public meetings by such means as well.

Due to COVID-19, public gatherings of 10 or more are generally not permitted without adequate social distancing. Should anyone wish to listen, observe or participate in the City Council meetings of June 22, 2020 at 7 p.m., (pre-meeting at 5:45 p.m.) please join by way of the Zoom app (re: Meeting ID 801-559-1126, password 06222020).

1. Approval of the June 8, 2020, minutes of the regular meeting of the City Council.
2. Consideration: Resolution authoring the application for CARES Act COVID-19 Disaster Relief financial assistance through the Jefferson County Commission.
3. Consideration: Resolution amending the City's IRC Section 125 Cafeteria Plan (Flexible Spending Account, Dependent Care and Unreimbursed Medical) effective October 1, 2020, and authorizing the execution of an administration agreement between the City and BeneTech Administrators, Inc.
4. Consideration: Resolution accepting the professional services proposal of Schoel Engineering with respect to Mountain Brook Junior High flooding study problem.
5. Consideration: Resolution authorizing the execution of a contractor agreement for the installation of a guardrail on Mountain Brook Parkway.
6. Consideration: Resolution authorizing the installation of a 35w LED street light with 2' arm on Sedley Drive.
7. Consideration: Resolution awarding the bid for mall improvements at City Hall.
8. Announcement: The next regular meeting of the City Council is July 13, 2020, at 7:00 p.m. (means and location to be announced).
9. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
JUNE 8, 2020**

[Pursuant to a proclamation issued by Governor Kay Ivey on March 18, 2020, elected officials are allowed to meet remotely by means of Internet or telephone conference and the public was invited to listen to, observe, or participate in the meeting by such means. The elected officials met in-person at City Hall and allowed the public to listen, observe and participate by way of video conference.]

The City Council of the City of Mountain Brook, Alabama met informally by way of Internet conference on the 8th day of June, 2020. The Council President called the pre-meeting to order and the roll was called with the following results:

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

Absent: None

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

1. AGENDA

1. Curfew (Motion No. 2020-086 (discontinuance of the curfew effective June 8, 2020, at 8 p.m.) was added to the formal meeting agenda.)
2. After hours and emergency inspections—Glen Merchant (Ordinance No. 2070 was added to the formal meeting agenda.)
3. Request by the Board of Landscape Design for funding of the Crestline Streetscape project between Dexter Avenue and Hoyt Lane on Church Street—Sim Johnson (Appendix 1). The City Council shall discuss this matter further in its 2021 budget planning work session scheduled for June 10, 2020 at 8 a.m.
4. Request by the Board of Landscape Design for a contract with Nimrod Long and Associates to develop a streetscape master plan for the medians in Mountain Brook Village—Sim Johnson (Appendix 2). The elected officials expressed their desire to make the closure of Canterbury Road at its intersection with Cahaba Road (Village Circle) in Mountain Brook Village permanent and will consider this action formally on June 22, 2020. Regarding the suggested contract to develop a streetscape master plan, the City Council shall discuss this matter further in its 2021 budget planning work session scheduled for June 10, 2020 at 8 a.m.
5. Cherokee Bend Elementary field improvements update—John Bricken and Dale Brasher with Goodwyn, Mills & Cawood. The bid documents will include the modular restroom building as an alternate line item giving the City the flexibility of installing immediately or at a later date. The consultants will continue to pursue press for the project completion before school resumes.
6. City facilities reopening plan (The matter was tabled.)
7. Street light on Sedley Drive between North Woodridge Road and Eaton Road—Lloyd Shelton and Sam Gaston (Appendix 3). The matter will be presented for formal consideration on June 22, 2020.

8. BBVA conditional use application, 229 Country Club Park—Dana Hazen (Resolution No. 2020-085 was added to the formal meeting agenda.)
9. Review of the other matters to be considered at the formal (7 p.m.) meeting

2. EXECUTIVE SESSION AND ADJOURNMENT

Council President Pro Tempore Pritchard made a motion that the City Council convene in executive session to discuss security plans, procedures, assessments and measures and/or security or safety of persons, structures, facilities the public disclosures of which could reasonably be expected to be detrimental to public safety or welfare. 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 member Black. . 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. She then announced that the City Council shall reconvene upon conclusion of the executive session at approximately 7 p.m. in Room A108. The pre-meeting was then adjourned (and the video conference ended) at approximately 6:45 p.m.

3. 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 by way of Internet teleconference on June 8, 2020, 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 Approved by
 City Council June 22 2020

**MINUTES OF THE REGULAR OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
JUNE 8, 2020**

[Pursuant to a proclamation issued by Governor Kay Ivey on March 18, 2020, elected officials are allowed to meet remotely by means of Internet or telephone conference and the public was invited to listen to, observe, or participate in the meeting by such means. The elected officials met in-person at City Hall and allowed the public to listen, observe and participate by way of video conference.]

The City Council of the City of Mountain Brook, Alabama met in public session in Room A-108 of City Hall at 7:00 p.m. on the 8th day of June, 2020. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: None

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

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

1. RECOGNITION OF A GUEST

President Smith recognized Boy Scout Jay Merchant of Troop 76 in attendance by way of electronic video conference.

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 May 26 2020, regular meeting of the City Council

Approval of the minutes of the June 1, 2020, special meeting of the City Council

Approval of the minutes of the June 1, 2020, special meeting of the City Council

2020-084	Authorize the execution of an agreement between the City and Morris-Shea Bridge Co., Inc. for the relocation of two (2) light poles at Field 3 of the Athletic Complex	Exhibit 1, Appendix 1
2020-085	Approve the conditional service use application submitted by BBVA Bank for 229 Country Club Park	Exhibit 2, Appendix 2
2020-086 MOTION	Approve the discontinuance of the curfew (Resolution No. 2020-082 and 2020-083) effective June 8, 2020, at 8 p.m.	Exhibit 3

Thereupon, the foregoing minutes, resolutions and motion were introduced by Council President Smith and a motion for their immediate adoption made by Council member Shelton. The minutes, resolutions

and motion were then considered by the City Council. Council President Pro Tempore Pritchard seconded the motion to adopt the foregoing minutes, resolutions and 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
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

Abstained: None

Council President Smith thereupon declared that said minutes, resolutions (Nos. 2020-084 and 2020-0185) and motion (Nos. 2020-086) were adopted by a vote of 5—0 that and as evidence thereof she signed the same.

3. CONSIDERATION OF AN ORDINANCE (NO. 2069) ESTABLISHING THE CITY OF MOUNTAIN BROOK LAW ENFORCEMENT RETIREMENT BENEFIT POLICY (EXHIBIT 4, APPENDIX 3)

The ordinance was introduced in writing by Council President Smith who then invited comments. There being no comments or questions, President Smith called for a motion. Council member Black made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Womack. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia C. Smith
William S. Pritchard, III
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

The Council President Smith declared the motion passed by a vote of 5—0.

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

Ayes: Virginia C. Smith
William S. Pritchard, III
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

The Council President Smith declared that the said ordinance (No. 2069) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

4. CONSIDERATION OF AN ORDINANCE (NO. 2070) AMENDING SEC. 14-1 OF THE CITY CODE WITH RESPECT TO EMERGENCY/AFTER-HOURS INSPECTION FEES IN THE CITY (EXHIBIT 5, APPENDIX 4)

The ordinance was introduced in writing by Council President Smith who then invited comments. There being no comments or questions, President Smith called for a motion. Council member Black made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Womack. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia C. Smith
William S. Pritchard, III
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

The Council President Smith declared the motion passed by a vote of 5—0.

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

Ayes: Virginia C. Smith
William S. Pritchard, III
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

The Council President Smith declared that the said ordinance (No. 2070) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

5. ANNOUNCEMENTS

The next regular meeting of the City Council will be June 22, 2020, at 7:00 p.m. with the location and means to be determined and announced at a later date.

6. ADJOURNEMENT

There being no further business or matters for discussion, Council President Smith adjourned the meeting at approximately 7:10 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 regular meeting of the City Council of the City of Mountain Brook, Alabama by Internet teleconference on June 8, 2020, 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
Approved by City Council June 22, 2020

RESOLUTION NO. 2020-087

**AUTHORIZATION TO APPLY FOR CARES ACT COVID-19
DISASTER ASSISTANCE ADMINISTERED
BY THE JEFFERSON COUNTY COMMISSION**

WHEREAS the City Council, in response to the COVID-19 pandemic, has incurred [unbudgeted] expenses for the sole purposes of protecting the health, safety and welfare of the residents, employees, visitors and patrons of the City; now, therefore,

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the City Clerk to apply for CARES Act COVID-19 Disaster Assistance through the Jefferson County Commission; and

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby acknowledges and certifies the following:

1. The expenditures submitted for reimbursement have been used to cover costs necessary to prevent, prepare for, and respond to the COVID-19 public health emergency
2. The expenditures incurred were not accounted for the City's budget as of March 27, 2020
3. All expenditures submitted for reimbursement shall have been incurred between March 1, 2020 and December 31, 2020
4. The Disaster Assistance reimbursement request does not include any expenditures reimbursed by any other third-party by way of grants or donations, is not intended to replace any other funding and not to recoup or prevent revenue shortages

ADOPTED: This 22nd day of June, 2020.

Council President

APPROVED: This 22nd day of June, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on June 22, 2020, as same appears in the minutes of record of said meeting.

City Clerk

RESOLUTION NO. 2020-088

**AMENDED AND RESTATED CITY OF MOUNTAIN BROOK FLEXIBLE
BENEFIT PLAN AND RELATED SERVICE AGREEMENT**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby amends and restates the City of Mountain Brook Flexible Benefit Plan, in the form as attached hereto as Exhibit A, effective October 1, 2020; and

BE IT FURTHER 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 the following with respect to the amended and restated City of Mountain Brook Flexible Benefit Plan:

1. City of Mountain Brook Flexible Benefit Plan—Exhibit A
2. Service Agreement between the City and BeneTech Administrators, Inc. (Flexible Spending Account administration only)—Exhibit B

ADOPTED: This 22nd day of June, 2020.

Council President

APPROVED: This 22nd day of June, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on June 22, 2020, as same appears in the minutes of record of said meeting.

City Clerk

CITY OF MOUNTAIN BROOK FLEXIBLE BENEFIT PLAN
SUMMARY PLAN DESCRIPTION

TABLE OF CONTENTS

**I
ELIGIBILITY**

1. When can I become a participant in the Plan?..... 1
2. What are the eligibility requirements for our Plan? 1
3. When is my entry date?..... 1
4. Are there any employees who are not eligible? 1
5. What must I do to enroll in the Plan? 1

**II
OPERATION**

1. How does this Plan operate?..... 1

**III
CONTRIBUTIONS**

1. How much of my pay may the Employer redirect?..... 2
2. What happens to contributions made to the Plan? 2
3. When must I decide which accounts I want to use? 2
4. When is the election period for our Plan? 2
5. May I change my elections during the Plan Year? 2
6. May I make new elections in future Plan Years? 3

**IV
BENEFITS**

1. Health Flexible Spending Account..... 3
2. Dependent Care Flexible Spending Account 3
3. Premium Expense Account 4

**V
BENEFIT PAYMENTS**

1. When will I receive payments from my accounts? 4
2. What happens if I don't spend all Plan contributions during the Plan Year? 4
3. Family and Medical Leave Act (FMLA) 5
4. Uniformed Services Employment and Reemployment Rights Act (USERRA)..... 5
5. What happens if I terminate employment? 5
6. Will my Social Security benefits be affected? 5
7. Qualified Reservist Distributions 5

**VI
HIGHLY COMPENSATED AND KEY EMPLOYEES**

1. Do limitations apply to highly compensated employees?..... 6

**VII
PLAN ACCOUNTING**

1. Periodic Statements 6

**VIII
GENERAL INFORMATION ABOUT OUR PLAN**

1.	General Plan Information.....	6
2.	Employer Information	6
3.	Plan Administrator Information	6
4.	Service of Legal Process	6
5.	Type of Administration.....	7
6.	Claims Submission.....	7

**IX
ADDITIONAL PLAN INFORMATION**

1.	Claims Process	7
----	----------------------	---

**X
SUMMARY**

CITY OF MOUNTAIN BROOK FLEXIBLE BENEFIT PLAN

INTRODUCTION

We have amended the "Flexible Benefits Plan" that we previously established for you and other eligible employees. Under this Plan, you will be able to choose among certain benefits that we make available. The benefits that you may choose are outlined in this Summary Plan Description. We will also tell you about other important information concerning the amended Plan, such as the rules you must satisfy before you can join and the laws that protect your rights.

One of the most important features of our Plan is that the benefits being offered are generally ones that you are already paying for, but normally with money that has first been subject to income and Social Security taxes. Under our Plan, these same expenses will be paid for with a portion of your pay before Federal income or Social Security taxes are withheld. This means that you will pay less tax and have more money to spend and save.

Read this Summary Plan Description carefully so that you understand the provisions of our amended Plan and the benefits you will receive. This SPD describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language. If the non-technical language in this SPD and the technical, legal language of the Plan document conflict, the Plan document always governs. Also, if there is a conflict between an insurance contract and either the Plan document or this Summary Plan Description, the insurance contract will control. If you wish to receive a copy of the legal Plan document, please contact the Administrator.

This SPD describes the current provisions of the Plan which are designed to comply with applicable legal requirements. The Plan is subject to federal laws, such as the Internal Revenue Code and other federal and state laws which may affect your rights. The provisions of the Plan are subject to revision due to a change in laws or due to pronouncements by the Internal Revenue Service (IRS) or other federal agencies. We may also amend or terminate this Plan. If the provisions of the Plan that are described in this SPD change, we will notify you.

We have attempted to answer most of the questions you may have regarding your benefits in the Plan. If this SPD does not answer all of your questions, please contact the Administrator (or other plan representative). The name and address of the Administrator can be found in the Article of this SPD entitled "General Information About the Plan."

I ELIGIBILITY

1. When can I become a participant in the Plan?

Before you become a Plan member (referred to in this Summary Plan Description as a "Participant"), there are certain rules which you must satisfy. First, you must meet the eligibility requirements and be an active employee. After that, the next step is to actually join the Plan on the "entry date" that we have established for all employees. The "entry date" is defined in Question 3 below. You will also be required to complete certain application forms before you can enroll in the Plan.

2. What are the eligibility requirements for our Plan?

You will be eligible to join the Plan as of your date of hire with us. Of course, if you were already a participant before this amendment, you will remain a participant.

3. When is my entry date?

You can join the Plan on the day you meet the eligibility requirements.

4. Are there any employees who are not eligible?

Yes, there are certain employees who are not eligible to join the Plan. They are:

- Union employees.
- Employees who are part-time. A part-time employee is someone who works, or is expected to work, less than 30 hours a week.

5. What must I do to enroll in the Plan?

Before you can join the Plan, you must complete an application to participate in the Plan. The application includes your personal choices for each of the benefits which are being offered under the Plan. You must also authorize us to set some of your earnings aside in order to pay for the benefits you have elected.

II OPERATION

1. How does this Plan operate?

Before the start of each Plan Year, you will be able to elect to have some of your upcoming pay contributed to the Plan. These amounts will be used to pay for the benefits you have chosen. The portion of your pay that is paid to the Plan is not subject to Federal income or Social Security taxes. In other words, this allows you to use tax-free dollars to pay for certain kinds of benefits and expenses which you normally pay for with out-of-pocket, taxable dollars. However, if you receive a reimbursement for an expense under the Plan, you cannot claim a Federal income tax credit or deduction on your return. (See the Article entitled "General Information About Our Plan" for the definition of "Plan Year.")

III CONTRIBUTIONS

1. How much of my pay may the Employer redirect?

Each year, you may elect to have us contribute on your behalf enough of your compensation to pay for the benefits that you elect under the Plan. These amounts will be deducted from your pay over the course of the year.

2. What happens to contributions made to the Plan?

Before each Plan Year begins, you will select the benefits you want and how much of the contributions should go toward each benefit. It is very important that you make these choices carefully based on what you expect to spend on each covered benefit or expense during the Plan Year. Later, they will be used to pay for the expenses as they arise during the Plan Year.

3. When must I decide which accounts I want to use?

You are required by Federal law to decide before the Plan Year begins, during the election period (defined below). You must decide two things. First, which benefits you want and, second, how much should go toward each benefit.

4. When is the election period for our Plan?

You will make your initial election on or before your entry date. (You should review Section I on Eligibility to better understand the eligibility requirements and entry date.) Then, for each following Plan Year, the election period is established by the Administrator and applied uniformly to all Participants. It will normally be a period of time prior to the beginning of each Plan Year. The Administrator will inform you each year about the election period. (See the Article entitled "General Information About Our Plan" for the definition of Plan Year.)

5. May I change my elections during the Plan Year?

Generally, you cannot change the elections you have made after the beginning of the Plan Year. However, there are certain limited situations when you can change your elections. You are permitted to change elections if you have a "change in status" and you make an election change that is consistent with the change in status. Currently, Federal law considers the following events to be a change in status:

- Marriage, divorce, death of a spouse, legal separation or annulment;
- Change in the number of dependents, including birth, adoption, placement for adoption, or death of a dependent;
- Any of the following events for you, your spouse or dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, a change in worksite, or any other change in employment status that affects eligibility for benefits;
- One of your dependents satisfies or ceases to satisfy the requirements for coverage due to change in age, student status, or any similar circumstance; and
- A change in the place of residence of you, your spouse or dependent that would lead to a change in status, such as moving out of a coverage area for insurance.

In addition, if you are participating in the Dependent Care Flexible Spending Account, then there is a change in status if your dependent no longer meets the qualifications to be eligible for dependent care.

There are detailed rules on when a change in election is deemed to be consistent with a change in status. In addition, there are laws that give you rights to change health coverage for you, your spouse, or your dependents. If you change coverage due to rights you have under the law, then you can make a corresponding change in your elections under the Plan. If any of these conditions apply to you, you should contact the Administrator.

If the cost of a benefit provided under the Plan increases or decreases during a Plan Year, then we will automatically increase or decrease, as the case may be, your salary redirection election. If the cost increases significantly, you will be permitted to either make corresponding changes in your payments or revoke your election and obtain coverage under another benefit package option with similar coverage, or revoke your election entirely.

If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, then you may revoke your elections and elect to receive on a prospective basis coverage under another plan with similar coverage. In addition, if we add a new coverage option or eliminate an existing option, you may elect the newly-added option (or elect another option if an option has been eliminated) and make corresponding election changes to other options providing similar coverage. If you are not a Participant, you may elect to

join the Plan. There are also certain situations when you may be able to change your elections on account of a change under the plan of your spouse's, former spouse's or dependent's employer.

These rules on change due to cost or coverage do not apply to the Health Flexible Spending Account, and you may not change your election to the Health Flexible Spending Account if you make a change due to cost or coverage for insurance.

You may not change your election under the Dependent Care Flexible Spending Account if the cost change is imposed by a dependent care provider who is your relative.

You may revoke your coverage under the employer's group health plan outside of our open enrollment period, if your employment status changes from working at least 30 hours per week to less than 30 hours. This is regardless of whether the reduction in hours has resulted in loss of eligibility. You must show intent to enroll in another health plan.

You may also revoke your coverage under our Employer sponsored group health plan if you are eligible to obtain coverage through the health exchanges.

6. May I make new elections in future Plan Years?

Yes, you may. For each new Plan Year, you may change the elections that you previously made. You may also choose not to participate in the Plan for the upcoming Plan Year. If you do not make new elections during the election period before a new Plan Year begins, we will assume you want your elections for insured benefits only to remain the same and you will not be considered a Participant for the non-insured benefit options under the Plan for the upcoming Plan Year.

IV BENEFITS

1. Health Flexible Spending Account

The Health Flexible Spending Account enables you to pay for expenses allowed under Sections 105 and 213(d) of the Internal Revenue Code which are not covered by our insured medical plan and save taxes at the same time. The Health Flexible Spending Account allows you to be reimbursed by the Employer for expenses incurred by you and your dependents.

You may not, however, be reimbursed for the cost of other health care coverage maintained outside of the Plan, or for long-term care expenses. A list of covered expenses is available from the Administrator.

For 2020, the most you can contribute is \$2,750. After 2020, the dollar limit may increase for cost of living adjustments. The minimum amount that you may contribute to the Health Flexible Spending Account each Plan Year is \$480. In addition, you will be eligible to carryover amounts left in your Health Flexible Spending Account, up to \$550. After 2020, the dollar limit may increase for cost of living adjustments. This means that amounts you do not use during a Plan Year can be carried over to the next Plan Year and used for expenses incurred in the next Plan Year.

In order to be reimbursed for a health care expense, you must submit to the Administrator an itemized bill from the service provider. We will also provide you with a debit or credit card to use to pay for medical expenses. The Administrator will provide you with further details. Amounts reimbursed from the Plan may not be claimed as a deduction on your personal income tax return. Reimbursement from the fund shall be paid at least once a month. Expenses under this Plan are treated as being "incurred" when you are provided with the care that gives rise to the expenses, not when you are formally billed or charged, or you pay for the medical care.

You may be reimbursed for expenses for any child until the end of the calendar year in which the child reaches age 26. A child is a natural child, stepchild, foster child, adopted child, or a child placed with you for adoption. If a child gains or regains eligibility due to these new rules, that qualifies as a change in status to change coverage.

Newborns' and Mothers' Health Protection Act: Group health plans generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

Women's Health and Cancer Rights Act: This plan, as required by the Women's Health and Cancer Rights Act of 1998, will reimburse up to plan limits for benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema). Contact your Plan Administrator for more information.

2. Dependent Care Flexible Spending Account

The Dependent Care Flexible Spending Account enables you to pay for out-of-pocket, work-related dependent day-care cost with pre-tax dollars. If you are married, you can use the account if you and your spouse both work or, in some situations, if your spouse goes to school full-time. Single employees can also use the account.

An eligible dependent is someone for whom you can claim expenses on Federal Income Tax Form 2441 "Credit for Child and Dependent Care Expenses." Children must be under age 13. Other dependents must be physically or mentally unable to care for themselves. Dependent Care arrangements which qualify include:

- (a) A Dependent (Day) Care Center, provided that if care is provided by the facility for more than six individuals, the facility complies with applicable state and local laws;
- (b) An Educational Institution for pre-school children. For older children, only expenses for non-school care are eligible; and
- (c) An "Individual" who provides care inside or outside your home: The "Individual" may not be a child of yours under age 19 or anyone you claim as a dependent for Federal tax purposes.

You should make sure that the dependent care expenses you are currently paying for qualify under our Plan. We will also provide you with a debit or credit card to use to pay for dependent care expenses. The Administrator will provide you with further details.

The law places limits on the amount of money that can be paid to you in a calendar year from your Dependent Care Flexible Spending Account. Generally, your reimbursements may not exceed the lesser of: (a) \$5,000 (if you are married filing a joint return or you are head of a household) or \$2,500 (if you are married filing separate returns); (b) your taxable compensation; (c) your spouse's actual or deemed earned income (a spouse who is a full time student or incapable of caring for himself/herself has a monthly earned income of \$250 for one dependent or \$500 for two or more dependents).

Also, in order to have the reimbursements made to you from this account be excludable from your income, you must provide a statement from the service provider including the name, address, and in most cases, the taxpayer identification number of the service provider on your tax form for the year, as well as the amount of such expense as proof that the expense has been incurred. In addition, Federal tax laws permit a tax credit for certain dependent care expenses you may be paying for even if you are not a Participant in this Plan. You may save more money if you take advantage of this tax credit rather than using the Dependent Care Flexible Spending Account under our Plan. Ask your tax adviser which is better for you.

3. Premium Expense Account

A Premium Expense Account allows you to use tax-free dollars to pay for certain premium expenses under various insurance programs that we offer you. These premium expenses include:

- Health care premiums under our insured group medical plan.
- Disability insurance premiums.
- Cancer insurance premiums.

Under our Plan, we will establish sub-accounts for you for each different type of insurance coverage that is available. Also, certain limits on the amount of coverage may apply.

The Administrator may terminate or modify Plan benefits at any time, subject to the provisions of any insurance contracts providing benefits described above. We will not be liable to you if an insurance company fails to provide any of the benefits described above. Also, your insurance will end when you leave employment, are no longer eligible under the terms of any insurance policies, or when insurance terminates.

Any benefits to be provided by insurance will be provided only after (1) you have provided the Administrator the necessary information to apply for insurance, and (2) the insurance is in effect for you.

If you cover your children up to age 26 under your insurance, you can pay for that coverage through the Plan.

V BENEFIT PAYMENTS

1. When will I receive payments from my accounts?

During the course of the Plan Year, you may submit requests for reimbursement of expenses you have incurred. Expenses are considered "incurred" when the service is performed, not necessarily when it is paid for. The Administrator will provide you with acceptable forms for submitting these requests for reimbursement. If the request qualifies as a benefit or expense that the Plan has agreed to pay, you will receive a reimbursement payment soon thereafter. Remember, these reimbursements which are made from the Plan are generally not subject to federal income tax or withholding. Nor are they subject to Social Security taxes. Requests for payment of insured benefits should be made directly to the insurer. You will only be reimbursed from the Dependent Care Flexible Spending Account to the extent that there are sufficient funds in the Account to cover your request.

2. What happens if I don't spend all Plan contributions during the Plan Year?

Any monies left at the end of the Plan Year will be forfeited, except for \$550, or maximum allowed, that can be carried over into the next Plan Year for the Health Flexible Spending Account. Obviously, qualifying expenses that you incur late in the Plan Year for which you seek reimbursement after the end of such Plan Year will be paid first before any amount is forfeited. For the Health Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. For the Dependent Care Flexible

Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. Because it is possible that you might forfeit amounts in the Plan if you do not fully use the contributions that have been made, it is important that you decide how much to place in each account carefully and conservatively. Remember, you must decide which benefits you want to contribute to and how much to place in each account before the Plan Year begins. You want to be as certain as you can that the amount you decide to place in each account will be used up entirely.

3. Family and Medical Leave Act (FMLA)

If you take leave under the Family and Medical Leave Act, you may revoke or change your existing elections for health insurance and the Health Flexible Spending Account. If your coverage in these benefits terminates, due to your revocation of the benefit while on leave or due to your non-payment of contributions, you will be permitted to reinstate coverage for the remaining part of the Plan Year upon your return. For the Health Flexible Spending Account, you may continue your coverage or you may revoke your coverage and resume it when you return. You can resume your coverage at its original level and make payments for the time that you are on leave. For example, if you elect \$1,200 for the year and are out on leave for 3 months, then return and elect to resume your coverage at that level, your remaining payments will be increased to cover the difference - from \$100 per month to \$150 per month. Alternatively your maximum amount will be reduced proportionately for the time that you were gone. For example, if you elect \$1,200 for the year and are out on leave for 3 months, your amount will be reduced to \$900. The expenses you incur during the time you are not in the Health Flexible Spending Account are not reimbursable.

If you continue your coverage during your unpaid leave, you may pre-pay for the coverage, you may pay for your coverage on an after-tax basis while you are on leave, or you and your Employer may arrange a schedule for you to "catch up" your payments when you return.

4. Uniformed Services Employment and Reemployment Rights Act (USERRA)

If you are going into or returning from military service, you may have special rights to health care coverage under your Health Flexible Spending Account under the Uniformed Services Employment and Reemployment Rights Act of 1994. These rights can include extended health care coverage. If you may be affected by this law, ask your Administrator for further details.

5. What happens if I terminate employment?

If you terminate employment during the Plan Year, your right to benefits will be determined in the following manner:

(a) You will remain covered by insurance, but only for the period for which premiums have been paid prior to your termination of employment.

(b) You will still be able to request reimbursement for qualifying dependent care expenses incurred prior to your date of termination from the balance remaining in your dependent care account at the time of termination of employment. However, no further salary redirection contributions will be made on your behalf after you terminate. You must submit claims within 90 days after termination.

(c) Your participation in the Health Flexible Spending Account will cease, and no further salary redirection contributions will be contributed on your behalf. However, you will be able to submit claims for health care expenses that were incurred before the end of the period for which payments to the Health Flexible Spending Account have already been made. You must submit claims within 90 days after termination.

6. Will my Social Security benefits be affected?

Your Social Security benefits may be slightly reduced because when you receive tax-free benefits under our Plan, it reduces the amount of contributions that you make to the Federal Social Security system as well as our contribution to Social Security on your behalf.

7. Qualified Reservist Distributions

If you are a member of a reserve unit and if you are ordered or called to active duty, then you may request a Qualified Reservist Distribution (QRD). A Qualified Reservist Distribution is a distribution of all or a portion of the amounts remaining in your Health Flexible Spending Account. You can only request this distribution if you are called to active duty for a period of 180 days or more or for an indefinite period. The distribution must be made during the period beginning on the date of the call and ending on the last date that reimbursements could otherwise be made under the Plan for the Plan Year which includes the date of the call.

You can receive the amount you have actually contributed minus any reimbursements you have already received (or are in process). The amount you request may be adjusted if needed to conform with your actual account balance. You must request the QRD before the last day of the Plan Year. Any claims that you submit after the date you request the QRD will not be processed. You can only request 1 QRDs for a Plan Year.

**VI
HIGHLY COMPENSATED AND KEY EMPLOYEES**

1. Do limitations apply to highly compensated employees?

Under the Internal Revenue Code, highly compensated employees and key employees generally are Participants who are officers, shareholders or highly paid. You will be notified by the Administrator each Plan Year whether you are a highly compensated employee or a key employee.

If you are within these categories, the amount of contributions and benefits for you may be limited so that the Plan as a whole does not unfairly favor those who are highly paid, their spouses or their dependents. Federal tax laws state that a plan will be considered to unfairly favor the key employees if they as a group receive more than 25% of all of the nontaxable benefits provided for under our Plan.

Plan experience will dictate whether contribution limitations on highly compensated employees or key employees will apply. You will be notified of these limitations if you are affected.

**VII
PLAN ACCOUNTING**

1. Periodic Statements

The Administrator will provide you with a statement of your account periodically during the Plan Year that shows your account balance. It is important to read these statements carefully so you understand the balance remaining to pay for a benefit. Remember, you want to spend all the money you have designated for a particular benefit by the end of the Plan Year.

**VIII
GENERAL INFORMATION ABOUT OUR PLAN**

This Section contains certain general information which you may need to know about the Plan.

1. General Plan Information

City of Mountain Brook Flexible Benefit Plan is the name of the Plan.

Your Employer has assigned Plan Number 501 to your Plan.

The provisions of your amended Plan become effective on 10/1/2020. Your Plan was originally effective on 10/1/1996.

Your Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on October 1 and ends on September 30.

2. Employer Information

Your Employer's name, address, and identification number are:

City of Mountain Brook
P.O. Box 130009
Mountain Brook, Alabama 35213-0009
63-6001325

3. Plan Administrator Information

The name, address and business telephone number of your Plan's Administrator are:

City of Mountain Brook
P.O. Box 130009
Mountain Brook, Alabama 35213-0009
205-802-3825

The Administrator keeps the records for the Plan and is responsible for the administration of the Plan. The Administrator will also answer any questions you may have about our Plan. You may contact the Administrator for any further information about the Plan.

4. Service of Legal Process

The name and address of the Plan's agent for service of legal process are:

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

5. Type of Administration

The type of Administration is Employer Administration.

6. Claims Submission

Claims for expenses should be submitted to:

BeneTech Administrators, Inc., email to claims@btai.com; or mail to
P.O. Box 530967
Birmingham, Alabama 35253

**IX
ADDITIONAL PLAN INFORMATION**

1. Claims Process

You should submit all reimbursement claims during the Plan Year. For the Health Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. However, if you terminate employment during the Plan Year, you must submit your Health Flexible Spending Account claims within 90 days after your termination of employment. For the Dependent Care Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. However, if you terminate employment during the Plan Year, you must submit your Dependent Care Flexible Spending Account claims within 90 days after your termination of employment. Any claims submitted after that time will not be considered.

Claims that are insured will be handled in accordance with procedures contained in the insurance policies. All other general requests should be directed to the Administrator of our Plan. If a dependent care or medical expense claim under the Plan is denied in whole or in part, you or your beneficiary will receive written notification. The notification will include the reasons for the denial, with reference to the specific provisions of the Plan on which the denial was based, a description of any additional information needed to process the claim and an explanation of the claims review procedure. Within 60 days after denial, you or your beneficiary may submit a written request for reconsideration of the denial to the Administrator.

Any such request should be accompanied by documents or records in support of your appeal. You or your beneficiary may review pertinent documents and submit issues and comments in writing. The Administrator will review the claim and provide, within 60 days, a written response to the appeal. (This period may be extended an additional 60 days under certain circumstances.) In this response, the Administrator will explain the reason for the decision, with specific reference to the provisions of the Plan on which the decision is based. The Administrator has the exclusive right to interpret the appropriate plan provisions. Decisions of the Administrator are conclusive and binding.

**X
SUMMARY**

The money you earn is important to you and your family. You need it to pay your bills, enjoy recreational activities and save for the future. Our flexible benefits plan will help you keep more of the money you earn by lowering the amount of taxes you pay. The Plan is the result of our continuing efforts to find ways to help you get the most for your earnings.

If you have any questions, please contact the Administrator.

City of Mountain Brook

**Cafeteria Plan
Administrative Service Agreement**

FLEXIBLE SPENDING ACCOUNT ADMINISTRATION ONLY

SERVICE AGREEMENT
FLEXIBLE SPENDING ACCOUNT ADMINISTRATION ONLY

AGREEMENT made this 22nd day of June, 2020, between City of Mountain Brook, an Employer qualified to do business in the state of Alabama, hereinafter referred to as "Employer", and BeneTech Administrators, Inc., of Birmingham, Alabama hereinafter referred to as "BeneTech"

Recitals

WHEREAS, the Employer desires to maintain a Section 125 Salary Reduction Plan, hereinafter referred to as the Plan, for the benefit of Employer's employees, and

WHEREAS, Employer desires to engage the services of BeneTech to assist in the check processing and account maintenance of the Flexible Spending Accounts only, and to render said services on the terms and conditions provided herein,

NOW THEREFORE, the Employer engages the services of BeneTech and in consideration of the mutual promises contained in this agreement, the parties agree as follows:

Term

1. This agreement shall be for a period of one year, commencing on October 1, 2020, the effective date of the plan, with one year renewals unless a 30 day notice by either party.

Services

2. The parties hereto accept the responsibilities and will provide the services as described below as they pertain to the Plan and in accordance with the terms of the Plan document adopted by Employer, said document being incorporated by reference at the time of its adoption:

A). The responsibilities of BeneTech shall be as follows:

1) PLAN ADMINISTRATION

- Adjudicate all claims in accordance with the plan terms, so long as they comply with the IRS code.
- Per reimbursement cycle reporting of the processing status.
- Providing all FSA participants with instructions on how to file for reimbursement and instructions for using the Benefits Card.
- Local and toll-free phone support for all plan participants.
- Internet access to claim forms, claims entry, account balances, claims history, and pending claims.
- Per reimbursement cycle communications itemizing respective reimbursements
- Per reimbursement cycle check processing on the Medical & Dependent Care FSA.
- Per reimbursement cycle reporting to the employer on the FSA participants reimbursements
- Monthly E-mails to Employer with participant balances, YTD disbursements and deductions.
- Payment E-mails to all participants that elect the direct deposit payment option.
- Annual reporting to employer (includes Final Enrollee Account Balance Report for all Flex Accounts)
- Cobra rights notification sent to Employer to be used for all terminating Medical FSA participants, if applicable.
- Account balance e-mails to all plan participants in the Flexible Spending Accounts, with remaining balances as the plan year end nears.

B. The responsibilities of the Employer will be as follows:

1) PLAN IMPLEMENTATION

- All responsibilities of the administrator for maintaining a Section 125 Cafeteria Plan.
- Supply all necessary information for the establishment and operation of the plan.

2) PLAN ENROLLMENT

- All responsibilities of the administrator for enrolling a Section 125 Cafeteria Plan.

3) PLAN ADMINISTRATION

- Making of necessary changes in payroll to accommodate the Cafeteria Plan.
- Forwarding of information on FSA participant termination's from and additions to the plan.
- Distribution of all plan communications to FSA participants.
- Funding Bank Account to cover reimbursement checks and Benefits Card Swipes

Fee

3. For services to be rendered under this agreement, BeneTech shall be entitled to the monthly fees attached.

Insurance

4. BeneTech shall be an independent contractor and not an employee of the Employer under this agreement. Alan Spain, acting as an employee of BeneTech Administrators, Inc., will be responsible for determining that liability insurance in the minimum amount of \$1,000,000 is in force to cover any claims arising out of the performance of the services under this agreement, proof of said coverage to be submitted by BeneTech to Employer at any time upon request. BeneTech shall further indemnify, save harmless, and defend the Employer from any claims arising from any act or omission of BeneTech's employees or agents and from any liability for withholding and payment of income taxes on employees of BeneTech.

Entire Agreement

5. This agreement supersedes any and all other agreements, either oral or in writing, between the parties to this agreement with respect to its subject matter, and no other agreement, statement, or promise relating to the subject matter of this agreement that is not contained in it shall be valid or binding.

Assignment

6. Neither this agreement nor any duties or obligations under this agreement shall be assignable by BeneTech without the prior written consent of the Employer. In the event of an assignment by BeneTech to which the Employer has consented, the assignee or the assignee's legal representative shall agree in writing with the Employer to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this contract.

Successors and Assigns

7. Subject to the provision regarding assignment, this agreement shall be binding on the heirs, executors, administrators, legal representatives, successors, and assigns of the respective parties.

Attorney's Fees

8. If any action at law or in equity is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief that may be available.

Governing Law

9. The validity of this agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this agreement, shall be governed by the laws of the State of Alabama.

Amendment

10. This agreement may be amended by the mutual agreement of the contracting parties in a writing to be attached to and incorporated into this agreement.

Legal Construction

11. In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of this agreement and this agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

Executed at City of Mountain Brook, on the day and year first written above.

For City of Mountain Brook



For BeneTech Administrators, Inc.

**BENETECH ADMINISTRATORS, INC.
SECTION 125 - FEE SCHEDULE**

Flex Plan Administration - (Includes Medical & Daycare Flexible Spending Accounts)

DESIGN & IMPLEMENTATION

- Plan Design & Set-up \$150.00 / 1st Yr Only

DOCUMENTATION

- Cafeteria Plan Document - Master Plan Document \$100.00 / 1st Yr Only
including Medical and Daycare Flexible Spending Accounts
- Corporate Resolution and Summary Plan Description

ENROLLMENT SERVICE

- Group Meetings with detailed explanation, examples and handouts \$ 50.00 Per Meeting
\$200.00 Max Per Day
(plus travel if applic)

FSA ADMINISTRATION

- Flexible Spending Account per participant monthly charge. (Includes all services for check processing)
- Includes Flex Debit Card
- Includes manual check processing for non debit card expenses
- Includes direct deposit payments to participants bank account
- Includes reimbursement check direct mailing
- Includes participant account website access
- Plan discrimination and eligibility testing (by request)

Flexible Spending Accounts	
Participants	Monthly Fee / Per Participant
1 - 15	* Min Fee (below)
16 - 30	\$4.75
31 - 50	\$4.50
51 - 100	\$4.25
101 - 150	\$4.00
151 - 250	\$3.85
251 - Up	Custom Quote

* Minimum Fees - \$75.00

- Above is not a tiered fee schedule. Determined fee amount is applicable to all FSA participants
- Only one FSA fee even if participant elects both Medical and Dependent Care FSAs

RESOLUTION NO. 2020-092

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a professional services agreement between the City and Schoel Engineering Company, Inc., in the form as attached hereto as Exhibit A, with respect to the Mountain Brook Junior High drainage problem study.

ADOPTED: This 13th day of April, 2020.

Council President

APPROVED: This 13th day of April, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on April 13, 2020, as same appears in the minutes of record of said meeting.

City Clerk

Agreement for Consulting Services

Mountain Brook Junior High Drainage Problem Study

June 09, 2020

This **AGREEMENT**, entered into by and between **The City of Mountain Brook, Alabama**, hereinafter referred to as the **Client**, and **Schoel Engineering Company, Inc.**, hereinafter referred to as the **Consultant**, is for Consulting Services associated with the study of the existing drainage problem at Mountain Brook Junior High School.

PROJECT OVERVIEW

A detention pond was installed at Mountain Brook Junior High School in around 2000. The pond almost immediately was overtopped by storms and flooding of the school building occurred. Schoel performed an evaluation in 2002 and recommended grading changes to the front parking lot and behind the building to better manage the failure of the pond. No attempt was made to address the underlying problem.

It is believed that the pond can be modified to alleviate local flooding. This study will rely on previous work, including hydrologic modeling and surveying to assist in the proposed study. Recommendations as to changes to the drainage conditions at the school will be made and a brief summary report submitted.

PROPOSED SCOPE & SERVICES

1. Drainage Study and recommendations of improvement/mitigation measures

The Consultant perform a drainage study of the major drainage way that runs through Mountain Brook Junior High school. The study would build off of the work performed in 2002 but would employ the Stormwater Management Model as the primary hydrologic model. The study would be extended downstream to Canterbury Church in order to evaluate potential downstream flow changes. The detailed scope is as follows:

- Field Survey pond outlet structures and verify topography from 2007
- Field Survey outlet of 60 inch storm pipe that crosses through the school site
- Develop hydrologic model using SWMM
- Calibrate model based on historical storms
- Document existing conditions
- Evaluate schemes to improve pond performance
- Prepare preliminary design of chosen mitigation scheme
- Discuss preliminary results with Client
- Develop study report

Lump Sum Fee \$16,500

NOT INCLUDED IN SCOPE OF WORK

1. Final Design (future work)
2. Study or design of off-site improvements
3. New topographic survey

SCHEDULE OF UNIT RATES – EFFECTIVE THROUGH 12/31/2020

Senior Principal	\$ 275.00 per hour
Principal	\$ 200.00 per hour
Chief Land Surveyor	\$ 200.00 per hour
Senior Project Manager	\$ 150.00 per hour
Project Manager	\$ 140.00 per hour
Assistant Project Manager	\$ 130.00 per hour
Senior Professional	\$ 140.00 per hour
Project Professional	\$ 115.00 per hour
Staff Professional	\$ 100.00 per hour
Senior Designer / Survey Drafter / Specialist	\$ 100.00 per hour
Designer / Survey Drafter / Specialist 2	\$ 85.00 per hour
Designer / Survey Drafter / Specialist 1	\$ 75.00 per hour
Field Survey Party	\$ 175.00 per hour
Laser Scanning and Registration	\$3,000.00 per day
Modeler	\$ 125.00 per hour
Admin Support/Intern	\$ 70.00 per hour
Transportation	\$ 0.58 per mile

The above fees are inclusive of all expenses or charges that Consultant may incur in connection with provision of Services on the Project, including travel, mail, courier services, communication and a commercially reasonable quantity of copying and reproduction expenses.

GENERAL TERMS AND CONDITIONS

1) Services performed under this Agreement will be conducted in a manner consistent with that level of care and skill exercised by members of the profession currently practicing under similar conditions. Plans, specifications, and submittals will be prepared in accordance with the written standards of the governing authorities having jurisdiction. Any extraordinary requirements for approvals will be considered additional services. Except as expressed herein, no other warranty, expressed or implied, is made. Nothing in this agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

2) Consultant agrees that, to the fullest extent permitted by law, it will defend, indemnify, reimburse and hold Client harmless from the expenses (including those for attorneys' fees, litigation costs and court expenses), damages (including those for bodily injury, death or damage to Clients' property or that owned by third parties) and losses that Client might incur that arise from the following types of claims, causes, suits or actions relating to the Project, the Project site, or Consultant's breach of its obligations under this Agreement (collectively, "Claims"):

(a) professional liability Claims by the Client against the Consultant to the extent caused by Consultant's negligent performance of its professional services contemplated hereunder (a "Professional Liability Claim"); provided that (i) Consultant's total liability for a Professional Liability Claim (including, but not limited to, those arising from its negligence, errors and omissions, or those alleging strict liability, breach of contract or breach of warranty) shall not exceed the minimum limits of the Consultant's Professional Liability insurance coverage required herein in subpart 7(a) below; and (ii) nothing in this

provision obligates Consultant to indemnify Client from a Professional Liability Claims resulting from Client's negligence or willful misconduct;

(b) any Claims for bodily injury, death, or property damage by third parties against the Client that arise out of any "occurrence" as that term is defined by Consultant's policy of Commercial General Liability insurance required in section 7(b) below, provided that (i) Consultant's total liability under this provision shall not exceed the amount of the minimum limits of the Comprehensive General Liability policy required in subpart 7(b) below; and (b) nothing in this provision shall obligate Consultant to indemnify the Client for Claims by third parties that result from the sole negligence or the willful misconduct of the Client. Nothing herein is intended or shall be interpreted to demand or require Consultant to defend or indemnify the Client from and against any third-party claims, demands, actions, proceedings or suits alleging or in any way arising out of Consultant's breach of its professional services obligations or warranty hereunder, except to the extent provided for in subsection (a) above.

3) The fees for different phases of Services in this Agreement are based on the Scope of Services herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will be performed at the above hourly rates, or at a revised fee that the parties will negotiate to their mutual satisfaction. If construction of the Project is delayed and completed more than six (6) months following the anticipated completion date set forth herein, the Consultant reserves the right to adjust its Hourly rates for inflation costs on a one-year interval from the date of this proposal.

4) If a claim, dispute, and other controversy arises between Consultant and Client concerning this Agreement or the alleged failure to perform their respective responsibilities hereunder (a "Dispute"), the respective Project Representatives for the Parties will use good faith efforts to amicably resolve such Dispute. If the Dispute is not resolved by the Project Representatives, it will be escalated to the senior official or manager level of each party for consideration. If a Dispute other than as a result of Client's failure to pay amounts undisputedly due hereunder is not resolved at the senior level, it will be submitted to mediation before, and as a condition precedent to, either party availing themselves of remedies provided by law. Mediation shall be held in the county where the Project is located, and if the parties cannot agree on a mediator, then one shall be appointed by the American Arbitration Association (AAA). The parties agree to equally split the cost billed by the mediator.

5) Services not expressly set forth in writing as basic or additional services and listed in the proposal to this Agreement are excluded from the scope of the Consultant's Services, and the Consultant assumes no duty to the Client to perform them unless agreed in a subsequent writing.

6) Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in Client's files. The Consultant may rely on the information provided by the Client without verification. The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the Scope of Services within established schedules.

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

(a) Professional Liability with minimum limits of not less than One Million Dollars (\$1,000,000.00) covering claims to the extent caused by Consultant's negligent performance of professional services or breach of professional warranty. This Professional Liability policy shall include coverage on an occurrence basis;

(b) Comprehensive General Liability with minimum limits of not less than One Million Dollars (\$1,000,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage on an occurrence basis for premises/operations, products/completed operations, assumed contractual obligations, and independent contractors; and

(c) **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.

Consultant may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before commencement of any Services, the Consultant shall provide Client a certificate(s) of insurance evidencing compliance with the requirements in this section. Further, through an endorsement,, Client shall be named an additional insured on the Comprehensive General Liability and any applicable umbrella and excess policies

8) All reports, plans, documents, materials created by Consultant or its work product from its Services (collectively, the "**Instruments of Service**") shall remain the property of the Consultant, and are intended solely for uses related to this Agreement and construction of the Project. Notwithstanding, Consultant grants Client a perpetual license to distribute to any third party, reproduce or otherwise use any of the Instruments of Service for purposes it deems reasonably necessary that relate to construction of the Project or conditions at the Project site. Client agrees and acknowledges any reuse of the Instruments of Service for purposes outside of this Agreement or the Project, or any failure to follow Consultant's recommendations in those Instruments without Consultant's written permission, shall be at the Client's and other user's sole risk.

9) This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure to perform in accordance with its terms by the other party through no fault of the terminating party. If this Agreement is terminated by Consultant due to default of Client, it agrees that Consultant shall be paid for total charges for work performed prior to the termination notice date.

Additionally, at Client's convenience and without cause or default by Consultant, Client may suspend or cancel the Agreement, performance of Services or work on the Project at any time by providing written notice to Consultant. In the event of such suspension or cancelation, Client will compensate Consultant for Services performed up to through the date of that notice.

10) **Delayed Performance/Force Majeure Events.** Neither party to this Agreement shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under it 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.

11) The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

12) Consultant shall not be responsible for construction safety or construction procedures at the Project site, nor will it be responsible for the quality of the work performed by the Contractor or any consultants that are not retained by it.

13) At Client's request and for its convenience, Consultant may provide documents and its work product in electronic format. Data, words, graphical representations, and drawings that are stored on electronic media or which are transmitted electronically, may be subject to uncontrollable alteration. The printed, signed and sealed hard copy is the actual professional Instrument of Service. In the event of a discrepancy between the electronic document and the hardcopy document, the hardcopy document will prevail.

14) This Agreement is entered with the expectation that it is not being used in a price comparison with other firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

15) **Limitation of Liability.** In no event may Consultant recover from Client 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 Client's breach of its obligations hereunder or suspension or termination of this Agreement.

16) **Project Representative.** Each party shall appoint a representative who shall coordinate with the other party on all matters related to the performance of the Services 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.

17) 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.

18) Any forbearance or delay on the part of Client 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.

19) Consultant may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of Client, which consent may be withheld for any reason.

20) 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.

21) Consultant is an independent contractor of Client. This Agreement does not create any partnership, joint venture or principal-agent relationship between the parties. Further, Client retains no control or authority with respect to its means and methods in which Consultant (or any of its employees or representatives) performs their work or Services.

22) **Immigration Law Compliance.** Consultant represents and warrants to Client 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 has enrolled or will enroll in the E-Verify program prior to performing any Services 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 Consultant 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. Consultant 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 Consultant 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.

23) **Amendment.** Neither this Agreement nor any of the provisions herein may be amended or modified except in accordance with the terms of a subsequent written instrument that is signed by both parties.

24) This instrument sets forth the entire understanding between the parties concerning the matters herein, and, unless expressed herein, all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are of no effect and are deemed to have merged herein.

25) This Agreement shall be governed by, construed and enforced 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 (CLIENT)

By: _____
Stewart H. Welch III

Its: Mayor

Date: June 22, 2020

SCHOEL ENGINEERING COMPANY, INC. (CONSULTANT)

By: Walt Schoel III
Walter Schoel III

Its: President

Date: June 9, 2020

Below please print or type the following information for the individual to whom invoices for payment should be sent, and enter the names of the respective Project Representatives.

Company: _____

Client: _____

Street Address: _____

City, State, Zip: _____

Phone Number: _____ **Fax Number:** _____

Email Address: _____

Client's Project Number: _____ **Client's Purchase Order Number:** _____

Consultant's Project Representative: _____

Client's Project Representative: _____

**ADDENDUM TO AGREEMENT BETWEEN
THE CITY OF MOUNTAIN BROOK AND
SCHOEL ENGINEERING COMPANY, INC.
DATED JUNE 22, 2020**

THIS ADDENDUM (“the/this Addendum”) to the principal agreement between the City of Mountain Brook, Alabama (“the City”) and Schoel Engineering Company, Inc. (“the Contractor”) dated June 22, 2020.

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

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

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

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

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

DATED this 22nd day of June, 2020.

Schoel Engineering Company, Inc.

City of Mountain Brook, Alabama

By : _____

By : _____

Its : _____

Its : Mayor _____

RESOLUTION NO. 2020-093

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a Contractor Agreement between City and Alabama Guardrail, Inc., in the form as attached hereto as Exhibit A, with respect to the Mountain Brook Parkway guardrail replacement.

ADOPTED: This 22nd day of June, 2020.

Council President

APPROVED: This 22nd day of June, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on June 22, 2020, as same appears in the minutes of record of said meeting.

City Clerk

CONTRACTOR AGREEMENT

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

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

2. **Term/Termination.** Unless otherwise agreed, the term of this Agreement shall commence on the Effective Date and thereafter continue in effect for two (2) months (the "Term"). The period in which Contractor will complete the Project is set forth on Exhibit A.

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

3. **Contract Price/Invoice/Certification.** Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of Thirty five thousand six hundred twenty five Dollars (\$35,625.00) as compensation for performing the Work (the "Contract Price"). Further, unless agreed in a writing or amendment to this Agreement that is signed by duly authorized representatives of both Parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price.

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

Clerk will remit to the Contractor the amount certified for payment within twenty (20) days after it receives that certification.

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

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

5. Insurance/Safety/Indemnification.

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

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

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

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

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

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

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

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

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

8. Miscellaneous Provisions.

a. This Agreement (which is comprised of this instrument and Exhibit A) sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein.

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: June 22, 2020 _____

ALABAMA GUARDRAIL, INC.

By: Keith Dillard _____

Its: President

Date: _____

EXHIBIT A – SPECIFICATIONS

1. Scope of Work *(Describe Project Below)*

Install 475 feet of wooden guardrail along Mountain Brook Parkway starting west of Overbrook Road and continuing 475 feet to the west. (the “Scope”). If Contractor desires or is required to perform services on the Project that fall outside the Scope (“Additional Operations”), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same.

2. Project Schedule. Contractor will commence performing the Work within no more than two (10) days after the City gives written or verbal notice to proceed, and successfully complete the Project within (30) days following its receipt of that notice.

3. Project Representatives.

City Project Representative:
Daniel Davis
3579 East Street
Mountain Brook, AL 35243
Email: davisda@mtnbrook.org
Day Tel #: 205-802-3869

Contractor Project Representative:
Keith Dillard
PO Box 126
Cleveland Alabama 35048
Email: ineel@alguardrail.com
Day Tel #: 205-625-3880

4. Special Conditions.

Contractor shall be responsible for all traffic control.

RESOLUTION NO. 2020-094

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

1. That Alabama Power Company is requested to install one (1) 35 watt LED area, 4000K, gray – 3,500 to 4,000 lumens street light on an existing pole with a 2' extension on Sedley Drive between the properties at 3400 North Woodridge Road and 3601 Springhill Road as more fully described in Exhibit A attached hereto (Lighting Services NESC Lease Agreement (Governmental-S)).
2. That the City Manager is hereby authorized to execute and deliver, or cause to be executed and delivered, on behalf of the City such documents, instruments, and agreements that may be deemed necessary or appropriate with respect to said street light upgrades/installations.
3. That the City Clerk is directed to furnish the Alabama Power Company a certified copy of this resolution.

ADOPTED: This 22nd day of June, 2020.

Council President

APPROVED: This 22nd day of June, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on June 22, 2020, as same appears in the minutes or record of said meeting.

City Clerk



Lighting Services NESC® Lease Agreement (Governmental)

Customer Legal Name City of Mountain Brook DBA N Woodridge Rd and Sedley
 Service Address 0 STREETLIGHTS, UNREG NESC LIGHTS BIRMINGHAM AL 35213 County Jefferson
 Mailing Address P.O. Box 130009, Birmingham, AL 35213
 Email Gastons@mtnbrook.org Tel # 205-802-3803 Alt Tel _____
 Tax ID _____ Business Description Municipal

Existing Customer? Yes No If Yes (and if possible), does Customer want Equipment added to an existing account? Yes No Existing Account 36128-68008
For informational purposes only

Equipment										
	Qty	Wattage	Type	Description	OH/UG	M/UM	Equipment Amount (\$)	Estimated Regulated Charge (\$)*	Estimated Monthly Charge (\$)*	
(1)	1	35	LED	LED Cobra - 4000k - gray - 3500 to 5000 Lumens	OH	UM	\$12.69	\$0.78	\$13.47	
(2)										
(3)										
(4)										
(5)										
(6)										
(7)										
(8)										
(9)										
(10)										
Monthly Total *										\$13.47

Project Notes: To install light and wire on existing pole near Sedley and N Woodridge

Initial Term 36 months **Prepaid Amount** \$ 0.00

* The Regulated Charge is subject to change at any time as dictated by the Alabama Public Service Commission. The amount shown is an estimate based on the Unmetered Outdoor Lighting (ODL) rate in effect at time of Agreement proposal; actual charges may vary.

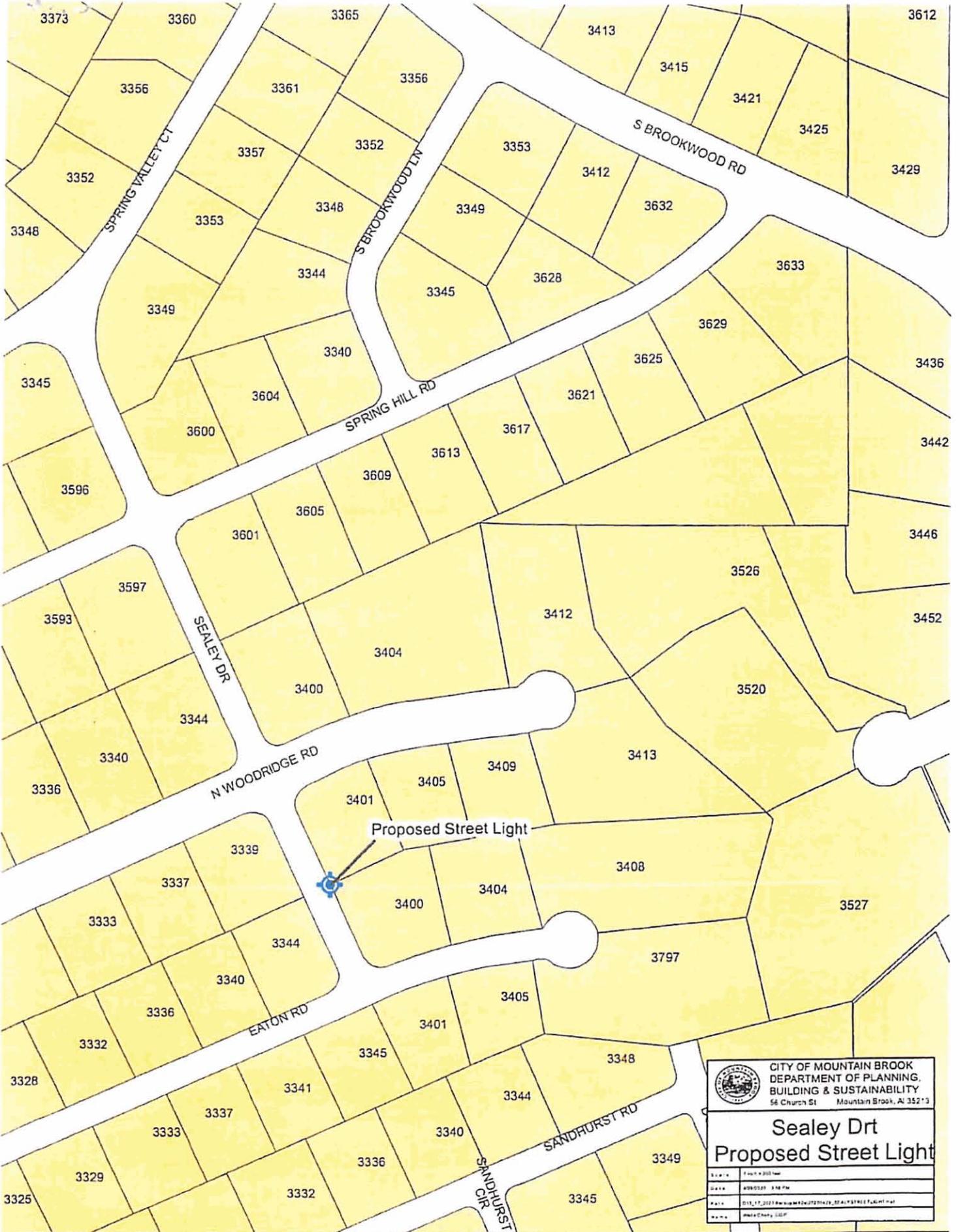
Customer agrees to lease the Equipment referenced above from Alabama Power Company on the attached terms and conditions and authorizes all actions noted above.

Customer Authorized Signature	Date	Alabama Power Company	Date
Sign Here _____	_____	Sign Here _____	_____
Print Name _____	_____	Print Name _____	_____
Print Title _____	_____	Print Title _____	_____

APC Internal Use Only - APC Reference Number (if applicable): _____

TERMS and CONDITIONS (NESC Governmental)

1. **Lighting Equipment Lease.** This Lease Agreement ("Agreement") states the agreed terms and conditions upon which Alabama Power Company ("APC") will (i) lease to "Customer" (identified on Page 1) the "Equipment" referenced on Page 1 for use at the stated "Service Address" (the "Premises"); and (ii) provide electric service to operate the Equipment. The "Equipment" includes all poles, bases, wiring, conduit, fixtures, controls, and related items necessary to provide lighting service through the listed fixtures, unless expressly noted otherwise in "Project Notes." Customer acknowledges that regulatory change during the Agreement term may require APC to modify or replace some Equipment.
2. **Intent and Title.** This Agreement is not a sale of the Equipment to Customer. Customer expressly acknowledges that APC retains title to the Equipment and agrees that this Agreement only gives Customer the right to use the Equipment during the Agreement term, so long as Customer complies with all terms and conditions. Customer acknowledges that the Equipment, although attached to real property, always will remain the exclusive personal property of APC and that APC may remove the Equipment when this Agreement ends. Customer authorizes APC, without further consent or action, to file any UCC financing statement or security agreement relating to the Equipment and agrees that APC may record those documents. APC makes no representation or warranty regarding treatment of this transaction by the Internal Revenue Service or the status of this Agreement under any federal or state tax law; Customer enters into this Agreement in sole reliance upon Customer's own advisors.
3. **Term.** The initial Agreement term is stated on Page 1, calculated from the date of the first monthly bill. After the initial term, this Agreement automatically renews on a month-to-month basis until terminated by either party by providing written notice of intent to terminate to the other party at least 30 days before the desired termination date. APC's address for notice is P.O. Box 2641, Birmingham, Alabama 35203; Customer's mailing address is noted on Page 1.
4. **Payment.** APC will invoice Customer per the terms stated on Page 1, subject to any change in the electric service charge dictated by the Alabama Public Service Commission. Customer agrees to pay the amount billed by the due date (20 days after billing date). Applicable taxes included in the Equipment price are subject to change at any time. If a balance is outstanding past the due date, Customer agrees to pay the greater of 1.5% of the unpaid balance or \$2.00 and acknowledges that APC may require Customer to pay a deposit of up to two times the Estimated Monthly Charge in order to continue service. If applicable, Customer must provide a copy of its Alabama sales tax exemption certificate.
5. **Premises Activity.** Customer grants a license and right of access to APC, and its contractors and representatives, to enter the Premises with vehicles and equipment to: (i) install and connect the Equipment and, if applicable, remove or disconnect existing equipment (collectively, the "Installation"); (ii) inspect, maintain, test, replace, repair, or remove the Equipment; (iii) provide electric service for the Equipment; or (iv) conduct any other Agreement-related activity (items (i)-(iv) collectively, the "APC Activity"). Customer will not cause or permit any obstruction that may interfere with APC's access to the Equipment. Customer represents that the individual signing this Agreement on its behalf has authority to do so and that it has express authority from all Premises owners (and any other party with rights in the Premises) to enter into this Agreement and to authorize the APC Activity. Customer is solely responsible for safety of the Premises and agrees that APC has no obligation to ensure the safety of the Premises or persons or property entering onto Customer's Premises.
6. **Installation.** Customer represents that: (i) the Premises' final grade will vary no more than 6 inches from the grade existing at the time of installation; and (ii) if applicable and required for proper installation, Premises property lines will be clearly marked before installation.
 - A. **Customer Work.** If APC, upon Customer's request, allows Customer to perform any part of the installation (including trenching) itself or through a third party, Customer warrants that the work will meet APC's installation specifications (which APC will provide to Customer and are incorporated by this reference). Customer is responsible for all reasonable additional costs arising from Customer's non-compliance with APC's specifications or lack of timely (i.e., 10 days) notice to APC that APC's installation activity can commence.
 - B. **Underground Facility/Obstruction Not Subject to Dig Law.** Because APC Activity may require excavation not subject to the Alabama's Underground Prevention Legislation (Ala. Code §§ 37-15-1 - 37-15-11) ("Dig Law"), Customer must mark any private utility or facility (e.g., gas/ water/sewer line; irrigation facility; low voltage data/communication line) or other underground obstruction at the Premises that is not subject to the Dig Law. If APC causes or incurs damage due to Customer's failure to mark a private facility or obstruction before APC commences installation, Customer is responsible for all damages and any resulting delay.
 - C. **Unforeseen Condition.** The estimated charges shown on Page 1 include no allowance for any subsurface rock, wetland, underground stream, buried waste, unsuitable soil, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, etc. not properly marked or identified ("Unforeseen Condition"). If APC encounters an Unforeseen Condition, APC, in its sole discretion, may stop all APC Activity until Customer either remedies or agrees to reimburse all APC costs arising from the condition. Customer is responsible for all costs of Equipment modification or change requested by Customer or dictated by an Unforeseen Condition or circumstance outside APC's control.
7. **Equipment Protection and Damage.** After installation and throughout this Agreement's term, in the event of any work or digging near the Equipment, Customer (or any person or entity working on Customer's behalf) must: (i) provide notices and locate requests by calling Alabama 811 or 1-800-292-8525; and (ii) provide notices to other utilities or operators as required by the Dig Law. As between Customer and APC, Customer is responsible for all damages arising from failure to comply with applicable law or for Equipment damage caused by anyone other than APC (or an APC contractor or representative).
8. **Maintenance.** During this Agreement's term, APC will maintain the Equipment and will bear the cost of routine repair or replacement. Customer must notify APC of any need for Equipment repair by calling the Business Service Center at 1-888-430-5787.
9. **Disclaimer; Damages.** APC makes no covenant, warranty, or representation of any kind (including warranty of fitness for a particular purpose or of merchantability) regarding the Equipment or any APC Activity. Customer also acknowledges that, due to the unique characteristics of the Premises, Customer's needs, or Equipment choice, the Equipment may not follow IESNA guidelines. Customer waives any right to consequential, special, indirect, treble, exemplary, incidental, punitive, loss of business reputation, or loss of use (including loss of revenue, profits, or capital costs) damages in connection with the Equipment or this Agreement, or arising from damage, hindrance, or delay involving the Equipment or this Agreement, whether or not reasonable, foreseeable, contemplated, or avoidable.
10. **Indemnity.** To the fullest extent allowed by law, Customer agrees to indemnify, release, hold harmless, and, at APC's request, defend APC and its affiliates and contractors (and their officers, directors, employees, representatives, and agents) from or against any loss, damage, cost, expense, or liability (including actual attorneys' fees reasonably incurred and all expenses of investigation and defense) for any damage or claim for personal or bodily injury (including death), property damage (including loss of use), monetary damage, or equitable relief caused by or arising out of any misrepresentation or act or omission of Customer involving this Agreement, the Equipment, or the Premises, whether or not caused by or arising out of the joint, concurrent, or contributory (but not sole) negligence of APC.
11. **Default.** Customer is in default if Customer does not pay the entire amount owed within 45 days of billing. APC's waiver of any past default will not waive any other default. If default occurs, APC, at its discretion, may immediately terminate this Agreement, collect all past due amounts (including late fees) and all amounts due for the Equipment during the remaining Agreement term, remove the Equipment from the Premises, and seek any other available remedy.
12. **Miscellaneous.** This Agreement contains the parties' entire agreement relating to the Equipment and replaces any prior agreement, written or oral. Only a written amendment signed by each party can modify this Agreement, except that either party may update administrative or contact information (e.g., address, phone, website) at any time by written notice to the other party. Customer will not assign, in whole or in part, this Agreement or its Agreement rights or obligations without APC's prior written consent. No assignment, whether with or without consent, relieves Customer of its Agreement obligations. Customer must provide advance notice of a change in control of all, or substantially all, of Customer's ownership or interest in the Premises. In this Agreement, "including" means "including, but not limited to." Alabama law governs this Agreement. If a court rules an Agreement provision unenforceable to any extent, the rest of that provision and all other provisions remain effective.




CITY OF MOUNTAIN BROOK
 DEPARTMENT OF PLANNING,
 BUILDING & SUSTAINABILITY
 56 Church St Mountain Brook, AL 35213

Sealey Drt
Proposed Street Light

DATE	1/28/2021
TIME	4:00 PM
FILE	D:\17_2021\Projects\20210128_SEALEY STREET LIGHT.MXD
USER	John Chappell

RESOLUTION NO. 2020-095

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby awards the bid (B-20200522-635), in the amount of \$107,751.00 (including 10% owner's contingency), to Meadows Contracting, Inc., for City Hall service mall renovations.

ADOPTED: This 22nd day of June, 2020.

Council President

APPROVED: This 22nd day of June, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on June 22, 2020, as same appears in the minutes of record of said meeting.

City Clerk

Bid Tabulation			6/18/2020 2:00pm	
Project: Mountain Brook City Hall - Mall Renovation				
	Meadows	Hallco Building	Conerstone	Budget
	Amount	Amount	Amount	Amount
DIV. 1 - GEN. REQUIREMENTS				
General Conditions	\$5,100.00	\$14,984.00	\$7,500.00	\$22,500.00
Subtotal: DIV. 1	\$5,100.00	\$14,984.00	\$7,500.00	\$22,500.00
DIV. 2 - SITEWORK				
Demolition	\$4,100.00	\$2,000.00	\$3,000.00	\$3,500.00
Subtotal: DIV. 2	\$4,100.00	\$2,000.00	\$3,000.00	\$3,500.00
DIV. 6 - WOOD & PLASTIC				
Rough Carpentry	\$4,500.00	\$7,000.00	\$2,000.00	\$1,000.00
Millwork and Trim	\$22,024.00	\$1,315.00	\$10,000.00	\$5,000.00
Countertop additions/modifications	\$1,200.00	Included	\$3,000.00	\$2,500.00
Subtotal: DIV. 6	\$27,724.00	\$8,315.00	\$15,000.00	\$8,500.00
DIV. 8 - WINDOWS & DOORS				
Bullet resistant Windows and Frames	\$24,715.00	\$26,000.00	\$20,000.00	\$40,000.00
Bullet resistant Doors and Frames	\$12,100.00	\$15,600.00	\$15,000.00	\$18,000.00
Hardware	\$800.00	\$1,000.00	\$1,250.00	\$1,500.00
Subtotal: DIV. 8	\$37,615.00	\$42,600.00	\$36,250.00	\$59,500.00
DIV. 9 - FINISHES				
Drywall and Framing	\$1,960.00	\$19,527.00	\$5,000.00	\$3,000.00
Painting	\$1,750.00	\$2,900.00	\$2,500.00	\$3,500.00
Acoustical Ceilings	\$0.00	Included	\$1,500.00	\$200.00
Fiberglass sheathing	\$10,437.00	Included	\$15,000.00	\$10,000.00
Subtotal: DIV. 9	\$14,147.00	\$22,427.00	\$24,000.00	\$16,700.00
DIV. 11 - EQUIPMENT				
Transaction Trays	\$960.00	Included in Div8	\$5,000.00	\$1,000.00
Subtotal: DIV. 11	\$960.00	\$0.00	\$5,000.00	\$1,000.00
DIV. 16 - ELECTRICAL				
Electrical	\$330.00	\$4,750.00	\$1,350.00	\$500.00
Low Voltage / Security	\$1,720.00	\$1,000.00	\$1,250.00	\$1,000.00
Subtotal: DIV.16	\$2,050.00	\$5,750.00	\$2,600.00	\$1,500.00
PROJECT SUBTOTAL:	\$91,696.00	\$96,076.00	\$93,350.00	\$113,200.00
Permits and Fees	\$4,585.00	\$3,667.00		
GC FEE	\$2,300.00	\$10,439.00	\$5,500.00	\$5,660.00
Performance Bond		\$855.00	\$5,250.00	\$10,000.00
Contingency	\$9,170.00	\$15,277.00	\$16,823.00	\$5,000.00
PROJECT TOTAL:	\$107,751.00	\$126,314.00	\$120,923.00	\$133,860.00