

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
JANUARY 9, 2023**

---

[As a convenience, members of the public were invited to listen, observe and participate in the public meeting by Internet video conference.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 5:45 p.m. on the 9<sup>th</sup> day of January, 2023 (others were allowed to listen to the meeting by way of Internet video conference). 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  
Graham L. Smith  
Gerald A. Garner  
Lloyd C. Shelton  
Stewart Welch III, Mayor

Absent: None

Also present were City Attorney Steve Stine, City Manager Sam Gaston, and City Clerk Heather Richards.

**1. EXECUTIVE SESSION**

Council President Pro Tempore Pritchard made a motion that the City Council convenes in executive session to discuss a real estate matter and that the City Council shall reconvene upon conclusion of the executive session. The City Attorney certified that the subject matters were allowed to be discussed in executive pursuant to Alabama Law. The motion was seconded by Council President Virginia Smith. 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  
Gerald A. Garner  
Graham L. Smith  
Lloyd C. Shelton

Nays: None

**2. ANNOUNCEMENT**

Virginia Smith-Council President

- Announced the Public Hearing regarding the rezoning of property from Residence B district to Planned Unit Development district will be removed from the 7pm formal agenda

Charlie Beavers-Developer

- An error was found on the notice that was sent to residents
- Requesting a special public meeting of January 30<sup>th</sup>

Virginia Smith

- The Public Hearing will be re-scheduled to January 30<sup>th</sup> at 5:00 p.m.

### 3. AGENDA

#### 1. Agreement with City of Birmingham on maintenance of Lane Park Road

Stewart Welch-Mayor

- Received calls regarding potholes on Lane Park Road in front of Botanical Gardens
- This portion of the road is in Birmingham
- This agreement allows Mountain Brook to repair the road that is located in Birmingham
- This agreement is not a cost share with Birmingham, Mountain Brook will incur all costs associated with repairs

Ronnie Vaughn-Public Works Director

- Would like to get a more accurate cost of repairs before proceeding

#### 2. Amwaste update

Rick Sweeney-Amwaste

- Provided a report of repeated missed services (Exhibit 1)
- Month 1 had 1355 missed services, last 6 weeks had 389 missed services
- 67 residents had repeat misses (this is down from the first 4 weeks)
- Goal is 0 missed services every day

#### 3. Tree Protection ordinance update

Tyler Slaten-Senior Planner

- At the December meeting a proposed tree ordinance was discussed that is required to maintain the state of a Tree City USA
- Implemented changes that was discussed

Steve Stine-City Attorney

- Any cost to residents were removed

Virginia Smith-Council President

- Item added to the formal agenda (Ordinance No. 2138)

#### 4. Sixty (60) day extension request on the Caldwell Mill Road bridge project

Sammy Harton-Gresham Smith

- Noticed a conflict on recommendation and letter in packet
- This extends the request another 14 days (provided updated extension request letter)
- Work ceased due to pipe, the piping had to be approved then ordered
- Contractor does not want to open road without guardrails
- Temporary barriers would cost around \$32,000
- Once change order is approved, it will take 5 to 6 weeks to get materials
- 74 day extension is for labor and materials (change order #3 for guardrail would need to be approved this week in order to keep timeline)

Steve Stine-City Attorney

- Completion dates can change over time due to weather, change in plans, etc.
- In these situations, requests are made by contractors if they believe there is good reason to extend the completion date
- The (\$200 a day) liquidated damages does not come into play if circumstances are agreed that the date should be moved
- If extension is granted, new date will be 74 days from December 16th
- Liquidated damages only applies if the contractor does not complete the work after the extension date

Virginia Smith-Council President

- Item added to the formal agenda (Resolution No. 2023-008)

5. Mirror on Right-of-Way at 2820 Cherokee Road

Steve Stine-City Attorney

- It appears the post is close to the road and looks like the post is on city Right-of-Way
- No request was made to the City to install a post or mirror at that location

Virginia Smith-Council President

- The City does not authorize mirrors as it is not part of the Uniform Traffic manual
- Typically mirrors are put up by agreeing neighbors
- The GIS will determine the location of the post to determine if it is on the City's Right-of-Way

[Note: It was determined after this meeting that the mirror is on the City of Mountain Brook's property]

6. Emily Christian to address the City Council regarding real estate and other signs at street corners on the weekends

Emily Christian-3900 Montevallo Road

- Lived at current residence for 9 years
- Asked real estate agents to remove signs and to cease putting signs in her yard
- Requesting the City to fine the agents or have someone to remove signs on weekends

Sam Gaston-City Manager

- Propose an administrative process to have employees remove the signs on weekends

7. Conditional Use application for Magic City Cheer located at 229 Country Club Park (in the former 32 Degrees Yogurt location)

Dana Hazen-Director of Planning, Building & Sustainability

- There is an excess of 13 parking spaces
- A fitness use requires more parking, would leave a surplus parking of 9 spaces
- On-site parking is adequate

Steven Hand-Owner of Magic City Cheer

- His wife started a cheering gym on Highway 280 10 years ago
- Small groups (4 kids to 1 coach); may look at 9 spots with 2 coaches.

Virginia Smith-Council President

- Item added to the formal agenda (Resolution No. 2022-007)

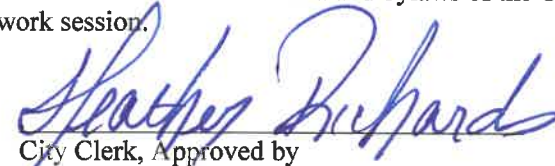
8. Review of the other matters to be considered at the formal (7:00p.m.) meeting

**2. ADJOURNMENT**

There being no further matters for discussion Council President Virginia Smith adjourned the pre-meeting at approximately 7:10 pm.

**3. CERTIFICATION**

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the regular session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A-106) on January 9, 2023, 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 January 23, 2023

Row Labels	Count of Customer Address One
132 FAIRMONT DR	3
136 Euclid Avenue	2
2 Easy Street	3
209 Montevallo Lane	2
22 Clarendon Rd	2
225 Beech Circle	2
23 Gaywood Circle	2
2317 Montevallo Road	3
2531 Montevallo Drive	2
2859 Southwood Road	6
2871 Balmoral Rd	2
2900 Montevallo Rd	3
2918 Montevallo Road	3
2921 Pumphouse Road	2
2928 brook hollow ln	2
2975 Brookwood Rd	2
3 Easy Street	3
3016, Cherokee Road	2
3068 Overton Road	2
3108 Overhill Rd	3
3180 Overton Cove	2
32 Beechwood Road	2
3232 E. Briarcliff rd.	2
3241 East Briarcliff Road	2
3250 Overbrook rd	3
3254 Dell Road	2
3312 East Briarcliff Road	2
3337 East Briarcliff	4
3341 Dell Road	3
3341 Overton Road	2
3349 S Brookwood Ln	2
3361 DELL ROAD	3
3400 East Briarcliff Rd	2
3515 River Bend Rd	2
3601 Crosshill Rd	2
3613 Crestside Rd	2
3613 Mountain Lane	4
3620 Mountain Park Drive	2
3624 Mountain Lane	2
3625 Mountain Park Dr	2
3633 springhill road	2
3665 northcote drive	2
3692 Rockhill Road	3
3713 Spring Valley Rd	2

3730 Montrose rd	2
3730 Crestbrook Road	2
4119 Old Leeds Road	2
412 Euclid Avenue	2
4128 Sharpsburg Dr	3
4140 Sharpsburg Drive	2
4144 Montevallo Rd Se	2
4144 Sharpsburg Dr	2
4233 WILDERNESS RD	2
4253 Stone River Rd	2
4313 Fair Oaks Drive	2
4333 Little River Road	3
4337 Little River Road	3
4353 Wilderness Court	2
4365 Little River Road	2
4433 Corinth Drive	2
4523 Pine Mountain Rd	2
4643 Battery Lane	2
47 Pine Crest Rd	2
601 Euclid Ave	2
7 Memory Lane	2
740 Montgomery Drive	2
904 Sheridan Drive	2
<b>Grand Total</b>	<b>156</b>

Date	Reported Missed Services	DOW
28-Nov	18	Monday
29-Nov	17	Tuesday
30-Nov	35	Wednesday
1-Dec	8	Thursday
2-Dec	13	Friday
3-Dec	3	Saturday
4-Dec	1	Sunday
5-Dec	6	Monday
6-Dec	12	Tuesday
7-Dec	12	Wednesday
8-Dec	18	Thursday
9-Dec	4	Friday
10-Dec	3	Saturday
11-Dec	5	Sunday
12-Dec	12	Monday
13-Dec	12	Tuesday
14-Dec	11	Wednesday
15-Dec	11	Thursday
16-Dec	3	Friday
17-Dec	4	Saturday
18-Dec	0	Sunday
19-Dec	9	Monday
20-Dec	5	Tuesday
21-Dec	7	Wednesday
22-Dec	10	Thursday
23-Dec	6	Friday
24-Dec	9	Saturday
25-Dec	1	Sunday
26-Dec	4	Monday
27-Dec	10	Tuesday
28-Dec	20	Wednesday
29-Dec	33	Thursday
30-Dec	24	Friday
31-Dec	17	Saturday
1-Jan	3	Sunday
2-Jan	5	Monday
3-Jan	10	Tuesday
4-Jan	20	Wednesday
5-Jan	10	Thursday
6-Jan	10	Friday
7-Jan	5	Saturday

15232 Weekly Services  
 91392 6 Week Services Evaluated  
 0.43% Services Failures Reported.

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
JANUARY 9, 2023**

---

[As a convenience, members of the public were invited to listen, observe and participate in the public meeting by Internet video conference.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:12 p.m. on the 9<sup>th</sup> day of January, 2023 (others were allowed to listen to the meeting by way of Internet video conference). The Council President Pro Tempore called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
William S. Pritchard III Chairman, Council President Pro Tempore  
Graham L. Smith  
Gerald A. Garner  
Lloyd C. Shelton  
Stewart Welch III, Mayor

Absent: None

Also present were City Attorney Steve Stine, City Manager Sam Gaston, and City Clerk Heather Richards.

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

**1. CONSENT AGENDA**

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

Approval of the minutes of the December 12, 2022, regular meeting of the City Council

<b>2023-001</b>	Accept the proposal submitted by Stone and Sons Electrical Contractors for the installation of a flashing beacon and sign on Old Leeds Road	Exhibit 1, Appendix 1
<b>2023-002</b>	Approve the City to enter into a negotiated contract with Wright Construction Company with respect to the Old Leeds Road sidewalk project	Exhibit 2, Appendix 2
<b>2023-003</b>	Execute a construction agreement with the State of Alabama (ALDOT) with respect to the TAP sidewalk project (TAPAA-TA23(919); CPMS Ref#100075860))	Exhibit 3, Appendix 3
<b>2023-004</b>	Execute a License Agreement with Birmingham Levite Jewish Community Center with respect to the City's use of the outdoor recreational field and Gymnasium	Exhibit 4, Appendix 4
<b>2023-005</b>	Ratify change order No. 2 with respect to the Caldwell Mill Road bridge project (Project#C-2016912-203)	Exhibit 5, Appendix 5

<b>2023-006</b>	Execute a Transit Service Agreement FY2023 with Birmingham-Jefferson County Transit Authority (BJCTA) (dba "MAX")	Exhibit 6, Appendix 6
<b>2023-007</b>	Approve the conditional use application for Magic City Cheer located at 229 Country Club Park	Exhibit 7, Appendix 7
<b>2023-008</b>	Approve a (74) working day extension on the Caldwell Mill Road bridge project	Exhibit 8, Appendix 8

Thereupon, the foregoing minutes and resolutions (Nos. 2023-001 through 2023-008), were introduced by Council President Virginia Smith and a motion for their immediate adoption made by Council President Pro Tempore Pritchard. The minutes and resolutions were then considered by the City Council. Council Member Graham Smith seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President  
 William S. Pritchard III, Council President Pro Tempore  
 Graham L. Smith  
 Gerald A. Garner  
 Lloyd C. Shelton

Nays: None

Abstained: None

Council President Virginia Smith thereupon declared that said minutes and resolutions (Nos. 2023-001 through 2023-008) were adopted by a vote of 5—0 and as evidence thereof she signed the same.

**2. RECOGNIZE JANET FORBES FOR RECEIVING THE CO-CITY EMPLOYEE OF THE YEAR AWARD FOR 2022**

Stewart Welch-Mayor

- Congratulated Janet Forbes for receiving the co-city employee of the year award for 2022

**3. CONSIDERATION: ORDINANCE NO. 2138 CITY OF MOUNTAIN BROOK TREE ORDINANCE (EXHIBIT 9)**

Council President Virginia Smith introduced the ordinance in writing. It was then moved by Council Member Shelton 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 be given and that the reading of the ordinance at length be waived. The motion was seconded by Council President Pro Tempore Pritchard and was unanimously carried, as follows:

Ayes: Virginia C. Smith  
 William S. ("Billy") Pritchard III  
 Gerald A. Garner  
 Graham L. Smith

Lloyd C. Shelton

Nays: None

Council President Virginia Smith declared the motion carried by a vote of 5—0.

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

Ayes: Virginia C. Smith  
William S. ("Billy") Pritchard III  
Gerald A. Garner  
Graham L. Smith  
Lloyd C. Shelton

Nays: None

Council President Virginia Smith declared that the ordinance (No. 2138) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

**4. CONSIDERATION: RESOLUTION EXECUTING A CONTRACTOR AGREEMENT WITH NET CONNECTION LLC WITH RESPECT TO THE INSTALLATION OF BATTING CAGES AND FRAMES LOCATED AT CHEROKEE BEND ELEMENTARY**

Shanda Williams-Parks and Recreation Director

- 2 batting cages were removed, want to put them back
- School wants the batting cages outside field area
- The batting cages would have a cover to provide shelter from elements

Scott Elledge-4345 Kennesaw Drive

- Through the years, the buffer between his house and the field has been removed
- Oppose the location of the batting cages, not the batting cages themselves
- Would like the City to look at other locations to install the batting cages

Kaye Houser-4341 Kennesaw Drive

- The previous location of the batting cages were never a bother
- Several trees have died, reducing the buffer
- Does not want to remove any more of the buffer

Virginia Smith-Council President

- Will look at alternate locations before a decision will be made regarding the location of the batting cages
- Will discuss adding more buffering with the school

Austin Ray-4349 Kennesaw Drive

- Proposed location of the batting cages would eliminate the last bit of buffer
- The pinging of bats could be a concern because there is no auditory barrier



- Appreciate the council's consideration of moving the location of the batting cages

**5. ANNOUNCEMENT**

Council President Virginia Smith announced the next regular meeting of the City Council is January 23, 2023, 7:00p.m.

**6. ANNOUNCEMENT**

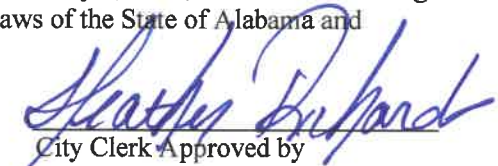
Council President Virginia Smith announced the public hearing for the request to rezone property from Residence B district to Planned Unit Development (PUD) district will be January 30, 2023 at 5:00 p.m.

**7. ADJOURNMENT**

There being no further business to come before the City Council, Council President Virginia Smith adjourned the meeting at approximately 7:40 p.m.

**8. CERTIFICATION**

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A-108) on January 9, 2023, 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 January 23, 2023

---

**EXHIBIT 1  
 RESOLUTION NO. 2023-001**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the Mayor or the City Manager to accept the proposal submitted by Stone & Sons Electrical Contractors for the installation of a flashing beacon and sign on Old Leeds Road at Cherokee Road in consideration of \$36,251.00 (Exhibit A attached hereto). Subject to entering a customary contract with the City.

**APPENDIX 1**

---

**EXHIBIT 2  
 RESOLUTION NO. 2023-002**

**WHEREAS**, on July 21<sup>st</sup> at 10:00 am the bid opening commenced for the Old Leeds Sidewalk Project (B-20220617-802) to which no bids were received.

**WHEREAS**, Mountain Brook negotiated the work for the above project with Wright Construction Company as prescribed by the Alabama bid law.

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby approves the City to enter into a negotiated contract with Wright Construction Company with respect to the Old Leeds Road sidewalk project.

**APPENDIX 2**

---

**EXHIBIT 3**

**RESOLUTION NO. 2023-003**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a construction agreement between the City and the State of Alabama (acting by and through the Alabama Department of Transportation) with respect to the Transportation Alternatives Program (TAP) sidewalk project (TAPAA-TA23(919); CPMS Ref #100075860) along Country Club Road starting just south of Montclair Road to Montclair Road along Montclair Road from Country Club Road to Mountain Brook Park Drive.

**APPENDIX 3**

---

**EXHIBIT 4**

**RESOLUTION NO. 2023-004**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a License Agreement between the City and Birmingham Levite Jewish Community Center, in the form as attached hereto as Exhibit A, with respect to the City's use of the outdoor recreational field and the Gymnasium and appurtenant areas located at the Center, subject to the agreement of the hours when the field and gymnasium are available.

**APPENDIX 4**

---

**EXHIBIT 5**

**RESOLUTION NO. 2023-005**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby ratifying change order No. 2 with respect to the Caldwell Mill Road bridge project (Resolution No. 2022-040) (Project # C-2016912-203) in the amount of \$12,000.00 (Twelve Thousand Dollars).

**APPENDIX 5**

---

**EXHIBIT 6**

**RESOLUTION NO. 2023-006**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a Transit Service Agreement FY2023 between the City and Birmingham-Jefferson County Transit Authority (BJCTA) (dba\ "MAX"), in the form as attached hereto as Exhibit A.

**APPENDIX 6**

---

**EXHIBIT 7****RESOLUTION NO. 2023-007**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the conditional use application (Magic City Cheer) at 229 Country Club Park.

**APPENDIX 7**

---

**EXHIBIT 8****RESOLUTION NO. 2023-008**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the contract awarded to Gillespie Construction, LLC with a completion date of December 16<sup>th</sup> 2022, authorized upon the adoption of Resolution No. 2022-040 dated March 28, 2022, with respect to the Caldwell Mill Road bridge project is hereby extended for (74) working days with a new completion date of February 28<sup>th</sup> 2023.

**APPENDIX 8**

---



Electrical Contractors, Inc.

January 4, 2023

City of Mountain Brook  
C/O Skipper Consulting

RE: Flashing Beacon & Sign  
Old Leeds Rd @ Cherokee

Attn: Richard Caudle

Richard,

Our price for the above referenced work based on your drawings dated 12/20/2022 will be as follows:

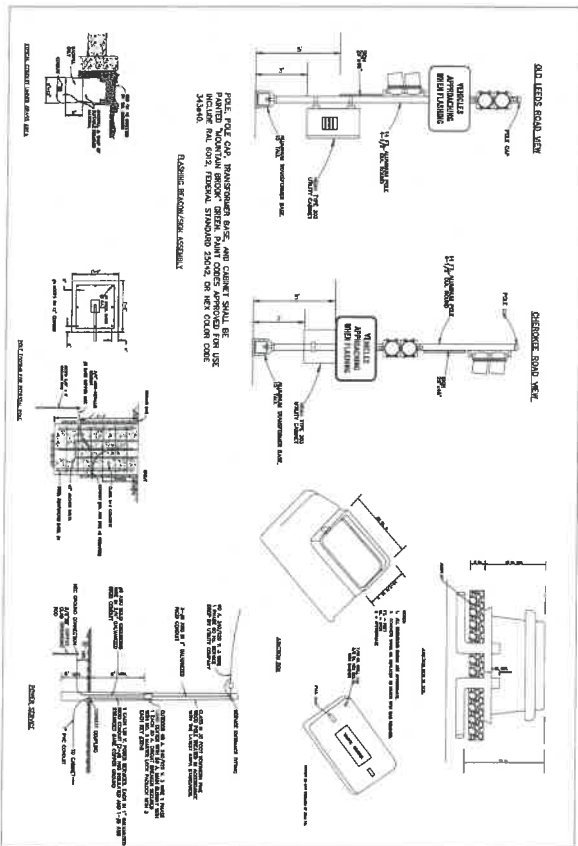
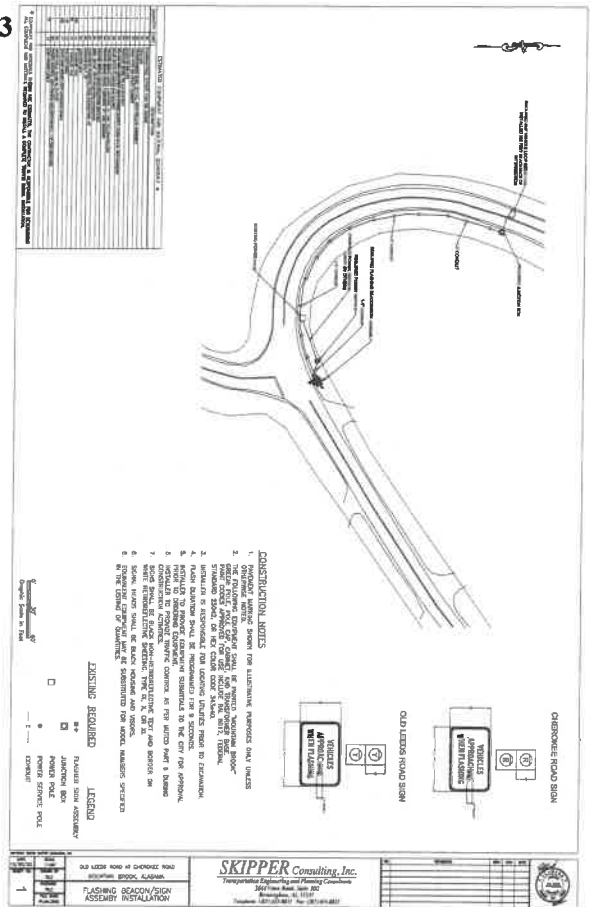
**\$36,251.00**

Lead time on this equipment is quoted by our vendor at 20-30 weeks after approval of submittal information.

Best Regards,

*J. Mark Rouse*  
Project Manager

2530 Queenstown Road • Birmingham, AL 35210 • Office: (205) 833-8494 • Fax: (205) 833-9390



**EMAIL COVER SHEET**

STONE & SONS ELECTRICAL CONTRACTORS, INC.  
2530 Queenstown Road  
Birmingham, Alabama 35210  
Phone Number (205) 833-8484  
Fax Number (205) 833-8380

TO: Skipper Consulting, Inc. 3644 Vann Road, Suite 100 Birmingham, Alabama 35235	FROM: Michael Clay MC23008
ATTENTION: Richard Caudle	DATE: 1/12/2023
FAX NUMBER: 205-855-8855	PHONE NUMBER: 205-855-8855

Urgent  Reply ASAP  For Approval  For Review  Your Copy

TOTAL PAGES INCLUDING COVER SHEET: Please find enclosed (1) signed copy of

the subcontract for the project City of Mountain Brook Flashing Lights/Sign Equipment  
as requested.

If you should have any questions, please do not hesitate to contact us.

Thank you.

\*\*\*\*\*emailed to Skipper\*\*\*\*\*

January 9, 2023

AGREEMENT TO INSTALL FLASHING LIGHTS/SIGN EQUIPMENT

STONE & SONS ELECTRICAL CONTRACTORS, INC. (hereinafter referred to as the "Contractor") enters into this Agreement to install Flashing Lights and Signs Equipment ("Agreement") with the CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation ("City") effective as of the date last executed by a party below (the "Effective Date").

1. Scope of Project. The Contractor will provide and furnish all labor, materials, equipment, and services necessary to perform the following project (the "Project") in accordance with the terms, conditions and specifications set forth herein:

- Install an assembly of flashing lights and signs at the intersection of Old Leeds Road at Cherokee Road in the City of Mountain Brook. Contractor's operations generally include installation of one (1) 14 foot aluminum pole with transformer base and concrete foundation, pole to be equipped with two (2) two-section signal heads, a controller cabinet with battery backup, and vehicle detection. Contractor is required to construct a power service and arrange for power with local power service provider, in conjunction with the City.
• Contractor shall provide and install all materials and equipment to be according to the plans prepared by Skipper Consulting, Inc. dated December 20, 2022, which are attached and incorporated herein as Exhibit A; and
• Contractor shall be responsible for utility location and traffic control during construction.

All of the operations to be performed by Contractor on the Project collectively may be referenced herein as the "Work."

2. Project Schedule. Contractor will order the materials and equipment needed for the Work as soon as possible after the Effective Date. Contractor agrees to perform the Work and finish the Project within two hundred and ten (210) calendar days after the Effective Date.

3. Termination. The City may terminate this Agreement if the Contractor defaults on a material obligation to the City hereunder (a "Default"), and, following the City's provision of written notice of Default to Contractor, the Contractor fails to correct or remedy the Default within seven (7) days after receipt of 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 by law.

Additionally and notwithstanding any other provision herein, the City, effective upon provision of written notice to Contractor, may terminate this Agreement without any liability, penalty or obligation to make payment for services or Work rendered after the effective date of termination if its governing body does not appropriate or allocate funds

1

5. Insurance/Safety/Indemnification.

(a) Insurance. For the duration of this Agreement and for limits not less than stated below, the 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: One Million Dollars (\$1,000,000), combined single limit and aggregate for bodily injury and property damage;
(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage; and
(iii) Workers Compensation: Workers' Compensation as required by statute.

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 the City, and its officials and employees, as additional insureds 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 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 Work sites, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work sites or adjacent thereto.

(c). Indemnification. The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (hereinafter 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.

for payment of the Project. In the event of such termination for non-appropriation, the City shall remain obligated to pay for services or Work furnished prior to termination.

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

- (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 subcontractors, 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 locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those sites 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 the Contractor is authorized to execute this Agreement.

2

(d). Waiver of Consequential Damages. 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.

6. Compensation to Contractor. The total lump sum amount payable by the City to the Contractor for the Work (inclusive of any material and equipment to be supplied by it) shall be Thirty Six Thousand Two Hundred Fifty One & 00/100 Dollars (\$36,251.00, hereinafter the "Contractor Charge").

Upon certification from the City Project Representative that Contractor has successfully completed the Project, Contractor will submit an invoice for the entire Contractor Charge, and the City will remit payment for any undisputed amount of that Charge within thirty (30) days after receipt of that invoice.

7. Project Representative. The parties appoint the following respective 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"):

City Project Representative:

Richard Caudle, P.E.
Skipper Consulting, Inc.
3644 Vann Road Suite 100
Birmingham, Alabama 35235
Email: richard@skipperinc.com
Office (205) 655-8855 fax (205) 655-8825

Contractor Project Representative:

Mitchell Clay
Project Manager
2530 Queenstown Road
Birmingham, AL 35210
Email: mclay@stoneandsons.com
Office (205) 833-8494 fax (205) 833-9390

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.

APPENDIX 1

8. Miscellaneous Provisions.

a. This Agreement 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 the parties prior to acceptance and signing of this Agreement are deemed to have merged herein. This Agreement may not be modified or amended except in a writing that is signed by all parties.

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

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

g. Immigration Law Compliance. The 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-Hammond 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. The 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.

(Signature Page Follows)

IN WITNESS WHEREOF the undersigned, duly authorized representatives of the parties have executed this Agreement on behalf of their respective organization.

EXHIBIT A - SKIPPER CONSULTING INC. PROJECT PLANS

See attached.

STONE & SONS ELECTRICAL CONTRACTORS, INC.

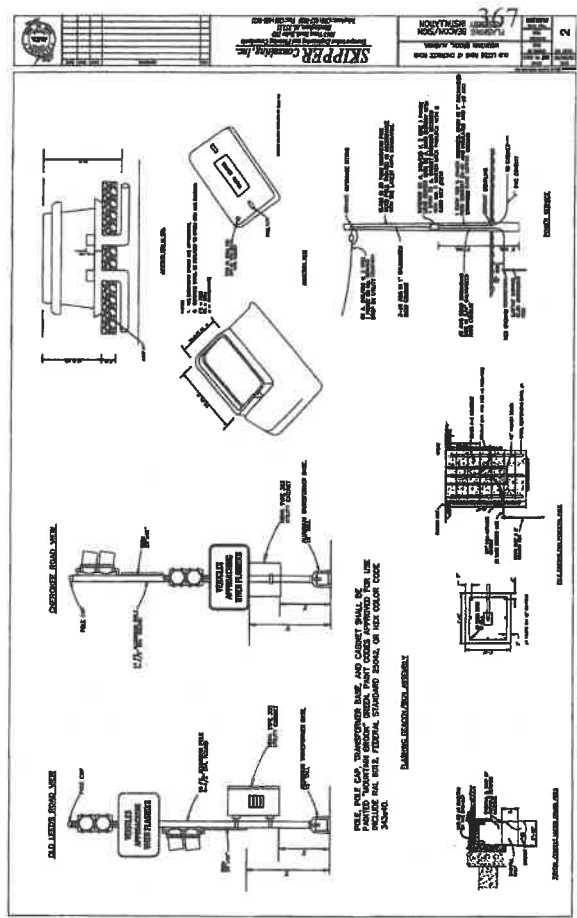
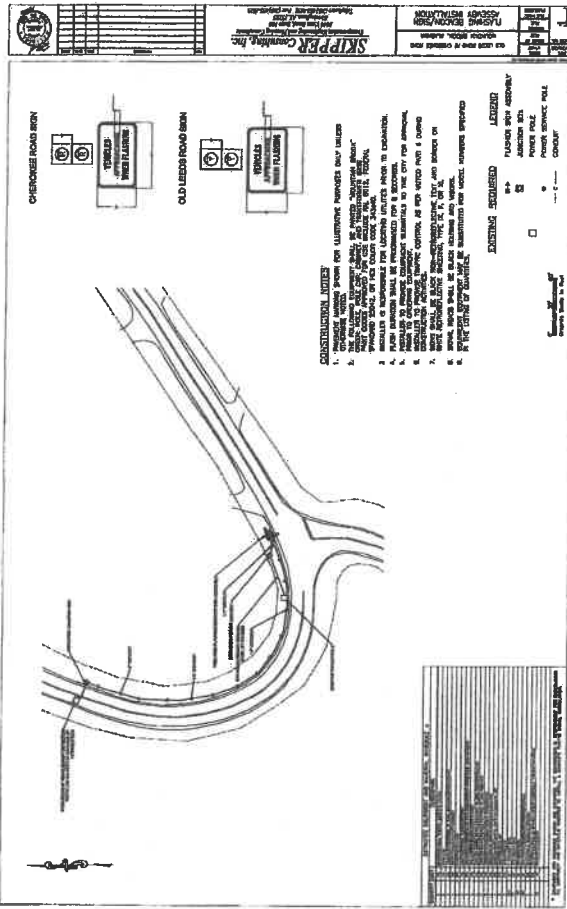
By:   
Its: 

Date: 1-10-23

CITY OF MOUNTAIN BROOK, ALABAMA

By:   
Its: Mayor City Manager

Date: 1-12-23



APPENDIX 1

**ACORD CERTIFICATE OF LIABILITY INSURANCE**

Client: 678250 STONEBORN1

DATE (MM/DD/YYYY) 1/10/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AGENE, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights in the certificate holder in lieu of such endorsement(s).

PRODUCER: **WorkSafeFirst CompFund**  
 5 East Main Street Ste 202  
 Knoxville, IL 61732

INSURED: **Stone & Sons Electrical Contractors, Inc**  
 2530 QUEENSTOWN ROAD  
 BIRMINGHAM, AL 35210

COVERAGES: **WORKERS COMPENSATION AND EMPLOYERS LIABILITY**

**ACORD CERTIFICATE OF LIABILITY INSURANCE**

Client: 678250 STONEBORN1

DATE (MM/DD/YYYY) 1/10/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AGENE, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights in the certificate holder in lieu of such endorsement(s).

PRODUCER: **Marsh & McLennan Agency LLC**  
 10 Inverness Center Pkwy  
 Suite 400  
 Birmingham, AL 35242

INSURED: **Stone & Sons Electrical Contractors Inc**  
 2530 Queenstown Road  
 Birmingham, AL 35210

COVERAGES: **WORKERS COMPENSATION AND EMPLOYERS LIABILITY**

CLASS	TYPE OF INSURANCE	POLICY NUMBER	EXPIRATION DATE	RENEWAL DATE	LIMITS
1	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	6081797275	08/18/2022	08/18/2023	EACH OCCURRENCE \$1,000,000 ANNUAL AGGREGATE \$1,000,000 MED EXP (per person) \$15,000 PERSONAL & ADV WARY \$1,000,000 PRODUCTS-COMP/OP AGG \$2,000,000
2	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	6081687324	08/18/2022	08/18/2023	PROPERTY DAMAGE \$1,000,000 PERSONAL & ADV WARY \$1,000,000 PROPERTY DAMAGE \$1,000,000
3	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	6081687341	08/18/2022	08/18/2023	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000
4	LEASED/RENTED EQUIPMENT	6081687310	08/18/2022	08/18/2023	\$250,000

CLASS	TYPE OF INSURANCE	POLICY NUMBER	EXPIRATION DATE	RENEWAL DATE	LIMITS
1	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	6081797275	08/18/2022	08/18/2023	EACH OCCURRENCE \$1,000,000 ANNUAL AGGREGATE \$1,000,000 MED EXP (per person) \$15,000 PERSONAL & ADV WARY \$1,000,000 PRODUCTS-COMP/OP AGG \$2,000,000
2	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	6081687324	08/18/2022	08/18/2023	PROPERTY DAMAGE \$1,000,000 PERSONAL & ADV WARY \$1,000,000 PROPERTY DAMAGE \$1,000,000
3	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	6081687341	08/18/2022	08/18/2023	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000
4	LEASED/RENTED EQUIPMENT	6081687310	08/18/2022	08/18/2023	\$250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be checked if none apply to request)  
 Project: Install Flashing Light at Intersection of Old Leads Road in Cherokee Road in the City of Mountain Brook, Alabama.  
 RESUBROGATION EFFECTIVE AND EXPIRATION, BOTH DATES ARE AT 12:01 A.M. STANDARD TIME AT THE INSURED'S ADDRESS.  
 COVERAGE UNDER THIS PROGRAM IS LIMITED TO THE ALABAMA WORKERS COMPENSATION ACT.  
 Excluded Officer(s): Danny Stone Brody Stone Tyler Stone

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be checked if none apply to request)  
 MC23003 Installation of Flashing Light/Sign Equipment

CERTIFICATE HOLDER: **STONE AND SONS ELECTRICAL CONTRACTORS, INC**  
 ATTN: DANNY STONE  
 2530 QUEENSTOWN ROAD  
 BIRMINGHAM, AL 35210

CERTIFICATE HOLDER: **City of Mountain Brook**  
 PO Box 13000  
 Birmingham, AL 35213



(c) the Defined Terms used in this agreement shall have the same meaning as in the Bid; and

(d) except as modified or changed herein, all provisions in the Bid Materials and Contract regarding the Project are effective and binding on the parties. Do not hesitate to call me if you have any questions about these matters.

January 5, 2023

Mr. Landon Ditto  
Wright Construction Company  
3165 Dublin Lane  
Bessemer, AL 35022

Yours truly,  
*Ronnie Vaughn*  
Ronnie Vaughn

Re: Old Leeds Road Sidewalk Project – City of Mountain Brook, Alabama  
Work Specified in Bid # B202220617-802

Dear Landon,

Thank you for negotiating a mutually acceptable contract (the "Contract") whereby your firm, Wright Construction Company ("WCC"), will construct the above-referenced Project for the City of Mountain Brook ("City"). The Contract will be presented to the Mountain Brook's City Council for its consideration next week.

As you know, last year the City advertised for interested contractors to submit bids to construct the Project in Bid # B202220617-802 (the "Bid"). Those Bid materials are incorporated herein by reference. The specifications, plans, drawings, responsibilities, and other terms and conditions with which the successful contractor would comply were set forth in those materials.

For next week's City Council meeting, please confirm the understandings below regarding the Contract and Project by signing on behalf of your firm and returning a fully executed version of this correspondence to me as soon as possible:

- (a) WCC has reviewed the Bid materials and, except as provided herein, agrees to perform the Project and obligations of the Contractor as specified in the Bid materials:
  - (i) the liquidated damages amount for delays caused by the Contractor to complete the Project will be \$100 per Calendar Day; and
  - (ii) notwithstanding any provision on Exhibit D or elsewhere in the Bid materials, the City will issue the Notice to Proceed on or about January 20, 2023, and the Contractor agrees to substantially complete the work within 100 calendar days thereafter (i.e., by May 1, 2023);
- (b) the lump sum Contract Price to be paid for successful completion of the Project is \$338,987;

CONCURRED:  
Wright Construction Company

By: *[Signature]*  
Is: *Landon Ditto / p.m.*

Date: January 6, 2023

APPENDIX 2

1

2



September 8, 2022

City Of Mountain Brook  
Attn: Sam Gaston | Ronnie Vaughn | Steven Gay



Re: City of Mountain Brook | Old Leeds Rd. Project

Wright Construction Company proposes to furnish all labor, materials, and equipment necessary to complete the scope of work described below at the above referenced project:

**Scope of Work to Include:**

\*Install approx. 800LF sidewalk constructed along the east shoulder of Old Leeds Rd. between Old Leeds Ln. and Shady Ln. to include concrete curb/gutter, sidewalk, drainage pipe/structures (five pour-in-place specialty type E1 storm boxes/inlets/tops), curb ramps, retaining wall, clearing/grubbing/haul-off, asphalt patching, sodding, erosion control, traffic control, mobilization and demobilization.

**TOTAL PROJECT COST: \$338,987**



**Exclusions:** Permits, Engineering, Testing, Private Locate, Utility Relocation and/or repair, Unsuitable Soils,

links for the opportunity to submit proposals for the Old Leeds Rd. Sidewalk Project in Mountain Brook near

Landon Ditto  
Lead Estimator/Project Manager

7/25/22, 2:40 PM

City of Mountain Brook Mail - Bid: Old Leeds Rd Sidewalk Project (B-20220617-802)



Janet Forbes <forbesj@mtnbrook.org>

**Bid: Old Leeds Rd Sidewalk Project (B-20220617-802)**  
2 messages

Janet Forbes <forbesj@mtnbrook.org> Fri, Jul 22, 2022 at 10:42 AM  
To: Ronald Vaughn <vaughnr@mtnbrook.org>, James Gay <gayj@mtnbrook.org>

Ronnie-  
Can you send me an email stating no contractors submitted a bid for this project? I need it for my bid file.

*Janet Forbes, SENIOR-CP*  
Assistant to the City Manager  
City of Mountain Brook  
P.O. Box 130009  
Mountain Brook, AL 35213  
(p) 205.802.3800 (f) 205.870.3577  
forbesj@mtnbrook.org

Ronald Vaughn <vaughnr@mtnbrook.org> Fri, Jul 22, 2022 at 1:24 PM  
To: Janet Forbes <forbesj@mtnbrook.org>  
Cc: James Gay <gayj@mtnbrook.org>

Janet,

We were scheduled for a sealed bid opening yesterday July 21 at 10:00 AM for the Old Leeds Sidewalk Project (B-20220617-802).

Unfortunately we received no bids for this project.

Thanks

Ronnie Vaughn  
Public Works Director  
City of Mountain Brook AL  
3579 East Street  
Birmingham, AL 35243  
205.802.3865 Office  
205.967.2631 Fax  
vaughnr@mtnbrook.org

On Jul 22, 2022, at 10:44 AM, Janet Forbes <forbesj@mtnbrook.org> wrote:

[Quoted text hidden]

January 9, 2023



CONSTRUCTION AGREEMENT FOR A TRANSPORTATION ALTERNATIVES PROGRAM PROJECT

BETWEEN THE STATE OF ALABAMA AND THE CITY OF MOUNTAIN BROOK Jefferson County

Project No. TAPAA-TA23(919) CPMS Ref# 100075860

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as the CITY.

WHEREAS, the STATE and the CITY desire to cooperate in the sidewalk connection along Country Club Rd. starting just south of Montclair Rd. to Montclair Rd. and along Montclair Rd. from Country Club Rd. to Mountain Brook Park Dr.; Project# TAPAA-TA23(919); CPMS Ref# 100075860.

NOW, THEREFORE, it is mutually agreed between the STATE and the CITY as follows:

PART TWO (2): FUNDING PROVISIONS

- A. Project Funding: Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. It is expressly understood that federal funds for this project will be provided from Transportation Alternatives Program (TAP) funds as authorized by the U.S. Congress and the STATE will not be liable for any funding. Cost for the project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds, based on the contract as let price plus CE&I or the estimated costs below, whichever is lower. Any deficiency in Federal Aid or overrun in costs will be borne by the CITY from CITY funds unless approved in writing by the STATE. In the event of an underrun in project costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible costs, whichever is less.
B. The estimated cost and participation by the various parties is as follows:

Table with 2 columns: FUNDING SOURCE, ESTIMATED COSTS. Rows include Federal TAP Funds (\$ 800,000.00), City Funds (\$ 200,000.00), and TOTAL (Incl CE&I) (\$ 1,000,000.00).

- B. The CITY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will be an eligible cost to the project, as approved by the application.
C. The CITY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with CITY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not be an eligible cost to the Project.
If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the CITY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All cost for which the CITY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the CITY be reimbursed for expenditures over and beyond the amount approved by the STATE.
The CITY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the CITY and approved by the STATE. The plans, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the CITY that failure of the CITY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal funding and the refund of any federal funds previously received on the project.
Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for Procedures for Processing State and Industrial Access Funded County and City Projects, and attached hereto as a part of this Agreement prior to the CITY letting the contract.
D. The CITY will furnish all construction engineering for the project with CITY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost to the Project.
E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The CITY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

- A. The CITY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the CITY to proceed.
B. Associated Construction costs will be an eligible cost to the Project.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids, and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the CITY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The CITY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the CITY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the CITY relating to this project which is determined to be ineligible for reimbursement by the FHWA or in excess of the limiting amounts previously stated will not be an eligible cost to the project and will be borne and paid by the CITY.

- C. Time Limit: This project will commence upon written authorization to proceed from the STATE directed to the CITY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Board and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

- A. The CITY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost to the Project. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the CITY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the CITY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the CITY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property acquired shall be in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.

The CITY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the CITY from the sale or lease of property.

For projects let to contract by the CITY, the CITY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The CITY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement. The CITY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the CITY will provide all bids to the STATE with a recommendation for award. The CITY shall not award the contract until it has received written approval from the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

- C. If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The CITY will be the permittee of record with ADEM for the permit. The CITY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The CITY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The CITY will secure all permits and licenses of every nature and description applicable to the project in any manner and will conform to and comply with the requirements of any such permit or license, and with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

- D. The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation and the project will be built in accordance with the approved plans.

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

- F. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities.

G. Upon completion and acceptance of this project by the State, the CITY will assume full ownership and responsibility for the project work and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the CITY, for any audit performed on this project in accordance with Act No. 94-414.

PART FIVE (5): ACCOUNTING PROVISIONS

PART SIX (6): MISCELLANEOUS PROVISIONS

- A. The CITY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The CITY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
B. The CITY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.
C. The CITY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.
All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.
The CITY will report to the STATE the progress of the project in such manner as the STATE may require. The CITY will also provide the STATE any information requested by the STATE regarding the project. The CITY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.
The CITY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project; any and all data and records which in any way relate to the project or to the accomplishment of the project. The CITY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the CITY will give its full cooperation to those persons or their authorized representatives, as applicable.
The CITY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.
D. The CITY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.
E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.

- A. By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
B. It is agreed that the terms and commitments contained in this agreement shall not be construed as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in this agreement shall be deemed null and void.
C. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
D. No member, officer, or employee of the CITY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.
F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.
H. Exhibits A, E, H, M, and N are hereby attached to and made a part of this Agreement.

APPENDIX 3

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

STD CONTRACT EXHIBITS
REV. 9/19/16

ATTEST:

EXHIBIT A

By: Heather Richards, City Clerk (Signature)
City Clerk (Signature)
Heather Richards
Type Name of Clerk (AFFIX SEAL)
By: Stewart Welch, As Mayor (Signature)
As Mayor (Signature)
Stewart Welch
Type Name of Mayor

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

This agreement has been legally reviewed and approved as to form and content.

By: William F. Patty, Chief Counsel

RECOMMENDED FOR APPROVAL:

DeJarvis Leonard, P.E., East Central Region Engineer
Bradley B. Lindsey, P.E., State Local Transportation Engineer

Edward N. Austin, P. E., Chief Engineer

STATE OF ALABAMA, ACTING BY AND THROUGH THE ALABAMA DEPARTMENT OF TRANSPORTATION

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND SIGNED BY THE GOVERNOR ON THIS DAY OF 20

KAY IVEY

EXHIBIT E

EXHIBIT H  
Page 1

TERMINATION OR ABANDONMENT

- a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.
- b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CITY upon an equitable basis. The value of the work performed by the CITY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:
  - 1. The ratio of the amount of work performed by the CITY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.
  - 2. The amount of the expense to which the CITY is put in performing the work to be terminated in proportion to the amount of expense to which the CITY would have been put had been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CITY prior to the termination, no consideration will be given to profit, which the CITY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CITY, the value of the work performed by the CITY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

- a. This contract shall be binding upon the successors and assigns of the respective parties hereto.
- b. Should the AGREEMENT be terminated due to default by CITY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

EXHIBIT H  
Page 2

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
- b. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CITY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. Solicitations

In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the CITY of the CITY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. Information and Reports

The CITY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

EQUAL RIGHTS PROVISIONS

During the performance of this contract, the CITY for itself, its assignees and successors in interest agrees as follows:

a. Compliance with Regulations

The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

EXHIBIT H  
Page 3

records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance

In the event of the CITY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

- 1. withholding of payments to the CITY under contract until the CITY complies, and/or
- 2. cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions

The CITY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The CITY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CITY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the CITY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

- 1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the CITY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

EXHIBIT H  
Page 4

EXHIBIT H  
Page 5

The CITY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

- 2. **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.
- 3. **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CITY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- b. The CITY, in accordance with the status of CITY as an independent contractor, covenants and agrees that the conduct of CITY will be consistent with such status, that CITY will neither hold CITY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CITY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of CITY.

CITY'S CERTIFICATIONS

The CITY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non-salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CITY. The CITY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CITY at the time of execution of the AGREEMENT. The CITY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CITY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CITY agrees that a meal allowance shall be limited to CITY employees while in travel status only and only when used in lieu of a per diem rate.

The CITY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CITY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The CITY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The CITY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

- a. The CITY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

14

15

STD CONTRACT EXHIBITS  
REV. 9/19/16

STD CONTRACT EXHIBITS  
REV. 9/19/16

EXHIBIT M

EXHIBIT N

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

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

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

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of prororation of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CITY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CITY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CITY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

APPENDIX 3

STATE OF ALABAMA  
DEPARTMENT OF TRANSPORTATION  
GUIDELINES FOR OPERATION

MINUTE BOOK 93 Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL ACCESS FUNDED COUNTY AND CITY PROJECTS

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an in-place annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

1-20

Rev. 10/2017

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL:

  
BUREAU CHIEF/REGION ENGINEER

APPROVAL:   
CHIEF ENGINEER

APPROVAL:   
TRANSPORTATION DIRECTOR

  
DATE

1-20

Rev. 10/2017

APPENDIX 3

Dollars (\$15,000.00) payable no later than thirty (30) days after the beginning of each such Renewal Term As additional consideration for the use of the Licensed Space, Licensee agrees to maintain, at Licensee's expense, the Outdoor Recreational Field portion of the Licensed Space which includes, but may not be limited to, applying fertilizer, chemicals, and seeding to grassy areas and regularly cutting the grass (the "Field Maintenance") for the entire term of this Agreement.

THIS AGREEMENT (this "Agreement") is effective as of January 1, 2023, by and between the Birmingham Levite Jewish Community Center, whose address is 3960 Montclair Road, Birmingham, Alabama 35213 ("Owner"), and the City of Mountain Brook, Alabama whose principal place of business is located at 56 Church Street, P.O. Box 130009, Mountain Brook, Alabama 35213 ("Licensee").

WITNESSETH

WHEREAS, Owner is the owner of a community center located at 3960 Montclair Road, Birmingham, Alabama 35213 (the "Center"); and

WHEREAS, Owner has agreed to allow Licensee to use the outdoor recreational field, more particularly depicted on Exhibit "A" attached hereto, and the Owner's Gymnasium and appurtenant areas (the "Licensed Space"), located at the Center for specific time periods for the sole and limited purpose of use by the Licensee in conjunction with its youth athletic programs (referred to herein as the "Approved Purposes") pursuant to the License Agreement and Amendment thereto attached as Exhibits "B" and "C"; and

WHEREAS, the Owner and Licensee have agreed to extend the term of the use of the Licensed Space and to restate and confirm the terms and conditions of Licensee's use in this Restated Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and undertakings of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Limited License; Use of Licensed Space. Owner does hereby grant a limited, non-exclusive, and non-transferable license unto Licensee for the Approved Purposes to use the Licensed Space during the term hereof from January 1, 2023 — June 30, 2023 as follows:

- (a) Outdoor Recreational Field —
a. Tuesdays & Thursdays from 4:00-9:00 PM;
b. Friday's 4:00 — 6:00 PM; and
c. Saturday 9:00 AM - 1:00 PM.
(b) Gymnasium —
a. Tuesdays & Thursdays from 4:45-8:45 PM; and
b. Saturday 8:15 AM - 5:45 PM.

Other times may be available if mutually agreed upon by both parties. For clarification purposes, and not in limitation of the foregoing, Licensee acknowledges and agrees, except as otherwise approved by Owner, in its complete and sole discretion, Licensee (a) shall have the right to use the Licensed Space only during the time periods set forth above, (b) shall not have the right to use the Licensed Space for any purposes other than the Approved Purposes, and (c) shall not have the right to use any other facilities at the Center unless approved by the Owner in writing.

2. Term. This Agreement shall commence on the effective date listed above and shall be for an initial term of six (6) months from the effective date (the "Initial Term"). Upon expiration of the Initial Term, the Agreement shall be renewed for additional successive one-year terms (each a "Renewal Term") unless Licensee or Owner provide written notice of intention to cancel the Agreement at least 30 days prior to the end of the Initial Term of the then effective Renewal Term.

3. Usage Fees. As consideration for the use of the Licensed Space during the Initial Term, Licensee agrees to pay to Owner Five Thousand Dollars (\$5000.00) payable no later than thirty (30) days after the execution of this Agreement. Consideration for each Renewal Term shall be Fifteen Thousand

whatsoever, including the payment of reasonable attorneys' fees, both at law and in equity (collectively, the "Claims") alleged or asserted against or actually suffered or incurred by any Owner Party on account of or arising out of, in whole or in part, directly or indirectly, (i) any damage or destruction to the Center or the Licensed Space as result of the actions or inaction of Licensee or the license granted to Licensee hereunder; or (ii) the use of the Licensed Space by Licensee, its employees or agents or any activities conducted or sponsored by or on behalf of Licensee in the Licensed Space.

8. Miscellaneous.

- (a) Notice. Any notice required to be given hereunder shall be deemed given immediately if hand delivered or on the third (3<sup>rd</sup>) business day following mailing of any such notice, postage paid, to the address set out herein above.
(b) Waiver. The waiver of the breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or other provision hereof.
(c) Governing Law. This Agreement will be construed and interpreted in accordance with and governed by the laws of the State of Alabama without regard to conflicts of laws principles.
(d) Necessary Action. Each party shall perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.
(e) Severability. The provisions of this Agreement shall be severable and if any provision shall be invalid or void or unenforceable in whole or in part for any reason, the remaining provisions shall remain in full force and effect, and construed as if this Agreement did not contain the particular part, term or provision held invalid.
(f) Assignment. Licensee may assign its rights and obligations under this Agreement to its sub-licensees Mountain Brook Athletics, Mountain Brook Lacrosse or other city related youth athletic organizations and Owner agrees to such assignment provided that Licensee shall not be released from performing any of its obligations hereunder and will perform all such obligations in the event that its sub-licensees fail to do so, as determined by Owner in its sole discretion. Owner agrees that payment hereunder may be remitted by sub-licensees and any such payments shall be credited to Licensee's obligation to pay User Fees. Other than as set forth above, neither party shall assign its interest hereunder.
(g) Interpretation. The terms "herein" or "hereunder" or like terms shall be deemed to refer to this Agreement as a whole and not to a particular section. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The captions or headings in this Agreement are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of this Agreement. Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders. All references to sections hereunder shall be deemed to refer to portions of this Agreement, unless otherwise expressly provided. Words of "not hereof," "above," "below" or like words are used.

4. Additional Terms and Conditions.

- (a) At all times, Licensee agrees to, and shall cause its employees to, comply with all applicable laws, rules and regulations regarding the use of the Licensed Space.
(b) Licensee hereby agrees to reimburse Owner for any damage or harm to the Licensed Space caused by use of the Licensed Space by Licensee, including the payment of any reasonable attorneys' fees associated with enforcing this Agreement or fees of any service provider or contractor required to repair or replace any property damaged during any usage of the Licensed Space by Licensee.
(c) This Agreement is not a lease and nothing in this Agreement grants Licensee a leasehold interest in any part or portion of the Licensed Space or Center.
(d) Owner assumes no risk of loss or damage to any property left or stored on the Licensed Space or at the Center by Licensee or any of its agents, employees or invitees.
(e) Owner makes no representations or warranties to Licensee regarding the condition or use of the Licensed Space or Center or the suitability of the Licensed Space for the Approved Purposes, and Licensee hereby agrees that THE LICENSED SPACE AND CENTER ARE BEING PROVIDED ON AN "AS-IS, WHERE-IS" BASIS.
(f) Licensee may erect temporary signs or provide appropriate signage for the property subject to the written approval of the Owner; however, said approval shall not be unreasonably withheld.
(g) Licensee shall not make any improvements or material changes to the Licensed Space without prior written approval from the Owner.

5. Employment. Notwithstanding anything to the contrary herein, no employee of Owner shall be deemed to be an employee of Licensee as a result of this Agreement, and no employee of Licensee shall be deemed to be an employee of Owner as a result of this Agreement.

6. Insurance. During the term of this Agreement, Licensee shall procure and maintain, at its own cost and expense, commercial general liability insurance for bodily injury, death or property damage, in such amounts as reasonably approved by Owner, but in any event no less than \$2,000,000 per occurrence. Owner shall be listed as an additional insured, and, promptly upon the execution of this Agreement, Licensee shall provide Owner with an insurance certificate and a copy of the insurance policy. Additionally, Licensee shall procure and maintain at its own cost and expense, workers' compensation insurance policies for Licensee employees to the extent required by law.

7. Indemnification. Licensee, on its own behalf, and on behalf of its trustees, officers, directors, members, invitees, employees and agents (each an "Licensee Party" and, collectively, the "Licensee Parties") hereby agrees to indemnify, defend and hold harmless Owner, and each past, present and future employee, officer, director and member of Owner (each, an "Owner Party" and collectively the "Owner Parties") from and against any and all claims, losses, damages, costs, expenses, liabilities, debts, demands, causes of action, investigations, litigation, suits, orders, obligations, contracts and agreements

- (h) Counterparts. This Agreement may be executed by facsimile or electronic transmission and/or in one or more counterparts, each of which shall be an original, all of which when taken together shall constitute one instrument.
(i) Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes and replaces the License Agreement entered into on June 29, 2018, the Amendment thereto entered into on November 1, 2018 and any other agreement, representation, communication or understanding, whether oral or written, between the parties hereto and relating to the transactions contemplated herein or the subject matter hereof. This Agreement may not be changed or terminated orally, but may only be changed by an Agreement in writing signed by the parties hereto.

- Remainder of page intentionally left blank -

APPENDIX 4

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be effective on the date first above written.


Owner:

Birmingham Levite Jewish Community Center

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Licensee:

City of Mountain Brook, Alabama

By:   
Name: Stewart Welch  
Title: Mayor

November 21<sup>st</sup>, 2022

TO: Sammy Harton

RE: Caldwell Mill Road Bridge Replacement- Change Order #2 Request

Sammy,

This letter is to be a reference for Gillespie Construction, LLC request for Change Order #2. Gillespie is requesting Change Order #2 due to the pipe that was quoted in the Change Order #1 was 22" X 14" pipe. The pipe that is being requested to use now is 36" X 23" pipe.

The additional price for the 36" x 23" pipe for material and labor is **\$12,000.00**.

Please let me know if you have any questions.

Sincerely,

Gillespie Construction, LLC





Executive Director  
Charlotte Shaw

Board Chair  
Theodore "Ted" Smith

Honorable Stewart H. Welch III, Mayor  
City of Mountain Brook, Alabama  
56 Church Street, PO Box 130009  
Mountain Brook, AL 35213

Dear Mayor Welch:

It is our pleasure to continue providing transit services to the City of Mountain Brook, Alabama for Fiscal Year 2023 (October 1, 2022, through September 2023). Enclosed is the Transit Service Agreement outlining the terms of those services. We have also enclosed the following:

- Schedule of Services (EXHIBIT A)
- City of Mountain Brook Ridership Report Card

The Transit Services Agreement is the formal contract between the Birmingham-Jefferson County Transit Authority and the City of Mountain Brook, Alabama, which provides details of the terms of our agreement for providing transit services during Fiscal Year 2023.

The Schedule of Services outlines the pick-up times for stops on those routes servicing your city. The Ridership Report Card, a new report we are excited to present, provides ridership data and several key metrics regarding the Fixed Route and Paratransit services we offer you and provides depth and insight about transit services in your city.

Finally, we appreciate the opportunity to have partnered with your city for many years and our desire is to "Move Transit Forward" in the region as we continue to enhance the services we provide to your citizens and businesses.

Sincerely,

Charlotte Shaw, Executive Director/CEO

cc: Sam Gaston, City Manager

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY  
1801 Morris Avenue • Suite 201 • Birmingham Alabama 35203 • Phone (205) 621-0101  
www.bjcta.org

**BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY  
TRANSIT SERVICES AGREEMENT**

This Transit Services Agreement (the Agreement) is by and between the BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY (the BJCTA), a public corporation organized under the laws of the state of Alabama and the CITY OF MOUNTAIN BROOK, ALABAMA (the City), a municipal corporation organized under the laws of the state of Alabama.

**Recitals:**

WHEREAS, the BJCTA was established by Alabama Legislative Act No. 1971-993 to provide mass public transportation services and repealed by Alabama Legislative Act No.2013-380 (the Act) to expand and improve mass public transportation services in Jefferson County, Alabama; and

WHEREAS, Alabama Legislative Act No.2013-380 (the Act) provides that the annual amount to be paid by each municipality which elects to be served by the BJCTA shall be ascertained by multiplying the total projected hours of operation in such municipality for the forthcoming fiscal year, times the cost per hour of operation set forth by the BJCTA, based upon the certified routes and times; and

WHEREAS, the Act provides that the annual amount to be paid by the City shall be certified by the BJCTA to the Jefferson County Tax Collector, its Revenue Commissioner or Director of Revenue; and

WHEREAS, the City elects and requests transit services from the BJCTA in accordance with the Act; and

WHEREAS, the BJCTA desires to provide such transit services to the City.

NOW, THEREFORE, in consideration of the premises, in accordance with Alabama Act 2013-380 and the foregoing recitals; and other good and valuable consideration contained herein, the City and the BJCTA (the Parties) agree as follows:

1. **DEFINITIONS.** For purposes of this Agreement, the following definitions shall apply, unless the context requires otherwise, or another definition is expressly provided in this Agreement:

- Agreement** Shall mean this Transit Service Agreement, as the same may be amended from time to time.
- Transit Service** Shall mean the revenue Transit Service to be provided by BJCTA in and to the Service Area as set forth in this Agreement.
- Cost of Transit Service** Shall mean the cost incurred by BJCTA to provide the Transit Service, during the period October 1, 2022 through September 30, 2023.
- County** Shall mean Jefferson County.
- ALDOT** Shall mean the Alabama Department of Transportation.

**TRANSIT SERVICE AGREEMENT  
FY 2023**

by and between

**BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY d/b/a MAX  
(BJCTA)**

and

**CITY OF MOUNTAIN BROOK**

relating to providing Transit Service in Mountain Brook, Alabama

October 1, 2022

APPENDIX 6

- FTA** Shall mean the Federal Transit Administration.
- Service Area** Shall mean the area served by BJCTA.
- Service Schedule** Shall mean the frequency, times and stops for the Transit Service to be provided by BJCTA, as set forth and described in paragraph 5 below.

2. **PROVIDING OF TRANSIT SERVICE.** Pursuant to the terms and conditions of this Agreement and in consideration of the Payments, BJCTA agrees to provide the Transit Service in the Service Area. In regard to providing said Transit Service, the obligation of BJCTA is subject to the following:

- (a) Federal, state and local regulations applicable to BJCTA including, but not limited to, the rules and regulations promulgated from time to time by ALDOT and/or FTA as applicable to BJCTA;
- (b) All conditions beyond the reasonable control of BJCTA including but not limited to, Acts of God, hurricanes, matters of public safety, etc.;
- (c) The changing transportation needs of the City to the extent BJCTA can accommodate such needs; and

The times set forth in this Agreement and other matters regarding the providing of Transit Service are not guarantees; they are projected times for stops and starts and are subject to best efforts by BJCTA, including matters associated with traffic, accidents, etc.

3. **TERM.** This Agreement shall be effective as of the date hereof **October 1, 2022** (the "Commencement Date") and shall, except as otherwise set forth herein or unless terminated in writing by either party, be completed on or before **September 30, 2023** (the "Expiration Date"), which is the funding period for providing the Transit Service as set forth in **Exhibit "A"** attached hereto.

No later than March 1<sup>st</sup> of each year, the City shall file a written request for service setting forth the routes and frequency of service requested.

4. **TERMINATION.**

- a. **Termination at Will.** This Agreement may be terminated by either party upon no less than thirty (30) calendar days' notice, without cause. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Notice shall be effective upon receipt.
- b. **Termination Due to Lack of Funds.** In the event funds from governmental sources relied upon to finance this Agreement become unavailable, the City or BJCTA may terminate this Agreement with no less than twenty-four (24) hours written notice to the other party and to the City. Notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Notice shall be effective upon receipt.
- c. **Termination for Breach.** Unless breach is waived by the City or BJCTA in writing, either party shall, in order to terminate this Agreement for breach, give the other party and the City written notice of the breach. If the breach is not cured within thirty (30) calendar days, the non-breaching party may terminate this Agreement. Notice shall be delivered by certified mail, return receipt

January 9, 2023

requested, or in person with proof of delivery. Waiver by either party of breach of any provisions of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement and shall not act as a waiver or estoppel to enforcement of any provision of this Agreement. The provisions herein do not limit the City or BJCTA right to remedies at law or to damages.

5. **SERVICE PLAN RECOMMENDATION FORM.** Attached hereto as **Exhibit "A"** is a summary (span of service, headways, hours, hourly rate and cost) of the routes to be provided. This schedule is subject to all of the provisions of this Agreement. This schedule is not a guarantee but rather reflects the anticipated levels of service. During the term of this Agreement, BJCTA, after discussion with the City, may adjust the schedule to better accommodate the overall Transit Service to be provided under this Agreement. Thus, for example, if a particular Bus Stop provides a safety hazard, then BJCTA, in cooperation with the City, could move that Bus Stop to a safer location.

6. **PAYMENT FOR TRANSIT SERVICE.** The City agrees to pay the BJCTA **\$164,355.97** for providing transit services for the forthcoming fiscal year beginning October 1, 2022 through September 30, 2023. This sum represents **1995.58** service hours of Fixed Route transit services, as requested, at a rate of **\$82.36** per hour. Invoices shall be billed at the beginning of each month in advance of the service being rendered. Payments are due the first day of each month and are considered late after the 15<sup>th</sup> day of the month.

If the City fails to make any monthly payment by the 15<sup>th</sup> day of the month as outlined above, the payment shall be deemed past due. Interest at 1.5% per month shall accrue daily on the past due amount, from the past due date until the date paid.

In that regard, the parties do hereby agree as follows:

a. For the purpose of invoicing, BJCTA will send monthly invoices and related matters to the City at the following address:

Attention: City Clerk  
City of Mountain Brook  
56 Church Street  
Mountain Brook, Alabama 35213

b. In any event, the obligation of BJCTA to provide the Transit Service is expressly contingent upon it receiving and only to the extent it receives the required Payments set forth above.

7. **SECURITY DEPOSIT.** No security deposit is required of the City under this Agreement.

8. **ADVERTISING.** The parties are aware and understand that BJCTA undertakes an advertising program on its buses and that BJCTA also does not specifically identify a specific bus on a specific route. From time to time, buses will be taken out of service for maintenance and repair and replacement, and future buses will also be used from time to time to provide the Transit Service. In addition, various rules (including FTA guidelines) provide for random assignment of buses with this background:

c. BJCTA will be entitled to place on the buses which it uses to provide the Transit Service, advertising from time to time.

d. BJCTA shall have the right in its reasonable discretion as to what buses and the type of the buses that will be used to provide the Transit Service.

The foregoing assignments and other matters regarding the buses in the Transit Service will be subject in all respects to all applicable laws including FTA and AIDOT requirements.

9. **BOND.** The City shall not be required to furnish BJCTA with any bond or other collateral conditions for the faithful performance of the duties and due accounting for all monies received from the City under this Agreement.

10. **NON-ASSIGNABILITY.** This Agreement is not assignable by either Party without the prior written consent of the other Party.

11. **RELATIONSHIP OF OTHER PARTIES.** The Parties are aware and agree that the relationship between BJCTA and the City under this Agreement shall be that of an independent contractor and not an agent.

12. **NO THIRD-PARTY BENEFICIARY.** This Agreement is solely between the parties hereto and no person or persons not a party hereto shall have any rights or privileges whatsoever either as a third-party beneficiary or otherwise.

13. **NOTICE.** Any notice permitted to be given to either party under this Agreement shall be in writing and shall be deemed to be given (i) in the case of delivery, when delivered to the other party at the address set forth below, (ii) in the case of mailing, three (3) days after said notice has been deposited, postage pre-paid, in the United States mail and sent by certified or return receipt requested to the other party at the address set forth below and (iii) in all other cases when such notice is actually received by the party to whom it has been sent. Notices shall be sent to the following:

BJCTA: Charlotte Shaw  
Executive Director/CEO  
Birmingham-Jefferson County Transit Authority  
1801 Morris Avenue 2<sup>nd</sup> FL  
Birmingham, AL 35203

Copy: Gfena Dickerson  
Chief Financial Officer  
Birmingham-Jefferson County Transit Authority  
1801 Morris Avenue 2<sup>nd</sup> FL  
Birmingham, AL 35203

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

APPENDIX 6

Either party may change the address to which any notices are to be given by so notifying the other party to this Agreement as provided in this paragraph.

14. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama. The parties further agree that the exclusive venue and jurisdiction over any action arising under this Agreement shall be in the courts of Jefferson County, Alabama. Each party expressly waives any right to a jury trial.

15. **MISCELLANEOUS CLAUSES.**

c. **Sovereign Immunity.** Each party hereto is a government agency entitled to sovereign immunity under the laws of the State of Alabama. Nothing contained in this Agreement, the relationship between the parties hereto, the providing of the Transit Service, or otherwise shall in any way whatsoever constitute any waiver by BJCTA or the City of its rights to invoke sovereign immunity as a governmental entity.

f. **Force Majeure.** The rights and obligations and duties of the parties hereunder shall be subject to any causes beyond their reasonable control including, but not limited to, Acts of God, hurricanes, storms, and, in the case of BJCTA, government regulations and directives applicable to it.

g. **Time of Essence.** The parties recognize that time is of the essence in the performance of the provisions of this Agreement provided, however, in regard to the providing of Transit Service, that is subject to the qualifications set forth in this Agreement.

h. **Legal Obligations.** This Agreement shall not relieve any party of any obligation or responsibility imposed upon it by law.

i. **No Waiver.** No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party or parties claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all parties.

j. **Benefits of Service.** The Payments to be paid by the City to BJCTA are net, and shall not be reduced based upon any other funding or benefits that BJCTA may receive including, but not limited to, ad valorem taxes, other contributions by the City and any funding that BJCTA receives from the FTA as a part of its overall ridership total.

k. **No Oral Modification.** The parties agree that this Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

l. **Severability.** If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. To that end, the provisions of this Agreement are declared to be severable.

m. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement, to produce or account for more than one (1) of such counterparts.

n. **Adjustment of Bus Routes.** The parties are aware and understand that with respect to any adjustment or modification of Transit Service, BJCTA will be required to follow State and Federal guidelines relating to adjustments and modification of Transit Service. This will generally require a minimum of sixty (60) days in order to provide various required public notices.

i. **Capital Requirements (i.e., Buses).** BJCTA has generally planned for adequate buses to provide the Transit Service. If, at any time, BJCTA experiences a material shortfall or lack of buses to provide the Transit Service, BJCTA will immediately discuss with the City such situation and how it is to be resolved. The matter will also be brought to the attention of the Board of Directors of BJCTA and the Parties will seek to arrive at a solution to provide such additional bus capacity. In doing so, the parties are aware that any solution would not necessarily involve BJCTA moving buses from its other public routes. BJCTA, through its Board of Directors, will have in its reasonable discretion the ability to deal with such situation.

o. **Default/Notice/Procedure to Resolve Disputes.** The parties understand and are aware that this Agreement is between two entities who mutually desire for the beneficial providing of the Transit Service under this Agreement and wish to avoid any default or misunderstandings. Thus, in the event one Party hereto believes that the other Party is in default under this Agreement, the other Party through a senior representative shall contact a senior representative of the other Party in an effort to discuss and resolve any alleged default or nonperformance. Failing such resolution, said Party will then be required to give actual written notice to the other party of said alleged default before said Party may exercise any of the rights available to it under this Agreement. With this background, the City is aware and specifically understands that the scope and quantity of the Transit Service being made available to it, is based upon the amount received from the city. Thus, for example, if the City should fail to pay the requisite Payments, BJCTA could seek to enforce that payment but, at its option, could also reduce in its discretion the Transit Service specifically within the Service Area.

p. **Service Within and Outside the Service Area.** The Transit Service to be provided by BJCTA under this Agreement covers Bus Routes that are located within the Service Area, as more particularly set forth in **Exhibit "A"**. BJCTA is not obligated to provide the Transit Service outside the Service Area, unless otherwise agreed between the parties through an amendment to this Agreement.

q. **Independent Contract as To Employees of BJCTA.** BJCTA is an independent contractor and retains the right to exercise full control and supervision over its employees and their compensation and discharge. BJCTA will be solely responsible for all matters relating to payment of its employees, including but not limited to the withholding and payment of employee taxes, insurance contributions, placement of insurance and pension coverages and the like.

16. **BOARD APPROVAL.** This Agreement is subject to the approval by the BJCTA Board of Directors.

17. **COMPLETE AGREEMENT.** This Agreement constitutes the complete agreement between the parties hereto with respect to the management and distribution of the services contemplated herein and

it may not be amended, changed or modified except by in writing and signed by the party to be charged by said amendment, change or modification subject to the following:

r. Modifications that are anticipated to result in no increase to BJCTA's operational cost per revenue hour (see Cost of Transit Service) require only the concurrence of the BJCTA's Executive Director and the approval of the City.

s. Modifications that are anticipated to result in an increase to BJCTA's operational cost per revenue hour (see Cost of Transit Service) require the approval of the BJCTA's Board of Directors and the City.

IN WITNESS WHEREOF, the Parties have hereunto executed this Transit Service Agreement the day and year first above written.

Attest:

CITY OF MOUNTAIN BROOK

By: CITY OF MOUNTAIN BROOK, MAYOR  
OR AUTHORIZED OFFICIAL

By:   
(Signature of Authorized Official)

Date: 1-9-2023

BIRMINGHAM-JEFFERSON COUNTY  
TRANSIT AUTHORITY

By: \_\_\_\_\_  
CHARLOTTE SILAW  
Executive Director/CEO

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

This Agreement has been reviewed as to form by legal counsel for BJCTA. This confirmation is not to be relied upon by any person other than BJCTA.

FUSTON, PETWAY & FRENCH

By: \_\_\_\_\_  
G. Courtney French, Esq., Partner

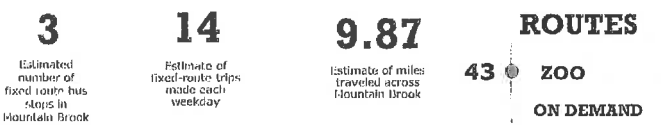
(THIS SECTION IS LEFT BLANK INTENTIONALLY)

APPENDIX 6

# CITY OF MOUNTAIN BROOK

**Transit on the Move**  
Moving Transit Forward

RIDERSHIP REPORT CARD



## ABOUT THIS REPORT

This report presents the various metrics used to help gauge the effectiveness of public transportation in the City of Mountain Brook. Each route is summarized independently on the following pages.

**NUMBER OF VEHICLES**  
needed to operate each fixed-route and micro transit across Mountain Brook



## RIDERSHIP

**4,126** Total riders in 2021 (Includes Microtransit OnDemand)

**2,298** Total riders in 2022 January 2022 - September 2022 (Includes Microtransit OnDemand)

## KEY PERFORMANCE INDICATORS



## AREAS FOR GROWTH



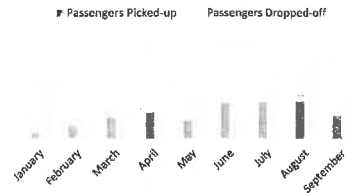
# Paratransit Service

**Transit on the Move**  
Moving Transit Forward

## RIDERSHIP REPORT

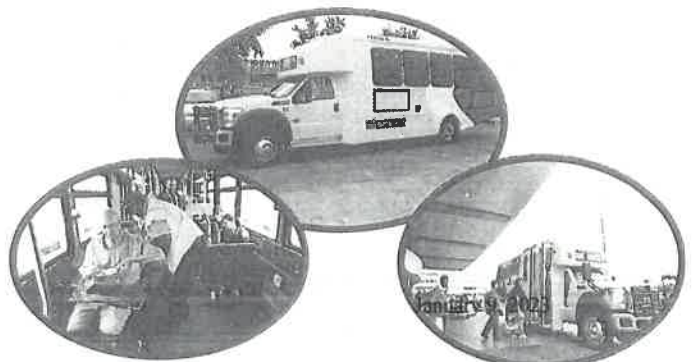
Service Hours: Weekday - Saturday 4:00 am - 11:00 pm Sunday No Service

## RIDERSHIP



## MAX SERVICE AREA

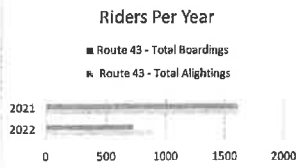
MAX Service Area? ADA paratransit is provided to residents of the Birmingham and Surrounding Metro Area who are ADA eligible in accordance with the ADA regulations on eligibility. The origin and destination of each trip must be within the MAX service area which includes a 3/4 mile corridor which surrounds the regular fixed-routes.



**RIDERSHIP REPORT**

Service Hours: Monday – Friday 7:00 am – 6:20 pm • Saturday - No Service

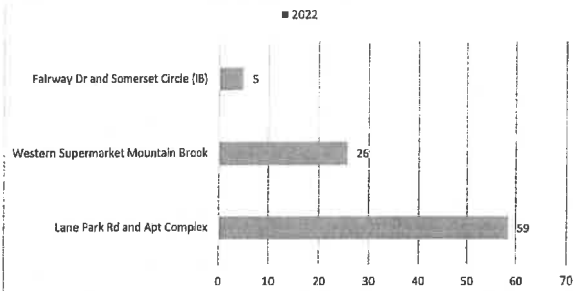
**RIDERSHIP**



**BY THE NUMBERS**

2021	2022
<b>1,633</b>	<b>907</b>
Total Alightings	Total Alightings
<b>1,614</b>	<b>727</b>
Total Boardings	Total Boardings
Jan 2022 - Sept 2022	

**Average Riders Per Stop (2022)**



**DEFINITIONS**

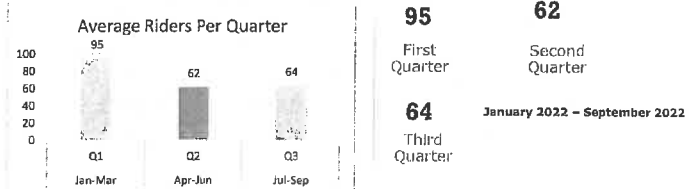
Boarding: Riders getting onto the bus

Alighting: Riders getting off the bus

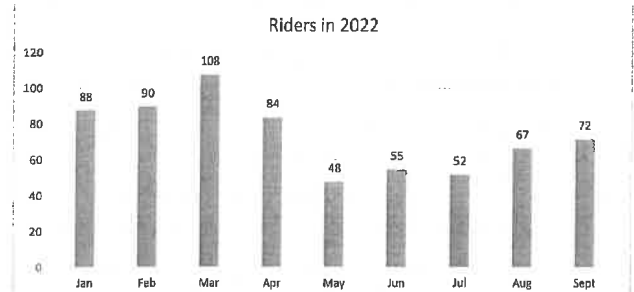
**RIDERSHIP REPORT**

Service Hours: Monday – Friday 8:00 – 9:30 am and 2:00 – 3:30 pm.

**AVERAGE RIDERSHIP PER QUARTER (2022)**



**Riders Per Month (2022)**



**SERVICE RECOMMENDATIONS**

Expand to Saturday service

Expand service hours of operation

Route No	LOOP			
	Central Station	2000 S.S. & 11th Ave S	1th Brook Village	2000 S.S. & 11th Ave S
4301	700 AM	710 AM	718 AM	727 AM
4301	744 AM	755 AM	804 AM	817 AM
4301	834 AM	843 AM	854 AM	914 AM
4301	921 AM	930 AM	938 AM	980 AM
4301	1009 AM	1019 AM	1027 AM	1041 AM
4301	1058 AM	1108 AM	1117 AM	1129 AM
4301	1148 AM	1159 PM	1208 PM	1220 PM
4301	1238 PM	1247 PM	1256 PM	107 PM
4301	125 PM	134 PM	142 PM	118 PM
4301	213 PM	223 PM	231 PM	206 PM
4311	300 PM	310 PM	319 PM	253 PM
4311	348 PM	403 PM	414 PM	342 PM
4311	441 PM	455 PM	506 PM	434 PM
4311	533 PM	547 PM	558 PM	526 PM
4311				618 PM



DATE: January 9, 2023

TO: Mayor, City Council & City Manager

FROM: Dana Hazen, City Planner

RE: Magic City Cheer (Boutique Tumbling Class) – 229 Country Club Park

Service uses, such as the proposed fitness studio, require council approval of a conditional use. The conditional use is reviewed primarily for its anticipated effect on street parking. Here is what the code says:

"The conditional review and approval process shall ensure that, in addition to the other factors of conditional review, sufficient parking exists so that the use will not negatively impact existing established businesses, and that the proposed service use, either in isolation or in conjunction with other service or office uses, will not have a detrimental impact on public parking in the villages."

The proposed space at Country Club Park (previous 32 Degrees yogurt and temporary BBVA) has a parking credit of 9 spaces. Based on the square footage of the space and the higher parking requirement for fitness uses, 12 parking spaces in the common parking lot would be required for Magic City Cheer.

Country Club Park currently has a surplus of 13 parking spaces (over and above that required for the current mix of uses). The on-site credit includes 48 street parking spaces created along Dan Watkins and Keeley Court during the 1997 installation of public sidewalks and parking, part of which is contained on the Scott property (see attached map of Dan Watkins and Keely Court).

An additional 3 parking spaces would be required for the proposed fitness use, which would lower the shopping center's overall surplus down to 9 parking spaces.

See attached Applicant Request for details on proposed hours of operation, and class size/schedule. It is not anticipated that the proposed use would have a detrimental effect on street parking in Crestline Village.

Note\*\* The zoning code indicates that a conditional use shall be approved by the city council if all required parking is provided on site and in the quantities set forth in subsection 129-555(a) of this Code, but it does not necessarily prevent the council from placing conditions on the approval on a proposed conditional use that would serve to mitigate any anticipated negative effects on the established businesses in the vicinity of the proposed use.

Mountain Brook City Council,

Magic City Cheer and tumble would like to ask the approval for a conditional use for the space at Country Club Park (previously 32 degrees yogurt).

We have been approached by many local parents to open up something a little closer than our 280 gym. With our kids in the MB school system we are desiring to open up a small boutique style tumbling class to service over the mountain families.

Our business will consist of private group (30 min to 1 hour) lessons of 4 kids to one coach from the hours after school from 3pm- 7pm.

We have also considered mommy and me classes in the morning from 9-11 with the same style small class of 4 to 5 families per one coach.

We will be closed during the lunch hours of 11-2 in order to help with the known parking situation in the area.

Our employees will park in the underground lot or the all day parking on Dan Watkins to also help with the parking. We will have 1 to 2 employees at the location during our operating hours.

Thank you for your consideration

Stephen and Kendall Hand

APPENDIX 7



January 9, 2023

January 5<sup>th</sup>, 2023

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

TO: Sammy Harton

RE: Caldwell Mill Road Bridge Replacement Change Orders and Time Extension

Subject: Time Extension Request Recommendation  
Caldwell Mill Road Bridge Replacement  
Mountain Brook, AL  
Gresham Smith Project No. 42480.00

Sammy,

Dear Mr. Gaston:

Gillespie Construction, LLC is requesting a time extension for seventy four (74) calendar days for the Caldwell Mill project. This time extension is needed as we have been delayed due to the change to the plans which resulted in delay in the material.

Gresham Smith has reviewed the time extension request from Gillespie Construction dated January 5<sup>th</sup>, 2023 and concur with the request due to the delays referenced in the attached letter. We recommend extending the contract time seventy four (74) calendar days from the original substantial completion date of December 16<sup>th</sup>, 2022. This would set the new substantial completion date at February 28<sup>th</sup>, 2023.

Gillespie Construction, LLC also was directed to delay on the order of guardrail due to potential changes in the direction of the plans. These changes are still ongoing and haven't been resolved.

Gillespie Construction LLC received the pipe last week. Asphalt is planned with weather permitted to be completed at the end of January. Guardrail still hasn't been ordered, and possibly 30-day lead time until guardrail issue is resolved.

Sincerely,



If you have any questions about the time extension request, please contact me.

Sammy Harton, P.E.  
Project Engineer

Sincerely,

Gillespie Construction, LLC



SH

Attachment: Gillespie Construction's Time Extension Request Letter

Copy      Ronnie Vaughn - City of Mountain Brook  
             Blair Perry - Gresham Smith

3595 Grandview Parkway  
Suite 300  
Birmingham, AL 35243  
205.298.9200

GreshamSmith.com

*Genuine Ingenuity*

**APPENDIX 8**