

**MINUTES OF THE SPECIAL MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
MAY 1, 2023**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 8 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met in person at 6:00 p.m. on the 1st day of May, 2023 (others were invited to listen to the meeting by way of Internet video conference—8 attended virtually). Council President Virginia Smith called the meeting to order and the roll was called with the following results:

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

Absent: Stewart Welch III, Mayor

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

Council President Virginia Smith stated that a quorum was present and that the meeting was open.

1. LAW DAY PROCLAMATION

Graham Smith-Council Member

- Presented Proclamation No. 2023-071 (Exhibit 1) to Judge K. C. Hairston and Magistrate Supervisor, Breanna Dunn

K.C. Hairston-Mountain Brook Municipal Judge

- The rule of law is a critical foundation for a just and fair society
- The law is impartial, fair, and accessible to all regardless of social or economic status
- Want to work together to ensure legal system is fair and just for all

2. CONSIDERATION: RESOLUTION APPROVING THE UNBUDGETED SOLUTIONS PROPOSAL SUBMITTED BY LEXIPOL FOR THE POLICE DEPARTMENT (RESOLUTION NO. 2023-072 EXHIBIT 2, APPENDIX 1)

Council Member Garner made a motion to approve the resolution for the unbudgeted solutions proposal submitted by Lexipol for the Police Department. The motion was seconded by Council Member Shelton. 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 Resolution (No. 2023-072) is hereby adopted by a vote of 5—0 (Exhibit 2, Appendix 1)

3. CONSIDERATION: RESOLUTION AUTHORIZING THE PROFESSIONAL SERVICE AGREEMENT WITH SKIPPER CONSULTANTS INC. WITH RESPECT TO THE OVERTON ROAD FLASHING WARNING SIGN (RESOLUTION NO. 2023-073 EXHIBIT 3, APPENDIX 2)

Council Member Shelton made a motion to authorize the resolution for the professional service agreement with Skipper Consultants, Inc. with respect to the Overton Road flashing warning sign. 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 Resolution (No. 2023-073) is hereby adopted by a vote of 5—0 (Exhibit 3, Appendix 2)

4. PUBLIC HEARING-REQUEST TO REZONE PROPERTY FROM RESIDENCE B DISTRICT TO PLANNED UNIT DEVELOPMENT (PUD) DISTRICT-2305 MONTEVALLO ROAD, MONTEVALLO ROAD PARTNERS, LLC

Charlie Beavers-4348 Old Brook Trail (Represents Applicant)

- Presentation will go over changes to site development plan

Louis Nequette-2227 2nd Avenue North (Principal at Nequette Architecture and Design)

- Vision is unchanged-address gateway, provide living choices, improve onsite storm water management, improve connectivity to village, and be considerate of adjacent owners
- Revised development plan-one larger condominium building and three townhouse units
- Larger condominiums unit contains up to 26 units and has an extended footprint
- Drive access to the level of condominium directly off access drive and 2nd access that drops down a grade which brings it to the back yard and enters a 2nd lower basement level
- This allows 2 parking stalls per unit
- Village lots are unchanged-10 village courtyard lots and 3 manor lots with access to Chester Road
- General character is unchanged
- 3 townhouse units (approximately 27’ wide, 46’height to the ridge (3 stories plus a 16’ tall roof form)
- Have fully enclosed trash locations with overhead door
- New design shows longer extended condominium building but within the same character as was originally proposed
- Condominium height is same as was originally proposed
- Would encourage the look of the townhomes to look like the Dexter Design building

- Single family lots are coded to have courtyard in middle, alley access, and be 2400-3500 square feet

Andrew Phillips-1001 22nd Street South (Schoel Engineering)

- Previously had 1% increase in impervious footprint, new footprint has increased impervious footprint to 53% which is a 3% increase from before
- The increase impervious footprint will be addressed by beefing up storm water underground detention system
- Utility changes-had to modify the sanitary sewer scheme
- Water services will still be provided from 8" water main in Montevallo Road that will serve condominium and townhomes
- Still plan to take the overhead power underground for condominium
- Beefed up underground detention (between condominium and 1st Townhome unit) which will give water quality and will reduce flow through 2-100 year storm events
- Added an additional public fire hydrant

Virginia Smith-Council President

- Inquired if the Fire Department is comfortable with Chester access with island remaining

Andrew Phillips

- From his understanding the Fire Department was comfortable with the way it is

Gerald Clarke-7500 South Memorial Parkway (Landscape)

- Made changes to reflect the changes in sight plan
- Montevallo Road streetscape had to be addressed-will have under story trees to help soften the edge
- Sidewalk along Montevallo has been straightened out
- Will be able to plant taller trees in the back along the 3 townhome units

Virginia Smith

- Inquired as to the height of the trees at the time of planting

Gerald Clarke

- The trees will be at least 6', probably taller
- Along Chester side-screen walls will have softer edge with vines planted on face that gives a residential feel
- Will have under story trees throughout development

Richard Caudle-3644 Vann Road (Skipper Consultants-Traffic Engineer)

- The report was updated
- There has been a slight decrease in density (in terms of dwelling units), this has decreased the amount of traffic generated
- Estimated a decrease of 20 vehicles a day as a result of the changes to the proposed site plans
- No significant impacts and no required improvements
- The findings of the new traffic study are the same as the previous study

Charlie Beavers

- Under ordinance, with respect to PUD applications, the council can 1) approve, 2) deny, or 3) amend and approve as amended
- Listened to input and moved the density toward Highway 280 and away from the back of the Chester Road neighborhood
- Changed the type of building from a stacked condominium (which is taller and further back) to townhomes

- Townhomes are shorter (by a story) than the condominium and are 15' further away from the back line from Chester
- Feel this is a positive change and is in keeping with what they are trying to accomplish

Tripp Galloway-4144 Stone River Road Attorney for Chester Road property owners who are opposed of project

- Stated a dumpster is located on the rear property line (which he did not recall seeing the dumpsters on the previous plan)
- Inquired as to where the dumpsters were located in the previous plan and why they were not depicted
- Wants clarification on the height of the townhome being 46' (to the ridge), inquired if that is from the front stoop to the ridge or from the rear base to the ridge, if from the front, wants to know the measurement from the rear base to the ridge
- In the stats of the proposal there is a reference to a possibility of a vacation of the land that is between Express Oil and the subject property
- Inquired if vacation was the applicants plan and if Express Oil is on board or has a petition been filed as to the status of this and how it would impact the proposed right of way (because access would then be private as opposed to public if vacated)
- If vacated, absent an agreement, typical results of vacation: east gets half and west gets half
- On parking in the front: inquired as to the parking count for the front spaces and inquired if the front spaces would be in public right of way
- Inquired as to how the City will govern individuals parking in the front parking spaces

Charlie Beavers

- The alley that is in Homewood has not been vacated and is still a public alley
- Went to Homewood to secure an agreement to allow them to improve the alley and incorporate it into the development plan

Billy Pritchard-Council President Pro Tempore

- Inquired if there has been discussion of de-annexing the alley

Charlie Beavers

- They have not asked Homewood to de-annex the alley

Gerald Garner-Council Member

- Inquired as to the possibility of it being vacated

Charlie Beavers

- Homewood could vacate it if they wanted to
- It is adjacent to another property
- Do not know if it would be needed
- Have not asked Homewood to vacate the alley
- There has been no discussion or expressed interested in vacating the alley

Louis Nequette

- The height regulations of the townhomes are based on village overlay requirements
- The 46' in the ordinance is measured from the grade at the front to the ridge which includes the ridge height
- The land at this location drops 5-7' from front to back which would be an additional distance down to the ridge to the alley behind them
- The dumpsters were either as shown or tucked into side doors of the saddlebags of the condominium

Virginia Smith

- Inquired as to where the dumpsters could be moved from the current proposed location

Louis Nequette

- The dumpsters could be put into basement of the condominium building
- They could flip the maintenance building with the dumpsters

Jared Calhoun-2227 2nd Avenue North (Nequette Architecture and Design)

- The parking along Montevallo Road has always been visitor parking
- The off-street parking that is dedicated to units are parking beneath units
- There is no reservation to the parking spaces in the front, it would be public and available for use by visitors

Dana Hazen-Director of Planning, Building, and Sustainability

- When Condominiums and townhome developments provide the visitor parking it can be in public right-of-way
- The parking on Montevallo Road would be for the general public

Lloyd Shelton-Council Member

- Would have a problem with Express Oil change to utilize those parking spaces to store their inventory

Billy Pritchard

- If this was to pass, could always limit the hours of those parking spaces

Charlie Beavers

- With respect to the dumpsters and maintenance building: Will eliminate the building and move dumpsters and maintenance building underground
- Will extend landscaping all the way across the back of Chester Road

Heidi Blankenship-2350 Montevallo Road Unit 1603

- Want to address what it is like to live on Montevallo Road in a high density building
- Concern is the traffic
- Traffic along Montevallo Road makes it difficult to turn onto Montevallo Road (from her building)
- With the parked cars along Montevallo Road makes it difficult to turn onto Montevallo Road

Richard Pizitz-3425 Oak Cannon Drive

- Has lived at his address for 30 years; however, he has been looking for a place closer in the city and wants to scale down
- Has not found options available to them
- Wants walkable distance
- Is in favor of the project

Alan and Katherine Kilpatrick-2304 Chester Road

- Passed out paperwork (Appendix 3)
- In over a year, there has been very little change with the project
- The design has not changed other than making the building bigger
- There has been no concession on behalf of the Chester neighborhood
- Over a year has been spent on this design with no meaningful change other than to make it worse for the neighborhood

- Feels the developer has done this out of maximizing their profits
- If the developer was concerned about the neighborhood, they would have made meaningful changes
- The changes are worse (than what was proposed a year ago) because building A is bigger (Original plan had 12 units on a 3 story building, new plan has 26 units on a 4 story building)
- Design is unacceptable to neighborhood and them
- Access road calls for 52 parking spaces in building and 6 in townhomes-which will result in 58 car lights shining in their back yard
- The drawing online had a 3' privacy wall which would not block any lights
- The privacy wall was proposed at 8' and is back at 3'
- Would rebut that the circle would have to be reduced in size if not eliminated to get a fire truck around (once there is parking on street)
- Traffic on Chester will be doubled with this development
- There are other designs that are acceptable with the neighborhood; however, developer has not worked with the neighborhood
- Requesting the council to vote "No" on the design and push developer to work with the neighborhood on a design that works for all
- Would like to have a taller privacy wall because a green wall may die

Virginia Smith

- Asked developer to remove cobblestones between Chester and the new development

Lee Rhudy-Fire Marshall

- The information given to him by Andrew Phillips and Schoel meets or exceeds the IFC 2021 fire code
- The entrance from Chester meets code coming in

Billy Pritchard

- Inquired if emergency and fire trucks could get into the new design if cars are parked along Chester or the circle

Lee Rhudy

- It would be very difficult, they do it now
- A lot of times they have to do a 3-point turn or back up

Elizabeth Coleman-2321 Chester Road

- Want to give historical prospective of Chester Road
- Moved to Chester Road when she was 5 years old
- Chester Road is Mayberry in nature with 12 cottage houses, a church at one end and a quaint village at the other end
- Moved back to Chester Road as an adult
- Friends call Chester Road a "hidden gem"
- Many of the homes are tastefully larger on Chester Road
- Do not think placing a high density PUD atop a Residence B neighborhood will do anything to increase the property values
- Traffic will be doubled on Chester Road
- Does not want to be forced to be a part of a high density PUD, these are two different kinds of neighborhoods
- Does not oppose the development, object Chester Road being connected to the development
- Wants to maintain integrity of their beloved quiet street

Jane Brown Grant-2317 Chester Road

- Originally excited about development
- Noticed the Chester Road access at a meeting the developer had
- All of the neighbors asked the developer to not use Chester Road
- Feels like the voices of the neighborhood have been ignored
- Feels the developer hoped the neighborhood would run out of money, give in, or get tired of the fight and give them Chester Road
- The developer needs Chester Road to make their money
- The council is their protector and last hope to keep a small street from being connected to the PUD
- Pleaded with the council help the families on Chester Road and support them

Dan McCreary-2334 Chester Road

- Was hopeful things would change with the PUD; however, still looking at massive density
- Zero changes have been made to lower portion with respect to Chester Road
- This property is zoned Residential B, and the developer knew this when they closed on the property
- The developer assumed the risk that the application to rezone could be denied and property may remain Residential B
- The applicant in PUD has no legal rights to what they are putting forth
- The burden of overcoming objections should not be on the neighborhood and should be on the developer to come forth with substantial showing to demonstrate that the objections raised are not a problem
- The developer has not changed much as it relates to the high density single family homes and Chester Road
- Last meeting the neighborhood sponsored a civil engineer from MTTR Engineering, Jeremy Taylor, to design alternatives
- Commissioned engineer at own expense due to developer team representing it was not feasible to access lower portion PUD from Montevallo Road
- Mr. Taylor proved this to be untrue, he presented 2 alternatives with access to Montevallo Road
- There has been no word from developers on Mr. Taylor's options
- Chester Road is not necessary and rather it is a preference from PUD applicant
- The high density area of single family in the PUD is not consistent with Residence B or the neighborhood
- Provided the applicants depiction of what the single family PUD houses would look like (Appendix 4)
- Chester Road and the high density homes are fundamentally different
- Provided the applicants master developer plan (Appendix 5) to focus on the 10 village lots
- By including common areas, the developer says the lot sizes are 7500 (this is by taking whole area and dividing it by the number of lots)
- On their development plan it states the single family village lots are 60'x78' which is about 4,680 square feet
- There is no continuity in merging these homes with a Residence B neighborhood
- This would be one of the smallest footprint in Mountain Brook
- The lot size of the single family village lots are fundamentally different from Chester Road, Residence B has to have a minimum of 10,000 square feet
- The vehicular burden-it is strange to suggest that adding 14 houses at the end of Chester Road will not change the traffic burden on that street
- Developer offered traffic study based on 24 hour data pull (the week before spring break), focused on peak periods

- The study stated there was no problems during peak period even though the actual traffic count in the study demonstrated there is higher usage periods along Cahaba Road than the peak period they studied
- Would suggest the council take into consideration the shortcoming in the study and rely on common sense and logic in assessing the effect of more than doubling the single family homes accessing homes on Chester Road
- Sightline issue (provided documents, Appendix 6), when you stop behind crosswalk, there is not adequate sightline to turn left
- If permit the PUD to access Chester Road, then you are linking the future of Chester Road neighborhood to the success (or failure) of the high density area
- If the PUD is successful, then the neighborhood is exposed to traffic burdens and negative impacts
- If the PUD is unsuccessful, then Chester Road will have a struggling high density attached to their street
- Granting the PUD access to Chester Road should be denied because it is incompatible, it burdens Chester Road, and it is not necessary (it is a developer preference)
- There are other viable alternatives for accessing Montevallo Road that would eliminate the identifiable burdens and avoid risks to Chester Road
- Asked the council to consider whether the size and scale of Building A (and townhomes) are appropriate for the entry point into the city

Elizabeth Coleman

- Brook Manor Drive and Chester Road were originally built as “no outlet streets”
- Brook Manor Drive is still a no outlet street
- Chester Road still has a sign that states “no outlet”
- Had an agreement with the church to open the chain on Sundays and Wednesdays, all other times it was closed

Tripp Galloway

- In Village Place, there is one ingress and one egress point on Montclair Road
- The plat for Village Place, there are 8 lots that boarder a street
- If Village Place is most like the PUD that is presented, then there should not be access on Chester Road because the decision was made for Village Place to have only one ingress and egress to Montclair Road
- Asked the council for consistency with Village Place and the PUD request to eliminate Chester Road
- (Provided Easement and Covenant Agreement, Appendix 7)
- As evidence of Appendix 7, in July of 2022, the Church entered into an easement and covenant agreement with the Rushings
- In document, there is a 5’ easement area in favor of the Rushings over lot 331
- In the document, there is a 25’ easement area that consumes the 5’ easement area for benefitting the Rushings in creating a buffer area on lot 331
- The document conveying title from Shades Valley to the developer have an exception for this easement agreement
- This created a self-imposed hardship to the other Chester residents
- These townhomes will dwarf Chester Road
- (Provided 129-555(b)(3), Appendix 8)
- Quoted Section C of Appendix 8
- The council should consider there should be a limit in height well below the limit of the townhomes due to the self-imposed hardship the developer created when they gave the 25’ buffer area to the Rushings.

- The townhomes violate the directive of Appendix 8 by adversely affecting the developed property in the vicinity of the PUD
- If the 25' buffer were not in place, the townhomes could have been spread out and shorter, feels this needs to go back to the Planning Commission for its direction and input
- A PUD is an exceptionally deferential zoning that should be hard to get and if obtained, it should come with strict requirements
- Feels the developer is overreaching with its 26 condominiums, 3 townhomes that are over 56' in height, 10 smallest lots in Mountain Brook, and access to Chester Road

Charlie Beavers

- Have issue with going back to the Planning Commission because the Planning Commission looked at it deeply and approved it
- The Planning Commission recommended exactly the same single family residence configuration, access to Chester Road, and a building behind the two lots at the end of Chester that had 14 units, a story taller, and 15' closer to the two lots on Chester than what is presented now
- In the City's ordinance the City Council options for PUD requests are as follows: approve, amend and approve, or disapprove
- What is before the council now has moved in a direction closer to the neighborhood and their input than what was recommended by the Planning Commission
- Applicant moved the density to the western corner and less density behind the two houses on Chester
- Townhouses proposed are consistent with the long range plan of the City
- The Chester Road plat, from the beginning, connected to the subject property with public road access and was never a private road and always had access to the subject property
- This property is zoned Residence B and could be loaded up with Residence B houses and access Chester Road without coming to Council, which the traffic study showed would cause more traffic on Chester Road
- Residence B development on subject property would increase the number of kids in Mountain Brook schools
- The density and size of project are appropriate for this property in this location
- In the Planning Commission minutes, Planning Commissioner Black stated "The By-rite proposal would incur more traffic. The City Council would probably be concerned about the impact on the schools. The project will address a market that the City does not have"

Louis Nequette

- Addressing the 2 issues of the townhouses and lot size: The argument that the townhouses puts a unique condition and hardship on the houses behind them that doesn't exist anywhere and has not been considered, is not true
- This is partially the reason the City considered the overlay district of the village in coding those townhouses
- The requirements of the overlay have been reduced and lessened and impact of houses behind townhouses is similar to townhouse on Dexter and Vine
- These townhouses are a lesser impact than what exists on Dexter and Vine
- The unique lot size does not exist because this provides for a demand in the marketplace

Lloyd Shelton

- Inquired as to the elevation of the townhomes

Louis Nequette

- It would be 53' but there is a 20' offset and the height would be 21-22' to the eave with roof ridge of another 10-12' at max

Virginia Smith

- Not ready for a vote, a few items need to be addressed
- The council will decide (at a later date) if it needs to go back to the Planning Commission

Billy Pritchard

- Appreciated the efforts made by the developer
- Was hopeful the developer would have made more changes
- Wants to keep character of neighborhood, this property has been zoned Residence B for 70+ years
- His charge on the city council is to look out for the health, safety and welfare of the residents of Mountain Brook
- Does not think the changes made are within keeping the character of the neighborhood in Mountain Brook
- Does not think it is in the best interest and welfare of the residence of Mountain Brook (as proposed)

Virginia Smith

- Closed the public hearing

5. ANNOUNCEMENT

The City Council will have a Special Meeting on Tuesday, May 2nd, 2023 at 5:30 p.m. to discuss drainage options for Richmar Drive and Mountain Avenue

6. ANNOUNCEMENT

The next regular meeting of the City Council is May 8, 2023 at 7:00 p.m.

7. ADJOURNMENT

There being no further business to come before the City Council, Council President Virginia Smith adjourned the meeting at approximately 8:43 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 special meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A-108) on May 1, 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 June 12, 2023

EXHIBIT 1**PROCLAMATION NO. 2023-071**

WHEREAS, in 1958 President Eisenhower proclaimed Law Day to honor the role of law in the creation of the United States of America, and in 1961 Congress issued a joint resolution declaring May 1, Law Day; and

WHEREAS, the theme for Law Day 2023 is Cornerstones of Democracy: Civics, Civility, and Collaboration; and

WHEREAS, at times throughout our nation’s history, there have been divisions in society, aggravated by incivility in public discourse and insufficient understanding about the Constitution and the way American government works. Even the Founding generation overcame deep divisions to craft our great charter of government; and

WHEREAS, all Americans must remember, as President Lincoln proclaimed, “We are not enemies, but friends... Though passion may have strained, it must not break our bonds of affection;” and

WHEREAS, members of the legal profession should lead the way in promoting collaboration to overcome our differences and resolve our disputes so that we may strengthen the bonds of affection between citizens, and ensure all Americans understand how our constitutional order protects the blessings of liberty; and

WHEREAS, the theme for Law Day 2023 is Cornerstones of Democracy: Civics, Civility, and Collaboration, we encourage all Americans to work together to overcome our differences, resolve our disputes, and preserve our democracy and republic.

NOW, THEREFORE, I, Graham L. Smith, Council Member for the City of Mountain Brook, Alabama do hereby proclaim May 1, 2023 as

“LAW DAY”

and urge everyone to observe this day by renewing their commitment to civic engagement, civility, and collaboration.

EXHIBIT 2

RESOLUTION NO. 2023-072

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the unbudgeted solutions proposal submitted by Lexipol for creating, revising, and maintenance of the Police Department’s policies.

APPENDIX 1

EXHIBIT 3
RESOLUTION NO. 2023-073

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby accepts the professional services agreement submitted by Skipper Consulting, Inc., in the form as attached hereto as Exhibit A, with respect to preparing a traffic control device design for a flashing light warning beacon system for Overton Road near the intersection of North Woodridge Road.

APPENDIX 2

APPENDIX 3

APPENDIX 4

APPENDIX 5

APPENDIX 6

APPENDIX 7

APPENDIX 8



Heather Richards <richardsh@mtnbrook.org>

MINUTE BOOK 93



Heather Richards <richardsh@mtnbrook.org>

623

Lexipol Bid Law

Mandy Rogers <mrogers@bishopolvin.com> Fri, Apr 28, 2023 at 10:09 AM
To: gastons@mtnbrook.org
Cc: boones@mtnbrook.org, richardsh@mtnbrook.org, Carl Johnson <carljohnson@bishopolvin.com>

Good morning, Sam:

I have reviewed Lexipol's proposal for providing policy management services for the Mountain Brook Police Department. The proposal includes customized and/or specialized services that draw on professional resources and expertise and that entail compliance with ongoing legal and professional training and performance standards, as well as risk management measures.

The nature of services brings the proposal within the ambit of the bid law's exemption for professional services:

Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part.

ALA. CODE §41-16-51(a)(3) (1975).

I offer no opinion as to whether Lexipol qualifies as a "sole source" for the services in question within the meaning of §41-16-51(a)(13).

Please let me know if you have any questions.

Best regards,

Carl Johnson (205) 251-2881
via carljohnson@bishopolvin.com
Mandy Rogers

https://mail.google.com/mail/u/0/?ik=80a4775052&view=pt&search=all&permmsgid=msg-f:1764433136876334987&siml=msg-f:17644331368763349... 1/2

Council Items

Carl Johnson <carljohnson@bishopolvin.com> Fri, Apr 28, 2023 at 8:54 AM
To: Sam Gaston <gastons@mtnbrook.org>, Heather Richards <richardsh@mtnbrook.org>
Cc: Steve Boone <boones@mtnbrook.org>, Jaye Loggins <logginsj@mtnbrook.org>, Whit Colvin <wcolvin@bishopolvin.com>, Nimrod Long <nimrod@nimrodlong.com>, Joel Eliason <jeliason@nimrodlong.com>

Good to go with Lexipol (re bid law question).

Thanks,

Carl Johnson
1910 First Avenue North
Birmingham, Alabama 35203
Phone : (205) 251-2881
Fax : (205) 254-3987
Email : carljohnson@bishopolvin.com



From: Sam Gaston <gastons@mtnbrook.org>
Sent: Friday, April 28, 2023 8:22 AM

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APPENDIX 1



Mountain Brook Police Department
Chief Jaye Loggins
101 Tibbett Street
Mountain Brook, Alabama 35213
Phone: 205.879.0486
Fax: 205.802-2415

To: Mountain Brook City Council
From: J. Loggins, Chief of Police
Date: April 18, 2023
Re: Budget Amendment

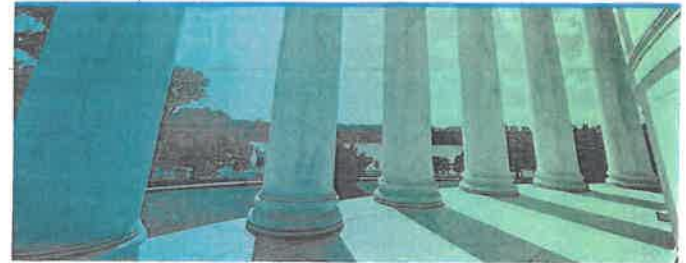
I am submitting this memorandum as a request for an amendment to the Police Department's FY23 budget. The amendment will affect the "Annual Maint-Software" line item 100-3510-6463-3502. The request is for approval of utilizing Lexipol in creating, revising, and maintenance of department policies. The current policies are inconsistent and outdated. Many of the policies date back to 2009 signed by then Chief J. Stanley.

By utilizing Lexipol, our policies will be established through the current laws and court decisions surrounding employee and law enforcement practices. The company will work with our department in review and revision with personnel specific for Alabama. Through the use of Lexipol, our department's policies and practices will have consistent maintenance as the company will inform us and also amend policies due to Alabama Supreme Court and US Supreme Court decisions as well as new and changing legislation and practices. The services will include written policies, training bulletins, updates and reporting of employees completing trainings and acknowledgement of receiving the policies. Included in the policies will be high-risk, high-liability, and daily operations policies.

The service will make the Mountain Brook Police Department stronger and will meet the professional standards expected of our personnel. In a recent review of our department's practices, the Alabama Municipal Insurance Corporation recommended a service of this type to bring our policies up to date. Several departments within the state utilize the service and all are complimentary of the company and services provided. I have included a proposal along with this request for your review. The company will be able to produce a "sole source letter" when requested. Thank you for any and all consideration in this matter. I will be available for questions and/or comments.



SOLUTIONS PROPOSAL



PREPARED FOR:
Mountain Brook Police Department
Lieutenant Chris Thompson
thompsonc@mtnbrook.org
2052837253

PREPARED BY:
Allen Payne
apayne@lexipol.com

2611 Internet Blvd, Ste 100
Frisco, Texas 75034
(844) 312-9500
www.lexipol.com

Executive Summary

Scope of Services

Public safety agencies and local government organizations today face challenges of keeping personnel safe and healthy, reducing risk and maintaining a positive reputation. Add to that the dynamically changing legislative landscape and evolving best practices, and even the most progressive, forward-thinking departments can struggle to keep up.

Lexipol's solutions are designed to save you time and money while protecting your personnel and your community. Our team consists of professionals with expertise in public safety law, policy, state and federal accreditation, training, mental and physical wellness and grants. We continually monitor changes and trends in legislation, case law and best practices and use this knowledge to create policies, training, wellness resources and funding services that minimize risk and help you effectively serve your community.

THE LEXIPOL ADVANTAGE

Lexipol was founded by public safety experts who saw a need for a better, safer way to run a public safety agency. Since the company launch in 2003, Lexipol has grown to form an entire risk management solution for public safety and local government. Today, we serve more than 10,000 agencies and municipalities and 2 million public safety and government professionals with a range of informational and technological solutions to meet the challenges facing these dynamic industries. In addition to providing policy management, accreditation, online training, wellness resources, and grant assistance, we provide 24/7 industry news and analysis through the digital communities Police1, FireRescue1, Corrections1, EMS1 and Gov1.

Our customers choose Lexipol to make an investment in the safety and security of their personnel, their agencies and their communities. We help agencies address issues that create substantial risk, including:

- Inconsistent and outdated policies
- Lack of technology to easily update and issue policies and training electronically
- Unchecked mental health needs of staff
- Difficulty keeping up with new and changing legislation and practices
- Inability to produce policy acknowledgment and training documentation
- Unfamiliarity of city legal resources with the intricacies of public safety law
- The need to secure grant funding for critical equipment, infrastructure and personnel

Lexipol is backed by the expertise of 440 employees with more than 2,075 years of combined experience in constitutional law, civil rights, ADA and discrimination, mental health, psychology, labor negotiations, Internal Affairs, use of force, hazmat, instructional design, federal and state grants and a whole lot more. That means no more trying to figure out policy, achieve accreditation, develop training or wellness content, or secure funding on your own. You can draw on the experience of our dedicated team members who have researched, taught and lived these issues.

We look forward to working with Mountain Brook Police Department to address your unique challenges.

You'll receive one-on-one collaborative assistance to help you review, customize and adopt the policies efficiently and effectively.

Implementation Policy Tier III: Daily Operations Policies

Benefit from our proven, systematic approach to implementing policies. Tier III represents about 20% of the manual, including policies needed for orderly daily operations of your organization. You'll receive one-on-one collaborative assistance to help you review, customize and adopt the policies efficiently and effectively.

Policy Manual

Constitutionally sound, up-to-date policies are the foundation for consistent, safe public safety operations and are key to reducing risk and enhancing personnel and community safety. Lexipol's comprehensive policy manual covers all aspects of your agency's operations.

- More than 155 policies researched and written by public safety attorneys and subject matter experts
- Policies based on State and federal laws and regulations as well as nationwide best practices
- Content customized to reflect your agency's terminology and structure

Daily Training Bulletins (DTBs)

Even the best policy manual lacks effectiveness if it's not backed by training. Lexipol's Daily Training Bulletins are designed to help your personnel learn and apply your agency's policy content through 2-minute training exercises.

- Scenario-based training ties policy to real-world applications
- Understanding and retention of policy content is improved via a singular focus on one distinct aspect of the policy
- Each Daily Training Bulletin concludes with a question that confirms the user understood the training objective
- Daily Training Bulletins can be completed via computers or from smartphones, tablets or other mobile devices
- Reports show completion of Daily Training Bulletins by agency member and topic

Policy Updates

Lexipol's legal and content development teams continuously review state and federal laws and regulations, court decisions and evolving best practices. When needed, we create new and updated policies and provide them to your agency, making it simple and efficient to keep your policy content up to date.

- Updates delivered to you through Lexipol's web-based content delivery platform
- Changes presented in side-by-side comparison against existing policy so you can easily identify modifications/improvements
- Your agency can accept, reject or customize each update

Web-Based Delivery Platform and Mobile App (Knowledge Management System)

Lexipol's online content delivery platform, called KMS, provides secure storage and easy access to all your policy and training content, and our KMS mobile app facilitates staff use of policies and training completion.

- Ability to edit and customize content to reflect your agency's mission and philosophy
- Efficient distribution of policies, updates and training to staff
- Archival and easy retrieval of all versions of your agency's policy manual
- Mobile app provides in-the-field access to policy and training materials

Reports

Lexipol's Knowledge Management System provides intuitive reporting capabilities and easy-to-read reports that enhance command staff meetings and strategic planning.

- Track and report when your personnel have acknowledged policies and policy updates
- Produce reports showing completion of Daily Training Bulletins
- Sort reports by agency member, topic and other subgroups (e.g., shift, assignment)
- Reduce the time your supervisors spend verifying policy acknowledgement and training completion

Implementation Policy Tier I: High-Risk Policies

Benefit from our proven, systematic approach to implementing policies. Tier I represents about 20% of the manual, including foundational policies necessary to provide structure and authority to your policy manual, as well as policies addressing high-risk, low-frequency and high-risk, high-frequency incidents. You'll receive one-on-one collaborative assistance to help you review, customize and adopt the policies efficiently and effectively.

Implementation Policy Tier II: High-Liability Policies

Benefit from our proven, systematic approach to implementing policies. Tier II represents about 20% of the manual, including policies that relate to common day-to-day calls for service that have a higher level of potential liability.

APPENDIX I

Proposal

Prepared By: Allen Payne
Phone:
Email: apayne@lexipol.com

Quote #: Q-54339-3
Date: 1/27/2023
Valid Through: 4/27/2023

Overview

Lexipol empowers first responders and public servants to best meet the needs of their residents safely and responsibly. We are the experts in policy, training and wellness support, committed to improving the quality of life for all community members. Our solutions include state-specific policies, online learning, behavioral health resources, funding assistance, and industry news and information offered through the websites Police1, FireRescue1, EMS1 and Corrections1. Lexipol serves more than 2 million public safety and government professionals in over 10,000 agencies and municipalities. The services proposed below are designed to meet your agency's specific goals and needs.

Yearly Subscription

QTY	DESCRIPTION	UNIT PRICE	DISC	DISC AMT	EXTENDED
1	Annual Law Enforcement Policy Manual & Daily Training Bulletins (12 Months)	USD 18,971.00	5%	USD 948.55	USD 18,022.45
	Subscription Line Items Total			USD 948.55	USD 18,022.45
				USD 948.55	USD 18,022.45
	Yearly Subscription Discount:				USD 948.55
	Yearly Subscription TOTAL:				USD 18,022.45

One Time Implementation

QTY	DESCRIPTION	UNIT PRICE	DISC	DISC AMT	EXTENDED
1	Law Enforcement Tier I Implementation	USD 4,701.00	5%	USD 235.05	USD 4,465.95
1	Law Enforcement Tier II Implementation	USD 4,112.00	5%	USD 205.60	USD 3,906.40
1	Law Enforcement Tier III Implementation	USD 3,428.00	5%	USD 171.40	USD 3,256.60
	One-Time Line Items Total			USD 612.05	USD 11,628.95
				USD 612.05	USD 11,628.95
	One Time Implementation Discount:				USD 612.05
	One Time Implementation TOTAL:				USD 11,628.95

*Law Enforcement pricing is based on 64 Law Enforcement Sworn Officers.

Discount Notes
5% Sourcewell Discount

PROFESSIONAL SERVICES AGREEMENT
Between
The City of Mountain Brook and Skipper Consulting, Inc.

This Agreement is made by and between the City of Mountain Brook, Alabama ("Client"), doing business at 58 Church Street, Mountain Brook, Alabama 35213 and, Skipper Consulting, Inc. ("Consultant"), doing business at 3844 Vann Road, Suite 100, Birmingham, Alabama 35235.

WHEREAS, the Client requests that the Consultant perform professional traffic engineering services related to a traffic control device design for an flashing light warning sign system on Overton Road near the intersection of North Woodridge Road in the City of Mountain Brook (the "Project" or "Services");

WHEREAS, the parties intend that the Consultant be authorized to start work on the services outlined in this agreement upon execution of this Agreement, and

WHEREAS, the Client and Consultant agree that the Services be performed pursuant to the terms of this Agreement, together with the attached Exhibit A and the Addendum related hereto, which writings constitute the entire agreement between them relating to this assignment.

1. **PROFESSIONAL SERVICES:** The Consultant agrees to perform the following Services under this Agreement:

SEE SCOPE OF WORK SET FORTH ON EXHIBIT "A"

The Consultant agrees to perform its Services in a manner that is consistent with professional skill and care that would be provided by other professionals in its industry under same or similar conditions, and in the orderly progress of the Project.

2. **CLIENT'S RESPONSIBILITIES:** Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in its files. The Consultant may rely on the information provided by the Client without verification.

The Client will designate a representative who shall have the authority to act on behalf of the Client for this project.

The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the scope of work within established schedules.

3. **COMPENSATION/ BILLING/ PAYMENT:** Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) for a fixed fee in the following amounts:

Flashing Warning Beacon Design \$ 4,500.00

The CLIENT will bill for its Services monthly based on the work completed during the billing period. Invoices for uncontested amounts are payable within 30 days from the receipt by the Client, and such payment shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this Agreement.

If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such change. If the Client wishes to undertake tasks that are identified as being outside the proposed scope of services, the Consultant will submit a proposal for the additional work. No additional work or services other than those contemplated herein shall be performed without the written approval of the Client.

If for any reason, payment for uncontested amounts reflected on invoices is more than 30 days delinquent, the Consultant shall have the right to stop work on the assignment until such payment is made. The Consultant will not be liable for any delays to project schedules caused for such work stoppage.

4. STANDARD TERMS AND CONDITIONS

The Client shall have final right of review and approval of all plans and specifications that shall be delivered in connection with the performance of the Services; however, review and approval shall not be withheld unreasonably.

The rights and obligations of the parties to this Agreement may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

Either party may terminate this Agreement upon 10 days' written notice to the other party should the defaulting party substantially fail to perform any or its material responsibilities in the Agreement through no fault of the party desiring to terminate. In the event of termination of this Agreement, due to the fault of a person or party other than the Consultant, Consultant shall be paid for Services performed to termination date.

The Consultant agrees to furnish consulting services only related to the Project. Consultant shall be responsible for coordination of its work with that of Client.

This Agreement (including Exhibit A and the Addendum) shall constitute the entire agreement between the parties concerning the matters herein, and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated into this Agreement.

Any modification or amendment of this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

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

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

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

Neither party to this Agreement shall be liable to the other for any loss, cost, or damages, arising out from or resulting from, any failure to perform in accordance with its terms where the causes of such failure shall occur due to events beyond a party's reasonable control, include, but not limited to, the following: acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockades,

APPENDIX 2

insurrections, riots, governmental action, explosions, fire, floods, or any other cause not within the reasonable control of either party.

Consultant shall secure and maintain such Insurance as is reflected on the Addendum.

Client shall provide Consultant access to the Project site necessary for the Consultant to provide the services outlined.

The Client's reuse of any report, documents or other deliverables prepared by the Consultant for the Project on any other project without written verification by the Consultant shall be at the Client's risk.

The persons signing this Agreement warrant that they have the authority to sign on behalf of the Client and Consultant.

CLIENT: CITY OF MOUNTAIN BROOK, AL CONSULTANT: SKIPPER CONSULTING INC.

By: Stewart Welch By: Richard L. Caudle

Printed Name: Stewart Welch Printed Name: Richard L. Caudle, P.E.

Title: Mayor Title: Senior Traffic Engineer

Date: 5-8-23 Date: April 26, 2023

EXHIBIT "A"
SCOPE OF WORK

The Consultant shall perform the following scope of work in relation to preparing a traffic control device design for an flashing light warning beacon system for Overton Road near the Intersection of North Woodridge Road in the City of Mountain Brook.

Flashing Warning Beacon Design

The Consultant will prepare design plans for construction of an approaching traffic warning beacon system with vehicular loop actuation. It is anticipated that construction efforts would be less than \$50,000, and thus could be performed under Public Works bid law. The Consultant will assist the City in selection of a contractor, reviewing equipment submittals, coordinating any required power service with the City and APOCO, and performing an inspection of contractor work.

Schedule

The Consultant will perform the scope of work described above, up to and including issuing a design for contractor pricing, within a period of two (2) weeks from notice to proceed, barring unforeseen circumstances outside of the control of the Consultant.

ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND SKIPPER CONSULTING, INC. - TRAFFIC ENGINEERING SERVICES (Overton Road Flashing Warning Beacon)

THIS ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT ("the/this Addendum") between the City of Mountain Brook, Alabama ("the City") and Skipper Consulting, Inc. ("the Contractor") is entered between the parties.

This Addendum is a part of the Professional Services Agreement between the parties (the "Agreement") concerning the work, services or project described in the Agreement. In the event of any conflict between the terms and provisions of this Addendum and the Agreement, the terms herein supersede and control any conflicting or inconsistent terms or provisions, particularly to the extent the conflicting or inconsistent terms or provisions in the Agreement purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law.

1. Definitions. For purposes of this Addendum, the terms below have the following meanings:

- A. "The City" refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies. The City may also be referenced in the Agreement as the "Client."
B. "The (this) Agreement" refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
C. "The Contractor" refers to the person, firm, or other legal entity that enters the Agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors. The Contractor may also be referenced in the Agreement as the "Consultant."

2. Dispute Resolution. If a disagreement, claim, issue or disagreement arises between the parties with respect to the performance of this Agreement or the failure of a Party to perform their respective rights or obligations hereunder (a "Dispute"), the parties will use reasonable efforts to resolve any Dispute at the designated representative level. If the parties are unable to amicably resolve any Dispute at that level, each agree to escalate that matter to senior managers or senior officials for consideration by and potential resolution by them. If the Dispute is not resolved at the senior level, the dispute resolution mechanism shall be litigation in a court with competent jurisdiction that is located in Jefferson County, Alabama.

3. Attorney's Fees; Court Costs; Litigation Expenses. The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. Late Payment Charges; Fees; Interest. The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services, and bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be considered delinquent pending resolution of the dispute.

5. Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies. The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.

6. Choice of Law; Choice of Venue or Forum. The meaning, legal effect, and enforcement of terms and provisions of the Agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the Agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.

7. Construction of Addendum. Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal Agreement or as a matter of law.

8. Independent Contractor. Consultant's relationship to Client at all times is that of an independent contractor. Consultant exclusively controls the means and methods in which it performs its operations or provides the goods, services or undertaking described in the Agreement. The Client does not reserve any right of control over Consultant's operations or the activities it utilizes to perform its obligations in the Agreement.

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

- 1. Comprehensive General Liability: This insurance shall cover all operations performed by or on behalf of Contractor, and provide coverage for bodily injury and

APPENDIX 2

property damage with a combined single limit of not less than \$500,000 per occurrence.

2. Automobile Liability: If the work or services performed by the Contractor involves use of motor vehicles on public streets, Automobile Liability covering owned and rented vehicles operated by Contractor with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) combined single limit and aggregate for bodily injury and property damage, per occurrence.

3. Workers Compensation: Workers' Compensation and Employers Liability as required by statute.

4. Professional Liability: If Contractor is providing professional services, Professional Liability covering Contractor's negligent acts, errors and omissions in its performance of professional services with policy limits of not less One Million Dollars (\$1,000,000) per claim and in the aggregate.

Contractor may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. These insurance requirements are in addition to and do not affect any indemnification obligation of Contractor herein.

All policies, except for the Workers Compensation and Professional Liability policies shall contain endorsements naming the City, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of the Contractor or its performance of Services or work. The additional named insured endorsement shall not limit the scope of coverage to the City to vicarious liability, but shall allow coverage for the City to the fullest extent provided by the policy.

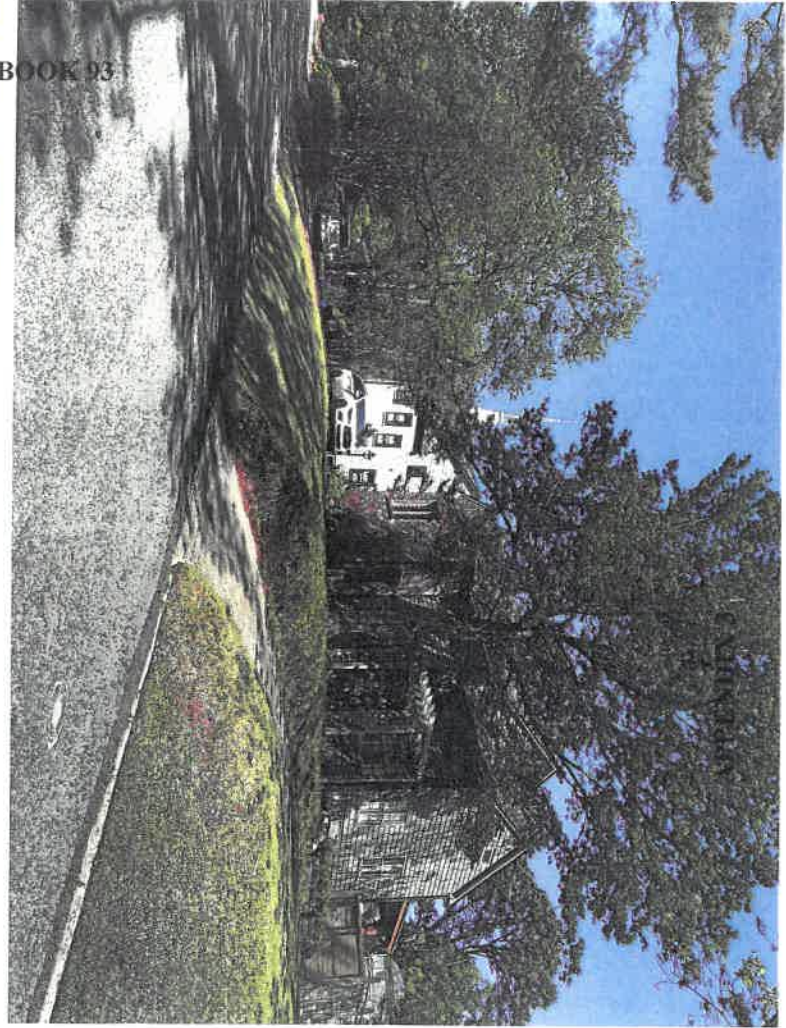
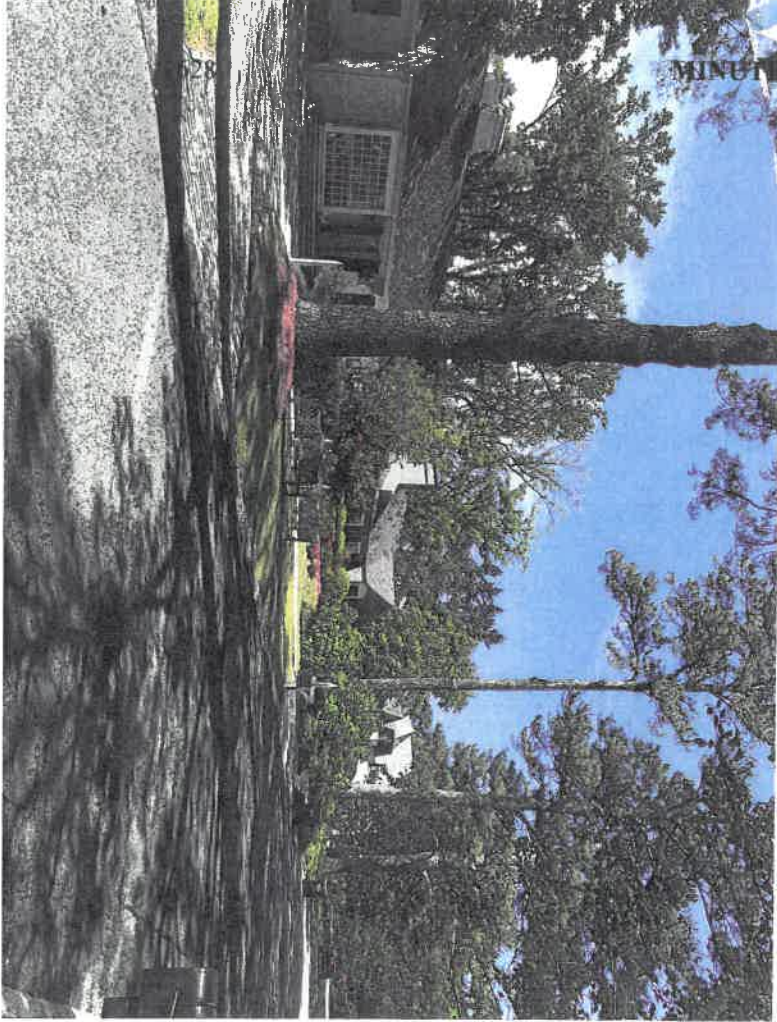
All insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance program administered by the City.

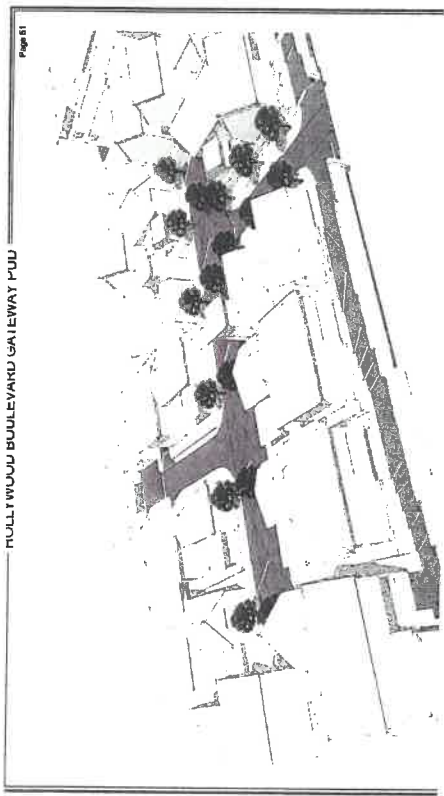
Before commencement of Services hereunder, Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section. This certificate(s) shall provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the City.

10. Indemnification for Claims by Third Parties. The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (collectively hereinafter the "Indemnitees") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages, collectively hereinafter "Claim(s)") that are made against the City by any third parties (including any employee, agent or representative of the Contractor, collectively "Third Parties") to the extent that such Claims are caused or allegedly caused by the negligence of the Consultant in the performance of its Services, its work on the Project described in the Agreement or its failure to perform its obligations in the Agreement.

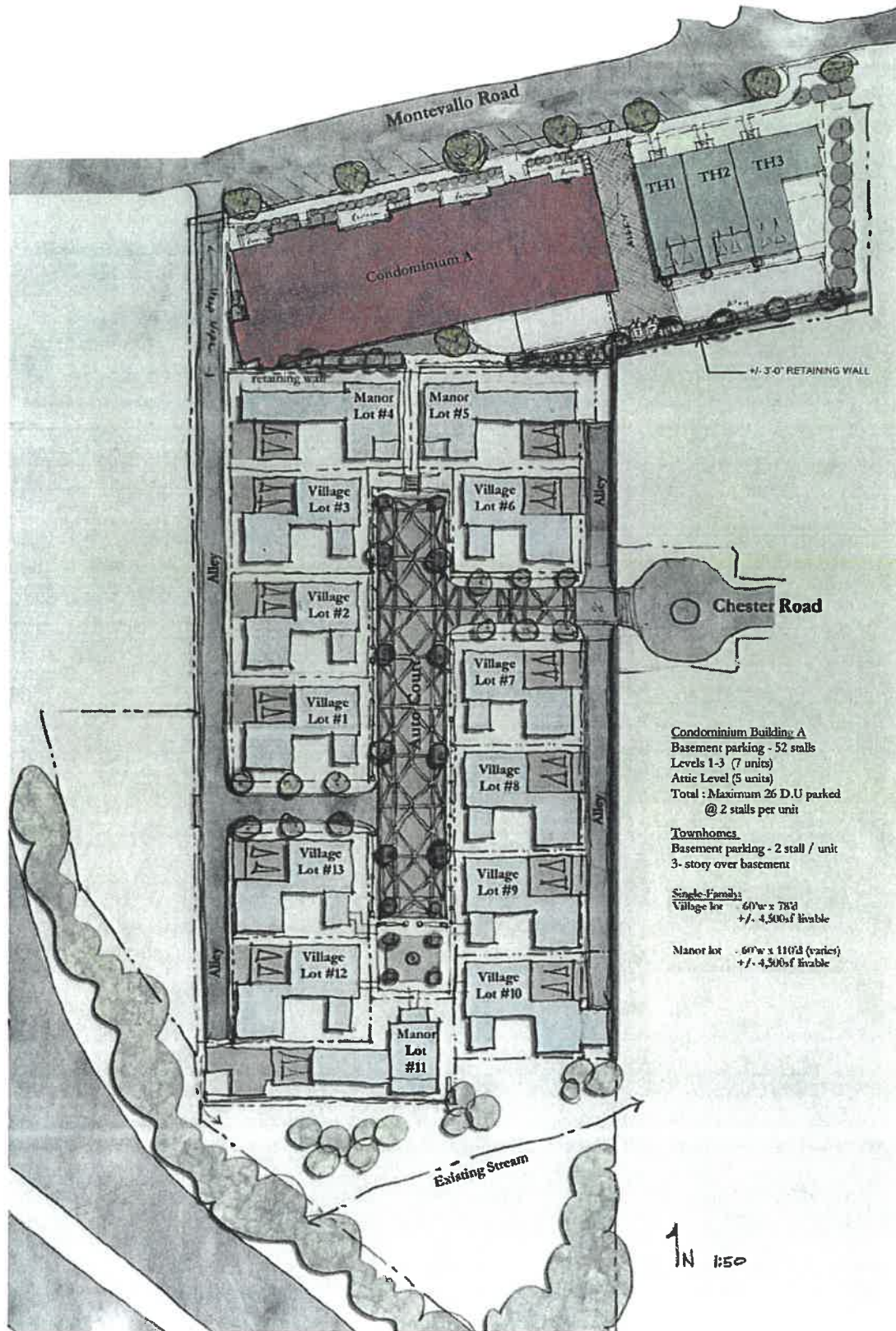
11. EXCLUSION OF CONSEQUENTIAL DAMAGES. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT, IN THE EVENT THAT IT ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THE AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS THEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE ACTUAL DAMAGES THAT DIRECTLY ARISE FROM THAT BREACH. THE CONTRACTOR FURTHER ACKNOWLEDGES THAT THE COMMERCIAL TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT ENTERED INTO THIS AGREEMENT WITHOUT INCLUDING THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR OTHER SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS. NOTHING IN THIS PROVISION IS INTENDED TO IMPACT, MODIFY, AMEND OR LIMIT THE TERMS OR APPLICATION OF THE INDEMNIFICATION PROVISION IN THE PROVISION ABOVE THAT PERTAINS TO CONTRACTOR'S OBLIGATIONS TO INDEMNIFY THE CITY FOR CLAIMS MADE AGAINST THE CITY BY THIRD PARTIES.

CITY: CITY OF MOUNTAIN BROOK CONTRACTOR: SKIPPER CONSULTING INC.
By: [Signature] By: Richard L. Caudle
Printed Name: Stewart Welch Printed Name: Richard L. Caudle, P.E.
Title: Mayor Title: Senior Traffic Engineer
Date: 5-8-23 Date: April 26, 2023





4. MASTER DEVELOPMENT PLAN



Condominium Building A
 Basement parking - 52 stalls
 Levels 1-3 (7 units)
 Attic Level (5 units)
 Total : Maximum 26 D.U. parked
 @ 2 stalls per unit

Townhomes
 Basement parking - 2 stall / unit
 3- story over basement

Single-Family:
 Village lot - 60'w x 78'd
 +/- 4,500sf livable

Manor lot - 60'w x 110'd (varies)
 +/- 4,500sf livable

NOTE: The footprints of the single family residential buildings shown on this plan and elsewhere in these materials are conceptual in nature, for illustrative purposes only, and subject to plans as prepared by or for the respective owners thereof, subject to applicable architectural approvals, codes, regulations and ordinances; the other improvements shown hereon and depicted elsewhere in these materials are subject to modifications necessitated by site conditions, applicable requirements of governmental codes, regulations and ordinances, and the details of final design and construction, which are not significantly inconsistent with the plans as represented in these materials.

APPENDIX 5

MINUTE BOOK 93

Sight Distance

During the public hearing before the City of Mountain Brook Planning Commission on July 6, 2022, a citizen raised the issue of inadequate sight distance for traffic exiting Chester Road onto Cahaba Road. In response to this comment, Skipper Consulting, Inc. has performed sight distance measurements for traffic exiting Chester Road onto Cahaba Road and compared these measurements to required minimum distances based on travel speed according to the AASHTO publication *A Policy on Geometric Design of Highways and Streets (2018)*.

The sight distance measurements were initially taken for a driver's eye position at a point 10 feet behind the stop line on Chester Road. From this position, the measured sight distances were as follows:

- Looking to the left – 430 feet
- Looking to the right – 45 feet

Pictures of the available sight distance from a position 10 feet behind the stop line are shown below.

Sight lines from 10 feet behind stop line on Chester Road



Looking to the left – 430 feet

Looking to the right – 45 feet

The available sight distance from a driver's eye position at a point 10 feet behind the stop line on Chester Road looking to the right is obviously inadequate. However, vehicles that exit Chester Road will move forward until the front of their vehicle is past the crosswalk in order to gain better sight lines. From this position, that is, with the driver's eye position over the crosswalk, the measured sight distances were as follows:

- Looking to the left – 650 feet
- Looking to the right – 740 feet

Pictures of the available sight distance from a driver's eye position over the crosswalk are shown below.

Sight lines from crosswalk



Looking to the left – 650 feet

Looking to the right – 740 feet

The following table shows the minimum required sight distances from AASHTO Tables 9-7 and 9-9.

Speed (mph)	Minimum Sight Distance Required	
	for a left turn	for a right turn
15	170'	145'
20	225'	195'
25	280'	240'
30	335'	290'
35	390'	335'
40	445'	385'
45	500'	430'
50	555'	480'
55	610'	530'
60	665'	575'
65	720'	625'
70	775'	670'

Therefore, for a driver's eye position 10 feet behind the stop line on Chester Road, the following conclusions can be drawn:

- A right turn onto Cahaba Road from Chester Road is safe for speeds up to 45 mph
- A left turn onto Cahaba Road from Chester Road is not safe for any speed

For a driver's eye position over the crosswalk, the following conclusions can be drawn:

- A right turn onto Cahaba Road from Chester Road is safe for speeds up to 65 mph
- A left turn onto Cahaba Road from Chester Road is safe for speeds up to 55 mph

Note: the posted speed limit on Cahaba Road in the vicinity of Chester Road is 20 mph.

This Instrument Prepared By:
Christopher M. Gill, Esq.
Hand Arendall Harrison Sale LLC
Post Office Box 123
Mobile, Alabama 36601
251-432-5511

STATE OF ALABAMA
COUNTY OF JEFFERSON

EASEMENT AND COVENANT AGREEMENT

THIS EASEMENT AND COVENANT AGREEMENT (this "Agreement") is made and entered into as of the 12th day of July, 2022, by and among Shades Valley Presbyterian Church, an Alabama nonprofit corporation ("Grantor"), and Rodney E. Rushing and Michelle L. Rushing, each individual residents of Alabama collectively, "Grantee").

Recitals:

Grantor is the owner of Lot 331, according to the Survey of Mountain Brook Estates, Chester Road, as recorded in Map Book 24, page 37, in the Office of the Judge of Probate of Jefferson County, Alabama (the "Grantor Property"). Grantee is the owner of Lot 332, according to the Survey of Mountain Brook Estates, Chester Road, as recorded in Map Book 24, page 37, in the Office of the Judge of Probate of Jefferson County, Alabama (the "Grantee Property").

Certain items that serve the home located on the Grantee Property, including a portion of the driveway and brick curb running from Montevallo Road to the home located on the Grantee Property (collectively, the "Improvements") cross and encroach upon that certain portion of the Grantor Property described on Exhibit "A" attached hereto (the "Easement Area"). Grantor has agreed to grant Grantee easement rights over and across the Easement Area for purposes of Grantee's maintenance of the Improvements, all on and subject to the terms and conditions hereof.

The redevelopment of the Grantor Property is being proposed, and Grantor has agreed to restrict the use of certain portions of the Grantor Property for the benefit of Grantee in accordance with the terms and conditions hereof.

Agreement:

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the mutual covenants and agreements contained herein, the receipt and sufficiency of which are

7/13/2022

7/13/2022

7. Landscaping Buffer Area. Grantor hereby imposes upon the Grantor Property the following covenants for the benefit of Grantee and the Grantee Property (collectively, the "Restrictive Covenants"):

(a) Grantor shall not construct any improvements within that portion of the Grantor Property that is described and depicted on Exhibit "B" attached hereto (the "Buffer Area"), except as may be expressly provided in this Section to the contrary.

(b) Grantor may install, maintain, repair and/or replace (as applicable) a sidewalk along Montevallo Road.

(c) Grantor may install, maintain, repair and/or replace (as applicable) trees, bushes, flowers and other landscaping and an irrigation system associated therewith in the Buffer Area.

The Restrictive Covenants shall be burdens on the Grantor Property, shall run with the land and shall be binding on all successors in title of Grantor with respect to the Grantor Property (or any portion thereof). The Restrictive Covenants may be enforced by Grantee and/or any successor owner of the Grantee Property or any portion thereof.

8. No Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Easement to the general public or for any public use or purpose, whatsoever.

9. Non-Waiver. The failure of either party hereto to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law, in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

10. Binding Effect. The terms of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns which become owners of either the Grantor Property or the Grantee Property or any portion thereof.

11. Captions; Pronouns. The captions in this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement. Whenever the context hereof admits or requires, words in the singular may be regarded as in the plural and vice-versa, and personal pronouns may be read as masculine, feminine and neuter.

12. Severability. Invalidation of any of the provisions contained in this Agreement shall in no way affect any of the other provisions hereof or the application thereof to any other person or entity, and the remainder of this Agreement shall remain in full force and effect.

13. Applicable Law. It is expressly understood and agreed that this Agreement and all questions arising hereunder shall be construed according to the laws of the State of Alabama.

7/13/2022

hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct in all respects and form a material part of this Agreement, the same as if such recitals were set forth in the numbered paragraphs hereof.

2. Grant of Easement. Grantor hereby grants and conveys to Grantee a non-exclusive, perpetual easement over and across the Easement Area for the purposes of (a) permitting Grantee and Grantee's successors and assigns to repair, maintain, preserve, and/or replace (as applicable) the Improvements, and (b) permitting Grantee and Grantee's guests, invitees, successors and assigns vehicular and pedestrian ingress and egress across the Improvements to and from the house located on the Grantee Property and Montevallo Road (the "Easement").

3. Easement Perpetual Termination. The Easement is perpetual (subject to the limitations contained herein) with the land, is intended to confer restrictions and benefits on and to the parties hereto, constitutes an equitable servitude, and may be modified and/or terminated only upon the written agreement of the parties hereto or their respective successors and assigns, which agreement must be recorded in the filing office in which this Agreement is recorded. It is the intention of the parties hereto that the holders of all existing and future mortgages and other interests with respect to any portion of either the Grantor Property or the Grantee Property shall acquire and/or hold their respective mortgages and other interests subject and subordinate to the Easement, and that the foreclosure or other exercise of rights by any such holder shall not terminate or cancel the Easement or this Agreement in any respect.

4. Maintenance of Easement and Improvements. Grantee shall be responsible, at Grantee's sole cost and expense, for the maintenance of the Easement Area and the Improvements, and Grantor shall have no liability or obligation whatsoever with respect thereto.

5. Indemnification. Grantee shall indemnify, defend and hold harmless Grantor from and against any and all damage, loss, cost and/or expense (including reasonable attorneys' fees) incurred or suffered by Grantor and/or the Grantor Property that is caused by or results from the exercise by Grantee of any of its rights granted hereunder (including any use of the Easement by any one acting by, through or under Grantee).

6. Quitclaim of Interest. Except for the rights of Grantee created hereby with respect to the Easement, Grantee hereby remises, releases and quitclaims to Grantor any and all right, title and interest Grantee may have in and to the Grantor Property (or any portion thereof). Without in any way limiting the foregoing terms, Grantee acknowledges and agrees that Grantor shall have the right to remove from the Grantor Property any and all walls and fencing currently located on the Grantor Property (including, without limitation, any brick walls and chain link fences).

14. Attorney's Fees. In the event of any dispute concerning enforcement of any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

(Remainder of Page Intentionally Left Blank)

UNOFFICIAL DOCUMENT

APPENDIX 7

MINUTE BOOK 93

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of the day and year first written above.

GRANTOR:

SHADES VALLEY PRESBYTERIAN CHURCH, an Alabama nonprofit corporation

By: Jean Archibald, Jean Archibald As Its Trustee; John Glover, John Glover As Its Trustee; Laura McDonald, Laura McDonald As Its Trustee

STATE OF ALABAMA COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jean Archibald, whose name as Trustee of Shades Valley Presbyterian Church, an Alabama nonprofit corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, as such officer, executed the same voluntarily and with full authority for and as the act of said nonprofit corporation.

Given under my hand and official seal this 8th day of July, 2022.

(SEAL)

Notary Public Seal: Lena Allma-Rush, My Commission Expires: January 24, 2024

STATE OF ALABAMA COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John Glover, whose name as Trustee of Shades Valley Presbyterian Church, an Alabama nonprofit corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he,

777232-4

as such officer, executed the same voluntarily and with full authority for and as the act of said nonprofit corporation.

Given under my hand and official seal this 8th day of July, 2022.

(SEAL)

Notary Public Seal: Lena Allma-Rush, My Commission Expires: January 24, 2024

STATE OF ALABAMA COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Laura McDonald, whose name as Trustee of Shades Valley Presbyterian Church, an Alabama nonprofit corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, as such officer, executed the same voluntarily and with full authority for and as the act of said nonprofit corporation.

Given under my hand and official seal this 8th day of July, 2022.

(SEAL)

Notary Public Seal: Lena Allma-Rush, My Commission Expires: January 24, 2024

(Remainder of Page Intentionally Left Blank - Signature, Continue on Following Page)

APPENDIX 7

777232-4

GRANTEE:

Rodney E. Rushing, Rodney E. Rushing; Michelle L. Rushing, Michelle L. Rushing

STATE OF ALABAMA COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Rodney E. Rushing, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily.

Given under my hand and official seal this 12th day of July, 2022.

(SEAL)

Notary Public Seal: Brent Mills Smith, My Commission Expires: 8/6/2024

STATE OF ALABAMA COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Michelle L. Rushing, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily.

Given under my hand and official seal this 12th day of July, 2022.

(SEAL)

Notary Public Seal: Brent Mills Smith, My Commission Expires: 8/6/2024



777232-4

EXHIBIT "A" DESCRIPTION OF THE EASEMENT AREA

That certain parcel of real property located in Jefferson County, Alabama and more particularly described as follows:

Begin at the Northwest corner of Lot 332, Mountain Brook Estates, as recorded in Map book 24, Page 37 of the Jefferson County Probate Office; thence continue south along the westerly property line of Lot 332 a distance of 117.46 feet to a point; thence 79°53'39" to the right in a Southwesterly direction a distance of 5.00 feet to point; thence 100°06'21" to the right in a Northerly direction a distance of 117.44 feet to a point; thence 79°43'31" to the right in a Northeasterly direction a distance of 5.00 feet to THE POINT OF BEGINNING.

The Easement Area is also depicted as follows:

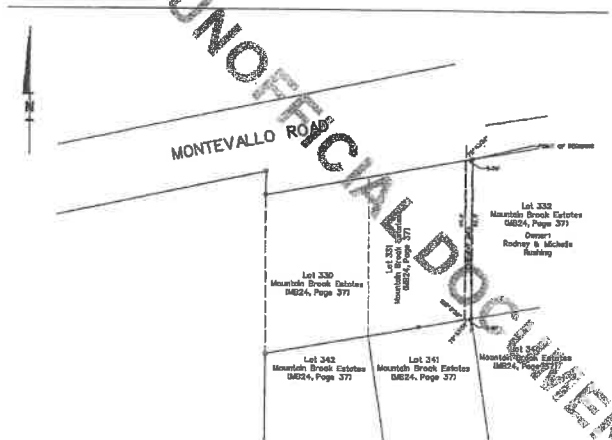
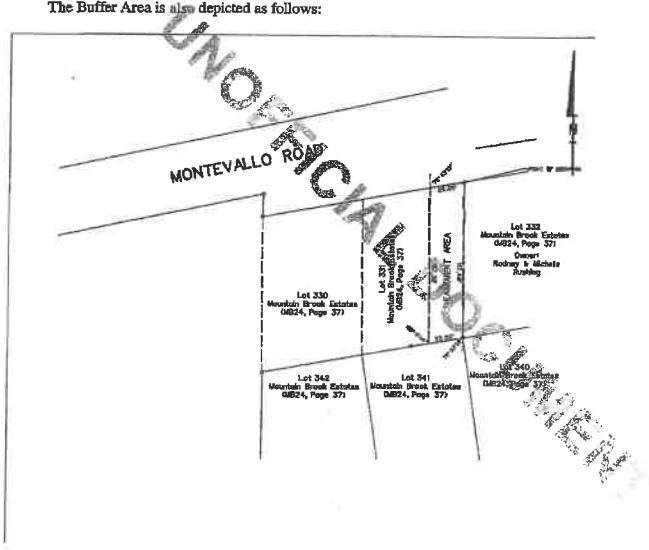


EXHIBIT "B"
DESCRIPTION OF THE BUFFER AREA

That certain parcel of real property located in Jefferson County, Alabama and more particularly described as follows:

Begin at the Northwest corner of Lot 332, Mountain Brook Estates, as recorded in Map book 24, Page 37 of the Jefferson County Probate Office: thence continue south along the westerly property line of Lot 332 a distance of 117.46 feet to a point; thence 79°53'39" to the right in a Southwesterly direction a distance of 25.00 feet to a point; thence 100°06'44" to the right in a Northerly direction a distance of 117.39 feet to a point; thence 79°43'13" to the right in a Northeasterly direction a distance of 25.00 feet to THE POINT OF BEGINNING.

The Buffer Area is also depicted as follows:



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j. *Density*: The permitted number of dwelling units and building intensity in a PUD may not exceed the number which would otherwise be allowed in the base zoning district(s) which are used as a basis for the master development plan, though the city council may allow other densities that better meet the purposes of this district and any specific policies and goals of the city master plan and any applicable village master plan. In this regard, the PU application shall be considered similar to a rezoning request to all of the districts that make up the basis of the master development plan. The burden of proof shall be on the developer to show that existing or proposed facilities and utilities can handle the requested intensification of development.

k. *Property development standards*: The property development standards for a PUD shall be determined by the city council after consulting with the planning commission. The development of the PUD must be compatible with the topography of the parcel and must preserve any unusual topographic or natural features of the parcel. The development shall not adversely affect the developed or undeveloped property in the vicinity of the PUD, and the development must be compatible with such other property with regard to density, size of buildings, architectural style and type of use. The city council's determination as to whether the proposed development of the PUD is compatible with the neighboring properties with regard to the foregoing criteria shall be presumptively correct. Adequate water, sewer, streets, open spaces and other facilities and utilities must be