

**PRE-MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

**CITY HALL PRE-COUNCIL ROOM (A106)
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213**

TUESDAY, JANUARY 10, 2017, 6:00 P.M.

1. Proposed amendments to Chapter 129 of the City of Mountain Brook Municipal Code, Articles III, IV, V, VII, VIII, XVIII, XX, XIX regarding building limitations in residential zoning districts, use exemptions, exceptions to require setbacks for architectural features and accessory buildings on residential lots—Dana Hazen (a public hearing is scheduled for the 7 p.m. meeting).
2. NJK, LLC Third Street vacation settlement agreement—Tony Davis (this matter is included on the 7 p.m. meeting agenda)
3. Professional service proposal submitted by Rob Walker for the library moisture abatement, window replacement and related building repairs (may be added to the formal agenda)
4. Amendments to the traffic island beautification policy (may be added to the formal agenda)
5. Shades Creek pedestrian bridge—Andrew Phillips of Schoel Engineering
6. Library's request to combine two part-time positions into one full-time position (may be added to the formal agenda)
7. Finance Committee recommendation regarding excess pension contribution (may be added to the formal agenda)
8. Authorize merit pay increases for part-time employees (may be added to the formal agenda)
9. Executive session

Proposed Zoning Amendments

The ZOR (Zoning Ordinance Review) Committee and the Planning Commission recently reviewed several proposed zoning amendments regarding the zoning code of the City of Mountain Brook, specifically pertaining to Articles III, IV, V, VII, VIII, XVIII, XX, XIX, and has forwarded the recommendations herein to the City Council. The ZOR Committee consisted of Phil Black, Susan Swagler and the BZA Chairman and Co-Chairman, Patrick Higginbotham and Will Hereford. Also, staff solicited the input of local architects with respect to items 3 and 4 below.

The exact language of all proposed changes is attached—new language is written and underlined in [red ink](#).

All amendments are discussed at length below:

1. Insert a Reference to the Storm Water Detention Ordinance in the Zoning Code

Within each residential article of the zoning code there is a regulation limiting the maximum building area for a lot in said district. The intent of this regulation is to limit the maximum lot coverage (or building footprint) for each lot. However there is an additional regulation that is derived from the storm water ordinance (which is not in the zoning code) which further limits *all* impervious area (which includes the building footprint, driveway, walkway, patio, etc.) on a residential lot to 5% more than the maximum building area specified in a particular zoning district.

The problem encountered by staff is that design professionals have a difficult time finding the storm water ordinance limitations. They arrive at the “maximum building area” regulation in the zoning code and then incorrectly assume this is the maximum impervious area, or if they know there is a separate regulation for the overall impervious area they have a hard time locating it.

The purpose of this zoning amendment is to link the two regulations together by inserting a note (actually a *link* for the on-line version of the municipal code) regarding the storm water ordinance regulation alongside the maximum building area regulations noted in each residential article of the zoning code. This will make it easier for citizens to quickly find the ordinance, and will look like this for Res-A:

“(c) *Building limitations.*

(1)Maximum building area25 percent of the total area of the parcel.

[Impervious surfaces are limited to 5% more than the allowed maximum building coverage, as specified in section 113-228 \(e\) of Chapter 113.](#)

(2)Maximum building height35 feet

(3)Maximum number of stories2”

The attached proposed language inserts this change into each of the following residential articles: Res-A, Res-B, Res-C, Res-D and Res-E.

2. *Insert Specific Language Regarding PC Review of Solar Panel Systems*

The purpose of this proposed zoning amendment is to specifically mention *solar panel systems* in Section 129-292, Use Exemptions, (Article XVIII – General Regulations and Provisions). This section of the zoning code allows for the installation of a variety of utility equipment and minor structures in any zoning district, with the approval of the Planning Commission, but does not specifically mention solar panel systems (simply because such systems were probably not common when the original provision was written).

The Planning Commission recently reviewed a request to install a ground mount solar panel system on a residential lot, and staff referenced this section of the zoning code for Planning Commission authority to review, but recognized the need to add specific language to the code.

“Sec. 129-292. - Use exemptions.

Notwithstanding any other provision of this chapter, there may be constructed or installed in or upon a parcel located within any zoning district, such equipment and minor structures and improvements incidental to the provision and distribution of gas, electricity, water and telecommunication services, including, but not limited to, gas regulators, fogging stations, electric transformer stations without major rotating equipment, solar panel systems, poles, cables and towers for the transmission of electricity, water pressure regulator stations, water pumping stations, telephone exchanges, cables, poles, antennas and masts for antennas as may be approved by the planning commission.”

3. *Exceptions to Required Setbacks for Architectural Features (all new language)*

This section is proposed as new language to be added under Article XX – Exceptions to General Area and Dimensional Requirements. This section will make specific reference to allowable encroachments of certain minor architectural features into required front, side, and/or rear setbacks.

The purpose of this section is to allow architectural enhancements to residential structures without the need for a variance. Decorative architectural features such as awnings, bay windows, cornices, and pilasters serve to add architectural interest and enhance the housing inventory of the city. However, the Board of Zoning Adjustment has often denied requests of this nature (in accordance with state law) since they rarely relate to a hardship inherent to the site. This has been especially true in cases where an older house may have a flat front elevation and the front door has no protection from the elements and is devoid of architectural interest. The house is usually built to the allowable front setback line and the request has come to BZA for a canopy over the door, which would then encroach into the required front

setback. Since there has typically been no hardship associated with such a request the BZA has been bound to deny, although the encroachments are minor in nature and would not be detrimental to the streetscape or adjoining properties.

The proposed language in this section would allow minor architectural features to encroach into setbacks, but with limited parameters regarding the amount of allowable encroachment and, in some cases, the width of a particular architectural feature. Some of the language would permit encroachments not currently allowed in a required setback without a variance (such as bay windows, canopies and awnings) and some of the language will simply codify an existing practice of allowing certain types of encroachments without a variance (such as cornices and eaves).

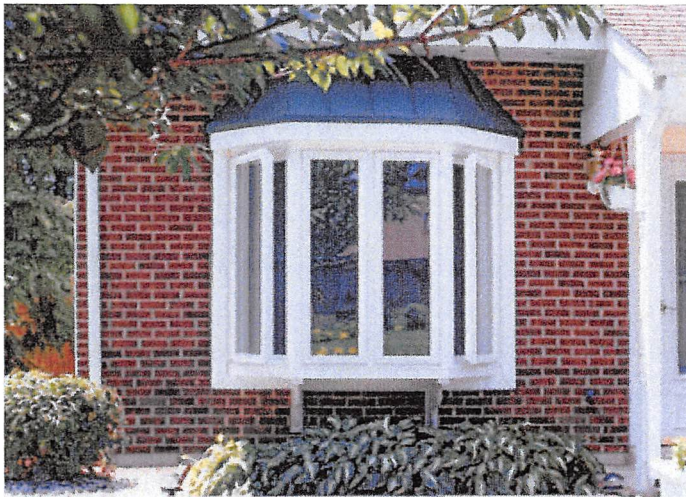


Figure 1 - Bay Window.

This bay window would be permitted in the proposed section, which states, “Bay windows and greenhouse windows may project into a required front, side, and/or rear setback no more than two (2) feet, including the drip line, with a maximum width of eight (8) feet.”

Figure 2 - Cornice.

Cornices, such as the one to the right, add a distinction to the dwelling and provide a sense of character. This proposal will clarify language for allowance of these charming features. “Cornices, pilasters, sills, and other similar decorative architectural features may project into a front, side, and/or rear yard no more than one (1) foot.”

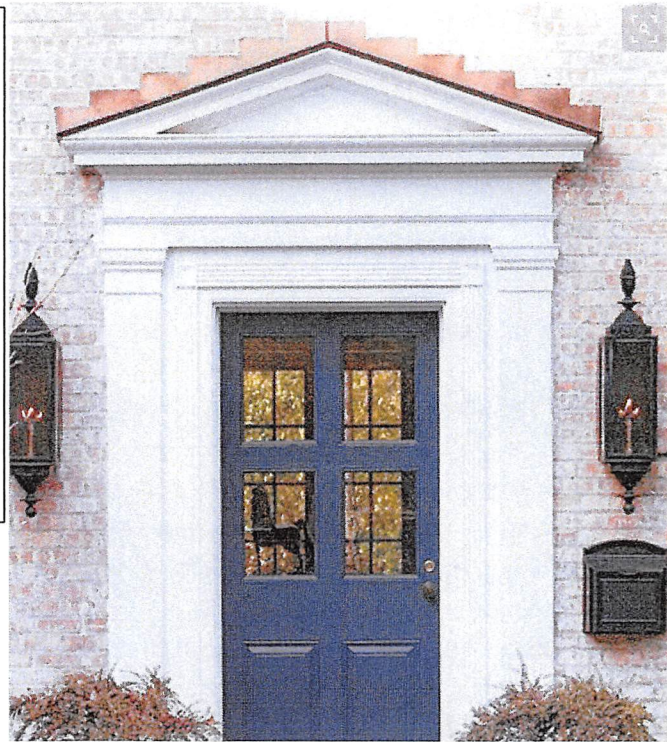


Figure 3 - Awning.

This awning would be permitted in the proposed section, which states, “Cantilevered awnings and canopies may project into a required front, side, and/or rear setback no more than three (3) feet.”

Also, the Board of Zoning Adjustment has requested that chimneys be a permitted encroachment (with limitations on the amount of encroachment and the width of the chimney).

Figure 4 - Chimney.

This chimney would be permitted in the proposed section, which states, "Chimneys may project into a required front, side, and/or rear setback, no more than two (2) feet, with a maximum width of eight (8) feet."



4. Accessory Buildings on Residential Lots

There are two parts to this section; one addresses the relationship of an accessory building to the principle structure (as far as what is consider "attached" or "detached"), the other addresses the allowable size and height of accessory buildings which are eligible for reduced side and rear setbacks.

a. Is it attached or detached?

It has historically been the practice of city staff to differentiate between detached and attached accessory buildings based on whether or not the "attachment" was heated and cooled. If so, it was considered to be attached. However, this interpretation is not in the zoning code, so the purpose of this this amendment is to codify this interpretation. The following language is proposed to be added to Section 129-314(b) of Article XIX (General Area and Dimensional Requirements).

An accessory building... "may be attached to the principal structure by means of a covered, open breezeway that is no wider than 8 feet, is not enclosed (contains no more than two (2) walls) and is not heated nor cooled."

This proposal will add clarity and regulation, allowing citizens to add this connection without adding additional square footage to their principal dwelling.

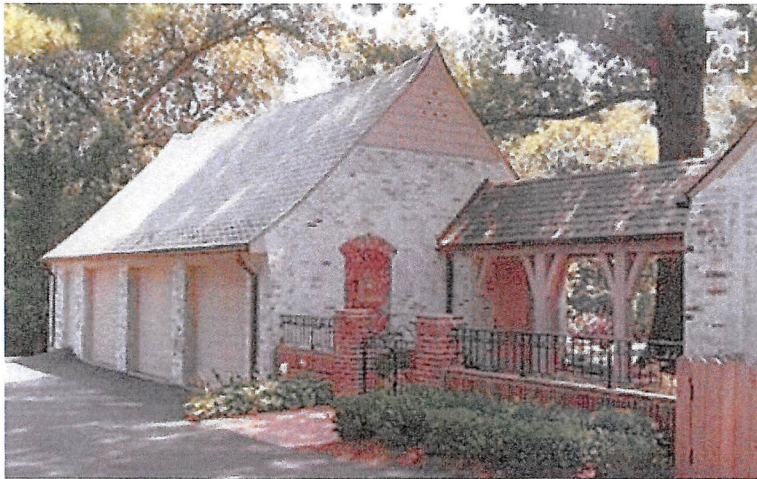


Figure 5 - Detached Accessory Building.

This open breezeway from the principle structure to the accessory building would be allowed under the proposed additional language.

It is:

- ✓ Not enclosed
- ✓ Not heated nor cooled
- ✓ Less than 8 feet wide

b. Size and Height of Detached Accessory Buildings

Also being proposed is a change to the existing maximum square footage and height limit for detached accessory buildings which are eligible for reduced side and rear setbacks (10 feet).

For the purpose of reference, the zoning code has an absolute cap on the size and height of accessory buildings (maximum size is the greater of 800 square feet or 20% of the principle building, and the maximum height is no higher than the principle building). The setbacks required for accessory buildings of this size and height are the same as the principle building for the zoning district in which it is located. *There is no change being proposed to this cap or the related setbacks.*

There is also a regulation that allows smaller detached accessory buildings to be 10 feet from the side and rear property lines. Those eligible for these reduced setbacks are currently limited to 400 square feet and 15 feet in height. *The proposal is to increase the square footage and height allowances for these types of buildings.*

Historically, 400 square feet (20x20) has been a common size for a two-car garage; this allows for two (10x20) parking spaces inside a garage. And while this size can accommodate SUV's and larger contemporary vehicles, it proves to be

somewhat of a tight squeeze. As such, homeowners often ask architects to design slightly roomier garages (perhaps with a little storage).

The Board of Zoning Adjustment frequently approves requests for new and remodeled detached accessory buildings (which slightly exceed 400 square feet) to be 10 feet from the side or rear property line. Local architects were asked for input on this issue and expressed that 25x25 (625 square feet) would be much more accommodating and result in fewer requests for variances.

Also, the Board of Zoning Adjustment occasionally reviews requests for detached accessory buildings to be higher than 15 feet. This is usually a result of the designer attempting to match (or nearly match) a steep pitched roof on the principle building. Many houses in Mountain Brook take their architectural roots from European design, which often entails steeper roof pitches. However, when the detached accessory building is limited to 15 feet in height, it ends up looking more like an afterthought (or a shed) than part of a thoughtful, integrated design. And since the height of a building rarely has any real relationship to the site (or hardship) BZA has had to deny, resulting in fewer architectural amenities in the city.

The proposed language is as follows:

Setback requirements. All accessory buildings which do not exceed 400 625 square feet and ~~15~~ 25 feet in height (or the height of the principle building on the lot, whichever is lower), must be at least ~~ten~~ 10 feet from all lot lines, except that such buildings may be allowed to conform to the required side setbacks for principal buildings on non-conforming Residence B and Residence C lots, as specified in sections 129-53 and 129-63 of this chapter. Accessory buildings exceeding 400 625 square feet or ~~15~~ 25 feet (or the height of the principle structure on the lot, whichever is lower) shall be subject to the regular setbacks specified in the regulations for each zoning district.

It should be noted that in Res-B and Res-C (Crestline and English Village), for lots less than 70 feet wide, the code allows the principle building to be 8-9 feet from the side property line and be 35 feet high).

The code currently does not differentiate between detached garages and accessory building with other uses, such as storage buildings, offices, pool houses and greenhouses. *No change is herein proposed.*

ORDINANCE NO. 1970

AN ORDINANCE AMENDING ARTICLES III, IV, V, VII, VIII, XVIII, XX, XIX OF THE CITY CODE REGARDING BUILDING LIMITATIONS IN RESIDENTIAL ZONING DISTRICTS, USE EXEMPTIONS, EXCEPTIONS TO REQUIRED SETBACKS FOR ARCHITECTURAL FEATURES, AND ACCESSORY BUILDINGS ON RESIDENTIAL LOTS

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, that Articles III, IV, V, VII, VIII, XVIII, XX, XIX of the City Code are hereby amended to as follows:

Section 1.

“Article III. – Residence A District

Sec. 129-34. - Area and dimensional requirements.

(c) Building limitations.

(1) Maximum building area25 percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Article IV. – Residence B District

Sec. 129-52. - Area and dimensional requirements.

(c) Building limitations.

(1) Maximum building area35 percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Article V. – Residence C District

Sec. 129-62. - Area and dimensional requirements.

(c) Building limitations.

(1) Maximum building area35 percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Article VII. – Residence D District

Sec. 129-92. - Area and dimensional requirements for townhouses.

(d) Building limitations.

(1) Maximum building area50 percent of the total site area.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Sec. 129-93. - Area and dimensional requirements for duplexes and apartment houses.

(d) Building limitations.

(1) Maximum building area37½ percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Article VIII. – Residence E District

Sec. 129-112. - Area and dimensional requirements for townhouses only.

(d) Building limitations.

(1) Maximum building area:40 percent of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

Article XVIII. – General Regulations and Provisions

Sec. 129-292. - Use exemptions.

Notwithstanding any other provision of this chapter, there may be constructed or installed in or upon a parcel located within any zoning district, such equipment and minor structures and improvements incidental to the provision and distribution of gas, electricity, water and telecommunication services, including, but not limited to, gas regulators, fogging stations, electric transformer stations without major rotating equipment, solar panel systems, poles, cables and towers for the transmission of electricity, water pressure regulator stations, water pumping stations, telephone exchanges, cables, poles, antennas and masts for antennas as may be approved by the planning commission.

Article XX. – Exceptions to General Area and Dimensional Requirements

Sec. 129-336 – Exceptions to required setbacks for architectural features.

Encroachments of certain architectural features may be allowed into required front, side, and/or rear setbacks in accordance with the standards of this subsection.

- (a) Cantilevered awnings and canopies may project into a required front, side, and/or rear setback no more than three (3) feet.
- (b) Bay windows and greenhouse windows may project into a required front, side, and/or rear setback no more than two (2) feet, including the drip line, with a maximum width of eight (8) feet.
- (c) Chimneys may project into a required front, side, and/or rear setback, no more than two (2) feet, with a maximum width of eight (8) feet.
- (d) Cornices, pilasters, sills, and other similar decorative architectural features may project into a front, side, and/or rear yard no more than one (1) foot.
- (e) Eaves may project into a front, side, and/or rear yard no more than two (2) feet, with a minimum of two (2) feet maintained to any adjoining lot line.

Article XIX. – General Area and Dimensional Requirements

Sec. 129-314. - Accessory structures and accessory buildings on residential lots

- (a) *Size.* Accessory buildings may not contain more than the greater of 800 square feet of floor area or 20 percent of the floor area of the principal building on the lot. The height of an accessory building may not exceed the height of the principal building on the lot.

(b) *Relationship to parcel and dwelling.* No accessory structure or accessory building in a residential district may be erected in any actual or required front yard. An accessory building may not be located closer than ~~ten~~ 10 feet to any other structure on the same parcel and may not occupy more than 15 percent of any actual or required rear or side yard. An accessory structure or accessory building must be located at least ~~five~~ 5 feet from the dwelling on the parcel on which the accessory structure or building is located, and may be attached to the principle structure by means of a covered, open breezeway that is no wider than 8 feet, is not enclosed (contains no more than two (2) walls) and is not heated nor cooled. Notwithstanding the foregoing, fences or walls can be erected up to the property line, and may be erected directly adjacent to the principal structure.

(c) *Setback requirements.* All accessory buildings which do not exceed ~~400~~ 625 square feet and ~~15~~ 25 feet in height (or the height of the principle structure on the lot, whichever is lower), must be at least ~~ten~~ 10 feet from all lot lines, except that such buildings may be allowed to conform to the required side setbacks for principal buildings on non- conforming Residence B and Residence C lots, as specified in sections 129-53 and 129-63 of this chapter. Accessory buildings exceeding ~~400~~ 625 square feet or ~~15~~ 25 feet (or the height of the principle structure on the lot, whichever is lower) shall be subject to the regular setbacks specified in the regulations for each zoning district. Notwithstanding any other provision contained in this chapter, no accessory structure or accessory building may be located in a front yard or nearer than 60 feet to the front street line of the parcel on which the accessory structure or accessory building is located.'

2. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
3. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.
4. **Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

ADOPTED: The 10th day of January, 2017.

Council President

APPROVED: The 10th day of January, 2017.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on January 10, 2017, as same appears in the minutes of record of said meeting, and published by posting copies thereof on January 11, 2017, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Overton Park, 3020 Overton Road

Gilchrist Pharmacy, 2805 Cahaba Road
Cahaba River Walk, 3503 Overton Road

City Clerk

**IN THE TENTH JUDICIAL CIRCUIT COURT OF ALABAMA
JEFFERSON COUNTY
BIRMINGHAM DIVISION**

Field Code Changed

NJK, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. CV 2016 - 900522.00
THE CITY OF MOUNTAIN BROOK, ALABAMA;)	
MARGARET ANN PETERSON; and FICTITIOUS)	
DEFENDANTS A, B, C, D E, F, G, H, I and J,)	
)	
Defendants.)	

PRO TANTO SETTLEMENT AGREEMENT

THIS PRO TANTO SETTLEMENT AGREEMENT (the "Agreement") is executed as of this ____ day of ~~December, 2016~~ December/January, 2017~~6~~, by and among plaintiff NJK, LLC ("NJK") and defendant The City of Mountain Brook, Alabama (the "City"— the City and NJK are collectively referred to herein as the "Parties").

RECITALS:

WHEREAS, NJK and the City are parties in the above-referenced lawsuit (the "Lawsuit") involving the proposed vacation of an unimproved, undeveloped and unused right-of-way located in the City of Mountain Brook in Jefferson County, Alabama which is known as "3rd Street", and which is more particularly described as follows:

A parcel of land situated in the Southwest quarter of the Southwest quarter of Section 33, Township 17 South, Range 2 west, Jefferson County, Alabama, said parcel being 3rd Street (40' ROW), being more particularly described as follows:

Commence at the Northwest corner of Lot 1A according to Calton Hill at Mountain Brook as recorded in Map Book 239, Page 9 in the office of Judge of Probate in Jefferson County, Alabama, point also being a found rebar stamped CA-560-LS, thence run South 88 degrees 25 minutes 31 seconds East along the North line of said Lot 1A for a distance of 48.03 feet to a found capped rebar, said point being the POINT OF BEGINNING; thence continue along the last described course for a distance of 5.41 feet, said point being on the Easternmost Right of Way of 3rd Street (40' ROW); thence run South 00 degrees 15 minutes 36 seconds East along said Right of Way for a distance of 344.03 feet to a point being on the Northernmost Right of Way of Montclair Road (80' ROW); thence run South 55 degrees 34 minutes 19 seconds West along said Right of Way for a distance of 48.34 feet to a found rebar stamped CA-560-LS, said point being the Southeast corner of said Lot 1A; thence leaving said Right of Way run North 00 degrees 15 minutes 36 seconds West along the East line of said Lot 1A for a distance of 332.79 feet to a found rebar stamped CA-560-LS; thence run North 83 degrees 44 minutes 54 seconds West along said lot line for a distance of 17.16 feet to a found rebar stamped CA-560-LS; thence run North 54 degrees 24 minutes 14 seconds East along said lot line for a distance of 63.31 feet to the POINT OF BEGINNING. Said parcel contains 14,006 square feet or 0.32 acres more or less ("3rd Street").

WHEREAS 3rd Street was dedicated pursuant to the plat entitled "Map of Resurvey of Evelyn Heights" which plat was filed in the Office of the Judge of Probate of Jefferson County, Alabama (the "Probate Office") on May 21, 1924 in Volume 13 of Maps, on page 95 (the "Plat");

WHEREAS NJK owns that certain real property located in the Birmingham Division of Jefferson County, Alabama, which borders the western boundary of 3rd Street and is more particularly described as:

Lot 1A of Calton Hill at Mountain Brook, as recorded on July 1, 2014 in Map Book 239 at Page 9 in the Probate Office (the "NJK Property").

WHEREAS the City is located solely in the Birmingham Division of Jefferson County, Alabama and is a duly incorporated municipal corporation under the laws of the State of Alabama;

WHEREAS 3rd Street is located solely within the municipal boundaries of the City;

WHEREAS NJK filed the Lawsuit to seek a judicial vacation of 3rd Street;

WHEREAS prior to the filing of the Lawsuit all landowners abutting 3rd Street - other than defendant Margaret Ann Peterson ("Peterson" -- who claims to own land bordering the northern border of 3rd Street) consented to the vacation of 3rd Street with title to all of 3rd Street reverting to NJK,

WHEREAS, since the filing of the Lawsuit, without the Court adjudicating whether Peterson has an ownership interest in lands abutting 3rd Street, Peterson now consents to the vacation of 3rd Street;

WHEREAS NJK has agreed to pay the City, and the City has agreed to accept, \$57,500 for fees associated with reversion of title to 3rd Street to NJK;

WHEREAS, NJK and the City agree to file a joint stipulation of dismissal with prejudice of the claims between it and the City in the Lawsuit (the "Motion"). The Motion will provide that the Parties have resolved their differences and that title to 3rd Street will revert to NJK;

WHEREAS, the Parties have, between themselves, negotiated a complete resolution of any and all disputes, claims or potential claims brought or which could have been brought in the Lawsuit;

NOW THEREFORE, for and in consideration of the Parties agreeing to the terms herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The above recitals are hereby made a part of this Agreement.

2. **Submission of Joint Stipulation of Dismissal and Proposed Final Order.** Upon execution of this Agreement, the Parties agree to file a Joint Stipulation of Dismissal of the Lawsuit. The Parties also agree to thereafter jointly submit to the court a proposed final order vacating 3rd Street and dismissing the Lawsuit with prejudice. ~~Final Order. Upon the execution of this Agreement and, counsel for the Parties will file the Motion.~~

3. **Release/Waiver of Damages.** Except as otherwise provided in this Agreement, NJK, its successors and assigns, do hereby completely and irrevocably release, cancel, forgive, and forever discharge the City and its agents, attorneys, successors and assigns (provided that none of the foregoing – other than the City – are defendants to this Lawsuit), from all actions, claims, demands, damages, obligations, liabilities, controversies, and executions, of any kind or nature whatsoever, whether known or unknown, whether suspected or not, which have arisen, or may have arisen under the facts and circumstances surrounding the Lawsuit and/or the vacation of 3rd Street, and NJK specifically waives any claim or right to assert any cause of action or alleged cause of action or claim or demand against ~~Peterson~~ the City which has, through oversight or error intentionally or unintentionally or through mutual mistake, been omitted from this release. The City, its affiliates, agents, attorneys, successors or assigns, further hereby completely and irrevocably release, cancel, forgive, and forever discharge NJK, its agents, attorneys, successors and assigns, from all actions, claims, demands,

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damages, obligations, liabilities, controversies, and executions, of any kind or nature whatsoever, whether known or unknown, whether suspected or not, which have arisen, or may have arisen under the facts and circumstances surrounding the Lawsuit and/or the vacation of 3rd Street.

4. **Opportunity to Review.** Each of the Parties represents and declares that, in executing this Agreement, it relied solely upon its own judgment, belief and knowledge, and each of the Parties has read this Agreement, has been represented or has had an opportunity to be represented by independent counsel, and that it has not been influenced to any extent whatsoever in executing the same by any representations or statements governing any matter made by any other parties or by any person representing any of such other.

5. **Non-Assignment or Transfer of Claims.** NJK and the City hereby represent and warrant to the other that neither has heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any claims, debts, liabilities, demands, obligations, damages, losses, costs, expenses, attorneys' fees, actions or causes of action released herein.

6. **Jurisdiction and Venue.** The Parties acknowledge that for the purpose of enforcing the terms of this Agreement or entering judgment, appropriate jurisdiction and venue shall lie with the [Birmingham Division of the](#) Circuit Court of Jefferson County, Alabama.

7. **Voluntary Execution and Mutual Assent.** Every Party to this Agreement has had the opportunity to investigate this matter, determine the advisability of entering into this Agreement and has entered into this Agreement freely and voluntarily. All of the Parties acknowledge that in executing this Agreement they have relied solely on their own judgment,

belief and knowledge and on such advice as they may have received from their own counsel, and none of the Parties has been influenced by any representation or statements made by the other party or its counsel. No provision in this Agreement is to be interpreted for or against any Party because that Party or that Party's counsel drafted such provision. No promise or agreement not herein expressed has been made by or on behalf of said Parties. The stated consideration is the sole and only consideration for the releases set forth herein and is accepted in full settlement and satisfaction of any and every claim previously described herein.

8. **Entire Agreement.** This Agreement embodies the entire understanding and agreement of the Parties concerning the resolution of all disputes, claims or potential claims that are set forth herein, including, without limitation, those claims related to the subject matter of the Lawsuit.

9. **Binding Effect.** The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each of the Parties. The Parties represent and warrant that the signatories to this Agreement have the requisite authority to bind the Parties, and that this Agreement has been approved pursuant to duly authorized proceedings and, therefore, is binding and legally effective.

10. **Timely Execution and Action.** The Parties, and each of them, agree to execute such other documents and take such other immediate action as may reasonably be necessary to accomplish the purpose of this Agreement.

11. **Severability.** In the event that any condition, covenant or other provision of this Agreement is held to be invalid or void by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Agreement and shall in no way affect any other

condition, covenant or other provision of this Agreement. If such condition, covenant or other provision is held to be invalid due to its scope or breadth, it is agreed that it shall be deemed to remain valid to the extent permitted by law.

12. **Non-Waiver.** No breach of any provision of this Agreement shall be deemed waived unless it is waived in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

13. **Amendment.** This Agreement can be amended or modified by only a written agreement duly executed by both of the Parties.

14. **Choice of Laws.** This Agreement shall be governed by and construed and enforced under the laws of the State of Alabama.

15. **Joint Drafting.** All parties to this Agreement have had an opportunity to contribute to the drafting of this Agreement. The Parties agree that in the event any action in a court of law is brought to enforce this Agreement, any ambiguity contained herein will not be construed against either Party by virtue of the fact that the Party drafted all or part of this Agreement.

16. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning, interpretation, or construction of any provision of this Agreement.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the
day, month and year above written.

NJK, LLC

BY: _____

PRINT NAME

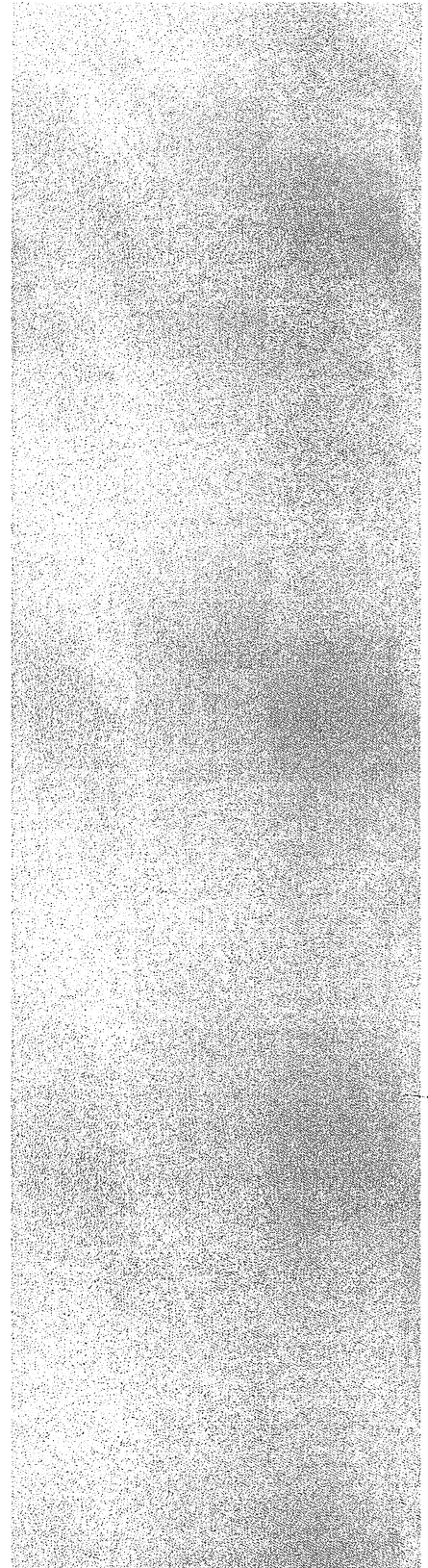
ITS: _____

THE CITY OF MOUNTAIN BROOK, ALABAMA

BY: _____

PRINT NAME

ITS: _____



**IN THE TENTH JUDICIAL CIRCUIT COURT OF ALABAMA
JEFFERSON COUNTY
BIRMINGHAM DIVISION**

NJK, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. CV 2016 - 900522.00
THE CITY OF MOUNTAIN BROOK, ALABAMA;)	
MARGARET ANN PETERSON; and FICTITIOUS)	
DEFENDANTS A, B, C, D E, F, G, H, I and J,)	
)	
Defendants.)	

PRO TANTO SETTLEMENT AGREEMENT

THIS PRO TANTO SETTLEMENT AGREEMENT (the "Agreement") is executed as of this ____ day of January, 2017, by and among plaintiff NJK, LLC ("NJK") and defendant The City of Mountain Brook, Alabama (the "City"— the City and NJK are collectively referred to herein as the "Parties").

RECITALS:

WHEREAS, NJK and the City are parties in the above-referenced lawsuit (the "Lawsuit") involving the proposed vacation of an unimproved, undeveloped and unused right-of-way located in the City of Mountain Brook in Jefferson County, Alabama which is known as "3rd Street", and which is more particularly described as follows:

A parcel of land situated in the Southwest quarter of the Southwest quarter of Section 33, Township 17 South, Range 2 west, Jefferson County, Alabama, said parcel being 3rd Street (40' ROW), being more particularly described as follows:

Commence at the Northwest corner of Lot 1A according to Calton Hill at Mountain Brook as recorded in Map Book 239, Page 9 in the office of Judge of Probate in Jefferson County, Alabama, point also being a found rebar stamped CA-560-LS, thence run South 88 degrees 25 minutes 31 seconds East along the North line of said Lot 1A for a distance of 48.03 feet to a found capped rebar, said point being the POINT OF BEGINNING; thence continue along the last described course for a distance of 5.41 feet, said point being on the Easternmost Right of Way of 3rd Street (40' ROW); thence run South 00 degrees 15 minutes 36 seconds East along said Right of Way for a distance of 344.03 feet to a point being on the Northernmost Right of Way of Montclair Road (80' ROW); thence run South 55 degrees 34 minutes 19 seconds West along said Right of Way for a distance of 48.34 feet to a found rebar stamped CA-560-LS, said point being the Southeast corner of said Lot 1A; thence leaving said Right of Way run North 00 degrees 15 minutes 36 seconds West along the East line of said Lot 1A for a distance of 332.79 feet to a found rebar stamped CA-560-LS; thence run North 83 degrees 44 minutes 54 seconds West along said lot line for a distance of 17.16 feet to a found rebar stamped CA-560-LS; thence run North 54 degrees 24 minutes 14 seconds East along said lot line for a distance of 63.31 feet to the POINT OF BEGINNING. Said parcel contains 14,006 square feet or 0.32 acres more or less ("3rd Street").

WHEREAS 3rd Street was dedicated pursuant to the plat entitled "Map of Resurvey of Evelyn Heights" which plat was filed in the Office of the Judge of Probate of Jefferson County, Alabama (the "Probate Office") on May 21, 1924 in Volume 13 of Maps, on page 95 (the "Plat");

WHEREAS NJK owns that certain real property located in the Birmingham Division of Jefferson County, Alabama, which borders the western boundary of 3rd Street and is more particularly described as:

Lot 1A of Calton Hill at Mountain Brook, as recorded on July 1, 2014 in Map Book 239 at Page 9 in the Probate Office (the "NJK Property").

WHEREAS the City is located solely in the Birmingham Division of Jefferson County, Alabama and is a duly incorporated municipal corporation under the laws of the State of Alabama;

WHEREAS 3rd Street is located solely within the municipal boundaries of the City;

WHEREAS NJK filed the Lawsuit to seek a judicial vacation of 3rd Street;

WHEREAS prior to the filing of the Lawsuit all landowners abutting 3rd Street - other than defendant Margaret Ann Peterson ("Peterson" -- who claims to own land bordering the northern border of 3rd Street) consented to the vacation of 3rd Street with title to all of 3rd Street reverting to NJK,

WHEREAS, since the filing of the Lawsuit, without the Court adjudicating whether Peterson has an ownership interest in lands abutting 3rd Street, Peterson now consents to the vacation of 3rd Street;

WHEREAS NJK has agreed to pay the City, and the City has agreed to accept, \$57,500 for fees associated with reversion of title to 3rd Street to NJK;

WHEREAS, NJK and the City agree to file a joint stipulation of dismissal with prejudice of the claims between it and the City in the Lawsuit (the "Motion"). The Motion will provide that the Parties have resolved their differences and that title to 3rd Street will revert to NJK;

WHEREAS, the Parties have, between themselves, negotiated a complete resolution of any and all disputes, claims or potential claims brought or which could have been brought in the Lawsuit;

NOW THEREFORE, for and in consideration of the Parties agreeing to the terms herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The above recitals are hereby made a part of this Agreement.

2. **Submission of Joint Stipulation of Dismissal and Proposed Final Order.**

Upon execution of this Agreement, the Parties agree to file a Joint Stipulation of Dismissal of the Lawsuit. The Parties also agree to thereafter jointly submit to the court a proposed final order vacating 3rd Street and dismissing the Lawsuit with prejudice.

3. **Release/Waiver of Damages.** Except as otherwise provided in this Agreement, NJK, its successors and assigns, do hereby completely and irrevocably release, cancel, forgive, and forever discharge the City and its agents, attorneys, successors and assigns (provided that none of the foregoing – other than the City – are defendants to this Lawsuit), from all actions, claims, demands, damages, obligations, liabilities, controversies, and executions, of any kind or nature whatsoever, whether known or unknown, whether suspected or not, which have arisen, or may have arisen under the facts and circumstances surrounding the Lawsuit and/or the vacation of 3rd Street, and NJK specifically waives any claim or right to assert any cause of action or alleged cause of action or claim or demand against the City which has, through oversight or error intentionally or unintentionally or through mutual mistake, been omitted from this release. The City, its affiliates, agents, attorneys, successors or assigns, further hereby completely and irrevocably release, cancel, forgive, and forever discharge NJK, its agents, attorneys, successors and assigns, from all actions, claims, demands, damages, obligations, liabilities, controversies, and executions, of any kind or nature whatsoever,

whether known or unknown, whether suspected or not, which have arisen, or may have arisen under the facts and circumstances surrounding the Lawsuit and/or the vacation of 3rd Street.

4. **Opportunity to Review.** Each of the Parties represents and declares that, in executing this Agreement, it relied solely upon its own judgment, belief and knowledge, and each of the Parties has read this Agreement, has been represented or has had an opportunity to be represented by independent counsel, and that it has not been influenced to any extent whatsoever in executing the same by any representations or statements governing any matter made by any other parties or by any person representing any of such other.

5. **Non-Assignment or Transfer of Claims.** NJK and the City hereby represent and warrant to the other that neither has heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any claims, debts, liabilities, demands, obligations, damages, losses, costs, expenses, attorneys' fees, actions or causes of action released herein.

6. **Jurisdiction and Venue.** The Parties acknowledge that for the purpose of enforcing the terms of this Agreement or entering judgment, appropriate jurisdiction and venue shall lie with the Birmingham Division of the Circuit Court of Jefferson County, Alabama.

7. **Voluntary Execution and Mutual Assent.** Every Party to this Agreement has had the opportunity to investigate this matter, determine the advisability of entering into this Agreement and has entered into this Agreement freely and voluntarily. All of the Parties acknowledge that in executing this Agreement they have relied solely on their own judgment, belief and knowledge and on such advice as they may have received from their own counsel, and none of the Parties has been influenced by any representation or statements made by the

other party or its counsel. No provision in this Agreement is to be interpreted for or against any Party because that Party or that Party's counsel drafted such provision. No promise or agreement not herein expressed has been made by or on behalf of said Parties. The stated consideration is the sole and only consideration for the releases set forth herein and is accepted in full settlement and satisfaction of any and every claim previously described herein.

8. **Entire Agreement.** This Agreement embodies the entire understanding and agreement of the Parties concerning the resolution of all disputes, claims or potential claims that are set forth herein, including, without limitation, those claims related to the subject matter of the Lawsuit.

9. **Binding Effect.** The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each of the Parties. The Parties represent and warrant that the signatories to this Agreement have the requisite authority to bind the Parties, and that this Agreement has been approved pursuant to duly authorized proceedings and, therefore, is binding and legally effective.

10. **Timely Execution and Action.** The Parties, and each of them, agree to execute such other documents and take such other immediate action as may reasonably be necessary to accomplish the purpose of this Agreement.

11. **Severability.** In the event that any condition, covenant or other provision of this Agreement is held to be invalid or void by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Agreement and shall in no way affect any other condition, covenant or other provision of this Agreement. If such condition, covenant or other

provision is held to be invalid due to its scope or breadth, it is agreed that it shall be deemed to remain valid to the extent permitted by law.

12. **Non-Waiver.** No breach of any provision of this Agreement shall be deemed waived unless it is waived in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

13. **Amendment.** This Agreement can be amended or modified by only a written agreement duly executed by both of the Parties.

14. **Choice of Laws.** This Agreement shall be governed by and construed and enforced under the laws of the State of Alabama.

15. **Joint Drafting.** All parties to this Agreement have had an opportunity to contribute to the drafting of this Agreement. The Parties agree that in the event any action in a court of law is brought to enforce this Agreement, any ambiguity contained herein will not be construed against either Party by virtue of the fact that the Party drafted all or part of this Agreement.

16. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning, interpretation, or construction of any provision of this Agreement.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the
day, month and year above written.

NJK, LLC

BY: _____

PRINT NAME

ITS: _____

THE CITY OF MOUNTAIN BROOK, ALABAMA

BY: _____

PRINT NAME

ITS: _____



January 4, 2017

Steven Boone
City of Mountain Brook
P. O. Box 130009
Mountain Brook, AL 35213-0009

**PROPOSAL FOR ARCHITECTURAL SERVICES
FOR EMMET O'NEIL LIBRARY
Mountain Brook, Alabama**

Dear Steve:

Based on our initial meeting, reports as provided by Williamson & Associates, Inc., my on-site walk-thru with Brasfield & Gorrie, and existing Owner-provided drawings; I have outlined the following tentative Scope of Work:

Scope of Work

1. Replacement of all (104) existing Aluminum-Clad wood windows in 42 various openings on the First and Second Floors with new all Aluminum/Metal windows (to be selected).
 - a. Removal and reinstallation of existing brick as required.
 - b. New flashing and sealants throughout as required for new windows.
 - c. Removal and replacement of existing stucco area as required.
 - d. Patch and repaint existing stucco areas as required.
 - e. New interior trim and gyp. board at openings as required for new windows.
 - f. Touch-up and replace interior finishes as required, i.e. flooring, ceiling, paint.
2. New Gutters and downspouts at existing bay windows along the East Elevation.
3. Replace and provide new flashing at stucco, masonry and roof transition areas as described by Williamson & Associates in their reports dated 6/14/16 and 9/2/16.
4. Replace existing failed and failing Sealant Joints.
5. Remove and replace existing deteriorated wood trim throughout with a more durable material.
6. Project budget has not been provided by the Owner yet.

Basic Services

Based on the Scope of Work outlined above the following Basic Services will be provided:

1. Architectural Services for Construction Documents necessary to obtain local agency approvals and provide the contractor sufficient information to perform the Work.
 - a. Preparation of Construction Drawings and Specifications consisting of Plans, Elevations, Sections, Details, window schedule and Project Manual (which will include the Invitation to Bid specs).
2. Field verification of existing conditions and documentation thereof.
3. Coordination with Williams & Associates.
4. Coordination with Brasfield & Gorrie.
5. Assistance with Design Review Committee submission and approval for new Exterior elements.
6. Bidding & Permitting Services, which will include assistance in evaluating the bids, providing a recommendation for Contractor selection, and coordination with the City of Mountain Brook during permitting and plan review stages.
7. Normal Construction Administration services during Construction of Project, which will include field observations, submittal review, and review of Contractor's Application for payment.

Services Not Included

The following Services are not included in this proposal and will be considered as Additional Services if requested by the owner:

1. "Value Engineering" – revising the scope of Project after Construction Drawings are complete.
2. Structural, Mechanical, Electrical and Plumbing engineering services are not expected for this Scope of Work but can be provided if deemed necessary at a later date.

Compensation

Rob Walker Architects, LLC proposes the following Compensation for performing the above referenced services:

1. Basic Services will be provided for 7.8% Cost of the Work.
2. An employee corresponding to the Schedule of Hourly Rates below will perform owner-requested modifications at an hourly rate or lump sum fee based on the Scope of Work.
3. Typical reimbursable expenses such as printing, plotting, courier services, postage, additional travel etc. as associated with the Project will be billed concurrently at a rate of 1.15.
4. Mileage for trips will be invoiced at the current standard government reimbursable rate.
5. Billing will be monthly based on percentage of total fee, based on work completed as defined in the Project Phase Schedule.

SCHEDULE OF HOURLY RATES

(*Hourly rates shall be annually adjusted in accordance with normal salary review practices.):

Principal Architect	\$150.00 / hour
Project Architect	\$125.00 / hour

This fee proposal is based on the above outlined Scope of Work. If this Scope of Work is not accurate, please let us know and we will provide a revised proposal to you. Should the Scope of Work change after this proposal is approved, these revisions will be treated as additional services.

We are excited about this project and look forward to the opportunity of working with you. If this Proposal meets with your approval, please sign one copy and return it to our Office. Upon receipt of an approved proposal, we will modify the Standard form of Agreement between Owner and Architect to include the above proposal. If you have any questions regarding this proposal, do not hesitate to contact this Office and thank-you again for this opportunity.

Rob Walker Architects, LLC



Rob Walker, NCARB, AIA
Principal

APPROVED:

By _____ Date _____

RESOLUTION NO. 2017-

WHEREAS, the City Council of the City of Mountain Brook, Alabama desires to amend its "Significant Accounting and Management Policies" previously adopted in Resolution 99-168 and as amended and restated by Resolutions 00-09 and 09-51;

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that effective upon the date of this resolution, the Council does hereby amend the "Significant Accounting and Management Policies" by adding the following section:

"PUBLIC REQUESTS FOR TRAFFIC ISLAND AND COMMUNITY ENTRANCE OR GATEWAY BEAUTIFICATION AND IMPROVEMENTS POLICY"

WHEREAS the City periodically receives requests from residents, neighborhoods and garden clubs to beautify traffic islands and community entrances or gateways within the public right-of-way ("Traffic Island and Entrance Improvements"). The requested improvements usually consist of landscaping, irrigation, curbing and the installation of decorative street lighting. On many occasions, those individuals or groups making these requests offer to pay the cost of landscaping provided the City will install higher or better curbing.

PURSUANT THERETO, the City Council hereby adopts the following policies with respect to such requests:

- The City Council may include in its annual operating budget an amount of up to \$15,000 for Traffic Island and Entrance Improvements.
- Upon request of residents, merchants, neighborhoods, civic associations, and like entities, the City Council may agree to commit funds toward the Traffic Island and Entrance Improvements (not including curbing work to be performed by the Public Works Department or ongoing maintenance) within the ranges and subject to the conditions and considerations indicated below:

<u>Area of Traffic Island and/or Community Entrance or Gateway</u>	City Contribution
Up to 3,000 square feet	\$ 1,000.00
3,000 - 6,000 square feet	\$ 2,000.00
6,000 + square feet	\$ 3,000.00

The City's agreement to participate in and the amount of its contribution to a proposed beautification project may be based on any of a number of variables, including but not limited to the amount of budgeted funds available for expenditure, the overall cost and "cost-effectiveness" of the proposed improvements and any related improvements that may be required, the costs and feasibility of ongoing maintenance requirements, the willingness of project sponsors or

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proponents to enter into initial cost-sharing or long-term maintenance sharing agreements, the overall benefit of the proposed project to the City as a whole, the receipt of objections, if any, from neighbors or other persons, the existence of safety concerns presented by the proposed project, if any, and the availability of special grants to defray the cost of the Traffic Island and Entrance Improvements or the maintenance thereof.

- Landscaping plans shall be submitted to the City for review and approval by appropriate authorities, including but not limited to the Police Department and Parks and Recreation Director, before work is performed to ensure it meets the City’s standards and that sight visibility will be sufficient. The City may enter into a maintenance sharing agreement with garden clubs, or neighborhood group for landscaping improvements.

- City will install curbing, if upgrades are needed, by Public Works Department.

- Requests for Traffic Island and Entrance Improvements that include irrigation or decorative street lights must be approved in advance by the City Council. The City may pay for the purchase of the light post and globe but installation cost will be the responsibility of the requesting group or neighborhood.”

The City reserves complete and absolute discretion to deviate from or to modify the application of the foregoing policies, criteria, and guidelines if, in the judgment of the City Council or City officials, the interests of the City would be served thereby. Persons, firms, or organizations shall not have or be invested with any legally enforceable right or entitlement based upon the existence and content of these policies and guidelines.

ADOPTED: This ___th day of January, 2017.

Virginia C. Smith, Council President

APPROVED: This ___th day of January, 2017.

Stewart H. Welch, III, Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on January _____, 2017, as same appears in the minutes of record of said meeting.

City Clerk

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Sam Gaston

From: Andrew Phillips
Sent: Wednesday, January 04, 2017 5:23 PM
To: 'Sam Gaston'
Cc: Walter Schoel III
Subject: Jemison Park Bridge Update
Attachments: 2016-05-25 Jemison Park Bridge.pdf

Sam:

Attached is the final Geotech report from Bhate. Bhate's recommendation is to install drilled shafts in lieu of strip footings for the bridge abutments. The soils did not provide enough bearing capacity to support the bridge. The drilled shafts will generally be 15' deep. This is the depth from existing grade to weathered shale. The preliminary cost estimate assumed that strip (shallow) foundations could be utilized for the bridge installation. The drilled shaft installation will drive up the cost of the bridge project. We are in the process of completing the drilled shaft design (depth and diameter). We will coordinate with a local contractor to update the project budget once the design is complete.

Also, we have modeled the stream impacts resulting from the bridge installation and determined that the a No-rise Certification is achievable for the project. We will however need to remove the old (inactive) sanitary sewer pipe and rock wall that is presently within the stream bed.

I will call you tomorrow to discuss in further detail. Have a great afternoon.

Thank you,

Andrew Phillips, PE

Project Manager

Schoel Engineering

1001 22nd Street South | Birmingham, Alabama 35205

Direct: 205.313.1154 | Main: 205.323.6166 | Fax: 205.328.2252

aphillips@schoel.com | www.schoel.com



Civil Engineering | Surveying | Water Resources
Environmental | High Definition Surveying

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1/5/2017

Report of Subsurface Exploration and
Geotechnical Engineering Evaluation
Proposed Pedestrian Bridge Site
Jemison Park Trail
Mountain Brook, Alabama
BHATE Project Number: 116284
December 20, 2016

**REPORT OF SUBSURFACE EXPLORATION AND
GEOTECHNICAL ENGINEERING EVALUATION**

Prepared for:

City of Mountain Brook
c/o Schoel Consulting Engineers
1001 22nd Street
Birmingham, Alabama 35205

Attention: Mr. Andrew Phillips

Prepared by:

BHATE Geosciences Corporation, Inc.
5217 Fifth Avenue South
Birmingham, Alabama 35212
205.591.7062





Bhate Geosciences Corporation
Geotechnical, Materials Environmental Engineers

5217 5th Avenue South
Birmingham, Alabama 35212
Phone: (205) 591-7062
Fax: (205) 591-7184
Web: <http://www.bhate-geo.com>

December 20, 2016

City of Mountain Brook
c/o Schoel Consulting Engineers
1001 22nd Street
Birmingham, Alabama 35205

Attention: Mr. Andrew Phillips

Subject: Report of Subsurface Exploration and
Geotechnical Engineering Evaluation
Proposed Pedestrian Bridge Site
Jemison Park Trail
Mountain Brook, Alabama
BHATE Project Number: 116284

Dear Mr. Phillips:

Bhate Geosciences Corporation (BHATE) has completed the authorized subsurface exploration and geotechnical engineering evaluation of the proposed bridge crossing site. Our services were provided in general accordance with our Proposal Number 8769-16 dated October 20, 2016.

The purpose of our services was to evaluate general subsurface conditions at specific soil test boring locations and to gather data on which to base comments relative to bridge foundation design. This report outlines the exploration procedures used, exhibits the data obtained, and presents our evaluation and comments relative to the geotechnical engineering aspects of the project, within the scope of services outlined in this report.

We appreciate the opportunity to work with you on this project. If you have any questions, or we may be of further service to you, please call us.

Respectfully submitted,
BHATE GEOSCIENCES CORPORATION

Handwritten signature of Dennis Isbell in black ink.

Dennis Isbell
Project Professional

Handwritten signature of Charles R. Burgin in black ink.

Charles R. Burgin, P.E.
Principal Engineer

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BORING LOCATION PLAN

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IMPORTANT INFORMATION ABOUT YOUR GEOTECHNICAL ENGINEERING REPORT

1.0 SCOPE OF SERVICES

The purpose of our exploration was to evaluate general subsurface conditions at specific soil test borings at the proposed location of a pedestrian bridge to be located along an existing trail at Jemison Park in Mountain Brook, Alabama. The results of our field exploration, laboratory analyses and geotechnical engineering evaluation are presented in the following report. Our scope of services consisted of the following items:

- Field coordination including site reconnaissance, drilling coordination, sample logging and data compilation.
- Two (2) soil test borings were drilled; one at each end of the proposed bridge location; in close proximity to the bridge foundations. The soil test boring locations were chosen in the field by BHATE based on an untitled plan provided to us by members of Schoel Consulting Engineers on 11/18/16. The approximate boring locations are indicated on the Boring Location Plan in the Appendix.
- The soil borings were extended through the soil overburden to auger refusal depths that ranged from approximately 12' to 14' below the existing ground surface.
- Preparation of a geotechnical engineering report to address the following items:
 - Site geology and surface conditions.
 - A description of the subsurface conditions encountered at the soil test boring locations.
 - Groundwater conditions encountered during the field exploration.
 - Bridge foundation considerations including recommended foundation type, anticipated bearing depths and maximum allowable bearing pressure.

The scope of services represented by this report does not include an environmental assessment or exploration for the presence or absence of wetlands or hazardous or toxic material at the site. In addition, hydrologic or flood plain studies were not conducted as part of our scope of services.

2.0 PROJECT INFORMATION

The proposed pedestrian bridge site is located along the route of an existing walking trail within Jemison Park in Mountain Brook, Alabama. The bridge will span Shades Creek on the northeast side of, and roughly parallel and adjacent to, an existing 40" sanitary sewer line that also crosses the creek. A site vicinity map, designated as Figure 2, is provided in the Appendix of this report and indicates the general area of the proposed bridge site.

Based on preliminary information provided to us by Mr. Andrew Phillips with Schoel Consulting Engineers, we understand the following about the project:

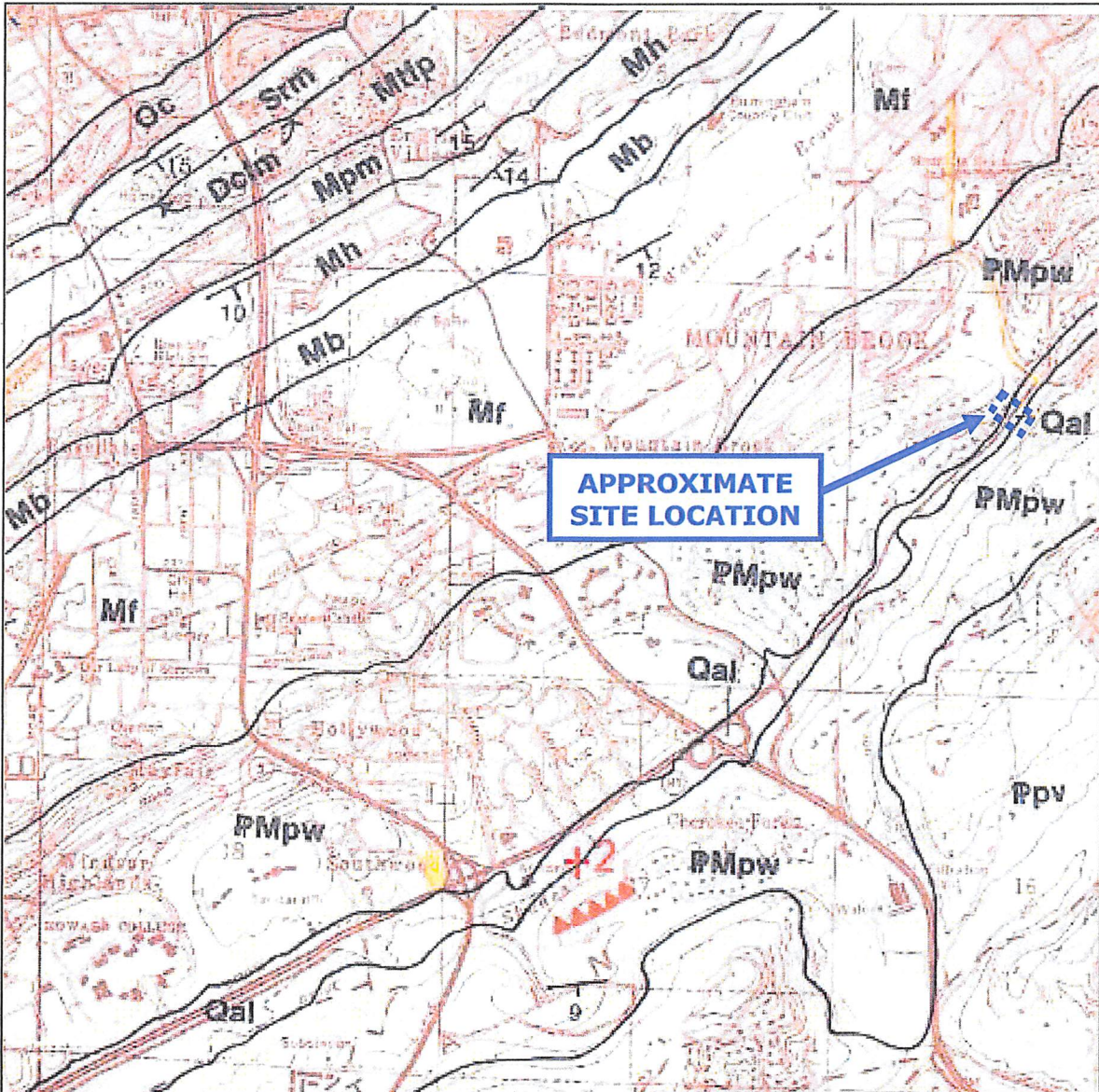
- An approximately 65'-long, one piece pre-fabricated Contech® pedestrian bridge with possible wooden plank decking is planned for the bridge site.
- The bridge will be supported at the abutments only; no intermediate supports are planned.
- According to Michael Davis, the project structural engineer, axial loads generated by the bridge would be in the range of 50 kips, and ground contact pressure beneath the foundations (if spread footings) would be less than 4,000 psf.

3.0 SITE GEOLOGY

The publication titled "Engineering Geology of Jefferson County, Alabama, Map 21, Birmingham South Quadrangle", dated 1979, indicates the following the proposed bridge site is underlain by the Parkwood Formation. The Parkwood Formation typically consists of thin-bedded shale with feldspathic siltstone and sandstone interbeds with a few thin coal beds occurring in the upper part of the formation. The shale is typically medium to dark gray and commonly micaceous. The shale beds range from thin and fissile to massive and generally weather to brownish-gray. Sandstones are light to medium gray very fine to fine grained, micaceous and locally cross-bedded. Alluvial sediments are also mapped within, and adjacent to, the Shades Creek channel.

The overburden materials can vary substantially, depending on the composition of the parent rock at a particular location. Bedrock is often encountered within 10 to 20 feet of the ground surface. The decomposed rock changes gradually to more competent weathered rock and, finally, into material that is classified as unweathered rock.

The following image, designated Figure 1, is taken from Map 21-Birmingham South Quadrangle of the noted geologic publication and indicates the mapped geology at the subject bridge site:



Pmpw - indicates area underlain by the Parkwood Formation, Qal - indicates alluvial sediment.

Figure 1: Portion of geologic map showing the project site location

4.0 FIELD EXPLORATION

The soil test boring locations were chosen and marked in the field by BHATE based on the location of the proposed pedestrian bridge included on the plan provided to us. The subsurface exploration was conducted by a BHATE sub-contracted drilling crew on December 5, 2016. The boring locations were determined by measuring from surface features shown on the site plan provided to us.

Standard Penetration Tests (AASHTO T-206) were taken at the boring locations on approximately 2½- to 5-foot depth intervals. Representative soil samples obtained from the split-tube sampler were sealed in relatively airtight containers and transported to our laboratory for further analysis.

5.0 SUBSURFACE CONDITIONS

Boring logs indicating the location and depth of drilling and sampling intervals were prepared by our project manager. Copies of the boring logs are included in the Appendix of this report. The stratification lines indicated on the Logs of Boring represent approximate boundaries between soil types; however, the actual transition may be gradual. Conditions represented by the soil test borings should be considered applicable only at the locations tested on the dates shown and it should be assumed that the reported conditions may be different at other locations or at other times. The general subsurface conditions encountered and their pertinent characteristics are described in the following paragraphs.

5.1 SUBSURFACE SOILS

Borings B-1 and B-2 were performed on the west and east banks of Shades Creek, respectively. The ground surface was grass covered at both locations at the time of our exploration. A surficial layer of topsoil measuring approximately six (6) inches thick was encountered at B-1; approximately five (5) inches of topsoil was encountered at B-2.

5.1.1 Boring B-1 (West Side of Shades Creek): The soil samples obtained from directly beneath the surficial topsoil layer at boring B-1 were described as alluvium. Alluvial soils are typically classified as water-deposited soil within and flanking drainage features. The alluvial soil samples indicated soft, brown sandy clay to a depth of about three (3) feet below the ground surface. A Standard Penetration Test (SPT) N-value of three (3) blows per foot (bpf) was recorded at the 1.5' to 3' sample interval at B-1 indicating a soft consistency. The upper soft, sandy clay was underlain by about seven feet of tan to gray, clayey sands. SPT N-values of 10 and 14 bpf were recorded at the 4' to 5.5' and 9' to 10.5' sample intervals at B-1 indicating a loose to medium dense relative density at these depths. The alluvial soils extended to a depth of about 10 feet at B-1.

Weathered to slightly weathered shale was encountered directly below the alluvium at B-1 at a depth of about 10 feet below the existing ground surface. The partially weathered shale was described as gray, silty clay with gravel size shale fragments. An SPT N-value of greater than 50 bpf was recorded at B-1 at the 9'-10.5' sample interval indicating the presence of very high consistency material at this location and sample depth. Although such material can be very dense when in place, retained samples from the borings often consist of sand, silt and rock fragments because of the pulverizing effect the repeatedly high impact of sampling had on the material. The drilling equipment used was able to penetrate approximately two (2) feet (10' to 12') of the partially weathered rock at B-1 prior to encountering auger refusal.

5.1.2 Boring B-2 (East Side of Shades Creek): The soils samples from directly beneath the surficial topsoil layer at boring B-2 were also described as alluvium. The upper alluvial soils consisted of red and tan, silt and clay to a depth of about seven feet. SPT N-values of 38 and 22 bpf were recorded at the 1.5'-3' and 4'-5.5' sample intervals at B-2, respectively, indicating a very stiff consistency at those sampling depths. The upper silt and clay was underlain by about three feet of tan to gray, silty fine sand. An SPT N-value of 17 bpf was recorded at the 6.5'-8' sample interval at B-2 indicating medium-dense soil at that depth. The alluvial soils extended to a depth of about 10 feet at B-2, a similar thickness as exhibited at B-1.

Weathered to slightly weathered shale was encountered directly below the alluvium at B-2 at a depth of about 10 feet below the existing ground surface. The partially weathered shale was described as gray, silty clay with gravel size shale fragments. Remnant rock structure was observed in portions of the sample obtained from the weathered rock stratum. An SPT N-values greater than 50 bpf was recorded at B-2 at the 9'-10.5' sample interval indicating the presence of very high consistency material at that location and depth. The drilling equipment was able to penetrate approximately four (4) feet (10' to 14') of the partially weathered rock at B-2 prior to encountering auger refusal.

5.1.3 Auger Refusal: Auger refusal is the depth at which the borehole can no longer be advanced by standard soil drilling techniques and rock coring methods must be used for practical further advancement of the test boring. Auger refusal was encountered at boring locations B-1 and B-2 at depths of 12' and 14', respectively. No attempts were made to core into the refusal material so the composition and continuity of the resistant material was not determined. However, it is likely that weathered to slightly weathered, interbedded shale, siltstone, and sandstone are present beneath the refusal depths.

5.1.4 Groundwater: Our exploration was encountered toward the end of a period described by the National Weather Service as "exceptional drought". Consequently we would expect that groundwater levels were depressed at the time of drilling. In addition, the upper soil (perhaps to depths as great as six or seven feet) could have been significantly drier than normal as a result of the drought.

Groundwater was encountered at boring location B-1 at a depth about eight (8) feet below the ground surface during drilling. Groundwater was not encountered during drilling at B-2. It should be noted that the water levels were only measured in the completed boreholes for a very limited time period. The installation of observation wells would be required to develop accurate long term groundwater data. Due to the close proximity of the borings to nearby Shades Creek, we would expect vary shallow groundwater could occur at the site, particularly after prolonged periods of rainfall. Trapped or perched groundwater is probably influenced to some extent by the water level in the creek.

The presence or absence of water in the boreholes does not necessarily mean that groundwater will not be encountered at other locations or at other times. Seasonal variations in rainfall as well as other factors will cause fluctuations in groundwater levels and influence the presence of water in upper soils.

6.0 BRIDGE FOUNDATION RECOMMENDATIONS

The subsurface profiles at the bridge foundation locations consist of about 10 feet of alluvial soil underlain by partially weathered shale at depths ranging from about 12' to 14'. Auger refusal was encountered below such depths.

Due to the variable composition and relatively low strength of some of the alluvial soils, it is our opinion a shallow foundation system bearing on/in the alluvium would not be appropriate for support of the bridge. In addition, a shallow foundation supported on the soil could be subject to scour. As a result of the alluvial soil presence, we recommend that bridge foundations extend through the alluvium to bear on the highly weathered rock. Deep spread footings could be considered; however, deep (10+ feet below the existing ground surface) and relatively large excavations would be required and some dewatering of groundwater seepage would be necessary. It is our opinion drilled shafts designed to derive support by end-bearing on slightly weathered to unweathered shale would be a reasonable foundation system for the proposed bridge site. Lateral and uplift resistance could be achieved by embedding the shafts into the rock.

Based on information provided by Mr. Tod Green, P.E. with Contech, the weight of the approximately 65'-long bridge would be approximately 45 kips. According to Mr. Green, foundation bearing values for support of Contech steel truss pedestrian bridges are typically on the order of 2,500 to 3,000 psf. Such values could be achieved by bearing on the weathered rock above the refusal depths.

6.1 DRILLED SHAFTS END-BEARING ON SHALE

The load carrying capacity of the drilled shafts at the proposed pedestrian bridge site can be achieved by end bearing on, or embedment into, slightly weathered to unweathered shale. Shafts bearing on/in competent shale can be designed with a maximum allowable end bearing capacity up to 20 ksf. A shear/friction capacity of three (3) to five (5) ksf can be achieved for portions of the drilled shaft socketed into the weathered to unweathered shale respectively.

Consideration could be given to designing the foundations as "drill and pour" shafts, whereby all the load carrying capacity is achieved by side resistance/skin friction from the portion of the shaft embedded into the weathered or unweathered rock. With such an approach, down-hole cleaning and inspection, as well as percussion-drilled test holes can be eliminated, perhaps resulting in some cost savings. For conventional drilled shaft construction, down-hole cleaning, drilling a test hole (to a depth equal to twice the shaft diameter), and inspection would be required and should be included in the bid documents.

6.2 ADDITIONAL DRILLED SHAFT CONSTRUCTION

Based on the conditions encountered in the borings, the following construction conditions are anticipated for drilled shafts at both bridge sites:

- We anticipate the drilled shafts at each foundation location can generally be constructed using the "dry method" with normal dewatering accomplished using conventional pneumatic pumps from inside the drilled shaft to facilitate construction in the dry. The contractor should be prepared to adequately seal casing and have equipment available to handle water in-flows. We note that it is sometimes necessary to extend drilled shafts through what may be adequate bearing material simply to restrict the flow of water into the drilled shaft. Occasionally vertical fractures are present in shale bedrock that can result in significant inflows of water. In such a case, measures would be required to control soil inflow and removal during dewatering to minimize potential for future ground loss. Groundwater was encountered at B-1, and consequently, it should be expected that drilling below a zone of perched water will occur.
- The drilled shafts will require temporary casing during construction to prevent collapse of the shaft. The casing is typically extended through the entire length of the shaft to maintain stability. The casing is removed as the concrete is placed in the drilled shaft. A sufficient head of concrete should be maintained during casing removal to preclude outside water or soil intrusion into the drilled shaft.
- Our experience and current research in the field indicate that drilled shafts can be concreted by the "free fall" method without affecting the strength and quality of the in-place concrete. Concrete should free fall without hitting the sides of the excavation or reinforcing. The use of a hopper or other suitable device is recommended to control concrete placement. The placement of concrete in the shaft should proceed until the concrete level is above the external fluid level and should be maintained above this level throughout casing removal.
- Because the refusal material was not cored to evaluate continuity it will be necessary to drill a test hole in at least one of the shafts on each side of the creek. Test drilling could be conducted prior to or after drilling the shafts. In view of the relatively shallow rock, test drilling could probably be conducted from the ground surface rather than requiring downhole testing and inspection. However, downhole cleaning of the bearing surface would be required.

7.0 GENERAL REMARKS AND REPORT LIMITATIONS

This report has been prepared for the exclusive use of the **City of Mountain Brook** and its design team members for specific application to the subject project. All recommendations contained in this report have been made in accordance with generally accepted soil and foundation engineering practices in the area where the services were provided. No other warranties are implied or expressed. The analysis and recommendations submitted in this report are based upon the data obtained from the soil test borings. The nature and extent of variations outside the soil test boring locations may not become evident until construction. If variations then appear evident, it may be necessary to re-evaluate the recommendations of this report.

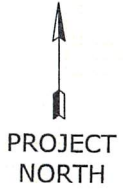
We emphasize that this report was for design purposes only and may not be sufficient to prepare an accurate bid. Contractors reviewing this report should acknowledge that the discussions and recommendations contained herein are for design purposes only.

When the plans and specifications are more complete or if significant changes are made to the character of the proposed structures, a consultation should be arranged to review them with respect to prevailing soil conditions. Following such a review, it may be necessary to submit supplementary recommendations.

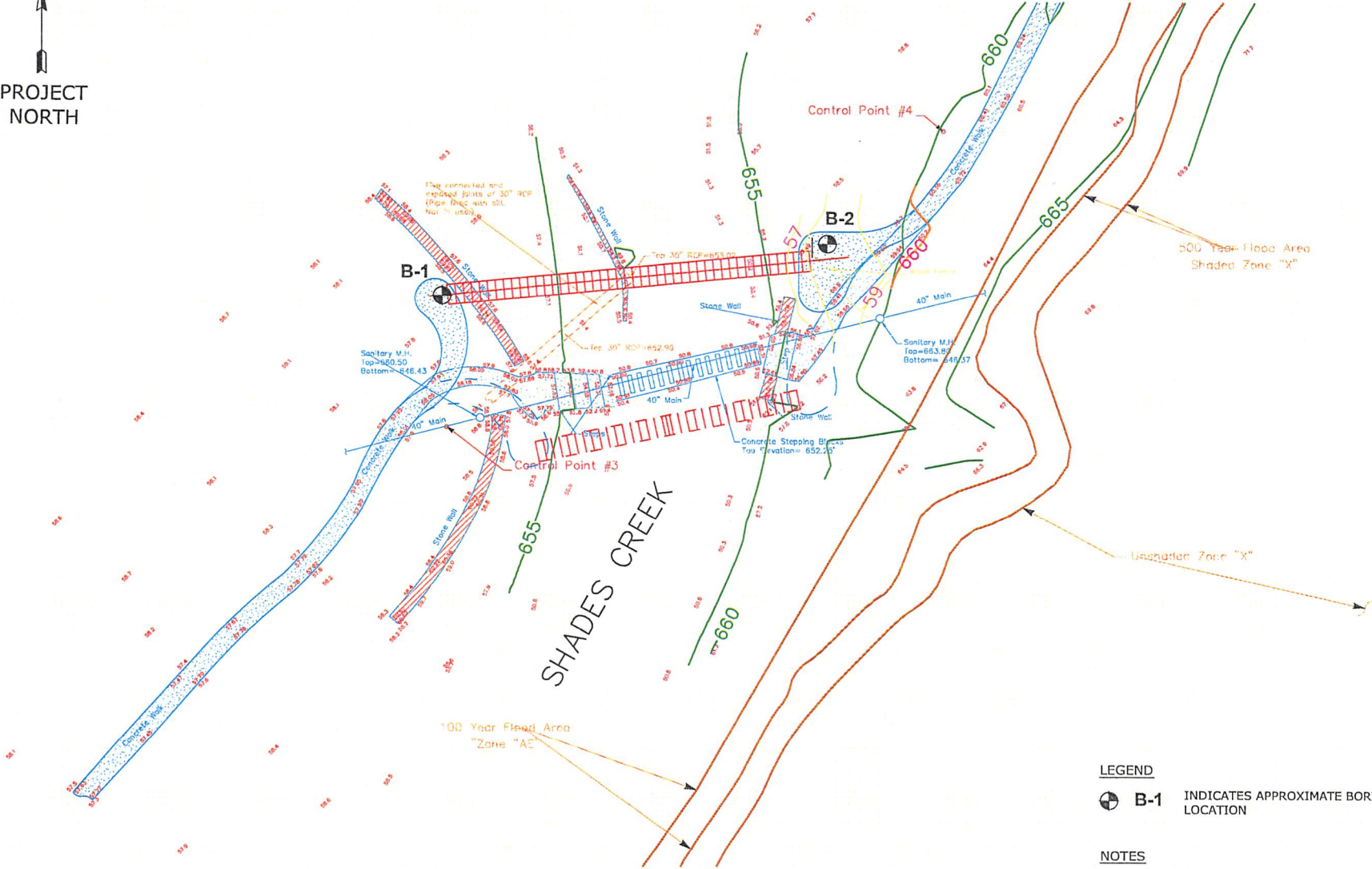
The information contained in this report is for the benefit of the client and to aid the other project professionals in planning and design of the subject project. The report is not intended to serve as a contract document and should not be used as a substitute for a project-specific foundation specification. Instead, a project/site specific specification which incorporates applicable information contained in this report should be prepared by the project civil engineer or architect.

We also suggest the geotechnical engineer be given the opportunity to review the geotechnical related plans and specifications to verify that the recommendations in this report are properly interpreted and incorporated in the design. If the geotechnical engineer is not accorded the privilege of making this recommended review, we can assume no responsibility for misinterpretation of our recommendations. Also, confirmation of findings and recommendations from this report during construction will be an essential component of the design verification process.

APPENDIX



PROJECT
NORTH



LEGEND

 **B-1** INDICATES APPROXIMATE BORING LOCATION

NOTES

1. THIS DRAWING IS FOR ILLUSTRATION ONLY.
2. THIS DRAWING HAS BEEN ADAPTED FROM AN ORIGINAL DRAWING PREPARED BY SCHOEL CONSULTING ENGINEERS.



BORING LOCATION PLAN

PROPOSED PEDESTRIAN BRIDGE
JEMISON PARK TRAIL
MOUNTAIN BROOK, ALABAMA












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DATE 12/7/2016	DRAWN BY DEI	FILE NAME ELP116284.dwg
PROJECT NO. 116284		

LOG OF BORING

CONTRACTED WITH: Schoel Consulting Engineers
 PROJECT NAME: Jemison Park Trail Pedestrian Bridge
 PROJECT LOCATION: Mountain Brook, Alabama

BORING NUMBER: B-1
 PROJECT NUMBER: 116284
 SHEET 1 OF 1
 DATE: 12/5/16

DEPTH (ft)	GRAPHIC LOG	MATERIAL DESCRIPTION	SAMPLE DATA										
			NUMBER	TYPE	BLOWS/6"	N-VALUE	MOISTURE (%)	LL (%)	PL (%)	PI (%)	PPqu (tsf)	WATER LEVEL	REMARKS
0		6" TOPSOIL											
		Soft, brown, sandy CLAY	1		2-1-2	3							
		Loose, tan, clayey SAND	2		4-5-5	10							
5		...medium-dense, gray	3		7-5-9	14							
10		(ALLUVIUM)	4		9-50/5-x	50/5							
		DECOMPOSED SHALE: sampled as gray, silty clay, with shale fragments (DECOMPOSED ROCK)											
		Auger refusal at 12 feet											
15													
20													
25													
30													

LOG OF BORING

CONTRACTED WITH: Schoel Consulting Engineers
 PROJECT NAME: Jemison Park Trail Pedestrian Bridge
 PROJECT LOCATION: Mountain Brook, Alabama

BORING NUMBER: B-2
 PROJECT NUMBER: 116284

SHEET 1 OF 1
 DATE: 12/5/16

DEPTH (ft)	GRAPHIC LOG	MATERIAL DESCRIPTION	SAMPLE DATA								REMARKS		
			NUMBER	TYPE	BLOWS/6"	N-VALUE	MOISTURE (%)	LL (%)	PL (%)	PI (%)		PPqu (tsf)	WATER LEVEL
0	5" TOPSOIL	Very stiff, reddish-tan, silty CLAY, some gravel size sandstone fragments	1	X	14-16-22	38							
5	Very stiff, tan, clayey SILT	Very stiff, tan, clayey SILT	2	X	11-11-11	22							
10	Medium-dense, tan to gray, silty fine SAND, trace clay (ALLUVIUM)	Medium-dense, tan to gray, silty fine SAND, trace clay (ALLUVIUM)	3	X	5-9-8	17							
10	DECOMPOSED SHALE: sampled as gray, silty clay, with gravel size shale fragments, remnant rock structure intact (DECOMPOSED ROCK)	DECOMPOSED SHALE: sampled as gray, silty clay, with gravel size shale fragments, remnant rock structure intact (DECOMPOSED ROCK)	4	X	23-50/5-x	50/2							
15	Auger refusal at 14 feet	Auger refusal at 14 feet									GNE		



- GNE = Ground Water Not Encountered
- ▽ = Water Table Encountered @ Time of Boring
- ▼ = Delayed Water Table Level
- ⊗ = Hole Cave In Depth

**Proposed Pedestrian Bridge
Jemison Park Trail
Mountain Brook, Alabama
BHATE Project Number: 116284**

Site Photographs



Approximate Area of Boring B-1

**Proposed Pedestrian Bridge
Jemison Park Trail
Mountain Brook, Alabama
BHATE Project Number: 116284**

Site Photographs



Approximate Area of Boring B-2

**Proposed Pedestrian Bridge
Jemison Park Trail
Mountain Brook, Alabama
BHATE Project Number: 116284**

Site Photographs



Soil Cuttings Generated During Drilling at B-2

Important Information about This

Geotechnical-Engineering Report

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

The Geoprofessional Business Association (GBA) has prepared this advisory to help you – assumedly a client representative – interpret and apply this geotechnical-engineering report as effectively as possible. In that way, clients can benefit from a lowered exposure to the subsurface problems that, for decades, have been a principal cause of construction delays, cost overruns, claims, and disputes. If you have questions or want more information about any of the issues discussed below, contact your GBA-member geotechnical engineer. Active involvement in the Geoprofessional Business Association exposes geotechnical engineers to a wide array of risk-confrontation techniques that can be of genuine benefit for everyone involved with a construction project.

Geotechnical-Engineering Services Are Performed for Specific Purposes, Persons, and Projects

Geotechnical engineers structure their services to meet the specific needs of their clients. A geotechnical-engineering study conducted for a given civil engineer will not likely meet the needs of a civil-works constructor or even a different civil engineer. Because each geotechnical-engineering study is unique, each geotechnical-engineering report is unique, prepared solely for the client. *Those who rely on a geotechnical-engineering report prepared for a different client can be seriously misled.* No one except authorized client representatives should rely on this geotechnical-engineering report without first conferring with the geotechnical engineer who prepared it. *And no one – not even you – should apply this report for any purpose or project except the one originally contemplated.*

Read this Report in Full

Costly problems have occurred because those relying on a geotechnical-engineering report did not read it *in its entirety*. Do not rely on an executive summary. Do not read selected elements only. *Read this report in full.*

You Need to Inform Your Geotechnical Engineer about Change

Your geotechnical engineer considered unique, project-specific factors when designing the study behind this report and developing the confirmation-dependent recommendations the report conveys. A few typical factors include:

- the client's goals, objectives, budget, schedule, and risk-management preferences;
- the general nature of the structure involved, its size, configuration, and performance criteria;
- the structure's location and orientation on the site; and
- other planned or existing site improvements, such as retaining walls, access roads, parking lots, and underground utilities.

Typical changes that could erode the reliability of this report include those that affect:

- the site's size or shape;
- the function of the proposed structure, as when it's changed from a parking garage to an office building, or from a light-industrial plant to a refrigerated warehouse;
- the elevation, configuration, location, orientation, or weight of the proposed structure;
- the composition of the design team; or
- project ownership.

As a general rule, *always* inform your geotechnical engineer of project changes – even minor ones – and request an assessment of their impact. *The geotechnical engineer who prepared this report cannot accept responsibility or liability for problems that arise because the geotechnical engineer was not informed about developments the engineer otherwise would have considered.*

This Report May Not Be Reliable

Do not rely on this report if your geotechnical engineer prepared it:

- for a different client;
- for a different project;
- for a different site (that may or may not include all or a portion of the original site); or
- before important events occurred at the site or adjacent to it; e.g., man-made events like construction or environmental remediation, or natural events like floods, droughts, earthquakes, or groundwater fluctuations.

Note, too, that it could be unwise to rely on a geotechnical-engineering report whose reliability may have been affected by the passage of time, because of factors like changed subsurface conditions; new or modified codes, standards, or regulations; or new techniques or tools. *If your geotechnical engineer has not indicated an "apply-by" date on the report, ask what it should be, and, in general, if you are the least bit uncertain about the continued reliability of this report, contact your geotechnical engineer before applying it.* A minor amount of additional testing or analysis – if any is required at all – could prevent major problems.

Most of the "Findings" Related in This Report Are Professional Opinions

Before construction begins, geotechnical engineers explore a site's subsurface through various sampling and testing procedures. *Geotechnical engineers can observe actual subsurface conditions only at those specific locations where sampling and testing were performed.* The data derived from that sampling and testing were reviewed by your geotechnical engineer, who then applied professional judgment to form opinions about subsurface conditions throughout the site. Actual sitewide-subsurface conditions may differ – maybe significantly – from those indicated in this report. Confront that risk by retaining your geotechnical engineer to serve on the design team from project start to project finish, so the individual can provide informed guidance quickly, whenever needed.

This Report's Recommendations Are Confirmation-Dependent

The recommendations included in this report – including any options or alternatives – are confirmation-dependent. In other words, *they are not final*, because the geotechnical engineer who developed them relied heavily on judgment and opinion to do so. Your geotechnical engineer can finalize the recommendations *only after observing actual subsurface conditions* revealed during construction. If through observation your geotechnical engineer confirms that the conditions assumed to exist actually do exist, the recommendations can be relied upon, assuming no other changes have occurred. *The geotechnical engineer who prepared this report cannot assume responsibility or liability for confirmation-dependent recommendations if you fail to retain that engineer to perform construction observation.*

This Report Could Be Misinterpreted

Other design professionals' misinterpretation of geotechnical-engineering reports has resulted in costly problems. Confront that risk by having your geotechnical engineer serve as a full-time member of the design team, to:

- confer with other design-team members,
- help develop specifications,
- review pertinent elements of other design professionals' plans and specifications, and
- be on hand quickly whenever geotechnical-engineering guidance is needed.

You should also confront the risk of constructors misinterpreting this report. Do so by retaining your geotechnical engineer to participate in prebid and preconstruction conferences and to perform construction observation.

Give Constructors a Complete Report and Guidance

Some owners and design professionals mistakenly believe they can shift unanticipated-subsurface-conditions liability to constructors by limiting the information they provide for bid preparation. To help prevent the costly, contentious problems this practice has caused, include the complete geotechnical-engineering report, along with any attachments or appendices, with your contract documents, *but be certain to note conspicuously that you've included the material for informational purposes only.* To avoid misunderstanding, you may also want to note that "informational purposes" means constructors have no right to rely on the interpretations, opinions, conclusions, or recommendations in the report, but they may rely on the factual data relative to the specific times, locations, and depths/elevations referenced. Be certain that constructors know they may learn about specific project requirements, including options selected from the report, *only* from the design drawings and specifications. Remind constructors that they may

perform their own studies if they want to, and *be sure to allow enough time* to permit them to do so. Only then might you be in a position to give constructors the information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions. Conducting prebid and preconstruction conferences can also be valuable in this respect.

Read Responsibility Provisions Closely

Some client representatives, design professionals, and constructors do not realize that geotechnical engineering is far less exact than other engineering disciplines. That lack of understanding has nurtured unrealistic expectations that have resulted in disappointments, delays, cost overruns, claims, and disputes. To confront that risk, geotechnical engineers commonly include explanatory provisions in their reports. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. *Read these provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Geoenvironmental Concerns Are Not Covered

The personnel, equipment, and techniques used to perform an environmental study – e.g., a "phase-one" or "phase-two" environmental site assessment – differ significantly from those used to perform a geotechnical-engineering study. For that reason, a geotechnical-engineering report does not usually relate any environmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. *Unanticipated subsurface environmental problems have led to project failures.* If you have not yet obtained your own environmental information, ask your geotechnical consultant for risk-management guidance. As a general rule, *do not rely on an environmental report prepared for a different client, site, or project, or that is more than six months old.*

Obtain Professional Assistance to Deal with Moisture Infiltration and Mold

While your geotechnical engineer may have addressed groundwater, water infiltration, or similar issues in this report, none of the engineer's services were designed, conducted, or intended to prevent uncontrolled migration of moisture – including water vapor – from the soil through building slabs and walls and into the building interior, where it can cause mold growth and material-performance deficiencies. Accordingly, *proper implementation of the geotechnical engineer's recommendations will not of itself be sufficient to prevent moisture infiltration.* Confront the risk of moisture infiltration by including building-envelope or mold specialists on the design team. *Geotechnical engineers are not building-envelope or mold specialists.*



Telephone: 301/565-2733

e-mail: info@geoprofessional.org www.geoprofessional.org

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Memo

To: Sue DeBrecht

From: Gloria Repolesk

CC: Emmet O'Neal Public Library Board

Date: 12/12/2016

Re: Part-time Children's Assistant Position upgrade to Full-Time Library Assistant II

The Children's Department proposes a position upgrade from part-time Children's Assistant to full-time Library Assistant II. Currently, the Children's Department has five full-time positions and four part-time positions. Historically, part-time employees hold second jobs and often use their employment as a stepping stone to full-time positions in other facilities. Currently, all four of our part-time employees hold multiple jobs, and we are losing one employee to graduate school. We would like to take advantage of this recent employee resignation to combine two part-time Children's Assistant positions to create a full time Library Assistant II, thus creating a more flexible and reliable staff composition.

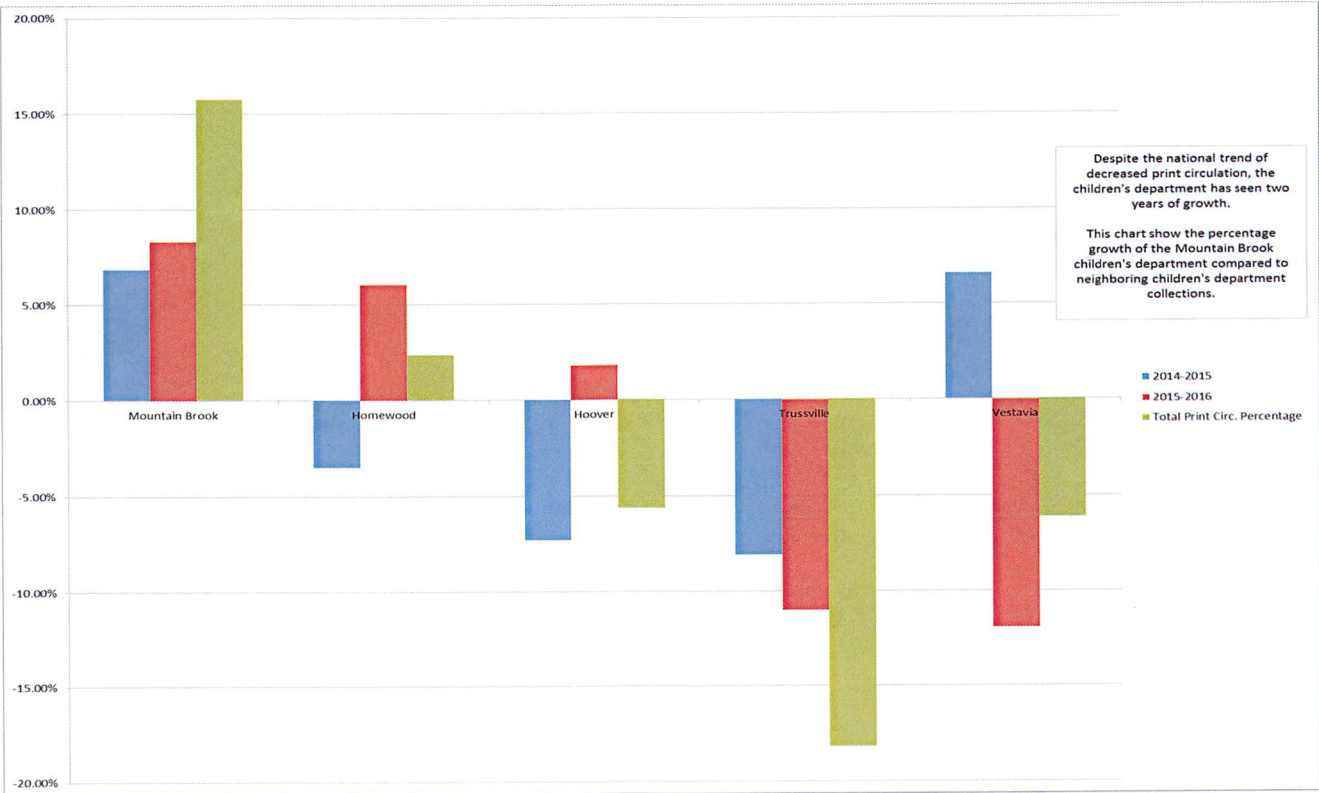
The new full-time position would enable the implementation of a more consistent staffing schedule, allowing us to schedule employees when needed rather than working around conflicting schedules. One of our goals for the upcoming school year is to expand our relationship with the schools in the Mountain Brook community. The Children's Department staff currently collaborates with the teachers and school librarians on Summer Reading literature. The representatives at the school have been exceedingly receptive to our ideas and proposals made in regard to updating their required summer reading literature for students in grades K-6. This interaction has opened up a broadening dialogue about multiple ways the schools and the library could and should collaborate. Unfortunately, much of the library's full time children's staff is dedicated to existing programs and projects. Our current involvement has been limited by the ability to coordinate our complex calendar with the schools' needs and limited flexibility.

A new full-time position would have a prominent influence on the relationship between our department and the schools. The main focus of this position would be on outreach. The new position would be responsible for organizing school story times and book talks and helping with library tours. The assistant would be readily available to work with the schools on their schedules rather than working around our busy calendar. With a full-time employee dedicated to outreach, we would expand this type of service beyond the 4 public elementary schools to offer similar programming to area private schools.

The Children's Department has experienced substantial growth over the last two years. When looking at statistics over the last five years, one can readily see that the library's physical book circulation has slowly decreased since 2012. Between 2012 and 2014, children's book circulation decreased by 7.4%. (Please refer to chart on page 2 and statistics on page 3.) This has been a common theme for all libraries. At Emmet O'Neal, we have seen this trend reversed during the last two years, a byproduct of vigilantly reorganizing our collection and further training staff in children's literature for the purpose of providing more targeted services to the community. My focus as the Children's Department Manager

has been to provide quality customer service with an emphasis on collection development. With the implementation of new training, collection reorganization, and programming changes, the Children’s Department print circulation increased by **15.76%** from 2014 to 2016. The statistics for neighboring libraries, as seen on page 3, show that circulation of Hoover’s, Trussville’s, and Vestavia’s children’s print collections all decreased. This data demonstrates an incredible payoff of our effort to rebrand our services and connect differently with our patrons. In October and November of this new fiscal year, our print circulation is already up 7% compared to the same period last year, and our average program attendance is slightly greater than in 2012. Also, with a Children’s Department staff of nine people and three contract storytellers, we had 472 programs last year. These were comprised of 12 weekly story times and programs, 5 monthly programs, and several special programs such as Summer Reading, a Night Dark and Grim, and more. Given the success our current staff is achieving with their specialized talents, I feel the best way to reach our full potential and provide the requested collaboration with the schools of Mountain Brook is by establishing a full-time staff member dedicated to outreach.

Two Year Children’s Print Circulation Comparison



Five years of children's department print statistics

	Mountain Brook			Homewood			Hoover			Trussville			Vestavia		
	Total Juvenile Circ.		% Growth	Total Juvenile Circ.		% Growth	Total Juvenile Circ.		% Growth	Total Juvenile Circ.		% Growth	Total Juvenile Circ.		% Growth
2010-2011	123,560														
2011-2012	122554	-1,006	-0.81%												
2012-2013	119985	-2,569	-2.10%												
2013-2014	113399	-6,586	-5.49%	86314			339690			85029			103430		
2014-2015	121186	7,787	6.87%	83301	-3,013	-3.49%	314855	-24,835	-7.31%	78153	-6,876	-8.09%	110248	6,818	6.59%
2015-2016	131274	10,088	8.32%	88350	5,049	6.06%	320551	5,696	1.81%	69542	-8,611	-11.02%	97079	-13,169	-11.94%
2012-2014		-9,155	-7.47%												
2015-2016		17,875	15.76%		2,036	2.36%		-19,139	-5.63%		-15,487	-18.21%		-6,351	-6.14%

2016 (2 months)	19259		
2017 (2 months)	20620	1,361	7.07%

Proposed Full Time Library Position

	<u>Combined PT</u>		<u>FT</u>
Annual Wages	\$ 30,501.00	\$	33,265.00
FICA/Medicare City Match	\$ 2,333.00	\$	2,545.00
RSA - Tier 1	\$ -	\$	-
RSA - Tier 2	\$ -	\$	865.00
Medical Ins - Single	\$ -	\$	5,328.00
Medical Ins - Family	\$ -	\$	-
GTL	\$ -	\$	34.00
Disability	\$ -	\$	126.00
Total with benefits	\$ 32,834.00	\$	42,163.00

PT based on average of 78 hours per pay period @ \$15.04 per hour

FT position based on Single medical , Tier 2 @ \$15.99 per hour

FT, Tier 1 with Family medical coverage - annual salary differential up to \$4,000.00

RESOLUTION NO. 2017-__

WHEREAS the City's (2460 MTB) pension funding has systematically deteriorated since joining the Retirement Systems of Alabama (RSA) plan on January 1, 1995 as illustrated by an initial unfunded pension liability of \$3.6 million that has grown to more than \$24.7 million as of September 30, 2015 (the most recent actuarial information available) representing an annualized growth rate of 10.5%; and

WHEREAS the deterioration of the City's (2460 MTB) pension funding has occurred in spite of the significant growth of the actuarially determined pension contribution of 10.48% (combined employee and employer contribution percentage) in 1995 to more than 21% effective after October 1, 2017; and

WHEREAS the City Council has demonstrated its commitment to addressing the situation by authorizing additional pension contributions totaling \$9.3 million (\$2 million in 2001, \$7 million in 2007, and \$300,000 in 2008), however, it appears that some portion of these prior excess contributions has effectively been returned to the City by way of the smoothing of actuarial gains through the [actuary's] reduction of the City's annual required contributions; now, therefore,

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes recurring installments to be remitted between January 10, 2017 and September 30, 2017 to the Retirement Systems of Alabama from the City's General Fund budget and/or Debt Service Reserve Fund (the aggregate amount of which shall total \$600,000) for the purpose of minimizing future required employer pension contribution increases and to slow, and hopefully reverse, the growth of the unfunded actuarial accrued liability of unit 2460 MTB.

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes ongoing recurring installments to the Retirement Systems of Alabama (unit 2460 MTB) in an aggregate amount for each fiscal year equal to the total pension contribution for fiscal year 2017 including the additional \$600,000 described above expressed as a percentage of payroll minus the required pension contribution expressed as a percentage of payroll as reported in the applicable annual actuarial valuation multiplied by the pensionable wages for the applicable fiscal year [(2017 total pension contribution expressed as percentage of payroll minus the actuarially determined pension contribution %) * future pensionable wages].

ADOPTED: This 10th day of January, 2017.

Council President

APPROVED: This 10th day of January, 2017.

Mayor

MOUNTAIN BROOK FINANCE COMMITTEE**DECEMBER 2, 2016**

The Finance Committee (established pursuant to Resolution Nos. 1989-008 and 1999-180) of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 8:30 a.m. on Friday, the 2nd day of December, 2016. The Chairman called the meeting to order and the roll was called with the following results:

Present:	Lloyd Shelton, Chairman	Jack Martin
	John Doody	Thomas Yardley
	Craig Fravert	Stewart Welch (non-voting, advisory member)
		Sam Gaston (non-voting, advisory member)
Absent:	Page Daniel	
	Bryan Helm	

Also present was Finance Director Steven Boone.

1. INTRODUCTION

Mr. Boone:

- The Retirement Systems of Alabama (RSA) is comprised of three separate pension plans: Employees' Retirement System (ERS) which includes all State employees and those of approximately 900 local governments and other agencies, Teachers Retirement System (TRS), and the Judicial Retirement System (JRS)
- Each of the pension systems has a board that consists of members appointed by the governor and active employees and retirees (lay people) of the respective plans elected by the membership
- The pension boards use the RSA to perform all administrative functions of the pension systems (investment management, enrollment, compliance, benefit payments, etc.)
- The investments are held in one account with assets distinguished by pension system by way of the RSA's accounting system. (ERS participating agencies are also segregated each with their own actuarial assumptions and annual valuations)

Regarding a November 30, 2016 telephone conversation with Jackie Graham, State of Alabama Personnel Director

- Last year, Council members Pritchard and Shelton, City Manager Sam Gaston, and Finance Director Steven Boone met with Jackie Graham, Personnel Director for the State of Alabama and governor's appointee to the ERS Board, along with two other state employees. At that time, the ERS Board was working to implement changes to its investment policy and other governance-related issues to shift control away from the executive director of the RSA back to the ERS Board. The changes were implemented and the ERS Board planned to work with the TRS Board to implement similar policy changes. Ms. Graham reported that the TRS Board appears to be loyal to the RSA and existing policies and practices.
- It has been determined upon advice of ERS counsel that as long as the RSA follows established investment policies, the ERS Board cannot influence RSA decisions with respect to existing investment holdings
- However, the governance changes implemented a year ago do seem to be working. This past year, the RSA sought approval from the ERS Board to invest additional pension assets into one of the RSA's Mobile real estate holdings. The request was denied by the ERS investment committee. To date, the RSA has not attempted to circumvent the denial by investing through one of the other pension systems.

Based on a December 1, 2016 educational seminar presentation by and subsequent meeting with Diane Scott, CFO of the RSA:

- GASB 68 stipulates that the Total Pension Liability is to be discounted at the assumed market return on plan assets to the extent available. RSA's actuaries are projecting the City's inflows and benefits (outflows) out 100 years and when the City's pension trust fund is projected to be depleted, an adjustment to the City's pension contribution is factored into the rate (currently 1.17% of the 13.30% required). RSA is discounting the City's total pension liability at the assumed rate of return on long-term investments of 8%. Apparently, there is some point between 2015 and 2115 that the City's trust assets are projected to be depleted hence the 1.17% adjustment. Beginning with the September 30, 2016 actuarial valuation, the RSA will change its assumed investment rate of return (and therefore the discount rate used to determine the total pension liability) from 8% to 7.75%. The change without regard to other influences is estimated to increase the total pension liability (and unfunded pension liability) by \$2 million. The change in assumption (approved by the ERS Board) will be implemented over two years.
- There are several ERS agencies of the 900 +/- that are fully funded
- There are 5-6 agencies of the 900 +/- that contribute amounts into their respective pension trusts that exceed the amounts determined in their actuarial valuations
- RSA can administratively accommodate the City of Mountain Brook's proposed monthly excess contributions (if paid separately from the payroll withholdings and City matching payments) – Appendix 1

2. **RECOMMENDATION OF THE FINANCE DIRECTOR (APPENDIX 1), SYNOPSIS OF FINANCE COMMITTEE DELIBERATIONS AND RECOMMENDATIONS**

The members of the Committee considered the following:

- **Merits of making the excess contributions to the RSA versus retaining funds internally (as has been done since 2008)**
 - The City can legally only invest in specified fixed income securities. Therefore, the City cannot achieve an investment rate of return close the assumed rate of return of 7.75% effective September 30, 2017.
 - The internal savings are not protected from creditors as is the case with the pension trust assets
 - The internal savings could be redirected at any time at the discretion of the City Council
 - Accumulating funds internally leaves open the possibility of other interests competing for the funds
- **In spite of the separate [internal] accounting of the ERS participating agencies, is it possible for any of the City's trust assets to be diverted to another agency?**
 - Anything is possible, however, there are documented cases where RSA participating agencies privatized (namely hospitals) and therefore ceased their participation. Eventually the pension trusts depleted their trust assets leaving the pension beneficiaries without their promised benefits. Neither the State of Alabama nor RSA interceded in these documented cases.
- **Is there a way for the City to establish a separate pension trust that will allow the City to invest in a manner that might allow the City's returns to be increased as compared to the fixed income investment limitations currently applicable to local governments**
 - Obviously a legal question, but likely not. Even if it were determined to be possible, the City has heretofore demonstrated that it has no will or intention of adopting an "aggressive" investment strategy as evidenced by the investment policies applied to the [IRC 115] Other Post-Employment Benefits Trust established 6-7years ago.
- **Has a financial projection been considered to determine the long-term implications and sustainability of the suggested excess pension contributions**
 - No, however, the Finance Director expressed his confidence based on current economic conditions that the budget can absorb this cost. If another recession hits, other adjustments will be necessary. However, projections would not contemplate and could not accurately forecast the depth of another recession.

- The City escrowed \$300,000 of the proposed 2017 payment from 2016 excess surplus and can draw the other \$300,000 from the 2017 Debt Service Fund transfer, if necessary. For the time being, if approved, the Finance Director proposes that:
 - 1) The 2017 budget be left as is
 - 2) The \$600,000 be paid monthly between the date approved and year end
 - 3) The City evaluate the ending surplus at the end of 2017 as usual
 - 4) The 2018 budget be developed including the extra cost (the City can try to continue setting aside the \$300,000 in the Debt Service Fund or stop depending on how the 2018 budget develops)
 - 5) If 2017 and future years generate significant excess surpluses, the City can evaluate whether to add to the extra contribution in the fall along with other capital transfers
- **How was the \$600,000 suggested excess contribution determined?**
 - In hind sight, it is the Finance Director's opinion that the City erred when it decided to stop remitting the \$300,000 extra in 2009
 - Because the actuarial model and methodology amortizes actuarial gains and losses to guide plans back to the norm, it appears that the RSA has effectively returned a significant portion of the \$9.3 million excess payments made in 2001, 2007 and 2008 by virtue of the reduced annual required pension contributions expressed as a percentage of payroll
 - The \$600,000 amount is recommended because it is sustainable based on current economic conditions (it is not to imply that it is sufficient to amortize the unfunded liability but better than the current strategy of following the actuarial recommended funding level as evidenced by the continued increasing unfunded liability and City pension contribution)
 - The strategy and amount recommended are intended to mitigate expected future pension cost increases and eventually lead to a reduction in the unfunded pension liability
 - It is the hope and recommendation that a systematic [over-funding] funding strategy can be implemented that will transcend changes in elected officials and administrations
 - [Editorial observation: The City's 2018 pension contribution includes a 1.17% "up-charge" based on the actuaries' 100-year projection. The up-charge is estimated to be \$145,000 (September 30, 2015 pension wages of \$12,421,007 (1.17%)). While the \$600,000 may not be enough to reverse the growth of the unfunded pension liability, it is more than 4 times what the actuaries' are recommending in the 2018 contribution calculation of 13.3% of payroll.]
- **Expressed frustration with the RSA administration, investment selection and policies, limited control by the City, and inability to get constructive changes legislatively**
 - Mr. Boone pointed out that there are policy measures available to the City that are at the sole discretion of the City Council that can positively affect (albeit small) the City's pension situation
 - As suggested in the memo (Appendix 1), not granting future retiree cost-of-living adjustments until a desired level of funding is achieved
 - Eliminating altogether or shortening the duration of the retiree medical insurance benefit. Currently, retiree's that qualify may remain on the City's group medical plan for the lesser of 13 years or until they are eligible for Medicare.
 - Eliminating or significantly reducing the annual longevity bonus payment thereby a) reducing the pension wage and thereby pension benefits used to determine the Total Pension Liability and b) lowering General Fund annual operating expenses that can offset increasing pension costs
 - Mayor Welch suggested that rather than eliminating or reducing these benefits thereby adversely affecting current employees, a better approach might be to implement such changes for employees hired at some future date to be determined by the City Council

Upon conclusion of the discussion, Chairman Shelton made a motion that 1) the City Council authorize the payment of excess contributions in the initial amount of \$600,000 to the City's pension trust administered by the RSA (such payments to be made monthly) and that the City continue to fund the pension trust based the resulting ratio of total pension contribution/pensionable compensation without regard to future actuarially determined contribution amounts, 2) that the City Council consider

adopting an ordinance expressing that the City shall not authorize retiree cost-of-living increases in any year that the Unfunded Actuarial Accrued Liability (UAA) is less than 90% of the Actuarial Value of Assets as reported in the City's most recent actuarial valuation report, 3) that in conjunction with the 2018 budget deliberations, the City Council consider reducing or eliminating the longevity bonus for employees hired after a date to be determined by the City Council, and 4) that in conjunction with the 2018 budget deliberations, the City Council consider eliminating or shortening the term that retirees may continue to participate in the City's group medical plan for eligible employees that retire after a date to be determined by the City Council. The motion was then considered by the members of the Finance Committee. Jack Martin seconded the motion. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes:	Lloyd Shelton, Chairman	Jack Martin
	John Doody	Thomas Yardley
	Craig Fravert	

Nays: None

Chairman Shelton thereupon declared that said motion carried by a vote of 5—0.

3. ADJOURN

There being no further business, Chairman Shelton adjourned the meeting.

4. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the Finance Committee of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on December 2, 2016, and that the meeting was duly called and that no formal [City Council] business or action was conducted at said meeting.


 City Clerk



CITY OF MOUNTAIN BROOK

P. O. Box 130009
 Mountain Brook, Alabama 35213-0009
 Telephone: 205.802.2400
 www.mtnbrook.org

December 2, 2016

To: Mayor, members of the City Council, and City Manager
 From: Steven Boone
 Subject: Pension plan

Good news, bad news. The actuarial valuation reports and the GASB financial reporting information for the year ended September 30, 2015 are available. The bad news (as expected), the unfunded pension liability increased significantly largely due to poor investment/market performance. The good news is that the City's pension contribution rate(s) (as a percentage of payroll) will not increase for fiscal 2018. Following is a summary of the actuarial information:

As of September 30, 2015	City	Park	Library	Total
Actuarial value of assets	\$ 43,506,508	\$ 1,646,566	\$ 3,880,742	\$ 49,033,816
Actuarial accrued liability (AAL)	<u>\$ (68,234,247)</u>	<u>\$ (1,734,282)</u>	<u>\$ (4,052,830)</u>	<u>\$ (74,021,359)</u>
Unfunded AAL	\$ (24,727,739)	\$ (87,716)	\$ (172,088)	\$ (24,987,543)
Market gains (losses) omitted for smoothing	\$ (469,279)	\$ (20,459)	\$ (51,615)	\$ (541,353)
Adjusted unfunded AAL	<u>\$ (25,197,018)</u>	<u>\$ (108,175)</u>	<u>\$ (223,703)</u>	<u>\$ (25,528,896)</u>
Funded ratio	63.1%	93.8%	94.5%	65.5%

As of September 30, 2014 (for comparison)	City	Park	Library	Total
Actuarial value of assets	\$ 41,141,583	\$ 1,545,835	\$ 3,531,650	\$ 46,219,068
Actuarial accrued liability (AAL)	<u>\$ (64,602,214)</u>	<u>\$ (1,641,239)</u>	<u>\$ (3,754,707)</u>	<u>\$ (69,998,160)</u>
Unfunded AAL	\$ (23,460,631)	\$ (95,404)	\$ (223,057)	\$ (23,779,092)
Market gains (losses) omitted for smoothing	\$ 2,666,758	\$ 96,302	\$ 217,293	\$ 2,980,353
Adjusted unfunded AAL	<u>\$ (20,793,873)</u>	<u>\$ 898</u>	<u>\$ (5,764)</u>	<u>\$ (20,798,739)</u>
Funded ratio	67.8%	100.1%	99.8%	70.3%

Employer pension contribution rates effective for period beginning October 1, 2017 (fiscal 2018)

Employer contribution rate (Tier 1: hired < 1/1/2013)	13.30%	2.62%	2.61%
Normal cost	0.89%	1.08%	0.61%
Accrued liability	12.04%	1.17%	1.63%
Pre-retirement death benefit	0.02%	0.02%	0.02%
Administrative expense (RSA)	0.35%	0.35%	0.35%
Employer contribution rate (Tier 2: hired > 1/1/2013)	13.00%	0.61%	2.09%
Normal cost	0.59%	-0.93%	0.09%
Accrued liability	12.04%	1.17%	1.63%
Pre-retirement death benefit	0.02%	0.02%	0.02%
Administrative expense (RSA)	0.35%	0.35%	0.35%

For financial reporting purposes GASB requires alternative reporting from that illustrated above. As expressed in the actuaries' report to the City . . . "These results are only for financial reporting and may not be appropriate for funding purposes or other types of analysis. Calculations for purposes other than satisfying the requirement of GASB 67 and GASB 68 may produce significantly different results. Future actuarial results may differ significantly from the current results presented in the report due to such factors as changes in plan experience or changes in economic or demographic assumptions." Below is a summary of the GASB reporting information (all units combined):

	Total Pension Liability (a)	Plan Fiduciary Net Position (b)	Net Pension Liability (Asset) (c)
Balances at September 30, 2014	\$ 71,076,028	\$ 49,199,421	\$ 21,876,607
Changes for the year:			
Service cost	\$ 1,300,723	\$ 0	\$ 1,300,723
Interest	\$ 5,523,394	\$ 0	\$ 5,523,394
Changes of assumptions	\$ 0	\$ 0	\$ 0
Differences between expected and actual experience	\$ 809,623	\$ 0	\$ 809,623
Contributions-Employer	\$ 0	\$ 1,578,733	\$ (1,578,733)
Contributions-Employee	\$ 0	\$ 1,163,946	\$ (1,163,946)
Net investment income	\$ 0	\$ 576,080	\$ (576,080)
Benefit payments, including refunds of employee contribution:	\$ (4,067,215)	\$ (4,067,215)	\$ 0
Administrative expense	\$ 0	\$ 0	\$ 0
Transfers among employers	\$ 0	\$ 41,498	\$ (41,498)
Net changes	\$ 3,566,525	\$ (706,958)	\$ 4,273,483
Balances at September 30, 2015	\$ 74,642,553	\$ 48,492,463	\$ 26,150,090
Deferrals			
Deferred outflows of resources	\$ 0	\$ 3,969,788	\$ (3,969,788)
Deferred inflows of resources	\$ 88,210	\$ 0	\$ 88,210
Net effect on net position (or "equity")	\$ 74,730,763	\$ 52,462,251	\$ 22,268,512

Regarding the issue of funding policy raised during the 2017 budget meetings:

Service cost represents the actuaries estimated benefit accrual for active employees. In theory, this amount set aside and invested annually over an employees' career will result in a fully funded trust that will be used to satisfy the payment of benefits over the retiree's and their beneficiaries' lives. Therefore, contributions in excess of the service cost (excluding pre-retirement death benefits and [RSA] administrative expenses) reduce the accrued liability. As illustrated in the GASB information above, the contributions (employer plus employee) for 2015 totaled **\$2,742,679** which exceed the service cost of **\$1,300,723** by \$1,441,956.

The investments are assumed (for actuarial purposes) to grow at the average annual rate of 8%. Similarly, the total pension liability is charged interest at the rate of 8% annually. If the trust assets equalled the total pension liability and the trust assets achieved the long-term rate of return equal to the interest charged on the total pension liability, the interest expense and investment returns would offset. Because the City's trust assets are less than the total pension liability, even if the trust asset return of 8% could be achieved, there would be a shortfall equal to the net pension liability times the assumed investment rate of return or \$1,921,000 found by averaging the net pension liability and multiplying by the investment rate of return $((\$26,150,090 + \$21,876,607) / 2 * 8\%)$.

Therefore, it is [arguably] reasonable to estimate an annual contribution target and contribution deficiency as follows:

Service cost	\$ 1,300,723
Equivalent investment return on the net pension liability	\$ 1,921,000
Contribution target (without regard to the accrued liability)	\$ 3,221,723
Additional amount to amortize the net pension liability	
\$26,150,090 / 20 years	\$ 1,300,000 ⁽¹⁾
Contribution target	\$ 4,521,723
Actual contributions	
Employer	\$ 1,578,733
Employee	\$ 1,163,946
Actual contributions	\$ 2,742,679
Contribution excess (deficiency) for the year ended September 30, 2015	\$ (1,779,044)
Employer pension contribution rate as a percentage of payroll for fiscal year 2015	12.39%
Contribution deficiency expressed as a percentage of payroll	13.96%
Employer contribution target for fiscal year 2015	26.35%

⁽¹⁾ If amortized over 30 years, the additional amount would be \$870,000 (\$26,150,090 / 30) or 6.8% of payroll.

Remember, that the above analysis is not based on established actuarial principles but rather observations of the City's experience and the assumption/perception that the actuarial principles are flawed with respect to funding policy as arguably demonstrated by the City's worsening funded status and increasing pension contribution rate. Also, keep in mind that even if the target contribution above were made into the trust, market volatility and trust returns less than the 8% assumed rate of return would require an even higher contribution target.

Obviously, the City's budget cannot currently support a pension contribution at the rate of 20% (30-year amortization) or 26+% (20-year amortization) of payroll (although a 20% rate is conceivable within the next 5-7 years). However, as expressed in the actuarial report, the GASB reporting information may not be appropriate for funding purposes. By extension, the GASB information may not be appropriate when considering the sustainability of the plan either.

Following is a summary of my research since the August 2016 budget planning session where the notion of "over-funding" the plan was first discussed (see also "Pension Obligation Bond (POB) Considerations" dated July 2016):

August 19, 2016

Conversation with Diane Scott, CFO of the RSA (334/517-7302)

I explained my proposed strategy of systematically over-funding the pension plan. Scott explained that the City is in a [RSA] special funding status. GASB 68 stipulates that the Total Pension Liability is to be discounted at the assumed market return on plan assets to the extent available. RSA's actuaries are projecting the City's inflows and benefits (outflows) out 100 years and when the City's pension trust fund is projected to be depleted, an adjustment to the City's pension contribution is factored into the rate (currently 1.17% of the 13.30% required). RSA is discounting the City's total pension liability at the assumed rate of return on long-term investments of 8%. Apparently, there is some point between 2015 and 2115 that the City's trust assets are depleted hence the 1.17% adjustment. Beginning with the 9/30/2016 actuarial valuation, the RSA will change its assumed investment rate of return (and therefore the discount rate used to determine the total pension liability) from 8% to 7.75%. The change is estimated to increase the total pension liability (and unfunded pension liability) by \$2 million. The change in assumption will be implemented over two years.

Scott stated that the RSA prefers to alter the assumptions to achieve a higher employer contribution (i.e., reduce the amortization period) rather than having employers remit amounts different from what is determined in the actuarial valuations. I countered that modifying the assumptions is unacceptable to the City as the effect of the over-funding is no longer measurable and no longer discretionary.

Scott conceded that the RSA can account for the excess contributions but the RSA requires that such payments be made by way of separate check (not comingled with the monthly employer and employee contributions).

Scott went on to say that the RSA is contemplating reducing the assumed market rate of return on trust assets. Therefore, the combination of 1) closed amortization period required by GASB, 2) reducing the discount rate for valuing the Total Pension Liability, and 3) reducing the assumed return on investments all lead to 1) increasing the Net Pension Liability and 2) increasing the employers' pension contribution.

August 25, 2016

Conversation with John Mitchell of Benassist (john.mitchell@benassist.org, 866/511-3328) referred to me by Jason Harp, CPA of Carr, Riggs & Ingram

Benassist (actuaries) works primarily with single employer pension plans as opposed to multi-employer plans like RSA. Mr. Mitchell confirmed that the systematic over-funding should result in a reduction to the actuarially calculated employer pension contribution as it represents an actuarial gain or benefit from the actuarially determined contribution. He agrees that the proposed over-funding policy may cause some administrative difficulties for the RSA. However, provided a mechanism is in place, it should not matter what frequency the over-funding payments are made (e.g., monthly, quarterly, or annually).

August 25, 2016

Conversation with Catherine Turcott, Principal and Managing Director with Cavanaugh McDonald Consulting (CMC) 678/388-1700

I have talked with Ms. Turcott on previous occasions regarding the City's prior lump sum contributions. Scott had already contacted Turcott regarding our August 19, 2016 telephone conversation.

Turcott was aware of the administrative/accounting system RSA utilizes to account for excess/contributions. As long as the "special payments" are reported to CMC, the actuaries can factor them appropriately into the actuarial model.

Turcott confirmed that systematically over-funding the plan represents an actuarial gain that will factor into the determination of the employer contribution rate. As long as the "special payment" exceeds the percentage of payroll that the contribution would otherwise be scheduled to increase, the contribution rate (expressed as a percentage of payroll) should decrease.

Turcott confirmed that RSA is currently discounting the total pension liability at 8% (contrary to GASB 68). Instead, the actuary is running a forecast of the plan (100 years according to Scott) and adjusting the matching contribution to prevent a forecast pension asset shortfall. Turcott expects RSA to approve some changes in assumptions for the next valuation effectively reducing the discount factor that in turn will increase both the Total Pension Liability and the Unfunded Pension Liability which in turn will result in an increase to the annual required contribution.

Recommendations

1. Increase the pension contribution \$600,000 annually (or \$50,000 per month). Determine the payroll percentage of the increased payment (approximately 15.5%–16% of payroll). Contribute at least that percentage annually thereafter (and disregard the actuarially calculated employer pension contribution except for payroll withholding and reporting purposes).

The 2017 over-funding will be reflected in the actuarial valuation report that will be presented to the City in September 2018. The 2017 valuation report will be used to establish the 2020 employer contribution rate. Therefore, it could be potentially three years (2017-2019) before the excess contributions are factored into the City's pension contribution unless the City requests that a valuation be revised. I see no need to revise a valuation report since the City is going to ignore the reported pension contribution rate.

2. Adopt an ordinance stating that the City shall not grant a retiree cost-of-living pension benefit increase in any year that the Unfunded Actuarial Accrued Liability (UAAL) is less than 90% of the of the Actuarial Value of Assets.

The cost-of-living adjustment (COLA), if granted, directly increases the Actuarial Accrued Liability by way of increased pension contributions and the cost is born solely by the City since only retirees (who no longer contribute to the pension trust) are affected. The City should exercise the limited controls it has with respect to the holding down the UAAL. The COLA would work against the City's over-funding strategy described above.



CITY OF MOUNTAIN BROOK

P. O. Box 130009
Mountain Brook, Alabama 35213-0009
Telephone: 205.802.2400
www.mtnbrook.org

Date: December 30, 2016
To: Sam Gaston, City Manager
From: Steven Boone
Subject: Merit increases for part-time employees

Part-time employees are generally considered unclassified and therefore not governed by the Personnel Board of Jefferson County (PBJC). However, service contracts including part-time positions are subject to the review and approval of PBJC for the purpose of their determining that such contracts and part-time employment are not being used to circumvent the merit system.

The Library is expressly excluded from the merit system and has the largest number of part-time employees. Part-time workers are used sparingly among the other City departments and often those positions are seasonal in nature so merit increases have not been an issue. There is one permanent part-time employee in the court and another [custodian] in the police department. The City has been advised that formal authorization is required to grant merit pay increases for these permanent part-time employees.

I am recommending that the City adopt an ordinance authorizing the City Manager to grant (5%) merit pay increases to permanent part-time employees in a manner consistent with merit system employees (i.e., generally annually at their date of hire (merit date) provided their performance appraisals meet applicable standards). I have attached a draft ordinance for the Council's consideration.

ORDINANCE NO. 1969

**AN ORDINANCE AUTHORIZING ANNUAL SALARY ADVANCEMENT FOR
PERMANENT PART-TIME EMPLOYEES WITHIN ESTABLISHED PAY GRADES
BASED ON MERITORIOUS PERFORMANCE**

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

Section 1. The Appointing Authority of the City is hereby authorized to grant annual salary increases to permanent, part-time employees of the City within established pay grades based on meritorious performance on the job in the same manner as provided in "The Rule and Regulations of the Personnel Board of Jefferson County" including future amendments (Rule 8.2)

Section 2. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

Section 3. Severability. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

Section 4. Effective Date. This ordinance shall become immediately upon publication as provided by law.

ADOPTED: The 10th day of January, 2017.

Council President

APPROVED: The 10th day of January, 2017.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on January 10, 2017, as same appears in the minutes of record of said meeting, and published by posting copies thereof on January 11, 2017, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Overton Park, 3020 Overton Road

Gilchrist Pharmacy, 2805 Cahaba Road
Cahaba River Walk, 3503 Overton Road

City Clerk