

**JOINT MEETING AGENDA OF THE  
MOUNTAIN BROOK CITY COUNCIL AND  
MOUNTAIN BROOK EMERGENCY COMMUNICATIONS (E911) DISTRICT**

**CITY HALL COUNCIL CHAMBER (ROOM A108)  
56 CHURCH STREET, MOUNTAIN BROOK, AL 35213**

**JANUARY 28, 2019, 7:00 P.M.**

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1. Approval of the minutes of the January 14, 2019, joint meeting of the Mountain Brook City Council and Mountain Brook Emergency Communications (E911) District.
2. Consideration: Resolution approving the Final Execution Version of Franchise Agreement between City and Spectrum Southeast, LLC (f/k/a Charter Communications) with minor changes in form previously approved by the Council on December 10, 2018, with said Agreement consolidating therein former separate franchise agreements between the City and Charter Communications (f/k/a Marcus Cable) and the City and Bright House Networks, LLC.
3. Consideration: Resolution authorizing the execution of an agreement between the City and Invasive Plant Control to remove invasive plants from Cahaba River Walk.
4. Consideration: Resolution authorizing the execution of an agreement for the installation of batting cages and bull pens at the Athletic Complex to serve the Girls' Softball Field.
5. Consideration: Resolution authorizing the execution of the second amendment to the facilities use agreement between the City and Levite Jewish Community Center
6. Consideration: Resolution granting a hardship exemption from the development moratorium imposed upon the adoption of Resolution Nos. 2018-150 and 2018-163 with respect to the hardship appeal of Mr. Bill Bowron with respect to Lots 10 and 11.
7. Announcement: The City Council shall conduct a public hearing on February 11, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213 regarding a request by the Mountain Brook Board of Education for the City to call for a referendum to increase the ad valorem tax by up to 10 mils exclusively for educational purposes.
8. Announcement: The City Council shall conduct a public hearing on February 11, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213 to consider an ordinance rezoning a recently annexed parcel located in the Lockerbie subdivision (132 Queensbury Crescent) from its current [temporary] Residence-C District to [permanent] Clustered Residential District.
9. Announcement: The next regular meeting of the City Council will be February 11, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
10. Comments from residents.
11. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
JANUARY 14, 2019**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:15 p.m. on the 14th day of January, 2019. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: None

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

**1. AGENDA**

1. Flashing pedestrian crossing signs for area near Cherokee Bend Elementary School—Richard Caudle of Skipper Consultants (Resolution No. 2019-009 was added to the formal meeting agenda.)
2. Conditional use for an office in the 2<sup>nd</sup> phase of Lane Parke—John Evans and Hunter Simmons (Resolution No. 2019-008 was added to the formal meeting agenda.)
3. Review of the matters to be considered at the formal (7 p.m.) meeting

**2. EXECUTIVE SESSION**

Council President Pro Tempore Pritchard made a motion that the City Council convene in executive session to discuss law enforcement/public safety matter. The City Attorney certified that the subject matter of the executive session is permissible under the Open Meetings Act. The motion was seconded by Council President Smith. There being no further discussion, the vote was called with the following results:

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

Nays: None

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

**3. ADJOURNMENT**

There being no further matters to be discussed, Council President Smith excused those in attendance at the meeting, announced that the City Council shall reconvene in the Council Chamber upon conclusion of the execution session in 15—20 minutes and adjourned the pre-meeting at approximately 6:40 p.m.

**4. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on January 14, 2019, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

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City Clerk

**MINUTES OF THE REGULAR, JOINT MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK AND  
MOUNTAIN BROOK EMERGENCY COMMUNICATIONS (E911) DISTRICT  
JANUARY 14, 2019**

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The City Council of the City of Mountain Brook, Alabama (and Mountain Brook Emergency Communications District) met in public session in the City Hall Council Chamber at 7:00 p.m. on the 14th day of January, 2019. The Council President (and District Chairman) called the meeting to order and the roll was called with the following results:

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

Absent: None

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

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

**1. CONSENT AGENDA**

Council President (and District Chairman) Smith announced that the following matters will be considered at one time on the consent agenda provided no one in attendance objects:

Approval of the minutes of the December 10, 2018, regular meeting of the City Council.

<b>2019-001</b>	Reappoint Patrick Higginbotham to the Board of Zoning Adjustment, to serve without compensation, his term to end December 31, 2021	Exhibit 1
<b>2019-002</b>	Authorize the execution of an agreement between the City and All In Mountain Brook with respect to community education and awareness programs within the City's school system	Exhibit 2, Appendix 1
<b>2019-003</b>	Award the [sole] bid for the purchase of two 2019 Chevrolet Silverado trucks to Donohoo Chevrolet, LLC	Exhibit 3, Appendix 2
<b>2019-004</b>	Authorize the purchase of a Rosenbauer custom fire pumper from Bonaventure Fire Equipment in consideration of \$572,194 said purchase from the Alabama Department of Examiners of Public Accounts approved HGAC purchasing cooperative and the progress payment in the amount of \$269,395 due upon completion of the Rosenbauer Custom fire pumper chassis in consideration of a \$10,830 discount included in the aforementioned purchase price	Exhibit 4, Appendix 3
<b>2019-005 E911</b>	Authorize the purchase of the Tango Tango push-to-talk mobile phone subscription service/application for emergency communication in consideration of \$2,844 annually the cost of	Exhibit 5, Appendix 4

which shall be paid from the Emergency Communications District (E911) funds

2019-006	Authorize the purchase of a 2019 Eagle Ranger SCBA Fill Station Trailer for use by the Fire Department from NAFCO consideration of \$85,475 said purchase from the Alabama Department of Examiners of Public Accounts approved HGAC purchasing cooperative	Exhibit 6, Appendix 5
2019-007	Authorize the execution of an agreement between the City and Friends of Jemison Park with respect to landscape design and improvements in the vicinity of the pedestrian bridge [where Mr. Richard (Dick) Shea will perform the bank stabilization provided, after a meeting with Andrew Phillips of Schoel Engineering, it is determined such stabilization efforts will not erode or impede water flow]	Exhibit 7, Appendix 6
2019-008	Approve the conditional <u>property management</u> business office use application submitted by John Evans for the Lane Parke PUD with the condition that any proposed future use of said property different from that hereby approved shall require formal review and approval by the Mountain Brook City Council	Exhibit 8, Appendix 7
2019-009	Authorize the purchase of two (2) S1-1 School Zone signals with flashing LED lights to be installed with City labor on Wilderness Road in the vicinity of Cherokee Bend Elementary	Exhibit 9, Appendix 8

Thereupon, the foregoing minutes and resolutions were introduced by Council President (and District Chairman) Smith and a motion for their immediate adoption was made by Council member Black. The minutes and resolutions were then considered by the City Council (and District Board). Council member Womack seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President (District Chairman)  
William S. Pritchard III, Council President Pro Tempore  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

Council President (and District Chairman) Smith thereupon declared that said minutes and resolutions (Nos. 2018-001 through 2018-009) are adopted by a vote of 5—0 and as evidence thereof signed the same.

## 2. ANNOUNCEMENT

The next regular meeting of the City Council will be Monday, January 28, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

## 3. ADJOURNMENT

There being no further business to come before the City Council, Council President Smith adjourned the meeting at approximately 7:02 p.m.

## 4. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the joint, regular meeting of the City Council of the City of Mountain Brook, Alabama

held at City Hall, Council Chamber (Room A108) on January 14, 2019, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

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City Clerk

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**EXHIBIT 1**

**RESOLUTION NO. 2019-001**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Patrick Higginbotham is hereby reappointed to the Board of Zoning Adjustment, to serve without compensation, his term to end December 31, 2021.

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**EXHIBIT 2**

**RESOLUTION NO. 2019-002**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into an agreement with All In Mountain Brook, in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

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**APPENDIX 1**

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**EXHIBIT 3**

**RESOLUTION NO. 2019-003**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby awards the bid to Donohoo Chevrolet, LLC, being the sole bidder and whose bid has been determined to satisfy the expressed specifications, for the purchase of two (2) 2019 Silverado trucks for the Fire Department; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Manager is hereby authorized to issue a purchase order and to execute such other documentation determined to be necessary with respect to said purchase.

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**APPENDIX 2**

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**EXHIBIT 4**

**RESOLUTION NO. 2019-004**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the purchase of a Rosenbauer custom fire pumper from Bonaventure Fire Equipment in consideration of \$572,194 said purchase from the Alabama Department of Examiners of Public Accounts approved HGAC purchasing cooperative; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the progress payment in the amount of \$269,395 due upon completion of

**RESOLUTION NO. 2019-010**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby approves the Final Execution Version of Franchise Agreement between City and Spectrum Southeast, LLC (f/k/a Charter Communications), in the form as attached hereto as Exhibit A, with minor changes in form previously approved (Resolution No. 2018-170) by the Council on December 10, 2018, with said Agreement consolidating therein former separate franchise agreements between the City and Charter Communications (f/k/a Marcus Cable) and the City and Bright House Networks, LLC.

**ADOPTED:** This 28th day of January, 2019.

\_\_\_\_\_  
Council President

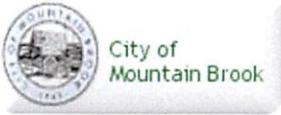
**APPROVED:** This 28th day of January, 2019.

\_\_\_\_\_  
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 28, 2019, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



Steve Boone <boones@mtnbrook.org>

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**FW: Final Execution Version of New City of Mt. Br Franchise Agmt with Spectrum? Charter (with Jan 2019 edits to version previously approved pproved by Council on Dec 10, 2018)**

1 message

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**Steve Stine** <sstine@bishopcolvin.com>  
To: Steve Boone <boones@mtnbrook.org>  
Cc: Sam Gaston <gastons@mtnbrook.org>

Thu, Jan 24, 2019 at 11:00 AM

Steve B, for the City Council Packet for Monday's January 24 Meeting, attached is the Final Execution version of the new Franchise Agmt. with Spectrum/Charter. As you recall, the City Council approved a form of this new Agreement on Dec. 10, 2018, and the attached execution version includes some minor edits to the version that was presented to the City Council on Dec 10, 2019. I do not consider these edits to be of consequence. I will at Monday's Pre-meeting if anyone has any questions about this.

I see that this matter is shown on the current draft of Monday's Agenda as an "amendment to the franchise agreement between the City and Marcus Cable of Alabama, L.L.C., a Delaware limited liability company and successor to Marcus Cable of Alabama, L.P. (dba\ Charter Communications) . . . previously authorized on December 10, 2018."

As the version that the Council approved on Dec 10 was never signed, perhaps a different way to describe this Item might be:

"Approval of Final Execution Version of Franchise Agreement between City and Spectrum Southeast, LLC (f/k/a Charter Communications) w minor changes in form previously approved by the Council on December 10, 2018, with said Agreement consolidating therein former separate franchise agreements between the City and Charter Communications (f/k/a Marcus Cable) and the City and Bright House Networks, LLC."

See you Monday.

Steve

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**From:** Steve Stine [mailto:[sstine@bishopcolvin.com](mailto:sstine@bishopcolvin.com)]  
**Sent:** Tuesday, January 22, 2019 4:37 PM  
**To:** 'Abbott, Paul D'; 'Vice, Taylor C'  
**Cc:** 'Steve Boone'; 'Sam Gaston'  
**Subject:** RE: Mountain Brook Franchise Amendments - Spectrum's 12/21/18 Request for Changes to Agreement Approved by Mt. Brook City Council on Dec 10, 2018

Thanks. I don't think that Taylor needs to come to the meeting next Monday night (but he is welcome if he wants to).

Steve

**From:** Abbott, Paul D [mailto:Paul.Abbott@charter.com]  
**Sent:** Tuesday, January 22, 2019 10:56 AM  
**To:** Steve Stine; Vice, Taylor C  
**Cc:** Steve Boone; Sam Gaston  
**Subject:** RE: Mountain Brook Franchise Amendments - Spectrum's 12/21/18 Request for Changes to Agreement Approved by Mt. Brook City Council on Dec 10, 2018

Steve,

Your proposed additions (with language added in purple) to the Indemnification provision in Section 8b are acceptable to Charter. In fact, I think the changes strike a good balance between the competing concerns—thank you.

I also want to add that I truly appreciate your and your client's patience and willingness to resolve these last three issues, and we also appreciate that you and Mr. Boone will support these changes before the City Council. Please let us know if there is anything further Taylor and I can do to assist your efforts.

Thank you again,

Paul

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**From:** Steve Stine [mailto:ssstine@bishopcolvin.com]  
**Sent:** Monday, January 21, 2019 6:21 PM  
**To:** Vice, Taylor C <Taylor.Vice@charter.com>; Abbott, Paul D <Paul.Abbott@charter.com>  
**Cc:** Steve Boone <boones@mtnbrook.org>; Sam Gaston <gastons@mtnbrook.org>  
**Subject:** RE: Mountain Brook Franchise Amendments - Spectrum's 12/21/18 Request for Changes to Agreement Approved by Mt. Brook City Council on Dec 10, 2018

Taylor and Paul, It appears that the "last unresolved matter" is your suggested change to paragraph 8b of the Insurance/Indemnification provision. The sentence you proposed to add in this paragraph is in red color below and reads:

a. *8 b. Indemnification. Grantee agrees to defend, indemnify and hold the City, and its agents, employees, officials and representatives, harmless from all suits, claims for damages (including personal injury or death and property damage), judgments, losses, expenses (including but not limited to reasonable attorneys' fees, court costs and other litigation costs) and liabilities (hereinafter collectively "Claims") resulting from the following acts or omissions of Grantee (or its employees, representatives, officials, or contractors): (i) its construction, operation or maintenance of the Cable System, (ii) its provision of Cable Services in or about the Service Area, (iii) its use of the Franchise, or (iv) its failure to perform its obligations under this Agreement. City agrees to furnish Grantee written notice of any requests for indemnification pursuant to this Section **at least ten (10) business days prior to the deadline for responding to any complaint or claim for which indemnification is sought, if any such deadline exists, or within thirty (30) days of its receipt of any such claim or demand if there is no deadline for response.** Notwithstanding the foregoing, Grantee shall not be obligated to indemnify the City (or its representatives) for Claims resulting from the independent willful or negligent acts of the City (or its representatives), the City's use of the Cable System, or from the activity or conduct of the City or any person or entity other than Grantee in connection with PEG Channel programming.*

There was no time requirement for the City to assert a claim for indemnification in the pre-existing version of the Franchise Agmt. Also, the customary legal standard that is applied to determine whether a request for indemnification has been timely given is not tied to a specific time period, but considered on the basis whether that notice was provided by such time that the ability of the party being asked to defend and assume responsibility for the subject claim has not

been unduly prejudiced Mt. Brook can accept Spectrum's new notice provision if this sentence is modified includes the word in purple, so this part of Section 8 b will read:

"City agrees to use its good faith effort to furnish Grantee written notice of any requests for indemnification pursuant to this Section **at least ten (10) business days prior to the deadline for responding to any complaint or claim for which indemnification is sought, if any such deadline exists, or within thirty (30) days of its receipt of any such claim or demand if there is no deadline for response**; provided that the City's failure to provide notice in these periods shall not affect, nullify or preclude it from exercising its rights under this provision unless Grantees demonstrates that the City's delay has prejudiced Grantee's ability to assume the defense for and indemnify the City against the claim(s) for which it demands indemnification."

Does this work? Assuming it will, I have inserted this revised wording into Section 8 b, and attach a January 21 version of the Franchise Agreement that Mr. Boone and I can submit to the Mountain Brook City Council at its upcoming January 28 Meeting. At that time we could ask them to approve the 3 changes from the version they already approved last month on December 10 (i.e. the addition of a reference to GAAP in Section 1 d, the addition of "subject to applicable law" in Section 7, and the aforesaid change in Section 8 b.) Let us know.

Steve

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**From:** Vice, Taylor C [mailto:[Taylor.Vice@charter.com](mailto:Taylor.Vice@charter.com)]  
**Sent:** Tuesday, January 8, 2019 5:04 PM  
**To:** Steve Stine  
**Cc:** Sam Gaston; Steve Boone  
**Subject:** RE: Mountain Brook Franchise Amendments - Spectrum's 12/21/18 Request for Changes

Steve,

I have included comments from Paul Abbott in red in the below email that speak to these two items.

Please let me know if a call is needed to discuss further.

Thank you sir,



**Taylor C. Vice** | Director, Government Affairs | 334.235.8830

151 London Parkway | Birmingham, AL 35211

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**From:** Steve Stine <[sstine@bishopcolvin.com](mailto:ssstine@bishopcolvin.com)>  
**Sent:** Tuesday, January 8, 2019 10:43 AM  
**To:** Vice, Taylor C <[Taylor.Vice@charter.com](mailto:Taylor.Vice@charter.com)>  
**Cc:** Sam Gaston <[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)>; Steve Boone <[boones@mtnbrook.org](mailto:boones@mtnbrook.org)>  
**Subject:** RE: Mountain Brook Franchise Amendments - Spectrum's 12/21/18 Request for Changes

Taylor, Steve Boone and I have looked at the 3 additional changes that you want to make to the form of the new Spectrum/City of Mt. Brook franchise agreement that we agreed to late last year. Below is our reaction: Can you help us with the following information?:

1. Page 2, Gross Revenues (section 1d.) – addition of reference to GAAP – “shall be revenues determined in accordance with generally accepted accounting principles (GAAP) and” What is the purpose of this request by Spectrum? We understand that GAAP accounting generally is an accrual based system. The City does not account for revenues such as Franchise Fees on an accrual basis.

The issue here is not how the City accounts for the fees it receives, but rather how Charter calculates revenue for the purpose of determining what its gross revenues are included in the calculation of the franchise fees it remits to the City. As you know, Charter is a publicly traded company that is required to regularly file audited financial statements with the Securities and Exchange Commission (“SEC”), and the SEC requires that those statements comply with GAAP. The accounting principles set forth in GAAP were formulated by the well established guidelines of the Financial Accounting Standards Board (“FASB”) as well as the SEC. These standard setting bodies developed the GAAP accounting rules that Charter follows in appropriately reflecting all revenues and expenses in the operations of its cable system nationwide. Since Charter is obligated to calculate its gross revenues in accordance with GAAP, we believe it best for our franchisees to reflect this fact. It provides additional clarity that will benefit both parties by avoiding misunderstandings and costly disputes down the roads.

2. Page 8, Basic Service for Public Buildings (subsection c) – addition of “subject to applicable law” - This additional wording is acceptable.

Page 9, Indemnification (subsection b.) – addition of “within ten (10) days” - If “within ten (10) days” is added, the affected sentence in this provision would read “City agrees to furnish Grantee written notice within ten (10) days of any requests for indemnification pursuant to this Section. Is Spectrum’s intent here in adding the 10-day time limitation that the City of Mt. Brook could not exercise its right to seek indemnification from Spectrum unless the City gives Spectrum notice of a claim for indemnification within 10 days from the time of any incident that gives rise to the claim for indemnification? No, and we can add language to address this concern. We do want prompt notice after the City receives a claim or demand. The City does not need to be clairvoyant—and I agree it would not make sense to require you to notify us within 10 days of any incident. The time should only start to run once the claim or demand based upon that incident is made. Moreover, to the extent an indemnifiable claim includes a legal duty to respond within a specific time frame, e.g. a complaint, then we would like to make sure we have enough time to prepare a response.

In hindsight, I think we needed to be a little more precise with our edit, as it went beyond what was necessary to address our two concerns. So here is a revised proposal, providing a markup of the entire sentence in question:

Page 9, Section 8b – Indemnification (language in red below included in attached document)

“City agrees to furnish Grantee written notice of any requests for indemnification pursuant to this Section at least ten (10) business days prior to the deadline for responding to any complaint or claim for which indemnification is sought, if any such deadline exists, or within thirty (30) days of its receipt of any such claim or demand if there is no deadline for response. Notwithstanding the foregoing, Grantee shall not be obligated to indemnify the City (or its representatives) for Claims resulting from the independent willful or negligent acts of the City (or its representatives), the City’s use of the Cable System, or from the activity or conduct of the City or any person or entity other than Grantee in connection with PEG Channel programming.

If so, the City will not accept this time limitation as it is commercially and grossly unreasonable, Spectrum would never knowingly accept such a limitation on its contractual rights in an agreement. Legal matters of the nature of demands for indemnification take time to be communicated, investigate and unfold, It would be extraordinary in any business organization (even a smaller organization like the City) for such matters to be internally communicated and resolved within a 10 day period. There are varying statute of limitations as to when claims that can be made against cities in Alabama. If Spectrum wants a time limitation in the Indemnification provision, the City would accept the following language: "City agrees to furnish Grantee written notice of any requests for indemnification pursuant to this Section within sixty (60) days following the expiration of the period in which the underlying claim against the City can be asserted under applicable Alabama law."

As stated above, we recognize and understand your concern. Hopefully the proposed language above addresses it.

Please respond.

Steve Stine

1910 First Avenue North

Birmingham, Alabama 35203

Phone : (205) 251-2881

Fax : (205) 254-3987

Email: [ssstine@bishopcolvin.com](mailto:ssstine@bishopcolvin.com)



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**From:** Vice, Taylor C [mailto:[Taylor.Vice@charter.com](mailto:Taylor.Vice@charter.com)]

**Sent:** Friday, December 21, 2018 1:36 PM

**To:** Steve Stine

**Cc:** Sam Gaston; Steve Boone

**Subject:** Mountain Brook Franchise Amendments

Steve,

In the rush to get the franchise completed this year, our team overlooked a couple of items in the franchise agreement that was passed at the December 10<sup>th</sup> City Council Meeting.

These changes should not do anything to materially change the document as a whole.

I've added language in the attached document as well as spelled it out below.

- Page 2, Gross Revenues (section 1d.) – addition of reference to GAAP – “shall be revenues determined in accordance with generally accepted accounting principles (GAAP) and”
- Page 8, Basic Service for Public Buildings (subsection c) – addition of “subject to applicable law”
- Page 9, Indemnification (subsection b.) – addition of “within ten (10) days”

I'm not sure which process is easier – to amend the document or simply place this corrected agreement back on the Council agenda in January.

Please let me know when you have time to discuss.

Thanks Steve,



**Taylor C. Vice** | Director, Government Affairs | 334.235.8830

151 London Parkway | Birmingham, AL 35211

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## FRANCHISE AGREEMENT

This **Franchise Agreement** (“the Agreement”) is made between the **City of Mountain Brook, Alabama** (hereinafter the “Grantor” or “City”), and **Spectrum Southeast, LLC**, which was heretofore been locally known as **Grantee Communications** (hereinafter referred to as the “Grantee”). The City and Grantee may be referenced herein separately as a “Party,” and collectively as the “Parties.”

### RECITALS

WHEREAS, pursuant to City Ordinance No. 1302 enacted on or about March 23, 1998, the Grantor granted Marcus Cable of Alabama, LLC the franchise and right to offer cable services to customers throughout the City (the “Existing Agreement with Marcus Cable”);

WHEREAS, subsequent to said Ordinance No. 1302, Grantee (or its predecessor in interest) acquired the interest of Marcus Cable of Alabama, LLC and has succeeded to the rights and obligations in the Existing Agreement with Marcus Cable;

WHEREAS, pursuant to City Resolution No. 2013-108 adopted on or about July 22, 2013, the Grantor granted Bright House Networks, LLC the franchise and right to offer cable services to customers throughout the City (the “Existing Agreement with Bright House”);

WHEREAS, subsequent to said Resolution No. 2013-108, Grantee (or its predecessor in interest) acquired the interest of Bright House Networks LLC and succeeded to the rights and obligations in the Existing Agreement with Bright House Cable;

WHEREAS, the Parties desire that, as of the Effective Date,

(a) the Existing Agreement with Marcus Cable and the Existing Agreement with Bright House Cable (which collectively may be referenced hereinafter as the “Existing Agreements”) terminate; provided that the respective obligations of the Parties that arise under those Agreements and by their nature survive termination shall continue in effect following such termination;

(b) the provisions in this Agreement shall apply to Grantee’s cable service operations in the City;

(c) the terms, conditions and provisions in this Agreement supersede those in the Existing Agreements and previously enacted Ordinance and Resolution applicable to the cable service operations of Marcus Cable of Alabama, LLC and Bright House Networks, LLC (collectively, “Grantee’s Predecessors in Interest in the City”); and

(d) the Parties desire that Grantee hold the Franchise (as defined below) to provide Cable Service (as defined below) within the geographic limits of the City.

WHEREAS, the City acknowledges that Grantee's Predecessors in Interest in the City have substantially complied with the material terms of the Existing Agreements under applicable law, and Grantee represents that it has the financial, legal, and technical ability that is reasonably sufficient to provide cable-related services, facilities, and equipment to meet the future needs of the community; and

WHEREAS, the Parties desire to enter into this Agreement whereby, as of the Effective Date, Grantee will operate a Cable System (as defined below) in the City on the terms set forth herein.

#### WITNESSETH

In consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

**1. Definitions.**

a. "Cable Act" means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.

b. "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act.

c. "Franchise" means the authorization granted hereunder of the privilege, permit, license or other right to construct, operate and maintain a Cable System and provide Cable Services to Subscribers within the Service Area.

d. "Gross Revenues" shall mean all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Grantee that arises out of the provision of Cable Service within the City. Gross Revenues shall be revenues determined in accordance with generally accepted accounting principles (GAAP) and include, but are not limited to, the following:

i. All subscription fees paid by Subscribers in the City for the provision of Cable Services;

ii. All revenue derived from advertising sales and home shopping (including Home Shopping Network and any comparable shopping from home network) sales derived from the operation of the Service within the City. Advertising commissions paid to third parties shall be deducted from advertising revenue included in Gross Revenues. The allocation of advertising and home shopping revenue shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant region or national compensation arrangement; and

iii. All revenue arising from or attributable to the provision of Cable Services that are charged Subscribers in the City for any basic, optional, premium, per-channel or per-program, on-demand or video or audio service; cable service provider fees; installation and re-connection fees; charges for converter boxes, DVRs and other equipment rentals and/or sales; and upgrade, downgrade or other change-in-service fees.

Gross Revenues do not include:

- i. uncollectible fees; provided that, all or part of uncollectible fees that are written off as bad debt but subsequently collected, less expenses of collection, shall be included in Gross Revenues in the period collected;
- ii. insufficient funds (returned checks);
- iii. late payment fees;
- iv. maintenance charges for equipment and wire-maintenance plans;
- v. discounts, refunds, and other price adjustments that reduce the amount of compensation received by Grantee;
- vi. revenue from Grantee's sale of capital assets or surplus equipment;
- vii. revenues for voice or telecommunication services, data transmission, information services, or the provision of directory or Internet advertising that are aggregated or bundled with amounts billed to Subscribers for Cable Services; provided the Parties acknowledge and agree that the part of any bundled charge that is payable by Subscribers for such bundled services that is attributable to Cable Services shall be included in Gross Revenues for purposes of this Agreement; or
- viii. amounts billed to Subscribers to recover government-imposed taxes, fees, or surcharges in connection with the provision of Cable Service, including the Franchise Fee and any educational/governmental channel fee contemplated hereunder.

e. "Service Area" shall mean the territory comprising the entire municipal limits of the City; this term may be used interchangeably with the term "Franchise Area."

f. "Streets" means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, and the public grounds, places or water within the geographic boundaries of the City.

g. "Subscriber" means any person in the City lawfully receiving any Cable Service from Grantee.

**2. Granting of Franchise.**

The City hereby grants to Grantee a non-exclusive Franchise for the use of the Streets within the Service Area for the construction, operation and maintenance of its Cable System, upon the terms and conditions set forth herein. Nothing in this Franchise shall be construed to prohibit Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

**3. Effective Date/Term.**

This Agreement will become effective on January 1, 2019 (the "Effective Date").

Unless otherwise mutually agreed, this Agreement and the Franchise granted herein shall be in effect for an initial term of five (5) years that commences on the Effective Date. Following this initial term, this Agreement and Franchise will be automatically extended for an additional term of five (5) years, unless any of the following occur:

- a. the City initiates renewal procedures in accordance with Section 546 of the Cable Act before the expiration of the term of this Agreement;
- b. the City submits a proposal for the renewal of the Franchise under the alternative renewal procedures specified in Section 546(h) of the Cable Act; or
- c. Proceedings to terminate or revoke the Franchise are initiated in accordance with the requirements of the Cable Act and this Agreement.

**4. Use of Streets.**

a. Grantee shall have the right to use the Streets of the City for the construction, operation and maintenance of the Cable System, including the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities whenever practicable.

b. Grantee's facilities shall be installed underground in any part of the Service Area where existing telephone and electric services are both underground at the time of construction of the Cable System. In areas where either telephone or electric utility facilities are installed aerially at the time of Grantee's construction, it may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, the Grantee shall likewise place its facilities underground.

c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets of the City, but shall do so only after reasonable consultation with the City through its Arborist or other City official acting in such capacity.

d. Grantee, at no cost to the City, shall promptly repair or replace any facility, service or public improvement in the City (including but not limited to any Street, sewer, electric facility, water main or fire alarm, police communication or traffic control equipment) that Grantee damages in the course of exercising its Franchise privileges.

**5. Standards for Operation of Cable System.**

a. At all times Grantee shall employ ordinary care in the maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the City, the property or improvements of the City or the life, health or property of third parties that may be affected by Grantee's operations.

b. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may, from time to time, be amended.

c. In the course of designing, constructing, maintaining and operating its Cable System in the City, Grantee further agrees to:

i. comply with all applicable sections of the National Electric Safety Code;

ii. comply with all federal, state and local laws, codes, rules and regulations (collectively hereinafter "Laws") applicable to its operations, including, but not limited to, the following: Laws regarding safety in the workplace and protection of workers; Laws for use of the roads and operation of vehicles; and Laws that protect the environment, air or water quality or the public health, safety and welfare (including, without limitation, those issued by the Alabama Department of Environmental Management and Environmental Protection Agency); and

iii. perform its operations in accordance with industry standards for Cable Service providers.

**6. Service for Subscribers.**

a. Grantee shall continue to offer and provide Cable Service to all residences and locations within the Service Area where Grantee currently provides Cable Service. Its offering of Cable Service to Subscribers is conditioned upon Grantee having legal access to any such Subscriber's dwelling or other unit wherein such Cable Service is provided.

b. If the City annexes any territory outside the current Service Area in which Grantee (or any of its affiliates) is providing Cable Service, such annexed area will be subject to the provisions of this Agreement (including the obligation to remit the Franchise Fee to City) within ninety (90) days after the City provides Grantee notice of that annexation.

c. During the term of this Agreement, Grantee agrees that, with respect to its provision of service, it will comply with all Customer Service Standards set forth by the FCC in 47 C.F.R. § 76.309 or elsewhere in Part 76 of its rules and regulations (including those applicable to cable office hours, availability of telephone service, installation, outages, service calls, refunds, credits and customer notices), as may from time to time be amended.

d. Grantee shall provide its Subscribers and City any notices of changes in rates, programming services or channel positions or other information as may be required by the FCC in Part 76 of its rules and regulations, as may from time to time be amended.

e. Grantee shall not refuse to provide or deploy Cable Services to any customer (or a group of potential customers) in the City because of the income, race, gender, national origin, disability or other status of any of those customers.

#### **7. Public Services.**

a. Grantee shall provide one (1) channel on the Cable System for the use by the Grantor for original, locally-produced, non-commercial, video programming for Government access programming. Programming shall be produced in Mountain Brook, AL. The Government access channel may be placed on any tier of service available to all Subscribers, including the digital tier.

b. If the City Council, the governing body for the Grantor, approves collection from Grantee Subscribers of a monthly PEG support fee (the "PEG Fee"), Grantee agrees to commence collecting that Fee from its Subscribers within sixty (60) days after the City Manager provides Grantee notice of the City's intent to commence collection of those Fees. In no event will the amount of the PEG Fee exceed \$0.25 cents per Subscriber. The City will use these PEG Fees to defray expenses incurred for repairs, maintenance, upgrades, or replacement of equipment or operating facilities used to produce or deliver programming over the PEG Channel. Grantee will remit to the City any PEG Fees that it collects from the Grantee's Subscribers on the same frequency as the Franchise Fee.

c. Basic Service for Public Buildings. At its expense and subject to applicable law, Grantee shall install and provide complimentary monthly basic cable service to one outlet at each public school, and at each municipal, fire station, police station, library or other government building within the Service Area that passes within 125 feet of Grantee's distribution cable.

d. Emergency Broadcast. Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS").

**8. Insurance/Indemnification.**

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

-Workers' Compensation	Statutory Limits
-Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.); \$3,000,000 General Aggregate
-Automobile Liability, including coverage on all owned, non-owned hired vehicles	\$1,000,000 per occurrence C.S.L.; \$3,000,000 General Aggregate

Grantee may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

Before the Effective Date, the Grantee shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate(s) shall indicate that the City has been named as an additional insured on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies, with respect to all of Grantee's operations contemplated by this Agreement. Thereafter, upon request of City, Grantee shall furnish a current certificate(s) of insurance evidencing such coverage. Should any of the policies required herein be cancelled before the expiration date thereof, the Insurer affording coverage will endeavor to mail 30 days written notice of that cancellation to the City, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer affording coverage, its agents, or representatives, or the issuer of this certificate.

b. Indemnification. Grantee agrees to defend, indemnify and hold the City, and its agents, employees, officials and representatives, harmless from all suits, claims for damages (including personal injury or death and property damage), judgments, losses, expenses (including but not limited to reasonable attorneys' fees, court costs and other litigation costs) and liabilities (hereinafter collectively "Claims") resulting from the following acts or omissions of Grantee (or its employees, representatives, officials, or contractors): (i) its construction, operation or maintenance of the Cable System, (ii) its provision of Cable Services in or about the Service Area, (iii) its use of the Franchise, or (iv) its failure to perform its obligations under this Agreement. City agrees to use its good faith effort to furnish Grantee written notice of any requests for indemnification pursuant to this Section at least ten (10) business days prior to the deadline for responding to any complaint or claim for which indemnification is sought, if any such deadline exists, or within thirty (30) days of its receipt of any such claim or demand if there is no deadline for response; provided that the City's failure to provide notice in these periods shall not affect, nullify or preclude it from exercising its rights under this provision unless

Grantees demonstrates that the City's delay has prejudiced Grantee's ability to assume the defense for and indemnify the City against the claim(s) for which it demands indemnification. Notwithstanding the foregoing, Grantee shall not be obligated to indemnify the City (or its representatives) for Claims resulting from the independent willful or negligent acts of the City (or its representatives), the City's use of the Cable System, or from the activity or conduct of the City or any person or entity other than Grantee in connection with PEG Channel programming.

**9. Revocation of Franchise/Early Termination of Agreement.**

Prior to the revocation of the Franchise or the early termination of this Agreement by the City, it shall give written notice to Grantee of its intent to so revoke or terminate based on a pattern of substantial noncompliance by Grantee with one or more material provisions of this Agreement, or for other lawful cause. The notice shall specify the noncompliance that the City has identified as the basis for its proposed revocation or termination. Grantee shall have sixty (60) days from such notice to (a) object in writing to the alleged noncompliance and state its reasons for such objection, (b) provide the City a written explanation for the alleged noncompliance that the City subsequently acknowledges in writing satisfies the noncompliant condition, or (c) cure the noncompliance. If Grantee has not cured the noncompliance or otherwise resolved it to City's satisfaction during that sixty (60) day time period, the City then may seek to revoke the Franchise or terminate the Agreement following a public hearing in which it considers those actions (the "Revocation Hearing").

The City shall provide Grantee at least thirty (30) days prior written notice of the Revocation Hearing; that notice shall specify the time, place and purpose of such Hearing. At any such Revocation Hearing will be on the record, and during it the City shall give Grantee an opportunity to state its position, present evidence and question witnesses on any noncompliance matters. Following the Revocation Hearing, the governing body for the City will determine whether it will revoke the Franchise and terminate this Agreement: if that action is taken, a written transcript or video record of the Hearing shall be made available to Grantee within twenty-one (21) business days following that determination. Grantee reserves the right to challenge a revocation determination made by the City in a court or tribunal of competent jurisdiction on such grounds as may be available to it under the Cable Act, or otherwise by law. In such instance, the decision of the City shall be entitled to such weight as is appropriate under the applicable principle(s) of legal review, but nothing in this Agreement shall be deemed to deny Grantee any right that is otherwise available to it to present additional evidence or argument to the reviewing court, tribunal, or agency. Likewise, nothing in this Agreement or in any action taken by the City under authority of this Agreement shall be deemed to confer, expand, deny, or restrict the nature, scope, or type of judicial review applicable to the challenged revocation.

Upon revocation of the Franchise or early termination of this Agreement for any reason, Grantee, at its expense, may remove the Cable System from the Streets, or abandon the Cable System in place. Further, although Grantee shall no longer be obligated to provide Cable Service in the City following the revocation of its Franchise or the termination of this Agreement, all of

Grantee's obligations hereunder that relate to or arise from events occurring before the effective time of the revocation (or termination) will survive those actions.

**10. Franchise Fee/Records Retention/City's Audit Right.**

a. Franchise Fee. Throughout the term of the Agreement, Grantee shall pay City an amount equal to five percent (5%) of the Gross Revenues (as defined in Section 1 above) related to the provision of cable service to Subscribers (the "Franchise Fee"). No later than forty-five (45) days following each quarter of the Agreement, Grantee will calculate and pay the City the Franchise Fee owed for the previous quarter by electronic fund transfer to a bank account it designates. At the time of each such payment, Grantee also will furnish City with an accounting report or statement that, in a summary form, discloses the total Gross Revenues derived from the Cable System for the previous quarter, the methodology used to calculate the Franchise Fee and other bases on which Grantee determined the amount of each payment.

b. Records Retention. For a rolling period not less than six (6) years following the generation of the following records, Grantee agrees to retain and make the same available for inspection by the City (or its designated representative):

i. its databases and books, reports, statements or accounting records indicating cable and other types of services provided to Subscribers during the term of the Agreement;

ii. its databases and books, reports, statements and accounting records indicating the revenues charged and collected for cable and other types of services provided to Subscribers during the Agreement; and

iii. all records, reports or other data generated, used or reviewed by Grantee to compute its Gross Revenues or in the process of calculating the amounts of Franchise Fees paid to the City.

c. Audit of Grantee Records. Grantee acknowledges and agrees that, to the extent necessary to ensure proper payment of Franchise Fees and other amounts owed City hereunder, the City (or its designated representative), upon the provision of reasonable advance notice to Grantee during the rolling, six-year record retention period for the records listed above in subsections (i), (ii) and (iii), shall have the right to audit, examine, review and receive copies of those records. At its expense, Grantee agrees to furnish access to these records and reasonably cooperate with City in any such review or audit.

d. The City's acceptance of periodic Franchise Fee payments shall not be construed as a release of or an accord or satisfaction of any claim that City might have for further or additional sums payable under the terms of the Agreement.

e. City understands that, on Grantee's bills to its Subscribers, Grantee separately will identify and subsequently pass through the Franchise Fee, any PEG Fee authorized by this

Agreement and other government-imposed taxes, taxes, fees, or surcharges payable and collected from Subscribers in connection with the provision of Cable Services.

**11. Equitable Modification.**

If any entity other than Grantee is authorized by the City to provide Cable Service or video services of the type provided by Grantee (without regard to the technology used to deliver such services) using facilities located wholly or partly in its Streets (a “Grantee Competitor(s),” which Competitors specifically include, but are not limited to AT&T Corporation or its affiliates), and if Grantee alleges that the material obligations applicable to Grantee in this Franchise are more burdensome or less favorable than those imposed on any such Grantee Competitor, then Grantee may request that the Grantor modify this Franchise as reasonably necessary to ensure that the alleged inequity applicable to Grantee is rectified, and Grantor shall not unreasonably deny such a request. In the event Grantor denies the request by Grantee to so correct an alleged inequity and the parties are unable to resolve that dispute, Grantee may, at its option, (i) request that the Grantor agree to mediate that dispute before a mutually agreeable mediator; (ii) deem this Franchise expired thirty-six (36) months from the date of the above written notice; or (iii) terminate this Franchise and replace it with the franchise arrangement offered by the City to the Grantee Competitor that allegedly benefits from the claimed inequity..

**12. Confidentiality.**

During the term of this Agreement, either Party may provide the other books, records, documents and information that the disclosing Party considers and designates as confidential (“Confidential Information”). The Parties agree to take reasonable measures to prevent disclosure to third parties of any Confidential Information that the other so designates.

Notwithstanding the above provision or any other herein, Grantee acknowledges that the City is a governmental entity that is obligated to comply with the public record laws of the State of Alabama, and that it may be required thereunder to disclose to third parties certain information that Grantee designates as Confidential. Accordingly, the City does not represent that it can or will undertake or protect from disclosure to third parties any Confidential Information supplied by Grantee in connection with this Agreement; provided that, if the City receives a request from a third party to disclose information received from Grantee that it has designated as Confidential Information, the City, before disclosing that Information to the third party, will notify the party requesting disclosure of Grantee’s desire to protect the confidentiality of such Information and promptly notify Grantee so that it, at its own expense, will be afforded an opportunity to oppose the disclosure in court. If Grantee does not so oppose disclosure, the City will comply with the request of the third party and release the requested Information to it.

**13. Designated Representatives/Notices.**

The Parties appoint their respective representatives below to coordinate with the other on all matters pertinent to the administration of this Agreement (the “Designated Representative”).

Designated Representative for City:

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

Designated Representative for Spectrum Southeast, LLC

Director, Government Affairs  
Charter Communications  
151 London Parkway  
Birmingham, AL 35211

Each Designated Representative also shall have the authority to act on behalf of its respective organization to transmit instructions and receive information. Either Party may substitute a Designated Representative other than the person named above upon provision of written notice.

Any notice required hereunder to be sent in writing to the other Party shall be sufficiently given when sent to the Designated Representative for the intended recipient (i) via United States certified mail, return receipt requested, (ii) via overnight courier with receipt verification to the address set forth herein, or (iii) by personally delivering such notice to the recipient's Designated Representative. Additionally, copies of any notices to Grantee shall be sent to:

Charter Communications  
Attention: Vice President, Local Govt. Affairs & Franchising  
601 Massachusetts Ave. NW, Suite 400W  
Washington, DC 20001

**14. Force Majeure.**

If a Party is unable to perform its obligations hereunder due to the occurrence of an event(s), conditions or circumstances that are beyond that Party's reasonable control (a "Force Majeure Event"), the non-performing Party shall not be deemed in default to the other, nor suffer any penalty related thereto, during the period that the Force Majeure Event causes the noncompliance. A Force Majeure Event includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, and work delays caused by failure of other utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System may be attached.

**15. Dispute Resolution.**

Including any competitive disadvantage claim that is discussed above in Section 11, the Designated Representatives of the Parties will use their good faith efforts to resolve any other type of dispute or claim between them arising from the performance or failure to perform their respective obligations under this Agreement (a "Dispute"). If the Designated Representatives are unable to amicably resolve a Dispute, it will be escalated to the official or senior level of each Party for consideration. If a Dispute cannot be resolved at the official or senior level, either Party may request that the Dispute be mediated; if the Parties agree to mediate, each will bear its own costs of mediation, including attorneys' fees. However, if the parties are unable to amicably resolve any Dispute, either party may commence litigation in a court that is located in or has venue for Jefferson County, Alabama. If (i) either Party should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) one Party secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the other Party, the losing Party will pay the prevailing Party its reasonable attorneys' fees and other reasonable expenses that are incurred in that action; provided that the maximum amount of such attorneys' fees and expenses that the prevailing Party may recover from the losing Party shall not exceed Twenty Thousand Dollars (\$20,000).

**16. Miscellaneous.**

a. Amendment. Except as provided in the provision immediately below, this Agreement may be amended or modified only by a written instrument executed by duly authorized representatives of both Parties.

b. Obligations Under Existing Agreement Not Discharged. Nothing in this Agreement shall discharge or release Grantee from its obligations to pay Franchise Fees or otherwise perform its obligations to the City that relate to or arise out of events that occurred (or failed to occur) before the termination of the Existing Agreements.

c. Entire Agreement. This Agreement constitutes the entire agreement between the City and Grantee with respect to the matters contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between the City and Grantee, whether oral or written, regarding the subject matter hereof.

d. No Waiver. The failure on the part of either Party to enforce any of the terms, conditions or provisions of this Agreement shall not be construed as a waiver of the right to subsequently compel enforcement of that or any other term, condition or provision herein. The respective rights, benefits and obligations under this Agreement may be waived only in a writing signed by the Parties.

e. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective principals, managers, officials, offices, directors, shareholders, agents, employees, attorneys, successors and authorized assigns.

f. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the

same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

g. Choice of Law. This Agreement shall be construed and interpreted according to the laws of the State of Alabama.

h. Assignment. This Agreement and the Franchise granted hereunder may not be assigned by Grantee unless (i) it obtains the written consent of City, which consent may be withheld for any reason, or (ii) such assignment is authorized by law.

i. Independent Contractors. The City and Grantee are independent contractors. Grantee exclusively controls the methods and means by which it conducts its cable service operations within the City. Further, neither this Agreement nor any provision herein is intended make either Party the agent, fiduciary or partner of the other, or grant either Party any authority to bind the other to any obligation with a third party.

j. Other Representations. Grantee and the City represent that each has secured all necessary board, corporate or other approval required to enter this Agreement, and that its undersigned representatives are authorized to execute it on behalf of their respective organization.

k. Headings. The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

l. Cooperation. Grantee and the City shall cooperate fully with one another to execute any and all other documents and take whatever any additional actions (including, without limitation, the processing of permits) that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

m. No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a Party to this Agreement.

*(Signature Page Follows)*

Considered and approved this \_\_\_\_ day of \_\_\_\_\_, 201\_\_

**City of Mountain Brook, Alabama**

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Accepted this \_\_\_\_ day of \_\_\_\_, 201\_\_, subject to applicable federal, state and local law.

**Spectrum Southeast LLC .**

By: \_\_\_\_\_, its Manager

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

**RESOLUTION NO. 2019-011**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council of the City of Mountain Brook hereby authorizes the execution of a contractor agreement between the City and Invasive Plant Control, Inc., in the form as attached hereto as Exhibit A subject to such minor revisions as may be determined appropriate by the City Attorney, with respect to invasive plant removal services for Cahaba River Walk.

**ADOPTED:** This 28th day of January, 2019.

\_\_\_\_\_  
Council President

**APPROVED:** This 28th day of January, 2019.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on January 28, 2019, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

Invasive Plant Control, Inc.  
PO Box 50556  
Nashville, TN 37205



01/04/19

Shanda Williams  
Parks & Recreation Superintendent  
City of Mountain Brook  
3698 Bethune Drive  
Mountain Brook, AL 35223

**RE: Cahaba River Walk Invasive Plant Removal**

Dear Shanda Williams,

Thank you for the opportunity to visit Cahaba River Walk. During our initial site visit, we determined the extent of the invasive plant infestation. IPC proposes 3 days for the first phase of treatment at the park. Two days will include the cutting and stump treatment of the invasive species present at the site, with the third day devoted to removal/processing of plant debris on the site.

Per our discussion during the initial site visit, I am proposing two different options and costs for the disposal of plant material at the site:

Option 1: Two days of herbicide treatment; One day chipping material onsite:  
Cost: \$4,764.90

Option 2: Two days of herbicide treatment; One day hauling brush to onsite dumpster:  
Cost: \$5,342.40

The second phase of treatment will consist of foliar treatment for regrowth at the site. IPC proposes one day for treatment at a cost of \$1,450.80.

The total cost for each option (Phase 1&2) is listed below:

**Option 1 (Chipping Debris): \$6,215.70**

**Option 2 (Offsite Debris Removal): \$6,793.20**

Thank you for considering our proposal. If you have any questions, please contact me at [vance@ipc.us.com](mailto:vance@ipc.us.com) or 615-630-0465.

Sincerely,

Vance Brown  
Invasive Plant Control, Inc.  
AL Pesticide Applicator #17366

## CONTRACTOR AGREEMENT

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

1. **Project.** Unless otherwise stated on the attached Exhibit A - Specifications (which is incorporated by reference), Contractor, at its expense, will furnish all the labor, materials, supplies, supervision, and equipment needed to perform the work, services and operations (collectively, the “Work”) on the understated project (the Project”)

Name of Project: Remove Invasive Plants

Site of Project: Cahaba River Walk  
3503 Overton Road  
Mountain Brook, AL 35223

2. **Scope of Work.** See Exhibit A (which includes the City Scope of Work and January 4, 2019 Contractor Proposal) that is attached and incorporated herein.

3. **Undertaking of Parties.** Contractor agrees to perform the Work in accordance with the terms, conditions and specification in this Agreement and on Exhibit A. City agrees to compensate Contractor and perform its other responsibilities set forth in the Contract Documents.

4. **Term/Termination.** The term of this Agreement shall commence on the Effective Date and thereafter continue in effect up to twelve ( 12 ) months (the “Term”). The period in which Contractor will complete the Project is set forth on Exhibit A.

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

5. **Contract Price/Invoice/Certification.** Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of Six Thousand Seven Hundred and Ninety-three Dollars and Twenty Cents (\$6,793.20) as compensation for performing the Work (the

“Contract Price”). Unless agreed in a writing or amendment to this Agreement that is signed by duly authorized representatives of both Parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price.

The City will pay the Contract Price on this Project as follows:

Within ten (10) days following the successful completion of the Project, Contractor will submit to City Project Representative an invoice for the Contract Price (as adjusted by any mutually agreed change orders signed by both parties). With such invoice Contractor shall submit records reasonably supporting its payment. Within five (5) days following receipt of that invoice, City Project Representative will review same, consult with Contractor and make any mutually agreed modifications to it, certify that the invoice is due to be paid, and forward that certified invoice to the City Clerk. The City Clerk will remit to the Contractor the amount certified for payment within twenty (20) days after it receives that certification.

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

- (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;
- (b) that it, and all of its employees or any subcontractors (if authorized), will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;
- (c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, “Licensing”). Contractor further agrees to maintain that Licensing throughout the performance of the Project;
- (d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;
- (e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;

- (f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of completion of the Project; and
- (g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of Contractor is authorized to execute this Agreement.

**7. Insurance/Safety/Indemnification.**

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

- (i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars (\$750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;
- (ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) combined single limit and aggregate for bodily injury and property damage;
- (iii) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.

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

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

control of the Contractor or any of its representatives; and (iii) other property at the Work Site or adjacent thereto.

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

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

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

#### **9. Miscellaneous Provisions.**

a. This Agreement which is comprised of this instrument, the City Scope of Work and the January 4, 2019 Contractor Proposal (collectively, the "Contract Documents") sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein.

b. This Agreement may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

c. Any forbearance or delay on the part of City in enforcing any of its rights under this Agreement shall not be construed as a waiver of such rights. No terms of this Agreement shall be waived unless expressly waived in writing.

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

e. This Agreement is made only for the benefit of the Parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

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

h. **Immigration Law Compliance.** Contractor represents and warrants to the City that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the "Act"); (ii) it will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Contractor shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Contractor further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if Contractor is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

i. **Amendment.** Neither this Agreement nor any of the provisions herein (including, without limitation, those concerning the Scope, Project Schedule and Contract Price) may be amended or modified except in accordance with the terms of a written instrument (or change order) signed by both Parties.

j. **Delayed Performance/Force Majeure Events.** Neither Party shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under this Agreement during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed Party must promptly provide the other with written notice of the

Force Majeure Event, the delayed Party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other Party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed Party.

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

*(Signature Page Follows)*

Whereas, the undersigned, duly authorized representatives of the Parties execute this Agreement on behalf of their respective organization on the date(s) shown below.

**CITY OF MOUNTAIN BROOK, ALABAMA**

By: \_\_\_\_\_

Its: Mayor

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

**INVASIVE PLANT CONTROL, INC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT A – SPECIFICATIONS**

1. Scope of Work.

See attached City Scope of Work and January 4, 2019 Contractor Proposal

If Contractor desires or is required to perform services on the Project that fall outside the Scope (“Additional Operations”), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same.

2. Project Schedule. Weather permitting, Contractor expects to complete the first phase of the Work within an approximate 6 week period after execution of the Agreement and the City provides it a Notice to Proceed. The second phase of the Work should be completed with a 12 month period after execution of the Agreement.

3. Project Representatives.

City Project Representative:  
Shanda Williams  
3698 Bethune Drive  
Birmingham, AL 35223  
Email: williamssh@mtnbrook.org  
Day Tel #: 205-802-3879

Contractor Project Representative:  
Vance Brown  
PO Box 50556  
Nashville, TN 37205  
Email: vancebrown@hotmail.com  
Day Tel #: 615-630-0465

4. Special Conditions.

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## **INVASIVE PLANT MANAGEMENT SPECIFICATIONS AND INSTRUCTIONS FOR CAHABA RIVER WALK**

### **1.0 Scope/Nature of Requested Services**

- 1.1 Scope: This proposal is to provide the City of Mountain Brook with services to remove select invasive plant and noxious weed species from Cahaba River Walk, treat any stumps in the removal areas with appropriate herbicides to prevent or retard subsequent regrowth and subsequent management efforts. The City estimates that it will require mechanical removal of invasive growth and stump/foiar treatment of select invasive plant and noxious weed species over approximately three and one half (3.5) acres at Cahaba River Walk. In addition to the initial removal of select invasive plant and noxious weeds species, the regrowth of these plants will need to be sprayed within the following 12 months. The City's Park and Recreation Department will be the main contact for this service.

The two phases for performing these services are as follows:

- (a) Phase One. The initial removal of invasive plant and noxious weed growth and application work will need to be performed and completed by February 22, 2019.
  - (b) Phase Two: A follow-up herbicide application operation in the areas in which invasive plants and weeds initially were removed will need to be completed by February 22, 2020.
- 1.2 The services will be provided around or near Cahaba River and tributaries, so commercially reasonable practices and precautions must be taken to avoid contamination of water in those areas.
- 1.3 The goal of the City of Mountain Brook is to remove invasive species from the park to open up the view of the park and river. The park is bordered by a creek, Cahaba River, and Overton Road.

A map of Cahaba River Walk is located at the end of this document.

Trucks and equipment can easily access the park from the parking lot off of Overton Road. Smaller equipment can enter the park, but great care should be taken to not damage any of the desirable plants. The contractor will be responsible for correcting any damages.

- 1.4 There is a steep bank between the trail and Cahaba River. Invasive plants should be removed from the top flat areas and on the edge of the bank. Invasive plants along the side of the bank need to be cut and stump treated selectively so to not cause significant erosion issues. Extreme caution should be exercised in these areas for the safety of the worker and well-being of the river and park.

- 1.5 Area Estimate: The City estimates that project will require specific invasive plant and noxious weed removal and management over approximately three and one half (3.5) acres at Cahaba River Walk. Not all of this area is thick with invasive plants.
- 1.6 Invasive Plant and Noxious Weed Species to be Removed, Treated and Managed: The following are the plant species to be removed, treated and managed. Species occur at varying rates and sizes and all do not occur at each site.

Brush/Trees

Privet  
Mimosa  
Chinese Parasol  
Eleagnus  
Althea  
Mahonia  
Cherry Laurel  
Chinese Holly

Vines

Kudzu  
Ivy  
Wisteria  
Poison Ivy  
Japanese Honeysuckle

- 1.7 Native and Other Plants to Remain in Place and Not Be Removed or Treated. Employees of the successful contractor shall not remove or treat any native plants or plants other than those above in Section 1.5. Those employees must be trained and capable of identifying and distinguishing the invasive plants/weeds from those that shall remain in place, unharmed and not treated. Below is list of certain types of plants and species that shall remain in place and not be cut, removed or sprayed:

Wild Ginger  
Trillium  
Native Euonymus/Hearts a Bursting  
Buckeye  
Oakleaf Hydrangea  
Native Azalea  
Big Leaf Magnolia

This is not a comprehensive list of all native plants.

- 1.8 Herbicide Products: All herbicides that are used must be labeled for use in the areas where they are applied. A list of proposed herbicides should be provided on the attached Response Form. All herbicides used must first be approved by the City. A list of herbicides used and their corresponding MSDS sheets must be kept on site while being

applied and made available upon request. A record of application must be turned into the Parks and Recreation Department. At a minimum, this record should include the following: date, chemical, rate, amount applied, area applied to, name of applicator, and any other noteworthy information.

- 1.9 **Pricing:** Each respondent shall submit a quote of its firm price for the operations contemplated in this document. The quoted price is intended to cover all of the contractor's expenses for equipment, tools, herbicides, hauling off and dumping of brush, labor and supervision to complete the work.
  
- 1.10 **Scheduling of Work:** One week prior to any invasive species removal the contractor must submit a schedule to the City representative of the week's anticipated work schedule and locations. Also, one week prior to any foliar treatment, the contractor shall submit a schedule detailing when each site is anticipated to be sprayed.
  
- 1.11 **Cutting, removal, hauling and disposal of trunks, limbs, logs, brush and vegetation and stump spraying:** The quoted price for this work includes the expense of all equipment, chainsaws, chippers, supplies, herbicides, etc, needed by the successful respondent to complete its operations. Cutting and removal of the invasive plant and noxious weed species shall be done in such a way, at a time and during conditions that will not cause erosion or damage to the City parks or properties on which it is performed or damage to adjacent landowner property. Stump treatment with an herbicide approved by the City must be used in compliance with the label directions. *Stump treatment must be done under the supervision of a certified pesticide applicator.* Bush type plant species with a basal diameter smaller than one inch (1") may be addressed with herbicides only. All crew members must be trained in plant identification. Trucks must be equipped to ensure no spillage of debris when hauling for disposal. Proper safety signage and/or cones marking the work area shall be the responsibility of the service provider. Care must be taken to not damage any open turf area with ruts from trucks and chipping equipment used at the sites. Repairs of any turf damage at the sites will be the responsibility of the service provider. *All cuttings and debris are to be removed from City property and properly discarded.*
  
- 1.12 **Foliar treatment of regrowth:** Following the initial removal and treatment of invasive vegetation, spraying of herbicides to retreat the designated areas at Cahaba River Walk will be performed within twelve (12) months after the initial phase of the project is completed. This work will also entail removal of any invasive plant/weeds that were "missed" (i.e., not removed) by the contractor in the initial phase. *All treatment for regrowth of the select invasive plant and noxious weed species must be done under the supervision of a Certified Pesticide Applicator.* The treatment of regrowth shall be done with an herbicide approved by the City and must be used in compliance with the labeled directions. The herbicide chosen shall be approved for use near water ways when used by the creeks.

- 1.13 Working Days and Hours: Work shall be performed Monday through Friday, during daylight hours, but between the hours of 7:00 am and 4:30 pm. *Spraying herbicides should be done while the temperatures are above forty (40) degrees.* The performance of work outside those days, hours and conditions must be approved by the City Representative.
- 1.14 Traffic: The contractor shall conduct work so that it does not interfere with the safe flow of traffic on the roadways and driveways on and off City property, or unreasonably interfere with pedestrian traffic on the trails at City parks.
- 1.15 Progress Reports: The contractor shall submit an email report regularly to the City Representative of the work performed. The report must include: days worked, location of work performed, acres or work performed, a brief description of the work performed, general spray record, and preferably photos of before and after to document the progress.
- 1.16 Documentation of Herbicide Application: The contractor shall submit to the Department copies of all spray records for work performed upon the City property within fourteen (14) days of work performed.
- 1.17 Inspections: The Park and Recreation Department will conduct periodic site inspection for the removal or foliar treatment of the select invasive plant and noxious weed species. A representative from that Department will be onsite the first week of work. If the City determines in its inspections that removal, touch up or extra spot herbicide applications are needed due to insufficient removal or foliar application by the contractor during its initial work, the contractor shall furnish such services at no additional cost to the City.

## **2.0 General Requirements**

- 2.1 Contract: The successful contractor agrees to perform the work according to the Specifications and requirements herein.
- 2.2 Initial Term of Contract. The proposed contract shall become effective on the date of its execution by the City and expire on February 22, 2020.
- 2.3 After reviewing all responses, the City reserves the right to not award a contract to any of the respondents.
- 2.4 Compliance with Immigration Laws. If awarded the contemplated contract, the successful contractor agrees, represents and warrants that it will not knowingly employ, hire for employment, or continue to employ within the State of Alabama an “unauthorized alien,” as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the “Act”) and that, during the performance of this contract, it shall participate in the E-Verify program as required under the terms of the Act. The contractor also agrees to comply with all applicable provisions of the Act with respect to its contractors in the State of

Alabama by entering into an agreement with or by obtaining an affidavit from such contractors providing work for the contractor providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program. The contractor represents and warrants that it shall not hire, retain or contract with any contractor in the State of Alabama that it knows is not in compliance with the Act.

By entering the contract, the contractor also affirms that, for its duration of the contract, it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. If the contractor violates these provisions of the Contract, it shall be deemed in breach and shall be responsible for all damages resulting therefrom.

- 2.5 The successful respondent must supply the City with a copy of its W-9 and E-verify MOU. The E-verify document can be printed from [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify).
- 2.6 Licensing. Before commencing the work, the successful contractor, at its expense, must obtain and maintain a business license with the City of Mountain Brook, an Alabama Commercial Pesticide Applicator's license, and all other licenses related to the performance of the work and maintain all of those licenses throughout the term of the contract.
- 2.7 Contractor Insurance Requirements : The successful contractor must provide and maintain the following policies of insurance throughout the term of the contract:
  - (a) Comprehensive General Liability: This insurance shall cover all operations performed by or on behalf of the contractor with limits of not less than Two Million Dollars (\$2,000,000) combined single limit and aggregate for bodily injury and property damage per occurrence. This insurance shall include coverage for the following: (i) completed operations; (ii) assumed contractual liabilities; (iii) damages to third parties for personal injury, death and property damage; (iv) damage and injury to City property and City personnel cause by or resulting from the negligent acts, operations, or omissions of the Contractor or its employees or representatives in performing its services and work contemplated in the contract; and (v) coverage for claims against the City for damage to environmental conditions resulting from alleged or actual violations of Environmental Laws (as defined in these Specifications) occurring at the Irondale Furnace or other City parks in the course of performing contractor's services.
  - (b) Workers' Compensation as required by statute;
  - (c) Employer's Liability with limits of \$500,000 per occurrence; and
  - (d) Automobile and Vehicle Insurance: This insurance shall cover all vehicles (owned and rented) used by the contractor in connection with the performance of the work with limits of not less than \$500,000 combined

single limit and aggregate for bodily injury and property damage per occurrence.

All required insurance shall be provided by a policy(ies) issued by a company or companies qualified to engage in the insurance business in the State of Alabama with a rating reasonably acceptable to the City. These insurance requirements are in addition to and do not affect any indemnification obligation of the Contractor herein. Except for the Workers Compensation coverage, all coverage shall contain endorsements naming the City of Mountain Brook and its officers, employees, and agents, as additional insureds with respect to liabilities that arise out of and result from the operations of the contractor or the performance of its work. Before the commencement of work hereunder, the contractor shall provide the City with a certificate of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section.

- 2.8 Contractor's Warranties on Use of Hazardous Substances. For purposes of the contract and this provision, the following definitions apply: (a) "Hazardous Substances" are toxic or hazardous substances, pollutants, or wastes pursuant to Environmental Laws, and include the following substances: toxic pesticides and herbicides, gasoline, kerosene, other flammable or toxic petroleum products, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Laws" means federal laws and laws of the jurisdiction where the work site(s) is located and associated regulations that relate to health, safety or environmental protection (including, but not limited to, laws, regulations and rules that protect the quality of water and air or public health, safety and welfare that are promulgated by the EPA and the Alabama Department of Environmental Management); (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Laws; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

The herbicides that the contractor will store, apply and use on City property and work sites (the "Property") are Hazardous Substances within the meaning of applicable Environmental Laws. Except as is commercially reasonable in the use of herbicides to treat invasive plants and noxious weeds, the Contractor shall not cause or permit disposal or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Further, the Contractor warrants that it shall use commercially reasonable practices when applying herbicides, shall not violate any Environmental Laws in the process of performing its services and shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Laws, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the Property. The preceding sentences shall not prevent the presence, use, or storage on the Property of quantities of Hazardous Substances that are generally recognized to be appropriate for the conduct of the services that the contractor will provide to the City and comply with Environmental Laws.

The contractor shall promptly give the City written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which the contractor has actual knowledge, (b) any Environmental Condition, including, but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of any hazardous substance which adversely affects the Property. If the contractor learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary as a result of the contractor's operations on the Property, contractor shall promptly take all necessary remedial actions in accordance with Environmental Laws.

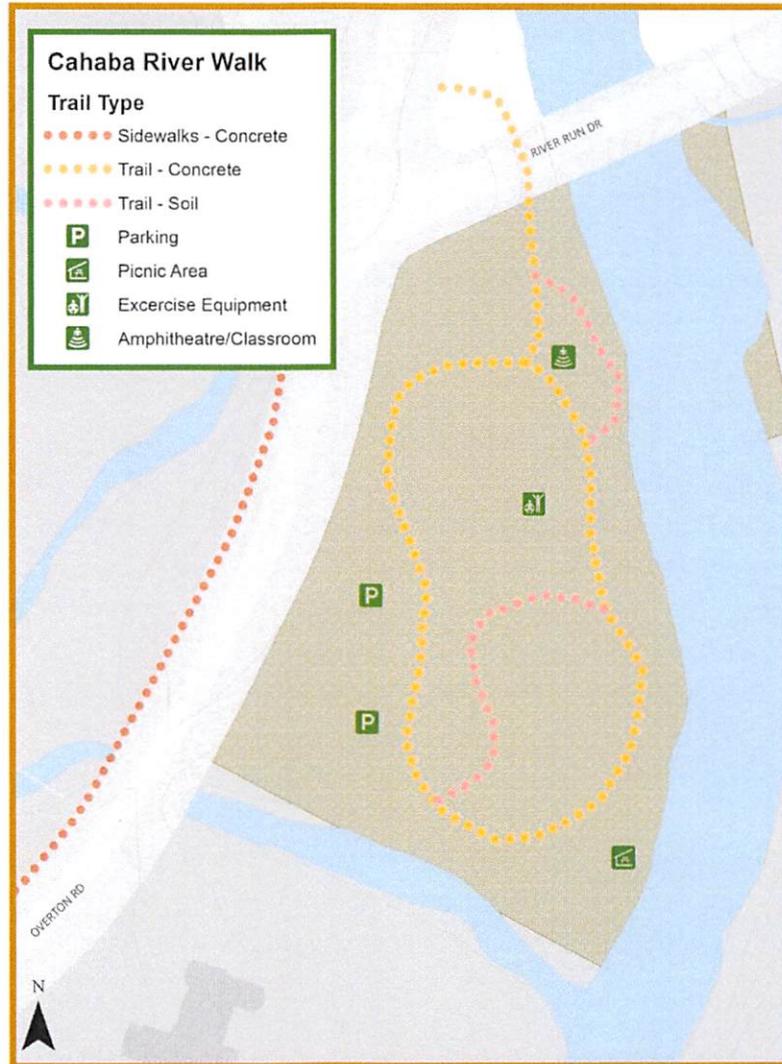
- 2.9 **Compliance with Laws.** The contractor warrants that it will perform its services in compliance with all federal, state and local laws that are applicable to its operations and performance of its services, including, but not limited to, any Environmental Laws (as defined above).
- 2.10 **Indemnification of City by Contractor.** The contractor shall defend, indemnify, and hold harmless the City, and its agents, employees and officials (hereinafter an "Indemnatee" or collectively "Indemnitees") from and against all demands, actions, damages, judgments, losses, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs) and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property) (collectively hereinafter "Loss" or "Losses") arising out of, related to, or resulting from (i) contractor's failure to perform its obligations under the contemplated contract, (ii) contractor's breach of any of its warranties in the specifications for the project or contract; (iii) the alleged or actual violation of Environmental Laws by contractor in the course of providing its services, and (iv) Losses arising in whole or part from the acts or omissions of the contractor and its employees, agents, and representatives in performing its services, regardless whether the Loss is caused in part by the negligence or other fault of an Indemnatee. The Contractor is not obligated under this provision to indemnify an Indemnatee to the extent that a Loss is caused by the sole negligence or willful misconduct of an Indemnatee(s).
- 2.11 **Compensation for Services.** The contractor will submit invoices and be compensated for its services on the following basis:
- (a) One (1) invoice shall be submitted for upon completion of the initial removal and treatment service at Cahaba River Walk;
  - (b) Subsequent invoices for work on phase two of the project shall be submitted on a monthly basis;
  - (c) Each invoice shall include the date of service, list each site serviced, state a subtotal for each site, and state the total amount billed; and
  - (d) The City will remit payment for uncontested amounts invoiced and due for services successfully completed within thirty (30) days after the receipt of such invoice.

### 3.0 Selection of Contractor

- 3.1 Qualifications: The successful respondent must satisfy certain minimum qualifications in order to be awarded the contemplated contract. Each respondent should have the following requirements:
- (a) that it has experience in providing invasive plant and noxious weed species management services
  - (b) that it has professional experience as a herbicide applicator;
  - (c) that someone employed with the business has a valid license issued by the State of Alabama as a commercial pesticide applicator in the following categories: *Ornamental and Turf or Forestry*. A copy of this license shall be furnished with the response;
  - (d) that the workers employed by the business who will be performing the chemical application duties are experienced in the application and treatment of invasive plants.
  - (e) that, with respect to the work crew members who will perform the services, have been trained, have experience and are proficient in plant identification to ensure that only the target, invasive plant species are removed from and treated.
- 3.2 Award Selection Criteria: The City intends to award the contract to the respondent that the City, considering the respondent's experience, pricing and all other pertinent factors, determines in its good faith discretion to have made submitted the most advantageous proposal to the City.
- 3.3 Questions about Specifications: Questions regarding this project should be directed to Shanda Williams at 802-3879 or [williamssh@mtnbrook.org](mailto:williamssh@mtnbrook.org).
- 3.4 Site Visit. A site visit to Cahaba River Walk may be scheduled with the Park Superintendent for the purpose of assisting interested respondents to prepare their quotes. Appointments for these visits can be made by emailing Shanda Williams at [williamssh@mtnbrook.org](mailto:williamssh@mtnbrook.org) or calling her at 802-3879. Site visits should be arranged before Friday, December 28, 2018. You may visit the site on your own at any time.

3.5 Site Map:

Treat areas highlighted in green.



3.6 Quote Submission: Please email your quote to Shanda Williams at [williamssh@mtnbrook.org](mailto:williamssh@mtnbrook.org) no later than January 8, 2019 at 2 pm. Please provide all the information on the following form. Using the actual form is not required.

**RESPONSE FORM - INVASIVE PLANT MANAGEMENT**

We (I) propose to furnish the following services at the price stated below and comply with all conditions, specifications and terms in these specifications.

Respondent: \_\_\_\_\_

Business Address of Respondent \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact for Respondent:      Name: \_\_\_\_\_  
   Day Tel # \_\_\_\_\_  
   Email:        \_\_\_\_\_

- a.     \$ \_\_\_\_\_ All Inclusive Charge for completion the first and second phases of service to remove and spray invasive plant species in the specified areas shown on attached map of the Cahaba River Walk. This is to include expenses that the contractor will incur for all labor, material, equipment, supplies, reporting and administrative costs during this initial phase.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b.     Please note any exceptions to the Specifications. (Attach a supplemental page if additional space is needed):

Exceptions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Certifications**

Please provide a copy of your Alabama Pesticide License that includes Ornamental and Turf , Forestry, or equivalent endorsements.

2019-012

January 24, 2019

DRAFT RESOLUTION ATTACHED

Dear City Council,

This is to update you on the status of installing new bullpens by the softball field at MBHS and request permission to proceed with executing a contract once the agreement has been reviewed and approved by legal counsel.

After discussions with personnel from the Board of Education, we developed a plan to install a single lane bullpen on the third base side of the field and a double lane unit on the bank by the first base side. The plans are provided. After further discussions with the Board of Education, we made a change on the single bullpen. Instead of having a concrete floor and overhead framing as shown in the plan, it will now be natural grass and open on top. These changes were sent to the companies before they submitted their quotes. I requested quotes for installing both sets of bullpens from four companies and received two valid quotes. Both quotes were around \$60,000 which means we would need to bid it out if we plan to hire out the installation of both bullpens.

Since the single bullpen by the third base side will be made of natural grass to match the playing field and not have an overhead frame, my department can do the installation. We will just hire out the fencing around it. We will need to purchase sod and concrete. I do not have solid quotes yet, but expect that all of this will cost less than \$7,000. I hope to be able to update this for you Monday night. We can start next week as soon as the new lights are completed on this field and we will have over three weeks to get it finished before the first varsity softball game on this field.

By doing the work on the single bullpen ourselves, I believe that new quotes for only installing the double unit behind first base will be between \$40,000 -\$50,000. If this works out as planned, I could have a contract ready by February 1 and the work could potentially begin before the next council meeting on February 11.

Sincerely,

Shanda Williams  
Mountain Brook Parks and Rec

**RESOLUTION NO. 2019-012**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council of the City of Mountain Brook hereby authorizes the following:

1. The Parks and Recreation Superintendent shall proceed with the installation of a fenced single lane bullpen along the third base side of the Girls' Softball Field located at the Athletic Complex including the purchase of fencing and installation thereof by a third-party as illustrated in the attached exhibits except that the ground surface of said bullpen shall be natural sod rather than concrete slab; and
2. The Parks and Recreation Superintendent shall be authorized to engage a contractor to install the bullpen/batting cage along the first base side of the Girls' Softball Field located at the Athletic Complex in accordance with the plans and illustrations attached hereto subject to: a) the total contract price including contingencies for unforeseen conditions shall not exceed \$50,000, and b) legal review by the City Attorney.

**ADOPTED:** This 28th day of January, 2019.

\_\_\_\_\_  
Council President

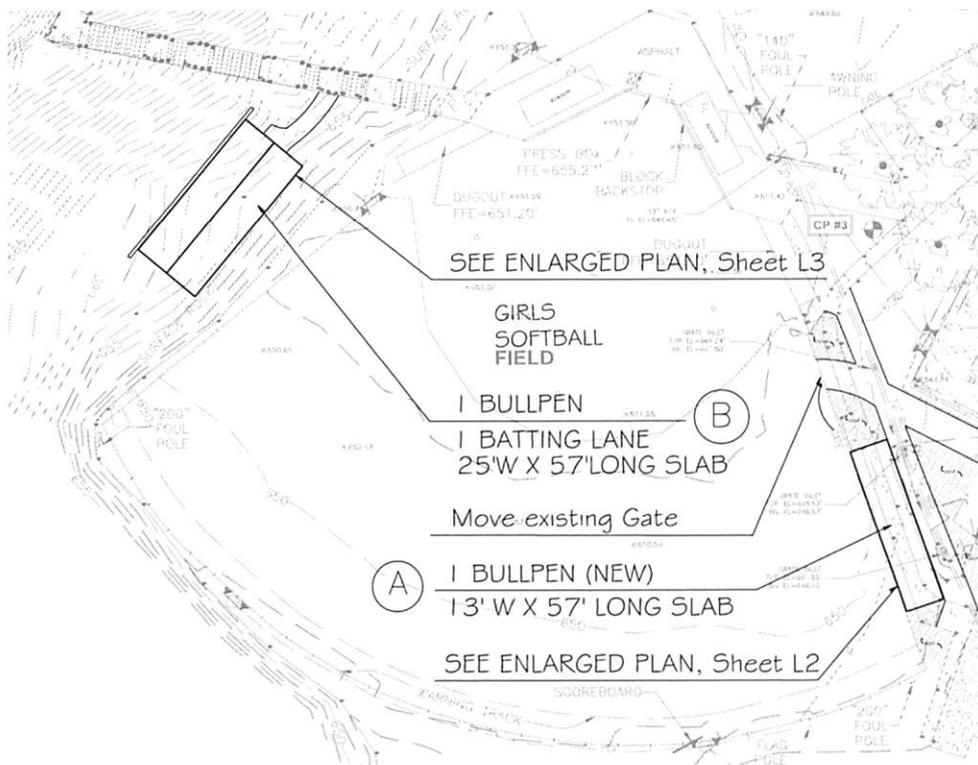
**APPROVED:** This 28th day of January, 2019.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on January 28, 2019, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



SEE ENLARGED PLAN, Sheet L3

GIRLS SOFTBALL FIELD

1 BULLPEN

1 BATTING LANE  
25'W X 57'LONG SLAB

Move existing Gate

1 BULLPEN (NEW)  
13' W X 57' LONG SLAB

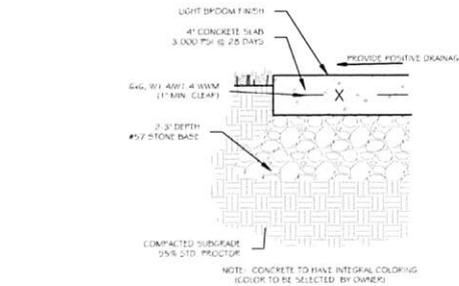
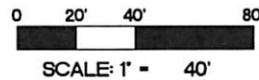
SEE ENLARGED PLAN, Sheet L2

**A1** GIRLS SOFTBALL FIELD OVERALL SITE PLAN

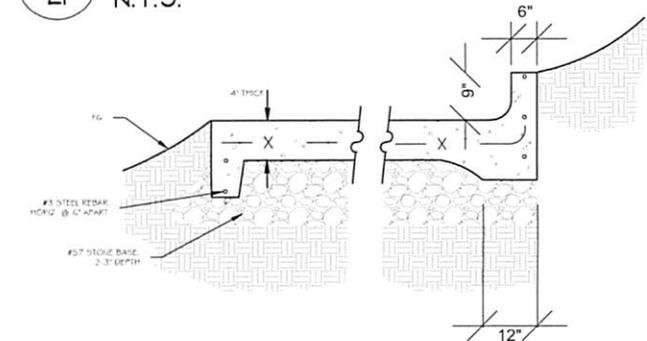
SCALE: 1"=40'

**NOTES:**

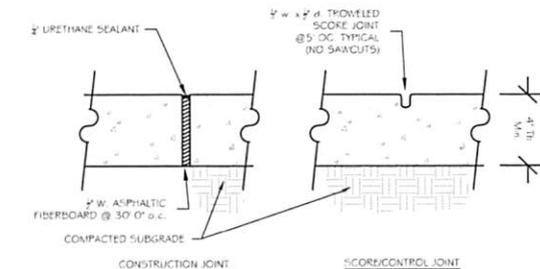
1. CALL LANDSCAPE ARCHITECT TO REVIEW LAYOUT & GRADING OF SLABS
2. SLABS TO BE 4" THICK MINIMUM
3. SCORE SLABS @ 6'X6' MINIMUM PATTERN, 1/2" DEPTH
4. PLACE 2-3" DEPTH OF #57 STONE UNDER ALL CONC. POURS
5. SAWCUT & REMOVE EX. WALKS IN ORDER TO INSTALL NEW SITE IMPROVEMENTS
6. PROVIDE AND INSTALL NETTING AND STRUCTURES ON CONCRETES SLABS FOR (3) LANES, ONE DOUBLE AND ONE SINGLE



**1** CONCRETE PAVING  
LI N.T.S.



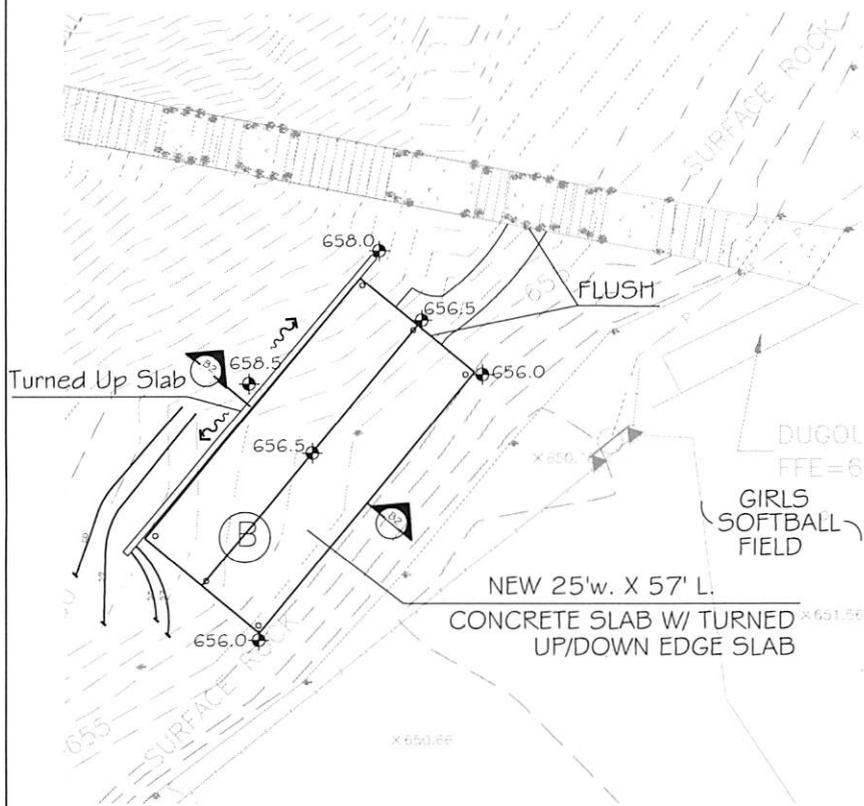
**2** SLAB EDGE DETAIL  
LI N.T.S.



**3** CONCRETE JOINTS (TYPICAL)  
LI N.T.S.

Date	January 09, 2019
Revisions	

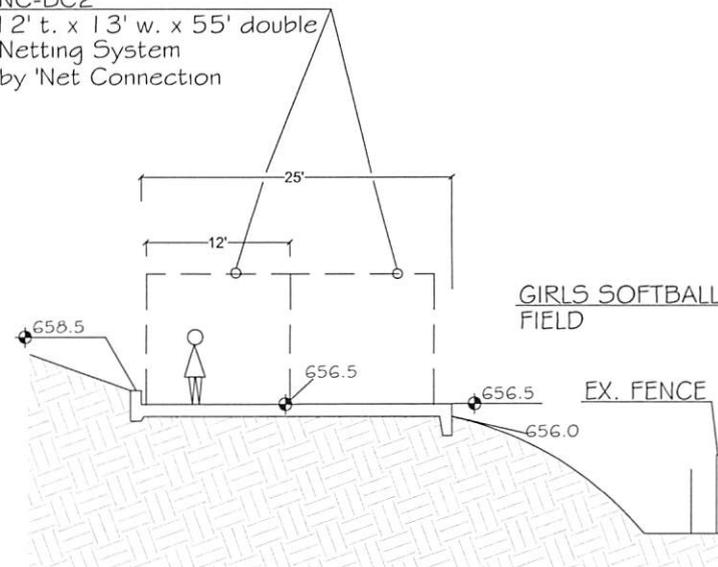




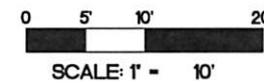
**B1** GIRLS SOFTBALL FIELD BATTING & BULLPEN CAGES  
SCALE: 1"=20'



NC-BC2  
12' t. x 13' w. x 55' double  
Netting System  
by 'Net Connection

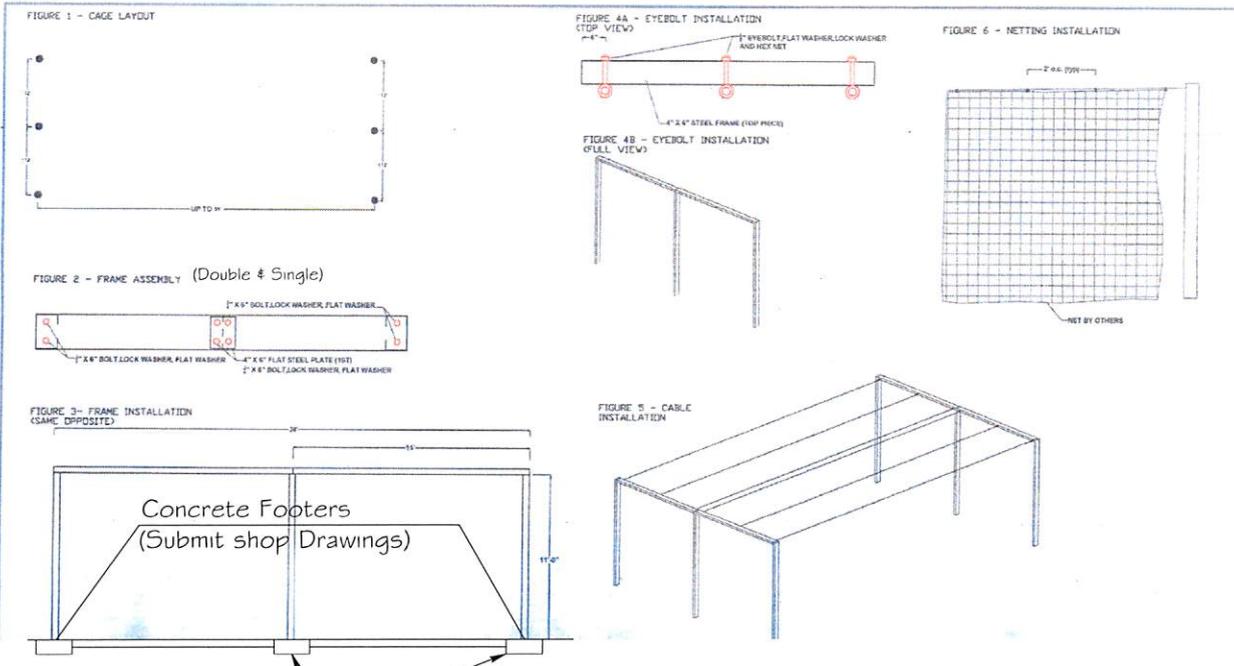


**B2** SECTION 'B2-B2'  
SCALE: 1"=10'

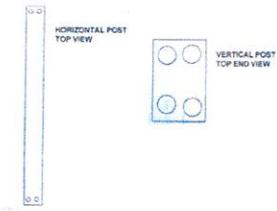


Revisions

NO.	REVISIONS	DATE



- PACKING LIST  
IT IS CUSTOMER RESPONSIBILITY TO CHECK CONTENTS OF PACKAGE(S) TO ENSURE ALL REQUIRED COMPONENTS ARE INCLUDED
- 6 EA. - 15'6" LONG, 4X6 STEEL POSTS (VERTICAL)
  - 4 EA. - 15'0" LONG 4X6 STEEL POSTS (HORIZONTAL)
  - 16 EA. - 1/2" X 6" ZINC PLATED BOLTS, FLAT WASHERS, LOCK WASHERS
  - 12 EA. - 5/8" X 8" GALVANIZED EYEBOLTS, FLAT WASHERS, LOCK WASHERS, NUTS
  - 6 EA. - 1/2" CABLE WITH CLOSED END (80' PRECUT SECTIONS)
  - 6 EA. - 3/4" THIMBLES
  - 12 EA. - 1/4" CABLE CLIPS
  - 6 EA. - JAW AND JAW TURNBUCKLES
  - 210 EA. - CADMIUM PLATED CARABINEERS
  - 2 EA. - 4X6 FLAT STEEL PLATES



(B1) NET CONNECTION NC-BC2 SIDE BY SIDE BATTING CAGE SYSTEM  
NTS.

**A. CAGE LAYOUT - REFER TO FIGURE 1**

THE NC-BC2 BATTING CAGE SYSTEM IS DESIGNED FOR ALL BATTING NETTING TUNNELS UP TO 55' IN LENGTH AND ACCOMMODATES 14" WIDE X 12" TALL NETTING TUNNELS. IT IS IMPORTANT TO INSTALL CAGE SYSTEM ON FLAT, LEVEL GROUND.

1) A TOTAL OF SIX (6) VERTICAL POSTS ARE TO BE INSTALLED INTO GROUND. (SEE FIGURE 1). MEASURE AND MARK ON GROUND EXACT LOCATIONS FOR EACH VERTICAL POST. IT IS IMPORTANT THAT EACH POST IS MARKED EXACTLY 15' CENTER TO CENTER.

**B. FRAME ASSEMBLY - REFER TO FIGURE 2**

IT IS RECOMMENDED THAT THE FRAMES BE ASSEMBLED ON THE GROUND PRIOR TO ERECTION.

- 1) LAY THREE (3) VERTICAL SUPPORT POSTS ON THE GROUND SPACED 15' APART (POSITION THE 4<sup>th</sup> SIDE ON THE GROUND) POSITION THE BOTTOM END OF POSTS ADJACENT TO EACH MARKED POST LOCATION
- 2) PLACE THE HORIZONTAL POST ON THE TOP END SIDE OF THE VERTICAL POSTS (TOP END SIDE OF VERTICAL POST WILL HAVE FOUR (4) THREADED BOLT HOLES ON TOP).
- 3) BEGINNING AT ONE END, INSERT 2 EA. 1/2" ZINC PLATED BOLTS, FLAT WASHER AND LOCK WASHER THRU PRE-DRILLED HOLE ON 6" SIDE OF HORIZONTAL POST. SECURELY TIGHTEN BOLT INTO THREADED INSERT WITH SOCKET OR, IF AVAILABLE, WITH IMPACT WRENCH.
- 4) POSITION THE OPPOSITE END OF HORIZONTAL POST ON TOP OF MIDDLE VERTICAL POST AT THE MID POINT, LINING UP THE THREADED INSERT ON THE VERTICAL POST AND THE PRE-DRILLED HOLES AT END OF HORIZONTAL POST. PLEASE NOTE, IF CORRECTLY ALIGNED, THERE WILL BE TWO (2) THREADED INSERTS ON TOP OF SAME VERTICAL MID POST EXPOSED.
- 5) BEGINNING AT THE MIDDLE VERTICAL POST, POSITION A 2ND 15' HORIZONTAL POST SO THAT THE PRE-DRILLED HOLES ALIGN WITH THE TWO (2) EXPOSED THREADED INSERTS.
- 6) SECURE THE ENDS OF THE TWO HORIZONTAL POSTS THAT ARE POSITIONED OVER THE MIDDLE VERTICAL POST BY FIRST PLACING THE SUPPLIED 4"x8" FLAT STEEL PLATE OVER THE FOUR (4) PRE-DRILLED HOLES, THEN INSERTING FOUR (4) 1/2" ZINC PLATED BOLTS, FLAT WASHER AND LOCK WASHER THRU PRE-DRILLED HOLES. SECURELY TIGHTEN BOLTS WITH SOCKET OR, IF AVAILABLE, WITH IMPACT WRENCH.
- 7) POSITION THE END OF HORIZONTAL POST OVER THE TOP OF LAST VERTICAL POST, ENSURING THAT PRE-DRILLED HOLES ON HORIZONTAL POST ALIGN WITH THE OUTER THREADED INSERTS ON TOP OF VERTICAL POST.
- 8) INSERT 2 EA. 1/2" ZINC PLATED BOLTS, FLAT WASHER AND LOCK WASHER THRU PRE-DRILLED HOLES. SECURELY TIGHTEN BOLTS WITH SOCKET, OR IF AVAILABLE, WITH IMPACT WRENCH.
- 9) FOLLOW THE SAME STEPS AND ASSEMBLY SEQUENCE FOR THE 2ND END FRAME (ON OPPOSITE SIDE).

**C. FRAME INSTALLATION - REFER TO FIGURE 3**

CARE SHOULD BE TAKEN DURING THIS STEP NOT TO SCRATCH OR DENT FRAMES DURING POST INSTALLATION.

- 1) AUGER OR DIG A FOUNDATION HOLE 1 1/2" IN DIAMETER TO A DEPTH OF 4" DEEP AT ALL PREVIOUSLY MARKED VERTICAL POST LOCATIONS. IT IS IMPORTANT THAT ALL BORES HAVE A FULL COMPLETE DEPTH OF 4"
- 2) WITH THE PROPER LIFTING EQUIPMENT, STAND THE ASSEMBLED FRAMES INTO EXCAVATED HOLES. ENSURE THAT THE POST REACH BOTTOM DEPTH OF HOLES.
- 3) PLUMB EACH END FRAME WITHIN FOUNDATIONS, ENSURING THAT THE FRAMES ARE LEVEL AND TRUE THROUGHOUT. ONCE FRAMES HAVE BEEN PLUMBED, A WOODEN WEDGE (NOT PROVIDED) OR SIMILAR CAN BE USED TO KEEP POSTS PLUMB PRIOR TO BACKFILLING.
- 4) FOLLOW THE ABOVE STEPS AND PROCEDURES FOR OTHER FRAME ON OPPOSITE END.
- 5) ONCE BOTH FRAMES HAVE BEEN CORRECTLY PLACED WITHIN FOUNDATIONS, BACKFILL ENTIRE FOUNDATIONS WITH CONCRETE. IT IS RECOMMENDED THAT 3000psi CONCRETE BE USED FOR BACKFILL. IT IS RECOMMENDED THAT THE TOP OF CONCRETE BE SLOPED AWAY FROM POSTS.

**D. HARDWARE ASSEMBLY - REFER TO FIGURE 4A, 4B**

1) INSERT THREE (3) SUPPLIED 1/2" X 8" GALVANIZED EYEBOLTS, FLAT WASHERS, LOCK WASHERS AND NUTS THRU THE PRE-DRILLED HOLES ALONG TOP HORIZONTAL POST. SECURELY TIGHTEN TO POST. REPEAT THIS STEP ON THE OPPOSITE FRAME.

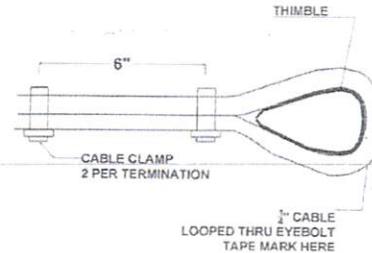
**E. CABLE ASSEMBLY - REFER TO FIGURE 5 AND FIGURE ON THIS PAGE**

- 1) ONCE FRAMES HAVE BEEN COMPLETELY INSTALLED AND ALL EYEBOLTS HAVE BEEN INSTALLED TO POSTS, MEASURE THE DISTANCE BETWEEN EACH EYEBOLTS OPPOSITE OF EACH OTHER ON EACH FRAME.
- 2) LAY OUT THE SUPPLIED CABLE BETWEEN FRAMES AND ATTACH FACTORY CLOSED END OF CABLE TO ONE END OF TURNBUCKLE. NOTE- TURNBUCKLES SHOULD BE THREADED OUT TO THE WAY PRIOR TO ASSEMBLY TO ALLOW FOR MAXIMUM TAKE UP DURING CABLE TENSIONING.
- 3) USING THE MEASUREMENT OBTAINED IN STEP 1, MARK LOCATION WITH TAPE OR OTHER ON OUTER SIDE OF SUPPLIED CABLE. SECURE THE CABLE TO THE GALVANIZED EYEBOLT PREVIOUSLY INSTALLED TO HORIZONTAL POST BY LOOPING THE CABLE THRU EYEBOLT AND SEATING CABLE ON SUPPLIED THIMBLE THRU EYEBOLT (SEE FIGURE THIS PAGE), ENSURING THAT LOOPED END MATCHES THE TAPE MARK PREVIOUSLY DONE WITH THIS STEP.
- 4) USING SUPPLIED CABLE CLAMPS, CLAMP TAIL END OF CABLE. TWO (2) CABLE CLAMPS PER TERMINATION ARE REQUIRED.
- 5) SECURE TURNBUCKLE TO REMAINING EYEBOLTS PREVIOUSLY INSTALLED TO HORIZONTAL FRAME. INSTALL TURNBUCKLE BY REMOVING PIN FROM JAW END OF TURNBUCKLE AND SECURING PIN BACK THRU EYE OF BOLT.
- 6) ONCE INSTALLED TO EYEBOLT, TIGHTEN TURNBUCKLE SO THAT CABLE IS TAUNT AND THE CABLE HAS LESS THAN 4"-6" OF SAG THROUGHOUT. REPEAT FOR ALL TURNBUCKLE LOCATIONS (TOTAL NOTE- THE RUGGED HEAVY DUTY FRAMES ARE DESIGN TO ALLOW FOR PROPER TENSION OF CABLE SO TO ALLOW FOR A MINIMAL AMOUNT OF SAG.

**F. NETTING INSTALLATION - REFER TO FIGURE 5**

NOTE- NETTING IS SUPPLIED BY OTHERS. THE BATTING CAGE FRAME PACKAGE IS DESIGNED TO ALLOW THE NETTING TO DRAPE 1' ALONG GROUND.

- 1) USING THE CARABINEERS SUPPLIED WITH THIS PACKAGE, CLIP THE NETTING TO THE HORIZONTAL SUPPORT CABLES EVERY TWO FEET. WHERE POSSIBLE, ONLY ENCOMPASS THE ROPE BORDER OF NETTING AND CABLE WHEN CLIPPING CARABINEER TO CABLES.



**NET CONNECTION NC-BC2 SIDE BY SIDE BATTING CAGE SYSTEM**

WRITTEN INSTALLATION INSTRUCTIONS (PAGE 2 OF 2) REFER TO INSTALLATION INSTRUCTIONS (PAGE 1 OF 2)  
CHECK CONTENTS TO MAKE SURE ALL REQUIRED PARTS ARE INCLUDED WITH YOUR PACKAGE. (SEE PACKING LIST)  
NC-BC2 SIDE BY SIDE BATTING CAGE ACCOMMODATES ALL 12" TALL X 14" WIDE BATTING TUNNELS UP TO 75' IN LENGTH.

\*\*\*IT IS HIGHLY RECOMMENDED NOT TO LEAVE THE NETTING FULLY INSTALLED DURING HIGH WIND EVENTS OR SNOW/ICE CONDITIONS. IT IS RECOMMENDED TO EITHER COMPLETELY REMOVE NETTING OR SLIDE NETTING TO ONE SIDE PRIOR TO EXTREME WEATHER EVENT\*\*\*

Date: January 09, 2019

Rev	Revisions

5. The second amendment to the Levite Jewish Community Center facility use agreement shall be distributed separately upon completion.

## RESOLUTION NO. 2019-014

**WHEREAS**, on November 5, 2018, the City Council of the City of Mountain Brook in Resolution 2018-150 declared a moratorium on the issuance of building permits for new construction for all nonconforming lots in the Residence A zoning district that met the conditions set forth in that Resolution; and

**WHEREAS**, on December 10<sup>th</sup>, 2018 the City Council passed Resolution 2018-163 whereby it voted to extend such moratorium for an additional sixty (60) days and the moratorium remains in place as of the date of this Resolution; and

**WHEREAS**, both Resolutions 2018-150 and 2018-163 (together the “Moratorium Resolutions”) contained the following hardship provision:

**Hardship Provision.** The City will impose and implement this moratorium reasonably and will not unduly restrict the use of affected property. Accordingly, any landowner who has been denied use of his or her property may present evidence of same to the City Council of the City of Mountain Brook as a request for a hardship. In evaluating whether such a hardship exists, the City Council of the City of Mountain Brook shall determine whether the moratorium as applied to the specific parcel prohibits *any and all* use of the property which is the subject of the request. Absent said hardship, the moratorium will continue in full force and effect, provided, however, that, if the City Council of the City of Mountain Brook determines that such a hardship exists, it may permit the requested use or modify the moratorium to the minimum extent necessary to remedy the hardship.

**WHEREAS**, the Estate of Shila Donovan Bowron is the owner of Lots 10 and 11 located in Rockridge Park in the City of Mountain Brook, Jefferson County, Alabama, as recorded in the Office for the Judge of Probate for Jefferson County, Alabama on March 14, 1925, in Map Book 14, at page 75 and further shown on Exhibit “A” hereto; and

**WHEREAS**, Lots 10 and 11 meet the conditions set forth in the moratorium and thus, are restricted thereby; and

**WHEREAS**, Suzanne Bowron Nichols, Executrix for the Estate of Shila Donovan Bowron (“Bowron”) has requested that the City Council modify the moratorium under the hardship provision of the resolutions so as to permit issuance of a building permit for new construction on Lots 10 and 11 in the event that the current residence thereupon be removed and new residences be constructed on both Lot 10 and Lot 11; and

**WHEREAS**, such request is made upon the express agreement that, in such instance, the new residences would not be any closer than seventy (70) feet from County Club Drive as set

forth in the Covenant attached hereto as Exhibit B; and

**WHEREAS**, the City Council finds and determines that a hardship does exist under the terms of the Resolution and that a modification of the moratorium to exclude Lots 10 and 11 from its scope under the hardship provisions thereof, and further upon the imposition of the attached Covenant, to be reasonable and appropriate and in the best interests of the public.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mountain Brook, as follows:

1. The request of Bowron to be excluded from the moratorium under Resolutions 2018-150 and 2018-163 based, in part, on the imposition of the Covenant set forth as Exhibit B to this Resolution, should be and hereby is granted.
2. The City Council finds and determines that to further mitigate the concerns set forth in the Moratorium Resolutions and to give the submitted Covenant greater effect, the lines for Lots 10 and 11 should be reconfigured as is set forth on Exhibit C, attached hereto; that it is acknowledged that Bowron has made the recordation of the Covenants conditioned upon the approval of such resurvey; and accordingly, the City Council hereby requests that the Planning Commission of the City of Mountain Brook consider approving a resurvey of Lots 10 and 11 with the understanding and under the condition that the Covenant be recorded *prior* to the recordation of any such resurvey.
3. If the Planning Commission of the City of Mountain Brook denies the resurvey request referenced herein, then this Resolution shall be considered rescinded and of no force and effect immediately upon such denial.

**ADOPTED:** The 28th day of January, 2019.

\_\_\_\_\_  
Council President

**APPROVED:** The 28th day of January, 2019.

\_\_\_\_\_  
Mayor

## **CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on January 28, 2019, as same appears in the minutes of record of said meeting.

---

City Clerk

# DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, AND CONDITIONS

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## Jefferson County, Alabama

**THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND CONDITIONS** (this "Declaration") is made this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2019, by Suzanne Bowron Nichols, Executrix for the Estate of Shila Donovan Bowron, hereinafter referred to as "Declarant".

### WITNESSETH:

**WHEREAS**, Declarant is the owner of lot 10 ("Lot 10") and lot 11 ("Lot 11") located in Rockridge Park in the City of Mountain Brook, Jefferson County, Alabama, a certified plat being recorded in the Office for the Judge of Probate for Jefferson County, Alabama on March 14, 1925, in Map Book 14, at page 75 and further described on **Exhibit "A"** attached hereto and made a part hereof (Lot 10 and Lot 11 referenced together as the "Lots"); and

**WHEREAS**, one residential residence is constructed across the Lots and Declarant desires the flexibility to (i) expand the existing structure of the residence, (ii) clear the Lots and construct a new single family residence across both Lots under applicable zoning rules or (iii) clear the Lots and construct a separate single family residence on each of Lot 10 and Lot 11 under certain restrictive covenants; and

**WHEREAS**, in order to benefit the Lots, to provide for a more uniform streetscape and to promote consistency with the location of residences on surrounding properties, Declarant desires to place the restrictions set forth herein on Lot 10 and Lot 11 if such Lots are developed separately and two (2) single family residences are constructed thereupon.

**NOW, THEREFORE**, Declarant declares that Lot 10 and Lot 11 shall be held, sold, conveyed or encumbered, rented, used, occupied and improved subject to the following Covenants, Restrictions, and Conditions ("**Restrictions**") set forth below expressly and exclusively for the use and benefit of Lots and of each and every person or entity who now or in the future owns any portion or portions of the Lots and further for the benefit of the City of Mountain Brook, Alabama.

## ARTICLE I DEFINITIONS

**SECTION 1.** The following words, when used in this Declaration or any supplemental Declaration (unless the content shall prohibit), shall have the following meanings:

(A) Declarant shall mean The Estate of Shila Donovan Bowron, its successors or assigns.

(B) Owner shall mean and refer to a record Owner of the fee simple title to any Lot or Dwelling Unit situated upon Lot 10 and/or Lot 11.

## ARTICLE II COVENANTS, RESTRICTIONS AND AFFIRMATIVE OBLIGATIONS

**SECTION 1. Residential Building.** The Lots shall be used exclusively for single family residential purposes.

**SECTION 2. Independent Development of Lots 10 and 11 and the Construction of Two Separate Dwelling Units Thereupon.** If Owner decides to remove the residence that is, at the time of the execution

of this Declaration, situated upon Lots 10 and 11 and develop Lot 10 and Lot 11 separately such that a new residence shall be constructed on each of such Lots, the residences constructed on both Lot 10 and Lot 11 shall be sited in such a way as to provide a minimum front setback from Country Club Road of seventy (70) feet. All other setbacks shall conform with applicable zoning regulations in place at the time of issuance of any permit for construction thereof.

**ARTICLE III  
GENERAL PROVISIONS**

**SECTION 1. Scope and Effect.** The restrictions contained herein shall not be deemed to impair or restrict use of the subject Lots other than as specifically set forth herein and there shall be no restriction on the type or number of structures implied hereby, the intent being that use of the Lots shall not be limited except by application of governing standards set forth in applicable municipal law or regulation.

**SECTION 2. Amendment of Covenants, Conditions and Restrictions.** The covenants, conditions and restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by an instrument signed by all of the Owners of the Lots or any portion or portions of the Lots and by the City of Mountain Brook, Alabama. Any amendment must be recorded.

IN WITNESS WHEREOF, Suzanne Bowron Nichols, Executrix for the Estate of Shila Donovan Bowron, has caused this Declaration to be executed on this the \_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_  
Suzanne Bowron Nichols, Executrix  
for the Estate of Shila Donovan Bowron

THE STATE OF \_\_\_\_\_ )  
\_\_\_\_\_ COUNTY )

I, the undersigned, a Notary Public in and for said State hereby certify that Suzanne Bowron Nichols, whose name is signed to the foregoing conveyance, and who is known to me acknowledged before me on this day, that, being informed of the contents of the conveyance she, as Executrix for the Estate of his mother, Shila Donovan Bowron, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2019.

NOTARIAL SEAL

\_\_\_\_\_  
Notary Public  
My Commission Expires:

This Instrument Prepared By:

# EXHIBIT A



## **“ZONING NOTICE**

Notice is hereby given that at a regular meeting of the City Council of the City of Mountain Brook to be held on Monday, February 11, 2019, at 7:00 p.m., in the Council Chamber of the Mountain Brook City Hall located at 56 Church Street, Mountain Brook, Alabama 35213, the City Council will hold a public hearing regarding a proposal to rezone recently annexed Lockerbie property from its temporary zoning of Res-C to permanent zoning of Clustered Residential.

### **‘ORDINANCE NO.**

### **AN ORDINANCE TO REZONE A PARCEL OF LAND IN THE CITY OF MOUNTAIN BROOK, ALABAMA FROM ITS CURRENT [TEMPORARY] RESIDENCE-C DISTRICT TO [PERMANENT] CLUSTERED RESIDENTIAL DISTRICT.**

**WHEREAS**, the real estate as more particularly described as: “Lot 11 A, according to a Resurvey of Lots 1,2,4,5,6,7 and 8, Cluster I and Managed and Landscaped Areas, Resurvey of Lockerbie Phase II, and Lots 1,2,3,4,5,6,7 and 8 Cluster II and Acreage, Amended map of Lockerbie, Phase IV, said Resurvey being recorded In Map Book 155, Page 78, in the Probate Office of Jefferson County, Alabama,” and illustrated in the accompanying survey map is presently [temporarily] zoned Residence-C District as provided by Ordinance No. 1347; and

**WHEREAS**, after due consideration, the City Council has determined that the zoning Classification of the Real Estate should be Clustered Residential District.

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

Section 1. The zoning map of the City of Mountain Brook, as referred to in Section 129-17 of the Mountain Brook City Code, as amended from time to time, is hereby further amended by zoning the above described property Clustered Residential District:

Section 2. The provisions of this ordinance are severable. If any provision of this ordinance is held by a court of competent jurisdiction to be invalid, such invalidity shall in no way affect the remaining provisions of this ordinance.

Section 3. This ordinance shall become effective when published by posting the same as required by law.”

### **CERTIFICATION**

I, Tammy Reid, Administrative Analyst for the City of Mountain Brook, Alabama, do hereby certify that I have caused notice of the proposed rezoning and of public meeting thereupon set forth above to be published and provided in the manner specified by Article XXV, Sec. 129-431, of the Mountain Brook City Code. I further certify that I have posted said notice in four conspicuous places within the City of Mountain Brook, in the manner and within the time permitted by law, said places being:

Mountain Brook City Hall, 56 Church Street  
Cahaba River Walk, 3503 Overton Road

Gilchrist Pharmacy, 2850 Cahaba Road  
Overton Park, 3020 Overton Road

---

Tammy Reid, Administrative Analyst