

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

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

DECEMBER 10, 2018, 7:00 P.M.

1. Human Trafficking Awareness proclamation.
2. Approval of the minutes of the November 26, 2018, regular meeting of the Mountain Brook City Council.
3. Approval of the minutes of the December 10, 2018, regular meeting of the Mountain Brook City Council.
4. Consideration: Resolution appointing Thomas Amason to the Board of Landscape Design (to fill the unexpired term of Jason Comer), to serve without compensation through December 12, 2020.
5. Consideration: Resolution appointing Vince Schilleci to the Editorial Board (to fill the unexpired term of Graham Leigh Smith), to serve without compensation, with the term of office to end August 8, 2020.
6. Consideration: Resolution authoring the expenditure of up to \$1,000 for island improvements on Lewis Circle.
7. Consideration: Resolution authorizing the purchase of LED fixtures and lights from the Sourcewell (formerly NJPA) governmental purchasing cooperative contract 082114-msl with respect to the Athletic Complex improvements.
8. Consideration: Resolution authorizing the execution of an agreement with Stone & Sons Electrical Contractors, Inc. with respect to the Athletic Complex LED lighting improvement project.
9. Consideration: Resolution authorizing the renewal of a 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) with respect to their operation of a cable system in the City.
10. Consideration: Resolution authorizing the execution of the second amendment to the franchise agreement with AT&T (Resolution No. 2011-193) with respect to their provision of television programming in the City (U-verse).
11. Consideration: Resolution authorizing the execution of an amendment to the field use/maintenance agreement between the City and Birmingham Levite Jewish Community Center with respect to the use of gym space.
12. Consideration: Resolution authorizing the execution of an agreement between the City and G & A Electrical Services for electrical work with respect to the Mountain Brook Elementary School athletic field restroom project.
13. Consideration: Resolution authorizing the execution of a right-of-way encroachment (driveway in unimproved right-of-way) agreement between the City and TJB, LLC with respect to the property located at 142 Spring Street.
14. Consideration: Hardship appeal by the owners of 401 Michael Lane with respect to the moratorium imposed upon the adoption of Resolution No. 2018-150 on development of non-conforming parcels and extended to February 3, 2019, upon the adoption of Resolution No. 2018-163.
15. Announcement: The next regular meeting of the City Council will be January 7, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
16. Comments from residents.
17. Adjourn.

Human Trafficking Awareness Month

WHEREAS, human trafficking is a very real problem facing the world today. Although it can take many forms, including debt bondage, forced marriage, slavery and commercial sexual exploitation, in every case it goes against the core principles of individual freedom and civil rights that our state and nation stand for. The City of Mountain Brook, Alabama is committed to ensuring that our community remains on the front lines in combating this deplorable crime, and

WHEREAS, due to its secretive and illegal nature, it is difficult to accurately quantify the extent of **human trafficking**. However, the U.S. Department of State estimates that anywhere from 600,000 to 800,000 people are trafficked across international borders each year. Most victims of **human trafficking** are women or children who have been marginalized and isolated from society. The difficulty in grasping the full scope of this problem can be further compounded because people often turn a blind eye to it, and

WHEREAS, the first step in eliminating **human trafficking** is to educate others. We must work to ensure that all our residents are aware of this problem and how to spot it. We must work together as a community so that human traffickers are punished and to protect and assist their victims. Through the vigilance and perseverance of our citizens, effective enforcement of justice will someday be a reality, and

WHEREAS, we ask all residents of this community to join us in raising the visibility of this crime whose victims are all too often invisible. Together, we can become more informed about this pressing issue and work to combat its injustices.

NOW, THEREFORE, I, Stewart H. Welch III, Mayor of the City of Mountain Brook, do hereby proclaim January 2019, as "**Human Trafficking Awareness Month**" in Mountain Brook, Alabama.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Mountain Brook to be affixed the 10th day of December of the year of our Lord 2018 and of the Independence of the United States of America, the 242nd.

Stewart H. Welch III, Mayor

2018-164

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
NOVEMBER 26, 2018**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:30 p.m. on the 26th day of November, 2018. 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. Request for bus stop shelter at Cahaba Village (Appendix 1)—David Silverstein

The members of the City Council expressed their general support for the installation of a bus stop shelter on U. S. Highway 280 but reminded Mr. Silverstein that this request was previously denied by the Alabama Department of Transportation (ALDOT). Mr. Silverstein offered to discuss this proposal as well as the yield sign on Pump House Road with ALDOT and report back to the City Council.

2. Review of the matters to be considered at the formal (7 p.m.) meeting
3. The Mayor gave a brief update on the following matters: 1) the Restaurant Challenge, 2) the MAX village shuttle pilot program, and 3) the pedestrian bridge in Jemison Park.

2. ADJOURNMENT

There being no further matters to be discussed, Council President Smith adjourned the pre-meeting at approximately 6:45 p.m.

3. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on November 26, 2018, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

City Clerk

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
NOVEMBER 26, 2018**

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:00 p.m. on the 26th day of November, 2018. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: None

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

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

1. INTRODUCTION OF GUESTS

Council President recognized Reynard Vaughan and 4-5 other Boy Scouts from Troop 320 along with Boy Scouts Carl Lane Evans and Jack Welch from Troop 63 all in attendance for their communications merit badge.

2. CONSENT AGENDA

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

Approval of the minutes of the November 13, 2018, regular meeting of the City Council.

2018-160	Reaffirm the City's commitment to promote safe workplace guidelines with respect to the City's workers' compensation program	Exhibit 1, Appendix 1
2018-161	Authorize the installation of and ongoing operation of a street light in the vicinity of 3869 Glencoe Drive	Exhibit 2, Appendix 2
2018-162	Declare certain [library] equipment surplus and authorizing its sale at public Internet auction	Exhibit 3

Thereupon, the foregoing minutes and resolutions and motion were introduced by Council President Smith and a motion for their immediate adoption was made by Council Black. The minutes and resolutions were then considered by the City Council. 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
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 minutes and resolutions (Nos. 2018-160 through 2018-162) are adopted by a vote of 5—0 and as evidence thereof signed the same.

3. CONSIDERATION: RESOLUTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY ENCROACHMENT (DRIVEWAY IN THE UNIMPROVED RIGHT-OF-WAY) AGREEMENT BETWEEN THE CITY AND TJB, LLC WITH RESPECT TO THE PROPERTY LOCATED AT 142 SPRING STREET (EXHIBIT 4, APPENDIX 3)

Council President Smith introduced the resolution in writing and then invited comments from City Planner Dana Hazen and other interested parties.

Dana Hazen, City Planner:

- The developer wishes to install a driveway within the 50 foot right-of-way along the north side of the property
- There is currently asphalt under dirt and debris on the right-of-way where the improvement is requested, probably installed by the previous owner

Casey Wheeler, developer, of 8343 Dogwood Lane, Morris, AL:

- Apologized to Building Official Glen Merchant and the property owners for the recent concrete work performed outside the hours allowed
- Wishes to install a 20-foot wide by 50-foot long access to the property to allow for additional off-street parking which should significantly reduce the need for the [future] property owners or their guests to park along the very narrow street
- There is an old masonry wall and steps that appears to access a previous, similar improvement

Council member Black inquired of Mr. Merchant what has been permitted to which Mr. Merchant responded that the permit includes the home which meets all setback, impervious area and parking requirements. The requested improvement within the right-of-way, if approved by the City Council, will allow for additional on-site parking.

David Allen of 134 Spring Street:

- Is generally in favor of the development project, however, the construction phase has been a nightmare for the residents
- The project is being performed by a builder/investor, not a resident homeowner
- Expressed concern about the marketability of the two lots due to the unusual configuration of the lots and therefore is concerned about their viability
- Currently, accessibility and safety are of great concern due to construction worker/contractor traffic and the very narrow road
- Children currently use the right-of-way as a walking path to the alley
- Questions where the right-of-way lines are located
- Urged the City Council to delay approving this improvement to perform additional research
- Ultimately, the neighbors would like to see the City widen the street and perhaps make room for even more parking

Wilson Holifield of 132 Spring Street:

- Communication has been terrible
- Recently, the developer took down a 60-foot pine tree without any warning which he perceived as unsafe and of great inconvenience
- The neighbors have paved driveways and landscaped yards and do not like the idea of a gravel driveway around these properties
- Echoed concern about traffic, safety and area children

Council President Smith, Dana Hazen, Council member Black:

- The lots are zoned Residence C
- Gravel driveways are common in Crestline where there are smaller lots due to impervious area building regulations
- The project has been permitted which includes verification of impervious areas which often dictates the type of building/paving materials to be used for drive and walking paths

Mr. Merchant:

- Conceded that initial communications with Mr. Allen were not optimal due to computer issues
- Mr. Wheeler has built at least two other homes in the City with little or no issues
- With respect to this project, there has been one fine for a BMP failure
- The lots and the plans are conforming
- The encroachment improvement, if approved, should have no impact of the adjoining property owners

David Allen:

- Suggests that the City resurvey the area (and all future right-of-way encroachment requests) to determine the exact location of the rights-of-way
- For this request, believes the City should evaluate the traffic situation and determine how wide Spring Street should be

Glen Merchant:

- The request is not practical
- The suggestion is an impractical solution to a simple problem
- Surveying right-of-way for such requests is not customary in Mountain Brook or surrounding cities
- The City staff has spent considerable time studying this and similar issues and views the encroachment agreement as an appropriate solution

David Allen:

- Asked whether any evaluation has been done with respect to the masonry stairs mentioned earlier that appears to be in the right-of-way

Glen Merchant:

- The stairs are unrelated to the request under discussion

David Allen:

- Asked not to be told he was irrelevant

Council President Smith then excused Mr. Merchant in order to get the discussion back on point.

David Allen:

- Believes the masonry stairs are relevant and that the whole area needs to be studied before making a decision on the requested improvements in the right-of-way
- Does not view the delay of the requested improvements to adversely impact the overall development project or timeline

Mr. Allen and Holifield agreed that they are in favor of a good development project. They just want to be sure the project has the best chance of being marketable, beneficial to the neighborhood, safe and results in minimal traffic impact.

John Barnhart of 146 Spring Street:

- Does not object to the issues raised by Mr. Allen and Mr. Holifield
- The street is actually a one-lane alley
- When the homes are finished and there will be five houses on the street, traffic flow will be significantly worse than it is currently

- Ultimately, would like to see Mountain Avenue extended and connected to Spring Street
- Understands that the City will likely not undertake that improvement
- He currently maintains the unimproved easement and believes the City should take over that responsibility if the area is not going to be improved
- Believes that if the developer installs an aesthetically pleasing driveway it will help the traffic congestion and safety situation

There being no further comments or discussion from the audience, Council President Smith asked for comments from the elected officials.

Council President Pro Tempore Pritchard admitted that he has not inspected the area with respect to this proposal and wishes to delay any action to allow him time to do so.

Council President Smith expressed her agreement. Because no one entered a motion, Council President Smith announced that the matter will likely be brought back for formal consideration at the December 10, 2018, meeting of the City Council.

Council member Black:

- To avoid having the Riot Act read with respect to this and any future developments in the City, suggested that Mr. Wheeler be a good neighbor
- Takes exception to a developer (especially with respect to a [non]resident investor) coming into an area to develop property and believes the developer should go out of their way to proactively keep the affected neighbors informed especially when the development activity disrupts normal activity in the neighborhood
- Suggested that Mr. Wheeler treat the neighbors as he would expect to be treated were he in their shoes

Council President Smith then closed the discussion.

4. CONSIDERATION: ORDINANCE (NO. 2038) TO ALTER AND REARRANGE THE BOUNDARY LINES OF THE CITY OF MOUNTAIN BROOK, ALABAMA, SO AS TO INCLUDE WITHIN THE CORPORATE LIMITS CERTAIN OTHER TERRITORY CONTIGUOUS TO SAID CITY (EXHIBIT 5, APPENDIX 4)

Council President Smith introduced the ordinance in writing and then invited comments from the applicants or their representative.

Jason Wallace, developer, representing the applicants of 2005 Craig Lane, Hoover, AL 35226:

- The developer, on behalf of the property owners, wishes to subdivide the 18.7 +/- acre parcel into three, estate-sized lots and develop each pursuant to the conditions outlined in the annexation covenants
- Recently, completed their development of one sector in this area and now wishes to develop the second sector

Council President Pro Tempore Pritchard stated that the Mountain Brook Board of Education has expressed no opposition to the proposed annexation.

City Attorney Whit Colvin:

- The covenants include a provision that the parcel shall be subdivided into no more than three lots
- Each lot shall be a minimum of 3 acres
- The covenants shall be recorded and be binding for all future owners of the lots

There being no further comments or questions, Council President Smith invited a motion from the City Council. It was then moved by Council member Shelton that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended and that unanimous consent to the immediate consideration of said ordinance be given and that the reading of the

ordinance at length be waived. The motion was seconded by Council President Pro Tempore Pritchard and was unanimously carried, as follows:

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

Nays: None

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

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

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

Nays: None

Council President Smith declared that the ordinance (No. 2038) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same

5. ANNOUNCEMENT

The next regular meeting of the City Council will be Monday, December 10, 2018, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

6. ADJOURNMENT

There being no further business to come before the City Council, Council President Smith adjourned the meeting at approximately 7:32 p.m.

7. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the joint, regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on November 26, 2018, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

City Clerk

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**MINUTES OF THE SPECIAL MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
DECEMBER 5, 2018**

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 5:00 p.m. on the 5th day of December, 2018. 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
Lloyd C. Shelton
Alice B. Womack
Stewart Welch III, Mayor

Absent: Philip E. Black

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

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

1. CONSIDERATION: RESOLUTION EXTENDING FOR ~~90~~ 60 DAYS A MORATORIUM DECLARED NOVEMBER 5, 2018, UPON THE ADOPTION OF RESOLUTION NO. 2018-150 ON THE DEVELOPMENT OF NON-CONFORMING PARCELS (EXPIRES ~~MARCH 5 FEBRUARY 3, 2019~~) (EXHIBIT 1, APPENDIX 1)

Council President Smith introduced the resolution in writing (which has been prompted by a request from the Planning Commission) extending the moratorium for ninety (90) days.

Whit Colvin, City Attorney:

- Resolution No. 2018-150 provides for multiple extensions of up to ninety (90) days but an extension could be granted for less or not at all
- Beyond 90 days, it may be viewed as impinging on the owners' property rights
- The purpose of the 90-day time frame was to allow time for the Planning Commission and City Council public hearing(s) notification process(es) required for regulatory amendments

Dana Hazen, City Planner:

- The Planning Commission's ad hoc committee requested additional time (90 days) for study but has not offered any guidance on what code amendments may be in order

Council President Smith:

- Bill Bowron and Jesse Vogtle have requested that the City Council consider extending the moratorium for no more than 60 days
- Mr. Bowron intends to present restrictive covenants that will protect the City and neighborhood and seek a hardship exception to said moratorium should the Council agree

Bill Bowron:

- Currently, a future property owner could alter the existing home and stay within existing setback and other building code requirements
- Similarly, should a future property owner wish to raze the house and construct another house on the lots, they can do so under the current zoning code
- Barring those scenarios, if two homes were to be built on the lots, the property line will have to be adjusted via a resurvey approved by the planning commission and the setback of each of the houses be 60 feet

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- The proposed covenants (to run with the deed) will state that if two houses are ever proposed, each must satisfy a front 60-foot setback along Country Club Road

Dana Hazen, City Planner:

- She was asked to look at the nearby lot widths, not just the lot sizes
- There are six parcels along Country Club Road are approximately 100 feet wide and comparable with respect to the houses widths on the parcels
- With respect to the six houses along Country Club Road, house widths range from 58 to 75 feet
- These homes have front setbacks of 80 to 150 feet
- The “Skinner” house (3308) is set back approximately 40-50 feet
- There are two similar cases at hand, Mr. Bowron’s and another located on Michael Lane
- The Michael Lane parcel is actually three lots with one house
- The owners wish to sell each of the lots and, if so, there could be three non-conforming lots with three houses where there is currently one
- The owners have had a contract cancelled for the center parcel due to the moratorium
- The owners will seek a hardship exception to the moratorium on December 10
- These situations raise the question as to whether there are (and how many) similar non-conforming Residence A parcels in the City which will could complicate any regulatory changes the City may wish to consider
- Michael Lane is neither a landmark or gateway road, as is Country Club Road
- No real solution has been offered by either the ad hoc study committee or the planning commission
- Perhaps, going forward, non-conforming lots may not be redeveloped that do not meet the setback requirements except for standalone lots (one house currently on one non-conforming parcel)
- The three Michael Lane parcels could be consolidated into two conforming parcels with one house on each and not be impeded by the moratorium (not an option for Mr. Bowron)
- A proposal is not necessarily difficult to come up with, there simply has not been any direction offered to date

Council President Pro Tempore Pritchard

- Bothered by the Council interfering with someone’s property rights
- On the other hand, believes that it could be virtually impossible to identify all of these occurrences and draft comprehensive regulatory changes that can accommodate each one
- Prefers that the Council deal with each case individually and address concerns through negotiated covenants as has been proposed in the Bill Bowron case

Mr. Bowron:

- The house has been vacant for 6-7 months and is concerned that his fire insurance coverage may soon be cancelled

Whit Colvin:

- Believes a regulatory amendment can be drafted within 60 days for the City to consider
- In Mr. Bowron’s case, it appears he will seek a negotiated covenant solution and apply for a hardship exception to the moratorium

Jesse Vogtle:

- The Bowron’s are dealing with marketability issues until the covenants are agreed upon or moratorium otherwise lifted
- The reason Mr. Bowron’s request upset the neighbors was due to a misunderstanding by one of Mr. Livingston’s relatives who informed the neighborhood residents that the Bowron’s intended to have the City change the zoning code to allow him to subdivide the parcel which, led to a large turn-out at the Planning Commission meeting

Council President Smith:

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- Would prefer that Mr. Bowron's parcel be built with one nice house and thinks the front setback should be greater than 60 feet
- However, suggests that the City consider extending the moratorium for 60 days and work with Mr. Bowron to develop covenants to make the future development more palatable for the neighbors (as they will not be satisfied as they likely do not want two houses on these parcels)

Mayor Welch:

- Urged that the process move quickly as insurance can soon become problematic

Council President Pro Tempore Pritchard:

- Agrees with Presidents Smith's recommendations
- Another reason to move quickly is that two houses can be built on the property today
- Reconfiguring the lots and increasing the setback to 60 feet will result in a better development

The property may be marketed but cannot be developed under the [extended] moratorium, if approved. However, Mr. Bowron may seek a hardship exception to the moratorium provided the Council agrees to the proposed covenants. Once the hardship is approved, assuming it is, and then the parcel subdivision may be presented to the Planning Commission for approval.

There being no further comments or discussion, Council President Smith called for a motion. Council President Pro Tempore Pritchard then moved for the adoption of said resolution [modified to change the extension from 90 to 60 days]. The motion was seconded by Council member Shelton. Thereupon, Council President Smith called for vote with the following results:

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

Nays: None

Council President Smith declared that the resolution (No. 2018-163) is hereby adopted by a vote of 4—0 and, as evidence thereof, she signed the same.

2. ANNOUNCEMENT

The next regular meeting of the City Council will be Monday, December 10, 2018, 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 5:30 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 December 5, 2018, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

City Clerk

RESOLUTION NO. 2018-165

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Thomas Amason is hereby appointed to the Board of Landscape Design, to fill the unexpired term of Jason Comer and serve without compensation, with the term of office to end December 12, 2020.

ADOPTED: This 10th day of December, 2018.

Council President

APPROVED: This 10th day of December, 2018.

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 December 10, 2018, as same appears in the minutes of record of said meeting.

City Clerk

Tommy Amason bio for BLD appointment

Simeon Johnson

to Janet, Tommy, Sam, Virginia, me

Janet,

Please find below Tommy Amason's bio for the city council's consideration at their December 10, 2018 meeting. The Board of Landscape Design voted unanimously at its November meeting to recommend the city council appoint Tommy to serve the remainder of the BLD term vacated by Jason Comer. Please let me know if anything more is needed from me or Tommy for the city council's consideration. Thank you all

Sim S.W. Johnson
Chair, Mountain Brook Board of Landscape Design
cell [205.215.8621](tel:205.215.8621)
Instagram @simswjohnson

Begin forwarded message:

From: "Amason, Thomas DDS Birmingham" <Thomas.Amason@ssa.gov>
Date: December 4, 2018 at 10:55:20 AM CST
To: "SIMEONJOHNSON@MSN.COM" <SIMEONJOHNSON@MSN.COM>
Subject: BRIEF CV FOR TOMMY AMASON

THOMAS GILBERT AMASON, JR, M.D. (TOMMY)
DOB 3/28/40
MARRIED TO THE FORMER CAROLINE YATES MIDDLETON FOR 50 YEARS.
TWO ADULT CHILDREN: CAROLINE AMASON ADAMS (RUSSELL), THOMAS GILBERT "BERT"
AMASON, III (VIRGINIA)
BS DEGREE AUBURN UNIVERSITY 1962
MD DEGREE U OF AL, 1966
PEDIATRIC TRAINING UAB 1966-1968
US NAVY, LT. COMMANDER 1968-1970, NUCLEAR SUBMARINE PHYSICIAN
PEDIATRIC TRAINING 1970-1971, MONTEFIORE HOSPITAL OF ALBERT EINSTEIN MEDICAL SCHOOL,
NY, NY
MASTER GARDENER PROGRAM GRADUATE 1993

PRIVATE PRACTICE AT MAYFAIR MEDICAL GROUP PEDIATRICS, 1971-2015 (44YRS)
CURRENTLY EMPLOYED AS A MEDICAL CONSULTANT FOR THE STATE OF AL AT DDS

TRUSTEE AT BBG AND LONG TIME BOARD MEMBER, PAST PRESIDENT OF FRIENDS OF BBG BOARD
AMERICAN HORTICULTURE SOCIETY NATIONAL BOARD MEMBER FOR THREE YEARS
SPEAKER AT WILLIAMSBURG SPRING GARDEN SYMPOSIUM
SPEAKER FOR LOCAL GARDEN CLUBS MANY TIMES
AMASON PRIVATE RESIDENCE GARDENS ON TOUR TWICE FOR BBG GLORIOUS GARDENS TOURS

PAST VESTRY MEMBER AT SAINT MARY'S ON THE HIGHLANDS EPISCOPAL CHURCH AND
LAYREADER
MEMBER OF THE ST. ANDREWS SOCIETY OF THE MIDDLE SOUTH
PAST PRESIDENT OF THE MEDICAL STAFF AT CHILDREN'S OF ALABAMA
FOUNDER COMMITTEE FOR THE DISCOVERY PLACE FOR CHILDREN, NOW THE MC WANE SCIENCE
CENTER

12/4/18

2018-165

RESOLUTION NO. 2018-166

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Vince Schilleci is hereby appointed as a member of the Editorial Board of the City of Mountain Brook (to fill the unexpired term of Graham Leigh Smith), to serve without compensation, with the term of office to end August 8, 2020.

ADOPTED: This 10th day of December, 2018.

Council President

APPROVED: This 10th day of December, 2018.

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 December 10, 2018, as same appears in the minutes or record of said meeting.

City Clerk

RESOLUTION NO. 2018-167

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes City Manager to pay, or cause to be paid for and on behalf of the City, up to \$1,000 for materials and provide City labor and equipment to install beautification improvements at the Lewis Circle traffic island as illustrated in Exhibit A attached hereto.

ADOPTED: This 10th day of December,2018.

Council President

APPROVED: This 10th day of December,2018.

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 December 10, 2018, as same appears in the minutes of record of said meeting.

City Clerk

Traffic Island Policy Worksheet

Partnership Agreement

Mr. Sink will install and maintain the island

Island Committee Comments

Date 12/3/18

The plan was approved with the suggestion to plant mondo grass instead of hedges in the green space.

It was also suggested to plant a variety of native trees along the street leading up to and around the island.

Tree Commission Members: E. Poyner R. Holman (not present)

Park Board Members: H. Drennen + A. Reese

Others Present: V. Smith S. Williams A. Sink

Police Department Comments

Date 11/28/18

It was suggested that the sugar kettle remain under 4ft which it is drawn that way on the plan.

Council Comments:

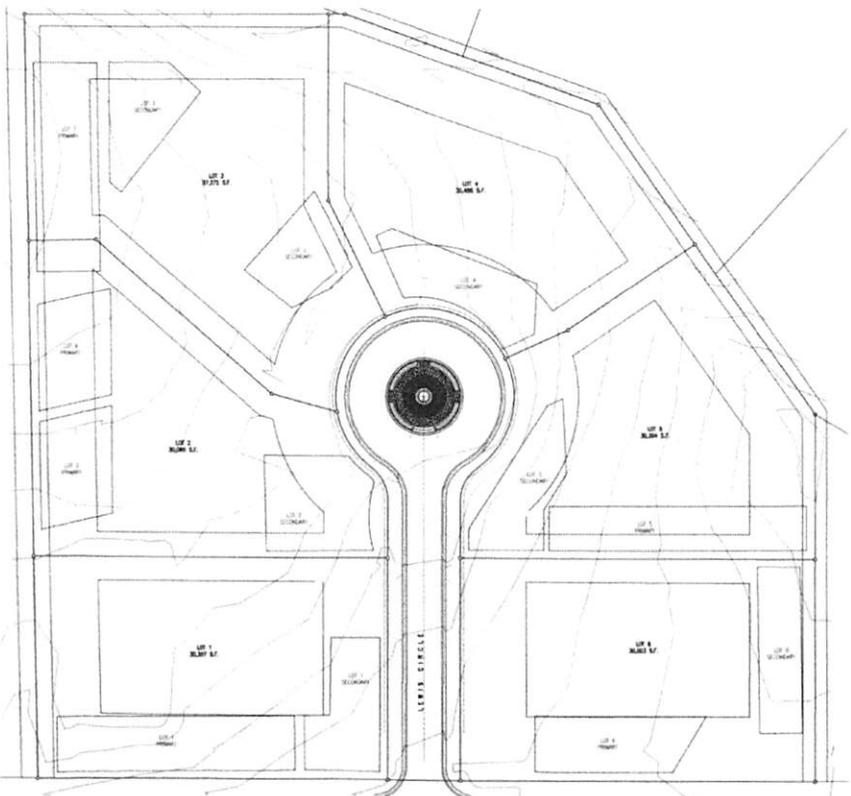
Date: 12/10/18

Amount approved:

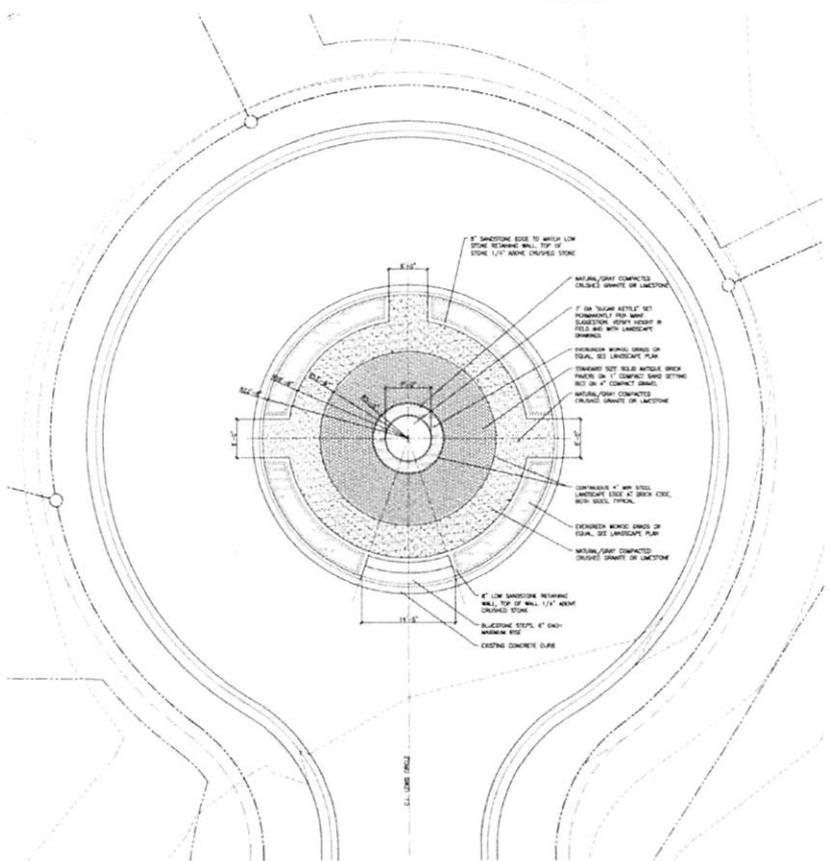
Traffic Island Policy Worksheet

Construction Issues/Comments/Adjustments

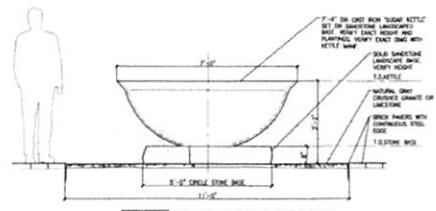
2018-167



02 OVERALL SITE PLAN
SCALE 1/8"=1'-0"



01 CIRCLE PLAN
SCALE 1/8"=1'-0"



05 SUGAR KETTLE DETAIL
SCALE 1/2"=1'-0"

A NEW RESIDENTIAL DEVELOPMENT
LEWIS CIRCLE
 LEWIS CIRCLE, MOUNTAIN BROOK, ALABAMA 35223
 C.M. BRANT
 ARCHITECTS
 1111 UNIVERSITY BLVD., SUITE 100
 HOUSTON, TEXAS 77002-2834
 TEL: 281.440.1111
 FAX: 281.440.1112
 WWW.CMSTANT.COM
 DATE: 08/15/18
 SHEET: 01 OF 01

RESOLUTION NO. 2018-168

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes City Manager to issue a purchase order and to execute such other documents that may be determined necessary for the purchase of LED lighting from the Alabama Department of Examiners' approved Sourcewell (formerly NJPA) purchasing cooperative contract 082114-MSL with respect to the Athletic Complex (see Exhibit A attached hereto).

ADOPTED: This 10th day of December,2018.

Council President

APPROVED: This 10th day of December,2018.

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 December 10, 2018, as same appears in the minutes of record of said meeting.

City Clerk



Ronald L. Jones
Chief Examiner

Mailing Address:
P.O. Box 302251
Montgomery, AL 36130-2251

State of Alabama
Department of
Examiners of Public Accounts

Act 2018-413 provides for certain exceptions to the Alabama Public Works Law. As a result, effective June 1, 2018, air conditioning and heating units and systems may not be purchased from this cooperative until further notice.

Location:
Gordon Persons Building
50 North Ripley Street, Room 3201
Montgomery, AL 36104-3833

October 30, 2017

Alabama Municipalities
Alabama County Commissions
Alabama City and County Boards of Education
Alabama Community College System
Other Entities subject to the *Code of Alabama 1975*, Section 41-16-50

To whom it may concern,

In accordance with the *Code of Alabama 1975*, Section 41-16-51 and the *Code of Alabama 1975*, Section 16-13B-2, we have reviewed the competitive bidding process used by the National Joint Powers Alliance ("NJPA"), a national governmental purchasing cooperative for the contracts awarded as of the date of this letter. We noted no matters we felt were contrary to proper purchasing procedures or routine governmental procurement practices. These contracts were awarded by NJPA, which is a governmental entity, based on competitive bid requirements of the State of Minnesota.

Based on our review, we approve the competitive bidding process used by NJPA through November 30, 2019, for the purchase of goods or services.

The *Code of Alabama 1975*, Sections 41-16-51 and 16-13B-2 authorizes the purchases of goods or services, other than voice or data wireless communication services utilizing purchasing cooperatives when certain conditions are met. Therefore, you **are not authorized** to use this purchasing cooperative for the purchase of voice or data wireless communication services.

Prior to utilizing this purchasing cooperative, you must ensure your entity's compliance with the Alabama Competitive Bid Law. The *Code of Alabama 1975*, Sections 41-16-51 and 16-13B-2, requires that you verify that the goods or services are not at the time available on the state purchasing program, or that they are available at a price equal to or less than that on the state purchasing program. Additionally, you must verify that the purchase is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.

Note – This approval does **not** apply to State Public Four-Year Universities within the State of Alabama.

Sincerely,

Ronald L. Jones
CHIEF EXAMINER

RLJ/jh

Vendors & Contracts

By Category

All Vendors

Athletics & Playgrounds 

Lighting & Electronics 



Clear All

Grainger - MRO

Facility Maintenance Products & Services

#091214-WWG

Office & Technology Facilities (MRO)

Athletics & Playgrounds Food Roads & Airports

Grounds & Ag Public Safety Fleet & Related

Grainger - Public Safety

Public Safety Equipment, Supplies & Apparel

#121416-WWG

Office & Technology Facilities (MRO)

Athletics & Playgrounds Health & Science Food

Roads & Airports Public Safety Fleet & Related

Musco Sports Lighting, LLC

Sporting Lighting Solutions

#082114-MSL

Athletics & Playgrounds

Nevco, Inc.

Video Display & Scoring Solutions

#082114-NVC

Athletics & Playgrounds



[Sourcewell for Vendors →](#)

[Terms & Conditions](#)

[Privacy Policy](#)

[Sitemap](#)

[Accessibility](#)

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Quote

Mountain Brook Sports Complex Fields 3, 4, 6 and 7 – Mountain Brook, AL
October 8, 2018

To: Sam Gaston

Sourcewell (Formerly NJPA)

Master Project: 170558, Contract Number: 082114-msl, Expiration: 09/16/2019

Category: Facility & MRO, Sub-Category: Athletic Field / Court and Parking Lot Lighting Systems

Sales tax, bonding, labor, and unloading of the equipment are not included.

Pricing furnished is effective for 60 days unless otherwise noted and is considered confidential.

Quotation Price – Materials Only Delivered to Job Site

Field 3: Coca Cola \$ 42,920.00

System Description

- (17) Factory aimed and assembled luminaries, including BallTracker™ luminaires
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Mounting hardware for poletop luminaire assemblies and electrical components enclosures
- Disconnects
- UL Listed as a system

Field 4: Coke Zero \$ 44,375.00

System Description

- (16) Factory aimed and assembled luminaries, including BallTracker™ luminaires
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Mounting hardware for poletop luminaire assemblies and electrical components enclosures
- Disconnects
- UL Listed as a system

Field 6: Sprite \$ 66,500.00

System Description

- (26) Factory aimed and assembled luminaries, including BallTracker™ luminaires
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Mounting hardware for poletop luminaire assemblies and electrical components enclosures
- Disconnects
- UL Listed as a system

Field 7: Dasani \$ 60,775.00

System Description

- (25) Factory aimed and assembled luminaries, including BallTracker™ luminaires
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Mounting hardware for poletop luminaire assemblies and electrical components enclosures
- Disconnects
- UL Listed as a system

SportsCluster System with Total Light Control – TLC for LED™ technology

Control Systems and Services

- Control-Link® system with contractors for remote on/off control and performance monitoring with 24/7 customer support

Operation and Warranty Services

- Reduction of energy and maintenance costs by 50% to 85% over typical 1500W metal halide equipment
- Product assurance and warranty program that covers materials and onsite labor, eliminating 100% of your



Quote

maintenance costs for 10 years

- Support from Musco's Lighting Services Team – over 170 Team members dedicated to operating and maintaining your lighting system – plus a network of 1800+ contractors

Payment Terms

Musco's Credit Department will provide payment terms.

Upon approval Email a copy of the Purchase Order to Musco Sports Lighting, LLC:

Musco Sports Lighting, LLC
Attn: Jimmy Jumper
Fax: 800-374-6402
Email: Jimmy.Jumper@musco.com

**All purchase orders should note the following:
Sourcewell (Formerly NJPA) purchase – Contract Number: 082114-MSL**

Delivery Timing

6 - 8 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole locations.

Due to the built-in custom light control per luminaire, pole locations need to be confirmed prior to production. Changes to pole locations after the product is sent to production could result in additional charges.

Notes

Quote is based on:

- Shipment of entire project together to one location.
- Structural code and wind speed = 2009 IBC, 90MPH, Importance Factor 1.0.
- Owner is responsible for getting electrical power to the site, coordination with the utility, and any power company fees.
- Standard soil conditions – rock, bottomless, wet or unsuitable soil may require additional engineering, special installation methods and additional cost.
- Confirmation of pole locations prior to production.
- Product assurance and warranty program is contingent upon site review and compatibility with Musco's lighting system
- The owner of the field is responsible for the structural integrity of the existing poles [Sports Cluster only].

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Jimmy Jumper
Field Sales Representative
Musco Sports Lighting, LLC
Phone: 256-483-5433
E-mail: jimmy.jumper





Ronald L. Jones
Chief Examiner

Mailing Address:
P.O. Box 302251
Montgomery, AL 36130-2251

State of Alabama
Department of
Examiners of Public Accounts

Telephone (334) 242-9200
FAX (334) 242-1775

March 29, 2012

Location:
Gordon Persons Building
50 North Ripley Street, Room 3201
Montgomery, AL 36104-3833

To: Alabama Municipalities
Alabama County Commissions
Alabama Community College System
Other Entities subject to the *Code of Alabama 1975*, Section 41-16-50

The Alabama Legislature passed Act No. 2011-530 (the "Act") allowing governmental entities to purchase items through certain purchasing cooperatives. Portions of the Act applicable to purchasing cooperatives have been codified in the *Code of Alabama 1975*, Section 41-16-51. Among other things, the Act provides that the purchases may be made if the goods being purchased are available as a result of a competitive bid process conducted by a governmental entity and approved by the Alabama Department of Examiners of Public Accounts ("EPA").

In order to receive this approval, the governmental entity wishing to purchase from one of the cooperative programs not already approved and posted on the EPA website should send a letter to EPA requesting approval. *The letter should reference the cooperative program and the type of items to be purchased.* The EPA will then review the cooperative program's purchasing procedures and determine whether it is approved. It should be noted that there are other provisions with which the governmental entity wishing to make purchases utilizing a purchasing cooperative should also comply. These additional provisions are contained in the *Code of Alabama 1975* Section 41-16-51.

These provisions do not currently apply to State Public Four-Year Universities or City and County Boards of Education within the State of Alabama.

Sincerely,

A handwritten signature in cursive script that reads "Ronald L. Jones".

Ronald L. Jones
CHIEF EXAMINER

RLJ/SR



Alabama Department of **EXAMINERS OF PUBLIC ACCOUNTS**

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Purchasing Cooperatives

[Cooperative Approval Procedures - General](#)

[Cooperative Approval Procedures - BOEs](#)

[U.S. Communities](#)

[TCPN Cooperative - General](#)

[TCPN Cooperative - BOEs](#)

[National IPA Cooperative - General](#)

[National IPA Cooperative - BOEs](#)

[NJPA Cooperative - General](#)

[NJPA Cooperative - BOEs](#)

[H-GAC Cooperatives - General](#)

[H-GAC Cooperatives - BOEs](#)

[Public Sourcing Solutions \(PSS\)](#)

[Home](#) | [Admin](#)

[Top](#)

Sam Gaston

From: Jimmy Jumper
Sent: Tuesday, October 09, 2018 4:17 PM
To: gastons@mtnbrook.org
Cc: williamssh@mtnbrook.org
Subject: Fwd: Mountain Brook Lighting Upgrade
Attachments: State Of Alabama Legistation Approving Purchasing Cooperatives.pdf; State Of Alabama Approved Purchasing Cooperatives List.pdf; Mountain Brook Revised Lighting Sourcewell Direct Purchase quote 10-8-18.pdf

Mr. Gaston:

Good afternoon. It has been some time since we spoke so I hope all is well with you. I am emailing you as I received a call this afternoon from Mr. Shea about upgrading the lighting on fields 3, 4, 6, and 7 at your Mountain Brook youth athletic fields. I know you all have been discussing this for some time. But, In talking with Mr. Shea today he stated that in his conversations with you today it was stated that the City would have to bid the lighting materials out. I certainly understand that and the bid laws which would require this item to be publicly bid.

However, I did mention to Mr. Shea there is another option that would allow the City of Mountain Brook to purchase the lighting materials direct. As you know in Alabama the State of Legislature has passed legislation that allows cities to purchase materials direct under one of the State of Alabama Approved Purchasing Cooperatives.(See attached Legislative Act)

Upon approving this legislation the State of Alabama approved approximately 10 Purchasing Cooperatives.(See attached list of Approved Cooperatives) Each of these cooperatives sent out specifications, for vendors to supply materials which were approved by the state. Two of these cooperatives, US Communities and NJPA which has changed its name to Sourcewell, sell sports lighting. For both of these cooperatives Musco was selected as the approved sports lighting vendor.

So, if the City wanted they could using one of these cooperatives to purchase our Musco Sports Lighting direct and be within the bids laws of The state of Alabama. In fact most cites now use these cooperatives to purchase our lighting instead of going through the bid process. Neighboring cites such as Homewood, Hoover, Pelham, Springville, Alabaster and many others have upgraded there lighting and purchased our lighting direct under the NJPA/Sourcewell Purchasing Cooperative. I hope you will realize that with so many cities purchasing our Musco Lighting direct there is a reason why they are doing this instead of bidding out the sports lighting.

Using this cooperative expedites the process and allows cities to get the lighting they want. In fact the quote I prepared for your lighting upgrades(See attached Quote) was based on the City of Mountain Brook purchasing the lighting direct under the NJPA/Sourcewell cooperative. I knew outside of Mr. Shea purchasing the lighting direct this would be the only way the City of Mountain Brook could do this. Thus, as stated that is why I prepared our quote under the Sourcewell Purchasing Cooperative.

I also understand that even though the City of Mountain Brook could purchase the lighting direct the legislative act does not allow for the install to be included or purchased direct. However, most other cities are either doing a self install, paying for the install with private funding, or if the install is under \$50,000 dollars it could be considered a public works project and thus the install can move forward without having to go through the bid process. I know cities who have done small projects have done this if the install under the \$50,000 threshold. Or if none of this works cities are buying our materials direct and only bidding the install. Also, as for the install I think Mr. Shea is willing to help with the install cost but I will let you and him discuss that.

So, as for the install I am not sure if any of the above mentioned options, outside of bidding the install, would work for your application. I will let you and Mr. Shea discuss this further to see if there are any options that might work on getting the install completed.

In closing upon your review of this info I certainly hope the City will explore purchasing our Musco lighting direct under the Sourcewell Purchasing Cooperative. This is a great program and as stated is how most cities are buying their lighting. As you know the sports field lighting is a critical part of any complex and most cities do NOT want to leave the decision of whose sports lighting they get in the hands of a contractor under a public bid application.

As always thanks for your time and if you have any questions I would be glad to discuss this further with you. Or, I would really enjoy the opportunity to sit down in person and discuss this further with you. There are some key items I would really like to discuss with you that I think would be very helpful.

Thanks so much for your time.

Sincerely,
Jimmy Jumper
Musco Sports Lighting
256-483-5433

RESOLUTION NO. 2018-169

BE IT RESOLVED that the City Council hereby authorizes the execution of a contract between the City and Stone & Sons Electrical Contractors, Inc., in the form as attached hereto as Exhibit A, with respect to the installation of LED lighting at the Athletic Complex.

ADOPTED: This 10th day of December, 2018.

Council President

APPROVED: This 10th day of December, 2018.

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 December 10, 2018, as same appears in the minutes of record of said meeting.

City Clerk

CONTRACTOR AGREEMENT

Stone and Sons Electrical Contractors, 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: Install Musco LED Lights on Fields 3, 4, 6, and 7

Site of Project: Mountain Brook Athletic Complex
3650 Bethune Drive
Mountain Brook, AL 35223

2. Scope of Work. See Exhibit A (which includes the City Scope of Work and October 29, 2018 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 five (5) 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 Forty-nine thousand five hundred dollars (\$49,500.00) 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

2018-169

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:

- (a) Fifteen percent (15%) of the Contract Price within five days after execution of Agreement; and
- (b) The Balance of the Contract Price after the following certification of completion of Work.

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 October 29, 2018 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: _____

STONE AND SONS ELECTRICAL CONTRACTORS, INC.

By: _____

Its: _____

Date: _____

EXHIBIT A – SPECIFICATIONS

1. Scope of Work.

See attached City Scope of Work and October 29, 2018 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 Work within an approximate 12 week period after execution of the Agreement and the City provides it a Notice to Proceed.

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:
Brody Stone
2530 Queenstown Road
Birmingham, AL 35210
Email: bstone@stoneandsons.com
Day Tel #: 205-833-8494

4. Special Conditions.

EXHIBIT A



Stone & Sons

Electrical Contractors, Inc.

October 29, 2018

Shanda Williams
Mountain Brook Parks and Recreation

RE: Mountain Brook Sports Complex

We are pleased to offer you the following quotation for the installation of the City furnished Musco lighting package. This quote meets the specifications outlined in the bid documents.

- Furnish labor, equipment, and miscellaneous materials to install Musco retrofit lighting packages on fields 3, 4, 6, and 7.
- Demo existing control panels and install Musco lighting control panels.

Total Price: \$49,500.00

Thank you for this opportunity. Feel free to contact with any questions regarding this quotation.

Sincerely,



Brody Stone

Mountain Brook Fields 3, 4, 6, and 7 Relight Install Request

To: Electrical Contractors

From: Shanda Williams, City of Mountain Brook

Re: Scope of Work info for Lighting Upgrades on Fields 3, 4, 6, 7 at Mountain Brook Sports Complex

The City of Mountain Brook is seeking Proposals to upgrade the lighting as stated for fields, 3, 4, 6, and 7 at the Mountain Brook Sports Complex (3650 Bethune Drive). The lighting equipment to be installed will be Musco and will be owner furnished.

The Scope of work is as follows:

To demo all lights as indicated for each field below. The demo shall include taking all fixtures down, taking cages down, and storing them on site as outlined by the owner. All existing electrical wiring will remain as it is the intent of the owner to reuse all existing wiring.

In addition to the demo of the fixtures the contractor shall remove all existing contactors in the electrical room and install two new Musco Control Cabinets which will have all new contactors included. Furthermore, the contractor shall demo all existing remote switches located outside the North East wall of the electrical room and install new Musco Remote switches for all fields.

Also, the contractor shall include in his proposal the cost to accept delivery of equipment from Musco to retrofit the existing Concrete poles with Musco LED Fixtures for each field as outlined below. Plus, the contractor shall include in his proposal the cost to install driver enclosures, approximately 12 feet above grade, on each pole as well as uplights per the recommended height from Musco. All driver enclosures can be strapped onto the pole.

Any damage to fields must be repaired to leave the fields/site in the same condition as it was found upon starting work. Plywood or other ground protection must be used under heavy vehicles.

Field 3—Coca Cola Field

The field has 17 total HID fixtures and we are going to replace these with 17 LED fixtures. There will be 13 fixtures at the top of the poles and 4 uplights fixtures located approximately 30 feet above grade on the A poles and 15 feet above grade on the C poles.

Field 4—Coke Zero Field

This field has 16 HID fixtures and we are going to replace these with 16 LED fixtures. There will be 12 fixtures at the top of the poles and four up lights. The uplights will be located at 30 feet on the A poles and 15 feet on the B poles.

Field 6---Sprite Field

This field has 26 HID fixtures and we are going back with 26 LED fixtures. This field has 6 poles. There will be 20 fixtures at the top of the poles and 6 uplights, one on each pole. The uplights on the A poles will be mounted at 30 feet and the B and C pole uplights will be mounted at 15 feet.

Field 7—Dasani Field

This field has 25 HID fixtures and we are going back with 25 LED fixtures. The field has six poles. There will be 19 fixtures at the top of the poles and 6 uplight fixtures. The uplight fixtures on the A poles will be at 30 feet and the uplight fixtures on the B and C poles will be at 15 feet.

In summary this is a one for one swap so we will be taking down 84 HID fixtures and installing 84 new Owner Furnished Musco LED fixtures on four fields. Also, as stated all cages are coming down and will not be re-installed.

Work could begin as early as mid December.

All work will need to be completed by the week of February 10, 2019.

An on-site meeting with the Musco representative is scheduled for Tuesday, October 23, 2018 at 10 am at the entrance of the complex by Field 3. Other site visits without the Musco representative can be arranged. Field 5 has already been completed so it can be viewed as an example of what we want for the other fields.

Please return your quote by Tuesday, October 30 at 10 am. You may submit it by email to the contact below.

If you have questions or want to schedule a different site visit please contact:

Shanda Williams
Mountain Brook Parks and Recreation
205-802-3879
williamssh@mtnbrook.org

Site Map: E is the electrical room





Control System Summary

Project Specific Notes:

Project Information

Project #: 174786
 Project Name: Mountain Brook Sports Complex Retrofit
 Date: 10/22/18
 Project Engineer: BVerStee
 Sales Representative: Jimmy Jumper
 Control System Type: Control and Monitoring
 Communication Type: Digital Cellular
 Scan: 174786BR1
 Document ID: 174786P1V1-1022160135
 Distribution Panel Location or ID: Service 1
 Total # of Distribution Panel Locations for Project: 1
 Design Voltage/Hertz/Phase: 480/60/3
 Control Voltage: 120

Equipment Listing

DESCRIPTION	APPROXIMATE SIZE
1. Control and Monitoring Cabinet	24 X 72
2. Manual Switch Cabinet	16 X 16
3. Control and Monitoring Cabinet	24 X 72
4. Control and Monitoring Cabinet	24 X 48

	QTY	SIZE
Total Contactors	26	30 AMP
Total Off/On/Auto Switches:	5	

Materials Checklist

Contractor/Customer Supplied:

- A single control circuit must be supplied per distribution panel location.
 - If the control voltage is NOT available, a control transformer is required.
- Electrical distribution panel to provide overcurrent protection for circuits
 - Thermal/Magnetic circuit breaker sized per full load amps on Circuit Summary by Zone Chart
- Wiring:
 - Dedicated control power circuit
 - Power circuit to and from lighting contactors
 - Harnesses for cabinets at remote locations
 - Means of grounding, including lightning ground protection
- Electrical conduit wireway system
 - Entrance hubs rated NEMA 4: must be die-cast zinc, PVC, or copper-free die-cast aluminum
- Mounting hardware for cabinets
- Control circuit lock-on device to prevent unauthorized power interruption to control power
- Anti-corrosion compound to apply to ends of wire, if necessary

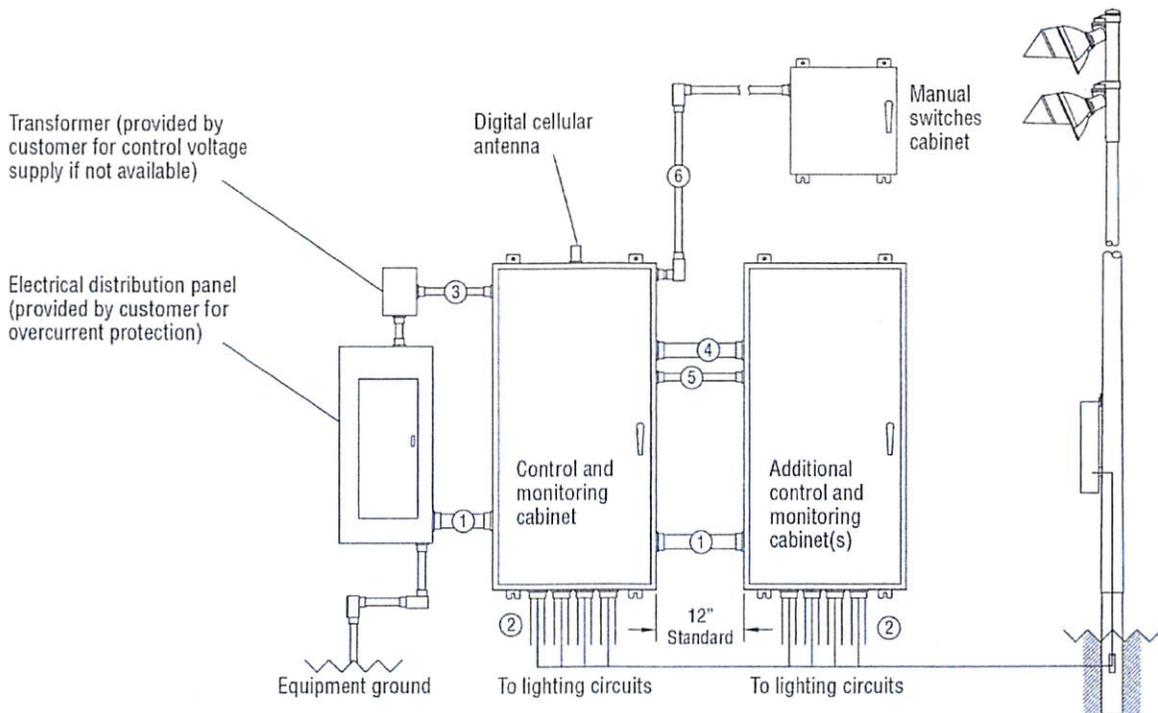
Call Control-Link Central™ operations center at 877/347-3319 to schedule activation of the control system upon completion of the installation.
 Note: Activation may take up to 1 1/2 hours

IMPORTANT NOTES

1. Please confirm that the design voltage listed above is accurate for this facility. Design voltage/phase is defined as the voltage/phase being connected and utilized at each lighting pole's ballast enclosure disconnect. Inaccurate design voltage/phase can result in additional costs and delays. Contact your Musco sales representative to confirm this item.
2. In a 3 phase design, all 3 phases are to be run to each pole. When a 3 phase design is used Musco's single phase luminaires come pre-wired to utilize all 3 phases across the entire facility.
3. One contactor is required for each pole. When a pole has multiple circuits, one contactor is required for each circuit. All contactors are UL 100% rated for the published continuous load. All contactors are 3 pole.
4. If the lighting system will be fed from more than one distribution location, additional equipment may be required. Contact your Musco sales representative.
5. A single control circuit must be supplied per control system.
6. Size overcurrent devices using the full load amps column of the Circuit Summary By Zone chart- Minimum power factor is 0.9.

NOTE: Refer to Installation Instructions for more details on equipment information and the installation requirements

Control-Link. Control and Monitoring System



Wire	Description	# of Wires	Typ. Wire Size (AWG)	Max. Wire Length (FT)	Wire from Musco	Notes
1	Line power to contactors, and equipment grounding conductor	Note A	Note B	27	No	A - D, F
2	Load power to lighting circuits	Note A	Note B	N/A	No	A - D
3	Control power (dedicated, 20A)	3	12	N/A	No	C, D
4	Control harnesses	Note E	--	8*	Yes*	C, D, E
5	Communication cable (RS - 485)	1	--	8*	Yes*	C, D
6	Control harnesses to manual switches	Note G	12	300	No	C, D, G

R60-35-00_C

- Notes:
- A. Voltage and phasing per the notes on cover page.
 - B. Calculate per load and voltage drop.
 - C. Minimum conduit diameter.
 - a. Wire 4 requires 2" (for connector ends to pass through).
 - b. Wire 5 requires 1" (for connector ends to pass through).
 - c. All other conduit diameters should be per code.
 - D. Refer to control and monitoring system installation instructions for more details on equipment information and the installation requirements.
 - E. Number of wires = 6 power wires + 2 wires per zone (see circuit summary by zone chart for the number of zones).
 - F. Contact Musco if maximum wire length from circuit breaker to contactor exceeds value in chart.
 - G. Number of wires = 3 power wires + 3 wires per zone (see circuit summary by zone chart for the number of zones).

IMPORTANT: Communication wire (5) must be in separate conduit from any AC power wiring (1, 2, 3, 4, 6). Control (3, 4, 6) wires must be in separate conduit from line and load power wiring (1, 2).

*Musco supplied wire harnesses are provided in standard 8-foot lengths.



Control System Summary

Mountain Brook Sports Complex Retrofit / 174786 - 174786BR1
Service 1 - Page 3 of 5

SWITCHING SCHEDULE

Field/Zone Description	Zones
Field 5	1
Field 7	2
Field 6	3
Field 3	4
Field 4	5

CONTROL POWER CONSUMPTION	
120V Single Phase	
VA loading of Musco Supplied Equipment	INRUSH: 6988.0 SEALED: 796.8

CIRCUIT SUMMARY BY ZONE

POLE	CIRCUIT DESCRIPTION	# OF FIXTURES	# OF DRIVERS	*FULL LOAD AMPS	CONTACTOR SIZE (AMPS)	CONTACTOR ID	ZONE
A7	Field 5	3	3	5.1	30	C1	1
A8	Field 5	3	3	5.1	30	C2	1
B1	Field 5	5	5	8.9	30	C3	1
B8	Field 5	5	5	8.9	30	C4	1
C1	Field 5	5	5	7.5	30	C5	1
C2	Field 5	5	5	7.5	30	C6	1
A4	Field 7	3	3	5.1	30	C7	2
A5	Field 7	3	3	5.1	30	C8	2
B3	Field 7	5	5	8.9	30	C9	2
B4	Field 7	5	5	8.9	30	C10	2
C5	Field 7	5	5	7.5	30	C11	2
C6	Field 7	5	5	7.5	30	C12	2
A2	Field 6	3	3	5.1	30	C13	3
A3	Field 6	3	3	5.1	30	C14	3
B2	Field 6	5	5	8.9	30	C15	3
B3	Field 6	5	5	8.9	30	C16	3
C3	Field 6	5	5	7.5	30	C17	3
C4	Field 6	5	5	7.5	30	C18	3
A1	Field 3	4	4	6.3	30	C19	4
A6	Field 3	4	4	6.3	30	C20	4
B5	Field 3	5	5	7.5	30	C21	4
B6	Field 3	5	5	7.5	30	C22	4
A3	Field 4	4	4	6.3	30	C23	5
A4	Field 4	5	5	7.5	30	C24	5
A6	Field 4	4	4	6.3	30	C25	5
B7	Field 4	5	5	7.5	30	C26	5

*Full Load Amps based on amps per driver.



Control System Summary

Mountain Brook Sports Complex Retrofit / 174786 - 174786BR1
Service 1 - Page 4 of 5

PANEL SUMMARY						
CABINET #	CONTROL MODULE LOCATION	CONTACTOR ID	CIRCUIT DESCRIPTION	FULL LOAD AMPS	DISTRIBUTION PANEL ID (BY OTHERS)	CIRCUIT BREAKER POSITION (BY OTHERS)
1	1	C1	Pole A7	5.13		
1	1	C2	Pole A8	5.13		
1	1	C3	Pole B1	8.89		
1	1	C4	Pole B8	8.89		
1	1	C5	Pole C1	7.52		
1	1	C6	Pole C2	7.52		
1	1	C7	Pole A4	5.13		
1	1	C8	Pole A5	5.13		
1	1	C9	Pole B3	8.89		
1	1	C10	Pole B4	8.89		
1	1	C11	Pole C5	7.52		
1	1	C12	Pole C6	7.52		
3	1	C13	Pole A2	5.13		
3	1	C14	Pole A3	5.13		
3	1	C15	Pole B2	8.89		
3	1	C16	Pole B3	8.89		
3	1	C17	Pole C3	7.52		
3	1	C18	Pole C4	7.52		
3	1	C19	Pole A1	6.32		
3	1	C20	Pole A6	6.32		
3	1	C21	Pole B5	7.52		
3	1	C22	Pole B6	7.52		
3	1	C23	Pole A3	6.32		
3	1	C24	Pole A4	7.52		
4	1	C25	Pole A6	6.32		
4	1	C26	Pole B7	7.52		

ZONE SCHEDULE				
ZONE	SELECTOR SWITCH	ZONE DESCRIPTION	CIRCUIT DESCRIPTION	
			POLE ID	CONTACTOR ID
Zone 1	1	Field 5	A7	C1
			A8	C2
			B1	C3
			B8	C4
			C1	C5
			C2	C6
Zone 2	2	Field 7	A4	C7
			A5	C8
			B3	C9
			B4	C10
			C5	C11
			C6	C12
Zone 3	3	Field 6	A2	C13
			A3	C14
			B2	C15

CONTINUED ON NEXT PAGE



Control System Summary

Mountain Brook Sports Complex Retrofit / 174786 - 174786BR1
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ZONE SCHEDULE				
ZONE	SELECTOR SWITCH	ZONE DESCRIPTION	CIRCUIT DESCRIPTION	
			POLE ID	CONTACTOR ID
Zone 3	3	Field 6	B3	C16
			C3	C17
			C4	C18
Zone 4	4	Field 3	A1	C19
			A6	C20
			B5	C21
			B6	C22
Zone 5	5	Field 4	A3	C23
			A4	C24
			A6	C25
			B7	C26

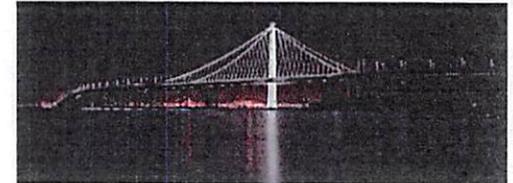
Mountain Brook Sports Complex Retrofit

Mountain Brook, AL

Lighting System

Pole / Fixture Summary						
Pole ID	Pole Height	Mtg Height	Fixture Qty	Luminaire Type	Load	Circuit
A1	50'	30'	1	TLC-BT-575	0.58 kW	D
		50'	3	TLC-LED-1150	3.45 kW	D
A2	50'	50'	3	TLC-LED-1150	3.45 kW	C
		50'	3	TLC-LED-1150	3.45 kW	C
A3	50'	30'	1	TLC-BT-575	0.58 kW	E
		50'	3	TLC-LED-1150	3.45 kW	C
A4	50'	15'	2	TLC-BT-575	1.15 kW	E
		50'	3	TLC-LED-1150	3.45 kW	B
A5	50'	50'	3	TLC-LED-1150	3.45 kW	B
		50'	3	TLC-LED-1150	3.45 kW	B
A6	50'	30'	1	TLC-BT-575	0.58 kW	D
		50'	3	TLC-LED-1150	3.45 kW	D
B2	50'	15'	1	TLC-BT-575	0.58 kW	C
		50'	4	TLC-LED-1150	4.60 kW	C
B3	50'	15'	1	TLC-BT-575	0.58 kW	B
		50'	4	TLC-LED-1150	4.60 kW	B
B4	50'	15'	1	TLC-BT-575	0.58 kW	B
		50'	4	TLC-LED-1150	4.60 kW	B
B5-B6	50'	15'	2	TLC-BT-575	1.15 kW	D
		50'	3	TLC-LED-1150	3.45 kW	D
B7	50'	15'	2	TLC-BT-575	1.15 kW	E
		50'	3	TLC-LED-1150	3.45 kW	E
C3-C4	50'	15'	2	TLC-BT-575	1.15 kW	C
		50'	3	TLC-LED-1150	3.45 kW	C
C5-C6	50'	15'	2	TLC-BT-575	1.15 kW	B
		50'	3	TLC-LED-1150	3.45 kW	B
16			88		87.40 kW	

From Hometown to Professional



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Mountain Brook Sports Complex Retrofit

Mountain Brook, AL

Circuit Summary			
Circuit	Description	Load	Fixture Qty
B	Field 7	26.45 kW	26
C	Field 6	26.45 kW	26
D	Field 3	17.25 kW	18
E	Field 4	17.25 kW	18

Fixture Type Summary							
Type	Source	Wattage	Lumens	L90	L80	L70	Quantity
TLC-LED-1150	LED 5700K - 75 CRI	1150W	121,000	>81,000	>81,000	>81,000	64
TLC-BT-575	LED 5700K - 75 CRI	575W	52,000	>81,000	>81,000	>81,000	24

Light Level Summary

Calculation Grid Summary								
Grid Name	Calculation Metric	Illumination					Circuits	Fixture Qty
		Ave	Min	Max	Max/Min	Ave/Min		
Field 3 (Infield)	Horizontal Illuminance	51.9	35.6	69.3	1.95	1.46	D	18
Field 3 (Outfield)	Horizontal Illuminance	40.5	25.1	57.4	2.28	1.61	D	18
Field 4 (Infield)	Horizontal Illuminance	50.3	36.9	68.9	1.87	1.36	E	18
Field 4 (Outfield)	Horizontal Illuminance	42.6	29.2	52.4	1.80	1.46	E	18
Field 6 (Infield)	Horizontal Illuminance	52.5	36.3	68.5	1.88	1.45	C	26
Field 6 (Outfield)	Horizontal Illuminance	39.6	23.9	51.2	2.14	1.65	C	26
Field 7 (Infield)	Horizontal Illuminance	58.2	39.8	67.1	1.68	1.46	B	26
Field 7 (Outfield)	Horizontal Illuminance	38.3	25.4	56.7	2.23	1.51	B	26

From Hometown to Professional

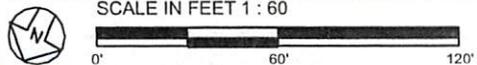


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EQUIPMENT LIST FOR AREAS SHOWN

Pole				Luminaires				
QTY	LOCATION	SIZE	GRADE ELEVATION	MOUNTING HEIGHT	LUMINAIRE TYPE	QTY / POLE	THIS GRID	OTHER GRIDS
1	A4	50'	-	15'	TLC-BT-575	2	0	2
				50'	TLC-LED-1150	3/3*	3	3
1	A5	50'	-	50'	TLC-LED-1150	3	3	0
1	B3	50'	-	15'	TLC-BT-575	1/1*	1	1
				50'	TLC-LED-1150	4/4*	4	4
1	B4	50'	-	15'	TLC-BT-575	1	1	0
				50'	TLC-LED-1150	4	4	0
2	C5-C6	50'	-	15'	TLC-BT-575	2	2	0
				50'	TLC-LED-1150	3	3	0
6	TOTALS					36	26	10

* This structure utilizes a back-to-back mounting configuration



Pole location(s) ⊕ dimensions are relative to 0,0 reference point(s) ⊗

ENGINEERED DESIGN By: Brad Ver Steegh • File #174786B • 22-Oct-18

**Mountain Brook Sports Complex Retrofit
Mountain Brook, AL**

GRID SUMMARY	
Name:	Field 7
Size:	200'/200'/200' - basepath 60'
Spacing:	20.0' x 20.0'
Height:	3.0' above grade

ILLUMINATION SUMMARY			
MAINTAINED HORIZONTAL FOOTCANDLES			
	Infield	Outfield	
Guaranteed Average:	50	30	
Scan Average:	58.20	38.27	
Maximum:	67.06	56.69	
Minimum:	39.83	25.41	
Avg / Min:	1.46	1.51	
Guaranteed Max / Min:	2	2.5	
Max / Min:	1.68	2.23	
UG (adjacent pts):	1.28	1.49	
CU:	0.67		
No. of Points:	25	73	
LUMINAIRE INFORMATION			
Color / CRI:	5700K - 75 CRI		
Luminaire Output:	121,000 / 52,000 lumens		
No. of Luminaires:	26		
Total Load:	26.45 kW		
Lumen Maintenance			
Luminaire Type	L90 hrs	L80 hrs	L70 hrs
TLC-LED-1150	>81,000	>81,000	>81,000
TLC-BT-575	>81,000	>81,000	>81,000
Reported per IM-21-11. See luminaire datasheet for details.			

Guaranteed Performance: The ILLUMINATION described above is guaranteed per your Musco Warranty document and includes a 0.95 dirt depreciation factor.

Field Measurements: Individual field measurements may vary from computer-calculated predictions and should be taken in accordance with IESNA RP-6-15.

Electrical System Requirements: Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

Installation Requirements: Results assume ± 3% nominal voltage at line side of the driver and structures located within 3 feet (1m) of design locations.



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ILLUMINATION SUMMARY

EQUIPMENT LIST FOR AREAS SHOWN

Pole		Luminaires						
QTY	LOCATION	SIZE	GRADE ELEVATION	MOUNTING HEIGHT	LUMINAIRE TYPE	QTY / POLE	THIS GRID	OTHER GRIDS
1	A2	50'	-	50'	TLC-LED-1150	3	3	0
1	A3	50'	-	30'	TLC-BT-575	1	0	1
				50'	TLC-LED-1150	3/3*	3	3
1	B2	50'	-	15'	TLC-BT-575	1	1	0
				50'	TLC-LED-1150	4	4	0
1	B3	50'	-	15'	TLC-BT-575	1/1*	1	1
				50'	TLC-LED-1150	4/4*	4	4
2	C3-C4	50'	-	15'	TLC-BT-575	2	2	0
				50'	TLC-LED-1150	3	3	0
6	TOTALS					35	26	9

* This structure utilizes a back-to-back mounting configuration



**Mountain Brook Sports Complex Retrofit
Mountain Brook, AL**

GRID SUMMARY

Name: Field 6
Size: 200'/200'/200' - basepath 60'
Spacing: 20.0' x 20.0'
Height: 3.0' above grade

ILLUMINATION SUMMARY

MAINTAINED HORIZONTAL FOOT CANDLES		
	Infield	Outfield
Guaranteed Average:	50	30
Scan Average:	52.50	39.55
Maximum:	68.45	51.24
Minimum:	36.32	23.94
Avg / Min:	1.45	1.65
Guaranteed Max / Min:	2	2.5
Max / Min:	1.88	2.14
UG (adjacent pts):	1.39	2.03
CU:	0.66	
No. of Points:	25	73

LUMINAIRE INFORMATION

Color / CRI: 5700K - 75 CRI
Luminaire Output: 121,000 / 52,000 lumens
No. of Luminaires: 26
Total Load: 26.45 kW

Luminaire Type	Lumen Maintenance		
	L90 hrs	L80 hrs	L70 hrs
TLC-LED-1150	>81,000	>81,000	>81,000
TLC-BT-575	>81,000	>81,000	>81,000

Reported per TM-21-11. See luminaire datasheet for details.

Guaranteed Performance: The ILLUMINATION described above is guaranteed per your Musco Warranty document and includes a 0.95 dirt depreciation factor.

Field Measurements: Individual field measurements may vary from computer-calculated predictions and should be taken in accordance with IESNA RP-6-15.

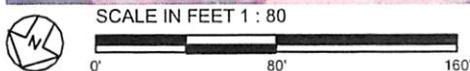
Electrical System Requirements: Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

Installation Requirements: Results assume ± 3% nominal voltage at line side of the driver and structures located within 3 feet (1m) of design locations.



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Pole location(s) ⊕ dimensions are relative to 0,0 reference point(s) ⊗

EQUIPMENT LIST FOR AREAS SHOWN

Pole				Luminaires				
QTY	LOCATION	SIZE	GRADE ELEVATION	MOUNTING HEIGHT	LUMINAIRE TYPE	QTY / POLE	THIS GRID	OTHER GRIDS
1	A1	50'	-	30'	TLC-BT-575	1	1	0
				50'	TLC-LED-1150	3	3	0
1	A6	50'	-	30'	TLC-BT-575	1/1*	1	1
				50'	TLC-LED-1150	3/3*	3	3
2	B5-B6	50'	-	15'	TLC-BT-575	2	2	0
				50'	TLC-LED-1150	3	3	0
4	TOTALS					22	18	4

* This structure utilizes a back-to-back mounting configuration



**Mountain Brook Sports Complex Retrofit
Mountain Brook, AL**

GRID SUMMARY

Name: Field 3
 Size: 143'/155'/143' - basepath 60'
 Spacing: 20.0' x 20.0'
 Height: 3.0' above grade

ILLUMINATION SUMMARY

MAINTAINED HORIZONTAL FOOT CANDLES

	Infield	Outfield
Guaranteed Average:	50	30
Scan Average:	51.91	40.45
Maximum:	69.31	57.38
Minimum:	35.60	25.14
Avg / Min:	1.46	1.61
Guaranteed Max / Min:	2	2.5
Max / Min:	1.95	2.28
UG (adjacent pts):	1.59	1.74
CU:	0.61	
No. of Points:	25	29

LUMINAIRE INFORMATION:

Color / CRI: 5700K - 75 CRI
 Luminaire Output: 52,000 / 121,000 lumens
No. of Luminaires: 18
 Total Load: 17.25 kW

Luminaire Type	Lumen Maintenance		
	L90 hrs	L80 hrs	L70 hrs
TLC-BT-575	>81,000	>81,000	>81,000
TLC-LED-1150	>81,000	>81,000	>81,000

Reported per IM-21-11. See luminaire datasheet for details.

Guaranteed Performance: The ILLUMINATION described above is guaranteed per your Musco Warranty document and includes a 0.95 dirt depreciation factor.

Field Measurements: Individual field measurements may vary from computer-calculated predictions and should be taken in accordance with IESNA RP-6-15.

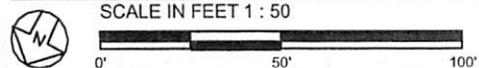
Electrical System Requirements: Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

Installation Requirements: Results assume ± 3% nominal voltage at line side of the driver and structures located within 3 feet (1m) of design locations.



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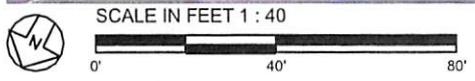
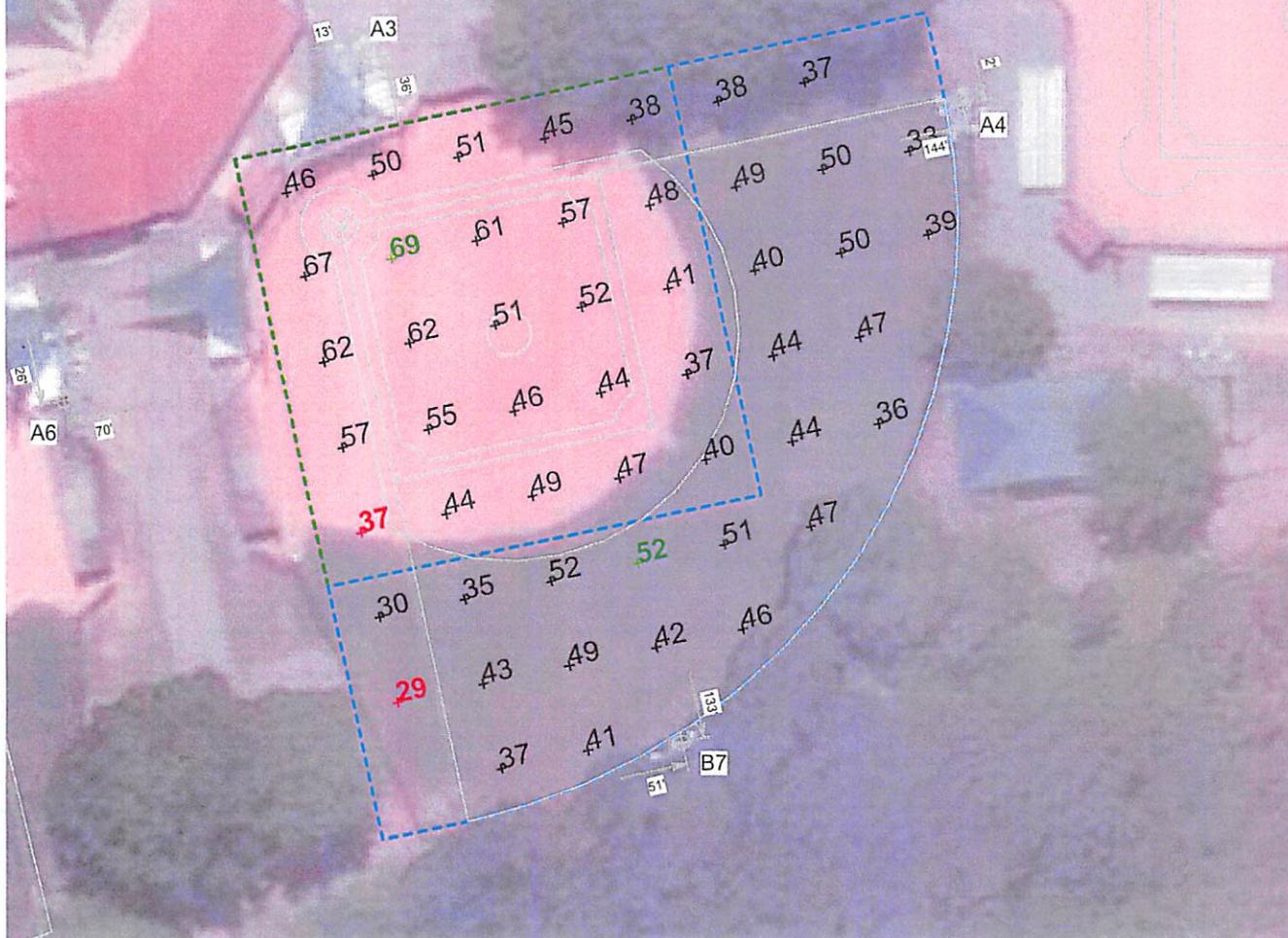
Pole location(s) ⊕ dimensions are relative to 0,0 reference point(s) ⊗

ILLUMINATION SUMMARY

EQUIPMENT LIST FOR AREAS SHOWN

Pole			Luminaires					
QTY	LOCATION	SIZE	GRADE ELEVATION	MOUNTING HEIGHT	LUMINAIRE TYPE	QTY / POLE	THIS GRID	OTHER GRIDS
1	A3	50'	-	30'	TLC-BT-575	1	1	0
				50'	TLC-LED-1150	3/3*	3	3
1	A4	50'	-	15'	TLC-BT-575	2	2	0
				50'	TLC-LED-1150	3/3*	3	3
1	A6	50'	-	30'	TLC-BT-575	1/1*	1	1
				50'	TLC-LED-1150	3/3*	3	3
1	B7	50'	-	15'	TLC-BT-575	2	2	0
				50'	TLC-LED-1150	3	3	0
4	TOTALS					28	18	10

* This structure utilizes a back-to-back mounting configuration



Pole location(s) ⊕ dimensions are relative to 0,0 reference point(s) ⊗

ENGINEERED DESIGN By: Brad Ver Steegh • File #174786B • 22-Oct-18

**Mountain Brook Sports Complex Retrofit
Mountain Brook, AL**

GRID SUMMARY

Name: Field 4
Size: 140'/140'/140' - basepath 60'
Spacing: 20.0' x 20.0'
Height: 3.0' above grade

ILLUMINATION SUMMARY

MAINTAINED HORIZONTAL FOOT CANDLES		
	Infield	Outfield
Guaranteed Average:	50	30
Scan Average:	50.28	42.55
Maximum:	68.86	52.36
Minimum:	36.91	29.16
Avg / Min:	1.36	1.46
Guaranteed Max / Min:	2	2.5
Max / Min:	1.87	1.80
UG (adjacent pts):	1.54	1.51
CU:	0.57	
No. of Points:	25	25

LUMINAIRE INFORMATION
 Color / CRI: 5700K - 75 CRI
 Luminaire Output: 52,000 / 121,000 lumens
 No. of Luminaires: 18
 Total Load: 17.25 kW

Luminaire Type	Lumen Maintenance		
	L90 hrs	L80 hrs	L70 hrs
TLC-BT-575	>81,000	>81,000	>81,000
TLC-LED-1150	>81,000	>81,000	>81,000

Reported per TM-21-11. See luminaire datasheet for details.

Guaranteed Performance: The ILLUMINATION described above is guaranteed per your Musco Warranty document and includes a 0.95 dirt depreciation factor.

Field Measurements: Individual field measurements may vary from computer-calculated predictions and should be taken in accordance with IESNA RP-6-15.

Electrical System Requirements: Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

Installation Requirements: Results assume ± 3% nominal voltage at line side of the driver and structures located within 3 feet (1m) of design locations.



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ILLUMINATION SUMMARY

Mountain Brook Sports Complex Retrofit
Mountain Brook, AL



EQUIPMENT LAYOUT

INCLUDES:

- Field 3
- Field 4
- Field 6
- Field 7

Electrical System Requirements: Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

Installation Requirements: Results assume ± 3% nominal voltage at line side of the driver and structures located within 3 feet (1m) of design locations.

EQUIPMENT LIST FOR AREAS SHOWN

QTY	LOCATION	POLE SIZE	GRADE ELEVATION	Luminaires		
				MOUNTING HEIGHT	LUMINAIRE TYPE	QTY / POLE
1	A1	50'	-	30'	TLC-BT-575	1
				50'	TLC-LED-1150	3
2	A2, A5	50'	-	50'	TLC-LED-1150	3
1	A3	50'	-	30'	TLC-BT-575	1
				50'	TLC-LED-1150	3/3*
1	A4	50'	-	15'	TLC-BT-575	2
				50'	TLC-LED-1150	3/3*
1	A6	50'	-	30'	TLC-BT-575	1/1*
				50'	TLC-LED-1150	3/3*
2	B2, B4	50'	-	15'	TLC-BT-575	1
				50'	TLC-LED-1150	4
1	B3	50'	-	15'	TLC-BT-575	1/1*
				50'	TLC-LED-1150	4/4*
7	B5-B7	50'	-	50'	TLC-LED-1150	3
	C3-C6			15'	TLC-BT-575	2
16	TOTALS					88

* This structure utilizes a back-to-back mounting configuration

SINGLE LUMINAIRE AMPERAGE DRAW CHART

Ballast Specifications (.90 min power factor)	Line Amperage Per Luminaire (max draw)						
	208 (60)	220 (60)	240 (60)	277 (60)	347 (60)	380 (60)	480 (60)
Single Phase Voltage							
TLC-LED-1150	6.8	6.5	5.9	5.1	4.1	3.7	3.0
TLC-BT-575	3.2	3.0	2.8	2.4	1.9	1.7	1.4



SCALE IN FEET 1 : 120



Pole location(s) ⊕ dimensions are relative to 0,0 reference point(s) ⊗

ENGINEERED DESIGN By: Brad Ver Steegh • File #174786B • 22-Oct-18

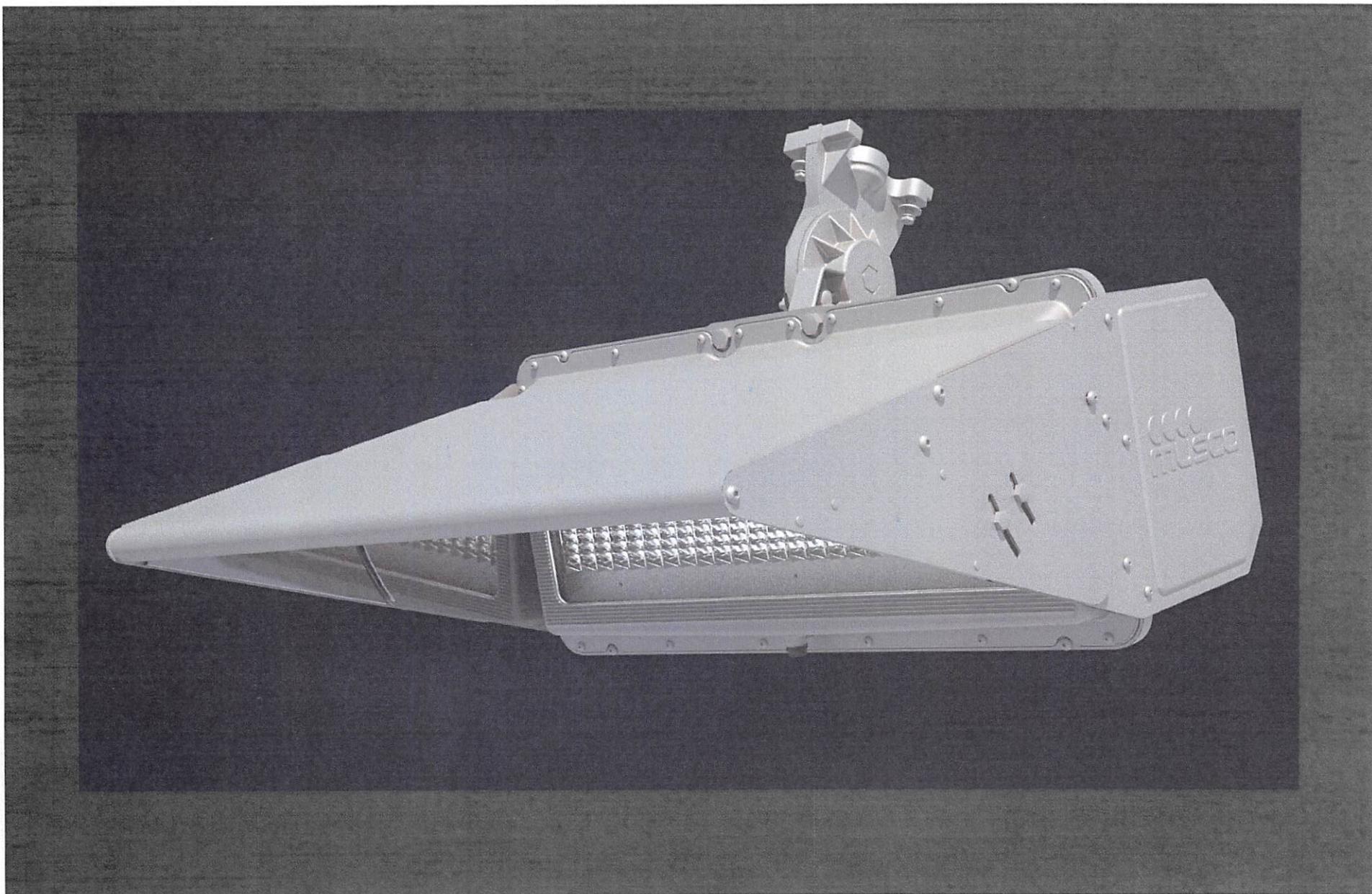


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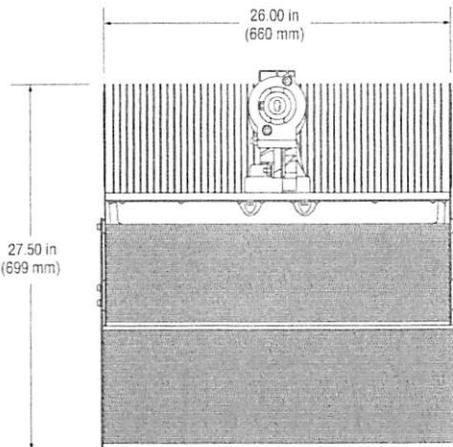
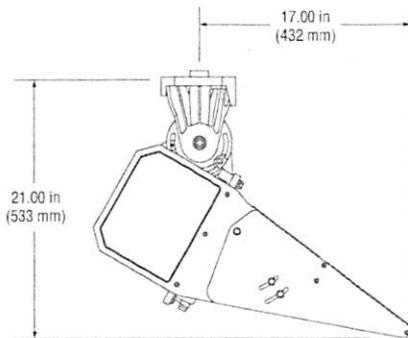
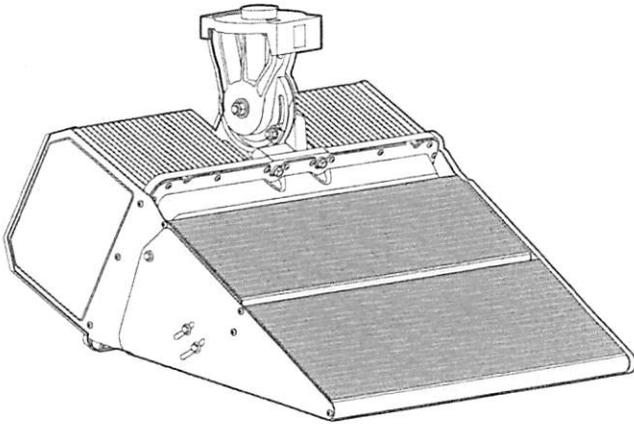
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EQUIPMENT LAYOUT

Total Light Control™ - TLC-LED-1150 Luminaire



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Luminaire Data

Weight (luminaire) 80 lb (36 kg)
 UL listing number E338094
 UL listed for USA / Canada UL1598 CSA-C22.2 No.250.0
 Ingress protection, luminaire IP65
 Material and finish Aluminum,
 powder-coat painted
 Wind speed rating (aiming only) 150 mi/h (67 m/s)

Photometric Characteristics

Projected lumen maintenance per IES TM-21-11

L90(8.5k) >51,000 h
 L80(8.5k) >51,000 h
 L70(8.5k) >51,000 h
 CIE correlated color temperature 5700 K
 Color Rendering Index (CRI), typical 75
 Color Rendering Index (CRI), minimum 70
 Lumens¹ 121,000

Footnotes:

1) Incorporates appropriate dirt depreciation factor for life of luminaire.

Datasheet: TLC-LED-1150 Luminaire and Driver

Driver Data

Typical Wiring

Electrical Data

Rated wattage¹

Per driver..... 1,150 W

Per luminaire..... 1,150 W

Number of luminaires per driver..... 1

Starting (inrush) current..... <40 A, 256 μ

Fuse rating..... 15 A

UL ambient temperature rating,
electrical components enclosure 50°C (122°F)

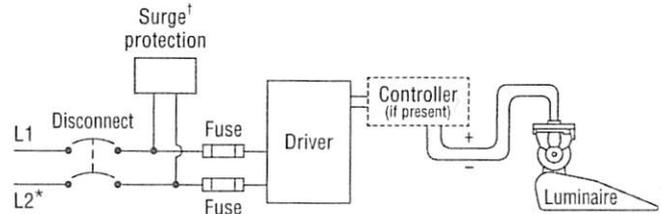
Ingress protection,
electrical components enclosure IP54

Efficiency 95%

Dimming mode..... optional

Range, energy consumption 15–100%

Range, light output..... 20–100%



* If L2 (com) is neutral then not switched or fused.

† Not present if indoor installation.

	200 Vac 50/60 Hz	208 Vac 60 Hz	220 Vac 50/60 Hz	230 Vac 50 Hz	240 Vac 50/60 Hz	277 Vac 60 Hz	347 Vac 60 Hz	380 Vac 50/60 Hz	400 Vac 50 Hz	415 Vac 50 Hz	480 Vac 60 Hz
Max operating current ²	7.26 A	6.98 A	6.60 A	6.31 A	6.05 A	5.24 A	4.18 A	3.82 A	3.63 A	3.50 A	3.03 A

Footnotes:

- 1) Rated wattage is the power consumption, including driver efficiency losses, at stabilized operation in 25°C ambient temperature environment.
- 2) Operating current includes allowance for 0.90 minimum power factor, operating temperature, and LED light source manufacturing tolerances.

Notes

1. Use thermal magnetic HID-rated or D-curve circuit breakers.
2. See Musco *Control System Summary* for circuit information.



RESOLUTION NO. 2018-170

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the Mayor of the City is hereby authorized and directed, on behalf of, and in the name of, the City of Mountain Brook ("City"), to execute the Franchise Agreement, in the form as attached hereto as Exhibit A with such minor changes thereto as may be recommended by the City Attorney, between the City and Marcus Cable of Alabama, LLC (locally known as Charter Communications).

ADOPTED: This 10th day of December, 2018.

Council President

APPROVED: This 10th day of December, 2018.

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 December 10, 2018, as same appears in the minutes of record of said meeting.

City Clerk

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 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, 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 furnish Grantee written notice of any requests for indemnification pursuant to this Section. 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 may designate 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: _____

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**~~~~**Marcus Cable of Alabama, L.L.C.**~~, which was heretofore been locally known as ~~Charter~~~~Grantee~~ Communications (hereinafter referred to as ~~the “Grantee” or “Charter~~~~the” Grantee~~”). The City and ~~Charter~~~~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~~ ~~Grantee’s predecessor in interest~~ 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, as of the Effective Date (as defined below in Section 3), the Parties desire (a) to terminate the Existing Agreement, and (b) that the terms, conditions and provisions in this Agreement supersede those in the Existing Agreement and other Ordinances previously enacted that relate to Charter’s operations in the City; _____~~

~~—WHEREAS, the Parties desire to renew Charter’s existing Franchise (as defined below) to provide Cable Service (as defined below) within the geographic limits of the City;~~

WHEREAS, the City acknowledges that ~~the Charter has~~ Grantee’s Predecessors in Interest in the City have substantially complied with the material terms of the Existing Agreements ~~current Franchise~~ under applicable law, and ~~Charter~~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, ~~Charter~~Grantee will ~~continue to~~ 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 ~~Charter~~Grantee that arises out of the provision of Cable Service within the City. Gross Revenues 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 CharterGrantee;
- vi. revenue from CharterGrantee'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 at City acknowledge~~ Parties acknowledges and agrees 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~~Charter~~.

2. Granting of Franchise.

The City hereby grants to Charter~~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~~Charter~~ 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 first of the month after the last date that it is executed by a Party below~~ (the "Effective Date").

Unless otherwise mutually agreed, this Agreement and the Franchise granted ~~renewed~~ 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~~~~Charter~~ -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 ~~Charter~~~~Grantee~~ shall utilize the facilities of utilities whenever practicable.

b. ~~Charter~~~~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 ~~Charter~~~~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 ~~Charter~~~~Grantee~~ shall likewise place its facilities underground.

c. ~~Charter~~~~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. ~~Charter~~~~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 ~~Charter~~~~Grantee~~ damages in the course of exercising its Franchise privileges.

5. Standards for Operation of Cable System.

a. At all times ~~Charter~~~~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 ~~Charter~~~~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, ~~Charter~~~~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. CharterGrantee shall continue to offer and provide Cable Service to all residences and locations within the Service Area where CharterGrantee currently provides Cable Service. ~~Cable~~ Its offering of Cable Service to Subscribers is conditioned upon CharterGrantee 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 CharterGrantee (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 CharterGrantee notice of that annexation.

c. During the term of this Agreement, CharterGrantee 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. CharterGrantee 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. CharterGrantee 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.

a. City agrees to provide Franchisee, upon written request, with a written annual report detailing PEG Channel usage and efforts to increase the quality and quantity of Government Access Programming, which report shall be due to the City within one hundred twenty (120) days after the close of each calendar year. The annual report shall contain, at a minimum, the average percent of Government Access Programming on any consecutive twelve (12) week period consistent with the terms provided herein.

b. In the event the Government Access Programming levels set forth herein are not being maintained, or if the City does not adequately utilize the Government Access Channel, the Franchisee reserves the right to have the underutilized Government Access Channel returned to the Franchisee for the Franchisee's use. The Franchisee may utilize the Government Access Channel only after giving the City sixty (60) days' notice and City fails to maintain the minimum Government Access Programming levels set forth herein during those sixty (60) days. The City may request return of any Government Access Channel used by the Franchisee at any time, which request for return shall be accompanied by a showing that the City's intended use for the Government Access Channel will, or is reasonably likely to, meet the Government Access Programming requirements set forth in this section. The Franchisee shall, within ninety (90) days of the date of the written request, cease use of and return the Government Access Channel to the City. The Franchisee may, in any manner, use the Government Access Channel during those hours that the City or other governmental, public or educational entity is not using the Government Access Channel.

~~a. PEG Channel. Charter, at its expense, shall furnish and maintain at least one channel on its Cable System for non-commercial, video transmission of educational and governmental access programming (the "PEG Channel"). The PEG channel will be available to all Subscribers, including those on the "basic" tier of service, and shall be dedicated on a full-time basis for the exclusive use of City, schools or other public agencies in the City for such purposes as they may desire for the distribution of programming in the public interest. The quality of cable service provided by Charter on the PEG channel shall be equal to that provided to Subscribers at the basic level in the City.~~

~~At its expense, Charter shall furnish, operate and maintain all equipment and facilities required to broadcast signals over the PEG Channel; provided that, Charter shall not responsible (i) to make repairs to any equipment that is damaged by the negligence or willful misconduct of any employee, representative, agent, or contractor of City, or (ii) to furnish or maintain a studio, video programming equipment or other facilities that may be required for the delivery of programming over PEG Channel. Further, the City will confer with the providers of video that is transmitted over the PEG Channel and allocate the usage by those providers in a reasonable manner.~~

~~The Parties intend that, during prime viewing hours, the City substantially will utilize the capacity of the PEG Channel provided to it by Charter. In the event that Charter, in the exercise of its reasonable judgment, expresses concern that the City is underutilizing this capacity, the Parties will meet and negotiate in good faith to reach understandings on approaches to increase that utilization, including, but not limited to, more public interest programming by the City or the potential sharing between them of broadcasting capacity available on the PEG Channel.~~

b. If the City Council, the governing body for the Grantor, approves collection from CharterGrantee Subscribers of a monthly PEG support fee (the "PEG Fee"), CharterGrantee 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. CharterGrantee 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, CharterGrantee 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 CharterGrantee'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"). ~~At its expense, Charter shall configure, maintain and provide emergency public broadcast functionality on its Cable System in the City. This system will provide Emergency Alerts to Subscribers, and will meet or exceed all applicable FCC or state requirements.~~

8. Insurance/Indemnification.

a. Insurance Requirements. For the duration of this Agreement and for limits not less than stated below, CharterGrantee 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

CharterGrantee 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 CharterGrantee 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 CharterGrantee's operations contemplated by this Agreement. Thereafter, upon request of City, CharterGrantee 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. CharterGrantee 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 CharterGrantee (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 CharterGrantee written notice of any requests for indemnification pursuant to this Section. Notwithstanding the foregoing, CharterGrantee 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 CharterGrantee 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 CharterGrantee of its intent to so revoke or terminate based on a pattern of substantial noncompliance by CharterGrantee 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. CharterGrantee 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 CharterGrantee 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 CharterGrantee 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 CharterGrantee 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 CharterGrantee within twenty-one (21) business days following that determination. CharterGrantee 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 CharterGrantee 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, CharterGrantee, at its expense, may remove the Cable System from the Streets, or abandon the Cable System in place. Further, although CharterGrantee 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 CharterGrantee'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, CharterGrantee 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, CharterGrantee 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, CharterGrantee 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 ~~Charter~~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, ~~Charter~~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 ~~Charter~~Grantee to compute its Gross Revenues or in the process of calculating the amounts of Franchise Fees paid to the City.

c. Audit of ~~Charter~~Grantee Records. ~~Charter~~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 ~~Charter~~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, ~~Charter~~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 ~~Charter~~Grantee's bills to its Subscribers, ~~Charter~~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..

~~———— If any entity other than Charter is authorized by the City to provide cable or video services (without regard to the technology used to deliver such services) using facilities located wholly or partly in its Streets, the City may shall modify this Agreement in response to a showing by Charter that the City's requirements hereunder impose an unreasonable and unjustifiable competitive disadvantage to Charter in comparison to otherwise similarly situated competing providers. If the Parties are unable to reach agreement on the sufficiency of Charter's showing or the appropriateness of Charter's request for modification, Charter and the City shall mediate those disputes before a mutually acceptable mediator; each Party will bear its own costs associated with any such mediation, including their attorneys' fees. If the Parties do not agree to modify this Agreement following the mediation process, and Charter contends that it has made a sufficient showing and the City fails to make the requested modification, Charter may pursue such legal remedies, if any, as may be available to it under law to protect its rights. Upon a judicial determination that the City has violated Charter's rights with respect to similarly situated competitors, the City may be required to pay the reasonable attorneys' fees that Charter incurs in securing that determination; conversely, if a judicial determination is made that the City has not violated Charter's rights with respect to any of its alleged competitors, Charter agrees to pay the City its reasonable attorneys' fees incurred in defending Charter's competitive disadvantage claim.~~

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, ~~Charter~~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 ~~Charter~~Grantee may 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 ~~Charter~~Grantee in connection with this Agreement; provided that, if the City receives a request from a third party to disclose information received from ~~Charter~~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 ~~Charter~~Grantee's desire to protect

the confidentiality of such Information and promptly notify ~~Charter~~Grantee so that it, at its own expense, will be afforded an opportunity to oppose the disclosure in court. If ~~Charter~~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 ~~Charter~~Spectrum Southeast, LLC:

Director, Government Affairs
~~Charter~~Charter Communications
~~151 London Parkway 3000 Riverchase Galleria, Suite 610~~
Birmingham, AL 3521144

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 ~~Charter~~Grantee shall be sent to:

~~Charter~~Charter -Communications
~~Attention: Legal Department~~ _____
~~12405 Powerscourt Drive~~ _____
~~St. Louis, MO 63131~~
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 ~~Charter~~Grantec's Cable System may be attached.

15. Dispute Resolution.

~~Excepting~~ 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, ~~the dispute resolution mechanism shall be~~ 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). ~~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.~~

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 ~~Charter~~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 Operator~~ 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 Operator~~, 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 ~~Charter~~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 ~~Charter~~Grantee are independent contractors. ~~Grantee The Operator~~ 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. ~~Charter~~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. ~~Charter~~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 _____, 2011 -

City of Mountain Brook, Alabama

Signature: _____

Name/Title: _____

Accepted this ____ day of _____, 2011 —, subject to applicable federal, state and local law.

~~Spectrum Southeast LLC Marcus Cable of Alabama, L.L.C.~~

By: ~~Charter Communications, Inc.~~ _____, its Manager

Signature: _____

Name/Title: _____

**RESOLUTION NO. 2018-171
AMENDMENT TO RESOLUTION NO. 2011-193 TO FURTHER EXTEND
AGREEMENT WITH AT&T FOR IP VIDEO SERVICES**

WHEREAS, the City Council of the City of Mountain Brook (“City Council”) adopted Resolution No. 2011-193 on December 12, 2011, regarding the provision by Bellsouth Telecommunications, Inc. d/b/a AT&T Alabama, a Georgia corporation (“AT&T Alabama”) within the City of Mountain Brook, Alabama (“City”), of broadband platform of voice, data and video services (“IP Video Services”);

WHEREAS, effective on or about December 15, 2011, the City and AT&T Alabama entered an Agreement concerning its provision of the IP Video Service contemplated in City Resolution No. 2011-93 (the “Agreement”);

WHEREAS, paragraph 3 of the Agreement states that its term would expire December 31, 2016, but allows for extensions of the Agreement upon written mutual agreement of the parties;

WHEREAS, City Council Resolution No. 2016-093, which was adopted on or about July 25, 2016, authorized, among other matters, an extension of the Agreement into 2018, and, by agreement of the parties, it remains in effect through the end of calendar year 2018;

WHEREAS, the City and AT&T Alabama desire to further amend the Agreement so that, effective as of January 1, 2019, its term will be further extended for a five year term followed by an automatic renewal of such term for an additional five year period; and

WHEREAS, further extension of the Agreement in the public interest as it will permit the continued provision of AT&T Alabama’s IP Video Services in the City.

BE IT RESOLVED by the City Council of the City of Mountain Brook that Resolution No. 2011-135 is hereby amended to authorize the Mayor or the City Manager is hereby to enter into the Second Amendment to Agreement with AT&T Alabama for IP Services in substantially the form attached to this Resolution, subject to such minor changes as may be approved by the City Attorney.

ADOPTED: This 10th day of December, 2018.

Council President

APPROVED: This 10th day of December, 2018

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 December 10, 2018, as same appears in the minutes of record of said meeting.

City Clerk

**SECOND AMENDMENT TO AGREEMENT WITH AT&T
ALABAMA FOR IP VIDEO SERVICES**

THIS SECOND AMENDMENT TO AGREEMENT WITH AT&T ALABAMA FOR IP SERVICES (the "Second Amendment") dated December ____, 2018, is made by and between BellSouth Telecommunications, LLC d/b/a AT&T Alabama ("AT&T Alabama"), and the City of Mountain Brook, Alabama, a municipal corporation ("City"). AT&T Alabama and City shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, City and AT&T Alabama entered an Agreement on December 15, 2011 (the "Agreement"), regarding the provision by AT&T Alabama of a broadband platform of voice, data and video services in the City ("IP Video Service");

WHEREAS, paragraph 3 states that the Agreement will expire effective December 31, 2016, but allows for extension upon written mutual agreement of the Parties;

WHEREAS, on or about July 25, 2016, the Parties entered that Amendment to Agreement with AT&T Alabama for IP Video Services (the "Amendment"), which, among other matters, extended the Agreement into 2018, and, by agreement of the parties, it remains in effect through the end of calendar year 2018; and

WHEREAS, the Parties hereby desire to enter into this Second Amendment to further extend the Agreement beyond 2018.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The first sentence of Paragraph 3 of the Agreement, as amended, is further revised as follows:

Term. The term of this Agreement shall be from January 1, 2019 through December 31, 2024; thereafter, unless otherwise in a subsequent amendment hereto, it shall be automatically renewed for an additional term of five (5) years."

2. Unless expressed in the Amendment or this Second Amendment, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect throughout the extended term. In the event the terms and conditions of the Agreement, as amended, conflict with the terms of this Second Amendment, the terms in this Second Amendment shall be deemed to supersede, override and control.

IN WITNESS WHEREOF, the Parties hereto, by their undersigned duly authorized representatives, have executed this Second Agreement and made the same as of the date stated above.

BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T ALABAMA

By: _____

Name: _____

Title: President – AT&T Alabama

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

Name: Stewart Welch

Title: Mayor

AGREEMENT

THIS AGREEMENT ("Agreement") dated December 15, 2011 ("Effective Date") is made by and between BellSouth Telecommunications, Inc., d/b/a AT&T Alabama ("AT&T Alabama"), a Georgia corporation, and the City of Mountain Brook, Alabama, a municipal corporation ("City"). AT&T Alabama and City shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, AT&T Alabama is in the process of modifying its existing telecommunications network to provide an integrated Internet Protocol ("IP") enabled broadband platform of voice, data, and video services ("IP Network"), the video component of which is a switched, two-way, point-to-point and interactive service ("IP enabled Video Service"). The IP Network upgrade will involve the use of the public right-of-way in the City ("ROW").

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, City and AT&T Alabama agree as follows:

1. **Definition of Gross Revenues.** For purposes of this Agreement, "Gross Revenues" means all revenues, as determined in accordance with generally accepted accounting principles, actually received by AT&T Alabama from subscribers within the Service Area for IP Video Services purchased by such subscribers, but shall not include revenues from any source that are not properly includable for purposes of determining such fee under any provision of applicable federal or state law or by common custom and generally accepted industry practice. "Gross Revenues" include, but are not limited to, amounts billed to and collected from AT&T Alabama IP Video Services product subscribers for the following:

- (a) recurring charges for IP Video Services;
- (b) event-based charges for IP Video Services, including pay-per-view and video-on-demand charges;
- (c) rental of set top boxes and other IP Video Services equipment;
- (d) service charges related to the provision of IP Video Services, activation, installation, and repair; and
- (e) administrative charges related to the provision of IP Video Services, including service order and service termination charges.

For purposes of this Agreement, Gross Revenues do not include:

- (i) uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected fees, 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 and wire-maintenance plans;
- (v) amounts billed to IP Video Services customers to recover taxes, fees, or surcharges imposed on IP Video Services subscribers in connection with the provision of IP Video Services, including the IP Video Services Provider fee authorized by this Agreement;
- (vi) discounts, refunds, and other price adjustments that reduce the amount of compensation received by AT&T Alabama;
- (vii) revenue from the sale of capital assets or surplus equipment; or
- (viii) charges, other than those described in subsection 1(a)-(e), that are aggregated or bundled with amounts billed to IP System subscribers including but not limited to any revenues received by AT&T Alabama or its affiliates for telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing.

2. **Emergency Message.** AT&T Alabama shall carry all federal, state, and local alerts provided over the "Federal Emergency Alert System" through AT&T Alabama's IP-enabled Video Services in the event of a public safety emergency, which at a minimum will include the concurrent rebroadcast of local broadcast channels.

3. **Term.** The term of this Agreement shall be from December 15, 2011 through December 31, 2016. The term may be extended upon mutual agreement of the Parties.

- A. The Parties agree to consult in the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of controlling jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable, and binding upon either City or AT&T Alabama, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either Party, within thirty (30) days of receipt of the finding, provides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the Parties mutually may agree. Where the effect of a finding is a modification, the Parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the Parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either Party to terminate the Agreement on the provision of thirty (30) days' written notice.
- B. In addition to the termination rights set forth in Section 3(A) above, AT&T Alabama shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days notice to the City, if (a) AT&T

Alabama concludes in its reasonable business judgment that IP Video Service in the City is no longer technically, economically or financially consistent with AT&T Alabama's business objectives; (b) Title VI of the Communications Act of 1934, as amended obligations or any similar obligations are imposed on AT&T Alabama; or (c) it becomes clear that AT&T Alabama must offer or provide IP Video Service pursuant to a franchise (cable or otherwise) and/or franchise-like requirements or other local authorization.

4. **Obligations.**

During the term of this Agreement, City agrees:

- A. To subject the construction and installation of the IP Network to the same process and review as it subjects the installation and construction of AT&T Alabama's existing telecommunications infrastructure.
- B. Not to unreasonably block, restrict, or limit the construction and installation of the IP Network.
- C. To process any and all applicable permits for the installation, construction, maintenance, repair, removal and other activities associated with the IP Network in a timely and prompt manner.

5. **Maintenance of the System.**

- A. AT&T Alabama shall at all times employ ordinary care in the maintenance and operation of the IP Network so as not to endanger the life, health or property of any citizen of the City or the property of the City.
- B. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

6. **Customer Service.** AT&T Alabama shall comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c).

7. **PEG Channel.**

- A. AT&T shall, at City's request, provide capacity for the City's public, educational and governmental ("PEG") programming through AT&T's IP-enabled Video Service, including sufficient bandwidth capacity to carry PEG channels required by the City. The City may be required to support a change in or addition to current City equipment now in use for PEG programming to make it compatible with AT&T's IP-enabled video technology.

- B. Any operation of any PEG access channel by City shall be the responsibility of City, and AT&T Alabama's only obligation, if any, is the responsibility for the transmission of such channel. The City will be responsible to ensure that all transmissions, retransmissions, content, or programming that may be requested to be transmitted over a channel or facility by AT&T Alabama in the future, if any, are provided or submitted to AT&T Alabama, at the AT&T Alabama designated connection point, in a manner or form that is capable of being accepted and transmitted by AT&T Alabama, without requirement for additional alteration or change in the format or content by AT&T Alabama, over the network of AT&T Alabama, and which is compatible with the technology or protocol utilized by AT&T Alabama to deliver IP Video Service. City may use a provider of its choosing, including self-provisioning, to deliver PEG content to AT&T's designated connection point, provided that the bandwidth and streaming specifications are followed.
- C. AT&T shall collect from its IP Video subscribers and pay to the City a PEG fee of twenty-five cents per subscriber per month for PEG and institutional network support. The City shall provide AT&T written notice forty-five (45) days in advance of the date on which it seeks to start collecting the fee. All fees remitted to the City may be used by the City as allowed by federal law; further, the PEG fee shall not be offset, deducted or chargeable as a credit against franchise fee payments required by section 10 of this Agreement. Payments made for PEG and institutional network support shall be collected and paid in the same manner as outlined in Section 10 of this Agreement. Except as provided above, any operation of any PEG access channel by City shall be the responsibility of City, and AT&T Alabama's only obligation, if any, is the responsibility for the transmission of such channel. The City will be responsible to ensure that all transmissions, retransmissions, content, or programming that may be requested to be transmitted over a channel or facility by AT&T Alabama in the future, if any, are provided or submitted to AT&T Alabama, at the AT&T Alabama's designated connection point in a manner or form that is capable of being accepted and transmitted by AT&T Alabama, without requirement for additional alteration or change in the format or content by AT&T Alabama, over the network of the AT&T Alabama, and which is compatible with the technology or protocol utilized by AT&T Alabama to deliver IP Video Services.

If technically and economically feasible, AT&T Alabama will, at its discretion, use reasonable efforts to interconnect with the incumbent cable provider to provide PEG programming.

8. **Indemnification and Insurance.**

- A. AT&T Alabama hereby agrees to indemnify and hold the City, including its agents and employees, harmless from any claims or damages resulting from the actions of AT&T Alabama in constructing, operating or maintaining the IP Network. The City agrees to give AT&T Alabama written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this section.
- B. Notwithstanding the foregoing, AT&T Alabama shall maintain no responsibility or liability for any damages, liability or claims resulting from the negligence or willful misconduct of City, its officers, agents, employees, attorneys, consultants, or independent contractors or third parties or for any activity or function conducted by any person or entity other than AT&T Alabama in connection with PEG programming, or for other independent acts of City, its agents, employees, or assigns.
- C. AT&T Alabama shall maintain in full force and effect, at its own cost and expense, during the term of the Agreement, commercial general liability insurance in the amount of \$3,000,000 combined single limit for bodily injury and property damage and auto liability insurance in the amount of \$1,000,000 single limit of liability. The requirements set forth may be satisfied by a combination of primary insurance, excess/umbrella coverage, or self-insurance. The City shall be added as an additional insured, arising out of work performed by AT&T Alabama for IP video service, to the insurance coverage. Upon written request, the AT&T Alabama shall provide a Certificate of Insurance or Coverage showing evidence of the coverage required by this subsection. Should any of the policies described herein be cancelled before the expiration date thereof, the insurer affording coverage will endeavor to mail 30 days written notice to the certificate holder named herein, 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.

9. **Breach of Agreement and Dispute Resolution.**

- A. Should either party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other party shall cure such breach within ninety (90) days.
- B. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated

representatives of the Parties and use of a mediator when such discussions have failed.

10. Compensation to City.

- A. During the term of this Agreement, AT&T Alabama shall pay to City a fee equal to five percent (5%) of the Gross Revenues as defined above collected from each subscriber to AT&T Alabama's IP Video Services product delivered over the IP Network in the City's ROW. The fee ("IP Video Services Provider Fee") will be identified and passed through on any subscriber bill by AT&T Alabama, and all such fees collected will be forwarded to City quarterly and shall be due forty-five (45) days after the end of each quarter. AT&T Alabama agrees to submit to City an annual report or analysis specifying the separate sources of revenue that, in total, comprise the Gross Revenues and the amount of revenue allocable to each source for the preceding year no later than January 30 of the following year.
- B. AT&T Alabama shall provide one free installation and free monthly service to one outlet at each public school, municipal or government-owned building, fire station, police station, and library building that is within 125 feet of the IP Network.

11. **Inspection.** City shall have the right to inspect, upon reasonable notice, AT&T Alabama's books and records showing its gross revenues for any of the services provided herein from which the fee specified herein is computed. No acceptance of any such fee by City shall be construed as a release of or an accord or satisfaction of any claim City might have for further or additional sums payable under the terms of the Agreement.

12. **Confidentiality.** If AT&T Alabama provides any books and records to the City, the City agrees to treat as confidential such books, records, or maps that constitute proprietary or confidential information. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by state and federal law, it shall deny access to any of AT&T Alabama's books and records marked confidential to any person.

13. **Notices.** Any notice to be given under this Agreement shall be in writing and may be delivered either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to City:

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

2011-193

If to AT&T Alabama:

AT&T Alabama
General Counsel -Alabama
Suite 28A2
600 19th Street North
Birmingham, Alabama 35203

14. **Force Majeure.** AT&T Alabama shall not be held in default under, or in noncompliance with the provisions of the Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of AT&T Alabama to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the IP Network is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

15. **Waiver.** Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

16. **Entire Agreement.** This Agreement constitutes the entire agreement between City and AT&T Alabama with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and AT&T Alabama regarding the subject matter hereof.

17. **Assignment.** AT&T Alabama may not assign or transfer this Agreement or any interest herein without the prior consent of City, which consent will not unreasonably be withheld or delayed. No consent shall be required, however, for (1) a transfer of an agreement or any interest therein to an Affiliate, (2) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of AT&T in this Agreement or the system in order to secure indebtedness, or (3) for a transaction that is approved by the Federal Communications Commission. Any request for consent to a transfer of this Agreement or change in control of AT&T shall be handled by the City in accordance with applicable federal and state law.

18. **Miscellaneous.**

- A. AT&T Alabama and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.
- B. 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.
- C. AT&T Alabama and City shall cooperate fully with one another in the execution of any and all other documents and in the completion of 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.
- D. 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, unless otherwise expressly set forth herein.

19. **Binding Effect.** This Agreement shall be binding upon and for the benefit of each of the Parties and their respective successors and assigns. If any particular section of this Agreement shall be held invalid, the remaining provisions and their application shall not be affected thereby.

20. **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.

21. **Modification.** This Agreement may be amended or modified only by a written instrument executed by both Parties.

22. **Non-discrimination.** AT&T Alabama shall not deny access to its IP Video Services to any group of potential residential customers because of the income of the residents of the local area in which the group resides.

23. **Applicable Law and Venue.** This Agreement shall be construed and interpreted according to the laws of the United States and the State of Alabama, and shall be enforced in the Circuit Court of Jefferson County, Alabama, or in the United States District Court for the Northern District of Alabama.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of this 12 day of Dec, 2011.

AT&T ALABAMA

By: *Fred McCallum, Jr.*
~~Thomas L. Hamby~~ = Fred McCallum, Jr.
Its: President-AT&T Alabama

State of Alabama)

Jefferson County)

Sworn to and subscribed before me this 15th day of December, 2011.

Madeline Saugh
Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 19, 2012
BONDED THRU NOTARY PUBLIC UNDERWRITERS

CITY OF MOUNTAIN BROOK, ALABAMA

By: *Lawrence T. Oden*
Lawrence T. Oden
Its: Mayor

State of Alabama)

Jefferson County)

Sworn to and subscribed before me this 12 day of Dec., 2011.

Steven Boone
Notary Public

*Commission expires
April 12, 2013*

2011-193

RESOLUTION NO. 2018-172

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of the First Amendment to License Agreement (Resolution No. 2018-139) between the City and Birmingham Levite Jewish Community Center, in the form as attached hereto as Exhibit A, with respect to the City's use of gymnasium facilities.

ADOPTED: This 10th day of December, 2018.

Council President

APPROVED: This 10th day of December, 2018.

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 December 10, 2018, as same appears in the minutes of record of said meeting.

City Clerk

STATE OF ALABAMA)
JEFFERSON COUNTY)

FIRST AMENDMENT TO LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT ("Amendment") is made and entered into as of Nov. 1, 2018, by and between the BIRMINGHAM LEVITE JEWISH COMMUNITY CENTER, whose address is 3960 Montclair Road, Birmingham, Alabama 35213 ("Owner") and THE CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation organized under the laws of the State of Alabama ("Licensee").

WHEREAS, the Owner and Licensee entered into a License Agreement dated June 29, 2018 ("License Agreement") (attached hereto as Exhibit 1) whereby Owner granted a limited non-exclusive and non-transferrable license to use certain portions of its property (the "Licensed Space") for recreational and athletic use by participants in Licensee's youth athletic programs (the "Approved Purposes"); and

WHEREAS, under the License Agreement, the Licensed Space is designated as the outdoor recreational field more particularly depicted on Exhibit A to the License Agreement; and

WHEREAS, Licensee has requested to use Owner's Gymnasium in conjunction with its winter basketball program on Tuesdays and Thursdays from 4:45 p.m. to 8:45 p.m. and on Saturdays from 8:15 a.m. to 5:45 p.m. during the term from November 1, 2018 to February 16, 2019, and

WHEREAS, the parties have agreed to amend the License Agreement to include the Owner's Gymnasium as part of the Licensed Space, to provide for terms related to its use by the Licensee, and to include provisions relating to payment for its use.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and covenants contained herein, the Owner and the Licensee agree as follows:

1. *Licensed Space to Include Birmingham Levite Jewish Community Center.* The License Agreement shall be amended to include within the Licensed Space the Birmingham Levite Jewish Community Center Gymnasium and appurtenant areas necessary for its use as part of the Licensed Space.
2. *Term and Priority of Use.* Owner grants Licensee and its Sub Licensee, Mountain Brook Athletics, Inc., a limited, non-exclusive and non-transferable license to use the Birmingham Levite Jewish Community Center Gymnasium during the term from November 1, 2018 to February 16, 2019 on the following days and times:

<u>Day</u>	<u>Time</u>
Tuesday	4:45 p.m. to 8:45 p.m.
Thursdays	4:45 p.m. to 8:45 p.m.
Saturdays	8:15 a.m. to 5:45 p.m.

While such use is non-exclusive, Licensee shall have priority of use during such time periods and no use which unreasonably interferes with Licensee's use at the aforementioned times shall be permitted.

3. *Usage Fee.* Licensee agrees to pay a usage fee of \$5,000.00 for use of Owner's Gymnasium.
4. Except as is specifically amended hereby, the License Agreement shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the Birmingham Levite Jewish Community Center has caused this First Amendment to License Agreement to be executed by its duly authorized Executive Director and City of Mountain Brook has caused this Amendment to be executed by its duly authorized City Manager, all as of the day and year first written above.

BIRMINGHAM LEVITE JEWISH
COMMUNITY CENTER

By: _____

Richard Friedman
Richard Friedman
Executive Director

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

Sam S. Gaston
City Manager

RESOLUTION NO. 2018-173

BE IT RESOLVED that the City Council hereby authorizes the execution of a contract between the City and G & A Electrical Services, in the form as attached hereto as Exhibit A, with respect to electrical work for the Mountain Brook Elementary playing field restroom project.

ADOPTED: This 10th day of December, 2018.

Council President

APPROVED: This 10th day of December, 2018.

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 December 10, 2018, as same appears in the minutes of record of said meeting.

City Clerk

CONTRACTOR AGREEMENT

G & A Electrical Services (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: Install New Electrical Services for MBE Restroom
B-20180626-429

Site of Project: Mountain Brook Elementary Field
3041 Cahaba Road
Mountain Brook, AL 35223

2. **Scope of Work.** See Exhibit A (which includes the City Scope of Work and December 5, 2018 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 four (4) 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 Eight Thousand Eight Hundred Seventy Five Dollars (\$8,875.00) 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 December 5, 2018 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: _____

G & A Electrical Services

By: _____

Its: _____

Date: _____

EXHIBIT A – SPECIFICATIONS

1. Scope of Work.

See attached City Scope of Work and December 5, 2018 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 Work within an approximate 6 week period after execution of the Agreement and the City provides it a Notice to Proceed.

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:
Dennis Griffin
PO Box 171
Trussville, AL 35173
Email: gaelectrical171@gmail.com
Day Tel #: 205-902-7866

4. Special Conditions.

**Electrical Quote for a Pre-fabricated Restroom
At the field by Mountain Brook Elementary**

The City of Mountain Brook requested quotes to run a new 200 amp electrical line to a pre-fabricated restroom that is to be placed by the athletic field by Mountain Brook Elementary.

A new service will need to be installed from a new pole set by Alabama Power near the portalets. The electrician will need to set a 30 foot wooden service pole and connect a new meter socket. Power will need to run underground from the meter to the restroom location.

A site map and detailed drawings of the pre-fabricated restroom is included. The electrical details are on or about page 20. The provided plans are a generic set for the type of building we are purchasing. A final set of plans will be provided so actual stub up locations can be determined.

The restroom will be placed on a 4.5-5 foot mound that is yet to be built. The grading, plumbing, and electrical work will be contracted separately and coordinated with the City.

The company will need to be present when the building is delivered to make any needed adjustments and final connections.

All work must be in compliance with current city and state codes.

The chosen company will be required to purchase a Mountain Brook Business License if one is not currently held.

A work permit will need to be pulled, but no fees will be charged since it is a City project.

Project Details

Install new pole, meter, and service for 200 amp power to be supplied underground to the restroom according to the provided specifications.

City Contacts:

Shanda Williams
Mountain Brook Parks and Recreation
205-802-3879
williamssh@mtnbrook.org

Glen Merchant
Mountain Brook Inspections
205-802-3812
merchant@mtnbrook.org

RESOLUTION NO. 2018-174

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that City Council hereby authorizes the execution of a right-of-way encroachment agreement between the he City and TJB, LLC, in the form as attached hereto as Exhibit A, with respect to the property located at 142 Spring Street.

ADOPTED: This 10th day of December, 2018.

Council President

APPROVED: This 10th day of December, 2018.

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 December 10, 2018, as same appears in the minutes of record of said meeting.

City Clerk



CITY OF MOUNTAIN BROOK

Dana O. Hazen, AICP
Director of Planning, Building & Sustainability
56 Church Street
Mountain Brook, Alabama 35213
Telephone: 205/802-3821
Fax: 205.879.6913
hazend@mtnbrook.org

DATE: November 26, 2018

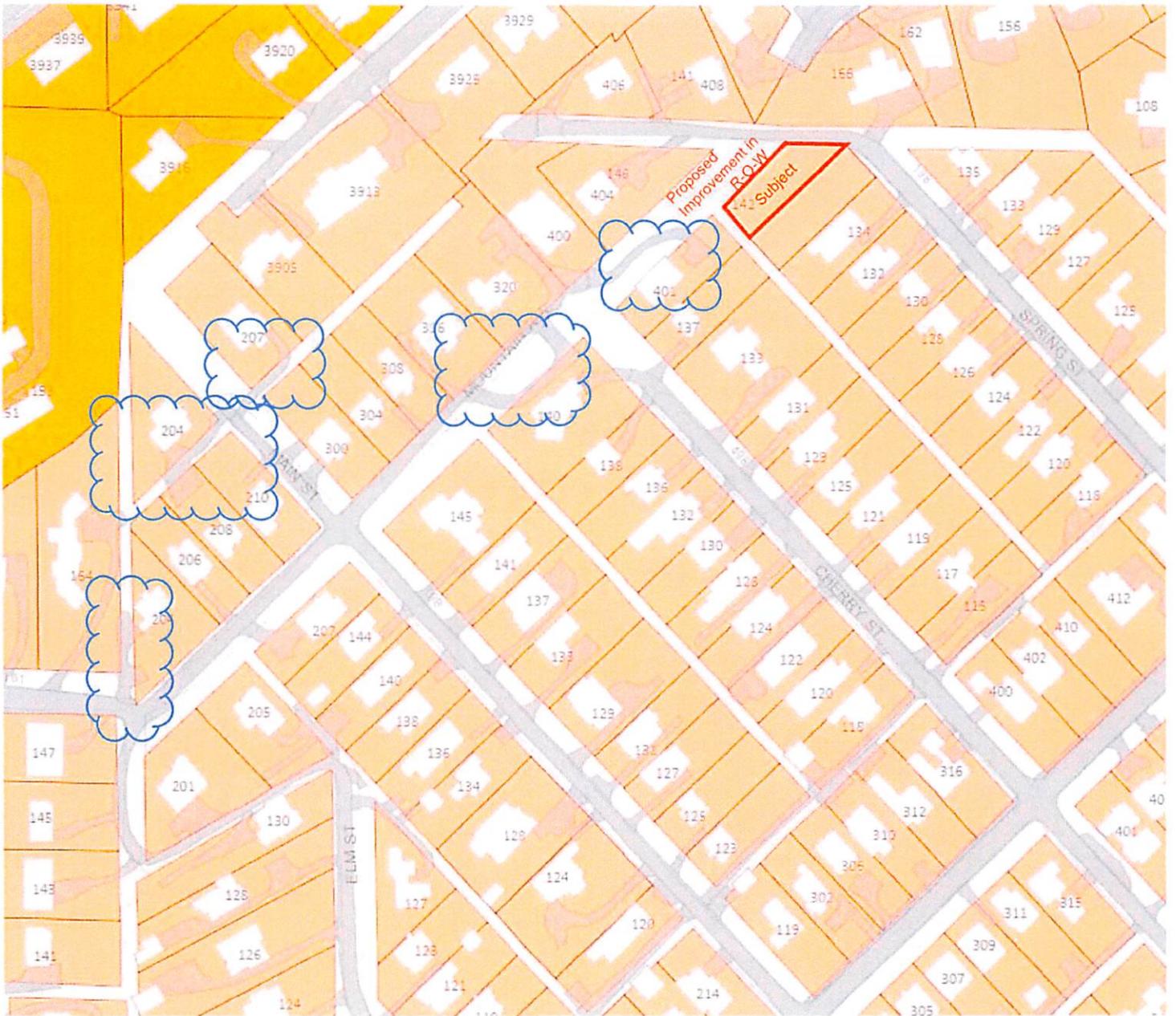
TO: Mayor, City Council & City Manager
FROM: Dana Hazen, City Planner

RE: Encroachment Agreement – 142 Spring Street

In conjunction with the construction of a new single family dwelling at 142 Spring Street, the applicant proposes an access drive within the adjoining unimproved Mountain Avenue right-of-way to the north. The right-of-way is 50 feet wide and, as may be seen on the attached topographic survey and photograph, contains a slope on the right (which is not proposed to be altered).

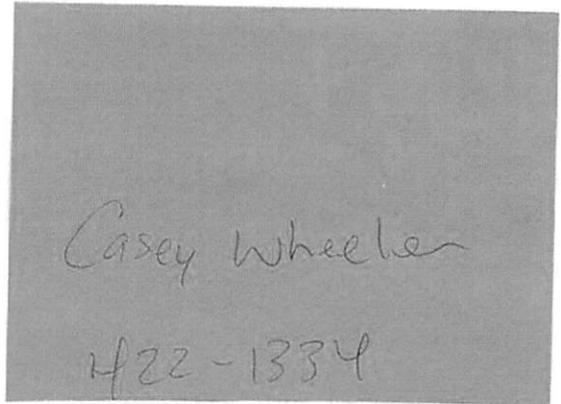
Staff inspected the site and noted that there is an existing, aging, asphalt driveway in the same location as the proposed new driveway; the applicant intends to install a new concrete improvement that will be a little wider than the existing asphalt, and do some grading of the left side of the right-of-way in order to transition to the building site.

The attached zoning map depicts the subject property and adjoining right-of-way in red, and also shows other similar private improvements in the right-of-way in the vicinity (in blue “bubbles”).



THIS INSTRUMENT PREPARED BY:

TJB LLC



JEFFERSON COUNTY }
STATE OF ALABAMA }

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

This **Right of Way Encroachment License Agreement** (the "Agreement") is entered this _____ day of _____ 201_, by and between the **City of Mountain Brook, Alabama**, a municipal corporation (hereinafter the "City" or "Licensor"), and TJB LLC (hereinafter individually or collectively referenced for purposes of this Agreement as the "Licensee").

WITNESSETH:

WHEREAS, the Licensee represents that it owns the following real property located in the City of Mountain Brook, Jefferson County, Alabama:

Address: 142 SPRING STREET
Parcel ID #: 2300333605038.000
Legal Description CRESTLINE HEIGHTS LOT 1

(the "Property");

WHEREAS, the Property abuts right(s) of way that is owned by the City and reserved for the use of the general public (the "City ROW");

WHEREAS, the Licensee desires to install and maintain PAVED DRIVE at the location depicted on the attached Exhibit "A" (collectively hereinafter the "Improvement"), and intend that the Improvement will be used by the occupants of the Property or their guests;

WHEREAS, part or all of the area in which the Improvement will be installed lies within and encroaches upon the City Right of Way (hereinafter, the "Encroachment Area"); and

WHEREAS, subject to terms, conditions and understandings herein, the City agrees to grant the Licensee a non-exclusive, revocable license to install and use the encroaching Improvement within the City ROW.

NOW, THEREFORE, 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. The City grants the Licensee a non-exclusive, revocable license to utilize the City ROW for purposes reasonably related to the construction, installation, maintenance and use of above-described encroaching Improvement within the Encroachment Area (the "License"). No other uses of the City ROW are authorized.

2. The Licensee agrees and acknowledges that this Agreement grants it (or them) only a license, not any interest, title, permanent right or estate. The grant made hereunder is personal to the Licensee and does not run with the land. Further, the Licensee agrees to not claim any permanent interest in the Encroachment Area by entering into this Agreement or by its use of any contemplated encroaching Improvement.

3. The Licensee agrees to (a) keep the Encroachment Area clean and free of debris, weeds or overgrown grass, (b) maintain the contemplated encroaching Improvement in good and sound condition, and (c) not use the Encroachment Area or any encroaching Improvement in a manner that creates a hazard or causes damage to any third persons or adjacent properties.

4. The Licensee acknowledges that, in the event that the City, in the exercise of its sole discretion, determines that the Licensee's utilization of the Encroachment Area or the Improvement conflicts with City's use of or plans to use that Area, it may revoke the License effective upon providing the Licensee written notice from the Mayor, the City Manager or the City's other executive official. If the License is revoked, the City, in the exercise of its sole discretion, either (a) may request that the Licensee, at its (or their) expense, remove any encroaching Improvement and restore the City ROW to a condition that is reasonably satisfactory to the City within thirty (30) days after the receipt of notice of revocation, or (b) at the City's expense, may remove any encroaching Improvement placed by the Licensee in the Encroachment Area. If the City revokes the License, the Licensee waives and releases the City from any and all claims for expenses incurred by the Licensee to construct or maintain any Improvement in the Encroachment Area.

5. The Licensee may not assign or transfer this Agreement (or any benefit, right or obligation hereunder) to any third party without advance written consent by the City, which consent shall not be unreasonably withheld.

6. All plans, designs and work to construct any contemplated encroaching Improvement shall be subject to review and approval of the City's Building Inspection Department, or such other department as the City may designate. Further, the Licensee agrees that all operations related to the installation or maintenance of any such Improvement will comply with applicable federal, state and local laws, ordinances and regulations (including but not limited to, license and permit requirements) that relate to those operations.

7. The Licensee shall not permit any mechanic or materialman's lien to be filed against the City or concerning the Encroachment Area by reason of any labor, services, materials or equipment supplied or claimed to have been supplied to construct or maintain any encroaching

Improvement (collectively, a "Lien"). If such a Lien is filed, then the Licensee, after notice of its filing, promptly shall either (a) cause the same to be discharged by depositing adequate funds in court or issuing a bond; or (b) indemnify the City against any loss from a Lien by posting security or taking other actions that are reasonably satisfactory to the City.

8. The Licensee, for itself and on behalf of any of its heirs, personal representatives, authorized assigns or other persons or entities that may succeed to its interest in this Agreement (collectively the "Licensee" for purposes of this provision) agrees to waive, release, indemnify, defend and hold harmless the City, and its officers, employees, and representatives (collectively for purposes of this provision, the "City"), from and against any claim, liability, loss, expense (including, reasonable attorney fees and costs of court), demand or action asserted against the City by the Licensee or by any third party claiming personal injury, property damage or any other loss of any kind (collectively, a "Claim") that arises from or is in any manner related to (a) the Licensee's use of the License granted herein or the Encroachment Area, or (b) any encroaching Improvement placed in the City ROW. The scope of this indemnification obligation includes Claims that are caused or allegedly caused in whole or part by the negligence of the City; provided that the Licensee shall not be obligated hereunder to indemnify the City for Claims that are caused by the gross negligence or willful misconduct of the City.

9. If the Licensee removes or substantially modifies an encroaching Improvement after this Agreement is executed, it shall not replace or construct another or different Improvement or structure in the City ROW without advance approval from the City; provided that nothing herein shall prohibit the Licensee from maintaining, repairing or refurbishing any encroaching Improvement contemplated by this Agreement.

10. All notices that may be required to be given hereunder shall be deemed to have been properly given if in writing and (a) if personally delivered, or (b) sent either by registered or certified mail, postage prepaid, and addressed as follows, or by nationally recognized overnight courier to the following address (or such other address as a party may designate in writing):

To the City:
City of Mountain Brook, Alabama
Attention: City Manager
56 Church Street
Mountain Brook, AL 35213

To the Licensee:
TJB LLC
463 Renaissance Drive
Hoover, AL 35226

Notices shall be deemed given upon receipt or refusal of delivery.

11. Miscellaneous Provisions.

(a) This Agreement may not be amended or modified unless all parties execute a writing that is signed by their duly authorized representatives.

(b) The failure of the City to enforce any of the terms, conditions or provisions of this Agreement shall not be construed as a waiver of its right to subsequently compel enforcement of that or any other term, condition or provision herein. The rights, benefits and obligations under this Agreement may be waived only in a writing signed by the parties.

(c) This Agreement, and the conditions, terms and provisions herein, do not create, and are not intended to create or confer any benefit to any third party.

(c) This Agreement contains the complete agreement of the parties concerning the subject matter herein. Any prior negotiation, agreement or understanding, whether oral or written, concerning the matters addressed herein is superseded and of no effect unless expressed herein.

(d) 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 or other form of electronic transmission, and any signature so transmitted will be given the same force and effect as an original signature

(e) If requested by the City, the Licensee shall record a fully-executed form of this Agreement in the real property records of the Probate Court for Jefferson County.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date hereinabove set forth.

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

City Clerk

By: _____
Mayor

LICENSEE (if individual)

LICENSEE (if individual)

LICENSEE (if entity)

TJB LLC

By: _____
Name of Entity

Its: Owner

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

(For Use if Licensee is Individual)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that _____ whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed same voluntarily.

Given under my hand and official seal this ____ day of _____, 20__.

NOTARY PUBLIC

My Commission expires: _____

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

(For Use if Licensee is Individual)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that _____ whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed same voluntarily.

Given under my hand and official seal this ____ day of _____, 20__.

NOTARY PUBLIC

My Commission expires: _____

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

(For Use if Licensee is Entity)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Tony Amador whose name as Owner of TJD LLC, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she as such officer and with full authority, executed same voluntarily for and as the act of said entity.

Given under my hand and official seal this 5th day of Nov., 2018

[Signature]

NOTARY PUBLIC

My Commission expires: 3-3-20



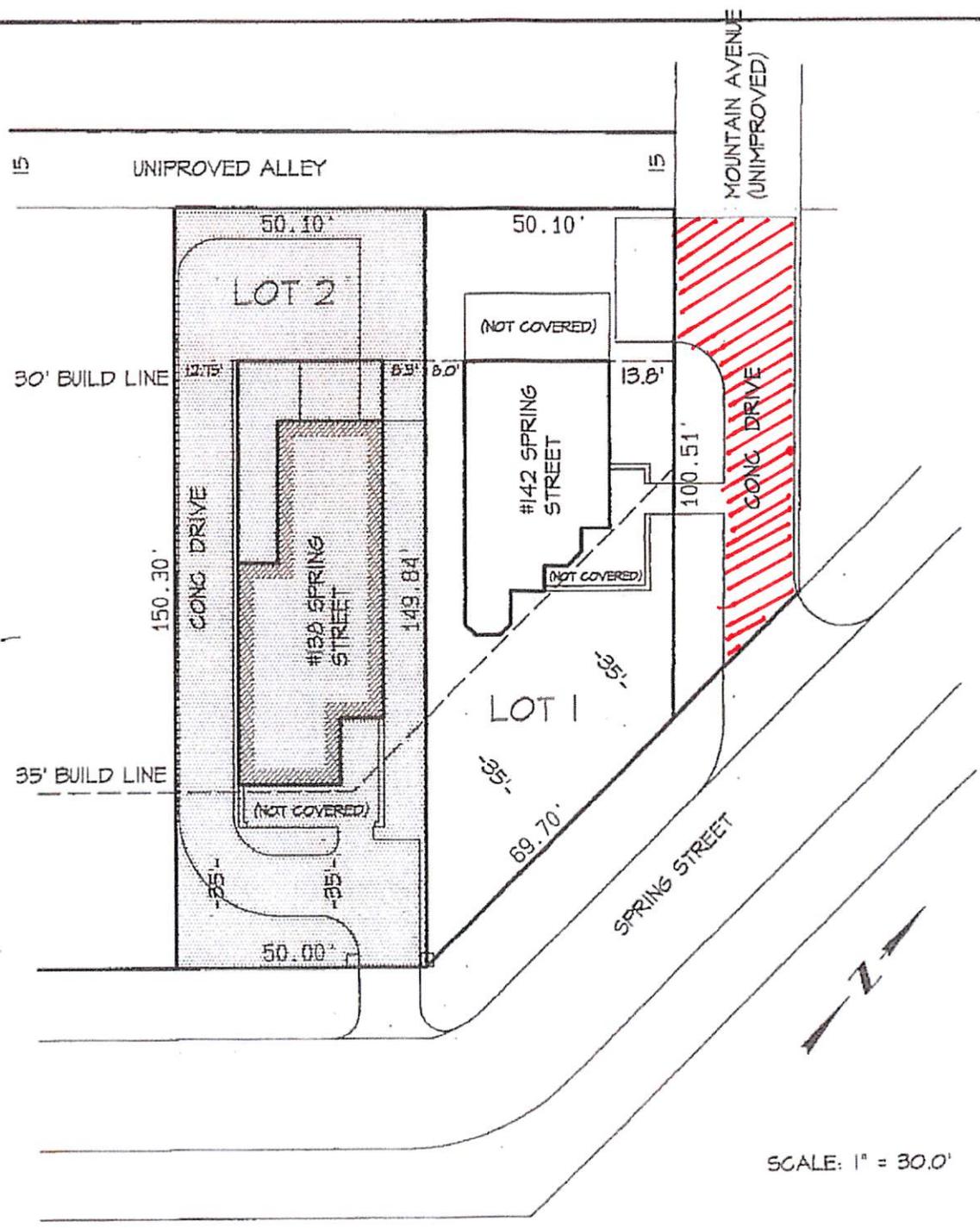
Aug 2014

EXHIBIT A – DEPICTION OF ENCROACHMENT AREA

See attached.



142 Spring St

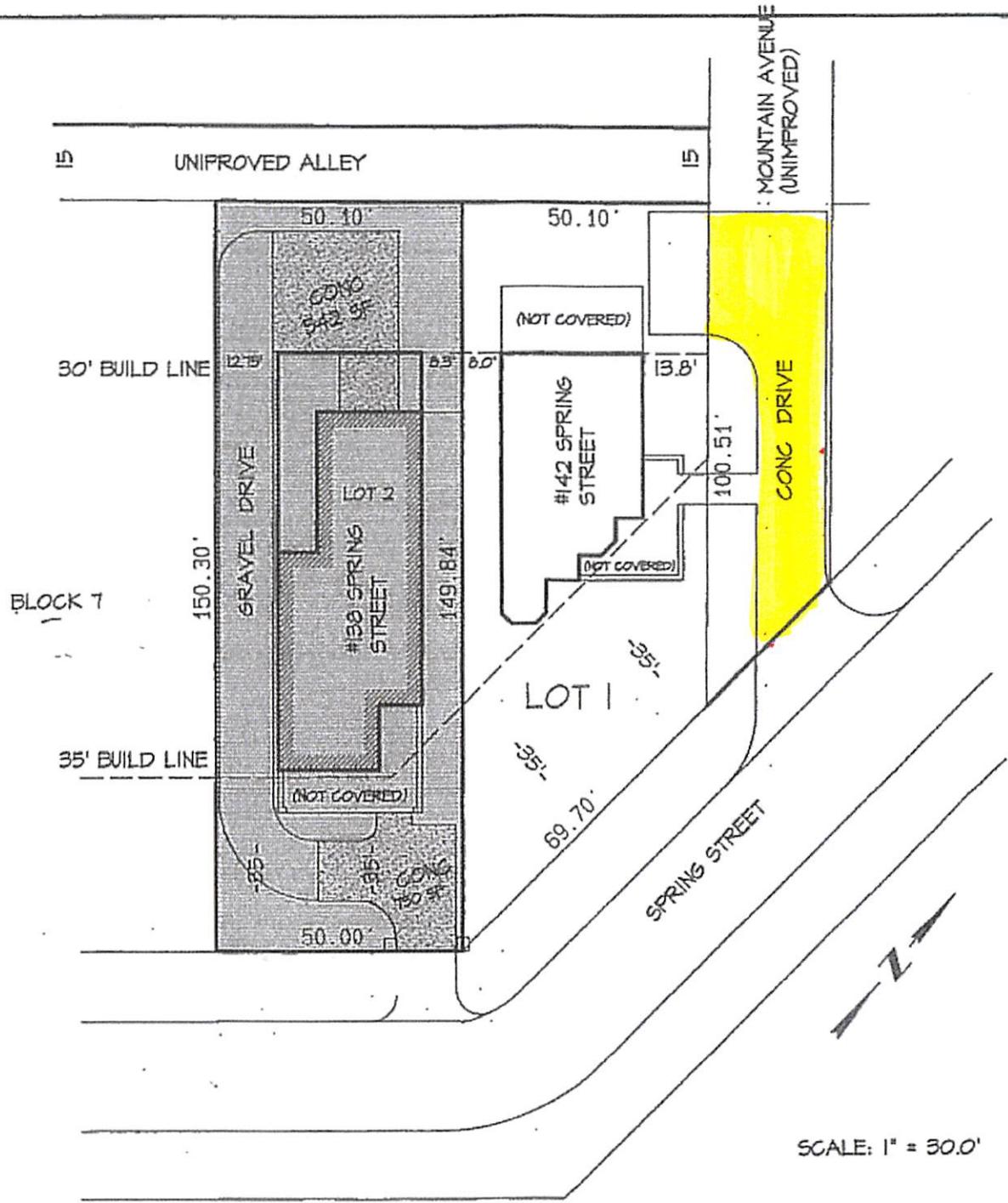


PROPOSED PLOT PLAN

LOT 2 BLOCK 7 ACCORDING TO THE MAP OF
CRESTLINE HEIGHTS
AS RECORDED IN MAP BOOK 7, PAGE 16



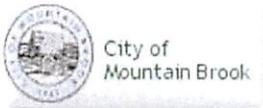
SCALE: 1" = 30.0'



PROPOSED PLOT PLAN

LOT 2, BLOCK 7 ACCORDING TO THE MAP OF
 CRESTLINE HEIGHTS
 AS RECORDED IN MAP BOOK 7, PAGE 16

HOUSE = 1742 SF 23 %
 DRIVE CONC = 1290 SF 17 %
 LOT = 7510 SF



Steve Boone <boones@mtnbrook.org>

Re: Contest of Request for Use of City Street for Driveway/ 138, 142 Spring Street

1 message

david allen <rda@gloorstrickland.com>

Tue, Nov 20, 2018 at 9:32 AM

To: boones@mtnbrook.org

Thank you, Steven, for your assistance. Please confirm receipt of my previous email so that I know it will make it into the packet by the deadline. Also I wanted to ask that you list my mobile phone number as my primary contact, 205-222-3837.

On Tue, Nov 20, 2018 at 9:16 AM david allen <rda@gloorstrickland.com> wrote:

Mr. Boone:

As requested, I am sending you an e-mail to make a formal request on behalf of all residents of the North end of Spring Street to urge the City Council to postpone consideration of the Builder/ Owner's request for use of city property for a driveway.

I have also attached below an e-mail string between Glen Merchant and the residents. However, we have been in constant contact with the City since construction commenced.

My family has been a resident at 134 Spring Street since 2005.

First, I refer the Council to City Officials, including the City Magistrate, for more information about the Builder/ Owner flaunting building regulations, fines being assessed for violation of environmental regulations, trespassing, causing unsafe traffic conditions which rises to nuisance level, and breaching the peace by working until 11 pm. As of 11/16/18, the City suspended the building permits for this property due to repeated violations.

The Builder/ Owner is attempting this building project as an investment only and has shown no respect for the residents. In many cases, I know that the City Council/ Planning Commission has been reluctant to consider requests for variances/ special use until an owner/ occupant is identified. We believe this is such a case.

The Builder/Owner has basically ignored the City's warnings and now faces a joint complaint by Mr. Merchant and the Spring Street Residents to the City Magistrate to determine further penalties and fines against this Builder.

Although, you may speak to any resident of the North End of Spring Street, Bruce Barze, Wilson Holifield, and I have been most active in addressing the problems.

We respectfully request that the Council investigate the overall situation on the top of Spring Street in detail, and we are available to participate in a tour to fully communicate our concerns. Please note the following:

1. The top of Spring Street is a very unusual area, completely unlike any other in Crestline. The historical development of the property caused very strange, non-conforming lots, with steep slopes and significant rock. We believe that the issues facing the City Council as concerns this property could be problematic for the City and the residents for years to come if not addressed immediately.
2. The right-of-way at issue is platted as an extension of Mountain Avenue. It is not simply an alley right-of-way.
3. The North End of Spring Street is actually not a "street." It was platted as an alley, and appears to be surveyed and developed as an alley only. Currently, cars may not pass each other on this section of the street. We believe the Council should fully investigate this issue to determine if the alley should be developed into a street so as to accommodate the use of the property by the new residential owners and the increased traffic congestion.
4. We are also concerned about the new construction on the other side of the street as it appears the owner plans to significantly build up the grade of the property to meet the foundation. Apparently, the Owner chose not to dig a normal foundation due to the significant rock. A previous owner abandoned plans to build due to the rock situation. The raising of the grade will cause significant issues for the City Right-of-Way, which includes an unstable masonry "cave" which we believe could fall on the street at any time.

Unfortunately, the overall situation is complex and will require significant investigation to safeguard the residents of Spring Street. Therefore, we respectfully request the Council deny and postpone any petition for special use of Rights-of-Way near Spring Street.

Sincerely yours,

R. David Allen, Jr.
GLOOR, STRICKLAND, HAGGERTY & ALLEN, LLP
100 Williamsburg Office Park, Suite 100
Birmingham, AL 35216
Telephone: (205) 822-1223, office/ (205) 222-3837, mobile
FAX: (205) 822-1216
Email: rda@gloorstrickland.com

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Forwarded Conversation

Subject: Photos/ Foundation/ 138, 142 Spring Street

From: david allen <rda@gloorstrickland.com> Date: Fri, Nov 2, 2018 at 11:12 AM
To: <merchantg@mtnbrook.org>, <gastons@mtnbrook.org>
Cc: Bruce Barze <bbarze@btnllaw.com>, Wilson Holifield <wilson@imiteam.com>

Please find attached for your records photos taken November 1, 2018 of the Builder/Owner pouring foundation walls during the storm yesterday in pouring rain.
I am sure that, at the very least, this is not a best practice.
Please let us know your response, and your plan to force remediation of unstable foundations on this property.

thanks,

R. David Allen, Jr.
GLOOR, STRICKLAND, HAGGERTY & ALLEN, LLP
100 Williamsburg Office Park, Suite 100
Birmingham, AL 35216
Telephone: (205) 822-1223, office/ (205) 222-3837, mobile
FAX: (205) 822-1216
Email: rda@gloorstrickland.com

From: Glen Merchant <merchantg@mtnbrook.org>
Date: Fri, Nov 2, 2018 at 11:56 AM
To: david allen <rda@gloorstrickland.com>
Cc: Sam Gaston <gastons@mtnbrook.org>, Bruce Barze <bbarze@btnllaw.com>, Wilson Holifield <wilson@imiteam.com>

Mr. Allen,

Yes, this site is compliant. Please address your questions to me or we can have a meeting if you need additional assistance. There is no 2015 International Residential Code requirement for pouring concrete in the rain. The foundations were dug out to the specified dimensions and our inspector verified these and a soil probe during the inspection to ensure compaction of the sub surface grade at least 12" from the existing grade to ensure solid soil base. These foundations are also required to have reinforcement of #4 steel rebar that is consistent and tied together so that any soil failure due to erosion or utility excavation later that may weaken the sub grade soil at the foundation will not allow the foundation to settle or fail as part of the entire foundation system. Please be respectful of your neighbor in that he has to do his best to construct on a small and narrow lot just like yours and we should be considerate of one

another in having inconvenience such as traffic and noise during these events. I can facilitate a meeting of the neighbors and the contractor and owner if needed to have everyone be respectful and helpful as a community improvement. Any civil dispute or disagreement should be respectfully addressed and handled with the parties at odds and while I cannot enforce these concerns we can help everyone understand the differing opinions to help solve any communication gap. Please find the time to discuss further previous miscommunication errors of Mr. Wheeler with him as he stated to me he would do whatever you need him to do to correct any damage made from his tree contractor to your electric underground dog fence disturbed by the root removal of the old trees. Casey Wheeler 422-1334. caseyjwheeler82@yahoo.com

Best Regards,

Glen Merchant
Building Official

205/802-3812 Phone
City of Mountain Brook, AL.
56 Church Street
Mountain Brook, AL 35213

From: david allen <rda@gloorstrickland.com>
Date: Fri, Nov 2, 2018 at 2:30 PM
To: Glen Merchant <merchantg@mtnbrook.org>
Cc: Bruce Barze <bbarze@btnllaw.com>, Sam Gaston <gastons@mtnbrook.org>, Wilson Holifield <wilson@imiteam.com>

Thank you for the detailed response. I think that is the point, that I am not an engineer or building code expert. But, I think we can agree that the manner these guys began this project will make us cautious about everything they do.

I am still pretty sure they don't have house plans, so there remains a lot of concern.

I had another call from a concerned neighbor today, so I am trying to stay on top of it

--

R. David Allen, Jr.
GLOOR, STRICKLAND, HAGGERTY & ALLEN, LLP
100 Williamsburg Office Park, Suite 100
Birmingham, AL 35216
Telephone: (205) 822-1223, office/ (205) 222-3837, mobile
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From: Bruce Barze <bbarze@btnllaw.com>
Date: Fri, Nov 16, 2018 at 6:34 PM
To: Glen Merchant <merchantg@mtnbrook.org>, david allen <rda@gloorstrickland.com>
Cc: Wilson Holifield <wilson@imiteam.com>, Buffy Bromberg Allen <ballen@raypoyner.com>

Dear Glen,

I read your email below, and I understand that we all must exercise patience during the next few months. As a lawyer I am extremely familiar with the concept of an owner having the right to use and enjoy his property and to attempt to maximize its value. An owner cannot, however, do that to the detriment or at the expense of his neighbors. And if today was any indication, I am greatly concerned about how this project will proceed over the next several months. Following up on your comment below that we all need to be respectful, I agree wholeheartedly, but it is a two-way street. We are dealing with much more than mere "traffic and noise" on our street.

First, please tell Mr. Wheeler that he and his crew members cannot block driveways on Spring Street. Due to spilled concrete in the road and/or vehicles, my wife was unable to get into our driveway at two different times this afternoon (around 2.30 and 4.30). She had to park on Peachtree Street and walk down the hill to our house. I'm sure you are aware that City Ordinance Sec. 50-108 states that it is "unlawful for any person to park or leave a motor vehicle on any portion of a public street or a private street in a location which results in the partial or complete blocking of, or interference with access to or from, a driveway located on property owned by another person without the permission of the person who is the owner or tenant of such property."

Moreover, as the Shelby Concrete trucks are backing down the hill, they need to be careful. Not only do we have kids and dogs running around here, but the trucks are spilling excess concrete onto our street, and one of them nearly backed into my wife, who was coming up the hill. At around 5.30 pm, a neighbor came home and was unable to get into his driveway, which was blocked by a pickup truck/trailer. The spilled concrete was cleaned up and the vehicles ultimately were moved, but there is still concrete residue all over the street. I don't particularly want to walk my dog in that residue and have his paws get burned. I have defended companies in concrete burn cases, so I know that's a real thing. All afternoon and this evening (as we speak), the top part of Spring Street is completely impassable due to concrete trucks pouring foundation walls. I don't live up there, but it's unacceptable that the people at the top of Spring Street can't come and go from their homes. What if there were an emergency? Also, the mailman today turned around before he got to the construction project and didn't deliver mail to the homes at the top of the street, because it was blocked. That, too, is unacceptable.

Again, my concern is that this project is just getting started. We're only at the stage where foundations are being poured. While it may mean the construction crew members will have to walk up the hill or carpool, Wheeler cannot congregate all of his crew and construction vehicles and trailers at the top of Spring Street while this project is ongoing. Even when they aren't blocking driveways, they are making the street virtually impassable. So, while I'm happy to be (and always strive to be) respectful of fellow property owners, given the tight logistics at the top of the street, the intersection of all of the right-of-ways, and the narrowness of our street up top, Wheeler and his subs are going to have to exercise extraordinary respectfulness and keep their vehicles to the bare minimum on Spring Street.

Regards, Bruce

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R. Bruce Barze, Jr., Partner

Barze Taylor Noles Lowther LLC

Lakeshore Park Plaza

2204 Lakeshore Drive, Suite 330

Birmingham, Alabama 35209

T: 205.872.1015

Fax: 205.872.0339

E: bbarze@btnllaw.com

www.btnllaw.com



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From: Glen Merchant <merchantg@mtnbrook.org>

Date: Friday, November 2, 2018 at 11:56 AM

To: david allen <rda@gloorstrickland.com>

Cc: Sam Gaston <gastons@mtnbrook.org>, Bruce Barze <bbarze@btnllaw.com>, Wilson Holifield <wilson@imiteam.com>

Subject: Re: Photos/ Foundation/ 138, 142 Spring Street

From: Bruce Barze <bbarze@btnllaw.com>

Date: Fri, Nov 16, 2018 at 8:05 PM

To: Glen Merchant <merchantg@mtnbrook.org>, david allen <rda@gloorstrickland.com>

Cc: Wilson Holifield <wilson@imiteam.com>, Buffy Bromberg Allen <ballen@raypoynor.com>, Sam Gaston <gastons@mtnbrook.org>

And as a follow up to my earlier email, they are still pouring concrete and blocking the street, and backing concrete trucks up Spring Street, and it's now after 8 pm. So, now they are acting in violation of City Ordinance Sec. 109-3.

From: Bruce Barze <bbarze@btnllaw.com>

Date: Friday, November 16, 2018 at 6:34 PM

To: Glen Merchant <merchantg@mtnbrook.org>, david allen <rda@gloorstrickland.com>
Cc: Wilson Holifield <wilson@imiteam.com>, Buffy Bromberg Allen <ballen@raypoynor.com>

From: david allen <rda@gloorstrickland.com>
Date: Fri, Nov 16, 2018 at 8:10 PM
To: Bruce Barze <bbarze@btntlaw.com>
Cc: Buffy Bromberg Allen <ballen@raypoynor.com>, Glen Merchant <merchantg@mtnbrook.org>, Wilson Holifield <wilson@imiteam.com>



8:10 pm
Police called

--

R. David Allen, Jr.
GLOOR, STRICKLAND, HAGGERTY & ALLEN, LLP
100 Williamsburg Office Park, Suite 100
Birmingham, AL 35216
Telephone: (205) 822-1223, office/ (205) 222-3837, mobile
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Email: rda@gloorstrickland.com

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From: Bruce Barze <bbarze@btnllaw.com>
Date: Fri, Nov 16, 2018 at 8:40 PM
To: david allen <rda@gloorstrickland.com>
Cc: Buffy Bromberg Allen <ballen@raypoynor.com>, Glen Merchant <merchantg@mtnbrook.org>, Wilson Holifield <wilson@imiteam.com>

8:38 pm and they are still pouring concrete, banging hammers, shining bright lights, and don't look anywhere close to being finished for the day. A big part of being a respectful neighbor is following the law and city ordinances.

R. Bruce Barze, Jr.
Barze Taylor Noles Lowther LLC
205.872.1015
bbarze@btnllaw.com

Sent from my iPhone

On Nov 16, 2018, at 8:10 PM, david allen <rda@gloorstrickland.com> wrote:

<IMG_3046.jpg>
8:10 pm
Police called

On Fri, Nov 16, 2018 at 6:34 PM Bruce Barze <bbarze@btnllaw.com> wrote:

Dear Glen,

I read your email below, and I understand that we all must exercise patience during the next few months. As a lawyer I am extremely familiar with the concept of an owner having the right to use and enjoy his property and to attempt to maximize its value. An owner cannot, however, do that to the detriment or at the expense of his neighbors. And if today was any indication, I am greatly concerned about how this project will proceed over the next several months. Following up on your comment below that we all need to be respectful, I agree wholeheartedly, but it is a two-way street. We are dealing with much more than mere "traffic and noise" on our street.

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Again, my concern is that this project is just getting started. We're only at the stage where foundations are being poured. While it may mean the construction crew members will have to walk up the hill or carpool, Wheeler cannot congregate all of his crew and construction vehicles and trailers at the top of Spring Street while this project is ongoing. Even when they aren't blocking driveways, they are making the street virtually impassable. So, while I'm happy to be (and always strive to be) respectful of fellow property owners, given the tight logistics at the top of the street, the intersection of all of the right-of-ways, and the narrowness of our street up top, Wheeler and his subs are going to have to exercise extraordinary respectfulness and keep their vehicles to the bare minimum on Spring Street.

Regards, Bruce

 cid:image001.png@01D3E58C.6ED08DA0

R. Bruce Barze, Jr., Partner

Barze Taylor Noles Lowther LLC

Lakeshore Park Plaza

[2204 Lakeshore Drive, Suite 330](#)

[Birmingham, Alabama 35209](#)

T: 205.872.1015

Fax: 205.872.0339

E: bbarze@btnllaw.com

www.btnllaw.com

 cid:image003.png@01D3E58C.556D87A0 <image001.png>

From: **Buffy B. Allen** <ballen@raypoynor.com>
Date: Fri, Nov 16, 2018 at 9:08 PM
To: Bruce Barze <bbarze@btnllaw.com>
Cc: david allen <rda@gloorstrickland.com>, Glen Merchant <merchantg@mtnbrook.org>, Wilson Holifield <wilson@imiteam.com>

Mr. Merchant, The builder and All crews are Still here @9:09 p.m. and hammering away



From: Bruce Barze <bbarze@btnllaw.com>
Date: Fri, Nov 16, 2018 at 9:13 PM
To: david allen <rda@gloorstrickland.com>
Cc: Buffy Bromberg Allen <ballen@raypoynor.com>, Glen Merchant <merchantg@mtnbrook.org>, Wilson Holifield <wilson@imiteam.com>

9:10 pm and they're still working, trucks backing up with back up alarms, and my neighbor's driveway is blocked and he can't get into his driveway. Hammers still banging away, and a concrete pump boom is still extended with flood lights shining everywhere.

R. Bruce Barze, Jr.
Barze Taylor Noles Lowther LLC
205.872.1015
bbarze@btnllaw.com

Sent from my iPhone

On Nov 16, 2018, at 8:10 PM, david allen <rda@gloorstrickland.com> wrote:

<IMG_3046.jpg>
8:10 pm
Police called

On Fri, Nov 16, 2018 at 6:34 PM Bruce Barze <bbarze@btnllaw.com> wrote:

Dear Glen,

I read your email below, and I understand that we all must exercise patience during the next few months. As a lawyer I am extremely familiar with the concept of an owner having the right to use and enjoy his property and to attempt to maximize its value. An owner cannot, however, do that to the detriment or at the expense of his neighbors. And if today was any indication, I am greatly concerned about how this project will proceed over the next several months. Following up on your comment below that we all need to be respectful, I agree wholeheartedly, but it is a two-way street. We are dealing with much more than mere "traffic and noise" on our street.

First, please tell Mr. Wheeler that he and his crew members cannot block driveways on Spring Street. Due to spilled concrete in the road and/or vehicles, my wife was unable to get into our driveway at two different times this afternoon (around 2.30 and 4.30). She had to park on Peachtree Street and walk down the hill to our house. I'm sure you are aware that City Ordinance Sec. 50-108 states that it is "unlawful for any person to park or leave a motor vehicle on any portion of a public street or a private street in a location which results in the partial or complete blocking of, or interference with access to or from, a driveway located on property owned by another person without the permission of the person who is the owner or tenant of such property."

Moreover, as the Shelby Concrete trucks are backing down the hill, they need to be careful. Not only do we have kids and dogs running around here, but the trucks are spilling excess concrete onto our street, and one of them nearly backed into my wife, who was coming up the hill. At around 5.30 pm, a neighbor came home and was unable to get into his driveway, which was blocked by a pickup truck/trailer. The spilled concrete was cleaned up and the vehicles ultimately were moved, but there is still concrete residue all over the street. I don't particularly want to walk my dog in that residue and have his paws get burned. I have defended companies in concrete burn cases, so I know that's a real thing. All afternoon and this evening (as we speak), the top part of Spring Street is completely impassable due to concrete trucks pouring foundation walls. I don't live up there, but it's unacceptable that the people at the top of Spring Street can't come and go from their homes. What if there were an emergency? Also, the mailman today turned around before he got to the construction project and didn't deliver mail to the homes at the top of the street, because it was blocked. That, too, is unacceptable.

Again, my concern is that this project is just getting started. We're only at the stage where foundations are being poured. While it may mean the construction crew members will have to walk up the hill or carpool, Wheeler cannot congregate all of his crew and construction vehicles and trailers at the top of Spring Street while this project is ongoing. Even when they aren't blocking driveways, they are making the street virtually impassable. So, while I'm happy to be (and always strive to be) respectful of fellow property owners, given the tight logistics at the top of the street, the intersection of all of the right-of-ways, and the narrowness of our street up top, Wheeler and his subs are going to have to exercise extraordinary respectfulness and keep their vehicles to the bare minimum on Spring Street.

Regards, Bruce

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R. Bruce Barze, Jr., Partner

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E: bbarze@btnllaw.com

www.btnllaw.com

 cid:image003.png@01D3E58C.556D87A0 <image001.png>

From: Sam Gaston <gastons@mtnbrook.org>
Date: Fri, Nov 16, 2018 at 9:26 PM
To: Bruce Barze <bbarze@btnllaw.com>
Cc: Glen Merchant <merchantg@mtnbrook.org>, david allen <rda@gloorstrickland.com>, Wilson Holifield <wilson@imiteam.com>, Buffy Bromberg Allen <ballen@raypoynor.com>

Our Police Dept was notified shortly after your email.

Sent from my iPhone
Sam Gaston

On Nov 16, 2018, at 9:05 PM, Bruce Barze <bbarze@btnllaw.com> wrote:

And as a follow up to my earlier email, they are still pouring concrete and blocking the street, and backing concrete trucks up Spring Street, and it's now after 8 pm. So, now they are acting in violation of City Ordinance Sec. 109-3.

From: Bruce Barze <bbarze@btnllaw.com>
Date: Friday, November 16, 2018 at 6:34 PM
To: Glen Merchant <merchantg@mtnbrook.org>, david allen <rda@gloorstrickland.com>
Cc: Wilson Holifield <wilson@imiteam.com>, Buffy Bromberg Allen <ballen@raypoynor.com>
Subject: Re: Photos/ Foundation/ 138, 142 Spring Street

Dear Glen,

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Regards, Bruce

<image001.png>

R. Bruce Barze, Jr., Partner

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<image002.png> <image003.png>

From: **Bruce Barze** <bbarze@btnllaw.com>
Date: Fri, Nov 16, 2018 at 9:32 PM
To: Sam Gaston <gastons@mtnbrook.org>
Cc: Glen Merchant <merchantg@mtnbrook.org>, david allen <rda@gloorstrickland.com>, Wilson Holifield <wilson@imiteam.com>, Buffy Bromberg Allen <ballen@raypoynor.com>

Much appreciated. Have a good weekend.

R. Bruce Barze, Jr.
Barze Taylor Noles Lowther LLC
205.872.1015
bbarze@btnllaw.com

Sent from my iPhone

--
R. David Allen, Jr.
GLOOR, STRICKLAND, HAGGERTY & ALLEN, LLP
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[Birmingham, AL 35216](#)
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Steve Boone <boones@mtnbrook.org>

Item #5, City Council Meeting, 11/26/2018

1 message

Virginia Martin <virginiamartin1@bellsouth.net>

Mon, Nov 26, 2018 at 1:17 PM

To: hazend@mtnbrook.org, Glen Merchant <merchantg@mtnbrook.org>, boones@mtnbrook.org, gastons@mtnbrook.org

I, Virginia M. Martin live at 145 Spring Street at the North end on the right. I do not have a problem with 142 Spring Street using the City's right of way, along undeveloped Mountain Avenue, for a driveway and parking pad. Thanks for your consideration of my opinion. Gina Martin

Sent from my iPhone

The Michael Lane property is owned by Michael Staff, for whom the street is named. His father, Meyer Staff, was a founding developer of Mountain Brook and developed much of the area, retaining the subject property for his residence. There is no resident more familiar with the intended character and residential development standards than Mike Staff.

Issues for the moratorium/ possible regulation changes depend on the finalization/ consideration of the Study commissioned by the Council. The study is limited to Landmark Streets. Michael Lane is not a Landmark Street, is not being studied, and any finding by the Study will not be relevant to Michael Lane. It is misguided and unfair for the City to restrict development of properties which are not relevant to the Study.

2018-175

As Ms. Hazen pointed out in the Planning Commission meeting, in order to develop the Country Club Road non-conforming lot, a resurvey is required. With Michael Lane, no resurvey is required before developing each lot as platted. As Dana Hazen confirmed with the owner and their real estate agents, the lots may be sold and developed as is.

In the pre-meeting, Carey Hollingsworth stated that there was no real hardship for the Michael Lane property since it had been "on the market for 1-2 years" and hadn't sold, attempting to say that 90 days extension of the moratorium doesn't matter. The Michael Lane lots, in fact, were not marketed and listed for sale until October 18, 2018. One lot went under contract, but upon discovering the moratorium, the Buyer may back out, and Mike Staff will be unable to market any of the lots until

Michael Lane is exempted from the moratorium, or the moratorium is terminated.

Specific to this situation, the Michael Lane property is located on the corner of Michael Lane, a dead-end street, and Mountain Park Drive, in a location far from any landmark or gateway street. Mike Staff, owner of the Michael Lane property, made financial arrangements, and invested a great deal of time and resources in reliance on the City's promise that the Michael Lane lots could be marketed, sold, and developed as is. It is an extreme hardship that simply due to bad luck and the timing of the moratorium, that the Michael Lane lots are being prevented from development consistent with the current planning and zoning laws.