

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

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

**MARCH 11, 2019, 6:00 P.M.**

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1. Revised Flood Damage Prevention Ordinance-Glen Merchant and Whit Colvin (See attached information. This item may be added to the formal agenda.)
2. Resolution granting a 3-year fiber optics franchise to Verizon Access Transmission Services-Steve Stine (See attached information. This item may be added to the formal agenda.)
3. Street paving list for 2019-Ronnie Vaughn (See attached information. This item may be added to the formal agenda.)
4. Executive Session



**FEMA**

FEB 14 2019

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

The Honorable Stewart H. Welch, III  
Mayor, City of Mountain Brook  
Post Office Box 130009  
Mountain Brook, Alabama 35213

Dear Mayor Welch:

I am writing this letter as an official reminder that the City of Mountain Brook, Alabama, has until March 21, 2019, to adopt and have the Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office approve floodplain management measures that satisfy 44 Code of Federal Regulations (CFR) Section 60.3(d) of the National Flood Insurance Program (NFIP) regulations.

The City of Mountain Brook must adopt floodplain management measures, such as a floodplain management ordinance, that meet or exceed the minimum NFIP requirements (copy enclosed) by March 21, 2019, to avoid suspension from the NFIP. If suspended, your community becomes ineligible for flood insurance through the NFIP, new insurance policies cannot be sold, and existing policies cannot be renewed.

The NFIP State Coordinating Office for your State has verified that Alabama communities may include language in their floodplain management measures that automatically adopt the most recently available flood elevation data provided by FEMA. Your community's floodplain management measures may already be sufficient if the measures include suitable automatic adoption language and are otherwise in accordance with the minimum requirements of the NFIP. The NFIP State Coordinator can assist you further in clarifying questions you may have about automatic adoption.

Under the Flood Disaster Protection Act of 1973, as amended, flood insurance must be purchased by property owners seeking any Federal financial assistance for construction or acquisition of buildings in Special Flood Hazard Areas (SFHAs). This financial assistance includes certain federally guaranteed mortgages and direct loans, federal disaster relief loans and grants, as well as other similarly described assistance from FEMA and other agencies.

In addition, all loans individuals obtain from Federally regulated, supervised, or insured lending institutions that are secured by improved real estate located in SFHAs are also contingent upon the borrower obtaining flood insurance coverage on the building. However, purchasing and maintaining flood insurance coverage on a voluntary basis is frequently recommended for properties located outside SFHAs.

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Your NFIP State Coordinator and FEMA would like to assist the City of Mountain Brook to ensure it remains in good standing with the NFIP and avoids suspension from the Program. If your community is suspended, it may regain its eligibility in the NFIP by enacting the floodplain management measures established in 44 CFR Section 60.3 of the NFIP regulations. As stated in my previous correspondence, I recommend you contact your NFIP State Coordinator or the FEMA Regional Office if the City of Mountain Brook is encountering difficulties in enacting its measures.

I recognize that your community may be in the final adoption process or may have recently adopted the appropriate floodplain management measures. Please submit these measures to the Floodplain Management Program at the Alabama Department of Economic and Community Affairs, Office of Water Resources. Corey Garyotis, P.E., CFM, the NFIP State Coordinator, is accessible by telephone at (334) 353-0853, in writing at 401 Adams Avenue, Montgomery, Alabama 36104, or by electronic mail at [corey.garyotis@adeca.alabama.gov](mailto:corey.garyotis@adeca.alabama.gov).

The FEMA Regional staff in Atlanta, Georgia, is also available to assist you with your floodplain management measures. The FEMA Regional Office may be contacted by telephone at (770) 220-5200 or in writing. Please send your written inquiries to the Director, Mitigation Division, FEMA Region IV, at 3003 Chamblee Tucker Road, Atlanta, Georgia 30341.

In the event your community does not adopt and/or submit the necessary floodplain management measures that meet or exceed the minimum NFIP requirements, I must take the necessary steps to suspend your community from the NFIP. This letter is FEMA's final notification before your community is suspended from the Program.

Sincerely,



Rachel Sears, Director  
Floodplain Management Division  
Mitigation Directorate | FEMA

Enclosure

cc: Gracia Szczech, Regional Administrator, FEMA Region IV  
Corey Garyotis, P.E., CFM, NFIP State Coordinator, Alabama Department of Economic and  
Community Affairs, Office of Water Resources  
Glen Merchant, Building Official, City of Mountain Brook

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**ORDINANCE NO. 2043**

**AN ORDINANCE AMENDING CHAPTER 117 OF THE CITY CODE  
FLOOD DAMAGE PREVENTION ORDINANCE  
City of Mountain Brook**

**BE IT ORDAINED** by the City Council of the City of Mountain Brook, Alabama, that Chapter 117 of the City Code is hereby amended to read as follows:

**“ARTICLE 1**

**Statutory Authorization, Findings of Fact, Purpose And Objectives**

**SECTION A                    STATUTORY AUTHORIZATION**

The Legislature of the State of Alabama has in Title 11, Chapter 19, Sections 1-24, Chapter 45, Sections 1-11, Chapter 52, Sections 1-84, and Title 41, Chapter 9, Section 166 of the Code of Alabama, 1975, authorized local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Mountain Brook of Jefferson County, Alabama, does ordain as follows:

**SECTION B                    FINDINGS OF FACT**

- (1) The flood hazard areas of Mountain Brook, Alabama are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, flood proofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.

**SECTION C                    STATEMENT OF PURPOSE**

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (2) restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;

- (3) control filling, grading, dredging and other development which may increase flood damage or erosion;
- (4) prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands; and
- (5) control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.

## **SECTION D                    OBJECTIVES**

The objectives of this ordinance are:

- (1) to protect human life and health;
- (2) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (3) to help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas,
- (4) to minimize expenditure of public money for costly flood control projects;
- (5) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (6) to minimize prolonged business interruptions, and
- (7) to ensure that potential home buyers are notified that property is in a flood area.

## **ARTICLE 2** **GENERAL PROVISIONS**

### **SECTION A                    LANDS TO WHICH THIS ORDINANCE APPLIES**

This ordinance shall apply to all Areas of Special Flood Hazard within the jurisdiction of Mountain Brook, Alabama.

### **SECTION B                    BASIS FOR AREA OF SPECIAL FLOOD HAZARD**

The Areas of Special Flood Hazard identified by the Federal Emergency Management Agency in its **Flood Insurance Study (FIS), dated March 21, 2019**, with accompanying maps and other supporting data **and any revision thereto**, are adopted by reference and declared a part of this ordinance. For those land areas acquired by a municipality through annexation, the current effective FIS and data for Jefferson County are hereby adopted by reference. Areas of Special Flood Hazard may also include those areas known to have flooded historically or defined through standard engineering analysis by governmental agencies or private parties but not yet incorporated in the FIS.

*When Preliminary Flood Insurance Studies and Flood Insurance Rate Maps have been provided by FEMA to the City of Mountain Brook:*

- (1) Prior to the issuance of a Letter of Final Determination (LFD) by FEMA, the use of the preliminary flood hazard data shall only be required where no base flood elevations and/or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in the effective flood hazard data provided by FEMA. Such preliminary data may be subject to revision through valid appeals.*
- (2) Upon the issuance of a Letter of Final Determination (LFD) by FEMA, the revised flood hazard data shall be used and replace all previously effective flood hazard data provided by FEMA for the purposes of administrating these regulations.*

*Where adopted regulatory standards conflict, the more stringent base flood elevation shall prevail. Preliminary FIS data may be subject to change by a valid appeal.*

**SECTION C:           ESTABLISHMENT OF A FLOODPLAIN DEVELOPMENT PERMIT**

A Development Permit shall be required in conformance with the provisions of this ordinance PRIOR to the commencement of any development activities in identified areas of special flood hazard and **community flood hazard areas** within the community.

**SECTION D.           COMPLIANCE**

No structure or land shall hereafter be located, extended, converted or altered without **full compliance** with the terms of this ordinance and other applicable regulations.

**SECTION E.           ABROGATION AND GREATER RESTRICTIONS**

This ordinance is not intended to repeal, abrogate, or impair any existing ordinance, easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**SECTION F.           INTERPRETATION**

In the interpretation and application of this ordinance all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body, and (3) deemed neither to limit nor repeal any other powers granted under state statutes.

**SECTION G.           WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of The City of Mountain Brook or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

**SECTION H.           PENALTIES FOR VIOLATION**

- (1) Notice of Violation. If the community determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, or the provisions of this ordinance, it shall issue a written notice of violation, by certified return receipt mail, to such applicant or other responsible person. Where the person is engaged in activity covered by this ordinance without having first secured a permit, the notice shall be served on the owner or the responsible person in charge of the activity being conducted on the site. The notice of violation shall contain:
- (a) The name and address of the owner or the applicant or the responsible person;
  - (b) The address or other description of the site upon which the violation is occurring;
  - (c) A statement specifying the nature of the violation;
  - (d) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit or this ordinance and the date for the completion of such remedial action;
  - (e) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed, and;
  - (f) A statement that the determination of violation may be appealed to the community by filing a written notice of appeal within thirty days after the notice of violation (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24-hour notice shall be sufficient).

- (2) Additional Enforcement Actions. If the remedial measures described in the Notice of Violation have not been completed by the date set forth for such completion in the Notice of Violation, any one or more of the following enforcement actions may be enacted against the person to whom the Notice of Violation was directed. Before taking any of the following actions or imposing any of the following penalties, the City of Mountain Brook shall first notify the applicant or other responsible person in writing of its intended action. The City of Mountain Brook shall provide reasonable opportunity, of not less than ten days (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24-hour notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the City of Mountain Brook may take or impose any one or more of the following enforcement actions or penalties:

**NOTE: The Community may choose which additional enforcement options it chooses to utilize in addition to the “Notice of Violation” described above and the “Civil penalties” described below.**

- (a) Stop Work Order: *The community may issue a stop work order, which shall be served on the applicant or other responsible person. The stop work order shall remain in effect -until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.*
- (b) Termination of utility service and/or withhold or revoke Certificate of Occupancy: *The community may terminate utilities and/or refuse to issue and/or revoke a certificate of occupancy for the building or other improvements and/or repairs conducted or being conducted on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein.*
- (c) Suspension, revocation, or modifications of permit: *The community may suspend,*

*revoke, or modify the permit authorizing the development project. A suspended, revoked, or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the community may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.*

- (d) Civil penalties: Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than { \$500.00 } or imprisoned for not more than { 30 } days, or both, and in addition, shall pay all costs and expenses involved in the case: Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Mountain Brook from taking such other lawful actions as is necessary to prevent or remedy any violation. Brindle
- (e) Section 1316 Declaration: *Section 1316 of the National Flood Insurance Act authorizes FEMA to deny flood insurance to a property declared by the State, County, or Municipal government to be in violation of the local floodplain management ordinance. A Section 1316 declaration shall be used when all other legal means to remedy a violation have been exhausted and the structure is noncompliant. Once invoked, the property's flood insurance coverage will be terminated and no new or renewal policy can be issued; no flood insurance claim can be paid on any policy on the property, and disaster assistance will be denied.*

*The declaration must be in writing (letter or citation), from the community to the property owner and the applicable FEMA Regional Office, and must contain the following items:*

- i. The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;*
- ii. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;*
- iii. A clear statement that the public body making the declaration has authority to do so and a citation to that authority;*
- iv. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and*
- v. A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.*

*If a structure that has received a Section 1316 declaration is made compliant with the community's floodplain management ordinance, then the Section 1316 declaration can be rescinded by the community and flood insurance eligibility restored.*

- (3) Administrative appeal; judicial review. Any person receiving a Notice of Violation may appeal the determination of the community, including but not limited to the issuance of a stop work order, the assessment of an administratively-imposed monetary penalty, the suspension, revocation, modification, or grant with condition of a permit by the community upon finding that the holder is in violation of permit conditions, or that the holder is in violation of any applicable

ordinance or any of the community's rules and regulations, or the issuance of a notice of bond forfeiture.

The Notice of Appeal must be in writing and must be received within ten days from the date of the Notice of Violation. A hearing on the appeal shall take place within thirty days from the date of receipt of the Notice of Appeal by the Floodplain Administrator.

- (4) All appeals shall be heard and decided by the community's designated Appeal Board, which shall be the City Council or their designees. The Appeal Board shall have the power to affirm, modify, or reject the original penalty, including the right to increase or decrease the amount of any monetary penalty and the right to add or delete remedial actions required for correction of the violation and compliance with the community's flood damage prevention ordinance, and any other applicable local, state, or federal requirements. The decision of the Appeal Board shall be final.
- (5) A judicial review can be requested by any person aggrieved by a decision or order of the community, after exhausting his/her administrative remedies. They shall have the right to appeal de novo to the County Circuit Court of Appeals.

**SECTION I. SAVINGS CLAUSE**

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be noncompliant with 44 Code of Federal Regulation 59-78, such decision shall not affect the validity of the remaining portions of this ordinance.

***SECTION J. REPEALER***

*Ordinance 1633 of the City of Mountain Brook, Alabama is hereby repealed. This Repealer shall not, however, effect, terminate, or preclude any rights, duties, requirements or terms which arose or existed while said Ordinance was in effect, all of which are specifically preserved.*

**ARTICLE 3**  
**ADMINISTRATION**

**SECTION A DESIGNATION OF FLOODPLAIN ADMINISTRATOR**

The Building Official is hereby appointed to administer and implement the provisions of this ordinance.

**SECTION B PERMIT PROCEDURES**

Application for a Development Permit shall be made to the Floodplain Administrator on forms furnished by the community **PRIOR** to any development activities, and may include, but not be limited to, the following: Plans in duplicate drawn to scale showing the elevations of the area in question and the nature, location, dimensions, of existing or proposed structures, fill placement, storage of materials or equipment, and drainage facilities.

Specifically, the following procedures and information are required for all projects in the Special Flood Hazard Areas within the jurisdiction of The City of Mountain Brook:

(1) Application Stage

Plot plans are to include:

- (a) The Base Flood Elevation (BFE) where provided as set forth in Article 2, Section B; Article 4, Section C; or Article 5, Section D;
- (b) Boundary of the Special Flood Hazard Area and floodway(s) as delineated on the FIRM or other flood map as determined in Article 2, Section B;
- (c) Flood zone designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 2, Section B;
- (d) Elevation in relation to mean sea level (or highest adjacent grade) of the regulatory lowest floor level, including basement, of all proposed structures;
- (e) Elevation in relation to mean sea level to which any non-residential structure will be flood proofed;
- (f) Design certification from a registered professional engineer or architect that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of Article 4, Sections B(2) and E(2);
- (g) A Foundation Plan, drawn to scale, that shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include, but are not limited to, the proposed method of elevation (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls) and description of any flood openings required in accordance with Article 4, Sections B(1), B(3), D(7), and E(1) when solid foundation perimeter walls are used.
- (h) Usage details of any enclosed areas below the lowest floor shall be described.
- (i) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (j) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development including current and proposed locations of the watercourse. An engineering report shall be provided on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream. The affected properties shall be depicted on a map or on the plot plan.
- (k) Certification of the plot plan by a licensed professional engineer or surveyor in the State of Alabama is required.

(2) Construction Stage

For all new construction and substantial improvements, the permit holder shall provide to the Floodplain Administrator an as-built certification of the regulatory floor elevation or flood-proofing level **using appropriate FEMA elevation or floodproofing certificate** immediately after the lowest floor or flood proofing is completed.

- (a) When flood proofing is utilized for non-residential structures, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.
- (b) **Any work undertaken prior to submission of these certifications shall be at the permit holder's risk.**
- (c) The Floodplain Administrator shall review the above referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder

immediately and prior to further progressive work being allowed to proceed. Failure to submit certification or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

- (d) The Floodplain Administrator shall make **periodic inspections** of projects during construction throughout the Special Flood Hazard Areas within the jurisdiction of the community to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. Members of his or her inspections/engineering department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (e) The Floodplain Administrator may **revoke and require the return of the floodplain development permit** by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (f) *In any lot or lots/areas that will be or have been removed from the special flood hazard area utilizing a Letter of Map Revision Based on Fill (LOMR-F), the top of fill level must meet the community's freeboard elevation at that location. If the top of fill level is below the freeboard elevation, all new structures, additions to existing buildings or substantial improvement must meet the required community freeboard elevation.*

(3) Finished Construction

Upon completion of construction, a FEMA elevation certificate (FEMA Form 81-31), which depicts all finished construction elevations, is required to be submitted to the Floodplain Administrator prior to issuance of a Certificate of Occupancy.

- (a) If the project includes a floodproofing measure, a FEMA floodproofing certificate is required to be submitted by the permit holder to the Floodplain Administrator.
- (b) The Floodplain Administrator shall review the certificate(s) data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance.
- (c) In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (d) Documentation regarding completion and compliance with the requirements stated in the permit application and with Article 3, Section B(1) of this ordinance shall be provided to the local Floodplain Administrator at the completion of construction or records shall be maintained throughout the Construction Stage by inspectors for the Floodplain Administrator. Failure to provide the required documentation shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (e) All records that pertain to the administration of this ordinance shall be maintained and made available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

**SECTION C** **DUTIES AND RESPONSIBILITIES OF THE ADMINISTRATOR**

Duties of the Floodplain Administrator shall include, but shall not be limited to:

- (1) Review all development permits to assure that the permit requirements of this ordinance have been satisfied; and assure that development sites are reasonably safe from flooding.
- (2) Review copies of all necessary permits from governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Maintain such permits permanently with floodplain development permit file.
- (3) When Base Flood Elevation data or floodway data have not been provided in accordance with Article 2, Section B then the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other sources in order to administer the provisions of Article 4.
- (4) Verify and record the actual elevation in relation to mean sea level (or highest adjacent grade) of the regulatory floor level, including basement, of all new construction or substantially improved structures in accordance with Article 3, Section B.
- (5) Verify and record the actual elevation, in relation to mean sea level to which any new or substantially improved structures have been flood-proofed, in accordance with Article 4, Sections B(2) and E(2).
- (6) When flood proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of design criteria from a registered professional engineer or architect in accordance with Article 3, Section B(1)(c) and Article 4, Section B(2) or E(2).
- (7) Notify adjacent communities and the Alabama Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA), and the Alabama Department of Economic and Community Affairs/Office of Water Resources/NFIP State Coordinator's Office.
- (8) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to FEMA and State to ensure accuracy of community flood maps through the Letter of Map Revision process. Assure flood carrying capacity of any altered or relocated watercourse is maintained.
- (9) Where interpretation is needed as to the exact location of boundaries of the Areas of Special Flood Hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Ordinance.
- (10) All records pertaining to the provisions of this ordinance shall be maintained in the office of the Floodplain Administrator and shall be open for public inspection.
- (11) *In addition, the Floodplain Administrator and his or her designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The Administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.*

- (a) *Right of Entry*
- i. *Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Administrator has reasonable cause to believe that there exists in any building or upon any premises any condition or ordinance violation which makes such building, structure or premises unsafe, dangerous or hazardous, the Administrator may enter such building, structure or premises at all reasonable times to inspect the same or perform any duty imposed upon the Administrator by this ordinance.*
  - ii. *If such building or premises are occupied, the Administrator shall first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of such building or premises.*
  - iii. *If entry is refused, the Administrator shall have recourse to every remedy provided by law to secure entry.*
  - iv. *When the Administrator shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building, structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Administrator for the purpose of inspection and examination pursuant to this ordinance.*
- (b) *Stop Work Orders*
- i. *Upon notice from the Administrator, work on any building, structure or premises that is being performed contrary to the provisions of this ordinance shall immediately cease.*
  - ii. *Such notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the person doing the work, and shall state the conditions under which work may be resumed.*
- (c) *Revocation of Permits*
- i. *The Administrator may revoke a permit or approval, issued under the provisions of this ordinance, in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.*
  - ii. *The Administrator may revoke a permit upon determination that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.*

#### **ARTICLE 4**

#### **PROVISIONS FOR FLOOD HAZARD REDUCTION**

#### **SECTION A            GENERAL STANDARDS**

In ALL Areas of Special Flood Hazard the following provisions are required:

- (1) Require copies of all necessary permits from governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Maintain such permits be on file.

- (2) New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse and lateral movement of the structure.
- (3) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage.
- (4) New construction and substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage:
  - (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
  - (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
  - (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (5) All heating and air conditioning equipment and components, all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (6) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State requirements for resisting wind forces.
- (7) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- (9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (10) Any alteration, repair, reconstruction or improvement to a structure which is not compliant with the provisions of this ordinance, shall be undertaken only if the non- conformity is not furthered, extended or replaced.
- (11) Proposed new construction and substantial improvements that are partially located in an area of special flood hazard shall have the entire structure meet the standards for new construction.
- (12) Proposed new construction and substantial improvements that are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations shall have the entire structure meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.

**SECTION B**                      **SPECIFIC STANDARDS**

In ALL Areas of Special Flood Hazard designated as A1-30, AE, AH, A (with engineered or estimated base flood elevation), the following provisions are required:

- (1) Residential and Non-residential Structures - Where base flood elevation data is available, new construction and substantial improvement of any structure or manufactured home **shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation.** Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of Article 4, Section B(3).
- (2) Non-Residential Structures - New construction and substantial improvement of any non-residential structure located in A1-30, AE, or AH zones, may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to one (1) foot above the base flood elevation, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in Article 3, Section C(6).

*Dry floodproofing is allowed only where flood velocities are less than or equal to five feet per second. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. A Flood Emergency Operation Plan and an Inspection and Maintenance Plan must be provided by the design professional for the building. Such certification shall be provided to the Floodplain Administrator.*

- (3) Enclosures for Elevated Buildings - All new construction and substantial improvements of existing structures that include **ANY fully enclosed area** below the base flood elevation, located below the lowest floor formed by the foundation and other exterior walls shall be designed so as to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of flood waters.
  - (a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
    - (i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding (if a structure has more than one enclosed area below the base flood elevation, each shall have openings on exterior walls);
    - (ii) The bottom of all openings shall be no higher than one foot above grade; and
    - (iii) Openings may be equipped with screens, louvers, valves and other coverings and devices provided they permit the automatic flow of floodwater in both directions.
  - (b) So as not to violate the "Lowest Floor" criteria of this ordinance, the unfinished or flood resistant enclosure shall only be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area.
  - (c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms. All interior walls, ceilings and floors below the base flood elevation shall be unfinished and/or constructed of flood resistant materials.

- (d) Mechanical, electrical or plumbing devices shall not be installed below the Base Flood Elevation. The interior portion of such enclosed area(s) shall be void of utilities except for essential lighting and power as required.
  - (e) *Property owners shall be required to execute a flood openings/venting affidavit acknowledging that all openings will be maintained as flood vents, and that the elimination or alteration of the openings in any way will violate the requirements for enclosures below the base flood elevation. Periodic inspections will be conducted by the Floodplain Administrator to ensure compliance.*
  - (f) *Property owners shall agree, certify, and declare to the following conditions and restrictions placed on the affected property as a condition for granting a permit. A binding agreement, referred to as a Non-conversion Agreement, is required to be executed and recorded with the Deed. It shall obligate the Owner to the following terms and conditions:*
    - (i) *That the enclosed area(s) shall remain fully compliant with all parts of the section Enclosures for Elevated Buildings of this Ordinance unless otherwise modified to be fully compliant with the applicable sections of the Flood Damage Prevention Ordinance in effect at the time of conversion.*
    - (ii) *A duly appointed representative of the City of Mountain Brook is authorized to enter the property for the purpose of inspecting the exterior and interior of the enclosed area to verify compliance with the Agreement and Permit.*
    - (iii) *The community may take any appropriate legal action to correct any violation pertaining to the Agreement and the subject Permit.*
- (4) Standards for Manufactured Homes and Recreational Vehicles - Where base flood elevation data are available:
- (a) All manufactured homes placed and substantially improved on:
    - (i) individual lots or parcels,
    - (ii) in new or substantially improved manufactured home parks or subdivisions,
    - (iii) in expansions to existing manufactured home parks or subdivisions, or
    - (iv) on a site in an existing manufactured home park or subdivision where a manufactured home has incurred "substantial damage" as the result of a flood, must have the lowest floor including basement elevated no lower than one foot above the base flood elevation.
  - (b) Manufactured homes placed and substantially improved in an existing manufactured home park or subdivision may be elevated so that either:
    - (i) the lowest floor of the manufactured home is elevated no lower than one foot above the level of the base flood elevation, or
    - (ii) where no Base Flood Elevation exists, the manufactured home chassis and supporting equipment is supported by reinforced piers or other foundation elements of at least equivalent strength and a maximum of 60 inches (five feet) above grade and must meet the standards of Article 4, Section D(5).
  - (c) All Manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
  - (d) All recreational vehicles placed on sites must either:
    - (i) be on the site for fewer than 180 consecutive days, fully licensed and ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions; or

- (ii) the recreational vehicle must meet all the requirements for "New Construction," including the anchoring and elevation requirements of Article 4, Section B, provisions (3)(a) and (3)(c).
- (5) Require, until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the City of Mountain Brook FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than **one foot** at any point within the community.
- (6) Accessory Structures (also referred to as appurtenant structures) – This provision generally applies to new and substantially improved accessory structures. When an accessory structure complies with all other provisions of this ordinance (including floodway encroachment), represents a minimal investment (less than {\$1000}), and meets the requirements outlined below, these structures may be wet-floodproofed and do not have to be elevated or dry floodproofed.

**NOTE: Community to designate the value that defines “minimal investment” for its own community. Values typically range between \$300 - \$1,000.**

Accessory structures include, but are not limited to, residential structures such as detached garages, storage sheds for garden tools or woodworking, gazebos, picnic pavilions, boathouses, small pole barns, and similar buildings. The following provisions apply to accessory structures built below the base flood elevation:

- (a) A permit shall be required prior to construction or installation.
- (b) Must be low value (less than {\$1000}) and not be used for human habitation.
- (c) Use must be restricted to parking of personal vehicles or limited storage (low-cost items that cannot be conveniently stored in the principal structure).
- (d) Must be designed with an unfinished interior and constructed with flood damage-resistant materials below the BFE.
- (e) Must be adequately anchored to prevent flotation, collapse, or lateral movement.
- (f) Must have adequate flood openings as described in Article 4, Section A (5) and be designed to otherwise have low flood damage potential.
- (g) Shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
- (h) Any mechanical and other utility equipment in the structure must be elevated to or above the BFE or must be floodproofed.
- (i) Under limited circumstances communities may issue variances to permit construction of wet-floodproofed accessory structures. Communities should not grant variances to entire subdivisions for accessory structures, especially detached garages. Variances should only be reviewed and issued on an individual or case-by-case basis and be based on the unique characteristics of the site.

## **SECTION C                      FLOODWAYS**

Located within Areas of Special Flood Hazard established in Article 2, Section B, are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the

discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:

- (1) The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;
- (2) Encroachments are prohibited, including fill, new construction, substantial improvements or other development within the adopted regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment **shall not result in any increase** in flood levels or floodway widths during a base flood discharge. A registered professional engineer must provide supporting technical data and certification thereof;
- (3) A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional letter of map revision (CLOMR) and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of FEMA;
- (4) **ONLY** if Article 4, Section C, provisions (1) through (3) are satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of Article 4.

**OR, if a community wishes to prohibit all development within the floodway, adopt the following language in place of paragraphs (2) through (4) from Section C shown above.**

- (2) *Encroachments, including fill, new construction, placement of manufactured homes, substantial improvements, and other development, are prohibited.*
- (3) *As long as no fill, structures (including additions), or other impediments to flow are added, permissible uses within the floodway may include: lawns, gardens, athletic fields, play areas, picnic grounds, and hiking/biking/horseback riding trails, general farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife, and related uses. The uses in this subsection are permissible only if and to the extent that they do not cause any increase in flood levels during the base flood discharge.*

**SECTION D**                      **BUILDING STANDARDS FOR STREAMS WITHOUT ESTABLISHED  
BASE FLOOD ELEVATIONS (APPROXIMATE A-ZONES)**

Located within the Areas of Special Flood Hazard established in Article 2, Section B, where streams exist but no base flood data have been provided (Approximate A-Zones), the following provisions apply:

- (1) Base flood elevation data shall be provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than fifty (50) lots or five (5) acres, whichever is the lesser.
- (2) When base flood elevation data or floodway data have not been provided in accordance with Article 2, Section B then the Floodplain Administrator shall obtain, review, and reasonably utilize any scientific or historic Base Flood Elevation and floodway data available from a Federal,

State, or other source, in order to administer the provisions of Article 4. ONLY if data are not available from these sources, then Article 4, Section D, provisions (5) and (6) shall apply:

- (3) *No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty-five feet, whichever is greater, measured from the top of the stream bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.*
- (4) All development in Zone A must meet the requirements of Article 4, Section A and Section B(1) through B(4).
- (5) In special flood hazard areas without base flood elevation data, new construction and substantial improvements of existing structures shall have the lowest floor (for the lowest enclosed area; including basement) elevated no less than three (3) feet above the highest adjacent grade.
- (6) In the absence of a base flood elevation, a manufactured home must also meet the elevation requirements of Article 4, Section B(4)(b)(ii) in that the structure must be elevated to a maximum of 60 inches (5 feet).
- (7) Openings sufficient to facilitate automatic equalization of flood water hydrostatic forces on exterior walls shall be provided in accordance with standards of Article 4, Section B(3)(a). The Floodplain Administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.
- (8) *Fill within the area of special flood hazard shall result in no net loss of natural floodplain storage. The volume of loss of floodwater storage due to filling in the special flood hazard area shall be offset by providing an equal volume of flood storage by excavation or other compensatory measures at or adjacent to the development site. Any excavation or other measures taken for compensatory storage shall be properly designed to provide protection against erosion or overgrowth of vegetation in order to preserve the storage volume. Proper maintenance measures shall also be undertaken to ensure the intended storage volume remains in perpetuity.*

## **SECTION E                      STANDARDS FOR AREAS OF SHALLOW FLOODING (AO ZONES)**

Areas of Special Flood Hazard established in Article 2, Section B may include designated "AO" shallow flooding areas. These areas have base flood depths of one to three feet (1'-3') above ground, with no clearly defined channel. The following provisions apply:

- (1) All new construction and substantial improvements of residential and nonresidential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM) plus one foot of freeboard. **If no depth number is specified, the lowest floor, including basement, shall be elevated at least three (3) feet above the highest adjacent grade.** Openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of Article 4, Section B(3), "Enclosures for Elevated Buildings".

The Floodplain Administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

- (2) New construction and the substantial improvement of a non-residential structure may be flood-proofed in lieu of elevation. **The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to the specified flood level in Article 4, Section E(1) or three (3) feet (if no depth number is specified), above highest adjacent grade,** with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and as required in Article 3, Section B(1)(c) and (2).
- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

***SECTION F***                      **STANDARDS FOR SUBDIVISIONS**

- (1) *All subdivision proposals shall be consistent with the need to minimize flood damage.*
- (2) *All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.*
- (3) *All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and;*
- (4) *Base flood elevation data shall be provided for all new subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than fifty lots or five acres; whichever is the lesser.*
- (5) *All subdivision and other development proposals which involve disturbing more than 1Acre of land shall include a stormwater management plan which is designed to limit peak runoff from the site to predevelopment levels for the one, ten, and 100-year rainfall event. These plans shall be designed to limit adverse impacts to downstream channels and floodplains. Single residential lots involving less than one acre of land disturbance are not subject to this regulation. Ordinance 1496 also addresses additional development of property requirements.*
- (6) *All preliminary plans for platted subdivisions shall identify the flood hazard area and the elevation of the base flood.*
- (7) *All final subdivision plats will provide the boundary of the special flood hazard area, the floodway boundary, and the base flood elevations.*
- (8) *In platted subdivisions, all proposed lots or parcels that will be future building sites shall have a minimum buildable area outside the natural (non-filled) 1% chance annual floodplain. The buildable area shall be, at a minimum, large enough to accommodate any primary structure and associated structures such as sheds, barns, swimming pools, detached garages, on-site sewage disposal systems, and water supply wells, where applicable.*

***SECTION G.***                      **CRITICAL FACILITIES**

*Construction of new and substantially improved critical facilities shall be located outside the limits of the special flood hazard area (one percent annual chance floodplain). Construction of new critical facilities shall be permissible within the SFHA only if no feasible alternative site is available and access to the facilities remains available during a 0.2 percent chance flood.*

- (1) Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above the base flood elevation at the site (or to the 0.2 percent chance flood elevation whichever is greater).*
- (2) Floodproofing and sealing measures must be implemented to ensure that any and all on-site toxic substances will not be displaced by or released into floodwaters.*
- (3) Multiple access routes, elevated to or above the 0.2 percent flood elevation, shall be provided to all critical facilities to the maximum extent possible.*
- (4) Critical facilities must be protected to or above the 0.2 percent chance flood and must remain operable during such an event.
  - a. The community's flood response plan must list facilities considered critical in a flood.*
  - b. Other facilities in low risk flood zones that may also be needed to support flood response efforts must be included on the critical facility list.**
- (5) The use of any structure shall not be changed to a critical facility, where such a change in use will render the new critical facility out of conformance with this section.*

## **ARTICLE 5**

### **VARIANCE PROCEDURES**

#### **SECTION A.           DESIGNATION OF VARIANCE AND APPEALS BOARD**

The Board of Zoning Adjustments as established by the City Council of The City of Mountain Brook shall hear and decide requests for appeals or variance from the requirements of this ordinance.

#### **SECTION B.           DUTIES OF BOARD**

The Board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the Board of Zoning Adjustments may appeal such decision to the Jefferson County Appellate Court, as provided in State of Alabama.

#### **SECTION C.           VARIANCE PROCEDURES**

In reviewing requests for variance, the Board of Zoning Adjustments shall consider all technical evaluations, relevant factors, and standards specified in other sections of this ordinance, and:

- (1) Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of this Article are met, no reasonable alternative exists, the development is protected by methods that minimize flood damage during the base flood, and it creates no additional threats to public safety.*

- (2) Variances shall not be issued within any designated floodway if ANY increase in flood levels during the base flood discharge would result.
- (3) The evaluation must be based on the characteristics unique to that property and not be shared by adjacent parcels. The characteristics must pertain to the land itself, not to the structure, its inhabitants, or its owners.
- (4) Variances should never be granted for multiple lots, phases of subdivisions, or entire subdivisions.
- (5) The danger of life and property due to flooding or erosion damage including materials that may be swept onto other lands to the injury of others.
- (6) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner and the community.
- (7) The safety of access to the property during flood conditions for daily traffic and emergency vehicles.
- (8) The importance of the services provided by the proposed facility to the community.
- (9) The necessity of the facility to be at a waterfront location, where applicable.
- (10) The compatibility of the proposed use with existing and anticipated development based on the community's comprehensive plan for that area.
- (11) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- (12) The costs associated with providing governmental services to the development during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and community infrastructure such as streets, bridges, and culverts.

Upon consideration of factors listed above, and the purpose of this ordinance, the Board of Zoning Adjustments may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

#### **SECTION D. VARIANCES FOR HISTORIC STRUCTURES**

Variances may be issued for the repair or rehabilitation of Historic Structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum to preserve the historic character and design of the structure.

#### **SECTION E. CONDITIONS FOR VARIANCES**

The provisions of this Ordinance are minimum standards for flood loss reduction, therefore any deviation from the standards must be weighed carefully. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- (1) A variance may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of Sections E(3), E(4), F(1) and F(2) of this Article.
- (2) In the instance of a Historic Structure, a determination is required that the variance is the minimum necessary so as not to destroy the historic character and design of the building.
- (3) A variance shall be issued ONLY when there is:
  - (a) A finding of good and sufficient cause;
  - (b) A determination that failure to grant the variance would result in exceptional hardship; and
  - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (4) A variance shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall not be issued “after the fact.”

**SECTION F. VARIANCE NOTIFICATION AND RECORDS**

- (1) Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that specifies the difference between the base flood elevation and the elevation of the proposed lowest floor and stating that the issuance of such a variance could:
  - a. result in rate increases in the hundreds and possibly thousands of dollars annually depending on structure and site-specific conditions; and
  - b. increase the risk to life and property resulting from construction below the base flood level.
- (2) The Floodplain Administrator shall maintain a record of all variance actions and appeal actions, including justification for their issuance. Report any variances to the Federal Emergency Management Agency Region 4 and the Alabama Department of Economic and Community Affairs/Office of Water Resources upon request.
- (3) A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Jefferson County Probate Office in the form of a Covenant or Deed Restriction and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

**ARTICLE 6**  
**DEFINITIONS**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

*A Zone means the Area of Special Flood Hazard without base flood elevations determined.*

**Accessory Structure (also referred to as appurtenant structures)** means a structure which is located on the same parcel of property as a principal structure to be insured and the use of which is incidental to the use of the principal structure. They should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. These structures are used solely for parking (two-car detached garages or smaller) or limited storage (small, low cost storage sheds). They are included under the general definition of structure and are consequently subject to all floodplain management regulations pertaining to structures.

**Addition (to an existing building)** means any improvement that increases the square footage of a structure. These include lateral additions added to the front, side, or rear of a structure, vertical additions added on top of a structure, and enclosures added underneath a structure. NFIP regulations for new construction apply to any addition that is considered a perimeter expansion or enclosure beneath a structure. If it is considered to be a substantial improvement (more than 50% of market value) to a structure, the existing structure will also need to be treated as new construction.

Depending on the flood zone and details of the project, the existing building may not have to be elevated. The determining factors are the common wall and what improvements are made to the existing structure. If the common wall is demolished as part of the project, then the entire structure must be elevated. If only a doorway is knocked through it and only minimal finishing is done, then only the addition has to be elevated.

***AE Zone** means the Area of Special Flood Hazard with base flood elevations determined.*

***AH Zone** means an area of one percent chance of shallow flooding where depths are between one to three feet (usually shallow ponding), with base flood elevations shown.*

***AO Zone** means an area of one percent chance of shallow flooding where depths are between one to three feet (usually sheet flow on sloping terrain), with depth numbers shown.*

**Appeal** means a request for a review of the Flood Plain Administrators interpretation of any provision of this ordinance.

***AR/AE, AR/AH, AR/AO, and AR/A Zones** means a flood zone that results from the decertification of a previously accredited flood protection system or levee that is in the process of being restored to provide a one percent chance or greater level of flood protection. After restoration is complete, these areas will still experience residual flooding from other flooding sources.*

***A99 Zone** means that part of the special flood hazard area inundated by the one percent annual chance flood to be protected from the one percent chance flood by a Federal flood protection system or levee under construction, no base flood elevations are determined.*

**Area of shallow flooding** means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet, and/or where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

**Area of special flood hazard** (also see "Special flood hazard area") means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. In the absence of official designation by the Federal Emergency Management Agency, Areas of Special Flood Hazard shall be those designated by the local community and referenced in Article 2, Section B.

**Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the “one percent chance flood”).

**Base flood elevation** means the computed elevation to which floodwater is anticipated to rise during the base flood. It is also the elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year. Base Flood Elevations are shown in the FIS and on the Flood Insurance Rate Map (FIRM) for zones AE, AH, A1–A30, AR, AR/A, AR/AE, AR/A1– A30, AR/AH, AR/AO, V1–V30 and VE.

**Basement** means any portion of a building having its floor sub grade (below ground level) on all sides.

**Building** (also see **Structure**) means (1) A structure with 2 or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; or (2) a manufactured home (a “manufactured home,” also known as a mobile home, is a structure built on a permanent chassis, transported to its site in 1 or more sections, and affixed to a permanent foundation); or (3) a travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws.

**Community** means a political entity and/or its authorized agents or representatives that have the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

***Community Rating System (CRS)** means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.*

***Critical facility** (aka, critical action) means facilities for which the effects of even a slight chance of flooding would be too great. The minimum floodplain of concern for critical facilities is the 0.2 percent chance flood level. Critical facilities include, but are not limited to facilities critical to the health and safety of the public such as: emergency operations centers, designated public shelters, schools, nursing homes, hospitals, police, fire and emergency response installations, vital data storage centers, power generation and water and other utilities (including related infrastructure such as principal points of utility systems) and installations which produce, use or store hazardous materials or hazardous waste (as defined under the Clean Water Act and other Federal statutes and regulations).*

***D Zone** means an area in which the flood hazard is undetermined.*

***Dam** means any artificial barrier, including appurtenant works, constructed to impound or divert water, waste water, liquid borne materials, or solids that may flow if saturated. All structures necessary to maintain the water level in an impoundment or to divert a stream from its course will be considered a dam.*

**Development** means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials.

***Dry Floodproofing** means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damages to real estate or improved real estate property, water, and sanitary facilities, structures, and their contents. Structures shall be floodproofed with a minimum of 12 inches above the base flood elevation (more is recommended). Dry floodproofing of a pre-FIRM residential structure that has not been substantially damaged or improved is allowed. Dry floodproofing of a post-FIRM residential building is not allowed. Non-residential structures may be dry*

*floodproofed in all flood zones with the exception of the Coastal High Hazard Area or the Coastal AE Zone.*

**Elevated building** means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, pilings, posts, columns, piers, or shear walls.

**Elevation Certificate** means a FEMA form used as a certified statement that verifies a building's elevation information.

**Encroachment** means the advance or infringement of uses, plant growth, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**Existing Construction** means any structure for which the "start of construction" commenced before March 11, 2019 [i.e., [the effective date of the FIRST floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program \(NFIP\)](#)] or before January 1, 1975, for FIRMs effective before that date. Existing construction may also be referred to as existing structures.

**Existing manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed before March 11, 2019.

**Expansion to an existing manufactured home park or subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

**Flood or flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters; or
- b. The unusual and rapid accumulation or runoff of surface waters from any source.
- c. Mudslides which are proximately caused by flooding as described in part "b." of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- d. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually highwater level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in part "a." of this definition.

**Flood Hazard Boundary Map (FHBM)** means an official map of a community, issued by the Federal Insurance Administration, where the boundaries of areas of special flood hazard have been designated as Zone A.

**Flood Insurance Rate Map (FIRM)** means an official map of a community, on which the Federal Emergency Management Agency has delineated the areas of special flood hazard and/or risk premium zones applicable to the community.

**Flood Insurance Study/ Flood Elevation Study** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide and/or flood-related erosion hazards.

**Floodplain** means any land area susceptible to being inundated by water from any source.

*Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.*

**Floodplain management regulations** means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

**Floodproofing** means any combination of structural and nonstructural additions, changes or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities or structures with their contents.

**Floodway (Regulatory Floodway)** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

*Floodway fringe means that area of the special flood hazard area on either side of the regulatory floodway.*

*Flood Protection Elevation means the base flood elevation plus the community freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations or base flood elevations determined and/or approved by the floodplain administrator plus freeboard.*

**Freeboard** means a factor of safety usually expressed in feet above the Base Flood Elevation (BFE) for purposes of floodplain management which tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed. Used to determine the level for a building's lowest floor elevation or level of floodproofing required to be in compliance with the community's floodplain management regulations.

**Functionally dependent facility** means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facility that are necessary for the loading and unloading of cargo or passengers, and shipbuilding, and ship repair facilities. The term does not include long-term storage or related manufacturing facilities.

**Hardship** (as related to variances of this ordinance) means the exceptional difficulty that would result from a failure to grant the requested variance. The Board of Zoning Adjustments requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal

preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Highest adjacent grade** means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

**Historic Structure** means any structure that is;

- a. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- c. Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
  - i. By an approved state program as determined by the Secretary of the Interior, or
  - ii. Directly by the Secretary of the Interior in states without approved programs.

***Letter of Map Change (LOMC)** is an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMC's are broken down into the following categories:*

***Letter of Map Amendment (LOMA)***

*An amendment based on technical data showing that a property was incorrectly included in a designated SFHA, was not elevated by fill (only by a natural grade elevation), and will not be inundated by the one percent chance flood. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.*

***Letter of Map Revision (LOMR)***

*A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the BFE and is, therefore, excluded from the SFHA.*

***Conditional Letter of Map Revision (CLOMR)***

*A formal review and comment by FEMA as to whether a proposed project complies with the minimum NFIP floodplain management criteria. A CLOMR does not revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.*

**Levee** means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**Levee System** means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

***Lowest adjacent grade** means the point of the ground level immediately next to a building. This may be the sidewalk, patio, deck support, or basement entryway immediately next to the structure after the completion of construction. It does not include earth that is placed for aesthetic or landscape reasons around a foundation wall. It does include natural ground or properly compacted fill that comprises a component of a building's foundation system.*

**Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of other provisions of this ordinance.

**Manufactured home** means a building, transportable in one or more section, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

**Manufactured home park or subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Market value** means the property value (as agreed between a willing buyer and seller), excluding the value of land as established by what the local real estate market will bear. Market value can be established by independent certified appraisal; replacement cost depreciated by age of building (Actual Cash Value); or adjusted assessed values.

**Mean Sea Level** means the average height of the sea for all stages of the tide. It is used as a reference for the base flood elevations shown on a community's Flood Insurance Rate Map (FIRM). For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum.

**National Flood Insurance Program (NFIP)** means the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

**National Geodetic Vertical Datum (NGVD)** means as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

**New construction** means ANY structure (see definition) for which the "start of construction" commenced after March 11, 2019 and includes any subsequent improvements (including additions) to such structures.

**New manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after March 11, 2019.

**Non-Residential** means, but is not limited to; small business concerns, churches, schools, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, mercantile structures,

agricultural and industrial structures, warehouses, and hotels and motels with normal room rentals for less than 6 months duration.

**North American Vertical Datum (NAVD) of 1988** means a vertical control, corrected in 1988, used as a reference for establishing varying elevations within the floodplain.

**Obstruction** means, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channel construction, bridge, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

**One Percent Flood** (aka 100-Year Flood) is the flood that has a one percent chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A or V is subject to inundation by the one percent chance flood. Over the life of a 30-year loan, there is a 26-percent chance of experiencing such a flood within the SFHA.

**Participating Community** is any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

**Post-FIRM Construction** means new construction and substantial improvements for which start of construction occurred after December 31, 1974, or on or after the effective date of the initial FIRM of the community, whichever is later.

**Pre-FIRM Construction** means new construction and substantial improvements for which start of construction occurred on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.

**Probation** means an action taken by FEMA to formally notify participating communities of the first of the two NFIP sanctions due to their failure to correct violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

**Public safety and nuisance** means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

**Recreational vehicle** means a vehicle which is:

- a. Licensed and titled as a recreational vehicle or park model;
- b. Built on a single chassis;
- c. 400 square feet or less when measured at the largest horizontal projection;
- d. Has no attached deck, porch, or shed;
- e. Has quick-disconnect sewage, water, and electrical connectors;
- f. Designed to be self-propelled or permanently towable by a light duty truck; and
- g. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

***Regular Program** means the second phase of the community's participation in the NFIP in which second layer coverage is available based upon risk premium rates only after FEMA has completed a flood risk study for the community.*

**Regulatory floodway** see **Floodway**.

**Remedy a violation** means to bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

**Repetitive Loss** means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

***Repetitive Loss Property** means any insurable structure for which two or more claims of more than \$1,000 were paid by the National Flood Insurance Program (NFIP) within any rolling 10-year period, since 1978. At least two of the claims must be more than ten days apart but, within ten years of each other. A repetitive loss property may or may not be currently insured by the NFIP.*

**Section 1316** means no new flood insurance policy or federal disaster assistance shall be provided for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in floodprone areas. If the structure is made compliant with the applicable community's floodplain management ordinance, then the Section 1316 declaration can be rescinded by the community and flood insurance and disaster assistance eligibility restored.

***Severe Repetitive Loss Structure** means any insured property that has met at least one of the following paid flood loss criteria since 1978, regardless of ownership:*

- a. *Four or more separate claim payments of more than \$5,000 each (including building and contents payments); or*
- b. *Two or more separate claim payments (building payments only) where the total of the payments exceeds the current market value of the property.*

*In either case, two of the claim payments must have occurred within ten years of each other. Multiple losses at the same location within ten days of each other are counted as one loss, with the payment amounts added together.*

**Special flood hazard area (SFHA)** means that portion of the floodplain subject to inundation by the base flood and/or flood-related erosion hazards as shown on a FHBM or FIRM as Zones A, AE, AH, AO, AR, AR/AE, AR/AO, AR/AH, AR/A, A99, or VE.

**Start of construction** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) means the date the development or building permit was issued (includes substantial improvement), provided the actual start of construction, repair, reconstruction, or

improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of the structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, and includes the placement of a manufactured home on a foundation.

“Permanent construction” does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of buildings appurtenant to the permitted structure, such as garages or sheds not occupied as dwelling units or part of the main structure. (*NOTE: accessory structures are NOT exempt from any ordinance requirements*). For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure** means a walled and roofed building, including a liquid or gas storage tank, that is principally above ground, as well as a manufactured home.

**Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to it before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

**[OR replace the “50 percent” and “25 percent” with lower values for stricter standards]**

**Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “repetitive loss” or “substantial damage”, regardless of the actual repair work performed. The market value of the building should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring.

**[If lower values are used in the above definition for “Substantial damage”, then include the same lower values for stricter standards for this definition]**

**[OR replace “means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement” with the following:]**

*means any combination of reconstruction, alteration, or improvement to a building, taking place during a 5-year **[or 10-year]** period, in which the cumulative percentage of improvement equals or exceeds 50 percent of the current market value of the structure before the “start of construction” of the initial improvement. Any subsequent improvement project costs shall be added to the initial costs for the initial improvement project. At the end of a 5-year **[or 10-year]** period from the initial improvement project, an updated valuation for the structure can be used for the next time period.*

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local

- code enforcement official and which are the minimum necessary to assure safe living conditions *(provided that said code deficiencies were not caused by neglect or lack of maintenance on the part of the current or previous owners)* or;
- b. Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

**Substantially improved existing manufactured home parks or subdivisions** is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

**If lower values are used in the definition above for “Substantial improvement”, then include the same lower values for stricter standards for this definition**

***Suspension** means the removal, with or without probation, of a participating community from the NFIP because the community failed to adopt and enforce the compliant floodplain management regulations required for participation in the NFIP.*

**Variance** means a grant of relief from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance.

**Violation** means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in the Code of Federal Regulations (CFR) §44, Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) and corresponding parts of this ordinance is presumed to be in violation until such time as that documentation is provided.

**Watercourse** means any flowing body of water including a river, creek, stream, or a branch.

**Water surface elevation** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

***Wet floodproofing** means a method of construction which allows water to enter a structure in such a way that will minimize damage to the structure and its contents. Wet floodproofing is appropriate for functionally dependent use and uses that facilitate open space use by variance only, structures utilized for parking or limited storage, or when all other techniques are not technically feasible. Wet floodproofing shall not be utilized as a method to satisfy the requirements of this ordinance for bringing substantially damaged or improved structures into compliance. Wet floodproofing is not allowed in lieu of complying with the lowest floor elevation requirements for new residential buildings.*

***X Zones (shaded)** are areas of 0.2 percent chance flood that are outside of the SFHA subject to the one percent chance flood with average depths of less than one foot, or with contributing drainage area less than one square mile, and areas protected by certified levees from the base flood.*

***X Zones (unshaded)** are areas determined to be outside the 0.2 percent chance floodplain.*

**Zone** means a geographical area shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

## **ARTICLE 7**

**SEVERABILITY**

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.”

**ADOPTED:** This 11th day of March, 2019.

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

**APPROVED:** This 11th day of March, 2019.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, at its meeting held on this 11th day of March, 2019, as same appears in the minutes of record of said meeting, and published by posting copies thereof on March 12, 2019, at the following public places, which copies remained posted for five (5) days as required by law.

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

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

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

## FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (the "Agreement") is made between **MCIMETRO ACCESS TRANSMISSION SERVICES CORP. d/b/a VERIZON ACCESS TRANSMISSION SERVICES**, a Delaware corporation whose address is One Verizon Way, Basking Ridge, NJ 07920 (hereinafter referred to as the "Company"), and the **CITY OF MOUNTAIN BROOK, ALABAMA**, a municipal corporation (the "City"), as of the Effective Date (as defined below). The Company and the City separately may be referenced herein as a "Party," and collectively as "Parties."

### RECITALS

**WHEREAS**, on or about April 12, 2002 the Alabama Public Service Commission (the "ALAPSC") awarded the Company's predecessor in interest a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services and intra-LATA Toll Services in the State of Alabama;

**WHEREAS**, the Company has requested a non-exclusive franchise from the City to use the streets and public ways of the City to conduct business as a communications services provider;

**WHEREAS**, the Company intends to construct, maintain and operate a fiber-based communications system within the City in, over, under, across and through the City's public rights-of-way (the "Fiber Optic System" or "System");

**WHEREAS**, the areas in the City at which the Company initially intends to construct its Fiber Optic System are shown on the map that is attached as **Exhibit A**;

**WHEREAS**, the Company intends to use its Fiber Optic System to provide various communications services within the City, including as a "competitive access provider" which directly connects its business customers within the City with other businesses, local area networks, local exchange and interexchange carriers. Company may also provide such other services, including but not limited to, provision of dark fiber to affiliated and unaffiliated parties, local exchange, enhanced services, and other services as may be authorized by the ALAPSC or federal law;

**WHEREAS**, the Company's selection of locations for its Fiber Optic System, and its construction and operation of that System along the public rights of way is subject to the advance approval of the City and the exercise of its police powers, and the Company must comply with all laws, codes and regulations that apply to those operations;

**WHEREAS**, the services to be provided by the Company over its System concern the transport of data, voice or video communications between locations in the City in which such communications may both originate and terminate in the City, or may only originate or terminate in it;

**WHEREAS**, the Company will not use the Fiber Optic System or the Franchise contemplated herein to offer or provide the following services: (i) cable television services, channels, or programming to end users in the City without first obtaining a separate cable franchise with the City; (ii) any Telecommunications or other services to residential end users; or (iii) services directly regulated by ALAPSC, unless authorized by the ALAPSC;

**WHEREAS**, in accordance with the terms and conditions herein, the City grants the Company a non-exclusive franchise to construct, maintain and operate its Fiber Optic System in the City at the locations and in the manner approved in advance by the City.

**NOW, THEREFORE**, in consideration of the Recitals above, the respective representations, promises, concessions, terms and conditions contained herein, the receipt and sufficiency of which is acknowledged, the Parties agree as follows.

**1. Definitions.** For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

(a) "City" means the City of Mountain Brook, Alabama.

(b) "Company" means MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services or any entity that succeeds it in accordance with the provisions of this Agreement.

(c) "Customer" means any person to whom the Company provides any Telecommunications services to or from, or between locations in the City.

(d) "Effective Date" shall mean the first day of the month after the date last executed by a Party below on the Signature Page.

(e) "Facilities" means all or any part of a network of fiber optic cables and all related equipment, including but not limited to, conduit, carrier pipe, fiber optic cables, poles, handholes, manholes, repeaters, power sources, and other attachments and appurtenances necessary for the fiber-based System and located within the City's rights of way.

(f) "Franchise" means the authorization granted hereunder of a franchise, privilege, permit, license or other right to construct, operate and maintain the Fiber Optic System in and along the ROW at locations requested by the Company in which its intended operations are approved in advance by the City and performed in compliance with applicable laws, codes or regulations, including but not limited to, land use and zoning regulations. The Franchise does not include the right to install or place a Telecommunication Tower (as defined in Chapter 125 of the current Mountain Brook City Code, or as hereafter may be amended) on any City property (including, but not limited to, City ROW).

(g) "Franchise Fee" means the fee paid by the Company to the City for the privilege of locating, maintaining and operating its Fiber Optic System at various locations in the ROW.

(h) "Gross Revenues" shall mean all revenues, in whatever form, that are received, booked or accrued by the Company from any persons, carriers or entities that may or may not be affiliated with it with respect to the receipt, transmission, or distribution of any data, voice, video or other electronic messages in whatever form to or from locations in the City, or between locations in it. This term shall include, but not be limited to, the following:

- i. All recurring or non-recurring revenues received with respect to the provision of any Telecommunications or other service that utilizes the System;
- ii. All recurring or non-recurring contract fees, usage based fees, charges, or consideration of any kind or nature (including without limitation, cash, credits, property, and in-kind contributions) received by the Company in connection with its utilization of the System;
- iii. All revenue arising from or attributable to the provision of customer premises equipment that is leased or sold by the Company to its customers in connection with the provision of services.

Gross Revenues do not include the following:

- 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. discounts, refunds, and other price adjustments that reduce the amount of compensation received by Company from its customers;
- v. the amounts billed by the Company to its Customers to recover taxes, fees, or surcharges imposed on them in connection with the provision of services, including the Franchise Fee and any other tax, fee or charge of general applicability collected by Company from its customers for pass through to the City or any other governmental entity or agency;
- vi. revenues from provision of Internet access services; or

- vii. revenues that Company receives from its wireless affiliate for provision of fiber/transport to the wireless affiliate's wireless facilities in public right-of-way for which the wireless affiliate is paying fees to the City in accordance with a City ordinance.

(i) "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

(h) "ROW" or "Rights-of-Way" means the surface and space above and below any the public rights of way, streets, avenues, highways, roads and dedicated municipal easements within the City's corporate boundaries.

(j) "Services" shall mean all services provided by the Company for which it receives compensation from its customers.

(k) "Fiber Optic System" or "System" means the system of conduit, transmission lines, meters, equipment and other facilities associated with the construction, maintenance and operation of a fiber-optic based transmission line by the Company in the City in accordance with the terms and conditions in this Agreement, which system will be utilized for the purpose of providing communications services, including receiving, transmitting or distributing Telecommunications or other electronic messages in whatever form to or from, or between locations in the City.

(l) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video or voice), without change in the form or content of the information as sent and received.

**2. Grant of Authority.** Pursuant to the terms, conditions and understandings herein, the City hereby grants to the Company a non-exclusive Franchise to construct, maintain and operate its Fiber Optic System in, under, over, on and along the ROW in the City.

The Company agrees and acknowledges the following limitations, conditions and understandings apply with respect to this grant:

- (a) The request of the Company to utilize particular locations along the ROW in the City must be approved in advance by the City;
- (b) The nature, manner and mode of installing or maintaining any line, cable, equipment or apparatus comprising the System must be approved in advance by the City;
- (c) The nature and type of the Company's intended operations along the ROW must comply with applicable laws, codes or regulations.

- (d) The Company shall not install, expand or extend the System without first obtaining appropriate permits from the City, and complying with any conditions related to the use of such permits, including burying any underground facilities at depths below the grades of any streets as may be required by the City;
- (e) The grant is not exclusive. The City reserves the right to grant the use of the ROW to any other person at any time and for any lawful purpose;
- (f) This Agreement shall not be construed to create any rights beyond its express terms, conditions and periods;
- (g) In approving any intended Company operations along particular points of the ROW, the City does not represent or warrant to the Company that the City holds title, right or interest in or to the ROW at those points, or that it has the right or authority to grant the Company the right to conduct its intended operations thereon. The Company acknowledges and agrees that it has the burden and responsibility to assess and determine its right to operate in the requested locations in advance of the installation of its System. Further, the City does not make any warranty (express or implied) to the Company concerning the sufficiency, condition or appropriateness of the ROW for the uses intended by the Company;
- (h) The Company acknowledges that utilities or other persons or entities may hold or claim rights to utilize the same sections of the ROW in which the Company intends to operate, and that the Company exclusively is responsible for designing, planning, coordinating, installing its System and conducting its operations in a manner that does not unduly interfere with the operations of those other entities;
- (i) This Agreement shall not be construed to deprive the City of any rights, regulatory or police powers or other privileges under State law which it now has, or may hereafter have, to regulate the use and control of its ROW or provide for the safety and welfare of the public. By granting this Franchise and approving this Agreement, the City does not surrender or to any extent waive, impair or relinquish any of those regulatory powers and rights, or the right to charge reasonable compensation for such use. By entering this Agreement, the Company agrees and acknowledges that all such rights, police or other regulatory powers shall be in full force and effect during its term, that the Franchise granted it hereunder is subject to the exercise by the City of those police powers, and that it will comply with all such existing, applicable laws and ordinances that exist today or hereinafter may be enacted. In the event of any conflict between the provisions of this Agreement and any present or future laws, regulations or ordinances by which the City exercises its police powers, the provisions of those laws,

regulations and ordinances, applied in a reasonable and nondiscriminatory manner, shall control and take precedence in resolving the conflict;

- (j) The grant of the Franchise herein shall not be construed to convey, bestow, or transfer to Company any title, easement or other permanent property interest in the ROW or other public property in or on which it conducts operations;
- (k) This Agreement does not establish any priority for the use of the ROW by the Company, or any present or future franchisees, permit holders or other users of the ROW. In the event of any dispute as to the priority of use of the ROW, the first priority shall be to the public generally, the second priority shall lie with the City, the third priority with the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its police and other powers conferred on it by the State of Alabama;
- (l) Nothing in this Section or elsewhere in the Agreement shall be construed to limit the Company's rights to access and use its own or general utility easements in accordance with the terms of such easements so long as such use is consistent with applicable law.
- (m) This Agreement does not confer upon the Company any right to use conduit that is now owned by the City or may hereafter be acquired.

### **3. Operating Requirements and Standards.**

The following understandings apply with respect to the Company's use of the Franchise and its operations within the City:

- (a) At all times the Company shall keep and maintain the System in a safe, suitable, and substantial condition, and in good order and repair.
- (b) The Company shall provide safe passageway for vehicles and pedestrians through, in and around its work sites. It further shall comply with all rules of the road or other laws related to operation of vehicles along the ROW. Except in the case of an emergency or with the approval of the City Engineer (or other designated City official), the Company agrees not to conduct its operations in a manner that interferes with usual vehicular or pedestrian travel on or the maintenance of the ROW, nor shall the placement of its facilities or its operations unreasonably limit the visibility of vehicular and/or pedestrian traffic on or along them.

- (c) The Company shall conduct its operations in a manner that does not unreasonably interfere with the rights and reasonable convenience of persons who own property adjoining the ROW. The Company acknowledges that it may enter private property only as permitted by applicable law, or as allowed by the owner of such private property, for the purpose of performing its operations thereon.
- (d) The Company shall construct the System and perform its operations in accordance with all applicable federal, state and local laws, ordinances, codes, and regulations pertaining thereto, including, but not limited to, the following: any building code, electric code or ordinances that are now in effect or may hereafter be adopted by the City; laws and regulations that protect workers and are intended to promote safety in the workplace; laws and regulations 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 regulations of the Federal Communications Commission.
- (e) Prior to installing, expanding or constructing its System or conducting other operations on the ROW, the Company shall obtain a permit(s) from the City pertinent to that work. The Company shall submit maps or plats showing the locations and types of equipment intended to be installed at all locations. The City agrees to consider any requests for permits and process them in a timely manner consistent with reasonable municipal practices. The work to be done under this Agreement, and the restoration of the ROW as required herein, must be completed within the dates specified in any permits authorizing the work, provided that Company may request an extension of time if the work cannot reasonably be accomplished by the dates specified, which the City shall not unreasonably withhold, delay or deny. The Company shall perform the work according to the standards and with the materials specified or approved by the City Engineer, or other City official.
- (f) The Company shall repair and replace sections of the ROW that are disturbed due to the installation, removal, relocation, maintenance and repair of its System, and restore those sections to a condition comparable to the condition existing immediately prior to such disturbance to the satisfaction of the City.
- (g) Whenever reasonably practical, the Company agrees to place its facilities on, within or adjacent to the facilities and easements of utilities and other franchisees or other areas used by them.
- (h) When the Company constructs or configures its System, it agrees to install its facilities underground in those parts of the City where all existing telephone and electric services are underground. In areas where either telephone or electric utility facilities are installed aerially at the time of construction of the System, the Company may install its facilities aerially with the understanding that, at such time as all of the existing aerial facilities are required to be placed underground by the City, the Company shall likewise place its facilities underground. If a site requested by the

Company for the location of facilities or equipment raises concerns about public health, safety, and welfare, the City and Company agree to work together to identify alternative locations, if available, that satisfy any technical specifications or limitations of those facilities or equipment and those concerns.

- (i) Least Disruptive Technology. The Company agrees to construct and maintain its System in a manner resulting in the least amount of damage and disruption to the ROW. To that end, the Company will use directional boring in all areas where no conduit exists. Further, the Company will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the City. The City Engineer (or other appropriate official) may require trenchless technology in other locations where circumstances prevent or make open-cut methods impractical. Any requests by the Company to utilize the open-cut or trench method for construction or maintenance must be approved by the City Engineer (or other City official).
- (j) The Company shall have the right to remove, trim, cut and keep trees and shrubbery clear of the System at points in and along the public ways; provided that Company shall perform those operations only having first consulting with the City's arborist (or other official who is designated to act in that capacity), and shall comply with any local rules, codes and regulations that pertain to that work. The Company shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Company to the satisfaction of the City.
- (k) The Company shall bear all costs associated with the installation, repair and maintenance of its System and its equipment including, but not limited to (1) all expense to repair and restore the ROW that is disturbed due to those operations, and (2) all expense incurred in removing or relocating any portion of the System or facilities constructed when required by this Agreement for a public purpose.
- (l) The Company, at its expense, agrees to promptly repair or replace any facility, equipment or public improvement in or about the ROW that Company damages or disturbs in the course of exercising its rights hereunder, including but not limited to, any road, street or other section of the ROW, and any electric facility, sewer, water main, fire alarm, police communication or traffic control facility.
- (m) The Company, at its expense, agrees to promptly repair or replace any facility, equipment or public improvement in or about the ROW that Company damages or disturbs in the course of exercising its rights hereunder, including but not limited to, any road, street or other section of the ROW, and any electric facility, sewer, water main, fire alarm, police communication or traffic control facility.
- (n) In conducting its operations, the Company further agrees to:

- (1) comply with all applicable sections of the National Electric Safety Code;
  - (2) utilize reasonable, commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public or damages to property owned by third persons;
  - (3) install and maintain the System in such manner that its operations will not interfere with any improvements of the City or of a public utility serving the City.
  - (4) perform its operations in accordance with good engineering practices and standards for firms providing like operations in the Company's industry, and in an orderly and workmanlike manner;
  - (5) perform all its operations through qualified maintenance and construction personnel. Further, the Company shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service and maintenance of the System; and
  - (6) not perform its operations in a manner that obstructs the rights-of-way so as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways.
- (o) Relocation or Removal of System at Request of the City. The City reserves the right to determine that, in the exercise of its sole discretion, it is in the public interest to improve or modify its ROW in a manner that requires the displacement, modification, relocation or removal of the System from any area along the ROW. Upon its receipt of reasonable notice from the City of that determination (which notice shall not be less than forty-five (45) days except where emergency conditions require shorter notice), the Company, at its own expense, shall protect, support, temporarily disconnect, relocate to another section of the ROW designated by the City, or totally remove from the ROW any property, equipment or facilities of the Company when required or requested by the City, Jefferson County or the State of Alabama for reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines when such relocation work is being done directly by or for the City, Jefferson County or the State. Should the Company refuse or fail to begin relocation or removal of its equipment and facilities as provided for herein within forty-five (45) days after written notification to Company, the City,

Jefferson County or State shall have the right to do such work (or cause it to be done) and the reasonable cost thereof shall be chargeable to the Company.

#### **4. Effective Date/Term/Renewal.**

This Agreement will become effective on the Effective Date, and thereafter continue in effect for a term of three (3) years (the "Initial Term"). Following the expiration of this Initial Term, this Agreement and the Franchise granted herein may be renewed and extended upon mutual agreement of the Parties for an additional term of five (5) years upon application to the City if (i) the Agreement previously has not been terminated or the Franchise revoked as provided hereunder, (ii) the Company has faithfully performed its obligations hereunder, and (iii) the application and extension complies with applicable federal, state or local law. Notwithstanding, either Party may require or request that new terms and conditions apply during the renewal period if changes in the regulatory or legal environment after the Effective Date substantially affect telecommunications and broadband technology, principles for use of right of way, service types, availability, character of service, or system technology. The Parties agree to negotiate any such new terms or conditions in good faith.

#### **5. Franchise Fee/Records Retention/Audit**

(a) Franchise Fee. During the term of this Agreement, the Company shall pay the City a fee of five percent (5%) of the Gross Revenues (the "Franchise Fee"). Company shall make these payments within fifteen (15) days after the end of the preceding quarter of each year of the term of this Agreement. At the time of each such payment, the Company also will furnish City with a report or statement that, in a summary form, discloses the total Gross Revenues derived from the System for the previous quarter, the methodology used by Company to calculate the Franchise Fee and other bases upon which Company determined the amount of each payment.

(b) Records Retention. For a rolling period not less than five (5) years following the creation of the following records, the Company 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 the types of services provided to Customers during the term of the Agreement;
- ii. its databases and books, reports, statements and accounting records indicating the revenues charged and collected for the services provided to Customers during the Agreement; and
- iii. all records, reports or other data generated, used or reviewed by the Company to compute its Gross Revenues or in the process of calculating the amounts of Franchise Fees paid to the City.

(c) Audit of Records. The Company acknowledges and agrees that, to the extent necessary to ensure proper payment of Franchise Fees or any other amounts owed City hereunder, the City (or its designated representative), upon the provision of reasonable advance

notice to the Company, shall have the right during the Term of the Agreement or within one (1) year following its expiration or termination to audit, examine, review and receive copies of the records listed above in subpart (b). The Company agrees to furnish access to these records and reasonably cooperate with City in any such audit or review.

(d) The City's acceptance of quarterly Franchise Fee payments shall not be construed as a waiver, release, accord or satisfaction of any claim that the City might have related to the Company's obligation for those payments, or be construed as an agreement that the amount of any such payment is correct.

(e) The City acknowledges that, on the Company's bills to its Customers, the Company separately may identify and subsequently pass through the Franchise Fee and other government-imposed taxes, taxes, fees, or surcharges payable and collected from them in connection with the its provision of services.

(f) Other Reports. In addition to other records contemplated in this Section, if requested by the City, the Company agrees to furnish the City an annual financial statement at any time upon request of the City after thirty (30) days written notice. Such statement shall show Gross Receipts received, booked or accrued by the Company from its operations within the City for the previous twelve (12) month period.

#### **6. Service to Customers.**

During the term of this Agreement, the Company will comply with all regulations of the ALAPSC or any other applicable regulatory agency that relate to service standards for its Customers.

#### **7. Complimentary Public Service Pathway.**

When requested by the City, the Company agrees to furnish and maintain, at no cost to the City, two (2) fiber strands along the entire backbone of the System (whether installed aerially or underground) that the City may use for non-commercial purposes (the "Public Service Pathway"). The Public Service Pathway shall be installed by the Company in a manner that will permit non-commercial uses by the City which include, but are not limited to, the transmission of point-to-point communications between municipal, schools and other publicly-owned buildings in the City; provided that: (i) such Public Service Pathway shall be located within the Company's planned backbone deployment routes; (ii) the City obtains its own switches at its own cost; (iii) the City shall not assign, sell, or otherwise transfer the Public Service Pathway without the Company's prior written consent and (iv) the City shall be responsible for any damages resulting from its use of the Public Service Pathway that are caused by the negligent, willful or wanton acts of the City, its employees or any other person acting under its direction or control. The City agrees that the Company shall manage the interconnection of all Public Service Pathway laterals (including all access and egress points) to the Company's backbone fiber, and all costs associated with such interconnection shall be borne exclusively by the City.

## **8. Insurance/Indemnification/Performance Bond.**

(a) Insurance Requirements. For the duration of this Agreement and for limits stated below, the Company shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to City:

Workers' Compensation	As Required by Statute
Employer's Liability	\$500,000 for each accident/decease/policy limit
Commercial General Liability	(a) \$2,000,000 per occurrence for bodily injury (including death) and property damage; and (b) \$2,000,000 general aggregate
Auto Liability, including coverage on all owned, non-owned & rented vehicles	\$2,000,000 combined single limit each accident for bodily injury (including death) and property damage

The Commercial General Liability insurance shall include coverage for premises-operations, products/complete operations and contractual liability.

Upon the Effective Date of this Agreement, the Company shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this Section. The certificate(s) shall include the City, and its employees and officials as an additional insured as their interest may appear under this Agreement on the Commercial General Liability, Automobile Liability policies, with respect to all matters arising out of the Company operations contemplated by this Agreement. Thereafter, upon request of the City, Company shall furnish a current certificate(s) of insurance evidencing such coverage. Upon receipt of notice from its insurer(s) the Company shall provide the City with thirty (30) days prior written notice of cancellation, 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.

The provision of the amount or type of insurance required in this section and the recovery of insurance proceeds hereunder by the City will in no way be considered to limit the liability of the Company (if any) under the indemnification or other provisions of this Agreement.

(b) Indemnification. The Company agrees to defend, indemnify and hold the City, and its agents, employees and officials, 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") which may arise, whether in whole or in part, out of or in connection with the installation, operation or maintenance of the Fiber Optic System or the Company's failure to perform any of its obligations under this Agreement. The City agrees to furnish Company written notice of any Claims asserted against it and any request that the Company indemnify City (or its representatives) pursuant to this Section. Notwithstanding the foregoing, the Company shall not be obligated to indemnify the City for Claims to the extent resulting solely from the negligent or willful acts of the City (or its representatives), or from the actions by a person or entity other than the Company in connection with the City's use of the Public Service Pathway provided herein.

(c) Performance Bond. Prior to the Effective Date, the Company will provide a Performance Bond in the amount of not less than Ninety Thousand Dollars (\$90,000.00) in favor of the City to secure the performance by the Company of its obligations under this Agreement. This Bond shall be issued by a surety qualified to do business in Alabama and reasonably satisfactory to the City.

#### **9. Disputes/Enforcement/Default/Termination.**

(a) Dispute Resolution. The Designated Representatives of the Parties will use their good faith efforts to resolve any 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 senior manager/official level of each Party for consideration. If the Dispute cannot be resolved at the senior official 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 litigation in a court that is located in Jefferson County, Alabama.

(b) Breach/Notice of Breach. If the Company fails to comply with any of its material obligations under this Agreement (a "Breach"), the City shall notify the Company in writing of the nature of the alleged noncompliance. The occurrences that constitute a material Breach by the Company, and may result in early termination of this Agreement and cancellation of the Franchise granted herein include the following:

- (1) Failure to pay the Franchise Fee or make any other payment to the City required in this Agreement;
- (2) Failure to maintain the insurance policies and coverage that are required hereunder;
- (3) Failure to provide or furnish the City material information required under this Agreement;
- (4) Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety;

(5) The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Company;

(6) The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or

(7) If (a) the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company.

The Company shall not be deemed to have defaulted this Agreement or be in noncompliance with its provisions, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond the ability to the Company to control; provided that the Company's excuse for nonperformance only shall remain in effect as long as the condition causing that circumstance remains in existence, and the Company is obligated to recommence its performance hereunder when upon the expiration of that condition.

(c) **Company's Right to Cure Breach or Respond.** The Company shall have thirty (30) days from receipt of the notice of a Breach as provided in subpart (a) above (1) to respond to the City by contesting the assertion of noncompliance, (2) to cure such breach, or (c) in the event that, by the nature of the Breach, it cannot be cured within the 30-day period for reasons beyond the reasonable control of the Company, to initiate reasonable steps to remedy such Breach and notify the City of the steps being taken and the projected date that they will be completed.

(d) Remedies. If the Company fails to respond to the notice of Breach described in subpart (a), it contests the assertion of noncompliance pursuant to the procedures set forth in subpart (b), or it does not remedy the subject Breach within 30 days or by the date projected in subpart (b) above, the City may pursue any or all of the following remedies:

1. Seek specific performance of any provision which reasonably lends itself to such a remedy;
2. Make a claim against any surety with respect to the Performance Bond which may be required to be posted;
3. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement;
4. Seek any other available remedy permitted by law or in equity;
5. Take any other action which it deems appropriate to enforce the City's rights under this Agreement in lieu of revocation of the Agreement.

(e) Revocation of Franchise/Public Hearing. In addition to the remedies stated above, the City may schedule a public hearing to investigate the Breach and consider whether to terminate this Agreement and revoke the Franchise. The City shall notify the Company in writing of the time and place of such hearing. Such public hearing may be held at the next regularly scheduled meeting of the City's governing body, or at such other time and place which is scheduled not less than five business days from the City's notice of hearing. At that hearing the City shall give the Company an opportunity to state its position concerning the Breach and otherwise be heard, after which its governing body shall determine whether or not this Agreement shall be terminated and the Franchise be revoked. In that event, the City may terminate the Agreement and the revoke the Franchise effective ten (10) days following the determination by its governing body to terminate this Agreement.

(f) Nothing herein shall preclude the Company from petitioning the Circuit Court of Jefferson County, Alabama to challenge a determination by the governing body of the City to terminate this Agreement and revoke the Franchise. Such challenge must be taken within thirty (30) days of the issuance of that determination.

(g) Obligations of Company on Expiration or Early Termination of Agreement. Upon the expiration or early termination of this Agreement for any reason, the City may request that the Company, at its own expense and within a reasonable amount of time following that request, remove from the ROW any equipment or facilities that the Company placed thereon to provide its services and restore the surrounding property to the condition that existed prior to its installation. Any equipment not removed by the Company following that request may be left in place by the Company and shall be deemed abandoned. Further, although the respective obligations of the Parties concerning further use of the ROW will cease upon the expiration or early termination of this Agreement, the Company's obligations to pay Franchise Fees owed

prior to termination, to permit the City to perform audits and to furnish information to the City required for City to ensure proper payment of Franchise Fees and other amounts owed by Company, and to indemnify the City and provide insurance with respect to events occurring before the termination shall survive and remain in effect for a period of two (2) years following the expiration or effective date of early termination.

#### **10. 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:

City of Mountain Brook, Alabama  
ATTENTION: City Manager  
56 Church Street  
Mountain Brook, AL 35213

Designated Representative of Company:

MCImetro Access Transmission Services Corp. d/b/a Verizon Access  
Transmission Services  
ATTENTION: Franchise Manager  
600 Hidden Ridge  
Mailcode E02E102  
Irving, TX 75038

With copy to (except for invoices):

Verizon  
ATTENTION: Vice President and Deputy General Counsel  
1320 N. Courthouse Road, Suite 900  
Arlington, VA 22201

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 shall be sufficiently given (a) in writing and (b) when sent to the Designated Representative for the other Party 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.

#### **11. Miscellaneous.**

(a) Amendment. This Agreement may be amended or modified only by a written instrument that is executed by duly authorized representatives of both Parties.

(b) Construction. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

(c) No Presumption against Drafter. The Parties acknowledge that each Party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

(d) Entire Agreement. This Agreement (including the attached Exhibit A) constitutes the entire agreement between the City and Company with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between them, whether oral or written, regarding the subject matter hereof.

(e) No Waiver. Both Parties reserve their respective rights and privileges under applicable federal and state law. The failure of either Party to enforce any of the terms, conditions or provisions of this Agreement shall not be construed as a subsequent waiver of the right to compel enforcement of that or any other term, condition or provision. The respective rights, benefits and obligations under this Agreement may be waived only in a writing signed by the Parties.

(f) 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 assigns. and any parent, subsidiary or affiliated corporation or entity, as applicable.

(g) 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.

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

(i) Assignment. The Company's interest in this Agreement and the Franchise shall not be assigned, sold, transferred, or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City, which consent shall not be unreasonably withheld. The City reserves the right to be reimbursed by the Company for costs incurred by it in reviewing the request for transfer of ownership. Notwithstanding the foregoing, Company may assign its interest in this agreement to any parent, affiliate, or successor of Company, now or hereinafter existing, by only providing notice to City of such assignment.

(j) Independent Contractors. The City and Company are independent contractors. The Company exclusively controls the methods and means by which it conducts its operations.

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.

(k) Other Representations. The Company and the City each represent to the other that it has the requisite power and authority to enter into this Agreement, that each has secured all necessary board, corporate or other required approval to enter this Agreement, and that its undersigned representatives are authorized to execute below on behalf of their respective organization.

(m) Cooperation. The Company 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.

(n) 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

(o) Attorneys' Fees. If (i) either Party breaches its obligations to the other hereunder, (ii) the non-defaulting Party should employ attorneys or incur other expenses in any legal action regarding such breach of this Agreement, and (iii) the non-defaulting Party secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the defaulting Party, the losing Party in that proceeding will pay the prevailing Party its reasonable attorneys' fees and other reasonable expenses that are incurred in that breach-of-contract action.

(p) Severability. If any provision, part, section or subdivision of this Agreement shall be held invalid, illegal, unconstitutional or unenforceable for any reason, such holding shall not be construed to invalidate or impair its remaining provisions, which shall continue in full force and effect notwithstanding such holding.

(q) Exclusion of Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE COMPANY AGREES THAT, IN THE EVENT IT MAKES OR ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THIS AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER, THE MAXIMUM AMOUNT THAT THE COMPANY MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE COMPANY'S ACTUAL, DIRECT DAMAGES ARISING FROM THE CITY'S BREACH. THE COMPANY AGREES AND ACKNOWLEDGES THAT THE TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE INCLUSION OF THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE COMPANY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS

OR REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY THE CITY.

(r) Licensing. Before commencing any operations contemplated hereunder, the Company, at its own expense, will obtain all licenses, permits or other governmental authorizations needed to construct the System, provide its services and perform its Operations, including without limitation, any business license issued by applicable governing authorities ("Licensing"). The Company agrees to maintain that Licensing throughout the performance of this Agreement.

(s) Immigration Act. The Company represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien," as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the "Act"); and (b) that, during the performance of this Agreement, (i) it shall participate in the E-Verify program as required under the terms of the Act; (ii) it will comply with all applicable provisions of the Act with respect to its contractors by entering into an agreement with or by obtaining an affidavit from such contractors providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program; (iii) it shall not hire, retain or contract with any contractor that it knows is not in compliance with the Act; and (iv) if it is found to be in violation of this provision, the Company shall be deemed in breach of this Agreement and shall be responsible for all damages resulting therefrom.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement as of the Effective Date.

**MCIMETRO ACCESS TRANSMISSION SERVICES CORP.  
d/b/a VERIZON ACCESS TRANSMISSION SERVICES**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**CITY OF MOUNTAIN BROOK, ALABAMA**

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

Name: \_\_\_\_\_

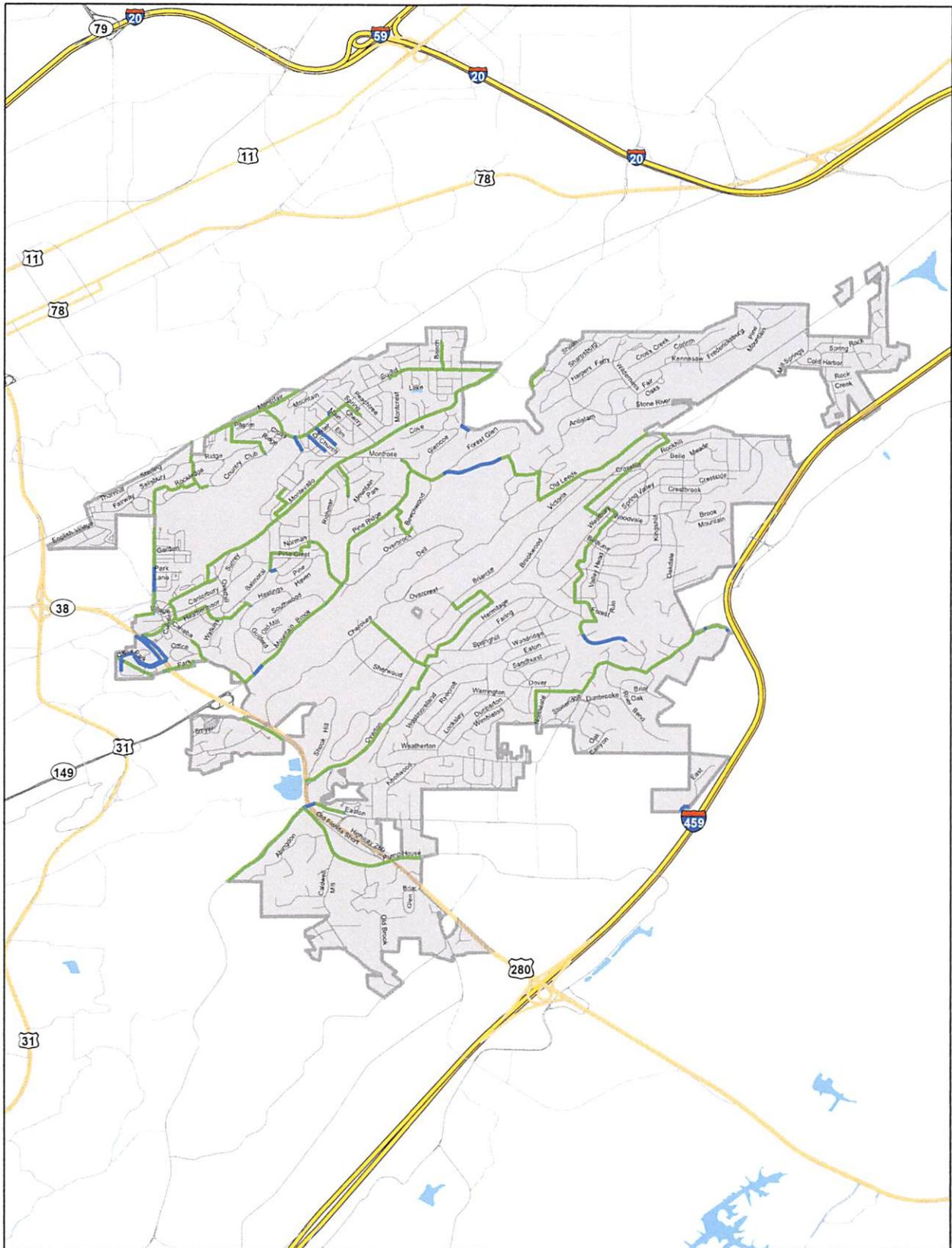
Title: \_\_\_\_\_

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

**EXHIBIT A – INITIAL PROPOSED ROUTE OF SYSTEM**

See attached Map.

# MCI metro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services License Area Planned Fiber Routes City of Mountain Brook, AL



- Planned Aerial - 129,287 Linear Ft.
- Planned Underground - 17,825 Linear Ft.
- Mountain Brook

**Note: This is a PRELIMINARY VIEW only**

Final design not yet completed, thus routes subject to change. Cables shown in green and blue represent backbone fiber to existing or new cell sites. Not shown above are additional laterals off backbone cables to be determined to serve business customers along the routes.

Verizon/MCI metro Confidential and Proprietary. May Contain Trade Secrets, or Sensitive Commercial or Financial Information. Any Unauthorized Review, Use, Disclosure, Distribution, or Copying is Prohibited.

Data Source: VZB  
 Projection: GCS\_WGS\_1984  
 Map Created: 03/05/2010  
 Map Created By: Daniel White



# **PAVING LIST**

**2019**

## **Mountain Brook Village**

The Circle

Montevallo Road from Jemison Lane to Hollywood Blvd. at the city limits

Canterbury Road from Culver Road (at the bridge) to Cahaba Road

Cahaba Road from Heathermoor Road to just west of 280 ramp

Culver Road from Montevallo Road to Cahaba Road including the section named Petticoat

**Note:** Culver Road from Cahaba Road to Montevallo Road in front of Sneaky Pete's may possibly be delayed until Phase 2 of Lane Parke is complete.

Cherokee Road from Highway 280 to Overcrest Road

Overhill Road from Canterbury Road to Mountain Brook Parkway

Crosshill Road from Spring Valley Road to Rockhill Road

Oakdale Road from Oakdale Drive to Woodvale Road'

Woodvale Road

Westbury Way

Stone River Road (Dead End from Shiloh to the creek)

**2019 Mountain Brook Paving**

**Mountain Brook Village - \$299,825.25**

**Cherokee Road from Hwy 280 to Overcrest Road - \$226,852.50**

**Overhill Road from Canterbury Road to Mountain Brook Parkway - \$125,942.25**

**Canterbury/Overhill Access Road - \$7,375.50**

**Crosshill Road from Spring Valley Road to Rockhill Road - \$33,683.70**

**Oakdale Road from Oakdale Drive to Woodvale Road - \$18,934.60**

**Woodvale Road - \$26,820.00**

**Westbury Way - \$63,027.00**

**Stone River Road Dead End - \$10,281.00**

**Total - \$812,741.80**

