

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

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

**OCTOBER 14, 2019, 7:00 P.M.**

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1. Consideration: Resolution expressing gratitude to Alice McSpadden Williams for her service on the Planning Commission.
2. Approval of the minutes of the September 23, 2019, regular meeting of the Mountain Brook City Council.
3. Approval of the minutes of the October 1, 2019, special meeting of the Mountain Brook City Council.
4. Announcement. Mayoral [re]appoint of Rob Walker to the Planning Commission.
5. Consideration: Resolution declaring certain personal property surplus and authorizing its sale at public Internet auction or disposal for such items not sold at auction.
6. Consideration: Resolution ratifying the right-of-way acquisition in conjunction with the Dunbarton Road sidewalk construction project.
7. Consideration: Resolution authorizing the execution of service agreements for the following:
  - a. All-In Mountain Brook
  - b. Birmingham Zoo, Inc.
  - c. Birmingham Botanical Gardens
  - d. Jefferson/Blount/St. Clair Mental Health Authority
  - e. Prescott House
8. Consideration: Resolution authorizing the execution of a professional services agreement between the City and ESC for a geotechnical evaluation of Smyer Road.
9. Consideration: Resolution setting a public hearing on Tuesday, November 12, 2019, to consider an ordinance adopting the 2018 building codes and 2017 electrical code.
10. Announcement: The next regular meeting of the City Council is October 28, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
11. Announcement: There will be a public involvement meeting in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213 on Thursday, November 14, 2019, from 5—7 p.m. regarding the sidewalk project along Pine Ridge Road from Overton Road to Old Leeds Road
12. Comments from residents.
13. Adjourn.

EXPRESSION OF GRATITUDE TO ALICE MCSPADDEN WILLIAMS  
FOR HER DEDICATED SERVICE TO THE CITY ON THE  
PLANNING COMMISSION

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WHEREAS, Alice McSpadden Williams has served with distinction on the Planning Commission of Mountain Brook from March of 2011 to September of 2019; and

WHEREAS, Alice McSpadden Williams has served as Secretary to the Planning Commission from January 2015 to January 2019; then serving as Vice Chairman until September 2019; and

WHEREAS, Alice McSpadden Williams brought invaluable insight to the Planning Commission's decisions regarding Lane Parke, as well as multiple zoning ordinance revisions; and

WHEREAS, Alice McSpadden Williams is a true *friend of planning*, consistently taking a special interest all matters of current and advance planning; and

WHEREAS, Alice McSpadden Williams' vast institutional knowledge brought invaluable insight to decisions regarding all of Mountain Brook and its various villages; her thoughtful deliberation of all issues, steadfast dedication to her community, and strategic leadership being instrumental in establishing a legacy of sound city planning for years to come; and

WHEREAS, it is the desire of the City of Mountain Brook to express its gratitude to Alice McSpadden Williams for her unselfish service and tireless efforts while serving on the Planning Commission, and;

NOW, THEREFORE, BE IT RESOLVED that the City Council and Mayor, on behalf of the residents of Mountain Brook, do publicly thank Alice McSpadden Williams for her exemplary service.

ADOPTED: The 14th day of October, 2019.

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Stewart H. Welch III, Mayor

APPROVED: The 14th day of October, 2019.

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Virginia C. Smith, President

2019-153

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
SEPTEMBER 23, 2019**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:15 p.m. on the 23rd day of September, 2019. The Council President called the meeting to order and the roll was called with the following results:

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

**Absent:** None

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

**1. AGENDA**

1. Teresa Callahan to discuss her ideas (Appendix 1) on proposed changes to the stop signs at the intersection of Dexter Avenue and Vine Street—Richard Caudle of Skipper Consultants (Appendix 2)

It was the consensus of the elected officials that Council President Pro Tempore meet with School Board officials to discuss the traffic engineer's recommendations and report back to the City Council. Council President Pro Tempore Pritchard recommended that the City Council consider delaying implementation of any modifications until after the area construction (approximately 2 months) is completed to determine whether conditions still warrant the recommended changes.

2. Feral Cat ordinance amendments—Whit Colvin (Ordinance No. 2058 was added to the formal meeting agenda)

Police Chief Cook was instructed to communicate the no feeding of feral cats as provided in the proposed ordinance and to enforce existing laws with respect to the collections and disposition of the subject feral cats.

3. Review of the other matters to be considered at the formal (7 p.m.) meeting. (Resolution No. 2019-133 was added to the formal meeting agenda.)

**2. ADJOURNMENT**

There being no further matters for discussion, the pre-meeting was adjourned at approximately 6:50 p.m.

**3. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on September 23, 2019, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

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City Clerk  
Approved by City Council October 14, 2019

**MINUTES OF THE REGULAR OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
SEPTEMBER 23, 2019**

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The City Council of the City of Mountain Brook, Alabama and met in public session in the City Hall Council Chamber at approximately 7:00 p.m. on the 23rd day of September, 2019. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: None

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

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

**1. RECOGNITION OF GUESTS**

Council President Smith recognized Boy Scouts Sam Fowler of Troop 63 and Ward Holt of Troop 53 (and others) in attendance for their Citizenship in the Community merit badge.

**2. JUDGE MARIA FORTUNE CANDIDATE FOR RE-ELECTION TO DISTRICT COURT PLACE 10 (DRUG COURT)**

Judge Fortune addressed the governing body and attendees requesting their vote in the upcoming election.

**3. SUPERINTENDENT DICKIE BARLOW REGARDING THE SEPTEMBER 24, 2019, SPECIAL ELECTION**

The Superintendent presented a 4-minute video explaining the need for the requested 10-mill ad valorem tax increase for the School System.

**4. PRESENTATIONS**

State Representative David Faulkner presented Mayor Welch with a check in the amount of \$11,200 to be used for the installation of two water fountains in City parks.

State Representative David Faulkner then presented the family of Thomas C. Clark, Jr. with a resolution recognizing and memorializing Mr. Clark for his service to the community.

Mayor Welch presented Kevin Alexander, DMD with a key to the City in recognition of the 30th anniversary of his dental practice in the City.

Mayor Welch read aloud and presented the Magic Moments Day proclamation (No. 2019-140, Exhibit 6) to a representative of Magic Moments.

## 5. CONSENT AGENDA

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

Approval of the minutes of the September 9, 2019, regular, joint meeting of the City Council and Mountain Brook Emergency Communications District

2019-135	Gynecological Cancer Awareness Month proclamation	Exhibit 1
2019-136	Expression of gratitude to Sally Legg for her service on the Village Design Review Committee	Exhibit 2
2019-137	Expression of gratitude to James Ernest (“Bo”) Grisham, III for his service on the Village Design Review Committee	Exhibit 3
2019-138	Authorize the execution of an agreement with ETC Institute with respect to a resident survey	Exhibit 4, Appendix 1
2019-139	Award the bid for portable target system for the City’s target range (B-20190828-554)	Exhibit 5, Appendix 2
2019-140	Magic Moments Day proclamation	Exhibit 6

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

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

Nays: None

Council President Smith thereupon declared that said minutes, resolutions (Nos. 2019-136 through 2019-139) and proclamations (Nos. 2019-135 and 2019-140) are adopted by a vote of 5—0

## 6. CONSIDERATION OF AN ORDINANCE (NO. 2058) AMENDING SEC. 6-3 OF THE CITY CODE WITH RESPECT TO STRAY, FERAL OR ABANDONED CATS AND FELINES (EXHIBIT 7)

The ordinance was introduced in writing by Council President Smith who then invited comments. There being no comments or questions, President Smith called for a motion. Council member Black made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given and that the reading of the ordinance at length be waived. The motion was seconded by Council President Pro Tempore Pritchard. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia C. Smith  
William S. Pritchard, III  
Philip E. Black  
Lloyd C. Shelton

Alice B. Womack

Nays: None

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

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

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

Nays: None

The Council President Smith declared that the said ordinance (No. 2058) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

**7. PUBLIC HEARING: CONSIDERATION OF AN ORDINANCE (NO. 2057) AMENDING THE LANE PARKE PLANNED UNIT DEVELOPMENT MASTER (PUD) MASTER DEVELOPMENT PLAN WITH RESPECT TO DRIVE THROUGHS (EXHIBIT 8, APPENDIX 3)**

The ordinance was introduced in writing by Council President Smith who requested that persons who wish to speak address their comments to the governing body, avoid repeating comments and keep comments focused on the proposed amendment. She then invited comments and questions from the audience.

Mel McElroy of 1901 6th Avenue North representing Evson, Inc.:

- The owner has been working hard to replace the tenants lost due to extraneous circumstances
- The owner maintains a positive outlook for the development
- Crawford Square Real Estate has been added to the team to recruit new tenants
- The developer has identified two national tenants interested in opening locations within the development both of which are requiring drive-throughs which has prompted the requested modifications to the PUD master development plan
- The PUD modifications include 1) the addition of one drive-through in the “Treadwell’s block” which shall be limited to only a bank, pharmacy or dry cleaners and 2) specify the location of a new drive-through in the “Regions block” providing access to the new drive-through and 3) confirming the other location of a drive-through already permitted in the PUD
- [35:58] In exchange for these modifications, the owner is agreeing to grant the City the right to approve a traffic/queuing study for the proposed [coffee shop] and future drive-through such approval not required in the current PUD
- If the Council approves the traffic/queuing study, the developer will be requesting approval of a coffee shop to be located in Building E
- A point of clarification is that the PUD does not allow for a fast food operation in the development
- Mr. Caudle studied an additional coffee shop located in Cahaba Heights and added the results thereof to his report and studied the traffic patterns along Jemison Lane and the potential impact of a drive-through
- Star Buck’s (national) requires stacking capacity for 9 vehicles
- Regarding the loss of plantings along Building E to accommodate the proposed drive-through, a supplemental planting plan has been prepared to demonstrate conformance to the existing PUD green space requirements
- The tenants for the spaces cannot be expressed presently

Richard Caudle, P.E. of Skipper Consulting:

- The major change since the August 12 hearing, Skipper studied another Star Buck's located on Cahaba Heights Road
- The revised study is attached hereto (Appendix 3)
- The vehicle storage from Jemison Lane to the drive-through window is 195 feet or 9 vehicles of 22 feet each
- It appears that the ques for the coffee shops studied may have more to do with the traffic volume of the adjacent street than the coffee shop itself
- Therefore, Caudle expects the proposed que to be more in line with the Montclair Road and Cahaba Heights stores than the Trussville store
- The Montclair site begins and ends in a parking lot
- The updated study suggests there will be no issues in the mid-day and afternoon peak times [49:42]. The 10th vehicle will block the crosswalk. The 11th vehicle will block one lane of traffic on Jemison Lane. The 12th vehicle will block both lanes on Jemison Lane. The updated study suggests that the que will exceed the storage capacity for 4 minutes during the morning peak times. Of those 4 minutes, the cross walk will be blocked for 1 minute, for 2 minutes at approximately 8:30 a.m. one lane of Jemison Lane will be blocked and for 1 minute both lanes of Jemison Lane will be blocked.
- Jemison Lane traffic was machine counted in 5-minute increments which showed the peak flow to be 15 vehicles or 3 vehicles per minute for 5 minutes. At this rate, during the peak times when the que is at its projected maximum, Jemison Lane should experience up to 3 vehicles in que behind the stopped vehicle in the drive-through.
- The original study did not indicate any issues with vehicles exiting a drive-through onto Rele Street
- The original Lane Parke traffic study would not be invalidated by the proposed modifications
- The third car in the Jemison Lane que described above could be blocked for up to one minute assuming the motorist is unable to pass using the three available lanes provided by Jemison Lane

Sam Heide of 2800 Heathermoor Road of Crawford Square Real Estate Advisors:

- The principals of Crawford Square are all residents of the City
- People like the convenience of a drive-through
- A pharmacy drive-through provides more privacy than a store counter
- Accessing the current Star Bucks is unsafe for pedestrians due to having to cross a thoroughfare
- Patrons will still be able to go inside the Star Bucks as opposed to going through the drive-through
- Traffic is important to a retailer's success
- The success of this project is another step toward success for this community
- A big announcement for the development is scheduled for tomorrow
- Fast food is not in the plan
- Would it be the worst thing for Mountain Brook Village to have any of the following all with a drive-through: coffee shop, bank, dry cleaners, pharmacy or organic juice bar—No
- The opposition is not all about the drive-through but perhaps an urge to say "I told you so"
- This project needs the community's support
- Asked for the community to root for the development, developer, marketing firm and the City
- The developer wants to bring businesses to the development that are complimentary to the Village
- The tenant at one of the three spaces for the building adjacent to the "Kinnucan's alley" cannot be formally announced yet but it is a retailer with a little of bottles. The others include the post office and talks are underway for an organic juice bar with a drive-through

Victor Hanson of 2328 Chester Road:

- The objection is not to the drive-through per se but rather the Star Bucks drive-through which he believes is more akin to a fast food drive-through
- Re: Mike OnTraffic graph (Appendix 4) illustrates the analogy of the drive-through requirements of various business types

- His son recently reported that he was 12th in line on a Saturday morning at the Cahaba Heights Star Bucks on Cahaba Heights Road
- Encouraged the Council members to visit some area Star Bucks at peak times to see for themselves what these drive-through ques look like
- Star Bucks' states on their website they want 11 cars in their drive-through ques
- The City does not need to rescue this development by granting this modification

Philip Grover of 2714 Carriage Place [1:20:28]:

- Previously asked [during the 2013 hearings] what impact the development will have on Montevallo Road and never heard a response
- Supports what Victor Hanson said completely
- Hope the Council represents the residents as much or more than the developer as we live here and will be most impacted

John Hornsby of 3400 Montevallo Road [1:22:36]:

- Mountain Brook is a city of relationships
- Is most concerned about the que and what delays motorists will encounter or whether they will be able back out of on-street parking spaces
- Thinks the que will be longer than the traffic consultant's report suggests
- Urged the Council to consider how an usually long que will be accommodated

Richard Caudle:

- The most recent study did not include the entire PUD area
- The land uses and accesses of the PUD are not being modified so the original PUD study does not require an update
- Regarding motorists exiting onto Rele Street, it is not projected to carry a large amount of traffic.
- Additionally, the drive-through peaks will occur before stores along Rele Street open
- Jemison Lane was not studied due to its current state of incompleteness. Yes, once completed Jemison Lane will experience greater traffic but the roadway will be improved to accommodate the increased traffic.
- Unable to respond to Mr. Hornsby's question about demographics and its impact on traffic

Edmond Siebels of 2871 Bamoral Road [1:30:18]:

- Here in support of the proposal
- Works with BB&T Bank
- Retail is under stress
- The success of this project is not guaranteed and it needs every opportunity to available to do so
- Urged the Council to vote in favor of this ordinance

Ann Relfe of 3043 Canterbury Road [1:32:23]:

- There is always a lot traffic from her house to Montevallo Road
- Driving through Mountain Brook Village, she frequently encounters numerous delivery trucks in the middle of the road
- Views a blocked road will be a detriment to the community
- Mountain Brook does not want to be like Trussville or Cahaba Heights
- It is ridiculous that the City wants to accommodate someone wanting to make money and allowing a Star Bucks at this location to do so

Abbie Molling of 2505 Mountain Brook Circle [1:34:43]:

- Is the que measured from the pick-up window or the ordering board to which Mr. Caudle responded that the que was measured from the pick-up window? Gaps can occur between the window and the order board

Amy Tully of 2619 Watkins Road [1:39:29]:

- Inquired about the traffic flow direction which was pointed out by Council member Black on the illustration shown by the overhead projector

Simeon Johnson of 9 Woodhill Road [1:42:11]:

- Mr. McElroy described the various drive-throughs approved and questioned whether the Star Bucks drive-through is currently allowed
- Passed out copies of the August 12 Council minutes with portions highlighted about the discussion of the 2 or 3 drive-throughs
- Council President Pro Tempore Pritchard responded that Mr. McElroy was mistaken when he stated on August 12 that the PUD only included 2 drive-throughs
- Council President Smith stated that it was the recollection of the governing body that the PUD included 3 drive-throughs and that the inconsistency included in the PUD pointed out on August 12 is a mistake. She went on to say that the irony of this discussion is that in her interpretation that the developer likely has the right to proceed with the installation of this drive-through without the approval of the City Council.
- Council member Womack stated that she was not present on August 12 and was confused when she read the minutes as she recalled the PUD including 3 drive-throughs
- John Evans had a plan for Lane Parke for over a decade. Just this year the plan has been changed to include these drive-throughs.
- The current PUD calls for numerous pocket parks and green space. Has not heard why the developer's original vision has changed or why the City is willing to give away the public green space and what is the City getting in return.
- Council President Smith: The greenery to be lost to accommodate the subject drive-through was never part of the "green space" for their numbers
- What is the City getting in return for giving away this green space?
- Council President Pro Tem Pritchard: The City is not giving away anything. The City is gaining a project that is moving forward and satisfies the needs of the community

Dona Musgrave of 2620 Carriage Place [1:51:26]:

- It was reported that the City would be giving up at 11 to 17 hardwoods and parking spaces
- A friend has been monitoring the Cahaba Heights Star Bucks and has reported that 3 p.m. appears to be that store's peak time. This individual has reported 13-15 cars in queue and traffic backed-up everywhere as all of the surrounding stores are open
- The statement that the Lane Parke store's peak flows will occur when surrounding businesses are closed is bogus
- Council President Smith: There is a landscape plan for the development. The City Council does not review the landscape plan. The Village Design Review Committee reviews the plan in relation to the Council-approved PUD master development plan. If the Council passes the drive-through tonight, the developer will be required to update its landscape plan. President Smith has seen a preliminary landscape plan that does show new plantings to replace those to be lost. Based on what President Smith has seen, the landscape is not a concern.
- City Planner Dana Hazen: Regarding parking spaces, there is a surplus of 18 spaces currently. It is projected that 11-14 spaces will be lost to accommodate the proposed drive-through. So, if approved, there will still be a parking space surplus. It is not the Council's responsibility to design the drive-through. And, if approved, the developer must still satisfy the parking requirements.

Elizabeth Pointer of 3500 Country Club Boulevard:

- Supports the development moving forward
- Drive-throughs do not encourage shopping
- Thinks the lost parking spaces would better promote shopping
- Does not believe the queuing study to be accurate
- Visited the Cahaba Heights location and believes the study presented by the developer to be unscientific. Does not believe a one-day study to be relevant. During her 2-hour observation,

disagrees with the 22-foot/vehicle measurement used to determine the number of vehicles that can be stored in the drive-through.

- Views this proposal, if approved, will have long-range negative effects on the development and surrounding village

Louise Gayle of 2937 Southwood Road [2:03:08]:

- Often when people are in a drive-through they are distracted and do not pull-up timely
- When Canterbury Road was closed off, traffic was impeded. If this drive-through is approved, traffic exiting Rele Street onto Montevallo Road will be similarly impeded when turning left.

Alleen Cater of 327 Easton Circle [2:05:23]:

- Visits the Cahaba Heights Star Bucks and the one in Mountain Brook Village often. When she visits the store with a drive-through it is an errand as compared to when she visits the Star Bucks in Mountain Brook Village when she shops nearby stores.
- Does the City want to make Lane Parke the best errand destination or shopping destination?

Terry Oden of 6 Rockledge Road [2:07:55]:

- When this development was first considered, great effort was exerted to get "it right". The plan that was agreed to at the time was the plan sold to the public. Questions why the City would agree to a change now.
- Believes it is disingenuous of the developer to make such a request
- The community is counting on the City Council to keep its word

Council President Smith [2:11:23] stated that she assumes no one has any new questions or concerns as she has not heard any for quite some time. There being none, the public hearing was closed. She then asked whether any of the elected officials had any questions or comments.

Council member Womack:

- What is the distance between the proposed Star Bucks drive-through and Culver Road? Caudle: Based on the scale of the depiction, approximately 300 feet.

Council President Pro Tempore Pritchard [2:12:47]:

- Sincerely appreciates the comments and interest
- The comments have been considered and much study has been conducted since the August 12 public hearing
- As pointed out by Terry Oden, considerable thought and effort was exerted before the initial approval of the PUD. One thing that was clearing understood by the governing body when the PUD was approved is that as the project evolved, it was going to require some tweaks.
- The world has changed in the last six years
- This drive-through proposal represents a significant change but one that is warranted under the circumstances
- It appears people may be concerned that the City Council has not given sufficient consideration to the publics' interests (not true), the person with the most to lose is John Evans and his family
- Questions have been raised about the validity of the traffic consultant's report. Skipper Consulting has been used by the City and others on numerous City projects. Mr. Pritchard could not envision how reconfiguring Green Valley Road at U. S. Highway 280 [re: Cahaba Village development] could work but the consultant's report proved to be correct in that study and many others. Views Skipper Consulting to be experts. Skipper has advised the Evans that this drive-through will work and if it does not, it will be the Evans' who suffer most.
- Made a motion to approve the requested modifications to the PUD [2:17:38]

Council member Shelton:

- Could not disagree more
- Tends to agree with Terry Oden in that the City Council got it right back in 2013 and is not sure that the drive-through proposal is the magic bullet that is going to make the project successful

- It is crystal clear that the City does not want a fast food operation in Lane Parke. Call it what you want but Star Bucks is a fast food operation.
- This proposal seems to contradict what we are trying to do all over the City
- We are considering a proposal that says we are okay blocking traffic
- The City Council modified Canterbury Road to achieve a reduction of commute time by seconds, yet here the City is considering a proposal that will block traffic for up to 4 minutes daily
- Intends to vote no and believes the City has more to lose than the Evans' family

Council member Black [2:20:09]:

- The Planning Commission voted unanimously for this proposal given the same information and data sets
- This community expects excellence in all facets of this community (education, public safety, recreation, etc.) Excellence is not perfection. Daily we see 18-wheel delivery trucks parked in the middle of the roadways all over the villages including Star Bucks in Mountain Brook Village and we all simply deal with it.
- If a car does block traffic on Jemison Lane and the motorist cannot maneuver around it, the driver will cope.
- Believes the City should allow the developer the ability to develop this property
- The developer has navigated a lengthy PUD review process to get where we are today for what Mr. Black considers to be a fairly minor modification

Council President Smith [2:22:26]:

- Has wrestled with this proposal from the start
- Initially, Ms. Smith could not have been more opposed
- Has read the documents and all of the e-mails (some twice)
- It was not until this morning that Ms. Smith had a change of heart
- Believes the facts do not support the beliefs that the drive-through will be the burden that she has been hearing from the people who have expressed their opinions and opposition
- Does not view this drive-through adversely impacting traffic along Rele Street and agrees with Council member Black regarding its impact on Jemison Lane
- Intends to vote in favor of the requested PUD amendment

Council member Womack:

- Has also waived in her opinion regarding this proposal
- Keeps coming back to the issue that if the proposal is denied, the developer can still put the coffee shop and drive-through at this location. Also, if the proposal is approved, the City gains more control over future tenants
- This proposal allows for a pharmacy

Mayor Welch [2:24:38]:

- Tends to lean toward the perspective of the businessman as he understands how hard it is to start, maintain and be successful in business
- Something really has to impress as being significantly detrimental to lean against a business
- Does not view this proposal as significantly adverse to the public's interests

Council President Pro Tempore Pritchard:

- There are two matters for consideration: 1) an ordinance approving the amendment to the PUD [which does not require unanimous consent for immediate consideration as the matter has already been before the City Council] and 2) approval of a coffee shop at this location
- Made a motion for the approval of an ordinance amending the Lane Parke PUD master development plan as presented

The motion was seconded by Council member Womack. Thereupon, Council President Smith called for vote by a show of hands with the following results:

Ayes: Virginia C. Smith  
William S. Pritchard, III  
Philip E. Black  
Alice B. Womack

Nays: Lloyd C. Shelton

The Council President Smith declared the ordinance (No. 2057) passed by a vote of 4—1.

Council President Pro Tempore Pritchard then made a motion (No. 2019-141, Exhibit 9, Appendix 5) to approve the drive through for a coffee shop for Block 10 as presented. The motion was seconded by Council President Smith. Thereupon, Council President Smith called for vote by a show of hands with the following results:

Ayes: Virginia C. Smith  
William S. Pritchard, III  
Philip E. Black  
Alice B. Womack

Nays: Lloyd C. Shelton

The Council President Smith declared that the said motion (No. 2019-141) is hereby adopted by a vote of 4—1 and, as evidence thereof, she signed the same.

#### 8. ANNOUNCEMENT

The next regular meeting of the City Council will be October 14, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

#### 9. ADJOURNMENT

There being no further business to come before the City Council, Council President Smith adjourned the meeting at approximately 9:30 p.m.

#### 10. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on September 23, 2019, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

\_\_\_\_\_  
City Clerk  
Approved by City Council October 14, 2019

### EXHIBIT 1

#### PROCLAMATION NO. 2019-135

#### GYNECOLOGIC CANCER AWARENESS MONTH

**WHEREAS**, gynecologic (GYN) cancers are among the leading cancer killers of women in the United States, and more than 107,000 women will be diagnosed, and more than 31,000 women will die from these diseases this year and the absence they leave in our hearts will be deeply felt forever; and

**MINUTES OF THE SPECIAL MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA  
OCTOBER 1, 2019**

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The City Council of the City of Mountain Brook, Alabama met in special public session at City Hall of the City of Mountain Brook on Tuesday, the 1st day of October 2019, at 12:00 p.m. The meeting was then called to order by the Council President and the roll was called with the following results:

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

Absent: Philip E. Black  
Stewart Welch III, Mayor

Also present were City Manager Sam Gaston and City Clerk Steven Boone.

**1. CONSIDERATION OF AN ORDINANCE (NO. 2059) CANVASSING THE RETURNS OF THE SPECIAL MUNICIPAL TAX ELECTION HELD IN THE CITY ON SEPTEMBER 24, 2019 (APPENDIX 1)**

Council President Smith stated that this was the date fixed by law for the canvass of the returns of the special municipal tax election held in the City on September 24, 2019, which had been called by Ordinance No. 2049, adopted on June 24, 2019. The Council, constituting a board of canvassers, thereupon proceeded to canvass the returns respecting the proposition submitted to the electors of the City at the said election, and upon completion of such canvass the following ordinance, together with the preambles thereto, was introduced in writing by Council President Smith:

**“AN ORDINANCE CANVASSING AND DECLARING THE RESULTS OF A SPECIAL MUNICIPAL ELECTION HELD IN THE CITY OF MOUNTAIN BROOK, ALABAMA, ON TUESDAY, SEPTEMBER 24, 2019, REGARDING AN INCREASE IN THE RATE OF A PROPERTY TAX FOR PUBLIC SCHOOL PURPOSES**

**WHEREAS**, at a meeting of the City Council ("the Council") of the City of Mountain Brook ("the City") in the State of Alabama held on June 24, 2019, Ordinance No. 2049 was duly adopted by the Council in which a special municipal election was called to be held in the City on September 24, 2019 (being the fourth Tuesday in the month of September), for the purpose of submitting to the qualified electors of the City to determine their will with respect to the following proposition:

Whether the City shall be authorized to levy and collect, in addition to all other taxes now or hereafter authorized, the special annual ad valorem tax at the per annum rate of 20.6 mills on each dollar of the assessed valuation of the taxable property in the City referred to in the notice of election set out in Section 3 of Ordinance No. 2049 adopted on June 24, 2019.

**WHEREAS**, notice of the said election was posted in four public places in the City (viz., the Mountain Brook City Hall, 56 Church Street; Cahaba River Walk, 3053 Overton Road; Overton Park, 3020 Overton Road; and Gilchrist, 2805 Cahaba Road, there being no newspaper published and having general circulation in the City, in the form provided in the said ordinance, said posting having been more than thirty days before the date of the said election, and having also been on or before the fourth Tuesday of the second month next preceding the month in which the said election was held;

**WHEREAS**, the said election was held in the City on September 24, 2019, in all respects as provided in the said notice between the hours of 7:00 o'clock, a.m., and 7:00 o'clock, p.m., being the legal hours provided by law for holding the said election, and the ballot used in the said election was in all respects in the form therefor set out in the said ordinance, and the officials who conducted the said election have duly made and duly filed with the Council their respective reports, returns, and certificates; and

**WHEREAS**, the Council is required by law to canvass the returns of the said election on the first Tuesday next after the said election, and declare the results thereof, and at a meeting of the Council held on October 1, 2019, the Council, acting as a board of canvassers, has duly canvassed the said returns and ascertained the results of the said election with respect to the said proposition;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Mountain Brook, acting as a board of canvassers for the purpose of canvassing the results of the said election, as follows:

- (1) the recitations contained in the foregoing preambles are hereby found and declared to be true and are hereby adopted as a part of this ordinance;
- (2) the said election was duly called, notice thereof was duly given, and the said election was duly held and the ballots used thereat were in all respects as provided by law;
- (3) at the said election on the said proposition, the canvass of the returns indicated the following::

	St. Luke's Episcopal 01	City Hall 02	Brookwood Baptist Church 03	Mountain Brook Comm. Church 04	Canterbury United Methodist 05	Cherokee Bend Elem. 06	Absentee	Total
<b>For Increase in Rate of School Tax</b>								
	284	419	433	308	117	243	20	1,824
Provisional	0	0	0	0	0	0	0	0
	<i>66.36%</i>	<i>63.10%</i>	<i>72.17%</i>	<i>65.95%</i>	<i>50.65%</i>	<i>64.97%</i>	<i>66.36%</i>	<i>65.3%</i>
<b>Against Increase in Rate of School Tax</b>								
	144	245	167	159	114	131	8	968
Provisional	0	0	0	0	0	0	0	0
	<i>33.64%</i>	<i>36.90%</i>	<i>27.83%</i>	<i>34.05%</i>	<i>49.35%</i>	<i>35.03%</i>	<i>66.36%</i>	<i>23.7%</i>
	<b>428</b>	<b>664</b>	<b>600</b>	<b>467</b>	<b>231</b>	<b>374</b>	<b>28</b>	<b>2,792</b>
								<i>100%</i>
Registered voters	2,383	4,423	3,514	3,639	1,758	2,270	N/A	17,987
Voter turn-out	<i>17.96%</i>	<i>15.06%</i>	<i>17.10%</i>	<i>12.83%</i>	<i>13.14%</i>	<i>16.56%</i>	<i>N/A</i>	<i>15.5%</i>

Note: Over/under votes not counted have been omitted from the vote counts above

- (4) at the said election on the said proposition a total of 2,792 votes were received and cast; of the said votes so received and cast 1,824 votes were received and cast **for** the increase in the said special tax and 968 votes were received and cast **against** the increase in the said special tax; that the number of votes received and cast in the said election in favor of the increase in the said special tax **were greater than** the number of votes received and cast in the said election against the

increase in the said special tax; and that at the said election a majority of the qualified electors of the said City who voted thereat voted for of the increase in the said special tax.

**BE IT FURTHER ORDAINED** that this ordinance shall comprise the canvass and declaration by the Council of the results of the aforesaid election and shall be recorded in the minutes of the proceedings of the City.”

Councilmember Womack moved that the rules be suspended and unanimous consent be given for immediate consideration of and action on the said ordinance, which motion was seconded by Council President Pro Tempore Pritchard and, upon the same being put to vote, the following vote was recorded:

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

Nays: None

Council President Smith thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Council President Pro Tempore Pritchard thereupon moved that the foregoing ordinance be adopted, which motion was seconded by Councilmember Shelton and, upon the same being put to vote, the following vote was recorded:

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

Nays: None

Council President Smith thereupon declared that motion for the adoption of said Ordinance (No. 2059) carried by a vote of 4—0 and as evidence thereof she signed the same.

**2. CONSIDERATION OF A RESOLUTION (NO. 2019-142) AUTHORIZING THE EXECUTION OF THE AUDIT ENGAGEMENT LETTER, IN THE FORM ATTACHED HERETO AS EXHIBIT A, WITH RESPECT TO THE CITY'S ANNUAL INDEPENDENT FINANCIAL AUDIT (EXHIBIT 1, APPENDIX 2)**

The resolution and engagement letter were introduced in writing by Council President Smith who then invited comments. There being no comments or questions, President Smith called for a motion. Council member Shelton made a motion for adoption of the resolution. The motion was seconded by Council President Smith. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia C. Smith  
William S. Pritchard, III  
Philip E. Black  
Lloyd C. Shelton

Nays: None

Council President Smith thereupon declared that motion for the adoption of said resolution (No. 2019-142) carried by a vote of 4—0 and as evidence thereof she signed the same.

**3. ANNOUNCEMENT**

The next regular meeting of the City Council will be October 14, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

**4. ADJOURNMENT**

There being no further business to come before the City Council, Council President Smith adjourned the meeting at approximately 12:05 p.m.

**5. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, City Hall Pre-Council Room (A106) on October 1, 2019, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

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

Approved by City Council October 14, 2019

\_\_\_\_\_  
**EXHIBIT 1**

**RESOLUTION NO. 2019-142**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute, for and on behalf of the City Council, the audit engagement letter, in the form attached hereto as Exhibit A, with respect to the City's annual independent financial audit.

**APPENDIX 2**

**MAYORAL APPOINTMENT 2019-143**

Mayor Welch announced his reappointment of Rob Walker to the Planning Commission to fill to serve without compensation through October 1, 2025.

\_\_\_\_\_  
Stewart H. Welch, Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct synopsis of an announcement by the Mayor of the City of Mountain Brook during the regular meeting of the City Council conducted on October 14, 2019, as same appears in the minutes of record of said meeting.

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

**RESOLUTION NO. 2019-144**

**A RESOLUTION AUTHORIZING THE SALE OR DISPOSAL  
OF CERTAIN SURPLUS PROPERTY**

**WHEREAS**, the City of Mountain Brook, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

**WHEREAS**, Section 11-43-56 of the Alabama Code of 1975 authorizes the municipal governing body to dispose of unneeded personal property.

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

Section 1. It is hereby established and declared that the following property owned by the City of Mountain Brook, Alabama is not needed for public or municipal purposes and is hereby declared surplus property:

**Description**  
Stihl FS131R  
Husqvarna 372PT5S pole saw  
Stihl HL100 trimmer  
Stihl FS240R  
Stihl HL100 trimmer  
Stihl HL100 trimmer  
Stihl HL94  
Stihl FS131R  
Husqvarna 580BTS  
Husqvarna 580BTS  
Stihl BR600  
Stihl BR600  
Stihl BR600  
Stihl TS5800  
Husqvarna 450  
2011Exmark Lazer Z

Section 2. That the City Manager, or his designated representative, is hereby authorized and directed to sell said property by way of public Internet auction or to dispose of such property not sold at auction.

**ADOPTED:** This 14th day of October, 2019.

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

**APPROVED:** This 14th day of October, 2019.

\_\_\_\_\_  
Mayor

**RESOLUTION NO. 2019-145**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that City Council hereby ratifies the right-of-way purchase from Clay Spitler (Exhibit A) with respect to the ongoing Dunbarton Road sidewalk construction project.

**ADOPTED:** This 14th day of October, 2019.

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

**APPROVED:** This 14th day of October, 2019.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 14, 2019, as same appears in the minutes of record of said meeting.

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

AGREEMENT  
FEE SIMPLE

STATE OF ALABAMA  
COUNTY OF JEFFERSON

THIS AGREEMENT made between the City of Mountain Brook in the State of Alabama, party of the first part, and Clay Spitzer party of the second part.

For and in consideration of the sum of one dollar (\$14,100.00) in hand paid by the party of the first part to the party of the second part, receipt of which is hereby acknowledged, the parties herein agree as follows:

1. The party of the first part agrees to purchase in fee simple from the party of the second part certain property known as Right-of-Way, Tract No. 1 of the subject project, as identified from the records of the City of Mountain Brook for the purpose of constructing and maintaining a public sidewalk identified as Project No. TAPBH-TA18(931) as shown by the right-of-way map of said project.

2. The party of the second part agrees to sell and convey the property to the party of the first part in fee simple, free of all encumbrances, and will execute and deliver a warranty deed to the party of the first part, conveying the property in fee simple free of all encumbrances to the party of the first part upon payment of the sum of \$ 14,100.00 dollars to the party of the second part by the party of the first part at the time of delivery of such deed. The party of the second part agrees to satisfy all liens for ad valorem taxes outstanding against the above tract that becomes due and payable October 1 next, following date of execution of the agreement.

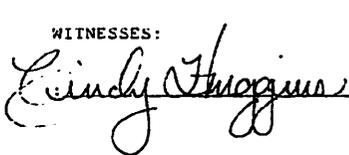
The party of the second part understands the above mentioned sum includes payment for the following: 0.03 ac of land

3. The party of the second part agrees to give the party of the first part and its contractors immediate right-of-entry to the property being acquired: Yes  or No .

4. Exceptions and additional conditions: None

IN WITNESS WHEREOF the parties herein have set their hands and seals this the 23<sup>rd</sup> da. of SEPTEMBER, 2019.

WITNESSES:



  
Owner

Date: 08/29/2019  
Record Locator: NYVR5B  
Travelers:  
Spitler, Clay.Alexander  
Agent: vatravel@duluthtravel.com

Agency Information  
2860 Peachtree Industrial Blvd  
Suite 1000  
Duluth GA, 30097  
866-779-6612

Tue, Sep 24 2019

check-in **HYATT REGENCY** Confirmation No. 32LW9LNX  
Address:  
Phone: 222-222-2222  
Rate: USD 181.00  
Room Desc: NON SMOKING  
Info: COLORADO CONVENTION CENTER DENVER CO

3:57 PM **Birmingham (BHM) to Denver (DEN)** — Confirmation No. MR21G9

depart **United Airlines**  
Flight 5454 **Takeoff: 3:57 PM**  
OPERATED BY SKYWEST DBA UNITED **Birmingham, AL** **Landing: 6:05 PM**  
EXPRESS **Economy [ S ] Class | Food and**  
PLEASE CHECK-IN WITH THE **Beverage for Purchase | 3h 8m**  
OPERATING CARRIER

**Travelers:**  
Name: Spitler, Clay.Alexander Ticket #: 016-7410428430 Seat: 18B

Wed, Sep 25 2019

5:15 PM **Denver (DEN) to Birmingham (BHM)** — Confirmation No. MR21G9

depart **United Airlines**  
Flight 5347 **Takeoff: 5:15 PM**  
OPERATED BY SKYWEST DBA UNITED **Denver, CO** **Landing: 9:00 PM**  
EXPRESS **Economy [ S ] Class | Food and**  
PLEASE CHECK-IN WITH THE **Beverage for Purchase | 2h 45m**  
OPERATING CARRIER

**Travelers:**  
Name: Spitler, Clay.Alexander Ticket #: 016-7410428430 Seat: 23C

**Additional Information:**

- Check In Times Are 90 Minutes Prior For Domestic Flights Or 120 Minutes For International Flights.
- Check Carrier Web Site For Change/Cancel And Baggage Policies.
- For Emergency Assistance Call 866-779-6612.
- Check In Times Are 90 Minutes Prior For Domestic Flights Or 120 Minutes For International Flights.
- Check Carrier Web Site For Change/Cancel And Baggage Policies.
- Org Code: VAVHAV12 578 EDWARD HINES JR HOSPITAL
- TA Number: 578T94165

**A Message From Your Agent**

THIS MESSAGE CONFIRMS THAT YOUR RESERVATION HAS BEEN TICKETED. FOR CHANGES CANCELLATIONS OR QUESTIONS PLEASE CALL THE AGENCY PHONE NUMBER ON YOUR ITINERARY.

## Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return) <b>Clay Alexander Spittler</b>	
Business name, if different from above	
Check appropriate box: <input checked="" type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ .....	
<input type="checkbox"/> Exempt from backup withholding	
Address (number, street, and apt. or suite no.) <b>3352 Hermitage Road</b>	Requester's name and address (optional)
City, state, and ZIP code <b>Mountain Brook Alabama, 35223</b>	
List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number <div style="border: 1px solid black; width: 100%; height: 1.2em; background-color: #cccccc;"></div>
OR
Employer identification number <div style="border: 1px solid black; width: 100%; height: 1.2em; background-color: #cccccc;"></div>

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶ <b>9/23/19</b>
------------------	----------------------------	-----------------------

#### Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

REQUEST FOR AP CHECK

DATE: 9-24-19

To: ACCOUNTING DEPARTMENT City of Mountain Brook  
Please prepare a check as follows:

Payable to: CLAY SPITLER

Amount: \$14,100

For What Purpose: Property Purchase for

Vendor Number Dumbarton sidewalk project

Account Number: \_\_\_\_\_ P.O. # \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fund. General \_\_\_\_\_ Other \_\_\_\_\_

Check Disposition:  
(1) Return to: Sam Gorton

(2) Mail to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Additional instructions: \_\_\_\_\_

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

Dept Head: \_\_\_\_\_

Authorization: SSC

**RESOLUTION NO. 2019-148**

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

**ADOPTED:** This 14th day of October, 2019.

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

**APPROVED:** This 14th day of October, 2019.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk for the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 14, 2019, as same appears in the minutes of record of said meeting.

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

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

**CONTRACT AGREEMENT**

**THIS AGREEMENT** is entered into on this the \_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Mountain Brook (hereinafter referred to as “City”) and All In Mountain Brook (hereinafter referred to as “Contractor”):

**WHEREAS**, municipalities in the State of Alabama are authorized to promote the public health, safety, morals, security, prosperity, contentment and the general welfare of the community;

**WHEREAS**, All In Mountain Brook is an organization which has as one of its goals the promotion of public health, safety, morals, security, prosperity, contentment and the general welfare in the City of Mountain Brook—specifically, the enhancement and protection of the lives of Mountain Brook youth;

**WHEREAS**, the City Council of the City of Mountain Brook, Alabama desires to enter into a contract with the Contractor for the purpose of providing services and resources to residents of the City of Mountain Brook which are designed to combat issues and problems that place the lives and well-being of Mountain Brook youth at risk;

**WITNESSETH,**

1. That the City, for and in consideration of the covenants and agreements hereinafter set out to be kept and performed by the Contractor, does hereby agree to pay the Contractor the sum of \$10,000.00 (Ten Thousand and No/100 Dollars) (hereinafter referred to as the “Contract Amount”) for performing the services herein provided for the period beginning October 1, 2019, through September 30, 2020.

2. **SCOPE OF SERVICES:**

In consideration of the covenants and agreements made herein by the City, the Contractor agrees that the Contractor shall be totally responsible for, and shall have exclusive control over, the management and disbursement of the Contract Amount, and that the Contract Amount shall be used only for the purposes herein described:

a. To underwrite All In Mountain Brook parent and student educational programming, thereby targeting families and youth in grades Kindergarten through twelfth grade, including but not limited to All In Mountain Brook speakers, activities, services, materials, and communications designed to combat issues and problems that place the lives and well-being of Mountain Brook youth at risk.

b. Activities will be planned by appointed Parent Teacher Organization representatives in each school, along with administrators and school counselors.



9. Any time period stated in a notice will be computed from the time the notice is deemed received. Either party may change its mailing address or the individual to receive notice by notifying the other party as provided in this paragraph.

10. No oral agreement or communication with any officer, agent, employee, or consultant of the City either before or after execution of this Agreement will affect or modify any of the terms or obligations contained in this Agreement. Any such oral agreement or communication will be considered as unofficial information and in no way binding upon City or Contractor. Any amendment to this Agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the 9 day of October, 2019.

**CITY OF MOUNTAIN BROOK,**

**A Municipal Corporation**

BY: \_\_\_\_\_

Mayor, City of Mountain Brook

**WITNESSED:**

BY: \_\_\_\_\_

**ALL IN MOUNTAIN BROOK**

BY: Laura C. Hydringer

Its Authorized Agent

Print name: Laura C. Hydringer

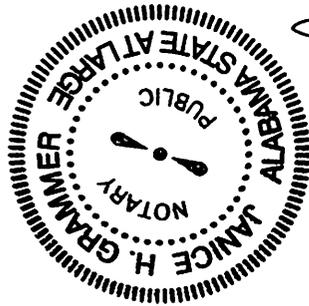
Title: Executive Director, All in Mountain Brook

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, Janice H. Grammer, a notary public in and for said County in said State, hereby certify that Laura C. Hyding whose name as Authorized Agent of All In Mountain Brook, a nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she, as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 9th day of October, 2019.



Janice H. Grammer

NOTARY PUBLIC

My Commission Expires: 1-8-21



October 8, 2019

To: Mountain Brook City Council Members  
RE: Request for Funding for Academic Year 2019-2020

ALL IN Mountain Brook is grateful for the opportunity to petition the City of Mountain Brook once again for financial support of our educational programs which help **protect and enhance the lives of our youth** and their families. Since our inception in 2014, ALL IN Mountain Brook has provided the Mountain Brook community with over 120 hours of free student, parent and community programs in three key areas: (1) drug and alcohol awareness, (2) mental health and wellness, and (3) safety and preventable accidents.

ALL IN Mountain Brook is a registered Alabama non-profit corporation and a federal 501©(3) non-profit. Our board enjoys representation from a cross-section of the community, including: clinicians, school board members, administrators, teachers and coaches, city council members, local business leaders, worship community leaders, and parents and student representatives. Our organization is passionate and dedicated to providing our community with critical tools to live safe, happy, healthy and productive lives.

ALL IN Mountain Brook obtains some funding through family donations and the Taste of Mountain Brook, but funding from the City of Mountain Brook is integral to our ability to provide such a broad scope and variety of relevant, meaningful educational programs for our community.

The programs expenses for 2018-2019 are as follows: *(see attached)*

- Elementary, Junior High and High School Parenting Programs \$5,850\*
- Junior High and High School Student Programs - \$5,405

\*A portion of this total includes the consulting fee ALL IN pays to Dr. Dale Wisely, PhD to conduct numerous parenting workshops throughout the year (see attached).

In addition to the educational conferences and workshops offered in 2018-2019, ALL IN allocated resources to other areas to further our educational offerings and expand the reach within our community. *ALL IN a Minute* is a series of 1 minute educational videos, that we created, filmed and edited, featuring a variety of topics related our focus areas. The videos began monthly distribution to parents in August 2019. Finally, in 2018 we began building a new website to further our mission and provide additional community resources. The expenses from our ALL IN a Minute videos and new website are not reflected in this year's report even though work for these projects began in the 2018-2019 calendar year. (A complete schedule of programs for 2019-2020 is also attached.)

Thank you again for your consideration. We are grateful for the continued support of the City of Mountain Brook.

Respectfully submitted,

A handwritten signature in black ink that reads "Laura C. Hydinger". The signature is written in a cursive, flowing style.

Laura Hydinger  
Executive Director  
ALL IN Mountain Brook  
[allinmountainbrook@gmail.com](mailto:allinmountainbrook@gmail.com)  
205-305-1322



**Student and Parent Programs 2018 – 2019**

<u>Topic</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
<b>The Last Year Home and the First Year Away: A Talk for Families of High School Seniors</b>	September 11	6:30pm	MB BOE
<b>Parenting the Teen Driver</b>	September 20	9:00am/6:30pm	MB BOE
<b>Calling All Parents: Keeping our Daughter's Safe</b>	September 25	6:00-8:00pm	Junior League of Birmingham
<b>ADHD 3-part series:</b>			
The Disorders	October 10	9:00am	MB BOE
The Treatments	October 17	9:00am	MB BOE
Managing Home and Family	October 24	9:00am	MB BOE
<b>MBHS Student Conference</b>	November 6	8:00am	MBHS
<b>Junior High/High School Parent Conference</b>	January 10 <sup>th</sup>	5:30pm	MBHS
<b>ADHD 3-part series:</b>			
The Disorders	January 24	6:30pm	MB BOE
The Treatments	January 31	6:30pm	MB BOE
Managing Home and Family	February 7	6:30pm	MB BOE
<b>Elementary Parenting Conference (4<sup>th</sup>-6<sup>th</sup>)</b>	February 12	5:30pm	CBS
How to Raise Kids in a Tech World			
How to Protect Kids in a Tech World			
How to Develop and Maintain Strong Friendships			

<u>Topic</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
<b>Parenting the Teen Driver</b>	February 21	9:00am/6:30pm	MB BOE
<b>Elementary Parenting Conference (K-3<sup>rd</sup>)</b> How to Raise Kids in a Tech World How to Protect Kids in a Tech World Addressing Big Issues with Small Kids- Having Difficult Conversations	February 26	5:30pm	CBS
<b>Developing a Positive Discipline Plan:</b> (Elementary Parents)	March 4 <sup>th</sup>	11:30-1:00pm	MB BOE
<b>Developing a Positive Discipline Plan:</b> (Parents of Teens)	March 7 <sup>th</sup>	11:30-1:00pm	MB BOE
<b>ALL IN, Vestavia &amp; Homewood Event</b> <b>Harmless vs. Hazardous</b> Rx Medication Abuse and Prevention Vaping: What Parents & Professionals Need to Know Addiction: Warning Signs and Resources	March 12	5:30pm	Samford University
<b>Myths and Truths: A Guide to Your Teenager</b>	March 19	6:30pm	MB BOE

***For More Information and Resources***

***or***

***To Register for a Conference:***

**[www.allinmountainbrook.org](http://www.allinmountainbrook.org)**

# AIMB Programming 2019 – 2020

## Conferences

K-3- Jan 14 (MBE)  
 4-6- Jan 22 (MBE)  
 7-8- Oct. 2 (MBJH)  
 9-12- Sept 24 (TBD)  
 HS Student (Developed by MBHS)  
 JH Student (Developed by MBJH)

## Small Group

ADHD- Dale Wisely  
 Teen Driving-Dale Wisely  
 Discipline (Elementary-2 Part)-Dale Wisely  
 Discipline (Teenage-2 Part)-Dale Wisely  
 Myths and Truths about Teenagers-Dale Wisely  
 Last Year at Home, First Year Away-Dale Wisely  
 Grandparent Group-Tech Topic-Suzan Brandt

- Community Wide Speaker- Substances

## Monthly Programming Plan

	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May
Conferences		Parent 7-8 9-12		Student Conference			Parent K-3 4-6			
All In a Minute Videos	Bullying	Vaping	Alcohol	Relationships	Device Monitoring	Sleep	Anxiety	Mental Health	Driving	Drug Disposal
Small Groups	Registrations  Last Year at Home	Open Houses  Teen Driving	Substances  Discipline- Elementary (2)	Grandparent		ADHD		Myths and Truths  Discipline- Teenage (2)	Teen Driving	

## **AIMB Conference Planning**

### **High School Conference-Grades 9-12**

6:00-6:15- Embracing the Beauty of People- **Dr. Barlow**

6:15-7:00- Relationship Revolution- Relationships in the Digital Playground- Dale Wisely

7:00-7:45- What's My Value? The Highs and Lows of Teenage Life-Cindy Wiley

### **Junior High Conference- Grades 7-8**

6:00-6:15- Embracing the Beauty of People- **Dr. Barlow**

6:15-7:00- Relationship Revolution- Relationships in the Digital Playground- Dale Wisely

7:00-7:45- What's My Value? The Highs and Lows of Teenage Life-Cindy Wiley

### **Pre-Teen Conference- Grades 4-6**

6:00-6:15- Embracing the Beauty of People- **Dr. Barlow**

6:15-7:00- The Pressure of the Playground: Helping your Child Navigate the Digital Playground- Suzan Brandt

7:00-7:45- Parenting 101: From Those Who Have Been There (Parent Panel + Student)

### **Elementary Conference- Grades K-3**

6:00-6:15- Embracing the Beauty of People- **Dr. Barlow**

6:15-7:00- What's Your Motivation? Developing Your Parenting Principles- Dale Wisely

7:00-7:45- Raising a Resilient Child-Alexis Sapp

**RESOLUTION NO. 2019-149**

**WHEREAS**, the Birmingham Zoo (“Zoo”) is a regional educational and entertainment attraction located adjacent to the municipal limits of the City of Mountain Brook (“City”); and

**WHEREAS**, the Zoo serves the Mountain Brook community and its citizens through educational and informational programs, offering educational and family entertainment options, and through its cooperation in the City’s recent flood control efforts; and

**WHEREAS**, the City, as a community partner, supports the mission and purpose of the Zoo, and has provided financial commitments to the Zoo as a result of the Zoo’s commitments and service to the City; and

**WHEREAS**, the City Council of the City of Mountain Brook wishes to extend those financial commitments to the Zoo for an additional year, all as set forth in the attached Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mountain Brook that the City’s financial commitments to the Zoo shall be and hereby is extended for an additional year as set forth in the attached Agreement.

**BE IT FURTHER RESOLVED** that the commitments between the parties expressed in the Agreement are deemed to be fair and adequate and serve a public purpose, and the Mayor is hereby authorized to execute the Agreement on behalf of the City.

**ADOPTED:** This 14th day of October 2019.

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

**APPROVED:** This 14th day of October 2019.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 14, 2019, as same appears in the minutes of record of said meeting.

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

## AGREEMENT FOR SERVICES

THIS AGREEMENT made this 14th day of October, 2019 by and between the CITY OF MOUNTAIN BROOK, ALABAMA ("Mountain Brook"), a municipal corporation of the State of Alabama, and the BIRMINGHAM ZOO, INC. ("Zoo"), an Alabama non-profit corporation.

WHEREAS, the City desires to increase the learning opportunities for students who attend Mountain Brook City Schools; and

WHEREAS, the Zoo has developed certain programs, exhibits, and learning opportunities which, in the City's opinion, will be helpful and instructive to said students; and

WHEREAS, such programs, exhibits, and learning laboratories are not available at Mountain Brook City Schools; and

WHEREAS, the Zoo has agreed to work cooperatively with and assist the City with future public works projects; and

WHEREAS, the City has agreed to pay the Zoo the sum of Ten Thousand Dollars (\$10,000.00), in consideration of the Zoo providing the City the services referred to in this Agreement.

NOW, THEREFORE, consideration of the premises and in consideration of the covenants and agreements contained herein, the City and the Zoo hereby agree as follows:

1. The City shall pay to the Zoo Ten Thousand Dollars (\$10,000.00) within sixty (60) days of execution of the agreement and receipt of the Zoo's annual report for the fiscal year ended September 30, 2019.
2. In consideration of the payment of the funds as provided herein, the Zoo shall provide at least the following services to the City ("Services");
  - a. The Zoo will provide guides and educational enrichment for all pre-scheduled field trips to the Zoo from Mountain Brook City Schools for one (1) year from the date of execution of this Agreement. In addition, all participants in pre-scheduled field trips from Mountain Brook City Schools to the Zoo will be eligible to participate in the Zoo's group discount admission program.
  - b. The Zoo will provide to Mountain Brook City Schools a series of educational programming and classes targeting elementary, middle, and high school students free of charge for one (1) year from the date of execution of this Agreement.
  - c. The Zoo will use its best efforts to work cooperatively with the City and provide assistance and support to the City with the City's future public works projects that are located near the Zoo.
3. The Zoo shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations to Mountain Brook City Schools under the terms of this Agreement. The Zoo is an independent contractor and none of its agents or employees shall be deemed to be under the control of the City nor shall any of the agents or employees, or other persons, firms, or corporations conducting

business for or on behalf of the Zoo be deemed to be agents or employees of the City.

4. The Zoo shall indemnify the City and its agents, employees, and elected officials and hold them harmless from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs, which may be asserted against, or suffered by the City or its agents and employees arising out of, or in connection with: (a) the performance or attempted performance by the Zoo or its agents or employees of the Zoo's obligations under this Agreement; and (b) any claim that the payments described herein were improperly paid by the City to the Zoo.

5. The Zoo agrees to employ accounting procedures which are appropriate to the types of operation conducted by the Zoo and which are customary to similar operations. All financial records and other documents pertaining to this Agreement shall be maintained by the Zoo for a period of three (3) years after the expiration or termination of this Agreement. The City shall have full access to, and the right to examine any of such financial records and other documents at all reasonable times during the term of this Agreement and during said three-year period. The Zoo agrees that upon request from the City, the Zoo will submit to and cooperate with periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.

6. If the Zoo fails to comply with the provisions of this Agreement, such failure shall constitute a default under this Agreement and, unless corrected by the Zoo within thirty (30) days following receipt of written notice for the City of such default, shall be deemed a breach of this Agreement and the City shall have a right to terminate this Agreement by giving The Zoo twelve (12) days prior written notice of such termination, and the City shall not be obligated to make any additional payments to the Zoo. Such termination of this Agreement by the City shall not relieve the Zoo of any of its obligations or liabilities to the City under the provisions of paragraph 4 of this Agreement, whether such obligations or liabilities occur or accrue before or after the termination of this Agreement.

In witness whereof, the Birmingham Zoo, Inc. has caused this Agreement to be executed by its duly authorized Chief Executive Officer and the City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor, all as of the 14th day of October, 2019.

**CITY OF MOUNTAIN BROOK**

**BIRMINGHAM ZOO, INC.**

\_\_\_\_\_  
Stewart Welch III  
Mayor, City of Mountain Brook

\_\_\_\_\_  
Chris Pfefferkorn  
Chief Executive Officer, Birmingham Zoo, Inc.

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

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

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

**RESOLUTION NO. 2019-150**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Birmingham Botanical Society subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 14th day of October 2019.

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

**APPROVED:** This 14th day of October 2019.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 8, 2018 as same appears in the minutes of record of said meeting.

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

**Contract for Services**  
**Fiscal Year 2020**

This contract for services ("Contract") is entered into by and between City of Mt. Brook, an Alabama Municipal corporation ("City"), and the Birmingham Botanical Society, a nonprofit corporation organized under the laws of the State of Alabama ("Association").

Whereas, City desires to increase the learning opportunities for students in its school system including: and

Whereas, Contractor has developed certain programs, exhibits, and learning laboratories which, in the City's opinion, will be helpful and instructive to such students; and

Whereas, such programs, exhibits and learning laboratories are not available in the Mt. Brook school system; and

Whereas, City has agreed to pay contractor the sum of twenty thousand dollars (\$20,000.00) in consideration of Contractor providing City services referred to in the Contract.

Now, therefore, in consideration of the premises and in consideration of the covenants and agreements contained herein, City and Contractor hereby agree as follows:

1. City shall pay to Contractor the sum of ten thousand dollars (\$10,000.00), upon a) execution of this contract for services for one year from date of execution and b) receipt of the Association's annual report for the fiscal year ended September 30, 2019.
2. In consideration of the payment of the Contract Funds as provided herein, Contractor shall provide at least the following services to City ("Services"):
  - a. Contractor will continue to provide city students with a variety of free science curriculum-based field trips. The trained docents provide activities which are based on Alabama Course of Study: Science
  - b. Contractor agrees to inform the teachers about the Contractor's field trips and invite their participation
  - c. Field trips are for students in grades Kindergarten (K) through High School, inclusive
  - d. The following field trips are available during the following months:

Native American Area	September-November March-May
Dr. George Washington Carver	September-November
Garden Gates Workshop (Plant Propagation)	January-February
Tropical Rain Forest	March-May
Alabama Woodlands (Interdependence)	September-November March-May
Secret Life of Trees	September-November March-May
Plants: Inside Out	September-November March-May
Pollinator Observation	March-May

- e. Field Trips are available Monday through Friday, inclusive, from 9:30-11:30am. No field trips are offered on federal and state holidays
  - f. Schools shall select the students that will attend the contractors' field trips. The Contractor shall not be responsible for providing transportation
  - g. Schools shall contact the contractor at least ten (10) business days in advance of a proposed field trip to schedule a date that shall be reasonably convenient for schools and the contractor
  - h. The Contractor requires the presence of one (1) adult per ten (10) children for the duration of each field trip.
  - i. The city and the contractor shall each monitor the number of students that attend the contractor's field trips and shall agree to reconcile the number at the end of the contract period
  - j. The Contractor will engage with sophomore-through-senior city high school students
  - k. City Chamber of Commerce shall seek additional opportunities with the contractor
3. Contractor shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Contract. Contractor is an independent contractor and none of its agents or employees shall be deemed to be under the control of City nor shall any of the agents, or employees or other persons, firms, or corporations conducting business for or on behalf of Contractor be deemed to be agents, or employees of City.

4. Contractor shall indemnify City and its agents, employees and elected officials harmless, from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs which may be asserted against, or suffered by, City or its agents and employees arising out of, or in connection with: (a) the performance, or attempted performance, by Contractor or its agents or employees of Contractor's obligations under this contract; and (b) any claim that the Contract Funds were improperly paid by City to Contractor.
5. Contractor agrees to employ accounting procedures which are appropriate to the types of operations conducted by Contractor and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by Contractor for a period of three (3) years after the expiration or termination of the Contract. City shall have full access to, and the right to examine, any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. Contractor agrees that upon request from City, Contractor will submit to, and cooperate with, periodic audits by Alabama Department of Public Examiners or other audit procedures requested by the city.
6. If Contractor fails to comply with the provisions of the Contract, such failure shall constitute a default under this Contract and, unless corrected by Contractor within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this Contract and City shall have a right to terminate this Contract by giving Contractor ten (10) days prior written notice of such termination, and City shall not be obligated to make any additional payments to Contractor. Such termination of this Contract by City shall not relieve Contractor of any of its obligations or liabilities to City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.
7. The Association and the representative of the Association who executes this Contract, by the execution of the Contract, certify that:
  - a. no part of the Contract Funds paid by City pursuant to this Contract shall be paid to, or used in any way for personal benefit of, any elected official, employee or representative of any government or any family member of any such official, employee or representative, including federal, state, county and municipal governments and any agency of any such government;
  - b. neither the Association nor any of its officers, agents, representatives or employees has in any way colluded, conspired or connived with any elected

official, employee, or representative of City, or any other elected official or public employee, in any manner whatsoever to secure or obtain the Contract; and

- c. except as expressly set out in this scope of services of this Contract, no promise or commitment of any nature whatsoever of anything of value whatsoever has been made to any such elected official, employee or representative of City as an inducement or consideration for this Contract.

Any violation of the certification shall constitute a breach and default of this Contract which shall be cause for termination. Upon such termination, the Association shall immediately refund to City all amounts paid by City pursuant to this Contract.

In witness whereof, the Birmingham Botanical Society has caused this Contract to be executed by it duly authorized Executive Director on Oct. 1, 2019, and City of Mt. Brook has caused this Contract to be executed by its duly authorized representative, on Oct. 8, 2019, but this Contract shall be effective as of October 1, 2019.

**Birmingham Botanical Society, Inc.**

By:   
It's Executive Director

**City of Mountain Brook**

By: \_\_\_\_\_  
By: It's Mayor



# FRIENDS of Birmingham Botanical Gardens

## Annual Report for City of Mountain Brook As of October 1, 2019

Friends of Birmingham Botanical Gardens is proud to serve and partner with the great City of Mountain Brook and its residents to provide unique educational, volunteer, and ameliorative opportunities.

### **Education**

As one of our longest education supporters and partners, the City of Mountain Brook made it possible for the Friends to provide Mountain Brook students over 398 hours of programming through our award winning science education field trips, Discovery Field Trips. These trips were provided free during the 2018/2019 school year to 199 students and their teachers. In addition to the schools and teachers who choose to return year-after-year to enrich their in-class learning, we were able to include 40 Girl Scouts and Cub Scouts who learned about trees in Spring of this year. Working with Highlands Day School, we created a special field trip for 40 2<sup>nd</sup> graders and four adults with a Jefferson County Beekeeper, Dr. Leland Hull, to discuss the importance of pollinators in our pollinator garden. They were so pleased with the experience that we have already arranged for them to return in October for another Pollination Observation field trip.

In the coming year we have made arrangements for Mountain Brook Early Learning Center to return in October to learn about trees with kindergarteners and preschoolers. Brookwood Forest 2<sup>nd</sup> Grade is planning on a visit in April 2020 for Pollinator Observation to connect to their science unit studying pollinators and interdependence for nearly 100 students.

### **Enrichment**

From internships to volunteerism, the Friends is attempting to spread knowledge and passion for plants to our community. This past year, we have had Mountain Brook citizens volunteer over 1,490 hours through hands-on work in the Gardens. Their contributions range from helping with fundraising events (Spring Plant Sale, Antiques at the Gardens), as facilitators of our Summer Camps for kids, and as part of our many plant groups. In particular, the Bog Garden Work Group, a group comprised entirely of Mountain Brook residents, and guided by the leadership of Mountain Brook resident, Dr. Larry Stephens, have revived our Bog Garden into a place of vibrant, year-round interest.

Currently, during this 2019/2020 school year, we are fortunate to have an intern from Mountain Brook High School, Ann Inskeep, assisting in various capacities with our Garden Assessment Project Leader, Molly Hendry. Her work has had her engage in such diverse capacities as researching native plants for the Kaul Wildflower Garden, helping plant new seasonal perennials in the Southern Living Garden, in addition to many behind-the-scenes tasks. While this internship gives Ann credit toward her studies, she is also developing an interest in horticulture and the importance of the natural world and our interactions with it.

### **Functional Beautification**

The exceptional aesthetic value Birmingham Botanical Gardens adds to our surroundings, that same beauty that inspired the high-end boutique hotel, Grand Bohemian, to adapt a botanical theme, is being expanded with an eye toward functionality. Throughout this past year, our Director of Operations, Jane Underwood, has been working to improve rain water collection. With the draught we experienced at the end of this summer, these projects could not have been better timed. This includes collecting rain water runoff from the surrounding neighborhoods. In the coming year, visitors and residents can expect to see an improved Cahaba Road/Lane Park point where we are adding a new landmark sign as well as including perennial plants to add year-round interest.

With the help of the City of Mountain Brook and its civic-minded citizens, Friends of Birmingham Botanical Gardens is making a difference in our community, helping the Gardens and the city grow forward while preserving its rich heritage. We are deeply appreciative of the City's support.

**RESOLUTION NO. 2019-151**

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

**ADOPTED:** This 14th day of October 2019.

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

**APPROVED:** This 14th day of October 2019.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 14, 2019, as same appears in the minutes of record of said meeting.

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

**JEFFERSON - BLOUNT - ST. CLAIR MENTAL HEALTH AUTHORITY**

940 Montclair Road Suite 200 Birmingham, Alabama 35213 www.jbsmha.com  
Telephone: (205) 595-4555 Voice Mail: (205) 380-6460 Fax: (205) 592-3539 TDD: 1-800-545-1833 ext. 516

Executive Committee of the Board

Margie Sanford  
President

Lois Scott  
First Vice-President

Lamar Kelly  
Second Vice-President

Donna Burgess  
Secretary

J. Marvin Thornton  
Treasurer

Jansen Voss  
Asst. Secretary / Treasurer

Cathy Irvin  
Member-At-Large

Marianne Sharbel  
Member-At-Large

Cindy Smith  
Member-At-Large

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September 18, 2019

Sam Gaston  
City Manager  
City of Mountain Brook  
P.O. Box 130009  
Mountain Brook, AL 35213

Dear Mr. Gaston:

Enclosed please find the FY2020 Contract for Local Funds. As always, we hope that you will be able to provide funding for our mental health services for your area as we look forward to continuing our relationship with you. Please review, sign and send back to my attention. *Please retain a copy for your records.* If you have any questions or comments, you may contact me at 205-443-2211.

Sincerely,

Kathy VT Belcher  
Contracts Administrator

Encl.

**STATE OF ALABAMA)**

**COUNTY OF JEFFERSON)**

**CONTRACT AGREEMENT**

**THIS AGREEMENT** is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between the City of Mountain Brook (hereinafter referred to as “**City**”) and the Jefferson – Blount – St. Clair Mental Health Authority (hereinafter referred to as “**Contractor**”):

**WHEREAS**, municipalities in the State of Alabama are authorized to promote the public health, safety, morals, security, prosperity, contentment and the general welfare of the community:

**WHEREAS**, Jefferson – Blount – St. Clair Mental Health Authority, is an organization which has as one of its goals the promotion of public health, safety, morals, security, prosperity, contentment and the general welfare in the City of Mountain Brook:

**WHEREAS**, the City Council of the City of Mountain Brook, Alabama desires to enter into a contract with the Contractor for the purpose of providing mental health services to residents of the City of Mountain Brook:

**WITNESSETH,**

1. That the City, for and in consideration of the covenants and agreements hereinafter set

out to be kept and performed by the Contractor, does hereby agree to pay the Contractor the sum of TWO THOUSAND ONE HUNDRED and NO/100 (\$2,100.<sup>00</sup>) Dollars, for performing the services herein provided for the period beginning October 1, 2019 through September 30, 2020.

2. SCOPE OF SERVICES:

In consideration of the covenants and agreements made herein by the City, the Contractor agrees that is shall be totally responsible for, and shall have exclusive control over the management and disbursement for all such monies received from the City, and that all monies received under this contract shall be used only for the purposes herein described:

- a. Provide relief for residents who are in need of crisis stabilization for uninsured mentally ill persons:
- b. Provide medication and outpatient therapy for mentally ill persons:
- c. Provide housing and treatment for mentally ill persons:
- d. Provide in – home therapy for at – risk youths who are in danger of being removed from their homes:
- e. Provide case management to access housing and other supports to avoid unnecessary admissions to state hospitals:
- f. Provide social work assistance to families: and
- g. Contractor agrees to provide any all personnel, supplies, equipment necessary for the services herein to be provided.

3. The Contractor agrees to provide to the City at all reasonable times and places accounting for the expenditure of funds granted herein.

4. The Contractor shall not transfer or assign this contract or the license or any of the rights

and privileges granted herein without the prior written consent of the City.

5. The Contractor agrees that upon violation of any covenants and agreements herein contained, on account of any act or omission of the Contractor, the City may, at its option, terminate and cancel this contract and to exercise any remedy, at its option, available to it whether in law or equity.

6. The Contractor agrees that it will comply with Title 6 of the Civil Rights Act of 1964 assuring that no person under its employ will be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination on the grounds of race, sex, color, national origin or handicap.

7. Notwithstanding any of the other provisions contained in this contract, the City shall maintain the right to terminate this contract upon proper notice, which shall be in writing and shall be provided to the Contractor at least thirty (30) days prior to the intended date of cancellation.

8. Except as otherwise expressly provided in this Agreement, any notice, consent or other communication required or permitted under this Agreement must be in writing and will be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service, or, if mailed, 3 days after the notice is deposited in the United States mail addressed as follows:

To City of Mountain Brook:

City Manager  
City of Mountain Brook  
P.O. Box 130009  
Mountain Brook, AL 35213

To Contractor:

Jefferson – Blount – St. Clair Health Authority  
Yvonne Gallman, Associate Director  
940 Montclair Road, Suite 200  
Birmingham, AL 35213

Any time period stated in a notice will be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as party has provided in this paragraph.

No verbal agreement or conversation with any officer, agent, employee, or consultant of the City either before or after execution of this Agreement, will affect or modify any of the terms or obligations contained in this Agreement. Any such verbal agreement or conversation will be considered as unofficial information and in no way binding upon City or Contractor. Any amendment to this Agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the \_\_\_\_\_

day of \_\_\_\_\_, 2018.

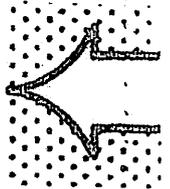
**CITY OF MOUNTAIN BROOK,  
A Municipal Corporation**

BY: \_\_\_\_\_

Stewart Welch  
Mayor, City of Mountain Brook

**WITNESSED:**

BY: \_\_\_\_\_



**JEFFERSON - BLOUNT - ST. CLAIR  
MENTAL HEALTH AUTHORITY**

BY: Richard Craig

Its Authorized Agent

Print name: Richard Craig

Title: Executive Director

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, Lynne Scarborough Swann a notary public in and for said County in said State, hereby certify that Richard Craig whose name as Authorized Agent of the **JEFFERSON – BLOUNT – ST. CLAIR MENTAL HEALTH AUTHORITY**, a nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 18 day of September, 2019

Lynne Scarborough Swann  
NOTARY PUBLIC

My Commission Expires

MY COMMISSION EXPIRES:  
January 12, 2020

**RESOLUTION NO. 2019-152**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Prescott House subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 14th day of October 2019.

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

**APPROVED:** This 14th day of October 2019.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 14, 2019, as same appears in the minutes of record of said meeting.

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



## CONTRACT FOR SERVICES

Prescott House hereby proposes to provide services to the City of Mountain Brook Police Department in the form of forensic interviews, counseling, team reviews, court preparation and court accompaniment in all reported cases alleging child abuse, child sexual abuse, and children who have witnessed violent crime.

Prescott House proposes to provide said services, and additional related services as the case may require, for FY2020, October 1, 2019 through September 30, 2020.

The City of Mountain Brook agrees to compensate Prescott House for said services in the amount of Five-thousand Dollars (\$5,000.00) to be paid during the period stated above.

On behalf of Prescott House

\_\_\_\_\_  
On behalf of the City of Mountain Brook

\_\_\_\_\_  
Dated

and privileges granted herein without the prior written consent of the City.

5. The Contractor agrees that upon violation of any covenants and agreements herein contained, on account of any act or omission of the Contractor, the City may, at its option, terminate and cancel this contract and to exercise any remedy, at its option, available to it whether in law or equity.

6. The Contractor agrees that it will comply with Title 6 of the Civil Rights Act of 1964 assuring that no person under its employ will be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination on the grounds of race, sex, color, national origin or handicap.

7. Notwithstanding any of the other provisions contained in this contract, the City shall maintain the right to terminate this contract upon proper notice, which shall be in writing and shall be provided to the Contractor at least thirty (30) days prior to the intended date of cancellation.

8. Except as otherwise expressly provided in this Agreement, any notice, consent or other communication required or permitted under this Agreement must be in writing and will be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service, or, if mailed, 3 days after the notice is deposited in the United States mail addressed as follows:

To City of Mountain Brook:           City Manager  
  City of Mountain Brook  
  P.O. Box 130009  
  Mountain Brook, AL 35213

To Contractor:                           Jefferson – Blount – St. Clair Health Authority  
  Yvonne Gallman, Associate Director  
  940 Montclair Road, Suite 200  
  Birmingham, AL 35213

Any time period stated in a notice will be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as party has provided in this paragraph.

No verbal agreement or conversation with any officer, agent, employee, or consultant of the City either before or after execution of this Agreement, will affect or modify any of the terms or obligations contained in this Agreement. Any such verbal agreement or conversation will be considered as unofficial information and in no way binding upon City or Contractor. Any amendment to this Agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the \_\_\_\_\_

day of \_\_\_\_\_, 2018.

**CITY OF MOUNTAIN BROOK,  
A Municipal Corporation**

BY: \_\_\_\_\_

Stewart Welch  
Mayor, City of Mountain Brook

**WITNESSED:**

BY: \_\_\_\_\_

**JEFFERSON – BLOUNT – ST. CLAIR  
MENTAL HEALTH AUTHORITY**

BY: Richard Craig

Its Authorized Agent

Print name: Richard Craig

Title: Executive Director

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, Lynne Scarborough Swann a notary public in and for said County in said State, hereby certify that Richard Craig whose name as Authorized Agent of the **JEFFERSON – BLOUNT – ST. CLAIR MENTAL HEALTH AUTHORITY**, a nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 18 day of September, 2019

Lynne Scarborough Swann  
NOTARY PUBLIC

My Commission Expires

MY COMMISSION EXPIRES:  
January 12, 2020

**RESOLUTION NO. 2019-146**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that City Council hereby authorizes the acceptance of a professional services proposal between the City and ECS Southeast, LLP, in the form as attached hereto as Exhibit A, for geotechnical subsurface consulting and evaluation services of Smyer Road.

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contract and such other documents that may be determined necessary with respect to said services all subject to review and approval by the City Attorney.

**ADOPTED:** This 14th day of October, 2019.

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

**APPROVED:** This 14th day of October, 2019.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 14, 2019, as same appears in the minutes of record of said meeting.

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



September 27, 2019

Mr. Ronnie Vaughn  
City of Mountain Brook  
Department of Public Works  
56 Church Street  
Mountain Brook, AL 35213

Reference: Proposal for Subsurface Evaluation Services  
Smyer Road  
Mountain Brook, Alabama 35216

ECS Proposal No. 30-1356-P

Dear Mr. Vaughn:

Based on the information provided, ECS Southeast, LLP (ECS) is pleased to submit this proposal to perform a geotechnical engineering evaluation for the above referenced site. This proposal consists of project information, scope of services, cost, and schedule.

#### PROJECT INFORMATION

Our knowledge of the proposed site conditions is based on our conversations with you and a preliminary site visit on September 25, 2019.

We understand there is pavement rutting and tearing along a section of the asphalt paved roadway in the portion of Smyer Road located within the city limits of Mountain Brook. From our prior knowledge of the site and from our conversations with you, we understand that the area has been remediated in the past with patching and repaving along with a small section of the road stabilized with concrete foundation retaining structure installed about 10 years ago. It's important to note that the prior repaired section is not within the area of concern for the current evaluation.

At this time, you have requested that we evaluate the subsurface conditions in the area and provide remediation and repair approaches, as applicable.

We have assumed the following for budgeting purposes:

- Excess soil spoils will be disposed of onsite out of the right of way of road traffic.
- Work may be performed during normal business hours (Monday - Friday 7am to 6pm).
- The borings are accessible with truck-mounted equipment.
- Repair of landscaping and grass due to drill rig access is outside the scope of services.
- A land disturbance or tree removal permit will not be required.

## GEOTECHNICAL SCOPE OF SERVICES

Based on the provided information, we have developed a scope of services that includes drilling a series of borings along the northern lane of the roadway where there is observed failure, as well as a few borings for comparison purposes in the opposite (southern) lane. Therefore, we have included a scope of 12 to 15 borings spaced within the area of interest. Please refer to the included Boring Location Diagram for a reference of typical spacing and locations; the actual locations of the borings will be directed in the field by our engineer.

We are anticipating encountering shallow rock in our borings. Therefore, each boring will be extended to auger refusal and/or depth of bedrock (anticipated to be about 5 to 10 feet deep). Please note that this depth may vary based on the conditions encountered.

A total of up to 150 feet of drilling has been budgeted for this project.

Soil samples will be transported to our laboratory in Birmingham, Alabama, for further identification and testing. Laboratory testing for the scope of services will include the following (subject to slight modifications, depending on the results of exploration):

Natural Moisture Content of soil	30 each
Atterberg Limits	3 each
Material Finer than No. 200 Sieve	3 each

Upon completion of excavation operations, the soil borings will be backfilled with the cuttings and the boring holes patched with cold patch asphalt. Every effort will be made to minimize damage to the existing roadway surface near the work areas and along ingress/egress pathways.

We will contact the Alabama One-Call System to locate underground utilities. However, no additional utility locating has been included in this proposal. Should you have drawings indicating any on-site features including utilities, we request a copy for our review. Alabama One-Call does not locate private utilities. We assume that we will be provided the below-grade utility plans, and that a private utility locator is not required for this site. Due to the potential for subsurface utility interactions, we recommend the attached allowance of \$1,600 for utility location within the area of evaluation.

Our exploration results will be incorporated into a geotechnical report that will include a soil test boring summary and an overview of the findings. The engineering report will include an Executive Summary as well as the following items:

- a. Observations from our site reconnaissance including current site conditions, surface drainage features, and surface topographic conditions.
- b. Description of the field exploration and laboratory tests performed.
- c. Final logs of the soil borings and records of the field exploration and laboratory tests in

accordance with the standard practice of geotechnical engineers. This includes a boring location diagram and vicinity map.

- d. Recommendations for repair for potential soil conditions encountered, if necessary.
- e. Recommendations for additional testing and/or consultation that might be required to complete the geotechnical assessment and related engineering for this project (supplemental reports and evaluations can be performed as requested; supplemental reports and evaluations will be considered additional scope and will be billed in accordance with our standard fee schedule unless otherwise negotiated).

## FEES

We will perform the proposed scope of services outlined herein for a **lump sum fee of \$4,900.00**. Please note that this fee does not include the previously referenced fee of \$1,600 for private utility clearance.

It is also important to note that we understand additional consulting time will be required for meetings with City officials. As such, we have included an allowance of \$1,600 for consulting and meetings. This will provide approximately 10 hours of consulting time by a Principal Engineer beyond that required for execution of the subsurface evaluation.

We have assumed that the site is not environmentally impacted and will not require specialized services for impacted conditions.

If additional work is required due to unexpected conditions encountered during our field study, or because of a request for additional services, they will be invoiced on a unit rate basis. Prior to modifying or expanding the agreed upon scope of work, your authorization for changes in the scope of services, cost, and schedule for the project will be required.

## SCHEDULE

We anticipate that soil test boring operations will require about one (1) day to complete, and that laboratory testing will require about seven (7) days after the completion of the test borings. Therefore, for time budget purposes, the entire scope should take about four (4) weeks from initial authorization through final report submission. Verbal comments on findings can be provided within three days of completion of the borings, if requested.

## CLOSING

If other items are required because of unexpected field conditions or because of a request for additional services, they would be invoiced in accordance with our current Fee Schedule. Before modifying or expanding the extent of our exploration program, you would be informed of our intentions for both your review and authorization.

Attached to this letter, and an integral part of our proposal, are our "Terms and Conditions of Service". These conditions represent the current recommendations of the GeoProfessional

Business Association, the Consulting Engineers' Council, and the Geo-Institute of the American Society of Civil Engineers.

Our insurance carrier requires that we receive written authorization prior to initiation of work, and a signed contract prior to the release of any work product. This letter is the agreement for our services. Your acceptance of this proposal may be indicated by signing and returning the enclosed copy to us. We are pleased to have this opportunity to offer our services and look forward to working with you on the project.

Respectfully,

**ECS Southeast, LLP**



David G. Marsh, P.E.  
Principal Engineer / Branch Manager



Danny Trawick, E.I.  
Project Manager

**PROPOSAL ACCEPTANCE FORM**  
**ECS SOUTHEAST, LLP**  
(Please Print or Type)

Project Name: Smyer Road Subsurface Evaluation  
Location: Mountain Brook, Alabama 35216

Subsurface Evaluation: \$ 4,900.00  
Private Utility Clearance: \$ 1,600.00  YES  NO  
Additional Consulting: \$ 1,600.00  YES  NO

Please complete and return this Proposal Acceptance Form to ECS as shown at the bottom of this form. By signing and returning this form, you are providing us with authorization to proceed, providing us permission to enter the site, and making this proposal the agreement between us. Your signature also indicates that you have read this document and the general conditions of service in its entirety and agree to pay for these services.

**CLIENT AND BILLING INFORMATION**

Name of Client: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
E-mail: \_\_\_\_\_

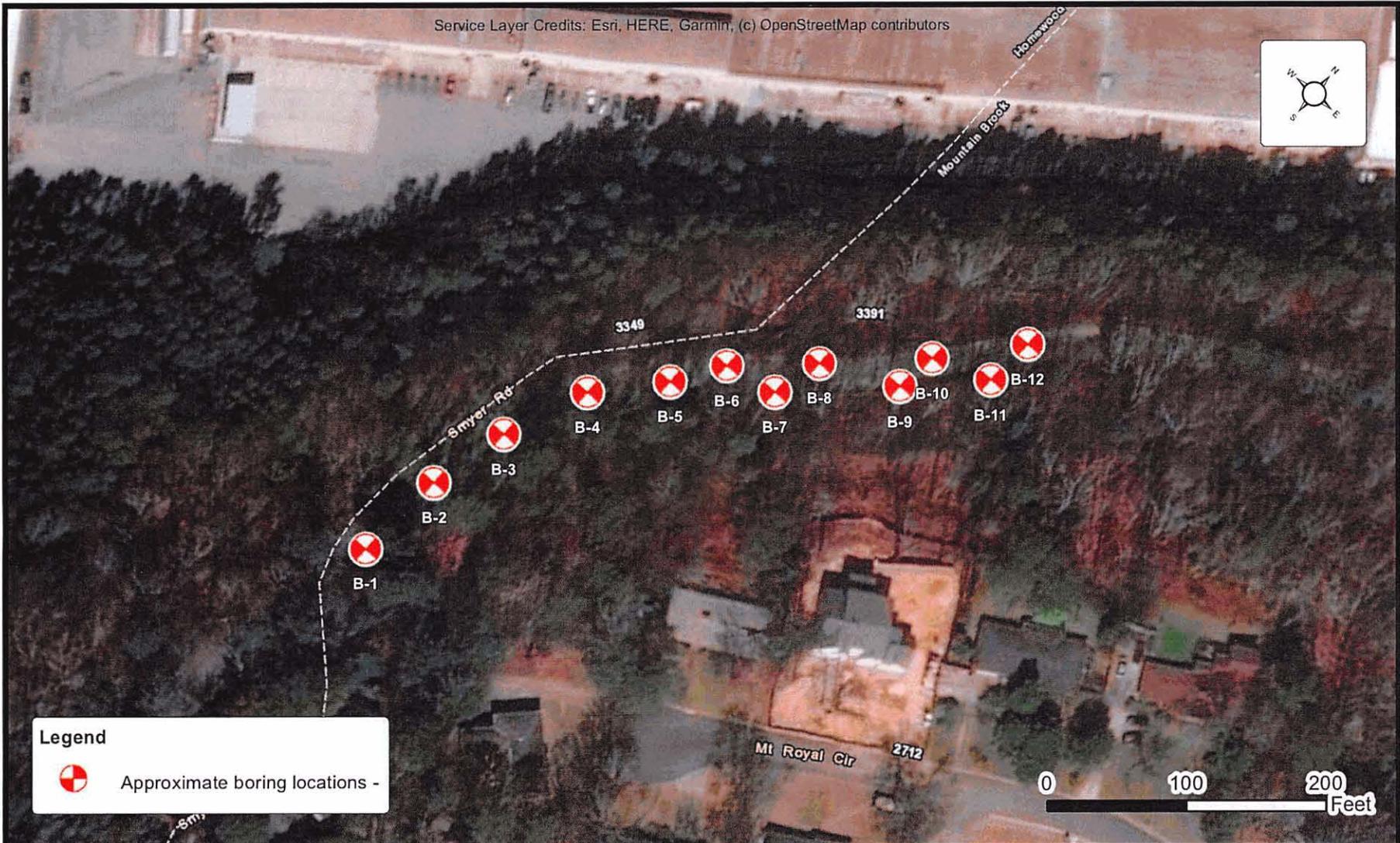
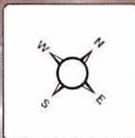
	<u>Responsible for Payment</u>	<u>Approval of Invoice (if different)</u>
Contact Name:	_____	_____
Company Name:	_____	_____
Address	_____	_____
Address	_____	_____
City, State, Zip	_____	_____
Telephone No.:	_____	_____
Fax No:	_____	_____
E-mail Address:	_____	_____

The reports are normally e-mailed directly to client. If you require copies to others, please provide their names, e-mail addresses and fax numbers below.

Name	e-mail Address	Phone Number	Fax Number
_____	_____	_____	_____
_____	_____	_____	_____

Special Instructions: \_\_\_\_\_  
Client Signature: × \_\_\_\_\_ Date: \_\_\_\_\_

Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap contributors



**Legend**

 Approximate boring locations -



# Proposed Boring Location Diagram SMYER ROAD EVALUATION

SMYER ROAD, MOUNTAIN BROOK, ALABAMA  
CITY OF MOUNTAIN BROOK

ENGINEER DGM
SCALE 1" = 100'
PROJECT NO. 30:1356
SHEET 1 OF 1
DATE 9/26/2019

**Proposal:** 30-1356-P Smyer Road Subsurface Evaluation (hereinafter the "Proposal")

**Client:** City of Mountain Brook, Alabama

## ECS SOUTHEAST, LLP TERMS AND CONDITIONS OF SERVICE

The professional services (the "Services") to be provided by ECS SOUTHEAST, LLP ("ECS") pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing shall form the Agreement between ECS and Client.

**1.0 INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants

**2.0 SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.

### **3.0 STANDARD OF CARE**

**3.1** In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.

**3.2** CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

**3.3** If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.

**3.4** If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.

### **4.0 CLIENT DISCLOSURES**

**4.1** Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.

**4.2** "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.

**4.3** If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

**5.0 INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.

**6.0 CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.

**10.5** Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be

### **7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**

**7.1** CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

**7.2** CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.

**7.3** ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.

**7.4** CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

### **8.0 UNDERGROUND UTILITIES**

**8.1** ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.

**8.2** CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.

**8.3** CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor's request for utility marking services made in accordance with local industry standards.

### **9.0 SAMPLES**

**9.1** Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.

**9.2** Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process by-products in accordance with applicable laws and regulations.

### **10.0 ENVIRONMENTAL RISKS**

**10.1** When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.

**10.2** When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.

**10.3** Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.

**10.4** In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.

**10.6** CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized



Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

#### **11.0 OWNERSHIP OF DOCUMENTS**

11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with the Project for which the Documents of Service are provided until the completion of the Project.

11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, it's licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.

11.3 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.

11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

#### **12.0 SAFETY**

12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.

12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

#### **13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES**

13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.

13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.

13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any contractor or consultant or any of their subcontractors or subconsultants.

13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from Work that was monitored or tested by ECS on a part time basis.

14.0 **CERTIFICATIONS** - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

#### **15.0 BILLINGS AND PAYMENTS**

15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate of Professional Fees stated in these Terms shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.

15.2 CLIENT agrees that all Professional Fees and other unit rates shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.

15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.

15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.

15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.

15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.

15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.

15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

#### **16.0 DEFECTS IN SERVICE**

16.1 CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT.

However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT'S personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.

16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

17.0 **INSURANCE** - ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

#### **18.0 LIMITATION OF LIABILITY**

18.1 CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.

18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.

18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$40,000, or the total fee for the services rendered, whichever is greater.

18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.

18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to \$500,000.



## **19.0 INDEMNIFICATION**

19.1 Subject Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)

19.2 To the fullest extent permitted by Law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.

19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. If CLIENT is a HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.

19.4 IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.

19.5 IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.

## **20.0 CONSEQUENTIAL DAMAGES**

20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

## **21.0 SOURCES OF RECOVERY**

21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.

21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.

22.0 **THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.

## **23.0 DISPUTE RESOLUTION**

23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.

23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.

23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

## **24.0 CURING A BREACH**

24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.

24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

## **25.0 TERMINATION**

25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.

25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

26.0 **TIME BAR TO LEGAL ACTION** - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.

27.0 **ASSIGNMENT** - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.

28.0 **SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.

29.0 **SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.

## **30.0 TITLES; ENTIRE AGREEMENT**

30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.

30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendices, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.

30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.

30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.

30.5 CLIENT'S execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT

**RESOLUTION NO. 2019-147**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook that, at the meeting of the City Council to be held on Tuesday, November 12, at 7:00 p.m., the Council Chamber of Mountain Brook City Hall, the City Council will hold a public hearing regarding the adoption of an ordinance repealing sections 109-31, 109-56, 109-195 and 109-227 of the City Code and adopting by reference 2018 versions of specified building and technical codes and the 2017 version of the electrical code.

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook that the City Clerk be, and he hereby is, authorized and directed to cause to provide at least 15 days' notice of the time, place and purpose of the hearing by posting in four (4) conspicuous places within the City of Mountain Brook, as follows: City Hall, 56 Church Street, Overton Park, 3020 Overton Road, Gilchrist Pharmacy, 2850 Cahaba Road, Cahaba River Walk, 3503 Overton Road, the following notice concerning the proposed actions in words and figures substantially as follows:

**“PUBLIC HEARING**

Notice is hereby given that at a regular meeting of the City Council of the City of Mountain Brook to be held on Tuesday, November 12, at 7:00 p.m., in the Council Chamber of the Mountain Brook City Hall, the City Council will hold a public hearing regarding a proposal that the City Council adopt an ordinance in words and figures substantially as follows:

**‘ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REPEALING SECTIONS 109-31, 109-56, 109-195, AND 109-227 OF THE CITY CODE AND ADOPTING BY REFERENCE 2018 VERSIONS OF SPECIFIED BUILDING AND TECHNICAL CODES AND THE 2017 VERSION OF THE ELECTRICAL CODE**

**WHEREAS**, the City Council of the City of Mountain Brook, Alabama (the "City Council") heretofore has adopted various technical codes promulgated by the International Code Council (the "ICC") and the National Fire Protection Association relating to buildings, residences and other structures in the City of Mountain Brook (the "City"), and operations in the City concerning fuel gas, mechanical, plumbing, and electrical systems (collectively, the "Technical Codes");

**WHEREAS**, the City Council desires that, except to the extent specified herein, the City adopt, the 2018 versions of the Building and Technical Codes except for the electrical code which is the 2017 version (the "Updated Building and Technical Codes") that are specified herein for use and application for buildings and structures within its corporate limits;

**WHEREAS**, the adoption of the Updated Building and Technical Codes by reference is authorized by §11-45-8 Code of Alabama (1975); and

**WHEREAS**, the adoption of the Updated Building and Technical Codes will facilitate the performance of inspection activities by the City, and promote the public safety, health and general welfare of its citizens and owners, occupants and users of buildings and structures in the City.

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

**Section 1.** Section 109-31 of the City Code is hereby repealed and replaced with the following:

**"Sec. 109-31. - Building codes—Adoption by reference.**

(a) Except as provided herein, the International Building Code - 2018 Edition ("ICC Building Code") and International Residential Code - 2018 Edition (the "IRC") and International Swimming Pool and Spa Code – 2018 Edition (the "ISPSC"), as published by the ICC and available for purchase at 900 Montclair Road, Birmingham, Alabama, are hereby adopted as the building code of the city by reference as though they were set forth fully herein.

(b) The building codes adopted by Section 109-31(a) are amended as follows:

(i) The following codes that are referenced in this Section [A]101.4 of the ICC Building Code are not adopted: (a) the International Property Maintenance Code referenced in Section 101.4.4; and (b) the International Existing Building Code referenced in Section 101.4.7.

(ii) Section [A] 109.2 of ICC Building Code & Section R108.2 of IRC are hereby repealed and are replaced in their entirety with the following:

**Schedule of Permit Fees.** On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee or fees as set forth in City Code Section 14-1 shall be paid at the time of filing application, in accordance with such fee schedule as shall be set from time to time by the city council. A list of such fees shall be kept on file in the city clerk's office.

(iii) Sections [A] 111.1 of ICC Building Code & R110.1 of IRC are hereby repealed and are replaced in their entirety with the following:

**Use and occupancy.** No residential building or structure shall be used or occupied, and no change in the existing occupancy classification of a residential building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy which has been signed by the building official and the City Manager. No commercial building or structure shall be used or occupied, and no change in the existing occupancy classification of a commercial building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy which has been signed by the building official, the fire official, and the City Manager. A certificate of occupancy shall not be issued until after the City Manager shall have determined that the building conforms to all provisions and regulations of the city with respect thereto, including its use under the zoning ordinances of the city. A certificate of occupancy (whether a temporary certificate of the regular certificate) issued without the signature or the building official, fire official (in the case of commercial buildings), and the City Manager shall not be deemed to be a certificate of occupancy issued under this code or under the city's zoning ordinance.

- (iv) Sections [A] 113 of ICC Building Code & R112 of the IRC are hereby repealed and are replaced in their entirety with the following:

Appeals regarding the application of the adopted building codes may be presented to the City Manager for consideration. The City Manager may elect to render a decision on such appeal or remand the appeal to the board of zoning adjustment. In cases where the appeal is heard by the City Manager and a decision is rendered, the appellant, if not satisfied with the decision, may then appeal to the board of zoning adjustment.

The board of zoning adjustment of the City of Mountain Brook, Alabama, as said board is prescribed by Section 11-52-80 Code of Alabama (1975), as amended, shall constitute a board of adjustments and appeals under these codes.

- (v) Sections [A]114.4 of ICC Building Code & R113.4 of IRC are hereby repealed and are replaced in their entirety with the following:

**R113.4 Violation Penalties.** Any person who violates a provision of these codes or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of these codes, shall be subject to penalties as prescribed by law.

In instances where a person commences work prior to making application for a required permit, all applicable permit fees shall be doubled. Once notified in writing by the building official of the City that a report or building permit application must be submitted, such person must submit such report within ten (10) days. Persons who fail to make such report within the time period required shall be subject to additional penalties as provided under Sec. 1-6.1 of the City Code and by §13A-10-4 of the Code of Alabama.

- (vi) Chapter 11 of IRC is adopted except as follows: (a) notwithstanding any provisions contained in Chapter 11 or elsewhere in the IRC, the Energy Efficiency requirements in the IRC shall not be applicable to the repair, renovation, alteration or reconstruction of existing buildings and structures; and (b) the minimum standards for insulation to be used in connection with the repair, renovation, alteration or reconstruction of existing buildings and structures shall not be less than R-30 for ceiling spaces, R-13 for walls and R-19 for floors.
- (vii) Section P2904 of the IRC- Dwelling Unit Fire Sprinkler Systems is adopted, but amended by adding the following provision as P2904.8.9:

**P2904.8.9 Residential Sprinkler Exemption.** Notwithstanding any provision in this Section P2904 or elsewhere in the IRC, any homeowner, upon application to the City's building official, may request an exemption to the sprinkler system

requirements of P2904.1 for a dwelling and such exemption shall be granted upon satisfaction of each of the following:

- a. The applicant must either confer with the City Fire Marshal or his or her designee about the benefits of installing a residential fire sprinkler system or review presentation materials developed by the Fire Marshal concerning sprinkler systems;
- b. The applicant must certify that he or she has met the requirements in subsection (a) above, and fully understands and acknowledges the risks of opting not to install a residential fire sprinkler system;

Exceptions:

- i. No exemption shall be granted for any dwelling constructed less than 5 feet from the property line; and
- ii. No exemption shall be granted for 2-family or more dwelling units.  
(viii) Section 506.2.1 of the 2018 IRC is adopted but is amended by adding the following language to such section:

Fill depths between 24-60" shall be permitted where fill consists of #57 compacted gravel stone backfill and where #4 rebar on 16" center tied in both directions or other approved reinforcement material, as specified by an engineer's report, is utilized."

**Section 2.** Section 109-56 of the City Code is repealed and replaced with the following:

**"Sec. 109-56. - Electrical code—Adopted by reference.**

The National Electrical Code, 2017 Edition, published by the National Fire Protection Association and available for purchase from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA, is hereby adopted by reference as though it were set forth fully herein as the electrical code of the city."

**Section 3.** Section 109-195 of the City Code is repealed and replaced with the following:

**"Sec. 109-195. - Gas and mechanical codes—Adoption by reference.**

- (a) Except as provided herein, the International Fuel Gas Code - 2018 Edition (the "Gas Code") and International Mechanical Code - 2018 Edition (the "Mechanical Code"), both published by International Code Council ("ICC") and available for purchase at 900 Montclair Road, Birmingham, Alabama, are hereby adopted as the gas and mechanical code of the city by reference as though they were set forth fully herein.
- (b) The Gas Code and the Mechanical Code, adopted by Section 109-195 are amended as follows:

- (i) Sections [A]106.6.2 of Gas Code & [A]106.5.2 of Mechanical Code are hereby repealed and are replaced in their entirety with the following:  
Schedule of Permit Fees. On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee or fees as set forth in City Code Section 14-1 shall be paid at the time of filing application, in accordance with such fee schedule as shall be set from time to time by the city council. A list of such fees shall be kept on file in the city clerk's office.
- (ii) Sections [A] 108.4 of Gas Code & Mechanical Codes are hereby repealed and are replaced in their entirety with the following:

**[A] 108.4 Violation Penalties.** Any person who violates a provision of these codes or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law.

In instances where a person commences work prior to making application for a required permit, all applicable permit fees shall be doubled. Once notified in writing by the building official of the City that a report or building permit application must be submitted, such person must submit such report within ten (10) days. Persons who fail to make such report within the time period required shall be subject to additional penalties as provided under Sec. 1-6.1 of the city code and by §13A-10-4 of the Code of Alabama.

- (iii) Sections 109 of Gas Code & Mechanical Code are hereby repealed and are replaced in their entirety with the following:

Appeals regarding the application of the adopted building codes may be presented to the City Manager for consideration. The City Manager may elect to render a decision on such appeal or remand the appeal to the board of zoning adjustment. In cases where the appeal is heard by the City Manager and a decision is rendered, the appellant, if not satisfied with the decision, may then appeal to the board of zoning adjustment.

The Board of Zoning Adjustment of the City of Mountain Brook, Alabama, as said board is prescribed by Section 11-52-80 Code of Alabama (1975), as amended, shall constitute a board of adjustments and appeals under these codes.”

**Section 4.** Section 109-227 of the City Code is repealed and replaced with the following:

**"Sec. 109-227. Plumbing Code—Adoption by reference.**

- (a) Except as provided herein, the International Plumbing Code - 2018 Edition published by International Code Council ("ICC") (the "Plumbing Code") and available for purchase at 900 Montclair Road, Birmingham, Alabama, is hereby adopted as the Plumbing Code of the city by reference as though it were fully set forth herein.

(b) The Plumbing Code adopted by Section 10—227(a) is amended as follows:

- (i) Section [A] 106.6.2 of Plumbing Code - Fee Schedule. This Section is not adopted in the form proposed by the ICC, and is replaced in its entirety with the following:

**Schedule of Permit Fees.** On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee or fees as set forth in City Code Section 14-1 shall be paid at the time of filing application, in accordance with such fee schedule as shall be set from time to time by the city council. A list of such fees shall be kept on file in the city clerk's office.

- (ii) Section [A] 108.4 of Plumbing Code is hereby repealed and is replaced in its entirety with the following:

**[A] 108.4 Violation Penalties.** Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law.

In instances where a person commences work prior to making application for a required permit, all applicable permit fees shall be doubled. Once notified in writing by the building official of the City that a report or building permit application must be submitted, such person must submit such report within ten (10) days. Persons who fail to make such report within the time period required shall be subject to additional penalties as provided under Sec. 1-6.1 of the City Code and by §13A-10-4 of the Code of Alabama.

- (iii) Section 109 of Plumbing Code is hereby repealed and is replaced in its entirety with the following:

Appeals regarding the application of the adopted building code may be presented to the city manager for consideration. The City Manager may elect to render a decision on such appeal or remand the appeal to the board of zoning adjustment. In cases where the appeal is heard by the City Manager and a decision is rendered, the appellant, if not satisfied with the decision, may then appeal to the board of zoning adjustment.

The board of zoning adjustment of the City of Mountain Brook, Alabama, as said board is prescribed by Section 11-52-80 Code of Alabama (1975), as amended, shall constitute a board of adjustments and appeals under this code.

- (iv) Section 410.3 of the Plumbing Code is amended to add the following as Subpart “3” under **Exceptions**:

3. An approved water cooler with an accessible approved spout height and a bottled water dispenser and permanent affixed cup or water bottle holder shall be permitted to be substituted for a standard high low water cooler fixture complying

with 410 in instances where the space is shown to be limited. Such substitution shall only be permitted where the update is part of renovation of an existing group B or M business space.

**Section 5.** This ordinance is cumulative in nature and is in addition to any power and authority which the City of Mountain Brook may have under any other ordinance or law.

**Section 6.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect, notwithstanding such holding.

**Section 7.** Any provisions herein that the City has adopted that deviate from the Technical Codes that are adopted by reference shall prevail over any conflicting provision of those Technical Codes. All other ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama, which are inconsistent with the provisions of this ordinance, are hereby expressly repealed.

In addition, when a provision in the adopted Technical Codes or this Ordinance refers to the duties of certain named officials, the official of the City of Mountain Brook, Alabama whose duties most closely correspond to those of such named official shall be deemed the official responsible for the enforcement of said provision.

**Section 8.** The effective date of this Ordinance shall be January 1, 2020.'

At the aforesaid time and place, all interested parties will be heard in relation to the changes proposed by said ordinance.”

**BE IT FURTHER RESOLVED** that not less than three (3) copies of the codes proposed for adoption by reference be filed for not less than fifteen (15) days prior to the date of such hearing for use and examination by the public in the office of the City Clerk.

**ADOPTED:** This 14th day of October, 2019.

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Council President

**APPROVED:** This 14th day of October, 2019.

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Mayor