

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

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

FEBRUARY 24, 2020, 6:15 P.M.

1. Overtime Policies-Steve Boone (See attached information. This item may be added to the formal agenda.)
2. Green equipment purchase and MOU with American Green Zone Alliance (AGZA) for Overton Park-Shanda Williams (See attached information. These items may be added to the formal agenda.)
3. Street Light request behind Vogue Cleaners located at 2816 Cahaba Road in Mountain Brook Village-Officer Ro Burrow and Sam Gaston (See attached information.)
4. Executive Session



CITY OF MOUNTAIN BROOK

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

Time and attendance policies

- The City has never formally adopted time and attendance policies with respect to overtime
- Consequently, departments have implemented departmental policies (some formal most informal)
- In many instances policies are inconsistent across departments and sometimes not applied consistently within departments over time
- The City has reviewed its time and attendance policies and has implemented or considering the following:

City Policy	Fair Labor Standards Act
Police sergeants and fire lieutenants changed from exempt to non-exempt	Still somewhat inconclusive but case law over the past decade suggests first responder duties comingled with administrative duties obviates the administrative exemption
Dispatch supervisor changed from exempt to non-exempt	Legal review concluded this position is exempt, however, City decided to treat as non-exempt in the interest of conservatism
Firefighter 26-day work period set at 192-hours for overtime purposes	FLSA 26-day work period is 197-hours
Law enforcement 14-day work period set at 80-hours for overtime purposes	FLSA 14-day work period is 86-hours
<p>Paid time off shall not be included in the total hours to be compared to the work period base for overtime calculation purposes except for 1) firefighters, and 2) public safety and other events that require immediate action to protect health, safety and welfare of the public and public property</p> <p>The Fire Department has been excluded from the provisions of the FLSA on-premises rule because 1) total overtime is less than 1% of the total salary costs and 2) the potential overtime reduction from the policy change is only about \$5,000/year.</p>	FLSA on-premises rule provides no exceptions. Overtime is not due until after an employee has physically worked beyond the applicable work period base.

The proposed policies are more employee friendly 1) than provided in the FLSA and 2) most other area cities polled.

City	FLSA On Premises Rule	Firework Period	Police Work Period	FYE 9/30/2018 Police overtime	Percentage of Total Police Salaries
Mtn Brook	No	26-days, 192-hours	14-days, 80-hours	\$353,758 (2018) \$461,254 (2019)	\$4,534,338 (7.8%) \$4,705,107 (9.8%)
Trussville	Yes	26-days, 197-hours	14-days, 86-hours		
Pelham	Yes	28-days/212-hours	14-days, 86-hours		
Hoover	Yes	26-days, 192-hours	5-days, 40-hours	\$1,226,036	\$12,909,450 (9.5%)
Homewood	Yes	26-days, 192-hours	28-days, 171-hours	\$350,000	\$7.3 million (4.8%)
Auburn	No	27-days, 204-hours	8-days, 48-hours	\$1,693,029	\$9,053,633 (18.7%)
Vestavia Hills	Yes#	27-days, 216-hours	14-days, 86.67-hours	\$60,000	\$5,956,573 (1%1)

"As interpreted by Vestavia Hills"

RESOLUTION NO. 2020-

WHEREAS the City Council formally adopted its “Internal Control Policies and Procedures” upon its adoption of Resolution No. 2019-049 (April 8, 2019); and

WHEREAS the City Council wishes to amend such policies and procedures with respect to overtime; now, therefore,

BE IT RESOLVED by the City Council of the City of Mountain Brook that the City Council hereby amends Sec. 8.4 of the “Internal Control Policies and Procedures” by adding Sec. 8.4.2 “Overtime policies”, in the form as attached hereto as Exhibit A (said section shall be appended to the previously adopted “Internal Control Policies and Procedures”); and

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook that the City Council delegates authority to the Finance Director and/or City Manager to implement editorial, procedural and workflow revisions to said internal control policies and procedures as conditions change or otherwise determined warranted to improve and further enhance such controls and workflow.

ADOPTED: This 24th day of February, 2020.

Council President

APPROVED: This 24th day of February, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on February 24, 2020, as same appears in the minutes of record of said meeting.

City Clerk

8.4.2 Overtime policies: Overtime is governed by the Fair Labor Standards Act (FLSA) administered by the U. S. Department of Labor. The City's overtime policies are generally intended to adhere (at a minimum) to the provisions of the FLSA with some (more liberal) exceptions as more fully described below. Deviations from the policies expressed herein below must be approved in writing by the City Manager.

1. Exempt employees. (Under the FLSA, exempt employees are not due overtime. In those instances where the City has authorized limited overtime for certain exempt personnel, such action does not change the underlying exempt nature of the position. The City may discontinue such practice at any time at its sole discretion. The City Manager shall authorize any changes to overtime compensation policies and practices with respect to exempt positions).

a. Certain Mountain Brook exempt employees (generally department heads and deputy or assistant department heads) are not compensated for overtime. Consistent with the FLSA, such employees may adjust their schedule as work responsibilities permit to balance work and personal time.

b. Certain other Mountain Brook exempt employees (generally, but not limited to^(a), Police Lieutenants) may be compensated for overtime generally for attendance at departmental staff/roll-call meetings, after-hours public meetings and other assigned duties outside of the normal schedule. The nature of work for which straight-time overtime shall be granted for such exempt employees shall be determined by the City on a case-by-case basis. Such overtime may be either:

i) Paid at the employee's regular hourly rate of pay ("straight-time") or

ii) Credited to the employee's accumulated leave time (one-hour banked for one-hour worked) as compensatory time ("comp time") where it shall be accumulated. As provided in the "City of Mountain Brook Employee Handbook" (Sec. III. E. 5.), when carried as comp time, such accumulations shall be limited to 80-hours. Once the 80-hour comp time limit is reached, all future straight-time overtime shall be paid as worked.

^(a) Fire Battalion Chiefs may be credited with straight-time compensatory time for attendance at mandatory command staff meetings occurring on scheduled off days

2. On-premises policies with respect to overtime calculation. [Note: Under the FLSA, the baseline or threshold for overtime for a 26-day work period (fire) is 197-hours and for a 14-day work period (law enforcement) is 86-hours. The City has intentionally established lower thresholds for fire and law enforcement overtime calculation purposes for these two public safety work periods. The City may, at its sole discretion, alter these baselines not to exceed those prescribed under the FLSA.)

a. The City has adopted by reference the FLSA on-premises rule whereby overtime is not due until after an employee has physically worked more than the applicable work period baseline (e.g., 40- hours weekly (Tuesday through Monday) for all except public safety employees, 192-hours over a 26-day work period for certified firefighters and 80-hours biweekly for APOST certified law enforcement personnel) except as provided herein below:

1) When afterhours work is required due to a public safety emergency or event or when a situation or event occurs that threatens public property, health, safety or welfare.

i. When an employee is called in early, asked to work over or called into work on an off-day as a result of a situation as described above, overtime shall be calculated on a daily/shift basis. In such instances, overtime shall commence for any hours worked outside of the normal shift without regard to paid time off during the specific work period.

2) If an employee is called into work as a result of a situation as described above, all time worked shall be considered overtime and compensated at either a) the rate of 1-1/2 times their regular hourly rate of pay or credited to the employee's comp time leave balance (1-1/2 hours for each overtime hour) at the non-exempt employee's discretion or b) straight time (paid or banked at the employee's discretion) for exempt employees who have been authorized for straight time overtime compensation.

3) If an employee is scheduled off by way of compensable paid time off (e.g., comp time or vacation, etc.) and is called into work as a result of a public safety emergency, the paid time off may be credited back to the employee's accumulated leave time balance. When such paid time off is credited back to the employee's leave time balance, overtime shall be paid or banked at the appropriate hourly rate of compensation after the employee has worked over the normal (daily) shift. Should the employee desire that the scheduled off time hours not be credited back to the employee's leave balance, time worked shall be paid (or banked) at the employee's regular (straight-time) hourly rate of pay.

4) Hours worked on a recognized holiday shall generally result in 8 hours straight-time pay or comp/holiday time for the holiday and straight time overtime for the hours worked (with a 2-hour minimum for callback) EXCEPT when such work is due to a public safety emergency AND the employee is not scheduled to work on the recognized

holiday. In those rare instances, the employee shall be compensated 8 hours straight-time pay or comp time for the holiday and 1-1/2 (or straight time if an approved exempt employee) overtime for the hours worked on the recognized holiday called-in to work.

Note: The policies outlined in subsections 1) through 4) above exceed the provisions specified in the FLSA. In practice, a non-exempt employee likely will receive both 1-1/2 overtime and straight time overtime within the same work period or biweekly payroll depending on the paid time off hours taken.

5) On-premises policy exception. Notwithstanding the policies described above regarding public safety emergency and similar events, Fire Department personnel are hereby authorized to treat paid time off within a 26-day/192-hour work period the same as time worked when determining overtime for all non-exempt and approved exempt employees subject to the following limitation:

Barring a public safety emergency or other qualifying event as described herein above, overtime paid at 1-1/2 times the employee's hourly rate of pay shall not exceed paid time off within the work period. Overtime hours that exceed the paid time off hours within a work period shall be paid at the employee's regular hourly rate of pay or the employee may request that said excess paid time off hours be credited back to their applicable leave balance.

b. Departmental policies may allow the payment of paid time off during work periods where an employee's total time exceeds the work period base. However, in such instances any time that exceeds the applicable work period base shall be paid at straight time (except for overtime worked as a result of a public safety emergency or other event that threatens public property, health safety and welfare as described above). Allowing an employee to be paid for accumulated leave time (e.g., vacation and sick) is:

1) Generally prohibited during the employee's probationary period [Note: Probationary employees are encouraged to bank overtime (i.e., compensatory time) so they may be compensated for absences during their probationary period] and

2) Discouraged especially in instances where an employee's accumulated leave balances are less than should be reasonably expected based on the employee's tenure with the City

American Green Zone Alliance (AGZA) Green Zone Certification Memorandum of Understanding

This Memorandum of Understanding (MOU) made between the City of Mountain Brook, Alabama and The American Green Zone Alliance (AGZA), summarizes the certification program specifics and the roles and responsibilities of the parties for the City of Mountain Brook, Alabama and AGZA Green Zone Certification.

Program Summary:

Reductions in air pollution emissions will be achieved through “verified” implementation of commercial battery electric grounds maintenance equipment on the designated properties listed on this MOU managed by the City of Mountain Brook, Alabama. City of Mountain Brook, Alabama with AGZA support will verify the replacement of gasoline-powered mowers, trimmers, blowers, edgers, and saws with battery powered options and AGZA Green Zone Certify the following property.

- Overton Park, 3020 Overtone Road, Mountain Brook Alabama

This project will greatly reduce ground ozone emissions, noise, solid and toxic waste associated with the use and maintenance of internal combustion grounds maintenance equipment. Additionally, any nearby schools will help students, teachers, staff, facilities workers, and park visitors enjoy healthier, quieter indoor and outdoor environments.

Project Responsibilities:

City of Mountain Brook, Alabama:

- Provide AGZA addresses location of designated Green Zone properties.
- Identify MB Green Zone liaison
- Adhere to the minimal requirements for AGZA Green Zone Certification status. *The minimal certification requirements will be the complete elimination of two-stroke internal combustion equipment for “routine” maintenance in the Green Zone areas. Gas allowances include heavy chainsaw workloads, and seasonal workloads when necessary.*
- Inform AGZA in writing within 30 days should Mountain Brook decide to dissolve Green Zone Certification

American Green Zone Alliance:

- Take gas fleet inventory. (with Quiet Communities)
- Generate environmental impact report. (with quiet communities)
- Verify with City of Mountain Brook, Alabama charging and storage facilities.
- Verify with City of Mountain Brook, Alabama battery-electric operation of crew.
- AGZA Green Zone Certification of properties.
- Listing on AGZA’s Green Zone Directory.

Executed by:

American Green Zone Alliance, Corp

Dan Mabe
President

Date

City of Mountain Brook

Name
Title

Date

ADVANCED MOWER INC
 2212 MORGAN ROAD
 BESSEMER, AL 35022
 Phone: 205-428-1546
 Fax: 205-428-9278
 Website: www.advancedmower.com
 Email: ar@advancedmower.com



Quotation

Quote # : 150182

Generated on 2/18/2020 4:32:24 PM

Bill To:

MOUNTAIN BROOK PARK AND REC
 3690 BETHUNE DRIVE
 MOUNTAIN BROOK, AL 35223

Ship To:

MOUNTAIN BROOK PARK AND REC
 3690 BETHUNE DRIVE
 MOUNTAIN BROOK, AL 35223
 Phone: PAYABLES@MTNBROOK.ORG

Part	Description	Qty	Price	Disc	Subtotal	Tax	Total
ECA 999442-00907	SPEED FEED 400 HEAD	5.00	32.19	0.00	160.95	0.00	160.95
STI KMA130R	TRIMMER	1.00	349.95	73.49	276.46	0.00	276.46
STI 4180 740 5005	FCS-KM STRAIGHT SHAFT EDGER AT	1.00	179.95	0.00	179.95	0.00	179.95
STI 4180 200 0471	FS/KM LINE ATTACHMENT (2 PER BO	1.00	94.95	0.00	94.95	0.00	94.95
STI 4182 200 0158	HT-KM POLE PRUNER attachment	1.00	224.95	0.00	224.95	0.00	224.95
STI 4243 740 5001	HL-KM 0 STRAIGHT HEDGE	1.00	189.95	0.00	189.95	0.00	189.95
STI 4601 740 4901	KB BRISTLE BRUSH	1.00	279.95	0.00	279.95	0.00	279.95
STI BGA 100	BATT ,POWERED BLOWER	2.00	369.95	77.69	584.52	0.00	584.52
STI AP300S	LITHIUM ION 36V BATTERY	10.00	229.95	48.29	1816.60	0.00	1816.60
STI AR3000	LITHIUM ION 36V BACKPACK BATTE	2.00	999.95	209.99	1579.92	0.00	1579.92
STA AL300	AL 300 RAPID CHARGER	12.00	89.95	0.00	1079.40	0.00	1079.40
STA AL500	HIGH SPEED AC 120V, 6	6.00	139.95	0.00	839.70	0.00	839.70
STI 4850 440 5103	AP BELT BAG W/ POWER	1.00	99.95	0.00	99.95	0.00	99.95
STI 4850 490 0402	AP BATTERY BACKPACK	4.00	59.95	0.00	239.80	0.00	239.80
STI FSA 90 R	BATT PWR TRIMMER.ECOSPEED	4.00	329.95	69.29	1042.64	0.00	1042.64

Subtotal:	\$8,689.69
Tax:	\$0.00
Misc Charges:	\$0.00
Misc Tax:	\$0.00
Handling:	\$0.00
Total:	\$8,689.69

QUOTE - Thank you for giving us the opportunity to provide you with a quote on the equipment that you are interested in purchasing. The equipment will be assembled & serviced. The owners manual will be supplied when you pick up your equipment. The warranty registration will be filed at no additional cost. Instruction on proper maintenance & operation will also be provided at no additional cost. Quote will be honored for 30 days. Advanced Mower has been providing quality sales & service since 1981

Sam Gaston

From: April Kirby <aprilk@theimpeccablepig.com> on behalf of April Kirby
Sent: Thursday, February 13, 2020 4:24 PM
To: gastons@mtnbrook.org
Cc: Janet Forbes
Subject: The Impeccable Pig Outdoor Lighting Safety Concern

Mr. Gaston,

My name is April Kirby and I am the Store Manager of The Impeccable Pig Boutique in Mountain Brook, and I would like to take a moment to speak to you about some safety concerns I have around our parking area.

I spoke to our property manager, Mr. Ricky Bromberg, about the possibility of putting in a light in our parking area in order to make the nighttime walk to and from our cars safer. He didn't think this was a big enough concern to the other tenants in our building, and didn't think it wouldn't be possible.

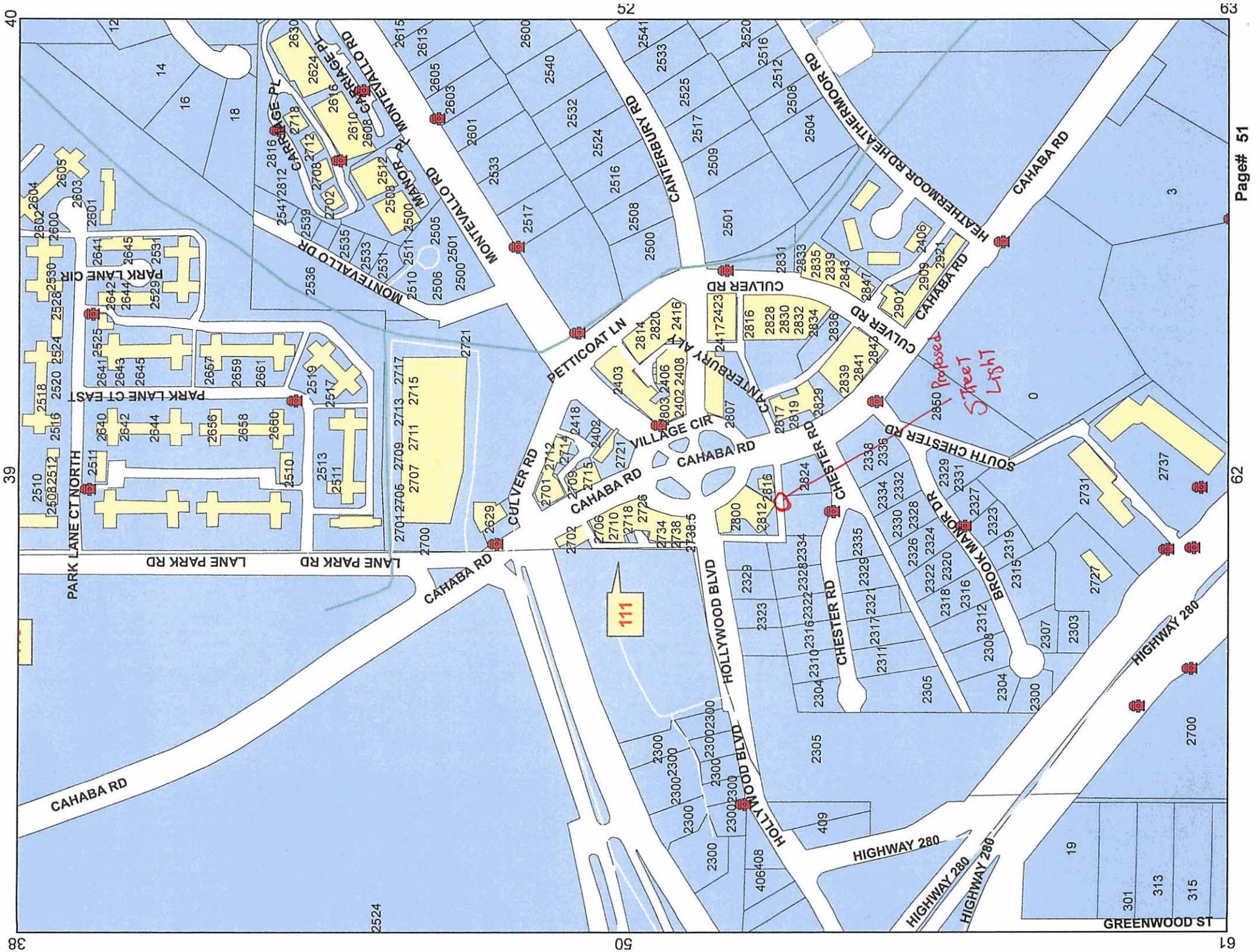
I, however, am very concerned about how dark it is to walk around our building and through the parking lot, since there are no utility lights and I employ an all female staff. We have recently had an escalated amount of incidents in our store where we have received obscene phone calls from a man at a blocked number and a couple of incidents with a client that we have had to ban from the store for bringing in a firearm.

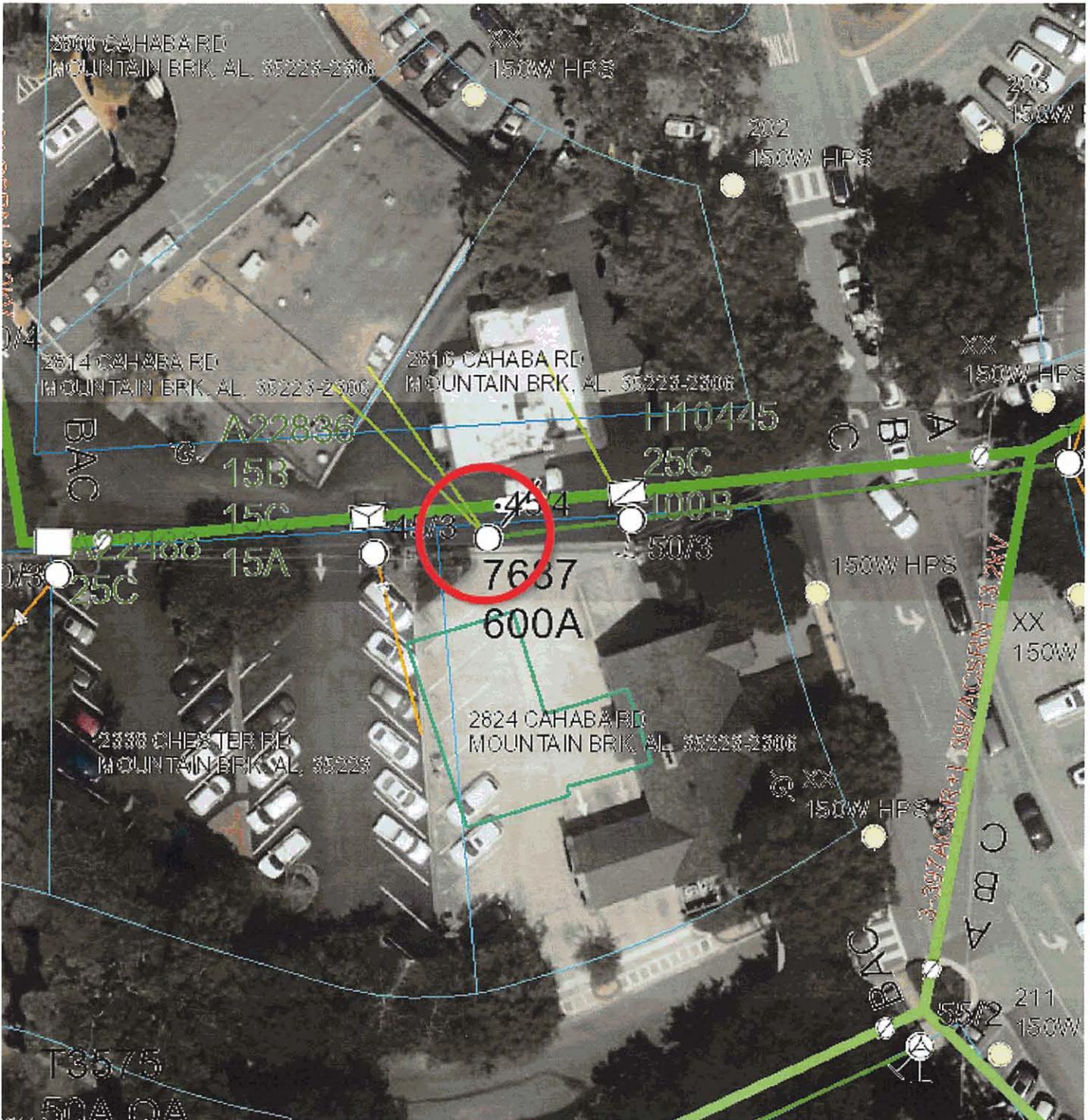
We do not feel safe walking to our cars at night due to the absence of lights in our parking area. I am requesting that the City of Mountain Brook put a light on utility pole #1-399821 so that not only my employees, but the employees of the businesses around us (Vogue Cleaners, Ousler Sandwiches and Ibera Bank), can feel safe walking to our parking areas. They have also expressed their concern for employee and client safety since there is little to no light in the parking areas.

I thank you for taking the time out of your day to read my concerns and I hope that this is a project we can all work on together to see accomplished.

Have a blessed day!

Thanks,
April Kirby SM
The Impeccable Pig Birmingham
205-874-7008





Lighting Services NESC® Lease Agreement (Governmental)



Customer Legal Name City of Mountain Brook DBA Light in alley near Vogue Cleaners
 Service Address CAHABA RD, BIRMINGHAM AL 35213 County Jefferson
 Mailing Address P.O. Box 130009, Birmingham, AL 35213
 Email Gastons@mtnbrook.org Tel # 205-802-3803 Alt Tel _____
 Tax ID _____ Business Description Municipal

Existing Customer? Yes No If Yes (and if possible), does Customer want Equipment added to an existing account? Yes No Existing Account 36128-68008
For informational purposes only

Equipment

	Qty	Wattage	Type	Description	OH/UG	M/UM	Equipment Amount (\$)	Estimated Regulated Charge (\$)*	Estimated Monthly Charge (\$)*
(1)	1	87	LED	LED Cobra - 4000k - gray - 8500 to 14000 Lumens	OH	UM	\$12.02	\$1.94	\$13.96
(2)									
(3)									
(4)									
(5)									
(6)									
(7)									
(8)									
(9)									
(10)									
Monthly Total *									\$13.96

Project Notes: To install light on existing secondary pole beside Vogue Cleaners

Initial Term 36 months **Prepaid Amount** \$ 0.00

* The Regulated Charge is subject to change at any time as dictated by the Alabama Public Service Commission. The amount shown is an estimate based on the Unmetered Outdoor Lighting (ODL) rate in effect at time of Agreement proposal; actual charges may vary.

Customer agrees to lease the Equipment referenced above from Alabama Power Company on the attached terms and conditions and authorizes all actions noted above.

Customer Authorized Signature	Date	Alabama Power Company	Date
Sign Here _____	_____	Sign Here _____	_____
Print Name _____	_____	Print Name _____	_____
Print Title _____	_____	Print Title _____	_____

APC Internal Use Only - APC Reference Number (if applicable): _____

TERMS and CONDITIONS (NESC Governmental)

1. **Lighting Equipment Lease.** This Lease Agreement ("Agreement") states the agreed terms and conditions upon which Alabama Power Company ("APC") will: (i) lease to "Customer" (identified on Page 1) the "Equipment" referenced on Page 1 for use at the stated "Service Address" (the "Premises"); and (ii) provide electric service to operate the Equipment. The "Equipment" includes all poles, bases, wiring, conduit, fixtures, controls, and related items necessary to provide lighting service through the listed fixtures, unless expressly noted otherwise in "Project Notes." Customer acknowledges that regulatory change during the Agreement term may require APC to modify or replace some Equipment.
2. **Intent and Title.** This Agreement is not a sale of the Equipment to Customer. Customer expressly acknowledges that APC retains title to the Equipment and agrees that this Agreement only gives Customer the right to use the Equipment during the Agreement term, so long as Customer complies with all terms and conditions. Customer acknowledges that the Equipment, although attached to real property, always will remain the exclusive personal property of APC and that APC may remove the Equipment when this Agreement ends. Customer authorizes APC, without further consent or action, to file any UCC financing statement or security agreement relating to the Equipment and agrees that APC may record those documents. APC makes no representation or warranty regarding treatment of this transaction by the Internal Revenue Service or the status of this Agreement under any federal or state tax law; Customer enters into this Agreement in sole reliance upon Customer's own advisors.
3. **Term.** The initial Agreement term is stated on Page 1, calculated from the date of the first monthly bill. After the initial term, this Agreement automatically renews on a month-to-month basis until terminated by either party by providing written notice of intent to terminate to the other party at least 30 days before the desired termination date. APC's address for notice is P.O. Box 2641, Birmingham, Alabama 35203; Customer's mailing address is noted on Page 1.
4. **Payment.** APC will invoice Customer per the terms stated on Page 1, subject to any change in the electric service charge dictated by the Alabama Public Service Commission. Customer agrees to pay the amount billed by the due date (20 days after billing date). Applicable taxes included in the Equipment price are subject to change at any time. If a balance is outstanding past the due date, Customer agrees to pay the greater of 1.5% of the unpaid balance or \$2.00 and acknowledges that APC may require Customer to pay a deposit of up to two times the Estimated Monthly Charge in order to continue service. If applicable, Customer must provide a copy of its Alabama sales tax exemption certificate.
5. **Premises Activity.** Customer grants a license and right of access to APC, and its contractors and representatives, to enter the Premises with vehicles and equipment to: (i) install and connect the Equipment and, if applicable, remove or disconnect existing equipment (collectively, the "Installation"); (ii) inspect, maintain, test, replace, repair, or remove the Equipment; (iii) provide electric service for the Equipment; or (iv) conduct any other Agreement-related activity (items-(iv) collectively, the "APC Activity"). Customer will not cause or permit any obstruction that may interfere with APC's access to the Equipment. Customer represents that the individual signing this Agreement on its behalf has authority to do so and that it has express authority from all Premises owners (and any other party with rights in the Premises) to enter into this Agreement and to authorize the APC Activity. Customer is solely responsible for safety of the Premises and agrees that APC has no obligation to ensure the safety of the Premises or persons or property entering onto Customer's Premises.
6. **Installation.** Customer represents that: (i) the Premises' final grade will vary no more than 6 inches from the grade existing at the time of Installation; and (ii) if applicable and required for proper Installation, Premises property lines will be clearly marked before Installation.
 - A. **Customer Work.** If APC, upon Customer's request, allows Customer to perform any part of the Installation (including trenching) itself or through a third party, Customer warrants that the work will meet APC's installation specifications (which APC will provide to Customer and are incorporated by this reference). Customer is responsible for all reasonable additional costs arising from Customer's non-compliance with APC's specifications or lack of timely (i.e., 10 days') notice to APC that APC's Installation activity can commence.
 - B. **Underground Facility/Obstruction Not Subject to Dig Law.** Because APC Activity may require excavation not subject to the Alabama's Underground Prevention Legislation (Ala. Code §§ 37-15-1 - 37-15-11) ("Dig Law"), Customer must mark any private utility or facility (e.g., gas/ water/sewer line; irrigation facility; low voltage data/communication line) or other underground obstruction at the Premises that is not subject to the Dig Law. If APC causes or incurs damage due to Customer's failure to mark a private facility or obstruction before APC commences Installation, Customer is responsible for all damages and any resulting delay.
 - C. **Unforeseen Condition.** The estimated charges shown on Page 1 include no allowance for any subsurface rock, wetland, underground stream, buried waste, unsuitable soil, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, etc. not properly marked or identified ("Unforeseen Condition"). If APC encounters an Unforeseen Condition, APC, in its sole discretion, may stop all APC Activity until Customer either remedies the condition or agrees to reimburse all APC costs arising from the condition. Customer is responsible for all costs of Equipment modification or change requested by Customer or dictated by an Unforeseen Condition or circumstance outside APC's control.
7. **Equipment Protection and Damage.** After Installation and throughout this Agreement's term, in the event of any work or digging near the Equipment, Customer (or any person or entity working on Customer's behalf) must: (i) provide notices and locate requests by calling Alabama 811 or 1-800-292-8525; and (ii) provide notices to other utilities or operators as required by the Dig Law. As between Customer and APC, Customer is responsible for all damages arising from failure to comply with applicable law or for Equipment damage caused by anyone other than APC (or an APC contractor or representative).
8. **Maintenance.** During this Agreement's term, APC will maintain the Equipment and will bear the cost of routine repair or replacement. Customer must notify APC of any need for Equipment repair by calling the Business Service Center at 1-888-430-5787.
9. **Disclaimer; Damages.** APC makes no covenant, warranty, or representation of any kind (including warranty of fitness for a particular purpose or of merchantability) regarding the Equipment or any APC Activity. Customer also acknowledges that, due to the unique characteristics of the Premises, Customer's needs, or Equipment choice, the Equipment may not follow IESNA guidelines. Customer waives any right to consequential, special, indirect, treble, exemplary, incidental, punitive, loss of business reputation, or loss of use (including loss of revenue, profits, or capital costs) damages in connection with the Equipment or this Agreement, or arising from damage, hindrance, or delay involving the Equipment or this Agreement, whether or not reasonable, foreseeable, contemplated, or avoidable.
10. **Indemnity.** To the fullest extent allowed by law, Customer agrees to indemnify, release, hold harmless, and, at APC's request, defend APC and its affiliates and contractors (and their officers, directors, employees, representatives, and agents) from or against any loss, damage, cost, expense, or liability (including actual attorneys' fees reasonably incurred and all expenses of investigation and defense) for any damage or claim for personal or bodily injury (including death), property damage (including loss of use), monetary damage, or equitable relief caused by or arising out of any misrepresentation or act or omission of Customer involving this Agreement, the Equipment, or the Premises, whether or not caused by or arising out of the joint, concurrent, or contributory (but not sole) negligence of APC.
11. **Default.** Customer is in default if Customer does not pay the entire amount owed within 45 days of billing. APC's waiver of any past default will not waive any other default. If default occurs, APC, at its discretion, may immediately terminate this Agreement, collect all past due amounts (including late fees) and all amounts due for the Equipment during the remaining Agreement term, remove the Equipment from the Premises, and seek any other available remedy.
12. **Miscellaneous.** This Agreement contains the parties' entire agreement relating to the Equipment and replaces any prior agreement, written or oral. Only a written amendment signed by each party can modify this Agreement, except that either party may update administrative or contact information (e.g., address, phone, website) at any time by written notice to the other party. Customer will not assign, in whole or in part, this Agreement or its Agreement rights or obligations without APC's prior written consent. No assignment, whether with or without consent, relieves Customer of its Agreement obligations. Customer must provide advance notice of a change in control of all, or substantially all, of Customer's ownership or interest in the Premises. In this Agreement, "including" means "including, but not limited to." Alabama law governs this Agreement. If a court rules an Agreement provision unenforceable to any extent, the rest of that provision and all other provisions remain effective.