

**MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

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

JANUARY 9, 2023, 7 P.M.

As a matter of convenience, members of the public are invited to listen, observe and participate in public meetings by Internet video conference. Presenters and others interested in a particular matter for discussion are encouraged to attend the meeting in-person. The City is not responsible for technical issues that may occur that interfere with the virtual meeting. The City Council, at its sole discretion, may proceed with its in-person business meeting regardless of whether virtual attendees can hear and/or observe the proceedings. The City intends to make the meeting available by way of the Zoom app (re: Meeting ID 801-559-1126, password 01092023).

1. Recognize Janet Forbes for receiving the Co-City Employee of the Year award for 2022
2. Approval of the minutes of the December 12, 2022, regular meeting of the City Council.
3. Resolution accepting the proposal submitted by Stone and Sons Electrical Contractors for the installation of a flashing beacon and sign on Old Leeds Road at Cherokee Road
4. Resolution entering into a negotiated contract with Wright Construction Company with respect to the Old Leeds Road sidewalk Project
5. Resolution authorizing the construction agreement with the State of Alabama (ALDOT) for the Montclair Road sidewalk TAP grant
6. Resolution authorizing a License Agreement with Birmingham Levite Jewish Community Center with respect to the use of the outdoor recreational field and gymnasium
7. Resolution ratifying change order No. 2 with respect to the Caldwell Mill Road Bridge project
8. Resolution authorizing a Transit Service Agreement for FY 2023 with Birmingham-Jefferson County Transit Authority (dba MAX)
9. Resolution executing a contractor agreement with Net Connection LLC with respect to the installation of bay batting cages and frames located at Cherokee Bend Elementary
10. (Applicant requested to postpone) Public Hearing- Request to rezone property from Residence B district to Planned Unit Development (PUD) district- 2305 Montevallo Road, Montevallo Road Partners, LLC
11. Comments from residents and attendees
12. Announcement: The next regular meeting of the City Council is January 23, 2022 at 7:00 p.m.
13. Adjourn

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
DECEMBER 12, 2022**

[As a convenience, members of the public were invited to listen, observe and participate in the public meeting by Internet video conference.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 5:45 p.m. on the 12th day of December, 2022 (others were allowed to listen to the meeting by way of Internet video conference). The Council President Pro Tempore called the pre-meeting to order and the roll was called with the following results:

Present: William S. Pritchard III, Council President Pro Tempore
Graham L. Smith
Gerald A. Garner
Lloyd C. Shelton
Stewart Welch III, Mayor

Absent: Virginia C. Smith, Council President

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

1. AGENDA

1. Drainage Projects status report

William Thomas-Schoel Engineering

- 900 Block of Euclid-plans are complete-working on bid documents
- Richmar “The Cut”-Preliminary plans complete, next steps is to set up meeting with neighborhood
- Northcote-under construction
- Junior High-construction under contract
- Pinecrest Road at Canterbury Methodist Church-design complete, working on bid documents
- Cherry Street-90% complete, working on bid documents
- Canterbury/Surrey Road-working on alternate design
- Fairmont Drive/Lorena Lane-Surveying underway
- Crestline Branch-preliminary scheme and cost estimate presented to city
- Ordinance and Regulations-Proposed new regulations now under consideration

2. Montclair Road sidewalk design funding options

Nathan Currie-Sain Associates

- The grant is cost sharing where 80% is federal funds and 20% is city funds
- Proposal is to for design of sidewalk improvements along Montclair Road
- If approved, could start surveying now

William “Billy” Pritchard-Council President Pro Tempore

- Item added to the formal agenda (Resolution 2022-209)

3. Parks/Recreation Board appointment

Shanda Williams-Parks and Recreation Superintendent

- Dean Nix is up for re-appointment
- The park board recommended to re-appoint Dean Nix

William “Billy” Pritchard-Council President Pro Tempore

- Item added to the formal agenda (Resolution 2022-210)

4. Conditional Use approval for Family Expeditions (129 Oak Street)

Dana Hazen-Director of Building, Planning and Sustainability

- This is for a Travel agency
- 2 onsite parking spaces
- Clients are mostly online
- Proposed hours: M-F 9:30-5:30

William “Billy” Pritchard-Council President Pro Tempore

- Item added to the formal agenda (Resolution 2022-211)

5. Proposed revised/updated tree protection ordinance

Tyler Slaten-Senior Planner

- Tree City USA performed a nationwide audit on all Tree cities
- It was determined that Mountain Brook did not have the proper tree ordinance in place
- Ordinance presented is draft recommended by Tree City USA

Sam Gaston-City Manager

- The Ordinance should be ready to present at the next council session (after some revisions)

6. First Responders Foundation

Vince Schilleci

- During pandemic helped set up the merchant relief fund
- Want to do something similar for first responders
- Request of the City: have City Council appoint the Board of Directors

7. Right-of-Way encroachment/transfer for 142 Spring Street

Steve Boone-Finance Director

- In 2018 the City authorized a ROW encroachment agreement for a parking pad
- The parking pad is now constructed
- This property is being sold and will close on Wednesday
- The 2018 agreement is for individual (and not the land)
- Will need to re-execute another agreement for new owners

William “Billy” Pritchard-Council President Pro Tempore

- Item added to the formal agenda (Resolution 2022-208)

8. Review of the other matters to be considered at the formal (7:00p.m.) meeting

2. EXECUTIVE SESSION AND ADJOURNMENT

Council President Pro Tempore Pritchard made a motion that the City Council convenes in executive session to discuss a potential litigation matter and real estate matter and that the City Council shall reconvene at approximately 7 p.m. upon conclusion of the executive session. The City Attorney certified that the subject matters were allowed to be discussed in executive pursuant to Alabama Law. The motion was seconded by Council Member Garner. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: William S. Pritchard III, Council President Pro Tempore
Gerald A. Garner
Graham L. Smith
Lloyd C. Shelton

Nays: None

There being no further matters for discussion Council President Pro Tempore Pritchard adjourned the pre-meeting at approximately 6:35 pm.

3. CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the regular session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A-106) on December 12, 2022, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

City Clerk, Approved by
City Council January 9, 2022

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK AND
MOUNTAIN BROOK EMERGENCY COMMUNICATION (E911 DISTRICT)**

DECEMBER 12, 2022

[As a convenience, members of the public were invited to listen, observe and participate in the public meeting by Internet video conference.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:03 p.m. on the 12th day of December, 2022 (others were allowed to listen to the meeting by way of Internet video conference). The Council President Pro Tempore called the meeting to order and the roll was called with the following results:

Present: William S. Pritchard III Chairman, Council President Pro Tempore
Graham L. Smith
Gerald A. Garner
Lloyd C. Shelton
Stewart Welch III, Mayor

Absent: Virginia C. Smith, Council President

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

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

1. RECOGNIZE MIKE MOURON FOR HIS SERVICE ON THE PLANNING COMMISSION

Stewart Welch-Mayor

- Presented Mike Mouron with Resolution 2022-197 (Exhibit 1)

2. HUMAN TRAFFICKING FREE ZONE PROCLAMATION

Stewart Welch-Mayor

- Presented James Barnett and Meridith Hutchinson with the Proclamation 2022-198 (Exhibit 2)

3. OATH OF OFFICE FOR MAGISTRATE SUPERVISOR, BREANNA DUNN

K.C. Hairston-Municipal Judge

- Administered oath of office to Magistrate Supervisor, Breanna Dunn

4. CONSENT AGENDA

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

Approval of the minutes of the November 28, 2022, regular meeting of the City Council

2022-197	Thank Michael Mouron for his exemplary service on the Planning Commission	Exhibit 1
2022-198	Human Trafficking Free Zone Proclamation	Exhibit 2, Appendix 1

2022-199	Approve the sidewalk café and accept the indemnification and hold harmless agreement for Ladybird Taco located at 300 Rele Street	Exhibit 3, Appendix 2
2022-200	Authorize the execution of a contract for services with ETC Institute with respect to the design, administration and evaluation of a resident survey	Exhibit 4, Appendix 3
2022-201	Accept the proposal submitted by Brasher Design Studio with respect to the Tot Lot at Crestline Village Construction Documents	Exhibit 5, Appendix 4
2022-202	Accept the proposal submitted by Brasher Design Studio with respect to the Brookwood Forest Field improvements Conceptual Master Plan subject to modifications by the City Manager	Exhibit 6, Appendix 5
2022-203	Designate the City of Mountain Brook as a BEE CITY USA® affiliate	Exhibit 7, Appendix 6
2022-204	Authorize the sale or disposal of certain surplus property	Exhibit 8, Appendix 7
2022-205	Ratify a \$3,00,000 transfer from the City's 2022 General Fund surplus to the infrastructure Capital Projects Fund (417)	Exhibit 9, Appendix 8
2022-206	Revise the FY2022 E911 District Budget	Exhibit 10
2022-207	Recommend to the State of Alabama, Alcoholic Beverage Control Board (ABC), the issuance of a 020-Restaurant Retail Liquor license to Melt Lane Park LLC located at 1011 Jemison Lane	Exhibit 11, Appendix 9
2022-208	Authorize the execution of a right-of-way (ROW) encroachment agreement with William Smith Jr. and Carrie Rothermel with respect to the property located at 142 Spring Street	Exhibit 12, Appendix 10
2022-209	Accept the proposal submitted by Sain Associates with respect to the design of sidewalk improvements along Montclair Road	Exhibit 13, Appendix 11
2022-210	Reappoint Dean Nix to the Parks and Recreation Board to serve without compensation, term to end December 12, 2027	Exhibit 14, Appendix 12
2022-211	Approve the conditional service use application submitted by Antlers & Anglers, LLC, and Family Expeditions, LLC for property at 129 Oak Street	Exhibit 15, Appendix 13
2022-212	Authorize the purchase of four vehicles for use by the Public Works Department.	Exhibit 16, Appendix 14

Thereupon, the foregoing minutes, proclamation and resolutions (Nos. 2022-197 through 2022-212), were introduced by Council President Pro Tempore and a motion for their immediate adoption made by Council Member Shelton. The minutes, proclamation and resolutions were then

considered by the City Council. Council Member Garner seconded the motion to adopt the foregoing minutes, proclamation and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: William S. Pritchard III, Council President Pro Tempore
Graham L. Smith
Gerald A. Garner
Lloyd C. Shelton

Nays: None

Abstained: None

Council President Pro Tempore thereupon declared that said minutes, proclamation and resolutions (Nos. 2022-197 through 2022-212) were adopted by a vote of 4—0 and as evidence thereof she signed the same.

5. CONSIDERATION: ORDINANCE NO. 2137 AMENDING THE CITY OF MOUNTAIN BROOK'S FY2022 BUDGET

Council President Pro Tempore Pritchard introduced the ordinance in writing. It was then moved by Council member Graham Smith that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended and that unanimous consent to the immediate consideration of said ordinance be given and that the reading of the ordinance at length be waived. The motion was seconded by Council Member Garner and was unanimously carried, as follows:

Ayes: William S. ("Billy") Pritchard III
Gerald A. Garner
Graham L. Smith
Lloyd C. Shelton

Nays: None

Council President Pro Tempore declared the motion carried by a vote of 4—0.

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

Ayes: William S. ("Billy") Pritchard III
Gerald A. Garner
Graham L. Smith
Lloyd C. Shelton

Nays: None

Council President Pro Tempore Pritchard declared that the ordinance (No. 2137) is hereby adopted by a vote of 4—0 and, as evidence thereof, she signed the same.

6. ANNOUNCEMENT

Council President Pro Tempore Pritchard announced the next regular meeting of the City Council is January 9, 2022, 7:00p.m.

7. ADJOURNMENT

There being no further business to come before the City Council, President Pro Tempore Pritchard adjourned the meeting at approximately 7:16 p.m.

8. CERTIFICATION

I, Heather Richards, 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 A-108) on December 12, 2022, 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 January 9, 2022

**EXHIBIT 1
RESOLUTION NO. 2022-197**

WHEREAS, Michael Mouron has served with distinction on the Mountain Brook Planning Commission from November 07, 2016, through November 07, 2022, having served as Secretary since July 1, 2019; and

WHEREAS, Michael Mouron brought invaluable insight to decisions regarding all of Mountain Brook with his thoughtful deliberation of all issues, and steadfast dedication to his community; and

WHEREAS, it is the desire of the residents of Mountain Brook to express their gratitude to Michael Mouron for his unselfish service and tireless efforts while serving on the Planning Commission.

NOW, THEREFORE, BE IT RESOLVED that the City Council and Mayor, on behalf of the residents of Mountain Brook, do publicly thank Michael Mouron for his exemplary service and wish him well in future endeavors.

**EXHIBIT 2
PROCLAMATION NO. 2022-198**

RESOLUTION NO. 2023-001

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the Mayor or the City Manager to accept the proposal submitted by Stone & Sons Electrical Contractors for the installation of a flashing beacon and sign on Old Leeds Road at Cherokee Road in consideration of \$36,251.00 (Exhibit A attached hereto).

ADOPTED: This 9th day of January, 2023.

Council President

APPROVED: This 9th day of January, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on January 9, 2023, as same appears in the minutes of record of said meeting.

City Clerk



Electrical Contractors, Inc.

January 4, 2023

City of Mountain Brook
C/O Skipper Consulting

RE: Flashing Beacon & Sign
Old Leeds Rd @ Cherokee

Attn: Richard Caudle

Richard,

Our price for the above referenced work based on your drawings dated 12/20/2022 will be as follows:

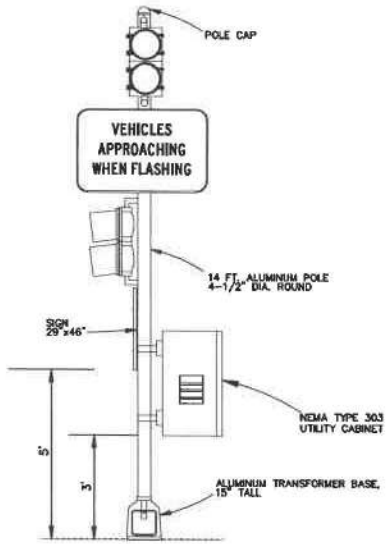
\$36,251.00

Lead time on this equipment is quoted by our vendor at 20-30 weeks after approval of submittal information.

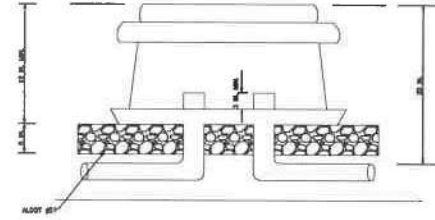
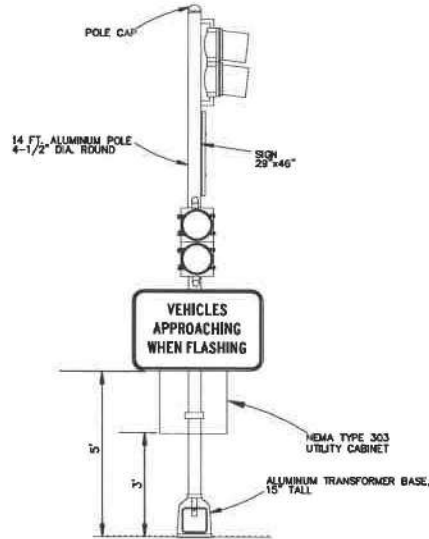
Best Regards,

J. Mark Roupe
Project Manager

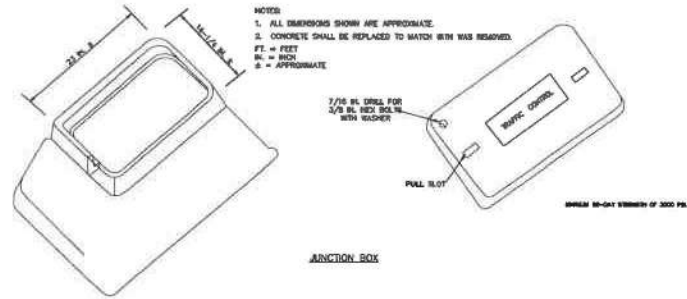
OLD LEEDS ROAD VIEW



CHEROKEE ROAD VIEW



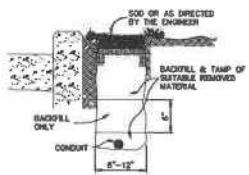
JUNCTION BOX IN SOIL



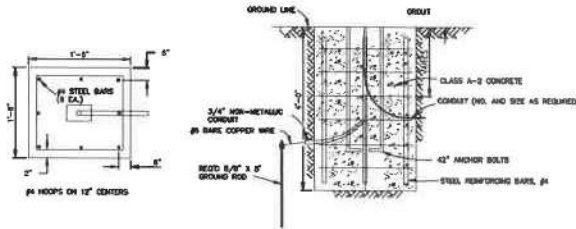
JUNCTION BOX

POLE, POLE CAP, TRANSFORMER BASE, AND CABINET SHALL BE PAINTED "MOUNTAIN BROOK" GREEN. PAINT CODES APPROVED FOR USE INCLUDE RAL 6012, FEDERAL STANDARD 25042, OR HEX COLOR CODE 343e40.

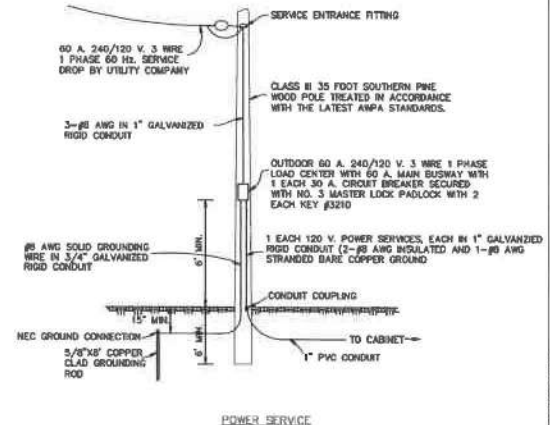
FLASHING BEACON/SIGN ASSEMBLY



TYPICAL CONDUIT UNDER GRADE AREA



POLE FOOTING FOR PRESTAL POLE



POWER SERVICE

DATE	DWG. DATE
12/29/22	
SCALE	BY
AS SHOWN	BLD
CHECKED	RLC
IN CHARGE	RLC
PROJECT	POLE
<p>SKIPPER Consulting, Inc. Transportation Engineering and Planning Consultants 3600 Spring Hollow Rd. #100 Birmingham, AL 35245 Telephone: (205) 854-3053 Fax: (205) 854-3023</p>	
<p>OLD LEEDS ROAD AT CHEROKEE ROAD MOUNTAIN BROOK, ALABAMA</p>	
<p>FLASHING BEACON/SIGN ASSEMBLY INSTALLATION</p>	
<p>2</p>	

RESOLUTION NO. 2023-002

WHEREAS, on July 21st at 10:00 am the bid opening commenced for the Old Leeds Sidewalk Project (B-20220617-802) to which no bids were received.

WHEREAS, Mountain Brook negotiated the work for the above project with Wright Construction Company as prescribed by the Alabama bid law.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby approves the City to enter into a negotiated contract with Wright Construction Company with respect to the Old Leeds Road sidewalk project.

ADOPTED: This 9th day of January, 2023.

Council President

APPROVED: This 9th day of January, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on January 9, 2023, as same appears in the minutes of record of said meeting.

City Clerk



CITY OF MOUNTAIN BROOK

PUBLIC WORKS DEPARTMENT

3579 East Street
Mountain Brook, Alabama 35243
Telephone: 205.802.2390
Fax: 205.967.2631
www.mtnbrook.org

January 5, 2023

Mr. Landon Ditto
Wright Construction Company
3165 Dublin Lane
Bessemer, AL 35022

Re: Old Leeds Road Sidewalk Project – City of Mountain Brook, Alabama
Work Specified in Bid # B202220617-802

Dear Landon,

Thank you for negotiating a mutually acceptable contract (the “Contract”) whereby your firm, Wright Construction Company (“WCC”), will construct the above-referenced Project for the City of Mountain Brook (“City”). The Contract will be presented to the Mountain Brook’s City Council for its consideration next week.

As you know, last year the City advertised for interested contractors to submit bids to construct the Project in Bid # B202220617-802 (the “Bid”). Those Bid materials are incorporated herein by reference. The specifications, plans, drawings, responsibilities, and other terms and conditions with which the successful contractor would comply were set forth in those materials.

For next week’s City Council meeting, please confirm the understandings below regarding the Contract and Project by signing on behalf of your firm and returning a fully executed version of this correspondence to me as soon as possible:

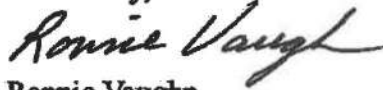
- (a) WCC has reviewed the Bid materials and, except as provided herein, agrees to perform the Project and obligations of the Contractor as specified in the Bid materials:
 - (i) the liquidated damages amount for delays caused by the Contractor to complete the Project will be \$100 per Calendar Day; and
 - (ii) notwithstanding any provision on Exhibit D or elsewhere in the Bid materials, the City will issue the Notice to Proceed on or about January 20, 2023, and the Contractor agrees to substantially complete the work within 100 calendar days thereafter (i.e., by May 1, 2023);
- (b) the lump sum Contract Price to be paid for successful completion of the Project is \$338,987;

(c) the Defined Terms used in this agreement shall have the same meaning as in the Bid; and

(d) except as modified or changed herein, all provisions in the Bid Materials and Contract regarding the Project are effective and binding on the parties.

Do not hesitate to call me if you have any questions about these matters.

Yours truly,

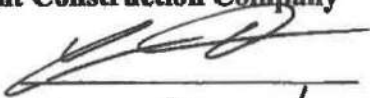


Ronnie Vaughn

CONCURRED:

Wright Construction Company

By:



Its:

Landon Ditto / P.M.

Date: January 6, 2023

September 8, 2022

City Of Mountain Brook

Attn: Sam Gaston | Ronnie Vaughn | Steven Gay



Re: City of Mountain Brook | Old Leeds Rd. Project

Wright Construction Company proposes to furnish all labor, materials, and equipment necessary to complete the scope of work described below at the above referenced project:

Scope of Work to include:

*install approx. 800LF sidewalk constructed along the east shoulder of Old Leeds Rd. between Old Leeds Ln. and Shady Ln. to include concrete curb/gutter, sidewalk, drainage pipe/structures (*five pour-in-place specialty type E1 storm boxes/inlets/tops*), curb ramps, retaining wall, clearing/grubbing/haul-off, asphalt patching, sodding, erosion control, traffic control, mobilization and demobilization.

TOTAL PROJECT COST: \$338,987



Exclusions: Permits, Engineering, Testing, Private Locate, Utility Relocation and/or repair, Unsuitable Soils,

thanks for the opportunity to bid on this project and as usual we look forward to working with the Mountain Brook team.

Landon Ditto

Lead Estimator/Project Manager



Janet Forbes <forbesj@mtnbrook.org>

Bid: Old Leeds Rd Sidewalk Project (B-20220617-802)

2 messages

Janet Forbes <forbesj@mtnbrook.org>

Fri, Jul 22, 2022 at 10:42 AM

To: Ronald Vaughn <vaughnr@mtnbrook.org>, James Gay <gayj@mtnbrook.org>

Ronnie-

Can you send me an email stating no contractors submitted a bid for this project? I need it for my bid file.

Janet Forbes, SHRM-CP

Assistant to the City Manager

City of Mountain Brook

P.O. Box 130009

Mountain Brook, AL 35213

(p) 205.802.3800 (f) 205.870.3577

forbesj@mtnbrook.org

Ronald Vaughn <vaughnr@mtnbrook.org>

Fri, Jul 22, 2022 at 1:24 PM

To: Janet Forbes <forbesj@mtnbrook.org>

Cc: James Gay <gayj@mtnbrook.org>

Janet,

We were scheduled for a sealed bid opening yesterday July 21 at 10:00 AM for the Old Leeds Sidewalk Project (B-20220617-802).

Unfortunately we received no bids for this project.

Thanks

Ronnie Vaughn
Public Works Director
[City of Mountain Brook AL](http://www.cityofmountainbrook.org)
3579 East Street
Birmingham, AL 35243
205.802.3865 Office
205.967.2631 Fax
vaughnr@mtnbrook.org

On Jul 22, 2022, at 10:44 AM, Janet Forbes <forbesj@mtnbrook.org> wrote:

[Quoted text hidden]

RESOLUTION NO. 2023-003

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a construction agreement between the City and the State of Alabama (acting by and through the Alabama Department of Transportation) with respect to the Transportation Alternatives Program (TAP) sidewalk project (TAPAA-TA23(919); CPMS Ref #100075860) along Country Club Road starting just south of Montclair Road to Montclair Road along Montclair Road from Country Club Road to Mountain Brook Park Drive.

ADOPTED: This 9th day of January, 2023.

Council President

APPROVED: This 9th day of January, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on January 9, 2023, as same appears in the minutes of record of said meeting.

City Clerk

**CONSTRUCTION
AGREEMENT
FOR A
TRANSPORTATION ALTERNATIVES PROGRAM
PROJECT**

**BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF MOUNTAIN BROOK
Jefferson County**

**Project No. TAPAA-TA23(919)
CPMS Ref# 100075860**

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as the CITY.

WHEREAS, the STATE and the CITY desire to cooperate in the sidewalk connection along Country Club Rd. starting just south of Montclair Rd. to Montclair Rd. and along Montclair Rd. from Country Club Rd. to Mountain Brook Park Dr.;
Project# TAPAA-TA23(919); CPMS Ref# 100075860.

NOW, THEREFORE, it is mutually agreed between the STATE and the CITY as follows:

PART TWO (2): FUNDING PROVISIONS

- A. **Project Funding:** Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. It is expressly understood that federal funds for this project will be provided from Transportation Alternatives Program (TAP) funds as authorized by the U.S. Congress and the STATE will not be liable for any funding. Cost for the project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds, based on the contract as let price plus CE&I or the estimated costs below, whichever is lower. Any deficiency in Federal Aid or overrun in costs will be borne by the CITY from CITY funds unless approved in writing by the STATE. In the event of an underrun in project costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible costs, whichever is less.
- B. The estimated cost and participation by the various parties is as follows:

CONSTRUCTION

FUNDING SOURCE	ESTIMATED COSTS
Federal TAP Funds	\$ 800,000.00
City Funds	\$ 200,000.00

TOTAL (Incl CE&I)	\$ 1,000,000.00

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the CITY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the CITY relating to this project which is determined to be ineligible for reimbursement by the FHWA or in excess of the limiting amounts previously stated will not be an eligible cost to the project and will be borne and paid by the CITY.

- C. **Time Limit:** This project will commence upon written authorization to proceed from the STATE directed to the CITY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Board and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

- A. The CITY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost to the Project. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the CITY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the CITY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the CITY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property acquired shall be in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.

The CITY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the CITY from the sale or lease of property.

- B. The CITY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will be an eligible cost to the project, as approved by the application.
- C. The CITY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with CITY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not be an eligible cost to the Project.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the CITY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All cost for which the CITY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the CITY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The CITY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the CITY and approved by the STATE. The plans, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the CITY that failure of the CITY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal funding and the refund of any federal funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for *Procedures for Processing State and Industrial Access Funded County and City Projects*, and attached hereto as a part of this Agreement prior to the CITY letting the contract.

- D. The CITY will furnish all construction engineering for the project with CITY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost to the Project.
- E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The CITY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

- A. The CITY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the CITY to proceed.
- B. Associated Construction costs will be an eligible cost to the Project.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids, and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the CITY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The CITY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the CITY, the CITY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The CITY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement. The CITY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the CITY will provide all bids to the STATE with a recommendation for award. The CITY shall not award the contract until it has received written approval from the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

- C. If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The CITY will be the permittee of record with ADEM for the permit. The CITY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The CITY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The CITY will secure all permits and licenses of every nature and description applicable to the project in any manner and will conform to and comply with the requirements of any such permit or license, and with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

- D. The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation and the project will be built in accordance with the approved plans.
- E. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the CITY its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants, representatives or employees, or anyone for whose acts the CITY may be liable.
- F. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities.

- G. Upon completion and acceptance of this project by the State, the CITY will assume full ownership and responsibility for the project work and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

PART FIVE (5): ACCOUNTING PROVISIONS

- A. The CITY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The CITY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- B. The CITY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.

- C. The CITY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

The CITY will report to the STATE the progress of the project in such manner as the STATE may require. The CITY will also provide the STATE any information requested by the STATE regarding the project. The CITY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

The CITY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project; any and all data and records which in any way relate to the project or to the accomplishment of the project. The CITY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the CITY will give its full cooperation to those persons or their authorized representatives, as applicable.

The CITY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.

- D. The CITY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.
- E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.

- F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the CITY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

- A. By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- B. It is agreed that the terms and commitments contained in this agreement shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in this agreement shall be deemed null and void.
- C. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- D. No member, officer, or employee of the CITY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.
- F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
- G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.
- H. **Exhibits A, E, H, M, and N** are hereby attached to and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

City of Mountain Brook, Alabama

By: _____
City Clerk (Signature)

By: _____
As Mayor (Signature)

Type Name of Clerk
(AFFIX SEAL)

Type Name of Mayor

This agreement has been legally reviewed and approved as to form and content.

By: _____
William F. Patty,
Chief Counsel

RECOMMENDED FOR APPROVAL:

DeJarvis Leonard, P.E.
East Central Region Engineer

Bradley B. Lindsey, P.E.
State Local Transportation Engineer

Edward N. Austin, P. E.
Chief Engineer

STATE OF ALABAMA, ACTING BY AND THROUGH
THE ALABAMA DEPARTMENT OF TRANSPORTATION

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND
SIGNED BY THE GOVERNOR ON THIS _____ DAY OF _____, 20 _____.

KAY IVEY
GOVERNOR, STATE OF ALABAMA

RESOLUTION NUMBER _____

BE IT RESOLVED, by the City of Mountain Brook as follows:

That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation relating to a project for:

Sidewalk connection along Country Club Rd. starting just south of Montclair Rd. to Montclair Rd. and along Montclair Rd. from Country Club Rd. to Mountain Brook Park Dr.; Project# TAPAA-TA23(919); CPMS Ref# 100075860.

Which agreement is before this Council, and that the agreement be executed in the name of the City, by the Mayor for and on its behalf and that it be attested by the City Clerk and the official seal of the City be affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City.

I, the undersigned qualified and acting Clerk of the City of Mountain Brook, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City named therein, at a regular meeting of such Council held on the _____ day of _____, 20____, and that such resolution is on file in the City Clerk's Office.

ATTESTED:

City Clerk

Mayor

_____ day of _____, 20____, and that such resolution is of record in the Minute Book of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 20____.

City Clerk

(AFFIX SEAL)

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

EXHIBIT E

TERMINATION OR ABANDONMENT

- a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.

- b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CITY upon an equitable basis. The value of the work performed by the CITY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:
 1. The ratio of the amount of work performed by the CITY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.

 2. The amount of the expense to which the CITY is put in performing the work to be terminated in proportion to the amount of expense to which the CITY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CITY prior to the termination, no consideration will be given to profit, which the CITY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CITY, the value of the work performed by the CITY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

- a. This contract shall be binding upon the successors and assigns of the respective parties hereto.

- b. Should the AGREEMENT be terminated due to default by CITY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

EXHIBIT H

Page 1

EQUAL RIGHTS PROVISIONS

During the performance of this contract, the CITY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;

EXHIBIT H

Page 2

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CITY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. **Solicitations**

In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the CITY of the CITY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. **Information and Reports**

The CITY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

EXHIBIT H

Page 3

records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance

In the event of the CITY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the CITY under contract until the CITY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions

The CITY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The CITY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CITY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the CITY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the CITY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

EXHIBIT H

Page 4

The CITY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.
3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CITY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The CITY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The CITY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

- a. The CITY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

EXHIBIT H
Page 5

- b. The CITY, in accordance with the status of CITY as an independent contractor, covenants and agrees that the conduct of CITY will be consistent with such status, that CITY will neither hold CITY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CITY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of CITY.

CITYS' CERTIFICATIONS

The CITY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CITY. The CITY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CITY at the time of execution of the AGREEMENT. The CITY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CITY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CITY agrees that a meal allowance shall be limited to CITY employees while in travel status only and only when used in lieu of a per diem rate.

The CITY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CITY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CITY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CITY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CITY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION**

**SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL
ACCESS FUNDED COUNTY AND CITY PROJECTS**

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an inplace annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL:


BUREAU CHIEF/REGION ENGINEER

APPROVAL:


CHIEF ENGINEER

APPROVAL:


TRANSPORTATION DIRECTOR

November 1, 2017

DATE

1-20

Rev. 10/2017

RESOLUTION NO. 2023-004

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a License Agreement between the City and Birmingham Levite Jewish Community Center, in the form as attached hereto as Exhibit A, with respect to the City's use of the outdoor recreational field and the Gymnasium and appurtenant areas located at the Center.

ADOPTED: This 9th day of January, 2023.

Council President

APPROVED: This 9th day of January, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on January 9, 2023, as same appears in the minutes of record of said meeting.

City Clerk

AGREEMENT

THIS AGREEMENT (this "Agreement") is effective as of January 1, 2023, by and between the **Birmingham Levite Jewish Community Center**, whose address is 3960 Montclair Road, Birmingham, Alabama 35213 ("Owner"), and the **City of Mountain Brook, Alabama** whose principal place of business is located at 56 Church Street, P.O. Box 130009, Mountain Brook, Alabama 35213 ("Licensee").

WITNESSETH•

WHEREAS, Owner is the owner of a community center located at 3960 Montclair Road, Birmingham, Alabama 35213 (the "Center"); and

WHEREAS, Owner has agreed to allow Licensee to use the outdoor recreational field, more particularly depicted on Exhibit "A" attached hereto, and the Owner's Gymnasium and appurtenant areas (the "Licensed Space"), located at the Center for specific time periods for the sole and limited purpose of use by the Licensee in conjunction with its youth athletic programs (referred to herein as the "Approved Purposes") pursuant to the License Agreement and Amendment thereto attached as Exhibits "B" and "C"; and

WHEREAS, the Owner and Licensee have agreed to extend the term of the use of the Licensed Space and to restate and confirm the terms and conditions of Licensee's use in this Restated Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and undertakings of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Limited License; Use of Licensed Space.** Owner does hereby grant a limited, non-exclusive, and non-transferable license unto Licensee for the Approved Purposes to use the Licensed Space during the term hereof from January 1, 2023 — June 30, 2023 as follows:

- (a) Outdoor Recreational Field –
 - a. Tuesdays & Thursdays from 4:00-9:00 PM;
 - b. Friday's 4:00 — 6:00 PM; and
 - c. Saturday 9:00 AM - 1:00 PM.
- (b) Gymnasium –
 - a. Tuesdays & Thursdays from 4:45-8:45 PM; and
 - b. Saturday 8:15 AM - 5:45 PM.

Other times may be available if mutually agreed upon by both parties. For clarification purposes, and not in limitation of the foregoing, Licensee acknowledges and agrees, except as otherwise approved by Owner, in its complete and sole discretion, Licensee (a) shall have the right to use the Licensed Space only during the time periods set forth above, (b) shall not have the right to use the Licensed Space for any purposes other than the Approved Purposes, and (c) shall not have the right to use any other facilities at the Center unless approved by the Owner in writing.

2. **Term.** This Agreement shall commence on the effective date listed above and shall be for an initial term of six (6) months from the effective date (the "Initial Term"). Upon expiration of the Initial Term, the Agreement shall be renewed for additional successive one-year terms (each a "Renewal Term") unless Licensee or Owner provide written notice of intention to cancel the Agreement at least 30 days prior to the end of the Initial Term of the then effective Renewal Term.

3. **Usage Fees.** As consideration for the use of the Licensed Space during the Initial Term, Licensee agrees to pay to Owner Five Thousand Dollars (\$5000.00) payable no later than thirty (30) days after the execution of this Agreement. Consideration for each Renewal Term shall be Fifteen Thousand

Dollars (\$15,000.00) payable no later than thirty (30) days after the beginning of each such Renewal Term. As additional consideration for the use of the Licensed Space, Licensee agrees to maintain, at Licensee's expense, the Outdoor Recreational Field portion of the Licensed Space which includes, but may not be limited to, applying fertilizer, chemicals, and seeding to grassy areas and regularly cutting the grass (the "Field Maintenance") for the entire term of this Agreement.

4. **Additional Terms and Conditions.**

- (a) At all times, Licensee agrees to, and shall cause its employees to, comply with all applicable laws, rules and regulations regarding the use of the Licensed Space.
- (b) Licensee hereby agrees to reimburse Owner for any damage or harm to the Licensed Space caused by use of the Licensed Space by Licensee, including the payment of any reasonable attorneys' fees associated with enforcing this Agreement or fees of any service provider or contractor required to repair or replace any property damaged during any usage of the Licensed Space by Licensee.
- (c) This Agreement is not a lease and nothing in this Agreement grants Licensee a leasehold interest in any part or portion of the Licensed Space or Center.
- (d) Owner assumes no risk of loss or damage to any property left or stored on the Licensed Space or at the Center by Licensee or any of its agents, employees or invitees.
- (e) Owner makes no representations or warranties to Licensee regarding the condition or use of the Licensed Space or Center or the suitability of the Licensed Space for the Approved Purposes, and Licensee hereby agrees that THE LICENSED SPACE AND CENTER ARE BEING PROVIDED ON AN "AS-IS, WHERE-IS" BASIS.
- (f) Licensee may erect temporary signs or provide appropriate signage for the property subject to the written approval of the Owner; however, said approval shall not be unreasonably withheld.
- (g) Licensee shall not make any improvements or material changes to the Licensed Space without prior written approval from the Owner.

5. **Employment.** Notwithstanding anything to the contrary herein, no employee of Owner shall be deemed to be an employee of Licensee as a result of this Agreement, and no employee of Licensee shall be deemed to be an employee of Owner as a result of this Agreement.

6. **Insurance.** During the term of this Agreement, Licensee shall procure and maintain, at its own cost and expense, commercial general liability insurance for bodily injury, death or property damage, in such amounts as reasonably approved by Owner, but in any event no less than \$2,000,000 per occurrence. Owner shall be listed as an additional insured, and, promptly upon the execution of this Agreement, Licensee shall provide Owner with an insurance certificate and a copy of the insurance policy. Additionally, Licensee shall procure and maintain at its own cost and expense, workers' compensation insurance policies for Licensee employees to the extent required by law.

7. **Indemnification.** Licensee, on its own behalf, and on behalf of its trustees, officers, directors, members, invitees, employees and agents (each an "Licensee Party" and, collectively, the "Licensee Parties") hereby agrees to indemnify, defend and hold harmless Owner, and each past, present and future employee, officer, director and member of Owner (each, an "Owner Party" and collectively the "Owner Parties") from and against any and all claims, losses, damages, costs, expenses, liabilities, debts, demands, causes of action, investigations, litigation, suits, orders, obligations, contracts and agreements

whatsoever, including the payment of reasonable attorneys' fees, both at law and in equity (collectively, the "Claims") alleged or asserted against or actually suffered or incurred by any Owner Party on account of or arising out of, in whole or in part, directly or indirectly, (i) any damage or destruction to the Center or the Licensed Space as result of the actions or inaction of Licensee or the license granted to Licensee hereunder; or (ii) the use of the Licensed Space by Licensee, its employees or agents or any activities conducted or sponsored by or on behalf of Licensee in the Licensed Space.

8. Miscellaneous.

- (a) Notice. Any notice required to be given hereunder shall be deemed given immediately if hand delivered or on the third (3rd) business day following mailing of any such notice, postage paid, to the address set out herein above.
- (b) Waiver. The waiver of the breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or other provision hereof.
- (c) Governing Law. This Agreement will be construed and interpreted in accordance with and governed by the laws of the State of Alabama without regard to conflicts of laws principles.
- (d) Necessary Action. Each party shall perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.
- (e) Severability. The provisions of this Agreement shall be severable and if any provision shall be invalid or void or unenforceable in whole or in part for any reason, the remaining provisions shall remain in full force and effect, and construed as if this Agreement did not contain the particular part, term or provision held invalid.
- (f) Assignment. Licensee may assign its rights and obligations under this Agreement to its sub-licensees Mountain Brook Athletics, Mountain Brook Lacrosse or other city related youth athletic organizations and Owner agrees to such assignment provided that Licensee shall not be released from performing any of its obligations hereunder and will perform all such obligations in the event that its sub-licensees fail to do so, as determined by Owner in its sole discretion. Owner agrees that payment hereunder may be remitted by sub-licensees and any such payments shall be credited to Licensee's obligation to pay User Fees. Other than as set forth above, neither party shall assign its interest hereunder.
- (g) Interpretation. The terms "herein" or "hereunder" or like terms shall be deemed to refer to this Agreement as a whole and not to a particular section. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The captions or headings in this Agreement are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of this Agreement. Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders. All references to sections hereunder shall be deemed to refer to sections of this Agreement, unless otherwise expressly provided, whether or not "hereof," "above," "below" or like words are used.

- (h) Counterparts. This Agreement may be executed by facsimile or electronic transmission and/or in one or more counterparts, each of which shall be an original, all of which when taken together shall constitute one instrument.
- (i) Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes and replaces the License Agreement entered into on June 29, 2018, the Amendment thereto entered into on November 1, 2018 and any other agreement, representation, communication or understanding, whether oral or written, between the parties hereto and relating to the transactions contemplated herein or the subject matter hereof. This Agreement may not be changed or terminated orally, but may only be changed by an Agreement in writing signed by the parties hereto.

- Remainder of page intentionally left blank -

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be effective on the date first above written.

Owner:

Birmingham Levite Jewish Community Center

By: _____

Name: _____

Title: _____

Licensee:

City of Mountain Brook, Alabama

By: _____

Name: _____

Title: _____

RESOLUTION NO. 2023-005

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby ratifying change order No. 2 with respect to the Caldwell Mill Road bridge project (Resolution No. 2022-040) (Project # C-2016912-203) in the amount of \$12,000.00 (Twelve Thousand Dollars).

ADOPTED: This 9th day of January, 2023.

Council President

APPROVED: This 9th day of January, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on January 9, 2023, as same appears in the minutes of record of said meeting.

City Clerk



Gillespie
CONSTRUCTION
3304 3rd Ave S, Jasper, AL 35501

November 21st, 2022

TO: Sammy Harton

RE: Caldwell Mill Road Bridge Replacement- Change Order #2 Request

Sammy,

This letter is to be a reference for Gillespie Construction, LLC request for Change Order #2. Gillespie is requesting Change Order #2 due to the pipe that was quoted in the Change Order #1 was 22" X 14" pipe. The pipe that is being requested to use now is 36" X 23" pipe.

The additional price for the 36" x 23" pipe for material and labor is **\$12,000.00**.

Please let me know if you have any questions.

Sincerely,

Gillespie Construction, LLC

RESOLUTION NO. 2023-006

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a Transit Service Agreement FY2023 between the City and Birmingham-Jefferson County Transit Authority (BJCTA) (dba\ "MAX"), in the form as attached hereto as Exhibit A.

ADOPTED: This 9th day of January, 2023.

Council President

APPROVED: This 9th day of January, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on January 9, 2023, as same appears in the minutes of record of said meeting.

City Clerk

Executive Director
Charlotte Shaw



Board Chair
Theodore "Ted" Smith

Honorable Stewart H. Welch III, Mayor
City of Mountain Brook, Alabama
56 Church Street, PO Box 130009
Mountain Brook, AL 35213

Dear Mayor Welch:

It is our pleasure to continue providing transit services to the City of Mountain Brook, Alabama for Fiscal Year 2023 (October 1, 2022, through September 2023). Enclosed is the Transit Service Agreement outlining the terms of those services. We have also enclosed the following:

- Schedule of Services (EXHIBIT A)
- City of Mountain Brook Ridership Report Card

The Transit Services Agreement is the formal contract between the Birmingham-Jefferson County Transit Authority and the City of Mountain Brook, Alabama, which provides details of the terms of our agreement for providing transit services during Fiscal Year 2023.

The Schedule of Services outlines the pick-up times for stops on those routes servicing your city. The Ridership Report Card, a new report we are excited to present, provides ridership data and several key metrics regarding the Fixed Route and Paratransit services we offer you and provides depth and insight about transit services in your city.

Finally, we appreciate the opportunity to have partnered with your city for many years and our desire is to *"Move Transit Forward"* in the region as we continue to enhance the services we provide to your citizens and businesses.

Sincerely,

Charlotte Shaw, Executive Director/CEO

cc: Sam Gaston, City Manager

**TRANSIT SERVICE AGREEMENT
FY 2023**

by and between

**BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY d/b/a MAX
(BJCTA)**

and

CITY OF MOUNTAIN BROOK

relating to providing Transit Service in Mountain Brook, Alabama

October 1, 2022

**BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY
TRANSIT SERVICES AGREEMENT**

This Transit Services Agreement (the Agreement) is by and between the **BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY** (the BJCTA), a public corporation organized under the laws of the state of Alabama and **the CITY OF BESSEMER, ALABAMA** (the City), a municipal corporation organized under the laws of the state of Alabama.

Recitals:

WHEREAS, the BJCTA was established by Alabama Legislative Act No. 1971-993 to provide mass public transportation services and repealed by Alabama Legislative Act No.2013-380 (the Act) to expand and improve mass public transportation services in Jefferson County, Alabama; and

WHEREAS, Alabama Legislative Act No.2013-380 (the Act) provides that the annual amount to be paid by each municipality which elects to be served by the BJCTA shall be ascertained by multiplying the total projected hours of operation in such municipality for the forthcoming fiscal year, times the cost per hour of operation set forth by the BJCTA, based upon the certified routes and times; and

WHEREAS, the Act provides that the annual amount to be paid by the City shall be certified by the BJCTA to the Jefferson County Tax Collector, its Revenue Commissioner or Director of Revenue; and

WHEREAS, the City elects and requests transit services from the BJCTA in accordance with the Act; and

WHEREAS, the BJCTA desires to provide such transit services to the City.

NOW, THEREFORE, in consideration of the premises, in accordance with Alabama Act 2013-380 and the foregoing recitals; and other good and valuable consideration contained herein, the City and the BJCTA (the Parties) agree as follows:

1. **DEFINITIONS**. For purposes of this Agreement, the following definitions shall apply, unless the context requires otherwise, or another definition is expressly provided in this Agreement:

<u>Agreement</u>	Shall mean this Transit Service Agreement, as the same may be amended from time to time.
<u>Transit Service</u>	Shall mean the revenue Transit Service to be provided by BJCTA in and to the Service Area as set forth in this Agreement.
<u>Cost of Transit Service</u>	Shall mean the cost incurred by BJCTA to provide the Transit Service, during the period October 1, 2022 through September 30, 2023.
<u>County</u>	Shall mean Jefferson County.
<u>ALDOT</u>	Shall mean the Alabama Department of Transportation.

<u>FTA</u>	Shall mean the Federal Transit Administration.
<u>Service Area</u>	Shall mean the area served by BJCTA.
<u>Service Schedule</u>	Shall mean the frequency, times and stops for the Transit Service to be provided by BJCTA, as set forth and described in paragraph 5 below.

2. **PROVIDING OF TRANSIT SERVICE.** Pursuant to the terms and conditions of this Agreement and in consideration of the Payments, BJCTA agrees to provide the Transit Service in the Service Area. In regard to providing said Transit Service, the obligation of BJCTA is subject to the following:

- (a) Federal, state and local regulations applicable to BJCTA including, but not limited to, the rules and regulations promulgated from time to time by ALDOT and/or FTA as applicable to BJCTA;
- (b) All conditions beyond the reasonable control of BJCTA including but not limited to, Acts of God, hurricanes, matters of public safety, etc.;
- (c) The changing transportation needs of the City to the extent BJCTA can accommodate such needs; and

The times set forth in this Agreement and other matters regarding the providing of Transit Service are not guarantees; they are projected times for stops and starts and are subject to best efforts by BJCTA, including matters associated with traffic, accidents, etc.

3. **TERM.** This Agreement shall be effective as of the date hereof **October 1, 2022** (the "**Commencement Date**") and shall, except as otherwise set forth herein or unless terminated in writing by either party, be completed on or before **September 30, 2023** (the "**Expiration Date**"), which is the funding period for providing the Transit Service as set forth in **Exhibit "A"** attached hereto.

No later than March 1st of each year, the City shall file a written request for service setting forth the routes and frequency of service requested.

4. **TERMINATION.**

a. **Termination at Will.** This Agreement may be terminated by either party upon no less than thirty (30) calendar days' notice, without cause. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Notice shall be effective upon receipt.

b. **Termination Due to Lack of Funds.** In the event funds from governmental sources relied upon to finance this Agreement become unavailable, the City or BJCTA may terminate this Agreement with no less than twenty-four (24) hours written notice to the other party and to the City. Notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Notice shall be effective upon receipt.

c. **Termination for Breach.** Unless breach is waived by the City or BJCTA in writing, either party shall, in order to terminate this Agreement for breach, give the other party and the City written notice of the breach. If the breach is not cured within thirty (30) calendar days, the non-breaching party may terminate this Agreement. Notice shall be delivered by certified mail, return receipt

requested, or in person with proof of delivery. Waiver by either party of breach of any provisions of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement and shall not act as a waiver or estoppel to enforcement of any provision of this Agreement. The provisions herein do not limit the City or BJCTA right to remedies at law or to damages.

5. **SERVICE PLAN RECOMMENDATION FORM.** Attached hereto as **Exhibit "A"** is a summary (span of service, headways, hours, hourly rate and cost) of the routes to be provided. This schedule is subject to all of the provisions of this Agreement. This schedule is not a guarantee but rather reflects the anticipated levels of service. During the term of this Agreement, BJCTA, after discussion with the City, may adjust the schedule to better accommodate the overall Transit Service to be provided under this Agreement. Thus, for example, if a particular Bus Stop provides a safety hazard, then BJCTA, in cooperation with the City, could move that Bus Stop to a safer location.

6. **PAYMENT FOR TRANSIT SERVICE.** The City agrees to pay the BJCTA **\$164,355.97** for providing transit services for the forthcoming fiscal year beginning October 1, 2022 through September 30, 2023. This sum represents **1995.58** service hours of Fixed Route transit services, as requested, at a rate of **\$82.36** per hour. Invoices shall be billed at the beginning of each month in advance of the service being rendered. Payments are due the first day of each month and are considered late after the 15th day of the month.

If the City fails to make any monthly payment by the 15th day of the month as outlined above, the payment shall be deemed past due. Interest at 1.5% per month shall accrue daily on the past due amount, from the past due date until the date paid.

In that regard, the parties do hereby agree as follows:

a. For the purpose of invoicing, BJCTA will send monthly invoices and related matters to the City at the following address:

Attention: City Clerk
City of Mountain Brook
56 Church Street
Mountain Brook, Alabama 35213

b. In any event, the obligation of BJCTA to provide the Transit Service is expressly contingent upon it receiving and only to the extent it receives the required Payments set forth above.

7. **SECURITY DEPOSIT.** No security deposit is required of the City under this Agreement.

8. **ADVERTISING.** The parties are aware and understand that BJCTA undertakes an advertising program on its buses and that BJCTA also does not specifically identify a specific bus on a specific route. From time to time, buses will be taken out of service for maintenance and repair and replacement, and future buses will also be used from time to time to provide the Transit Service. In addition, various rules (including FTA guidelines) provide for random assignment of buses with this background:

c. BJCTA will be entitled to place on the buses which it uses to provide the Transit Service, advertising from time to time.

d. BJCTA shall have the right in its reasonable discretion as to what buses and the type of the buses that will be used to provide the Transit Service.

The foregoing assignments and other matters regarding the buses in the Transit Service will be subject in all respects to all applicable laws including FTA and ALDOT requirements.

9. **BOND.** The City shall not be required to furnish BJCTA with any bond or other collateral conditions for the faithful performance of the duties and due accounting for all monies received from the City under this Agreement.

10. **NON-ASSIGNABILITY.** This Agreement is not assignable by either Party without the prior written consent of the other Party.

11. **RELATIONSHIP OF OTHER PARTIES.** The Parties are aware and agree that the relationship between BJCTA and the City under this Agreement shall be that of an independent contractor and not an agent.

12. **NO THIRD-PARTY BENEFICIARY.** This Agreement is solely between the parties hereto and no person or persons not a party hereto shall have any rights or privileges whatsoever either as a third-party beneficiary or otherwise.

13. **NOTICE.** Any notice permitted to be given to either party under this Agreement shall be in writing and shall be deemed to be given (i) in the case of delivery, when delivered to the other party at the address set forth below, (ii) in the case of mailing, three (3) days after said notice has been deposited, postage pre-paid, in the United States mail and sent by certified or return receipt requested to the other party at the address set forth below and (iii) in all other cases when such notice is actually received by the party to whom it has been sent. Notices shall be sent to the following:

BJCTA: Charlotte Shaw
Executive Director/CEO
Birmingham-Jefferson County Transit Authority
1801 Morris Avenue 2nd FL
Birmingham, AL 35203

Copy: Glenn Dickerson
Chief Financial Officer
Birmingham-Jefferson County Transit Authority
1801 Morris Avenue 2nd FL
Birmingham, AL 35203

CITY: The Honorable Stewart H. Welch III, Mayor
City of Mountain Brook
56 Church Street
Mountain Brook, AL 35213

Either party may change the address to which any notices are to be given by so notifying the other party to this Agreement as provided in this paragraph.

14. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama. The parties further agree that the exclusive venue and jurisdiction over any action arising under this Agreement shall be in the courts of Jefferson County, Alabama. Each party expressly waives any right to a jury trial.

15. **MISCELLANEOUS CLAUSES.**

e. **Sovereign Immunity.** Each party hereto is a government agency entitled to sovereign immunity under the laws of the State of Alabama. Nothing contained in this Agreement, the relationship between the parties hereto, the providing of the Transit Service, or otherwise shall in any way whatsoever constitute any waiver by BJCTA or the City of its rights to invoke sovereign immunity as a governmental entity.

f. **Force Majeure.** The rights and obligations and duties of the parties hereunder shall be subject to any causes beyond their reasonable control including, but not limited to, Acts of God, hurricanes, storms, and, in the case of BJCTA, government regulations and directives applicable to it.

g. **Time of Essence.** The parties recognize that time is of the essence in the performance of the provisions of this Agreement provided, however, in regard to the providing of Transit Service, that is subject to the qualifications set forth in this Agreement.

h. **Legal Obligations.** This Agreement shall not relieve any party of any obligation or responsibility imposed upon it by law.

i. **No Waiver.** No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party or parties claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all parties.

j. **Benefits of Service.** The Payments to be paid by the City to BJCTA are net, and shall not be reduced based upon any other funding or benefits that BJCTA may receive including, but not limited to, ad valorem taxes, other contributions by the City and any funding that BJCTA receives from the FTA as a part of its overall ridership total.

k. **No Oral Modification.** The parties agree that this Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

l. **Severability.** If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. To that end, the provisions of this Agreement are declared to be severable.

m. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement, to produce or account for more than one (1) of such counterparts.

n. **Adjustment of Bus Routes.** The parties are aware and understand that with respect to any adjustment or modification of Transit Service, BJCTA will be required to follow State and Federal guidelines relating to adjustments and modification of Transit Service. This will generally require a minimum of sixty (60) days in order to provide various required public notices.

i. **Capital Requirements (i.e., Buses).** BJCTA has generally planned for adequate buses to provide the Transit Service. If, at any time, BJCTA experiences a material shortfall or lack of buses to provide the Transit Service, BJCTA will immediately discuss with the City such situation and how it is to be resolved. The matter will also be brought to the attention of the Board of Directors of BJCTA and the Parties will seek to arrive at a solution to provide such additional bus capacity. In doing so, the parties are aware that any solution would not necessarily involve BJCTA moving buses from its other public routes. BJCTA, through its Board of Directors, will have in its reasonable discretion the ability to deal with such situation.

o. **Default/Notice/Procedure to Resolve Disputes.** The parties understand and are aware that this Agreement is between two entities who mutually desire for the beneficial providing of the Transit Service under this Agreement and wish to avoid any default or misunderstandings. Thus, in the event one Party hereto believes that the other Party is in default under this Agreement, the other Party through a senior representative shall contact a senior representative of the other Party in an effort to discuss and resolve any alleged default or nonperformance. Failing such resolution, said Party will then be required to give actual written notice to the other party of said alleged default before said Party may exercise any of the rights available to it under this Agreement. With this background, the City is aware and specifically understands that the scope and quantity of the Transit Service being made available to it, is based upon the amount received from the city. Thus, for example, if the City should fail to pay the requisite Payments, BJCTA could seek to enforce that payment but, at its option, could also reduce in its discretion the Transit Service specifically within the Service Area.

p. **Service Within and Outside the Service Area.** The Transit Service to be provided by BJCTA under this Agreement covers Bus Routes that are located within the Service Area, as more particularly set forth in **Exhibit "A"**. BJCTA is not obligated to provide the Transit Service outside the Service Area, unless otherwise agreed between the parties through an amendment to this Agreement.

q. **Independent Contract as To Employees of BJCTA.** BJCTA is an independent contractor and retains the right to exercise full control and supervision over its employees and their compensation and discharge. BJCTA will be solely responsible for all matters relating to payment of its employees, including but not limited to the withholding and payment of employee taxes, insurance contributions, placement of insurance and pension coverages and the like.

16. **BOARD APPROVAL.** This Agreement is subject to the approval by the BJCTA Board of Directors.

17. **COMPLETE AGREEMENT.** This Agreement constitutes the complete agreement between the parties hereto with respect to the management and distribution of the services contemplated herein and

it may not be amended, changed or modified except by in writing and signed by the party to be charged by said amendment, change or modification subject to the following:

r. Modifications that are anticipated to result in no increase to BJCTA's operational cost per revenue hour (see Cost of Transit Service) require only the concurrence of the BJCTA's Executive Director and the approval of the City.

s. Modifications that are anticipated to result in an increase to BJCTA's operational cost per revenue hour (see Cost of Transit Service) require the approval of the BJCTA's Board of Directors and the City.

(THIS SECTION IS LEFT BLANK INTENTIONALLY)

IN WITNESS WHEREOF, the Parties have hereunto executed this Transit Service Agreement the day and year first above written.

Attest:

CITY OF MOUNTAIN BROOK

By CITY OF MOUNTAIN BROOK, MAYOR
OR AUTHORIZED OFFICIAL

By: _____
(Signature of Authorized Official)

Date: _____

**BIRMINGHAM-JEFFERSON COUNTY
TRANSIT AUTHORITY**

By: _____
CHARLOTTE SHAW
Executive Director/CEO

Date: _____

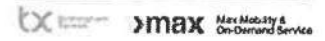
This Agreement has been reviewed as to form by legal counsel for BJCTA. This confirmation is not to be relied upon by any person other than BJCTA.

FUSTON, PETWAY & FRENCH

By: _____
G. Courtney French, Esq., Partner

CITY OF MOUNTAIN BROOK

Transit on the **Grow**
Moving Transit Forward



RIDERSHIP REPORT CARD

3
Estimated number of fixed route bus stops in Mountain Brook

14
Estimate of fixed-route trips made each weekday

9.87
Estimate of miles traveled across Mountain Brook

43 ● **ROUTES**
● ZOO
● ON DEMAND

ABOUT THIS REPORT

This report presents the various metrics used to help gauge the effectiveness of public transportation in the City of Mountain Brook. Each route is summarized independently on the following pages.

NUMBER OF VEHICLES

needed to operate each fixed-route and micro transit across Mountain Brook



RIDERSHIP

4,126 ● Total riders in 2021 (includes Microtransit OnDemand)

2,298 ● Total riders in 2022 January 2022 – September 2022 (includes Microtransit OnDemand)

KEY PERFORMANCE INDICATORS

Accessibility & Safety	Route Reliability	Route Frequency	Customer Satisfaction
------------------------	-------------------	-----------------	-----------------------

Rider's ea **WE ARE STILL DEVELOPING OUR KPI'S** | feedback

AREAS FOR GROWTH



Paratransit Service

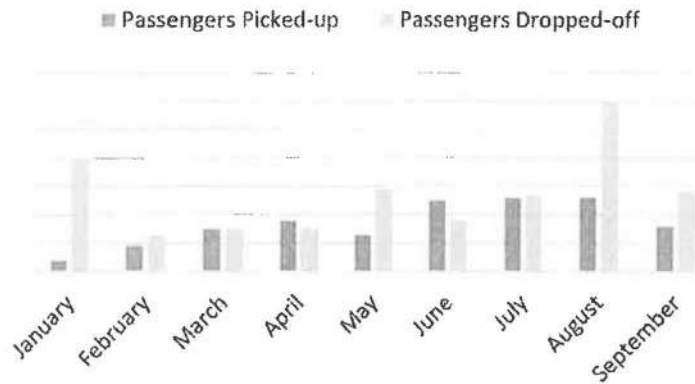
RIDERSHIP REPORT

Service Hours: Weekday - Saturday 4:00 am - 11:00 pm • Sunday - No Service



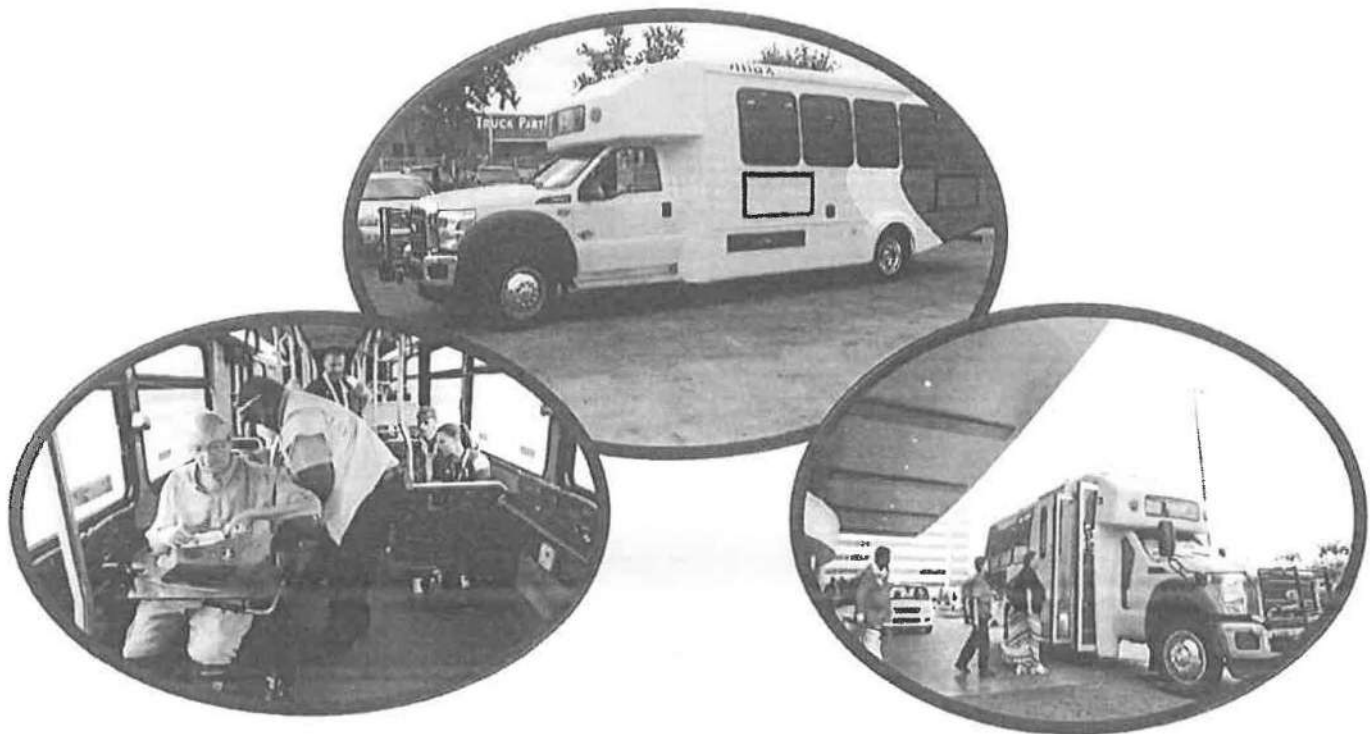
RIDERSHIP

2022
397



MAX SERVICE AREA

MAX Service Area? ADA paratransit is provided to residents of the Birmingham and Surrounding Metro Area who are ADA eligible in accordance with the ADA regulations on eligibility. The origin and destination of each trip must be within the MAX service area which includes a 3/4 mile corridor which surrounds the regular fixed-routes.

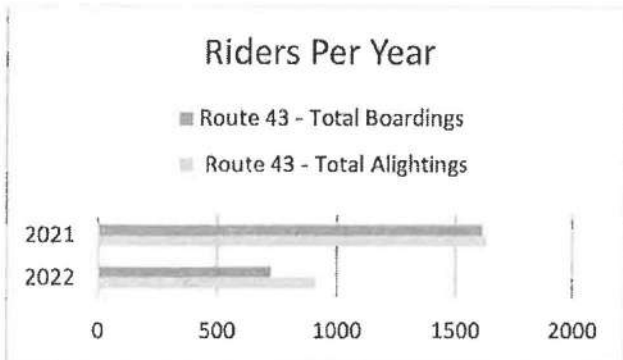


ROUTE 43 Zoo

RIDERSHIP REPORT

Service Hours: Monday - Friday 7:00 am - 6:20 pm • Saturday -No Service

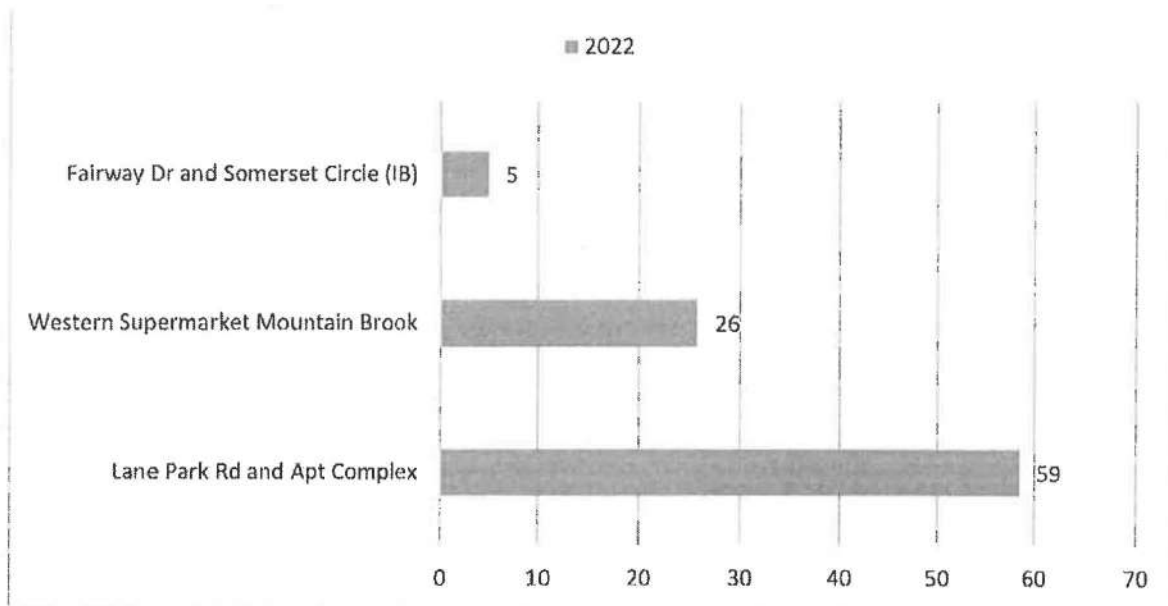
RIDERSHIP



BY THE NUMBERS

2021	2022
1,633	907
Total Alightings	Total Alightings
1,614	727
Total Boardings	Total Boardings
Jan 2022- Sept 2022	

Average Riders Per Stop (2022)



DEFINITIONS

Boarding: Riders getting onto the bus

Alighting: Riders getting off the bus

Mountain Brook On Demand

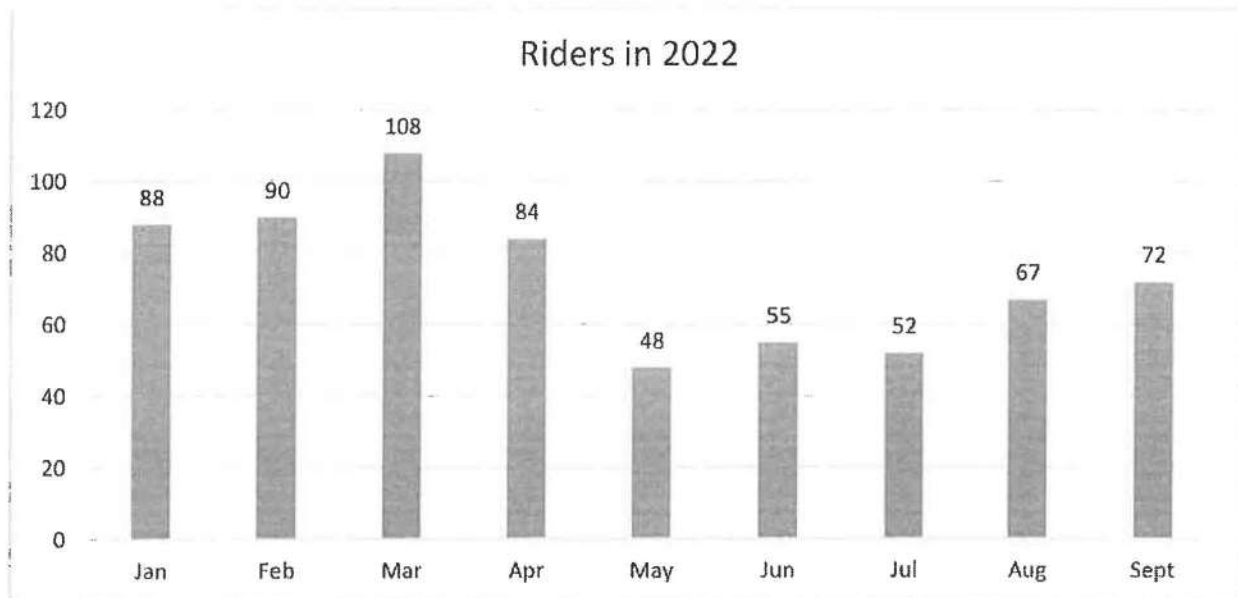
RIDERSHIP REPORT

Service Hours: Monday – Friday 8:00 - 9:30 am and 2:00 – 3:30 pm.

AVERAGE RIDERSHIP PER QUARTER (2022)



Riders Per Month (2022)



SERVICE RECOMMENDATIONS

Expand to Saturday service

Expand service hours of operation

43 Zoo

Weekday

LOOP

LOOP

Run No	Central Station	20th St & 11th Ave S	Mt. Brook Village	20th St & 11th Ave S	Central Station
4301	700 AM	710 AM	718 AM	727 AM	737 AM
4301	744 AM	755 AM	804 AM	817 AM	827 AM
4301	834 AM	843 AM	852 AM	905 AM	914 AM
4301	921 AM	930 AM	938 AM	952 AM	1002 AM
4301	1009 AM	1019 AM	1027 AM	1041 AM	1051 AM
4301	1058 AM	1108 AM	1117 AM	1129 AM	1141 AM
4301	1148 AM	1159 PM	1208 PM	1220 PM	1231 PM
4301	1238 PM	1247 PM	1256 PM	107 PM	118 PM
4301	125 PM	134 PM	142 PM	153 PM	206 PM
4301	213 PM	223 PM	231 PM	242 PM	253 PM
4311	300 PM	310 PM	319 PM	331 PM	342 PM
4311	349 PM	403 PM	414 PM	425 PM	434 PM
4311	441 PM	455 PM	506 PM	517 PM	526 PM
4311	533 PM	547 PM	558 PM	609 PM	618 PM

RESOLUTION NO. 2023-007

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that City Council hereby authorizes the execution of a contractor agreement between the City and Net Connection LLC, in the form as attached hereto as Exhibit A, with respect to the installation of 2 (two) bay batting cage and frames located at Cherokee Bend Elementary.

ADOPTED: This 9th day of January, 2023.

Council President

APPROVED: This 9th day of January, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on January 9, 2023, as same appears in the minutes of record of said meeting.

City Clerk

January 4, 2023

Mountain Brook City Council:

The Mountain Brook Parks and Recreation Department, along with Mountain Brook Athletics, would like to place a set of batting cages on the outskirts of the field by Cherokee Bend Elementary.

We recently made improvements to the field that expanded the use of the field and in doing so, we lost a couple of batting cages. Now we would like to replace those, but build them in the wooded area outside the open field space. This wooded area is beside the climbing tower on the east side of the field.



We have cleared out privet and some smaller trees to define the area if you would like to go by and see the exact location. We will need to clear about 12 trees of varying sizes and grade the area flat. Then construction can begin on the batting cages. Because we will need to get tree cutting and construction equipment in and out from this area, we are proposing to make a temporary access route from the dead end street off of Kennesaw Drive. This will keep the equipment away from the kids and prevent interfering with school activities. There is a split rail fence and shrubs creating a barrier at the end of the road that we will need to temporarily remove, but we will replace once we are done with the project. I do not believe we will have to move the basketball goal. The path we make will be dressed up and

covered with pinestraw when we finish. We will plant some native plants to replace the ones we have to remove to screen the view from the neighbors. We do not intend to disrupt the established footpath and steps that the kids use to get to school. That will remain open for their use and we will time our work around the morning and afternoon school traffic.



The batting cages will be two connecting lanes that are 15' x 55' each. They will share a frame and turf flooring and so the whole footprint will be 30' x 60'. It will be real similar to this photo.



We will move one of the existing LED light fixtures for the field to provide light to these cages until we can budget for more improvements. We plan for it to light the cages without directing it at any of the neighbors and LED lights are good for this. Musco has done an analysis and determined that moving one fixture will not negatively affect the lighting on the field. It will only be on when the field lights are on for school, MBA, or other authorized activities. The cages are not meant for public use after dark.

MBA would ultimately like to have 3 covered cages at the field. We plan to add a third lane and cover them all with a shelter in another year or two as budgeting allows. This will increase the footprint to 45 x 60 ft. Lights will be added under the cover like we have done at the Athletic Complex at MBHS. After getting that in place, the LED field light can be directed back to the field. We are considering these additions in our plans so it will be easy to add later. We ask that you also approve these additional

improvements with this request. This is what the covered two lane batting cage looks like at the Athletic Complex by Field 6. It would not be very noticeable in the wooded setting.



The Board of Education and CBE Principal have given their blessing on this project since it does not interfere with any of their usual activities and field space. Mountain Brook Athletics has been involved with the planning and approves of the site and plans. We have also communicated directly with the closest neighbors off of Kennesaw Drive since the construction route will be next to those homes. Their biggest concerns were the number of trees to be removed, seeing it, and the potential for increased activity around their home. I plan to only remove the trees and underbrush necessary to get the job done. After we are done, I will plant some native plants to screen the view and disguise the path we make. I also plan to get in and out as quickly as possible to not advertise this as an acceptable entrance for the general public. Overall I think we have eased their concerns.

We optimistically hope to have this first phase complete by the end of February 2023, but it may run into March if we have any setbacks.

Sincerely,

Shanda Williams
Superintendent of Parks and Recreation

NC | **NET CONNECTION**
GOLF • ENVIRONMENTAL • SPORTS
Proposal

December 21, 2022

Customer: City of Mtn Brook – Attn: Shanda Williams

Location: Cherokee Bend Elementary Mtn Brook, Al

PROJECT SCOPE- 2 Bay Batting Cage and Frames

Provide all labor, material and equipment necessary to install a new batting cage system. The proposed batting cage design is based on the design intent on plan using Net Connections, LLC typical design and installation methodology. The batting cage system is based on installation of 2 cages . The cage system includes end frames constructed of 4"x6" steel tubing that are directly embedded into the ground and encase in concrete. The frame will be 12' tall x 14' wide and will extend the length of the concrete pad . The net will be a 12' tall x 14' wide x 55' long #42 HDPE netting material. Three (3) horizontal support cables will be attached between each frame to support/attach the batting cage nets.

Furnish and Install the following:

- 4"x6" x.25" steel tubing, primed with weather resistant coating and two (2) coats of polyurethane (black), as manufactured by Carboline
- 3,000 psi concrete for backfill
- 5/16" EHS galvanized strand cable
- #42 HDPE Nets (2 total – 12' x14'x55')
- All supporting bolts, washers, clamps, and other hardware which all conform to the specifications of one or more of the following:
ANSI, ASTM, IEEE, NEMA
- All labor, equipment, and shipping charges included.

Total Bid \$18,773.00 ✓

Furnish and Install the following:

Option # 1

- ~~Form & pour concrete slab 30' x 60' x 4"~~
- ~~3,000 psi concrete~~
- ~~6 x 6 wire mesh / Fiber~~
- ~~All supporting bolts, washers, clamps, and other hardware which all conform to the specifications of one or more of the following: **ANSI, ASTM, IEEE, NEMA**~~
- ~~All labor, equipment, and shipping charges included.~~

~~Option # 1 Cost \$ 15,335.00~~

Furnish and Install the following:

Option # 2

- Form & Fill slab 30' x 60' x 4" with treated timbers and crushed
- ¾" crushed limestone
- All supporting bolts, washers, clamps, and other hardware which all conform to the specifications of one or more of the following: **ANSI, ASTM, IEEE, NEMA**
- All labor, equipment, and shipping charges included.

Option # 2 Cost \$ 9,887.00 ✓

Furnish and Install the following:

- 1800 SF of TXT 34-T3 synthetic turf for batting cages.
- Install using Turf Claw outdoor commercial glue (Concrete)
Or Nailer board for crushed stone.
- All supporting bolts, washers, clamps, and other hardware which all conform to the specifications of one or more of the following: **ANSI, ASTM, IEEE, NEMA**
- All labor, equipment, and shipping charges included.

Total Bid \$13,500.00 ✓

Total \$42,160



Exclusions and Clarifications:

- Proposal assumes clear access to site for required equipment.
- **Proposal excludes any repairs to turf, drives, walkways, roadways as result of accessing required equipment for installation of netting system.**
- Excludes applicable sales and use taxes.
- Excludes the cost any permits, bonds, performance and payment bonds or other specialty licenses that may be required.
- Excludes removal of spoils materials.
- Excludes any surveying. Assumes all pole locations will be clearly indicated and marked prior to installation.
- All private utilities to be located and clearly marked by owner prior to excavation.

Digging Clause: This bid is conditional on suitable subsoil conditions. Any and all additional expenses as a result of **rock drilling, boring, blasting, steel casings, de-watering or soil stabilization** will result in additional charges.

Payment: Per mutual acceptable terms.

Prices quoted in effect for 30 days

CONTRACTOR AGREEMENT

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

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

Name of Project: Batting Cage Installation at CBE

Site of Project: Cherokee Bend Elementary
4400 Fair Oaks Drive
Mountain Brook, AL 35223

2. **Scope of Work.** The Scope of Work is set forth on Exhibit A (which includes the December 21, 2022 Contractor Proposal and the Project Plans) that is attached and incorporated herein.

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

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

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

5. **Contract Price/Invoice/Certification.** Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of **Forty-two Thousand, One Hundred Sixty Dollars and Zero Cents (\$42,160.00)** as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing or amendment to this Agreement that is signed by

duly authorized representatives of both Parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price.

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

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

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

- (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;
- (b) that it, and all of its employees or any subcontractors (if authorized), will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;
- (c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;
- (d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;
- (e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;
- (f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of completion of the Project; and

- (g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of Contractor is authorized to execute this Agreement.

7. Insurance/Safety/Indemnification.

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

(i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars (\$750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;

(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) combined single limit and aggregate for bodily injury and property damage;

(iii) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

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

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

(c). *Indemnification.* Contractor agrees to defend, indemnify, and hold harmless City and its agents, employees and officials (hereinafter collectively, the "Indemnitees") from and against all demands, actions, liabilities, expenses (including reasonable

attorney's fees) or claims for damages by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") that arise out of, relate to or are caused by any negligent act, omission or conduct by Contractor or any Contractor Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.

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

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

9. Miscellaneous Provisions.

a. *Entire Agreement.* This Agreement which is comprised of this instrument, the December 21, 2022 Contractor Proposal and the Project Plans (collectively, the "Contract Documents") sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein.

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

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

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

e. *No Third Party Rights.* This Agreement is made only for the benefit of the Parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

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

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

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

i. *Delayed Performance/Force Majeure Events.* Neither Party shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under this Agreement during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed Party must promptly provide the other with written notice of the Force Majeure Event, the delayed Party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other Party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed Party.

j. *Applicable Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

(Signature Page Follows)

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

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

Its: _____

Date: _____

NET CONNECTION, LLC

By: _____

Its: _____

Date: _____

Project: Batting Cage Installation at CBE

EXHIBIT A – SPECIFICATIONS

1. Scope of Work.

See attached December 21, 2022 Contractor Proposal

If Contractor desires or is required to perform services on the Project that fall outside the Scope (“Additional Operations”), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services. No such services shall be provided unless and until the parties reach agreement on the expense of any Additional Operations and the City Project Representative approves any such Additional Operations.

2. Project Schedule. The Contractor will complete this project by April 30, 2023 unless an extension is requested in writing by the Contractor and approved in writing by the City.

3. Project Representatives.

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

Contractor Project Representative:
Ken Burnham
7355 Gadsden Hwy
Trussville, AL 35173
Email: kburnham@netconnectionllc.com
Day Tel #: 205-365-5828

4. Special Conditions:

Two batting cages will be constructed by the field at Cherokee Bend Elementary at the specific location indicated on project plans to be provided by the City. Net Connections will

- prepare the site for construction
- frame and construct the 30 x 60 ft base using crushed stone 4” thick
- install the frames and nets for (2) 12 x14 x 55 ft lanes so as to allow for additional lanes in the future
- Install and secure synthetic turf on the floor
- Undertake the work as described in the December 21, 2022 Proposal to the City of Mountain Brook, as modified and set forth on the attached Exhibit A-1



EXHIBIT A-1

PROPOSAL

ORDINANCE NO. 2138

**ORDINANCE TO REZONE CERTAIN PARCELS
OF LAND IN THE CITY OF MOUNTAIN BROOK, ALABAMA
FROM RESIDENCE A DISTRICT
TO PLANNED UNIT DEVELOPMENT
(PUD) DISTRICT**

WHEREAS, after due consideration, the City Council has determined that the zoning classification of the real estate owned by Montevallo Road Partners, LLC, which is located along Montevallo Road, as more particularly described below, should be zoned Planned Unit Development (PUD) District, such property being presently zoned Residence A District.

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

1. Amendment of Zoning Ordinance and Map. The zoning ordinance of the City of Mountain Brook and zoning map established under authority of Section 129-17 of the Mountain Brook City Code are hereby amended by rezoning the property described hereinbelow from its present Residence A District under Chapter 129, Article III, of said Code to Planned Unit Development (PUD) District as described in Chapter 129, Article XVI. The zoning ordinance of the City of Mountain Brook shall further be amended to set forth that the development of the subject property shall be governed by the zoning standards set forth in the PUD Rezoning Application and Master Development Plan.

2. Development Standards. The Master Development Plan and the materials submitted by the applicant, as required by Section 129-265 of the Mountain Brook City Code, are made a part hereof and are specifically incorporated herein by reference, said Plan and materials constituting regulatory standards for use of the affected property, subject to modification only as provided for in Article XVI, Chapter 129 of the Mountain Brook City Code

3. Description of Affected Property. The property that is the subject of the rezoning approved by this ordinance is described as follows:

PARCEL I:

Lots 330 and 331, according to the Survey of Mountain Brook Estates, Chester Road, as recorded in Map Book 24, page 37, in the Probate Office of Jefferson County, Alabama.

+/- 17,256 Square Feet or 0.4 Acres

PARCEL II:

Begin at the center of the North boundary line of the NW 1/4 of the SW 1/4 of Section 8, Township 18, Range 2 West; thence run South along the center line of said NW 1/4 of SW 1/4 790 feet; thence East and parallel with the North boundary line of the said NW 1/4 of SW 1/4 234 feet; thence North 790 feet to the North boundary line of said 40 acre tract; thence West along the said North boundary line 234 feet to Point of Beginning.

LESS AND EXCEPT any portion of subject property lying in US Highway 280. Situated in Jefferson County, Alabama.

+/- 151,035.66 Square Feet or 3.5 Acres

4. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

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

6. Effective Date. This ordinance shall become effective when published by posting the same as required by law.”

ADOPTED: This 9th day of January, 2023.

Council President

APPROVED: This 9th day of January, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on January 9, 2023, as same appears in the minutes of record of said meeting, and published by posting copies thereof on January 10, 2023, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road
Overton Park, 3020 Overton Road
Cahaba River Walk, 3503 Overton Road

City Clerk