

**MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

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

JANUARY 22, 2024, 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 01222024).

1. Approval of the minutes of the January 8, 2024, regular meeting of the City Council.
2. Consideration: Resolution authorizing the contractor agreement with The Bridge Builders of Alabama for the Parkway Bridge Restoration Project.
3. Consideration: Resolution authorizing the contractor agreement with JP Painting Company LLC for the Public Works Department Painting Project.
4. Consideration: Resolution authorizing the contractor agreement with B Group Architecture for the design and Construction documents of the Public Works building.
5. Consideration: Resolution authorizing the sale or disposal of certain surplus property.
6. Consideration: Resolution authorizing the trade of certain surplus property.
7. Consideration: Resolution awarding the bid for a Construction Supervisor Ford F-150 XLT for use by the Public Works Department.
8. Consideration: Resolution awarding the bid for a Shop Supervisor Ford F-150 XLT for use by the Public Works Department.
9. Consideration: Resolution approving change order No. 5 with respect to the Jemison Trail Nature Trail Improvement Project.
10. Consideration: Resolution authorizing the execution of the "MWCF Deductible Addendum-2024" with respect to the \$300,000 deductible workers' compensation insurance coverage and claims administration services for the policy year beginning February 1, 2024.
11. Consideration: Ordinance creating one-way operation of Winthrop Avenue between Alden Lane and Overbrook Road and to provide punishment thereof.
12. Consideration: Ordinance amending Chapter 117 of the City Code regarding Flood Damage Prevention.
13. Comments from residents and attendees.
14. Announcement: The next regular meeting of the City Council is February 12, 2024 at 7:00 p.m.
15. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
JANUARY 8, 2024**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 0 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 6:30 p.m. on the 8th day of January, 2024 (others were allowed to listen to the meeting by way of Internet video conference- no one did). Council President Virginia Smith called the pre-meeting to order and the roll was called with the following results:

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

Absent:

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

1. AGENDA

1. Introduction of Special Guests-Boy Scouts

Steven Brown with Troup 86 out of Saint Luke's Episcopal Church

- Working on Citizenship in the Community Badge

2. Rebuild Alabama grant letter of support from the City of Birmingham

Virginia Smith-Council President

- This is for support for the sidewalk down Diaper Row
- Agreed to do the Mountain Brook portion (crosswalk in front of Little Hardware and a strip of sidewalk down the southside)
- This is just a letter of support for Birmingham seeking the grant

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

2. EXECUTIVE SESSION AND ADJOURNMENT

Council President Pro Tempore made a motion that the City Council convenes in executive session to discuss matters of litigation and that the City Council shall reconvene upon conclusion of the executive session to the regular council meeting. 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 President Virginia Smith. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith
William S. Pritchard III

Graham L. Smith
Lloyd C. Shelton
Gerald A. Garner

Nays: None

There being no further matters for discussion Council President Virginia Smith adjourned the pre-meeting at approximately 6:40 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 January 8, 2024, 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 22, 2024

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
JANUARY 8, 2024**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 0 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:02 p.m. on the 8th day of January, 2024 (others were allowed to listen to the meeting by way of Internet video conference-no one did). Council President Virginia Smith called the meeting to order, and the roll was called with the following results:

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

Absent:

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

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

1. MOUNTAIN BROOK NATIONAL MENTORING MONTH PROCLAMATION

Stewart Welch-Mayor

- Presented Ibby Dickson with the proclamation

2. RECOGNITION OF SPECIAL GUESTS-BOY SCOUTS

Colin Stewart with Troup 86 out of Saint Luke's Episcopal Church

- Working on Citizenship in the Community Badge

Jack Abbenaw with Troup 86 out of Saint Luke's Episcopal Church

- Working on Citizenship in the Community Badge

3. HUMAN TRAFFICKING AWARENESS MONTH PROCLAMATION

Stewart Welch-Mayor

- Presented John Stone, Pam Raspberry, Jasmine DeLoach with the proclamation

4. EXPRESSION OF GRATITUDE TO VINCE SCHILLECI FOR HIS YEARS OF SERVICE ON THE EDITORIAL BOARD

Stewart Welch-Mayor

- Presented Vince Schilleci with the expression of gratitude

5. CONSENT AGENDA

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

Approval of the minutes of the December 11, 2023, regular meeting of the City Council

2024-001	National Mentoring Month Proclamation	Exhibit 1
2024-002	Human Trafficking Awareness Month Proclamation	Exhibit 2
2024-003	Expression of Gratitude to Vince Schilleci	Exhibit 3
2024-004	Re-appoint K.C. Hairston as Presiding Judge of the Mountain Brook Municipal Court	Exhibit 4, Appendix 1
2024-005	Execute a contractor agreement with Speyer Roofing Inc (dba Leak Solutions) with respect to the decking and roof demolition/removal of the patio at City Hall	Exhibit 5, Appendix 2
2024-006	Ratify the internal transfer of funds for the year October 1, 2022 through September 30, 2023	Exhibit 6, Appendix 3
2024-007	Accept the proposals submitted by Motorola Solutions with respect to the video evidence management for the police department	Exhibit 7, Appendix 4
2024-008	Approve the order of one (1) Rosenbauer Pumper, complete with Rosenbauer Commander chassis per specifications for use by the Fire Department	Exhibit 8, Appendix 5
2024-009	Authorize the sale or disposal of certain surplus property	Exhibit 9, Appendix 6

Thereupon, the foregoing minutes, proclamations and resolutions (Nos. 2024-001 through 2024-009), were introduced by Council President Virginia Smith and a motion for their immediate adoption made by Council Member Shelton. The minutes, proclamations, and resolutions were then considered by the City Council. Council Member Gerald Garner seconded the motion to adopt the foregoing minutes, proclamations and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith
William S. Pritchard III
Graham L. Smith
Lloyd C. Shelton
Gerald A. Garner

Nays: None

Abstained: None

Council President Virginia Smith thereupon declared that said minutes, proclamations, and resolutions (Nos. 2024-001 through 2024-009) were adopted by a vote of 5—0 and as evidence thereof he signed the same.

Stewart Welch-Mayor

- Issued the oath of office to Judge K.C. Hairston (Appendix 1)

6. CONSIDERATION OF RESOLUTION (2024-010) DESIGNATING THE NORTH SIDE OF WINTHROP AVENUE FROM ITS INTERSECTION WITH ALDEN LANE AND OVERBROOK ROAD AS “NO PARKING” WEEKDAYS BETWEEN THE HOURS OF 2:45 P.M. TO 3:15 P.M. (EXHIBIT 10)

Tony Ankar-10 Alden Lane

- Concerned with potential changes in traffic patterns that may increase traffic on the street
- Inquired if the city has checked with the schools and discussed the schools plan
- Inquired if alternative waiting zones were considered such as Mountain Brook Baptist or Canterbury Church
- Had concerns regarding signage on Clarendon Road, Norman Drive, and Winthrop Avenue regarding the speed limit

Virginia Smith-Council President

- The police department and Richard Caudle of Skipper Consultants looked at the signage in the area
- The recommendation was to not make any changes to the signage

Billy Pritchard-Council President Pro Tempore

- Had a meeting with the superintendent, the police chief, principal, and Richard Caudle to discuss the school's concerns and plans
- The school only controls the pickup within their property
- The school does not have a formal agreement with Canterbury or Mountain Brook Baptist to utilize their parking lot

Tony Ankar

- Inquired if the traffic pattern was studied and what would it do to traffic on Alden Lane

Richard Caudle-Skipper Consultants

- The proposal before the council is only to make Winthrop Avenue one way and only from Alden Lane to Overbrook during 2:45pm – 3:15pm
- Feels this is necessary to allow the fire department to be able to safely access the homes along Winthrop Avenue

Gerald Garner-Council Member

- This was brought before the council due to the public safety issue
- Public safety comes first and foremost

Tony Ankar

- Concern that this is shifting the public safety issue to Alden Lane

Richard Caudle

- The proposed changes will not cause any change in traffic on Alden Lane at this point

Billy Pritchard

- If these proposed changes exacerbates the problem, the council will review and address problems
- The council will continue to monitor any changes

Tony Ankar

- Asked the council to consider all options (ex. School lottery)
- Objects to any change that will increase traffic and increase safety concerns on Alden Lane

Graham Smith-Council Member

- It does not seem like the residents are enthused regarding these changes
- Not in favor of making these changes

Council President Pro Tempore made a motion to approve Resolution 2024-010 designating the north side of Winthrop Avenue from its intersection with Alden Lane and Overbrook Road as “no parking” weekdays between the hours of 2:45pm to 3:15pm. The motion was seconded by Council President Virginia Smith. Thereupon, Council President Virginia Smith called for a vote with the following results:

Ayes: Virginia C. Smith
William S. ("Billy") Pritchard III
Gerald A. Garner

Nays: Lloyd C. Shelton
Graham L. Smith

Council President Virginia Smith declared Resolution (No. 2024-010) is hereby passed by a vote of 3-2 (Exhibit 10)

7. CONSIDERATION OF ORDINANCE (NO. 2154) CREATING ONE-WAY OPERATION OF WINTHROP AVENUE BETWEEN ALDEN LANE AND OVERBROOK ROAD AND TO PROVIDE FOR PUNISHMENT THEREOF (EXHIBIT 10)

Council President Virginia Smith introduced the ordinance in writing. It was then moved by Council President Pro Tempore Pritchard 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. Thereupon, Council President Virginia Smith called for a vote with the following results:

Ayes: Virginia C. Smith
William S. ("Billy") Pritchard III
Gerald A. Garner

Nays: Lloyd C. Shelton
Graham L. Smith

Council President Virginia Smith declared the motion did not carry with a vote of 3-2 and will be addressed at the next council session.

8. COMMENTS FROM RESIDENCES AND ATTENDEES

(There were no public comments)

9. ANNOUNCEMENT

Council President Pro Tempore announced the next regular meeting of the City Council is January 22, 2024, 7:00p.m.

10. ADJOURNMENT

There being no further business to come before the City Council, Council President Virginia Smith adjourned the meeting at approximately 7:33 p.m.

11. 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 January 8, 2024, 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 22, 2024

EXHIBIT 1

PROCLAMATION NO. 2024-001

WHEREAS, January is National Mentoring Month: an annual campaign to raise awareness of and celebrate the powerful impact of mentoring relationships, recruit new mentors, and encourage institutions to integrate quality mentoring into their policies, practices; and

WHEREAS, the City of Mountain Brook recognizes the contributions of volunteer mentors, who link youth to economic and social opportunity, while also strengthening our community; and

WHEREAS, mentoring programs in Jefferson County make our state and communities stronger by enabling impactful relationships that provide invaluable support networks; and

WHEREAS, youth development experts agree that mentoring encourages positive youth development and smart daily behaviors, such as finishing homework and having healthy social interactions, and has a positive impact on the growth and success of a young person; and

WHEREAS, mentoring programs generally have a significant, positive impact on youth academic achievement, school connectedness and engagement, and educational success, which can lead to outcomes such as improved attendance, grades, and test scores, and classroom behavior; and

WHEREAS, mentors can help young people set career goals, and can help connect mentees to industry professionals to train for and find jobs; and

WHEREAS, effective mentoring of undeserved and vulnerable populations of young people helps them confront challenges and enjoy improved mental health and social-emotional well-being; and

RESOLUTION NO. 2024-011

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contractor agreement between the City and The Bridge Builders of Alabama, in the form as attached hereto as Exhibit A, with respect to the Parkway Bridge Restorations project.

ADOPTED: This 22nd day of January, 2024.

Council President

APPROVED: This 22nd day of January, 2024.

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 22, 2024, as same appears in the minutes of record of said meeting.

City Clerk

Phone 206-663-6501
Fax 205-663-2110
tbbfalabama.com



231 Applegate Trace
PO Box 1628
Pelham, AL 35124

Quote # 231219A

Sheet : 1

Customer

Name Mountain Brook
Address
City State ZIP
Email gayj@mtbrook.org

Misc

Date 12/19/23
Project 3 Bridge
Spall Repair
Location Mountain Brook

Item #	Description	Est Quantity	Units	Unit Price	TOTAL
1	BIN # 2850 Neat line score, chip spall areas, epoxy coat spall concrete and rebar, Form, drill pour access hole in deck, Pour, Reck forms. Rub underneath deck and therocoat.	1	LS	\$ 25,000.00	\$ 25,000.00
2	BIN # 2851 Neat line score, chip spall areas, epoxy coat spall concrete and rebar, Form, drill pour access hole in deck, Pour, Reck forms. Rub underneath deck and therocoat.	1	LS	\$ 35,000.00	\$ 35,000.00
3	BIN # 2852 Neat line score, chip spall areas, epoxy coat spall concrete and rebar, Form, drill pour access hole in deck, Pour, Reck forms. Rub underneath deck and therocoat.	1	LS	\$ 35,000.00	\$ 35,000.00

Notes:

Subtotal \$ 95,000.00

TAX

TOTAL \$ 95,000.00

Respectfully submitted,
The Bridge Builders of Alabama, LLC.

CONTRACTOR AGREEMENT

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

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

Name of Project: Parkway Bridge Restorations

Site of Project: 2780 Mountain Brook Parkway
Mountain Brook, AL 35223

2. **Scope of Work.** See Exhibit A (which includes the City Scope of Work and December 19, 2023 Contractor Proposal, hereinafter the "Contractor Proposal") that is attached and incorporated herein.

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

4. **Term/Termination.** The term of this Agreement shall commence on the Effective Date and thereafter continue in effect for six (6) 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.

Contractor's obligations herein shall survive the termination or expiration of the Term for these periods: Section 6(f) (Warranty on workmanship and materials) for one year following Project acceptance; other warranties in Section 6 for a period of one year, and Section 7(c) (Indemnification) for a period of two (2) years.

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 Ninety-Five thousand dollars (\$95,000.00) as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing signed by duly authorized representatives of both parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price (and agreed sum(s) payable for any Additional Operations contemplated on Exhibit A). In no event will the total amount paid to Contractor for its Work (including the Contract Price or any amount paid for Additional Operations) exceed \$100,000.00.

The City will pay the Contract Price on this Project on the following schedule:

- (a) The Lump sum of the Contract Price after the following certification of completion of Work.

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

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

- (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;
- (b) that it, and all of its employees or any subcontractors (if authorized), will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;
- (c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;

- (d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;
- (e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;
- (f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of acceptance of the Project; and
- (g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of Contractor is authorized to execute this Agreement.

7. Insurance/Safety/Indemnification.

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

- (i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars (\$750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;
- (ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) combined single limit and aggregate for bodily injury and property damage;
- (iii) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.

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

the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

The City will not furnish any type, form, coverage or amount of insurance in connection with the Project.

(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.

The City will not indemnify Contractor (or any of its representatives or authorized subcontractors) for any claims that relate to or arise out of the Project.

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

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

9. Miscellaneous Provisions.

a. This Agreement which is comprised of this instrument, the City Scope of Work and the December 19, 2023 Contractor Proposal (collectively, the "Contract Documents") sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein. In the event of any conflict or inconsistency between provisions in the various Contract Documents, the provision(s) in the document in the order below shall control and take precedence: (1) this Agreement; (2) the City Scope of Work; and (3) the Contractor Proposal.

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

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

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

e. This Agreement is made only for the benefit of the Parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

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

h. Immigration Law Compliance. Contractor represents and warrants to the City that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the "Act"); (ii) it will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Contractor shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on

the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Contractor further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if Contractor is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

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

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

k. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

(Signature Page Follows)

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

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

Its: Mayor

Date: _____

The Bridge Builders of Alabama.

By: _____

Its: _____

Date: _____

EXHIBIT A – SPECIFICATIONS

1. Scope of Work.

See attached City Scope of Work and December 19, 2023 Contractor Proposal. Restoration of the three bridges on Mountain Brook Parkway Bin # 2850, Bin # 2851 and Bin # 2852. Neat line score, Chip Spall Areas, epoxy coat spall concrete and rebar, Form, drill pour access hole in deck, pour, reekforms. Rub underneath the deck and therocoat.

If Contractor desires or is required to perform services on the Project that fall outside the Scope (“Additional Operations”), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same. No compensation for Additional Operations will be paid unless those Operations are approved in advance.

2. Project Schedule. Weather permitting, Contractor expects to complete the Work within an approximate 8 week period after execution of the Agreement and the City provides it a Notice to Proceed.

3. Project Representatives.

City Project Representative:
Steven Gay
3579 East Street
Birmingham, AL 35243
Email: gayj@mtnbrook.org
Day Tel #: 205-802-3870

Contractor Project Representative:
Cody Corley
231 Applegate Trace
Po Box 1628
Pelham, Al 35124
205-663-6501
kacym@tbbofalabama.com

4. Special Conditions.

Contractor is responsible for traffic control and cleanup of all waste materials from the job site daily. Any Environmental controls to protect watersheds shall be supplied by the contractor throughout the project.

RESOLUTION NO. 2024-012

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contractor agreement between the City and JP Painting Company LLC., in the form as attached hereto as Exhibit A, with respect to the Public Works Department Painting Project.

ADOPTED: This 22nd day of January, 2024.

Council President

APPROVED: This 22nd day of January, 2024.

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 22, 2024, as same appears in the minutes of record of said meeting.

City Clerk



City of
Mountain Brook

Heather Richards <richardsh@mtnbrook.org>

Council Agenda

James Gay <gayj@mtnbrook.org>

Wed, Jan 17, 2024 at 11:57 AM

To: Heather Richards <richardsh@mtnbrook.org>

Cc: Ronald Vaughn <vaughnr@mtnbrook.org>

Please add to the agenda.

This is a Public Works Project. I did reach out to three other contracts for part of our process. Capps Painting came out and looked at the job and never sent in a quote. Mike Pennington Painting is scaling back and turning the job down. Paint Masters Scotty Hughes never came to the site and passed the deadline to do so..

3 attachments

ExhibitAPainting Contract.pdf
1920K

2024 PW Paint Project.docx (1).pdf
117K

FrankPaintingEverify.pdf
4070K

Estimator: Joe 205-966-7672

JP Painting

Proposal

Date: November 21, 2023
To: City of Mountain Brook Public Works
Attn: Steven Gay
Ref: Public Works building(s) Exterior repaint

Below is the scope of work and pricing requested on the above-named project.

Scope:

Provide all material, labor, tools, **equipment** and clean up for a complete finish system @ exterior- per site visit and conversation with Steven Gay, Mountain Brook Public works, and Frank Chinoski (JP Painting) on 11/09/2023.

All surfaces to be finished will be pressure washed and cleaned with biodegradable cleaning products

Exclusions:

- No work @ pre finished entrance and exit doors and door casings @ front and rear elevations
- No work @ pre- finished windows
- No work @ CMU

Base Bid..... \$49,250.00

Equipment (Lift)\$3,200.00

Total Price.....\$52,450.00

Respectfully,

Frank Chinoski

p.o. box 312 Saginaw, AL 35137 * Phone (205) 894-1238*

Bond-Plex®

Waterbased Acrylic Coating

SURFACE PREPARATION

WARNING! If you scrape, sand or remove old paint, you may release lead dust. LEAD IS TOXIC. EXPOSURE TO LEAD DUST CAN CAUSE SERIOUS ILLNESS, SUCH AS BRAIN DAMAGE, ESPECIALLY IN CHILDREN. PREGNANT WOMEN SHOULD ALSO AVOID EXPOSURE. Wear a NIOSH-approved respirator to control lead exposure. Clean up carefully with a HEPA vacuum and a wet mop. Before you start, find out how to protect yourself and your family by contacting the National Lead Information Hotline at 1-800-424-LEAD or log on to www.epa.gov/lead.

When cleaning the surface per SSPC-SP1, use only an emulsifying industrial detergent, followed by a water rinse.

Do not use hydrocarbon solvents for cleaning.

Remove all surface contamination by washing with an appropriate cleaner, rinse thoroughly and allow to dry. Existing peeled or checked paint should be scraped and sanded to a sound surface. Glossy surfaces should be sanded dull. Stains from water, smoke, ink, pencil, grease, etc. should be sealed with the appropriate primer-sealer. Recognize that any surface preparation short of total removal of the old coating may compromise the service length of the system.

Pre-Finished Siding Fluorocarbon, Silicone Polyester, Polyester Polymers:

Remove oil, grease, dirt, oxides, and other contaminants from the surface by cleaning per SSPC-SP1 or water blasting per NACE Standard RP-01-72 (caution: excessive blasting pressure may cause warping, use caution). Always check compatibility of the previously painted surface with the new coating by applying a test patch of 2-3 square feet. Allow to dry thoroughly for 1 week before checking adhesion.

Previously Painted Surface:

If in sound condition, clean the surface of all foreign material. Smooth, hard or glossy coatings and surfaces should be dulled by abrading the surface. Always check compatibility of the previously painted surface with the new coating by applying a test patch of 2-3 square feet. Allow to dry thoroughly for 1 week before checking adhesion. If adhesion is poor, additional abrasion of the surface and/or removal of the previous coating may be necessary. Retest surface for adhesion. If paint is peeling or badly weathered, clean surface to sound substrate and treat as a new surface as above. Recognize that any surface preparation short of total removal of the old coating may compromise the service length of the system.

SURFACE PREPARATION

Mildew:

Prior to attempting to remove mildew, it is always recommended to test any cleaner on a small, inconspicuous area prior to use. Bleach and bleaching type cleaners may damage or discolor existing paint films. Bleach alternative cleaning solutions may be advised.

Mildew may be removed before painting by washing with a solution of 1 part liquid bleach and 3 parts clean water. Apply the solution and scrub the mildewed area. Allow the solution to remain on the surface for 10 minutes. Rinse thoroughly with clean water and allow the surface to dry before painting. Wear protective eyewear, waterproof gloves, and protective clothing. Quickly wash off any of the mixture that comes in contact with your skin. Do not add detergents or ammonia to the bleach-water solution.

PERFORMANCE

B71W00211 Bond-Plex @ 4.0 mils D.F.T.
(unless otherwise noted)

Abrasion Resistance:

Method:

ASTM D4060, CS17 Wheel, 1000 cycles, 1kg load

Result:

90.03 mg loss

Adhesion:

Method:

ASTM D4541

Result:

1477 p.s.i.

Corrosion Weathering*:

Method:

ASTM D5894, 8 cycles

Result:

Rating 8.5 for rusting
Rating 10 for blistering

Direct Impact Resistance:

Method:

ASTM D2794

Result:

greater than 176 inch pound

Dry Heat Resistance:

Method:

ASTM D2485

Result:

200°F/93°C

Flexibility:

Method:

ASTM D522, 180° bend, 1/4 inch mandrel

Result:

Pass

Humidity Resistance:

Method:

ASTM D4585, 1443 hours

Result:

Rating 10 for rusting
Rating 10 for blistering

Pencil Hardness:

Method:

ASTM D3363

Result:

1.5B

Salt Fog Resistance*:

Method:

ASTM B117, 274 hours

Result:

Rating 8 for rusting
Rating 8D for blistering

*1 coat Pro Industrial Pro-Cryl Primer
1 coat Bond-Plex

SAFETY PRECAUTIONS

Before using, carefully read **CAUTIONS** on label.

Refer to the Safety Data Sheets (SDS) before use.

FOR PROFESSIONAL USE ONLY.

Published technical data and instructions are subject to change without notice. Contact your Sherwin-Williams representative for additional technical data and instructions.

CLEANUP INFORMATION

Clean spills, spatters, hands and tools immediately after use with soap and warm clean water. After cleaning, flush spray equipment with compliant cleanup solvent to prevent rusting of the equipment. Follow manufacturer's safety recommendations when using solvents.

HOTW	12/19/2022	B71W00211	27	45
HOTW	12/19/2022	B71T00204	22	48
HOTW	12/19/2022	B71S00200	21	102


**SHERWIN
WILLIAMS.**

Bond-Plex®

Waterbased Acrylic Coating

B71W00211 Extra White, B71T00204 Clear Tint Base, B71S00200 Aluminum

CHARACTERISTICS

Bond-Plex Waterbased Acrylic Coating is a single component, waterborne acrylic, adhesion promoting coating formulated for direct application to pre-finished metal siding. Suitable for interior or exterior use.

Features:

- Outstanding adhesion
- Eliminates the use of a bonding primer over certain pre-finished siding or other hard, slick, glossy surfaces
- Outstanding application characteristics
- Suitable for use in USDA inspected facilities

For use over properly prepared pre-finished siding:

- Fluorocarbons (Kynar®)
- Polyester Polymers
- Silicone Polyesters

Recommended For:

- Light Industrial
- Pre-finished Siding
- Manufacturing Facilities, New Construction

Finish: 15-25 @ 85° Low Sheen
Aluminum 70° @ 60° Gloss
Color: Many Colors

Recommended Spreading Rate per coat:

(Extra White B71W00211 may vary by color)

Wet mils: 5.0-10.0
Dry mils: 2.4-4.1
Coverage: 160-328 sq. ft. per gallon
Theoretical Coverage: 657 sq. ft. per gallon @ 1 mil dry

Approximate spreading rates are calculated on volume solids and do not include any application loss.

Note: Brush or roll application may require multiple coats to achieve maximum film thickness and uniformity of appearance.

Drying Schedule @ 5.0 mils wet, @ 50% RH:
Drying and recoat times are temperature, humidity, and film thickness dependent.

	@50°F	@77°F	@120°F
To touch	1.5 hours	45 minutes	20 minutes
Tack free	6 hours	4 hours	2 hours
To recoats	8 hours	4 hours	2 hours

Tinting with CCE only:

Base	oz. per gallon	Strength
Extra White	0-4	SherColor
Deep Base	10-12	SherColor

Do Not Tint Aluminum

Extra White B71W00211

(may vary by color)

V.O.C. (less exempt solvents):

less than 50 grams per litre; 0.42 lbs. per gallon

Aluminum 102 grams per litre; 0.85 lbs. per gallon

As per 40 CFR 59.406

Volume Solids: 39 ±2%
Weight Solids: 55 ±2%
Weight per Gallon: 10.90 lbs
Flash Point: N/A
Vehicle Type: Acrylic
Shelf Life: 36 months, unopened
Aluminum 12 months

COMPLIANCE

As of 12/19/2022, Complies with:

OTC	Yes
OTC Phase II	Yes
S.C.A.Q.M.D.	Yes
CARB	Yes
CARB SCM 2007	Yes
CARB SCM 2020	Yes
Canada	Yes
LEED® v4 & v4.1 Emissions	No
LEED® v4 & v4.1 V.O.C.	Yes
EPD-NSF® Certified	No
MIR-Manufacturer Inventory	No
MPI®	No

APPLICATION

Temperature:
minimum 50°F / 10°C
maximum 120°F / 49°C
air, surface and material
At least 5°F above dew point

Relative humidity: 85% maximum
The following is a guide. Changes in pressures and tip sizes may be needed for proper spray characteristics. Always purge spray equipment before use with listed reducer. Any reduction must be compatible with the existing environmental and application conditions.

Reducer: Water
Airless Spray:
Pressure 2400 p.s.i.
Hose 1/4-3/8 inch I.D.
Tip .017-.019 inch
Filter 60 mesh

Conventional Spray:
Gun Binks 95
Fluid Nozzle 66
Air Nozzle 63 PB
Atomization Pressure 60 p.s.i.
Fluid Pressure 25 p.s.i.

Reduction: As needed up to 10% by volume

Brush: Nylon-polyester
Roller Cover: 1/2 inch woven-small surfaces only
If specific application equipment is listed above, equivalent equipment may be substituted. Consult spray manufacturer for more information on equipment variations.

Apply paint at the recommended film thickness and spreading rate as indicated. Application of coating above maximum or below minimum recommended spreading rate may adversely affect coating performance. Spreading rates are calculated on volume solids and do not include an application loss factor due to surface profile, roughness, or porosity of the surface, skill, and technique of the applicator, method of application, various surface irregularities, material loss during mixing, spillage, over thinning, climatic conditions, and excessive film build.

Mix paint thoroughly to a uniform consistency with slow speed power agitation prior to use.

Stripe coat crevices, welds, and sharp angles to prevent early failure in these areas. When using spray application, use 50% overlap with each pass of the gun to avoid holidays, bare areas, and pinholes. If necessary, cross spray at a right angle.

During the early stages of drying, the coating is sensitive to rain, dew, high humidity, and moisture condensation. Plan painting schedules to avoid these influences during the first 16-24 hours of curing.

SPECIFICATIONS

Pre-Finished Siding: Fluorocarbon, Silicone Polyester, Polyester Polymers:
1-2 coats Bond-Plex Waterbased Acrylic

Previously Painted, Hard, Slick, Glossy Surfaces:
1-2 coats Bond-Plex Waterbased Acrylic

Pre-Finished Siding: Fluorocarbon, Silicone Polyester, Polyester Polymers:
1 coat Bond-Plex Waterbased Acrylic
1-2 coats of Acceptable topcoat

Previously Painted, Hard, Slick, Glossy Surfaces:
1 coat Bond-Plex Waterbased Acrylic
1-2 coats of Acceptable topcoat

Acceptable Topcoats:

Pro Industrial Acrylic
Pro Industrial DTM Primer/Finish
Pro Industrial Multi-Surface Acrylic
Pro Industrial Waterbased Acrolon 100
Pro Industrial Waterbased Alkyd Urethane Enamel
Pro Industrial Pre-Catalyzed Waterbased Urethane

Always check compatibility of the previously painted surface with the new coating by applying a test patch of 2-3 square feet. Allow to dry thoroughly for 1 week before checking adhesion.

The systems listed above are representative of the product's use. Other systems may be appropriate.

Pro Industrial™

Waterbased Alkyd Urethane Enamel Semi-Gloss

SURFACE PREPARATION

WARNING! Removal of old paint by sanding, scraping or other means may generate dust or fumes that contain lead. Exposure to lead dust or fumes may cause brain damage or other adverse health effects, especially in children or pregnant women. Controlling exposure to lead or other hazardous substances requires the use of proper protective equipment, such as a properly fitted respirator (NIOSH approved) and proper containment and cleanup. For more information, call the National Lead Information Center at 1-800-424-LEAD (in US) or contact your local health authority.

Do not use hydrocarbon solvents for cleaning.

Remove all surface contamination by washing with an appropriate cleaner, rinse thoroughly and allow to dry. Existing peeling or checked paint should be scraped and sanded to a sound surface. Glossy surfaces should be sanded dull. Stains from water, smoke, ink, pencil, grease, etc. should be sealed with the appropriate primer/sealer. Recognize that any surface preparation short of total removal of the old coating may compromise the service length of the system.

Iron & Steel - Minimum surface preparation is Hand Tool Clean per SSPC-SP2. Remove all oil and grease from surface per SSPC-SP1. For better performance, use Commercial Blast Cleaning per SSPC-SP6. Primer recommended for best performance.

Aluminum - Remove all oil, grease, dirt, oxide and other foreign material per SSPC-SP1. Prime the area the same day as cleaned.

Galvanizing - Allow to weather a minimum of six months prior to coating. Solvent Clean per SSPC-SP1. When weathering is not possible, or the surface has been treated with chromates or silicates, first Solvent Clean per SSPC-SP1 and apply a test patch. Allow paint to dry at least one week before testing adhesion. If adhesion is poor, brush blasting per SSPC-SP16 is necessary to remove these treatments. Rusty galvanizing requires a minimum of Hand Tool Cleaning per SSPC-SP2, prime the area the same day as cleaned.

Concrete Block - Surface should be thoroughly clean and dry. Air, material and surface temperatures must be at least 55°F (13°C) before filling. Use Pro Industrial Heavy Duty Block Filler or Loxon Acrylic Block Surfacer. The filler must be thoroughly dry before topcoating.

Masonry - All masonry must be free of dirt, oil, grease, loose paint, mortar, masonry dust, etc. Clean per SSPC-SP13/Nace 6/ ICRI No. 310.2R, CSP 1-3. Poured, troweled, or tilt-up concrete, plaster, mortar, etc. must be thoroughly cured at least 30 days at 75°F. Form release compounds and curing membranes must be removed by brush blasting. Brick must be allowed to weather for one year prior to surface preparation and painting. Prime the area the same day as cleaned. Weathered masonry and soft or porous cement board must be brush blasted or power tool cleaned to remove loosely adhering contamination and to get to a hard, firm surface. Apply one coat Loxon Conditioner, following label recommendations.

Wood - Surface must be clean, dry, and sound. Prime with recommended primer. No painting should be done immediately after a rain or during foggy weather. Knots and pitch streaks must be scraped, sanded and spot primed before full coat of primer is applied. All nail holes or small openings must be properly caulked.

SURFACE PREPARATION

Previously Painted Surface - If in sound condition, clean the surface of all foreign material. Smooth, hard or glossy coatings and surfaces should be dulled by abrading the surface. Apply a test area, allowing paint to dry one week before testing adhesion. If adhesion is poor, additional abrasion of the surface and/or removal of the previous coating may be necessary. Retest surface for adhesion. If paint is peeling or badly weathered, clean surface to sound substrate and treat as a new surface as above. Recognize that any surface preparation short of total removal of the old coating may compromise the service length of the system.

Mildew - Prior to attempting to remove mildew, it is always recommended to test any cleaner on a small, inconspicuous area prior to use. Bleach and bleaching type cleaners may damage or discolor existing paint films. Bleach alternative cleaning solutions may be advised.

Mildew may be removed before painting by washing with a solution of 1 part liquid bleach and 3 parts water. Apply the solution and scrub the mildewed area. Allow the solution to remain on the surface for 10 minutes. Rinse thoroughly with water and allow the surface to dry before painting. Wear protective eyewear, waterproof gloves, and protective clothing. Quickly wash off any of the mixture that comes in contact with your skin. Do not add detergents or ammonia to the bleach/water solution.

PERFORMANCE

System Tested: (unless otherwise indicated)

Substrate: Steel
Surface Preparation: SSPC-SP10
Finish:

1 coat Waterbased Alkyd Urethane, 5 W.F.T.

Adhesion:
Method: ASTM D3359 method B
Result: 4B

Pencil Hardness:
Method: ASTM D3363
Result: 4H

Flexibility:
Method: Method: ASTM D522,
180° bend, 1/4" mandrel
Result: Pass

Dry Heat Resistance:
Method: ASTM D2485
Result: 200°F

Block Resistance:
Lab assessment: Excellent

Resistance to Yellowing:
Lab assessment: Excellent

No painting should be done immediately after a rain or during foggy weather.
Do not paint on wet surfaces.
Check adhesion by applying a test strip to determine the readiness for painting.

SAFETY PRECAUTIONS

Before using, carefully read **CAUTIONS** on label. Refer to the Safety Data Sheets (SDS) before use. **FOR PROFESSIONAL USE ONLY.**

Published technical data and instructions are subject to change without notice. Contact your Sherwin-Williams representative for additional technical data and instructions.

CLEANUP INFORMATION

Clean spills, spatters, hands and tools immediately after use with soap and warm water. After cleaning, flush spray equipment with compliant cleanup solvent to prevent rusting of the equipment. Follow manufacturer's safety recommendations when using solvents.

DANGER: Rags, steel wool, other waste soaked with this product, and sanding residue may spontaneously catch fire if improperly discarded. Immediately place rags, steel wool, other waste soaked with this product, and sanding residue in a sealed, water-filled, metal container. Dispose of in accordance with local fire regulations.

HOTW 03/10/2020 B53W01153 09 39
FRC

Pro Industrial™ Waterbased Alkyd Urethane Enamel Semi-Gloss

B53-1150/2150 Series


**SHERWIN
WILLIAMS.**

CHARACTERISTICS

Pro Industrial Waterbased Alkyd Urethane Enamel is a premium quality interior-exterior enamel formulated with a urethane modified alkyd resin system for high performance. It provides beauty and durability when applied to interior-exterior surfaces such as properly prepared drywall, wood, masonry and metal. It brings together the convenience and ease of use of a waterborne coating with the performance and coating characteristics of a traditional oil-based enamel.

- Excellent washability & flow & leveling
- Excellent touch up
- Easy application & cleanup
- Resistant to yellowing compared to traditional alkyds
- Suitable for use in USDA inspected facilities

For use on properly prepared:

Steel, Galvanized & Aluminum, Drywall, Concrete and Masonry, and Wood.

Finish: 50-70° @60°

Color: Most colors

Recommended Spreading Rate per coat:

Wet mils: 4.0-5.0

Dry mils: 1.4-1.7

Coverage: 320-389 sq.ft. per gallon

Theoretical Coverage: 545 sq. ft. per gallon @ 1 mil dry

Approximate spreading rates are calculated on volume solids and do not include any application loss.

Note: Brush or roll application may require multiple coats to achieve maximum film thickness and uniformity of appearance.

Drying Schedule @ 4.0 mils wet, @ 50% RH:

Drying, and recoat times are temperature, humidity, and film thickness dependent.

@77°F

To touch 1-2 hours

To recoat 4 hours

Tinting with CCE only:

Base	oz. per gallon	Strength
Extra White	0-6	SherColor
Deep Base	4-12	SherColor
Ultra-deep Base	10-14	SherColor

Extra White B53W02151

(may vary by color)

V.O.C. (less exempt solvents):

less than 50 grams per litre; 0.42 lbs. per gallon

As per 40 CFR 59.406

Volume Solids: 34 ± 2%

Weight Solids: 51 ± 2%

Weight per Gallon: 10.94 lb

Flash Point: N/A

Vehicle Type: Urethane modified alkyd

Shelf Life: 36 months, unopened

COMPLIANCE

As of 03/10/2020, Complies with:

OTC	Yes
OTC Phase II	Yes
SCAQMD	Yes
CARB	Yes
CARB SCM 2007	Yes
Canada	Yes
LEED® v4 & v4.1 Emissions	No
LEED® v4 & v4.1 V.O.C.	Yes
EPD-NSF® Certification	No
MIR-Manufacturer Inventory	No
NSF® Certification	No
MPI®	No

APPLICATION

Temperature:

minimum 50°F / 10°C

maximum 100°F / 37.8°C

air, surface, and material

At least 5°F above dew point

Relative humidity: 85% maximum

The following is a guide. Changes in pressures and tip sizes may be needed for proper spray characteristics. Always purge spray equipment before use with listed reducer. Any reduction must be compatible with the existing environmental and application conditions.

Reducer: Water

Airless Spray:

Pressure 2000 p.s.i.

Hose 1/4 inch I.D.

Tip .013 - .017 inch

Filter 60 mesh

Reduction Not recommended

Brush Nylon-polyester

Roller Cover 1/4-1/2 inch woven

If specific application equipment is listed above, equivalent equipment may be substituted.

Apply paint at the recommended film thickness and spreading rate as indicated on front page. Application of coating below minimum recommended spreading rate will adversely affect coating performance.

No painting should be done immediately after a rain or during foggy weather.

When using spray application, use a 50% overlap with each pass of the gun to avoid holidays, bare areas, and pinholes. Apply coating evenly while maintaining a wet edge to prevent lapping.

SPECIFICATIONS

Steel:

- 1 coat Pro Industrial Pro-Cryl Primer
- 2 coats Pro Industrial Waterbased Alkyd Urethane

Aluminum and Galvanizing:

- 1 coat Pro Industrial Pro-Cryl Primer
- 2 coats Pro Industrial Waterbased Alkyd Urethane

Concrete Block (CMU):

- 1 coat Pro Industrial Heavy Duty Blockfiller or Loxon Acrylic Block Surfer
- 2 coats Pro Industrial Waterbased Alkyd Urethane

Concrete-Masonry:

- 1 coat Loxon Concrete & Masonry Primer (if needed)
- 2 coats Pro Industrial Waterbased Alkyd Urethane

Drywall:

- 1 coat ProMar 200 Zero V.O.C. Primer
- 2 coats Pro Industrial Waterbased Alkyd Urethane

Wood, exterior:

- 1 coat Exterior Wood Primer
- 2 coats Pro Industrial Waterbased Alkyd Urethane

Wood, interior:

- 1 coat Premium Wall & Wood Primer
- 2 coats Pro Industrial Waterbased Alkyd Urethane

The systems listed above are representative of the product's use, other systems may be appropriate.

Product Application (cont.)

THINNING:

Do not thin.

APPLICATION METHODS:

Brush using a nylon or polyester brush, or roll using a 1/2"-3/4" synthetic roller cover. If sprayed, use a .017-.021 fluid tip @1800-2000 psi. Back roll or brush when spraying.

NUMBER OF COATS:

Two (2) coats on horizontal and vertical surfaces. Apply evenly and avoid applying heavy coats. Thoroughly coat the porous ends of all boards with product.

APPLICATION TEMPERATURE:

50°F.-90°F. Do not apply if wood surface is hot to touch or if rain is likely to occur.

DRY TIME @ 70°F.:

3-4 hours to recoat; 24-48 hours for foot traffic; 30 days before washing.

SPREAD RATE:

New Wood: 350-400 sq. ft. per gallon;

Weathered Wood: 250-300 sq. ft. per gallon.

SLIP RESISTANCE:

Use Anti-Skid Additive to create a slip resistant surface on decks, docks, stairs, ramps and more. Just mix Anti-Skid Additive into the final coat of stain and apply with a roller.

CLEAN UP:

Soap and water clean up. If product dries on tools use mineral spirits following product manufacturer's directions. Dispose of empty container or unused portion in accordance with local, state, and federal regulations.

MAINTENANCE:

If surface wear occurs clean with Superdeck® Wood Cleaner and recoat if necessary.

Physical Properties

RESIN TYPE:	100% Acrylic Latex/Alkyd Resin
LBS. PER GALLON:	9.80-10.25
VISCOSITY:	70-75 KU
SOLIDS (% BY WEIGHT):	50%
SOLIDS (% BY VOLUME):	39%
PIGMENT (% BY WEIGHT):	25%
VEHICLE (% BY WEIGHT):	74%
SHEEN:	Flat
FLASH POINT:	>180° F.
V.O.C.:	less than 100 grams per liter

Physical Properties (cont.)

OTHER:

SC 9601 Solid Color Stain Pastel Base

CAS Number	Ingredient
7732-18-5	Water
12736-96-8	Nepheline Syenite
Proprietary	Acrylic Polymer
Proprietary	Soya Alkyd Polymer
13463-67-7	Titanium Dioxide
14807-96-6	Talc

NON-PHOTOCHEMICALLY REACTIVE

VOC: 88 g/L - 0.73 lb/gal as per 40 CFR 59.406

SC 9602 Solid Color Stain Midtone Base

CAS Number	Ingredient
7732-18-5	Water
12736-96-8	Nepheline Syenite
Proprietary	Acrylic Polymer
Proprietary	Soya Alkyd Polymer
14807-96-6	Talc
13463-67-7	Titanium Dioxide

NON-PHOTOCHEMICALLY REACTIVE

VOC: 87 g/L - 0.73 lb/gal as per 40 CFR 59.406

SC 9603 Solid Color Stain Deeptone Base

CAS Number	Ingredient
7732-18-5	Water
12736-96-8	Nepheline Syenite
Proprietary	Acrylic Polymer
Proprietary	Soya Alkyd Polymer
14807-96-6	Talc

NON-PHOTOCHEMICALLY REACTIVE

VOC: 87 g/L - 0.73 lb/gal as per 40 CFR 59.406

SC 9606 Solid Color Stain Brilliant White

CAS Number	Ingredient
7732-18-5	Water
12736-96-8	Nepheline Syenite
Proprietary	Acrylic Polymer
13463-67-7	Titanium Dioxide
Proprietary	Soya Alkyd Polymer
14807-96-6	Talc

NON-PHOTOCHEMICALLY REACTIVE

VOC: 88 g/L - 0.73 lb/gal as per 40 CFR 59.406

SUPERDECK® Solid Color Stain

9600 Series 100 VOC



General Description

SUPERDECK® SOLID COLOR STAIN is an acrylic latex solid color coating that is fortified with a "super bonding" alkyd resin that provides priming and penetration, plus outstanding adhesion to chalky surfaces. The combination of a topcoat and primer is perfect for new projects and as a solution for recoating old applications. The tannin blocking capability offers outstanding color retention, and features the major benefits of oil and water-combined in one unique formula with easy soap and water clean up. Plus, Superdeck® Solid Color Stain is durable enough to stand up to demanding decking applications, yet has the flexibility to withstand the challenges of siding. The viscosity of Solid Color Stain has been specially formulated to offer extremely easy handling and works well with sprayers making it a contractor and DIY favorite.

Recommended Substrates

Protects exterior new wood, weathered wood or previously painted or stained surfaces that have been properly prepared. These surfaces include wood siding, T1-11 siding, decks, docks, fences, trim boards, outdoor furniture and weathered vertical stucco and masonry. Not for use indoors.

Tinting & Base Color Information

Solid Color Deck Stain can be used as is or it can be tinted. Pastel Base can be tinted with up to 4 ounces of colorant per gallon. Midtone and Deeptone Base can be tinted with up to 8 ounces of colorant per gallon. Tintable to 84 additional colors.

SC 9601-PASTEL BASE

SC 9602-MIDTONE BASE

SC 9603-DEEPTONE BASE

SC 9606-BRILLIANT WHITE (*Do not tint*)

Features / Benefits

Oil Primer and Latex Top Coat in One Formula
Guaranteed 5 Years Decks/15 Years Siding
Sprayable formula
Perfect solution to chalky stucco surfaces
Master Painters Institute (MPI) Approved for Product Class #16 & #33

Product Application

SURFACE PREPARATION:

All surfaces must be clean, dry, and free from dirt, mildew stains, dust and other foreign matter. Do not apply over sealed surfaces. Remove surface stains, dirt and failed oxidized stains with Superdeck® Wood Cleaner. Remove solid stains or paints with Superdeck® Wood Stripper. For redwood and cedar, follow cleaning or stripping with Superdeck® Wood Brightener to remove tannin stains and brighten wood to its original color. For new wood remove mill glaze with Superdeck® Wood Brightener.

WARNING! Removal of old paint by sanding, scraping or other means may generate dust or fumes that contain lead. Exposure to lead dust or fumes may cause brain damage or other adverse health effects, especially in children or pregnant women. Controlling exposure to lead or other hazardous substances requires the use of proper protective equipment, such as a properly fitted respirator (NIOSH approved) and proper containment and cleanup. For more information, call the National Lead Information Center at 1-800-424-LEAD (in US) or contact your local health authority.

PRODUCT PREPARATION:

Product should be shaken or stirred from bottom of container before and during application. When using more than one container of product, intermix all product and stir well to ensure color consistency. Fill level before tinting. Product may be tinted. Test a small area first for color satisfaction.



Cautions

CAUTIONS: Use only with adequate ventilation. If you experience eye watering, headaches, or dizziness, increase fresh air, or wear respiratory protection (NIOSH approved) or leave the area. Avoid contact with eyes and skin. Wash hands after using. Keep container closed when not in use. Do not transfer contents to other containers for storage.

FIRST AID: In case of eye contact, flush thoroughly with large amounts of water. Get medical attention if irritation persists. If swallowed, call Poison Control Center, hospital emergency room, or physician immediately.

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

DO NOT TAKE INTERNALLY. KEEP OUT OF THE REACH OF CHILDREN. DANGER: Rags, steel wool, other waste soaked with this product, and sanding residue

may spontaneously catch fire if improperly discarded. Immediately place rags, steel wool, other waste soaked with this product, and sanding residue in a sealed, waterfilled, metal container. Dispose of in accordance with local fire regulations.

03/11 (1262)

Conformance

OTC Approved:	Yes
SCAQMD Approved:	Yes
LADCO Approved:	Yes
CARB Approved:	Yes
Biodegradable:	No
ASTM Standard:	N/A
Master Painters Institute (MPI):	#33 & #16

Packaging

SC 9601-PASTEL BASE & SC 9606-BRILLIANT WHITE:

1-Gallon Container - 124 fl oz ($3\frac{7}{8}$ U.S. Qt) 3.66 L

5-Gallon Container - 620 fl oz ($4\frac{27}{32}$ U.S. Gal) 18.3 L

SC 9602-MIDTONE BASE & SC 9603-DEEPTONE BASE:

1-Gallon Container - 120 fl oz ($3\frac{3}{4}$ U.S. Qt) 3.55 L

5-Gallon Container - 600 fl oz ($4\frac{11}{16}$ U.S. Gal) 17.74 L

Limited Warranty

Manufacturer warrants this product against peeling on decks for 5 years, and against cracking, peeling and blistering on siding for 15 years from the date of purchase if applied according to label instructions to a properly prepared surface. If this product fails to perform as described above, manufacturer shall, as your sole and exclusive remedy, upon presentation of proof of purchase to manufacturer or its authorized representative, either replace an equivalent quantity of product free of charge or refund the original purchase price. This warranty shall not apply to any defect or damage resulting from improper surface preparation, structural defects, failure of a previous product, or problems caused by accident, alteration, misuse, improper storage, abuse or neglect of this product. To obtain performance under this warranty, contact manufacturer at (800) 825-5382 or superdeck.com. You may be asked to contact the retailer from whom you purchased this product for further warranty instructions. THIS WARRANTY EXCLUDES (1) LABOR OR COSTS ASSOCIATED WITH LABOR FOR THE APPLICATION OR REMOVAL OF ANY PRODUCT, AND (2) ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations may not apply to you. This warranty gives you specific rights, and you may also have other rights, which vary from state to state.



CONTRACTOR AGREEMENT
2024 Public Work Department Paint Project

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

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

Name of Project: 2024 Public Works Department Painting Project

Site of Project: 3579 East Street
Mountain Brook, AL 35243

2. **Scope of Work.** See Exhibit A (which includes the City Scope of Work and November 9, 2023 Contractor Proposal, hereinafter the "Contractor Proposal") that is attached and incorporated herein.

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

4. **Term/Termination.** The term of this Agreement shall commence on the Effective Date and thereafter continue in effect for six (6) 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.

Contractor's obligations herein shall survive the termination or expiration of the Term for these periods: Section 6(f) (Warranty on workmanship and materials) for one year following Project acceptance; other warranties in Section 6 for a period of one year, and Section 7(c) (Indemnification) for a period of two (2) years.

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 Fifty-Two thousand Four Hundred Fifty dollars (\$52,450.00) as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing signed by duly authorized representatives of both parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price (and agreed sum(s) payable for any Additional Operations contemplated on Exhibit A). In no event will the total amount paid to Contractor for its Work (including the Contract Price or any amount paid for Additional Operations) exceed \$100,000.00.

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

7. Insurance/Safety/Indemnification.

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

- (i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars (\$750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;
- (ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) combined single limit and aggregate for bodily injury and property damage;
- (iii) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.

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

The City will not furnish any type, form, coverage or amount of insurance in connection with the Project.

(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.

The City will not indemnify Contractor (or any of its representatives or authorized subcontractors) for any claims that relate to or arise out of the Project.

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

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

9. Miscellaneous Provisions.

a. This Agreement which is comprised of this instrument, the City Scope of Work and the November 9, 2023 Contractor Proposal (collectively, the "Contract Documents") sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and

terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein. In the event of any conflict or inconsistency between provisions in the various Contract Documents, the provision(s) in the document in the order below shall control and take precedence: (1) this Agreement; (2) the City Scope of Work; and (3) the Contractor Proposal.

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

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

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

e. This Agreement is made only for the benefit of the Parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

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

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

employ an unauthorized alien within the State of Alabama. Furthermore, if Contractor is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

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

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

k. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

(Signature Page Follows)

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

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

Its: Mayor

Date: _____

JP Painting Company, LLC.

By: _____

Its: _____

Date: _____

EXHIBIT A – SPECIFICATIONS

1. Scope of Work.

See attached City Scope of Work and November 9, 2023 Contractor Proposal. Provide all materials, labor, tools, equipment and clean up at the finish of each day. A review of site specific color designs will need to be taken before the start of project. All exterior shall be pressure washed prior to the start of project. All surfaces shall receive two coats of the approved paint or stain. Communications will be had daily of areas being painted so that areas are cleared of other city assets. Any weekend or after hours work will need to be approved by a City Official.

If Contractor desires or is required to perform services on the Project that fall outside the Scope (“Additional Operations”), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same. No compensation for Additional Operations will be paid unless those Operations are approved in advance.

2. Project Schedule. Weather permitting, Contractor expects to complete the Work within an approximate 8 week period after execution of the Agreement and the City provides it a Notice to Proceed.

3. Project Representatives.

City Project Representative:
James Gay
3579 East Street
Birmingham, AL 35243
Email: gayj@mtnbrook.org
Day Tel #: 205-802-3870

Contractor Project Representative:
Frank Chinoski
P.O. Box 312
Saginaw, AL 35137
jppaintingbhm@gmail.com
Day Tel #:205-894-1238

4. Special Conditions.

Work will be done on days that temps will be at 45 degrees and rising. Sherman Williams products will be used. to be specific Bond - Plex waterbased Acrylic Coating, Pro Industrial waterbased Alkyd Urethane Enamel semi-gloss and Superdeck 9600 Series Solid Color Stain. Any materials to be replaced will be replaced prior to the start of project.



2007-089

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

May 3, 2007

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Renee Culverhouse
Interim Chancellor
Alabama Department of Postsecondary Education
Post Office Box 302130
Montgomery, Alabama 36130-2130

Public Works – Postsecondary Education,
Department of – Maintenance

Painting contracts of \$50,000 or less entered into by the Alabama Department of Postsecondary Education qualify as “public works” under section 39-2-2(b) of the Code of Alabama and may be let with or without advertising or sealed bids.

Dear Dr. Culverhouse:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Inasmuch as maintenance projects are considered public works, would it be in keeping with the Code to allow painting contracts/expenses of \$50,000 or less to be entered into or conducted with or without bids?

FACTS AND ANALYSIS

In your letter of request, you informed this Office of the general facility maintenance needs of two-year colleges in Alabama. Specifically, your letter stressed the necessity of interior and exterior painting on high-use public facilities on the various campuses of the Alabama College System for occupancy by students, faculty, staff, and the public. This request was sent on behalf of the Alabama Department of Postsecondary Education.

The Alabama Department of Postsecondary Education ("Department") was established pursuant to section 16-60-110, *et seq.*, of the Code. According to the Code, the Department of Postsecondary Education is "[a] parallel organization to the State Department of Education directly responsible to the State Board of Education for the direction and supervision of junior colleges and trade schools and community colleges with a chief executive officer entitled chancellor." ALA. CODE § 16-60-110(6) (2001). The Chancellor of the Alabama Department of Postsecondary Education has "[t]he authority and responsibility for the operation, management, control, supervision, [and] maintenance . . . of each of the junior colleges and trade schools . . ." ALA. CODE § 16-60-111.2 (2001).

Section 39-2-2 of the Code requires that, "[b]efore entering into any contract for a public works involving an amount in excess of fifty thousand dollars (\$50,000), the awarding authority shall advertise for sealed bids." ALA. CODE § 39-2-2(a) (Supp. 2006). However, "[a]n awarding authority may let contracts for public works involving fifty thousand dollars (\$50,000) or less with or without advertising or sealed bids." ALA. CODE § 39-2-2(b) (Supp. 2006). An "awarding authority," as used in these provisions, is defined as follows:

Any governmental board, commission, agency, body, authority, instrumentality, department, or subdivision of the state, its counties and municipalities. This term includes but shall not be limited to, the Department of Transportation, the State Building Commission, the State Board of Education, and any other entity contracting for public works . . .

ALA. CODE § 39-2-1(1) (Supp. 2006). As a governmental organization directly responsible to the State Board of Education, the Department of Postsecondary Education is a governmental department and thus qualifies as an "awarding authority" under section 39-2-1(1).

"Public works" is defined in section 39-2-1(5) of the Code as follows:

The construction, repair, renovation, or *maintenance of public buildings*, structures, sewers, waterworks, roads, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.

ALA. CODE § 39-2-1(5) (Supp. 2006) (emphasis added).

According to the "plain language" rule of statutory construction, "[w]ords used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says." *IMED Corp. v. Systems Eng'g Associates Corp.*, 602 So.2d 344, 346 (Ala. 1992).

"Maintenance" is defined in *Black's Law Dictionary* as "[t]he care and work put into property to keep it operating and productive; general repair and upkeep." *Black's Law Dictionary* 973 (1999). As your letter to this Office states, "[h]igh-use public facilities require interior as well as exterior painting to safeguard property belonging to the state in good and safe condition for occupancy by students, faculty, staff, and the public. Painting . . . must be performed routinely." Thus, routine interior and exterior painting for the purpose of keeping public facilities in a good and safe working condition is "maintenance" under the definition of "public works" in section 39-2-1(5).

Confirmation of the conclusion that painting qualifies as "public works" may also be found in an opinion of this Office to Honorable Bobby Hayes. In explaining the definition of "public works," this opinion explained as follows:

The plain language of section 39-2-1(5) establishes a two-prong test in determining when a work is a public work for the purpose of competitive bidding: if the work (or improvement) is to be constructed or maintained on public property, and it is to be paid for, in whole or in part, with public funds, the work (or improvement) is a public work . . .

Opinion to Honorable Bobby Hayes, Mayor, City of Pelham, dated November 18, 2003, A.G. No. 2004-026 at 2.

The painting projects performed by or on behalf of the Alabama Department of Postsecondary Education satisfy both prongs of this test. First, as your letter states, the painting projects are part of "facility maintenance" for the "physical facilities located upon the various campuses of The Alabama College System." The maintenance performed on these facilities is therefore on public property and satisfies the first prong. Second, if the painting projects are paid for with funds from the State of Alabama or its agencies, this second prong is met.

Because "public works," as defined under section 39-2-1(5) of the Code, includes "maintenance of public buildings," interior and exterior painting projects performed for maintenance of these public facilities on the campuses of two-year colleges in Alabama qualify as "public works" under this section.

Honorable Renee Culverhouse
Page 4

Thus, painting contracts of \$50,000 or less may be let with or without advertising or sealed bids. The Department should be mindful that no public works contract in excess of \$50,000 shall be divided into parts involving less than \$50,000 for the purpose of evading the requirements of the public works law. ALA. CODE § 39-2-2(a) (Supp. 2006). Thus, the Department should not enter into multiple \$50,000 contracts with a single entity or person.

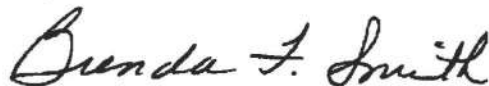
CONCLUSION

Painting contracts of \$50,000 or less entered into by the Alabama Department of Postsecondary Education qualify as "public works" under section 39-2-2(b) of the Code and may be let with or without advertising or sealed bids.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Pete Smyczek of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/PJS
222334/102462

RESOLUTION NO. 2024-013

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contractor agreement between the City and B Group Architecture, in the form as attached hereto as Exhibit A, with respect to the design and construction documents of the Public Works building.

ADOPTED: This 22nd day of January, 2024.

Council President

APPROVED: This 22nd day of January, 2024.

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 22, 2024, as same appears in the minutes of record of said meeting.

City Clerk



January 11, 2024

Mr. Ronnie Vaughn, Superintendent
City of Mountain Brook Public Works Department
3579 East Street
Mountain Brook, AL 35243

Re: Expansion of Existing Equipment Maintenance Facility and Addition of New Wash Bay
BGA Project Number 2401

Dear Ronnie:

You, and I recently met to discuss the above subject project where you have requested B Group Architecture, Inc. (BGA) to provide the City of Mountain Brook (MB) with a proposal for complete architectural services for the expansion of the equipment maintenance facility and the addition of an enclosed vehicle wash bay. This letter will serve as our proposal for services as follows:

GENERAL INFORMATION:

The existing maintenance facility is at capacity and the city has determined that an additional equipment maintenance bay should be added. The existing maintenance bays are housed in a pre-engineered high-bay metal building. A new maintenance bay will utilize the same or similar pre-engineered system. The wash bay (currently outdoors) will also be enclosed in its own area as an additional bay extension of the new addition. An existing equipment shed serving the wash bay will be joined up with this new wash bay extension. An existing oil interceptor system will be utilized by the new floor drains for the addition.

We understand that MB plans to advertise for and receive competitive bids for the construction of the improvements. MB has tentatively budgeted approximately \$300,000.00 for the construction. Although the maintenance facility is currently at capacity, there is no defined schedule for completing construction of the addition.

SCOPE OF WORK:

The project will include new pre-engineered metal building system, footings, foundation, and retaining walls, minor site work, concrete floor and floor finishes, powered roll-up doors, personnel doors, new electrical requirements and new general lighting, gas-fired radiant heating, ventilation and fire protection system. You will work with your own vendors to provide intrusion security alarms and video surveillance.

SCHEDULE:

Yet to be determined. We can accommodate any reasonable schedule you may require through mutual agreement.

Bgroup ARCHITECTURE, Inc.

3000 7th Avenue South

Birmingham, AL 35233

205.703.2059

SCOPE OF SERVICES WE WILL PROVIDE:

1. We will provide full architectural services including structural, mechanical, electrical, plumbing, and fire protection engineering. We have included line items for these consultants as part of our lump sum fee.
2. DESIGN: Our services will include Schematic Design and Construction Documents. We will provide review documents for you to comment and approve. We will make minor changes to the drawings to incorporate your comments. We will furnish sealed permit drawings to you for securing the City of Mountain Brook Building Permit. We will furnish the specification manual that will include materials and execution requirements, instructions to bidders, bid bond, performance and payment bonds, insurance, submittal requirements, definition of contract duration and closeout, etc.
3. BIDDING: We will assist the Owner during the bidding phase by communicating with bidders, answering questions and issuing addenda as required. We can assist with bid opening is requested.
4. CONSTRUCTION ADMINISTRATION: Construction Administration will include in-office review of submittals and shop drawings, finish color selections, review and approve pay requests, review change order requests, and any communications from the contractor for RFIs etc. We and our consultants will provide periodic site visits to review progress of the construction, along with a final punch list of items to be corrected as part of the project close-out. We will review all closeout documents on behalf of the owner including, warranties, maintenance manuals, as-built drawings, etc. We will review and recommend release of retainage as final payment of the general contractor's contract when all closeout requirements have been met by the contractor.

A specified number of jobsite trips to monitor the construction progress and perform a final punch list for the Certificate of Substantial Completion will be included as follows:

15 - trips for the Architect.

2 – trips for the engineering consultants.

Expenses such as postage, printing and mileage will be reimbursable with a 1.15 markup.

EXCLUSIONS:

- a. Significant owner-requested changes to the layout and equipment configuration/schedule once construction documents have begun.
- b. Any civil related design for tie-ins or other utilities outside the building. Civil engineering can be provided as an added service for a mutually agreed fee.
- c. Any work on the building site, hardscape, landscape, or exterior site lighting. (Building mounted lighting will be included.)
- d. Site Survey. We will require a recent site topo of the area surrounding the project showing adjacent building corners, benchmarks at existing building entry points including floor elevations inside existing roll-up doors. All buildings neighboring the project site shall be located and topo information shall extend 100 feet from the existing structure (1'-0" intervals) We will need this survey in CAD format prior to starting construction drawings.
- e. Any required legal advertisement for bids will be by MB.

PROPOSED FEES:

We will provide the above scope of services for a lump-sum fee as follows:

Complete Architectural Services: \$51,500.00

Expenses estimated not to exceed \$1,000.00 without prior approval.

Mr. Ronnie Vaughn, Superintendent City of Mountain Brook Public Works Department
January 11, 2024
Page 3

The fee will be distributed into the following phases:

Design & Construction Documents – 85%
Bidding Assistance and Construction Administration – 15%

Invoicing will be on a monthly basis for the amount of work completed for a given phase, plus any expenses.

Ronnie, we appreciate your business and look forward to working with you on this new project. If the scope of above proposal is consistent with your understanding, please have the City sign the confirmation line below and scan a PDF back to me. We understand that MB may have their standard contract for BGA to execute and approval by the council. Nevertheless, we can begin preliminary work on the project right away.

Thank you for this exciting opportunity to work with your department on this project. Please let me know if you have any questions by emailing me at phil@bgroupparch.com.

Sincerely yours,

B Group Architecture, Inc.

By



Philip E. Black, AIA
Principal

Confirmed _____

City of Mountain Brook

CONTRACTOR AGREEMENT

B Group Architecture ("Architect") enters this Contract 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), Architect, at its expense, will furnish all the labor, materials, supplies, supervision, and equipment needed to perform the work, services and operations (collectively, the "Work") on the understated project (the Project")

Name of Project: 2025 Shop Edition

Site of Project: 3579 East Street
Mountain Brook, AL 35243

2. **Scope of Work.** See Exhibit A (which includes the City Scope of Work and January 11, 2024 Architect Proposal, hereinafter the "Architect Proposal") that is attached and incorporated herein.

3. **Undertaking of Parties.** Architect agrees to perform the Work in accordance with the terms, conditions and specification in this Agreement and on Exhibit A. City agrees to compensate the Architect 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 for six (6) months (the "Term"). The period in which Architect 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 Architect if each of the following have occurred: (a) Architect 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 Architect, the Architect fails to correct or remedy that Default within fifteen (15) days after receipt of that notice. The failure of the Architect 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.

Architect's obligations herein shall survive the termination or expiration of the Term for these periods: Section 6(f) (Warranty on workmanship and materials) for one year following Project acceptance; other warranties in Section 6 for a period of one year, and Section 7(c) (Indemnification) for a period of two (2) years.

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 Architect the lump sum amount of Fifty-One thousand Five Hundred dollars (\$51,500.00) as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing signed by duly authorized representatives of both parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price (and agreed sum(s) payable for any Additional Operations contemplated on Exhibit A). In no event will the total amount paid to Contractor for its Work (including the Contract Price or any amount paid for Additional Operations) exceed \$100,000.00.

The City will pay the Architect on a monthly basis for the amount of work performed. The fee will be distributed into the following Phases:

Design & Construction Documents - 85%
Bidding Assistance & Construction Administration- 15%

With such invoice Architect 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 Architect amount certified for payment within twenty (20) days after it receives that certification.

6. Warranties of Architect. The Architect 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 Architects 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 Architect 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"). Architect 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 Architect to complete the Work;

- (e) that the Architect 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 acceptance of the Project; and
- (g) that all actions required to be taken by or on behalf of the Architect 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 Architect 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, Architect, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to City:

- (i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars (\$750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;
- (ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) combined single limit and aggregate for bodily injury and property damage;
- (iii) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.

The Architect may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before the execution of this Agreement, the Architect 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.

The City will not furnish any type, form, coverage or amount of insurance in connection with the Project.

(b). Safety. Architect 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 Architect. 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 Architect or any of its representatives; and (iii) other property at the Work Site or adjacent thereto.

(c). Indemnification. Architect 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 "Architect Representative") that arise out of, relate to or are caused by any negligent act, omission or conduct by Architect or any Architect Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall obligate the Architect to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.

The City will not indemnify Architect(or nay of its representatives or authorized subcontractors) for any claims that relate to or arise out of the Project.

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

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

9. Miscellaneous Provisions.

a. This Agreement which is comprised of this instrument, the City Scope of Work and the January 11, 2024 Architect Proposal (collectively, the "Contract Documents") sets forth the entire understanding between the Parties concerning the matters herein, and

all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein. In the event of any conflict or inconsistency between provisions in the various Contract Documents, the provision(s) in the document in the order below shall control and take precedence: (1) this Agreement; (2) the City Scope of Work; and (3) the Architect Proposal.

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

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

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

e. This Agreement is made only for the benefit of the Parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

f. Architect is an independent Architect 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 Architect (or any of its employees or representatives) performs the Work.

h. Immigration Law Compliance. Architect 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 Architect 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. Architect 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 the Architect is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

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

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

k. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

(Signature Page Follows)

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

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

Its: Mayor

Date: _____

B Group Architecture (Architect.)

By: _____

Its: _____

Date: _____

EXHIBIT A – SPECIFICATIONS

1. Scope of Work.

The project will include a new pre-engineered metal building system, footings, foundation, and retaining walls, minor site work, concrete floor and floor finishes, power roll-up doors, personnel doors, new electrical requirements and new general lighting, gas-fired radiant heating, ventilation and fire protection system.

See attached City Scope of Work and January 11, 2024 Architect Proposal.

If Architect desires or is required to perform services on the Project that fall outside the Scope (“Additional Operations”), the Architect shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Architect performs same. No compensation for Additional Operations will be paid unless those Operations are approved in advance.

2. Project Schedule. Weather permitting, Architect expects to complete the Work within an approximate 8 week period after execution of the Agreement and the City provides it a Notice to Proceed.

3. Project Representatives.

City Project Representative:
Ronald Vaughn
3579 East Street
Birmingham, AL 35243
Email: vaughnr@mtnbrook.org
Day Tel #: 205-802-3865

Architecture Project Representative:
Philip E. Black
300 7th Ave S
Birmingham, AL 35233
phil@bgrouparch.com
Day Tel #:205-703-2059

4. Special Conditions. The City shall have a topographic survey before start of the project.

RESOLUTION NO. 2024-014

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

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

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

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

Section 1. It is hereby established and declared that the following property, as described in the form as attached hereto as Exhibit A, owned by the City of Mountain Brook, Alabama are no longer needed for public or municipal purposes and is hereby declared surplus property; and

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

ADOPTED: This 22nd day of January, 2024.

Council President

APPROVED: This 22nd day of January, 2024.

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 22, 2024, as same appears in the minutes of record of said meeting.

City Clerk



DANINI

Vision X

Model: Vision X

E172976

Serial Number



USB 2.0 Interface
30V \pm 0.85A (MAX)

5032039
10/2011



Made in Italy

This device complies
with Part 15 of the
FCC Rules (Class A)

INFO. TECH. EQUIPMENT
4097



RESOLUTION NO. 2024-015

**A RESOLUTION AUTHORIZING THE TRADE
OF CERTAIN SURPLUS PROPERTY**

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

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

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

Section 1. It is hereby established and declared that the following property, as described in the form as attached hereto as Exhibit A, owned by the City of Mountain Brook, Alabama are no longer needed for public or municipal purposes and is hereby declared surplus property; and

Section 2. That the City Manager, or his designated representative, is hereby authorized and directed to trade said property as part of an upcoming purchase of a new vehicle.

ADOPTED: This 22nd day of January, 2024.

Council President

APPROVED: This 22nd day of January, 2024.

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 22, 2024, as same appears in the minutes of record of said meeting.

City Clerk



Heather Richards <richardsh@mtnbrook.org>

Surplus Ford Explorer

1 message

Ronald Vaughn <vaughnr@mtnbrook.org>

Tue, Jan 9, 2024 at 9:36 AM

To: Heather Richards <richardsh@mtnbrook.org>

Cc: Darren Davis <david@d@mtnbrook.org>, Steven Gay <gayj@mtnbrook.org>, Andrew Gidley <gidleya@mtnbrook.org>

Heather,

Per our phone conversation the following is the information on the Ford Explorer that Public Works wishes to declare surplus. This unit will NOT be auctioned but will be traded in as part of an upcoming purchase of a truck to be bid.

2019 Ford Explorer

Vin: 1FM5K7D83KGA36179

Mileage: 49166

Please let me know if you have any questions.

Thanks

Ronnie Vaughn

Public Works Director

[City of Mountain Brook AL](#)[3579 East Street](#)[Birmingham, Alabama 35243](#)

205.802.3865 Office

205.967.2631 Fax

vaughnr@mtnbrook.org

Trade in Propose Amounts
Public Works Explore XLT

Town & Country Ford

\$ 18,000.00


Stivers Ford of Birmingham

16,500.00

Long Lewis Ford

\$ 18,000.00

Long-Lewis Offer To Purchase

Sales Person:					Today's Date:																								
Jim Bates					01/17/2024																								
First Name:					Last Name:																								
City Of Mountain Brook																													
Street Address:					City		State:		Zip:																				
56 Church Street					Mtn Brook		AL		35213																				
Home Phone:			Work Phone:			Email:																							
			205-802-3800			gastons@mtnbrook.org																							
Year:		Make:		Model:			Trim:																						
2019		Ford		Explorer			XLT																						
VIN:				Miles:		Exterior Color		Interior Color		Engine Size (Litres)																			
1FM5K7D83KGA36179				49209		White		Black		3.5L V6																			
FWD, 4WD, AWD, ETC.				TRUCK CAB: REG, SUPER, CREW, ETC.				CAR STYLE: 2DR, 4DR, WAGON, ETC.																					
FWD								SUV																					
LEATHER: <input type="checkbox"/>		MOON ROOF: <input type="checkbox"/>		NAVIGATION: <input type="checkbox"/>		REAR DVD: <input type="checkbox"/>		PWR SEATS: <input checked="" type="checkbox"/>		HTD SEATS: <input type="checkbox"/>																			
REAR CAM: <input checked="" type="checkbox"/>		BLUE TOOTH: <input checked="" type="checkbox"/>		REAR CAPT SEATS: <input type="checkbox"/>		3RD SEAT: <input type="checkbox"/>		REAR A/C: <input checked="" type="checkbox"/>		OFF RD PKG: <input type="checkbox"/>																			
WHEEL SIZE: 17", 18", 19", 20", 20", ETC.						WHEEL TYPE: STEEL, ALLOY, CHROME, ETC.																							
PLEASE RATE THE FOLLOWING TO THE BEST OF YOUR ABILITIES (1 = NOT GOOD, 10 = LIKE NEW)																													
TIRE LIFE:					INTERIOR:					EXTERIOR:																			
1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does this vehicle have a branded, rebuilt, or salvage title? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, Please Explain:																													
Does this vehicle have any current mechanical issues? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, Please Explain:																													
Has this vehicle been involved in an accident or had paint work? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, Please Explain:																													
Has this vehicle had any major repairs? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, What?																													
Will any equipment be removed or altered? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If So, What?																													
Is this the actual mileage? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>					How many miles on your tires?																								
How often do you have the oil changed?																													
When did you change last?																													
Did you buy this car new? Yes <input type="checkbox"/> No <input type="checkbox"/>					Amount of your monthly investment?																								
May a prospective buyer call you? Yes <input type="checkbox"/> No <input type="checkbox"/>																													
Would you recommend this vehicle to a friend or co-worker? Yes <input type="checkbox"/> No <input type="checkbox"/>																													
Does your vehicle have a balance on extended service warranty? Yes <input type="checkbox"/> No <input type="checkbox"/>																													
This offer to purchase is valid for (3) three days or (300) three hundred miles from today provided that the vehicle remains in the same condition. If you do trade with us, you also have the option to buy it back within three days for the exact same amount as our offer to purchase.										\$ 18,000																			
The herein named customer(s), who is/are the current owner(s) of the above described motor vehicle certify and warrant to the Dealer, it's successors and assigns the accuracy of the following information concerning this motor vehicle.																													
<div style="display: flex; justify-content: space-between;"> <div>Customer Signature: _____</div> <div>Manager Signature: </div> </div>																													

Yes **No**

Date:	01/17/2024	
Seller:	City Of Mountain Brook	
Seller Street Address:	56 Church Street	
Seller City, State, Zip:	Mtn Brook	AL 35213
	(205) 966-1966	205-802-3800

Buyer:	Long-Lewis of Hoover		
Buyer Street Address:	2551 John Hawkins Parkway		
Buyer City, State, Zip:	Hoover	AL	35244

Stock # _____

Year: 2019 **Make:** Ford **Model:** Explorer **Miles:** 49209

Phone: _____

Buyer: _____



Bob Haines

Fleet Manager

1922 2nd Ave. S.
Birmingham, AL 35233
205-941-6070 w
205-368-9915 c
Bob.Haines@fordpros.com
www.stiversfordofbirmingham.com

2019 FORD EXPLORER

\$ 16,500.00

1FM5K7D83 KGA 36179

RESOLUTION NO. 2024-016

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby awards the bid [B-20240108-920] for the Public Works Department Construction Supervisor Ford F-150 XLT in the amount of \$59,389.50 to Long Lewis Ford having been determined by the City to have submitted the lowest bid in conformance with the expressed specifications.

ADOPTED: This 22nd day of January, 2024.

Council President

APPROVED: This 22nd day of January, 2024.

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 22, 2024, as same appears in the minutes of record of said meeting.

City Clerk

Bid Tabulation and Recommendation
Bid Number-B-20240108-920
P.W.D. Construction Supervisor Ford F-150 XLT

Town & Country Ford	\$77,929.00
---------------------	-------------

Stivers Ford of Birmingham	\$61,761.48
----------------------------	-------------

Long Lewis Ford	\$59,389.50
-----------------	-------------

Our recommendation is to take the bid from Long Lewis Ford for the bid # B-20240108-920. Their packet satisfied all of the specifications on this unit and they were the lowest bidder.

Assistant Director Steven Gay
City of Mountain Brook Public Works

Bid Tabulation and Recommendation
Bid Number-B-20240108-920
P.W.D. Construction Supervisor Ford F-150 XLT

Town & Country Ford

\$ 77,929.00

Stivers Ford of Birmingham

\$ 61,761.48

Long Lewis Ford

\$ 59,389.50

Assistant Director Steven Gay
City of Mountain Brook Public Works

RESOLUTION NO. 2024-017

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby awards the bid [B-20240108-915] for the Public Works Department Shop Supervisor Ford F-150 XLT in the amount of \$61,189.50 to Long Lewis Ford having been determined by the City to have submitted the lowest bid in conformance with the expressed specifications.

ADOPTED: This 22nd day of January, 2024.

Council President

APPROVED: This 22nd day of January, 2024.

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 22, 2024, as same appears in the minutes of record of said meeting.

City Clerk

Bid Tabulation and Recommendation
Bid Number-B-20240108-915
P.W.D. Shop Supervisor Ford F-150 XLT

Town & Country Ford	Did not turn in a packet for this unit
---------------------	--

Stivers Ford of Birmingham	\$61,761.48
----------------------------	-------------

Long Lewis Ford	\$61,189.50
-----------------	-------------

Our recommendation is to take the bid from Long Lewis Ford for the bid # B-20240108-915. Their packet satisfied all of the specifications on this unit and they were the lowest bidder.

Assistant Director Steven Gay
City of Mountain Brook Public Works

Bid Tabulation and Recommendation
Bid Number-B-20240108-915
P.W.D. Shop Supervisor Ford F-150 XLT

Town & Country Ford

Stivers Ford of Birmingham

\$ 61,761.48

Long Lewis Ford

\$ 61,189.50

Assistant Director Steven Gay
City of Mountain Brook Public Works

RESOLUTION NO. 2024-018

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby approving change order No. 5 with respect to the Jemison Trail Nature Trail Improvement Project (Resolution No. 2023-037).

ADOPTED: This 22nd day of January, 2024.

Council President

APPROVED: This 22nd day of January, 2024.

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 22, 2024, as same appears in the minutes of record of said meeting.

City Clerk

AIA® Document G701® – 2017

Change Order

PROJECT: (Name and address) Jemison Trail Mountain Brook, AL	CONTRACT INFORMATION: Contract For: General Construction Date: May 22, 2023	CHANGE ORDER INFORMATION: Change Order Number: 005 Date: January 18, 2023
OWNER: (Name and address) The City of Mountain Brook 56 Church Street Mountain Brook, AL 35213	ARCHITECT: (Name and address) Nimrod Long and Associates, Inc. 880 Montclair Road, Ste 235 Birmingham, AL 35213	CONTRACTOR: (Name and address) C.S. Beatty Construction, Inc. 1 Civitan Place Birmingham, AL 35213

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

See Exhibit A, attached.

The original Contract Sum was	\$ 3,330,735.00
The net change by previously authorized Change Orders	\$ -328,564.95
The Contract Sum prior to this Change Order was	\$ 3,002,170.05
The Contract Sum will be decreased by this Change Order in the amount of	\$ 109,304.67
The new Contract Sum including this Change Order will be	\$ 2,892,865.38
The Contract Time will be unchanged by Zero (0) days.	
The new date of Substantial Completion will be unchanged.	

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Nimrod Long and Associates, Inc. ARCHITECT (Firm name)	C.S. Beatty Construction, Inc. CONTRACTOR (Firm name)	The City of Mountain Brook OWNER (Firm name)
 SIGNATURE	 SIGNATURE	 SIGNATURE
Joel Ellason, President PRINTED NAME AND TITLE	Craig Beatty, Manager PRINTED NAME AND TITLE	Stewart Welch, Mayor PRINTED NAME AND TITLE
January 18, 2024 DATE	Jan 18, 2024 DATE	 DATE

EXHIBIT A



	VE Description	Item	Quantity	Unit	Add/Deducts	Total
1	Credit for Split Rail Fence	Credit for Split Rail Fence	1	LS	(\$32,500.00)	(\$32,500.00)
					Credit:	(\$32,500.00)
2	Add 23LF of 15" Storm Pipe and 2 Headwalls on Phase III	Install 15" Storm Pipe and 2 Headwalls	1	LS	\$5,000.00	\$5,000.00
					Add:	\$5,000.00
3	Add for Metal Flume @ Phase I Parking Area	Barrycraft EZ Frame and Cover	1	LS	\$ 966.90	\$ 966.90
					Add:	\$966.90
4	Credit for 64LF of 15" Storm Pipe, 32LF of 18" Storm Pipe, 3 Headwalls, 3 Curb Inlets, and 8" Standup Curb Across from Old Mill Site	15" Storm Pipe Credit (per Contract)	64	LF	\$ (54.50)	\$ (3,488.00)
		18" Storm Pipe Credit (per Contract)	32	LF	\$ (61.76)	\$ (1,976.32)
		Credit for 3 Headwalls	1	LS	\$ (4,500.00)	\$ (4,500.00)
		Curb Box Inlet Credit	3	EA	\$ (5,455.50)	\$ (16,366.50)
		8" Standup Curb Credit	92	LF	\$ (25.00)	\$ (2,300.00)
					Credit: \$	(28,630.82)
5	Cost to reinforce subgrade under proposed trail on all phases with layer of #24 stone & 8910	#24 Stone (Total)				
		a. Total Tons Delivered:	658	Tons		
		b. Additional Tonnage (557 tons included on CO #2 & #3):	101	Tons	\$75.00	\$7,556.25
		8910 (Total)				
		a. Total Tons Delivered:	566	Tons		
		b. Additional Tonnage (414 tons included on CO #2 & #3):	152	Tons	\$38.00	\$5,757.00
					Add:	\$13,313.25
6	Credit for using 8910 as base for sidewalks	Quantity In Contract (4" Thick) (Material Only)	455	Tons	\$ (23.35)	\$ (10,624.00)
		Quantity Used	505	Tons		
		Additional Tonnage Needed (Furnished & Installed)	50	Tons	\$ 38.00	\$ 1,900.00
					Credit: \$	(8,724.00)
	Credit for Soil Testing	Soil Testing Credit	1	LS	(\$21,130.00)	(\$21,130.00)
					Credit:	(\$21,130.00)
8	Rip Rap & Moss Rock for Headwalls (Estimated tonnage vs. Actual tonnage)	Estimated Cost of Rip Rap (per Change Order No. 2)	300	Tons	\$175.00	\$52,500.00
		Actual Cost of Rip Rap (delivered and installed as of 1.2.2024)	220	Tons	\$175.00	\$38,500.00
					Credit:	(\$14,000.00)
		Estimated Cost of Moss Rock (per Change Order No. 2)	120	Tons	\$215.00	\$25,800.00
		Actual Cost of Moss Rock (delivered and installed as of 1.2.2024)	80	Tons	\$215.00	\$17,200.00
					Credit:	(\$8,600.00)
					Credit for Moss Rock & Rip Rap:	(\$22,600.00)
9	Credit for Survey & Layout	Survey & Layout Credit	1	LS	(\$15,000.00)	(\$15,000.00)
					Credit:	(\$15,000.00)
					Total Credit:	(\$109,304.67)

(Items will be available at a later date)

ORDINANCE NO. 2154

**AN ORDINANCE CREATING ONE-WAY OPERATION OF WINTHROP AVENUE
BETWEEN ALDEN LANE AND OVERBROOK ROAD AND TO
PROVIDE FOR PUNISHMENT THEREOF**

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

Section 1. That it shall be unlawful for any person to drive any vehicle in a western direction along Winthrop Avenue from its intersection with Overbrook Road and Alden Lane weekdays between the hours of 2:45 p.m. to 3:15 p.m.

Section 2. Any person violating the provisions of this ordinance shall be punished by a fine not to exceed \$500.00, or by imprisonment not to exceed 180 days, or both.

Section 3. All ordinances or portions of ordinances conflicting with this ordinance are hereby repealed.

Section 4. This ordinance shall become effective when published as required by law.

ADOPTED: This 22nd day of January, 2024.

Council President

APPROVED: This 22nd day of January, 2024.

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, at its meeting held on this 8th day of January 2024, as same appears in the minutes of record of said meeting, and published by posting copies thereof on January 23rd, 2024, at the following public places, which copies remained posted for five (5) days as required by law.

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

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

City Clerk

ORDINANCE NO. 2155

AN ORDINANCE AMENDING CHAPTER 117 OF THE CITY CODE FLOODPLAIN DEVELOPMENT ORDINANCE

City of Mountain Brook, Alabama

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

ARTICLE 1

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES

The National Flood Insurance Program (NFIP) is managed by the Federal Emergency Management Agency (FEMA). Communities are not required to participate in the program by any law or regulation, but instead participate voluntarily in order to obtain access to NFIP flood insurance. Communities that choose to participate in the NFIP are required to adopt and enforce a floodplain development ordinance with land use and control measures that include effective enforcement provisions to regulate development in the floodplain resulting in reduced future flood losses.

FEMA has set forth in federal regulations the minimum standards required for participation in the NFIP; however, these standards have the force of law only because they are adopted and enforced by a state or local government; referred to as a NFIP community. Legal enforcement of the floodplain management standards is the responsibility of the participating NFIP community, which can elect to adopt higher standards as a means of mitigating flood risk. The City of Mountain Brook agrees to adopt and enforce this Ordinance, which meets or exceeds the minimum standards of the Code of Federal Regulations Title 44 §60.3 in order to participate in the NFIP and have access to federal flood insurance and other federal assistance.

SECTION A. STATUTORY AUTHORIZATION

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

SECTION B. FINDINGS OF FACT

- (1) The flood hazard areas of City of Mountain Brook, Alabama (the Federal Emergency Management Agency's [FEMA] designated Special Flood Hazard Areas (SFHAs) or other areas designated by City of Mountain Brook as flood-prone areas) are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for

flood relief and protection, and impairment of the tax base, all of which adversely affect public health, safety, and general welfare.

- (2) These flood losses are caused most often by development, as defined in this Ordinance, in areas designated as FEMA SFHAs or other areas designated by the City of Mountain Brook as vulnerable to flooding, including structures which are inadequately elevated or floodproofed (only non-residential structures) or are otherwise unprotected from flood damages; or by the cumulative effect of development in areas subject to flooding that cause increases in flood heights and velocities.

SECTION C. STATEMENT OF PURPOSE

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

- (1) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (2) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion.
- (3) Control development (including filling, grading, paving, dredging, and all other development as defined in this Ordinance).
- (4) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters, or which may increase flood hazards to other lands.
- (5) Control the alteration of natural floodplains, stream channels, and natural protective barriers which may influence the flow of water.

SECTION D. OBJECTIVES

The objectives of this Ordinance are to:

- (1) Protect human life and health;
- (2) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (3) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize flood blighted areas;
- (4) Minimize the expenditure of public money for costly flood control projects;

- (5) Minimize the need for rescue and relief efforts associated with flooding that are generally undertaken at the expense of the general public;
- (6) Minimize prolonged business interruptions; and
- (7) When asked for assistance regarding flood risk, ensure that potential home buyers are aware that a property is in an area subject to flooding.

ARTICLE 2

GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES

This Ordinance shall apply to all FEMA SFHAs and any additional areas designated by the City of Mountain Brook as floodplains within the jurisdiction of the City of Mountain Brook, Alabama.

SECTION B. BASIS FOR SPECIAL FLOOD HAZARD AREAS

The SFHAs identified by FEMA in Jefferson County's Flood Insurance Study (FIS), dated September 24, 2021, with accompanying Flood Insurance Rate Maps (FIRMs) and other supporting data and any revision thereto, are adopted by reference and declared a part of this Ordinance. For those lands acquired by a municipality through annexation, the current effective FIS and data for Jefferson County are hereby adopted by reference. Community Flood Hazard Areas may also be regulated as SFHAs. FEMA encourages communities to adopt areas prone to flooding to be added to the FIRMs. They may include those areas known to have flooded historically or that have been defined through standard engineering analysis by a professional engineer, licensed to practice in the State of Alabama; or by governmental agencies or private organizations that are not yet incorporated into the FIS or otherwise designated by the community.

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

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

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

SECTION C. ESTABLISHMENT OF A FLOODPLAIN DEVELOPMENT PERMIT

A Development Permit shall be required in conformance with the provisions of this Ordinance prior to the commencement of any development, as defined in this Ordinance, in identified SFHAs and any additional identified Community Flood Hazard Areas within the community.

SECTION D. COMPLIANCE

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

SECTION E. ABROGATION AND GREATER RESTRICTIONS

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

SECTION F. INTERPRETATION

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

SECTION G. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur and flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the SFHAs or other identified areas subject to flooding or uses permitted within such areas will be free from flooding or flood damage. This Ordinance shall not create liability on the part of the City of Mountain Brook or by any officer or employee thereof for any flood damage that results from reliance on this Ordinance, any administrative decision lawfully made thereunder, or otherwise.

SECTION H. PENALTIES FOR VIOLATION

Violation of the provisions of this Ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variances or special exceptions shall constitute a misdemeanor. The Code of Alabama (1975), Title 11, Chapters 19 and 45 grant local governments in Alabama the authority to administer the enforcement provisions stated within this section of the Ordinance.

- (1) Stop Work Order. The community may issue a stop work order, which shall be served on the applicant or other responsible person.
 - (a) Upon notice from the Administrator, work on any building, structure or premises

that is being performed contrary to the provisions of this Ordinance shall immediately cease.

- (b) Such notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order must include a provision that it may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.

- (2) Notice of Violation. If the community determines that an applicant or other responsible party for the development has failed to comply with the terms and conditions of a permit, or is otherwise out of compliance with the provisions of this Ordinance, it shall issue a written Notice of Violation, by certified return receipt mail, to such applicant or other responsible person. Where the person is engaged in activity covered by this Ordinance without having first secured a permit, the notice shall be served on the owner or the party in charge of the activity being conducted on the site. Therefore, any work undertaken prior to submission and approval of an official permit by the City of Mountain Brook or that is otherwise out of compliance with this Ordinance shall constitute a violation of this Ordinance and be at the permit holder's risk. The notice of violation shall contain:

- (a) The name and address of the owner or the applicant or the responsible party;
- (b) The address or other description of the site upon which the violation is occurring;
- (c) A statement specifying the nature of the violation (including failure to obtain a permit);
- (d) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit or this Ordinance and the date for the completion of such remedial action;
- (e) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,
- (f) A statement in the Notice of Violation shall be included that the determination of violation may be appealed to the community by filing a written Notice of Appeal within ten (10) working days after the Notice of Violation. Exceptions for the deadline for this Notice include: 1) in the event the violation constitutes a danger to public health or public safety, then a 24-hour notice shall be given; 2) if there is an imminent or immediate threat to life or property, then immediate action is required.

- (3) Civil Penalties. Any person who violates this Ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than thirty (30) days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues following receipt of the Notice of Violation shall be considered a separate offense. Nothing contained herein shall prevent the

City of Mountain Brook from taking such other lawful action as is necessary to prevent or remedy any violation.

- (4) Additional Enforcement Actions. If the remedial measures described in the Notice of Violation have not been completed by the date set forth in the Notice of Violation, any one or more of the following enforcement actions may be taken against the person to whom the Notice of Violation was directed.

Before taking any of the following enforcement actions or imposing any of the following penalties, the City of Mountain Brook shall first notify the applicant or other responsible person in writing of its intended action. The City of Mountain Brook shall provide reasonable opportunity, of not less than ten (10) days (except, in the event the violation constitutes a danger to public health or public safety, then a 24-hour notice shall be sufficient; if there is an imminent or immediate threat to the public health or public safety then immediate action is required) to cure such violation.

In the event the applicant or other responsible party fails to cure such violation after such notice and cure period, the City of Mountain Brook may take or impose any one or more of the enforcement actions or penalties listed below.

- (a) Withhold or revoke Certificate of Occupancy. The community may refuse to issue and/or revoke a certificate of occupancy for the building or other improvements/repairs conducted on the site. The order shall remain in-place until the applicant or other responsible party has taken the remedial measures set forth in the Notice of Violation or has otherwise cured the violation or violations described therein.
- (b) Suspension, revocation, or modifications of permit. The community may suspend, revoke, or modify the permit that authorizes the development project. A suspended, revoked, or modified permit may be reinstated after the applicant or other responsible party has taken the remedial measures set forth in the Notice of Violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the community may deem necessary). That would enable the applicant or other responsible party to take the necessary remedial measures to cure such violations.
- i. The Administrator may revoke a permit issued under the provisions of this Ordinance, in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
 - ii. The Administrator may revoke a permit upon determination that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this Ordinance.
- (5) Administrative Appeal; Judicial Review. Any person receiving a Notice of Violation may appeal the determination of the community, including but not limited to the issuance of a stop

work order, the assessment of an administratively imposed monetary penalty, the suspension, revocation, modification, or grant with condition of a permit by the community upon finding that the holder is in violation of permit conditions, or that the holder is in violation of any applicable ordinance or any of the community's rules and regulations, or the issuance of a notice of bond forfeiture.

The Notice of Appeal must be in writing to the Floodplain Administrator and must be received within ten (10) days from the date of the Notice of Violation. A hearing on the appeal shall take place within thirty (30) days from the date of receipt of the Notice of Appeal.

- (6) All appeals shall be heard and decided in the same manner as is set forth in Section 109-31(b)(4) of the City Code of the City of Mountain Brook. The appeals officer or board shall have the power to affirm, modify, or reject the original penalty, including the right to increase or decrease the amount of any monetary penalty and the right to add or delete remedial actions required for correction of the violation and compliance with the community's floodplain development ordinance, and any other applicable local, state, or federal requirements. Appeals cannot be in opposition to the provisions of this Ordinance. The decision of the appeals board shall be final.
- (7) Judicial review can be requested by any person aggrieved by a decision or order of the community, after exhausting his/her administrative remedies, pursuant to state law.

SECTION I. SAVINGS CLAUSE

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

SECTION J. REPEALER

Ordinance 2043 of the City of Mountain Brook Alabama is hereby repealed. This Repealer shall not, however, affect, terminate, or preclude any rights, duties, requirements or terms which arose or existed while said Ordinance was in effect, all of which are specifically preserved.

ARTICLE 3
ADMINISTRATION

SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The City Building Official is hereby appointed to administer and implement the provisions of this Ordinance. The City Building Official shall be referred to as the Floodplain Administrator in this Ordinance.

SECTION B. PERMIT PROCEDURES

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by the community prior to any development (any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials) in the SFHAs of the community, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the elevations of the area of development and the nature, location, and dimensions of existing or proposed development.

Specifically, the following procedures and information are required for all projects in the SFHA or other designated floodplains within the jurisdiction of the City of Mountain Brook:

(1) Application Stage

Plot plans are to include:

- (a) The BFEs where provided as set forth in Article 4, Section B and C;
- (b) Boundary of the Special Flood Hazard Area and floodway(s) as delineated on the FIRM or other flood map as determined in Article 2, Section B;
- (c) Flood zone designation of the proposed development area as determined on the FIRM or other flood map as set forth in Article 2, Section B;
- (d) Elevation in relation to mean sea level (or highest adjacent grade) of the regulatory lowest floor elevation, including basement, of all proposed structures;
- (e) Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed;
- (f) Design certification from a professional engineer, who is licensed to practice in the State of Alabama, or a licensed architect, who is registered to practice in the State of Alabama, that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of Article 4, Sections B(2) and E(2);
- (g) A Foundation Plan, drawn to scale, that shall include details of the proposed foundation system to ensure all provisions of this Ordinance are met. These details include, but are not limited to, the proposed method of elevation (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls) and description of any flood openings

required in accordance with Article 4, Sections B(1) and B(3) when solid foundation perimeter walls are used.

- (h) Usage details of any enclosed areas below the lowest floor shall be described.
- (i) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (j) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development including current and proposed locations of the watercourse. An engineering report shall be prepared by a professional engineer, who is licensed to practice in the State of Alabama, on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream. The affected properties shall be depicted on a map or on the plot plan.
- (k) Certification of the plot plan by a professional engineer or surveyor, who is licensed to practice in the State of Alabama, is required.
- (l) In any lot or lots/areas that will be removed from the special flood hazard area utilizing a Letter of Map Revision Based on Fill (LOMR-F), the top of fill elevation must meet the community's freeboard elevation at that location. If the top of fill elevation is below the freeboard elevation, all new structures, additions to existing buildings or substantial improvements must meet the required community freeboard elevation.

(2) Construction Stage

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

- (a) When flood-proofing is utilized for non-residential structures, said certification shall be prepared by a professional engineer, who is licensed to practice in the State of Alabama, or an architect, who is registered to practice in the State of Alabama.
- (b) Any work undertaken prior to submission of these certifications shall be at the permit holder's risk.
- (c) The Floodplain Administrator shall review the above referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed. Failure to submit certification or failure to make the required corrections shall be cause to issue a Notice of Violation and/or Stop-Work Order for the project.
- (d) The Floodplain Administrator shall make periodic inspections of projects during construction throughout the SFHAs within the jurisdiction of the community to ensure that the work is being done according to the provisions of this Ordinance and the terms of the permit. Members of the inspections/engineering department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the City of Mountain Brook during normal business hours of the community for the purposes of inspection or other enforcement action.

- (e) The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

(3) Finished Construction

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

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

SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

The Floodplain Administrator and his/her designated staff is hereby authorized and directed to enforce the provisions of this Ordinance. The Floodplain Administrator is further authorized to render interpretations of this Ordinance which are consistent with its spirit and purpose. Duties of the Floodplain Administrator shall include, but shall not be limited to:

- (1) Require permits for all proposed construction or other development in the community, including the placement of manufactured homes, so that it may be determined whether such construction or other development is proposed within flood-prone areas. Ensure the public is aware that floodplain development permits are required for development in SFHAs.

- (2) Conduct regular inspections of the community's SFHAs for any unpermitted development and issue Stop Work Orders and Notice of Violations for any such development. Any unpermitted structure or non-structural development in the SFHA will be considered a violation until such time that the violation has been remedied.
- (3) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Maintain such permits permanently with floodplain development permit file.
- (4) Review all permit applications of proposed development, to determine whether the proposed construction or other development will be reasonably safe from flooding and to assure compliance with this Ordinance and:
 - (a) If the provisions of this Ordinance have been met, approve the permit.
 - (b) If the provisions of this Ordinance have not been met, request that either corrections and accurate completion of the application be made or disapprove the permit.
- (5) When BFE data or floodway data have not been provided in accordance with Article 2, Section B then the Floodplain Administrator shall obtain, review and reasonably utilize any BFE and floodway data available from a Federal, State, or other sources in order to administer the provisions of Article 4.
- (6) Verify and record the actual elevation of the lowest floor, in relation to mean sea level (or highest adjacent grade), including basement, of all new construction or substantially improved residential structures in accordance with Article 3, Section B(2).
 - (a) Review elevation certificates and require incomplete or incorrect certificates to be corrected and resubmitted for approval.
 - (b) A post-construction elevation certificate is required to be kept with the permit and certificate of occupancy in perpetuity; a pre-construction elevation certificate can be used to ensure the correct elevation for the lowest floor and machinery along with the correct number of vents that will be used.
- (7) Verify and record the actual elevation, in relation to mean sea level to which any new or substantially improved non-residential structures have been elevated or floodproofed, in accordance with Article 3, Section B, or Article 4, Sections B(2) and E(2).
- (8) When floodproofing is utilized for a non-residential structure, the Floodplain Administrator shall obtain certification of design criteria from a professional engineer, licensed to practice in the State of Alabama, or licensed architect, registered to practice in the State of Alabama, in accordance with Article 3, Section B(1) and Article 4, Section B(2) or E(2).
- (9) Notify adjacent communities and the Alabama Department of Environmental Management and the appropriate district office of the U.S. Army Corps of Engineers prior to any alteration or relocation of a watercourse. Submit evidence of such notification to FEMA

and the NFIP State Coordinator's Office (Alabama Department of Economic and Community Affairs, Office of Water Resources).

- (10) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months after completion of the project to FEMA and State to ensure accuracy of community flood maps through the Letter of Map Revision process. Assure flood carrying capacity of any altered or relocated watercourse is maintained following completion of the project.
- (11) Where interpretation is needed as to the exact location of boundaries of the SFHA (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Ordinance.
- (12) All records pertaining to the provisions of this Ordinance shall be maintained, in perpetuity, at the office of the Floodplain Administrator and shall be available for public inspection when requested.
- (13) For any improvements made to existing construction located in the SFHA (as established in Article 2, Section B) ensure that a permit is obtained. Also, conduct Substantial Improvement (SI) (as defined in Article 6 of this Ordinance) reviews and analysis of all structural development permit applications. Maintain a record of the SI calculations and comments within the permit files in accordance with Section C(11) of this Article.
- (14) For any residential and nonresidential structures located in the SFHAs that are damaged from any source, natural hazard or man-made, conduct Substantial Damage (SD) (as defined in Article 6 of this Ordinance) assessments.
 - (a) The Floodplain Administrator shall ensure that permits are obtained, in accordance with this Ordinance, prior to any repairs commencing.
 - (b) Make SD determinations whenever structures within the SFHA area are damaged by any cause or origin. SD determinations shall not be waived to expedite the rebuilding process during a post-disaster recovery or for any other reason.
 - (c) If the community has a large number of buildings in their SFHA that have been damaged, they should decide in advance how best to handle permitting and inspecting damaged buildings for substantial damage determinations.
 - (d) If required, a moratorium may be placed on all non-disaster related construction permits until the community has sufficiently completed its SD determinations.
 - (e) The SD determinations should be performed immediately after the damage-causing event or other cause of damage.
 - (f) The community shall utilize methods and tools for collecting building data and performing analyses that will provide reasonable and defensible SD determinations. Those tools shall be capable of generating reports for record-keeping purposes and to provide to the applicable property owners if requested.
 - (g) Maintain a record of the SD calculations within permit files in accordance with this Article.

- (h) If the SD determination finds that the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred, the Floodplain Administrator shall:
 - i. Coordinate with the property owner and issue a letter to convey the SD determination.
 - ii. Determine if the damage was caused by flooding and include the cause in the letter to the property owner. Also, include whether or not the structure qualifies as a repetitive loss structure per the definitions in Article 6 of this Ordinance. The information can be used to determine if the claim is eligible for an Increased Cost of Compliance claim.
 - iii. Coordinate with property owners and insurance companies for any NFIP claims.
 - iv. If the repairs are to proceed, coordinate with the permit applicant to ensure a permit is obtained and inspections are conducted to ensure that all applicable provisions of this Ordinance are adhered to without exception or waiver.
 - (i) Ensure that phased improvements and incremental repairs do not circumvent the SI/SD requirements.
 - (j) Ensure that any combinations of elective improvements being made in addition to the necessary repairs to damages are included in making the SI/SD determination.
 - (k) An applicant for a permit may appeal a decision, order, or determination that was made by the local official for the following:
 - i. The local official's finding or determination that the proposed work constituting a SI/SD were based on insufficient information, errors, or repair/improvement costs that should be included and/or excluded;
 - ii. The local official's finding or determination that the proposed work constituting a SI/SD were based on inappropriate valuations of costs for the proposed work, or an inappropriate method to determine the market value of the building.
 - (l) It is not appropriate for a permit applicant to seek an appeal who wishes to build in a manner that is contrary to the regulations and codes included in this ordinance. In those cases, the applicant should seek a variance.
 - (m) Ensure that any building located in a floodway that constitutes a SI/SD has an engineering analysis performed in accordance with Article 4, Section C(2). If that analysis indicates any increase in the BFE, the local official must not allow the proposed work unless the structure is brought into full compliance with this Ordinance.
- (15) Coordinate with insurance adjusters prior to permitting any proposed work to bring any flood-damaged structure covered by a standard flood insurance policy into compliance to ensure eligibility for ICC funds.
- (16) Right of Entry
- (a) After the Certificate of Occupancy has been issued for a building and the Floodplain Administrator observes or has reasonable cause to believe that renovations or

retrofits have been made to the building, structure, or premises located in a SFHA that appear to be in violation of any provisions of this Ordinance, he/she shall have the right to seek entry into that building as described in (b) to (e) below.

- (b) Whenever it becomes necessary to make an inspection to enforce any of the provisions of this Ordinance, the Floodplain Administrator may enter such building, structure or premises at all reasonable times (normal business hours for the community) to inspect the same or perform any duty imposed upon the Floodplain Administrator by this Ordinance.
- (c) If such building or premises are occupied, the Floodplain Administrator shall first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he/she shall first make a reasonable effort to locate the owner or other persons having charge or control of such building or premises prior to entry.
- (d) If entry is refused or owner cannot be located, the Floodplain Administrator shall have recourse to every remedy provided by law to secure the right of entry of the building, structure, or premises.
- (e) No owner or occupant or any other persons having charge, care or control of any building, structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Floodplain Administrator for the purpose of inspection and examination pursuant to this Ordinance.

ARTICLE 4
PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

In all SFHAs and flood-prone areas regulated by the City of Mountain Brook, the following provisions are required for all proposed development including new construction and substantial improvements:

- (1) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including but, not limited to Section 404 of the Federal Water Pollution Control Act Amendments (1972, 33 U.S.C. 1334) and the Endangered Species Act (1973, 16 U.S.C. 1531-1544). Maintain such permits permanently with the floodplain development permit file.
- (2) New construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (3) New construction and substantial improvements shall be constructed with materials resistant to flood damage below the BFE.
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (5) New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (6) Review subdivision proposals and other proposed development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed development is in a SFHA, any such proposals shall be reviewed to assure that:
 - (a) They are consistent with the need to minimize flood damage within the SFHA,
 - (b) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage,
 - (c) All new and replacement water supply systems are to be designed to minimize or eliminate infiltration of flood waters into the systems,
 - (d) All new and replacement sanitary sewage systems are to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters,
 - (e) Onsite waste disposal systems are to be located to avoid impairment to them or contamination from them during flooding, and

- (f) Adequate drainage is provided to reduce exposure to flood hazards.
- (7) Manufactured homes shall be installed using methods and practices which minimize flood damage. They must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local requirements for resisting wind forces.
- (8) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- (9) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- (10) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (11) Any alteration, repair, reconstruction or improvement to new construction and substantial improvements which is not compliant with the provisions of this Ordinance, shall be undertaken only if the non-conformity is not furthered, extended or replaced.
- (12) Proposed new construction and substantial improvements that are partially located in a SFHA shall have the entire structure meet the standards of this Ordinance for new construction.
- (13) Where new construction and substantial improvements located in multiple SFHAs or in a SFHA with multiple BFEs, the entire structure shall meet the standards for the most hazardous SFHA and the highest BFE.

SECTION B. SPECIFIC TECHNICAL STANDARDS

In all Special Flood Hazard Areas designated as A, AE, AH (with engineered or estimated BFE), the following provisions are required:

- (1) Residential and Non-Residential Structures - Where BFE data is available, new construction and substantial improvement of any structure or manufactured home shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation (also referred to as the design flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of Article 4, Section B(3).

- (2) Non-Residential Structures - New construction and substantial improvement of any non-residential structure located in AE or AH zones, may be floodproofed (dry) in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to at least one (1) foot above the base flood elevation (herein after referred to as the design flood elevation), with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.
- (a) A professional engineer, who is licensed to practice in the State of Alabama, or licensed architect, who is registered to practice in the State of Alabama, shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with the standards in ASCE-24 (for dry floodproofing) or other compatible standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in Article 3, Section C(8).
 - (b) A record of such certificates, which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained with the official permitting records for the structure and kept in perpetuity.
 - (c) Any non-residential functionally dependent structure (as defined in Article 6) that cannot meet the standards stated in Section B(2)(a) shall require a variance to be issued in accordance with Article 5, Section C(3) and D(1).
 - (d) Prior to the issuance of the Certificate of Occupancy, the following must be submitted for any non-residential structure that will be floodproofed.
 - (i) The as-built Floodproofing Certificate.
 - (ii) An inspection and maintenance plan detailing the annual maintenance of floodproofed components ensuring that all components will operate properly under flood conditions. Components that must be inspected include at a minimum:
 - Mechanical equipment such as sump pumps and generators,
 - Flood shields and closures,
 - Walls and wall penetrations, and
 - Levees and berms (as applicable).
 - (iii) A Flood Emergency Operation Plan detailing the procedures to be followed during a flooding event and must include information pertaining to how all components will operate properly under all conditions, including power failures. The design professional must prepare the plan which shall include the following:
 - An established chain of command and responsibility with leadership responsibilities clearly defined for all aspects of the plan.
 - A procedure for notification of necessary parties when flooding threatens and flood warnings are issued. Personnel required to be at the building should have a planned and safe means of ingress/egress and should have no other emergency response duties during a flood event. Alternates should be assigned in the event that the primary persons responsible are unable to complete their assigned duties under the plan.

- A list of specific duties assigned to ensure that all responsibilities are addressed expeditiously. The locations of materials necessary to properly install all floodproofing components must be included in the list.
- An evacuation plan for all personnel or occupants; those without duties for the flood emergency as well as those with duties for implementing the plan. All possible ingress and egress routes must be identified.
- A periodic training and exercise program to keep personnel and occupants aware of their duties and responsibilities. Training drills should be held at least once a year and should be coordinated with community officials.

(3) Enclosures for Elevated Buildings - All new construction and substantial improvements of existing structures (residential and non-residential) that include any fully enclosed area below the BFE, located below the lowest floor formed by the foundation and other exterior walls shall be designed so as to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of flood waters.

- (a) Designs for complying with this requirement must either be certified by a professional engineer, who is licensed to practice in the State of Alabama, or a licensed architect, registered to practice in the State of Alabama, or meet the following minimum criteria:
 - (i) Provide a minimum of two openings for each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding (if a structure has more than one enclosed area below the BFE, each shall have openings on exterior walls);
 - (ii) Openings shall be in at least two walls of each enclosed area (includes areas separated by interior walls);
 - (iii) The bottom of all openings shall be no higher than one foot above grade;
 - (iv) Openings may be equipped with screens, louvers, valves and other coverings or devices provided that they permit the automatic entry and exit of floodwaters in both directions without impeding or blocking flow and shall be accounted for in determination of the net open area; and
 - (v) Openings meeting the requirements of (3)(a)(i) – (iv) that are installed in doors are permitted.
- (b) So as not to violate the "Lowest Floor" criteria of this Ordinance, the unfinished or flood resistant enclosure shall only be used for parking of vehicles, limited storage, or access to the elevated area.
- (c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- (d) All interior walls, ceilings and floors below the BFE shall be unfinished and/or constructed of flood damage-resistant materials. This practice is also referred to as "wet floodproofing". The definitions for "flood damage-resistant materials" and "wet floodproofing" are included in Article 6.
- (e) Mechanical, electrical, or plumbing devices shall be installed not less than one foot above the BFE. The interior portion of such enclosed area(s) shall be void of

utilities except for essential lighting and power, as required, that are watertight or have otherwise been floodproofed.

- (f) For any property for which the fully enclosed area below the BFE, located below the lowest floor formed by the foundation and other exterior walls meets the definition, or would meet the definition if improved, of a Basement under City codes and ordinances, property owners shall agree, certify, and declare to the following conditions and restrictions placed on the affected property as a condition for granting a permit. A binding agreement, referred to as a Non-conversion Agreement, is required to be executed and recorded with the Deed. It shall obligate the Owner to the following terms and conditions:

- (i) That any enclosed area meeting the definition of a Basement, or which would meet the definition of a Basement if improved, shall remain fully compliant with all parts of Article 4, Section B(3) of this Ordinance unless otherwise modified to be fully compliant with the applicable sections of the Floodplain Development Ordinance in effect at the time of conversion.
- (ii) A duly appointed representative of the City of Mountain Brook is authorized to enter the property for the purpose of inspecting the exterior and interior of the enclosed area to verify compliance with the Agreement and Permit.
- (iii) The community may take any appropriate legal action to correct any violation pertaining to the Agreement and the subject Permit.

(4) Standards for Manufactured Homes and Recreational Vehicles Where Base Flood Elevation Data is Available.

- (a) Require that all manufactured homes placed or substantially improved:
- (i) Outside of a manufactured home park or subdivision,
 - (ii) In a new or substantially improved manufactured home park or subdivision,
 - (iii) In an expansion to an existing manufactured home park or subdivision, or
 - (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the BFE and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.
- (b) Require that all manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of Subsection (4)(a) be elevated so that either:
- (i) The lowest floor of the manufactured home is one foot or more above the BFE; or
 - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above the highest adjacent grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.
 - (iii) Concrete block piers (and other foundation systems) are to be designed in accordance with the Code of Federal Regulations Title 24, Part 3285 and with

the specifications in *FEMA P-85: Protecting Manufactured Homes from Floods and Other Hazards – A Multi-Hazard Foundation and Installation Guide*. The §3285.306 *Design procedures for concrete block piers* and *FEMA P-85* (Table SP-1.1), specify that the maximum allowable pier height (measured from top of grade) for concrete piers to be five (5) feet.

- (iv) The chassis and its supporting equipment are to be above the pier or other foundation. The areas below the chassis must be constructed with flood-resistant materials. All utilities and mechanical equipment must be elevated to a minimum of three (3) feet above the highest adjacent grade. Any utility and mechanical components that must be below the BFE must be made watertight to that same elevation to meet the standards in Article 4, Section A(5).
- (c) Require that all recreational vehicles placed on sites must either:
 - (i) Be on the site for fewer than 180 consecutive days,
 - (ii) Be fully licensed and ready for highway use on its wheels or jacking system,
 - (iii) Be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or additions; or
 - (iv) Must meet all the requirements for "New Construction", including the anchoring and elevation requirements of Article 4, Section B, provisions (4)(a) and (4)(b).
- (5) Standards for Manufactured Homes Where No Base Flood Elevation Exists.
 - (a) Require that all manufactured homes to be placed within a Zone A area on the FIRM shall be installed using methods and practices that minimize flood damage.
 - (b) Manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors.
 - (c) The manufactured home chassis must be supported by reinforced piers or other foundation elements of at least equivalent strength such that the bottom of the chassis and its supporting equipment be no less than 36 inches and up to a maximum 60 inches (five feet) above the highest adjacent grade and be securely anchored to an adequately anchored foundation system.
 - (d) The areas below the chassis must be constructed with flood-resistant materials. All utilities and mechanical equipment must be elevated to a minimum of 3 feet above the highest adjacent grade. Any utility and mechanical components that must be below the BFE must be made watertight to that same elevation to meet the standards in Article 4, Section A(5).
- (6) Require, until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A and AE on the City of Mountain Brook FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

- (7) Accessory and Agricultural Structures – When an accessory structure meets the requirements outlined below, these structures may be wet-floodproofed and do not have to be elevated to one foot above the BFE as required in Article 4, Section B(1). A permit shall be required prior to construction or installation of any accessory structures and any agricultural structures built below the DFE and the following provisions apply:
- (a) Must be adequately anchored to prevent flotation, collapse, or lateral movement;
 - (b) Must be designed with an unfinished interior and constructed with flood damage-resistant materials below the DFE as described in Article 4, Section B(3);
 - (c) Must have adequate flood openings as described in Article 4, Section B(3);
 - (d) Must be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - (e) Must comply with the requirements for development in floodways in accordance with Article 4, Section C;
 - (f) Must elevate any mechanical and other utility equipment in or servicing the structure to or above the DFE or must be floodproofed in accordance with Article 4, Section A;
 - (g) Prohibit storage of any hazardous or toxic materials below the DFE.
 - (h) Permits for small accessory structures may be issued to provide wet floodproofing measures in accordance with the standards described in subsections (i) through (iv) below without requiring a variance. Before issuing permits for small accessory structures, the Floodplain Administrator must verify:
 - (i) Use is limited to parking of vehicles or storage;
 - (ii) Size is less than or equal to a one-story, two-car garage for all A zones;
 - (iii) Structures are a minimal investment and have a low damage potential with respect to the structure and contents;
 - (iv) Structures will not be used for human habitation;
 - (v) Structures comply with the wet floodproofing requirements in Article 4, Section B(3).
 - (i) Permits for accessory structures larger than the size allowed for in subsection (7)(h) above, shall require a variance to be granted on a case-by-case basis in accordance with Article 7, Section D(3). Variances shall not be granted for entire subdivisions for accessory structures.
 - (j) Permits for new construction of all agricultural structures shall require a variance to be granted on a case-by-case basis in accordance with Article 7, Section D(4).
 - (k) Prohibit the storage of hazardous substances (as defined in Article 7) in any residential accessory structure located in a SFHA. Limit the storage in non-residential accessory structures to only fertilizers, petroleum products, and pesticides essential for landscaping purposes. Storage shall be in strict compliance with the requirements of Article 4, Section B(9).
- (8) Underground and Aboveground Storage (Liquid and Gas) Tanks - Tanks and tank inlets, fill openings, outlets, and vents that are located below the DFE shall be designed, constructed, installed, and anchored to resist all flood-related loads (flotation, collapse, or lateral movement resulting from hydrostatic and hydrodynamic forces) and any other loads,

including the effects of buoyancy, during flooding up to and including the 100-year flood and without release of contents into floodwaters or infiltration of floodwaters into the tanks.

- (a) A permit that includes floodplain development shall be required prior to construction or installation of any underground and aboveground tanks (including their foundation and support systems) located within a special flood hazard area.
 - (b) Loads on underground tanks and aboveground tanks exposed to flooding shall be determined assuming at least 1.3 times the potential buoyant and other flood forces acting on the empty tank.
 - (c) Tanks and associated piping shall be installed to resist local scour and erosion during the 100-year flood.
 - (d) Aboveground tanks located in Zone A/AE flood hazard areas shall be either:
 - (i) Elevated to or above the DFE on platforms or structural fill,
 - (ii) Elevated to or above the DFE where attached to structures and the foundation system supporting the structures shall be designed to accommodate any increased loads resulting from the attached tanks,
 - (iii) Permitted below the DFE where the tank and its foundation are designed to resist all flood-related loads including floating debris, or
 - (iv) Permitted below the DFE where the tank and its foundation are designed to resist flood loads and are located inside a barrier designed to protect the tank from floating debris.
 - (e) Aboveground tanks located in areas designated as Zone V/VE, Coastal A-Zones, and other high risk flood hazard areas (see ASCE 24-14) shall be elevated to or above the DFE on platforms that conform to the foundation requirements of ASCE 24-14, Section 4.5. Aboveground tanks shall not be permitted to be located under elevated structures or attached to structures at elevations below one foot above the DFE in these areas.
 - (f) Underground tanks located in areas designated as Zone V/VE, Coastal A-Zones, and other high risk flood hazard areas (see ASCE 24-14) shall have the determination of flood-related loads take into consideration the eroded ground elevation.
 - (g) Tank inlets, fill openings, outlets, and vents shall be:
 - (i) At or above the DFE or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the 100-year flood.
 - (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the 100-year flood.
- (9) Structures and Sites for the Storage or Production of Hazardous Substances – Require that all outdoor storage sites, new construction and substantial improvements to be used for the production or storage of hazard substances (as defined in Article 7) which are located in the special flood hazard area shall be built in accordance with all applicable standards in this Ordinance in addition to the following requirements:
- (a) No structures containing hazardous substances shall be permitted for construction in a floodway;

- (b) Residential structures shall have the area in which the hazard substances are to be stored elevated or dry floodproofed a minimum of two (2) feet above the BFE;
 - (c) Non-residential structures shall be permitted to be built below the BFE in accordance with Article 4, Section B(2) such that the area where the hazard substance production or storage is located will be:
 - (i) elevated or designed and constructed to remain completely dry to at least two (2) feet above the BFE, and
 - (ii) designed to prevent pollution from the storage containers, structure, or activity during the course of the base flood.
 - (d) Any solid, liquid, or gas storage containers of hazardous substances and any associated mechanical, electrical, and conveyance equipment shall be watertight and shall be properly anchored and protected from the hydrostatic and hydrodynamic forces of flood waters and debris carried by the base flood.
- (10) Construction of Fences - New and replacement fences may be allowed in flood hazard areas if they do not act as a flow boundary and redirect the direction of flow, collect flood debris and cause blockages, cause localized increases in flood levels, or if damaged, become debris that may cause damage to other structures.

SECTION C. FLOODWAYS

Located within Special Flood Hazard Areas established in Article 2, Section B, are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:

- (1) The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;
- (2) Encroachments, including fill, new construction, substantial improvements or other development are prohibited within the adopted regulatory floodway unless it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in BFEs during the occurrence of the base flood discharge. A registered professional engineer must provide supporting technical data and certification (No-Rise Certificate) to FEMA for the proposed floodway encroachment. The No-Rise Certificate must be submitted to the Floodplain Administrator with the development permit (including a Site Plan showing the current and proposed floodway alignment) for approval.
- (3) Only if Article 4, Section C, provisions (1) and (2) are satisfied, then any new construction or substantial improvement in a floodway shall comply with all other applicable flood

hazard reduction provisions of Article 4. After satisfying the required provisions stated in this section, encroachments in floodways should be limited to the following types of projects:

- (a) flood control and stormwater management structures;
 - (b) road improvements and repairs;
 - (c) utility easements/rights-of-way; and
 - (d) public improvements or public structures for bridging over the floodway.
- (4) Fencing shall be prohibited in floodways unless it is demonstrated that such development will not cause any increase in the BFE. Appropriate analysis and documentation shall be submitted along with the development permit for review and approval. Fences that have the potential to block or restrict the passage of floodwaters (by trapping debris or with openings too small to allow unhindered passage of water), such as stockade and wire mesh fences, shall meet the requirements of Article 4, Section C(2).

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

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

- (1) BFE data shall be provided for new subdivision proposals and other proposed development (including manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser.
- (2) When BFE data or floodway data have not been provided in accordance with Article 2, Section B then the Floodplain Administrator shall obtain, review, and reasonably utilize any scientific or historic BFE and floodway data available from a Federal, State, or other source, in order to administer the provisions of Article 4. ONLY if data are not available from these sources, then Article 4, Section D, provisions (4) and (5) shall apply.
- (3) All development in Zone A must meet the requirements of Article 4, Section A and Sections B(1), B(2), B(3), B(5), B(6), B(7), B(8), B(9), and B(10).
- (4) In SFHAs without BFE data, new construction and substantial improvements of existing structures shall have the lowest floor (for the lowest enclosed area; including basement) elevated no less than three (3) feet above the highest adjacent grade. As the requirements set forth in Article 4, Section B(1) and B(2) stipulate the lowest floor to be elevated no less than one foot about the BFE, then the structure for this condition shall be elevated no less than four (4) feet about the highest adjacent grade.
- (5) In the absence of a BFE, a manufactured home must also meet the elevation requirements of Article 4, Section B(4)(b)(ii) – B(4)(b)(iv) in that the structure cannot be elevated above a

maximum of 60 inches (5 feet) and all utilities and mechanical equipment must be elevated a minimum of three (3) feet above the highest adjacent grade.

- (6) Enclosures for elevated buildings in Zone A areas shall comply with the standards of Article 4, Section B(3)(a). The Floodplain Administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.
- (7) No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty-five feet, whichever is greater, measured from the top of the stream bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

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

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

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

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

- (2) New construction and the substantial improvement of a non-residential structure may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to the specified flood level in Article 4, Section E(1) or three (3) feet (if no depth number is specified), above highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. As the requirements set forth in Article 4, Section B(1) and B(2) stipulate the lowest floor to be elevated no less than one foot about the BFE, then the structure for this condition shall be elevated no less than four (4) feet about the highest adjacent grade.

A professional engineer, who is licensed to practice in the State of Alabama, or licensed architect, who is registered in the State of Alabama, shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above and shall provide such certification to the official as set forth above and as required in Article 3, Section B(1) and (2).

- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

SECTION F. STANDARDS FOR SUBDIVISIONS AND OTHER DEVELOPMENT

All subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall include within the drawings, plans, and permits for such proposals the following:

- (1) BFE data;
- (2) Provisions to minimize flood damage;
- (3) Public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (4) Adequate drainage provided to reduce exposure to flood hazards without negatively impacting adjacent properties;
- (5) Preliminary plans for review and approval of the platted subdivision which identifies the Special Flood Hazard Area, floodway boundaries, the BFE, and other areas regulated by the community;
- (6) Final subdivision plats that identify the boundary of the special flood hazard area, the floodway boundary, the BFEs, and any drainage easements to reduce the risk for flash flooding;
- (7) Building Sites Free of Flood Zones - Each proposed lot or parcel of a platted subdivision shall have a minimum buildable area in upland areas outside of the natural (non-filled) 1% chance annual floodplain. The buildable area shall be, at a minimum, large enough to accommodate any primary structure and associated structures such as sheds, barns, swimming pools, detached garages, on-site sewage disposal systems, and water supply wells, where applicable. This procedure will not result in a change to the density permitted in underlying zoning district.
- (8) Lot Configuration and Building Envelopes - To the maximum extent feasible, lots subject to this Section F shall be configured so that they lie entirely out of the floodplain with any remainder parcels being preserved as provided in subsection F(9) below. As an alternative, lots may be configured so that portions are located within the floodplain. However, building footprints of such lots shall be delineated to lie, to the maximum extent feasible, outside the floodplain. If no other option for access is practicable, driveways may be located within the floodplain.

- (9) Floodplain Land Conservation - Any portion of a parcel or lot located in a floodplain which does not include an approved building area shall be permanently protected from development as private or public open space through a mechanism acceptable to and approved by the City of Mountain Brook. Such mechanism may include, but is not limited to, a conservation easement, permanent deed restriction, or transfer to a non-profit conservation organization or government entity.

SECTION G. CRITICAL FACILITIES

Construction of new and substantially improved critical facilities, which are those for which the effects of even a slight chance of flooding would be too great, shall be located outside the limits of the SFHA or other flood hazard area regulated by the community. These types of facilities (hospitals, fire stations, police stations, storage of critical records, etc.) are given special consideration when formulating regulatory alternatives and floodplain management plans. Construction of new critical facilities (including the modification of an existing structure not previously classified as a critical facility) shall be permissible within the SFHA or other area regulated by the community only if no feasible alternative site is available and access to the facilities remains available during a 0.2 percent chance flood (a.k.a., 500-year flood).

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

ARTICLE 5
VARIANCE PROCEDURES

SECTION A. DESIGNATION OF VARIANCE AND APPEALS BOARD

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

SECTION B. DUTIES OF BOARD

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

SECTION C. CONDITIONS FOR VARIANCES

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

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

SECTION D. VARIANCE PROCEDURES

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

- (1) Certain facilities and structures must be located on or adjacent to water in order to perform their intended purpose which may result in practical and operational difficulties due to the physical characteristics of the property. Variances may be issued for development necessary for conducting of a functionally dependent use, provided the criteria of this Article are met, no reasonable alternative exists, the development is protected by methods that minimize flood damage during the base flood, and it creates no additional threats to public safety.
- (2) Variances shall not be issued within any designated floodway if ANY increase in flood levels during the base flood discharge would result.
- (3) Variances may be issued for the construction or substantial improvement of accessory structures provided it has been determined that the proposed structure:
 - (a) Represents minimal investment and has low damage potential (amount of physical damage, contents damage, and loss of function).
 - (b) Is larger than the size limits specified in Article 4, Section B(7)(i).
 - (c) Complies with the wet floodproofing construction requirements of Article 4, Section (B)(3).
- (4) Variances may be issued for the construction or substantial improvement of agricultural structures provided it has been determined that the proposed structure:
 - (a) Is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.
 - (b) Has low damage potential (amount of physical damage, contents damage, and loss of function).
 - (c) Does not increase risks and pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.
 - (d) Is an aquaculture structure that is dependent on proximity to water if located in a coastal high-hazard area (Zones V, VE, V1 30, and VO).
 - (e) Complies with the wet floodproofing construction requirements of Article 4, Section (B)(3).
- (5) The evaluation must be based on the characteristics unique to that property and not be shared by adjacent parcels. The characteristics must pertain to the land itself, not to the structure, its inhabitants, or its owners.

- (6) Variances should never be granted for multiple lots, phases of subdivisions, or entire subdivisions.
- (7) Careful consideration and evaluation should be given to the following factors:
 - (a) The danger of life and property due to flooding or erosion damage including materials that may be swept onto other lands to the injury of others.
 - (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner and the community.
 - (c) The safety of access to the property during flood conditions for daily traffic and emergency vehicles.
 - (d) The importance of the services provided by the proposed facility to the community.
 - (e) The necessity of the facility to be at a waterfront location, where applicable.
 - (f) The compatibility of the proposed use with existing and anticipated development based on the community's comprehensive plan for that area.
 - (g) If applicable, the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action expected at the site.
 - (h) The costs associated with providing governmental services to the development during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and community infrastructure such as streets, bridges, and culverts.

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

SECTION E. VARIANCES FOR HISTORIC STRUCTURES

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

SECTION F. VARIANCE NOTIFICATION AND RECORDS

- (1) Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that specifies the difference between the BFE and the elevation of the proposed lowest floor and stating that the issuance of such a variance could:
 - (a) result in flood insurance rate increases in the hundreds and possibly thousands of dollars annually depending on structure and site-specific conditions; and
 - (b) increase the risk to life and property resulting from construction below the base flood level.
- (2) The Floodplain Administrator shall maintain a record of all variance actions and appeal actions, including justification for their issuance and shall report any variances to the Federal

Emergency Management Agency Region 4 and the Alabama Department of Economic and Community Affairs/Office of Water Resources upon request.

- (3) A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Probate Judge of Jefferson County, Alabama in a manner so that it appears in the chain of title (i.e., deed) of the affected parcel of land.

ARTICLE 6

DEFINITIONS

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

A Zone means the special flood hazard areas on a FIRM without base flood elevations determined.

Administrator means the Administrator of the Federal Emergency Management Agency (FEMA).

Accessory Structure (also referred to as Appurtenant Structures) means a structure which is located on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. Detached garages and small sheds used for limited storage are considered accessory structures. Other examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds, and similar buildings. An accessory structure specifically excludes structures used for human habitation.

Addition (to an Existing Building) means any improvement that increases the square footage of a structure. These include lateral additions added to the front, side, or rear of a structure, vertical additions added on top of a structure, and enclosures added underneath a structure. NFIP regulations for new construction apply to any addition that is considered a substantial improvement to a structure.

AE Zone means the special flood hazard areas on a FIRM with base flood elevations determined.

Agricultural Structure means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Aquaculture structures are included within this definition. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

AH Zone means area of special food hazards on a FIRM having shallow water depths and/or unpredictable flow paths between one (1) and three (3) feet, and with water surface elevations determined.

AO Zone means an area of special flood hazards on a FIRM having shallow water depths and /or unpredictable flow paths between one (1) and three (3) feet.

Appeal means a request for a review of the Board of Zoning Adjustment interpretation of any provision of this Ordinance.

Appurtenant Structure (see definition for **Accessory Structure**)

Area of Shallow Flooding means a designated AO, AH, AR/AO, AR/AH or VO zone on a community's FIRM with a 1 percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard (see definition for **Special Flood Hazard Area**)

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

Base Flood Elevation (BFE) means the elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year. The BFE is shown on the FIRM for zones AE, AH, A1–A30, AR, AR/A, AR/AE, AR/A1– A30, AR/AH, AR/AO, V1–V30 and VE. It is the regulatory requirement for the elevation of flood proofing of structures. The relationship between the BFE and a structure’s elevation determines the flood insurance premium.

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

Building (also see **Structure**) means a structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site; a manufactured home or a mobile home without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws. “Building” does not mean a gas or liquid storage tank or a recreational vehicle, park trailer or other similar vehicle.

Community means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

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

Condominium Building means a type of building in the form of ownership in which each unit owner has an undivided interest in common elements of the building.

Critical Facility (aka, critical action) means facilities or activities for which even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities. These facilities should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a floodplain if at all possible.

Dam means an artificial barrier, that has the ability to impound water, wastewater, or any liquid-borne material, for the purpose of storage or control of water.

Design Flood Elevation (DFE) means the locally adopted regulatory flood elevation. It is the minimum elevation to which a structure must be elevated or floodproofed. DFE is the sum of the base flood elevation and freeboard, based a building's structural category. In areas designated as Zone AO on a community's flood map, the DFE is the elevation of the highest existing grade of a building's perimeter plus the depth number specified on the flood hazard map. In areas designated as Zone AO where a depth is not specified on the map, the depth is two feet. In all cases, the DFE must be at least as high as the base flood elevation.

Developed Area means an area of a community that is:

- a. A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential, and commercial activities, and
 - i. Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or
 - ii. Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or
 - iii. Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.
- b. Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least 3 sides to areas meeting the criteria of paragraph "a" at the time the designation is adopted.
- c. A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual "start of construction" of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (a)(iii).

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

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

Elevation Certificate means a FEMA form used as an administrative tool of the NFIP to provide building elevation information necessary to ensure compliance with community floodplain management ordinances, to inform the proper insurance premium, and to support a request for a LOMA, CLOMA, LOMR-F, or CLOMR-F.

Encroachment means activities or construction within the floodway including fill, new construction, substantial improvements, and other development.

Existing Construction means, for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures”.

Existing Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed before the effective date of the original floodplain management regulations adopted by the community.

Expansion to an Existing Manufactured Home Park or Subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Fair Market Value means the price that the seller is willing to accept and the buyer is to pay on the open market and in an arm's length transaction.

Flood or Flooding means:

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

Flood Damage-Resistant Material means any building product capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage. Prolonged contact is defined as at least 72 hours. Significant damage is any damage requiring more than low-cost cosmetic repair (such as painting).

Flood Elevation Determination means a determination by the Federal Insurance Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

Flood Elevation Study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (see **Flood Elevation Study**)

Floodplain (or Flood-Prone Area) means any land area susceptible to being inundated by water from any source (see definition of **Flooding**).

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Management Regulations means this Ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as those for floodplain management, stormwater management, watershed management, grading/earthwork, and erosion control), and other applications of police power. This term describes state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

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

Floodway (see definition for **Regulatory Floodway**)

Floodway Fringe (or Flood Fringe) means the portion of the Special Flood Hazard Area outside of the floodway, which experiences shallower, lower-velocity floodwater than in the floodway. It serves as a temporary floodwater storage area during a flood.

Floodway Encroachment Lines mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

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

Hazardous Substance (or Material) means any substance or material that, when involved in an accident and released in sufficient quantities, poses a risk to people’s health, safety, and/or property. These substances and materials include explosives, radioactive materials, flammable liquids or solids, combustible liquids or solids, poisons, oxidizers, toxins, and corrosive materials. It includes any substance defined as a hazardous substance pursuant to 42 U.S.C. §9601(14) or listed as a hazardous waste pursuant to the Hazardous Wastes Management Act, Section 22-30-1 et seq. and the regulations promulgated thereunder.

Highest Adjacent Grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

Historic Structure means any structure that is:

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

Increased Cost of Compliance (ICC) means a claim under a standard NFIP flood insurance policy, available to flood insurance policyholders who need additional funding to rebuild after a flood. It provides up to \$30,000 to help cover the increased cost of mitigation measures to bring a building into compliance with the latest state or local floodplain management ordinances. Acceptable mitigation measures are elevation, floodproofing, relocation, and demolition, or any combination of these measures.

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

- a. **Letter of Map Amendment (LOMA)**
An amendment based on technical data showing that a property was incorrectly included in a designated SFHA, was not elevated by fill (only by a natural grade elevation), and will not be inundated by the one percent chance flood. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.
- b. **Letter of Map Revision (LOMR)**
A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the BFE and is, therefore, excluded from the SFHA.
- c. **Conditional Letter of Map Revision (CLOMR)**
A formal review and comment by FEMA as to whether a proposed project complies with the minimum NFIP floodplain management criteria. A CLOMR does not revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

Lowest Adjacent Grade means the lowest elevation of the natural or regraded ground surface, or structural fill (or concrete slab or pavement), at the location of a structure.

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

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market Value (see definition for **Fair Market Value**)

Mean Sea Level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Mixed Use Building means a building that has both residential and non-residential uses.

National Flood Insurance Program (NFIP) is a federal program created by the United States Congress in 1968 to identify flood-prone areas nationwide and make flood insurance available for properties in participating communities. Communities must enact and enforce floodplain management regulations that meet or exceed the criteria established by FEMA in order to participate in the program. This program requires properties within the floodplain with a federally backed or regulated mortgage, or those that receive federal housing subsidies, to buy flood insurance.

National Geodetic Vertical Datum (NGVD) of 1929 means a national standard reference datum for elevations, formerly referred to as Mean Sea Level (MSL) of 1929. NGVD 1929 may be used as the reference datum on some Flood Insurance Rate Maps (FIRMs).

New Construction means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

An existing building is considered to be new construction if it is substantially improved or once it has been repaired after being substantially damaged/improved.

New Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community on October 27, 1980.

Non-Residential Building means, a commercial or mixed-use building where the primary use is commercial or non-habitational.

Non-residential Property means either a non-residential building, the contents within a non-residential building, or both.

North American Vertical Datum (NAVD) of 1988 means the vertical control datum established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988. It replaces the National Geodetic Vertical Datum (NGVD) of 1929. Used by FEMA in many recent Flood Insurance Studies as the basis for measuring flood, ground, and structural elevations.

Post-FIRM means, for floodplain management purposes, a post-FIRM building is one for which construction began after the effective date of a community's NFIP-compliant floodplain management ordinance. For the purpose of determining flood insurance rates under the NFIP, a post-FIRM building is a building for which construction began on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, including any subsequent improvements to such structures.

Pre-FIRM means, for floodplain management purposes, a building for which the start of construction occurred before the effective date of the community's NFIP-compliant floodplain management ordinance. For the purpose of determining flood insurance rates under the NFIP, a pre-FIRM building is a building for which construction began prior to the effective date of an initial Flood Insurance Rate Map or on or before December 31, 1974, whichever is later.

Recreational Vehicle means a vehicle which is:

- a. Built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regular Program means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRM's effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

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

Remedy a Violation means to bring the structures or other development into full or partial compliance with State or local regulations or, if this is not possible, to reduce the impacts of its non-compliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provision of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Repetitive Loss Agricultural Structure means an agricultural structure covered by a NFIP contract for flood insurance that has incurred flood-related damage on two (2) separate occasions in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event.

Repetitive Loss Property means any NFIP-insured single family or multi-family residential building for which two or more claims of more than \$1,000 were paid by the NFIP within any rolling 10-year period, since 1978. A repetitive loss property may or may not be currently insured by the NFIP.

Residential Building means a non-commercial building designed for habitation by one or more families or a mixed-use building that qualifies as a single-family, two-to-four family, or other residential building.

Residential Property means either a residential building or the contents within a residential building, or both.

Riverine means floodplain relating to, formed by, or resembling a river (including tributaries), stream, brook, etc. Riverine floodplains have readily identifiable channels.

Section 1316 means Section 1316 of the National Flood Insurance Act of 1968, as amended, which provides for the denial of flood insurance coverage for any property which the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations. Once a duly constituted State or local authority declares a structure as being in violation, the Administrator must deny flood insurance coverage provided that the individual or office making the declaration has the authority to do so and that the law or regulations violated was, in fact, intended to discourage or otherwise restrict land development or occupancy in the flood-prone area.

Section 1316 was intended for use primarily as a backup for local enforcement actions (i.e., if a community could not force compliance through the enforcement mechanisms in its regulations, it could use Section 1316 as additional leverage) and was not intended merely as a mechanism to remove bad risks from the policy base. Section 1316 will only be implemented in instances where States or communities submit declarations specifically for that purpose.

Severe Repetitive Loss Structure means a single family property (consisting of 1 to 4 residences) that is covered under flood insurance by the NFIP and has incurred flood-related damage for which 4 or more separate claims payments have been paid under flood insurance coverage, with the amount of each claim payment exceeding \$5,000 and with cumulative amount of such claims payments exceeding \$20,000; or for which at least 2 separate claims payments have been made with the cumulative amount of such claims exceeding the reported value of the property.

Sheet Flow Area (see definition for **Area of Shallow Flooding**)

Single-family Dwelling means either (a) a residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area, or (b) a single-family residential unit within a two-to-four family building, other-residential building, business, or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

Special Flood Hazard Area (SFHA) means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year as shown on a FHBM or FIRM as Zones A, AE, AH, AO, AR, AR/AE, AR/AO, AR/AH, AR/A, A99, or VE. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.

Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) means the date the development or building permit was issued (includes substantial improvement), provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of the structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, and includes the placement of a manufactured home on a foundation.

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

Structure means, for floodplain management purposes, a walled and roofed building, including a liquid or gas storage tank, that is principally above ground, as well as a manufactured home. The terms "structure" and "building" are interchangeable in the NFIP. For insurance purposes, **structure** means:

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

For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to it before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “repetitive loss” or “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or;
- b. Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

Variance means a grant of relief by the (Community name) from the terms of a floodplain management regulation.

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

Watercourse means only the channel and banks of an identifiable watercourse and not the adjoining floodplain areas. The flood carrying capacity of a watercourse refers to the flood carrying capacity of the channel.

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

Wet floodproofing means a method of construction that involves modifying a building to allow floodwaters to enter it in order to minimize damage to the building, using flood damage-resistant materials below the DFE throughout the building, raising utilities and important contents to or above the DFE, installing and configuring electrical and mechanical systems to minimize disruptions and facilitate repairs, installing flood openings or other methods to equalize the hydrostatic pressure exerted by floodwaters, and, where required, installing pumps to gradually remove floodwater from basement areas after the flood.

Wet floodproofing shall not be utilized as a method to satisfy the requirements of this Ordinance for bringing substantially damaged or improved structures into compliance. Wet floodproofing is not allowed in lieu of complying with the lowest floor elevation requirements for new residential buildings.

X Zones (shaded) means the areas on a FIRM subject to inundation by the flood that has a 0.2-percent chance of being equaled or exceeded during any given year, often referred to as 500-year flood.

X Zones (unshaded) designates areas on a FIRM where the annual probability of flooding is less than 0.2 percent.

Zone of Imminent Collapse means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

ARTICLE 7 **LEGAL STATUS PROVISIONS**

SECTION A. SEVERABILITY

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

SECTION B. ENFORCEABILITY OF ORDINANCE AND FUTURE REVISIONS

The provisions within this Ordinance must be legally enforceable; applied uniformly throughout the community to all privately and publicly owned land within any regulated flood hazard areas; meet the minimum standards set forth in §60.3 of the Code of Federal Regulations Title 44; and the community must provide that the provisions of this Ordinance take precedence over any less restrictive conflicting local laws, ordinances, or codes.

If the City of Mountain Brook repeals its floodplain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §60.3 of the Code of Federal Regulations Title 44, it shall be suspended from the National Flood Insurance Program (NFIP). The community eligibility shall remain terminated after suspension until copies of adequate floodplain management regulations have been received and approved by the Federal Insurance Administrator. To avoid such occurrences, the City of Mountain Brook will coordinate with the Alabama NFIP State Coordinator and FEMA Regional Office prior to any revisions to this Ordinance. Without prior approval of the Federal Insurance Administrator, the community shall not adopt and enforce revised floodplain management regulations.

From time-to-time Part 60 of the Code of Federal Regulations Title 44 may be revised to advance flood risk reduction measures as experience is acquired under the NFIP and new information becomes available. The City of Mountain Brook agrees to revise its floodplain management Ordinance to comply with any such changes within six months from the effective date of any new federal regulation.

SECTION C. EFFECTIVE DATE

This Ordinance shall become effective when published as required by law.

SECTION D. ADOPTION SIGNATURE(S) AND CERTIFICATION

ADOPTED: This 22nd day of January, 2024.

Council President

APPROVED: This 22nd day of January, 2024.

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, at its meeting held on this 8th day of January 2024, as same appears in the minutes of record of said meeting, and published by posting copies thereof on January 23rd, 2024, at the following public places, which copies remained posted for five (5) days as required by law.

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

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

City Clerk