

ORDINANCE NUMBER 3168

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER
TO EXECUTE AND DELIVER AN AGREEMENT WITH THE CITY OF
MOUNTAIN BROOK FOR AUTOMATIC AID**

WHEREAS, the City of Vestavia Hills, Alabama is a municipal corporation, organized, existing and operating a Fire Department pursuant to the authority of Title 11-43-140, *Code of Alabama, 1975*; and

WHEREAS, the City of Mountain Brook, Alabama is a municipal corporation, organized, existing and operating a Fire Department pursuant to the authority of Title 11-43-140, *Code of Alabama, 1975*; and

WHEREAS, Alabama law at Title 11-43-141, *Code of Alabama, 1975*, authorizes municipal firemen to assist in emergencies beyond the corporate city limits; and

WHEREAS, Alabama at Title 11-102-1, *Code of Alabama, 1975*, authorizes municipalities to enter into written contracts with counties or other municipalities for emergency aid services; and

WHEREAS, City Ordinance Number 2280 enacted on November 23, 2009 allows the Vestavia Hills Fire Department to assist another fire department, emergency management agency or public safety agency through mutual aid or automatic aid agreement; and

WHEREAS, the Fire Departments of the Cities of Vestavia Hills, Alabama and Mountain Brook, Alabama desire for their respective municipalities to enter into a written agreement, which will provide, among other things, that the two Fire Departments may lend and borrow fire trucks and other firefighting equipment when needed; and

WHEREAS, the City of Vestavia Hills, Alabama ("Vestavia Hills") and the City of Mountain Brook, Alabama ("Mountain Brook") agree to mutual aid and wish to reduce their agreement to writing, a copy of which is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3168 as if written fully therein; and

WHEREAS, the Mayor and the City Council feel it is in the best interest of the public to execute and deliver said mutual aid agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The Mayor and City Manager are hereby authorized to execute and deliver the agreement detailed in the attached Exhibit A; and
2. The agreement, upon execution, shall be filed with the City Clerk of each municipality; and
3. This Ordinance Number 3168 shall become effective immediately upon adoption and publishing/posted as required by Alabama law.

ADOPTED and APPROVED this the 13th day of March, 2023.



Ashley C. Curry
Mayor

ATTESTED BY:



Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3168 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 13th day of March, 2023 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkel House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the 13th day of March, 2023.



Rebecca Leavings
City Clerk

**INTER-JURISDICTIONAL AUTOMATIC AID AGREEMENT
FOR STRUCTURE FIRE INCIDENT REPORTS**

This **Inter-Jurisdictional Automatic Aid Agreement for Structure Fire Reports** (the "Agreement") is entered by and between the **City of Mountain Brook, Alabama**, on behalf of its Fire Department, (hereinafter "MBFD") and the **City of Vestavia Hills, Alabama**, on behalf of its Fire Department (hereinafter "VHFD"). MBFD and VHFD herein may be referenced individually as a "Party" or collectively as "Parties." This Agreement shall become effective on the date last signed below by a Party (the "Effective Date").

W I T N E S E T H:

WHEREAS, each Party maintains and operates their own fire department (including separate personnel and equipment) to furnish fire and other emergency services in their respective jurisdictions;

WHEREAS, the jurisdictional boundaries of the cities that the Parties serve adjoin in many locations throughout Jefferson County, Alabama;

WHEREAS, a fire department generally serves a particular jurisdiction and is the responding agency for fire or emergency alarms and calls for service that originate in that jurisdiction;

WHEREAS, presently, both Parties use the services of the Shelby County Emergency Management Communications District (the "911 Call Center") to receive 911 calls that are made in or concern incidents occurring in their jurisdictions, and the 911 Call Center dispatches public safety agencies that serve their respective cities to respond to those incidents;

WHEREAS, the Parties desire to enter this Agreement whereby each of them will assist the other as set forth herein if the 911 Call Center receives a reported or confirmed fire incident report involving a structure (a "Structure Fire Incident Report") that is located in either of their jurisdictions; and

WHEREAS, it is mutually beneficial to the Parties and in the public interest of citizens in their respective jurisdictions for MBFD and VHFD to automatically respond to Structure Fire Incident Reports related to either of their jurisdictions.

WHEREFORE, in consideration of the mutual covenants and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties enter this Agreement pursuant to the following terms, provisions and conditions:

1. Automatic Response by Both Parties to Structure Fire Incident Reports. In lieu of a Party specifically requesting assistance from the other on a mutual aid basis, MBFD and VHFD agree to automatically respond to calls regarding a Structure Fire Incident Reports processed through the 911 Call Center regarding locations in their own or the other's jurisdiction.
2. Automatic Aid Procedures. The following procedures apply when MBFD and VHFD respond to Structure Fire Incident Reports occurring in either of their jurisdictions:

- (a) upon report of a Structure Fire Incident Report regarding a location in either the City of Mountain Brook or the City of Vestavia Hills, the 911 Call Center Dispatch Center will dispatch both the MBFD and VHFD to that location without regard to which city in which the incident occurs;
 - (b) if facilities and personnel are available, MBFD will respond to reported or confirmed structure fires occurring within the City of Vestavia Hills with one staffed Engine Company;
 - (c) if facilities and personnel are available, VHFD will respond to reported or confirmed structure fires occurring within the City of Mountain Brook with one staffed Engine Company;
 - (d) the officer in charge of the unit for the Party that arrives first at the location of an incident will establish command at the scene of the emergency. After units from both Parties arrive, incident command will remain with that Party and officer if the incident is occurring at a location in the jurisdiction of the first arriving unit. If the location of the incident is outside the jurisdiction of the first arriving unit, incident command will transfer to the Party in whose jurisdiction the incident is occurring when it is reasonably practical to relieve the initial officer and Party in charge;
 - (e) each Party maintains and utilizes their own radio channel to communicate between their respective companies, units, and personnel. The Parties agree that, during the course of operations contemplated under this Agreement, the companies, units, and personnel of both Parties who respond to a Structure Fire Incident Report hereunder will operate and communicate on the radio channel of the Party in whose jurisdiction the incident is occurring; and
 - (f) each Party is responsible to train its own personnel, companies, and units which will perform operations contemplated hereunder. Notwithstanding, the Parties may develop deployment plans for personnel and equipment (assuming same are available) when both Parties are dispatched to respond to a Structure Fire Incident Report.
3. Scope of Services. When a Party is dispatched hereunder to perform emergency services outside its jurisdiction, none of its officers or employees are expected or obligated to perform any type of service or function at that location that is different from those that such Party performs within its jurisdiction.
4. Supervision. Subject to the understandings in section 2(d) above, the supervision of workers, rendition and standards of performing services, discipline, and other matters incident to performance of services by a Party shall remain with the department and supervisors of the department employing the respective workers who provide services. To that end, any disputes, disagreements, or questions concerning the level of services and standards of performance of services by either Party at the location of an incident or concerning a Structure Fire Incident Report shall be determined by MBFD's Fire Chief if

those questions concern or relate to MBFD employees or by VHFD's Fire Chief if they concern or relate to VHFD employees.

5. Employee Status. In performing the services and functions contemplated in this Agreement, the Parties intend that the persons employed by them shall at all times be considered and remain as employees and representatives of the employing department. In no event shall workers of one Party have any claim or right to compensation or benefits of any type (including, without limitation, salary, wages, worker's compensation, pension or other benefits paid by either of them to their employees) or other employment rights or privileges that are granted by operation of law or otherwise extended by the other Party to their employees.

6. Liabilities and Responsibilities.

(a) Neither of the Parties or their respective officers and employees assume or shall be deemed to have assumed any liability or responsibility for the acts, omissions, and negligence of the other Party (or their officers or employees) in the performance of functions, operations, and activities contemplated in this Agreement. The City of Mountain Brook and the City of Vestavia Hills waive and release each other from any claims, demands, liabilities, actions, or suits of any kind (including any claim for contribution or indemnification) seeking compensation for property loss, personal injury or death, or other damages of any type (hereinafter a "Claim(s)") occurring as a consequence of the performance or failure of either department to perform their respective responsibilities under this Agreement;

(b) With respect to Claims or matters related or arising from operations contemplated hereunder, the Parties intend that they have responsibility only for the conduct and operations of their own department, employees, or officers, and that neither shall bear or have responsibility to the other (or be deemed to have responsibility to the other) or to any third party for their conduct or omissions. Accordingly, if a third party asserts a Claim against either Party arising from the performance or nonperformance by either of them of responsibilities contemplated hereunder, each Party is responsible to defend itself from any such claim made against them (or their respective officers or employees) at their own expense;

(c) All privileges and immunities from liability, exemption from Claims or laws, ordinances and rules, benefit of pensions and relief, disability, workman's compensation and other benefits which apply to a Party (or their officers or employees) when performing public safety functions within their own jurisdictional limits also apply to the same degree and extent when, as contemplated hereunder, a Party (or their officers and employees) performs those functions outside their own jurisdiction;

(d) All liability for workers compensation benefits or other Claims for injury to personnel employed by a Party, and for loss or damage of equipment owned

or utilized by either of them, exclusively shall be borne by the Party employing such personnel and owning such equipment.

- (e) The cost of fuel, expendable supplies, and other expense of operations contemplated hereunder shall be the responsibility of the Party providing that equipment, consuming those supplies, and performing those operations.
- (e) All compensation for personnel (including, but not limited to, salaries, pensions, and other benefits) who perform services contemplated hereunder shall be borne by the Party employing such personnel.
- (f) MBFD shall not be liable or responsible for the actions or inactions of VHFD (or their officers or employees) in performing or failing to perform operations contemplated hereunder, including, but not limited to, VHFD not responding to incident reports after being notified by the 911 Call Center. Similarly, VHFD shall not be liable or responsible for the actions or inactions of MBFD (or their officers or employees) in performing or failing to perform operations contemplated hereunder, including, but not limited to, MBFD not responding to incident reports after being notified by the 911 Call Center.

7. Effective Date & Term of Contract. The term of this Agreement shall begin on the Effective Date and remain in effect until terminated by mutual agreement; provided, however, either Party may terminate said Agreement by giving at least thirty (30) days' advance written notice to the other Party at the address indicated below.
8. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Alabama.
9. Integration/No Amendment/ No Waiver. This Agreement constitutes the entire agreement between the MBFD and VHFD with respect to the matters herein. Any discussions, understandings, or agreements concerning those matters not expressed herein are merged into this Agreement and of no effect. Further, this Agreement may not be amended or its provisions or rights hereunder waived by either Party except in a writing signed by both Parties.
10. Partial Invalidity. If any portion of this Agreement is determined to be invalid, void, or otherwise unenforceable, the remaining portions of it shall remain valid and of full force and effect.
11. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties.
12. Counterpart Signatures. This Agreement may be executed in multiple counterparts which shall be construed together as a single original instrument, and, when executed, each counterpart shall be binding upon and inure to the benefit of each party whether reproduced in photographic, digital, computer, or other electronic form.

(Signature Page Follows)

The undersigned, duly authorized representatives of the Parties execute this Agreement on behalf of their respective organizations.

CITY OF MOUNTAIN BROOK, ALABAMA, on behalf of its Fire Department

By: _____
Sam Gaston

Its: City Manager

Date: _____, 2023

By: _____
Chris J. Mullins

Its: Fire Chief

Date: _____, 2023

Administrative Address:
102 Tibbett Street
Birmingham, Alabama 35213

CITY OF VESTAVIA HILLS, ALABAMA on behalf of the VHFD

By: _____
Jeff Downes

Its: City Manager

Date: _____, 2023

By: _____
Marvin Green

Its: Fire Chief

Date: _____, 2023

Administrative Address:
1032 Montgomery Highway
Vestavia, Alabama 35216

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720
TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

E-Mail: patrickboone@bellsouth.net

February 20, 2023

By Electronic Mail

Fire Chief Marvin D. Green
Vestavia Hills Fire Department
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Inter-Jurisdictional Automatic Aid Agreement for Structure Fire Incident Reports Between
the Cities of Mountain Brook and Vestavia Hills

Dear Chief Green:

On February 1, 2023, you sent to me via electronic mail a copy of a proposed Inter-Jurisdictional Automatic Aid Agreement for Structure Fire Incident Reports (“Agreement”) by and between the Cities of Mountain Brook and Vestavia Hills, Alabama with a request that I review it and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

The Jurisdictional Automatic Aid Agreement for Structure Fire Incident Reports provides that the Fire Departments of the City of Vestavia Hills and the City of Mountain Brook will help each other. The Agreement specifically provides that both Fire Departments will answer fire calls in certain specific areas of the City of Vestavia Hills, Alabama and certain specific areas of the City of Mountain Brook, Alabama.

It is my legal opinion that the Agreement meets the requirements of Alabama law. Therefore, from a legal standpoint, I approve the Agreement. I have no suggestions for additions, deletions, changes and/or corrections. I do want to point out the following laws that support agreements of this nature.

1. Joint agreements between two different municipalities are permitted under Alabama law by Title 41-16-50(b), *Code of Alabama, 1975*, and also by Title 11-102-1, *Code of Alabama, 1975*.

February 20, 2023

Page 2

2. Alabama law authorizes municipalities to allow its Fire Department to operate beyond its corporate limits by virtue of Title 11-43-141, *Code of Alabama, 1975*.

3. Alabama law at Title 11-43-142, *Code of Alabama, 1975*, permits municipalities in Alabama to enter into contracts to provide fire services outside the corporate limits.

4. Alabama law at Title 11-80-9, *Code of Alabama, 1975*, permits municipalities to provide assistance to other municipalities during a disaster.

5. Employees of the Vestavia Hills Fire Department will continue to have discretionary function immunity under *Ex Parte Cranman*, 792 So.2d 392 (2000); *City of Birmingham v. Brown*, 969 So.2d 910 (2007); and *Ex Parte Gilland*, 274 So.3d 976 (2018).

6. The Vestavia Hills Fire Department employees will continue to have state agent immunity under the sovereign immunity statute at Title 36-1-12, *Code of Alabama, 1975*.

Please call me if you have any questions regarding any of the matters set forth in this legal opinion.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeffrey D. Downes (by e-mail)
City Clerk Rebecca Leavings (by e-mail)



**CITY OF VESTAVIA HILLS
FIRE DEPARTMENT
INTER-DEPARTMENT MEMO**

March 13, 2023

To: Jeff Downes, City Manager

Cc: Ryan Farrell, Asst. Fire Chief
Marvin Green, Fire Chief

From: Steven Michael

RE: Ordinance Number 3168 - An Ordinance authorizing the Mayor and City Manager to execute an automatic aid agreement with Mountain Brook

Background:

VHFD has existing automatic aid agreements with local municipalities. This establishes an automatic aid agreement with Mountain Brook.

Recommendation:

This has been reviewed by staff and the City Attorney found no issues.

Fiscal Impact:

Attachments:

1. Ordinance 3168
2. Automatic Aid Agrmt Mountain Brook
3. PH Boone Legal Opinion to Fire Chief Marvin Green February 20, 2023