

**MOUNTAIN BROOK CITY COUNCIL  
MEETING AGENDA**

**CITY HALL COUNCIL CHAMBER  
56 CHURCH STREET  
MOUNTAIN BROOK, AL 35213**

**MONDAY, JULY 22, 2013, 7:00 P.M.**

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1. Approval of the minutes of the July 8, 2013 regular meeting of the City Council.
2. Consideration: Resolution reappointing Sally Legg to the Village Design Review Committee, to serve without compensation, her term to end August 23, 2016.
3. Consideration: Resolution reappointing William J. Hereford to the Board of Zoning Adjustment, to serve without compensation, his term to end August 9, 2016.
4. Consideration: Resolution reappointing Chris Mitchell to the Board of Zoning Adjustment, to serve without compensation, his term to end September 13, 2016.
5. Consideration: Resolution authorizing the execution of an Employee Assistance Program Service Agreement between the City and American Behavioral EAP, LLC.
6. Consideration: Resolution authorizing the execution of an Agreement for a Transportation Enhancement Project (STPTE-TE08(918)S1) Supplement Number 1 between the City and the Alabama Department of Transportation with respect to the completion of the Phase 7A, Memory Lane sidewalk construction project.
7. Consideration: Resolution authorizing the execution of a cable franchise agreement between the City and Bright House Networks, LLC.
8. Announcement: The next regular meeting of the City Council is August 13, 2013, at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
9. Other business.
10. Comments from residents.
11. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
JULY 8, 2013**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:15 p.m. on Monday, the 8th day of July, 2013. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard III  
Jesse S. Vogtle, Jr.  
Lawrence T. Oden, Mayor

Absent: None

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

**1. AGENDA**

1. Bright House franchise request.

Scott Horne and Robert Smith of Bright House presented their proposed franchise agreement (Appendix 1). Bright House has been selected by the developers of the Lane Park development as its exclusive cable service provider which has prompted the requested franchise agreement. The members of the City Council pointed out that the draft agreement was incomplete and that they will reconsider the request at its next regular meeting on July 22, 2013.

2. Cost of carpet runner for main stairs in City Hall.

The cost of the carpet runner is estimated to be \$8,000 to \$9,000 and have a service life of five years. Robert McElroy of Brasfield & Gorrie estimates that the cost to refinish the wooden stairs to be \$7,000 and could be necessary every three years. The members of the City Council requested that the Building Committee consider some other carper runner style options and see if there are other less expensive options as well.

3. Change Orders for fountain and servers air conditioner unit.

The members of the City Council expressed general agreement with respect to a Brasfield & Gorrie change order for the back-up air conditioning system for the server room. Such change order will be presented to the City Council at a later date once the project has been designed and priced.

Some of the members of the City Council expressed concern about the overall cost of the fountain and expressed its intention to delve further into the estimated construction cost with representatives of Brown Mechanical and Nimrod Long. The notion of a Brasfield & Gorrie change order versus contracting with another [donee] entity will be reconsidered as well.

After the City Council's review of the formal [7 p.m.] agenda issues, Council President Smith adjourned the meeting at approximately 7:15 p.m..

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Steven Boone, City Clerk

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA  
JULY 8, 2013**

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The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:15 p.m. on Monday, the 8th day of July, 2013. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard III  
Jesse S. Vogtle, Jr.  
Lawrence T. Oden, Mayor

Absent: None

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

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

**1. RECOGNITION OF GUEST**

Council President Smith recognized Boy Scout Jay Sansom of Troop 86 in attendance for his Communications merit badge.

**2. CONSENT AGENDA**

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

Approval of the minutes of the June 24, 2013 meeting of the City Council.

2013-101	Reject all (two) the bids for the purchase police uniforms.	Exhibit 1
2013-102	Approve the [service] conditional use application submitted by Will and Sarah Mason with respect to their proposed operation of a music lesson/retail store at 2903 Cahaba Road (local business district).	Exhibit 2, Appendix 1

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

Ayes: Virginia C. Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard III  
Jesse S. Vogtle, Jr.

Nays: None

Council President Smith thereupon declared that said minutes and resolutions (nos. 2013-101 and 2013-102) are adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

**3. CONSIDERATION OF AN ORDINANCE (NO. 1892) RE-AFFIRMING VOTING DISTRICTS PREVIOUSLY ESTABLISHED UPON THE ADOPTION OF ORDINANCE NO. 1624, ASSIGNING POLLING LOCATIONS, AND RELOCATING ONE POLLING LOCATION (CITY HALL) TO ITS ORIGINAL SITE DUE TO THE RECENT COMPLETION OF THE NEW MUNICIPAL COMPLEX ALL WITH RESPECT TO MUNICIPAL ELECTIONS (EXHIBIT 3, APPENDIX 2)**

Council President Smith introduced the ordinance in writing and invited comments and questions from the audience. There being no discussion or comment, Council member Pritchard made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance be given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Vogtle and was carried, as follows:

Ayes: Virginia C. Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard III  
Jesse S. Vogtle, Jr.

Nays: None

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

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

Ayes: Virginia C. Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard III  
Jesse S. Vogtle, Jr.

Nays: None

The President of the Council declared that the ordinance (No. 1892) is hereby adopted by a vote of 4—0 and, as evidence thereof, she signed the same.

**4. PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING CHAPTER 129 OF THE CITY CODE BY ADDING A NEW “VINE STREET TRANSITIONAL” ZONING DISTRICT AND AMENDING THE ARTICLE XXXI (VILLAGE OVERLAY STANDARDS) AND SECTION 129-416 (ADVISORY DESIGN REVIEW REQUIRED IN THE VILLAGES OF MOUNTAIN BROOK) (APPENDIX 3)**

Council President Smith introduced the ordinance in writing and stated that the City Council does not intend to vote on the ordinance at this meeting. She then invited Planning Commission member Patrick Davis forward to explain the proposed ordinance (Appendix 3).

Patrick Davis:

- The proposed ordinance will allow for the following uses: Detached single family dwellings, attached single family dwellings, townhouses, professional offices, business offices, mixed use with residential above offices, and condominiums.
- The size of such developments will be dictated by the size and topography of the lot.
- Lighting is regulated.
- The maximum building height is 36 feet.

Afterward, President Smith invited comments and questions from the governing body.

Council member Pritchard wished to confirm that any planned development will have to come before the City Council for approval. The response:

- The ordinance does not rezone any property.
- The ordinance establishes a new zoning district.
- Property owners will follow normal practice with respect to rezoning applications and must also submit their development plan to the Planning Commission and Design Review Committee before coming to the City Council for final approval.
- The process will work much like that of a Planned Unit Development.
- This ordinance gives property owners in this district a means of developing their properties at such time that their existing structures are removed. Under the current zoning regulations, if a structure is demolished in this [proposed] district, there is no opportunity for redevelopment by the property owner.

Council member Carter stated that she sees no criteria for the Council to use to evaluate such future rezoning applications and development plans. The response:

- The permitted uses are specified in the [proposed] Vine Street Transitional District section (as a matter of right).
- The Village Overlay guidelines control how the property is to be developed (see Section 3 of the proposed ordinance).

Council member Carter asked whether the limitation of two off-street parking spaces is realistic. The response:

- The restriction poses an interesting architectural problem.
- It is contemplated that parking will be provided at the rear of the development, off-street.

There being no further questions or comments from the governing body, President Smith invited comments from the audience.

Michael Crump of 3904 Memory Brook Circle inquired whether this proposed ordinance is separate from that proposal discussed during the previous Village Overlay workshops held a couple of years ago. The response: Those meetings culminated in the adoption of the Village Overlay Standards which are incorporated by reference in the proposed ordinance.

Michael Crump also asked whether the ordinance could be revised to incorporate some landscaping, additional green space, fountains, or other amenities that may be beneficial to the community. The response: If a property owner offered to donate or sell a parcel to be developed into a "public park or space", some members of the Council may be receptive to such an offer and others likely not.

Jean Burford of 50 Vine Street:

- Her (and her husband's) property is currently allowed for a retail use (not sure of the current zoning).
- The current [retail] use is grandfathered.
- Does not see her proposed use listed among those enumerated in the proposed ordinance.

The response:

- 50 Vine Street will not be rezoned upon the adoption of this ordinance.
- Should the property owner wish to rezone the property to Vine Street Transitional District or the existing structure is razed, the permitted uses of the proposed ordinance do not allow retail use and the grandfathering of such current retail use will be lost.
- Retail is not encouraged in this proposed new district.
- It was suggested that, due to the fact specific nature of her concerns, a separate meeting be held to consider the various issues and concerns of the property owners.

Trip Galloway of 4144 Stone River Road represents Bill and Linda Israel:

- This proposal is much better than the first draft considered six months ago.

- Pointed out that the density was changed from 2,000 square feet to 2,500 square feet (Section C.4.)
- Questioned whether a development plan was required upon application to the Planning Commission.
- At what point in the process does the applicant address the Design Review Committee?
- If the Design Review approval comes after the City Council approval, at what point may the development commence (building permit be issued)? Prior to Design Review approval?
- The more filters an application but pass through, the less apprehensive his clients will be about a potentially undesirable development plan being approved.
- Would like to see the ordinance specify when in the process Design Review approval is required (preferably prior to City Council approval).
- How are modifications to the development plan years after approval to be approved? BZA?
- The Israel's are concerned about the potential of a property owner seeking a variance from the BZA, the variance being denied, and then the applicant appeal to the circuit court and thereby have a jury be put in the position of making planning decisions for the City.
- The density change made in C.4. will allow for three residential units atop two office units on the ground level; likely an unintended consequence that the Planning Commission said would be taken care of by the size of the lot.

The responses:

- Currently, Design Review cases may either come before or after City Council approval of a project.
- The intent is for all modifications to an approved development plan come before the City Council for approval as is the case currently with Planned Unit Development projects.
- The Council conceded that there may be instances where a property owner could seek a variance from the BZA for a set-back issue.
- It was suggested than Mr. Galloway meet with Mr. Colvin to work through these technical issues and to require City Council approval of all changes to an approved Vine Street Transitional District development plan.

There being no further questions or comments, President Smith closed the public hearing.

## **5. ANNOUNCEMENT REGARDING THE NEXT REGULAR MEETING OF THE CITY COUNCIL**

Council President Smith announced that the next regular meeting of the City Council will be Monday, July 22, 2013, at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213. Please visit the City's web site ([www.mtnbrook.org](http://www.mtnbrook.org)) for more information.

## **6. ADJOURNMENT**

There being no further business to come before the City Council at this time, Council President Smith adjourned the meeting.

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Steven Boone, City Clerk

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**RESOLUTION NO. 2013-103**

**B E IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Sally Legg is hereby reappointed to the Village Design Review Committee, to serve without compensation, her term to end August 23, 2016.

**ADOPTED:** This 22nd day of July, 2013.

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

**APPROVED:** This 22nd day of July, 2013.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 22, 2013, as same appears in the minutes of record of said meeting.

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

**RESOLUTION NO. 2013-104**

**B E IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that William J. Hereford is hereby reappointed to the Board of Zoning Adjustment, to serve without compensation, his term to end August 9, 2016.

**ADOPTED:** This 22nd day of July, 2013.

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

**APPROVED:** This 22nd day of July, 2013.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 22, 2013, as same appears in the minutes of record of said meeting.

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

**RESOLUTION NO. 2013-105**

**B E IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Chris Mitchell is hereby reappointed to the Board of Zoning Adjustment, to serve without compensation, his term to end September 13, 2016.

**ADOPTED:** This 22nd day of July, 2013.

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

**APPROVED:** This 22nd day of July, 2013.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 22, 2013, as same appears in the minutes of record of said meeting.

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

**RESOLUTION NO. 2013-106**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of an Employee Assistance Program Service Agreement, in the form as attached hereto as Exhibit A subject to such minor changes as may be determined appropriate by the City Attorney, between the City and American Behavioral EAP, LLC.

**ADOPTED:** This 22nd day of July, 2013.

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

**APPROVED:** This 22nd day of July, 2013.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 22, 2013, as same appears in the minutes of record of said meeting.

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



## American Behavioral ®

### INSTRUCTIONS FOR AMERICAN BEHAVIORAL BUSINESS ASSOCIATE AGREEMENT

Attached please find two (2) copies of a Business Associate Agreement signed by American Behavioral EAP, LLC. ("American Behavioral"). The Business Associate Agreement contains two (2) Exhibits: Exhibit A -- List of Designated Employees; Exhibit B -- Permitted Disclosures to Other Business Associates. Complete both copies, return one to American Behavioral and keep one copy for your records.

Under the Business Associate Agreement, the Plan is your group health plan that provides medical benefits to your employees and for which American Behavioral provides administrative and behavioral health services. You may have more than one group health plan for which American Behavioral provides services. If this is the case, the "Plan" is defined in the Business Associate Agreement to include all of your group health plans.

***On page 11 of the Agreement, please provide your company's name, the other requested information, and sign both Business Associate Agreements in the signature block for the Employer.***

#### **Exhibit A -- List of Designated Employees**

Under the HIPAA Privacy Rules, you must provide in the Business Associate Agreement a list of the names of your employees (or class of employees) designated as being authorized to receive protected health information from American Behavioral. ***Please complete Exhibit A (Page 12) -- the List of Designated Employees and Phone numbers.*** In the Business Associate Agreement, you agree to notify American Behavioral if the list of employees (or class of employees) designated to receive protected health information changes. Please see Section 2(c) of the Business Associate Agreement for more information.

#### **Exhibit B -- Disclosures to Other Business Associates of the Plan**

If you have other business associates (such as third party administrators of your Plan, consultants, pharmacy benefit managers, brokers, etc.) to whom you want American Behavioral to disclose protected health information, it is important that you let us know. To do so, ***you must complete Exhibit B (Page 13) -- Disclosures to Other Business Associates of the Plan.*** In the Business Associate Agreement, you agree to notify American Behavioral if the list of other business associates authorized to receive protected health information from American Behavioral changes.

Please return a copy of the Business Associate Agreement to American Behavioral, to attention Deborah C. Garvin, Director of Compliance and Quality Improvement.



# American Behavioral ®

## AMERICAN BEHAVIORAL EAP, LLC HIPAA BUSINESS ASSOCIATE AGREEMENT

**THIS BUSINESS ASSOCIATE AGREEMENT ("BA Agreement")** is effective as of the June 3, 2013 by and between **American Behavioral EAP, LLC ("American Behavioral")** and **City of Mountain Brook ("Employer")** and supplements and is made a part of that certain ASA Agreement by and between American Behavioral and Employer.

**WHEREAS**, Employer is a sponsor of the Plan, a covered entity under HIPAA;

**WHEREAS**, pursuant to an ASA Agreement, American Behavioral provides Administrative Services to Plan and, in connection with those services, American Behavioral has access to PHI that is subject to protection under HIPAA; American Behavioral is a "business associate" to Plan as defined by HIPAA;

**WHEREAS**, Employer and Plan require that American Behavioral protect the privacy and provide for the security of PHI in compliance with HIPAA in connection with the performance by American Behavioral of the Administrative Services; and

**WHEREAS**, Employer and Plan desire that American Behavioral disclose PHI to Designated Employees.

**NOW, THEREFORE**, in consideration of the foregoing and of the covenants and agreements set forth herein, the parties, intending to be legally bound, agree as follows:

**Section 1. Definitions.** The terms used, but otherwise not defined, in this BA Agreement shall have the same meaning as those terms in HIPAA.

(a) "Administrative Services" shall mean the administrative and behavioral health services that American Behavioral provides to or on behalf of Employer and Plan, and pursuant to which American Behavioral creates, receives, maintains or transmits PHI as a business associate of Plan.

(b) "ASA Agreement" shall mean one or more administrative services agreements which may be entered into by and between American Behavioral and Employer, from time to time, pursuant to which American Behavioral provides Administrative Services, as the same may be modified, amended, renewed or superseded.

(c) "Breach" shall have the meaning set forth in 45 CFR 164.402, including, without limitation, the unauthorized acquisition, access, use or disclosure of PHI in a manner not permitted by HIPAA.

(d) "Data Aggregation" shall have the meaning set forth in 45 CFR 164.501, including, without limitation, and with respect to PHI created or received by American Behavioral in its capacity as the business associate of Plan, the combining of such PHI by American Behavioral with the Protected Health Information received by American Behavioral in its capacity as a business associate of another covered entity, to permit data analyses that relate to the Health Care Operations of Plan and the other covered entity(ies).

(e) "Designated Employees" shall mean those persons (or class of persons) designated on Exhibit A by Employer and Plan as being included within the class of employees or other workforce members under the control of Employer designated in the Privacy Plan Amendment that are authorized to use and disclose PHI in accordance with the Privacy Plan Amendment.

(f) "Designated Record Set" shall have the meaning set forth in 45 CFR 164.501, including, without limitation, a group of records maintained by or for Plan that consist of: (i) the medical records and billing records about individuals maintained by or for Plan; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) records used, in whole or in part, by or for Plan to make decisions about individuals. For purposes of this definition, the term "record" means any item, collection or grouping of information that includes Protected Health Information and is maintained, collected, used or disseminated by or for Plan.

(g) "Effective Date" shall mean the effective date of the ASA Agreement.

(h) "Employer" shall mean the entity who sponsors the Plan and who has executed this BA Agreement (by its duly authorized representative) on the signature line designated for Employer.

(i) "Health Care Operations" shall have the meaning set forth in 45 CFR 164.501, including, without limitation, the following activities of Plan, to the extent that the activities are related to covered functions: quality assessment and improvement activities; credentialing; accreditation; conducting medical reviews; legal services; underwriting; premium rating; business planning and development; business management; and general administrative activities.

(j) "HIPAA" shall mean: (i) the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, including the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Parts 160 and 164, and any subsequent amendments or modifications thereto, and (ii) the HITECH Act, and regulations promulgated thereunder, and any subsequent amendments or modifications thereto.

(k) "HITECH Act" shall mean the provisions applicable to business associates under the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(l) "PHI" shall mean Protected Health Information which American Behavioral creates, receives, maintains or transmits on behalf of Plan in connection with the performance of Administrative Services.

(m) "Plan" shall mean one or more group health plans sponsored by Employer to which American Behavioral provides the Administrative Services.

(n) "Plan Administrative Services" shall mean the administrative services performed by Employer pursuant to the plan documents of Plan, including the Privacy Plan Amendment.

(o) "Privacy Plan Amendment" shall mean that amendment to the plan documents of Plan that complies in all respects with the requirements set forth in 45 CFR 164.504(f)(2) and for which the Plan has received a written certification as required by the Privacy Rules, on or before the Effective Date.

(p) "Privacy Rules" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, as may be amended, modified or superseded, from time to time.

(q) "Protected Health Information" shall have the meaning set forth in 45 CFR 160.103, including, without limitation, any information, whether oral, electronic or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual, including genetic information; or (ii) the provision of health care to an individual; or (iii) the past, present or future payment for the provision of health care to an individual; and (iv) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(r) "Required by Law" shall have the meaning set forth in 45 CFR 164.103, including, without limitation, a mandate contained in law that compels American Behavioral to make a use or disclosure of PHI and that is enforceable in a court of law.

(s) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his/her designee.

(t) "Security Incident" shall have the meaning set forth in 45 CFR 164.304, including the attempted or successful unauthorized access, use, disclosure, modification or destruction of electronic PHI.

(u) "Security Rules" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, as may be amended, modified or superseded from time to time.

(v) "Standard Transaction" shall have the meaning set forth in 45 CFR 162.103.

(w) "Unsecured PHI" shall have the meaning set forth in 45 CFR 164.402, including, without limitation, Protected Health Information not secured through the use of encryption, destruction or other technologies and methodologies identified by the Secretary to render such information unusable, unreadable, or indecipherable to unauthorized persons.

## **Section 2. Obligations of American Behavioral.**

(a) Permitted Uses. American Behavioral may only use PHI to provide Administrative Services pursuant to the ASA Agreement; provided, that American Behavioral shall not use PHI except as permitted or required by HIPAA, this BA Agreement or as permitted or required by law. American Behavioral may use PHI: (i) for the proper management and administration of American Behavioral; (ii) to carry out the legal responsibilities of American Behavioral; (iii) as Required by Law; or (iv) for Data Aggregation.

(b) Permitted Disclosures. American Behavioral may only disclose PHI to provide Administrative Services pursuant to the ASA Agreement; provided, that American Behavioral shall not disclose PHI except as permitted or required by HIPAA, this BA Agreement or as permitted or required by law. American Behavioral may disclose PHI to those persons listed on Exhibits A and B, as may be amended from time to time by Employer and/or Plan in writing. American Behavioral may disclose PHI: (i) for the proper management and administration of American Behavioral if such disclosure is Required by Law or if "Reasonable Assurances" are obtained; (ii) to carry out the legal responsibilities of American Behavioral if such disclosure is Required by Law or if "Reasonable Assurances" are obtained; (iii) as Required by Law; or (iv) for Data Aggregation. To the extent that American Behavioral discloses PHI to a third party pursuant to Section 2(b)(i) or (ii) above under Reasonable Assurances, American Behavioral must obtain in writing, prior to making any such disclosure: (x) reasonable assurance from the third party that such PHI will be held in a confidential manner; (y) reasonable assurance from the third party that such PHI will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to such third party; and (z) an agreement from the third party to immediately notify American Behavioral of any breaches of confidentiality of such PHI, to the extent the third party has knowledge of such breach (collectively, "Reasonable Assurances").

(c) Prohibited Uses and Disclosures. American Behavioral shall not use or disclose PHI for fund-raising or marketing purposes. Unless required by law, American Behavioral shall not disclose PHI to Plan for payment or health care operations if the individual subject to the PHI has requested such restriction and the individual or designee has paid out of pocket in full for the healthcare item or service to which the PHI relates. American Behavioral shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior consent of the Employer and Plan and as permitted by HIPAA; however, this prohibition shall not affect payment by Employer to American Behavioral for services provided pursuant to the ASA Agreement with Employer. American Behavioral shall not de-identify PHI without Plan's prior, written consent. Finally, American Behavioral shall not use or disclose an individual's genetic PHI for Plan underwriting purposes.

(d) Disclosure of PHI to Designated Employees. Employer and Plan hereby authorize and direct American Behavioral to disclose PHI to Designated Employees as set forth in Exhibit A, as may be amended from time to time by Employer and/or Plan in writing. In disclosing PHI to Designated Employees hereunder, Employer hereby agrees American Behavioral may rely solely upon the following representations, warranties and agreements of Plan and Employer:

(i) The Privacy Plan Amendment has been duly adopted by appropriate action of Plan and Employer and is, or will be, in full force and effect on the Effective Date. Plan has included all necessary statements in its notice of privacy practices required by the Privacy Rules to permit Plan and American Behavioral to disclose PHI to Designated

Employees. Employer and Plan shall promptly notify American Behavioral of any material modification or amendment to the Privacy Plan Amendment. Employer and Plan shall also promptly notify American Behavioral of any additions to or deletions from the list of Designated Employees.

(ii) Employer shall ensure that only Designated Employees shall use, or have the opportunity to use, PHI provided to Employer by American Behavioral hereunder.

(iii) On and after the Effective Date, Plan, Employer and Designated Employees will comply in all respects with HIPAA and the Privacy Plan Amendment that are applicable to this BA Agreement.

(iv) Designated Employees shall only request PHI from American Behavioral that is the minimum necessary as required by HIPAA to perform the Plan Administrative Services.

(e) Appropriate Safeguards. American Behavioral shall implement appropriate administrative, technical, security and physical safeguards in compliance with the Security Rules as are necessary to reasonably and appropriately safeguard and protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits in its performance of the Administrative Services pursuant to the ASA Agreement. As required by HIPAA, American Behavioral shall maintain policies, procedures and documentation that address these safeguards and the requirements of HIPAA and which are appropriate to the size and complexity of American Behavioral's operations and the nature and scope of its services.

(f) American Behavioral's Agents and/or Subcontractors. To the extent American Behavioral uses one or more subcontractors or agents to provide services under the ASA Agreement for the benefit of Plan, and such subcontractors or agents create, receive, maintain or transmit PHI, American Behavioral shall first require in accordance with 45 CFR 164.308 and 45 CFR 164.502 that each subcontractor or agent agree in writing to be bound by the terms of HIPAA to the same extent as American Behavioral.

(g) Access to PHI. Upon written notice from Plan, and in accordance with the written policies of American Behavioral then in effect, American Behavioral shall make PHI maintained by American Behavioral in a Designated Record Set available to Plan for inspection and/or copying to enable Plan to fulfill its obligations under 45 CFR 164.524. If a request for access to PHI is delivered directly to American Behavioral, American Behavioral shall promptly forward the request to Plan. American Behavioral shall provide Plan access to a copy of electronic PHI maintained by American Behavioral in a Designated Record Set in accordance with HIPAA.

(h) Amendment of PHI. Upon written notice from Plan, and in accordance with the written policies of American Behavioral then in effect, American Behavioral shall amend PHI maintained by American Behavioral in a Designated Record Set to enable the applicable Plan to fulfill its obligations under 45 CFR 164.526. If a request for amendment of PHI is delivered directly to American Behavioral, American Behavioral shall promptly forward the request to Plan.

(i) Accounting of PHI Disclosures. American Behavioral agrees to document disclosures of PHI and information related to such disclosures as would be required for Plan to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Upon written notice from Plan, and in accordance with the written policies of American Behavioral then in effect, American Behavioral shall make available to Plan the information required to provide an accounting of such disclosures. American Behavioral agrees to implement a process that allows for an accounting to be collected and maintained by American Behavioral and its agents or subcontractors in accordance with the time periods specified by 45 CFR 164.528 (except for disclosures occurring prior to the Effective Date). If a request for an accounting of PHI is delivered directly to American Behavioral, American Behavioral shall promptly forward the request to Plan.

(j) Governmental Access to Records. American Behavioral shall make its facilities and internal practices, books and records relating to the use and disclosure of PHI available to the Secretary in a time and manner designated by the Secretary, for the purpose of the Secretary determining American Behavioral's and Plan's compliance with HIPAA.

(k) Minimum Necessary Use and Disclosure Requirement. In accordance with 45 CFR 164.502(b), American Behavioral shall only request, use and disclose the minimum amount of PHI necessary to reasonably accomplish the purpose of the request, use or disclosure. Further, American Behavioral will restrict access to PHI to those employees, subcontractors and agents of American Behavioral who are actively and directly participating in providing Administrative Services and who need to know such PHI in order to fulfill such responsibilities.

(l) Retention of PHI. American Behavioral shall retain all PHI throughout the term of the ASA Agreement and shall continue to maintain the information required under Section 2(i) of this BA Agreement for a period of six (6) years from its creation.

(m) Notification Obligation; Mitigation. During the term of this BA Agreement, American Behavioral shall notify Plan within five (5) days after the discovery of any use and/or disclosure of PHI not permitted by this BA Agreement, a Breach of Unsecured PHI or any material Security Incident. This notification shall include the information required by HIPAA and at a minimum the following information: (i) a description of the facts and circumstances concerning the Breach or Security Incident; (ii) a description of the PHI affected; and (iii) the names and identity of the individual(s) affected. American Behavioral shall take prompt corrective action to mitigate and cure, if feasible, any harmful effect that is known to American Behavioral of an improper use and/or disclosure of PHI, Breach or Security Incident. American Behavioral shall cooperate with Plan regarding any Breach notification to third parties. American Behavioral shall be deemed to discover a Breach of Unsecured PHI as of the first day on which such Breach is known, or should have been known, by American Behavioral. Plan shall provide any breach notifications as required by HIPAA.

(n) Compliance with Standard Transactions. If American Behavioral conducts, in whole or in part, Standard Transactions for or on behalf of Plan, American Behavioral will comply, and will require any of its subcontractors or agents involved with such Standard Transactions on behalf of Plan to comply, with each applicable requirement of 45 CFR Parts 160 and 162. American Behavioral will not enter into, or permit its subcontractors or agents to enter into, any agreement in connection with the conduct of Standard Transactions for or on behalf of

Plan that: (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is marked "not used" in a Standard Transaction or are not in the Standard Transactions' implementation specification; or (iv) changes the meaning or intent of the Standard Transactions' implementation specifications.

### **Section 3. Obligations of Employer.**

(a) Notice of Privacy Practices. Employer shall notify American Behavioral of any limitation(s) in the Plan's notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation(s) may affect American Behavioral's use or disclosure of PHI.

(b) Restrictions on Use or Disclosure. Employer shall notify American Behavioral of any changes in, or revocation of, permission by individuals to use and/or disclose PHI, to the extent such changes or revocations may affect American Behavioral's permitted or required uses and/or disclosures of PHI. Further, Employer shall notify American Behavioral of any restriction on the use and/or disclosure of PHI that Plan has agreed to in accordance with 45 CFR 164.522, to the extent such restriction may affect American Behavioral's permitted or required uses and/or disclosures of PHI.

### **Section 4. Term and Termination.**

(a) Term. This BA Agreement shall commence on the Effective Date and will remain effective for the entire term of the ASA Agreement, unless earlier terminated in accordance with the terms herein.

(b) Automatic Termination. This BA Agreement will immediately and automatically terminate without notice upon termination of all ASA Agreement(s).

(c) For Cause Termination Due to Material Breach. Either party may terminate this BA Agreement by notice in writing to the other party, if the other party materially breaches this BA Agreement in any manner and such material breach continues for a period of thirty (30) days after written notice is given to the breaching party by the other party specifying the nature of the breach and requesting that it be cured. A material breach of this BA Agreement shall constitute a breach of the ASA Agreement. If termination of this BA Agreement is not feasible, the non-breaching party shall report the breach to the Secretary if required by HIPAA. Employer and American Behavioral hereby agree that, upon termination of this BA Agreement, the ASA Agreement shall automatically terminate and American Behavioral shall have no further obligation to perform the Administrative Services.

(d) Judicial or Administrative Proceedings. Employer or American Behavioral may terminate this BA Agreement and the ASA Agreement, effective immediately, if: (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) there is a finding or stipulation that either party has violated any standard or requirement of HIPAA in any administrative or civil proceeding.

(e) Effect of Termination. As of the effective date of termination of this BA Agreement, neither party shall have any further rights or obligations hereunder except: (i) as

otherwise provided herein or in the ASA Agreement; (ii) for continuing rights and obligations accruing under HIPAA; or (iii) arising as a result of any breach of this BA Agreement, including, but not limited to, any rights and remedies available at law or equity. Upon termination of this BA Agreement for any reason, American Behavioral shall return or destroy all PHI (regardless of form or medium), including all copies thereof and any data compilations derived from PHI and allowing identification of any individual who is the subject of the PHI. The obligation to return or destroy all PHI shall also apply to PHI that is in the possession of agents or subcontractors of American Behavioral. If the return or destruction of PHI is not feasible, American Behavioral shall provide Employer written notification of the conditions that make return or destruction not feasible. Upon notification that return or destruction of PHI is not feasible, American Behavioral shall continue to extend the protections of this BA Agreement to such information, and limit further uses or disclosures of such PHI to those purposes that make the return or destruction of such PHI not feasible, for as long as American Behavioral maintains such PHI. If American Behavioral elects to destroy the PHI, American Behavioral shall notify Employer in writing that such PHI has been destroyed.

**Section 5. Indemnity.** American Behavioral agrees to indemnify, defend and hold harmless Employer, Plan and their respective owners, officers, employees and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorneys' fees, arising from or based upon any violation of this BA Agreement and/or HIPAA by American Behavioral or any of its owners, officers, employees, agents and subcontractors. Employer agrees to indemnify, defend and hold harmless American Behavioral and its owners, officers, employees and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorneys' fees, arising from or based upon any violation of this BA Agreement and/or HIPAA by Employer, Plan or any of their respective owners, officers, employees, agents and subcontractors.

**Section 6. Construction.** This BA Agreement shall be construed as broadly as necessary to implement and comply with HIPAA. The parties agree that any ambiguity in this BA Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA. The terms and conditions of this BA Agreement shall override and control over any conflicting terms and conditions in the ASA Agreement, which are related to the security and privacy of PHI. Except as expressly modified or amended herein, all other terms and conditions of the ASA Agreement shall remain in full force and effect.

**Section 7. Captions.** The captions contained in this BA Agreement are included only for convenience of reference and do not define, limit, explain or modify this BA Agreement or its interpretation, construction or meaning and are in no way to be construed as part of this BA Agreement.

**Section 8. Notice.** All notices and other communications required or permitted pursuant to this BA Agreement shall be in writing, addressed to the party at the address set forth at the end of this BA Agreement, or to such other address as any party may designate from time to time in writing in accordance with this Section. All notices and other communications shall be sent by: (i) registered or certified mail, return receipt requested, postage pre-paid; (ii) overnight mail by a reputable carrier; (iii) facsimile with a copy sent by First Class Mail, postage pre-paid; or (iv) hand delivery. All notices shall be effective as of the date of delivery if by hand

delivery and overnight mail, two (2) days following the date of facsimile, or for certified mail on the date of receipt, whichever is applicable.

**Section 9. Assignment.** This BA Agreement and the rights and obligations hereunder shall not be assigned, delegated, or otherwise transferred by either party without the prior written consent of the other party and any assignment or transfer without proper consent shall be null and void.

**Section 10. Governing Law and Venue.** This BA Agreement shall be governed by and interpreted in accordance with HIPAA and the internal laws of the State of Alabama, without giving effect to any conflict of law provisions. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this BA Agreement, or any provision hereof, shall take place in the State of Alabama in Jefferson County. Employer, Plan and American Behavioral hereby consent to the personal jurisdiction of the state and federal courts in Jefferson County, Alabama in any dispute arising from or related to this BA Agreement.

**Section 11. Binding Effect; Modification.** This BA Agreement shall be binding upon, and shall enure to the benefit of, the parties hereto and their respective permitted successors and assigns. This BA Agreement may only be amended or modified by mutual written agreement of the parties; provided, however, that in the event any provision of this BA Agreement shall conflict with the requirements of HIPAA, this BA Agreement shall automatically be deemed amended as necessary to conform to such legal requirements at all times.

**Section 12. Waiver.** The failure of either party at any time to enforce any right or remedy available hereunder with respect to any breach or failure shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

**Section 13. Severability.** In the event that any provision or part of this BA Agreement is found to be totally or partially invalid, illegal, or unenforceable, then the provision will be deemed to be modified or restricted to the extent and in the manner necessary to make it valid, legal, or enforceable, or it will be excised without affecting any other provision of this BA Agreement, with the parties agreeing that the remaining provisions are to be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

**Section 14. No Third-Party Beneficiaries.** Nothing express or implied in this BA Agreement is intended to confer, nor shall anything herein confer, upon any person or entity other than Plan, Employer, American Behavioral and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

**Section 15. Independent Contractor.** The parties hereby acknowledge that in providing services pursuant to this BA Agreement, American Behavioral is at all times acting as an independent contractor and not as an employee or agent of Employer or Plan.

**Section 16. Entire Agreement.** This BA Agreement, including the Exhibits, constitutes the entire agreement between the parties with respect to the matters contemplated

herein and supersedes all previous and contemporaneous oral and written negotiations, commitments, and understandings relating thereto.

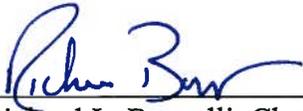
**Section 17. Counterparts.** The parties hereby agree that any number of counterparts of this BA Agreement may be executed, and that each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one BA Agreement.

**[Signatures on the following page]**

IN WITNESS WHEREOF, Employer and American Behavioral have each caused this BA Agreement to be executed in their respective names by their duly authorized representatives.

**AMERICAN BEHAVIORAL:**  
**American Behavioral**

**EMPLOYER:**  
**City of Mountain Brook**

By:   
Richard L. Bozzelli, Chairman

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: 4 Jan 2013

Date: \_\_\_\_\_

Address: 3680 Grandview Parkway  
Suite 100  
Birmingham, Alabama 35243

Address: 3928 Montclair Road, Suite 148  
Mountain Brook, AL 35213

Contact Person: Deborah C. Garvin

Contact Person: Sam Gaston

Telephone: (205) 868-9633

Telephone: (205) 802-3803

Facsimile: (205) 868-9625

Facsimile: (205) 870-3577

**Exhibit A**

**List of Designated Employees**

Under the Privacy Rules, Plan must provide a list of names of employees (or class of employees) who are authorized to receive PHI from American Behavioral. The employees listed below must be the same employees (or within the same class of employees) who are designated in Plan's Privacy Plan Amendment

**Employer: City of Mountain Brook**

The Plan hereby authorizes American Behavioral to disclose PHI to the following Designated Employees (or class of employees):

<b>Name of Employee(s) <u>or</u> Class of Employee(s)</b>	<b>Title (if individual employee(s) listed) and Telephone Number</b>
All	SAM GASTON
	CITY MANAGER
	802-3803

The Employer hereby agrees to notify American Behavioral, in writing, if the information and/or persons identified in the above list changes.

**Effective Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Exhibit B**

**Permitted Disclosures to Other Business Associates**

Please complete this form and provide the names of other business associates (such as third party administrators, benefit consultants, pharmacy managers, or brokers) to whom you want American Behavioral, as your business associate, to disclose PHI to on your behalf. Also please list any conditions or limitations that apply to the disclosure of PHI. If you list no conditions or limitations, then American Behavioral will provide the identified business associates all PHI that would be available from the Plan. If you do not complete and return this Exhibit B, American Behavioral will not disclose PHI to other business associates of the Plan until the Plan authorizes such disclosure in writing.

**Employer: City of Mountain Brook**

The Plan hereby authorizes American Behavioral to disclose PHI to the following business associates of the Plan:

Name/Address/Contact Person	Conditions/Limitations

The Employer hereby agrees to notify American Behavioral, in writing, if the information and/or persons identified in the above list changes.

**Effective Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ADDENDUM TO AGREEMENT BETWEEN  
THE CITY OF MOUNTAIN BROOK AND  
AMERICAN BEHAVIORAL EAP, LLC  
DATED JULY 22, 2013**

**THIS ADDENDUM** (“the/this Addendum”) to the principal agreement between the City of Mountain Brook, Alabama (“the City”) and American Behavioral EAP, LLC (“the Contractor”) dated July 22, 2013.

**This Addendum is a part of the principal agreement, but supersedes and controls any conflicting or inconsistent terms or provisions in the principal agreement, particularly to the extent the conflicting or inconsistent terms or provisions purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without express approval of the Mountain Brook City Council.**

1. ***Definitions.*** For purposes of this Addendum, the terms below have the following meanings:
  - A. ***“The City”*** refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies.
  - B. ***“The (this) Agreement”*** refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
  - C. ***“The Contractor”*** refers to the person, firm, or other legal entity that enters into an agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor’s vendors, suppliers, and subcontractors.
2. ***Arbitration; Mediation; Alternate Dispute Resolution.*** The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (1) the rights and remedies available under such arbitration rules or processes do not afford the Contractor greater relief (e.g., attorney’s fees, damages, etc.) than would be available under otherwise applicable law, (2) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (3) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.
3. ***Attorney’s Fees; Court Costs; Litigation Expenses.*** The City shall not be liable for attorney’s fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs,

and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. ***Late Payment Charges; Fees; Interest.*** The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services at a rate higher than two-thirds of one percent per month (eight percent per annum), but bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be subject to late payment charges pending resolution of the dispute.
5. ***Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies.*** The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.
6. ***Choice of Law; Choice of Venue or Forum.*** The meaning, legal effect, and enforcement of terms and provisions of the agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.
7. ***Construction of Addendum.*** Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal agreement or as a matter of law.
8. ***Alabama Immigration Law Compliance Contract.*** Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the 1-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplied by the Board and return the same to the City. Contractor shall also enroll in the E-Verify

Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as the Board may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the City and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

**DATED** this 22nd day of July, 2013.

**American Behavioral EAP, LLC**

**City of Mountain Brook, Alabama**

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

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

Its : \_\_\_\_\_

Its : \_\_\_\_\_

Nimrod Long  
And Associates

L O N G

Land Planners  
Landscape Architects  
Urban Designers

January 28, 2013

Mr. Brian McCollum  
Alabama Department of Transportation  
3<sup>rd</sup> Division  
1020 Bankhead Hwy, West  
Birmingham, AL 35204-2745

RE: **Project No. STPTE-TE08(918)**  
Village Trail System, Phase 7A (Memory Lane)  
City of Mountain Brook, Jefferson County

Dear Brian,

Per your request in e-mail dated January 25, 2013 we have shown the locations on the attached drawings that correspond to the October 31, 2012 pricing from Walker Patton. The following descriptions should further clarify the quantities listed.

**Station 103+50, Replacement of Driveway-**

36 LF of 206D003, Removing Curb and Gutter, replaced with 24 LF of 623A001, Concrete Gutter (Valley) and 12 LF 623C003 Combination Curb & Gutter Type C (Modified);  
47 SY of 206C010, Removing Concrete Driveway (Includes 37 SY for the driveway and 10 SY for the approaches on each side);  
37 SY of 618B003, Concrete Driveway, 6" Thick;  
10 SY of 618A000, Concrete Sidewalk, 4" Thick (Approaches on each side);  
3 CY of 305A051, Coarse Aggregate, Section 801, For Miscellaneous Use;  
20 SY of 66K000, Pinestraw Mulch; and  
7 SY of 654A005, Solid Sodding (Emerald Zoysia)

**Station 109+90 to Station 110+40, Handrail-**

50 LF of 517G000, Ornamental Metal Railing

**Station 118+24 to Station 118+35, Add Handicap Ramps-**

10 SY of 206C010, Removing Concrete Driveway;  
10 SY of 618A000, Concrete Sidewalk, 4" Thick; and  
3 SY of 654A005, Solid Sodding (Emerald Zoysia).

Please let me know if you have any further questions.

Sincerely,



David E. Giddens,  
LEED AP

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# WALKER PATTON COMPANY, INC.

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October 31, 2012

Mr. Nimrod Long  
Nimrod Long and Associates  
2213 Morris Avenue  
Birmingham, Alabama 35203

**Re: Project No. STPTE-TE08(918)  
Village Trail System, Phase 7, Memory Lane  
City of Mountain Brook  
Jefferson County**

Dear Nimrod:

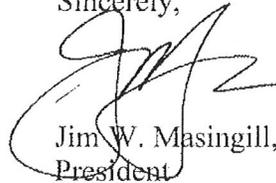
Please review the cost to make ADA accessible crossings per drawings and letter dated October 23, 2012.

#### Additional Work Items

QTY	ITEM #	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
57	206C010	SY	Removing Concrete Driveway	\$24.93	\$1,421.01
36	206D003	LF	Removing Curb and Gutter	\$8.06	\$290.16
3	305A051	CY	Coarse Aggregate, Section 801, For Miscellaneous Use	\$37.72	\$113.16
20	618A000	SY	Concrete Sidewalk, 4" Thick	\$61.95	\$1,239.00
37	618B003	SY	Concrete Driveway, 6" Thick (Includes Wire Mesh)	\$48.32	\$1,787.84
24	623A001	LF	Concrete Gutter (Valley)	\$23.15	\$555.60
12	623C003	LF	Combination Curb & Gutter Type C (Modified)	\$28.04	\$336.48
10	654A005	SY	Solid Sodding (Emerald Zoysia)	\$7.15	\$71.50
20	660K000	BALE	Pinestraw Mulch	\$7.70	\$154.00
50	517G-000	LF	Ornamental Metal Railing	\$121.00	\$6,050.00
				TOTAL	\$12,018.75

If you have any questions or changes, please feel free to contact me at (205) 836-9899. If you agree with this summary of additional work, please forward this request to the City for their concurrence.

Sincerely,



Jim W. Masingill, Jr.  
President

## Dave Giddens

---

**From:** Dunn, Adriana [dunna@dot.state.al.us]  
**Sent:** Friday, January 25, 2013 3:11 PM  
**To:** Dave Giddens  
**Cc:** McCollum, William "Brian"  
**Subject:** FW: STPTE-TE08 (918) Memory Lane  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

Mr. Giddens,

The additional work items in your letter dated October 31, 2012, are revised quantities from the original letter dated December 1, 2011. This office will need the revised drawings that show the locations of the quantities listed in the October 31, 2012 letter, to determine if ALDOT agrees with the revised pricing.

**Thanks,**

## Brian McCollum



Office: (205) 327-4927

Fax: (205) 327-4980

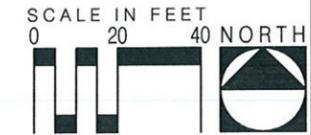
Cell: (205) 288-6790

Southern Linc # 1\*99\*3642

Email: [mccollumw@dot.state.al.us](mailto:mccollumw@dot.state.al.us)

**PLAN LEGEND**

- 1 REQ'D 206D003 REMOVING CURB AND GUTTER
- 2 REQ'D 206E001 REMOVING INLETS
- 3 REQ'D 209A000 MAILBOX RESET, SINGLE
- 4 REQ'D 305A051 COARSE AGGREGATE, SECTION 801, FOR MISCELLANEOUS USE
- 5 REQ'D 660C040 SHRUBS, ILEX CORNUTA BURFORDII NANA (DWARF BURFORD HOLLY)
- 6 REQ'D 613D000 BRICK CURB
- 7 REQ'D 618A000 CONCRETE SIDEWALK, 4" THICK.
- 8 REQ'D 654A005 SOLID SODDING (EMERALD ZOYSIA)
- 9 REQ'D 621C030 INLETS, TYPE "SPECIAL"
- 10 REQ'D 619A002 18" ROADWAY PIPE END TREATMENT, CLASS 1
- 11 REQ'D 623A001 CONCRETE GUTTER (VALLEY)
- 12 REQ'D 623C003 COMBINATION CURB & GUTTER TYPE C (MODIFIED, 18")
- 13 REQ'D 623C002 COMBINATION CURB & GUTTER TYPE K
- 14 REQ'D 424A344 SUPERPAVE BITUMINOUS WEARING SURFACE LAYER, PATCHING
- 15 OMIT
- 16 REQ'D 613FXXX BRICK PAVING
- 17 REQ'D 665J002 SILT FENCE
- 18 REQ'D 703A002 TRAFFIC CONTROL MARKINGS, CLASS 2, TYPE A
- 19 REQ'D 660K000 PINESTRAW MULCH
- 20 REQ'D 533A857 18" STORM SEWER PIPE
- 21 REQ'D 614B000 REINFORCED SLOPE PAVING
- 22 REQ'D 517D000 SIDEWALK HANDRAIL
- 23 REQ'D 701G253 SOLID WHITE, CLASS 2, TYPE A TRAFFIC STRIPE (6" WIDE)
- 24 REQ'D 701G265 SOLID YELLOW, CLASS 2, TYPE A TRAFFIC STRIPE (5" WIDE)
- 25 REQ'D 665P005 INLET PROTECTION, STAGE 3 OR 4
- 26 REQ'D 623B002 CONCRETE CURB, TYPE A
- 27 REQ'D 641S500 VALVE BOX RESET
- 28 REQ'D 517G000 ORNAMENTAL METAL RAILING



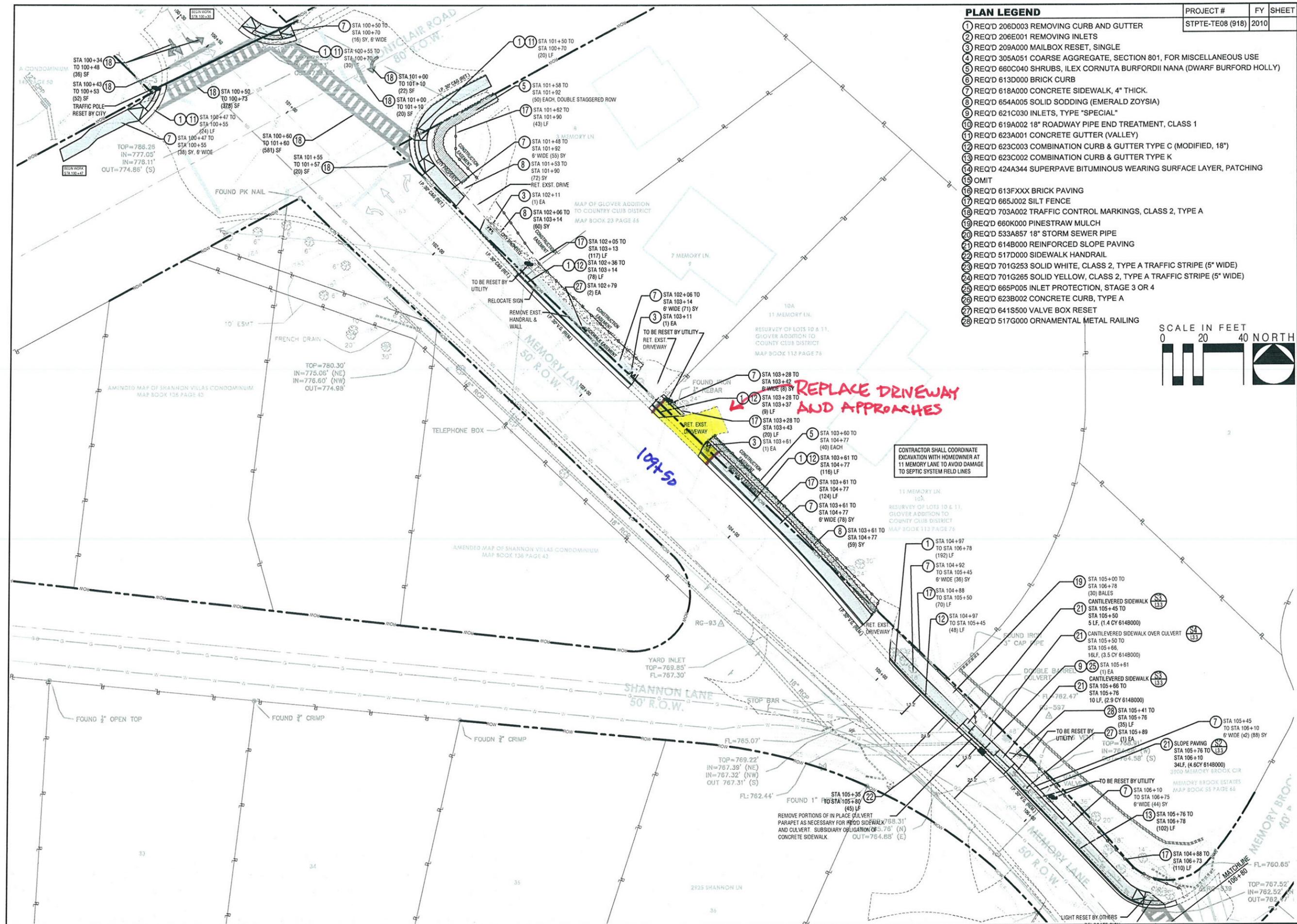
Nimrod Long  
 And Associates  
 Land Planners  
 Landscape Architects  
 Urban Designers  
 2213 Morrill Avenue First Floor, Birmingham, AL 35203 205/232-6072

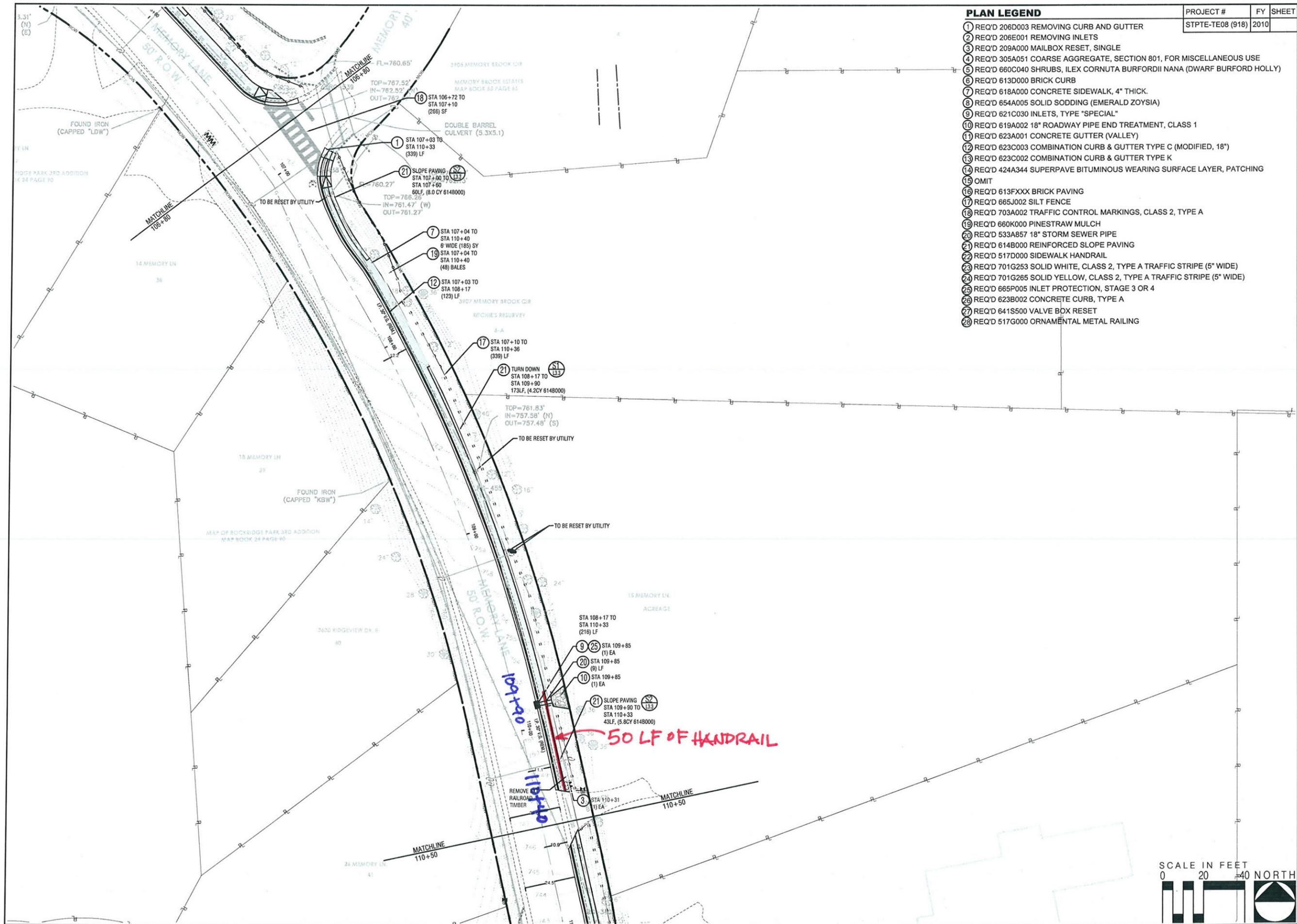
ALDOT Project STPTE-TE08 (918)  
 Village Trail System, Phase 7A (Memory Lane)  
 City of Mountain Brook  
 Jefferson County

COMMISSION NUMBER	07-063
DRAWING DATE	9/23/09
DESIGNED	NWELJI
DRAWN	RCC
CHECKED	DEG
DATE	REVISION



SHEET  
**L1.1**  
SIDEWALK LAYOUT PLAN  
AND EROSION CONTROL





**PLAN LEGEND**

- 1 REQ'D 206D003 REMOVING CURB AND GUTTER
- 2 REQ'D 206E001 REMOVING INLETS
- 3 REQ'D 209A000 MAILBOX RESET, SINGLE
- 4 REQ'D 305A051 COARSE AGGREGATE, SECTION 801, FOR MISCELLANEOUS USE
- 5 REQ'D 660C040 SHRUBS, ILEX CORNUTA BURFORDII NANA (DWARF BURFORD HOLLY)
- 6 REQ'D 613D000 BRICK CURB
- 7 REQ'D 618A000 CONCRETE SIDEWALK, 4" THICK.
- 8 REQ'D 654A005 SOLID SODDING (EMERALD ZOYSIA)
- 9 REQ'D 621C030 INLETS, TYPE "SPECIAL"
- 10 REQ'D 619A002 18" ROADWAY PIPE END TREATMENT, CLASS 1
- 11 REQ'D 623A001 CONCRETE GUTTER (VALLEY)
- 12 REQ'D 623C003 COMBINATION CURB & GUTTER TYPE C (MODIFIED, 18")
- 13 REQ'D 623C002 COMBINATION CURB & GUTTER TYPE K
- 14 REQ'D 424A344 SUPERPAVE BITUMINOUS WEARING SURFACE LAYER, PATCHING
- 15 OMIT
- 16 REQ'D 613FXXX BRICK PAVING
- 17 REQ'D 665J002 SILT FENCE
- 18 REQ'D 703A002 TRAFFIC CONTROL MARKINGS, CLASS 2, TYPE A
- 19 REQ'D 660K000 PINESTRAW MULCH
- 20 REQ'D 533A857 18" STORM SEWER PIPE
- 21 REQ'D 614B000 REINFORCED SLOPE PAVING
- 22 REQ'D 517D000 SIDEWALK HANDRAIL
- 23 REQ'D 701G253 SOLID WHITE, CLASS 2, TYPE A TRAFFIC STRIPE (5" WIDE)
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- 28 REQ'D 517G000 ORNAMENTAL METAL RAILING

PROJECT #	FY	SHEET
STPTE-TE08 (918)	2010	

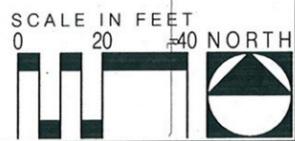
Nimrod Long  
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 2215 Morris Avenue First Floor Birmingham AL 35203 205/233.6072

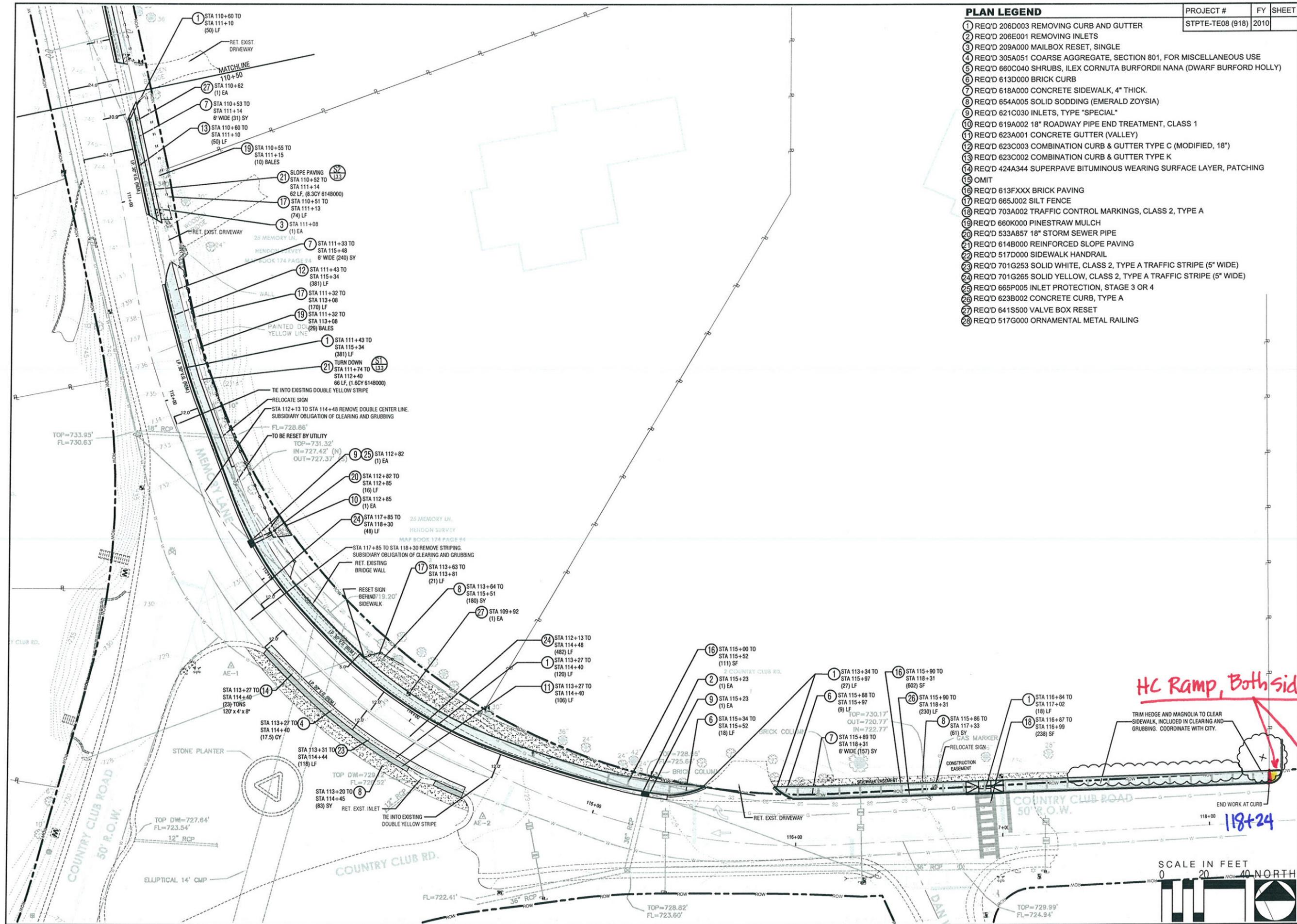
ALDOT Project STPTE-TE08 (918)  
 Village Trail System, Phase 7A (Memory Lane)  
 City of Mountain Brook  
 Jefferson County

COMMISSION NUMBER	07-063
DRAWING DATE	9/23/09
DESIGNED	MWELIJ
DRAWN	RCG
CHECKED	DEG
DATE	REVISION



SHEET  
**L1.2**  
 SIDEWALK LAYOUT PLAN  
 AND EROSION CONTROL





**PLAN LEGEND**

- 1 REQ'D 206D003 REMOVING CURB AND GUTTER
- 2 REQ'D 206E001 REMOVING INLETS
- 3 REQ'D 209A000 MAILBOX RESET, SINGLE
- 4 REQ'D 305A051 COARSE AGGREGATE, SECTION 801, FOR MISCELLANEOUS USE
- 5 REQ'D 660C040 SHRUBS, ILEX CORNUTA BURFORDII NANA (DWARF BURFORD HOLLY)
- 6 REQ'D 613D000 BRICK CURB
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- 12 REQ'D 623C003 COMBINATION CURB & GUTTER TYPE C (MODIFIED, 18")
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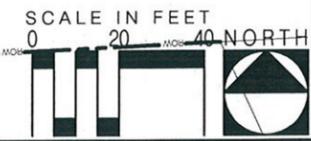
PROJECT #	FY	SHEET
STPTE-TE08 (918)	2010	

Nimrod Long  
 And Associates  
 Land Planners  
 Landscape Architects  
 Urban Designers  
 2213 Morris Avenue First Floor Birmingham AL 35203 205/723/236072

ALDOT Project STPTE-TE08 (918)  
 Village Trail System, Phase 7A (Memory Lane)  
 City of Mountain Brook  
 Jefferson County

COMMISSION NUMBER	07-063
DRAWING DATE	9/23/09
DESIGNED	NWELII
DRAWN	RCC
CHECKED	DEB
DATE	REVISION

SHEET  
**L1.3**  
 SIDEWALK LAYOUT PLAN  
 AND EROSION CONTROL



*HC Ramp, Both Sides*

*118+24*

*118+35*

L O N G

Land Planners  
Landscape Architects  
Urban Designers

January 28, 2013 (*Revised 5-20-13*)

Mr. Brian McCollum  
Alabama Department of Transportation  
3<sup>rd</sup> Division  
1020 Bankhead Hwy, West  
Birmingham, AL 35204-2745

RE: **Project No. STPTE-TE08(918)**  
Village Trail System, Phase 7A (Memory Lane)  
City of Mountain Brook, Jefferson County

Dear Brian,

Per your request in e-mail dated January 25, 2013 we have shown the locations on the attached drawings that correspond to the October 31, 2012 pricing *of \$12,018.75 from Walker Patton. The CE&I cost would be \$1,800.00 for a total of \$13,818.75.*

The following descriptions should further clarify the quantities listed:

**Station 103+50, Replacement of Driveway-**

36 LF of 206D003, Removing Curb and Gutter, replaced with 24 LF of 623A001, Concrete Gutter (Valley) and 12 LF 623C003 Combination Curb & Gutter Type C (Modified);  
47 SY of 206C010, Removing Concrete Driveway (Includes 37 SY for the driveway and 10 SY for the approaches on each side);  
37 SY of 618B003, Concrete Driveway, 6" Thick;  
10 SY of 618A000, Concrete Sidewalk, 4" Thick (Approaches on each side);  
3 CY of 305A051, Coarse Aggregate, Section 801, For Miscellaneous Use;  
20 SY of 66K000, Pinestraw Mulch; and  
7 SY of 654A005, Solid Sodding (Emerald Zoysia)

**Station 109+90 to Station 110+40, Handrail-**

50 LF of 517G000, Ornamental Metal Railing

**Station 118+24 to Station 118+35, Add Handicap Ramps-**

10 SY of 206C010, Removing Concrete Driveway;  
10 SY of 618A000, Concrete Sidewalk, 4" Thick; and  
3 SY of 654A005, Solid Sodding (Emerald Zoysia).

Please let me know if you have any further questions.

Sincerely,



David E. Giddens,  
LEED AP

cc: File



ROBERT BENTLEY  
GOVERNOR

# ALABAMA DEPARTMENT OF TRANSPORTATION

THIRD DIVISION  
OFFICE OF DIVISION ENGINEER  
1020 BANKHEAD HWY., WEST  
P.O. BOX 2745  
BIRMINGHAM, ALABAMA 35202-2745  
Telephone: (205) 328-5820



JOHN R. COOPER  
TRANSPORTATION DIRECTOR

June 26, 2013

The Honorable Lawrence T. Oden  
Mayor, City of Mountain Brook  
56 Church Street  
Mountain Brook, Alabama 35213

RE: Jefferson County  
Project No. STPTE-TE08(918) S1  
Mountain Brook Village Trail System  
(Memory Lane) Phase 7A  
City of Mountain Brook

Dear Mayor Oden:

Attached is the original supplemental agreement number 1 between the Department of Transportation and the City of Mountain Brook on the above referenced project.

The project funding has been amended by adding additional construction cost.

This agreement is submitted to the City for approval. After execution by the City Council, please return the original document, with original signatures and the City Seal affixed to this office for further handling. A certified resolution, which authorizes the Mayor to sign the agreement, affixed with the City Seal should also be included with the original agreement.

If you have any questions concerning this agreement, please contact Mrs. Renya Hooks of this office, telephone (205) 581-5883.

Sincerely,

Brian C. Davis  
Division Engineer

BCD/LAT/RMH/trs  
Attachment  
C: File w/att.

**AGREEMENT  
FOR A TRANSPORTATION ENHANCEMENT PROJECT**

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

**Jefferson County**

**Mountain Brook Village Trail System (Memory Lane) Phase 7A  
Project No. STPTE-TE08(918)S1**

**SUPPLEMENT NUMBER 1**

This Supplemental Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as STATE; and the City of Mountain Brook, hereinafter referred to as AGENCY, in cooperation with the U. S. Department of Transportation, Federal Highway Administration, hereinafter referred to as FHWA; and

WHEREAS, the STATE and the AGENCY entered into an “ Agreement for a Transportation Enhancement Project” for the above referenced project, on the 19<sup>th</sup> day of September 2008; and

WHEREAS, the STATE and the AGENCY desire to amend the Agreement entered into on the 19<sup>th</sup> day of September 2008, by execution of this supplemental agreement.

NOW, THEREFORE, the parties hereto, for, and consideration of the premises stated herein, do hereby mutually promise, stipulate, and agree that the foregoing agreement between the parties dated September 19, 2008 be and the same is hereby amended in the following respect:

1. PART TWO (2) PROJECT PROVISIONS, Paragraph C. is hereby amended by substituting:

**C. Project Funding:** It is expressly understood that federal funds for this project will be provided from Surface Transportation Program funds as authorized under 23 U.S.C 133(d)(2) and the STATE will not be liable for any funding. It is further understood that this is a cost reimbursement program and no federal funds will be provided to the AGENCY prior to accomplishment of work for which reimbursement is requested. Cost for the project will be financed, when eligible for federal participation, on the basis of \$251,055.00 federal transportation enhancement funds, and \$62,763.75 AGENCY funds not to exceed a maximum sum of \$313,818.75 in federal funds and AGENCY funds. The estimated cost and additional participation by the various parties is as follows:

	Total Estimated Cost	Estimated Federal Funds	Estimated Agency Funds	Estimated State Funds
Construction (Including Professional Fees for Construction Engineering and Inspection)	\$300,000.00	\$240,000.00	\$60,000.00	\$0
Additional Construction	\$ 13,818.75	\$ 11,055.00	\$ 2,763.75	\$0
<b>Total:</b>	<b>\$313,818.75</b>	<b>\$251,055.00</b>	<b>\$62,763.75</b>	<b>\$0</b>

Plans for constructing improvements under this project will be developed by or for the AGENCY at no expense to the STATE or FHWA. Construction of improvements under this agreement will be construction by contract in keeping with applicable competitive bid laws. Necessary engineering and inspection during construction will be performed by or for the AGENCY and will be paid for with federal funds. Any cost incurred by the AGENCY relating to this project which is determined to be ineligible for reimbursement by the FHWA or in excess of the limiting amount previously stated will be borne and paid by the AGENCY with no liability of the STATE for any such cost.

3. Exhibits M and N are hereby attached to and made a part of this Agreement. All other and remaining provisions of the Agreement of September 19, 2008 shall remain the same.

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

ATTEST:

City of Mountain Brook, Alabama

By: \_\_\_\_\_  
City Clerk (Signature)

By: \_\_\_\_\_  
As Mayor (Signature)

\_\_\_\_\_  
Type Name of Clerk

\_\_\_\_\_  
Type Name of Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jim R. Ippolito, Jr.  
Chief Counsel  
Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Brian C. Davis, Division Engineer

\_\_\_\_\_  
Robert J. Jilla  
Multimodal Transportation Engineer

\_\_\_\_\_  
Ronald L. Baldwin, P. E.  
Chief Engineer

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

\_\_\_\_\_  
John R. Cooper, Transportation Director

The foregoing Agreement is hereby executed in the name of the State of Alabama and signed by the Governor on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Robert Bentley  
Governor, State of Alabama



RESOLUTION NUMBER \_\_\_\_\_

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

1. That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation relating to a Transportation Enhancement project with partial funding by the Federal Highway Administration, which agreement is before this Council;
2. That the agreement be executed in the name of the City, for and on behalf of the City, by it's Mayor.
3. That it be attested by the Clerk and the seal of the City affixed thereto.

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

I, the undersigned qualified and acting City Clerk of the City of Mountain Brook, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council named therein, at a regular meeting of such Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_, and that such resolution is on file in the City Clerk's Office.

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

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

**CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING**

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

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

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

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

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

**FUNDS SHALL NOT BE CONSTITUTED AS A DEBT**

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

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

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to consider using appropriate forms of non-binding alternative dispute resolution.

**TERMINATION DUE TO INSUFFICIENT FUNDS**

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

**NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS**

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

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

**RESOLUTION NO. 2013-107**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the Mayor of the City is hereby authorized and directed, on behalf of, and in the name of, the City of Mountain Brook ("City"), to execute the Franchise Agreement, in the form as attached hereto as Exhibit A with such minor changes thereto as may be recommended by the City Attorney, between the City and Bright House Networks, LLC.

**ADOPTED:** This 22nd day of July, 2013.

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

**APPROVED:** This 22nd day of July, 2013.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 22, 2013, as same appears in the minutes of record of said meeting.

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

## CABLE SERVICE AGREEMENT

THIS CABLE SERVICE AGREEMENT (this "Agreement") dated the \_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date") is made by and between Bright House Networks, LLC, a limited liability company ("Operator"), and the City of Mountain Brook, a municipal corporation of the State of Alabama (the "City"). Operator and the City shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

### RECITALS

WHEREAS, Operator has requested the right to serve customers within the City of Mountain Brook; and

WHEREAS, the City is of the opinion that Operator has sufficient legal and technical ability to provide cable television services (as defined by the Act), facilities and equipment necessary to meet the future cable-related needs of the residents of the City (the "Cable Service" or "Service"); and

WHEREAS, the City agrees to grant to Operator a non-exclusive right to provide cable TV services within the City of Mountain Brook and to use the rights of way (ROW) of the City to provide cable TV services to the residents of the City; and

WHEREAS, the City believes that the system and services that Operator will use in the City to provide Cable Service are subject to the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, *et seq.*, as it may be amended or superseded (the "Act"); and

WHEREAS, the Parties desire to enter into this Agreement, which the Parties, in good faith, intend to be binding as a matter of contract between them and believe is in accord with such obligations as might be imposed by the Act, Alabama law and the ordinances of the City, if and to the extent such are applicable; and

WHEREAS, Operator intends to provide Cable Service on a non-discriminatory basis, and without regard to the income or minority status of any resident or group of residents residing in Operator's service area located within the English Village and Mountain Brook Village areas of the City, as outlined on the map in *Exhibit A*, attached hereto (the "Service Area"); and

NOW, THEREFORE, in consideration of and reliance upon the Recitals set out above, the respective representations, promises, concessions, terms and conditions contained herein, the City and Operator agree as follows.

#### **1. Requirements.**

1.1 Operator agrees that it must locate its cable service equipment in the ROW so as not to cause unreasonable interference with the proper use of streets, alleys and other public ways and places, and not to cause unreasonable interference with the rights, if any, and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways. In addition, Operator may enter private property only as permitted by applicable

law, or as allowed by the owner of such private property for the purpose of constructing, operating, maintaining, repairing, and upgrading equipment or facilities.

1.2 Operator agrees that no cable service facilities or equipment shall be placed in any public ways so as to unreasonably interfere with usual travel on, or maintenance of, such public rights of ways, nor shall such facilities or equipment unreasonably limit the visibility of vehicular and/or pedestrian traffic.

1.3 Operator shall comply with the lawful application of all applicable provisions of local, state and federal law with respect to the location of Operator's cable service equipment and facilities in the ROW. If the location selected by Operator for a specific cable service facilities or equipment raises a reasonable public health, safety, and welfare concern, the City and Operator agree to work together to identify alternative locations, if available, to satisfy any technical specifications or limitations of the facilities or equipment to be placed in the ROW and that are acceptable to the City.

1.4 In accordance with local rules and regulations, the City agrees to process any and all applicable permits for the installation and construction of cable service facilities in a timely and prompt manner consistent with reasonable municipal practices. City agrees not to unreasonably block, restrict, or limit the construction and installation of the cable service during the term of this Agreement.

1.5 With respect to the facilities of Operator located in the ROW and utilized to provide Cable Service:

a. All construction practices for cable service facilities shall be in accordance with all applicable state laws and local codes.

b. All installation of electronic cable service equipment shall be installed in accordance with the provisions of the National Electrical Safety Code of the National Bureau of Standards and National Electrical Code of the National Board of Fire Underwriters.

c. All of Operator's cable service equipment and facilities shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices. All such work must be performed by qualified maintenance and construction personnel so as not to endanger or unreasonably interfere with applicable improvements the City may deem appropriate to make, interfere in any unlawful manner with the rights of any property owner or unreasonably hinder or obstruct pedestrian or vehicular traffic. Nothing in this Section shall be construed to limit Operator's rights to access and make use of its own or general utility easements in accordance with the terms of such easements so long as such use is consistent with applicable law.

d. Operator shall at all times employ ordinary care and shall install, maintain and use commonly accepted methods and devices preventing accidents which are likely to cause damage or injury to the public.

e. Operator shall to the extent applicable, comply with the provisions of local rules and regulations regarding tree trimming on public rights of ways.

2. Term. The term of this Agreement shall begin on the Effective Date and end five (5) years after the Effective Date. This Agreement shall be renewed in accordance with the Act.

3. Compensation to the City.

3.1 During the term of this Agreement, Operator shall pay to the City a fee of five percent (5%) of the Gross Revenues, which fee shall be paid quarterly. Such fees shall be paid to the City within forty-five (45) days after the end of the preceding quarter for which payment is made. Operator may designate a portion of the subscriber's bill attributable to fees imposed pursuant to this Agreement and recover such amount from the subscriber as a separate line item of the bill.

Gross revenues shall mean all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Operator from the provision of Cable Service within the City.

1. Included Items: Subject to paragraph (2), the term Gross Revenues shall include the following:

a. All charges and subscription fees paid by subscribers in the Service Area for the provision of Cable Service;

b. All revenue derived from advertising sales and home shopping (including Home Shopping Network and any comparable shopping from home network) sales derived from the operation of the Service within the City. Advertising commissions paid to third parties shall be deducted from advertising revenue included in Gross Revenues. The allocation of advertising and home shopping revenue shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant region or national compensation arrangement; and

c. All revenue arising from or attributable to the provision of Cable Service related to fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; cable service provider fee; installation and re-connection fees; converter rentals and/or sales; wire maintenance revenues; upgrade, downgrade or other change-in-service fees;

2. For the purposes of this Chapter, the term Gross Revenues shall not include the following:

a. Charges, fees, or other revenues due but not received, including unrecovered bad debt; Any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt;

b. Late fees and collection fees;

- c. Refunds, rebates, credits or discounts to subscribers or City
- d. Any amounts attributable to the provision of Cable Service to customers at no charge, including the provision of such Service to the public institutions without charge;
- e. Any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a Federal, State, or local government or any other governmental entity, collected by Operator, and required to be remitted to the taxing entity, including sales and use taxes and utility user taxes;
- f. Any forgone revenue from the provision of Service at no charge to any Person, except that any forgone revenue exchanged for trades, barter, services, or other items of value shall be included in Gross Revenue;
- g. Sale of capital assets or surplus equipment;
- h. Reimbursement by programmers of marketing costs actually incurred by Operator for the introduction of new programming; and
- i. The sale of Services for resale to the extent the purchaser certifies in writing that it will resell the Service and pay a fee to the City with respect hereto.

**4. Educational and Governmental Programming.**

4.1 Operator shall make available one (1) digital channel for use by the City to enable City to provide educational and governmental (“EG”) programming. Operator’s obligation herein will begin when its cable service subscribers in the Service Area reach one thousand (1000) subscribers or eighteen (18) months after the Effective Date, whichever comes first. City shall be responsible for programming the channel and all other costs associated therein.

4.2 Operator shall pay the City an EG Fee of TWENTY FIVE CENTS (\$0.25) per subscriber per month. Payment shall be due within 45 days of the end of each quarter.

4.3 If technically and economically feasible, Operator will, at its discretion, use reasonable efforts to interconnect with the other cable or video provider to provide EG programming.

4.4 Operator will provide complimentary basic cable TV service to each public school, municipal government administrative buildings, fire buildings, police buildings, and library buildings that is passed by Operator’s system and capable of being served with a 200 foot drop.

**5. Customer Service. Operator shall comply with 47 C.F.R. § 76.309(c), as amended from time to time.**

6. Non-Discrimination. Operator will not deny access to its cable service within the City because of the income or minority status of the residents within the City.

7. Emergency Alerts. Operator shall comply with all FCC rules and regulations regarding the transmission of EAS alerts.

8. Indemnification. Operator agrees to indemnify, save harmless and defend the City, its officials, agents, servants, and employees against, and hold them harmless from, any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney's fees for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise, whether in whole or in part, out of or in connection with the actions or omissions of the Operator, except for damages resulting from the gross negligence or willful misconduct of the City, its officials, agents, servants, or employees.

9. Insurance. General Liability Insurance. Operator shall maintain, and by its acceptance of this Agreement specifically agrees that it will maintain throughout the term of this Agreement, general liability insurance insuring the Grantee in the minimum of:

- (1) ~~\$500,000~~1,000,000 for property damage per occurrence;
- (2) ~~\$500,000~~1,000,000 for property damage aggregate;
- (3) \$1,000,000 for personal bodily injury or death to any one person; and
- (4) ~~\$3,000,000~~5,000,000 bodily injury or death aggregate per single accident or occurrence.

Such general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard underground hazard products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

Automobile Liability Insurance. Operator shall maintain, and by its acceptance of this Agreement specifically agrees that it will maintain throughout the term of this Agreement, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:

- (1) \$1,000,000 for bodily injury and consequent death per occurrence;
- (2) \$1,000,000 for bodily injury and consequent death to any one person.
- (3) ~~\$500,000~~1,000,000 for property damage per occurrence.

Worker's Compensation and Employer's Liability Insurance. Operator shall maintain and by its acceptance of this Agreement specifically agrees that it will maintain throughout the

term of this Agreement, Worker's Compensation, valid in the State of Alabama, in the minimum amount of:

(1) Statutory limit for Worker's Compensation.

Upon written request, Operator shall furnish to the City certificates of insurance for all types of insurance required under this Section. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation.

Neither the provisions of this section nor any damages recovered by the City hereunder shall limit the liability of the Operator under this Agreement.

The insurance policy may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until thirty (30) days after receipt by the City, by certified mail, of a written notice of such intention to cancel or not to renew.

10. Compliance with Laws. Operator shall comply with all applicable federal, state and local laws during the term of this Agreement.

11. Books and Records. Operator shall maintain books of account and records adequate to enable Operator to demonstrate that it is in compliance with the obligation to pay the franchise fees and EG fees described in this Agreement with respect to cable service.

12. Termination and Revocation of this Agreement. A verified and continuing pattern of noncompliance with any material provision of this Agreement shall constitute a material breach of this Agreement. This Agreement may be revoked, after a full due process hearing, by a majority vote of the City Council ~~upon the recommendation of the City~~, for a material breach of this Agreement after giving Operator sixty (60) days notice in writing of intention to revoke such Agreement. ~~unless such violation is corrected during the period of notice, or unless Operator has made a reasonable attempt to correct the violation during that time and is unable to correct such violation despite such reasonable attempts.~~ If such noncompliance is not corrected within the sixty (60) day notice period, or if City has not otherwise received a response from Operator that is satisfactory, in City's sole judgment discretion, City may then revoke the Franchise following such public hearing.

13. Breach of Agreement. Should either Party claim that a breach of any part of this Agreement has occurred, that Party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other Party shall cure such breach within sixty (60) days.

14. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties, and use of non-binding mediation, if time permits. Each Party shall bear its own costs of mediation including attorney fees.

**15. Inspection Rights.**

15.1 The City shall have the right to inspect, upon reasonable prior written notice, and at its expense, all construction and installation work performed by Operator of cable service-specific facilities on the public rights-of-way as it shall find necessary to ensure compliance with a specified permit. Any such inspection shall be solely for the benefit of the City.

15.2 The City Council shall have authority to enforce the terms and conditions of this Agreement.

**16. Amendment of this Agreement.** This Agreement may be amended or modified only by a written instrument executed by both Parties.

16.1 Except as provided below, the Parties agree to consult in the event that any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either the City or Operator, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either Party, within thirty (30) days of receipt of the ruling, provides written notice to the other Party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the Parties mutually may agree. Where the effect of a finding is a modification, the Parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the Parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either Party to terminate this Agreement on the provision of thirty (30) days' written notice.

16.2 In addition to the rights set forth in above, Operator shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days' notice to the City, if Operator concludes in its reasonable business judgment that cable service in the City is no longer technically, economically or financially consistent with Operator's business objectives.

**17. Abandonment.** Upon abandonment, Operator will, at the City's request, and within a reasonable amount of time, remove from the City rights-of-way any visible equipment that Operator used exclusively for cable service and restore the surrounding property at the sole expense of Operator.

**18. Entire Agreement.** This Agreement constitutes the entire agreement between the City and Operator with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between the City and Operator regarding the subject matter hereof.

**19. Waiver.** Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

**20. Notices.** Any notice to be given under this Agreement shall be in writing and may be delivered to either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to the City:

City Manager  
City of Mountain Brook  
P.O. Box 130009  
Mountain Brook, Alabama 35213-0009

If to Bright House Networks:

Bright House Networks, LLC  
Attn: VP/GM  
151 London Pkwy  
Birmingham, AL 35211

**21. Miscellaneous.**

21.1 Operator and the City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

21.2 The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

21.3 Operator and the City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

21.4 Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a Party to this Agreement, unless otherwise expressly set forth herein.

~~21.5 To the extent the provisions of this Agreement conflict with any of the provisions of local laws, the provisions of this Agreement shall control.~~

~~21.6~~<sup>21.5</sup> As used in this Agreement, the term "Affiliate" shall mean any person that directly or indirectly owns or controls Operator, any person that Operator directly or indirectly owns or controls, or any person under common ownership or control with Operator.

**22. Waiver.** Operator and the City agree not to challenge the legality of any provision in this Agreement, or any future amendments as agreed by the parties, irrespective of any changes in the law applicable to cable service providers.

23. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable. However, should any change to federal or state law occurring during the term of this franchise have the lawful effect of materially altering the regime of cable franchising, then Operator shall have the option of terminating this franchise in order to opt-in to such new regime.

24. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

25. Compliance with this Agreement. Operator shall not be excused from complying with any of the terms, conditions, and provisions of this Agreement by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms, conditions or provisions.

26. Choice of Laws. This Agreement shall be construed and interpreted according to the laws of the State of Alabama.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of the Effective Date.

**BRIGHT HOUSE NETWORKS, LLC**

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

Name: Scott Horne

Title: VP/GM Birmingham

**CITY OF MOUNTAIN BROOK, ALABAMA**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit A – Service Area

