

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

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

September 14, 2015, 5:45_P. M.

1. Requests by Stephanie Davis and others;
 - A. Sidewalk extension along North Woodridge Road
 - B. Reconstruct sidewalks along South Brookwood Road that do not have a guardrail and add guardrails
 - C. Pedestrian Crossing at South Brookwood Road at North Woodridge Road (See proposal from Skipper Consultants)
 - D. Four-way stop sign request at North Woodridge and Spring Valley Court
(See attached information. Some of these items could be added to the formal agenda)
2. Farmers' Market on Oak Street, between the clock tower and the alley from Hoyt Lane, on Saturdays this Fall – Lindsey Horne of Urban Cookhouse. (See attached information. This item could be added to the formal agenda)
3. Set date for presentations by appropriated agencies for FY-2016 – Sam Gaston.
4. Proposed deferred compensation (Section 457 Plan) provider change – Steve Boone. (See attached information)
5. Roundabout project agreements with ALDOT and City of Birmingham – Steve Stine. (See attached information)

Sam Gaston

①

From: Stefanie Davis
Sent: Thursday, September 10, 2015 6:21 PM
To: Sam Gaston
Subject: Info for Council Meeting Monday 9/14

Hi Sam - Here is the info I would like to be included in the agenda packet for the meeting Monday night.

(1) Larger safer sidewalks on South Brookwood leaving the Elementary School - I would love to see our kids have a safer sidewalk down South Brookwood by replacing what is there. Crestline & MBE were approved for new sidewalks through a grant called the Safer Route to School. BWF & Cherokee Bend were not approved for the grant & it is no longer available. I would love to see what we need to do to get the ball rolling on wider sidewalks and maybe guard rails of some sort. I feel like this could also help alleviate some of the car pool problems we have.

(2) Crosswalk at S Brookwood & North Woodridge intersection - lots of our kids walk to the circle after school and could keep coming further if they had a safe way to cross the street onto North Woodridge. There are lots of us adults who run/walk in the neighborhood & this would also help us when trying to cross.

(3) Sidewalk completed on North Woodridge to Bethune - We would like to see the stretch of North Woodridge (where it stops at the bottom of the hill on North Woodridge and picks back up on Bethune) added to the list on the Master Sidewalk plan.

(4) 4 way stop at North Woodridge & Spring Valley Ct.

I have 5 people who have committed to be in attendance of the meeting. I am working on the number of children we have in our neighborhood. The crosswalk will benefit everyone in the area.

Thanks so much and please let me know if I need any more information to have on hand.

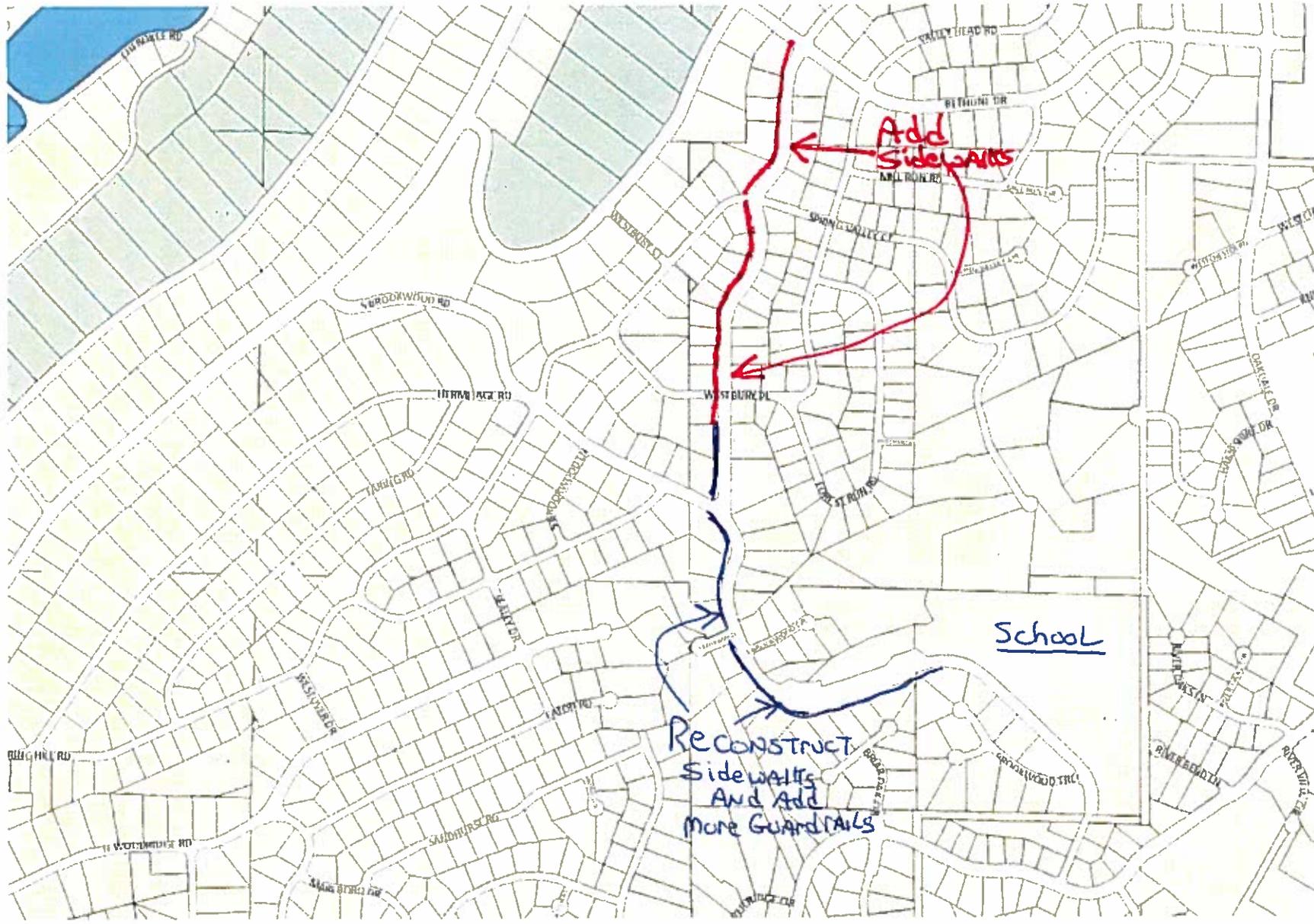
Sincerely,

Stefanie Davis

--

Stefanie Davis
Rodan & Fields
www.stefaniedavis.myrandf.com
205.541.6208

9/11/2015



Add Sidewalks

Reconstruct Sidewalks And Add more Guardrails

School

2 ← |

PROFESSIONAL SERVICES AGREEMENT
Between
The City of Mountain Brook and Skipper Consulting, Inc.

This Agreement is made by and between the City of Mountain Brook, Alabama ("Client"), doing business at 56 Church Street, Mountain Brook, Alabama 35213 and, Skipper Consulting, Inc. ("Consultant"), doing business at 3644 Vann Road, Suite 100, Birmingham, Alabama 35235.

WHEREAS, the Client requests that the Consultant perform professional traffic engineering services related to a traffic study for the intersection of South Brookwood Road at North Woodridge Road (the "Project" or "Services");

WHEREAS, the parties intend that the Consultant be authorized to start work on the services outlined in this agreement upon execution of this Agreement, and

WHEREAS, the Client and Consultant agree that the Services be performed pursuant to the terms of this Agreement, together with the attached Exhibit A and the Addendum related hereto, which writings constitute the entire agreement between them relating to this assignment.

1. **PROFESSIONAL SERVICES:** The Consultant agrees to perform the following Services under this Agreement:

SEE SCOPE OF WORK SET FORTH ON EXHIBIT "A"

The Consultant agrees to perform its Services in a manner that is consistent with professional skill and care that would be provided by other professionals in its industry under same or similar conditions, and in the orderly progress of the Project.

2. **CLIENT'S RESPONSIBILITIES:** Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in its files. The Consultant may rely on the information provided by the Client without verification.

The Client will designate a representative who shall have the authority to act on behalf of the Client for this project.

The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the scope of work within established schedules.

3. **COMPENSATION/ BILLING/ PAYMENT:** Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) of \$2,500.00.

The CLIENT will bill for its Services monthly based on the work completed during the billing period. Invoices for uncontested amounts are payable within 30 days from the receipt by the Client, and such payment shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this Agreement.

If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such change. If the Client wishes to undertake tasks that are identified as being outside the proposed scope of services, the Consultant will submit a proposal for the additional work. No additional work or services other than those contemplated herein shall be performed without the written approval of the Client.

If for any reason, payment for uncontested amounts reflected on invoices is more than 30 days delinquent, the Consultant shall have the right to stop work on the assignment until such payment is made. The Consultant will not be liable for any delays to project schedules caused for such work stoppage.

4. STANDARD TERMS AND CONDITIONS

The Client shall have final right of review and approval of all plans and specifications that shall be delivered in connection with the performance of the Services; however, review and approval shall not be withheld unreasonably.

The rights and obligations of the parties to this Agreement may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

Either party may terminate this Agreement upon 10 days' written notice to the other party should the defaulting party substantially fail to perform any or its material responsibilities in the Agreement through no fault of the party desiring to terminate. In the event of termination of this Agreement, due to the fault of a person or party other than the Consultant, Consultant shall be paid for Services performed to termination date.

The Consultant agrees to furnish consulting services only related to the Project. Consultant shall be responsible for coordination of its work with that of Client.

This Agreement (including Exhibit A and the Addendum) shall constitute the entire agreement between the parties concerning the matters herein, and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated into this Agreement.

Any modification or amendment of this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

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

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

Neither party to this Agreement shall be liable to the other for any loss, cost, or damages, arising out from or resulting from, any failure to perform in accordance with its terms where the causes of such failure shall occur due to events beyond a party's reasonable control, include, but not limited to, the following: acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockades, insurrections, riots, governmental action, explosions, fire, floods, or any other cause not within the reasonable control of either party.

Consultant shall secure and maintain such insurance as is reflected on the Addendum.

Client shall provide Consultant access to the Project site necessary for the Consultant to provide the services outlined.

South Brookwood Road at North Woodridge Road
Mountain Brook, Alabama

Professional Services Agreement

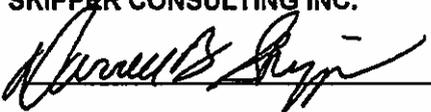
The Client's reuse of any report, documents or other deliverables prepared by the Consultant for the Project on any other project without written verification by the Consultant shall be at the Client's risk.

The persons signing this Agreement warrant that they have the authority to sign on behalf of the Client and Consultant.

CLIENT: CITY OF MOUNTAIN BROOK, AL

CONSULTANT: SKIPPER CONSULTING INC.

By: _____

By:  _____

Printed Name: _____

Printed Name: Darrell B. Skipper

Title: _____

Title: President

Date: _____

Date: 9/4/15

EXHIBIT "A"
SCOPE OF WORK

The Consultant shall perform a traffic study to determine the advisability for the installation of a pedestrian crosswalk crossing South Brookwood Road at North Woodridge Road. There is an existing sidewalk on the north side of North Woodridge Road and also on the west side of South Brookwood Road. Pedestrians must cross South Brookwood Road in an uncontrolled manner to transfer from one existing sidewalk to the other. The roadway geometry of South Brookwood Road in the vicinity of the intersection results in limited sight distance related to vehicles traveling northbound on South Brookwood Road due to horizontal and vertical curvature of the roadway. Therefore, a detailed traffic study needs to be performed to determine if it is advisable to mark a pedestrian crossing of South Brookwood Road at this intersection, or determine what conditions would be required to make a marked crossing advisable.

The following is the scope of work proposed for the project:

- Obtain and review the latest traffic count and speed study for South Brookwood Road recently performed by the Mountain Brook Police Department
- Obtain and review crash reports for the intersection from the Mountain Brook Police Department
- Perform a 24 hour machine traffic count on North Woodridge Road
- Perform a.m. and p.m. peak period intersection turning movement traffic count at the intersection of South Brookwood Road at North Woodridge Road
- Perform a.m. and p.m. peak period observations at the intersection of South Brookwood Road at North Woodridge Road
- Perform the following sight distance measurements:
 - Intersection sight distance for drivers exiting North Woodridge Road
 - Sight distance for pedestrians wishing to cross South Brookwood Road
 - Sight distance for drivers on South Brookwood Road approaching a pedestrian crossing of South Brookwood Road
- Compare sight distance measurements to industry standards
- Perform a warrant study and intersection capacity analysis for installation of a multi-way stop at the intersection of South Brookwood Road at North Woodridge Road
- Develop recommendations based on analysis and observations
- Document the results of the study in a report
- Attend as many meetings with the City of Mountain Brook as required to reach a conclusion regarding recommendations to be implemented

Schedule

The Consultant shall perform the scope of work as documented in Exhibit "A", up to and including issuing of report, within a period of three (3) calendar weeks following notice to proceed, barring unforeseen circumstances outside of the control of the Consultant.

ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND SKIPPER CONSULTING, INC. – TRAFFIC ENGINEERING SERVICES (SOUTH BROOKWOOD ROAD AT NORTH WOODRIDGE ROAD)

THIS ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT (“the/this Addendum”) between the City of Mountain Brook, Alabama (“the City”) and Skipper Consulting, Inc. (“the Contractor”) is entered between the parties.

This Addendum is a part of the Professional Services Agreement between the parties (the “Agreement”) concerning the work, services or project described in the Agreement. In the event of any conflict between the terms and provisions of this Addendum and the Agreement, the terms herein supersede and control any conflicting or inconsistent terms or provisions, particularly to the extent the conflicting or inconsistent terms or provisions in the Agreement 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 the 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. The City may also be referenced in the Agreement as the “Client.”
- 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 the 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. The Contractor may also be referenced in the Agreement as the “Consultant.”

2. Dispute Resolution. If a disagreement, claim, issue or disagreement arises between the parties with respect to the performance of this Agreement or the failure of a Party to perform their respective rights or obligations hereunder (a “Dispute”), the parties will use reasonable efforts to resolve any Dispute at the designated representative level. If the parties are unable to amicably resolve any Dispute at that level, each agree to escalate that matter to senior managers or senior officials for consideration by and potential resolution by them. If the Dispute is not resolved at the senior level, the dispute resolution

mechanism shall be litigation in a court with competent jurisdiction that is located in Jefferson County, Alabama.

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, and 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 considered delinquent 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. *Independent Contractor.* Consultant's relationship to Client at all times is that of an independent contractor. Consultant exclusively controls the means and methods in which it performs its operations or provides the goods, services or undertaking described in the Agreement. The Client does not reserve any right of control over Consultant's operations or the activities it utilizes to perform its obligations in the Agreement.

9. *Contractor's Insurance Requirements:* For the duration of this Agreement and for limits not less than stated below, the Contractor shall maintain the following insurance with a company(ies) lawfully authorized to do business in the location of the Project and reasonably acceptable to the City:

.1 **Comprehensive General Liability:** This insurance shall cover all operations performed by or on behalf of Contractor, and provide coverage for bodily injury and property damage with a combined single limit of not less than \$500,000 per occurrence.

.2 **Automobile Liability:** If the work or services performed by the Contractor involves use of motor vehicles on public streets, Automobile Liability covering owned and rented vehicles operated by Contractor with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) combined single limit and aggregate for bodily injury and property damage, per occurrence.

.3 **Workers Compensation:** Workers' Compensation and Employers Liability as required by statute.

.4 **Professional Liability:** If Contractor is providing professional services, Professional Liability covering Contractor's negligent acts, errors and omissions in its performance of professional services with policy limits of not less One Million Dollars (\$1,000,000) per claim and in the aggregate.

Contractor may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. These insurance requirements are in addition to and do not affect any indemnification obligation of Contractor herein.

All policies, except for the Workers Compensation and Professional Liability policies shall contain endorsements naming the City, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of the Contractor or its performance of Services or work. The additional named insured endorsement shall not limit the scope of coverage to the City to vicarious liability, but shall allow coverage for the City to the fullest extent provided by the policy.

All insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance program administered by the City.

Before commencement of Services hereunder, Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section. This certificate(s) shall provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the City.

10. *Indemnification for Claims by Third Parties.* The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (collectively hereinafter the "Indemnitees") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages, collectively hereinafter "Claim(s)") that are made against the City by any third parties (including any employee, agent or representative of the Contractor, collectively "Third Parties") to the extent that such Claims are caused or allegedly caused by

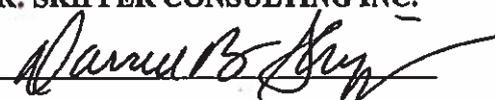
the negligence of the Consultant in the performance of its Services, its work on the Project described in the Agreement or its failure to perform its obligations in the Agreement.

11. **EXCLUSION OF CONSEQUENTIAL DAMAGES.** THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT, IN THE EVENT THAT IT ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THE AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS THEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE ACTUAL DAMAGES THAT DIRECTLY ARISE FROM THAT BREACH. THE CONTRACTOR FURTHER ACKNOWLEDGES THAT THE COMMERCIAL TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT ENTERED INTO THIS AGREEMENT WITHOUT INCLUDING THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR OTHER SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS. NOTHING IN THIS PROVISION IS INTENDED TO IMPACT, MODIFY, AMEND OR LIMIT THE TERMS OR APPLICATION OF THE INDEMNIFICATION PROVISION IN THE PROVISION ABOVE THAT PERTAINS TO CONTRACTOR'S OBLIGATIONS TO INDEMNIFY THE CITY FOR CLAIMS MADE AGAINST THE CITY BY THIRD PARTIES.

CITY: CITY OF MOUNTAIN BROOK

CONTRACTOR: SKIPPER CONSULTING INC.

By: _____

By:  _____

Printed Name: _____

Printed Name: Darrell B. Skipper

Title: _____

Title: President

Date: _____

Date: 2/4/15

**NORTH WOODRIDGE SIDEWALK EXTENSION FROM
WESTBURY PLACE TO BETHUNE DRIVE**

2500 ft of sidewalk 5 ft wide 162 yds	\$ 23,380.00
2 Crosswalks stripped	\$ 4,000.00
ADA bricks for crosswalks	\$ 2,000.00
Tree removal x 2	\$ 3,000.00
Power pole relocation	\$ 4,000.00
Misc. columns and mailbox relocate	\$ 10,000.00
Landscaping	\$ 10,000.00
Forming materials	\$ 3,000.00
Misc . Materials	\$ 3,000.00
Water Meter Relocation	\$ 32,000.00
 Total :	 \$ 94,380.00

These prices are subject to change due changing prices of materials.

SOUTH BROOKWOOD RD. SCHOOL SIDEWALK

Install new guardrail along sidewalk : 1775 ft.	\$	84,000.00
Sidewalk modifications :	\$	20,000.00
Total :	\$	104,000.00

These prices might change due to the rising cost of materials.

Memorandum

To: Lt. C. Clark
From: Sgt. J. Rhoads
Date: 9/10/15
Re: Traffic Count – North Woodridge Road near South Brookwood Road

Per your request, I conducted a traffic count on North Woodridge Road. Data was gathered concerning speed and volume. The following data was gathered:

	Southbound		Northbound		Total	
Vehicles counted	3,749		4,446		8,195	
Average speed	33 mph		32 mph		33 mph	
	#	%	#	%	#	%
00-25 mph	240	7	287	7	527	7
26-30 mph	579	16	1,153	26	1,732	21
31-35 mph	1,890	50	1,863	42	3,753	46
36-40 mph	904	24	951	21	1,855	23
41-45 mph	112	3	162	4	274	3
46-50 mph	18	0.5	23	0.5	41	0.5
51+ mph	6	0.2	7	0.2	13	0.2
Peak time	Morning & Afternoon commute		Morning & Afternoon commute		Morning & Afternoon commute	

Southbound traffic flows toward South Brookwood Road
Northbound traffic flows toward Spring Valley Ct.

Conclusion: This study began Thursday September 3rd and continued through Wednesday September 9th. Peak travel times for the weekdays included morning and afternoon commute hours. Traffic was also heavy during lunchtime. During the two weekend days, traffic volume was heavier around lunchtime and 6:00pm.

Note: Speed limit is 30 mph.

Cc: Chief T. Cook
Captain G. Hagood

Sam Gaston

(2)

From: Lindsay Horne
Sent: Friday, September 11, 2015 7:23 AM
To: gastons@mtnbrook.org
Subject: Fall Farmers Market

Mr. Gastons,

I appreciate your call yesterday and your willingness to help me through all the many steps necessary to put something like this on. I look forward to Monday night in hopes that everything will go smoothly.

The Farmers Market will hopefully begin the last weekend in September (26th) and run through the weekend before Thanksgiving (November 21st). If we need to push the start weekend back to the first weekend in October, that would work out just fine. Our hope for this Farmers Market is to bring the community together. That is our bottom line. To provide a place for family and friends to gather on a Saturday morning to enjoy and also help out local farmers and vendors.

The time would be from 7am-11am. We would have a crew there around 6am to get everything started and set up. Also, have a crew there for breaking down as quickly as possible to open that road back up. We would direct the vendors to park in the employee parking deck over off of Hawkins to allow for merchants in Crestline to not lose out on much parking because we know this is a huge issue. We would block off the left side of La Paz parking down to Otey's, with an area for cars to turn out of the alley.

I do not have a list of vendors yet just because I am wanting to acquire the appropriate permits not to lead them on while we are getting all of the logistics finalized. I hope we can make this happen and bring more visitors and more of our own community together. Thank you again for all of your help.

--

Lindsay Horne
Urban Cookhouse
678-463-6177-Cell Phone
www.urbancookhouse.com

9/11/2015



Crestline Village Neighbors,

We are so excited to announce that an Urban Cookhouse Fall Farmers Market is in the works for this fall. Continuing the summer market had its battles this year, but we are working hard to make it happen in the next couple of weeks.

As our neighbors, we would love to get you all involved in anyway possible, if that is having a tent at the market, or helping to spread the word to all of your friends and family in the area.

We are planning to have the market every Saturday from 7am to 11am starting in September through the middle of November. We know that parking in Crestline is a huge issue and can make for a huge headache when trying to accomplish something like this. Our plan is to use the road behind Urban Cookhouse and Otey's. We would have it blocked off in the morning and we would have a crew standing by to make the tear down once the market is complete as fast and easy as possible.

Farmer's Markets are a great way to bring community together. Crestline is a very unique community because a person could drive through the village every day for a month and sometimes miss out on a lot of the shops and restaurants just because of where it is located. We can put all of our shops and restaurants in one place and partner with farmers and vendors in the Birmingham area to create a wonderful gathering and tradition for family and friends alike.

Thank you in advance for your support and please feel free to call or email us with any questions or concerns.

Urban Cookhouse
(Lindsay Horne-6784636177 or lindsayhorne@urbancookhouse.com)

Mid-September

City of Mountain Brook
EVENT PERMIT APPLICATION
FOR EVENT, PARADE, PROCESSION, OR OTHER ASSEMBLY
(Applications submitted less than 30 days prior to the event may not be approved.)

Date: 9/10/15 Individual or organization: URBAN COOKHOUSE

Contact Information:

(a) Name: Lindsay Horne (b) Title: MANAGER

(c) Address: 212 COUNTRY CLUB PARK

(d) Tel. No. _____ (e) Cell No. 678-463-6177

(g) Email address: lindsayhorne@urbancookhouse.com (f) Fax No. _____

Describe the type, nature, character and purpose of the event (list all activities):

FALL FARMERS MARKET

Give the inclusive date(s)/time(s) of the event: Sept 26 - NOV 21 EVERY SAT 7-11

Give the number and composition of the event:	Component	Number
People (riding/walking)	<u>YES</u>	<u>upto 30 vendors and guests</u>
Motor Vehicles	_____	_____
Floats	_____	_____
Animals	_____	_____
Other	_____	_____

Identify the place, area, locality, and/or route of the assembly:

OAK STREET FROM LA PAZ TO OTEY'S

Will it be necessary to block any street or sidewalk during the course of the assembly/event? YES

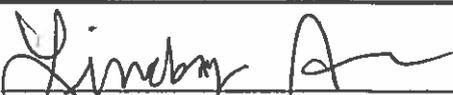
If so, explain FROM LA PAZ TO OTEY'S

Will alcoholic beverages be sold and/or served? If so, explain circumstances. NO

Will money be solicited? If so, explain circumstances? _____

Will signs, placards, banners, flags or cards be displayed? YES

List all vendors who will be supplying food, drink(s), games, booths, etc.: I do NOT have a list YET. WANTING to get approval FIRST but have lists of vendors

Applicant Signature: 

Telephone Number: (678) 463-6177

Approved this _____ day of _____, 20__

Lawrence T. Oden, Mayor

or

Sam S. Gaston, City Manager

Parade Safety & Restrictions*

- **Candy or other objects shall not be thrown or otherwise transferred to anyone along the parade route from vehicles or floats that are active within the parade.**
- **No stopping along the parade route.**
- **All float drivers must be properly licensed and insured. All drivers should be adults.**
- **All floats must have adequate lines of vision for the the drivers to see.**
- **No float or parade participant may turn out of the designated parade route without police approval and direction.**
- **No float participating in the parade event shall exceed 13 feet in height as measured from the ground to the highest point of the float.**

*Strict adherence to these restrictions must be maintained. Failure to adhere to these restrictions may cause immediate expulsion from the parade of the offending party, may cause the immediate stoppage of the parade and will jeopardize future parades. Organizing parties must ensure all drivers in the parade are furnished a copy of these restrictions.

I have read, understand and agree to comply with these guidelines. _____

Signature

Police Department Remarks

Signed: _____ Date: _____

Revenue Department Remarks:

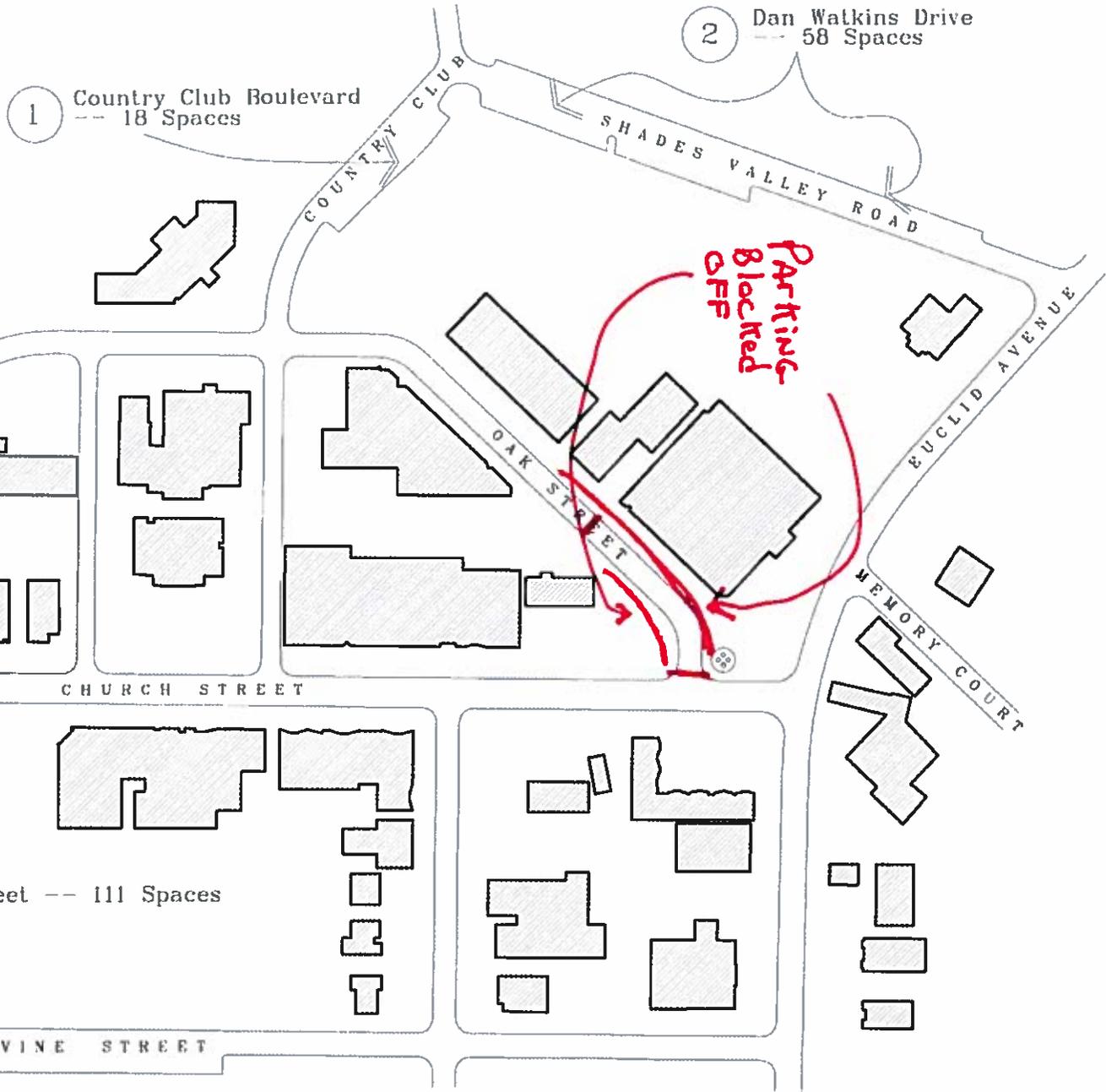
Signed: _____ Date: _____

The approved application serves as the permit.

If you have any questions, please contact Doris Kenny at 802-3800 or kennyd@mtnbrook.org .

CRESTLINE VILLAGE

All Day/Employee Parking





CITY OF MOUNTAIN BROOK

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

4

Subject: Deferred Compensation Plans
To: Sam Gaston, City Manager
From: Steven Boone
Date: August 24, 2015

The City offers four deferred compensation plans and has one other dormant plan. The deferred compensation plans include:

Provider	Assets	Employee Participants
Lincoln Financial	\$ 684,000	5
Nationwide Retirement	\$ 970,000	38
Valic	\$1,450,000	19
Voya (closed to new participants)	Unavailable	N/A
RSA-1	Unavailable	18

The **four commercial plans** were not bid and have not been evaluated since their introduction into the City's benefit plan. There is no out-of-pocket cost to the City as all fees and expenses are assessed against participants by way of fund net asset charges and administrative fees.

In 2009, the State of Alabama issued an RFP and awarded its contract to Great Midwest (now EmPower Retirement) which offered the lowest fee proposal at the time. The State contract includes performance goals and standards that are reviewed and evaluated quarterly by the State. Failure to achieve the performance standards subjects EmPower to financial penalties. The contract will be put out to bid periodically to ensure that the State's provider continues to offer the most competitive deferred compensation product in the market.

Due to the complexity of developing an RFP, and soliciting and evaluating the proposals, I suggest that the City piggyback off of the State's plan. Participation in the State's \$540 million deferred compensation plan is elective and non-binding. The benefits, in my opinion, include:

1. Consolidating 3 plans into 1 (RSA-1 will remain along with EmPower)
 - o Reduces plan options which should lead to less anxiety by employees over plan selection and hopefully lead to increased participation
 - o Streamlines the payroll administration function for the City
2. As inactive plans close over time, fewer accounts to manage by the City (from a fiduciary perspective)
3. Routine contract evaluation (from service and pricing perspectives) by the State

STATE OF ALABAMA DEFERRED COMPENSATION PLAN
Request for admission as a Participating Employer

Identifying information about the Participating Employer

Participating Employer: _____ Subset #: _____ GW Rep: _____

Address: _____

Who is the primary contact for your use of the State Plan?

Contact Name: _____ His or her e-mail address: _____

Telephone & Fax number: _____ Payroll frequency & next pay date: _____

The Participating Employer confirms the following two statements that it: (1) is a political subdivision of Alabama, or is an agency or instrumentality of the State or such a political subdivision; (2) is a city town county or public entity or corporation organized pursuant to the laws of Alabama.

Participating Employer's choices

For this Participating Employer, the State Plan is the only IRC § 457(b) plan OR the State Plan is in addition to one or more other deferred compensation plans.

This adoption includes a plan-to-plan transfer of all assets of an existing eligible deferred compensation plan. (After the State Personnel Board approves your admission as a Participating Employer, call the Recordkeeper at 1-866-695-4952 to arrange for the transfer of assets and records.)

Required provisions

Every adoption allows new contributions to the Plan, and allows participant-directed transfers and rollovers into the State Plan.

The Participating Employer adopts the State of Alabama Deferred Compensation Plan, including its Trust, and so adopts all investment and service arrangements set by the State of Alabama Personnel Board.

The Participating Employer will deliver promptly its participants' contributions to the Plan's Recordkeeper (which acts as the Trustee's agent). The Participating Employer will furnish the information (including each participant's name, Social Security Number, and contribution amount) that the Plan's Recordkeeper reasonably requires. (The Plan's Recordkeeper will furnish you information about how to remit contributions and necessary information.)

If the Participating Employer maintains any deferred compensation plan other than this State Plan, the Participating Employer must apply all provisions that involve coordination between or among two or more plans. Without limiting the broad effect of the preceding sentence, the Participating Employer must monitor and apply the deferral limits required by 26 U.S.C. § 457(b)(2)-(3) and 26 C.F.R. §§ 1.457-4 and 1.457-5. For example, a Participating Employer must limit its participant's ordinary deferrals to \$17,500 (for 2013) counting all deferrals under all eligible deferred compensation plans of one employer.

A Participating Employer may revoke its participation concerning contributions from wages for pay periods after the revocation is effective. But a participant's Plan Account remains invested under the State Plan and can be transferred only on his or her proper direction.

Date _____

Signed _____

Official's name _____

Official's title _____

Plan Authorized Signer / date:

Possible attachments: PSC log-in or Bank Authorization.
See reverse side for more instructions

Send the original of this form to:

L. Daniel Morris Jr.
State of Alabama Personnel Department
300 Folsom Administrative Building
Montgomery, AL 36130-4100

Send a copy of this form to the Plan's Recordkeeper:

Jennifer Leonard, Director of Client Relations and Plan Counseling
Empower Retirement
450 South Union Street, Suite 2100
Montgomery, AL 36104

You may fax the Recordkeeper's copy to 1-334-240-0071.

Please be careful to send the completed and signed form to both places.

Look for an e-mail (to the e-mail address you specified) as a confirmation that the State Personnel Board approved your admission as a Participating Employer.

Do NOT send any money to the Recordkeeper until after you have received the confirmation that you are admitted AND the Recordkeeper separately confirms that it has set you up in its systems.



Banking Change Request Form

PLEASE PRINT LEGIBLY IN BLACK OR BLUE INK

Plan Number: _____

*Division (if applicable): Name: _____ Number: _____

****Please submit a separate banking form for each division.***

Company Name: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Telephone #: _____ Fax: _____

The Primary/Site Contact is the person that we will contact if we have any questions or concerns and when the banking change is complete.

Primary/Site Contact (Please Print): Mr./Mrs./Ms. _____ Title: _____

(First Name) (Last Name) E-mail Address: _____

Telephone #: _____ Extension: _____

CONTINUE TO PAGE 2



Plan Service Center Authorization Form

This form is used to request usernames and passwords to establish Plan Service Center ("PSC") access. The PSC is the primary tool used by the Plan Sponsor, as identified in Part I, and any authorized third parties for on-line contribution processing, obtaining plan and participant data, requesting/downloading plan files and reports, and approving on-line disbursements. The Plan Sponsor agrees to notify Empower Retirement™ in the event that the Plan Sponsor desires to terminate PSC access for any user. The identified users listed below will receive an e-mail notification when their PSC authorization request has been completed.

Part I: PLAN SPONSOR CONTACT

Plan Name:		Plan Number:	
Contact Name:		Pay Center: (if applicable)	Division:
Contact Email:		Contact Phone/Ext:	
Address:			
City:	State:	Zip Code:	
Relationship Manager (RM):		RM Phone/Ext:	
RM Email:			

Part II: PLAN SERVICE CENTER (PSC) LOGIN REQUEST

ACCESS LEVELS AVAILABLE
INQUIRY: Includes the ability to view plan and participant information, compliance information, order reports, and print forms. Inquiry access is provided by default.
OPTIONAL UPDATE ACCESS: One of the following update access levels can be in addition to inquiry access. <ul style="list-style-type: none"> • Plan and Participant Update: Includes the ability to enter, alter, or delete participant information. • Payroll Contribution, Plan and Participant Update: Includes the ability to remit payroll contributions, pay plan expenses (if applicable), update plan ACH banking information, and the ability to enter, alter, or delete participant information. <i>(Please note: Contribution Processing provides the authority to debit applicable bank accounts to fund participant contributions and pay plan expenses.)</i>
OPTIONAL COMPLIANCE UPDATE ACCESS: Allows a user to update compliance information, upload the census files, submit the form 5500, and approve compliance corrective distributions for participants.
OPTIONAL TO DO LIST ACCESS: <ul style="list-style-type: none"> • View Only: Includes the ability view pending participant disbursements and notices. • Update: Includes the ability to authorize pending participant disbursements and clear notices.

To obtain access to Plan information through PSC, please complete the following (addendums may be attached as needed). If no box is checked, Inquire Access as defined above will be provided by default.

1) Name:		Current PSC Username (if applicable)	
E-Mail Address:		Phone:	
User Type: Check One	Plan Employee: <input type="checkbox"/>	Other: <input type="checkbox"/> _____	
A) Inquiry Access as defined above is provided by default.			
B) Optional Update Access: Select only one option. Update access will not be provided if a selection is not marked.		B1: <input type="checkbox"/> Plan and Participant Update B2: <input type="checkbox"/> Payroll Contributions, Plan and Participant Update	
C) Optional Compliance Update Access: <input type="checkbox"/> Compliance Update access will not be provided if this option is not marked.			
D) Optional To Do List Access: Select one option. To Do List access will not be provided if a selection is not marked.		D1: <input type="checkbox"/> View Only D2: <input type="checkbox"/> Update	

2) Name:		Current PSC Username (if applicable)
E-Mail Address:		Phone:
User Type: Check One	Plan Employee: <input type="checkbox"/>	Other: <input type="checkbox"/>
A) Inquiry Access as defined above is provided by default.		
B) Optional Update Access: Select only one option. Update access will not be provided if a selection is not marked.		B1: <input type="checkbox"/> Plan and Participant Update B2: <input type="checkbox"/> Payroll Contributions, Plan and Participant Update
C) Optional Compliance Update Access: <input type="checkbox"/> Compliance Update access will not be provided if this option is not marked.		
D) Optional To Do List Access: Select one option. To Do List access will not be provided if a selection is not marked.		D1: <input type="checkbox"/> View Only D2: <input type="checkbox"/> Update

3) Name:		Current PSC Username (if applicable)
E-Mail Address:		Phone:
User Type: Check One	Plan Employee: <input type="checkbox"/>	Other: <input type="checkbox"/>
A) Inquiry Access as defined above is provided by default.		
B) Optional Update Access: Select only one option. Update access will not be provided if a selection is not marked.		B1: <input type="checkbox"/> Plan and Participant Update B2: <input type="checkbox"/> Payroll Contributions, Plan and Participant Update
C) Optional Compliance Update Access: <input type="checkbox"/> Compliance Update access will not be provided if this option is not marked.		
D) Optional To Do List Access: Select one option. To Do List access will not be provided if a selection is not marked.		D1: <input type="checkbox"/> View Only D2: <input type="checkbox"/> Update

Part III: PLAN SERVICE CENTER (PSC) CLIENT ADMINISTRATION AGREEMENT

By signing this form, the Plan Sponsor agrees that the User Names listed are authorized to use the PSC. Further, the Plan Sponsor hereby agrees to notify each of the User Names listed to maintain the confidentiality of logon and password information provided and to not share such information with any third parties.

Authorized Plan Representative:	
Signature: _____	Print Name: _____
Title: _____	E-mail: _____
Phone #: _____	Date: _____

Note: If the plan has pay centers and/or divisions with different contacts, please complete one login form for each pay center and/or division.

Please complete and fax or email to Empower Retirement.

Fax Number: (303) 801-5228

Email: security@retirementpartner.com

MEMORANDUM

To: Mayor and Councilors for the City of Mountain Brook

From: Steve Stine – Attorney, Bishop & Colvin

Re: Overview - Agreements with ALDOT for Roundabout Road Project at Lane Park Road/Cahaba Road/US 80/Culver Road & Cost Sharing Agreement with City of Birmingham

Date: September 10, 2015

As you are aware, the State of Alabama Department of Transportation (“ALDOT”) has agreed to assist the City of Mountain Brook and City of Birmingham to construct a Roundabout road improvement at the intersections of Lane Park Road, Cahaba Road, Culver Road and the road that connects U.S. Highway 280 to Mountain Brook Village (the “Project”). This is ALDOT Project # CMAQ-3715. Federal highway funds will be used to pay 80% of the estimated expense of this Project, and local funding is to pay the balance of those expenses.

ALDOT has prepared and requested that the City of Mountain Brook sign the following three agreements that are needed to build the Roundabout:

1. An Agreement for Right of Way (ROW) Acquisition with estimate of total ROW acquisition costs of \$360,000 (including estimated local share of \$72,000);
2. An Agreement for Preliminary Engineering with total estimate of \$515,000 (including estimated local share of \$ 103,000) for those costs; and
3. An Agreement for Utility and Construction with total estimate \$2,616,000 (including estimated local share of \$523,200) to build the Roundabout improvement.

The total estimated cost of the Project is approximately \$3,500,000, and estimated local expense to build the Roundabout approximates \$700,000.

The City of Mountain Brook will enter these Agreements subject to its understanding that Birmingham will reimburse Mountain Brook for one-half of the total local expenses which Mountain Brook will pay to ALDOT pursuant to the three ALDOT/Mountain Brook Agreements. To document this commitment by Birmingham, another agreement – the attached Cost Sharing Agreement – also must be approved by the City Councils of both Birmingham and Mountain Brook. Both cities expect to pass Ordinances that authorize their collaboration on the Project and approval of the various agreements.

AGREEMENT FOR COST SHARING

Roundabout Improvement –Intersection Cahaba Road/US-280/Culver Road/Lane Park Road ALDOT Project # CMAQ-3715

The **CITY OF BIRMINGHAM, ALABAMA** (“Birmingham”), a municipal corporation and the **CITY OF MOUNTAIN BROOK, ALABAMA** (“Mountain Brook”), a municipal corporation, enter into this **AGREEMENT FOR COST SHARING** (“Agreement”). Mountain Brook and Birmingham individually may be referenced herein as a “Party” and collectively as “Parties.”

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21st Century Act (**MAP-21**), as directed by the Birmingham Metropolitan Planning Organization (**MPO**), and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program Funds (**CMAQ Funds**); and

WHEREAS, Birmingham and Mountain Brook desire to construct a roundabout road improvement (the “Roundabout”) at or near the intersections of Lane Park Road, Cahaba Road, Culver Road and a road that connects to U.S. Highway 280 in order to facilitate the flow of traffic in that area (the “Project”); and

WHEREAS, the intersections in question are important connectors for visitors to the Birmingham Zoo, the Birmingham Botanical Gardens, Mountain Brook Village and other points in that area that are regularly accessed by the citizens of both Birmingham and Mountain Brook; and

WHEREAS, the State of Alabama Department of Transportation (“ALDOT”) has designated the Roundabout Project as Project # CMAQ-3715, and Federal funds have been identified for use in conjunction with its construction; and

WHEREAS, in order to administer and implement Project # CMAQ-3715, ALDOT has requested that Mountain Brook enter into the following three (3) agreements with ALDOT: (i) an Agreement for Right of Way Acquisition that estimates for total right of way (“ROW”) acquisition costs at \$360,000 and estimates the local share of that expense as \$72,000; (ii) an Agreement for Preliminary Engineering that reflects a total estimate of \$515,000 for engineering expense and estimates the local share of \$103,000 for those costs; and (iii) an Agreement for Utility and Construction that reflects a total estimate \$2,616,000 to construct the Project and estimates a local share of \$523,200 to build the Roundabout (collectively, the “ALDOT/MB Agreements”); and

WHEREAS, Mountain Brook will enter the ALDOT/MB Agreements if Birmingham enters into this Agreement to equally share the actual amount of the local expenses on the Project that Mountain Brook pays ALDOT and incurs pursuant to those Agreements that are not covered by Federal CMAQ funds (the "Local Expense") and Birmingham agrees to reimburse Mountain Brook for one half (1/2) of the Local Expense; and

WHEREAS, the Local Expense includes costs for right of way ("ROW") acquisition, preliminary engineering and utility and road construction expenses; and

WHEREAS, it is in the public interest for the Parties and their respective citizens to cooperate on the implementation of the Project and to equally divide and share the Local Expense of the Project; and

WHEREAS, as is contemplated and authorized by *Ala. Code §§11-102-1 et. seq. (1975)*, the joint interests of the City and Birmingham are promoted by Mountain Brook entering the ALDOT/MB Agreements whereby ALDOT will perform services that jointly benefit each of the two municipalities, Mountain Brook will compensate ALDOT for those services pursuant to the terms in those Agreements, and Mountain Brook and Birmingham enter into this related Cost Sharing Agreement to equally share the Local Expense of the Project.

NOW WHEREFORE

In consideration of the premises and mutual covenants stated herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Birmingham and Mountain Brook agree as follows:

- I. **IMPLEMENTATION OF PROJECT:** The Project will be administered by ALDOT and the costs thereof will be financed, when eligible for Federal participation, on the basis of 80% federal CMAQ Funds and 20% local funds. Mountain Brook will enter the ALDOT/MB Agreements and make the Local Expense of Project payments to ALDOT contemplated in such Agreements, subject to the terms herein.
- II. **LOCAL EXPENSE.** The Parties agree that, for purposes of this Agreement, the benefits of the Project are equally proportionate to both jurisdictions. Accordingly, Birmingham will equally share the Local Expense with Mountain Brook and reimburse it for 50% of those costs paid by it to ALDOT under the ALDOT/MB Agreements.
- III. **EFFECTIVE DATE:** This Agreement will become effective on the date on which the last of all of the following has occurred: (1) Birmingham's City Council has approved an ordinance authorizing Birmingham to enter into this Agreement; (2) Mountain Brook's City Council has approved an ordinance authorizing Mountain Brook to enter into this Agreement; and (3) the respective, duly authorized representatives of the Parties have executed this Agreement (the "Effective Date").
- IV. **TERM.** This Agreement shall commence on its Effective Date and continue in effect for three (3) years thereafter or until Project is completed, whichever first occurs; provided that, if the Project is not completed at the end of the initial three year term, this

Agreement will be automatically renewed on the terms stated herein for an additional renewal period of three (3) years and continue in effect during that renewal term until the sooner of its expiration or the Project is completed. If the Project is not completed by the end of the renewal term, the Parties agree to enter good faith negotiations to extend this Agreement as needed to finalize the Project.

V. ESTIMATED COSTS OF PROJECT:

The estimated costs and expected sources of funding for the Project are as follows:

Type Expense	Total Estimated	Estimated Fed. CMAQ Funding	Estimated Bham Funding	Estimated Mt. Bk. Funding
ROW Acquisit.	\$360,000	\$288,000	\$36,000	\$36,000
Preliminary Engineering	\$515,000	\$412,000	\$51,500	\$51,500
Utilities	\$500,000	\$400,000	\$50,000	\$50,000
Construction (incl inspection)	\$2,116,000	\$1,692,800	\$211,600	\$211,600
TOTAL	\$3,491,000	\$2,792,800	\$349,100	\$349,100

The Parties acknowledge and understand that the above amounts are estimates only. In the event the final costs of the Project exceed the estimate, Birmingham and Mountain Brook will be responsible for sharing in and paying the actual Local Expense incurred on the Project on the proportional basis and utilizing the process described below.

VI. PROCESS FOR APPROVING, PAYMENT AND REIMBURSEMENT OF MOUNTAIN BROOK FOR LOCAL EXPENSE

- a. Each Party will designate a senior level representative who will be responsible for administration of their respective responsibilities under this Agreement (the "Contract Administrator").
- b. Mountain Brook promptly will forward to Birmingham's Contract Administrator any invoices or other requests for payment of the Local Expense that it receives from ALDOT. Prior to any payment thereof by Mountain Brook, the Contract Administrators for each Party shall consult and certify in writing that the requested amount is proper and should be paid by Mountain Brook pursuant to the terms and provisions of the ALDOT/MB Agreements. Such consultation and certification shall occur not less than 10 days before any such payment is due.
- c. Following the above-described confirmation and certification of ALDOT invoices, Mountain Brook will pay the amount due ALDOT under the ALDOT/MB Agreements for the Local Expense and promptly will notify Birmingham, in writing, upon making any such payment.

- d. Birmingham will remit to Mountain Brook 50% of any Local Expense payment made by Mountain Brook to ALDOT no later than ten (10) days following each such payment.

VII. **DEFAULT.** The Parties acknowledge and agree that any material breach, delay or other failure by either of them to perform their respective obligations hereunder (a "Default", which includes, but is not limited to, any delay by Birmingham in reimbursing Mountain Brook for amounts payable by Birmingham hereunder) will have a detrimental impact on the operations of the other Party. Consequently, in the event of a Default by either Party hereunder, the following understandings apply:

- (a) **Default Interest.** Simple interest shall accrue on any delinquent amount payable by one Party to the other hereunder at the rate of 6% per annum until the delinquency is satisfied; and

- (b) If the non-defaulting Party files litigation to enforce its rights hereunder and prevails in that proceeding, the defaulting Party shall reimburse the non-defaulting Party for all reasonable attorney's fees and costs of litigation that it incurs to remedy any such Default; and

- (c) If the defaulting Party fails to cure the Default within sixty (60) days after receipt of written notice thereof from the non-defaulting Party, the non-defaulting Party, in addition to all other remedies available to it at law or provided herein, may terminate this Agreement effective immediately upon its provision of a second written notice.

VIII. **MISCELLANEOUS.**

- a. Each municipality shall duly appropriate and finance their anticipated respective costs for the Local Expense of the Project from their Capital Improvement Funds, Gasoline Tax Funds, General Fund or other sources they deem appropriate. The failure of either Party to make such appropriations shall not relieve Mountain Brook of its obligations to make payments for Local Expense due ALDOT under the ALDOT/MB Agreements or Birmingham of obligation to pay and reimburse Mountain Brook for amounts due it hereunder.
- b. Unless otherwise agreed in writing, the Parties expressly agree that, following the construction of the Project, neither of them assume any risk or future liability, or any future responsibility for maintaining any portion of the Roundabout improvement that is located outside their respective jurisdiction.
- c. Except as expressly provided in this Agreement, no Party shall have any power to incur any debt which shall become the responsibility of any other contracting party.

- d. The execution of this Agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the Parties the relationship of principal or agent or of partnership or of joint venture.
- e. Except as otherwise provided by law and as limited by this Agreement between the parties, any entity which contracts to perform or exercise any service or power pursuant to this chapter shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the Agreement.
- f. This Agreement shall not take effect until it has been approved by the governing body of each Party. Approval shall be by adoption of an ordinance of general and permanent operation.
- g. This Agreement may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.
- h. With respect to immigration law compliance, the Parties represent and warrant that:
 - (1) they do not knowingly employ, hire for employment, or continue to employ, in Alabama, an “unauthorized alien,” as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the “Act”);
 - (2) they will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that the Party is enrolled in the E-Verify program. During the performance of this Agreement, Parties shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations;
 - (3) they will comply with all applicable provisions of the Act with respect to subcontractors, if any, that they engage on the Project entering into an agreement with or by obtaining an affidavit from such subcontractors providing work for the Party on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Parties represent and warrant that they shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which the Party knows is not in compliance with the Act; and
 - (4) by signing this Agreement, the contracting Parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore a Party found to be in violation of this

provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

- i. **SEVERABILITY:** If any provision of this agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid;
- j. **GOVERNING LAW:** This agreement shall be governed by and construed in accordance with the laws of the State of Alabama as interpreted by Alabama Courts; and
- k. **Additional Understanding on Process for ROW Acquisition:** Notwithstanding any terms or provisions in the Agreement for Right of Way Acquisition to be executed by Mountain Brook, ALDOT representatives have expressed a willingness to perform the ROW acquisition function for the Project that is needed to acquire land that lies in Birmingham and Mountain Brook. If ALDOT performs those services, the Parties agree that ALDOT will be paid the local expense portion of costs incurred in those operations in a manner that is consistent with the payment process contemplated herein. However, if ALDOT does not perform the ROW acquisition services for the Project, the Parties agree to jointly contract with a mutually acceptable third party contractor to obtain those services from that contractor.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their undersigned, duly authorized representatives as reflected below.

CITY OF BIRMINGHAM, ALABAMA

Date

BY: _____
William A. Bell, Sr., Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT:

Assistant City Attorney / Date

CITY OF MT. BROOK, ALABAMA

Date

BY: _____
Lawrence Terry Oden, Mayor

ATTEST:

City Clerk

ORDINANCE NUMBER _____

**AN ORDINANCE APPROVING COST SHARING AGREEMENT WITH
CITY OF BIRMINGHAM AND ALDOT/MB AGREEMENTS**

WHEREAS, the City of Mountain Brook, Alabama (“City”) and the City of Birmingham, Alabama (“Birmingham”) desire to construct a roundabout road improvement (the “Roundabout”) at or near the intersections of Lane Park Road, Cahaba Road, Culver Road and a road that connects to U.S. Highway 280 to Mountain Brook Village in order to facilitate the flow of traffic in that area (the “Project”);

WHEREAS, these intersections are major connectors for visitors and citizens to Mountain Brook Village, the Birmingham Zoo, the Birmingham Botanical Gardens, Mountain and other points in that area that are regularly accessed by the citizens of both Mountain Brook and Birmingham;

WHEREAS, the State of Alabama Department of Transportation (“ALDOT”) has designated the Roundabout Project as Project # CMAQ-3715, and Federal funds have been identified for use in conjunction with its construction;

WHEREAS, in order to administer and implement Project, ALDOT has requested that Mountain Brook enter into the following three (3) agreements with ALDOT: (i) an Agreement for Right of Way Acquisition; (ii) an Agreement for Preliminary Engineering; and (iii) an Agreement for Utility and Construction to build the Roundabout (collectively, the “ALDOT/MB Agreements”);

WHEREAS, pursuant to the ALDOT/MB Agreements, the City will pay ALDOT certain local funds that approximate 20% of the total costs of the Project and are not covered by Federal CMAQ funds (the “Local Expense”);

WHEREAS, the Local Expense includes costs for right of way (“ROW”) acquisition, preliminary engineering and utility and road construction expenses;

WHEREAS, the City is entering the ALDOT/MB Agreements on the understanding that, pursuant to that certain Cost Sharing Agreement between the City and Birmingham that is attached hereto (the “Cost Sharing Agreement”), Birmingham will reimburse Mountain Brook for one half (1/2) of the Local Expense that the City incurs on the Project; and

WHEREAS, it is in the public interest of the City and its citizens for it to cooperate with Birmingham in the implementation of the Project and for the two municipalities to equally divide and share the Local Expense.

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

1. The ALDOT/MB Agreements and related Cost Sharing Agreement are hereby approved.
2. The Mayor of the City is hereby authorized to execute the ALDOT/MB Agreements and the Cost Sharing Agreement as the official acts of the City.
3. This effective date of this Ordinance shall be _____, 2015; provided that, if, within 90 days of this effective date, written documentation has not been given to the City Clerk certifying that the City Council of the City of Birmingham has passed an ordinance approving the Cost Sharing Agreement and that such Agreement has been fully executed, this Ordinance is repealed in its entirety and shall be no longer in effect.

ADOPTED: This ___ day of _____, 2015.

Council President

APPROVED: This ____th day of _____, 2015.

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 an Ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on _____, 2015, as same appears in the minutes of record of said meeting, and published by posting copies thereof on _____, 2015, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road
The Invitation Place, 3150 Overton Road

Steven Boone, City Clerk

Adopted and approved on this the _____ day of _____, 2015.

Terry Oden, Mayor

Attest: _____
Steve Boone, City Clerk



Robert Bentley
GOVERNOR

ALABAMA
DEPARTMENT OF TRANSPORTATION

EAST CENTRAL REGION
100 CORPORATE PARKWAY
SUITE 450
HOOVER, AL 35242
P.O. BOX 382348
BIRMINGHAM, AL 35238-2348
TELEPHONE: (205) 327-4962

June 24, 2015



John R. Cooper
TRANSPORTATION DIRECTOR

The Honorable Lawrence T. Oden
Mayor, City of Mountain Brook
City Hall
P.O. Box 130009
Mountain Brook, Alabama 35213

RE: Jefferson County
Project No. CMAQ-3715()
Proj. Ref. No. 100064200
Intersection Improvements Cahaba Road/
US-280/Culver Road/Lane Park Road

Dear Mayor Oden:

I have enclosed the original Right of Way Acquisition Agreement (and one copy) between the State of Alabama and the City of Mountain Brook, Alabama for the above referenced project.

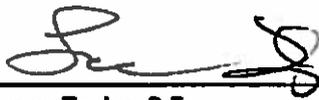
This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signature and the City Seal affixed to both to this office for further handling. A certified resolution, which authorizes the Mayor to sign the Agreement,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

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeJarvis Leonard, P.E.
East Central Region Engineer

By: _____


Lance Taylor, P.E.
Asst. Region Engineer, Pre-Construction

LAT/trs

Enclosure

C: **Mrs. Sandra F. P. Bonner**
File w/encl.

**AGREEMENT
FOR
RIGHT-OF-WAY ACQUISITION**

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

**Project CMAQ-3715 ()
Project Reference Number 100064200
Intersection Improvements Cahaba Road/US-280/Culver Road/Lane Park Road
in the City of Mountain Brook**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a right-of-way acquisition program for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program Funds (CMAQ).

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) This Agreement will cover only the right-of-way acquisition phase of the work.
- (2) The right-of-way purchased under terms of this Agreement will be acquired by the CITY and in accordance with current regulations of the STATE and FHWA. The CITY will adhere to all STATE and FHWA regulations pertaining to the acquisition of ROW and will coordinate their activities with the Region Acquisition Manager for guidance. The property will be acquired in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.
- (3) The STATE shall follow all Federal regulations related to the Management, Leasing, and Disposal of right-of-way, uneconomic remnants and excess right-of-way as found in CFR 23 §710 Subpart D. Proceeds from Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.
- (4) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overrun in the Project costs will be borne by the CITY. In the event of an under run in the Project costs, the amount of Federal Aid funds will be 80 percent of eligible costs.
- (5) This Project will be administered by the STATE and all costs will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties are as follows:

	<u>Total Estimated</u>	<u>Estimated Federal Funds</u>	<u>Estimated CITY Funds</u>
Right-of-way acquisition	<u>\$360,000</u>	<u>\$288,000</u>	<u>\$72,000</u>
TOTAL	\$360,000	\$288,000	\$72,000

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share. It is expressly understood by both parties of this Agreement that all Federal funds will be CMAQ funds, attributable to the Birmingham area.

- (6) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- (7) The CITY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) that Federal funds expended on this Project must be refunded to the FHWA, the CITY will reimburse and pay to the STATE a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (8) The CITY will invoice the STATE for the Federal share of right-of-way acquisition costs not more frequently than monthly. Requests for reimbursements will be made on forms provided by the STATE and submitted through the East Central Region Engineer for payment.
- (9) Invoices for any phase of work performed by the CITY under the terms of this Agreement will be submitted within twelve (12) months after completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- (10) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (11) The CITY will assist the STATE, if necessary, in any public involvement actions that may be required.

- (12) The CITY will provide without cost to the STATE, information available from its records that will facilitate the performance of the work.
- (13) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein and that a separate Agreement will be required for the construction of the proposed improvement.
- (14) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- (15) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- (16) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (17) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be

deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (18) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (19) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (20) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th Law).
- (21) Exhibits M and N are attached and hereby made a part of this Agreement.

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

SEAL

ATTEST: CITY OF MOUNTAIN BROOK, ALABAMA

City Clerk (Signature)

BY: _____
Mayor (Signature)

Type name of Clerk

Type name of Mayor

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED
AND APPROVED AS TO FORM AND CONTENT:

BY: _____
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

East Central Region Engineer, DeJarvis Leonard, P. E.

Multimodal Transportation Engineer,
Robert J. Jilla

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

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

Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this
____ day of _____, 20__.

GOVERNOR OF ALABAMA, ROBERT BENTLEY



7/18/90

Exhibit M

CERTIFICATION

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 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, 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.

07/01/2002

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

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

TERMINATION DUE TO INSUFFICIENT FUNDS

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.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

ADR CLAUSE

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 utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

RESOLUTION NUMBER _____

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

1. That the City enters into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Right-of-way acquisition program for Project CMAQ-3715 (), Project Reference Number 100064200 for intersections improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook; which Agreement is before this Council.
2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
3. That the Agreement be attested by the City 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 Clerk.

Passed, adopted and approved this ____ day of _____, 20 ____.

ATTESTED:

City Clerk

Mayor

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

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

City Clerk



Robert Bentley
GOVERNOR

ALABAMA DEPARTMENT OF TRANSPORTATION

EAST CENTRAL REGION
100 CORPORATE PARKWAY
SUITE 450
HOOVER, AL 35242
P.O. BOX 382348
BIRMINGHAM, AL 35238-2348
TELEPHONE: (205) 327-4962

June 24, 2015



John R. Cooper
TRANSPORTATION DIRECTOR

The Honorable Lawrence T. Oden
Mayor, City of Mountain Brook
City Hall
P.O. Box 130009
Mountain Brook, Alabama 35213

RE: Jefferson County
Project No. CMAQ-3715()
Proj. Ref. No. 100064199
Intersection Improvements Cahaba Road/
US-280/Culver Road/Lane Park Road

Dear Mayor Oden:

I have enclosed the original Preliminary Engineering Agreement (and one copy) between the State of Alabama and the City of Mountain Brook, Alabama for the above referenced project.

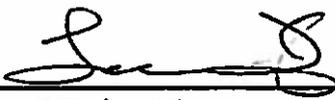
This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signature and the City Seal affixed to both to this office for further handling. A certified resolution, which authorizes the Mayor to sign the Agreement,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

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeJarvis Leonard, P.E.
East Central Region Engineer

By: _____


Lance Taylor, P.E.
Asst. Region Engineer, Pre-Construction

LAT/trs

Enclosure

C: Mrs. Sandra F. P. Bonner
File w/encl.

K-15-1348

**AGREEMENT
FOR
PRELIMINARY ENGINEERING**

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

15 JUN 15 4:42

**Project CMAQ-3715 ()
Project Reference Number 100064199
Intersection Improvements Cahaba Road/US-280/Culver Road/Lane Park Road
in the City of Mountain Brook**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and the CITY desire to cooperate in a preliminary engineering program for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvements Program Funds (CMAQ).

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) The CITY will perform or have performed all services required to fulfill the purposes of this Agreement. The East Central Region of the Department of Transportation will be the lead agency for the STATE relative to the work under this Agreement and will be point of contact for the CITY.
- (2) This Agreement will cover only the preliminary engineering phase of the work.
- (3) The preliminary engineering phase is hereby defined as that work necessary to advance the development of the Project through construction authorization by the FHWA. The preliminary engineering will be performed by or for the CITY and will include all environmental studies and documentation required by FHWA.
- (4) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA.
- (5) The project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties is as follows:

	<u>Total Estimated Cost</u>	<u>Estimated Federal Funds</u>	<u>Estimated CITY Funds</u>
Preliminary Engineering	<u>\$515,000</u>	<u>\$412,000</u>	<u>\$103,000</u>
TOTAL	\$515,000	\$412,000	\$103,000

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share of the final cost. It is expressly understood by both parties of this Agreement that all Federal funds will be CMAQ funds, attributable to the Birmingham area.

- (6) The STATE will assist the CITY in any public involvement action that may be required.
- (7) The CITY will invoice the STATE for the Federal share of the preliminary engineering costs not more frequently than monthly. Requests for reimbursements will be made on forms provided by the STATE and submitted through the East Central Region Engineer for payment.
- (8) Invoices for any phase of work performed by the CITY under the terms of this Agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- (9) Any cost for work not eligible for Federal participation will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- (10) The CITY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) that the Federal funds expended on this Project must be refunded to the FHWA, the CITY will reimburse and pay to the STATE a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (11) Any services of the STATE necessary to carry out the intent of this Agreement will be paid as provided for herein.
- (12) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (13) The STATE will provide without cost to the CITY information available from its records that will facilitate the performance of the work.

- (14) It is clearly understood by both parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein and that a separate agreement will be required for the construction of the proposed improvement.
- (15) A final audit will be made of all project records after the completion of the project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the final audit and this Agreement.
- (16) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- (17) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (18) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

-
- (19) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
 - (20) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
 - (21) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th Law).
 - (22) Exhibits M and N are attached and hereby made a part of this Agreement.

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

SEAL

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

City Clerk (Signature)

By: _____
Mayor (Signature)

Type name of Clerk

Type name of Mayor

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED
AND APPROVED AS TO FORM AND CONTENT:

By: _____
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

East Central Region Engineer, DeJarvis Leonard, P. E.

Multimodal Transportation Engineer,
Robert J. Jilla

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

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

Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama
this ___ day of _____, 20__.

GOVERNOR OF ALABAMA, ROBERT BENTLEY

✓

7/18/90

Exhibit M

CERTIFICATION

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 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, 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.

✓

07/01/2002

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

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

TERMINATION DUE TO INSUFFICIENT FUNDS

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.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

ADR CLAUSE

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 utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

✓

RESOLUTION NUMBER _____

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

1. That the City enter into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Preliminary engineering program, Project CMAQ-3715 (), Project Reference Number 100064199 for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook; which Agreement is before this Council.

2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
3. That the Agreement be attested by the City 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 Clerk.

Passed, adopted and approved this ____ day of _____, 20 ____.

ATTESTED:

City Clerk

Mayor

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

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

City Clerk



Robert Bentley
GOVERNOR

**ALABAMA
DEPARTMENT OF TRANSPORTATION**

EAST CENTRAL REGION
100 CORPORATE PARKWAY
SUITE 450
HOOVER, AL 35242
P.O. BOX 382348
BIRMINGHAM, AL 35238-2348
TELEPHONE: (205) 327-4962

June 24, 2015



John R. Cooper
TRANSPORTATION DIRECTOR

The Honorable Lawrence T. Oden
Mayor, City of Mountain Brook
City Hall
P.O. Box 130009
Mountain Brook, Alabama 35213

RE: **Jefferson County**
Project No. CMAQ-3715()
Proj. Ref. No. 100064201
Proj. Ref. No. 100064202
**Intersection Improvements Cahaba Road/
US-280/Culver Road/Lane Park Road**

Dear Mayor Oden:

I have enclosed the original Utility and Construction Agreement (and one copy) between the State of Alabama and the City of Mountain Brook, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signature and the City Seal affixed to both to this office for further handing. A certified resolution, which authorizes the Mayor to sign the Agreement, affixed with the City Seal should be included with the original Agreement, as well as with the copy.

If I can supply you with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Sincerely,

DeJarvis Leonard, P.E.
East Central Region Engineer

By: 
Lance Taylor, P.E.
Asst. Region Engineer, Pre-Construction

LAT/trs

Enclosure

C: Mrs. Sandra F. P. Bonner
File w/encl.

K-15-1349

**AGREEMENT
FOR
UTILITY AND CONSTRUCTION**

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

15 JUN 15 4:08:42

**Project CMAQ-3715 ()
Project Reference Number 100064201
Project Reference Number 100064202
Intersection Improvements Cahaba Road/US-280/Culver Road/Lane Park Road
in the City of Mountain Brook**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a utility and construction program for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program Funds (CMAQ).

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) This Agreement will cover utilities and all aspects of construction for the proposed improvements, including construction engineering and inspection during the course of the work, all in accordance with plans approved by the STATE.
- (2) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overrun in construction costs will be borne by the CITY. In the event of an under run in construction costs, the amount of Federal Aid funds will be 80 percent of eligible costs.
- (3) The Project will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds.

The estimated cost and participation by the various parties are as follows:

	<u>Total Estimated</u>	<u>Estimated Federal Funds</u>	<u>Estimated CITY Funds</u>
Utilities	\$500,000	\$400,000	\$100,000
construction, including engineering and inspection	<u>\$2,116,000</u>	<u>\$1,692,800</u>	<u>\$423,200</u>
TOTAL	\$2,616,000	\$2,092,800	\$523,200

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share as above noted and the CITY agrees to pay same to STATE; or in the event the cost is less than the estimate, the CITY will receive a refund accordingly from the STATE.

- (4) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit. It is expressly understood by both

parties of this Agreement that all Federal funds will be CMAQ funds, attributable to the Birmingham area.

- (5) The CITY will coordinate any required adjustments to utilities with the utility company involved in accordance with usual STATE procedures. Any utility expenses involved which are eligible for STATE reimbursement or payment under state law will be considered as a part of the Project cost and will be paid as provided herein, with the CITY paying its proportional share. The STATE will not be liable for utility expenses which are not eligible for STATE reimbursement or payment under state law.
- (6) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
- (7) The construction of the improvements will be by contract and the STATE will be responsible for advertisement and receipt of bids and for the award of the contract. Following receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its prorata share of the estimated construction cost as reflected by the bid of the successful bidder plus engineering and inspection cost, and the CITY will promptly pay this estimated cost before award of the contract. The STATE will not award the contract until it is in receipt of the estimated cost payable by the CITY as reflected by the bid of the successful bidder, plus the engineering and inspection cost.
- (8) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the facility which is not part of the State Highway Maintenance System.
- (9) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein.

- (10) The CITY agrees that in the event the FHWA determines, under its rules and/or regulations that Federal funds expended on this Project (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) must be refunded to the FHWA, the CITY shall reimburse and pay to the STATE for and on behalf of FHWA, a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (11) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- (12) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- (13) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (14) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a

contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (15) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (16) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (17) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th Law).
- (18) Exhibits M and N are attached and hereby made a part of this Agreement.

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

SEAL

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

City Clerk (Signature)

BY: _____
Mayor (Signature)

Type name of Clerk

Type name of Mayor

THIS AGREEMENT AS BEEN LEGALLY REVIEWED
AND APPROVED AS TO FORM AND CONTENT:

BY: _____
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

East Central Region Engineer, DeJarvis Leonard, P. E.

Multimodal Transportation Engineer,
Robert J. Jilla

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

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

Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this
____ day of _____, 20 ____.

GOVERNOR OF ALABAMA, ROBERT BENTLEY

7/18/90

Exhibit M

CERTIFICATION

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 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, 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.

07/01/2002

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

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

TERMINATION DUE TO INSUFFICIENT FUNDS

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.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

ADR CLAUSE

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 utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

✓

RESOLUTION NUMBER _____

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

1. That the City enters into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Utility and construction program for Project CMAQ-3715 (), Project Reference Numbers 100064201 and 100064202 for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook; which Agreement is before this Council.

2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
3. That the Agreement be attested by the City 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 Clerk.

Passed, adopted, and approved this ____ day of _____, 20 ____.

ATTESTED:

City Clerk

Mayor

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

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

City Clerk

**AGREEMENT
FOR
UTILITY AND CONSTRUCTION**

BETWEEN THE STATE OF ALABAMA 15 JUN 15 4:42
AND
THE CITY OF MOUNTAIN BROOK, ALABAMA

**Project CMAQ-3715 ()
Project Reference Number 100064201
Project Reference Number 100064202
Intersection Improvements Cahaba Road/US-280/Culver Road/Lane Park Road
in the City of Mountain Brook**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a utility and construction program for intersection improvements Cahaba Road/US-280/Culver Road/Lane Park Road in the City of Mountain Brook.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program Funds (CMAQ).

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) This Agreement will cover utilities and all aspects of construction for the proposed improvements, including construction engineering and inspection during the course of the work, all in accordance with plans approved by the STATE.
- (2) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overrun in construction costs will be borne by the CITY. In the event of an under run in construction costs, the amount of Federal Aid funds will be 80 percent of eligible costs.
- (3) The Project will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds.

The estimated cost and participation by the various parties are as follows:

	<u>Total Estimated</u>	<u>Estimated Federal Funds</u>	<u>Estimated CITY Funds</u>
Utilities construction, including engineering and inspection	\$500,000	\$400,000	\$100,000
	<u>\$2,116,000</u>	<u>\$1,692,800</u>	<u>\$423,200</u>
TOTAL	\$2,616,000	\$2,092,800	\$523,200

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share as above noted and the CITY agrees to pay same to STATE; or in the event the cost is less than the estimate, the CITY will receive a refund accordingly from the STATE.

- (4) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit. It is expressly understood by both

- parties of this Agreement that all Federal funds will be CMAQ funds, attributable to the Birmingham area.
- (5) The CITY will coordinate any required adjustments to utilities with the utility company involved in accordance with usual STATE procedures. Any utility expenses involved which are eligible for STATE reimbursement or payment under state law will be considered as a part of the Project cost and will be paid as provided herein, with the CITY paying its proportional share. The STATE will not be liable for utility expenses which are not eligible for STATE reimbursement or payment under state law.
 - (6) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
 - (7) The construction of the improvements will be by contract and the STATE will be responsible for advertisement and receipt of bids and for the award of the contract. Following receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its prorata share of the estimated construction cost as reflected by the bid of the successful bidder plus engineering and inspection cost, and the CITY will promptly pay this estimated cost before award of the contract. The STATE will not award the contract until it is in receipt of the estimated cost payable by the CITY as reflected by the bid of the successful bidder, plus the engineering and inspection cost.
 - (8) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the facility which is not part of the State Highway Maintenance System.
 - (9) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein.

- (10) The CITY agrees that in the event the FHWA determines, under its rules and/or regulations that Federal funds expended on this Project (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) must be refunded to the FHWA, the CITY shall reimburse and pay to the STATE for and on behalf of FHWA, a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (11) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- (12) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- (13) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (14) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a

contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (15) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.**
- (16) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.**
- (17) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th Law).**
- (18) Exhibits M and N are attached and hereby made a part of this Agreement.**

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

SEAL

ATTEST:

CITY OF MOUNTAIN BROOK, ALABAMA

City Clerk (Signature)

BY: _____
Mayor (Signature)

Type name of Clerk

Type name of Mayor

THIS AGREEMENT AS BEEN LEGALLY REVIEWED
AND APPROVED AS TO FORM AND CONTENT:

BY: _____
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

East Central Region Engineer, DeJarvis Leonard, P. E.

Multimodal Transportation Engineer,
Robert J. Jilla

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

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

Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this
day of _____, 20 ____.

GOVERNOR OF ALABAMA, ROBERT BENTLEY

7/18/90

Exhibit M

CERTIFICATION

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 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, 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.

07/01/2002

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

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

TERMINATION DUE TO INSUFFICIENT FUNDS

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In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

ADR CLAUSE

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 utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

RESOLUTION NUMBER _____

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2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
3. That the Agreement be attested by the City 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 Clerk.

Passed, adopted, and approved this ____ day of _____, 20 ____.

ATTESTED:

City Clerk

Mayor

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

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

City Clerk