

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
AUGUST 26, 2013**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:00 p.m. on Monday, the 26th day of August, 2013. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: Jesse S. Vogtle, Jr.

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

1. AGENDA

1. Introduction of Ms. Shanda Williams, the City's new Parks and Recreation Superintendent effective October 1st – Sam Gaston.
2. Three-way stop issue on Pine Ridge Road at Pine Ridge Trail and request to remove the stop signs on Pine Ridge Road by Mr. Bob Bohorfoush – Appendix 1.

Chief Cook reported that Mr. Bohorfoush does not want the "Do Not Block" sign relocated in his yard further away from the stop sign (near the existing rumble strips) nor does he want an "X" painted in the street in front of his driveway. Mr. Bohorfoush suggested that the City remove one stop sign at his driveway. This matter will be reconsidered by the City Council on September 9, 2013.

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



Steven Boone, City Clerk

Sam Gaston

From: Ronald Vaughn
Sent: Monday, August 19, 2013 12:16 PM
To: Sam Gaston; Ted Cook; Richard Caudle
Subject: 3 - way stop on Pine Ridge

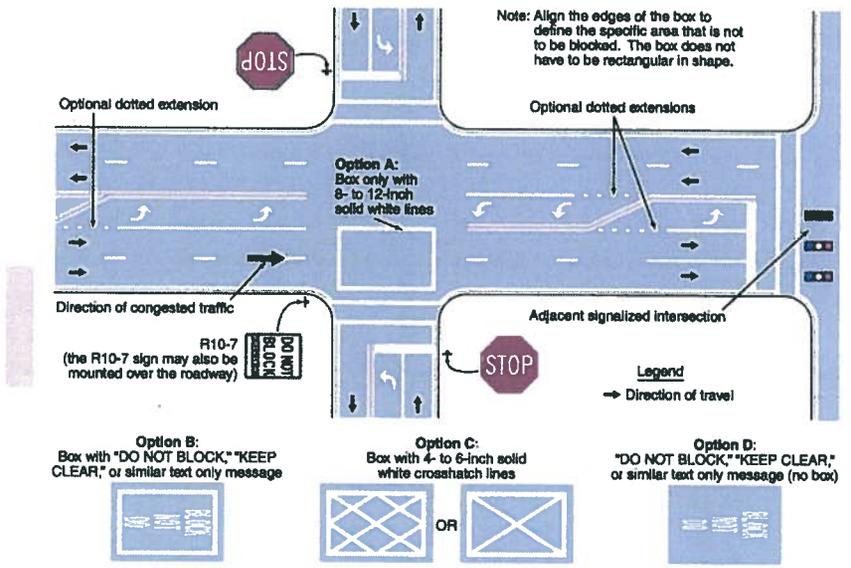
Attachments: Pine Ridge - Pages from mutcd2009r1r2edition-2.pdf

Richard Caudle, Chief Cook, and I met on site this morning to look at the three way stop at Pine Ridge Road and Pine Ridge Trail. We recommend moving the "Do Not Block" sign from very near the "Stop" sign to near where the rumble strips are located to give more of an advanced warning. We also recommend placing markings on the street at the driveway. Please find attached a page from the Manual on Uniform Traffic Control Devices. We would recommend option B on the attachment for the markings.

Thanks

Ronnie Vaughn
Public Works Director
City of Mountain Brook AL
3579 East Street
Birmingham , Alabama 35243
205.802.3865 Office
205.967.2631 Fax
vaughnr@mtnbrook.org

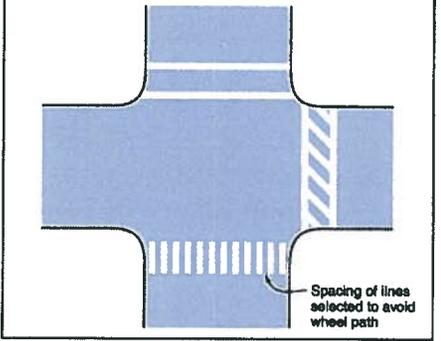
Figure 3B-18. Do Not Block Intersection Markings



08 Crosswalk lines should not be used indiscriminately. An engineering study should be performed before a marked crosswalk is installed at a location away from a traffic control signal or an approach controlled by a STOP or YIELD sign. The engineering study should consider the number of lanes, the presence of a median, the distance from adjacent signalized intersections, the pedestrian volumes and delays, the average daily traffic (ADT), the posted or statutory speed limit or 85th-percentile speed, the geometry of the location, the possible consolidation of multiple crossing points, the availability of street lighting, and other appropriate factors.

- 09 New marked crosswalks alone, without other measures designed to reduce traffic speeds, shorten crossing distances, enhance driver awareness of the crossing, and/or provide active warning of pedestrian presence, should not be installed across uncontrolled roadways where the speed limit exceeds 40 mph and either:
- A. The roadway has four or more lanes of travel without a raised median or pedestrian refuge island and an ADT of 12,000 vehicles per day or greater; or
 - B. The roadway has four or more lanes of travel with a raised median or pedestrian refuge island and an ADT of 15,000 vehicles per day or greater.

Figure 3B-19. Examples of Crosswalk Markings



Sam Gaston

From: bob bohorfoush
Sent: Monday, August 12, 2013 7:35 PM
To: Sam Gaston
Subject: 3405 Pine Ridge map
Attachments: Aerial map Pine Ridge.pdf

Mr. Gaston: I'm attaching for your benefit and that of the council an aerial map which shows our home at 3405 in relation to Pine Ridge Trail, 3409 Pine Ridge Road and the approximate locations of the stop signs. I'm sorry I did not have this available for tonight's meeting. I had assumed that the council had copies of that which had been previously submitted.

I would like the opportunity to meet with whomever the city plans to consult with regard to other options which may be available. I believe now that my wife and I have first hand experience that our input would be valid and maybe we can work out an alternate solution that gives us some relief and accomplishes what the city is trying to accomplish.

I appreciate your time and that of the council.

Sincerely,

Bob Bohorfoush

Bob Bohorfoush
Boardwalk Commercial Real Estate LLC
Suite 312
200 Office Park Drive
Birmingham, Al 35223 bobbobo@gmail.com
(205) 870-8222 Cell phone (205) 383-9955

Company website : <http://www.boardwalkcommercial.com/index.html>



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**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA
AUGUST 26, 2013**

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:00 p.m. on Monday, the 26th day of August, 2013. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: Jesse S. Vogtle, Jr.

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

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

1. RECOGNITION OF GUESTS

Council President Smith recognized Boy Scouts Whit King, Henry Evans, Clay Harkins, and Swaim Davis all from Troop 63 in attendance to satisfy the requirements for various merit badges.

2. CONSENT AGENDA

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

Approval of the minutes of the August 12, 2013 meeting of the City Council.

2013-117	Accept the professional services proposal submitted by Sain Associates with respect to the Mountain Brook Sidewalks—Phase 9, CMAQ-PE12() public involvement meeting and right-of-way survey.	Exhibit 1, Appendix 1
2013-118	Accept and approve Supplement 2 with respect to the Mountain Brook Village Walkway System, Phase 6, CMAQ-98-02(921) in the amount up to \$75,302.58 requested due to contract delays that extended the construction completion date.	Exhibit 2, Appendix 2
2013-119	Authorize the execution of an amended professional services agreement between the City and Sain Associates with respect to construction, engineering and inspection services for the Safe Routes to Schools sidewalk construction project.	Exhibit 3, Appendix 3
2013-120	Approve the conditional use application submitted by Craig Fowler (dba iRevive) to operate a service business (mobile telephone repair) in a Local Business District – 2710 Culver Road.	Exhibit 4, Appendix 4

2013-121 Amend the City of Mountain Brook Employee Handbook with respect to the verification of employees' current driver license and insurance. Exhibit 5

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

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

Nays: None

Council President Smith thereupon declared that said minutes, proclamation, resolutions (nos. 2013-117 through 121) are adopted by a vote of 4—0 and, as evidence thereof, she signed the same.

3. PUBLIC HEARING TO CONSIDER AN ORDINANCE (NO. 1893) AMENDING THE LANE PARKE PROJECT DEVELOPMENT PLAN PREVIOUSLY APPROVED UPON THE ADOPTION OF ORDINANCE NO. 1871 ADOPTED ON MAY 21, 2012 AND SUBSEQUENTLY AMENDED BY ORDINANCE NO. 1885 ADOPTED ON FEBRUARY 25, 2013. (EXHIBIT 6, APPENDIX 5)

Council President Smith introduced the ordinance in writing and then invited a representative of Daniel Realty Company, LLC to explain the requested amendments to the project development plan.

Pat Henry of 2815 Balmoral Road (Chief Development Officer of Daniel Realty Company, LLC) stated that the development plan has been modified to include: 1) the elimination of the structured parking deck, 2) the modification of the hotel plan [and timing], and 3) the project density has been reduced. The infrastructure is largely unchanged as is the pattern book. Green space throughout the development has been increased and pedestrian connectivity enhanced.

Council member Pritchard inquired about the status of the Lane Park Road and the improvements near the Botanical Gardens (both involving the City of Birmingham) to which Mr. Henry stated that the talks with Birmingham and the Gardens are on hold pending the outcome of the developer's application to the City of Mountain Brook to modify the development plan (and development agreement).

Council member Pritchard then asked about the timing/phasing of the Lane Park Road improvements to which Mr. Henry responded that the vast majority (and all pertaining to the development agreement) will be done in conjunction with the Phase I commercial portion. A small portion will be done in conjunction with the hotel phase.

Mayor Oden asked when Lane Park Road will be resurfaced to which Mr. Henry responded that it is their intention to do all of the work on Lane Park Road at one time [near the end of the Phase I retail construction]. Mayor Oden encouraged Mr. Henry to look at some improvements to the road sooner due its present condition.

Council President Smith:

- The City is pleased with the additional green space.
- Understands that the woodland park will extend down/along Watkins Branch to the new Jemison Lane and "connect" with the old portion of Mountain Brook Village. (Mr. Henry confirmed her understanding.)
- Will the woodland trail connect to the existing sidewalks? (Mr. Henry responded that the woodland trail has not been engineered yet but he does anticipate paths connecting the woodland trail to the Montevallo Road sidewalk.)
- The orientation of Building B is detached from the cluster of buildings just below it in anticipation of a tenant's need for a drive-through. She is okay with the configuration as long as

- the road between these buildings in one-way into the development. (Mr. Henry stated that this road will be a one-way road into the development and that it will have a sidewalk as well.)
- Will the new green space behind the drive-through be part of the woodland trail? (Mr. Henry stated that it will be treated as such.)
 - What is happening to the car wash? (Mr. Henry stated that the car wash has been eliminated. Instead, there will be an addition to the garage/maintenance area at the north end of the property which will include a dog wash that will be open to the public.)
 - What is going to happen to the Treadwell building? (Mr. Henry stated that such decision has not been made yet. The building may remain and, if so, will be remodeled.)
 - If the Rite Aid space is to remain until their lease expires, will that building be remodeled? (Mr. Henry stated that they will work with the Village Design Review Committee for both new buildings and old buildings to be remodeled.)
 - Regarding the pattern book, asked for clarification about the red and blue text. (Mr. Henry and Mr. Knutson explained that the red text represented the first iteration of the changes. The blue text represents the second iteration of the changes. In instances where the blue text supersedes the red text, the red text is [generally] stricken. Sometimes the blue text supplements the red text. Once approved, a final version will be printed with all colored text changed to black for consistency.)
 - Inquired about the drive-throughs planned for the development. (Mr. Henry responded that the original plan allowed for three drive-throughs. The revised plan provides for only two drive-throughs.)

Council President Pro Tempore Carter asked for confirmation that there will be no through street behind the Ray building. (Mr. Henry stated that her understanding is correct).

Council member Carl asked for clarification as to the number of parking spaces to be constructed. (Mr. Henry responded that the development will have 1,099 parking spaces once built-out.)

Council President Smith wants the developer to explain how the service courtyards (two off of Lane Park Road and one off of Culver Road) will function. (Mr. Henry stated that the construction plans, yet to be completed, to be presented to Village Design Review will address those issues.)

Council President Pro Tempore Carter asked whether all office use in the development is conditional. (Mr. Colvin responded that all office use is conditional unless specifically enumerated in the PUD (e.g., banks) as permitted.)

There being no more questions from the governing body, President Smith invited questions and comments from the audience.

Susan Swaggler of 220 Dexter Avenue (member of the City of Mountain Brook Planning Commission) asked about the type of construction of the woodland paths. (Mr. Henry replied that the paths have not been engineered yet. However, the paths will not be sidewalks but will be sturdy enough to withstand [light] flooding. It is anticipated that the pathways will be natural and likely constructed of crushed stone.)

There being no further discussion or comment, Council President Smith closed the public hearing. Thereupon, Council member Pritchard made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance be given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Carl and was carried, as follows:

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

Nays: None

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

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

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

Nays: None

The President of the Council declared that the ordinance (No. 1893) is hereby adopted by a vote of 4-0 and, as evidence thereof, she signed the same.

4. PUBLIC HEARING TO CONSIDER A RESOLUTION (NO. 2013-122) AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND EVSON, INC. AND DANIEL REALTY COMPANY, LLC WITH RESPECT TO THE LANE PARKE PROJECT, WHICH AGREEMENT WAS ORIGINALLY APPROVED ON JULY 30, 2012 (APPENDIX 6)

Council President Smith introduced the resolution in writing and then invited a representative of Daniel Realty Company, LLC to explain the requested amendments to the project development agreement.

Pat Henry of 2815 Balmoral Road (Chief Development Officer of Daniel Realty Company, LLC):

- The elements of the development agreement that are being requested to be modified include: 1) Reference to the [amended] PUD, and 2) clarification of the ambiguity with respect to the sales tax generated from the inn being included in the revenue sharing arrangement.

Council member Pritchard:

- Also included in the amended development plan are some provisions with respect to the removal of the Rite Aid building should it remain beyond Phase 1.
- The Alloways were again consulted to review the revenue projections of the scaled-down version of the development which report is to be incorporated into the minutes (Appendix 8). Their report projects the revenues to be consistent with the initial projections in spite of the smaller development [due to most of the reductions involving office and service space and anticipated tenant composition].

[For the benefit of the guest Boy Scouts in attendance]

Council member Carl:

- The projections indicate that the Mountain Brook Board of Education may realize between \$700,000–\$800,000 annually in additional ad valorem taxes once the development is completed.
- The City is also expected to realize some incremental revenue above what is currently collected from the existing mall [during the revenue sharing period].

Council President Pro Tempore Carter:

- While the scale of the development has been reduced, the revenue sharing arrangement is unchanged which on the surface does not make sense. However, the City's consultants have satisfied the City that the revenue to be generated from the smaller development is consistent with the originally approved plan.

Council member Pritchard:

- Additionally, the projected cost of the scaled-down development has only been reduced by about 1% which further justifies the City's revenue sharing commitment. Mr. Henry estimates that the project will cost approximately \$120 million.

Council member Carl:

- The development includes a new 100-room inn with construction scheduled to begin in October 2013.
- In addition, the Western Supermarket will double in size.

Mr. Gaston asked Mr. Henry to elaborate on the woodland park for the benefit of the City's soon-to-be Parks and Recreation Superintendent who is in the audience.

Mr. Henry responded that the woodland park has not yet been designed. The woodland park will, however, remain privately owned and therefore be maintained by the owners of the development.

There being no further discussion or comment, Council President Smith closed the public hearing. Thereupon, Council member Pritchard made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said resolution be suspended, and that unanimous consent to the immediate consideration of said resolution be given and that the reading of the resolution at length be waived. The motion was seconded by Council member Carl and was carried, as follows:

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

Nays: None

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

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

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

Nays: None

The President of the Council declared that the resolution (No. 2013-122) is hereby adopted by a vote of 4—0 and, as evidence thereof, she signed the same.

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

Council President Smith announced that the next regular meeting of the City Council will be Monday, September 9, 2013, at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213. Please visit the City's web site (www.mtnbrook.org) for more information.

6. ADJOURNMENT

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

Steven Boone, City Clerk

EXHIBIT 1
RESOLUTION NO. 2013-117

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby accepts the professional services proposal submitted by Sain Associates, in the form attached hereto as Exhibit A, with respect to the Mountain Brook Sidewalks–Phase 9, CMAQ-PE12() public involvement meeting and right-of-way survey.

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contract and such other documents that may be determined necessary with respect to said services all subject to review and approval by the City Attorney.

APPENDIX 1
EXHIBIT 2**RESOLUTION NO. 2013-118**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby accepts and approves Supplement 2 (see Exhibit A attached hereto) with respect to the Mountain Brook Village Walkway System, Phase 6, CMAQ-98-02(921) in the amount of up to \$75,302.58 requested due to contract delays that extended the construction completion date.

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of such other documents that may be determined necessary with respect to said services all subject to review and approval by the City Attorney.

APPENDIX 2
EXHIBIT 3**RESOLUTION NO. 2013-119**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby accepts the professional services proposal submitted by Sain Associates, in the form attached hereto as Exhibit A, with respect to the Safe Routes to Schools sidewalk construction projects [SRTS-SR09(903) and SRTS-SR09(904)] construction engineering and inspection services and related work.

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contract and such other documents that may be determined necessary with respect to said services all subject to review and approval by the City Attorney.

APPENDIX 3
EXHIBIT 4**RESOLUTION NO. 2013-120**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the conditional use application submitted by iRevive to establish a cell phone repair facility at 2710 Culver Road.

APPENDIX 4

EXHIBIT 5**RESOLUTION NO. 2013-121**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby approves the following revisions to the Employee Handbook:

1. II. OFFICIALS OF THE CITY OF MOUNTAN BROOK

See updated organizational chart attached hereto as Exhibit A.

2. Section IV. D. shall be amended by adding the following as the last paragraph of said section:

“IV. D. Authorized Use of City Vehicles, Driver License and Insurance Verification

In addition, all employees may, at one time or another, be required to drive their personal vehicles on City business. Therefore, all employees are required to show proof of current valid driving licenses and current effective insurance coverage before the first day of employment. The City participates in a system that regularly checks state Department of Motor Vehicles (DMV) records of all employees. The City reserves the right to transfer to an alternative position, suspend or terminate an employee whose license is revoked or who fails to maintain personal automobile insurance coverage.”

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the City Manager to incorporate such amended policy in the City's *Employee Handbook* a digital copy of which shall be available to employees on the City's [internal] intranet site.

EXHIBIT A

II. OFFICIALS OF THE CITY OF MOUNTAIN BROOK

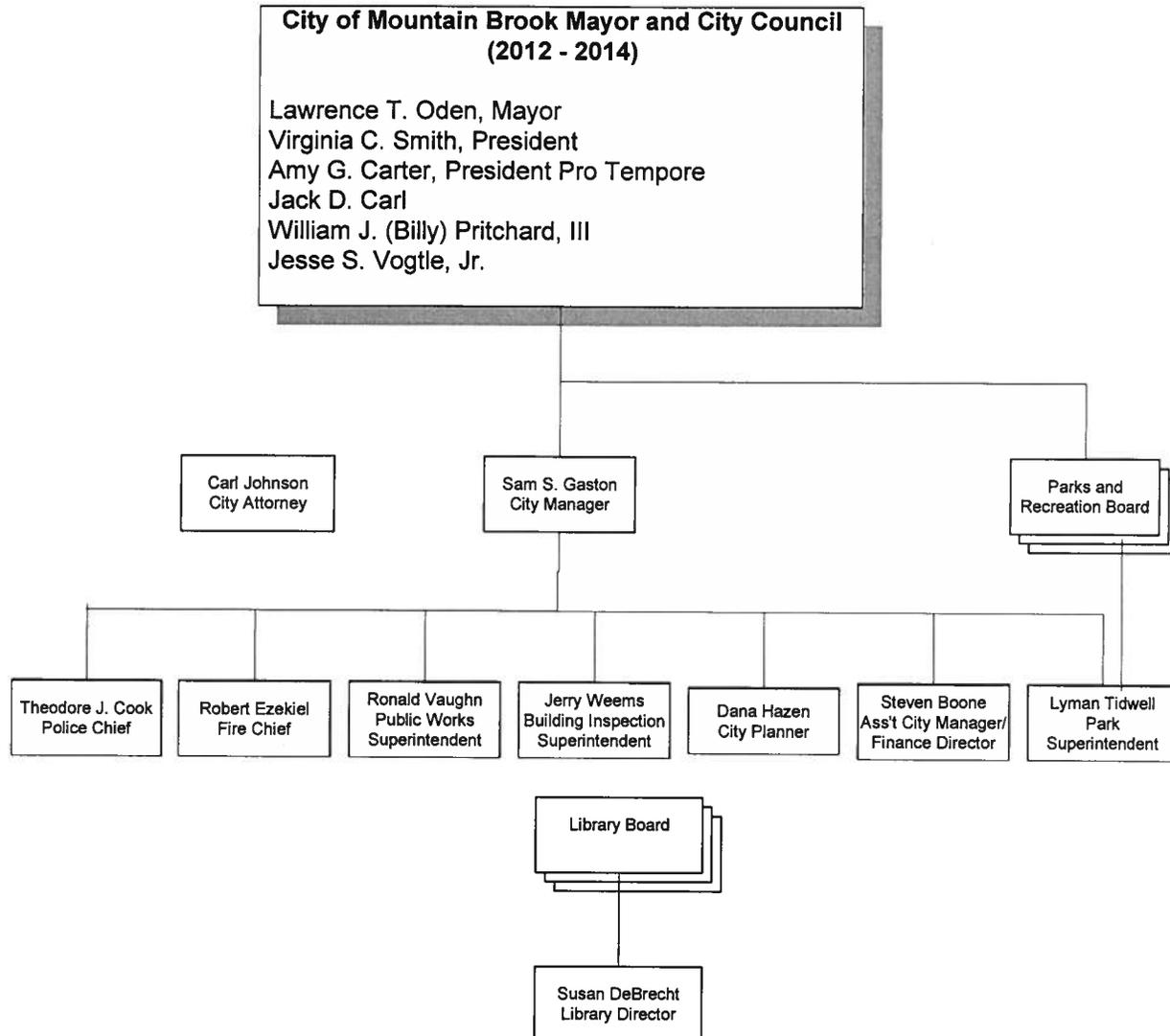


EXHIBIT 6

ORDINANCE NO. 1893

**AN ORDINANCE TO AMEND LANE PARKE DEVELOPMENT
PLAN PREVIOUSLY APPROVED BY ORDINANCE 1871,
AND AMENDED BY ORDINANCE 1885**

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

1. **Development Standards.** The Master Development Plan and the materials submitted by the applicant, as required by Section 129-265 of the Mountain Brook City Code, as approved upon the adoption of Ordinance 1871 dated May 21, 2012, and amended by Ordinance 1885, dated March 11, 2013, are hereby amended to include the changes set forth in the Amended

PUD Application, dated August 1, 2013, which is approved herewith, made a part hereof, and specifically incorporated herein by reference, said Plan and materials constituting regulatory standards for use of the subject property, subject to further modification only as provided for in Article XVI, Chapter 129 of the Mountain Brook City Code.

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

A parcel of land being situated in the Northeast quarter of the Northwest quarter and the Southeast quarter of the Northwest quarter of Section 8, Township 18 South, Range 2 West, more particularly described as follows:

Begin at the Southwest Corner of the Northeast Quarter of the Northwest Quarter of Section 8, Township 18 South, Range 2 West; being the Point of Beginning; thence run Northerly along the West line of said Quarter - Quarter a distance of 665.12 feet; thence right 91°-08'-04" a distance of 1325.11 feet; thence right 88°-58'-55" a distance of 74.22 feet; thence right 37°-49'-05" a distance of 736.41 feet; thence right 52°-46'-30" a distance of 62.37 feet; thence right 00°-14'-22" a distance of 179.92 feet; thence left 90°-58'-32" a distance of 355.39 feet; thence right 88°-43'-29" a distance of 24.53 feet; thence left 87°-29'-35" a distance of 139.13 feet; thence right 89°-27'-49" a distance of 14.61 feet; thence left 117°-30'-00" a distance of 175.92 feet; thence right 84°-32'-17" a distance of 46.85 feet; thence tangent to a curve to the left having a radius of 1243.26 feet and a central angle of 9°-20'-05" along the curve an arc distance of 202.55 feet; thence right 62°-49'-52" from the tangent of said curve a distance of 329.33 feet; thence tangent to a curve to the left having a central angle of 18°-00'-50" and a radius of 66.12 feet an arc distance of 20.79 feet; thence left 2°-03'-01" to the tangent of a curve to the left having a central angle of 34°-34'-36" and a radius of 60.77 feet, an arc distance of 36.67 feet; thence continue from the tangent of said curve a distance of 45.64 feet; thence right 90°-00'-00" a distance of 119.49 feet; thence right 33°-25'-36" a distance of 245.11 feet; thence right 0°-00'-42" a distance of 377.82 feet to the Point of Beginning.

Said Parcel contains 27.59 acres more or less.

3. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
4. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.
5. **Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

APPENDIX 5



August 22, 2013

SUBJECT: Mountain Brook Sidewalks – Phase 9
Project Number: CMAQ-PE12()
Mountain Brook, Alabama – SA #13-0005

Initial Contract Authorization

I. PUBLIC INVOLVEMENT MEETING.....Lump Sum \$8,073.74

- A. Please note this meeting is not an ALDOT requirement but Sain recommends this as a means to document the City's efforts to inform the public of the proposed sidewalks.
- B. This public involvement stage will be held before the survey and design has begun and will be based upon aerial photography, GIS data, and information obtained from site visits.
- C. A preliminary layout of the project will be prepared and potential impacts to the adjacent property owners will be identified on the layout. The City will have an opportunity to review the drawing at a meeting with Sain prior before the public involvement. A large roll map will be used to display the proposed plan at the meeting.
- D. Nimrod Long and Associates will act as a sub-consultant assisting in preparing for the Public Involvement Meeting by reviewing the Sain prepared maps, assisting with concept refinements, and attending the coordination meeting.
- E. We propose to have one (1) public involvement meeting at a location chosen by the City of Mountain Brook. Sain will prepare a flyer and letter for the City to use in advertising for the public meeting. The associated costs of advertising are not included in this proposal.
- F. Sain will attend the meeting to describe the project and answer questions. There will be a comment sheet given to all the residents for their input for the project.
- G. Sain will provide the City of Mountain Brook with a summary of all the comments received at the public involvement meeting.

II. RIGHT-OF-WAY SURVEYLump Sum \$1,000.00

- A. Courthouse research on property ownership to supplement GIS data.

III. NIMROD LONG AND ASSOCIATESLump Sum \$2,345.00

- A. NLA will assist Sain with determining the sidewalk location and impacts to property owners for preparation of maps.
- B. NLA will attend the Public Involvement meeting.

Celebrating 40 Years of Excellence in Engineering and Surveying

Two Perimeter Park South, Suite 500 East - Birmingham, Alabama 35243
p (205) 940-6420 - f (205) 940-6433
www.sain.com

2013-117

Mountain Brook Sidewalks – Phase 9
August 22, 2013
Page 2

GRAND TOTAL - \$11,418.74

Sincerely,

SAIN ASSOCIATES, INC.

Jim Meads, P.E.
President/CEO
Alabama Reg. #17294

Alicia Bailey, P.E.
Project Manager
Alabama Reg. #26339

ACCEPTED BY:

City of Mountain Brook

By:

Date: 8/26/2013

ADDENDUM TO AGREEMENT BETWEEN
THE CITY OF MOUNTAIN BROOK AND
SAIN ASSOCIATES
DATED AUGUST 26, 2013

THIS ADDENDUM ("the/this Addendum") to the principal agreement between the City of Mountain Brook, Alabama ("the City") and Sain Associates ("the Contractor") dated August 26, 2013.

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

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

2013-117

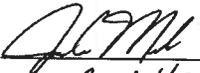
and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

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

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

DATED this 26th day of August, 2013.

Sain Associates

By: 
 Its: President/CEO

City of Mountain Brook, Alabama

By: 
 Its: Mayor

SAIN associates

consulting engineers & surveyors

August 22, 2013

Mr. Sam Gaston
City Manager
City of Mountain Brook
3928 Montclair Road, Suite 200
Mountain Brook, AL 35213

SUBJECT: Mountain Brook Village Walkway System, Phase 6
CMAQ-9802(921)
Jefferson County

Dear Sam:

As previously discussed with you and ALDOT, Sain's fee for CE&I services on the subject project has been depleted. By this letter, we request a supplement to our contract for \$75,302.58.

The original contract was based on 140 working days and was originally estimated to complete in November 2012. Supplement #1 extended the end date to June 2013. Due to pending decisions on driveways and retaining walls, the contract time has been periodically stopped because these pending decisions have caused for gaps in the contractor's work. Even though time is not counting toward the contract, Sain has maintained full time inspection while the contractor is working. Sain has also attended several meetings and has extensive coordination with the City, Nimrod Long and Associates, and ALDOT regarding the plan revisions, quantity revisions, and contractor pricing in regards to the driveways and retaining walls.

Sain estimates the following for time remaining on the project:

- Time remaining on the original contract as of August 1 - 7 days
- Time extension for Cherokee and Overbrook intersection - 8 days
- Time extension for Supplemental Agreement #4 - 1 days
- Time extension for Walls L and O - 5 days
- Time extension for estimated over-runs - 11 days
- Weather days or delays - 10 days
- TOTAL: 42 days

The supplemental manday estimate is based upon 42 additional days and an approximate completion date of September 2013. Currently, the contractor projects to be substantially complete by mid September and project closeout to be completed by end of September.

Please forward this letter and attachments with a letter of your approval to ALDOT. If you have any questions, please do not hesitate to call.

Sincerely,

Alicia Bailey

Alicia N. Bailey, P.E.
AL Registration #28339

James A. Meads

James A. Meads, P.E.
President/CEO
Alabama Reg. #17294

Celebrating 40 Years of Excellence in Engineering and Surveying

244 West Valley Avenue, Suite 200 - Birmingham, Alabama 35209 - p (205) 940-6420 - f (205) 940-6433
www.sain.com

2013-118

City of Mountain Brook
CMAQ-9802(921)

Sain Associates, Inc.

Project: Mountain Brook Village Walkway System, Phase 6

Task	Task Description	MANDAY TOTALS:	DAILY RATE:	TOTAL DIRECT LABOR:
8.0.A	Contract Administration	21	\$ 223.36	\$ 4,690.56
8.0.B	Survey Control and other surveying	10	\$ 152.00	\$ 1,520.00
8.0.C	Plan Check/Inspection	32	\$ 197.60	\$ 6,323.20
8.0.D	Training	5	\$ 152.00	\$ 760.00
8.0.E	Management Engineering Services	42	\$ 152.00	\$ 6,384.00
	Project Manager	5	\$ 276.80	\$ 1,384.00
	Level II Inspector	5	\$ 197.60	\$ 988.00
	Level I Inspector	13	\$ 152.00	\$ 1,976.00
	Administrative Assistant	2	\$ 138.40	\$ 276.80
	Professional Civil Engineer	5	\$ 276.80	\$ 1,384.00
	Target Person	14	\$ 152.00	\$ 2,128.00
	Instrument Person	14	\$ 176.00	\$ 2,464.00
	Field Supervisor	14	\$ 186.00	\$ 2,604.00
	Professional Land Surveyor	3.5	\$ 296.00	\$ 1,036.00
	Survey Drafter	3.25	\$ 185.28	\$ 602.16
	Total	131.75		\$ 23,650.72

OVERHEAD 14.25%: \$ 41,559.88
JOB TOTAL: \$ 65,410.80
DIRECT JOB COST: \$ 46,245.60
SUB-TOTAL: \$ 6,828.56
PROFIT @ 10%: \$ 682.86
SUB-CONSULTANT FEE: \$ -
SUB-CONSULTANT MARK-UP 5%: \$ 188.42
FACILITIES CAPITAL COST 0.75%: \$ -
TOTAL FEE AMOUNT: \$ 75,302.58

2013-118

RESOLUTION NO. 2013-119

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby accepts the professional services proposal submitted by Sain Associates, in the form attached hereto as Exhibit A, with respect to the Safe Routes to Schools sidewalk construction projects [SRTS-SR09(903) and SRTS-SR09(904)] construction engineering and inspection services and related work.

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contract and such other documents that may be determined necessary with respect to said services all subject to review and approval by the City Attorney.

ADOPTED: This 26th day of August, 2013.

Tom C. Smith
Council President

APPROVED: This 26th day of August, 2013.

Kevin Abich
Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on August 26, 2013, as same appears in the minutes of record of said meeting.

Steven Boone
City Clerk

AGREEMENT

BETWEEN

SAIN ASSOCIATES, INC.

AND

CITY OF MOUNTAIN BROOK

CONSTRUCTION ENGINEERING AND INSPECTION SERVICES

APPENDIX 3

Sain Associates SRTS CE&I Services

2013-119

Project #SRTS-SR09(903) & SRTS-SR09(904)

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2013-119

AGREEMENT

CONSTRUCTION ENGINEERING AND INSPECTION SERVICES

This AGREEMENT is made and entered into by and between the City of Mountain Brook, hereinafter referred to as the CITY, acting by and through the Alabama Department of Transportation, (ALDOT), hereinafter referred to as the STATE, and Sain Associates, Inc., which is qualified to do business in the State of Alabama, and has its principal Alabama office at 244 West Valley Avenue, Suite 200, Birmingham, Alabama 35209, Party of the Second Part, hereinafter referred to as the CONSULTANT.

ARTICLE I - SCOPE OF WORK

The CONSULTANT will perform construction engineering and inspection, materials sampling and testing and contract administration services for the Safe Routes to School for the City of Mountain Brook, Project Number SRTS-SR09(903) and SRTS-SR09(904). The project consists of the following seven sites: Canterbury Road (1950 LF), Overhill Road (900 LF), Overhill Road (414 LF), Watkins Road (1090 LF), Vine Street (615 LF), West Montcrest Drive (960 LF), and West Montcrest Drive (402 LF). The terms of this agreement between the CITY and CONSULTANT shall be the same terms in the on-call agreement between ALDOT and the CONSULTANT.

SECTION I - CONSTRUCTION ENGINEERING AND INSPECTION SERVICES

1.0 PURPOSE:

This statement of work describes and defines services which are required for construction engineering, inspection, materials sampling and testing and contract administration for construction projects selected by the CITY.

SCOPE:

The CONSULTANT shall be responsible for all construction engineering and administrative functions as defined in this Scope of Work and referenced manuals and procedures. The CONSULTANT shall

utilize effective control procedures to assure the construction of said project is performed in reasonable conformity with plans, specifications and contract provisions for assigned project.

The CONSULTANT shall provide professional, technical and administrative personnel, meeting requirements of the STATE in appropriate numbers at proper times to ensure that responsibilities assigned under this AGREEMENT are effectively fulfilled. All services shall be performed in accordance with established standard procedures and practices of the STATE. Prior to furnishing any services, the CONSULTANT shall be familiar with ALDOT procedures, standard and informal, and practices, standard and informal, for construction, engineering and contract administration used by the STATE.

2.0 ITEMS TO BE FURNISHED BY THE CITY/STATE TO CONSULTANT:

- A. The minimum Contract documents for each project shall be distributed to the CONSULTANT, via Division Engineer/City Engineer, by ALDOT'S Office Engineer subsequent to award of construction contract for each project as follows:
 - 5 sets Construction Plans - Half scale
 - 3 sets Construction Plans - Full size (1 set to be used in preparation of as built plans)
 - 2 sets Standard Drawings
 - 1 copy of Executed Contract

3.0 LIAISON:

The CONSULTANT shall be fully responsible for fulfilling all functions assigned to it by this AGREEMENT. The CONSULTANT'S activities and decisions relating to project(s) shall be subject to review by Division Engineer/City Engineer. The CONSULTANT shall provide coordination of all activities, correspondence, reports, and other communications related to its responsibilities under this AGREEMENT. No personnel shall be assigned until written notification by Division Engineer/City Engineer has been issued. Construction engineering and inspection forces shall be required of the CONSULTANT at all times when required by the STATE/CITY. If construction contract is suspended,

Project #SRTS-SR09(903) & SRTS-SR09(904)

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Project #SRTS-SR09(903) & SRTS-SR09(904)

Page | 3

the CONSULTANT'S forces shall be adjusted at the direction of Division Engineer/City Engineer to correspond with type of suspension, either complete suspension or partial suspension.

4.0 COOPERATION AND PERFORMANCE OF THE CONSULTANT:

During the period of this AGREEMENT, the STATE/CITY shall conduct reviews of various phases of the CONSULTANT'S operations, such as construction inspection, materials sampling and testing and administrative activities. Reviews shall be conducted to determine compliance with this AGREEMENT and sufficiency with which procedures are being effectively applied. These reviews are to assure that construction work and administrative activities are performed in reasonable conformity with the STATE policies, plans, specifications and contract provisions. The CONSULTANT shall cooperate and assist the STATE/CITY representatives in conducting said reviews. When deficiencies are indicated in a review, immediate remedial action shall be implemented by the CONSULTANT in conformance with the STATE'S/CITY'S recommendations. The STATE'S/CITY'S remedial recommendations and the CONSULTANT'S actions are to be properly documented by Division Engineer/City Engineer. The CONSULTANT shall be responsible for accuracy of its work and shall promptly implement policies and procedures reasonably necessary to prevent errors, omissions, or noncompliance with said contract terms. Federal Aid projects are subject to review by representatives of FHWA. Additional State personnel may make special reviews. The CONSULTANT shall fully cooperate with and assist in making such reviews.

5.0 REQUIREMENTS:

A. General:

It shall be the responsibility of the CONSULTANT to provide services as necessary for contract administration to produce construction in reasonable conformity with plans, specifications and contract provisions. The CONSULTANT shall advise Division Engineer/City Engineer and shall document any omissions, substitutions, defects, and deficiencies noted in the work of Contractor and the corrective action taken.

B. Project Inspection:

The CONSULTANT shall provide services to monitor and document Contractor's construction operations. The CONSULTANT shall test, inspect and document all

construction material as required to assure quality of workmanship and materials are in reasonable conformity with plans, specifications and other contract provisions. The CONSULTANT may be responsible for monitoring and approving asphalt production. The CONSULTANT shall keep detailed, accurate records of Contractor's daily operations and significant events that may affect the work. The standard procedures and practices of the STATE for inspections of construction projects are set out in the STATE'S Construction Manual. The CONSULTANT shall have appropriate certifications for inspection of work being performed. The CONSULTANT shall in general, perform inspection services in accordance with these standard procedures and practices and other accepted practices as may be appropriate.

C. Testing:

The CONSULTANT shall perform sampling and testing of component materials and completed work items to the extent that will assure materials and workmanship incorporated in each project is in reasonable conformity with plans, specifications and contract provisions. The CONSULTANT shall meet minimum sampling frequencies set out in the STATE'S Testing Manual. The STATE/CITY reserves the right to require additional sampling and testing. The CONSULTANT shall be specifically responsible for securing job control samples and utilizing test results to determine acceptability of all materials and completed work items. The CONSULTANT shall be responsible for verification of a certified test report as determined by the Bureau of Materials and Tests, DOT label, DOT stamp, etc., as appropriate. The CONSULTANT shall be responsible for progress record sampling of reinforcing steel. The STATE/CITY shall monitor the effectiveness of the CONSULTANT'S testing procedures through surveillance and obtaining testing progress record samples and final record samples. Progress record sampling and testing is necessary to verify job control sampling frequencies and test procedures are adequate. The CONSULTANT shall inform the STATE/CITY of schedules for sampling and testing as work progresses on each construction contract so sampling can be accomplished by the STATE at the proper time. Sampling and testing shall be as required by the aforementioned ALDOT Testing Manual or as modified by contract provisions. The

CONSULTANT shall be responsible for transporting samples to be tested to the appropriate State laboratory. Any testing performed at a laboratory other than the State laboratory shall be handled in a separate AGREEMENT. The CONSULTANT shall perform all required and necessary surveillance, inspection and documentation of project hot-mix asphalt operations.

D. Management Engineering Services:

The CONSULTANT shall perform all management engineering services necessary to: assure proper coordination of activities of all parties involved in accomplishing completion of projects; maintain complete, accurate records of all activities and events relating to projects; properly document all significant changes to projects; provide interpretations of plans, specifications and contract provisions; make recommendations to the STATE/CITY to resolve disputes that may arise in relation to construction contracts; and to maintain an adequate level of surveillance of Contractor's activities. The CONSULTANT shall perform any other management engineering services normally assigned to a project that are required to fulfill the CONSULTANT'S responsibilities under this AGREEMENT. All recordation and documentation shall be in accordance with standard ALDOT procedures, formats and content. CONSULTANT services include, but are not limited to the following:

1. Attending and participating in a pre-construction conference for each project. Record significant information revealed and decisions made at conference and if requested by the STATE/CITY, distribute copies of said minutes to appropriate parties. The CONSULTANT may be required to conduct the pre-construction conference.
2. Complete and maintain a full and accurate daily record of all activities and events relating to project. Record all work completed by Contractor, including quantities of pay items in conformity with Final Estimates preparation procedures and specifications. The CONSULTANT shall immediately report to Division Engineer/City Engineer changes in pay items, project time or cost as soon as they become known to the CONSULTANT.
3. Complete and maintain Project Diaries and Inspector's Daily Reports as requested by the STATE. Said diaries and reports shall be kept up-to-date on a daily basis.

4. Maintain a project log of all materials entering into work with proper indication of basis of acceptance for each shipment of material.
5. Maintain project records of all sampling and testing accomplished. Analyze such records to ascertain acceptability of materials and completed work items. The field reports shall be recorded in project records within three days. The CONSULTANT shall verify, certify and document work items requiring performance periods (curing period, operational period, etc.).
6. Prepare and submit monthly to Division Engineer/City Engineer a comprehensive tabulation of the quantity of each pay item satisfactorily completed that includes appropriate test reports and/or materials certifications or materials stored to date. Quantities shall be based on daily records and calculations. Calculations shall be properly recorded. The tabulations shall be used for preparation of the Monthly Progress Estimate.
7. Provide interpretations of plans, specifications and contract provisions. The CONSULTANT shall consult with Division Engineer/City Engineer when an interpretation involves complex issues or may have an impact on cost or quality of performing said work.
8. Field problems are difficulties encountered during construction through circumstance, which may or may not be under the control of Contractor, requiring a degree of engineering evaluation and decision. Field problems might involve situations such as: out of tolerance work, out of specification materials, structural defects, accidental damage, underground obstructions, etc. These problems may have a significant impact upon the execution, progress, cost or quality of said project. Therefore, it is of paramount importance that problems be resolved expeditiously. The CONSULTANT shall ensure solutions are pursued and implemented as expeditiously as possible. Where a difficulty, problem, or defect of any nature is encountered during construction, the CONSULTANT shall assemble all relevant information to include any proposals from Contractor. The

CONSULTANT shall document and evaluate the same in a concise and orderly manner, by reviewing all information and circumstances. The CONSULTANT shall make recommendations to Division Engineer/City Engineer for the most expeditious course of action to minimize delays and costs while achieving a structurally acceptable result. The State Construction Engineer, depending on the nature of proposal are responsible for structural engineering analysis of Contractor's proposals, determining acceptability of proposals and meeting the requirements of said design. However, the CONSULTANT shall be responsible for ensuring that Division Engineer/City Engineer is provided with all relevant information and, in addition, shall appraise and make recommendations to Division Engineer/City Engineer of all project(s) related circumstances that may have an influence upon the solution.

In particular, the CONSULTANT shall first utilize his own personnel and resources in order to assess the problem and its likely impacts on said project(s). By utilizing CONSULTANT personnel and resources, the CONSULTANT shall assess both technical and contractual implications upon said project(s) of any proposals presented by Contractor. The CONSULTANT shall consider all likely impacts upon project(s) as regards to costs, delays, potential claims, contract administration, management, any justifiable financial adjustments (increases or decreases, including penalties) to be applied to Construction Contract, and feasibility of the Contractor successfully and expeditiously fulfilling his technical proposals. The CONSULTANT shall make these assessments in order to formulate his recommendations. The CONSULTANT shall then forward the said assessments and recommendations to Division Engineer/City Engineer, together with any proposals from Contractor. The CONSULTANT shall be a liaison and cooperate with the STATE/CITY in resolution of any problems. Upon resolution and approval of technical solution, the CONSULTANT shall ensure all approved remedial measures are completed in a technically competent and satisfactory manner. The CONSULTANT shall be responsible for any contract administration and management

normally associated with implementing remedial measures. In situations where the CONSULTANT does not have direct responsibility for engineering inspection of the item that caused said problem, but where that item is now under his area of control, (example: defective precast components or fabricated steelwork made at a facility under engineering inspection of a different party and later delivered to site), the CONSULTANT shall formulate his assessment and recommendations and cooperate in resolving the problem. In all situations, the CONSULTANT shall ensure all proposals, reviews, assessments, studies, recommendations and decisions are executed expeditiously in order to minimize any delays and costs.

9. The CONSULTANT shall analyze changes to plans, specifications or contract provisions and extra work that appear to be necessary to fulfill the intent of said contract. The CONSULTANT shall provide recommended changes to Division Engineer/City Engineer for approval. Approval of Division Engineer/City Engineer must be obtained prior to initiating any change or extra work.
10. When a modification to the original contract for a project is required, due to a necessary change in character of work, the CONSULTANT, in conjunction with the STATE/CITY Project manager, shall negotiate prices with Contractor and prepare and submit a recommendation to Division Engineer/City Engineer for approval. The Division Engineer/City Engineer shall prepare the required SUPPLEMENTAL AGREEMENT and obtain all required approvals.
11. In the case where Contractor gives notice, either written or verbal, that certain work to be performed is beyond the scope of construction contract and intends to claim additional compensation, the CONSULTANT shall maintain accurate documentation in accordance with project contract requirements, of the costs involved in such work.
12. In the case where Contractor for a project submits a claim for additional compensation, the CONSULTANT shall analyze submittal in conjunction with Division Construction Engineer/City Construction Engineer. The CONSULTANT may be required to provide

recommendation on validity and reasonableness of the requested additional compensation and/or contract time extension. The CONSULTANT shall maintain complete and accurate documentation of work involved in claims.

13. In the case where Contractor for a project submits a request for extension of allowable contract time, the CONSULTANT shall analyze request and prepare a recommendation to Division Engineer/City Engineer covering accuracy of statements and actual effect of delaying factors on completion of controlling work items. The CONSULTANT shall make recommendations weekly, or other times as necessary, to Division Engineer/City Engineer on all delays. This recommendation is needed to justify a time extension.
14. The CONSULTANT shall prepare and submit to Division Engineer/City Engineer a final estimate with documentation and one (1) set of record as-built plans for each contract. All changes made to plans, which involve CONSULTANT, shall be signed and sealed by the CONSULTANT and Division Engineer/City Engineer. This task must be completed within a timely manner or in accordance with current ALDOT Standard Specifications from the earliest project acceptance date.
15. At request of the STATE/CITY, the CONSULTANT shall assist appropriate STATE/CITY offices in preparing for hearings or litigation that may occur during the term of this AGREEMENT in connection with a project covered by this AGREEMENT.
16. The CONSULTANT shall monitor and document Contractor's compliance with contract provisions in regard to payment of predetermined wage rates in accordance with State procedures. This includes sub-contractor compliance.
17. Shop drawing/sample submittal and approvals shall be logged by the STATE. Tracking shall include maintaining a log book of the status of each submittal as it progresses through review and approval. The CONSULTANT shall actively encourage all reviewers to accomplish reviews promptly.
18. The CONSULTANT shall assist Contractor and utility companies in resolving conflicts so that any conflicting utilities are timely removed, adjusted or protected to minimize

delays to construction operations. Documentation shall be maintained in accordance with the STATE'S procedures.

19. The Project Manager and the CONSULTANT for each particular project shall conduct meetings as required with respective Contractor, sub-contractor and/or utility companies to review plans, schedules, problems or other areas of concern. The results of these meetings shall be recorded in project diary.
 20. The CONSULTANT may be required to conduct and document field reviews of maintenance of traffic operations after normal working hours, weekends and holidays.
 21. The CONSULTANT may be required to respond to inquiries from various persons, i.e., public, media, property owners, local agencies, State agencies, Federal agencies, etc., and inform Division Engineer/City Engineer of these inquiries.
 22. The CONSULTANT may be required to provide field construction activities in areas of design engineering, vertical and horizontal control, typical sections, cross-sections for monthly estimates and other engineering required to complete construction project.
- 6.0 PERSONNEL: (See attached personnel and their qualifications)
- A. General Requirements:
The CONSULTANT shall provide a sufficient number of qualified personnel as directed by the STATE/CITY to effectively carry out its responsibilities under this AGREEMENT.
 - B. Personnel Qualifications:
The CONSULTANT shall utilize only competent personnel who are qualified by experience and education. The CONSULTANT shall submit, in writing, to Division Engineer/City Engineer the name of all personnel to be considered for assignment to said construction projects, together with a detailed resume of each person's qualifications and copies of current certifications with respect to salary, education and experience. The CONSULTANT'S personnel approval request shall be submitted at least two weeks prior to and approved by Division Engineer/City Engineer prior to the date an individual is to report to work. Listed below are minimum qualifications and

Job descriptions for the CONSULTANT'S personnel that may be working on various projects under this AGREEMENT.

PROJECT MANAGER:

Minimum Qualifications:

- Ten years of experience in construction inspection, surveying or highway materials testing and inspection or a Bachelor of Science degree in Civil Engineering or Registered Professional Engineer with five years of experience in construction inspection, surveying or highway materials testing and inspection. One or more of the following certifications may be required as approved by Division Engineer/City Engineer.
- Certified Asphalt Technician Level I – Field Tester
- Certified Level II – Quality Management Technician
- Certified Asphalt Roadway Technician
- Work Zone Safety Certification
- Certified Concrete Technician (ACI and ALDOT certification)
- Radiological Safety Course Certification
- Qualified Credentialed Inspector (QCI)

Job Description:

This is administrative and technical work in Civil Engineering. Employees in said class shall act as the first contact between contractor and the STATE/CITY. The Project Manager shall be responsible for supervision of all employees assigned to said project. The Project Manager shall ensure that a project is built in accordance with project plans and specifications under which contract was awarded. The Project Manager shall report directly to District Engineer's or Division Engineer's/City Engineer's designated representative.

SENIOR INSPECTOR:

Minimum Qualifications:

- Eight years of experience in construction inspection, surveying or highway materials testing and inspection or a Bachelor of Science degree in Civil Engineering or Registered Professional Engineer with two years of experience in construction inspection, surveying or highway materials testing and inspection. One or more of the following certifications as necessary and approved by Division Engineer/City Engineer. Inspectors who are to perform a specific task shall be certified in said field.
- Certified Asphalt Technician Level I – Field Tester
- Certified Level II – Quality Management Technician
- Certified Concrete Technician (ACI and ALDOT Certification)
- Certified Asphalt Roadway Technician
- Work Zone Safety Certification
- Radiological Safety Course Certification
- Qualified Credentialed Inspector (QCI)

Job Description:

This is skilled sub-professional engineering work in the field or office. Employees in said class shall act as the Assistant Project Manager and be responsible for reviewing and directing inspection duties of all project inspectors. The Senior Inspector shall be capable of surveying and drafting, as they apply to documenting and inspection, of a construction project. The Senior Inspector shall report directly to Project Manager.

LEVEL II INSPECTOR:

Minimum Qualifications:

- Five years of experience in construction inspection, surveying or highway materials testing and inspection or a Bachelor of Science degree in Civil Engineering with one year of experience in construction inspection, surveying or materials testing and inspection. One or

more of the following certifications as necessary and approved by Division Engineer/City Engineer. Inspectors who are to perform a specific task shall be certified in said field.

- Certified Asphalt Technician Level I – Field Tester
- Certified Concrete Technician (ACI and ALDOT Certification)
- Certified Asphalt Roadway Technician
- Work Zone Safety Certification
- Radiological Safety Course Certification
- Qualified Credentialed Inspector (QCI)

Job Description:

This is skilled sub-professional engineering work in the field or office. Employees in said class shall follow standard procedures in documenting construction projects and inspecting job activities to verify they are in compliance with project plans and specifications. The inspector shall be responsible for completing a daily report documenting labor and equipment used by contractor to include a description of work performed and any pertinent conversations with contractor. The inspector will assist with office work such as plotting cross-sections and computing earthwork quantities. The inspector shall report directly to Senior Inspector and/or Project Manager.

LEVEL I INSPECTOR:

Minimum Qualifications:

- Some experience in construction inspection, surveying or highway materials testing and inspection is preferred. One or more of the following certifications as necessary and approved by Division Engineer/City Engineer. Inspectors who are to perform a specific task shall be certified in that particular field.
- Certified Asphalt Technician Level I – Field Tester
- Certified Concrete Technician (ACI and ALDOT Certification)
- Certified Asphalt Roadway Technician

- Work Zone Safety Certification
- Radiological Safety Course Certification
- Qualified Credentialed Inspector (QCI)

Job Description:

This is sub-professional engineering work in the field or office. Employees in said class shall follow standard procedures in documenting construction projects and inspecting job activities to verify they are in compliance with project plans and specifications. The inspector shall be responsible for completing a daily report documenting labor and equipment used by contractor to include a description of work performed and any pertinent conversations with contractor. The inspector shall assist with office work such as plotting cross-sections and computing earthwork quantities. The inspector shall report directly to Senior Inspector and/or Project Manager.

ADMINISTRATIVE ASSISTANT

Minimum Qualifications:

- A high school diploma or a GED certificate.

Job Description:

Employees in this class may perform a variety of clerical duties. These duties may include data entry, filing documents, sorting mail, typing documents, taking dictation, proofreading documents, making copies, greeting and directing the public, taking telephone messages, posting records, or making simple calculations.

PROFESSIONAL CIVIL ENGINEER

Minimum Qualifications:

- Must possess a Professional Engineer's License as issued by the Alabama State Board of Licensure for Professional Engineers and Land Surveyors and must have at least one year of professional civil engineering experience.
- Qualified Credentialed Inspector (QCI)

Job Description:

This is advanced professional work in the field of civil engineering. Employees in said class perform a variety of complex engineering duties associated with planning, geodetic surveys, location, design, construction or maintenance of roads, bridges, buildings, or other civil engineering projects.

TARGET PERSON

Minimum Qualifications:

- Six months experience in surveying.

Job Description:

This is sub-professional work in the field or office. Employees in said class follow standard procedures in carrying out field or office assignments related to surveying for construction projects. Limited instrument use for construction and right-of-way stakout, obtaining quantity cross-sections, spot checking location and elevation of different construction activities such as form work, setting of girders, pipe grades and blue top elevations as well as cutting line constitute the main activities.

INSTRUMENT PERSON

Minimum Qualifications:

- Two years experience in surveying.

Job Description:

This is skilled sub-professional surveying work in the field or office. Employees in said class follow standard procedures in carrying out field or office assignments related to surveying for construction projects. Employees in said class may be in charge of checking of contractor's work, obtaining quantity cross-sections, and staking right-of-way. Said employee must be able to operate several types of surveying equipment. The ability to read/comprehend contract plans, take and reduce field notes and complete daily reports is essential. The position shall report directly to Field Supervisor or Project Manager.

FIELD SUPERVISOR

Minimum Qualifications:

- Four years experience in surveying with at least one year of experience as a construction survey party chief.

Job Description:

This is supervisory and technical surveying work in the field or office. Employees in said class are in charge of making daily work assignments, interpreting and reading construction plans, and directing surveying activities involved with checking contractor's work, obtaining quantity cross-sections, and staking right-of-way. Work is performed with considerable independence, but is reviewed for conformance with established policies, procedures, and applicable State laws. The ability to calculate horizontal and vertical positions as well as quantities for payment, communicate in writing and orally, and instruct personnel in the use of equipment is essential. Said position shall report directly to Project Manager or Professional Land Surveyor

PROFESSIONAL LAND SURVEYOR

Minimum Qualifications:

- Must possess a Professional Land Surveyor's License as issued by the Alabama State Board of Licensure for Professional Engineers and Land Surveyors and have at least one year of experience as a Professional Land Surveyor.

Job Description:

This is supervisory professional surveying work in the field or office as required by Alabama State Law. Employees in said class shall insure compliance to standards of practice for surveying in the State of Alabama and conformance with established policies and procedures for surveys which involve the staking of right-of-way.

C. STAFFING:

The STATE/CITY shall determine number and type of personnel needed to adequately staff and carry out responsibilities of said scope of service. The qualifications of each person proposed

for assignment must be reviewed and approved in writing by Division Engineer/City Engineer. An individual previously approved whose performance is later determined by the STATE/CITY to be unsatisfactory shall be immediately removed and replaced by the CONSULTANT within one week after notification. The CONSULTANT shall maintain an appropriate staff, as approved by Division Engineer/City Engineer, after completion of construction to complete the final estimate. Qualified personnel, thoroughly familiar with all aspects of construction and final measurements of various pay items, shall be available to resolve disputed final pay quantities until appropriate contract is finalized.

As Contractor's operations on a contract diminish, the CONSULTANT shall reduce number of personnel assigned to said project as appropriate. Any adjustment of the CONSULTANT forces as directed by Division Engineer/City Engineer shall be accomplished within one week after notification. The CONSULTANT shall, at all times, provide project personnel to ensure proper staffing is maintained. Personnel on a specific project shall be rotated to keep overtime to a minimum. The Project Manager shall be responsible to schedule the CONSULTANT employee work hours to avoid overtime. This shall include varying employee work hours, or the use of shift work, or rescheduling employee normal work hours in advance of expected overtime. The method of schedule modification shall be approved by Division Engineer/City Engineer. If overtime is not held to a minimum, then SECTION 1, 7.0 (Cooperation and Performance of the CONSULTANT) of this AGREEMENT shall be enforced to replace personnel. If construction contract is suspended, the CONSULTANT'S forces shall be adjusted at the direction of Division Engineer/City Engineer to correspond with type of suspension. In the event of a construction contract suspension which requires the removal of CONSULTANT forces from project, the CONSULTANT shall be allowed up to a maximum of five (5) days to demobilize, relocate or terminate such forces.

Should the STATE/CITY determine a need for additional classifications not set forth in this AGREEMENT, the classifications and hourly pay ranges shall be established based on mutual AGREEMENT with the CONSULTANT.

D. CERTIFICATION - Licensing for Equipment and Personnel:

The CONSULTANT shall be responsible for obtaining proper certification and licenses for equipment and personnel used on any project. Licensing of nuclear testing devices shall be obtained through the appropriate agencies. Only technicians approved by the STATE shall be authorized to operate nuclear testing devices. The CONSULTANT shall be responsible for monitoring activity (i.e. film badges/radiation levels) of their technicians who operate nuclear testing devices. Other certifications for technicians such as concrete, Asphalt Roadway, Asphalt Plant, American Traffic Safety Services Association (ATSSA) Worksite Supervisors and others if applicable shall be required. Construction Inspectors work qualifications shall be as shown in SECTION 1, Paragraph 6.0 B of this AGREEMENT.

7.0 SUBCONSULTANT SERVICES: (See attached proposal from Bhat Geosciences)

8.0 OTHER SERVICES:

The CONSULTANT shall, upon written authorization by Division Engineer/City Engineer, perform any additional services not otherwise identified in this AGREEMENT as may be required by the STATE/CITY in connection with said Project(s).

9.0 CLAIMS REVIEW:

In the event Contractor for said project submits a claim for additional compensation and/or time after the CONSULTANT has completed this AGREEMENT, the CONSULTANT shall, by written request from the STATE/CITY, analyze the claim, prepare a recommendation to Division Engineer/City Engineer covering validity and reasonableness of charges and/or assist in negotiations leading to settlement of said claim. Compensation for these services shall be mutually agreed between the STATE/CITY and the CONSULTANT prior to performance of said Services.

A. The CONSULTANT shall, upon written request by Division Engineer/City Engineer, assist appropriate STATE/CITY Offices in preparing for arbitration hearings or litigation that occur after the CONSULTANT'S contract time in connection with the project covered by this AGREEMENT.

The CONSULTANT shall, upon written request by Division Engineer/City Engineer, provide qualified Engineers and/or Engineering Technicians to serve as engineering witnesses, provide exhibits, and otherwise

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

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

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

DATED this 26th day of August, 2013.

Sain Associates

City of Mountain Brook, Alabama

By: [Signature]
Its: President/CEO

By: [Signature]
Its: Mayor

2013-120

August 20, 2013

Mayor Terry Oden
Mountain Brook City Council
PO Box 130009
Mountain Brook, Alabama 35213-0009

Re: Request for Business License for iRevive, LLC

Mr. Mayor and City Council members:

We submit for your consideration a formal request for a business license to be used at 2710 Culver Road in Mountain Brook Village. Our proposed business name will be "iRevive" and our primary service offered to the public will be the repair, refurbishment, and resale of mobile electronic devices. This will include multiple brands of smartphones, tablets, and other mobile computing devices.

We expect that our location will have a maximum of 3 employees once we reach a peak business volume. The property currently has three parking spaces in the alley behind the business that will allow for employee parking without taking up spaces for public use.

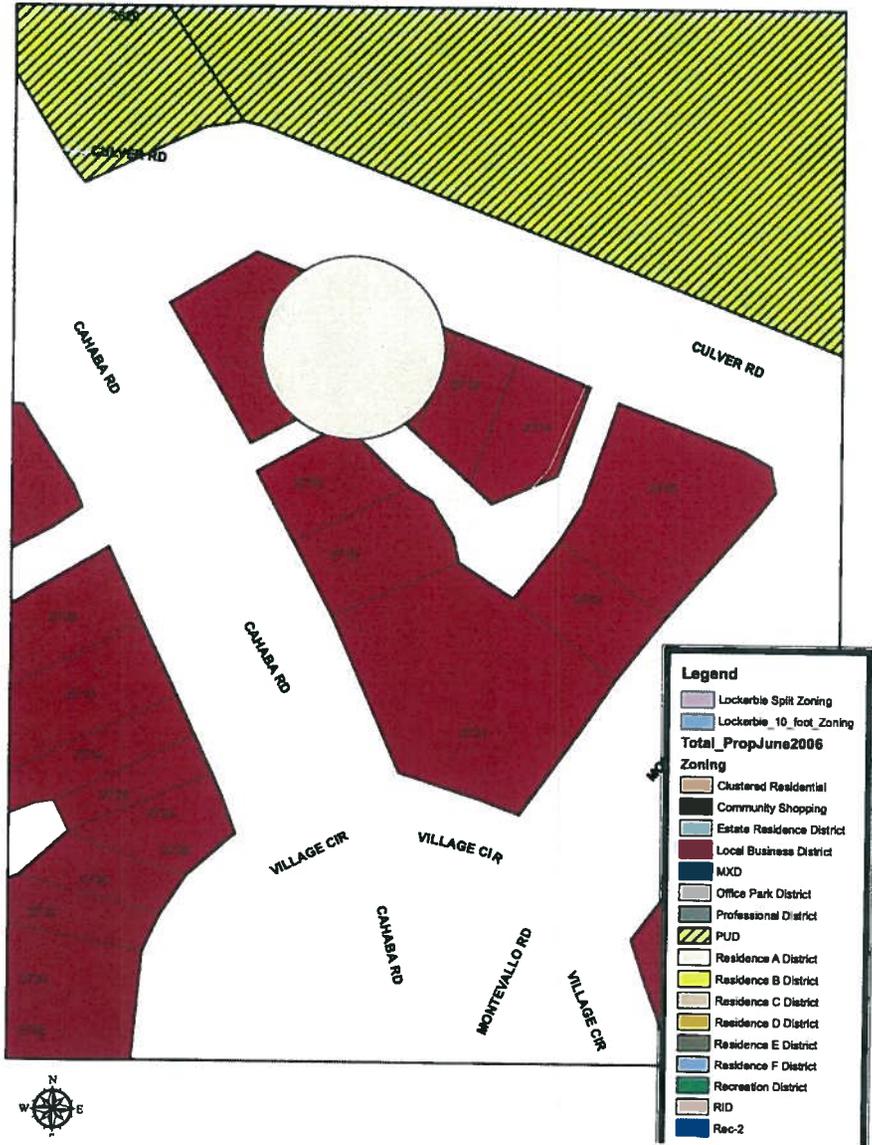
Our proposed hours of operation will be Monday through Saturday, 9 AM to 6PM, although we might adjust this slightly once we have a better sense of when customers might need our services for dropping off or picking up their devices. Due to the nature of our services, we believe the anticipated peak times of traffic into our store will be early in the business day or at the end of the day. With that being said, it is also likely that we will experience a steady stream throughout the day but with no more than 2 or 3 customers in the store at any given time. There is sufficient customer parking for that load factor directly in front of the store.

Thank you very much for your consideration. We look forward to being a part of the Mountain Brook business community.

Sincerely,

R. Craig Fowler

Cc: Robert C. Field
Eric H. Lipp



Lane Parke Update

August 2013

Summary

The developers revisited the Lane Parke development after several inputs: heightened interest in opening an upscale inn opening earlier than anticipated, retooling and rescaling the retail mix, and concerns communicated with the size and scope associated with the total impact of the development. A revised development plan has been put forth with two different development scenarios. Both secure solid retail and dining offerings for Mountain Brook residents, visitors, and others patronizing the Lane Parke development.

With the groundbreaking of the inn scheduled for October 2013 and opening fall of 2014, interest for location in Lane Parke, especially Phase I, has escalated with retailers who see the opportunity of the Birmingham market as a healthy and vibrant economy.

While this plan has a smaller footprint than earlier submissions, it is stronger and yields a more refined retail palette than before. These unique retailers will bring a new and refreshed energy to the village.

Scenario I

This scenario follows the path of: inn groundbreaking in October 2013 and opening fall 2014, initial construction of Phase I for November of 2013 opening spring of 2015, and Phase II following the completion of Phase I. The inn has been estimated to bring in approximately \$9 million dollars in revenue broken down into two categories. The developers are estimating that lodging revenues would be around \$4.8 million beginning in 2015 and \$4.5 million in food and beverage, catering, banquet, spa, art gallery, and other miscellaneous revenues associated with the inn. This should hold true given that outside of the lodging revenues generated, the inn will also provide new meeting opportunities that can be used for corporate meetings, small conferences, and social reception opportunities such as weddings and other family milestone gatherings. An inn of this stature will also provide additional customers for the surrounding retailers and dining establishments.

Phase I

This phase of the development is broken down in sixty (60%) percent food/grocery and forty (40%) percent retail of approximately 67,000 square feet. The retailers who will locate in Phase I are upscale and new to the Birmingham market. It is expected that the new dining options will also generate significant new dining dollars for the City of Mountain Brook.

Our estimates are that this particular phase of the development would generate \$433 sales dollars per square foot while Retail Specialists and Daniel estimates are \$446. This \$13 difference between estimates is not a significant amount and should not affect the success of this phase of the Lane Parke development.

This phase also takes into account that current tenants who choose to relocate in the new development do so in a timely manner allowing for the construction of Phase II to begin.

Phase II

The construction of this phase should yield approximately 51,000 square feet of retail and dining space. Approximately 13-14,000 (32%) square feet will be dedicated to dining opportunities and the remaining square footage to retail space and the relocated bank. Our retail sales dollars per square foot for this phase is \$326 with Retail Specialists and Daniel estimates at \$353 per square foot. While this is a larger difference than for Phase I, it is not cause for question. Estimates for three retailers and dining were somewhat less than those estimates provided by Retail Specialists Inc. and Daniel, but several factors could justify their higher estimates.

Overall for Phase I and Phase II, our estimates are \$374 per square foot with Daniel and Retail Specialists, Inc. reporting an estimate of \$395 per square foot.

Scenario II

This scenario deals with the reluctance of a current tenant to commit to locating in the new Lane Parke development. Should this developer decide not to locate, the owners and developers of Lane Parke have created a plan that allows for them to stay in place for the remainder of their lease and the owners and developers can continue the forward progress of Lane Parke. Phase I will not be affected and Phase II will be delayed. By creating this interim plan, the owners and developers will provide an opportunity for this retailer to continue to operate as well as other retailers who can choose to stay in the interim location subject to certain conditions. Once the lease has expired with the reluctant tenant, Phase II can continue as proposed.

This interim phase will contain 35,000 square feet with approximately 27,000 square feet of space in the existing center which will house a couple of spec retailers and three existing retailers. The remaining 8,000 square feet would represent Regions, Treadwell's, and the post office. These entities do not generate retail sales dollars for the city.

Sales per square foot for the interim center which contains current retailers are estimated to be \$220 per square foot with Daniel and Retail Specialists estimating \$176 per square foot. Their estimates for current retailers were a bit lower than what was provided earlier from city data so there is no concern for this difference either.

Conclusion

Overall, either scenario introduces a healthy revenue stream for the City of Mountain Brook. With the inn opening earlier than estimated in previous plans, new revenues and new patrons for the City of Mountain Brook are sure to come and enjoy the inn for business or personal visits. With the initial phase of Lane Parke opening shortly after the inn, there will be a renewed interest to visit Mountain Brook Village to shop, dine, and appreciate a new Lane Parke.

APPENDIX 5

	A	B	C	D	E
1	Phase I	Category	Size	Retail Specialists/Daniel Estimates	Allaway Estimates
2	Building A				
3	A1	Food	28300	715	728
4	A2	Retail	1065	400	378
5	A3	Retail	2400	325	461
6	A4	Retail	6500	628	400
7					
8	Building B				
9	B1	Retail	5400	150	235
10	B2	Retail	3330	150	235
11			38265		
12	Building C				
13	C1	Food	6500	500	472
14	C2	Retail	1800	500	511
15	C3	Retail	2400	400	364
16	C4	Retail	2400	400	425
17	C5	Food	3000	750	733
18	C6	Food	1150	440	300
19	C7	Food	3000	440	388
20			20250		
21	Phase I				
22	Estimated sales per sq. ft			\$446	\$433
23					
24	Phase II				
25	Building D, E & F				
26	D1	Retail	1700	350	200
27	D2	Retail	2600	350	200
28	D3	Retail	2600	350	200
29	D4	Retail	2100	350	328
30	D5	Retail	1500	375	412
31	D6	Retail	1450	325	300
32	D7	Retail	1500	325	300
33	D8	Retail	5260	325	300
34	D9	Food	7285	500	488
35	E2	Retail	4300	350	328
36	E3	Retail	1450	400	425
37	E4	Retail	1430	400	425
38	E5	Retail	1440	400	414
39	E6	Retail	1440	400	414
40	E7	Retail	2800	100	137
41	E8	Food	5230	500	473
42	F				
43	F1	Food	3700	200	200
44	Phase II		47785		
45	Estimated Sales per sq ft			\$353	\$326
46					

APPENDIX 5

	A	B	C	D	E
47	Existing Center				
48	Dande Lion	Retail	3950	175	120
49	Rite Aid	Retail	11144	158	340
50	Spec 1	Retail	2002	150	150
51	Spec 2	Retail	2002	150	150
52	Spec 3	Retail	3164	210	280
53	Spec 4	Retail	5172	210	280
54			27434		
55	Estimated Sales per sq ft			\$176	\$220
56					
57	Total Project: Phase I and II				
58	Estimated sales per sq ft			\$395	\$374
59					
60					
61	*All square footages are estimates and can increase or decrease depending on retailers particular need.				

APPENDIX 5

Lane Parke			
Public Infrastructure Summary			
Preliminary Development Budgets			
July, 2013 update			
Public Infrastructure (Off site)			Segment Subtotal
	Park Lane Road		
		Road construction	
		Permits & Fees	
		Engineering, Design, testing	
			\$ 1,325,000
	Culver Road		
		Road construction	
		Permits & Fees	
		Engineering, Design, testing	
			\$ 635,000
Public Infrastructure (On site)			
	Storm Water Improvements		
			\$ 2,225,000
	Jemison Lane		
		Road construction	
		Permits & Fees	
		Engineering, Design, testing	
		Site demolition	
		Grading and Fill	
			\$ 3,466,125
	Main Street		
		Road construction	
		Permits & Fees	
		Engineering, Design, testing	
		Site demolition	
		Grading and Fill	
			\$ 3,129,750
	Woodland Park, Village Green, Rights of Way		
			\$ 2,386,800
	Total Preliminary Budget		\$ 13,167,675

August 9, 2013

SKIPPER Consulting, Inc.

3644 Vann Road, Suite 100
Birmingham, Alabama 35225
Phone (205) 653-8835 Fax (205) 653-8823

July 25, 2013
CORRECTED August 9, 2013

John L. Knutsson
Vice President
Daniel Corporation
3660 Grandview Parkway
Suite 100
Birmingham, Alabama 35243

RE: Lane Parke

Dear John:

The purpose of this letter is to provide an analysis of the potential changes to the results of our most recent traffic study for the Lane Parke development (dated June 11, 2013) based on proposed changes to the development plan. A comparison of the development plan included in the report and the proposed development follows:

Land Use	Development Plan In Report	Proposed Development Plan
Retail	49,715 sq.ft.	47,415 sq.ft.
Pharmacy	11,157 sq.ft.	-
Restaurant (Fast/Casual)	6,000 sq.ft.	3,400 sq.ft.
Restaurant (Quality)	16,500 sq.ft.	12,500 sq.ft.
Grocery	28,300 sq.ft.	28,300 sq.ft.
Hotel	100 rooms	100 rooms
Bank	4,340 sq.ft.	12,340 sq.ft.
Apartments	276 units	276 units

A comparison of the total external trip generation of the two proposed land use plans is shown in the following table.

**Table
Trip Generation Comparison**

Land Use	Current Report		Proposed Development		Current Report		Proposed Development		
	In	Out	In	Out	In	Out	In	Out	
Current Report	4669	4669	9338	168	177	345	304	433	938
Proposed Changes	4452	4452	8904	182	187	368	306	445	951

As shown in the preceding table, the proposed land use generates approximately 5% less traffic than the land use included in the latest traffic impact study on a daily basis.

During the a.m. peak hour, the proposed land will generate approximately 7% more traffic than the land use included in the current traffic impact study; however, there are no roadway capacity issues during the a.m. peak hour, and therefore it is anticipated that the change in land use would not cause the need for additional roadway improvements to accommodate the a.m. peak hour of traffic flow.

During the p.m. peak hour, the proposed land use would generate approximately 1% more traffic than the land use included in the traffic impact study. This is negligible and will not cause any change in the analysis results.

Based on the information presented in this letter, it is the opinion of Skipper Consulting that the proposed changes in land use for Lane Parke would not change the results of the traffic impact study.

Sincerely,


Richard L. Caudle, P.E.

CITY OF MOUNTAIN BROOK, ALABAMA
RESOLUTION NO. 2013-~~122~~

WHEREAS, the City Council of the City of Mountain Brook, Alabama ("the City Council") has been asked to consider and approve a First Amendment to Development Agreement ("First Amendment") with Evson, Inc., an Alabama corporation, and Daniel Realty Company, LLC, an Alabama limited liability company (hereinafter collectively referred to as the "Company"), which First Amendment is attached hereto as Exhibit A, made a part hereof, and incorporated herein by reference; and

WHEREAS, the First Amendment amends the Development Agreement ("Development Agreement") between the City and Company entered into on July 30, 2012, which Development Agreement is attached hereto as Exhibit B; and

WHEREAS, the City Council, on August 12, 2013, authorized and directed the City Clerk to publish Legal Notice of Action Proposed to be Taken by the City of Mountain Brook, Alabama with regard to an amendment to the Development Agreement, pursuant to and in conformity with Amendment 772 to the Constitution of Alabama (1901) (Article 94.01 of the Recompiled Constitution of Alabama); and

WHEREAS, such Notice, attached hereto as Exhibit C, was published in the Birmingham News, the newspaper having the largest circulation in the City of Mountain Brook, on August 18, 2013, which publication was at least seven days prior to the date of the meeting at which this Resolution is being considered; and

WHEREAS, such Notice further invited members of the public to attend the meeting and submit comments regarding the actions the City Council is considering with respect to the transactions and agreements described in the Notice; and

WHEREAS, the City Council, at its meeting on the present date, offered members of the public the opportunity to comment on the matters set forth in the Notice, and those comments have been considered by the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA, as follows:

1. That the First Amendment to Development Agreement between City of Mountain Brook, Evson, Inc., and Daniel Realty Company, LLC, which is attached hereto and incorporated herein, shall be and is hereby approved.
2. That the Mayor of the City of Mountain Brook shall be and hereby is authorized to execute and enter into the First Amendment attached hereto and made a part

2013-122

hereof as Exhibit A, and deliver the First Amendment set forth in this Resolution to the other parties to the First Amendment or to their representatives.

3. That the Mayor shall further be authorized to make such corrections or revisions to the text or form of the First Amendment as necessary prior to such execution, provided that any such correction or revision shall not alter the material terms of the First Amendment.

4. That, after due consideration, the City Council finds and determines that the expenditure of public funds for the purposes and in the manner specified in the Development Agreement as amended by the First Amendment, and the execution of the First Amendment approved in this Resolution serve valid and sufficient public purposes, notwithstanding any individual benefit accruing to Evson, Inc., Daniel Realty Company, LLC, or any other private entity or entities.

5. That the public benefits to the City of Mountain Brook resulting from the First Amendment, the Development Agreement as amended thereby, and transactions herein approved include improvements to infrastructure, drainage, and public roadways; promotion of local, economic and commercial development and the stimulation of the local economy; revitalization of a significant portion of Mountain Brook Village; increasing employment opportunities in the City; increasing the City's tax base by attracting high quality tenants; promoting the location, expansion, and retention of commercial enterprises in Mountain Brook Village; preserving and improving the aesthetic quality of commercial development in Mountain Brook Village; expansion of and enhancement to the public street network used by its residents; installation of road improvements designed to improve traffic flow and increase safety; extension of sidewalks and pedestrian ways throughout the property and improved connections thereof; construction of stormwater improvements; development of usable green space; addition of public parking; and the generation of significant revenues for the City and for its public schools; all of which inure to the economic health and public benefit of the City.

ADOPTED AND APPROVED this the 26 day of August, 2013.

Virginia C. Smith
Virginia C. Smith, City Council President
Lawrence T. Oden
Lawrence T. Oden, Mayor, City of Mountain Brook

ATTEST:
Steven Boone
Steven Boone, City Clerk

EXHIBIT A

TO

RESOLUTION TO CONSIDER AND APPROVE

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
BETWEEN CITY OF MOUNTAIN BROOK
and EVSON, INC. and DANIEL REALTY COMPANY, LLC

This First Amendment to Development Agreement ("First Amendment") is hereby made and entered into on this 26th day of August, 2013 amending the original Development Agreement dated July 30, 2012 ("Development Agreement") between the CITY OF MOUNTAIN BROOK, ALABAMA (hereinafter, the "City"), a municipal corporation organized and existing under the laws of the State of Alabama, whose notice address is 56 Church Street, Mountain Brook, AL 35213 and EVSON, INC. ("Evson"), an Alabama corporation, registered to do business in Alabama and DANIEL REALTY COMPANY, LLC ("Daniel"), an Alabama limited liability company, registered to do business in Alabama (hereinafter, collectively referred to as "COMPANY"), whose notice address is 3660 Grandview Parkway, Suite 100 Birmingham, AL 35243. All of the capitalized terms in the Development Agreement are incorporated herein by reference.

RECITALS

WHEREAS, the City and COMPANY entered into the Development Agreement on July 30, 2012; and

WHEREAS, due to changes in the Project, the COMPANY submitted amendments to the PUD to the City on June 14, 2013 and August 1, 2013 (collectively, the "PUD Amendments" and individually, a "PUD Amendment"); and

APPENDIX 6

WHEREAS, due to changes in the Project, as more fully reflected in the PUD Amendments, the City and the COMPANY desire to amend the Development Agreement to more accurately reflect the agreement of the parties and further desire to memorialize the terms, conditions, and mutual obligations that comprise this First Amendment.

NOW, THEREFORE, for good and valuable consideration and the mutual promises and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The last two sentences of Section 2.1 are deleted in their entirety and the following is substituted in lieu thereof:

"More particularly, the Project shall be designed, constructed and developed in accordance with the plans, specifications, drawings, and undertakings contained in the PUD Application which was approved by the City Council in Ordinance Number 1871, the PUD Amendments which were approved by the City Council in Ordinance Numbers 1871 and 1893 (collectively, the "Amended PUD Application") and the commitments and representations made by the COMPANY at the meeting of the City Council on August 26, 2013, as reflected in the City's minutes in conjunction therewith. The Amended PUD Application and related materials are incorporated herein by reference and are hereinafter collectively described and referred to herein as the "Project Plans."

2. Section 4.6 is amended by deleting the first four lines and substituting the following in lieu thereof:

"(e) Unless otherwise agreed in writing by the parties, the City shall pay to the COMPANY, from and after the commencement of any retail sales from business operating in either the Grocery Commercial Phase, the Retail Phase or the Inn Phase ("Sales Tax Payment Commencement Date"), an amount equal to ninety percent (90%) of any Net Municipal Sales Tax Revenue. . ."

3. Exhibit B is hereby amended by deleting Item "G. Parking Structure" in its entirety.

4. The following is added as a new Section 4.11.

DOCSBHM\1953222\3

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"4.11 Delayed Payment. Notwithstanding anything herein to the contrary, in the event the City exercises its remedies to cure a default by the COMPANY in the section in the Amended PUD Application labeled "Interim Construction Phase," the City will retain, for its own account and not pay to the COMPANY all Incentive Payments otherwise due and owing COMPANY in an amount equal to the reasonable costs and expenses incurred by the City to perform the Road and Demolition Work ("City's Expenses"). Once the City has retained the Incentive Payments for its own account equal to the City's Expenses, then the City will promptly commence the payment of all Incentive Payments to the COMPANY."

5. Except as expressly amended or changed in this Amendment, all other terms and provisions of the Development Agreement remain in full force and effect.

IN WITNESS WHEREOF, each party has caused this First Amendment to be duly executed.

CITY OF MOUNTAIN BROOK, an Alabama Municipal Corporation

By: [Signature] Mayor

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EVSON, INC., an Alabama corporation

By: [Signature] President

DANIEL REALTY COMPANY, LLC, an Alabama limited liability company by Daniel Realty Corporation, its Manager

By: [Signature] CEO

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STATE OF ALABAMA) JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Lawrence T. Oden, whose name as Mayor of the City of Mountain Brook, a Municipal Corporation in the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

GIVEN under my hand and seal, this 26 day of August, 2013.

[Signature] Notary Public My Commission Expires: 4/17/2017

STATE OF ALABAMA) JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John T. Evans, whose name as President of Evson, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and seal, this 28 day of August, 2013.

[Signature] Notary Public My Commission Expires: 4/17/2017

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APPENDIX 6

STATE OF ALABAMA)
JEFFERSON COUNTY)

DEVELOPMENT AGREEMENT
BETWEEN CITY OF MOUNTAIN BROOK
and EVSON, INC. and DANIEL REALTY COMPANY, LLC

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Pat Henry, whose name as Chief Executive Officer of Daniel Realty Corporation, a corporation, the Manager of Daniel Realty Company, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Daniel Realty Corporation, acting in its capacity as Manager of said limited liability company.

GIVEN under my hand and seal, this 26th day of August, 2013.

Edward A. Boone
Notary Public
My Commission Expires: 4/17/2017

This Development Agreement ("Agreement") is hereby made and entered into on the 30th day of July, 2012 ("Effective Date"), between the CITY OF MOUNTAIN BROOK, ALABAMA (hereinafter, the "City"), a municipal corporation organized and existing under the laws of the State of Alabama, whose notice address is 56 Church Street, Mountain Brook, AL 35213 and EVSON, INC. ("Evson"), an Alabama corporation, registered to do business in Alabama and DANIEL REALTY COMPANY, LLC ("Daniel"), an Alabama limited liability company, registered to do business in Alabama (hereinafter, collectively referred to as "COMPANY"), whose notice address is 3660 Grandview Parkway, Suite 100 Birmingham, AL 35243.

EXHIBIT A

RECITALS

WHEREAS, the City desires to support and encourage economic development within the City in order to develop and maintain a strong local economy, increase employment opportunities, promote replacement of aging commercial structures, broaden the City's tax base and increase revenues in order to provide necessary services to the residents of the City, thus improving the quality of life for its residents; and

WHEREAS, Evson owns certain real property identified on Exhibit "A" (hereinafter referred to as the "Property") consisting of approximately 28 acres that is located within the corporate limits of the City; and

WHEREAS, the COMPANY intends to develop the Property for residential, retail and

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Development Agreement between
City of Mountain Brook, Evson, Inc. and
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commercial development in accordance with plans, specifications, and undertakings approved by the City under applicable city ordinances and regulations, as more fully set forth in 2.1 below (said development being hereinafter referred to as "the Project"); and

WHEREAS, the Project, when completed, is expected to generate annual taxable sales in excess of approximately \$65,000,000 and the creation of new jobs within the City; and

WHEREAS, to complete the Project, the COMPANY is scheduled to construct and install significant and needed public infrastructure improvements, including expansion and enhancement of the public street network in Mountain Brook Village, road improvements designed to improve traffic flow and eliminate safety hazards, extension of the pedestrian ways throughout the Property and to its north, construction of stormwater improvements to complement the City's stormwater mitigation project, development of usable green space, and increasing the parking inventory in Mountain Brook Village to support the Project; and

WHEREAS, the COMPANY is scheduled to complete such Infrastructure improvements in connection with its development and completion of the Project, all in accordance with plans and specifications approved by the City under applicable City ordinances and regulations and pursuant to the terms of this Agreement; and

WHEREAS, the COMPANY intends to invest or cause to be invested approximately One Hundred Twenty Million Dollars (\$120,000,000.00) in the development and completion of the Project, which will include the development and completion of major infrastructure improvements, as more particularly described in the Project Plans and on the list set forth on Exhibit "B" to this Agreement; and

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Development Agreement between
City of Mountain Brook, Evson, Inc. and
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EXHIBIT B

TO

RESOLUTION TO CONSIDER AND APPROVE

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

EXHIBIT A

WHEREAS, Amendment No. 772 of the Constitution of Alabama (1901) (Section 94.01(a)(3) of the Recompiled Constitution of Alabama and hereinafter referred to as "Amendment No. 772"), authorizes the City to enter into agreements for the purpose of promoting economic development within the City; and

WHEREAS, the City finds and determines that the Project and the infrastructure improvements which will be constructed in connection therewith, are of significant value to the City and that their completion is in the best interest of the City and the public and will promote the economic development of the City; and

WHEREAS, the City further finds and determines that completion of the Project will be of significant economic benefit to the City and its Board of Education through the generation of new and additional school taxes, sales taxes, lodging taxes, business license fees, permit fees and ad valorem property taxes; and

WHEREAS, following careful consideration and review, the City has determined that completion of the Project in accordance with said plans, specifications, and undertakings and with the terms of this Agreement are in the best interest of the City, as the Project will result in, among other things, an expansion and enhancement of the City's economic and tax base, an increase in employment opportunities, a redevelopment of outdated commercial property within the City which will attract new businesses to the City, and replacement of outdated residential units with new housing units; and

WHEREAS, the City has determined that entering into this Agreement will result in significant benefits to the public, and that the provisions hereof serve a valid and sufficient public purpose; and

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Development Agreement between City of Mountain Brook, Ewon, Inc. and Daniel Realty Company, LLC

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EXHIBIT A

WHEREAS, the City and the COMPANY desire to memorialize the terms, conditions, and mutual obligations that comprise this Agreement.

NOW, THEREFORE, for good and valuable consideration and the mutual promises and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

- 1.1 "Approved Assignee" shall have the meaning set forth in 6.8 below.
1.2 "Approved Assignment" shall have the meaning set forth in 6.8 below.
1.3 "Baseline Property Tax Revenue" means the taxes assessed and collected by the City from Municipal Property Taxes as of October 1, 2011 and described on Exhibit "D" attached hereto and made a part hereof, which tax revenue as of October 1, 2011 is warranted by the City as the true and correct tax revenue received by the City as reflected on their books and records.
1.4 "Baseline Sales Tax Revenue" means the sales tax revenue collected by the City from all sales activities on the Property for the 12-month period ending on December 31, 2011 and described on Exhibit "D" attached hereto and made a part hereof, which tax revenue as of December 31, 2011 is warranted by the City as the true and correct tax revenue received by the City as reflected on their books and records.
1.5 "City" shall refer to the City of Mountain Brook, Alabama.
1.6 "Culver Road Improvements" shall have the meaning set forth in 3.2(b) below.

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Development Agreement between City of Mountain Brook, Ewon, Inc. and Daniel Realty Company, LLC

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EXHIBIT A

- 1.7 "Dedicated Public Infrastructure" shall mean all roads, grading, utilities, drainage, culverts, sidewalks, and other improvements necessary to provide infrastructure to support the Project which will be dedicated and/or transferred or conveyed to the City and which are more particularly set forth on Exhibit "C" and "C1" attached hereto and made a part hereof.
1.8 "Draw Period" means within fifteen (15) days after March 31st, June 30th, September 30th and December 31st, as described in 3.2.
1.9 "Fiscal Year" shall have the meaning in 4.6(b).
1.10 "Grocery/Commercial Phase" shall have the meaning set forth in the PUD Application.
1.11 "Incentive Payments" shall have the meaning set forth in 4.1 below.
1.12 "Inn Phase" shall have the meaning set forth in the PUD Application.
1.13 "Jernison Lane Improvements" shall have the meaning set forth in 3.2(c) below.
1.14 "Lane Parke Infrastructure Improvements" shall mean all roads, grading, utilities, drainage, culverts, sidewalks, parks, greenways and other improvements necessary to provide infrastructure to support the Project, which are more particularly set forth on Exhibit "B" attached hereto and made a part hereof.
1.15 "Lane Park Road Improvements" shall have the meaning set forth in 3.2(a) below.
1.16 "Lender" shall have the meaning set forth in 6.9 below.
1.17 "Lodging Tax Incentive Payment" shall have the meaning set forth in 4.7 below.
1.18 "Monthly Baseline Sales Tax Revenue" means an amount equal to 1/12th of the Baseline Sales Tax Revenue, as shown on Exhibit "D".

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Development Agreement between City of Mountain Brook, Ewon, Inc. and Daniel Realty Company, LLC

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EXHIBIT A

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- 1.19 "Monthly Sales Tax Revenue" means an amount equal to the sales tax revenue collected by the City from all sales activity on the Property in any month following the Project Opening.
1.20 "Municipal Property Taxes" shall mean the general fund municipal ad valorem tax for the City of Mountain Brook which is currently 26.1 mills.
1.21 "Net Municipal Sales Tax Revenue" means that amount of sales tax revenue collected by the City and generated by retail sales from any activity on the Property in excess of the Baseline Sales Tax Revenue.
1.22 "Net Property Ad Valorem Tax Revenue" shall have the meaning set forth in 4.8 below.
1.23 "Net Tax Revenue" shall have the meaning set forth in 4.2 below.
1.24 "Permitted Assignee" shall have the meaning set forth in 6.8 below.
1.25 "Permitted Assignment" shall have the meaning set forth in 6.8 below.
1.26 "Phase" shall have the meaning set forth in the PUD Application.
1.27 "Project" shall have the meaning set forth in the Recitals.
1.28 "Project Opening" means the opening for business of any Phase of the Project, other than the Residential Phase.
1.29 "Project Plans" shall have the meaning set forth in 2.1 below.
1.30 "Property Tax Incentive Payment" shall have the meaning set forth in 4.8 below.
1.31 "Property Tax Incentive Payment Date" shall have the meaning set forth in 4.8 below.
1.32 "Public Road Payment Protocol" shall have the meaning set forth in 3.2(a) below.

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Development Agreement between City of Mountain Brook, Ewon, Inc. and Daniel Realty Company, LLC

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- 1.33 "PUD Application" shall have the meaning set forth in 2.1 below.
- 1.34 "Residential Phase" shall have the meaning set forth in the PUD Application.
- 1.35 "Retail Phase" shall have the meaning set forth in the PUD Application.
- 1.36 "Retainage" shall have the meaning set forth in 3.2(a) below.
- 1.37 "Roadway Improvements" shall have the meaning set forth in 3.1 below.
- 1.38 "Road Improvement Payment Commencement Date" shall have the meaning set forth in 3.1 below.
- 1.39 "Roadway Improvement Costs" shall have the meaning set forth in 3.1 below.
- 1.40 "Sales Tax Incentive Payment" shall have the meaning set forth in 4.6(a).
- 1.41 "Sales Tax Payment Commencement Date" shall have the meaning set forth in 4.6(a).

ARTICLE II

DESIGN AND CONSTRUCTION OF LANE PARKE

2.1 Design and Construction Relating to the Project. Subject to the provisions hereinafter set forth, the COMPANY shall, at its cost, be responsible for undertaking and completing architectural, engineering, and other design work (including preparation of detailed plans, specifications, and drawings related to the Project, the Lane Parke Infrastructure Improvements, landscaping, and associated improvements), as well as construction of the Project, its Lane Parke Infrastructure Improvements, and off-site improvements necessitated by the Project, including but not limited to construction of public roads, stormwater infrastructure, installation of sidewalks, curb and gutter, landscaping, parks, parking, and other improvements shown in or on the Project Plans (as defined below). In connection therewith, the COMPANY

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Development Agreement between
City of Mountain Brook, Evson, Inc. and
Daniel Realty Company, LLC

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shall secure any and all required governmental or regulatory approval and permits required for the Project and related improvements, including any such separate approvals that may be required by the City, and nothing herein shall be construed as a waiver of such requirements. More particularly, the Project shall be designed, constructed, and developed in accordance with the plans, specifications, drawings, and undertakings contained in that certain application for a PUD filed with the City on April 20, 2012 ("PUD Application") and approved by City Council Ordinance Number 1871. The approved PUD Application and related materials are incorporated herein by reference and are hereinafter collectively described and referred to herein as the "Project Plans."

2.2 Construction and Conveyance of Storm Water Drainage Infrastructure. As a part of and in conjunction with the construction of the Project, the COMPANY shall, at its cost, design, construct, and install a stormwater drainage system in accordance with the Project Plans. The drainage system shall be designed, constructed, and installed so that it may be integrated into the public drainage system of the City. Upon completion of the stormwater drainage system, the COMPANY agrees to transfer or convey to the City by deed or other appropriate means all right, title, and interest in and to portions of the drainage system, including the easement or right-of-way containing said system and improvements or infrastructure that are a part thereof that are part of the Dedicated Public Infrastructure and outlined on Exhibit "C" and "C1".

2.3 Roadway Improvements.

(a) Pursuant to the terms and provisions contained in the Project Plan and as part of and in conjunction with the construction of the Project, the COMPANY will construct Public and Private Roads, as identified in the Project Plans.

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City of Mountain Brook, Evson, Inc. and
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(b) It is understood and agreed all the roads identified as Public Roads in the duly approved Project Plans and any easements or rights-of-way associated therewith are to be constructed as public roads in accordance with City standards and transferred or dedicated to the City upon final completion thereof. The COMPANY and the City acknowledge that the secondary roads and other access corridors serving parts of the Project are proposed to be private roads, and are so identified in the Project Plans.

2.4 Dedicated Public Infrastructure. After the construction of the Dedicated Public Infrastructure is completed in accordance with ordinances, laws, rules, and regulations of the City, as well as, to the extent applicable, other applicable jurisdictions, the COMPANY agrees to transfer or convey to the City, by deed, easement or such other appropriate means, all of its right, title and interest in and to the Dedicated Public Infrastructure within a reasonable time after request by the City. From and after the date of the conveyance to the City of the Dedicated Public Infrastructure, the City agrees to accept such dedication and conveyance and to assume responsibility and control for the maintenance, repair and proper functioning of the Dedicated Public Infrastructure but may defer such acceptance and assumption until after the completion of the Grocery/Commercial Phase and the Retail Phase. The City may request the conveyance of the Dedicated Public Infrastructure in one or more conveyances.

ARTICLE III

PAYMENT OF ROADWAY IMPROVEMENT COSTS

3.1 Roadway Improvement Costs. The City agrees to pay to the COMPANY Four Million Dollars (\$4,000,000.00) ("Roadway Improvement Costs") as the Purchase Price for improvements to or construction of Lane Park Road, Culver Road and Jemison Lane ("Roadway Improvements"). The Roadway Improvements are described in the Project Plans. The Roadway

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Improvement Costs will be paid for each of the three separate roadway projects in the amounts designated in 3.2(a), (b) and (c). The Roadway Improvement Costs include, among other items, payment for all site demolition costs, certain Lane Parke Infrastructure Improvements and Dedicated Public Infrastructure which are part of the Roadway Improvements but the payments do not include work related to the installation of utilities. The Roadway Improvement Costs will be paid in the manner and on the terms and provisions below when at least twenty-five per cent (25%) of the shell building construction and related site work for either the Grocery/Commercial Phase or the Retail Phase is completed, as submitted by the COMPANY, verified by the COMPANY's architect or engineer of record, and confirmed by the City ("Road Improvement Payment Commencement Date").

3.2 Roadway Improvements.

(a) Lane Park Road Improvements. The City will pay the COMPANY the sum of One Million Dollars (\$1,000,000.00) for the completion of Roadway Improvements to Lane Park Road ("Lane Park Road Improvements"), as more fully set forth in the Project Plans. The City will pay COMPANY for the Lane Park Road Improvements at each Draw Period an amount equal to the percentage of work that has been properly completed, as certified in the manner below, multiplied by One Million Dollars (\$1,000,000.00) less the Retainage (as defined below). The COMPANY will notify the City when construction commences. Once construction commences, and following the Road Improvement Payment Commencement Date, the City will pay the COMPANY at each Draw Period following delivery by the COMPANY to the City of a written certification from the COMPANY and the general contractor performing the Lane Park Road Improvements certifying both that the work has been performed in accordance with the Project Plans and the percentage of the work that has been properly completed. From each progress

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payment, the City will be entitled to retain five percent (5%) to serve as a retainage ("Retainage"). The Retainage will be paid to the COMPANY, along with the balance of the One Million Dollars (\$1,000,000.00) that is outstanding at the time of the final payment for the completion of the Lane Park Road Improvements ("Public Road Payment Protocol").

(b) **Culver Road Improvements.** The City will pay the COMPANY the sum of Five Hundred Thousand Dollars (\$500,000.00) for completion of Roadway Improvements to Culver Road ("Culver Road Improvements"), as more fully set forth in the Project Plans. The City will pay the COMPANY for the Culver Road Improvements at each Draw Period an amount equal to the percentage of work that has been properly completed, as certified in the manner above, multiplied by Five Hundred Thousand Dollars (\$500,000.00) less the Retainage. The COMPANY will notify the City when construction commences. Once construction commences, and following the Road Improvement Payment Commencement Date, the City will pay the COMPANY for the Culver Road Improvements in accordance with, and in the same manner as they pay the COMPANY for the Lane Park Road Improvements utilizing the Public Road Payment Protocol for the Culver Road Improvements.

(c) **Jemison Lane Improvements.** The City will pay the COMPANY the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for the construction and full completion of Jemison Lane, as more fully set forth in the Project Plans ("Jemison Lane Improvements"). City will pay the COMPANY for the Jemison Lane Improvements at each Draw Period an amount equal to the percentage of work that has been properly completed, as certified in the manner above, multiplied by Two Million Five Hundred Thousand Dollars (\$2,500,000.00) less the Retainage. The COMPANY will notify the City when construction commences. Once construction commences, and following the Road Improvement Payment Commencement Date, the City will

pay the COMPANY for the Jemison Lane Improvements in accordance with, and in the same manner as they pay the COMPANY for the Lane Park Road Improvements utilizing the Public Road Payment Protocol for the Jemison Lane Improvements.

3.3 **Inspection of Records.** Upon request from the City, the City shall be provided, to the extent expressly under the control and direction of the COMPANY, reasonable access to appropriate and necessary records of the COMPANY, its designees, or other persons, firms, or entities directly related to the Public Road Project.

3.4 **Roadway Improvements.** The City agrees that the Roadway Improvements described in 3.2(a), (b), and (c) above contain a portion of the Lane Parke Infrastructure Improvements and the Dedicated Public Infrastructure, and that the fair and reasonable value of the above referenced Roadway Improvements is in excess of Four Million Dollars (\$4,000,000.00). The purchase price for the completion of each designated component of the Roadway Improvements shall be payable in accordance with and subject to the terms, conditions, and limitations set forth in subparagraphs 3.2(a) through (c) above. All conveyances of the Roadway Improvements to the City shall be by appropriate deed, easement, or such other instrument as may be reasonably required by the City.

3.5 **Maintenance and Repair.** The City will be obligated to repair and/or maintain the Public Roads (as defined in the Project Plans) located within the City of Mountain Brook which have been dedicated to and accepted by the City and which include the Roadway Improvements, as well as the Dedicated Public Infrastructure, to the extent located in the City. The COMPANY assumes the responsibility to repair and/or maintain the landscaping along the roadways within the Project, whether public or private, to repair and maintain Private Roadways, as defined in the Project Plans, or any other roadways which are not dedicated to and accepted by the City.

ARTICLE IV

ADDITIONAL INCENTIVES

4.1 **Terms and Conditions.** In addition to the payment for the Roadway Improvements provided for in Article III of this Agreement and as further inducement to the COMPANY for completion of the Lane Parke Infrastructure Improvements, the City shall pay the COMPANY an amount not to exceed the amount of Ten Million Dollars (\$10,000,000.00) in consideration for and as an inducement for the COMPANY's agreement to undertake the Lane Parke Infrastructure Improvements and the redevelopment of the Property in accordance with the Project Plans and with the conditions set forth herein (the "Incentive Payments").

4.3 **Calculation of the Incentive Payments.** The amount of the Incentive Payments to be paid to the COMPANY by the City shall be calculated based upon Net Tax Revenue generated from the Project, if any. For the purposes of this Agreement, "Net Tax Revenue" includes revenue collections by the City from: (i) municipal sales taxes arising from or generated by sales activities within the Project, (ii) lodging taxes generated within the Project, and (iii) municipal property taxes generated from the Property, less the baseline amounts of those respective taxes currently collected by the City, defined in 4.6 and 4.8 below and reflected on Exhibit "D". The amount of the Incentive Payments will be calculated in the manner and on the terms set forth herein.

4.3 **Permit Fees.** The City will receive and retain all permit fees generated from the construction of the Project and all such revenue and fees will be excluded from the calculation of Net Tax Revenue.

4.4 **Construction Sales Tax Fees.** The City will receive and retain all sales tax generated from the construction of the Project and all such revenue will be excluded from the calculation of Net Tax Revenue.

4.5 **School Taxes.** The levied educational ad valorem tax and any municipal ad valorem taxes which are expressly dedicated to the Mountain Brook City Schools or to providing public educational services ("School Taxes") will not be utilized in the calculation of the Municipal Property Taxes and Net Property Ad Valorem Tax Revenue. The Mountain Brook City Board of Education shall receive and retain one-hundred percent (100%) of the School Taxes generated by the Project.

4.6 **Sales Tax Revenue.**

(a) Unless otherwise agreed in writing by the parties, the City shall pay to the COMPANY, from and after the commencement of any retail sales from businesses operating in either the Grocery/Commercial Phase or the Retail Phase ("Sales Tax Payment Commencement Date"), an amount equal to ninety percent (90%) of any Net Municipal Sales Tax Revenue collected by the City until the COMPANY receives One Million and no/100 Dollars (1,000,000.00) in any Fiscal Year (as defined below) and an amount equal to seventy-five per cent (75%) of any Net Municipal Sales Tax Revenue collected by the City from and after the point the COMPANY has received One Million Dollars (\$1,000,000.00) in any Fiscal Year ("Sales Tax Incentive Payment"). The Sales Tax Incentive Payment will be paid in the manner outlined in (b) below.

(b) The Sales Tax Incentive Payment will be paid by the City on a monthly basis, with the first payment to occur by the 15th of the month after the first full month following the

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Sales Tax Payment Commencement Date, with each subsequent payment to occur on the 15th of each month thereafter. The Sales Tax Incentive Payment will be calculated by subtracting the Monthly Baseline Sales Tax Revenue from the Monthly Sales Tax Revenue and multiplying that sum (i) by ninety percent (90%) until the COMPANY receives up to One Million and no/100 Dollars (\$1,000,000.00) of Sales Tax Incentive Payments in any Fiscal Year and (ii) multiplying that sum by seventy-five per cent (75%) from and after the receipt by the COMPANY of One Million and no/100 Dollars (\$1,000,000.00) of Sales Tax Incentive Payments. Within 30 days after the end of the first 12 full months of payment of the Sales Tax Incentive Payment, and for each 12 months thereafter ("Fiscal Year"), the City and the COMPANY will calculate the exact amount of Net Municipal Sales Tax Revenues collected by the City for said Fiscal Year and, within 15 days thereafter, City will pay the COMPANY any shortfall in the payment of the Sales Tax Incentive Payment for such Fiscal Year, or conversely, the COMPANY will remit any excess payments it may have received during the Fiscal Year to the City.

4.7 **Lodging Tax Revenue.** Unless otherwise agreed in writing by the parties, the City shall remit to the COMPANY by the 15th of each month after the substantial completion of all improvements within the Inn Phase in an amount equal to ninety percent (90%) of any municipal lodging tax revenue generated from lodging activity on the Property and collected by the City during the preceding month ("Lodging Tax Incentive Payment").

4.8 **City Property Tax Revenue.** Unless otherwise agreed in writing by the parties, the City shall pay to the COMPANY an amount equal to the Net Property Ad Valorem Tax Revenue for all Property in the Project (the "Property Tax Incentive Payment"). For purposes of this Agreement, "Net Property Ad Valorem Tax Revenue" means the amount by which the Municipal Property Taxes received by the City exceed the Baseline Property Tax Revenue.

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Beginning with the tax year commencing on October 1, 2013, the COMPANY will earn and the City will accrue and escrow, if earned by the COMPANY, the Property Tax Incentive Payment after receipt of a certificate of occupancy for the Residential Phase but the City is not obligated to commence payment of the Property Tax Incentive Payment until the Sales Tax Payment Commencement Date. Within ten (10) days after the City receives notice from the COMPANY of the Sales Tax Payment Commencement Date, any and all escrowed funds will be paid to the COMPANY and thereafter the Property Tax Incentive Payment will be paid to the COMPANY on or before February 1 of each year ("Property Tax Incentive Payment Date"). In the event that the Sales Tax Payment Commencement Date does not occur by December 31, 2019, any sums placed in escrow pursuant to this subsection shall be released to the City for its use, and the COMPANY shall have no further right nor claim to those funds being held in escrow but this Agreement remains in force and effect on the terms herein.

4.9 **No Finance Charge or Interest.** Except as otherwise set forth herein, no interest, carrying charge, or finance charge of any kind shall accrue or be added to the principal amount due the COMPANY by the City under the terms of this Agreement.

4.10 **Suitable Fill Material.** As further inducement and to assist the City in the fulfillment of its obligations associated with the Agreement for Services Agreement ("Zoo Agreement") with the Birmingham Zoo, Inc., the City hereby grants the COMPANY the right, but not the obligation, to remove all or any part of the Materials (as defined in the Zoo Agreement) that is suitable as structural fill for the Project as determined by the COMPANY. On or before September 1, 2016, the COMPANY will notify the City, in writing, when the COMPANY no longer intends to remove any of the Materials. Except for the right to remove all or any part of the Materials granted herein to the COMPANY, the City and the COMPANY recognize that the

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COMPANY is not a party to the Zoo Agreement. The COMPANY shall further be responsible for all activities related to removal and transportation of the Materials, including any damage to person or property resulting from those activities. The COMPANY shall further agree to execute an access agreement or other like instrument as may be requested by the Zoo as a condition of such removal activities.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

5.1 **Representations and Warranties of the City.** The City makes the following representations and warranties as the basis for its undertaking pursuant to this Agreement.

(a) The execution and delivery of this Agreement on its part has been authorized by a resolution duly adopted by its City Council and by all other necessary actions, including those in accordance with Amendment 772 of the Constitution of the State of Alabama.

(b) The City has the power and authority to enter into the transactions contemplated by this Agreement and to fulfill and carry out its obligations hereunder.

5.2 **Representations and Warranties of the COMPANY.** The COMPANY makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Each entity comprising the COMPANY is organized, existing and in good standing under the laws of the State of Alabama and registered to conduct business in Alabama, has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(b) The execution and delivery of this Agreement on the part of the COMPANY's

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proper agent, officer, manager or general partner has been duly authorized.

ARTICLE VI

GENERAL PROVISIONS

6.1 **Duration.** Absent an early termination of this Agreement for reasons set forth herein, the covenants and obligations in this Agreement shall commence on the Effective Date and terminate on the earlier of (i) 20 years from the Project Opening, (ii) 25 years from the Effective Date or (iii) payment in full of all amounts pursuant to Articles III and IV of this Agreement whichever shall come first.

6.2 **Fees and Expenses.** Each party shall pay its own expenses in connection with negotiation, execution, and closing of this Agreement or any agreement or instrument contemplated herein. In connection with the conveyance of land hereunder or rights-of-way and other Dedicated Public Infrastructure, the COMPANY, at its sole expense, shall, if reasonably required, obtain a title insurance policy or binder and prepare a survey of the property to be conveyed. Except as expressly provided herein, any necessary deed or other instruments related to such public roads and rights-of-way shall be prepared by the COMPANY.

6.3 **Saverability.** If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement, provided each party receives substantial fulfillment of its benefits hereunder.

6.4 **Governing Law.** This Agreement shall be governed by the laws of the State of Alabama. Nothing in this Agreement shall be deemed or construed to relieve or exempt the COMPANY or its assigns from full compliance with any applicable ordinance or regulation adopted by the City, although the City agrees not to enact any ordinance or regulation which

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Development Agreement between
City of Mountain Brook, Evson, Inc. and
Daniel Realty Company, LLC

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EXHIBIT A

Limits or restricts the rights and obligations of each party under this Agreement.

6.5 Entire Agreement. This Agreement and the Exhibits that are attached hereto or incorporated herein by reference constitute the entire Agreement among the parties hereto pertaining to the subject matter hereof, supersede any and all prior or contemporaneous agreements or undertakings of the parties relating to the subject matter hereof, and may not be modified or amended except by a writing duly executed by the party against whom the modification or amendment is asserted.

6.6 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture between the City and the COMPANY and their respective successors and assigns.

6.7 Counterparts. This Agreement may be executed in counterparts, each which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

6.8 Assignment. This Agreement, and all of the provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be assigned by the COMPANY, without the consent of the City, if (i) it is in compliance with the terms of this Agreement at the time of the assignment and (ii) the assignment is executed either between the entities which comprise the COMPANY or any of its affiliates or subsidiaries, or to an entity which is owned in whole or in part by either or both Evson and/or Daniel, or to any third party who owns, along with Evson and/or Daniel or their affiliates, an equity interest in all or any portion of the Project, or once all the Phases of the Project are completed to any third party ("Permitted Assignment"). Except for a Permitted Assignment, any other assignment by the COMPANY, or its successors or assigns, must be

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EXHIBIT A

the rights, interest or obligations hereunder, is intended for the benefit of any other person or third party.

6.12 Public Purpose. Pursuant to Amendment No. 772, the City does hereby ascertain, determine, declare and find that undertaking the grant of public funds, as described herein, is in the best interest of the City and will serve a public purpose and further enhance the public benefit and welfare by, among other things: promotion of local economic and commercial development and the stimulation of the local economy; increasing employment opportunities in the City; increasing the City's tax base, which will result in additional tax revenues for the City; promoting the location, relocation, expansion and retention of commercial enterprises in the City; and, preserving and improving the aesthetic quality of commercial development, insuring to the economic health of the City. The City finds that the above-cited items will serve valid and sufficient public purpose notwithstanding any incidental benefit accruing to the COMPANY or any other private entity or entities.

6.13 Default. Upon the occurrence of an event of default by a party, which is not cured within thirty (30) days after written notice, the non-defaulting party may, in its discretion, take and pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided for in this Agreement:

- (a) seek and obtain injunctive relief; or
(b) terminate this Agreement prior to Closing; provided that the event of default occurred, and notice of the event of default is given, prior to the Closing; or
(c) exercise any and all other remedies available at law or in equity.

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Development Agreement between City of Mountain Brook, Evson, Inc. and Daniel Realty Company, LLC

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EXHIBIT A

APPENDIX 6

approved by the City Council of the City, which approval will not be unreasonably withheld, delayed or conditioned ("Approved Assignment"). In the event of a Permitted or Approved Assignment, the COMPANY will remain obligated under the terms of this Agreement, unless released by the City. The City will make payments under this Agreement to the COMPANY at the notice address contained in this Agreement, unless it receives a written notice signed by the COMPANY, or thereafter by any entity approved via a Permitted Assignment or Approved Assignment (such entity is referred to as a "Permitted Assignee" or "Approved Assignee") at least ten (10) days in advance of any payment designating a new entity and/or address to which payments hereunder should be made.

6.9 Collateral Assignments. Consent of the City shall not be required for any collateral assignments of the COMPANY's rights under this Agreement to a lender ("Lender") who provides financing for the Project to the COMPANY or to a Permitted Assignee or Approved Assignee. Such Lender will be deemed a Permitted Assignee. The COMPANY will provide written notice to the City of the name, address, and contact information of any Lender and copies of the Collateral Assignment documents executed with said Lender which provides financing for the Project. In the event of a Collateral Assignment, the COMPANY shall not be released from its obligations under this Agreement.

6.10 Estoppel Certificates. From time to time, upon request by any party, the party asked shall provide to the party making the request, an acknowledgment or certificate with respect to matters concerning this Agreement or the status of performance of the obligations of the parties hereunder, as may be reasonably requested.

6.11 No Third-Party Beneficiaries. Except as authorized herein, this Agreement is intended only for the benefit of the signing parties hereto, and neither this Agreement, nor any of

20 Development Agreement between City of Mountain Brook, Evson, Inc. and Daniel Realty Company, LLC

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EXHIBIT A

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the date written above.

ATTEST:
By: [Signature]
Its: City Manager

CITY OF MOUNTAIN BROOK, an Alabama Municipal Corporation
By: [Signature]
Its: Mayor

ATTEST:
By: [Signature]
Its: Vice President

EVSON, INC., an Alabama corporation
By: [Signature]
Its: President

ATTEST:
By: [Signature]
Its: CEO

DANIEL REALTY COMPANY, LLC, an Alabama limited liability company by Daniel Realty Corporation, its Manager
By: [Signature]
Its: Senior Vice President

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Development Agreement between City of Mountain Brook, Evson, Inc. and Daniel Realty Company, LLC

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EXHIBIT A

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Lawrence T. Olan, whose name as Mayor of the City of Mountain Brook, a Municipal Corporation in the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

GIVEN under my hand and seal, this 30th day of July, 2012.

Signature of Notary Public, My Commission Expires: 4/12/2013

EXHIBIT A

EXHIBIT A

A parcel of land being situated in the Northeast quarter of the Northwest quarter and the Southeast quarter of the Northwest quarter of Section 8, Township 18 South, Range 2 West, more particularly described as follows:

Begin at the Southwest Corner of the Northeast Quarter of the Northwest Quarter of Section 8, Township 18 South, Range 2 West; also being the Point of Beginning; thence run Northwesterly along the West line of said Quarter - Quarter a distance of 665.12 feet; thence right 91°-08'-04" a distance of 1325.11 feet; thence right 88°-58'-55" a distance of 74.22 feet; thence right 37°-49'-05" a distance of 736.41 feet; thence right 52°-46'-30" a distance of 62.37 feet; thence right 00°-14'-22" a distance of 179.92 feet; thence left 90°-58'-32" a distance of 355.39 feet; thence right 88°-43'-29" a distance of 24.53 feet; thence left 87°-29'-35" a distance of 139.13 feet; thence right 89°-27'-49" a distance of 14.61 feet; thence left 117°-30'-00" a distance of 175.92 feet; thence right 84°-32'-17" a distance of 46.85 feet; thence tangent to a curve to the left having a radius of 1243.26 feet and a central angle of 9°-30'-05" along the curve an arc distance of 202.55 feet; thence right 62°-49'-52" from the tangent of said curve a distance of 329.33 feet; thence tangent to a curve to the left having a central angle of 18°-00'-50" and a radius of 66.12 feet an arc distance of 20.79 feet; thence left 2°-03'-01" to the tangent of a curve to the left having a central angle of 34°-34'-36" and a radius of 60.77 feet, an arc distance of 36.67 feet; thence continue from the tangent of said curve a distance of 43.64 feet; thence right 90°-00'-00" a distance of 119.49 feet; thence right 33°-23'-36" a distance of 245.11 feet; thence right 0°-00'-42" a distance of 377.82 feet to the Point of Beginning. Said Parcel contains 27.59 acres more or less.

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that F.A. Evans, whose name as President of Evson, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and seal, this 30th day of July, 2012.

Signature of Notary Public, My Commission Expires: 4/12/2013

EXHIBIT A

APPENDIX 6

Development Agreement between City of Mountain Brook, Evson, Inc. and Daniel Realty Company, LLC

Development Agreement between City of Mountain Brook, Evson, Inc. and Daniel Realty Company, LLC

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that R. Scott Peltier, whose name as Senior Vice President of Daniel Realty Corporation, a corporation, the Manager of Daniel Realty Company, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Daniel Realty Corporation, acting in its capacity as Manager of said limited liability company.

GIVEN under my hand and seal, this 30th day of July, 2012.

Signature of Notary Public, My Commission Expires: 4/12/2013

EXHIBIT A

EXHIBIT B

LANE PARK INFRASTRUCTURE IMPROVEMENTS

- A. Lane Park Road Improvements
a. Road Construction
b. Road Striping
c. Storm Sewer
d. Electrical Duct Bank Relocation
e. Curbing, Gutters & Street Parking
f. Sidewalks, Landscape & Street Light
g. Permits & Fees
h. Engineering, Design & Testing
i. Contingency
B. Culver Road Improvements
a. Road Construction
b. Road Striping
c. Storm Sewer
d. Electrical Duct Bank and Street Light
e. Curbing, Gutters and Street Parking
f. Sidewalks, Landscape & Hardscape
g. Permits & Fees
h. Engineering, Design & Testing
i. Contingency
C. Jensen Lane
a. Road Construction
b. Sanitary Sewer
c. Storm Sewer
d. Water Line Extension
e. Electrical Duct Bank and Street Light
f. Curbing, Gutters and Street Parking
g. Sidewalks, Landscape & Hardscape
h. Permits & Fees
i. Engineering, Design & Testing
j. Contingency
D. Main Street
a. Road Construction
b. Sanitary Sewer
c. Storm Sewer
d. Water Line Extension
e. Electrical Duct Bank and Street Light
f. Curbing, Gutters and Street Parking
g. Sidewalks, Landscape & Hardscape
h. Permits & Fees
i. Engineering, Design & Testing
j. Contingency

EXHIBIT A

Development Agreement between City of Mountain Brook, Evson, Inc. and Daniel Realty Company, LLC

Development Agreement between City of Mountain Brook, Evson, Inc. and Daniel Realty Company, LLC

- E. Monteville Road**
 - a. Electrical Duct Bank Relocation
 - b. Curbing, Outlets and Street Parking
 - c. Sidewalks, Landscaping, Hardscape & Street Lights
 - d. Road Striping
 - e. Permits & Fees
 - f. Engineering, Design & Testing
 - g. Contingency
- F. Park Lane Court (North & South)**
 - a. Road Construction
 - b. Sanitary Sewer
 - c. Storm Sewer
 - d. Water Line Extension
 - e. Electrical Duct Bank and Street Lights
 - f. Curbing & Outlets
 - g. Permits & Fees
 - h. Engineering, Design & Testing
 - i. Contingency
- G. Parking Structure**
 - a. Deck Construction
 - b. Elevator & Stairs
 - c. Storm Sewer & Detention
 - d. Sidewalks, Landscaping, & Hardscape
 - e. Permits & Fees
 - f. Engineering, Design & Testing
 - g. Contingency
- H. Zoo Branch Culvert / Watkins Brook Flood Management**
 - a. Remove & Replace Box Culvert
 - b. Permits & Fees
 - c. Engineering, Design & Testing
 - d. Contingency
- I. Village Green**
 - a. Landscaping & Irrigation
 - b. Hardscape & Lighting
 - c. Permits & Fees
- J. Woodland Park**
 - a. Landscaping & Irrigation
 - b. Hardscape & Lighting
 - c. Permits & Fees

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Development Agreement between
City of Mountain Brook, Evson, Inc. and
Daniel Realty Company, LLC

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EXHIBIT C1
DEDICATED PUBLIC INFRASTRUCTURE

Jambon Lane, including all grading, utilities, drainage, culverts, sidewalks, and all other improvements in the right-of-way.

Main Street, including all grading, utilities, drainage, culverts, sidewalks, and all other improvements in the right-of-way.

Zoo Branch Stormwater Culvert, conveying off-site stormwater through the property.

Existing (FERMA) Stormwater Culvert, conveying off-site stormwater through the property.

EXHIBIT A

EXHIBIT A

APPENDIX 6

City of Mountain Brook, Evson, Inc. and
Daniel Realty Company, LLC

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EXHIBIT C

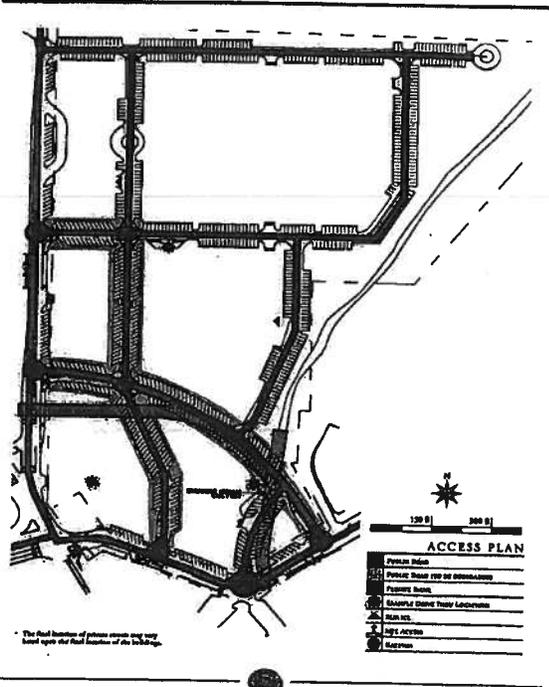


EXHIBIT A

Exhibit D
Estimated Payments¹

Year	Estimated Property Tax Increment Municipal Property Tax	Developer's Estimate of Tax Increment	Developer's Estimate of Tax Increment	Developer's Estimate of Tax Increment
2013	66,421	728,343	64,679	0
2014	66,421	731,343	64,679	0
2015	67,461	734,343	64,679	0
2016	68,501	737,343	64,679	0
2017	69,541	740,343	64,679	0
2018	70,581	743,343	64,679	0
2019	71,621	746,343	64,679	0
2020	72,661	749,343	64,679	0
2021	73,701	752,343	64,679	0
2022	74,741	755,343	64,679	0
2023	75,781	758,343	64,679	0
2024	76,821	761,343	64,679	0
2025	77,861	764,343	64,679	0
2026	78,901	767,343	64,679	0
2027	79,941	770,343	64,679	0
2028	80,981	773,343	64,679	0
2029	82,021	776,343	64,679	0
2030	83,061	779,343	64,679	0
2031	84,101	782,343	64,679	0
2032	85,141	785,343	64,679	0
2033	86,181	788,343	64,679	0
2034	87,221	791,343	64,679	0
2035	88,261	794,343	64,679	0
2036	89,301	797,343	64,679	0
2037	90,341	800,343	64,679	0
2038	91,381	803,343	64,679	0
2039	92,421	806,343	64,679	0
2040	93,461	809,343	64,679	0
2041	94,501	812,343	64,679	0
2042	95,541	815,343	64,679	0
2043	96,581	818,343	64,679	0
2044	97,621	821,343	64,679	0
2045	98,661	824,343	64,679	0
2046	99,701	827,343	64,679	0
2047	100,741	830,343	64,679	0
2048	101,781	833,343	64,679	0
2049	102,821	836,343	64,679	0
2050	103,861	839,343	64,679	0
2051	104,901	842,343	64,679	0
2052	105,941	845,343	64,679	0
2053	106,981	848,343	64,679	0
2054	108,021	851,343	64,679	0
2055	109,061	854,343	64,679	0
2056	110,101	857,343	64,679	0
2057	111,141	860,343	64,679	0
2058	112,181	863,343	64,679	0
2059	113,221	866,343	64,679	0
2060	114,261	869,343	64,679	0
2061	115,301	872,343	64,679	0
2062	116,341	875,343	64,679	0
2063	117,381	878,343	64,679	0
2064	118,421	881,343	64,679	0
2065	119,461	884,343	64,679	0
2066	120,501	887,343	64,679	0
2067	121,541	890,343	64,679	0
2068	122,581	893,343	64,679	0
2069	123,621	896,343	64,679	0
2070	124,661	899,343	64,679	0
2071	125,701	902,343	64,679	0
2072	126,741	905,343	64,679	0
2073	127,781	908,343	64,679	0
2074	128,821	911,343	64,679	0
2075	129,861	914,343	64,679	0
2076	130,901	917,343	64,679	0
2077	131,941	920,343	64,679	0
2078	132,981	923,343	64,679	0
2079	134,021	926,343	64,679	0
2080	135,061	929,343	64,679	0
2081	136,101	932,343	64,679	0
2082	137,141	935,343	64,679	0
2083	138,181	938,343	64,679	0
2084	139,221	941,343	64,679	0
2085	140,261	944,343	64,679	0
2086	141,301	947,343	64,679	0
2087	142,341	950,343	64,679	0
2088	143,381	953,343	64,679	0
2089	144,421	956,343	64,679	0
2090	145,461	959,343	64,679	0
2091	146,501	962,343	64,679	0
2092	147,541	965,343	64,679	0
2093	148,581	968,343	64,679	0
2094	149,621	971,343	64,679	0
2095	150,661	974,343	64,679	0
2096	151,701	977,343	64,679	0
2097	152,741	980,343	64,679	0
2098	153,781	983,343	64,679	0
2099	154,821	986,343	64,679	0
2100	155,861	989,343	64,679	0
2101	156,901	992,343	64,679	0
2102	157,941	995,343	64,679	0
2103	158,981	998,343	64,679	0
2104	160,021	1,001,343	64,679	0
2105	161,061	1,004,343	64,679	0
2106	162,101	1,007,343	64,679	0
2107	163,141	1,010,343	64,679	0
2108	164,181	1,013,343	64,679	0
2109	165,221	1,016,343	64,679	0
2110	166,261	1,019,343	64,679	0
2111	167,301	1,022,343	64,679	0
2112	168,341	1,025,343	64,679	0
2113	169,381	1,028,343	64,679	0
2114	170,421	1,031,343	64,679	0
2115	171,461	1,034,343	64,679	0
2116	172,501	1,037,343	64,679	0
2117	173,541	1,040,343	64,679	0
2118	174,581	1,043,343	64,679	0
2119	175,621	1,046,343	64,679	0
2120	176,661	1,049,343	64,679	0
2121	177,701	1,052,343	64,679	0
2122	178,741	1,055,343	64,679	0
2123	179,781	1,058,343	64,679	0
2124	180,821	1,061,343	64,679	0
2125	181,861	1,064,343	64,679	0
2126	182,901	1,067,343	64,679	0
2127	183,941	1,070,343	64,679	0
2128	184,981	1,073,343	64,679	0
2129	186,021	1,076,343	64,679	0
2130	187,061	1,079,343	64,679	0
2131	188,101	1,082,343	64,679	0
2132	189,141	1,085,343	64,679	0
2133	190,181	1,088,343	64,679	0
2134	191,221	1,091,343	64,679	0
2135	192,261	1,094,343	64,679	0
2136	193,301	1,097,343	64,679	0
2137	194,341	1,100,343	64,679	0
2138	195,381	1,103,343	64,679	0
2139	196,421	1,106,343	64,679	0
2140	197,461	1,109,343	64,679	0
2141	198,501	1,112,343	64,679	0
2142	199,541	1,115,343	64,679	0
2143	200,581	1,118,343	64,679	0
2144	201,621	1,121,343	64,679	0
2145	202,661	1,124,343	64,679	0
2146	203,701	1,127,343	64,679	0
2147	204,741	1,130,343	64,679	0
2148	205,781	1,133,343	64,679	0
2149	206,821	1,136,343	64,679	0
2150	207,861	1,139,343	64,679	0
2151	208,901	1,142,343	64,679	0
2152	209,941	1,145,343	64,679	0
2153	210,981	1,148,343	64,679	0
2154	212,021	1,151,343	64,679	0
2155	213,061	1,154,343	64,679	0
2156	214,101	1,157,343	64,679	0
2157	215,141	1,160,343	64,679	0
2158	216,181	1,163,343	64,679	0
2159	217,221	1,166,343	64,679	0
2160	218,261	1,169,343	64,679	0
2161	219,301	1,172,343	64,679	0
2162	220,341	1,175,343	64,679	0
2163	221,381	1,178,343	64,679	0
2164	222,421	1,181,343	64,679	0
2165	223,461	1,184,343	64,679	0
2166	224,501	1,187,343	64,679	0
2167	225,541	1,190,343	64,679	0
2168	226,581	1,193,343	64,679	0
2169	227,621	1,196,343	64,679	0
2170	228,661	1,199,343	64,679	0
2171	229,701	1,202,343	64,679	0
2172	230,741	1,205,343	64,679	0
2173	231,781	1,208,343	64,679	0
2174	232,821	1,211,343	64,679	0
2175	233,861	1,214,343	64,679	0
2176	234,901	1,217,343	64,679	0
2177	235,941	1,220,343	64,679	0
2178	236,981	1,223,343	64,679	0
2179	238,021	1,226,343	64,679	0
2180	239,061	1,229,343	64,679	0
2181	240,101	1,232,343	64,679	0
2182	241,141	1,235,343	64,679	0
2183	242,181	1,238,343	64,679	0
2184	243,221	1,241,343	64,679	0
2185	244,261	1,244,343	64,679	0
2186	245,301	1,247,343	64,679	0
2187	246,341	1,250,343	64,679	0
2188	247,381	1,253,343	64,679	0
2189	248,421	1,256,343	64,679	0
2190	249,461	1,259,343	64,679	0
2191	250,501	1,262,343	64,679	0
2192	251,541	1,265,343	64,679	0
2193	252,581	1,268,343	64,679	0
2194	253,621	1,271,343	64,679	0
2195	254,661	1,274,343	64,679	0
2196	255,701	1,277,343	64,679	0
2197	256,741	1,280,343	64,679	0
2198	257,781	1,283,343	64,679	0
2199	258,821	1,286,343	64,679	0
2200	259,861			

- 2. Section 4.6 has been updated to clarify that Retail Sales from businesses operating in the Inn Phase will be included in the calculation of revenues from which the Sales Tax Incentive Payment to Evson and Daniel is made.
- 3. Reference to the "Parking Structure" in Exhibit B has been removed.
- 4. A new Section 4.11 is being added. That Section provides for recovery from Incentive Payments of expenses incurred by the City in the event the City undertakes certain demolition activities with respect to the Interim Phase.

All other terms and provisions of the original Development Agreement approved on July 30, 2012 are reaffirmed by the First Amendment and shall remain in full force and effect.

Copies of a map of the Property, the First Amendment, the original Development Agreement, and the PUD Amendments referred to herein are available for copying and inspection in the office of the City Manager at Mountain Brook City Hall.

While Daniel and Evson would receive certain benefits under the Development Agreement and the First Amendment, the City Council expects to determine at its public meeting that the expenditure of public funds in connection with the Development Agreement (as amended by the First Amendment) will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to Daniel and Evson or any other private business. The public benefits sought and expected to be achieved by the approval of the Development Agreement (as amended by the First Amendment) include: improvements to infrastructure, drainage and public roadways; promotion of local economic and commercial development and the stimulation of the local economy; increase of employment opportunities in the City; increase of the City's tax base, which will result in significant additional tax revenues for the City; a significant increase in tax revenues for the schools operating in the City; promotion of the location, relocation, expansion and retention of commercial enterprises in the City; preservation of and improvement to the aesthetic quality of commercial development; and the replacement of aging residential structures, all of which inure to the economic health of the City.

EXHIBIT C

TO

RESOLUTION TO CONSIDER AND APPROVE

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

INVITATION TO ATTEND AND COMMENT

All members of the public are invited to attend the meeting described above or to submit written opinions or comments regarding the proposed action to the City Council prior to the meeting.

August 15, 2013
 Birmingham News
 To be published on Sunday, August 18, 2013

/s/ Steve Boone, City Clerk
 City of Mountain Brook, Alabama

APPENDIX 6

LEGAL NOTICE OF ACTION PROPOSED TO BE TAKEN BY THE CITY OF MOUNTAIN BROOK, ALABAMA WITH REGARD TO AN AMENDED DEVELOPMENT AGREEMENT

Pursuant to Amendment No. 772 to the Constitution of Alabama (1901) (Section 94.01(a)(3) of the Recompiled Constitution of Alabama and hereinafter referred to as "Amendment No. 772"), the City of Mountain Brook, Alabama (the "City") gives notice that its City Council, as the governing body of the City, will consider at a public meeting to be held on August 26, 2013, beginning at 7:00 p.m. at Mountain Brook City Hall, City Council meeting room, 56 Church Street, Mountain Brook, Alabama, approving a resolution that authorizes the execution and delivery of a First Amendment to Development Agreement between the City and Evson, Inc., an Alabama corporation ("Evson"), and Daniel Realty Company, LLC, an Alabama Limited Liability Company ("Daniel").

BACKGROUND

Evson owns approximately 28 acres of property ("Property") located in Mountain Brook Village in the City of Mountain Brook, Alabama along and north of Montevallo, Culver and Cahaba Roads and along and east of Lane Park Road. Evson and Daniel, proposed to redevelop that Property for residential, retail and commercial development as provided for in a zoning application (as amended) filed by Evson and Daniel and approved by the City in Ordinance Numbers 1871 and 1885. Construction of the residential component is currently under way. The redevelopment will result in replacement of outdated commercial space and residential units, provide for public infrastructure enhancements, will improve roads in the area, upgrade the City's stormwater system, provide for usable green space, increase the City's public parking inventory and generate significant sales, lodging and property taxes for the City and its schools. The City originally considered and approved a Development Agreement with Evson and Daniel ("Development Agreement") on July 30, 2012, as set forth in Resolution No. 2012-116. Additional amendments to the Project Plans are proposed for consideration by the City on August 26, 2013, and those proposed amendments have made necessary the consideration of an amendment to the Development Agreement.

SUMMARY OF TERMS OF THE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

In consideration and as an inducement for the redevelopment of the Property, the City is considering the execution of a First Amendment to Development Agreement with Evson and Daniel ("First Amendment") which incorporates the original terms of the Development Agreement and contains modifications to the Development Agreement, described as follows:

- 1. Section 2.1 of the Development Agreement requires that the Project be designed, constructed, and developed in accordance with the Project Plans. That Section has been updated to include and incorporate amendments to the PUD Plan as part of the Project Plans.



LEGAL AFFIDAVIT OF PUBLICATION
 ADVANCE MEDIA GROUP
 PUBLISHERS OF
 THE BIRMINGHAM NEWS

19th of August
 I, the undersigned, being a duly qualified and sworn Juror of the County of Jefferson, in the State of Alabama, and being the subject of the within and above entitled matter, depose and say that the within and above entitled matter was published in the Birmingham News on August 18, 2013.

Judith A. Webb
 Juror

The foregoing is true and correct to the best of my knowledge and belief, and I am not a party to the within and above entitled matter.

Subscribed and sworn to before me on August 19, 2013, at Mountain Brook, Alabama.

Nancy S. Bridgman
 Notary Public

NANCY S BRIDGMAN
 NOTARY PUBLIC
 STATE OF ALABAMA
 MY COMMISSION EXPIRES DEC. 31, 2011

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