

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
JULY 27, 2015**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:15 p.m. on Monday, the 27th day of July, 2015. The Council President Pro Tempore called the meeting to order and the roll was called with the following results:

Present: William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack
Lawrence T. Oden, Mayor

Absent: Virginia C. Smith, Council President

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

1. AGENDA

1. Proposed drainage study for Overbrook Road area in and around Canterbury Methodist Church – Walter Schoel of Schoel Engineering (Appendix 1).

It was the consensus of the Council members present that the study, which would only measure the estimated frequency and severity of flooding, would be of little benefit to the City. Mr. Schoel, whose firm is under contract with the City for professional services, was asked to walk the creek to identify any potential conditions that could be impeding water flow and report his findings to the City Manager.

2. First amendment to the lease with American Tower Corporation for the cell tower located at the high school athletic complex. (Resolution No. 2015-109 was added to the formal meeting agenda.)
3. Review of the formal [7 p.m.] meeting agenda.

2. ADJOURNMENT

There being no further issues for discussion, Council President Pro Tempore Pritchard adjourned the pre-meeting.



City Clerk



July 16, 2015

City of Mountain Brook
56 Church Street
PO Box 130009
Mountain Brook, Alabama 35213

Attention: Mr. Sam Gaston
Reference: ~~Overbrook~~
~~Pine Crest Road~~
Drainage Study

Dear Mr. Gaston:

Please accept this letter as a proposal to provide Consulting Services on the above referenced project. The Detailed Scope is as follows:

1) HYDROLOGIC CONSULTING

The consultant will investigate drainage conditions in the drainage way that drains under Pine Crest Road and on through the Canterbury United Methodist Church property. The drainage basin contributing to this location includes Mountain Brook Junior High and encompasses approximately 400 acres. The goal of this study would be to quantify the drainage issues, especially as related to the lot at 326 ~~Pine Crest Road~~. The detailed scope is as follows:

- Meet with the Client and inspect the drainage way
- Develop a project bas map from GIS information
- Update drainage basin map to reflect current conditions
- Develop return-period flows using urban regression equations
- Develop HEC-RAS water surface model based on field-shot and GIS information
- Compute water surface profiles in area, based on multiple return-period events
- Prepare brief report and exhibits that depict flooding conditions
- Meet and present conclusions to the City

Lump Sum Fee \$11,800

The goal of this study is to understand and quantify the drainage flooding conditions in the area. If any unusual conditions are found that contribute to the drainage issues are noted, these will be mentioned in the summary report.

Payment Terms

The Consultant will bill the Client monthly based on work completed during the billing period. Work completed will be based upon a percentage of completion for Lump Sum Fees. The Consultant has the right to review and adjust fees annually subject to Client's final approval. Payments are due upon receipt. Additional services beyond the herein-described scope of work will be performed according to the attached schedule of unit rates, or alternately for an additional fee as agreed upon.

Established in 1888
WALTER SCHDEL ENGINEERING COMPANY, INC.
1001 22nd Street South • Birmingham, Alabama 35205
P 205-323-6188 • F 205-328-2252 • schdel.com

Schedule of Unit Rates – Effective Through 12/31/2014

Senior Principal	\$ 225.00 per hour
Principal	\$ 170.00 per hour
Chief Land Surveyor	\$ 150.00 per hour
Senior Project Manager	\$ 140.00 per hour
Project Manager 2	\$ 125.00 per hour
Project Manager 1	\$ 110.00 per hour
Senior Professional	\$ 120.00 per hour
Project Professional	\$ 105.00 per hour
Staff Professional	\$ 90.00 per hour
Senior Designer / Survey Draftsman / Specialist	\$ 90.00 per hour
Designer / Survey Draftsman / Specialist 2	\$ 80.00 per hour
Designer / Survey Draftsman / Specialist 1	\$ 70.00 per hour
Field Survey Party	\$ 150.00 per hour
Laser Scanning Field Crew	\$ 200.00 per hour
Laser Scanning Specialist	\$ 125.00 per hour
Intern/Support	\$ 55.00 per hour
Courier	\$ 25.00 per delivery
Transportation	\$ 0.50 per mile
Materials (Stakes and Hubs)	\$ 0.35 each
(Flagging)	\$ 2.50 per roll
(Iron Pins and Caps)	\$ 5.00 each
(Spray Paint)	\$ 5.00 per can

Printing and other reimbursable expenses will be charged at cost, and are not included in the fee basis described above. Sub-consultant invoices will be billed to the client at a rate of 110% of the sub-consultant invoice. Overtime rates may apply for work required during non-standard work hours.

GENERAL TERMS AND CONDITIONS

- 1) The Client hereby agrees that to the fullest extent permitted by law the Consultant's total liability to Client for any and all injuries, claims, losses, expenses of damages whatsoever arising out of or in any way relating to the project, the site, or this Agreement, from any cause or causes including but not limited to the Consultant's negligence, errors, omissions, strict liability, breach of contract, breach of warranty shall not exceed the greater of the total amount paid by the Client for the services of the Consultant under this contract or \$50,000.00, whichever is greater. The Consultant's liability shall expire one (1) year from the completion date of the provision of services for each phase of the work.
- 2) The figures given above and in the body of this Agreement are based on the Scope of Work as described herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will also be performed at the above unit rates, or a revised fee will be negotiated to the satisfaction of both the Client and Consultant at that time. The Consultant reserves the right to adjust these unit rates for inflation costs on a one-year interval from the date of this proposal.
- 3) All reports, plans, documents, or other materials resulting from the Consultant's efforts shall remain the property of the Consultant and are intended solely for the purpose of this Agreement. Any reuse by Client of either for purposes outside of this Agreement or any failure to follow Consultant's recommendations without Consultant's written permission shall be at the users sole risk.
- 4) The Consultant shall not be responsible for construction site safety or construction procedures, nor will the Consultant be responsible for the quality of the work performed by the contractor or other consultant.

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA
JULY 27, 2015**

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 27th day of July, 2015. The Council President Pro Tempore called the meetings to order and the roll was called with the following results:

Present: William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack
Lawrence T. Oden, Mayor

Absent: Virginia C. Smith, Council President

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

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

1. RECOGNITION OF CAREY HOLLINGSWORTH (EXHIBIT 1)

Mayor Oden read aloud and presented Resolution No. 2015-102 to Mr. Hollingsworth.

2. CONSENT AGENDA

Council President Pro Tempore Pritchard 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 July 13, 2015 regular meeting of the City Council.

2015-102	Expression gratitude to Carey Hollingsworth for his service on the Parks and Recreation Board	Exhibit 1
2015-103	Appoint Jorja White to The Jefferson County Intellectual and Developmental Disabilities Authority	Exhibit 2, Appendix 1
2015-104	Appoint Helen McTyeire Drennen to the Mountain Brook Park and Recreation Board, to serve without compensation, with the term of office to end July 27, 2020	Exhibit 3, Appendix 2
2015-105	Authorize the City Clerk on behalf of the Mountain Brook municipal court to issue notice to Judicial Correction Services, Inc. (JCS) of the City's intent to cancel its contract (Resolution No. 2003-164)	Exhibit 4, Appendix 3
2015-106	Declare certain equipment and furniture surplus and authorizing its sale by way of public Internet auction	Exhibit 5
2015-107	Recommend to the ABC Board the issuance of a license to Kessler Collection Management, LLC, doing business as the Grand Bohemian Hotel Mountain Brook located in Mountain Brook Village, Mountain Brook, AL 35223	Exhibit 6, Appendix 4

- | | | |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 2015-108 | Authorize the execution of an encroachment agreement between the City and W. Banks Petrey and Bragan D. Petrey of 12 Norman Drive, Mountain Brook, AL 35213 | Exhibit 7,
Appendix 5 |
| 2015-109 | Authorize the execution of the First Amendment to the Tower Site Sublease Agreement between the City and American Tower Asset Sub, LLC, with respect to the wireless communication tower located at Liberty Parkway (Athletic Complex behind gymnastics building) | Exhibit 8,
Appendix 6 |

Thereupon, the foregoing minutes and resolutions were introduced by Council President Pro Tempore Pritchard and their immediate adoption was moved by Council member Shelton. The minutes and resolutions were then considered by the City Council. Council member Womack 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: William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Pro Tempore Pritchard thereupon declared that said minutes and Resolution Nos. 2015-102 through 2015-109 are adopted by a vote of 4–0.

3. CONSIDERATION: ORDINANCE AUTHORIZING THE PLACEMENT OF TWO (2) STOP SIGNS ON BROOKWOOD ROAD AT ITS INTERSECTION WITH CROSSHILL ROAD AND PROVIDE FOR PUNISHMENT FOR VIOLATIONS THEREOF (EXHIBIT 9, APPENDIX 7)

The proposed ordinance was introduced in writing by Council President Pro Tempore Pritchard who then invited Mr. Richard Caudle with Skipper Consulting, Inc. forward to describe the proposal (Exhibit 9, Appendix 7). Upon conclusion of Mr. Caudle's comments and explanation, Mr. Pritchard invited comments from proponents of the proposed stop signs. There being no one to speak in favor, comments were invited from those who opposed the proposal.

Ms. Lorelle Baddley of 3569 Brookwood Road:

- If implemented, she believes her driveway will effectively become a 4-way stop for about twenty minutes in the morning
- Presently, the only motorists she must make eye contact with before proceeding are those coming down Crosshill Road to Brookwood Road
- Perceives this proposal will could make the intersection less safe
- Does not understand the necessity of this proposal considering the limited time spans in the morning and evening when cars que to make their maneuvers
- Can recall only one or two accidents at this intersection in the 14 years she has resided here

Mr. Pritchard explained that the City obtained an APPLE Grant (Resolution No. 2014-099) to study various intersections throughout the City. The City Council solicited input from the community in order to identify the intersections to be studied through this grant. This intersection was selected for study based on comments and feedback from the community.

Mr. John Baddley of 3569 Brookwood Road:

- Complained that the high school kids frequently do not stop for the existing stop signs and is concerned that these new signs will be no different
- Suggested that law enforcement efforts be increased at this intersection

Mr. Sean Hannon of 3613 Brookwood Road:

- The congestion at this intersection occurs only for a short time in the morning and evening
- The area residents are very familiar with the flow and congestion
- The distance between the two stop signs on Brookwood Road will be very short (165 feet from center to center per Mr. Caudle) and the section of road between the two stop signs is a straight shot
- Would prefer speed bumps to stop signs

Mr. Caudle:

- The only sight distance issue observed is for those motorists turning left from Brookwood Road onto Crosshill Road toward the high school
- If the Council wishes to omit the proposed stop sign on Brookwood Road southbound, then he recommends that he take another look to determine the exact nature of the sight distance issues

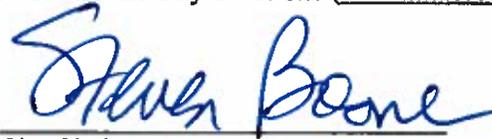
There being no further comments or discussion, Council President Pro Tempore Pritchard called for a motion regarding the proposed ordinance. There being none, Mr. Pritchard announced that in deference to the concerns raised and comments made, the matter will be continued pending further study and analysis by Mr. Caudle. It is expected that the matter may be considered by the City Council again on August 10, 2015 at 7 p.m.

4. OTHER BUSINESS

Mr. James Lott, representing Canterbury United Methodist, stated that he was in attendance to hear the discussion regarding the proposed drainage study for Overbrook Road area in and around Canterbury Methodist Church [that was discussed at the 6:15 p.m. pre-meeting]. Council President Pro-Tempore Pritchard explained that this matter was discussed previously and updated Mr. Lott about that earlier discussion.

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

Council President Pro Tempore Pritchard announced that the next meeting of the Mountain Brook City Council will be held on Monday, August 10, 2015 at 7:00 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.



City Clerk

EXHIBIT 1

RESOLUTION NO. 2015-102

WHEREAS, Carey Hollingsworth served with dedicated distinction on the Mountain Brook Parks and Recreation Board from October 22, 2004 through July 14, 2015 and has served as Chairman since March, 2006; and

WHEREAS, Carey Hollingsworth's background, leadership and knowledge have proven to be invaluable by providing input and guidance to the Mountain Brook Parks and Recreation Department for future planning for numerous projects, including: construction of a new Parks and Recreation building; renovation of a portion of the playground at Overton Park to create Cam's Corner; installation of water fountains at Mountain Brook Elementary playing field and Jemison Park and future fountains at Overton Park and Jemison Nature Trail; public restrooms at Overton Park and Brookwood Forest Elementary and future restrooms at Crestline Elementary and Mountain Brook Elementary; and upgrading the trash receptacles and park signs throughout the parks; and

WHEREAS, Carey Hollingsworth has provided generous support of the Boys Scouts of America by suggesting and mentoring many young men with Eagle Scout projects in the parks; and

WHEREAS, Carey Hollingsworth was instrumental in acquiring and developing Cahaba River Walk as well as the selection of benches and other park amenities; and

WHEREAS, Carey Hollingsworth's expertise and leadership were invaluable as he served on the committees to select a Parks and Recreation Superintendent replacement with the retirement of Lyman Tidwell; served on the committee to interpret the Mercer study results; and participated in the selection of Lose and Associates to develop the Parks & Recreation Master Plan and survey;

NOW, THEREFORE, BE IT RESOLVED that the City Council and Mayor, on behalf of the residents of Mountain Brook, do publicly thank Carey Hollingsworth, for his many years of exemplary service and wish him well in future endeavors.

EXHIBIT 2

RESOLUTION NO. 2015-103

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Jorja White is hereby appointed to serve, without compensation, on The Jefferson County Intellectual and Developmental Disabilities Authority, Inc. with this term of office to end July 27, 2021.

APPENDIX 1

EXHIBIT 3

RESOLUTION NO. 2015-104

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Helen McTyeire Drennen is hereby appointed to serve on the Mountain Brook Park and Recreation Board, to serve without compensation, with the term of office to end July 27, 2020.

APPENDIX 2

EXHIBIT 4

RESOLUTION NO. 2015-105

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Clerk, on behalf of the Mountain Brook municipal court, is hereby authorized to issue notice to Judicial Correction Services, Inc. (JCS) of the City's intent to cancel its contract pursuant to Condition 2 of its Client Service Agreement (re: Resolution No. 2003-164).

APPENDIX 3

EXHIBIT 5

RESOLUTION NO. 2015-106

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

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

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Brook, as follows: It is hereby established and declared that the following property owned by the City of Mountain Brook, Alabama is not needed for public or municipal purposes and is hereby declared surplus property:

Item	Asset	Description	Model or Serial	Notes
1			SN: NUEY003987	
		Epson WP-4020 color printer with extra cartridges: Black (2), Magenta (2), Cyan (1)		
2		HP Scanjet 7650 printer	SN:85ET4069	
3		HP Office 5610 all-in-one	SN:CN7CJF51H3	
4		HP Photosmart 7663 printer	SN:MY35N121K8	
5		1 lot HP Desktop Workstations (6 ea.): DC7700 DC7700 DC7700 DC7700 XW4300 DC7900	SN:MXL7260C4K SN:MXL7251C3H SN:MXL7260C4J SN:2UA733031V SN:MXL7580C44 SN:MXL94206JP	
6		HP Proliant DL380 server	SN:2UX61200BE	
7		1 lot Panasonic Toughbook (4 ea.) laptops CF-30	SN:9CKYA36912, 9BKYA28644, 9CKYA37054, 9BKYA34064, 9BKYA34108	
8		1 lot flat screen monitors (4 ea.) HPLA2205wg HP1940 HP1940 Tyco 17" touchscreen	SN:3CQ116BT5B SN:CNP549X1WG SN:CNP549X3C0 J09L070923	
9		HP Laserjet 4240N printer	SN:CNDXC06503	
10		HP Officejet Pro 8500 printer	SN:MY9724300V	
11		HP Laserjet P3005 printer	SN:JDPH00264	
12		HP color Laserjet 1600	SN:CNCC76V119	
13		HP color Laserjet 2600n	SN:CHHC61B1Y7	
14		HP Photosmart Premium printer	SN:MY02N57114	
19		HP Laserjet 3100 printer	SN:USBB177422	
20		ALTUSCN 16 port Rack	SN:NONE	
21		Cushioned Conference chairs without arms (108)	NONE	
22		Cushioned Conference chairs with arms (35)	NONE	

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Manager is hereby authorized and directed to sell said property by way of public Internet auction to the highest bidder and to otherwise dispose of such property that does not sell at said public auction.

EXHIBIT 6
RESOLUTION NO. 2015-107

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby recommends to the State of Alabama, Alcoholic Beverage Control Board, the issuance of a 160 - Special Retail - More than 30 Days [liquor] license to Kessler Collection Management, LLC, doing business as Grand Bohemian Hotel Mountain Brook, located at 2655 Lane Park Road, Mountain Brook, AL 35223.

BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to forward a copy of this resolution to the State of Alabama, Alcoholic Beverage Control Board.

APPENDIX 4

EXHIBIT 7
RESOLUTION NO. 2015-108

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of an encroachment agreement between the City and Property Owners W. Banks Petrey and Bragan D. Petrey of 12 Norman Drive, Mountain Brook, AL 35213 in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

APPENDIX 5

EXHIBIT 8
RESOLUTION NO. 2015-109

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of the First Amendment to the Tower Site Sublease Agreement between the City and American Tower Asset Sub, LLC, in the form as attached hereto as Exhibit A, subject to such minor changes as may be recommended by the City Attorney, with respect to the wireless communication tower located at Liberty Parkway.

APPENDIX 6

EXHIBIT 9

ORDINANCE NO. _____

DRAFT

**AN ORDINANCE TO PROVIDE FOR STOP SIGNS ON BROOKWOOD ROAD
AT ITS INTERSECTION WITH CROSSHILL ROAD AND
TO PROVIDE FOR PUNISHMENT THEREOF**

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

Section 1. It shall be unlawful for the driver of any vehicle to cause or allow such vehicle traveling in a northerly direction along Brookwood Road Way to enter its intersection with Crosshill Road when there is standing at such intersection a "Stop" sign facing in the direction of such driver without having first brought such vehicle to a complete stop within ten (10) feet of said intersection.

Section 2. It shall be unlawful for the driver of any vehicle to cause or allow such vehicle traveling in a southerly direction along Brookwood Road Way to enter its intersection with Crosshill Road when there is standing at such intersection a "Stop" sign facing in the direction of such driver without having first brought such vehicle to a complete stop within ten (10) feet of said intersection.

Section 3. Any person violating the provisions of this ordinance shall be punished by a fine not to exceed \$500.00, or by imprisonment not to exceed 180 days, or both.

Section 4. All ordinances or portions of ordinances conflicting with this ordinance are hereby repealed.

Section 5. If a court or competent authority finds that any provision of this ordinance is invalid, illegal, or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability if the other provisions of this ordinance shall not be affected.

Section 6. This ordinance shall become effective when published as required by law.

APPENDIX 7

JEFFERSON COUNTY INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AUTHORITY, INC.

829 Boone Parkway West, Suite 214
Birmingham, Alabama 35209
OFFICE (205) 945-8310 FAX (205) 945-8337

Robert Regulus
President

July 7, 2015

Eve Graham
Vice President

Wayne Dutt
Treasurer

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

Deborah Elston
Secretary

Dear Mayor Oden:

Jody Brash
Director

On behalf of the Board of Directors of The Jefferson County Intellectual and Developmental Disabilities, Inc., we are respectfully requesting the appointment of Ms. Jorja White to replace Mr. Russ McElroy. On June 23, 2015 our Board of Directors approved the nomination of Ms. White as our representative for the City of Mountain Brook. Ms. White has expressed to the Board her willingness to serve if appointed.

Kimon Eckhoff
Director

Kimberly Fort
Director

Ms. White resides at 3932 Forest Avenue, Mountain Brook, AL 35213. As you can see from the enclosed, Ms. White has extensive experience in business and community involvement.

Jayce M. Ness
Director

Russell McElroy, III
Director

We appreciate your consideration of Ms. White to fill the vacancy created by the resignation of Mr. McElroy. Should you have any questions, please contact our Executive Director, Gary Hendrix at extension 242 and he will be happy to assist you.

Philip Richards
Director

Respectfully,
Robert Regulus
Robert Regulus
Board President

Christ Whitty
Director

Sacey Turner
Director

Gary Hendrix
Executive Director

August 2011 - present Rob Walker Architects, LLC - Responsible for coordinating and overseeing office administrative duties, as well as social media development and basic marketing.

March 2011 - September 2012 W by Worth - Responsible for identifying and recruiting candidates for sales and/or managerial positions as well as administrative responsibilities.

April 2010 - present LivingBeyondThePale.com - Responsible for all development, marketing and content on blog that empowers women.

Employment

August 1991 - December 2003 Leadership Team, Collegiate Ministries - Served in leadership capacity for non-profit through development and fund-raising.

August 1995 - June 1997 CEO/Owner, Tailor Made Tutors - Took home business from start-up to development to profitable sale.

January 1992 - May 1993 High School Teacher - Worked to teach English and reduce drop-out rate with high-risk students.

Education

B.A., English/Speech Communications, 1990, Samford University
Masters of Arts, Theological Studies, 2000 (unpublished) Covenant Theological Seminary, St. Louis, MO

Community Involvement

Creston Elementary School, PTO Chairperson - Circle of Friends (Special Needs Awareness)
Mountain Brook Special Education Advisory Board
Leading Edge Institute - Board Member
LEI - Chairperson, Miss Representative Serving
Development/Marketing Advisor - 100 for Adama non-profit (www.100forAdama.com)

References

References available upon request.

APPENDIX 1

Jorja H. White
3932 Forest Avenue, Birmingham, Alabama 35213
205-329-1707
jorjabea@gmail.com

Professional Overview	Strategic problem preventer and solver with the rare combination of big-picture understanding and "make it happen" enthusiasm. Exceptionally skilled at identifying a need, developing a strategy and executing a plan while building and growing positive relationships.
Summary of Experience	<ul style="list-style-type: none"> Worked with non-profit directors to raise funds for organization & develop staff Took start-up business from idea to success; sold business for profit Developed business plan, recruited, trained, managed and marketed educational referral service Served as part of leadership team, helped create staff policies & development Instructed with a wide variety of personalities while managing and coordinating staff functions & events Exercised multi-tasking abilities in supervising staff Assisted Director in fund-raising, communication with current donor & cultivation of potential donors Developed and promoted business through social media, writing skills Interacted with an array of networks of individuals, both professional and personal, building and maintaining excellent working relationships Researched potential candidates and recruited for specific positions on sales team Handled administration for Regional Director of sales organization in Southeast
Summary of Skills	<ul style="list-style-type: none"> Strategic and resourceful big-picture thinker who takes action Proven ability to initiate, produce and execute a plan Excellent written and oral communication skills Strong interpersonal skills resulting in exceptional rapport with people Proven computer/internet research abilities/social media development Proven ability to raise funds and promote vision of organization Proven ability to advocate through blogging and social media Excellent networking abilities used to develop support for both profit and non-profit entities Proven ability to work well with a team by following through with my role as well as assisting those in leadership

PIR applied

Sam Gaston

From: Helen Drennen
Sent: Sunday, October 12, 2014 12:11 PM
To: Sam Gaston
Subject: Parks and Rec Board
Attachments: Helen Drennen Credentials.docx

Helen Drennen
Credentials.docx Sam,

To follow up on our conversation this summer, I am letting you know of my interest in serving on the Parks and Recreation board. Attached is my resume. As you probably know, I lived on Woodhill Road for 20 years and thoroughly enjoyed backing up to Jewison Park. While no longer there, I still feel very much connected to the park system and would love to offer my time in service to the community.

Thank you.

YWCA - Birmingham, Junior Board 1991-1992
Senior Citizens, Inc. - Nashville, Board of Directors 1966-1990
EDUCATION
Hollins College - Roanoke, Virginia 1977-1981
Double Major: Bachelor of Arts - Economics & French
Phi Beta Kappa, ODK, Wall Street Journal Award (top Economics student), #1 in Program Class, Jane Crohn Postmaster Award (for character and scholarship)
Hollins College - Paris study year abroad 1979

Helen McTyeire Drennen

4318 Old Leach Road 205.222.5684
Birmingham, AL 35213 helen.drennen@arc.com helenmcdren12@gmail.com

PROFESSIONAL EXPERIENCE

- REALTYSOUTH - Mountain Brook, Alabama 2013 to present
Sales Associate
Residential real estate sales
S.S. NESBITT & CO. - Birmingham, Alabama 2013 to present
Account Executive
Personal and commercial insurance sales
McTYEIRE ENTERPRISES - Birmingham, Alabama 2002 to present
Property Manager
Currently manage all marketing, leasing, accounting, and maintenance of three commercial properties.
PORTRAITS, INC. - Birmingham, Alabama 1991-2001
Sales Associate
Represented 150+ portrait artists.
National Top Salesman for seven years among more than 60 sales representatives.
SUNTRUST (formerly Third National Bank) - Nashville, Tennessee 1983-1990
Vice President, Private Banking
Built relationships with high net worth individuals by identifying and managing their financial service needs.
Vice President, Director of Market Management
Responsible for implementation of SunTrust/McCluskey and Company study for Nashville. Worked with key Market Managers in the Retail, Commercial, Investment, and Trust Divisions to organize selling efforts along market lines. Presented concepts to all bank officers and Board of Directors.
Assistant Vice President, Healthcare Lending Division
Developed relationships with corporate clients in Alabama, Texas, and Tennessee.
Senior Credit Officer, Commercial Lending Division
Established a program for credit analysis for correspondent banks and provided oversight to analysts.
WELLS FARGO (formerly First Atlanta) - Atlanta, Georgia 1981-1983
Senior Credit Analyst
Analyzed creditworthiness of small business and large corporate clients. Managed and reviewed analysts' work.
Management Training Program with focus on commercial lending and cash management.
McCluskey and Company - insert for the Atlanta Bulletin.

CIVIC LEADERSHIP

- Red Mountain Garden Club - Birmingham, Member of the Garden Club of America (GCA) 2001-2013
President
Raised \$250,000 for renovation of the Memorial Garden at the Birmingham Museum of Art.
Vice President, Occasional Sales Chair, Horticulture Chair & Southeast Zone Representative.
May, 2013
Mabel of Merit given by the GCA
Lindsay Haffa - Scholarship Committee 2008, 2009, 2013
Women's Committee of 108 for Birmingham - Member 2012-2013
Church of the Highlands - Leadership Team 2001-2013
Emmet O'Neal Library - Capital Campaign 1996

APPENDIX 2

Mouman Brook Municipal Court
Hospital Report

Year	Fees	Fines	Cases Assigned	Cases Successfully Completed
2004	\$42,290.90	\$198,671.60	604	451
2005	\$41,839.00	\$113,674.95	641	608
2006	\$70,176.45	\$181,587.47	493	479
2007	\$62,209.00	\$162,467.34	544	576
2008	\$42,145.00	\$148,777.17	796	770
2009	\$41,831.00	\$133,199.00	387	370
2010	\$50,062.00	\$104,677.98	443	937
2011	\$45,914.00	\$106,484.00	548	350
2012	\$26,772.00	\$91,878.00	233	218
2013	\$18,514.90	\$91,702.19	187	185
2014	\$8,702.00	\$71,911.74	97	67
2015	\$5,013.43	\$33,204.00	72	45

A. Board meeting on 10/20/15 - Judicial Commission Services will provide a short presentation on the new Judicial Commission. The presentation will be held at the next meeting. Program Director, Please advise the Board of the date and time of the presentation. The presentation will be held at the next meeting. The presentation will be held at the next meeting.

There are also a number of other items that are being discussed. The Board will discuss the items that are being discussed. The Board will discuss the items that are being discussed. The Board will discuss the items that are being discussed.

See report
10/20/15

7/1, I am looking for a list of the information. I believe the list is being prepared by the Board. I am looking for a list of the information. I believe the list is being prepared by the Board.

By: [Signature]
Deputy Director, Judicial Commission Services

APPENDIX 3



November 10, 2015

City of Houston
City of Houston
City of Houston

Thank you for your time and attention. Anything that we do on record that pertains to a case number of 15-111, 15-112, 15-113, 15-114, 15-115, 15-116, 15-117, 15-118, 15-119, 15-120, 15-121, 15-122, 15-123, 15-124, 15-125, 15-126, 15-127, 15-128, 15-129, 15-130, 15-131, 15-132, 15-133, 15-134, 15-135, 15-136, 15-137, 15-138, 15-139, 15-140, 15-141, 15-142, 15-143, 15-144, 15-145, 15-146, 15-147, 15-148, 15-149, 15-150, 15-151, 15-152, 15-153, 15-154, 15-155, 15-156, 15-157, 15-158, 15-159, 15-160, 15-161, 15-162, 15-163, 15-164, 15-165, 15-166, 15-167, 15-168, 15-169, 15-170, 15-171, 15-172, 15-173, 15-174, 15-175, 15-176, 15-177, 15-178, 15-179, 15-180, 15-181, 15-182, 15-183, 15-184, 15-185, 15-186, 15-187, 15-188, 15-189, 15-190, 15-191, 15-192, 15-193, 15-194, 15-195, 15-196, 15-197, 15-198, 15-199, 15-200, 15-201, 15-202, 15-203, 15-204, 15-205, 15-206, 15-207, 15-208, 15-209, 15-210, 15-211, 15-212, 15-213, 15-214, 15-215, 15-216, 15-217, 15-218, 15-219, 15-220, 15-221, 15-222, 15-223, 15-224, 15-225, 15-226, 15-227, 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106 W. Rowlett Avenue
Foley, AL 36535
(251) 943-2482
June 25, 2015

Lawrence T. Oden
Mountain Brook Municipal Mayor
P O Box 130009
Mountain Brook, AL 35213

Dear Lawrence T. Oden,

You may have received a recent mailing from the Southern Poverty Law Center ("SPLC") alleging that the private probation services provided by Judicial Correction Services, Inc. ("JCS"), and, by implication, all other private probation companies in Alabama, are illegal. As a valued client of JCS, we want to assure you that the allegations set forth in the SPLC letter are false and without merit.

SPLC alleges, in an unsupported conclusory manner, that JCS's probation services are unlawful, citing to a pending lawsuit as justification for its allegations. In fact, the lawsuit referenced by SPLC is in its very early stages of litigation, and no ruling in this case, in any manner, supports SPLC's positions. In fact, a case from the Alabama Supreme Court found that "[t]he power to contract with a private firm to aid in the collection of delinquent municipal court fines can and must be 'necessarily implied' from the power granted to cities and the obligation imposed on cities in § 12-14-3(a) to adequately support the municipal courts." See *Wilkins v. Dan Haggerty & Assoc., Inc.*, 672 So. 2d 507, 510 (Ala. 1995). Because of such, JCS disagrees with and disputes SPLC's opinions contained in that lawsuit and now recently repeated in its distributed letter. In April, JCS filed a motion to dismiss the referenced lawsuit for failing to even state a claim upon which relief can be granted, a copy of which is attached.

As to the specific allegations in the letter, SPLC first wrongly concludes that pay only probation arrangements are unconstitutional and illegal, because they were not publicly bid and because they grant JCS an "exclusive right" to manage a municipality's probation services. As JCS explained in its motion to dismiss, JCS contracts with municipalities are not, and are not intended to be, exclusive. While the SPLC tries to strain the contents of JCS contracts to create exclusivity, the contracts do not contain the explicit language the United States Supreme Court has said is necessary to create an exclusive franchise. See *Piedmont Power & Light Co. v. Town of Graham*, 253 U.S. 193, 194-95, 40 S.Ct. 453, 454, 64 L.Ed. 855 (1920). SPLC is aware that its allegations related to exclusivity are not supported by the United States Supreme Court. Disappointingly, SPLC continues to make the same false allegation.

Next, SPLC says that "probation fees in municipal court are not authorized by law." This is directly contrary to the opinion of the Alabama Attorney General, who opined that Alabama law allows municipal judges to assess "supervision fees" to probationers that are supervised by private firms. See Ala. Att'y Gen. Op. No. 98-00043 (Nov. 24, 1997) ("Therefore it is the opinion of this Office that a municipal judge can assess a supervision fee upon each probationer as a condition of probation.").

Finally, the letter implies that, because it entered into a settlement agreement with the SPLC, that the City of Clanton agreed with the allegations brought by the SPLC in its lawsuit. To the contrary, Clanton entered into a settlement agreement with the SPLC (attached to this letter), that states "at all times relevant to the Plaintiff's claim in this lawsuit (Clanton) acted lawfully."

It is unfortunate that the SPLC has chosen to litigate this suit by threatening JCS in municipalities unrelated to the lawsuit. What is even more telling of its motive is the fact that it is using mass mailings to spread information that it knows is, at best, misleading, but more likely designed to be deceptive and create fear through a veiled threat of litigation. Even so, JCS is confident in its positions and is eager for the Court to enter its opinion on the motion to dismiss. Even though we cannot predict how the Court will rule on our motion, we believe that our case is strong and that the Court will rule in our favor.

As always, we value the relationship that we have with you, and will continue to provide the best private probation services to the benefit of the municipality. Should you have any further questions or concerns regarding this matter, we are pleased to discuss them with you in more detail.

Sincerely,

Colleen Ray,
Alabama State Manager

Encl: Judicial Correction Services, Inc. Motion of Dismissal, filed April 21st, 2015

APPENDIX 3

SPLC Southern Poverty Law Center

June 17, 2015

Mayor Oden
P.O. Box 130009
Mountain Brook, AL 35213

RE: Contract with Judicial Correction Services, Inc.

Dear Mayor Oden:

We believe that the City of Mountain Brook has contracted with Judicial Correction Services (JCS) for private pay-only probation services with the Mountain Brook Municipal Court. Over the past year it has come to our attention that many—likely a hundred—towns and cities have done the same thing after being lured in by misleading promises made by JCS that it will legally collect extra revenue for these municipalities. This was a false promise. The contracts are illegal. And, as we allege in a lawsuit filed in the U.S. Court in the Middle District of Alabama, our investigation shows that JCS has not acted lawfully, either. It instead illegally extorts money from probationers who cannot afford to pay by threatening them with incarceration. I am writing to you today to share a recent settlement we reached with the City of Clanton, whereby they terminated their contract with JCS. A copy is attached. I ask you and the City to also take voluntary steps to cancel your contract with JCS before any further legal violations occur.

Pay-only probation schemes provided by JCS are unconstitutional and illegal for a number of reasons. First, your contract is unconstitutional if it grants JCS an exclusive right to probation, and it was not publicly bid. See Ala. Const. Art. I, § 22; Ala. Code § 41-16-50; see also *Beavers v. City of Walker*, 645 So. 2d 1365, 1373-74 (Ala. 1994); *Brown's Ferry Waste Disposal Ctr., Inc. v. Trent*, 611 So. 2d 226, 229-30 (Ala. 1992); *Kennedy v. City of Prichard*, 484 So. 2d 432, 433-35 (Ala. 1986). Second, the contract is void because it requires probationers to pay monthly supervision fees, and probation fees in municipal court are not authorized by law. See *Milton v. State*, 1 So. 2d 920, 921 (Ala. Ct. App. 1941); see also *State for Use & Ben. of Morgan Cnty. v. Norwood*, 26 So. 2d 577, 582 (Ala. 1946); *Cabler v. Mobile County*, 159 So. 692, 694 (Ala. 1935). Third, it creates a conflict of interest that is unconstitutional under the due process clause, as it allows a for-profit corporation with direct financial incentives to oversee probation. Probation officers decide how much a person on probation must pay each month; how often the person must report; how much a person must pay to avoid a court hearing; when a person must report to court; and what recommendation to make to the court in revocation proceedings.

This conflict of interest manifests itself in many ways. We sued JCS in the City of Clanton earlier this year because the individuals assigned to probation are threatened and extorted by JCS employees, who represent themselves as "officers," and these officers use the threat of court and jail to demand money from those who report that they cannot pay. JCS

officers set the monthly payment amount at a standard rate—usually approximately \$135 or \$140 minimum—without taking into account the individual's ability to pay. When individuals make monthly payments below that amount, JCS officers apply a large percentage of these partial payments to JCS fees, rather than ensuring that the fines and costs imposed in court are paid off first. JCS employees also regularly use a form notice that instructs individuals not to contact municipal courts and instead speak only to JCS about their payments and any problems.

JCS officers themselves are also typically given the authority by the City to decide when a hearing should be held and issue notices to individuals requiring them to appear in court, despite clear requirements that a court should issue all warrants or summons to appear in probation revocation proceedings. Ala. R. Crim. P. 27.4(a)(2). From our experience in Clanton and elsewhere, when JCS provides written notices to individuals on probation, they do not contain any explanation of the individual's rights or provide notice that the ability to pay will be a critical issue in the probation revocation proceeding. See *Turner v. Rogers*, 131 S. Ct. 2507, 2511 (2011).

Clanton decided to terminate its contract with JCS when it became fully aware of JCS's actions. They are not alone in taking a stand against JCS. The cities of Childersburg and Harpersville sued JCS to seek indemnification for the legal troubles JCS caused them. Others including Montgomery, Calera, and Thorsby have recently terminated their contracts with JCS.

We realize many towns and cities and their residents have been duped by JCS's false promises. This appears to be the case in Clanton and may be true in Mountain Brook, as well. We ask that you voluntarily terminate the contract and ensure that probationers are taken off of JCS supervision. We further ask that probationers who are found not to be indigent are given an appropriate payment plan directly with the City.

We are happy to discuss this further with you and to assist in coming up with a workable solution to transition away from the municipal court's use of JCS. We ask that you let us know within 30 days if you plan to end (or have previously ended) your contract with JCS.

Sincerely,

Sam Brooke
Deputy Legal Director

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

ROXANNE REYNOLDS, et al.
Plaintiffs,
v.
JUDICIAL CORRECTION SERVICES INC., et al.,
Defendants.

Case No. 2:15-cv-00161-MHT-CSC

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the following parties ("the Parties"): Plaintiffs Roxanne Reynolds, Rodney Ware, and Edward "Tylee" Williams ("Plaintiffs"); Plaintiffs' counsel Southern Poverty Law Center ("Plaintiffs' Counsel"); and Defendant City of Clanton ("Defendant").

Recitals

Whereas the Plaintiffs filed this action against the Defendant challenging the legality of the contract entered into between the City of Clanton and Judicial Correction Services, Inc. (JCS); and

Whereas Defendant avers that at all times relevant to the Plaintiffs' claims in this lawsuit it acted legally and lawfully;

The parties enter into the following Agreement:

Agreement

In consideration of the mutual execution of this Agreement and the releases and promises made in the Agreement by the Parties, the Parties agree as follows:

- 1. The City of Clanton, acting through Mayor Billy Joe Driver, provided notice to JCS on April 27, 2015, that it was cancelling the contract between the City of Clanton and JCS in 30 days.
2. The contract between the City of Clanton and JCS was cancelled effective May 27, 2015.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

ROXANNE REYNOLDS ET AL.,
Plaintiffs,
v.
JUDICIAL CORRECTION SERVICES, INC. ET AL.,
Defendants.

Case No. 2:15-cv-00161-MHT-CSC

Motion to Dismiss of Judicial Correction Services, Inc. and Steven Raymond

Defendants Judicial Correction Services, Inc. ("JCS") and Steven Raymond hereby move the Court, in accordance Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the Plaintiffs' First Amended Complaint (the "Amended Complaint"), or certain counts thereof, for failure to state a claim upon which relief may be granted and for lack of subject-matter jurisdiction.

The Plaintiffs' Amended Complaint asserts four counts. The first count contends that JCS and Raymond violated RICO. The second count purports to assert a claim against JCS and Raymond for the state-law claim of abuse of process. The third and fourth counts seeks declaratory and injunctive relief regarding the contract between JCS and the City of Clanton, which Plaintiffs contend is illegal for not having been competitively bid (count three) and for violating "public policy." As demonstrated

- 10. The Parties agree that the City of Clanton, may not enter into a new contract for probation-related or money-collection-related services related to its Municipal Court for at least 60 days after the notice required in Paragraph 6, above, is provided.
11. This Agreement shall remain in effect for five (5) years from the final date of execution.
12. This Agreement is the entire, final, and complete agreement of the Parties relating to the subject of this Agreement, and supersedes and replaces all prior or existing written and oral agreements between the Parties or their representatives relating thereto.
13. If any provision of this Agreement is held to be invalid or unenforceable, all remaining provisions will continue in full force and effect.
14. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals, and with the same effect as if all Parties had signed the same document.

The Parties, by their signatures below, have executed this Agreement and agree to be bound by it.

[Signatures beginning on following page]

herein, all of these counts fail to state a claim for which relief may be granted or this Court lacks subject-matter jurisdiction over the counts (or both).

A. Plaintiffs' Count III Is Due To Be Dismissed Because the Agreement Between JCS and the City of Clanton Does Not Establish an Exclusive Franchise.

1. The Plaintiffs Presented the Clause They Claim Establishes an Exclusive Franchise Out of Context.

The Plaintiffs allege that Alabama law requires a contract between a municipality and a private party to be competitively bid if such contract involves the expenditure of \$15,000.00 or more of public funds or grants an exclusive franchise. The Plaintiffs do not allege the contract involves any public funds, but incorrectly claim that the contract between JCS and the City of Clanton is void because it was not competitively bid but "grants an exclusive franchise for provision of probation services." This is not correct.

Whether or not a franchise is "exclusive" is a question of law, not fact, and is for the court to decide. Beavers v. County of Walker, 645 So. 2d 1365, 1375 (Ala. 1994). "Grants of rights and privileges by a State or municipality are strictly construed and whatever is not unequivocally granted is withheld[.]" Piedmont Power & Light Co. v. Town of Graham, 253 U.S. 193, 194-95 (1920) (emphasis added); Beavers, 645 So. 2d at 1375. In the absence of an express provision, the grant of a franchise will not be construed as exclusive. Beavers, 645 So. 2d at 1375.

The Plaintiffs' entire exclusivity argument essentially hinges on a single word in a single sentence in an exhibit to the agreement between JCS and Clanton. (See Amended Complaint, Doc. 11, ¶ 28.) Specifically, the Plaintiffs argue that JCS is granted an exclusive franchise because the exhibit provides, "JCS will supervise all probated cases sentenced by the Court." In a vacuum, the Plaintiffs ask this Court to believe that the word "all" was inserted in this clause to grant JCS an exclusive franchise. The agreement must be interpreted by "reading the words of [the] contract in the context of the entire contract and construing the contract to effectuate the parties' intent." *Feaz v. Wells Fargo Bank, N.A.*, 745 F.3d 1098, 1104 (11th Cir. 2014) (emphasis added); see also *Winn-Dixie Stores, Inc. v. Dolgencorp, LLC*, 746 F.3d 1008, 1022 (11th Cir. 2014) ("In reviewing a document, a court must consider the document as a whole, rather than attempting to isolate certain portions of it.") (emphasis added). Both the context of that exhibit and, indeed, the totality of the agreement do not support the contention that either party intended to form, or in fact did form, a contract constituting an exclusive franchise.

The complete contract between JCS and Clanton spans five pages: a cover page containing recitals, three exhibits, and a signature page. (Contract between JCS and Clanton, attached as Exhibit 1 hereto ("Ex. 1").) The exhibit to the contract at issue,

¹ Because the contract between JCS and Clanton is referenced in and is material to the Amended Complaint, it can be considered by the Court without converting this motion to dismiss into a motion for summary judgment. See *Brooks v. Blue Cross and Blue Shield*, 116 F.3d 1364,

Exhibit A, is titled "Uniform Standards of Probation Supervision." (Ex. 1 at Ex. A.) Reading through the eight sections of Exhibit A quickly reveals the context of this exhibit: it is a list of requirements and duties with which JCS must comply.

In fact, each of the 8 paragraphs imposes some duty or restriction on JCS. (Ex. 1.) Paragraph 1 requires all probation officers hired by JCS to be 21 years of age or older. Paragraph 2 requires JCS to employ at least one supervisor with a minimum of five years experience in corrections, parole, or probation services. Paragraph 3 forbids JCS from hiring any convicted felon as a private probation officer. Paragraph 4 requires JCS to run background checks before hiring private probation officers. Paragraph 5 requires JCS to supervise cases assigned to it by the Clanton municipal court, including indigent cases "when determined by the Court." Paragraph 6 requires JCS to return non-compliant probationers to the court and comply with court orders. Paragraph 7 requires JCS not to charge probation

1369 (11th Cir. 1997) ("[W]here the plaintiff refers to certain documents in the complaint and those documents are central to the plaintiff's claim, then the Court may consider the documents part of the pleadings for purposes of Rule 12(b)(6) dismissal, and the defendant's attaching such documents to the motion to dismiss will not require the conversion of the motion into a motion for summary judgment."); see also, *Snider v. Morgan*, 113 So. 3d 643, 648 (Ala. 2012) ("Nonetheless, the motions to dismiss were not converted to motions for a summary judgment, because the exhibits set out above were specifically referenced in Jeff's complaint and, thus, were not matters outside the pleading."); *Donoghue v. American Nat'l Ins. Co.*, 838 So. 2d 1032, 1035 (Ala. 2002) (adopting the rule "precluding conversion when the exhibits in question are referred to in, and are central to, the plaintiff's complaint"); *Lewis v. First Trust Bank*, 964 So. 2d 36, 39 n. 1 (Ala. Civ. App. 2007) ("[D]ocuments attached to a motion to dismiss are considered a part of the pleadings if those documents were specifically referred to in the plaintiff's complaint and are central to the claim being brought." (quoting *Banks, Finley, White & Co. v. Wright*, 864 So. 2d 324, 327 (Ala. Civ. App. 2001))).

supervision fees to probationers that pay their entire fine and court costs within one week of sentencing. Finally, Paragraph 8 requires JCS to comply with state and federal law. (Ex. 1)

What none of the paragraphs contain is any requirement or duty of the City of Clanton or the Clanton Municipal Court. The context of the exhibit is clear. It was not intended by the parties to grant JCS any exclusive franchise. Indeed, it was not intended to grant any rights to JCS at all. Its sole purpose, as is reflected in its title, is to establish the "Uniform Standards of Probation Supervision" to which JCS is required to comply. (Ex. 1.)

2. The Clause Quoted by the Plaintiffs Does Not Make the Agreement Exclusive.

Even had the Plaintiffs presented the clause on which they rely in the proper context, which they did not, the clause itself is still not enough to establish an exclusive franchise. In *Beavers*, the Alabama Supreme Court concluded that a clause established an exclusive franchise when such clause said:

The Authority and County agree that throughout the term of this Agreement neither the Authority nor the County will, without the prior written consent of BFI, operate (except for the Walker County Landfill which will be closed contemporaneously with the commencement of operations at the BFI Sanitary Landfill) or develop any Solid Waste disposal facility (including, without limitation, any sanitary landfill, incinerator or similar facility) within the County and neither of them will enter into any agreement or other arrangement of any kind with any other person or entity relating to the development, use or operation of any such Solid Waste disposal facility within the County.

Beavers at 1374-75. The difference in this, a true exclusivity clause, and the one at issue in the present case is stark. While the *Beavers* defendants clearly intended to form an exclusive franchise, JCS and Clanton did not. The parties, rather, merely intended for JCS to be required to take any probation case that the Clanton Municipal Court assigned to JCS.

Whereas the exclusivity clause in *Beavers* was clearly purposed to protect the private contractor's right to serve Walker County, both the language and the context of the clause at issue in this case suggest the clause was intended to protect the Clanton Municipal Court, which the Plaintiffs admit is a very small operation (see Amended Complaint, Doc. 11, ¶ 16), and to prevent JCS from declining to provide administration to assigned probation cases. To interpret the clause otherwise is to ignore the context surrounding the clause and create an exclusivity provision where one was not contemplated by the parties. See *Beavers*, 645 So. 2d at 1375. For the foregoing reasons, the contract does not create an exclusive franchise, was not required to be competitively bid, and the Plaintiffs' Count III is due to be dismissed as a matter of law.

B. Plaintiffs' Count IV is Due to be Dismissed Because the Arrangement and Administration of Probation Cases Between JCS and Clanton Were Lawful.

The Plaintiffs' fourth count, which alleges the JCS/Clanton agreement "violates public policy" by allowing JCS to collect fees, is due to be dismissed because

Alabama public policy explicitly allows municipalities to contract with private probation services and further allows those private probation services to collect fees in connection with the services they render. The Plaintiffs incorrectly urge this Court to ignore the authority available regarding this subject and create new law because the agreement "violates public policy." See *Willis v. Kincaid*, 983 So. 2d 1100, 1102 (Ala. 2007) ("Matters of policy are for the Legislature and, whether wise or unwise, legislative policies are of no concern to the courts.")³ This Court should decline to ignore the interpretation of Alabama state law available to it and should dismiss this count of the Plaintiffs' Amended Complaint.

It is well settled that "[t]he power to contract with a private firm to aid in the collection of delinquent municipal court fines can and must be 'necessarily implied' from the power granted to cities and the obligation imposed on cities in § 12-14-2(a) to adequately support the municipal courts." *Wilkins v. Dan Haggerty & Assoc., Inc.*, 672 So. 2d 507, 510 (Ala. 1995). The provision of probation services is expressly authorized by § 12-14-2(a). Indeed, the use of private firms for small municipalities such as Clanton allows those municipalities to provide for better supervision for probationers.

³ While Plaintiffs do not make a similar argument in their Amended Complaint, their Brief in Support of Motion for Preliminary Injunction, filed contemporaneously with the Amended Complaint, urges this Court to ignore the only guidance any office of the State of Alabama has provided regarding the legality of the probation fees.

While the Plaintiffs would apparently have such private firms paid either through public funds or not at all, the Alabama Attorney General expressly opined that municipal judges may assess "supervision fees" to probationers that are supervised by private firms. See Ala. Att'y Gen. Op. No. 98-00043 (Nov. 24, 1997). Attorney General Pryor correctly wrote that the municipal probation statute gives municipal judges "broad authority to place conditions on probation." *Id.* (discussing Ala. Code § 12-14-13). That statute enumerates certain examples of such conditions, then goes on to give the municipal courts authority to require probationers to comply with "any other conditions." This broad authority enables judges in small municipalities like Clanton to do what is necessary to fulfill their charge from the legislature to provide and support municipal courts.

In their brief in support of their Motion for Preliminary Injunction, filed contemporaneously with the Amended Complaint, the Plaintiffs urge this Court to ignore the Attorney General's opinion on this matter. In support of this, they cite an Alabama Court of Civil Appeals case that involved an Attorney General opinion that incorrectly relied on an excerpt from an Alabama Supreme Court that did not even discuss the statute at issue. See *Alabama Dept. of Public Safety v. Barbour*, 5 So. 3d 601, 610 (Ala. Civ. App. 2008) ("In his opinion, the attorney general erroneously relied on an excerpt from *Ex parte Welch*. . . . The Welch court did not even address

APPENDIX 3

§ 32-5A-191(e), the precursor to present-day § 32-5A-191(h)"). This case is not remotely similar.

Unlike *Barbour*, there are no Alabama court decisions that directly address the matter at issue — namely, the legality of supervision fees charged to probationers. Further, this is a federal court interpreting Alabama state law, and the *only* Alabama state authority, precedential or otherwise, is Attorney General Pryor's opinion. The 11th Circuit Court of Appeals has held that "opinions of the Attorney General of course are not binding, [but] they are entitled to some deference, especially where judicial decisions construing a statute are lacking." *Brown v. Alabama Dept. of Transp.*, 597 F.3d 1160, 1187-88 (2010) (quoting *Tal-Oren v. Libyan Arab Republic*, 726 F.2d 774, 780 n. 6 (D.C. Cir. 1984) (emphasis added)). The Plaintiffs are not correct when they instruct this Court to simply ignore the Alabama Attorney General's opinion. In fact, "because the Attorney General had issued an opinion on the point, the district court [is] not free to 'proceed as if the matter were open to utterly independent consideration.'" *Id.* at 1187 (quoting *Huggins v. Isenbarger*, 798 F.2d 203, 207 (7th Cir. 1986) (Easterbrook, J., concurring)) (emphasis added). To the contrary, "in the absence of any dispositive state-court jurisprudence on an issue of state law, a federal court should 'closely examine the opinions of the [State] Attorney

General." *Id.* at 1188 (quoting *Kneeland v. Nat'l Collegiate Athletic Ass'n*, 850 F.2d 224, 228 (5th Cir. 1988)).

Knowing that they can cite no "dispositive state-court jurisprudence on [this] issue of state law," the Plaintiffs opted to preemptively attack the one piece of concrete authority that this Court could reference regarding the legality of probation supervision fees charged by Alabama municipal court order. This attack is not due to be obliged, and Plaintiffs' count IV is thus due to be dismissed as a matter of law.

C. The Plaintiffs' Third Count Is Barred by the Statute of Limitations.

The Plaintiffs allege in their Amended Complaint that "Defendant ICS first contracted with Defendant City of Clanton on February 9, 2009." (Amended Complaint, Doc. 11, ¶ 23.) The original Complaint of the Plaintiffs was filed on March 12, 2015, 6 years, 1 month, and 3 days after the contract at issue was executed. (See Stamp of Clerk, Complaint, Doc. 1.) Alabama Code § 41-16-2 provides that, "A prosecution for any offense in violation of the competitive bid laws of Articles 2 and 3 of this chapter must be commenced within six years after the commission of the offense." Ala. Code § 41-16-2 (emphasis added). The Plaintiffs allege various offenses occurring "prior to executing the contract." For example, the Amended Complaint states:

24. Defendant City of Clanton did not put out a request for bids or otherwise advertise and solicit bids for probation services prior to executing the contract with Defendant JCS in 2009.
25. Defendant City of Clanton has not put out a request for bids or otherwise advertised and solicited bids for probation services after executing the contract with Defendant JCS in 2009.

(Amended Complaint, Doc. 11, ¶¶ 24-25.)

Also, the third count seeks relief based on an allegation that “[t]he contract was not competitively bid, as required by Ala. Const. Art. I, § 22 and Ala. Code 1975, § 41-16-50.” (Amended Complaint, Doc. 11, ¶ 214.)

As such, because the Plaintiffs’ claims were not filed within six years after the commission of the alleged offense, they are barred by the statute of limitations of Alabama Code § 41-16-2 and are due to be dismissed.

Additionally, the Plaintiffs cannot get around the statute by asserting a claim for declaratory relief. “While equitable remedies are not directly controlled by statutes of limitations, these remedies are unavailable where the statute of limitations has already run on the underlying legal claim.” *Murray v. Sevier*, 993 F. Supp. 1394, 1404 (M.D. Ala. 1997); *see also, e.g., Roberts v. Lanier*, 72 So. 3d 1174, 1184 (Ala. 2011) (“The act or omission giving rise to Roberts’s request for a judicial declaration that Lanier had engaged in the unauthorized practice of law occurred upon the execution of the contract in April 2006, and Roberts says that she learned on April 27,

11

2006, that Lanier was not licensed to practice law in Alabama. However, Roberts did not file the present action until February 2009, well after the two-year statute of limitations had expired.”). Thus, even the claim for declaratory or other equitable relief is time barred.

D. Plaintiffs’ Counts I and II Are Due To Be Dismissed Because the Actions of JCS and Raymond Were Legal Under the Agreement Between JCS and Clanton.

In Counts I and II of their Amended Complaint, the Plaintiffs lodge RICO and “abuse of process” claims against JCS and Raymond by claiming, essentially, that JCS’s collection of fees, as ordered by the Clanton Municipal Court, is “extortion.” According to the Amended Complaint, this “extortion” consisted of “obtaining by threat a \$10 set-up fee and a \$40-per-month probation fee from Plaintiffs[.]” In other words, JCS and Raymond are accused of “extortion” because they collected the monies they are authorized to charge and collect under the lawful agreement between JCS and the City of Clanton.

Particularly, the “threats” or notices described by the Plaintiffs are normal functions that would be expected from any probation supervision service and were, indeed, required of JCS through its agreement with Clanton. The contract was set up so that JCS could “notif[ly] the Court of any Non-Compliance,” collect fines levied by the Clanton Municipal Court, and provide reports to the Clanton Municipal Court

12

APPENDIX 3

regarding compliance and payment information. Any action against the probationers was and is strictly left to the Clanton Municipal Court, while that court agreed that, as it is allowed to do under Ala. Code § 12-14-13, it would order probationers to pay set-up and probation fees to cover the costs of their supervision. Instead of attacking the substance of JCS’s required conduct under the agreement, the Plaintiffs have sought to mischaracterize that required conduct as “extortion.” Simply put, JCS did nothing more or different than it was required to do with its agreement with the City of Clanton. As discussed *supra*, that agreement is valid, and thus the Plaintiffs’ attempts to declare compliance with the agreement illegal cannot stand. Thus, counts I and II of the Plaintiffs’ Amended Complaint are due to be dismissed.

E. The Plaintiffs’ RICO Claims Are Barred by the Statute of Limitations.

The Amended Complaint alleges that “[t]he Private Probation Defendants and the other participants in the RICO Enterprise have engaged in the racketeering activity described in this Claim repeatedly starting in about February 2009 and continuing through the present with respect to thousands of criminal defendants in the Clanton Municipal Court.” (Amended Complaint, Doc. 11, ¶ 199.) The suit was filed more than four years later on March 12, 2015. (See Stamp of Clerk on Complaint, Doc. 1.) There is a four-year statute of limitations for RICO claims. *See Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143 (1987); *Rotella v.*

13

Wood, 528 U.S. 549 (2000); *McCaleb v. A.O. Smith Corp.*, 200 F.3d 747, 751 (11th Cir. 2000). “A civil RICO action begins to accrue as soon as the plaintiff discovers, or reasonably should have discovered, both the existence and source of his injury and that the injury is part of a pattern.” *McCaleb*, 200 F.3d at 751. That is, “[t]his requirement is in accordance with the four year statute of limitations established by the United States Supreme Court because it requires ‘plaintiffs to pursue the civil RICO remedy within four years of the time when they discovered, or reasonably should have discovered, that they are entitled to civil RICO damages for their injury.’” *Id.* (quoting *Bivens Gardens Office Bldg., Inc. v. Barnett Bank, Inc.*, 906 F.2d 1546, 1544*55 (11th Cir. 1990).) “In this area, ‘inquiry notice’ controls. *Blackburn v. Calhoun*, No. 2:07-CV-166, 2008 WL 850191, *23 (N.D. Ala. Mar. 4, 2008) (finding claims barred by the statute of limitations and holding that “Blackburn’s RICO claims are therefore time barred, and the Rule 12(b)(6) motion of these defendants is granted.”). Because racketeering activity alleged in the Amended Complaint is alleged to have started more than four years ago, the Plaintiffs’ RICO claims are time-barred and should be dismissed.

F. Plaintiffs’ RICO Claims Are Due To Be Dismissed Because Plaintiffs Failed To Plead It with Particularity.

The Plaintiffs’ Count I is due to be dismissed because the Plaintiffs failed to plead it with the level of specificity required for a RICO claim. “Civil RICO claims,

14

which are essentially a certain breed of fraud claims, must be pled with an increased level of specificity. *See Brooks v. Blue Cross and Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1380-81 (11th Cir. 1997); *see also* Fed. R. Civ. P. 9(b). To satisfy the standard set out by Rule 9(b), a RICO plaintiff must allege the *precise* statements, documents, or misrepresentations made; the time and place of and person responsible for the statement; the content and manner in which the statements misled the plaintiff; and what the defendants gained by the alleged fraud. *Brooks*, 116 F.3d at 1380-81.

In their Amended Complaint, the Plaintiffs recite their individual stories, each of which fails to specify exactly what statements or behavior by JCS or its employees were supposedly the "extortion" that Plaintiffs use as their RICO predicate. Instead, the Plaintiffs generally allege that JCS asked them to pay the fines they were assessed and the fees they agreed to, then explaining how the Plaintiffs "felt" about their situation. These statements are interspersed with details about the Plaintiffs' personal hardships, most of which bear absolutely no connection to JCS or any of the allegations of this case.

At no point, however, does the Amended Complaint inform any Defendant, "This Defendant committed the RICO predicate act of extortion by making the following statement or action." A RICO complaint must "inform each defendant of the nature of his alleged participation in the fraud." *Ambrosia Coal & Construction*

15

Co. v. PAGES Morales, 482 F.3d 1316-17 (11th Cir. 2007). The Plaintiffs did not specify any of the particular behaviors that they allege were extortion and failed to inform any Defendant of the nature of the "alleged participation in the fraud" they are forced to defend. The RICO claims should therefore be dismissed due to Plaintiffs' failure to comply with RICO's heightened pleading standard.

G. Plaintiffs' Amended Complaint Is Due To Be Dismissed Because JCS and Raymond Are Entitled to Quasi-Judicial Immunity.

Through the agreement between JCS and the City of Clanton, JCS and its employees act as officials of the Clanton Municipal Court, who are appointed by that court, and who have an integral relationship with the judicial process. JCS and Raymond are, then, entitled to absolute quasi-judicial immunity. *See Roland v. Phillips*, 19 F.3d 552, 555 (11th Cir. 1994) (holding that non-judicial officials are encompassed by a judge's absolute immunity when their official duties "have an integral relationship with the judicial process"). This absolute immunity is available to the quasi-judicial officers as long as they are acting within the scope of their authority. *See id.* Where a court-appointed non-judicial official is appointed to carry out a court function, and he "carries out faithfully . . . the orders of the appointing judge," he will receive absolute immunity. *See Property Mgmt. & Invs., Inc. v. Lewis*, 752 F.2d 599, 603-04 (11th Cir. 1985) (finding absolute immunity for court-

16

APPENDIX 3

appointed receiver who did not do anything "beyond the scope of the official function of a state court receiver").

In this matter, JCS and Raymond simply carried out the functions they were appointed to carry out by the Clanton Municipal Court in accordance with the agreement between JCS and Clanton. As explained in Section D, *supra*, the "wrongdoing" alleged by the plaintiffs — collecting fees, giving the court information about probationers, etc. — was duly done according to the orders of the Clanton Municipal Court under the color of right granted to JCS by that court. JCS and Raymond, then, are absolutely immune from liability for actions taken within the scope of their directions from the Clanton Municipal Court. Because JCS's and Raymond's actions described in the Amended Complaint (to the extent they were taken at all) were taken within the scope of this direction, the Amended Complaint is due to be dismissed.

H. Plaintiffs' Amended Complaint Is Due To Be Dismissed Because This Court Lacks Subject-Matter Jurisdiction Over This Case Under the Rooker-Feldman Doctrine and Because It Is an Improper Collateral Attack on Judgments in Criminal Cases.

This Court lacks subject-matter jurisdiction over this action because of the *Rooker-Feldman* doctrine, which provides that "federal courts, other than the United States Supreme Court, have no authority to review the final judgment of state courts." *Goodman v. Sipes*, 259 F.3d 1327, 1332 (11th Cir. 2002). "The *Rooker-Feldman*

17

doctrine prevents . . . lower federal courts from exercising jurisdiction over cases brought by 'state-court losers' challenging 'state-court judgments rendered before the district court proceedings commences.'" *Lance v. Dennis*, 546 U.S. 459, 460 (2006) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)).

The Plaintiffs' Amended Complaint essentially asks this Court to invalidate the court orders of the Clanton Municipal Court by declaring the contract through which those orders are carried out and the actions through which the court's authority is imposed illegal. The probation orders underlying this case are final, appealable orders under Alabama law. *See D.A.D.O. v. State*, 57 So. 3d 798, 801 (Ala. Crim. App. 2009). The Plaintiffs cannot skirt *Rooker-Feldman* by alleging the orders were wrongfully procured by an illegal contract: the orders "remain in full force and effect until they are reversed or modified by an appropriate state court." *Grant v. Countrywide Home Loans, Inc.*, No. 1:08-CV-1547-RWS, 2009 WL 1437566, *4 (N.D. Ga. May 20, 2009) (holding that *Rooker-Feldman* applies even when a plaintiff alleges that a state-court judgment was procured by fraud).

The ultimate goal of the Plaintiffs' suit (besides seeking treble damages from JCS and Raymond for carrying out quasi-judicial actions in accordance with a lawful agreement with the City of Clanton), is to invalidate the court orders entered by the Clanton Municipal Court by voiding the contract between JCS and Clanton. This action is beyond this Court's jurisdiction. This circuit recognized in a case seeking

18

a similar result that “the district court correctly applied the *Rooker-Feldman* doctrine where the plaintiffs were requesting a district court to declare a final state court judgment void.” *Hirschhorn v. Ross*, 250 F. App’x 916 (11th Cir. 2007). Even claims that indirectly challenge a state court’s judgment are barred by *Rooker-Feldman*. See *Goodman* 259 F.3d at 1334 (holding that the district court lacked subject-matter jurisdiction over plaintiffs’ § 1983 claim that an employee of Family and Child Services submitted a fraudulent affidavit that led to an adverse court order). The Plaintiffs’ counts III and IV directly strike at the Clanton Municipal Court’s orders, while counts I and II attack the orders indirectly. All claims seek to usurp the state court’s judgment through the federal courts, and under *Rooker-Feldman* the Plaintiffs’ claims are due to be dismissed.

Similarly, this Court lacks subject-matter jurisdiction because this action is an improper civil proceeding collaterally attacking the judgments in criminal cases. A defendant in a state-court criminal proceeding must challenge allegedly unconstitutional or improper fines or fees within the criminal proceeding or under a petition for postconviction relief under Rule 32 of the Alabama Rules of Criminal Procedure. “Rule 32 applies . . . to a postconviction challenge to a portion of a court cost.” *Citizenship Trust v. Keddle-Hill*, 68 So. 3d 99, 105 (Ala. 2011). In *Citizenship Trust*, the plaintiffs brought a proposed class action challenging a \$12 fee for a DNA database that was imposed as part of the fine for a traffic citation. The plaintiffs

sought injunctive relief, declaratory relief, and refunds of the fees. The trial court entered a preliminary injunction requiring the defendant to escrow all funds received from the fees paid. On appeal, the Alabama Supreme Court held that “because this is a civil proceeding collaterally attacking the judgments in criminal cases, it falls within the scope of Rule 32, Ala. R. Crim. P.” and ordered the trial court to dismiss the case. *Citizenship Trust*, 68 So. 3d at 105-06. Because the present case, just like the civil claims in *Citizenship Trust*, is an attack on fines or fees as part of criminal judgments and orders, it is due to be dismissed for lack of subject-matter jurisdiction.

I. Plaintiffs Do Not Have Standing to Assert That the Contract Between JCS and Clanton Is Void as Against Public Policy.

The Plaintiffs have made no allegations that there were parties to the alleged contract between JCS and Clanton or even third-party beneficiaries to the contract. (See Amended Complaint, Doc. 11.) As strangers to the contract, they have no standing to complain about those contracts. See *Dunning v. New England Life Ins. Co.*, 890 So. 2d 92, 97-98 (Ala. 2003) (“the employees have no standing to complain about the alleged fraudulent behavior in connection with the execution of the contracts on New England Mutual’s part.”). As such, because the Plaintiffs lack standing this Court has no jurisdiction over their claims. *Id.* (“Because the employees lack standing, the trial court did not have jurisdiction over their claims.”).

J. The Plaintiffs Have Not Stated a Claim for Relief that the Contract Is Void as Against Public Policy.

The Plaintiffs sole allegation that the contract should be void as against public policy is the unsupported statement that “Alabama law does not authorize such a municipal probation fee to be charged.” (Amended Complaint, Doc. 11, ¶ 220.) The Plaintiffs cite no statute or case that supports this statement. “[T]o the extent this or any case requires us to look beyond the provisions of a statute directly at issue in order to ascertain whether a contractual provision is in violation of public policy, our Supreme Court has repeatedly declared that the principle that contracts in contravention of public policy are not enforceable should be applied with caution and only in cases plainly within the reason on which the doctrine rests.” *Alfa Specialty Ins. Co. v. Jennings*, 906 So. 2d 195, 199 (Ala. Civ. App. 2005).

The Court in *Milton Construction Co. v. State Highway Department*, 568 So. 2d 784 (Ala.1990), explained as follows:

The courts are averse to holding contracts unenforceable on the ground of public policy unless their illegality is clear and certain. Since the right of private contract is no small part of the liberty of the citizen, the usual and most important function of courts of justice is to maintain and enforce contracts rather than to enable parties thereto to escape from their obligations on the pretext of public policy, unless it clearly appears that they contravene public right or the public welfare. . . . Many courts have cautioned against recklessness in condemning agreements as being in violation of public policy. Public policy, some courts have said, is a term of vague and uncertain meaning which it is the duty of the law-making power to define, and courts are apt to

encroach upon the domain of that branch of the government if they characterize a transaction as invalid because it is contrary to public policy, unless the transaction contravenes some positive statute or some well-established rule of law. Other courts have approved the statement of an English judge that public policy is an unruly horse astride of which one may be carried into unknown paths. Considerations such as these have led to the statement that the power of the courts to declare an agreement void for being in contravention of sound public policy is a very delicate and undefined power and, like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt. . . . The fact is that since the courts are reluctant to declare an agreement void as against public policy, they will refuse to do so if by any reasonable construction the agreement can be upheld. Along this line, it is said that the paramount public policy is that freedom to contract is not to be interfered with lightly, and it is the court’s duty to sustain the legality of a contract in whole or in part whenever it can do so.

Id. at 788-89 (emphasis added); see also *ThyssenKrupp Steel USA, LLC v. United Forming, Inc.*, 926 F. Supp. 2d 1286, 1297 (S.D. Ala. 2013) (refusing to hold contract void as against public policy since its illegality was not “clear and certain.”). In our case the Plaintiffs have not pleaded any authority to support its position, much less authority that is clear and certain. As noted previously, the Alabama Attorney General has issued an opinion concluding that contracts like the JCS/Clanton contract are valid. Ala. Att’y Gen. Op. No. 98-00043 (Nov. 24, 1997). It can hardly be said that the contract’s illegality is “clear and certain.” As such, the Plaintiffs’ claim seeking a declaration that the contract is void as against public policy is due to be dismissed.

K. The Complaint Fails to State a Cognizable Claim for Abuse of Process.

To establish a claim of abuse of process, the Plaintiffs must prove: "(1) the existence of an ulterior purpose, (2) a wrongful use of process, and (3) malice." *Cahaba Forests, LLC v. Hay*, 927 F. Supp. 2d 1273, 1291 (M.D. Ala. 2013) (citing *C.C. & J., Inc. v. Hagood*, 711 So. 2d 947, 950 (Ala. 1998)). Whereas "[m]alicious prosecution concerns the wrongful issuance of process; abuse of process concerns the wrongful use of process after it has been issued." *C.C. & J., Inc. v. Hagood*, 711 So. 2d at 950 (emphasis in original). "As our supreme court has explained, a defendant cannot be liable for the tort of abuse of process 'if the action is confined to its regular and legitimate function in relation to the cause of action stated in the complaint.'" *Shoney's, Inc. v. Barnett*, 773 So. 2d 1015, 1025 (Ala. Civ. App. 1999) (emphasis added). That is, a "defendant cannot be held liable for abuse of process unless he or she somehow acted outside the boundaries of legitimate procedure after the initiation of the proceeding." *Haynes v. Coleman*, 30 So. 3d 420, 426 (Ala. Civ. App. 2009).

The allegations made against the Defendant are all things that are within the law and legitimate procedures. As such, the Plaintiffs have not stated a valid claim for abuse of process.

M. Plaintiffs' Claims for Prospective Declaratory Relief Are Barred by *O'Shea v. Littleton*.

In Counts Three and Four Plaintiffs seek broad and abstract declaratory relief. (Amended Complaint, Doc. 11, ¶¶ 212-223.) For example, the Amended Complaint states:

- 216. Plaintiffs and putative class members are entitled to a declaration that the contract is void and unenforceable.
- 217. Plaintiffs and putative class members are entitled to permanent injunction enjoining enforcement of the contract.
- • •
- 223. Plaintiffs and putative class members are entitled to permanent injunction enjoining enforcement of the contract.

(Amended Complaint, Doc. 11, ¶¶ 216-217, 223.) In *O'Shea v. Littleton*, 414 U.S. 488 (1974), the Supreme Court addressed similar claims for prospective declaratory relief as those asserted by Plaintiffs in this case. In *O'Shea*, the plaintiffs brought a class action against a state-court magistrate and judge claiming that they violated the constitutional rights of the plaintiffs by, among other things, sentencing indigent persons to jail for failing to pay fines. The plaintiffs sought an order enjoining the allegedly discriminatory practices in the state criminal court. The Supreme Court rejected the claims on two grounds: (A) the plaintiffs lacked standing to seek an injunction against potential future injuries, and (B) entering the requested injunctive

L. The Claims of Abuse of Process Are Barred by the Statute of Limitations.

"Abuse of process" is a tort claim. See *M & F Bank v. First American Title Ins. Co.*, 144 So. 3d 222 (Ala. 2013) ("[t]he elements of the tort of abuse of process are ..."). As such, the statute of limitations for this claim is two years. See Ala. Code § 6-2-38(f).³ The Amended Complaint alleges acts occurring in 2009 and more than two years before the complaint was filed. (See, e.g., Amended Complaint, Doc. 11, ¶ 199 ("The Private Probation Defendants and the other participants in the RICO Enterprise have engaged in the racketeering activity described in this Claim repeatedly starting in about February 2009 and continuing through the present with respect to thousands of criminal defendants in the Clanton Municipal Court.")). As such the Plaintiffs' claims for abuse of process are barred by the statute of limitations.

³ See also *Dawson v. Piggott*, No. CIV.A. 10-0376-WS-N, 2010 WL 4260108, at *3 (S.D. Ala. Oct. 21, 2010) ("The parties identify no statute expressly addressing claims of retaliation and abuse of process, but a residual provision states that '[e]ll actions for any injury to the person or rights of another not arising from contract and not specifically enumerated in this section must be brought within two years.' *Id.* § 6-2-38(f). Piggott invokes this provision, and the plaintiff does not deny that it applies. The Court therefore assumes for present purposes that a two-year limitations period applies to each of the plaintiff's state claims."); *Northwest Airlines, Inc. v. Casancho*, 296 F.3d 787, 789-790 (9th Cir. 2002) (holding that claims for malicious prosecution and abuse of process were not specifically included among claims listed in statute of limitations did not preclude determination that malicious prosecution and abuse of process claims were subject to provision of statute establishing two-year limitations period for injury to or death of person caused by another's neglect or wrongful act).

relief would be an improper exercise of federal judicial powers. The same two grounds require dismissal of Plaintiffs' request for prospective injunctive relief.

1. Plaintiffs Lack Standing to Pursue Claims for Prospective Injunctive Relief.

As in *O'Shea*, Plaintiffs have "failed to satisfy the threshold requirement imposed by Art. III of the Constitution that those who seek to invoke the power of federal courts must allege an actual case or controversy." *Id.* at 493. For prospective relief, Plaintiffs must allege a "real and immediate" threat of injury. *Id.*

Apparently, the proposition is that, if respondents proceed to violate an unchallenged law and if they are charged, held to answer, and tried in any proceedings before petitioners, they will be subjected to the discriminatory practices that petitioners are alleged to have followed. But it seems to us that attempting to anticipate whether and when these respondents will be charged with crime and will be made to appear before either petitioner takes us into the area of speculation and conjecture.

Id. at 497. See also *City of Los Angeles v. Lyons*, 461 U.S. 95, 102-05 (1983) (holding that a plaintiff lacked standing to pursue injunctive relief when the plaintiff would face such practices only if he violated the law and is charged, tried, and convicted); *Eubank v. Leslie*, 210 F. App'x 837 (11th Cir. 2006) ("[W]e must assume that [the plaintiff] will conform his future conduct to the law, in which case he will never be exposed to the allegedly unconstitutional conditions.").

In other words, in *O'Shea* "[i]t was to be assumed 'that [plaintiffs] will conduct their activities within the law and so avoid prosecution and conviction as well as

exposure to the challenged course of conduct said to be followed by [defendants].” *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983) (quoting *O’Shea*, 414 U.S. at 497). The same principle applies here. Plaintiffs do not claim that the underlying speeding, traffic, or other misdemeanor laws are unconstitutional. Furthermore, the Amended Complaint does not “allege facts from which it appears that there is a substantial likelihood that [Plaintiffs] will suffer injury in the future.” *Walden v. Centers for Disease Control and Prevention*, 669 F.3d 1277, 1284 (11th Cir. 2012).

Thus, Plaintiffs who each formerly served probation under the supervision of JCS cannot demonstrate a “real and immediate” threat that they will be ordered to probation for some future traffic offense or violation of some other misdemeanor criminal statute. Given the Supreme Court’s instruction to assume that Plaintiffs will follow the law, they lack standing to pursue claims for future injunctive relief.

2. Plaintiffs’ Claims for Prospective Declaratory Relief Would Constitute an Intrusive, Unworkable, and Ongoing Interference by This Court with State-Court Criminal Proceedings.

Plaintiffs’ claims for future injunctive relief are also barred for the second reason expressed in *O’Shea*—i.e., this relief would require an ongoing federal court intrusion into state-court judicial affairs. In *O’Shea*, the Supreme Court expanded the *Younger* abstention doctrine to apply to prospective injunctive relief in state-court proceedings.

What they seek is an injunction aimed at controlling or preventing the occurrence of specific events that might take place in the course of future state criminal trials. . . . Apparently the order would contemplate interruption of state proceedings to adjudicate assertions of noncompliance by petitioners. This seems to us nothing less than an ongoing federal audit of state criminal proceedings which would indirectly accomplish the kind of interference that *Younger v. Harris*, *supra*, and related cases sought to prevent.

O’Shea, 414 U.S. at 500.

In *Lucky v. Miller*, 976 F.2d 673 (11th Cir. 1992), the Eleventh Circuit relied heavily on *O’Shea* in holding that a claim for prospective injunctive relief to provide counsel for indigent defendants was barred. The plaintiffs sought to distinguish *O’Shea* by arguing that they merely sought “an order which would require the Defendants to reform their own system, and not to impose ongoing review from the outside.” *Id.* at 678. The Eleventh Circuit rejected this theory, however, reasoning that it must consider the potential enforcement difficulties that would arise if its order was violated. *Id.* at 679 (“This Court is constrained, therefore, to focus on the likely result of an attempt to enforce an order of the nature sought here.”). The *Lucky* court abstained from exercising its equitable jurisdiction because “laying the groundwork for a future request for more detailed relief which would violate the comity principles expressed in *Younger* and *O’Shea* is the precise exercise forbidden under the abstention doctrine.” *Id.*

In *Pompey v. Broward County*, 95 F.3d 1543 (11th Cir. 1996), the Eleventh Circuit held that similar requests for prospective injunctive relief were “intrusive and unworkable” and, therefore, barred. *Id.* at 1549. In that case, the plaintiffs sought prospective injunctive relief prohibiting state-court judges from incarcerating indigent individuals at contempt hearings without appointing counsel, and a declaratory judgment that it was unconstitutional to incarcerate individuals without making a finding regarding indigence. The Court reasoned:

Even if the district court were able to frame such an injunction in a satisfactory way, it would be unwise to do so. It would be unwise, because such an injunction would be at once an insult to the [state judges] . . . and an empty but potentially mischievous command to these officials to avoid committing any errors. It would ensnare the federal district court in relitigation of the state contempt proceeding issues, which is the kind of mischief *O’Shea* warned against. If the injunction plaintiffs seek were issued, any parent who was held in contempt despite his alleged indigency could and probably would seek relief in the federal district court on grounds that the state judge had violated the federal injunction. And what would the federal district court do? Would it make an independent determination of that parent’s indigency in order to determine if the injunction had been violated? And if the district court concluded that the injunction had been violated, what would it do then?

Id. at 1549-50 (internal citations and quotations omitted).

Here, Plaintiffs seek the same sort of prospective injunctive relief that was barred in *O’Shea*, *Lucky*, and *Pompey*. Plaintiffs ask this Court to enjoin JCS from committing the wrongdoing alleged in the Amended Complaint in the future. Such

relief would necessitate the very intrusion into the affairs of Alabama state-courts that *O’Shea* warned against as it would mandate the exercise of ongoing jurisdiction over the municipal court to enforce the requested relief. Consequently, Plaintiffs’ requests for prospective injunctive relief are due to be dismissed.

N. Because the RICO Claims Are Due To Be Dismissed, the Court Should Dismiss the Remaining State-Law Claims.

As set out above, the federal RICO claims are due to be dismissed. Because those claims are due to be dismissed then the remaining state-law claims should also be dismissed. See *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966) (“Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.”).

O. The Court Should Dismiss the Amended Complaint and Not Exercise Jurisdiction over the State-Law Claims.

Even if the RICO claims remains this Court should not exercise jurisdiction over the other state-law claims. Instead, this Court should abstain from addressing the purely state-law claims asserted against JCS and Raymond. A federal court may dismiss a case that presents “difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar.” *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976).

The U.S. Supreme Court has recognized that "[u]ltimately what is at stake is a federal court's decision, based on a careful consideration of the federal interests in retaining jurisdiction over the dispute and the competing concern for the 'independence of state action,' that the State's interests are paramount and that a dispute would best be adjudicated in a state forum." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 728 (1996) (quoting *Barford v. Sun Oil Co.*, 319 U.S. 315, 334 (1943)). As set out above the Plaintiffs are seeking the interpretation of state laws and statutes with regard to their claims. Those should be adjudicated in a state forum.

Conclusion

Based on the foregoing, JCS and Steven Raymond respectfully request that the Court dismiss the Amended Complaint or such counts as the Court deems warranted.

Respectfully submitted this 21st day of April, 2015.

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Of Counsel:
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Birmingham, Alabama 35253
(205) 870-0555

Certificate of Service

I certify that on April 21, 2015, I served a copy of the foregoing conflict disclosure statement on all counsel by the Court's CM/ECF electronic-filing system or by United States Mail as follows:

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/s/ Michael L. Jackson
Michael L. Jackson
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APPENDIX 3

Exhibit 1



JUDICIAL CORRECTION SERVICES, INC.
CLIENT AGREEMENT

CITY OF CLANTON, ALABAMA COUNTY OF CHILTON

THIS AGREEMENT made and entered into this 9 day of February, 2009, by and between the City of Clanton Alabama (the "City"), the City's Municipal Court (the "Court") and Judicial Correction Services, Inc., a Delaware corporation, ("JCS").

RECITALS

WHEREAS, the City, through its duly elected or appointed officials, is authorized to enter into a binding contract with a qualified vendor to provide probation supervision and release services for the benefit of the City and Court;

WHEREAS, JCS, who conducts probation services for various county and city entities and represents that it is a qualified vendor able and willing to provide these services to the City and Court;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable considerations, the receipt, adequacy and sufficiency of which is acknowledged by the parties hereto, the City and Court enter into this agreement with JCS to provide probation services upon the terms set forth below, including the following Exhibits:

- Exhibit A - Uniform Standards of Probation Supervision
- Exhibit B - Services Provided by JCS
- Exhibit C - Compensation to JCS

This agreement will initially extend for one year from the date of execution, and shall automatically renew in one year increments thereafter unless terminated by either party with a thirty (30) day written notice.

The foregoing constitutes the entire agreement between the parties and supersedes any representation or agreement heretofore made. This agreement shall be governed by the laws of the State of Alabama and may be amended only by a document in writing signed by a duly authorized representative of the City and JCS.

WITNESS the hand and seal of the authorized representatives of the City and JCS effective as of the date first above written.

**EXHIBIT A
UNIFORM STANDARDS OF PROBATION SUPERVISION**

1. All JCS probation officers will be at least 21 years of age at the time of appointment.
2. JCS will employ at least one supervisor of private probation officers with a minimum of five years experience in corrections, parole or probation services.
3. No person convicted of a felony will be employed as a private probation officer, use the title private probation officer or otherwise be responsible for the supervision of probationers.
4. JCS will complete record checks on all staff in accordance with its standard operating procedures.
5. JCS will supervise all probation cases sentenced by the Court. JCS will also supervise indigent cases when determined by the Court. These cases will not be charged the standard probation fee, but will still be offered all JCS services.
6. Probationers not complying with the terms set forth in the Court order will be returned to the Court, at which time the probation officer will testify as to the circumstances of the case, giving the probationer full opportunity to refute any or all points. The probation officer will then comply with the Court's ruling in reference to continuing or possible revocation of probation.
7. Probationers who pay their entire fine and Court costs within one week of the sentencing date will not be charged a probation supervision fee by JCS, although they would be responsible for a \$18 set-up fee.
8. JCS shall comply with all provisions of state and federal law.

Exhibit 1

**EXHIBIT B
SERVICES PROVIDED BY JCS**

1. Attend regularly scheduled court sessions for the purpose of obtaining sentencing information and personal history information for each offender placed on probation. Dates of regularly scheduled court sessions will be made available to JCS at least 30 days in advance.
2. Conduct an initial interview with each probationer at the time of his or her sentencing for purposes of explaining the scope of the court order relative to fines, fees, and/or conditions imposed as well as requirements and conditions for probation supervision.
3. Monitor offenders for compliance with terms and conditions of probation as required by the Court, notifying the Court of any non-compliance. The Court will decide when revocation of probation is necessary.
4. If requested by the Court to do so, collect from probationers Court ordered fees, restitution and other costs associated with the Court, and disburse said monies as follows:
 - (a) Restitution shall be paid to JCS who will disburse monies directly to the victim, or, the restitution may be paid to the Clerk of Court for distribution to the victim, as directed by the Court.
 - (b) All fines, surcharges, and other fees shall be paid to JCS who will disburse monies to the City as directed by Court.
5. Prepare referrals and lead assistance to probationers either ordered to receive or desiring employment assistance or counseling.
6. Coordinate community service work as required as a condition of probation by the Court. The City/Court will define the work activities for all community service. JCS will maintain only that community service work that is reasonably consistent with those duties performed by regular City employees.
7. Maintain case files on each probationer regarding compliance with the terms and conditions of probation, reporting dates, field contacts as they occur and in the amount and dates of monies collected.
8. Provide reports to the Court regarding compliance and payment information as requested.
9. JCS shall supervise all persons assigned to probation by the Court with a ratio of probationers to staff of no greater than 700 to 1.

Exhibit 1

APPENDIX 3

10. JCS shall maintain professional liability insurance in an amount not less than one million (\$1,000,000) dollars.
11. Each probationer placed on probation under the supervision of JCS will be required to meet with their assigned probation officer at least every 30 days. Probationers that do not comply with the probation guidelines and the Court's orders may be required to meet with their probation officer more than once a month (referred to as "intensive" supervision).
12. Any modification to the original court sentence will be decided by the Court.
13. JCS may recommend to the Court early probation release if a probationer has fulfilled all Court ordered requirements and paid all fees. Any remaining fees will not be assessed against the probationer if the Court grants early release.

**EXHIBIT C
COMPENSATION TO JCS**

JCS agrees that it will not invoice the City or Court for its services. In consideration of the probation services provided by JCS, the Court agrees that such Court Order shall provide for the following:

1. Probation fee of \$ 40.00 per month flat fee. (Basic or intensive supervision)
2. One time probationer set-up fee of \$18.00. This set-up fee includes courtroom processing and data and digital image entry into JCS's proprietary ProbationTracker™ software system.
3. Community service insurance of \$15.00 per 40 hours of community service assigned, if ordered by the Court. This insurance provides up to \$10,000 of medical/death benefits if the probationer is injured or killed while performing community service.
4. JCS provides a wide array of other probation related services such as Electronic Monitoring. Should the Court decide that it would like to avail itself of any of these services, a representative of JCS will be glad to meet with the Court and discuss the fee structure(s). Certain services require a minimum caseload level.

Exhibit 1

City of Canton, Alabama
 Mr. John J. Brown
 Title Clerk
 Judicial Correction Services, Inc.
 Mr. Jim J. Brown
 Title VP Operations

Exhibit 1

10:31 AM (18 minutes ago)
Cahin <wcalvin@bishopcahin.com>
to: ms, Aida, Jack, Lloyd, Lawrence, Virginia, Billy, Sam, Carl, wcalvin

Also, I got word this morning that the "Petrey Agreement" I have been waiting on is ready for approval. You may recall that the Petreys own a lot in Colonial Hills and they wanted to remove it. They had a guest house that they were planning on leaving as is so they could keep it. Turns out the guest house was partially on a sewer line for which there was no easement. Ordinarily, that would be the "County's problem" but in this case, the line was one that had been there a long time, installed way back when Mountain Brook was in charge of the sewer system. When the County took over the system, the City signed an Agreement whereby the City agreed to bear responsibility for getting easements for sewer lines that accidentally we gave them but where perhaps the legal hoops weren't jumped through. All that to say that the City is involved in a number of ways.

The parties worked together and I believe managed to solve the problem. The County and the Petreys did an agreement granting the proper easement but permitting the encroachment. The provision relating to the City permits the guest house to be moved if the County has to get in there and repair the sewer line but only to the minimum extent necessary. We went over all of this some time ago and the Council was fine with that approach. It has been sitting at the County since then. Finally, they have taken a look at it and are ok with proceeding. So, if there is any way the City could consider approving it on Monday, that would be great.

The final agreement is attached.
Thanks and sorry for the late notice.

Wah Cahin
Bishop, Cahin, Johnson & Kent, LLC
Phone: (205) 251-2281
Fax: (205) 251-2282
Mobile: (205) 222-8225
wcalvin@bishopcahin.com
www.bishopcahin.com

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (the "Agreement") made as of the 11th day of June, 2015, by and between W. Banks Petrey and Bragan D. Petrey (the "Owners"), Jefferson County, Alabama (the "County"), and the City of Mountain Brook, Alabama (the "City").

RECITALS

A. Owners own the real property located in Jefferson County, Alabama (the "Property") which is more particularly described as follows:

Lot 10, part of Lot 9, and part of that certain street which has been vacated, said street being an extension of Whitlow Avenue, in Block 1, according to the Map and Survey of Colonial Hills, as recorded in Map Book 18, Page 22, in the Office of the Judge of Probate of Jefferson County, Alabama, more particularly described as follows:

Beginning of the Southeast corner of Lot 10, in said Block 1, and run thence North along the West line of Norman Drive, 90 feet, thence on a angle to the left of 80 degrees and run West parallel with the North line of Lot 9, in said Block 1 for 100 feet to the West boundary line of said Block 1, thence South along the West boundary of said Block 1, 90 feet to the Southwest corner of Lot 10, in said Block 1, thence East along the South line of said Lot 10, 150 feet to the Point of Beginning.

B. There are presently in place active underground sewer lines along the south and west border of the Property for which easements have been described in the "Petrey Resurvey", as recorded in Map Book 226, Page 173, in the Office of the Judge of Probate of Jefferson County, Alabama.

C. The Owners and the County have created a formal written easement for the subject underground sewer lines and as referenced herein have contemporaneously entered into such a written agreement (the "Easement Agreement") that will, by its own terms, be subject and incorporate in the terms herein. By signing these documents, the County and the Owners seek to alter the County to maintain and operate the subject underground sewer lines, but in the same time preserve the ability of Owners to see, enjoy and if necessary, replace their guest house (the "Guest House") which in part overlies on the "Easement Area" as defined in the Easement Agreement.

D. The Easement Agreement shall be recorded in the Office of the Judge of Probate of Jefferson County, Alabama.

IN WITNESS WHEREOF, the parties have caused the Agreement to be duly executed as of the date and year first set forth above.

W. BANKS PETREY

BRAGAN D. PETREY

JEFFERSON COUNTY, ALABAMA

JAMES A. STEPHENS, President
Jefferson County Commission

CITY OF MOUNTAIN BROOK, ALABAMA

VERONICA C. SMITH, President
City Council of Mountain Brook

Attested by:

LAWRENCE T. COHEN, Mayor
City of Mountain Brook, Alabama

by Owners of the Easement or Easement Rights or constitute any form of waiver or abandonment of all or any part of the Easement or of any Easement Rights. Owners expressly reserve the right set forth in the Easement to cross the Easement with tracks, roads or driveways for any purpose over the Property subject to the Easement.

3. City agrees that, in the event the Guest House is removed or disturbed as provided in paragraph 1 hereof such that same may no longer be maintained or located in the Easement Area, Owners shall have the right to relocate the Guest House outside the Easement Area, provided that such relocated Guest House shall be situated as close as possible to the location of Guest House as of the date of this Agreement, that the relocated Guest House consists of no more square footage than that existing as of the date of this Agreement, and that the footprint of such relocated Guest House is as close as practicable to that currently existing.

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

5. This Agreement together with the Easement constitute the full and complete agreement of the parties with respect to the subject matter hereof, supersedes all prior discussions, correspondence and agreements with respect to the subject matter hereof, and cannot be modified or amended except by a subsequent written agreement signed by Owners and the County.

In the event the Owners' efforts to challenge, by legal means, the Agreement or the County's exercise of its rights hereunder are unsuccessful, the Owners shall be responsible for the payment of any resulting fines arising from delays caused by such challenge assessed by U.S. Environmental Protection Agency and the Alabama Department of Environmental Management as the cost of the cleanup of any sewage resulting from said challenge. In addition, the Owners shall be responsible for the cost of any damages to others caused by any such resulting delay, including, but not limited to, personal property and bodily injury. The Owners hereby agree to pay all court costs incurred by the County as a result of the aforementioned.

This Agreement shall run with the land and be binding upon and inure to the benefit of the parties and their respective heirs, administrators, personal representatives, successors and assigns.

E. Owners acknowledge that the Guest House in part encroaches on the Easement and that any future improvements on the current Guest House building approved by the County may encroach on the Easement (collectively, the "Owners' Improvements"). Owners further acknowledge and agree that any future County approval is limited to the above-recited encroachment of the current Owners' Improvements or replacement thereof. No expansion of the current encroachment by the Guest House shall be allowed.

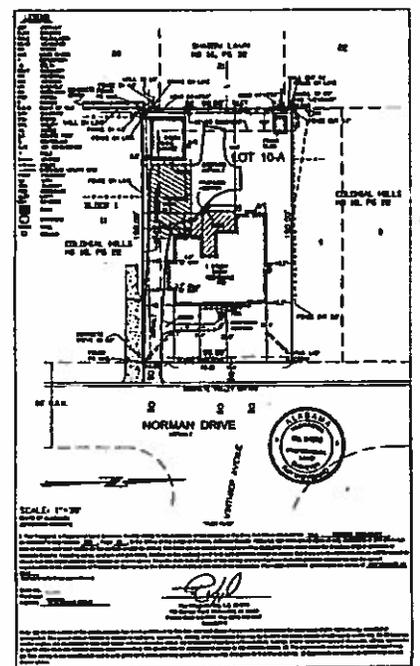
F. Owners and County mutually desire to enter into this Easement Agreement and address the relationship of the Guest House to the Easement.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and the mutual agreements herein, the parties agree as follows:

1. Owners agree that the County may utilize the Easement Area for all intended purposes of the Easement, including, without limitation, any installation, repair, maintenance or replacement of underground sanitary sewer lines (collectively, the "Easement Rights"). Before electing to exercise its rights hereunder to remove all or part of the Owners' Improvements, the County shall use its best efforts to avoid taking such step and instead shall seek to perform the intended work by other techniques means - which would seek to avoid destruction of or damage to the Guest House, or other improvements on the Property. Such obligation, however, contemplates that the County may factor in overall economics of the various options to effect the subject work, and the degree of inconvenience caused to perform the subject work so as to prevent another step a health hazard. Should the County deem it necessary to remove or disturb any of the Owners' Improvements in order to utilize the Easement for its intended purposes or exercise the Easement Rights, subject to the terms herein the County may do so at any time and employ the reasonable methodology for installation, repair, maintenance or replacement of sewer lines at the discretion of the County and its Department of Environmental Services. In the event that Owners' Improvements within the Easement Area are damaged due to Jefferson County's proper exercise of the Easement Rights, the costs of repair or replacement of Owners' Improvements or personal property will be borne solely by Owners. Owners fully and forever release and discharge the County from any and all liability, cost, damage, or expense to Owners' Improvements or improvements located adjacent to the Easement suffered or incurred by Owners as a result of the County's proper exercise of its Easement Rights to the Easement.

2. Subject to the terms of this Agreement, the County grants Owners a license for Owners' Improvements, as more particularly shown on Exhibit A attached hereto. Exhibit A details all of Owners' Improvements that will encroach on Easement Area, and no other greater or further improvements in the Easement Area will be allowed. No such past, present or future encroachment whatsoever will constitute an adverse possession



J:\Minutes & Agendas\Council\2015\20150727 Minutes.doc

July 27, 2015

----- Forwarded message -----
 From: Patricia Barnaby <Patricia.Barnaby@americantower.com>
 Date: Fri, Jun 26, 2015 at 1:24 PM
 Subject: RE: Redraft: 300249: Marked-up version of the lease amendment
 To: "boonec@mountainbrook.org" <boonec@mountainbrook.org>
 Cc: Andrew Darrigo <Andrew.Darrigo@americantower.com>

Good afternoon Mr. Boone,

I am working with Andrew Darrigo on the amendment for this site and have reviewed the redlined draft provided. All of the changes were fine except I did add language to section 2 of the amendment deleting section 10(e) of the original lease. All of the defaults and timeframes are fine under section 10 so we do not have a problem deleting the default language from the amendment. However, section 10 (e) provides for Landlord's right to terminate 6 months prior to the end of the initial, first and second renewal terms and since we are still in the second renewal term of the lease, we would request for that section to be deleted since it is the intent of the parties to extend the lease under this amendment.

If the attached agreement is acceptable to the City, I have provided a clean draft in .pdf format.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you and have a great weekend.
Trish

Patricia Barnaby
 Attorney, US Tower
 American Tower Corporation
 10 Presidential Way
 Woburn, MA 01801
 781.928.4347 office
 patricia.barnaby@americantower.com

THE FIRST AMENDMENT TO TOWER SITE SUBLEASE AGREEMENT

This First Amendment to Tower Site Sublease Agreement (this "Amendment") is made effective as of the later signature date hereof (the "Effective Date") by and between the City of Mountain Brook, Alabama, an Alabama municipal corporation, ("Landlord") and American Tower Asset Sub, LLC, a Delaware limited liability company, ("Tenant") (Landlord and Tenant being collectively referred to herein as the "Parties").

RECITALS

WHEREAS, the Board of Education of the City of Mountain Brook ("Board") is the owner of certain real property located in Jefferson County, Alabama, being more particularly depicted or described on Exhibit A attached hereto and by this reference made a part hereof (the "Parent Parcel") and the Board leased a portion of the Parent Parcel to Landlord pursuant to that certain lease agreement, dated October 1, 1989, as amended, and further pursuant to a related and amended lease agreement dated January 26, 2015, as recorded in Book LR 201511, Page 27633 in the office of the Judge of Probate of Jefferson County, Alabama; and

WHEREAS, Landlord and Tenant (or its predecessor-in-interest) entered into that certain Tower Site Sublease Agreement dated November 1, 1997 (as the same may have been amended, collectively, the "Lease"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such leasehold and easement rights and interests, collectively, the "Leased Premises"), which Leased Premises are also described on Exhibit A; and

WHEREAS, Landlord and Tenant desire to amend the terms of the Lease to extend the term thereof and to otherwise modify the Lease as expressly provided herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- One-Time Payment.** Tenant shall pay to Landlord a one-time payment in the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00), payable within thirty (30) days of the Effective Date and subject to the following conditions precedent: (a) Tenant's receipt of this Amendment executed by Landlord, on or before July 15, 2015; (b) Tenant's confirmation that Landlord's statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord's right to sublease the Leased Premises to Tenant; (c) Tenant's receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein; and (d) receipt by Tenant of an original Memorandum (as defined herein) executed by Landlord.
- Lease Term Extended.** Notwithstanding anything to the contrary contained in this Amendment or in the Lease, the Parties agree that the Lease originally commenced on December 1, 1997. In addition to any renewal options granted to Tenant in the Lease, Tenant shall have the option to extend the Lease for each of four (4) additional five (5) year renewal terms (each a "New Renewal Term" and, collectively, the "New Renewal Terms"). The first New Renewal Term shall commence simultaneously with the expiration of the Lease, taking into account all existing renewal term(s) (each an "Existing Renewal Term" and, collectively, the "Existing Renewal Terms") available under the Lease. Notwithstanding

APPENDIX 6

Site No: 300249
 Site Name: Liberty Parkway AL

anything to the contrary contained in the Lease, all Existing Renewal Terms and New Renewal Terms shall automatically renew unless Tenant notifies Landlord that Tenant elects not to renew the Lease not less than sixty (60) days prior to the expiration of the then current term. References in this Amendment to "Renewal Term(s)" shall refer, collectively, to the Existing Renewal Term(s) and the New Renewal Term(s). The Parties hereby acknowledge and agree that Section 10 (e) of the Lease is hereby deleted in its entirety. The Landlord hereby agrees to execute and return to Tenant an original Memorandum of Lease in the form and of the substance attached hereto as Exhibit B and by this reference made a part hereof (the "Memorandum") executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.

- Rent and Escalation.** Commencing on December 1, 2017 and on the beginning of each Renewal Term thereafter, Rent due under the Lease shall increase by an amount equal to twenty percent (20%) of the then current rent. Notwithstanding anything to the contrary contained in the Lease, all Rent and any other payments expressly required to be paid by Tenant to Landlord under the Lease and this Amendment shall be paid to the City of Mountain Brook, Alabama.
- Landlord and Tenant Acknowledgments.** Except as modified herein, the Lease and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed. The parties hereby agree that no defaults exist under the Lease. To the extent Tenant needed consent and/or approval from Landlord for any of Tenant's activities at and uses of the site prior to the Effective Date, Landlord's execution of this Amendment is and shall be considered consent to and approval of all such activities and uses. Tenant shall fully comply with all municipal ordinances governing its operations, including but not limited to zoning, telecommunication and building code ordinances. To the extent approval is necessary from governmental agencies other than the City of Mountain Brook, Landlord authorizes Tenant, its subcontractors and licensees, and their agents to file applications or seek approval with other such authorities or agencies for Tenant's intended use of the Leased Premises. Upon request by Tenant and at Tenant's sole cost and expense, Landlord hereby agrees to promptly execute and return to Tenant applications and other forms and documents, including a memorandum of lease, as required for such approval or use of the Leased Premises by Tenant and/or Tenant's customers, licensees, and sublessees. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.
- Landlord Statements.** Landlord hereby represents and warrants to Tenant that: (i) to the extent applicable, Landlord is duly organized, validly existing, and in good standing in the jurisdiction in which Landlord was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required; (ii) Landlord has the full power and authority to enter into and perform its obligations under this Amendment, and, to the extent applicable, the person(s) executing this Amendment on behalf of Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv)

Landlord is the leasehold owner of the Leased Premises; and (v) there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises which do or could (now or any time in the future) adversely impact, limit, and/or impair Tenant's rights under the Lease, as amended and modified by this Amendment. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment.

- Confidentiality.** Notwithstanding anything to the contrary contained in the Lease or in this Amendment, Landlord agrees and acknowledges that all the terms of this Amendment and the Lease and any information furnished to Landlord by Tenant in connection therewith shall be and remain confidential to the extent permitted by law. Except with Landlord's attorney, accountant, broker, lender, a prospective fee simple purchaser of the Parent Parcel, or if otherwise required by law, Landlord shall not disclose any such terms or information without the prior written consent of Tenant. The terms and provisions of this Section shall survive the execution and delivery of this Amendment.
- Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein; To Landlord at: City of Mountain Brook, 36 Church Street, Mountain Brook, AL 35213; To Tenant at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
- Counterparts.** This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.
- Governing Law.** Notwithstanding anything to the contrary contained in the Lease and in this Amendment, the Lease and this Amendment shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

Site No: 300249
 Site Name: Liberty Parkway AL

Site No: 300249
 Site Name: Liberty Parkway AL

10. Waiver. Notwithstanding anything to the contrary contained herein, in no event shall Landlord or Tenant be liable to the other for, and Landlord and Tenant hereby waive, to the fullest extent permitted under applicable law, the right to recover incidental, consequential (including, without limitation, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

11. Tenant's Securitization Rights Estoppel. Landlord hereby consents to the granting by Tenant of a lien and security interest in Tenant's interest in this Lease, as amended, and all of Tenant's property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant's mortgagee ("Tenant's Mortgagee") of its rights of foreclosure with respect to any such lien or security interest so granted. Provided that Tenant gives Landlord written notice that it has granted any such lien or security interest and the full name and address of Tenant's Mortgagee, Landlord shall recognize Tenant's Mortgagee as "Tenant" hereunder in the event Tenant's Mortgagee exercises its right of foreclosure. Provided, however, that in such case, the rights of Tenant's Mortgagee shall not, under any circumstances, be greater than those rights granted to Tenant under the Lease and this First Amendment. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant or Tenant's Mortgagee.

[SIGNATURES FOLLOW ON NEXT PAGE]

LANDLORD:

City of Mountain Brook, an Alabama municipal corporation

Signature: [Handwritten Signature]
Print Name: Lawrence T. Adams
Title: Mayor
Date: 7/27/2015

[SIGNATURES CONTINUE ON NEXT PAGE]

APPENDIX 6

Site No. 300249
Site Name: Liberty Parkway AL

Site No. 300249
Site Name: Liberty Parkway AL

TENANT:

American Tower Asset Sub, LLC,
a Delaware limited liability company

Signature: _____
Print Name: _____
Title: _____
Date: _____

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's Improvements thereon

The Parent Parcel consists of the entire legal taxable lot owned by City Board of Education, City of Mountain Brook and a portion of which is leased to Landlord and the Leased Premises is a part thereof with such Parent Parcel being described below.

Beginning of the Southeast Corner of Section 2, Township 18 South, Range 2 East of the Mountain Principal Meridian, run West along the South Line of said Section 2, 2703.25 feet thence 135°00' right 372.80 feet thence 12°36' left 258.00 feet thence 50°00' right 283.00 feet thence 17°00' right 83.66 feet thence 17°00' left 185.00 feet thence 90°00' left 440.00 feet thence 19°00' left 451.20 feet to the North Line of the Southwest Quarter of the Southeast Quarter of Section 2; thence 108°34' right 1846.30 feet along said North line of the Southwest Quarter of the Southeast Quarter of said Section 2 to the East line of same; thence 84°01' right 1318.0 feet along said East line to the Point of Beginning. Less and Except that property conveyed to the State of Alabama in Real Volume 1130, Page 359, Situated in Jefferson County, Alabama.

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A parcel of land situated in the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 East, Jefferson County, Alabama, and being more particularly described as follows:

Commence at the Northeast Corner of the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 East thence run South 08°38'58" West for a distance of 4,028.93 feet to the Point of Beginning; thence run South 19°44'07" West for a distance of 35.27 feet to a point; thence run South 72°30'29" West for a distance of 64.38 feet to a point; thence run North 35°08'09" West for a distance of 23.30 feet to a point; thence run North 23°01'32" East for a distance of 56.62 feet to a point; thence run South 74°16'06" East for a distance of 65.00 feet to the Point of Beginning. Said parcel contains 0.09 acres.

Site No. 300249
Site Name: Liberty Parkway AL

Site No. 300249
Site Name: Liberty Parkway AL

EXHIBIT A (Continued)

ACCESS AND UTILITIES

The Access and Utilities Easements include all easements of record as well as existing access and utilities currently servicing the Leased Premises to and from a public right of way, including but not limited to the following:

An easement of land situated in the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West, Jefferson County, Alabama and being more particularly described as follows:

Commence at the northeast corner of the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West; thence run South 09°38'38" West for a distance of 1,028.83 feet to a point; thence run North 74°16'36" West for a distance of 41.00 feet to the Point of Beginning of the center line of an Ingress/Egress Easement that lies 10 feet either side of said center line as described herein; thence run North 15°55'59" East for a distance of 270.55 feet to a point; thence run North 54°50'41" East for a distance of 136.88 feet to a point; thence run North 03°42'55" East for a distance of 81.58 feet to a point; thence run North 19°55'11" West for a distance of 113.33 feet to a point; thence run North 25°35'34" West for a distance of 231.06 feet to a point; thence run North 44°43'18" West for a distance of 108.28 feet to a point; thence run North 50°23'52" West for a distance of 185.83 feet to a point; thence run North 54°15'17" West for a distance of 33.88 feet to a point; thence with a curve to the right, with a radius of 53.34 feet and a deflection angle of 187°24'40", for a distance of 33.77 feet to a point; thence run North 57°25'15" East for a distance of 51.23 feet to a point; thence run North 31°04'21" East for a distance of 31.25 feet to a point; thence run North 77°42'16" East for a distance of 45.84 feet to a point on the eastern right-of-way of Interstate 69, having a variable right-of-way, and also being the terminus of easement.

EXHIBIT B

FORM OF MEMORANDUM OF LEASE

APPENDIX 6

Site No: 300249
Site Name: Liberty Parkway AL

Site No: 300249
Site Name: Liberty Parkway AL

Prepared by and Return to:
American Tower
10 Presidential Way
Woburn, MA 01801
Attn: Land Management/Patricia Barnaby, Esq.
ATC Site No: 300249
ATC Site Name: Liberty Parkway AL
Assessor's Parcel No(s) 28-00-02-4-001-020-000
28-00-02-4-001-001-002

State of Alabama
County of Jefferson

MEMORANDUM OF LEASE

This Memorandum of Lease (the "Memorandum") is entered into on the _____ day of _____, 201____ by and between City of Mountain Brook, an Alabama municipal corporation, ("Landlord") and American Tower Asset Sub, LLC, a Delaware limited liability company, ("Tenant").

NOTICE is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

- 1. **Parent Parcel and Lease.** The Board of Education of the City of Mountain Brook ("Board") is the owner of certain real property located in Jefferson County, Alabama, being more particularly depicted or described on Exhibit A, attached hereto and by this reference made a part hereof (the "Parent Parcel") and the Board leased a portion of the Parent Parcel to Landlord pursuant to that certain lease agreement, dated October 1, 1988, as amended, and further pursuant to a restated and amended lease agreement dated January 25, 2015, as recorded in Book 1R 201511, Page 27633 in the office of the Judge of Probate of Jefferson County, Alabama. Landlord and Tenant (or its predecessor-in-interest) entered into that certain Tower Site Sublease Agreement dated November 1, 1997 (as the same may have been amended, renewed, extended, restated, and/or modified from time to time, collectively, the "Lease"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such leasehold and easement rights and interests, collectively, the "Leased Premises"), which Leased Premises is also described on Exhibit A.
- 2. **Expiration Date.** Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be November 30, 2042. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.
- 3. **Leased Premises Description.** Tenant shall have the right, exercisable by Tenant at any time during the original or renewal term of the Lease, to cause an as-built survey of the Leased Premises to be prepared and, thereafter, to replace, in whole or in part, the description(s) of the Leased Premises set forth on

Exhibit A with a legal description or legal descriptions based upon such as-built survey. Upon Tenant's request, Landlord shall execute and deliver any documents reasonably necessary to effectuate such replacement, including, without limitation, amendments to this Memorandum and to the Lease.

- 4. **Effect/Miscellaneous.** This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.
- 5. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: To Landlord at: City of Mountain Brook, 56 Church Street, Mountain Brook, AL 35213; To Tenant at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn: Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
- 6. **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
- 7. **Governing Law.** This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

(SIGNATURES FOLLOW ON NEXT PAGE)

Site No: 300249
Site Name: Liberty Parkway AL

Site No: 300249
Site Name: Liberty Parkway AL

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Memorandum as of the day first above written.

LANDLORD 2 WITNESSES

City of Mountain Brook, an Alabama municipal corporation

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____
Signature: _____
Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____
County of _____

On this ___ day of _____, 201___, before me, the undersigned Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

[SEAL]

[SIGNATURES CONTINUE ON NEXT PAGE]

TENANT

American Tower Asset Sub, LLC, a Delaware limited liability company

Signature: _____
Print Name: _____
Title: _____
Date: _____

WITNESS

Signature: _____
Print Name: _____
Signature: _____
Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts
County of Middlesex

On this ___ day of _____, 201___, before me, the undersigned Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

[SEAL]

APPENDIX 6

Site No: 300249
Site Name: Liberty Parkway AL

Site No: 300249
Site Name: Liberty Parkway AL

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's Improvements thereon

The Parent Parcel consists of the entire legal taxable lot owned by City Board of Education, City of Mountain Brook and a portion of which is leased to Landlord and the Leased Premises is a part thereof with such Parent Parcel being described below.

Beginning of the Southeast Corner of Section 2, Township 18 South, Range 2 West of the Mountainville Principal Meridian, run West along the South Line of said Section 2, 2163.25 feet thence 131°00' right 372.00 feet thence 12°30' left 230.00 feet thence 58°00' right 285.00 feet thence 17°00' right 83.66 feet thence 17°00' left 185.00 feet thence 90°00' left 446.00 feet thence 19°00' left 451.20 feet to the North Line of the Southwest Quarter of the Southwest Quarter of Section 2, thence 108°34' right 1846.38 feet along said North Line of the Southwest Quarter of the Southwest Quarter of said Section 2 to the East Line of same; thence 88°07' right 1316.0 feet along said East Line to the Point of Beginning. Less and Except that property conveyed to the State of Alabama in Real Volume 1130, Page 359, Situated in Jefferson County, Alabama.

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utility easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A parcel of land situated in the Southeast Quarter of the Southwest Quarter of Section 2, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at the Northeast Corner of the Southwest Quarter of the Southwest Quarter of Section 2, Township 18 South, Range 2 West thence run South 08°38'30" West for a distance of 1,028.33 feet to the Point of Beginning; thence run South 15°44'07" West for a distance of 35.27 feet to a point; thence run South 72°30'23" West for a distance of 64.38 feet to a point; thence run North 36°00'03" West for a distance of 21.39 feet to a point; thence run North 23°01'32" East for a distance of 56.62 feet to a point; thence run South 74°16'06" East for a distance of 65.00 feet to the Point of Beginning. Said parcel contains 0.01 acres.

Site No: 300249
Site Name: Liberty Parkway AL

Site No: 300249
Site Name: Liberty Parkway AL

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below.

PARENT PARCEL

Tenant shall have the right to replace the description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.

The Parent Parcel consists of the entire legal taxable lot owned by City Board of Education, City of Mountain Brook and a portion of which is leased to Landlord and the Leased Premises is a part thereof with such Parent Parcel being described below.

Beginning of the Southwest Corner of Section 2, Township 18 South, Range 2 West of the Nashville Principal Meridian, run West along the South Line of said Section 2, 2783.25 feet; thence 123°00' right 371.80 feet; thence 12°57' left 254.98 feet; thence 33°00' right 225.00 feet; thence 17°00' right 43.51 feet; thence 17°00' left 145.00 feet; thence 30°00' left 440.00 feet; thence 17°00' left 451.20 feet to the North Line of the Southwest Quarter of the Southwest Quarter of Section 2; thence N02°34' right 1044.30 feet along said North Line of the Southwest Quarter of the Southwest Quarter of said Section 2 to the East Line of same; thence 82°01' right 1313.8 feet along said East Line to the Point of Beginning. Less and Except that property conveyed to the State of Alabama in Act Volume 1138, Page 259, situated in Jefferson County, Alabama.

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (1) the land area conveyed to Tenant in the Lease; (4) Tenant's existing improvements on the Parent Parcel; or (2) the legal description or depiction below (if any).

See No. 202249
384 Haver Liberty Parkway AL

A parcel of land situated in the Southwest Quarter of the Southwest Quarter of Section 2, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at the Northeast Corner of the Southwest Quarter of the Southwest Quarter of Section 2, Township 18 South, Range 2 West; thence run South 08°33'00" West for a distance of 1,402.53 feet to the Point of Beginning; thence run South 17°44'00" West for a distance of 44.30 feet to a point; thence run South 71°30'25" West for a distance of 23.30 feet to a point; thence run North 30°00'25" West for a distance of 23.30 feet to a point; thence run North 23°00'25" East for a distance of 26.32 feet to a point; thence run South 74°15'00" East for a distance of 65.80 feet to the Point of Beginning. Said parcel contains 0.01 acres.

EXHIBIT A (Continued)

ACCESS AND UTILITIES

The Access and Utilities Easements include all easements of record as well as existing access and utilities currently servicing the Leased Premises to and from a public right-of-way, including but not limited to the following:

An easement of land situated in the Southwest Quarter of the Southwest Quarter of Section 2, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at the Northeast Corner of the Southwest Quarter of the Southwest Quarter of Section 2, Township 18 South, Range 2 West; thence run South 08°33'00" West for a distance of 1,402.53 feet to a point; thence run North 74°15'00" West for a distance of 47.00 feet to the Point of Beginning of the centerline of an Inground/Easement that lies 10 feet either side of said centerline as described herein; thence run North 15°30'30" East for a distance of 270.55 feet to a point; thence run North 34°39'41" East for a distance of 124.80 feet to a point; thence run North 02°42'50" East for a distance of 40.50 feet to a point; thence run North 39°29'11" West for a distance of 111.33 feet to a point; thence run North 39°29'30" West for a distance of 234.00 feet to a point; thence run North 44°43'10" West for a distance of 186.23 feet to a point; thence run North 50°23'32" West for a distance of 183.89 feet to a point; thence run North 54°16'13" West for a distance of 59.40 feet to a point; thence with a curve to the right, with a radius of 33.74 feet and a deflection angle of 137°34'00", for a distance of 33.77 feet to a point; thence run North 57°29'15" East for a distance of 94.20 feet to a point; thence run North 71°04'01" East for a distance of 41.25 feet to a point; thence run North 77°42'16" East for a distance of 45.04 feet to a point on the western right-of-way of Interstate 49, having a variable right-of-way, and also being the terminal of easement.

See No. 202249
384 Haver Liberty Parkway AL



CITY OF MOUNTAIN BROOK
36 Church Street
P.O. Box 130009
Mountain Brook, Alabama 35213
Telephone: 205 807 2803
Fax: 205 810 2337
gastons@mtbroad.org

SAM S. GASTON
CITY MANAGER

July 15, 2015

Dear Resident,

The City of Mountain Brook will consider an ordinance at its July 27, 2015 meeting, placing two (2) additional stop signs on Brookwood Road at its intersection with Crosshill Road. The City Council meeting will start at 7:00 pm. (See attached map.)

The City received a grant to study up to nine (9) intersections in the community to reduce traffic congestion, improve traffic movements and to address safety concerns. The Brookwood/Crosshill intersection was one of the intersections selected to be reviewed by our traffic consultant, Skipper Consultants. Skipper Consultants recommends the placement of these additional stop signs on Brookwood Road.

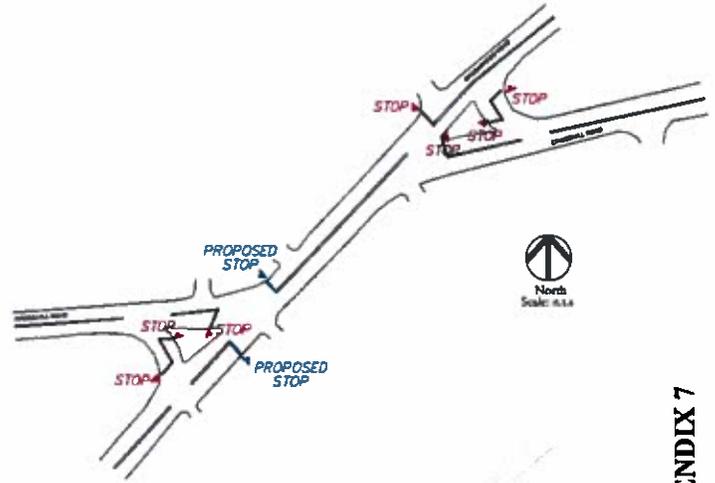
You are invited to attend the City Council meeting on July 27th to voice your opinion on these proposed stop signs. If you cannot attend on July 27th, but would like to comment, please send your remarks to gastons@mtbroad.org.

If you have any questions, please feel free to contact Richard Caudle at Skipper Consultants at 655-8855 or me at 802-3803.

Sincerely,

Sam Gaston
Sam Gaston
City Manager

SG/ih



APPENDIX 7

Page 1 of 1

Sam Gaston

From: Suzan Doidge
Sent: Wednesday, July 22, 2015 4:46 PM
To: 'Sam Gaston'
Subject: Concerns from a blend of mine on Brookwood Road

Sam,
I thought I should send you some concerns from people on Brookwood road. This was posted on Facebook and then Lorelle Baddley called me to discuss. She is planning on being at the meeting and asked her neighborhood to join her.
Suzan

From Lorelle Baddley...

To the left of my driveway (if you are leaving my driveway) & across the street to the left of my neighbor's driveway. This neighbor will never be able to get out of his driveway during morning school rush because it will be blocked. It is being discussed at a meeting next week...so not definite yet. I think it's going to complicate things. I've lived in that intersection 14 years. It's not bad if people pay attention. I'm not sure 5 stop signs in one intersection is the answer.

Suzan Doidge

Executive Director
Mountain Brook Chamber of Commerce
101 Hoyt Lane
Mountain Brook, AL 35213
(205) 871-1779
www.welcome10mountainbrook.com



Brookwood Road at Crosshill Road

The intersection of Overbrook Road at Crosshill Road was examined to determine the scope of both non-widening and widening projects which could alleviate existing traffic congestion experienced at the intersection. The general study area for the analysis is shown in Figure 1.



Figure 1. Site Location Map

In the vicinity of the intersection, Brookwood Road is a two lane roadway with a posted speed limit of 30 miles per hour. Crosshill Road is a two lane roadway with no posted speed limit. The configuration of the intersection is an offset intersection, forming two traffic triangles on Brookwood Road, separated by approximately 165 feet. The configuration of Brookwood Road at Crosshill Road and the current location of stop signs is shown in Figure 2.

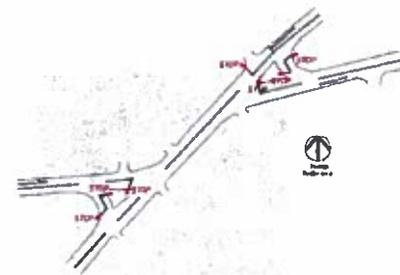


Figure 2. Existing Traffic Control

Existing Intersection Turning Movement Traffic Counts

An existing intersection turning movement traffic count was performed at the intersection of Brookwood Road at Crosshill Road on Wednesday to Thursday, March 11 to 12, 2015, during the hours of 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., by Traffic Data, LLC on behalf of Skipper Consulting, Inc. The traffic count data is included in Appendix A. Peak hour turning movement traffic volumes are illustrated in Figure 3.

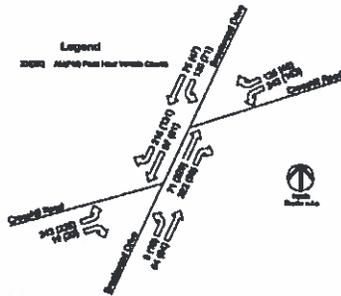


Figure 3. Existing Intersection Turning Movement Traffic Counts

Existing Intersection Capacity Analysis and Queue Calculations

Existing a.m. and p.m. peak hour intersection capacity analyses and queue calculations were performed for the intersection of Brookwood Road at Crosshill Road using the methods of analysis contained in the Highway Capacity Manual, published by the Transportation Research Board. Capacities are expressed as levels of service, and range from a level of service "A" (highest quality of service) to a level of service "F" (jammed conditions). As a general rule, operation at a level of service "C" or better is desirable, with a level of service "D" considered acceptable during the peak hours of traffic flow. The results of the intersection capacity analyses and queue calculations are included in Appendix B and are summarized in Table 2.

Table 2. Existing Intersection Capacity Analysis and Queue Calculations

Intersection	Approach	Movement	AM Peak			PM Peak		
			LOS	Delay	Queue	LOS	Delay	Queue
Brookwood Road at Crosshill Road (North)	Crosshill Road Westbound	Left	F	32'	395'	B	14'	100'
		Right	C	17'		A	3'	
	Brookwood Road Northbound	Through	A	7'	20'	A	3'	0'
		Right	A	5'		A	3'	0'
	Brookwood Road Southbound	Left	F	108'	58'	A	9'	68'
		Through	F	68'	690'	A	10'	70'
Overall Intersection			D	34'		A	8'	
Brookwood Road at Crosshill Road (South)	Crosshill Road Eastbound	Left	D	33'	380'	A	12'	103'
		Right	B	15'		A	7'	
	Brookwood Road Northbound	Left	A	6'	30'	A	6'	25'
		Through	A	4'	30'	A	2'	0'
	Brookwood Road Southbound	Through	A	3'	0'	A	4'	0'
		Right	A	4'	0'	A	3'	0'
Overall Intersection			C	18'		A	7'	

Note: Delay is expressed in average seconds per vehicle

Crash History

Crash information for the intersection of Brookwood Road at Crosshill Road was provided by the City of Mountain Brook Police Department for 2011, 2013, and 2014. During the period, there were three crashes related to the intersection of Brookwood Road at Crosshill Road. One crash was a rear-end crash on Crosshill Road eastbound. Two crashes were right angle crashes, with one of the crashes occurring on Crosshill Road eastbound and the other crash on Crosshill Road westbound. A crash diagram is provided in Figure 4.

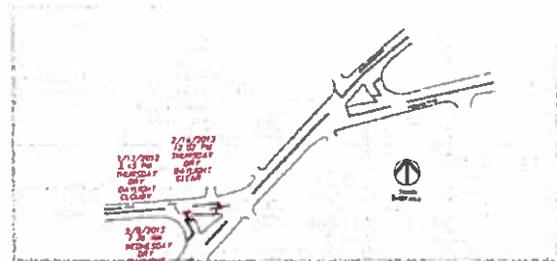


Figure 4. Crash History

Sight Distance

Sight distance measurements were made for all movements at each of the intersection for all movements where sight distance of approaching vehicles is required in order to make the desired movement. The minimum required sight distance according to the AASHTO Policy on the Geometric Design of Highways and Streets (Green Book) is 335 feet, based on the posted speed limit of 30 miles per hour on Brookwood Road. The sight distance measurements are shown in Figure 5 and Figure 6.

The only location where sight distance is limited below minimum requirements is for traffic entering the southern intersection of Crosshill Road looking to the right, where the sight distance is limited to 170 feet. In the narrative for the crash which occurred at this intersection on March 13, 2012, the driver of the vehicle entering Crosshill Road stated that she did not see the vehicle approaching from Brookwood Road.

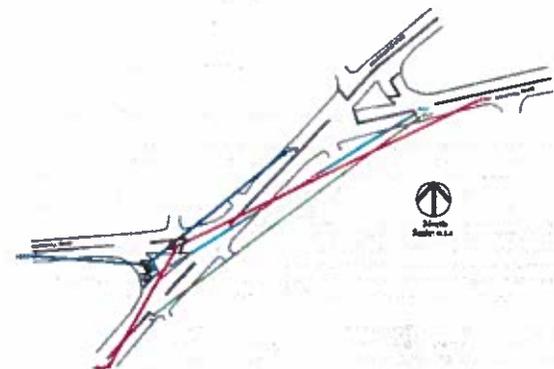


Figure 5. Sight Distance Measurements Crosshill Road (South)

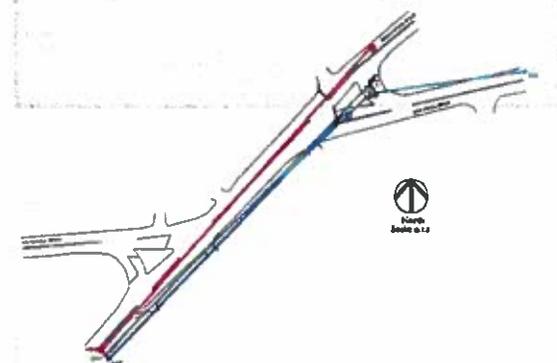


Figure 6. Sight Distance Measurements Crosshill Road (North)

Observations

Observations of traffic flow at the intersection of Brookwood Road at Crosshill Road were performed on Tuesday, May 12 and Wednesday May 13, 2015 by Skipper Consulting, Inc. Observations were conducted from 7:15 to 8:00 a.m., 2:30 to 3:20 p.m., and 4:45 to 5:30 p.m. The findings of the observations are discussed below.

AM Peak Period Observations

- While traffic flow was constant, the eastbound left queue from Crosshill Road onto Brookwood Road caused congestion and delay for the eastbound right and northbound left movements from 7:37 a.m. to 7:53 a.m. This problem persisted 4 other times during the study period.
- Similarly, the westbound left queue from Crosshill Road onto Brookwood Road caused congestion and delay for the westbound right and southbound left movements during the study period. However, the problem was minimal in comparison to the eastbound movement as it only persisted 2 times during the study period.

Afternoon School Peak Period Observations

- The eastbound left queue from Crosshill Road onto Brookwood Road did not cause any congestion or delay during the study period.

- The westbound left queue from Crosshill Road onto Brookwood Road caused congestion and delay for the westbound right and southbound left movements multiple times during the study period. However, no instance where movements were blocked longer than 1 minute.

PM Peak Period Observations

- The eastbound left queue from Crosshill Road onto Brookwood Road caused congestion and delay for the eastbound right and northbound left movements from 4:11 p.m. to 4:30 p.m. This problem persisted 5 other times during the study period lasting less than 1 minute each time.
- Similarly, the westbound left queue from Crosshill Road onto Brookwood Road caused congestion and delay for the westbound right and southbound left movements 6 times during the study period.

Alternative Improvements

Alternative 1 – Install Additional Stop Signs

In order to correct deficiencies shown to exist in intersection capacity, sight distance, and based on observations, three additional stop signs could be installed on Brookwood Road. The locations of the proposed stop signs are shown in Figure 7. Capacity and queue analyses were performed to determine the traffic operation of the proposed alternative. The results of these analyses are shown in Table 2 and are included in Appendix C.

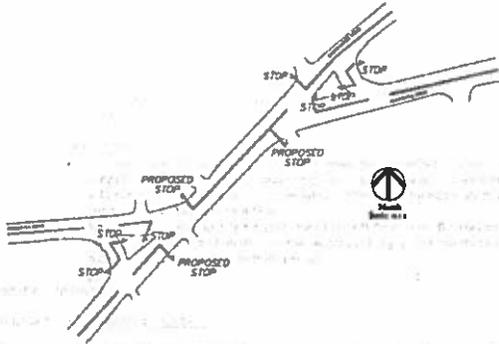


Figure 7. Improvement Alternative 1 (All-Way Stop)

Table 2. Intersection Capacity Analysis and Queue Calculations – Alternative 1

Intersection	Approach	Movement	AM Peak		PM Peak	
			LOS	Queue (feet)	LOS	Queue (feet)
Brookwood Road at Crosshill Road (North)	Crosshill Road Westbound	Left	C	16	B	12
		Right	A	9	A	5
	Brookwood Road Northbound	Through	D	29	B	12
		Right	D	29	A	8
	Brookwood Road Southbound	Left	B	14	A	8
		Through	B	12	A	8
Overall Intersection			C	20	A	10
Brookwood Road at Crosshill Road (South)	Crosshill Road Eastbound	Left	C	23	B	11
		Right	B	13	A	7
	Brookwood Road Northbound	Left	A	9	A	8
		Through	B	12	A	8
	Brookwood Road Southbound	Through	A	8	A	7
		Right	A	9	A	7
Overall Intersection			C	16	A	9

Note: Delay is expressed in average seconds per vehicle

While the analyses show that installation of additional stop signs results in overall improvements in delay and level of service, the queue on Brookwood Road northbound approaching the northern intersection of Crosshill Road is significantly greater than the available stacking room between the two triangles. Therefore, installation of the proposed stop sign on Brookwood Road northbound at the northern intersection of Crosshill Road would not be advisable.

Alternative 2 – Traffic Signalization

A second alternative for correction of capacity and sight distance deficiencies at the intersection of Brookwood Road at Crosshill Road would be the installation of a traffic signal. In order to determine if this would be a viable alternative, a traffic signal warrant analysis was performed for the intersection using the methodology included in the 2009 Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration. Approach traffic counts for the intersection are included in Appendix D. The results of the warrant analysis are included in Appendix E. The results of the traffic signal warrant study show that the existing traffic volumes at the intersection of Brookwood Road at Crosshill Road do not meet either the eight hour volume warrants or four hour volume warrant. Therefore, signalization of the intersection is not advised.

Recommended Improvements

Based on the analyses of the alternative improvements, it is recommended that two stop signs be installed at the intersection of Brookwood Road at Crosshill Road. The locations of the proposed stop signs are shown in Figure 8.

APPENDIX 7

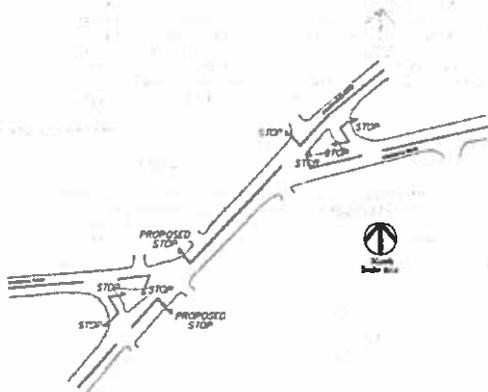


Figure 8. Recommended Improvements

Operational Analysis of Recommended Improvements

Capacity and queue analyses were performed to determine the traffic operation of the recommended improvements. The results of these analyses are shown in Table 3 and are included in Appendix F.

Table 3. Intersection Capacity Analysis and Queue Calculations – Recommended Improvements

Intersection	Approach	Movement	AM Peak		PM Peak	
			LOS	Queue (feet)	LOS	Queue (feet)
Brookwood Road at Crosshill Road (North)	Crosshill Road Westbound	Left	F	38	B	15
		Right	C	23	A	5
	Brookwood Road Northbound	Through	A	8	A	4
		Right	A	5	A	3
	Brookwood Road Southbound	Left	F	137	A	10
		Through	F	91	A	10
Overall Intersection			F	42	A	8
Brookwood Road at Crosshill Road (South)	Crosshill Road Eastbound	Left	C	23	B	11
		Right	B	13	A	7
	Brookwood Road Northbound	Left	A	9	A	8
		Through	B	12	A	8
	Brookwood Road Southbound	Through	A	8	A	7
		Right	A	8	A	8
Overall Intersection			C	16	A	9

Note: Delay is expressed in average seconds per vehicle

TRAFFIC DATA, LLC
1409 Turnham Lane
Birmingham, AL 35216
205-824-8126

File Name : mountainbrook01
Site Code : 00000000
Start Date : 03/11/2015
Page No : 2

Main Item	BROOKWOOD RD Southbound				BROOKWOOD RD Northbound				CROSSHILL RD Eastbound				PL 1000
	Vol	Peak	App. Total	App. Total	Vol	Peak	App. Total	App. Total	Vol	Peak	App. Total	App. Total	
Peak Hour From 07:30 AM to 08:00 AM - Peak 1 of 1													
Intersection: 07:30 AM													
Volume	87	218	312	0	8	94	73	343	19	363	747		
Percent	31.1	88.8		0	12.3	87.7		84.8	5.2	138	383		
07:30 Volume	96	87	85		6	27	32	131	6	138	2718		
Peak Factor													
High Int. 07:30 AM	87	85			07:30 AM	6	27	32	07:30 AM	6	138		
Volume	28				6			121	6		0.896		
Peak Factor					0.821			0.870					
Peak Hour From 07:30 AM to 08:00 AM - Peak 1 of 1													
By Approach: 07:18 AM													
Volume	108	214	320	0	28	88	76	343	19	362			
Percent	33.1	64.8			13.3	88.8		84.8	5.2				
High Int. 07:30 AM	28	87	85		6	27	32	121	6	138			
Volume											0.881		
Peak Factor					0.642			0.894					

Appendix B

Existing Intersection Capacity and Queue Analysis Worksheets

APPENDIX 7

SimTraffic Performance Report
Existing AM

Existing AM
5/28/2015

1: Crosshill Road WB & Brookwood Road Performance by movement

Movement	WB	WB	WB	WB	WB	WB	WB
Delay / Veh (s)	31.5	17.2	7.3	5.0	108.8	65.8	34.4

2: Crosshill Road EB & Brookwood Road Performance by movement

Movement	EB	EB	EB	EB	EB	EB	EB
Delay / Veh (s)	33.2	14.6	5.8	3.5	3.4	3.8	18.0

Total Network Performance

Delay / Veh (s)	36.8
-----------------	------

Queuing and Blocking Report
Existing AM

Existing AM
5/28/2015

Intersection: 1: Crosshill Road WB & Brookwood Road

Movement	WB	WB	EB	EB
Directions Served	LR	TR	L	T
Maximum Queue (ft)	507	22	56	503
Average Queue (ft)	204	4	83	246
95th Queue (ft)	396	19	86	478
Link Distance (ft)	2693	1591		2785
Upstream Blk Time (%)				
Queuing Penalty (veh)				
Storage Bay Del (ft)			30	
Storage Blk Time (%)			0.89	0.13
Queuing Penalty (veh)			108	28

Intersection: 2: Crosshill Road EB & Brookwood Road

Movement	EB	WB
Directions Served	LR	L
Maximum Queue (ft)	457	32
Average Queue (ft)	228	7
95th Queue (ft)	382	29
Link Distance (ft)	2848	
Upstream Blk Time (%)		
Queuing Penalty (veh)		
Storage Bay Del (ft)		30
Storage Blk Time (%)		0.01
Queuing Penalty (veh)		1

Network Summary

Network wide Queuing Penalty 136

SimTraffic Performance Report		Existing PM						
Existing PM		5/26/2015						
1. Crosshill Road WB & Brookwood Road Performance by movement								
Movement	WB	WB	WB	WB	WB	WB	WB	WB
Delay / Veh (s)	14.4	5.0	3.3	3.2	9.0	9.7	7.5	
2. Crosshill Road EB & Brookwood Road Performance by movement								
Movement	EB	EB	EB	EB	EB	EB	EB	EB
Delay / Veh (s)	12.0	7.4	6.6	1.6	3.5	2.7	6.8	
Total Network Performance								
Delay / Veh (s)	16.7							

Queuing and Blocking Report			Existing PM		
Existing PM			8/28/2015		
Intersection: 1: Crosshill Road WB & Brookwood Road					
Movement	WB	WB	WB	WB	WB
Directions Served	LR	L	L	L	L
Maximum Queue (ft)	113	65	69		
Average Queue (ft)	63	42	39		
95th Queue (ft)	98	64	71		
Link Distance (ft)	2693		2765		
Upstream Blk Time (%)					
Queuing Penalty (veh)					
Storage Bay Dist (ft)			30		
Storage Blk Time (%)			0.11		0.08
Queuing Penalty (veh)			7		6

Intersection: 2: Crosshill Road EB & Brookwood Road		
Movement	EB	EB
Directions Served	LR	L
Maximum Queue (ft)	113	32
Average Queue (ft)	65	5
95th Queue (ft)	105	24
Link Distance (ft)	2848	
Upstream Blk Time (%)		
Queuing Penalty (veh)		
Storage Bay Dist (ft)		30
Storage Blk Time (%)		0.00
Queuing Penalty (veh)		0

Network Summary
 Network wide Queuing Penalty: 14

APPENDIX 7

Appendix C

**Intersection Capacity and Queue Analysis
 Worksheets
 Alternative 1 - All-Way Stop**

SimTraffic Performance Report		AM All Way Stop						
AM All Way Stop		8/30/2015						
1. Crosshill Road WB & Brookwood Road Performance by movement								
Movement	WB	WB	WB	WB	WB	WB	WB	WB
Delay / Veh (s)	17.5	9.0	27.5	27.8	13.5	12.1	20.4	
2. Crosshill Road EB & Brookwood Road Performance by movement								
Movement	EB	EB	EB	EB	EB	EB	EB	EB
Delay / Veh (s)	23.2	13.1	8.7	11.5	7.8	6.6	15.8	
Total Network Performance								
Delay / Veh (s)	39.5							

Queuing and Blocking Report
AM All Way Stop

AM All Way Stop
8/30/2015

Intersection: 1: Crosshill Road WB & Brookwood Road

Movement	WB	WB	EB	EB
Directions Served	LR	TR	L	T
Maximum Queue (ft)	140	595	56	136
Average Queue (ft)	62	225	52	61
95th Queue (ft)	110	430	64	109
Link Distance (ft)	2993	1591		2785
Upstream Blk Time (%)				
Queuing Penalty (veh)				
Storage Bay Dist (ft)		30		
Storage Blk Time (%)		0.28	0.11	
Queuing Penalty (veh)		31	24	

Intersection: 2: Crosshill Road EB & Brookwood Road

Movement	EB	EB	WB	WB
Directions Served	LR	L	T	TR
Maximum Queue (ft)	309	95	76	138
Average Queue (ft)	149	14	47	88
95th Queue (ft)	237	47	72	107
Link Distance (ft)	2848		3458	1591
Upstream Blk Time (%)				
Queuing Penalty (veh)				
Storage Bay Dist (ft)		30		
Storage Blk Time (%)		0.02	0.14	
Queuing Penalty (veh)		2	2	

Network Summary

Network wide Queuing Penalty: 59

SimTraffic Performance Report
PM All Way Stop

PM All Way Stop
8/30/2015

1: Crosshill Road WB & Brookwood Road Performance by movement

Movement	WB	WB	WB	WB	WB	WB	WB
Delay / Veh (s)	11.9	5.0	11.5	6.3	7.9	9.2	10.2

2: Crosshill Road EB & Brookwood Road Performance by movement

Movement	EB	EB	WB	WB	WB	WB	WB
Delay / Veh (s)	11.0	7.4	9.0	7.8	7.1	6.8	8.7

Total Network Performance

Delay / Veh (s)	23.9
-----------------	------

Brookwood Rd at Crosshill Rd
RLC
Skippier Consulting

SimTraffic Report
Page 2

Brookwood Rd at Crosshill Rd
RLC
Skippier Consulting

SimTraffic Report
Page 1

Queuing and Blocking Report
PM All Way Stop

PM All Way Stop
8/30/2015

Intersection: 1: Crosshill Road WB & Brookwood Road

Movement	WB	WB	EB	EB
Directions Served	LR	TR	L	T
Maximum Queue (ft)	100	114	55	99
Average Queue (ft)	58	66	39	38
95th Queue (ft)	87	104	61	89
Link Distance (ft)	2993	1591		2785
Upstream Blk Time (%)				
Queuing Penalty (veh)				
Storage Bay Dist (ft)		30		
Storage Blk Time (%)		0.08	0.05	
Queuing Penalty (veh)		6	5	

Intersection: 2: Crosshill Road EB & Brookwood Road

Movement	EB	WB	WB	WB
Directions Served	LR	L	T	TR
Maximum Queue (ft)	113	66	56	100
Average Queue (ft)	63	14	35	50
95th Queue (ft)	99	44	54	88
Link Distance (ft)	2848		3458	1591
Upstream Blk Time (%)				
Queuing Penalty (veh)				
Storage Bay Dist (ft)		30		
Storage Blk Time (%)		0.01	0.05	
Queuing Penalty (veh)		1	1	

Network Summary

Network wide Queuing Penalty: 12

Brookwood Rd at Crosshill Rd
RLC
Skippier Consulting

SimTraffic Report
Page 2

Appendix D

Existing Intersection Approach Traffic Counts

Brookwood Road at Crosshill Road
Existing Traffic Volumes

Signal Warrants - Summary

Major Street Approaches	Minor Street Approaches
Eastbound: Crosshill Road Number of Lanes: 1 85% Speed + 40 MPH Total Approach Volume: 1,763	Northbound: Brookwood Road Number of Lanes: 1 Total Approach Volume: 831
Westbound: Crosshill Road Number of Lanes: 1 85% Speed + 40 MPH Total Approach Volume: 3,236	Southbound: Brookwood Road Number of Lanes: 1 Total Approach Volume: 933

Warrant Summary (Known values apply)

Warrant 1 - Eight Hour Vehicular Volume	Not Satisfied
Warrant 1A - Minimum Vehicular Volume Required volumes reached for 8 hours, 8 are needed	Not Satisfied
Warrant 1B - Interruption of Continuous Traffic Required volumes reached for 8 hours, 8 are needed	Not Satisfied
Warrant 1 A&B - Combination of Minimum Required volumes reached for 8 hours, 8 are needed	Not Satisfied
Warrant 2 - Four Hour Volume Number of hours (H) volumes exceed minimum + minimum required (M)	Not Satisfied
Warrant 3 - Peak Hour	Not Evaluated
Warrant 3A - Peak Hour Delay	Not Evaluated
Warrant 3B - Peak Hour Volume	Not Evaluated
Warrant 4 - Pedestrian Volume	Not Evaluated
Warrant 5 - School Crossing	Not Evaluated
Warrant 6 - Coordinated Signal System	Not Evaluated
Warrant 7 - Crash Experience	Not Evaluated
Warrant 8 - Roadway Network	Not Evaluated
Warrant 9 - Intersection Near a Grade Crossing	Not Evaluated

Appendix F

Intersection Capacity and Queue Analysis
Worksheets
Recommended Improvements

APPENDIX 7

SimTraffic Performance Report AM Recommended 6/30/2015

1: Crosshill Road WB & Brookwood Road Performance by movement

Movement	WPL	WPH	WBT	WBR	SBL	SBT	AL
Delay / Veh (s)	57.7	22.5	7.7	5.4	138.8	90.7	42.0

2: Crosshill Road EB & Brookwood Road Performance by movement

Movement	WPL	WPH	WBT	WBR	SBL	SBT	AL
Delay / Veh (s)	23.4	13.2	8.5	11.7	7.5	7.9	15.8

Total Network Performance

Delay / Veh (s)	60.7
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Queuing and Blocking Report AM Recommended 6/30/2015

Intersection: 1: Crosshill Road WB & Brookwood Road

Movement	WB	WB	EB	EB
Directions Served	LR	TR	L	T
Maximum Queue (ft)	574	22	56	608
Average Queue (ft)	228	4	55	311
95th Queue (ft)	552	17	56	605
Link Distance (ft)	2833	1591		2765
Upstream Blk Time (%)				
Queuing Penalty (veh)			30	
Storage Bay Dist (ft)			0.92	0.14
Queuing Penalty (veh)			111	29

Intersection: 2: Crosshill Road EB & Brookwood Road

Movement	EB	EB	WB	WB
Directions Served	LR	L	T	TR
Maximum Queue (ft)	309	35	82	97
Average Queue (ft)	150	14	48	65
95th Queue (ft)	247	47	75	98
Link Distance (ft)	2848		3458	1591
Upstream Blk Time (%)				
Queuing Penalty (veh)				
Storage Bay Dist (ft)			30	
Storage Blk Time (%)			0.02	0.15
Queuing Penalty (veh)			2	2

Network Summary

Network wide Queuing Penalty: 144

SimTraffic Performance Report PM Recommended
 PM Recommended 6/30/2015

1. Crosshill Road WB & Brookwood Road Performance by movement

Movement	WB	WB	WB	WB	WB	WB	WB
Delay / Veh (s)	14.6	5.0	3.7	3.4	10.4	10.0	8.1

2. Crosshill Road EB & Brookwood Road Performance by movement

Movement	EB	EB	EB	EB	EB	EB	EB
Delay / Veh (s)	11.0	7.4	8.7	7.9	7.2	6.4	8.7

Total Network Performance

Delay / Veh (s)	20.7
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Queuing and Blocking Report PM Recommended
 PM Recommended 6/30/2015

Intersection: 1. Crosshill Road WB & Brookwood Road

Movement	WB	WB	WB
Directions Served	LR	L	T
Maximum Queue (ft)	139	65	118
Average Queue (ft)	66	41	40
95th Queue (ft)	106	64	79
Link Distance (ft)	2893		2765
Upstream Blk Time (%)			
Queueing Penalty (veh)			
Storage Bay Dist (ft)	30		
Storage Blk Time (%)	0.12	0.08	
Queueing Penalty (veh)	8	6	

Intersection: 2. Crosshill Road EB & Brookwood Road

Movement	EB	EB	EB	EB
Directions Served	LR	L	T	TR
Maximum Queue (ft)	109	55	56	100
Average Queue (ft)	63	14	35	56
95th Queue (ft)	96	44	54	86
Link Distance (ft)	2848		3456	1591
Upstream Blk Time (%)				
Queueing Penalty (veh)				
Storage Bay Dist (ft)	30			
Storage Blk Time (%)	0.01	0.05		
Queueing Penalty (veh)	1	1		

Network Summary

Network wide Queueing Penalty	16
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