

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
MARCH 9, 2020**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:00 p.m. on the 9th day of March, 2020. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Philip E. Black  
Lloyd C. Shelton  
Alice B. Womack  
Stewart Welch III, Mayor

Absent: None

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

**1. AGENDA**

1. Mariellan and Billy Morris and residents of Brookwood Road, between Crosshill Road and the northern city limits, to request sidewalks along this section of street (Appendix 1). Matt Stoops with Sain Associates was asked to determine whether there are any TAP grant funds available that the City could apply for and report back to the City Council
2. Additional evaluation for repairs on Smyer Road—David Marsh of ECS (Resolution No. 2020-038 was added to the formal meeting agenda.)
3. Construction, engineering and inspection contract with Sain Associates for the Dunbarton sidewalk project—Matt Stoops of Sain Associates (Resolution No. 2020-039 was added to the formal meeting agenda.)
4. Property at 3339 North Woodridge (code violations)—Glen Merchant (Appendix 2). The best outcome for the City is for HUD to take ownership of the property and then sell same. Mr. Merchant shall continue to monitor the situation for any new developments.
5. Fiscal 2020 street paving list—Ronnie Vaughn (Resolution No. 2020-037 was added to the formal meeting agenda.)
6. Traffic Island beautification project on Ridgeview Drive West—Shanda Williams (Resolution No. 2020-040 was added to the formal meeting agenda.)
7. Review of the other matters to be considered at the formal (7 p.m.) meeting

**8. EXECUTIVE SESSION AND ADJOURNMENT**

Council President Pro Tempore Pritchard made a motion that the City Council convene in executive session to discuss a real estate matter and another matter that could lead to litigation. The City Attorney verbally certified that the subject matter of the executive session is permissible under the Open Meetings Act.

The motion was seconded by Council President Smith. There being no further discussion, the vote was called with the following results:

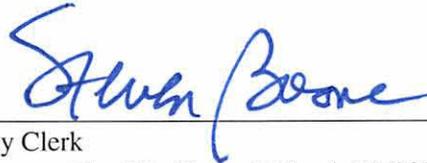
Ayes: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Philip E. Black  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said motion carried by a vote of 5—0. She then announced that the City Council shall reconvene upon conclusion of the executive session at approximately 7 p.m. in Room A108. The pre-meeting was then adjourned at approximately 6:45 p.m.

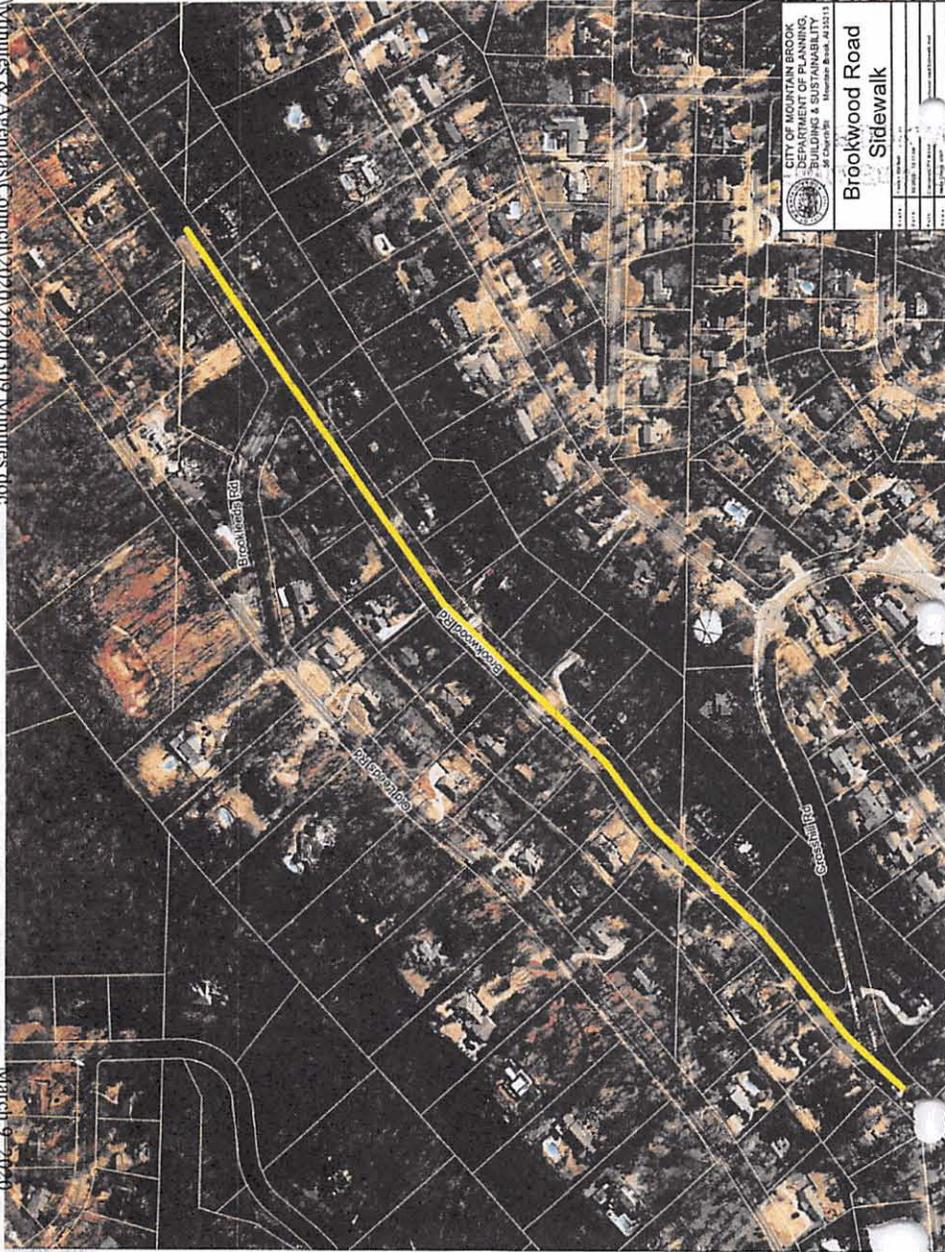
## 9. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on March 9, 2020, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.



City Clerk

Approved by City Council March 23, 2020



**BROOKWOOD RD. SIDEWALK QUOTE**  
 FROM CROSSHILL RD. TO CITY LIMIT SIGN  
 2,702 Feet

- Gravel: \$1,674.00
- 11 - Water meters relocated: \$22,000.00
- 4 - Steel plates for storm inlets: \$1,393.40
- 14 - Tree's removed: \$5,500.00
- 6 - Brick mailboxes replaced: \$10,500.00
- Form materials: \$13,164.00
- 475 - Yards of Concrete: \$65,746.50
- Landscaping: \$2,400.00
- 430 - 20 FT. sticks of rebar: \$3,913.00
- 16,100 SQ FT. of rock facing for retaining wall: \$131,760.00

**Total: \$270,953.45**

THIS QUOTE HAS A 5% OVERAGE ADDED DUE TO THE CHANGING PRICES OF MATERIALS.

March 9<sup>th</sup> Brookwood Road Sidewalk Request

- I. Introduce ourselves and thank the council for having us.
- II. We represent the neighbors on the block of Brookwood Road between Crosshill Road and Brookleeds Road at the fire station, and we want to express our need to have a sidewalk.

We have 9 reasons, but our first and most important is:

- 1. **CHILDREN and SAFETY:** We have 41 children and grandchildren that live and play on this block. We need a way to walk, stroll children, ride bikes, and run without having to jump into yards to avoid the high volume of traffic on our street.
- 2. **SPEEDING: A CONSTANT PROBLEM**
- 3. **HIGH TRAFFIC VOLUME:** Our block handles traffic and busses for 2 school systems: MB High School, Jr. High, CBS, Shades Valley High School and Highlands School.

The TYPICAL WEEKDAY TRAFFIC looks like this:

- 7:20-8:30: 422 cars, 9 trucks, 6 school buses
- 10:10-10:20: 25 cars, 2 trucks
- 1:15-2:00: 94 cars, 9 trucks
- 2:00-3:30: 385 cars and 34 trucks

Saturday mornings: 8:30-8:45:  
35 cars/trucks

Our short stretch of Brookwood Road could connect to existing sidewalks on Crosshill and near the fire station.

**5. CONSTRUCTION VEHICLES:** We have many construction vehicles-dump trucks, flatbeds, tractor/trailer trucks- cutting through on their way to I-20.

**6. FIRE ENGINE TRAFFIC:** We love them and are so glad to have a station so near, but we need to be able to get out of their way.

**7. CLOSE NEIGHBORHOOD:** We would like to create a closer neighborhood that a sidewalk would offer.

This is an issue that we have been talking about since my family moved to Brookwood Road 26 years ago. I see these young families moving in who also read in The Reporter in the past few years or heard the same thing that we were in line for sidewalks. We have always believed in letting the process take place, and we have met with some of you for guidance on how to address this, and we appreciate your time, but we no longer feel safe walking on our road and honestly no longer feel like we are a priority. How can we hope to attract young families if they do not think this is a safe street to live on?

We do understand that at this time our block of Brookwood has dropped down on the priority list since the survey results were tallied. But we are here to ask all of you to consider our request and help us make this end of Brookwood Road a safe place for our children and our grandchildren.

**4. CONNECTIVITY:** Our short stretch of Brookwood Road could connect to existing sidewalks on Crosshill and near the fire station.

**5. CONSTRUCTION VEHICLES:** We have many construction vehicles-dump trucks, flatbeds, tractor/trailer trucks- cutting through on their way to I-20.

**6. FIRE ENGINE TRAFFIC:** We love them and are so glad to have a station so near, but we need to be able to get out of their way.

**7. CLOSE NEIGHBORHOOD:** We would like to create a closer neighborhood that a sidewalk would offer.

This is an issue that we have been talking about since my family moved to Brookwood Road 26 years ago. I see these young families moving in who also read in The Reporter in the past few years or heard the same thing that we were in line for sidewalks. We have always believed in letting the process take place, and we have met with some of you for guidance on how to address this, and we appreciate your time, but we no longer feel safe walking on our road and honestly no longer feel like we are a priority. How can we hope to attract young families if they do not think this is a safe street to live on?

We do understand that at this time our block of Brookwood has dropped down on the priority list since the survey results were tallied. But we are here to ask all of you to consider our request and help us make this end of Brookwood Road a safe place for our children and our grandchildren.

**BACKGROUND, CONDITION & ACTION PLANS FOR UNMAINTAINED PROPERTY AT 3339 N. WOODRIDGE ROAD**

The residential property at 3339 N. Woodridge Road is not being properly maintained. City officials have attempted for several months to locate a person/organization who will accept responsibility to maintain both (1) the yard and (2) the house at this address. Unfortunately, those efforts have not been successful, so formal action may be required by the City to address the conditions there.

Preliminary information indicates that the property formerly was owned by Stephen Christian Stutts, who is now deceased. Third parties have expressed interest in purchasing the property, but title to it may be clouded. Before he died, Mr. Stutts mortgaged the property to receive funding through a reverse mortgage mechanism. Consequently, the holder of that mortgage has an interest that must be considered before the property could be transferred to a third person who would properly maintain it. Further, it is presently unknown whether a Probate Case was opened following the death of Mr. Stutts, or if he died testate.

In the meantime, the City staff plans to take the following actions regarding this property. First, as to the unmaintained yard, the City's Building Official - Glen Merchant - will assess whether the conditions there now constitute a public nuisance pursuant to the City's private property Nuisance Ordinance. If that determination is made, Mr. Merchant will initiate the process to abate those conditions. In the event a nuisance determination is made and those holding interests in the site do not maintain the yard, the City may be required to remedy the condition of the yard at its expense, and later assess that cost as a lien against the property. Assuming that the conditions in the yard may constitute a nuisance, Title Research is being ordered to identify all persons/organizations who would receive notice under the City's Private Property Nuisance Ordinance.

As to the condition of the structure, the Building Official is attempting to secure permission from Meredith Stutts (a daughter of the decedent and possible heir) to enter and inspect the structure. If the structural conditions are unsafe or endanger human life, State Law and the Private Property Nuisance Ordinance would authorize demolition of the structure. However, in the past the preference of the City Council has been file a lawsuit and obtain a court order before demolishing unsafe structures in the City. If that route is taken, the City will need an engineer to testify in Court that the structure at 3339 North Woodridge Rd. is unsafe.

Below is an action plan and preliminary schedule to address the conditions at this location:

- Complete Title Research - By March 20, 2020**
- Assess if Conditions in Yard Constitute Public Nuisance - Building Official to Complete by March 20, 2020**
- Assess if Structure Constitutes Public Nuisance - Building Official to Complete by March 20, 2020**
- Follow Up Report to City Council - March 23, 2020 Council Pre-Meeting**



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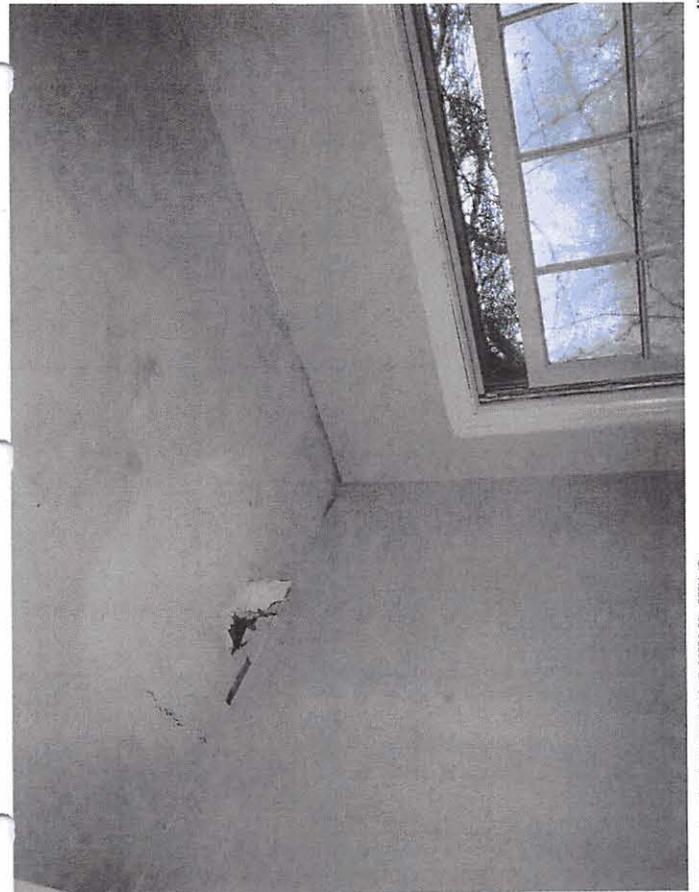
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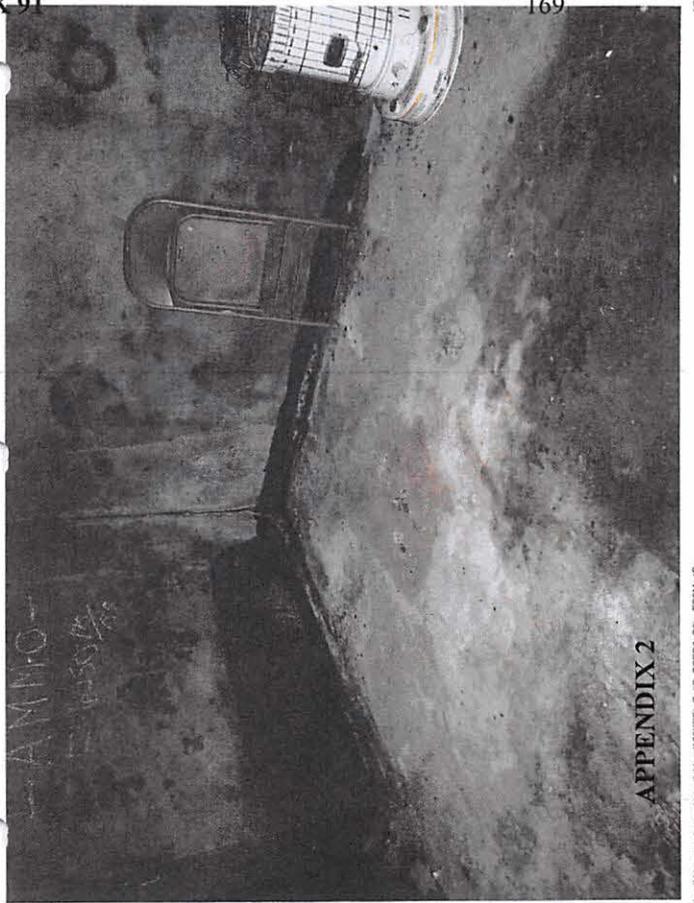
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**MINUTES OF THE REGULAR OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
MARCH 9, 2020**

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The City Council of the City of Mountain Brook, Alabama and met in public session in the City Hall Council Chamber at approximately 7:00 p.m. on the 9th day of March, 2020. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Philip E. Black  
Lloyd C. Shelton  
Alice B. Womack  
Stewart Welch III, Mayor

Absent: None

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

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

**1. PRESENTATION**

Mayor Welch, Fire Chief Chris Mullins and Deputy Fire Chief Stacy Cole presented Resolution No. 2020-034 (Exhibit 1) to Dr. Adam Robertson.

**2. LEADERSHIP MOUNTAIN BROOK CLASS OF 2019-2020**

The high school students participating in the 2019—2020 Leadership Mountain Brook presented their project plans as follows:

- A promotion video illustrating the amenities, culture and benefits of the City of Mountain Brook.

The video is expected to be approximately 2 minutes in length, to cost approximately \$2,000 to produce, will be housed on the Mountain Brook Chamber website and distributed through other social media outlets as well.

- A street map of the City to educate prospective and current residents including features of interest throughout the community.

It is estimated that maps can be produced for \$4,950 plus \$800 for 1,000 copies. The students are soliciting a sponsor to cover \$4,000 of the cost, \$1,000 from the Chamber and \$1,000 from the City. The maps will be sold by the Chamber for \$2 each and available for distribution by the sponsor for free.

The elected officials agreed that both proposals are worthy projects that the City would like to see implemented and agreeable to committing \$1,000 for each of the two projects. The matter was added to the consent agenda below.

**3. CONSENT AGENDA**

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

Approval of the minutes of the February 24 2020, regular meeting of the City Council

<b>2020-034</b>	Resolution expressing gratitude to Dr. Adam Robertson for his volunteer service as medical director for the Fire Department	Exhibit 1
<b>2020-035</b>	Authorize the execution of a professional services contract between the City and Skipper Consulting for a traffic study of the intersection of Dexter Avenue at Vine Street	Exhibit 2, Appendix 1
<b>2020-036</b>	Authorize the execution of the MWCF Deductible Addendum – 2020 with respect to the City’s high deductible workers’ compensation policy	Exhibit 3, Appendix 2
<b>2020-037</b>	Approve the proposed street paving/resurfacing list for fiscal 2020 under the City’s 3-year street resurfacing contract (see Resolution No. 2017-058 adopted May 8, 2017)	Exhibit 4, Appendix 3
<b>2020-038</b>	Authorize the execution of a professional services agreement between the City and ECS Southeast, LLP with respect to a Smyer Road repair feasibility study	Exhibit 5, Appendix 4
<b>2020-039</b>	Authorize the execution of a professional services agreement between the City and Sain Associates with respect to construction, engineering and inspection services for the Dunbarton TAP Sidewalk Project (TAPBH-TA18(931))	Exhibit 6, Appendix 5
<b>2020-040</b>	Authorize City Manager to pay, or cause to be paid for and on behalf of the City, up to \$1,000.00 for materials and provide City labor and equipment as necessary to install beautification improvements at the Ridgeview Drive West traffic island	Exhibit 7, Appendix 6
<b>2020-041 Motion</b>	Authorize the expenditure of \$1,000 (each) for the following 2019-2020 Mountain Brook Leadership Class projects: 1) promotional video for the Chamber website and Facebook and 2) community maps to be sold by the Chamber of Commerce	

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

Ayes: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Philip E. Black  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

Abstained: None

Council President Smith thereupon declared that said minutes, resolutions (Nos. 2020-034 through 2020-040) and motion (No. 2020-041) were adopted by a vote of 5—0 that and as evidence thereof she signed the same.

**4. ANNOUNCEMENTS**

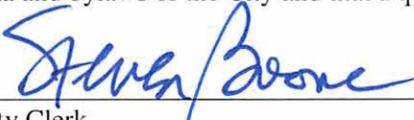
The next regular meeting of the City Council will be March 9, 2020, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

**5. ADJOURNEMENT**

There being no further business or matters for discussion, Council President Smith adjourned the meeting at approximately 7:25 p.m.

**6. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on March 9, 2020, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

  
 City Clerk  
 Approved by City Council March 23, 2020

**EXHIBIT 1****RESOLUTION NO. 2020-034**

**HONORING DR. ADAM ROBERTSON FOR HIS COMMUNITY SERVICE  
 TO THE CITY OF MOUNTAIN BROOK**

**WHEREAS**, The City of Mountain Brook deems it necessary to highlight the community service and bestow honor on citizens who are committed to excellence and consistently strive to improve our community; and

**WHEREAS**, Dr. Adam Robertson is one of those people, as he has voluntarily served over 20 years as the Fire Department's Medical Director; and

**WHEREAS**, through Adam's leadership, he has provided the necessary medical training and credentials required to maintain a high-quality emergency medical service to the Birmingham area; and

**WHEREAS**, Dr. Adam Robertson is well connected with members of our medical community and has earned their well-deserved trust and respect, just retiring from his position as Birmingham Regional Emergency Medical Services System (BREMSS) Medical Director.

**NOW, THEREFORE**, I, Stewart H. Welch III, as Mayor issue this resolution to honor Dr. Adam Robertson in recognition and appreciation of his many years of dedicated service to humanity and our community.

**EXHIBIT 2****RESOLUTION NO. 2020-035**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a professional services agreement between the City and Skipper Consulting, Inc., in the form as attached hereto as Exhibit A, with respect to a traffic study of the intersection of Dexter Avenue at Vine Street.

**APPENDIX 1**

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**EXHIBIT 3**

**RESOLUTION NO. 2020-036**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that City Council hereby ratifies the execution of the “MWCF Deductible Addendum – 2020”, in the form as attached hereto as Exhibit A, and such other documents that may be determined necessary with respect to the \$300,000 deductible workers’ compensation insurance coverage and claims administration services for the policy year beginning February 1, 2020.

**APPENDIX 2**

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**EXHIBIT 4**

**RESOLUTION NO. 2020-037**

**BE IT RESOLVED** that the City Council hereby approves the proposed street paving/resurfacing list for fiscal 2020 under the City’s 3-year street resurfacing contract (see Resolution No. 2017-058 adopted May 8, 2017).

**APPENDIX 3**

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**EXHIBIT 5**

**RESOLUTION NO. 2020-038**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a professional services agreement between the City and ECS Southeast, LLP, in the form as attached hereto as Exhibit A, with respect to a Smyer Road repair feasibility study.

**APPENDIX 4**

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**EXHIBIT 6**

**RESOLUTION NO. 2020-039**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a professional services agreement between the City and Sain Associates, in the form as attached hereto as Exhibit A, with respect to construction, engineering and inspection services for the Dunbarton TAP Sidewalk Project (TAPBH-TA18(931)).

**APPENDIX 5**

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**MINUTE BOOK 91****EXHIBIT 7****RESOLUTION NO. 2020-040**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes City Manager to pay, or cause to be paid for and on behalf of the City, up to \$1,000.00 for materials and provide City labor and equipment as necessary to install beautification improvements at the Ridgeview Drive West traffic island as illustrated in Exhibit A attached hereto.

**APPENDIX 6**  

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2020-035

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

This Agreement is made by and between the City of Mountain Brook, Alabama ("Client"), doing business at 66 Church Street, Mountain Brook, Alabama 35213 and, Skipper Consulting, Inc. ("Consultant"), doing business at 3844 Vann Road, Suite 100, Birmingham, Alabama 35235.

WHEREAS, the Client requests that the Consultant perform professional traffic engineering services related to a traffic study for the intersection of Dexter Avenue at Vine Street in the City of Mountain Brook (the "Project" or "Services");

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

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

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

SEE SCOPE OF WORK SET FORTH ON EXHIBIT "A"

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

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

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

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

**COMPENSATION/ BILLING/ PAYMENT:** Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) for a fixed fee in the amount of \$7,650.00.

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

If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such change. If the Client wishes to undertake tasks that are identified as being outside the proposed scope of services, the Consultant will submit a proposal for the additional work. No additional work or

The Consultant agrees to perform its Services in accordance with the terms of this Agreement, and in the orderly progress of the Project.

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

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

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

**COMPENSATION/ BILLING/ PAYMENT:** Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) for a fixed fee in the amount of \$7,650.00.

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

If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such change. If the Client wishes to undertake tasks that are identified as being outside the proposed scope of services, the Consultant will submit a proposal for the additional work. No additional work or

The Consultant agrees to perform its Services in accordance with the terms of this Agreement, and in the orderly progress of the Project.

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

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

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

**COMPENSATION/ BILLING/ PAYMENT:** Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) for a fixed fee in the amount of \$7,650.00.

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

If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such change. If the Client wishes to undertake tasks that are identified as being outside the proposed scope of services, the Consultant will submit a proposal for the additional work. No additional work or

services other than those contemplated herein shall be performed without the written approval of the Client.

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

4. **STANDARD TERMS AND CONDITIONS**

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

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

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

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

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

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

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

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

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

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

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

The Consultant agrees to perform its Services in accordance with the terms of this Agreement, and in the orderly progress of the Project.

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

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

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

**COMPENSATION/ BILLING/ PAYMENT:** Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) for a fixed fee in the amount of \$7,650.00.

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

If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such change. If the Client wishes to undertake tasks that are identified as being outside the proposed scope of services, the Consultant will submit a proposal for the additional work. No additional work or

The Consultant agrees to perform its Services in accordance with the terms of this Agreement, and in the orderly progress of the Project.

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

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APPENDIX 1

**EXHIBIT "A"**  
**SCOPE OF WORK**

The Consultant shall perform the following scope of work in relation to a traffic study of the intersection of Dexter Avenue at Vine Street in the City of Mountain Brook.

- Conduct a video camera-based intersection turning movement traffic count on a weekday from 7:00 a.m. to 6:00 p.m. Use of a video camera will allow collection of:
  - o Vehicle traffic counts
  - o Pedestrian counts
  - o Vehicle/vehicle conflicts
  - o Vehicle/pedestrian conflicts
  - o Vehicles failing to yield right-of-way
  - o Vehicles failing to properly exercise right-of-way
- Conduct two drone video observations (30 minutes each) during the morning and afternoon peak periods as identified by the video camera traffic count. The drone video observations will allow collection of:
  - o Vehicle speeds through the intersection
  - o Vehicle queuing
  - o Vehicle delay
- Conduct windshield observations during the morning and afternoon peak periods
- Collect additional crash data for the intersection from the MBPD for crashes occurring after September, 2019
- Perform an analysis of existing traffic conditions at the intersection, including capacity, level of service, delays, queues, and safety
- Prepare a traffic model of the intersection calibrated to existing traffic conditions, and use the model to test alternative traffic control schemes. Specifically, this will include conversion of the intersection to a four-way stop. Testing of alternative schemes will include capacity, level of service, delays, queues, and safety.
- Prepare report of study findings and recommendations
- Meet with City staff, Crestline Elementary staff, and Board of Education staff as required
- Meet with area citizens and other stakeholders as required
- Attend city council meetings to present study findings and recommendations as required

**Schedule**

The Consultant will perform the scope of work described above, up to and including issuing a report of the study findings, within a period of four (4) weeks from notice to proceed, barring unforeseen circumstances outside of the control of the Consultant.

ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND SKIPPER CONSULTING, INC. - TRAFFIC ENGINEERING SERVICES (DEXTER AVENUE AT VINE STREET)

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

This Addendum is a part of the Professional Services Agreement between the parties ("the Agreement") concerning the work, services or project described in the Agreement. In the event of any conflict between the terms and provisions of this Addendum and the Agreement, the terms herein supersede and control any conflicting or inconsistent terms or provisions, particularly to the extent the conflicting or inconsistent terms or provisions in the Agreement purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The Addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal Agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without the express approval of the Mountain Brook City Council.

1. Definitions. For purposes of this Addendum, the terms below have the following meanings:

- A. "The City" refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies. The City may also be referenced in the Agreement as the "Client."
- B. "The (this) Agreement" refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
- C. "The Contractor" refers to the person, firm, or other legal entity that enters the Agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors. The Contractor may also be referenced in the Agreement as the "Consultant."

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

property damage with a combined single limit of not less than \$500,000 per occurrence.

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

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

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

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

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

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

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

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

3. Attorney's Fees; Court Costs; Litigation Expenses. The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. Late Payment Charges; Fees; Interest. The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services, and bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be considered delinquent pending resolution of the dispute.

5. Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies. The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.

6. Choice of Law; Choice of Venue or Forum. The meaning, legal effect, and enforcement of terms and provisions of the Agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the Agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.

7. Construction of Addendum. Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal Agreement or as a matter of law.

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

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

- 1. Comprehensive General Liability: This insurance shall cover all operations performed by or on behalf of Contractor, and provide coverage for bodily injury and

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

CITY: CITY OF MOUNTAIN BROOK      CONTRACTOR: SKIPPER CONSULTING INC.

By: *Stewart Welch III*      By: *Darrell B. Skipper*

Printed Name: Stewart Welch III      Printed Name: Darrell B. Skipper, P.E.

Title: Mayor      Title: President

Date: 3/9/2020      Date: February 25, 2020

APPENDIX I

Dear City of Mountain Brook:

On behalf of The Municipal Workers Compensation Fund (MWCF), we would like to thank you for purchasing workers comp coverage through MWCF for your entity.

This addendum to the MWCF Participation Agreement confirms your deductible program and your portion of each claim that City of Mountain Brook will pay under this program. City of Mountain Brook is on a \$300,000 deductible per claim per year program. MWCF will pay all expenses on each claim that exceeds \$300,000 and City of Mountain Brook will pay all expenses on each claim up to the first \$300,000 of each claim.

You agree by signing this addendum, that in the event you do not pay the deductible reimbursement expenses on this program within 30 Days of billing receipt, MWCF may offset any balance due to them, against un-earned premiums paid in by you, against any deposit paid in by you, any dividends due to you and may accelerate any un-paid premium payments under any financing agreement. You further agree, that in the event your entity does not reimburse deductible expenses back to MWCF, you understand that MWCF may cancel your existing workers compensation insurance coverage under state law for non-payment.

You also agree that as a condition of this deductible program, you will furnish MWCF ongoing quarterly financial statements, if requested. In the event of a significant change in the finances of your entity, determined in our sole discretion, then the fund may re-underwrite the risk of your entity based on this deductible program mid-year. Re-underwriting may include termination of coverage, change in deductible amount or even elimination of deductible amount for the current coverage term.

As part of our program MWCF will provide normal administrative services to your account, including claims below your \$300,000 deductible.

In addition to the standard MWCF services, it is important to note and understand that certain fees and expenses related to the administration of claims are included within the deductible portion of your policy. These expenses are called "allocated loss adjustment expenses" and are standard in the industry. City of Mountain Brook must pay these expenses for the first \$300,000 of all claims. MWCF will only pay these expenses after the \$300,000 deductible of any claim is met. The "allocated loss adjustment expenses" are listed below.

ALLOCATED LOSS ADJUSTMENT EXPENSE

The term "Allocated Loss Adjustment Expense" shall mean such of the following items of expense incurred or authorized by Service Company as may be reasonable and necessary in connection with its provision of the Basic Services. The below items are the claims cost items that are to be considered in determining self-insured retention levels as well as deductible levels:

- A. Medical examination of claimants, including the reasonable and necessary transportation expenses of claimants.
- B. Reports from attending or examining physicians.
- C. Attorneys' fees, disbursements, and expenses.
- D. Court reporter services and transcripts.

- E. Stenographic services and transcripts.
- F. Witness attendance fees.
- G. Court costs.
- H. Appeal bonds.
- I. Printing costs related to trials and appeals.
- J. Testimony, opinions, appraisals, reports, surveys and analyses of professionals and experts.
- K. Automobile and Property appraisals.
- L. Trial and hearing attendance fees.
- M. Reports from government agencies or branches.
- N. Credit bureau reports.
- O. Private investigators.
- P. Photographers.
- Q. Medical or vocational rehabilitation.
- R. Medical costs containment services, i.e., utilization review, pre-admission authorization, hospital bill audit, provider bill audit and medical case management incurred at the request of Client.
- S. Extraordinary Claim Investigation and/or travel expense incurred at the request of Client.
- T. Any similar service related to the investigation and defense of a particular Claim, or the protection of and collection of the subrogation rights of Client.
- U. Indemnity Benefits and Medical provider payments and associated cost containment fees, such as but not limited to RX out of contract repricing costs, etc.
- V. Out of State TPA service fees.
- W. Out of contract in-state and out-of-state bill adjudication fees.
- X. Medicaid Set-Aside program management fees.

APPENDIX 2

On behalf of MWCF, thank you for your support of the Municipal Workers Compensation Program.

Please execute this addendum, acknowledging that you have a \$300,000 deductible per claim. Once executed please return a copy of this document back to:

MWCF, Inc.  
P O Box 1270  
Montgomery, AL 36102

Addendum Authorizing Signatures for the City of Mountain Brook:

By: [Signature] Date: \_\_\_\_\_  
Authorized Municipal Official

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

RESOLUTION NO. 2020-037

BE IT RESOLVED that the City Council hereby approves the proposed street paving/resurfacing list for fiscal 2020 under the City's 3-year street resurfacing contract (see Resolution No. 2017-058 adopted May 8, 2017).

ADOPTED: This 9th day of March, 2020.

*Vince C Smith*  
Council President

APPROVED: This 9th day of March, 2020.

*Steven Boone*  
Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on March 9, 2020, as same appears in the minutes of record of said meeting.

*Steven Boone*  
City Clerk

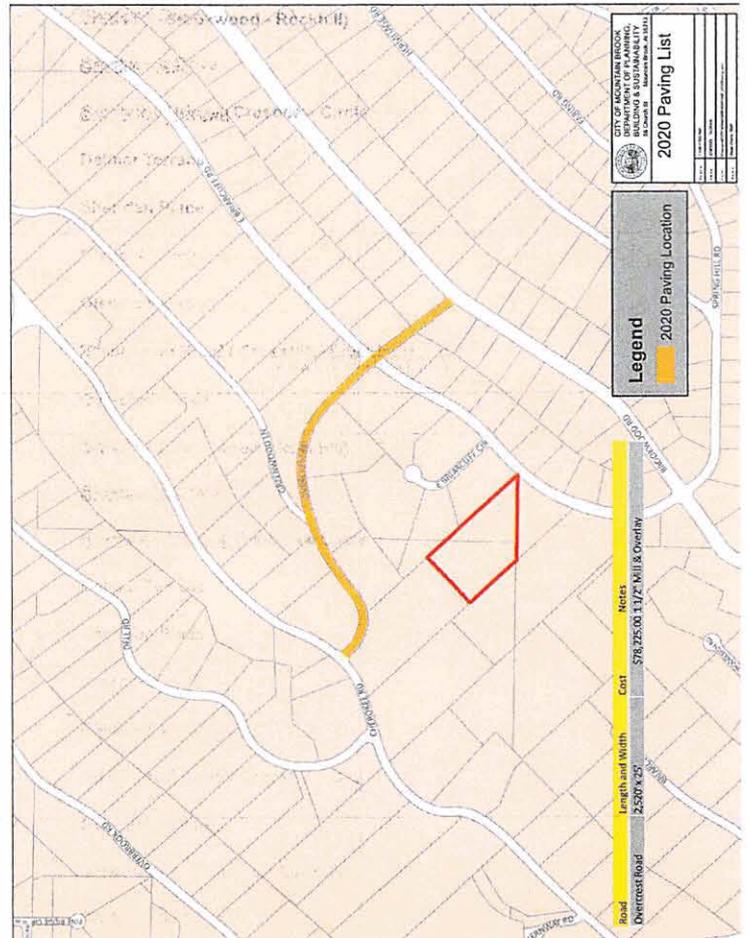
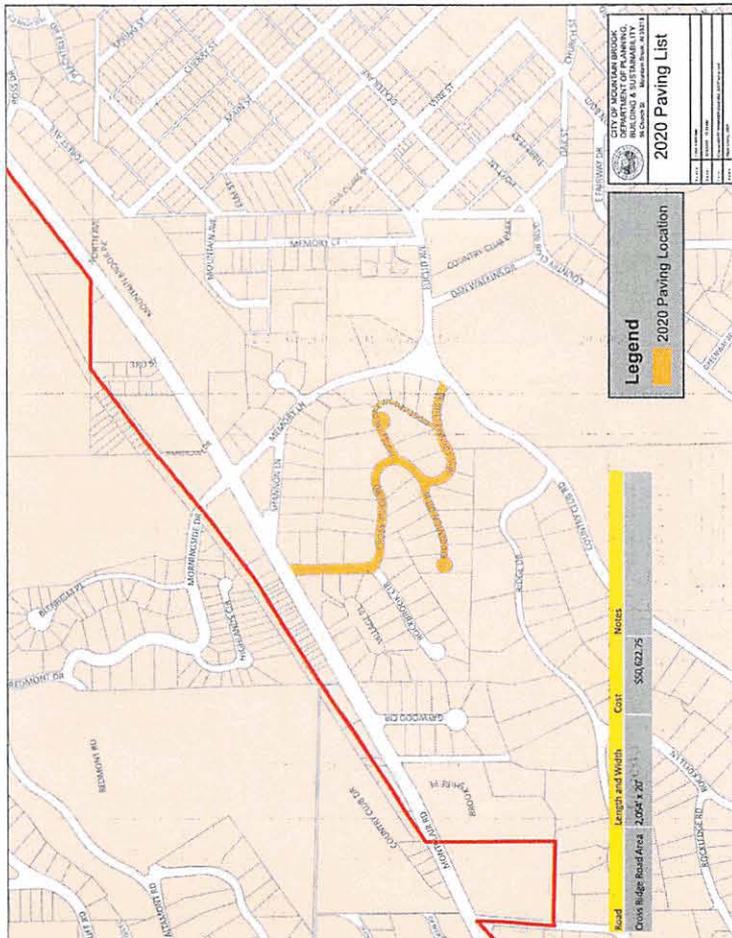
2020 Street Paving/Resurfacing List

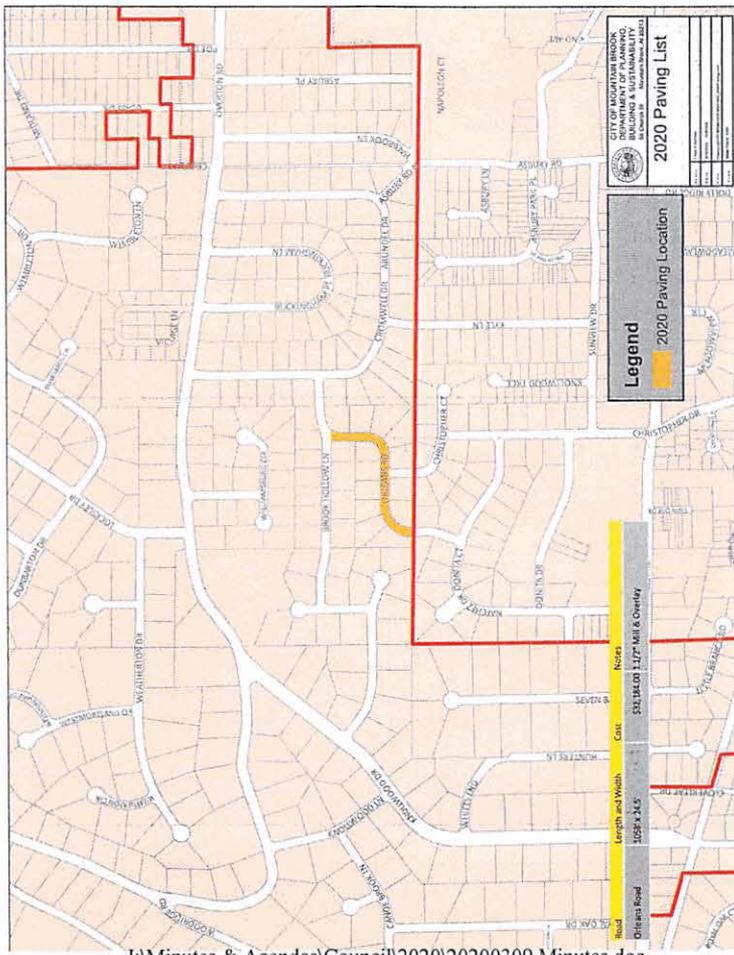
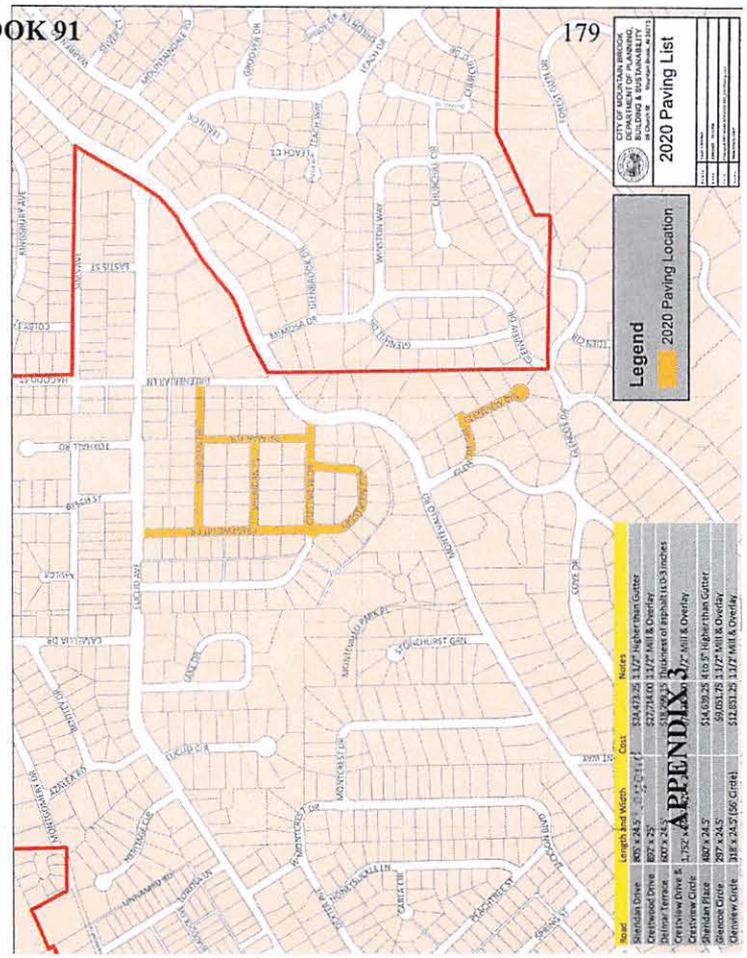
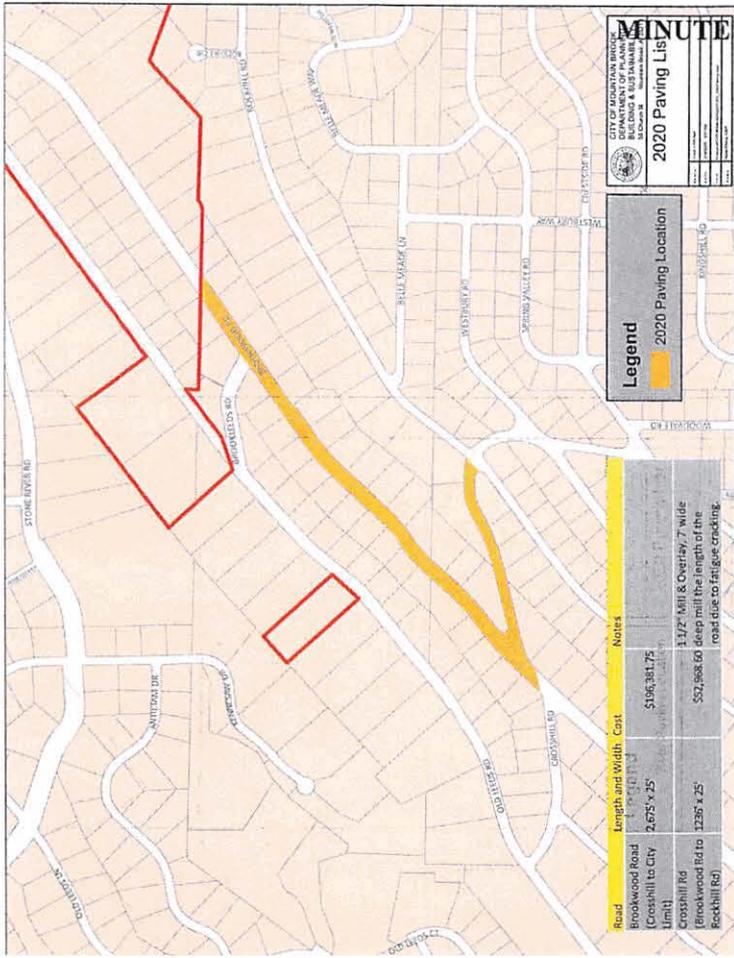
2020-037

2020 PAVING LIST

- Sheridan Drive
- Crestwood Drive
- Crestview Drive & Crestview Circle
- Delmar Terrace
- Sheridan Place
- Glencoe Circle
- Glenview Circle
- Brookwood Road ( Crosshill - City Limit)
- Overcrest Road
- Crosshill (Brookwood - Rockhill)
- Orleans Road
- Cross Ridge Road
- Delmar Terrace
- Sheridan Place
- Glencoe Circle
- Glenview Circle
- Brookwood Road ( Crosshill - City Limit)

APPENDIX 3





2020-038



ECS SOUTHEAST, LLP
Geotechnical • Construction Materials • Environmental • Facilities



ECS SOUTHEAST, LLP
Geotechnical • Construction Materials • Environmental • Facilities

ECS is pleased to provide the professional services outlined in the proposed scope of services below. This contract conforms your authorization for the services requested and your agreement to the Incorporated Terms and Conditions under which the services will be provided.

PROJECT INFORMATION

Table with 3 columns: Field (Project Name, Street Address, Project Location), Value (Smyer Road Repair Feasibility Study, Smyer Road, Mountain Brook, Alabama)

CLIENT INVOICE INFORMATION

Table with 3 columns: Field (Firm, Mailing Address, City, State), Value (City of Mountain Brook Alabama, 56 Church Street, Mountain Brook, Alabama)

Project Description: The project site is located on Smyer Road in Mountain Brook, Alabama. We understand that a portion of the slope adjacent to Smyer Road and the roadway are exhibiting signs of distress.

Services: ECS will perform a feasibility study to evaluate repair methods for the slope. ECS will provide a recommendations letter based on the results of the study commenting on the feasibility of up to three (3) different repair methods.

Lump Sum Fee: ECS will evaluate the feasibility of several repair options for the slope for a lump sum fee of \$5,000. ECS can provide final construction drawings for the slope repair once the repair method is selected.

Additional consulting time after the submittal of our report will be charged on a Time and Materials basis on the attached Geotechnical Design Services Fee Schedule.

Work Authorized By:

Signature table for Stewart Welch III, Mayor of Mountain Brook, dated 3/19/2020.

ECS SOUTHEAST, LLP:

Signature table for Morgan E. Carden (Project Manager) and Marc F. Plotkin, P.E., D.GE (Principal Engineer), dated 3/14/2020.

111 W. Glenboro Road, Suite 203, Birmingham, AL 35209 • T: 205.568.0700 • www.ecsllp.com
ECS Mountain Brook • 1000 Mountain Brook Road, Mountain Brook, AL 35226 • T: 205.568.0700 • www.ecsllp.com

GEOTECHNICAL DESIGN SERVICES
FEE SCHEDULE

Professional & Administrative Services

Fee schedule table listing Senior Principal Level (\$225.00), Principal Level (\$185.00), Senior Project Level (\$135.00), Project Level (\$115.00), Staff Professional Level (\$55.00), Draftsperson (\$75.00), Administrative Level (\$50.00), and Subcontract Services (cost + 15%).

APPENDIX 4

ECS SOUTHEAST, LLP
TERMS AND CONDITIONS OF SERVICE

1.1 The professional services ("Services") to be provided by ECS SOUTHEAST, LLP ("ECS") pursuant to this Agreement shall be provided in accordance with the standard of care required of a professional in the industry performing similar services on projects of like size and complexity at that time and in the region (the "Standard of Care").

13.3. Subject to the terms and conditions of this Agreement, ECS shall be responsible for the design, construction, and maintenance of the project. ECS shall be responsible for the design, construction, and maintenance of the project.



ADDENDUM TO AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND ECS SOUTHEAST, LLP DATED MARCH 9, 2020

THIS ADDENDUM ("the this Addendum") to the principal agreement between the City of Mountain Brook, Alabama ("the City") and ECS Southeast, LLP ("the Contractor") dated May 23, 2016.

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

1. Definitions. For purposes of this Addendum, the terms below have the following meanings:

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

APPENDIX 4



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

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

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

DATED this 9th day of March, 2020.

ECS Southeast, LLP

City of Mountain Brook, Alabama

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

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

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

Its: Mayor



**SAIN ASSOCIATES, INC.**  
**TERMS AND CONDITIONS**

**Dispute Resolution:**  
Client and Sain Associates agree that if a dispute arises out of or relates to the contract, the parties will attempt to settle the dispute through good faith negotiations. If direct negotiations do not resolve the dispute, the parties agree to arbitrate to settle the dispute by mediation prior to the initiation of any legal action unless a written agreement is reached. Mediation shall take place in County where project is located and if mediation cannot be agreed upon by parties then it is agreed that Arbitration Association Association will appoint mediator.

**Indemnification:**  
Client and Consultant agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorney's fees, for the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.

**Force Majeure:**  
Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause that is beyond its reasonable control and without its negligence.

**Termination of Contract:**  
Client may terminate this Agreement with seven days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Client provides full and complete payment for all services, expenses and other charges.

**Ownership of Documents:**  
All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional services, and Consultant will retain an ownership and property interest therein. Consultant grants Client a license to use instruments of Consultant's professional services for the purpose of constructing, occupying and maintaining the Project. Review or modification of any such documents by Client, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorney's fees, arising out of such review by Client or by others acting through Client.

March 2020

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March 3, 2020

To: Mr. Sam Clayton  
City of Mountain Brook

SUBJECT: Dunbarston Sidewalk Project Update

Project Scope:  
From North Woodlake to Lockley Dr (1754')



Typical: 6' wide sidewalks, reducing pavement width by 2' - 1/8" and overlay paving of Dunbarston 192' (home) - to be completed by the City

Item	Cost	City	ALDOT
Design	\$ 94,900	\$ 94,900	\$ -
R/W	\$ 15,000	\$ 15,000	\$ -
Utility Relocations	\$ -	\$ -	\$ -
Construction	\$ 379,045	\$ 199,809	\$ 179,236
Inspection	\$ 59,362	\$ 296,337	\$ 236,975
ALDOT Indirect Costs	\$ 41,176	\$ 20,588	\$ 20,588
Indirects Excluded for Agreement	\$ 292,949	\$ 292,949	\$ 292,949
<b>Total</b>	<b>\$ 607,893</b>	<b>\$ 316,743</b>	<b>\$ 388,142</b>

The ALDOT 2018 Funding Agreement was for us to \$486,240 for construction, inspections & ALDOT indirect costs.  
80% Fed \$546,992  
20% City \$137,248

\*ALDOT has imposed a cap on the CE & I costs of 19% of the construction bid, which would be \$56,857, therefore making the city responsible for the \$12,885 difference from the \$69,742.

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**ADDENDUM TO AGREEMENT BETWEEN  
THE CITY OF MOUNTAIN BROOK AND  
SAIN ASSOCIATES  
DATED MARCH 9, 2020**

**THIS ADDENDUM ("the this Addendum") to the principal agreement between the City of Mountain Brook, Alabama ("the City") and Sain Associates ("the Contractor") dated May 21, 2016.**

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

1. **Definitions.** For purposes of this Addendum, the terms below have the following meanings:

- A. **"The City"** refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies.
- B. **"This Agreement"** refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
- C. **"The Contractor"** refers to the person, firm, or other legal entity that enters into an agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors.

2. **Arbitration; Mediation; Alternate Dispute Resolution.** The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising hereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (1) the rights and remedies available under such arbitration rules or processes do not afford the Contractor greater relief (e.g., attorney's fees, damages, etc.) than would be available under otherwise applicable law, (2) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (3) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.

3. **Attorney's Fees; Court Costs; Litigation Expenses.** The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs,

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

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

Page 2 of 3

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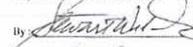
DATED this 9th day of March, 2020.

Sain Associates

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

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

City of Mountain Brook, Alabama

By: 

Its: Mayor

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**APPENDIX 5**

March 9, 2020

Island Location Ridgeview Drive West

Area of Island 283 Max City Contribution \$1,000

(<3,000 sq ft = \$1,000; 3,000-6,000 sq ft = \$2,000; > 6,000 sq ft = \$3,000)

Sketch of Design



Other Details

This island has had issues with trucks running across it and the previous plants and curb were damaged. The fire department also requested that the island be made smaller to accommodate their trucks so we have already done that. Now we just have to replace the plants.

Sketch of Design

Materials needed	Quantity	Cost
Willow Oak	1	\$200
Asiatic Jasmine	600	\$600
Soil Ammendment		\$200

Total Cost \$1000

Resident Contact Information

Name	Email
Maria Mathews	Maria.Mathews@protective.com

Partnership Agreement

We will plant it and maintain like we've been doing.

Island Committee Comments

Date March 2, 2020

Aimee Reese and Helen Drennen were consulted on this project and they agreed with the listed plants and design.

Tree Commission Members: Ro Holman and Elizabeth Poyner

Park Board Members: Helen Drennen and Aimee Reese

Others: Shanda Williams

Police Department Comments

Date March 3, 2020

Lt. Carmack stated that since the sight lines were improving from the original planting that he did not see a problem with it.

Council Comments:

Date:

Amount approved:

Tree Commission Members: Ro Holman and Elizabeth Poyner

Construction Issues/Comments/Adjustments

Others: Shanda Williams

APPENDIX 6

Before Picture:



After Picture: