

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
NOVEMBER 28, 2022**

[As a convenience, members of the public were invited to listen, observe and participate in the public meeting by Internet video conference.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 6:15 p.m. on the 28th day of November, 2022 (others were allowed to listen to the meeting by way of Internet video conference). The Council President called the pre-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
Graham L. Smith
Gerald A. Garner
Lloyd C. Shelton
Stewart Welch III, Mayor

Absent: None

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

1. AGENDA

1. Drainage Projects update

Sam Gaston-City Manager

- 900 Block of Euclid-plans are almost ready for bid
- Richmar "The Cut"-Preliminary plan complete
- Northcote-under construction
- Junior High-construction under contract
- Canterbury Methodist Church-design complete, working on bid documents
- Cherry Street-90% complete
- Canterbury/Surrey Road-working on design
- Surrey Road-working on design
- Fairmont Drive/Lorena Lane-Surveying underway
- Crestline Branch-preliminary scheme and cost estimate presented

Virginia Smith-Council President

- Inquired as to when the sidewalk project on Pin Ridge will start

Sam Gaston

- The project should start at the end of 2023

2. Design of flashing signal on Old Leeds Road at Cherokee Road

Richard Caudle-Skipper Consultants

- Complaints were received from bicycle community regarding this location

- Agreement is for Skipper to complete project which consists of two parts: 1) traffic study 2) design of beacon (preparing plans and having contractor do the work)
- Recommendation is to hire a contractor to do the work
- Sign would be about 14 feet tall
- Cost estimate: \$25,000

Virginia Smith-Council President

- Item added to the formal agenda (Resolution 2022-196)

3. Review of the other matters to be considered at the formal (7:00p.m.) meeting

2. EXECUTIVE SESSION AND ADJOURNMENT

Council President Pro Tempore Pritchard made a motion that the City Council convenes in executive session to discuss a potential litigation matter and that the City Council shall reconvene at approximately 7 p.m. upon conclusion of the executive session. The City Attorney certified that the subject matters were allowed to be discussed in executive pursuant to Alabama Law. The motion was seconded by Council President Virginia Smith. 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
Gerald A. Garner
Graham L. Smith
Lloyd C. Shelton

Nays: None

There being no further matters for discussion Council President Virginia Smith adjourned the pre-meeting at approximately 6:34 pm.

3. CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the regular session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A-106) on November 28, 2022, 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 December 12, 2022

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
NOVEMBER 28, 2022**

[As a convenience, members of the public were invited to listen, observe and participate in the public meeting by Internet video conference.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:04 p.m. on the 28th day of November, 2022 (others were allowed to listen to the meeting by way of Internet video conference). 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 Chairman, Council President Pro Tempore
Graham L. Smith
Gerald A. Garner
Lloyd C. Shelton
Stewart Welch III, Mayor

Absent: None

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

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

1. RECOGNIZE MOUNTAIN BROOK POLICE CORPORAL, EJ MELTON

Jaye Loggings-Police Chief

- Corporal Melton assisted individuals involved in an accident (outside the city limits) while off duty and assisted the individuals until Birmingham Police Department arrived
- Presented Corporal Melton with a Star Employee Village Gold

2. RECOGNIZE ALICE WOMACK FOR HER YEARS OF SERVICE ON THE MOUNTAIN BROOK CITY COUNCIL

Stewart Welch-Mayor

- Presented Alice Womack with Resolution 2022-192 (Exhibit 1)

Alice Womack

- Thankful for the opportunity to serve the City of Mountain Brook

3. RECOGNIZE THE CITY OF MOUNTAIN BROOK FOR RECEIVING THE NATIONAL SAFETY COUNCIL 2021 TRAINING CENTER OF THE YEAR AWARD FOR BOTH THE 4 AND 8 HOUR DEFENSIVE DRIVING SCHOOL PROGRAM

K.C. Hairston-Presiding Judge

- Recognized John Songer (the 4 hour instructor) and James “Bo” Stinson (the 8 hour instructor) and Heather Richards, City Clerk, for receiving the award

4. CONSENT AGENDA

Council President Virginia 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 November 14, 2022, regular meeting of the City Council

2022-192	Recognize Alice Womack for her years of service on the Mountain Brook City Council	Exhibit 1
2022-193	Authorize the architect/engineering agreement with Goodwyn Mills Cawood LLC with respect to the Junior High Athletic Field project	Exhibit 2, Appendix 1
2022-194	Execute a contractor agreement between the City and Wilbanks Engineering and Environmental Solutions, LLC with respect to the Streambank Restoration at Jemison Park	Exhibit 3, Appendix 2
2022-195	Accept change order No. 1 requested by JD Morris Construction Co. with respect to the Northcote Drive Culvert Replacement project	Exhibit 4, Appendix 3
2022-196	Accept the professional services agreement submitted by Skipper Consulting, Inc. with respect to preparing a traffic control device design for an approaching traffic warning beacon system for the intersection of Old Leeds Road at Cherokee Road in the City of Mountain Brook that includes a traffic study and the design of a flashing warning beacon	Exhibit 5, Appendix 4

Thereupon, the foregoing minutes and resolutions (Nos. 2022-192 through 2022-196), were introduced by Council President Virginia Smith and a motion for their immediate adoption made by Council Member Shelton. The minutes and resolutions were then considered by the City Council. Council Member Graham Smith seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Graham L. Smith
Gerald A. Garner
Lloyd C. Shelton

Nays: None

Abstained: None

Council President Virginia Smith thereupon declared that said minutes and resolutions (Nos. 2022-92 through 2022-196) were adopted by a vote of 5—0 and as evidence thereof she signed the same.

5. PLANNING COMMISSION APPOINTMENTS

Stewart Welch-Mayor

- Appointed Winston McCalley and Maretta Ashford to the Planning Commission

6. ANNOUNCEMENT

Council President Virginia Smith announced the next regular meeting of the City Council is December 12, 2022, 7:00p.m.

7. ADJOURNMENT

There being no further business to come before the City Council, President Virginia Smith adjourned the meeting at approximately 7:24 p.m.

8. CERTIFICATION

I, Heather Richards, 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 A-108) on November 28, 2022, 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 December 12, 2022

**EXHIBIT 1
RESOLUTION NO. 2022-192**

WHEREAS, Alice Womack served as the President of the Mountain Brook Chamber of Commerce from 2007-2008 and;

WHEREAS, Alice Womack served as the Council liaison to the Chamber of Commerce from November 3, 2014 to November 7, 2022, contributing greatly to the success of the organization and the business community by being a supportive advocate for the betterment of the members and;

WHEREAS, Alice Womack was appointed to the Finance committee on January 28, 2008 and was reappointed to the Finance committee on February 27, 2012 and;

WHEREAS, While on the Finance Committee, Mrs. Womack provided valuable insight into the management of the defined pension plan including the decisions to systematically contribute more than the actuarially determined required contribution starting in fiscal year 2017 and the decision to grant Tier 1 benefits to Tier 2 members starting October 1, 2021 and;

WHEREAS, Alice Womack thoughtfully guided the City's development of policies and practices with respect to the compensation plan serving on the Compensation sub-committee and;

WHEREAS, Alice Womack has served as Council liaison to the Village Design Review Committee from November 3, 2014 to November 7, 2022 and;

WHEREAS, As a part of Village Design Review Committee, Mrs. Womack, tirelessly worked to raise the quality of the built environment in the Mountain Brook Villages for businesses and the public, and her input has always stemmed from a belief in the specialness of Mountain Brook and its villages and;

WHEREAS, Alice Womack was elected to the Mountain Brook City Council Place 1 that commenced on November 3rd, 2014 and was re-elected to the Mountain Brook City Council Place 1 that commenced on November 5, 2018 and;

WHEREAS, Alice Womack's endless commitment and strong work ethic and compassion made her a council member that will be sorely missed and;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Mountain Brook thank Alice Womack for her exemplary service in the many capacities she served within the City of Mountain Brook to the residents and to the City of Mountain Brook.

EXHIBIT 2

RESOLUTION NO. 2022-193

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the architect/engineering agreement between the City and Goodwyn Mills Cawood LLC. (GMC), in the form attached hereto as exhibit A, with respect to the Junior High Athletic Field Project.

APPENDIX 1

EXHIBIT 3

RESOLUTION NO. 2022-194

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute a contractor agreement, in the form as attached hereto as Exhibit A, between the City and Wilbanks Engineering and Environmental Solutions, LLC with respect to the Streambank Restoration at Jemison Park.

APPENDIX 2

EXHIBIT 4

RESOLUTION NO. 2022-195

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby accepts change order No. 1 requested by JD Morris Construction Co., in the form as attached hereto as Exhibit A, with respect to the Northcote Drive Culvert Replacement project (Resolution No. 2022-065).

APPENDIX 3

EXHIBIT 5**RESOLUTION NO. 2022-196**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby accepts the professional services agreement submitted by Skipper Consulting, Inc., in the form as attached hereto as Exhibit A, with respect to preparing a traffic control device design for an approaching traffic warning beacon system for the intersection of Old Leeds Road at Cherokee Road in the City of Mountain Brook that includes a traffic study and the design of a flashing warning beacon.

APPENDIX 4

MINUTE BOOK 93 The Project does not fall within a Building Group; see the Special Provisions of this Agreement

B.C. Project No. 282

To be completed using ABC Form B-3, "Checklist for Preparation of Agreement Between Owner and Architect"

AGREEMENT BETWEEN OWNER AND ARCHITECT
• Supplemented by ABC Form B-2A, Standard Articles of the Agreement Between Owner and Architect •

(1) **DATE of this AGREEMENT:** The Seventeenth Day of November, Two Thousand Twenty-Two

(3) **The OWNER(s):** City of Mountain Brook
P.O. Box 130009
Mountain Brook, Alabama 35213

(4) **The** **ARCHITECT** **ENGINEER** (substitute "Engineer" for "Architect" hereinafter)
Goodwyn Mills Cawood LLC
2660 Eastchase Lane, Suite 200
Montgomery, AL 36117

FEIN 63-0906620

(5) **The PROJECT:** (Insert full description of Project, Location, Address, and Scope)
205 Overbrook Rd., Birmingham, AL 35213

Design for Mountain Brook Junior High School Sports. Project to include conversion of existing grass sports field to synthetic turf for multiple sports. New construction of tennis courts with lighting and new parking lot along Overbrook Road. Small restroom building to be built as well.
[Local Funds]

(6) **BUDGET:** The Tentative Fixed amount budgeted by the Owner for the Cost of the Work is \$2,500,000.00

BASIC SERVICES: Unless otherwise provided in the Special Provisions, the Architect shall render Basic Services A, B, and C for the above-described Project in accordance with the "Standard Articles of the Agreement Between Owner and Architect".

(7) **BASIC FEE:** The Basic Fee to be paid the Architect shall be:
 the Fixed Fee of _____ Dollars (\$ _____).
 determined as a percentage of the Cost of the Work, at the Basic Fee Rate of 6.8 percent.

*See Special Provisions

(8) **PROJECT CLASSIFICATION:** As defined in the current edition of Chapter 4 - Supplement of the "Manual of Procedures of the Alabama Building Commission" this Project is classified as follows:
 The Projects are classified in Building Group III
 The Project is divided into Building Groups as stated in the Special Provisions of this Agreement

(9) **DETERMINATION of the BASIC FEE:**
 The Basic Fees have been determined in accordance with the current edition of Chapter 4 - Supplement of the "Manual of Procedures of the Alabama Building Commission"
 The Project is also classified as Major Renovation and the Basic Fee includes a 0% increase of the "Schedule of Basic Fee Rates" for Major Renovation per Chapter 4 - Supplement, Section D.
 The Basic Fee has been negotiated on the basis stated in the Special Provisions of this Agreement.

TIME PERIODS of the AGREEMENT:
(10) a. Pursuant to Standard Article 9, the Architect may terminate the Agreement if the Project is postponed or delayed by the Owner for more than 12 months.
b. The Design Schedule of Standard Article 11: 30 calendar days for Schematic Drawings;
15 calendar days for Preliminary Drawings
30 calendar days for Final Drawings.

(11) **STANDARD ARTICLES:**
By reference, the current edition of "Standard Articles of the Agreement Between Owner and Architect" (ABC Form B-2A) is incorporated herein as the terms, conditions, and requirements of this Agreement, subject only to such modifications or supplementation of the "Standard Articles" as may be stated as Special Provisions below.

(12) **SPECIAL PROVISIONS:**

12.0 Basic Fee Calculation-Group III per ABC Basic Fee Rates;

Project	Tentative Budget	Fee
Junior High Project	\$2,500,000	6.8% (\$170,000.00)
Schematic Design	10%	\$17,000.00
Design Development	15%	\$25,500.00
Construction Documents	50%	\$85,000.00
Bidding	5%	\$8,500.00
Construction Administration	20%	\$34,000.00

12.1 Fees for alternates approved by the Owner, designed or bid but not accepted, will be paid to the Architect to the extent Basic Services are completed.

12.2 Article 3.D.2 is hereby amended to provide reimbursement to Architect for cost of printing, shipping and handling, when these costs were not paid by the recipient.

12.3 Article 3 is hereby amended as follows:

- Specialty consultants and other work, which is reimbursable to the Architect under this article, shall include in part, soils testing, land surveying, environmental surveys and engineering, and similar services, when performed under the direction of the Architect and as approved by the Owner.
- For the purpose of Owner's reimbursement from the Contractor, and reimbursement payment to the Architect for additional construction administration time and expenses incurred by the Architect (if any), due to repetitive submittals and/or the Contractor's not completing this project by their contractual completion date, the Owner agrees to add to charges and liquidated damages chargeable to the Contractor under the Owner-Contractor Agreement (i.e.: "Construction Contract"), as follows:
 - For review of any of the Contractor's shop drawings and submittals more than two times, and
 - For construction administration and observation expenses incurred by the Architect after

APPENDIX I

Construction Contract completion date (other than one final inspection, one follow-up final inspection, one year-end/warranty inspection, and one follow-up year/end inspection).

12.4 The Architect/Engineer will be paid based on the cost of the Work of the project, as indicated, including in part, alternates approved by the Owner to the extent services are completed; and the actual fair market value of goods and services donated to or by the Owner. Cost of the work shall include taxes.

12.5 There shall be no reduction in fee for actual services provided due to deductive change order items, except in the case of unused contingency amounts.

12.6 Additional Services and Reimbursables: The Architect and design team may assist the Owner with other tasks upon mutual agreement and at the direction of the Owner. Fees, possible services and estimates shall be mutually agreed upon based on services selected. Advertisement for Construction shall be a reimbursable expense if not paid directly by the owner.

12.7 Construction Time Overrun: Inasmuch as the project Contractor's failure to perform in a timely manner is beyond the control of the Architect, it is hereby agreed that any Construction Administration Phase Services provided by the Architect beyond a period equal to 120% of a reasonable construction period, as mutually agreed upon by the Owner and Architect, will be deemed an Extra Service, provided said cost is reasonable and is recoverable by the Owner from the Contractor by way of liquidated damages or penalty as provided for in the Construction Contract.

12.8 The duty of preparing and assembling record drawings can be transferred to the Contractor via contract provisions. Delete the words Architect's inspection fee and substitute Architect's fee for administration of the Construction Contract. Reference to the Architect making "at least one inspection each week" is modified to indicate "at least an average of one site visit per week". Mechanical, electrical and plumbing engineers shall include a total of 2 site visits including above ceiling and final inspection.

12.9 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees or of any other persons performing portions of the Work. Neither the professional activities of the Architect, nor the presence of the Architect or its employees and consultants at the construction site, shall relieve the General Contractor and any other entity of their obligations, duties, and responsibilities including but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The Architect and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Owner agrees that the General Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the Owner's Agreement with the General Contractor.

12.10 Project Betterment: If, due to the Architect's error or omission, any required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the actual cost to add such item or component to the extent that such item or component would have been otherwise necessary for the project or otherwise adds value or betterment to the project. In no event will the Architect be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

12.11 By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

12.12 Waivers of Subrogation: To the extent that loss or damage is covered by property insurance during construction, the Owner and Architect agree to waive (and not to attempt to assert) against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to proceeds of such insurance held by the Owner, Architect, or Contractor as fiduciary. The Owner or

Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. This waiver shall not be applicable to loss or damage that occurs after final acceptance of the Work.

12.13 In compliance with Act 2016-312, the contractor hereby verifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

(If Special Provisions must be continued in an attachment, identify the attachment above.)

(13) CONSULTANTS: Pursuant to Standard Article 10, the consultants to be employed by the Architect (insert Name, Alabama Registration Number, Address, and Telephone Number)

Civil Engineer
Goodwyn Mills Cawood LLC
2500 5th Avenue South, Suite 200
Birmingham, AL 35233
Cole Williams, PE, AL Reg. #24119

Electrical Engineer
Goodwyn Mills Cawood LLC
2660 Eastchase Lane, Suite 200
Montgomery, AL 36117
John Averrett, PE, AL Reg. #26967

Architect
Goodwyn Mills Cawood LLC
2500 5th Avenue South, Suite 200
Birmingham, AL 35233

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute a contractor agreement, in the form as attached hereto as Exhibit A, between the City and Wilbanks Engineering and Environmental Solutions, LLC with respect to the Streambank Restoration at Jemison Park.

ADOPTED: This 28th day of November, 2022.

Yvonne C. Smith
Council President

APPROVED: This 28th day of November, 2022.

Stewart Welch
Mayor

The Owner does hereby certify that the terms and commitments of this Agreement do not constitute a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26.

CERTIFICATION

I, Heather Richards, 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 November 28, 2022, as same appears in the minutes of record of said meeting.

Heather Richards
City Clerk

APPENDIX 1

APPROVALS	CONTRACTING PARTIES
By _____	<u>Goodwyn Mills Cawood, LLC</u> <i>John Briceken</i> Signature of Officer of Firm Name & Title <u>John Briceken, P.L.A.</u> <u>Executive Vice President of Landscape Architecture</u>
STATE OF ALABAMA BUILDING COMMISSION <i>(Not required for locally-funded SDE projects)</i> By _____ Director, Technical Staff	<u>City of Mountain Brook</u> <i>Stewart Welch</i> Owner Name & Title <u>Mr. Stewart Welch, Mayor</u>

November 22, 2022

Dear Council Members,

I would like to hire Wilbanks Engineering to perform the work to grade and stabilize the eroding bank in Jemison Park. I have met with Zach, Nimrod Long, and some members of Friends of Jemison and we are all in agreement on what will be done.

Wilbanks will remove some trees along the bank that are already in danger of falling and use them to secure the bank in place. He will cut back the bank some and terrace it to allow the water more unobstructed room to flow, but stabilize it with rocks and vegetation so it will not continue to erode.

We want to get this work done before the end of the year so it does not interfere with any of the new trail improvement plans.

Thanks,

Shanda Williams
Superintendent of Parks and Recreation



November 8, 2022

Shanda Williams, CPRP
Parks & Recreation Superintendent
City of Mountain Brook
williamssh@mtnbrook.org

Re: Jemison Park, Mountain Brook, Alabama
Shades Creek Streambank Stabilization
Construction Services Proposal

Dear Ms. Williams:

In keeping with your request, Wilbanks Engineering & Environmental Solutions, LLC (Wilbanks) has prepared a proposal associated with implementing the design plans dated September 30, 2022, for stabilizing the right bank of Shades Creek within Jemison Park in Mountain Brook, Alabama.

1.0 Construction Services

- a) Mobilization & Demobilization of Equipment and Materials (if necessary)
- b) Harvesting on-site materials (trees, toe wood, rocks, sod, etc.)
- c) Coordination and delivery of off-site moss rock from Alabama Wholesale Stone
- d) Earthwork and Grading to form the grades and slopes of the design
- e) Installation of toe wood, moss rock armoring, sod, etc.
- f) Cleanup, seeding and mulching of disturbances

Total fixed not to exceed price.....\$40,500.00

A City Representative must approve each tree to be removed, rock material prior to delivery, and sod areas. Bare areas shall be seeded with a ryegrass seed mix and mulched. Rock material will be stockpiled close to the rock and relocated to the project site via skid steers and smaller equipment to minimize impacts.

You may consider this proposal good for a period of thirty (30) days from the date of this proposal. If you should have any questions or need additional information, please do not hesitate to contact our office at (205) 285-9696 or via email me at zach@wilbankseng.com.

Sincerely,

Zachary Wilbanks

Zachary Wilbanks, PE
Principal Owner

November 28, 2022

Wilbanks Engineering and Environmental Solutions, LLC (hereinafter the "Contractor") enters this Contractor Agreement ("Agreement") with the City of Mountain Brook, Alabama, a municipal corporation ("City"), effective as of the date last executed by a party below (the "Effective Date"). Contractor and City may be individually referenced herein as "Party" or collectively as "Parties."

1. Project. Unless otherwise stated on the attached Exhibit A - Specifications (which is incorporated by reference), Contractor, at its expense, will furnish all the labor, materials, supplies, supervision, and equipment needed to perform the work, services and operations (collectively, the "Work") at the site designated below (the "Site") on the understated project (the "Project"):

Name of Project: Streambank Restoration at Jemison Park
Site of Project: Jemison Park
2615 Mountain Brook Parkway
Mountain Brook, AL 35223

2. Scope of Work. The Scope of Work is set forth on Exhibit A (which includes the November 8, 2022 Contractor Proposal and the Project Plans) that is attached and incorporated herein.

3. Undertaking of Parties. Contractor agrees to perform the Work in accordance with the terms, conditions and specification in this Agreement and on Exhibit A. City agrees to compensate Contractor as set forth herein and perform its other responsibilities set forth in the Contract Documents.

4. Term/Termination. The term of this Agreement shall commence on the Effective Date and thereafter continue in effect up to two (2) months (the "Term"). The period in which Contractor will complete the Project is set forth on Exhibit A.

Notwithstanding the provision immediately above or any other language herein, City may terminate this Agreement before the expiration of its Term at the time designated in a written notice to Contractor if each of the following have occurred: (a) Contractor has defaulted on a material obligation to the City hereunder (a "Default"); and (b) following the City's provision of written notice of Default to Contractor, the Contractor fails to correct or remedy that Default within fifteen (15) days after receipt of that notice. The failure of the Contractor to timely perform the Work shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available to City under law or in equity.

5. Contract Price/Invoice/Certification. Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of Forty Thousand, Five Hundred Dollars and Zero Cents (\$40,500.00) as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing or amendment to this Agreement that is signed by duly

(g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of Contractor is authorized to execute this Agreement.

7. Insurance/Safety/Indemnification.

(a) Insurance. For the duration of this Agreement and for limits not less than stated below, Contractor, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to City:

- (i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars (\$750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;
(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) combined single limit and aggregate for bodily injury and property damage;
(iii) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

The Contractor may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before the execution of this Agreement, the Contractor shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate shall name City as an additional insured on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

(b). Safety. Contractor agrees that it (a) has the sole responsibility to identify any condition or hazard at the Site or other locations on City property that will prevent it from safely performing the Work, and (b) is exclusively responsible for performing the Work in a safe manner that does not put at risk the safety of persons or endanger property. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) its employees and all other persons who may be affected by the Work; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work Site or adjacent thereto.

(c). Indemnification. Contractor agrees to defend, indemnify, and hold harmless City and its agents, employees and officials (hereinafter collectively, the "Indemnitees") from and against all claims, damages, costs, expenses, and reasonable attorneys' fees and

The City will pay the Contract Price on this Project as follows:

Within ten (10) days following the successful completion of the Project, Contractor will submit to City Project Representative an invoice for the Contract Price (as adjusted by any mutually agreed change orders signed by both parties). With such invoice Contractor shall submit records reasonably supporting its payment. Within five (5) days following receipt of that invoice, City Project Representative will review same, consult with Contractor and make any mutually agreed modifications to it, certify that the invoice is due to be paid, and forward that certified invoice to the City Clerk. The City Clerk will remit to the Contractor the amount certified for payment within twenty (20) days after it receives that certification.

6. Warranties of Contractor. The Contractor warrants each of the following with respect to its Work:

- (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;
(b) that it, and all of its employees or any subcontractors (if authorized), will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;
(c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;
(d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;
(e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;
(f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of completion of the Project; and

APPENDIX 1

attorney's fees) or claims for damages by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") that arise out of, relate to or are caused by any negligent act, omission or conduct by Contractor or any Contractor Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.

(d). Limitation of Liability. In no event may Contractor recover from the City any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the City's breach of its obligations hereunder.

8. Project Representative. Each Party shall appoint and indicate on Exhibit A its representative who shall coordinate with the other Party on all matters related to the performance of the Work and the administration of this Agreement (the "Project Representative"). Any notice required hereunder shall be sufficiently given when sent to the appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

9. Miscellaneous Provisions.

a. This Agreement which is comprised of this instrument, the November 8, 2022 Contractor Proposal and the Project Plans (collectively, the "Contract Documents") sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein.

b. This Agreement may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

c. Any forbearance or delay on the part of City in enforcing any of its rights under this Agreement shall not be construed as a waiver of such rights. No terms of this Agreement shall be waived unless expressly waived in writing.

d. Contractor may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of City, which consent may be withheld for any reason.

e. This Agreement is made only for the benefit of the Parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

f. Contractor is an independent contractor of City. This Agreement does not create any partnership, joint venture or principal-agent relationship between the Parties. Further, City retains no control or authority with respect to its means and methods in which Contractor (or any of its employees or representatives) performs the Work.

Whereas, the undersigned, duly authorized representatives of the City execute this Agreement on behalf of their respective organization on the date(s) shown below.

g. Immigration Law Compliance. Contractor represents and warrants to the City that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the "Act"); (ii) it will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Contractor shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Contractor further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if Contractor is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

CITY OF MOUNTAIN BROOK, ALABAMA
By: [Signature]
Its: Mayor
Date: 11-28-2022

WILBANKS ENGINEERING AND ENVIRONMENTAL SOLUTIONS, LLC
By: _____
Its: _____
Date: _____

h. Amendment. Neither this Agreement nor any of the provisions herein (including, without limitation, those concerning the Project Schedule and Contract Price) may be amended or modified except in accordance with the terms of a written instrument (or change order) signed by both Parties.

i. Delayed Performance/Force Majeure Events. Neither Party shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under this Agreement during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed Party must promptly provide the other with written notice of the Force Majeure Event, the delayed Party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other Party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed Party.

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

(Signature Page Follows)

APPENDIX 1

Project: Streambank Restoration in Jemison Park

EXHIBIT A – SPECIFICATIONS

1. Scope of Work

See attached November 8, 2022 Contractor Proposal and Project Plans dated September 30, 2022.

If Contractor desires or is required to perform services on the Project that fall outside the Scope ("Additional Operations"), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same.

2. Project Schedule. The Contractor will complete this project by December 30, 2022 unless an extension is requested in writing by the Contractor and approved in writing by the City.

3. Project Representatives.

City Project Representative:	Contractor Project Representative:
Shanda Williams	Zach Wilbanks
3698 Bethune Drive	210 Redmayne Road
Birmingham, AL 35223	Gardendale, AL 35071
Email: williamssh@mtbrook.org	Email: zach@wilbankseng.com
Day Tel #: 205-802-3879	Day Tel #: 205-412-3373

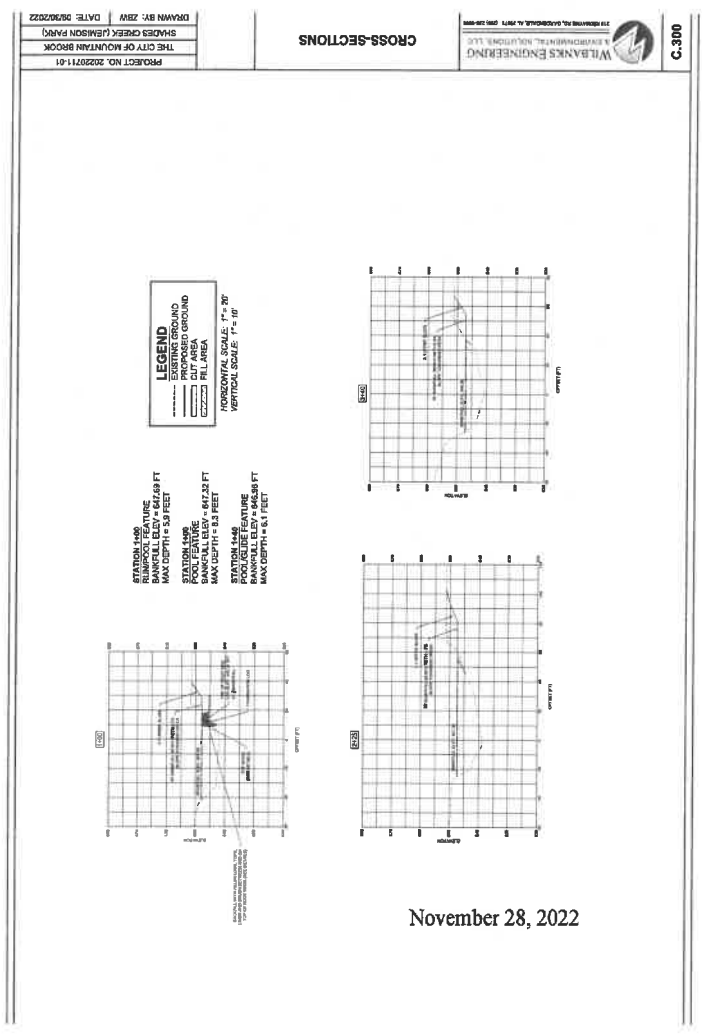
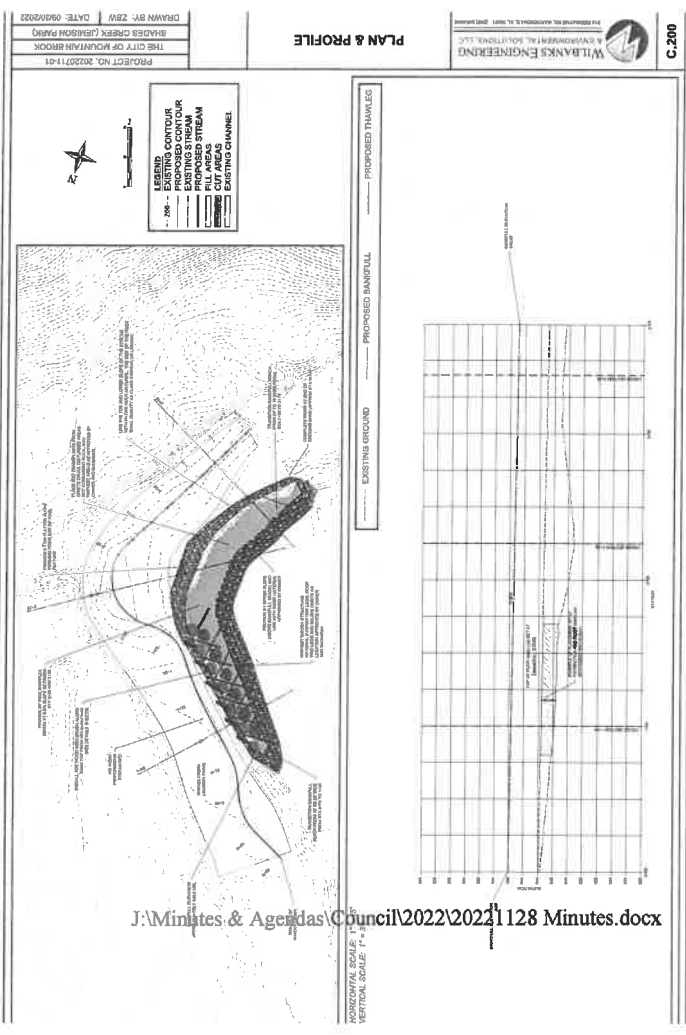
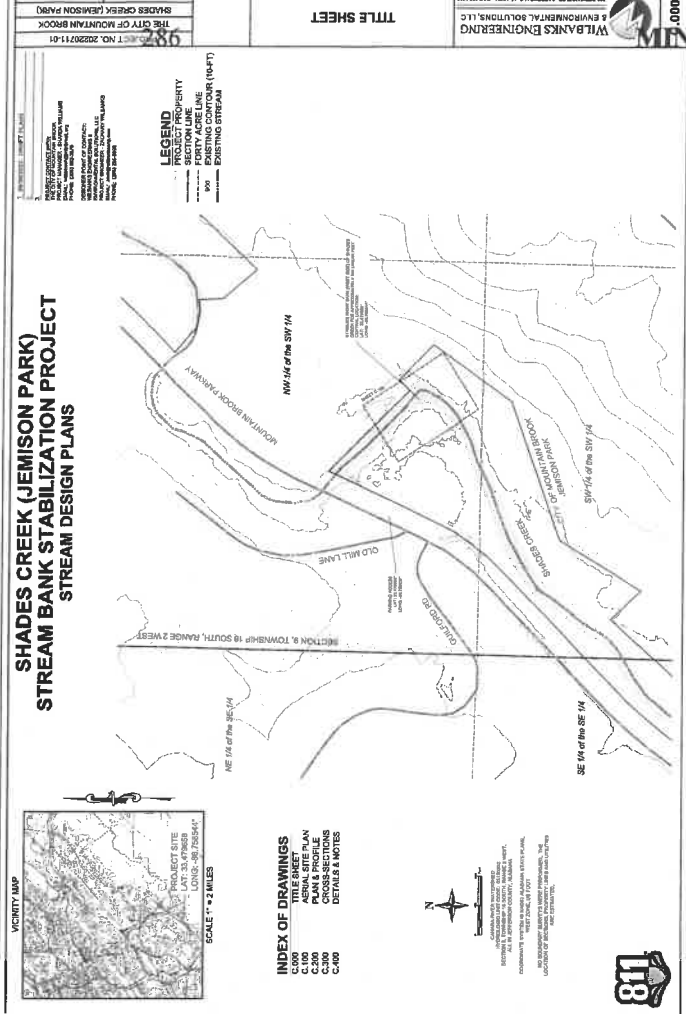
4. Special Conditions:

The purpose of this Contract is to remedy the erosion of the stream bank of Shades Creek behind the picnic tables in Jemison Park in the area shown on the Project Plans. The following shall constitute additional terms and conditions related to the Work:

1. Stabilization measures shall include the use of "toe wood", which may be harvested from the park. No trees shall be harvested, cut or removed for such purposes unless specifically approved by the City Project Representative or her designee. Most of the previously identified trees to be harvested are already in jeopardy of falling from the erosion. If more trees are needed to be harvested and utilized than are approved to be harvested from the park, the Contractor will need to provide those from somewhere else.
2. Rocks used on the banks should match the native rocks found in the creek and park. The City Project Representative must approve any stone used on the Project. The City will pay for any preferred rock that cannot be equally substituted for the rock specified on the plan.
3. No sod shall be harvested from the park unless or until the City Project Representative has approved same, including the specific location from which the sod shall be harvested. The depth of the sod should be as minimal as possible to minimize the erosion risk and preserve the harvested site.

harvested site will be filled with an approved fill material and seeded with a rye/fescue blend by the Contractor.

4. Due care should be taken not to disturb surrounding areas of the Park, except to the extent absolutely necessary to conduct the Work. The City reserves the right to make adjustments to the Project Plans to minimize the loss of surrounding trees and to allow sufficient room for the existing and proposed trail system in the Park. Heavy equipment shall be limited to the area around the parking pad located in the area designated as "Parking Access" on the Title Sheet of the Project Plans. Materials to be utilized on the Project shall be deposited as close to Mountain Brook Parkway and hauled to the work site by smaller equipment such as a skid steer.



PROJECT NO. 202211-01
THE CITY OF KENTON BOOK
SHANEY KAMISON PARK

WILBANKS ENGINEERING & ENVIRONMENTAL SOLUTIONS, LLC
1300 WILBANKS DRIVE, SUITE 100, KENTON, KY 41021
C-400

DETAILS & NOTES

COMPLETION NOTES:

1. ALL WORK SHALL BE COMPLETED BY THE DATE SPECIFIED IN THE SCHEDULE.
2. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.
4. THE CONTRACTOR SHALL MAINTAIN A NEAT AND ORDERLY WORK SITE AT ALL TIMES.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
6. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES IN PLACE AT ALL TIMES.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF ALL DEBRIS AND WASTE MATERIALS.
8. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES.
10. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES IN PLACE AT ALL TIMES.

REVISIONS:

REVISION NO. 1: ALL WORK SHALL BE COMPLETED BY THE DATE SPECIFIED IN THE SCHEDULE.

REVISION NO. 2: THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.

REVISION NO. 3: THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.

REVISION NO. 4: THE CONTRACTOR SHALL MAINTAIN A NEAT AND ORDERLY WORK SITE AT ALL TIMES.

REVISION NO. 5: THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.

REVISION NO. 6: THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES IN PLACE AT ALL TIMES.

REVISION NO. 7: THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF ALL DEBRIS AND WASTE MATERIALS.

REVISION NO. 8: THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.

REVISION NO. 9: THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES.

REVISION NO. 10: THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES IN PLACE AT ALL TIMES.

GENERAL NOTES:

1. ALL WORK SHALL BE COMPLETED BY THE DATE SPECIFIED IN THE SCHEDULE.

2. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.

4. THE CONTRACTOR SHALL MAINTAIN A NEAT AND ORDERLY WORK SITE AT ALL TIMES.

5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.

6. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES IN PLACE AT ALL TIMES.

7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF ALL DEBRIS AND WASTE MATERIALS.

8. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.

9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES.

10. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES IN PLACE AT ALL TIMES.

APPENDIX 1

GENERAL NOTES:

1. ALL WORK SHALL BE COMPLETED BY THE DATE SPECIFIED IN THE SCHEDULE.

2. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.

4. THE CONTRACTOR SHALL MAINTAIN A NEAT AND ORDERLY WORK SITE AT ALL TIMES.

5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.

6. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES IN PLACE AT ALL TIMES.

7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF ALL DEBRIS AND WASTE MATERIALS.

8. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.

9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES.

10. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES IN PLACE AT ALL TIMES.

APPENDIX 1

GENERAL NOTES:

1. ALL WORK SHALL BE COMPLETED BY THE DATE SPECIFIED IN THE SCHEDULE.

2. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.

4. THE CONTRACTOR SHALL MAINTAIN A NEAT AND ORDERLY WORK SITE AT ALL TIMES.

5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.

6. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES IN PLACE AT ALL TIMES.

7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF ALL DEBRIS AND WASTE MATERIALS.

8. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.

9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES.

10. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES IN PLACE AT ALL TIMES.



Dear Council Members,

November 8, 2022

Shanda Williams, CPRP
Parks & Recreation Superintendent
City of Mountain Brook
williamsst@mtnbrook.org

I would like to hire Wilbanks Engineering to perform the work to grade and stabilize the eroding bank in Jemison Park. I have met with Zach, Nimrod Long, and some members of Friends of Jemison and we are all in agreement on what will be done.

Re: Jemison Park, Mountain Brook, Alabama
Shades Creek Streambank Stabilization
Construction Services Proposal

Wilbanks will remove some trees along the bank that are already in danger of falling and use them to secure the bank in place. He will cut back the bank some and terrace it to allow the water more unobstructed room to flow, but stabilize it with rocks and vegetation so it will not continue to erode.

Dear Ms. Williams:

We want to get this work done before the end of the year so it does not interfere with any of the new trail Improvement plans.

In keeping with your request, Wilbanks Engineering & Environmental Solutions, LLC (Wilbanks) has prepared a proposal associated with implementing the design plans dated September 30, 2022, for stabilizing the right bank of Shades Creek within Jemison Park in Mountain Brook, Alabama.

Thanks,

1.0 Construction Services

Shanda Williams
Superintendent of Parks and Recreation

- a) Mobilization & Demobilization of Equipment and Materials (if necessary)
b) Harvesting on-site materials (trees, toe wood, rocks, sod, etc.)
c) Coordination and delivery of off-site moss rock from Alabama Wholesale Stone
d) Earthwork and Grading to form the grades and slopes of the design
e) Installation of toe wood, moss rock armoring, sod, etc.
f) Cleanup, seeding and mulching of disturbances

Total fixed not to exceed price.....\$40,500.00

A City Representative must approve each tree to be removed, rock material prior to delivery, and sod areas. Bare areas shall be seeded with a ryefescus seed mix and mulched. Rock material will be stockpiled close to the rock and relocated to the project site via skid steers and smaller equipment to minimize impacts.

You may consider this proposal good for a period of thirty (30) days from the date of this proposal. If you should have any questions or need additional information, please do not hesitate to contact our office at (205) 285-9696 or via email me at zwilliams@wilbankseng.com.

Sincerely,

Zachary Wilbanks

Zachary Wilbanks, PE
Principal Owner

210 REDMAYNE RD., GARDENDALE, ALABAMA 35071 TELEPHONE: (205) 285-9696

APPENDIX 2

CONTRACTOR AGREEMENT

Wilbanks Engineering and Environmental Solutions, LLC (hereinafter the "Contractor") enters this Contractor Agreement ("Agreement") with the City of Mountain Brook, Alabama, a municipal corporation ("City"), effective as of the date last executed by a party below (the "Effective Date"). Contractor and City may be individually referenced herein as "Party" or collectively as "Parties."

authorized representatives of both Parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price.

The City will pay the Contract Price on this Project as follows:

1. Project. Unless otherwise stated on the attached Exhibit A - Specifications (which is incorporated by reference), Contractor, at its expense, will furnish all the labor, materials, supplies, supervision, and equipment needed to perform the work, services and operations (collectively, the "Work") at the site designated below (the "Site") on the understated project (the "Project"):

Within ten (10) days following the successful completion of the Project, Contractor will submit to City Project Representative an invoice for the Contract Price (as adjusted by any mutually agreed change orders signed by both parties). With such invoice Contractor shall submit records reasonably supporting its payment. Within five (5) days following receipt of that invoice, City Project Representative will review same, consult with Contractor and make any mutually agreed modifications to it, certify that the invoice is due to be paid, and forward that certified invoice to the City Clerk. The City Clerk will remit to the Contractor the amount certified for payment within twenty (20) days after it receives that certification.

Name of Project: Streambank Restoration at Jemison Park

Site of Project: Jemison Park
2615 Mountain Brook Parkway
Mountain Brook, AL 35223

2. Scope of Work. The Scope of Work is set forth on Exhibit A (which includes the November 8, 2022 Contractor Proposal and the Project Plans) that is attached and incorporated herein.

6. Warranties of Contractor. The Contractor warrants each of the following with respect to its Work:

3. Undertaking of Parties. Contractor agrees to perform the Work in accordance with the terms, conditions and specification in this Agreement and on Exhibit A. City agrees to compensate Contractor as set forth herein and perform its other responsibilities set forth in the Contract Documents.

(a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;

(b) that it, and all of its employees or any subcontractors (if authorized), will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;

4. Term/Termination. The term of this Agreement shall commence on the Effective Date and thereafter continue in effect up to two (2) months (the "Term"). The period in which Contractor will complete the Project is set forth on Exhibit A.

(c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;

Notwithstanding the provision immediately above or any other language herein, City may terminate this Agreement before the expiration of its Term at the time designated in a written notice to Contractor if each of the following have occurred: (a) Contractor has defaulted on a material obligation to the City hereunder (a "Default"); and (b) following the City's provision of written notice of Default to Contractor, the Contractor fails to correct or remedy that Default within fifteen (15) days after receipt of that notice. The failure of the Contractor to timely perform the Work shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available to City under law or in equity.

(d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;

(e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;

5. Contract Price/Invoice/Certification. Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of Forty Thousand, Five Hundred Dollars and Zero Cents (\$40,500.00) as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing or amendment to this Agreement that is signed by duly

(f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of completion of the Project; and

(g) All actions required to be taken by or on behalf of the Contractor to cause or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of Contractor is authorized to execute this Agreement.

7. Insurance/Safety/Indemnification.

(a) Insurance. For the duration of this Agreement and for limits not less than stated below, Contractor, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to City:

(i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars (\$750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;

(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) combined single limit and aggregate for bodily injury and property damage;

(iii) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

The Contractor may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before the execution of this Agreement, the Contractor shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate shall name City as an additional insured on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

(b) Safety. Contractor agrees that it (a) has the sole responsibility to identify any condition or hazard at the Site or other locations on City property that will prevent it from safely performing the Work, and (b) is exclusively responsible for performing the Work in a safe manner that does not put at risk the safety of persons or endanger property. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) its employees and all other persons who may be affected by the Work; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work Site or adjacent thereto.

(c) Indemnification. Contractor agrees to defend, indemnify, and hold harmless City and its agents, employees and officials (hereinafter collectively, the "Indemnitees") from and against all demands, actions, liabilities, expenses (including reasonable

attorney's fees) or claims for damages by any third parties (including an employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") that arise out of, relate to or are caused by any negligent act, omission or conduct by Contractor or any Contractor Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.

(d) Limitation of Liability. In no event may Contractor recover from the City any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the City's breach of its obligations hereunder.

8. Project Representative. Each Party shall appoint and indicate on Exhibit A its representative who shall coordinate with the other Party on all matters related to the performance of the Work and the administration of this Agreement (the "Project Representative"). Any notice required hereunder shall be sufficiently given when sent to the appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

9. Miscellaneous Provisions.

a. This Agreement which is comprised of this instrument, the November 8, 2022 Contractor Proposal and the Project Plans (collectively, the "Contract Documents") sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein.

b. This Agreement may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

c. Any forbearance or delay on the part of City in enforcing any of its rights under this Agreement shall not be construed as a waiver of such rights. No terms of this Agreement shall be waived unless expressly waived in writing.

d. Contractor may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of City, which consent may be withheld for any reason.

e. This Agreement is made only for the benefit of the Parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

APPENDIX 2

f. Contractor is an independent contractor of City. This Agreement does not create any partnership, joint venture or principal-agent relationship between the Parties. Further, City retains no control or authority with respect to its means and methods in which Contractor (or any of its employees or representatives) performs the Work.

g. Immigration Law Compliance. Contractor represents and warrants to the City that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the "Act"); (ii) it will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Contractor shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Contractor further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if Contractor is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

h. Amendment. Neither this Agreement nor any of the provisions herein (including, without limitation, those concerning the Project Schedule and Contract Price) may be amended or modified except in accordance with the terms of a written instrument (or change order) signed by both Parties.

i. Delayed Performance/Force Majeure Events. Neither Party shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under this Agreement during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed Party must promptly provide the other with written notice of the Force Majeure Event, the delayed Party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other Party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed Party.

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

(Signature Page Follows)

Whereas, the undersigned, duly authorized representatives of the Parties execute this Agreement on behalf of their respective organization on the date(s) shown below.

CITY OF MOUNTAIN BROOK, ALABAMA

By: 

Its: Mayor

Date: 11-28-2022

WILBANKS ENGINEERING AND ENVIRONMENTAL SOLUTIONS, LLC

By: _____

Its: _____

Date: _____

Project: Streambank Restoration in Jemison Park

1. Scope of Work

See attached November 8, 2022 Contractor Proposal and Project Plans dated September 30, 2022.

If Contractor desires or is required to perform services on the Project that fall outside the Scope ("Additional Operations"), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same.

2. Project Schedule. The Contractor will complete this project by December 30, 2022 unless an extension is requested in writing by the Contractor and approved in writing by the City.

3. Project Representatives.

City Project Representative:
Shanda Williams
3698 Bethune Drive
Birmingham, AL 35223
Email: williamssh@mtmbrook.org
Day Tel #: 205-802-3879

Contractor Project Representative:
Zach Wilbanks
210 Redmayne Road
Gardendale, AL 35071
Email: zach@wilbankseng.com
Day Tel #: 205-412-3373

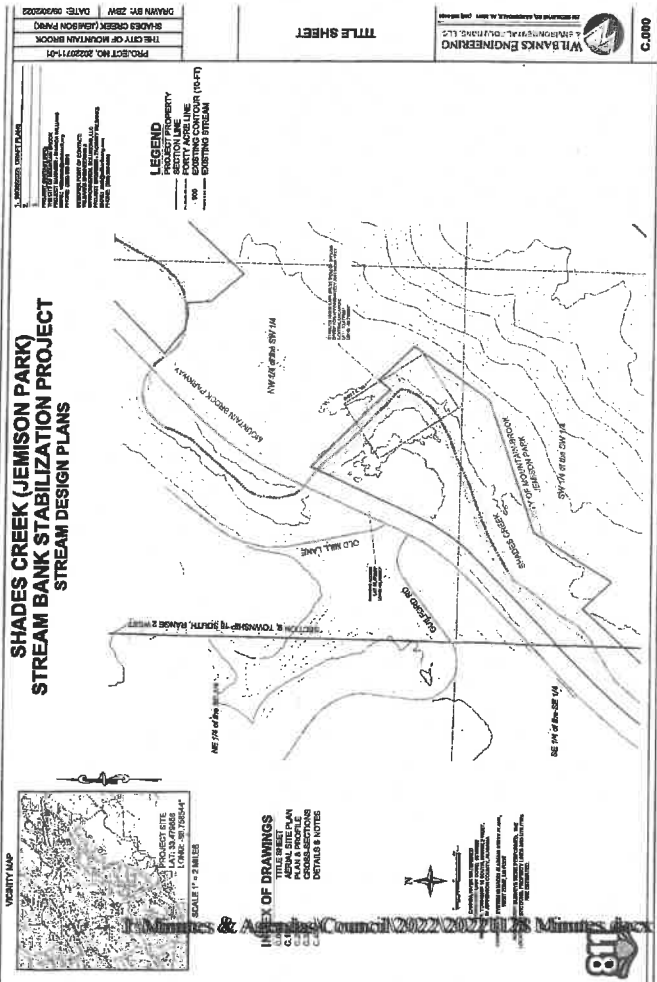
4. Special Conditions:

The purpose of this Contract is to remedy the erosion of the stream bank of Shades Creek behind the picnic tables in Jemison Park in the area shown on the Project Plans. The following shall constitute additional terms and conditions related to the Work:

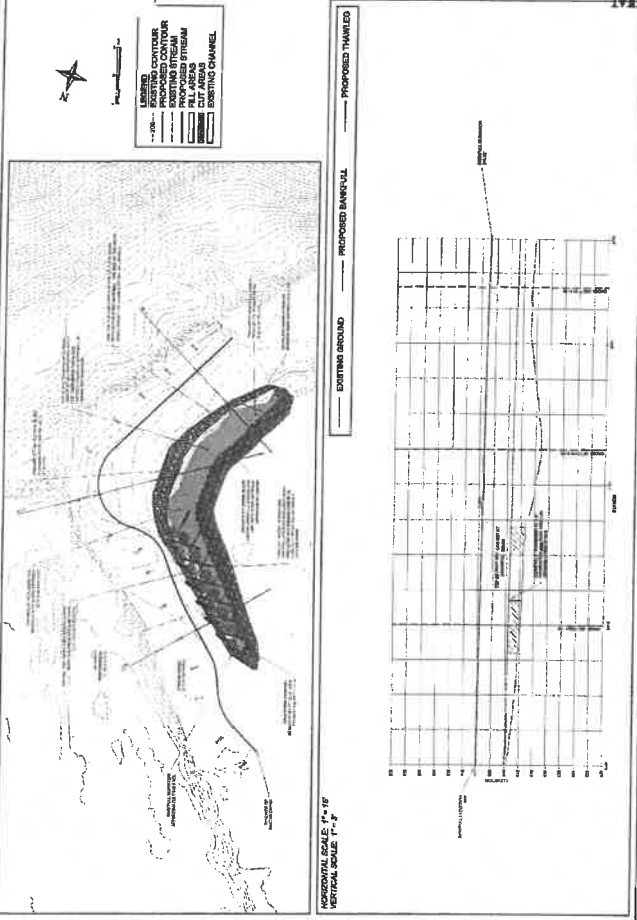
- 1. Stabilization measures shall include the use of "toe wood", which may be harvested from the park. No trees shall be harvested, cut or removed for such purposes unless specifically approved by the City Project Representative or her designee. Most of the previously identified trees to be harvested are already in jeopardy of falling from the erosion. If more trees are needed to be harvested and utilized than are approved to be harvested from the park, the Contractor will need to provide those from somewhere else.
2. Rocks used on the banks should match the native rocks found in the creek and park. The City Project Representative must approve any stone used on the Project. The City will pay for any preferred rock that cannot be equally substituted for the rock specified on the plan.
3. No sod shall be harvested from the park unless or until the City Project Representative has approved same, including the specific location from which the sod shall be harvested. The depth of the sod should be as minimal as possible to stabilize the bank work and preserve the harvest site. The

harvested site will be filled with an approved fill material and seed with a rye/fescue blend by the Contractor.

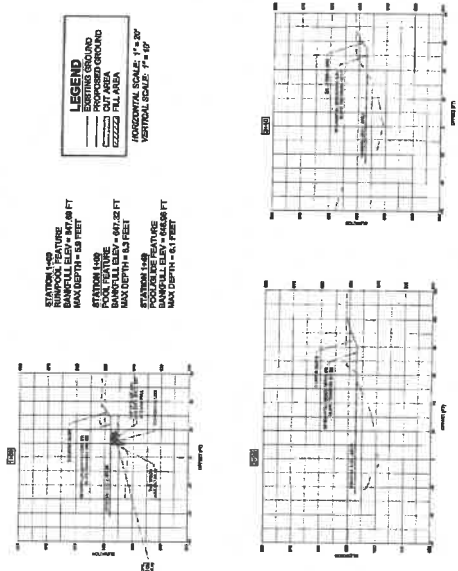
- 4. Due care should be taken not to disturb surrounding areas of the park, except to the extent absolutely necessary to conduct the Work. The City reserves the right to make adjustments to the Project Plans to minimize the loss of surrounding trees and to allow sufficient room for the existing and proposed trail system in the Park. Heavy equipment shall be limited to the area around the parking pad located in the area designated as "Parking Access" on the Title Sheet of the Project Plans. Materials to be utilized on the Project shall be deposited as close to Mountain Brook Parkway and hauled to the work site by smaller equipment such as a skid steer.



PLAN & PROFILE



CROSS-SECTIONS



DETAILS & NOTES

CONSTRUCTION NOTES:

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE TEXAS CONSTRUCTION SPECIFICATIONS FOR ROAD AND BRIDGE.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF HOUSTON AND THE STATE OF TEXAS.
3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
4. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES FROM DAMAGE DURING CONSTRUCTION.
5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT THE PROJECT.
6. THE CONTRACTOR SHALL CONDUCT REGULAR INSPECTIONS AND REPORTS TO THE CITY ENGINEER ON THE PROGRESS OF THE WORK.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY OF ALL WORKERS AND THE PUBLIC DURING CONSTRUCTION.
8. THE CONTRACTOR SHALL MAINTAIN RECORD DRAWINGS AND AS-BUILT DRAWINGS OF ALL CONSTRUCTION.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF ALL CONSTRUCTION MATERIALS AND DEBRIS FROM THE SITE.
10. THE CONTRACTOR SHALL MAINTAIN THE SITE IN A SAFE AND SOUND CONDITION AT ALL TIMES.

GENERAL NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL ELEVATIONS ARE IN FEET ABOVE MEAN SEA LEVEL.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF HOUSTON AND THE STATE OF TEXAS.
4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
5. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES FROM DAMAGE DURING CONSTRUCTION.
6. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT THE PROJECT.
7. THE CONTRACTOR SHALL CONDUCT REGULAR INSPECTIONS AND REPORTS TO THE CITY ENGINEER ON THE PROGRESS OF THE WORK.
8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY OF ALL WORKERS AND THE PUBLIC DURING CONSTRUCTION.
9. THE CONTRACTOR SHALL MAINTAIN RECORD DRAWINGS AND AS-BUILT DRAWINGS OF ALL CONSTRUCTION.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF ALL CONSTRUCTION MATERIALS AND DEBRIS FROM THE SITE.
11. THE CONTRACTOR SHALL MAINTAIN THE SITE IN A SAFE AND SOUND CONDITION AT ALL TIMES.

CROSS SECTION NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL ELEVATIONS ARE IN FEET ABOVE MEAN SEA LEVEL.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF HOUSTON AND THE STATE OF TEXAS.
4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
5. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES FROM DAMAGE DURING CONSTRUCTION.
6. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT THE PROJECT.
7. THE CONTRACTOR SHALL CONDUCT REGULAR INSPECTIONS AND REPORTS TO THE CITY ENGINEER ON THE PROGRESS OF THE WORK.
8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY OF ALL WORKERS AND THE PUBLIC DURING CONSTRUCTION.
9. THE CONTRACTOR SHALL MAINTAIN RECORD DRAWINGS AND AS-BUILT DRAWINGS OF ALL CONSTRUCTION.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF ALL CONSTRUCTION MATERIALS AND DEBRIS FROM THE SITE.
11. THE CONTRACTOR SHALL MAINTAIN THE SITE IN A SAFE AND SOUND CONDITION AT ALL TIMES.

November 21, 2022

City of Mountain Brook
56 Church Street
Mountain Brook, AL 35213-3700

Attn: Mr. Sam Gaston, City Manager

Project Reference: Northcote Drive Culvert Replacement
Bid No. 20550325-003
Bid Date: April 28, 2022
Change Order No.1

Mr. Gaston:

We are in receipt of a change order request from the prime contractor, JD Morris Construction. The change order is for the demolition and removal of trench rock. After review of the documentation submitted by the contractor, a field site visit, and discussion with Mr. Ronnie Vaughn, it has been deemed an appropriate change order request.

At this time, Schoel recommends consideration of a change order in the amount of \$ 5,733.

Feel free to reach out to me with any questions related to the request.

SCHOEL ENGINEERING CO., INC.

Mark Simpson, P.E., CFM
Senior Project Manager

Cc: Mr. Ronald Vaughn, Public Works Director
Mr. Steven Boone, Finance Director

Attachment: Formal Change Order Request from JD Morris

Schoel

Attn.: Mark Simpson

October 30, 2022

Ref: Northcote Drive Culvert Replacement
Mountain Brook Contract B-20220325-003

Subject: Additional Scope
Rock Demolition & removal
Sketch # JDM - SKRM1

Dear Sir,

This writing is a request summary for cost to Demolish and Remove Rock as shown on attached sketch. This work was performed October 18 thru 22 and I have a video of rock being demolished that I can send you. I texted you a message October 17, 2022. Clarification no. 4 of Contract excluded Rock Demolition and removal

Summary:

Labor \$1,525
Equipment \$4,208 (see attached invoice)
Total \$5,733

We appreciate the opportunity to perform work on this project. Please contact me if we need to Discuss further or you need additional information or clarification

Sincerely,

Ron Reed

APPENDIX 3

Established 1886
SCHOEL ENGINEERING COMPANY, INC
1001 22nd Street South | Birmingham, AL 35206
P 205-928-8188 | F 205-929-2292 | schoel.com

www.jdmorrisconstruction.com

EQUIPMENT SERVICES

Branch: H&E EQUIPMENT SERVICES, INC. #4101
806 Lebarge Drive
Bessemer, AL 35022
Phone: (205) 760-7200
Fax: (205) 780-7201

Remit to: H&E EQUIPMENT SERVICES, INC.
PO Box 848650
Dallas, TX 75284-8650

Billed to: JD MORRIS CONSTRUCTION
PO Box 70
Mc Calla, AL 35111

Ship to: 3888 Northcote Drive,
3668 Northcote Dr.
Birmingham, AL 35223

Rental Invoice # 96893577
Amount (USD) \$3,826.85

Customer # 1233075
Invoice Date 10/31/2022
Terms Net due in 30 days
Contract # 31053367
Invoicem H&E Delivery
PO # 352205
Project Name 3888 Northcote Drive
Ordered By jd
Billing Start Date 10/18/2022
Billing End Date 10/21/2022
Reference Inv #

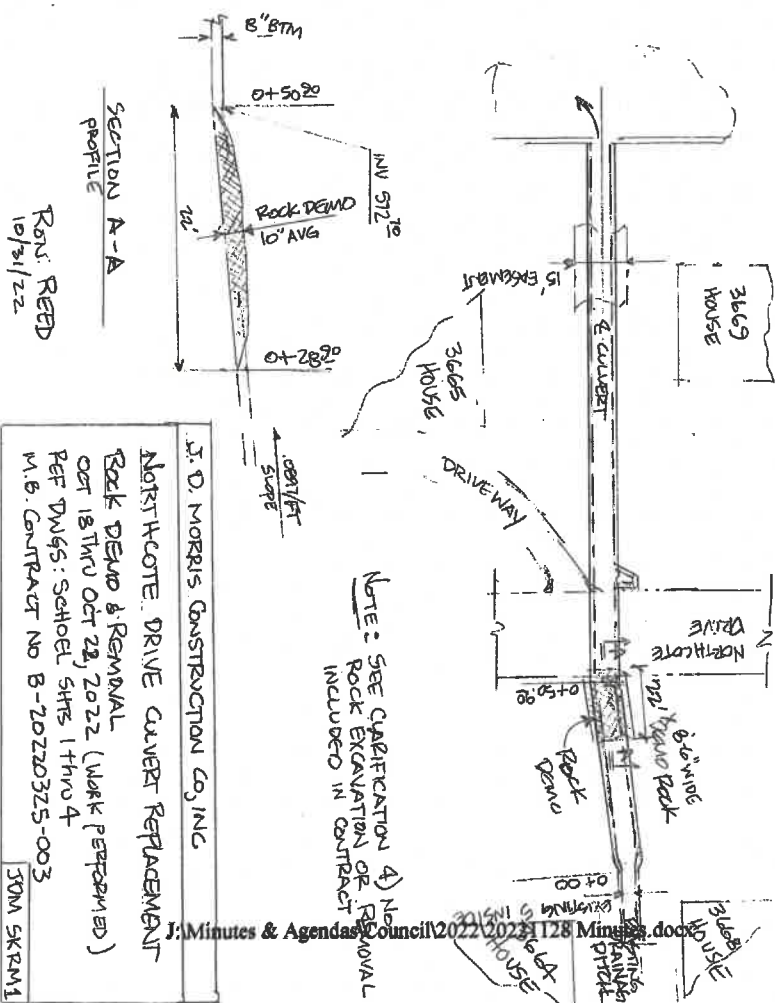
Rental Item	Qty	Item	Description	Day	Week	4 Week	Amount
1	10300446	Excavator Hammer 1000-1809 lb		\$300.00	\$1,250.00	\$2,500.00	\$1,200.00
1	10298512	Excavator 8.8 T w/Tm CIA		\$625.00	\$1,655.00	\$3,423.00	\$1,655.00
1	10532772	Excavator Bucket Attachment		\$1.00	\$2.00	\$3.00	\$2.00
Rental							\$2,757.00

Miscellaneous Items	Qty	Description	Unit Price	Amount
1		Delivery Charge	\$150.00	\$150.00
1		Pick Up Charge	\$150.00	\$150.00
1		Property Tax Recovery Fee	\$23.33	\$23.33
1		Environmental - Rental	\$99.83	\$99.83
1		Loss Damage Waiver	\$413.55	\$413.55
Miscellaneous				\$806.71
Subtotal				\$3,563.71

Tax Items	Description	Amount
	State Tax	\$0.00
	County Tax	\$0.00
	City/District Tax	\$0.00
	Alabama Rental Tax	\$283.14
Tax		\$283.14
INVOICE TOTAL		\$3,826.85
+ 10% MV		382
		\$ 4,208

DATE 11/1/22
LOGGED DATE
JOB NO. ACCT. NO.
T&M FP
APPROVED

INVOICE TOTAL \$3,826.85
+ 10% MV 382
\$ 4,208



J.D. MORRIS CONSTRUCTION CO, INC
NORTHCOTE DRIVE CULVERT REPLACEMENT
ROCK DEMO & REMOVAL
OCT 18 THRU OCT 22, 2022 (WORK PERFORMED)
REF DWGS: SCHOEL SHRS 1 THRU 4
M.B. CONTRACT NO B-20220325-003
JDM SKRM1

NOTE: SEE CLARIFICATION 4) NO REMOVAL ROCK EXCAVATION OR REMOVAL INCLUDED IN CONTRACT

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

This Agreement is made by and between the City of Mountain Brook, Alabama ("Client"), doing business at 56 Church Street, Mountain Brook, Alabama 35213 and, Skipper Consulting, Inc. ("Consultant"), doing business at 3844 Vann Road, Suite 100, Birmingham, Alabama 35235.

WHEREAS, the Client requests that the Consultant perform professional traffic engineering services related to a traffic control device design for an approaching traffic warning sign system at the intersection of Old Leeds Road at Cherokee Road 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.

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

Traffic Study	\$ 2,000.00
Flashing Warning Beacon Design	\$ 4,500.00
Total	\$ 6,500.00

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

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

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

4. STANDARD TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

APPENDIX 4

insurrections, riots, governmental action, explosions, fire, floods, or any other cause not within the reasonable control of either party.

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

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

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

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

CLIENT: CITY OF MOUNTAIN BROOK, AL CONSULTANT: SKIPPER CONSULTING INC.

By: [Signature] By: Richard L. Caudle

Printed Name: Stewart Welch Printed Name: Richard L. Caudle, P.E.

Title: Mayor Title: Senior Traffic Engineer

Date: 11-28-2022 Date: November 16, 2022

EXHIBIT "A"
SCOPE OF WORK

The Consultant shall perform the following scope of work in relation to preparing a traffic control device design for an approaching traffic warning beacon system for the intersection of Old Leeds Road at Cherokee Road in the City of Mountain Brook.

Traffic Study

The Consultant will undertake a traffic study at the intersection of Old Leeds at Cherokee Road to obtain data needed for design of the warning beacon system. This shall include:

- conducting a twenty four hour machine traffic count on Old Leeds Road to the west of the intersection of Cherokee Road, including speed
- determine the speed range of traffic for setting the correct detection setback and number of seconds for the warning beacons to flash
- request and review crash data for the intersection for the previous five years to determine if there are specific crash patterns which need to be taken into account in the system design
- measure available sight distances

Flashing Warning Beacon Design

The Consultant will prepare design plans for construction of an approaching traffic warning beacon system with vehicular loop actuation. It is anticipated that construction efforts would be less than \$50,000, and thus could be performed under Public Works bid law. The Consultant will assist the City in selection of a contractor, reviewing equipment submittals, coordinating any required power service with the City and APCO, and performing an inspection of contractor work.

Schedule

The Consultant will perform the scope of work described above, up to and including issuing a design for contractor pricing, within a period of six (6) 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 (Old Leeds Road at Cherokee Road Warning Beacon)

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX 4

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

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

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

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

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

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

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

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

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

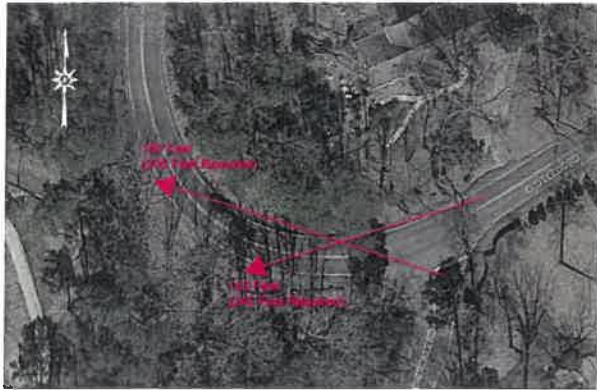
11. EXCLUSION OF CONSEQUENTIAL DAMAGES. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT, IN THE EVENT THAT IT ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THE AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS THEREUNDER, THE MAXIMUM AMOUNT THAT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

CITY: CITY OF MOUNTAIN BROOK CONTRACTOR: SKIPPER CONSULTING INC.
By: _____ By: Richard L. Caudle
Printed Name: _____ Printed Name: Richard L. Caudle, P.E.
Title: _____ Title: Senior Traffic Engineer
Date: _____ Date: November 16, 2022

Old Leeds Road at Cherokee Road

This report documents a study performed to respond to a public request for the installation of a flashing light system to alert motorists and bicyclists of an oncoming vehicle on Old Leeds Road eastbound approaching around the hairpin turn at the intersection of Cherokee Road.

Sight distance is limited for drivers making a left turn from Cherokee Road onto Old Leeds Road and making a left turn from Old Leeds Road onto Cherokee Road. The sight distance looking to the left from Cherokee Road is 185 feet. A minimum of 335 feet of sight distance is needed to make the left turn based on the 30 mile per hour posted speed limit on Old Leeds Road. The sight distance looking at oncoming traffic from Old Leeds Road westbound is 150 feet. A minimum of 245 feet of sight distance is needed to make the left turn. The sight lines are illustrated in the following figure.



The proposed solution to the inadequate sight distance is to install a flashing light system which would detect vehicles on Old Leeds Road eastbound and provide a flashing light warning to vehicles on Cherokee Road and Old Leeds Road of the oncoming vehicle. A similar system is currently in use in Cahaba Road at Botanical Place in the City of Mountain Brook.

In order to determine design elements of the system, the time required to make a left turn maneuver must be known. Based on information in the Transportation Research Board's publication "Highway Capacity Manual, 6th Edition", the following headway times are required to make a left turn maneuver:

Left turn from the major road	4.1 seconds
Left turn from the minor road	7.1 seconds

Based on the 30 mile per hour posted speed limit on Old Leeds Road, the detection zone for the oncoming vehicles would need to be:

Left turn from Old Leeds Road	180 feet from the intersection
Left turn from Cherokee Road	310 feet from the intersection

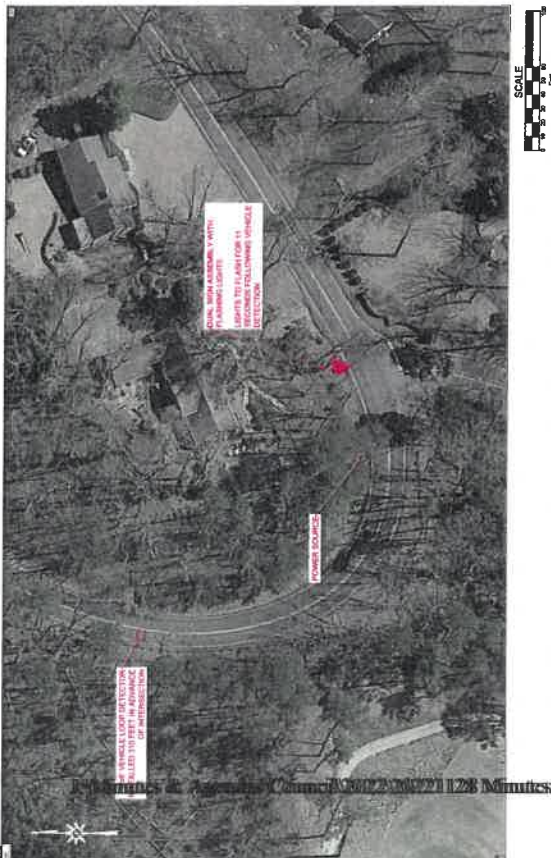
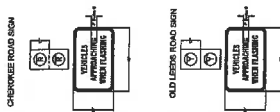
The left turn from Cherokee Road is the worst case, so a detection distance of 310 feet would be needed for the system.

The time that the flashing lights should flash was calculated based on a minimum expected speed of 20 miles per hour on Old Leeds Road. To traverse 310 feet, 11 seconds is needed for a vehicle to clear the intersection from the detection zone.

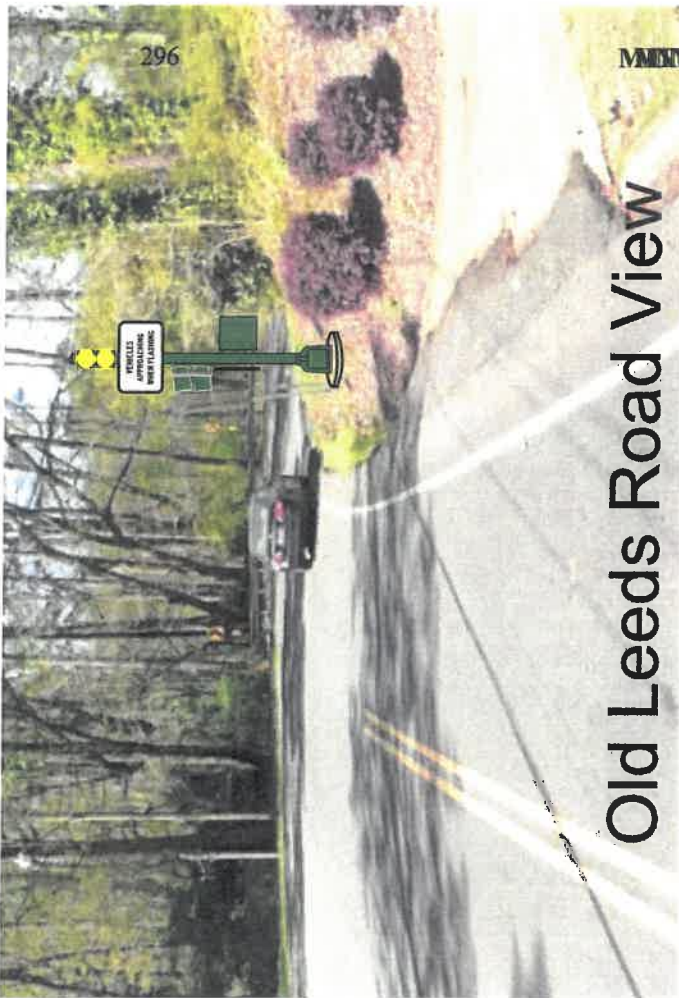
A plan view of the system design is shown on the following page. The next two pages are renderings of the proposed signs/flashing lights from Cherokee Road and Old Leeds Road.

The cost estimate to install the system as shown is approximately \$25,000.

APPENDIX 4



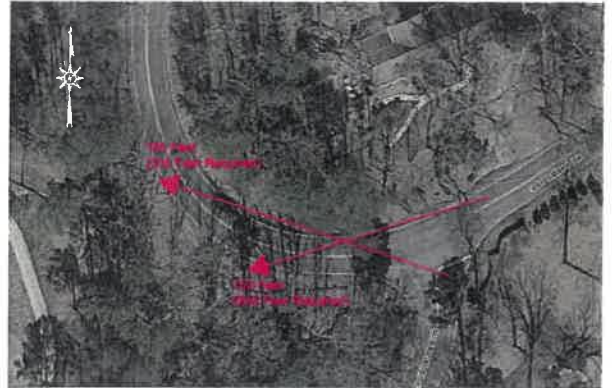
Old Leeds Road View



Old Leeds Road at Cherokee Road

This report documents a study performed to respond to a public request for the installation of a flashing light system to alert motorists and bicyclists of an oncoming vehicle on Old Leeds Road eastbound approaching around the hairpin turn at the intersection of Cherokee Road.

Sight distance is limited for drivers making a left turn from Cherokee Road onto Old Leeds Road and making a left turn from Old Leeds Road onto Cherokee Road. The sight distance looking to the left from Cherokee Road is 185 feet. A minimum of 335 feet of sight distance is needed to make the left turn based on the 30 mile per hour posted speed limit on Old Leeds Road. The sight distance looking at oncoming traffic from Old Leeds Road westbound is 150 feet. A minimum of 245 feet of sight distance is needed to make the left turn. The sight lines are illustrated in the following figure.



The proposed solution to the inadequate sight distance is to install a flashing light system which would detect vehicles on Old Leeds Road eastbound and provide a flashing light warning to vehicles on Cherokee Road and Old Leeds Road of the oncoming vehicle. A similar system is currently in use in on Cahaba Road at Botanical Place in the City of Mountain Brook.

In order to determine design elements of the system, the time required to make a left turn maneuver must be known. Based on information in the Transportation Research Board's publication "Highway Capacity Manual, 6th Edition", the following roadway times are required to make a left turn maneuver:

Left turn from the major road	4.1 seconds
Left turn from the minor road	7.1 seconds

Based on the 30 mile per hour posted speed limit on Old Leeds Road, the detection zone for the oncoming vehicles would need to be:

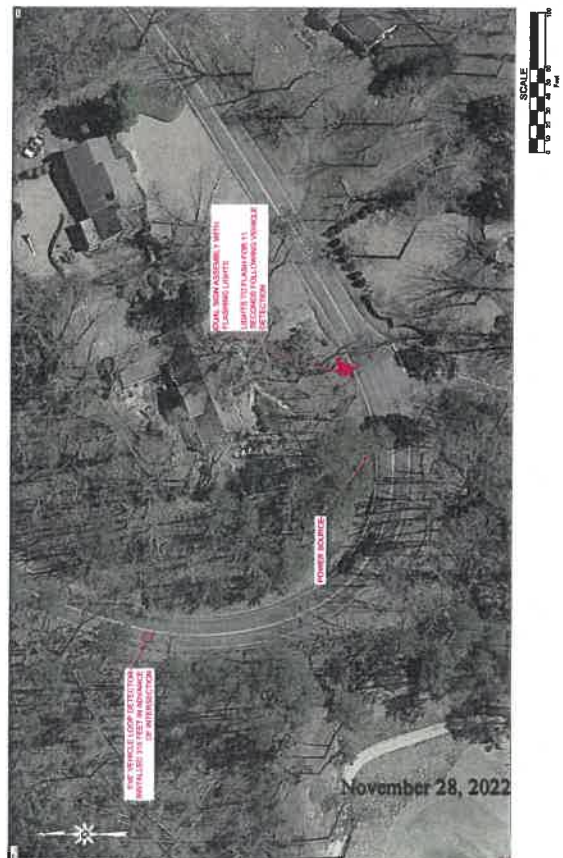
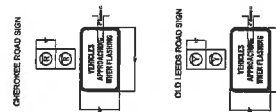
Left turn from Old Leeds Road	180 feet from the intersection
Left turn from Cherokee Road	310 feet from the intersection

The left turn from Cherokee Road is the worst case, so a detection distance of 310 feet would be needed for the system.

The time that the flashing lights should flash was calculated based on a minimum expected speed of 20 miles per hour on Old Leeds Road. To traverse 310 feet, 11 seconds is needed for a vehicle to clear the intersection from the detection zone.

A plan view of the system design is shown on the following page. The next two pages are renderings of the proposed signs/flashing lights from Cherokee Road and Old Leeds Road.

The cost estimate to install the system as shown is approximately \$25,000.





Cherokee Road View



Old Leads Road View

APPENDIX 4