

**MEETING AGENDA  
MOUNTAIN BROOK CITY COUNCIL**

**CITY HALL COUNCIL CHAMBER (ROOM A108)  
56 CHURCH STREET  
MOUNTAIN BROOK, AL 35213**

**TUESDAY, JANUARY 10, 2017, 7:00 P.M.**

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1. Approval of the minutes of the December 12, 2016 regular meeting of the City Council.
2. Consideration: Resolution reappointing William H. (Bill) Wyatt to the Parks and Recreation Board, to serve without compensation through January 23, 2022.
3. Consideration: Resolution ratifying the previous administrative authorization to proceed with the installation of two additional 8 inch water main loops on Brookwood Road (residences 3553 and 3537) required for the Phase 9 sidewalk construction project at an estimated [additional] cost of \$65,000 (80% of which is anticipated to be reimbursed under grant project CMAQ-NR13(908) administered by the Alabama Department of Transportation).
4. Consideration: Resolution authorizing the execution of a Pro Tanto Settlement Agreement between the City and NJK, LLC with respect to the vacation of Third Street.
5. Consideration: Resolution approving the conditional [service] use application submitted by Ryder Hollis for a fitness center operation at 2830 Culver Road in Mountain Brook Village.
6. Consideration: Resolution authorizing the execution of the First Amendment to Lease Agreement between the City and New Cingular Wireless PCS, LLC with respect to the wireless communications facilities located at 3021 Mountain Brook Parkway.
7. Public hearing: Consideration of an ordinance amending Chapter 129 of the City of Mountain Brook Municipal Code, Articles III, IV, V, VII, VIII, XVIII, XX, XIX regarding building limitations in residential zoning districts, use exemptions, exceptions to require setbacks for architectural features and accessory buildings on residential lots.
8. Announcement: The next regular meeting of the City Council is January 23, 2017, at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
9. Comments from residents.
10. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
DECEMBER 12, 2016**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:30 p.m. on Monday, the 12th day of December, 2016. The Council President Pro Tempore called the meeting to order and the roll was called with the following results:

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

Absent: Virginia C. Smith, Council President  
Lloyd C. Shelton

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

**1. AGENDA**

1. Subdivision entrance and traffic island beautification applications-Shanda Williams
  - a. Gaywood Circle (Resolution No. 2016-207 was added to the meeting agenda)
  - b. Williamsburg Circle (Resolution No. 2016-206 was added to the meeting agenda)
2. Hydration Station at the Athletic Complex-Shanda Williams (Appendix 1)

The members of the City Council expressed general support for the project and the Hendry's were encouraged to begin their fundraising efforts. The matter of bidding the installation and obtaining formal Board of Education approval was discussed with the Hendry's.

3. Review of the matters to be considered at the formal [7 p.m.] meeting. (Resolution No. 2016-208 was added to the meeting agenda.)

**2. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on December 12, 2016, 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.

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City Clerk

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA  
DECEMBER 12, 2016**

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The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:00 p.m. on Monday, the 12th day of December, 2016. The Council President Pro Tempore called the meeting to order and the roll was called with the following results:

**Present:** William S. Pritchard, III, Council President Pro Tempore  
Philip E. Black  
Alice B. Womack  
Stewart Welch III, Mayor

**Absent:** Virginia C. Smith, Council President  
Lloyd C. Shelton

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

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

**1. CONSENT AGENDA**

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

	Approval of the minutes of the November 28, 2016 regular meeting of the City Council of the Mountain Brook	
<b>2016-199</b>	Ratify the transfer of cash/surplus between funds as of and for the year ended September 30, 2016	Exhibit 1
<b>2016-200</b>	Reaffirm the City's commitment to promote safe workplace guidelines with respect to the City's workers' compensation program	Exhibit 2, Appendix 1
<b>2016-201</b>	Authorize the execution of an agreement with Con-site Services, Inc. for the grinding and removal of trees and organic materials stockpiled at Public Works	Exhibit 3, Appendix 2
<b>2016-202</b>	Authorize the execution of a professional services agreement with Gresham, Smith & Partners for the design of the Caldwell Mill Road bridge replacement	Exhibit 4, Appendix 3
<b>2016-203</b>	Set a public hearing for Tuesday, January 10, 2017 at 7 p.m. to consider and ordinance amending Chapter 129 of the City of Mountain Brook Municipal Code, Articles III, IV, V, VII, VIII, XVIII, XX, XIX regarding building limitations in residential zoning districts, use exemptions, exceptions to require setbacks for architectural features and accessory buildings on residential lots	Exhibit 5

2016-204	Authorize the execution of an assignment and assumption of maintenance agreement between the City and ISBI Cahaba Village, LLC and Cahaba Village Properties, LLC with respect to the "Agreement for the Cooperative Maintenance of Public Right of Way" previously authorized upon the adoption of Resolution No. 2014-118 on September 22, 2014	Exhibit 6, Appendix 4
2016-205	Authorize the execution of an agreement between the City and C. S. Beatty Construction, Inc. with respect to its donation of materials and services for the installation of a trail loop and memorial bench foundation along the Jemison Trail	Exhibit 7, Appendix 5
2016-206	Authorize payment up to \$677 for plant materials and mulch and provide City labor and equipment to plant the ferns and spread the mulch at the Williamsburg Circle entrance	Exhibit 8, Appendix 6
2016-207	Authorize payment up to \$1,000 for materials and provide City labor and equipment to install beautification improvements at the Gaywood Circle traffic island	Exhibit 9, Appendix 7
2016-208	Accept the professional services proposal submitted by Bhate Geosciences Corporation with respect to the foundation testing of the Watkins Branch Pedestrian Bridge in consideration of an amount not to exceed \$2,250	Exhibit 10, Appendix 8

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

Ayes: William S. Pritchard, III, Council President Pro Tempore  
Philip E. Black  
Alice B. Womack

Nays: None

Council President Pro Tempore Pritchard thereupon declared that said minutes and resolution (Nos. 2016-199 through 208) are adopted by a vote of 3-0 and as evidence thereof he signed the same.

## 2. ANNOUNCEMENT REGARDING THE NEXT MEETING OF THE CITY COUNCIL

Council President Smith announced that the next meeting of the Mountain Brook City Council will be held on Tuesday, January 10, 2017 at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213. Please visit the City's web site ([www.mtnbrook.org](http://www.mtnbrook.org)) for more information.

## 3. ADJOURNMENT

There being no further business to come before the City Council President Pro Tempore Pritchard adjourned the meeting.

#### 4. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on December 12, 2016, 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

#### EXHIBIT 1

#### RESOLUTION NO. 2016-199

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes and ratifies the following fiscal 2016 [cash and surplus] intra-fund transfers:

<b>Ledger</b>	<b>Description</b>	<b>Adopted Budget (or Current Actual)</b>	<b>Proposed</b>	<b>Additional Transfer Ratified</b>
10011166941	Transfers-Capital	\$ 608,633 DR	808,633 DR	\$200,000 DR
10011166917	Transfers-Capital	1,036,685 DR	1,236,685 DR	200,000 DR
44134084810	Transfers-General Fund	608,633 CR	808,633 CR	200,000 CR
41734084810	Transfers-General Fund GJ 09-45 Transfer General Operations excess surplus to Capital	1,036,685 CR	1,236,685 CR	200,000 CR
60034084810	Transfers General Fund	300,000 CR	600,000 CR	300,000 CR
10011166962	Transfers Debt Service Fund GJ 09-45 Transfer General Operations excess surplus to Debt Service Fund	300,000 DR	600,000 DR	300,000 DR
10011166915	Transfers Park Board	1,131,042 DR	1,102,382 DR	28,660 CR
11534084810	Transfers General Fund	1,131,042 CR	1,102,382 CR	28,660 DR
14634084810	Transfers General Fund	25,000 CR	53,660 CR	25,338 CR
10011166946	Transfers Emergency Reserves GJ 09-45 Transfer Park Board excess surplus to Emergency Reserve Fund	25,000 DR	53,660 DR	25,338 DR

#### EXHIBIT 2

#### RESOLUTION NO. 2016-200

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby reaffirms the City's commitment to promote safe workplace guidelines with respect to the City's workers' compensation program (Exhibit A attached hereto).

#### APPENDIX 1

**RESOLUTION NO. 2017-001**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that William H. (Bill) Wyatt is hereby re-appointed to serve on the Mountain Brook Park and Recreation Board, to serve without compensation, with the term of office to end January 23, 2022.

**ADOPTED:** This 10th day of January, 2017.

\_\_\_\_\_  
Council President

**APPROVED:** This 10th day of January, 2017.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on January 10, 2017, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**RESOLUTION NO. 2017-002**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby ratifies the previous administrative authorization to proceed with the installation of two additional 8 inch water main loops on Brookwood Road (residences 3553 and 3537) required for the Phase 9 sidewalk construction project at an estimated [additional] cost of \$65,000 (80% of which is anticipated to be reimbursed under grant project CMAQ-NR13(908) administered by the Alabama Department of Transportation).

**ADOPTED:** This 10th day of January, 2017.

\_\_\_\_\_  
Council President

**APPROVED:** This 10th day of January, 2017.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on January 10, 2017, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**From:** Stoops, Matt [mailto:[MStoops@sain.com](mailto:MStoops@sain.com)]  
**Sent:** Tuesday, December 20, 2016 4:42 PM  
**To:** 'Sam Gaston'  
**Cc:** Jay Trimm; [pendleyr@dot.state.al.us](mailto:pendleyr@dot.state.al.us); Couch, Kenneth  
**Subject:** RE: 8" Loops along Brookwood Road, CMAQ-NR13(908)

Sam –

*EXHIBIT A (attached)*

Here is a letter to try to summarize the funding for the Phase 9 sidewalk & water line contracts. If I need to clarify anything, please let me know.

Matt Stoops, PE  
[mstoops@sain.com](mailto:mstoops@sain.com)  
205-263-2180 Office  
205-960-3022 Cell

**From:** Sam Gaston [mailto:[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)]  
**Sent:** Monday, December 19, 2016 10:39 AM  
**To:** Jay Trimm  
**Cc:** Stoops, Matt  
**Subject:** RE: 8" Loops along Brookwood Road

We have approval. Help me with the math. Cost is \$65,000, so 20% is \$13,000 which should be the city's share, but the State is paying \$10,000 of our local costs?

You have the go-ahead on this.

Matt-I will need change order forms in advance of the January 9<sup>th</sup> Council meeting for their approval.

Sam S.Gaston  
City Manager  
City of Mountain Brook, AL  
56 Church Street  
P.O. Box 130009  
Mountain Brook AL. 35213  
[\(205\) 802-3803](tel:2058023803) Phone  
[\(205\) 870-3577](tel:2058703577) Fax

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**From:** Jay Trimm [mailto:[Jay.Trimm@bwwb.org](mailto:Jay.Trimm@bwwb.org)]  
**Sent:** Monday, December 19, 2016 8:29 AM  
**To:** Sam Gaston  
**Subject:** RE: 8" Loops along Brookwood Road

Can Rast Construction proceed with the work on the 2 additional loops?

Jay Trimm  
Senior Project Coordinator – System Development  
Water Works Board of the City of Birmingham  
Email: [jay.trimm@bwwb.org](mailto:jay.trimm@bwwb.org)  
Office: (205) 244-4260



**From:** Sam Gaston [mailto:[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)]  
**Sent:** Monday, December 19, 2016 8:28 AM  
**To:** Jay Trimm  
**Cc:** Stoops, Matt  
**Subject:** RE: 8" Loops along Brookwood Road

I will ask Matt Stoops to prepare the necessary change order documents for our approval.

Sam S.Gaston  
City Manager  
City of Mountain Brook, AL.  
56 Church Street  
P.O. Box 130009  
Mountain Brook AL. 35213  
[\(205\) 802-3803](tel:(205)802-3803) Phone  
[\(205\) 870-3577](tel:(205)870-3577) Fax

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**From:** Jay Trimm [mailto:[Jay.Trimm@bwwb.org](mailto:Jay.Trimm@bwwb.org)]  
**Sent:** Monday, December 19, 2016 8:08 AM  
**To:** Sam Gaston  
**Subject:** RE: 8" Loops along Brookwood Road

\$12,500.00 is correct. State will pay 80% and M.B. will pay 20%. State – 10,000.00. City – 2,500.00.

Jay Trimm  
Senior Project Coordinator – System Development  
Water Works Board of the City of Birmingham  
Email: [jay.trimm@bwwb.org](mailto:jay.trimm@bwwb.org)  
Office: (205) 244-4260

**From:** Sam Gaston [mailto:[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)]  
**Sent:** Monday, December 19, 2016 8:02 AM  
**To:** Jay Trimm  
**Cc:** Doug Stockham; Stoops, Matt; Alan Penley  
**Subject:** RE: 8" Loops along Brookwood Road

Did you mean \$12,500 instead of \$2,500 for the city's costs?

Sam S.Gaston  
City Manager  
City of Mountain Brook, AL.  
56 Church Street  
P.O. Box 130009  
Mountain Brook AL. 35213  
[\(205\) 802-3803](tel:(205)802-3803) Phone  
[\(205\) 870-3577](tel:(205)870-3577) Fax

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**From:** Jay Trimm [mailto:[Jay.Trimm@bwwb.org](mailto:Jay.Trimm@bwwb.org)]  
**Sent:** Friday, December 16, 2016 3:01 PM  
**To:** Sam Gaston ([gastons@MTNBROOK.org](mailto:gastons@MTNBROOK.org))  
**Cc:** Doug Stockham; Stoops, Matt ([MStoops@sain.com](mailto:MStoops@sain.com)); Alan Penley ([pendleyr@dot.state.al.us](mailto:pendleyr@dot.state.al.us))  
**Subject:** FW: 8" Loops along Brookwood Road

Sam,

I was informed by my Inspector (Austin Trammell) that we need to add 2-additional 8" loops along Brookwood Road. #3553 and #3537 Brookwood Road. The proposed catch basins will be in conflict with the existing 8" main. We missed the location of the water mains on the original estimate. I do apologize for this. The cost for each 8" loop is \$32,500 each for a total of \$65,000.00. We may be able to eliminate the 300' of 16" water main along Crosshill Road at an approximate cost of \$52,500.00. Sain Engineering is trying to work around our existing 16" water with the proposed storm drain work. If this works out, Mt. Brook would be looking at an additional cost of \$2,500.00. for the two extra 8" loops (20% of the total cost). Please let me know if I need to provide additional information in order for the contractor to perform this work. Thanks Jay

Jay Trimm  
Senior Project Coordinator - System Development  
Water Works Board of the City of Birmingham  
Email: [jay.trimm@bwwb.org](mailto:jay.trimm@bwwb.org)  
Office: [\(205\) 244-4260](tel:2052444260)

2 loops	\$ 65,000. <sup>00</sup>	
Savings	<52,500. <sup>00</sup> > "MAY"	
	<hr/>	
	\$ 12,500. <sup>00</sup>	
	<hr/>	
80%.	10,000. <sup>00</sup>	ALDOT
20%.	2,500. <sup>00</sup>	CITY

December 20, 2016

Mr. Sam Gaston  
 City of Mountain Brook  
 56 Church Street  
 Mountain Brook, AL 35213  
[gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)

Subject: CMAQ-NR13(908)  
 Mountain Brook Phase 9  
 Project Funding Update

Dear Mr. Gaston:

Regarding the changes to the water line relocation and costs that the city might incur, please find the summary below for funding of the 2 contracts for Phase 9 using the actual bid amounts:

Contracts as Bid	Total Amount	80% Federal	20% City
Sidewalk Construction Bid Amount by Bulls	\$ 1,408,004.00	\$ 1,126,403.20	\$ 281,600.80
CE & I by Sain	\$ 211,200.60	\$ 168,960.48	\$ 42,240.12
Subtotal	\$ 1,619,204.60	\$ 1,295,363.68	\$ 323,840.92
ALDOT Indirect Costs 13.63% of Construction	\$ 220,697.59	\$ 176,558.07	\$ 44,139.52
Subtotal	\$ 1,839,902.19	\$ 1,471,921.75	\$ 367,980.44
Water Line Relocation Bid Amount by Rast	\$ 428,725.00	\$ 342,980.00	\$ 85,745.00
ALDOT Indirect Costs 13.63% of Water Line	\$ 58,435.22	\$ 46,748.17	\$ 11,687.04
Subtotal	\$ 487,160.22	\$ 389,728.17	\$ 97,432.04
<b>Total</b>	<b>\$ 2,327,062.40</b>	<b>\$ 1,861,649.92</b>	<b>\$ 465,412.48</b>

In August, ALDOT invoiced the city for the \$367,980 on the sidewalk construction. The city's share for the water line relocation of \$97,432 has not been invoiced. This part of the cost is expected to be invoiced by ALDOT when the water relocations are completed.

BWWB is preparing an updated agreement since the water relocation contract ended up being higher than first estimated. The original agreement used an estimated \$202,333, while the actual bid came in at \$428,725.

The changes as proposed last week on the water line relocation do not require a change order since the pay items are already in the contract. The unit prices will be used to pay the overrun. BWWB has projected that particular change to cost an additional \$65,000. There has also been a change at another location that will save the approximately \$52,500. This net difference of \$12,500 would be shared at 80/20, so the city's share would be \$2,500. Thus the new total for the city's share of the water line relocations would be \$99,932.

Attached for your reference are the previous correspondences related to funding for the sidewalks or the water line.

- A 2014-08-22 ALDOT approved construction funding agreement for sidewalk & CE & I
- B 2016-06-03 ALDOT approved SAHD agreement for estimated water line relocation cost of \$202,333
- C 2016-08-01 ALDOT invoice to city for \$367,980 for sidewalk & CE & I costs
- D 2016-11-18 ALDOT authorization for BWWB contract at \$428,725, request updated SAHD agreement

If you have any questions, please feel free to contact me at [mstoops@sain.com](mailto:mstoops@sain.com) or at 205-263-2180.

Sincerely,



Matt Stoops, PE  
Project Manager

Cc: Jay Trim – BWWB  
Alan Pendley – ALDOT  
Ken Couch - ALDOT



# ALABAMA DEPARTMENT OF TRANSPORTATION

THIRD DIVISION  
OFFICE OF DIVISION ENGINEER  
1020 BANKHEAD HWY. WEST  
P.O. Box 2745

BIRMINGHAM, ALABAMA 35202-2745

Telephone: (205) 328-5820

FAX: (205) 254-3199



Robert Bentley  
Governor

John R. Cooper  
Transportation Director

August 22, 2014

The Honorable Lawrence Oden  
Mayor, City of Mountain Brook  
City Hall  
56 Church Street  
Mountain Brook, Alabama 35213

*Ph 9*

RE: Jefferson County  
Project Number: CMAQ-NR13(908)  
[Proj. Ref. No. 100056494]  
Mountain Brook Sidewalks, Phase 9  
Along Brookwood Road, Crosshill Road  
and Oakdale Drive

Dear Mayor Oden:

Attached is the fully executed Construction Agreement for the above referenced project. This is provided for your review and records.

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

Sincerely,

Brian C. Davis  
Division Engineer

BCD/LAT/SFPB

Attachment

Cc: Mrs. Sandra F. P. Bonner  
File w/att.

**AGREEMENT  
FOR  
UTILITY AND CONSTRUCTION**

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

**PROJECT CMAQ-NR13(908)  
Mountain Brook Sidewalks Phase 9  
along Brookwood Road, Crosshill Road and Oakdale Drive  
Mountain Brook, Alabama  
Reference Number:100056494**

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

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

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

WHEREAS, the STATE and the CITY desire to cooperate in a construction program for sidewalks along Brookwood Road, Crosshill Road and Oakdale Drive, Phase 9 of a citywide project, in the City of Mountain Brook, Alabama.

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

- 1) This Agreement will cover all aspects of construction for the proposed improvements, including construction engineering and inspection during the course of the work, all in accordance with plans approved by the STATE.
- 2) Funding for this agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA.
- 3) The project will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties is as follows:

2014-080 ..

	<u>Total Estimated Cost</u>	<u>Total Estimated Federal Funds</u>	<u>Total Estimated Local Funds</u>
Construction Including Engineering and Inspection	<u>\$1,578,184.19</u>	<u>\$1,262,547.35</u>	<u>\$315,636.84</u>
Total	\$1,578,184.19	\$1,262,547.35	\$315,636.84

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share as above noted and the CITY agrees to pay same to the STATE; or in the event the cost is less than the estimate, the CITY will receive a refund accordingly from the STATE. It is expressly understood by both parties of this Agreement that all Federal funds will be CMAQ program funds, attributable to the Birmingham Area. The STATE does not commit any STATE or Federal funds beyond those mentioned herein.

- 4) The CITY will coordinate required adjustments to utilities with the utility company involved in accordance with usual STATE procedures. Any utility expenses involved which are eligible for STATE reimbursement or payment under state law will be considered as part of the Project cost and will be paid as provided herein, with the CITY paying its proportional share. The STATE will not be liable for utility expenses which are not eligible for STATE reimbursement or payment under state law.
- 5) The construction of the improvements will be by contract and the STATE will be responsible for advertisement and receipt of bids and for the award of the contract. Following receipt of bids and prior to award of the contract, the STATE will invoice the CITY for its porata share of the estimate construction cost as reflected by the bid of the successful bidder plus the engineering and inspection cost, and the CITY will promptly pay this estimated cost before the award of the contract. The STATE will not award the contract until it is in receipt of the estimated cost payable by the CITY as reflected by the bid of the successful bidder, plus the engineering and inspection cost. All required off-site testing shall be the responsibility of the Alabama Department of Transportation. All on-site engineering, inspection, and testing (including obtaining and delivery of test specimens to the Alabama Department of Transportation testing facility) shall be the responsibility of the CITY or its designated representative.
- 6) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the improvements which are not part of the Alabama Highway Maintenance System.
- 7) A final audit will be made of all project records after the completion of the project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with ACT 1994, No.94-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- 8) The performance of the work covered by this Agreement will be in accordance with the current requirements of the STATE and FHWA.

- 9) Each party will provide without cost to the other, information available from its records that will facilitate the performance of the work.
- 10) Agency to Indemnify: The CITY will be responsible at all times for all of the work performed under this Agreement and the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees in both their official and individual capacities, and their agents and/or assigns, from and against any and all actions, damages, claims, loss, liabilities, including attorney's fees or expenses whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.  
By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- 11) Any dispute concerning a question of fact in connection with the work not disputed of by this Agreement between the CITY and the STATE will be referred to the director of the State of Alabama Department of Transportation, whose decision will be final.
- 12) Exhibits M and N are attached and hereby made a part of this Agreement.
- 13) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- 14) Either party has the right to terminate this Agreement at any time by giving thirty (30) days written notice of termination. Said notice will be mailed by certified or registered mail.
- 15) 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.
- 16) 7/24<sup>th</sup> Law: Nothing shall be construed under the terms of this Agreement by the CITY or the STATE that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.



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

SEAL

ATTEST:

Steven Boone  
City Clerk (Signature)

Steven Boone  
Type name of Clerk

THE CITY OF MOUNTAIN BROOK, ALABAMA

BY: Lawrence T. Oden  
Mayor (Signature)

Lawrence T. Oden, Mayor  
Type name of Mayor

APPROVED AS TO FORM:

BY: Jim R. Ippolito Jr.  
Jim R. Ippolito, Jr.  
Chief Counsel  
Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

Brian Davis  
Brian Davis  
Division Engineer

Robert J. Jilla  
Robert J. Jilla,  
Multimodal Transportation Engineer

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

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

John R. Cooper  
John R. Cooper, Transportation Director

The foregoing Agreement is hereby executed in the name of the State of Alabama and signed by the Governor on this 14th day of August, 2014.

Robert Bentley  
Robert Bentley  
Governor, State of Alabama 8/14/14

RESOLUTION NUMBER 2014-080

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

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

Project CMAQ-NR13(908), the Mountain Brook Sidewalks Phase 9 for a construction program for sidewalks along Brookwood Road, Crosshill Road and Oakdale Drive in the City of Mountain Brook which Agreement is before this council.

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

BE IT FURTHER RESOLVED that upon the completion of the execution of the Agreement by all parties, that a copy of such agreement be kept on file by the City Clerk.

Passed, adopted and approved this 14th day of July, 2014.

ATTESTED:

Steven Boone  
City Clerk

Kevin Keller  
Mayor

I, the undersigned qualified and acting City Clerk of the City of Mountain Brook, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 14th day of July, 2014 and that such resolution is on file in the City Clerk's Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 14th day of July, 2014.

Steven Boone  
City Clerk

2014-080

CONSULTANT 3/19/90  
REVISED 7/18/90  
REVISED 6/16/11

EXHIBIT M

**CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING**

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.



CONSULTANT 2/15/95  
REVISED 5/30/02  
REVISED 6/16/11

EXHIBIT N

**FUNDS SHALL NOT BE CONSTITUTED AS A DEBT**

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

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive on all parties.

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to consider using appropriate forms of non-binding alternative dispute resolution.

**TERMINATION DUE TO INSUFFICIENT FUNDS**

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

**NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS**

The STATE and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

1



**Robert Bentley**  
Governor

6

**ALABAMA**  
**DEPARTMENT OF TRANSPORTATION**

EAST CENTRAL REGION  
100 Corporate Parkway – SUITE 450  
Hoover, ALABAMA 35242  
P.O. Box 382348  
BIRMINGHAM, AL 35238-2348  
TELEPHONE: (205) 327-4962



**John R. Cooper**  
Transportation Director

June 3, 2016

Ms. Alicia Bailey, PE  
Team Leader / Transportation  
Sain Associates  
Two Perimeter Park South, Suite 500 East  
Birmingham, AL 35243

Re: Jefferson County  
Project No. CMAQ-NR13(908)  
Mountain Brook Sidewalks Phase 9  
along Brookwook Road, Crosshill Road  
and Oakdale Dr.

Dear Ms. Bailey:

Please find the attached approved SAHD No. 2 Reimbursable Agreement, in the amount of \$202,333.32 covering the relocation of facilities owned by **The Water Works Board of the City of Birmingham** that are in conflict with construction of the above referenced project. The Federal Highway Administration's authorization date is May 26, 2016.

Please forward a copy of this approved agreement to the utility owner for their records and copy this office with your transmittal letter. In your letter, please notify the utility that they are authorized to proceed with the work covered by this agreement. Please also be mindful of the Project Sponsor's responsibility to monitor all work performed and to maintain good daily records of all relocation and construction activities for this project.

The contract bid documents and specifications covering the relocation of facilities owned by The Water Works Board have been approved. Please notify The Water Works Board to proceed with the solicitation of bids.

Upon receipt of responsive bids, please furnish this office with a copy of the three (3) lowest bids, and a bid tabulation of all bids received for review and approval by our Central Office, prior to awarding the contract.

Page Two  
Ms. Alicia Bailey, PE  
June 3, 2016

Additionally, the Utility should be reminded that all request regarding eligible costs for reimbursement should be submitted within six (6) months following completion and final acceptance of the work. Please also state in your letter to the utility that the Department has advised that failure to provide an invoice within the aforementioned time may result in the closure of this project's account and that upon closure of this project's account no invoices will be considered for reimbursement.

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

Sincerely,

DeJarvis Leonard  
Region Engineer

By:   
Lance Taylor  
Assistant Region Engineer,  
Pre-Construction

LAT/LJR/RAP  
Attachments

C: Mr. Robert G. Lee  
Mr. Ken Couch  
Mr. Sam S. Gaston  
File

**REIMBURSABLE AGREEMENT  
FOR RELOCATION OF UTILITY FACILITIES  
ON PRIVATE OR PUBLIC RIGHT-OF-WAY**

PROJECT NUMBER  
\_\_\_\_\_ Water  
Utilities \_\_\_\_\_  
 Private Right-of-Way  
 Public Right-of-Way  
Construction \_\_\_\_\_ CMAQ-NR (908)

THIS AGREEMENT is entered into by and between the State of Alabama Department of Transportation acting by and through its Transportation Director, hereinafter referred to as the STATE, and Birmingham Water Works Board, hereinafter referred to as the UTILITY.

WITNESSETH:

WHEREAS, the STATE proposes a project of certain highway improvements in Jefferson County, Alabama, said project being designated as Project No. CMAQ-NR (908) and consisting approximately of the following: Relocating approximately 300' of 16" pipe; seven-8" loops and/or 320' of 8" DICL pipe; two fire hydrants and 48 water services. \_\_\_\_\_; and

WHEREAS, the UTILITY is the owner of certain facilities located on private or public right-of-way, as applicable, at places where they will interfere with the construction of said project unless said facilities are relocated; and

WHEREAS, the Transportation Director has determined that the relocation of the facilities hereinafter referred to is necessitated by the construction of said project and has requested or ordered, as applicable, the UTILITY to relocate same; and

WHEREAS, under the laws of Alabama, the STATE is required to compensate the UTILITY for all or part of such relocation;

NOW, THEREFORE, the parties hereto agree as follows:

1. The UTILITY will relocate its facilities presently located within the right-of-way limits of the above referenced project in accordance with the UTILITY'S plans and specifications as approved by the STATE, so as to occasion the least possible interference with the progress of the project. The UTILITY'S plans, specifications and estimate of relocation cost are transmitted herewith and made a part hereof by reference.
2. The estimated cost for Engineering required by the relocation of utility facilities will be included in the total estimated cost of relocation set forth hereafter in this Agreement, and will be divided into three (3) phases: (a) Phase I - Concept; (b) Phase II - Design; and (c) Phase III - Construction. Each Phase of the Engineering work must be estimated and performed independently of the other. The three Engineering Phases will apply to work performed by the UTILITY'S Engineering Personnel and/or Consultant Engineers. The UTILITY will not proceed with any additional Phase of the required engineering work until it has received written notification from the STATE approving the completion of the previous Phase and written instruction to proceed with the next Phase.

3. The STATE has the right to notify the UTILITY, in writing, to cease Engineering work at any time it deems necessary. If so notified, the UTILITY shall cause all work to cease within four (4) working days and will invoice the STATE for the reimbursable work completed to date.

4. The UTILITY will conform to the provisions of the latest edition of the State of Alabama Department of Transportation Utility Manual, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such Utility Manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

5. The UTILITY will conform to the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), latest edition, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

6. Code of Federal Regulations 23 C.F.R. Part 645 is hereby made a part hereof by reference and will be conformed to by the UTILITY as the provisions thereof are applicable hereto.

7. The UTILITY will observe and comply with the provisions of all Federal, State and Municipal laws and regulations as the provisions thereof are applicable hereto in the performance of work hereunder, including the Clean Water Act of 1987, the Alabama Nonpoint Source Management Program of 1989, and the regulations of the Environmental Protection Agency (EPA) and the Alabama Department of Environmental Management (ADEM). The UTILITY will procure and pay for all licenses and permits that are necessary for its performance of the work.

8. The UTILITY will perform the work of relocation:

- (a)  by UTILITY'S own forces;
- (b)  by contract let by the UTILITY;
- (c)  by an existing written continuing contract where the work is regularly performed for the UTILITY; or
- (d)  by combination of the preceding (as shown in detail on the estimate).

9. The detailed relocation cost estimate will be prepared on the State's Form U-10 or the UTILITY'S own form giving the same type of information and attached to this agreement. With respect to facilities located on the UTILITY'S private right-of-way, the STATE will reimburse the UTILITY for the actual cost of relocation, as may be adjusted below. With respect to facilities located on public right-of-way, the STATE will reimburse the UTILITY for all or part of the actual cost of relocation as required by the laws of Alabama, as may be adjusted below.

a. The STATE'S share of the engineering charges shall be limited to the "in-kind" work only. This agreement includes betterment  Yes  No

b. The total actual cost of relocation, including Engineering, whether the facilities are on private or public right-of-way, shall be adjusted for betterment, if any, as defined and provided for in 23 C.F.R. Part 645 above noted. Excluding betterment costs, the total estimated cost of relocation, including Engineering, is \$ 202,333.32. The total estimated cost including betterment is \$ 0.00.

c. If an adjustment for betterment is applicable, the STATE will reimburse the UTILITY for 100.00 percent of the actual cost of relocation and the remaining 0.00 percent thereof shall be for the account of the UTILITY for betterment. If there are changes during construction and/or the actual construction cost percentage becomes substantially different from the construction estimate, the STATE reserves the right to recalculate the percentages at any time.

10. The method to be used for the development of relocation costs for this project is:

- (a)  as established by Federal or State regulatory body;
- (b)  as previously approved by the STATE; or
- (c)  Lump Sum Amount (\$100,000 maximum).

The UTILITY will furnish the STATE, in writing, six (6) weeks prior to the State's project letting date a time frame for beginning and ending the required relocation work.



11. The UTILITY will keep accurate and true records of all expenditures made by it in the process of such relocation. Records will be kept in accordance with 23 CFR Part 645 above noted, or in accordance with Part 30 and 31, Federal Acquisition Regulations, or in accordance with accounting practices acceptable to the STATE.

12. The UTILITY will, during the progress of the work and for three years from the date final payment is made, make its records available during normal working hours for examination and audit by representatives of the STATE and of the Federal Highway Administration to verify amounts and items covered in the reimbursement for relocation of facilities covered herein. Said records will be available for examination at  
Birmingham Water Works System Development Department

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3600 1st Avenue North

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Birmingham, Alabama 35283

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13. The UTILITY will, within six (6) months following completion of the relocation, furnish the STATE such papers, records, supporting documents and invoices as may be required by the State showing the cost of said relocation. The UTILITY will furnish the STATE a copy of its "as built" plans for the STATE'S records.

14. Upon receipt of such documents and accounts as may be required by the preceding paragraph and upon completion and acceptance of such verification as the STATE may deem necessary, the STATE will reimburse the UTILITY for the actual cost of such relocation as verified by the STATE. In the event the actual verified cost, as accepted, exceeds the estimated cost, the STATE may require a Supplemental Agreement to be executed between the parties prior to reimbursement of any amount in excess of the estimated cost.

15. Paragraphs numbered 16 through 20 set forth below are applicable to this Agreement only if some or all of the UTILITY facilities to be relocated hereunder are located on private right-of-way of the UTILITY; otherwise, such paragraphs are considered inapplicable to this Agreement and null and void.

16. Where the UTILITY has a compensable property interest in its existing location (herein referred to as private right-of-way) by reason of holding the fee, an easement or other property interest, evidence of such compensable property interest will be submitted to the STATE by the UTILITY for review and approval.

17. If the UTILITY is required to move all of its facilities from a portion of its private right-of-way, upon completion of the relocation provided for herein, the UTILITY will convey to the STATE by appropriate instrument the portion of its private right-of-way located within the right-of-way limits of the above referenced project.

18. In the event the UTILITY is not required to relocate any of its facilities which are located on its private right-of-way, the following provisions shall apply:

a. To the extent the UTILITY has the right to so agree the STATE will have the right to construct, operate and maintain a highway over and along the portion of the UTILITY'S private right-of-way located within the right-of-way limits of the above referenced project.

b. The subordination of the UTILITY'S private right-of-way to the right of the STATE to construct, operate, and maintain said highway will be effective and operative only to such air, surface and sub-surface rights as may reasonably be required and are necessary for the construction, operation, and maintenance of said highway, and to enable the STATE to control access to the highway where such control is established; otherwise this subordination agreement will in no wise affect and impair the rights of the UTILITY, its successors and assigns, in or to its private right-of-way, including but not limited to the right to install additional facilities over, under and across the highway; provided, however, that any installation of additional facilities will be subject to the STATE'S responsibility and right to make prior determination that any such additional facilities are located so as not to impair the highway or any planned highway improvement and so as not to interfere with the free and safe flow of traffic thereon.

c. It is mutually understood that the terms of this Agreement do not subordinate, affect or impair the rights of the UTILITY for reimbursement of the cost of such future relocation as may be required and necessitated by highway construction at some future date, as fully as if no subordination existed; however, such relocation will be in accordance with an additional agreement to be entered into at that time between the UTILITY and the STATE.

19. If the UTILITY is required to relocate any of its facilities which are located on its private right-of-way to a new location on the same private right-of-way, the following provisions shall apply:

a. To the extent the UTILITY has the right to so agree, upon completion of the relocation provided for herein, the STATE will have the right to construct, operate and maintain a highway over and along the portion of the UTILITY'S private right-of-way located within the right-of-way limits of the above referenced project.

b. The subordination of the UTILITY'S private right-of-way to the right of the STATE to construct, operate and maintain said highway will be effective and operative only to such air, surface and sub-surface rights as may reasonably be required and are necessary for the construction, operation and maintenance of said highway, and to enable the STATE to control access to the highway where such control is established; otherwise this subordination agreement will in no wise affect and impair the rights of the UTILITY, its successors and assigns, in or to its private right-of-way, including but not limited to the right to install additional facilities over, under and across the highway; provided, however, that any installation of additional facilities will be subject to the STATE'S responsibility and right to make prior determination that any such additional facilities are located so as not to impair the highway or any planned highway improvement and so as not to interfere with the free and safe flow of traffic thereon.

c. It is mutually understood that the terms of this Agreement do not subordinate, affect or impair the rights of the UTILITY for reimbursement of the cost of such future relocation as may be required and necessitated by highway construction at some future date, as fully as if no subordination existed; however, such relocation will be in accordance with an additional agreement to be entered into at that time between the UTILITY and the STATE.

20. If the UTILITY is required to relocate any of its facilities which are located on its private right-of-way to a new location on public right-of-way or if any such facilities are to be retained in place within the public right-of-way due to this project, the following provisions will apply:

a. The cost of relocation will include reimbursement for acquisition of right-of-way by the UTILITY to place necessary guy wires and anchors on private lands adjacent to the highway right-of-way and the rights to cut, trim and remove, initially and from time to time as necessary, trees on private lands adjacent to the highway right-of-way which might then or thereafter endanger the facilities of the UTILITY.

b. Reimbursement for future relocation of the UTILITY'S facilities will be in accordance with State laws in effect at the time such relocation is made; provided, however, the UTILITY will be reimbursed for the cost of any future relocation of the facilities, including the cost of acquisition of equivalent private right-of-way if such future relocation is outside the highway right-of-way and such relocation is required by the STATE, and provided that the prior relocation from private right-of-way to public right-of-way was without compensation to the UTILITY for its compensable property interest in its private right-of-way.

21. The UTILITY is responsible, and will not hold the State of Alabama, the Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns responsible for damages to private property, public utilities or the general public, caused by the conduct, in accordance with Alabama and/or Federal law, of the UTILITY, its agents, servants, employees or facilities.

22. By entering into this agreement, the UTILITY is not an agent of the State, its officers, employees, agents or assigns. The UTILITY is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.

23. In the event a Utility - Consultant Engineering Agreement for this project is entered into between the UTILITY and a Consulting Engineer, the following provisions will apply:

a. The UTILITY has complied or will comply with and fulfill and will require the Consultant Engineer of the UTILITY to comply with and fulfill, all obligations, requirements, notifications, and provisions of the Utility - Consultant Engineering Agreement executed for this project work which are for the benefit or protection of the STATE.

b. The UTILITY has obtained or will obtain all approvals and authorizations required by the STATE which are provided for in the Utility - Consultant Engineering Agreement.

c. No reimbursement payments will be due and none will be made by the STATE until such Utility - Consultant Engineering Agreement is complied with faithfully by the UTILITY and Consulting Engineer.

24. The UTILITY will have a copy of this Agreement on the project site at all times while work is being performed under this Agreement.

25. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the STATE to the public right-of-way nor to increase, decrease or modify in any way the rights of the UTILITY provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

26. Paragraph 27 set forth below is applicable to this Agreement only if Federal appropriated funds are available or will be available in the project by which the relocation required by this Agreement is necessitated.

27. In the event any Federal Funds are utilized for this work, the following certification is made:

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

28. In accordance with Title 23, U.S.C. Sec 313, Buy America, steel and iron materials and products used on this utility relocation shall comply with the Buy America requirements of 23 CFR 635.410. Minor items of foreign steel may be used if their cost is less than \$2,500 or one-tenth of one percent of the agreement amount, whichever is greater. Eligibility for reimbursement is subject to audit for compliance with the Buy America Requirement.

29. Exhibit N is attached hereto and made a part hereof.

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

WITNESS: [Signature]

RECOMMENDED FOR APPROVAL:

BY: [Signature]  
Region Representative

Birmingham Water Works Board  
(Legal Name of Utility)

BY: [Signature]  
Robert G. Lee  
Utilities Engineer

BY: [Signature] Asst. G.M.  
(Signature and Title)

T.M. Jones  
(Typed Name)

Assistant General Manager  
(Typed Title)

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

3600 1st Avenue North  
(Address)

BY: [Signature]  
Jim Ippolito, Jr.  
Chief Counsel,  
Alabama Department of Transportation

Birmingham, Alabama 35283  
(City, State, Zip)

(205) 244-4000  
(Telephone)

STATE OF ALABAMA DEPARTMENT OF TRANSPORTATION ACTING BY AND THROUGH ITS TRANSPORTATION DIRECTOR

[Signature]  
John R. Cooper  
Transportation Director

The within and foregoing Agreement is hereby approved on this 2<sup>ND</sup> day of May, 20 16

[Signature]  
Robert Bentley  
GOVERNOR  
STATE OF ALABAMA

## EXHIBIT N

### FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

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

### TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal year.
- b. In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

### ADDITIONAL ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative hearings or where appropriate, private mediators.

### Utility Relocation Estimate

County: Jefferson .....

Project No: CMAQ-NR13 (908).....

Date: 4/7/16.....

Name of Utility: Birmingham Water Works Board.....

Address: 3600 1<sup>st</sup> Avenue North Birmingham, Alabama 35283.....

Submitted By:

NAME	Assistant General Manager .....
	TITLE

T.M. (Sonny) Jones.....

ADDRESS (If different from above)	(205) 244-4000 .....
	TELEPHONE NUMBER

(Please list the name, address and telephone number of the Utility's representative in responsible charge of work if different from above.)

Number of calendar days from receipt of Notice to Proceed to actual beginning of relocation:

60

Number of calendar days from beginning to completion of work, including cleanup:

60

If the Utility is regulated by a State or Federal Agency, please list the Agency.

\_\_\_\_\_

A Consultant Engineer ( ) will, ( ) will not be used.

The gross receipts of this Utility ( ) did, ( ) did not exceed two hundred fifty (250) million dollars for the calendar year preceeding the proposed relocation.

The method to be used to accomplish this relocation work is: (a) \_\_\_\_\_ by UTILITY'S own forces; (b) X by Contract Let by the UTILITY; (c) \_\_\_\_\_ by existing, written continuing contract; or (d) \_\_\_\_\_ by combination of the preceding (must be detailed within this estimate).

SUMMARY OF QUANTITIES

	<u>IN-KIND</u>	<u>BETTERMENT</u>
1. Gross Estimated Construction Cost Only	\$196,609.54.....	\$ .....
2. Less Salvage Credit (Show as zero if none)	\$.....	\$ .....
3. Less Other Credit (If Applicable)	\$.....	\$ .....
4. Total Estimated Construction Cost Only	\$196,609.54.....	\$ .....
5. Difference in Estimated Cost (Betterment minus In-Kind)		\$.....
6. Utility's Pro Rata Share of Estimated Construction Cost (Line 5 divided by Betterment Total X 100 Percent)		.....
7. State's Pro Rata Share of Estimated Construction Cost (100 Percent minus Line 6 Percentage)		.....
	<u>STATE</u>	<u>UTILITY</u>
8. Pro Rata Construction Cost	\$196,609.54 .....	\$ .....
9. Pro Rata Engineering Cost (\$5,723.78 _____ X Percentage)	\$5,723.78.....	\$ .....
10. Total Right-of-Way Acquisition Cost (If not 100% State Reimbursable, please list accordingly)	\$.....	\$ .....
11. Grand Total	\$.....	\$ .....
(List In-Kind and Betterment Totals on Page 2 of the SAHD No. 2 Agreement)	<u>TOTAL IN-KIND</u> \$202,333.32.....	<u>TOTAL BETTERMENT</u> \$.....

**ITEM 6 - SALVAGE CREDIT**

a. If salvage credit is allowed, check one or both of the following statements.

..... Salvage to inventory credit is allowed on a temporary and/or replaced facility.

..... Salvage for sale or scrap credit is allowed on a temporary and/or replaced facility.

(1) **Salvage to Inventory Credit**

Temporary Facilities (Credit at stock price less 10% for use)

Replaced Facilities (Credit at stock price or consistent with utility practice)

Item			<u>Temporary Facility</u>	<u>Replaced Facility</u>
(Size/Type)	No.	Value	Amount	Amount
.....	(.....)	\$.....	\$.....	\$.....
.....	(.....)	\$.....	\$.....	\$.....
.....	(.....)	\$.....	\$.....	\$.....
Total Salvage to Inventory Credit			\$.....	\$.....

(2) **Salvage for Sale or Scrap Credit (Actual value to be determined at sale and invoice adjusted accordingly)**

Item			<u>Temporary Facility</u>	<u>Replaced Facility</u>
(Size/Type)	No.	Estimated Value	Amount	Amount
.....	(.....)	\$.....	\$.....	\$.....
.....	(.....)	\$.....	\$.....	\$.....
.....	(.....)	\$.....	\$.....	\$.....
Total Salvage for Sale or Scrap Credit			\$.....	\$.....
SUBTOTAL SALVAGE CREDIT (1 & 2)			\$.....	\$.....
TOTAL SALVAGE CREDIT (Line 2 on Summary Sheet)			\$.....	



- b. If salvage credit is not allowed, check either or both of the following statements.
- X.....No salvage credit is allowed as the salvage/removal cost exceeds the salvage value.
- ..... The temporary and/or replaced facility is to be abandoned in place.
- c. If expired service life credit (accrued depreciation) on a major utility facility is due the State, please attach a copy of the calculations. This does not apply to service, distribution or transmission lines. It does apply to substations, pumping stations, filtration plants, power plants, etc.

**NOTE:** The Department and the FHWA Division Administrator shall have the right to inspect recovered materials prior to disposal by sale or scrap. This requirement shall be satisfied by the company giving two weeks written notice to the State of Alabama or oral notice followed by written confirmation of the time and place the materials will be available for inspection. This notice is the responsibility of the company and it may be held accountable for full value of materials disposed of without notice.

**"IN KIND" ESTIMATE OF COST**

**THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM**

**Estimate**

**For**

**THE ALABAMA DEPARTMENT OF TRANSPORTATION**

**ALDOT PROJECT: CMAQ-NR13(908)  
Mountain Brook Sidewalks Phase 9**

**This Estimate Includes the Relocation of Birmingham Water Board Facilities to Accommodate  
ALDOT/MOUNTAIN BROOK PPROJECT: CMAQ-NR13 (908)**

**BIRMINGHAM WATER WORKS BOARD PROJECT NUMBER: P.01670**

**Revised April 5th, 2016**

**ALDOT PROJECT: CMAQ-NR13(908) "In kind" Estimate of Cost  
Install Approximately 300' of 16" DICL Pipe along Crosshill Road,  
as shown on BWWB construction drawing.**

**Project Number: P.01670.060.016**

**Materials:**

300	ft	16" DICL Pipe	@ \$	41.87	\$	12,561.00	
2	ea	Valve Box		72.00		144.00	
1	ea	16" Sleeve		400.00		400.00	
1	ea	16" x 2" Service Clamp		147.00		147.00	
4	ea	16" 45 Degree Bend		447.00		1,788.00	
2	ea	16" 11-1/4 Degree Bend		329.00		658.00	
1	ea	16" Cap (Tapped 2")		151.00		151.00	
8	ea	16" Retainer Rings		136.00		1,088.00	
8	ea	2" x 18" Stainless Steel Nipple		17.00		136.00	
4	ea	2" x 12" Stainless Steel Nipple		15.00		60.00	
1	ea	2" x 4" Stainless Steel Nipple		5.00		5.00	
3	ea	2" Stainless Steel Elbow		7.00		21.00	
6	ea	2" Stainless Steel Coupling		5.00		30.00	
1	ea	2" Screwed Gate Valve		185.00		185.00	
100	ft	3/4" All Thread Rod		1.20		120.00	
1	ea	6 lb HTH		12.00		12.00	
1	ea	2" Coupling		9.00		9.00	
1	ea	2" Tee Head Valve		160.00		160.00	\$ 17,675.00

**Contractors Charges:**

300	lf	Install 16" Pipe		70.00	\$	21,000.00	
10	lf	Permanent Paving		20.00		200.00	
10	lf	Temporary Paving		12.00		120.00	
10	sf	Concrete Sidewalk		30.00		300.00	
10	lf	Concrete Curb & Gutter		30.00		300.00	
25	lf	Install Silt Fence		4.00		100.00	
5	ea	Install Hay Bales		6.00		30.00	
10	cy	Concrete Bracing		175.00		1,750.00	23,800.00

**BWWB Labor**

40	hours	Construction Inspector	@	37.00	\$	1,480.00	
8	hours	Field Investigator		26.00		208.00	
10	hours	Distribution Maintenance Worker		21.00		210.00	
10	hours	Distribution Maintenance Worker		17.00		170.00	2,068.00

**Other Charges**

Storeroom Expense @ 8.62% (of Materials)	\$	1,523.59	
Overhead Expense @ 15.00% (Contractor's Charges Only)		3,570.00	
Overhead Expense @ 30.68% (Labor, Trans & Permits)		634.46	5,728.05

**TOTAL FOR 16" PIPE: \$ 49,271.05**

ALDOT PROJECT: CMAQ-NR13(908) "In kind" Estimate of Cost  
Install 8-8" Loops in various locations, as Shown on BWWB Construction Drawing

**Project Number: P.01670.060.008**

**Materials:**

320	ft	8" DI CL Pipe	@	\$	14.76	\$	4,723.20	
16	ea	8" Solid Sleeve			113.00		1,808.00	
8	ea	8" x 12" Valve Adapter			84.00		672.00	
64	ea	8" Retainer Rings			24.00		1,536.00	
4	ea	8" 90 Degree Bend			126.00		504.00	
32	ea	8" 45 Degree Bend			115.00		3,680.00	
8	ea	8" 22-1/2 Degree Bend			115.00		920.00	
8	ea	8" 11-1/4 Degree Bend			103.00		824.00	
3	ea	8" Gate Valve			380.00		1,140.00	
3	ea	Valve Box			72.00		216.00	
250	ea	3/4" Nuts & Washers			0.39		97.50	
129	ea	3/4" x 4-1/2" Eye Bolts			6.50		838.50	
65	ea	3/4" Rod Couplings			0.54		35.10	
800	ft	3/4" All Thread Rod			1.20		960.00	
1	ea	6 lb HTH			12.00		12.00	
1	ea	2" Tee Head Valve			160.00		160.00	
2	ea	8" x 2" Service Clamp			27.00		54.00	
6	ea	8" Offset Bend 12" Drop			360.02		2,160.12	
6	ea	8" Offset Bend 6" Drop			245.00		1,470.00	\$ 21,810.42

**Contractors Charges:**

8	ea	Cut in 8" Loop			4,500.00	\$	36,000.00	
50	sf	Mill & Resurface Paving			35.00		1,750.00	
50	sf	Concrete Sidewalk			25.00		1,250.00	
50	lf	Permanent Paving			20.00		1,000.00	
50	lf	Temporary Paving			12.00		600.00	
100	ft	Extra Depth Trench			3.00		300.00	
40	lf	Concrete Curb & Gutter			30.00		1,200.00	
25	lf	Install Silt Fence			4.00		100.00	
10	ea	Install Hay Bales			6.00		60.00	
32	cy	Concrete Bracing			175.00		5,600.00	47,860.00

**BWWB Labor**

140	hours	Construction Inspector	@		30.00	\$	4,200.00	
48	hours	Distribution Maintenance Worker			20.00		960.00	
48	hours	Distribution Maintenance Worker			17.00		816.00	
							-	5,976.00

**Other Charges**

Storeroom Expense @ 8.62% (of Materials)	\$	1,880.06	
Overhead Expense @ 15.00% (Contractor's Charges Only)		7,179.00	
Overhead Expense @ 30.68% (Labor, Trans & Permits)		1,833.44	10,892.50

**TOTAL FOR 8" PIPE: \$ 86,538.92**

**ALDOT PROJECT: CMAQ-NR13(908) "In kind" Estimate of Cost  
Install / Relcoate Fire Hydrants as Shown on BWWB Construction Drawing**

**Project Number: P.01670.070**

**Materials**

**Contractor's Charges**

2	ea	Install/Reset Fire Hydrant	@ \$	1,500.00	\$	<u>3,000.00</u>	\$	3,000.00
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**BWWB Labor**

4	hours	Construction Inspector		30.00	\$	<u>120.00</u>		120.00
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**Other Charges**

Overhead Expense @ 15.00% (Contractor's Charges Only)	\$	450.00		
Overhead Expense @ 30.68% (Labor, Trans. & Permits)		<u>36.82</u>		<u>486.82</u>

**TOTAL FOR FIRE HYDRANTS: \$ 3,606.82**

**ALDOT PROJECT: CMAQ-NR13(908) "In kind" Estimate of Cost  
Relocate and / or Reconnect Services as Shown on BWWB Construction Drawing**

**Project Number: P.01670.060.008**

**Materials**

660	ft	1" Copper Pipe	\$	5.00	\$	3,300.00		
20	ft	3/4" Copper Pipe		3.25		65.00		
44	ea	1" Coppersetters		200.00		8,800.00		
3	ea	1" Corporation Stop		28.00		84.00		
20	ea	1" Repair Couplings		19.00		380.00		
44	ea	1" Copper Copper Union		23.00		1,012.00		
24	ea	1" Compression Coupling		10.00		240.00		
10	ea	1" Copper to Copper 90 Degree Bend		13.00		130.00		
44	ea	Composite Meter Box (13"x 24")		44.00		1,936.00		
44	ea	Composite Meter Box Lid (13"x 24")		33.00		<u>1,452.00</u>	\$	17,399.00

**Contractor's Charges**

660	lf	Install 1" Copper Service Pipe		29.00	\$	19,140.00		
120	lf	Bore & Jack 1" Copper Service Pipe		50.00		6,000.00		
60	lf	Permanent Paving		20.00		1,200.00		
60	lf	Temporary Paving		12.00		<u>720.00</u>		27,060.00

**BWWB Labor**

38	hours	Construction Inspector	@ \$	30.00	\$	<u>1,140.00</u>		1,140.00
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**BWWB Transportation / Equipment**

4	hours	2004 Chevy Colorado Ext. Cab	@ \$	22.00	\$	<u>88.00</u>		88.00
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**Other Charges**

Storeroom Expense @ 8.62% (of Materials)	\$	1,499.79		
Overhead Expense @ 15.00% (Contractor's Charges Only)		4,059.00		
Overhead Expense @ 30.68% (Labor, Trans & Permits)		<u>376.75</u>		<u>5,935.54</u>

**TOTAL FOR SERVICE WORK: \$ 51,622.54**

ALDOT PROJECT: CMAQ-NR13(908) "In kind" Estimate of Cost  
Retire +/- 300' of 16" pipe & 240' of 8" pipe that is in conflict with ALDOT Project CMAQ-NR13- (908)  
as shown on BWWB construction drawing.

NOTE: All Retired Mains 4" & Larger are to be Abandoned in Place, Capped Off, and Filled with Flowable Grout Fill.

Project Number: P.01670.120

Materials

2	-	ea	16" Caps (Solid)	@ \$	195.00	\$	390.00	
16		ea	8" Caps (Solid)		40.00		640.00	
2		ea	8" Plugs		50.00		100.00	
1		ea	6" Plugs		30.20		<u>30.20</u>	\$ 1,160.20

Contractor's Charges

22	cy	Grout Abandoned Mains: (4" & Larger)		185.00	\$	<u>4,070.00</u>	4,070.00
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BWWB Labor

8	hours	Construction Inspector	@ \$	30.00	\$	<u>240.00</u>	240.00
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Other Charges

Storeroom Expense @ 8.62% (of Materials)	\$	<u>100.01</u>	<u>100.01</u>
NO OVERHEAD CHARGED ON RETIREMENT			
<b>TOTAL FOR RETIREMENT:</b>	<b>\$</b>		<b><u>5,570.21</u></b>

ALDOT PROJECT: CMAQ-NR13(908) "In kind" Estimate of Cost  
WATER BOARD (BWVB) ENGINEERING CHARGES

Project Number: P.01670.001 - (Preliminary Engineering)

Includes Administrative, Transportation & Construction Costs Associated With Site V

BWVB Labor:

39	hours	Sr. Project Coordinator	@	\$	36.00	\$	1,404.00
40	hours	Field Investigator			24.00		960.00
32	hours	Senior Drafter			30.00		960.00
							\$ 3,324.00

Other Charges:

Overhead Expense @ 30.68% (Labor, Trans & Permits) 1,019.80

**TOTAL FOR PRELIMINARY ENGINEERING:** \$ 4,343.80

ALDOT PROJECT: CMAQ-NR13(908) "In kind" Estimate of Cost

WATER BOARD (BWVB) ENGINEERING CHARGES, CONTINUED

Project Number: P.01670.001 ( Construction Engineering)

Includes Administrative, Transportation & Construction Costs associated with Phase III

BWVB Labor:

24	hours	Sr. Project Coordinator	@	\$	36.00	\$	864.00
8	hours	Field Investigator			24.00		192.00
							\$ 1,056.00

Other Charges:

Overhead Expense @ 30.68% (Labor, Trans & Permits) 323.98

**TOTAL FOR CONSTRUCTION ENGINEERING:** \$ 1,379.98

ALDOT PROJECT: CMAQ-NR13(908) "In kind" Estimate of Cost

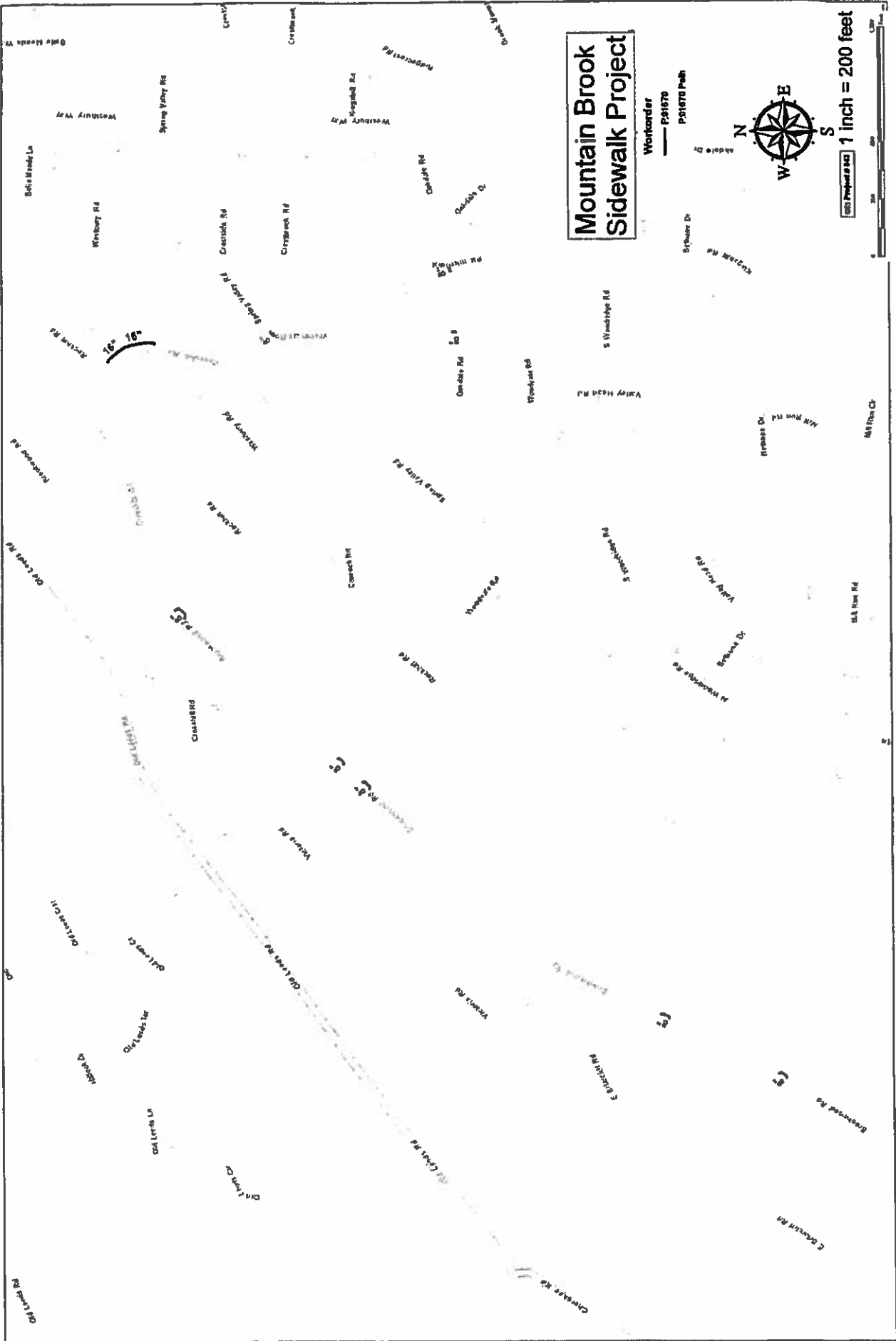
SUMMARY SHEET

SUMMARY of ESTIMATED COST

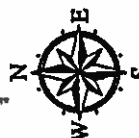
Install 16" Pipe	\$	49,271.05
Install 8" Pipe		86,538.92
Install / Relocate Fire Hydrants		3,606.82
Relocate / Reconnect Services		51,622.54
Retirement of Facilities		5,570.21
Preliminary Eng. Labor, Trans / Equip		4,343.80
<u>Construction Eng. Labor, Trans / Equip</u>		<u>1,379.98</u>

TOTAL ESTIMATED COST (IN KIND): \$ 202,333.32



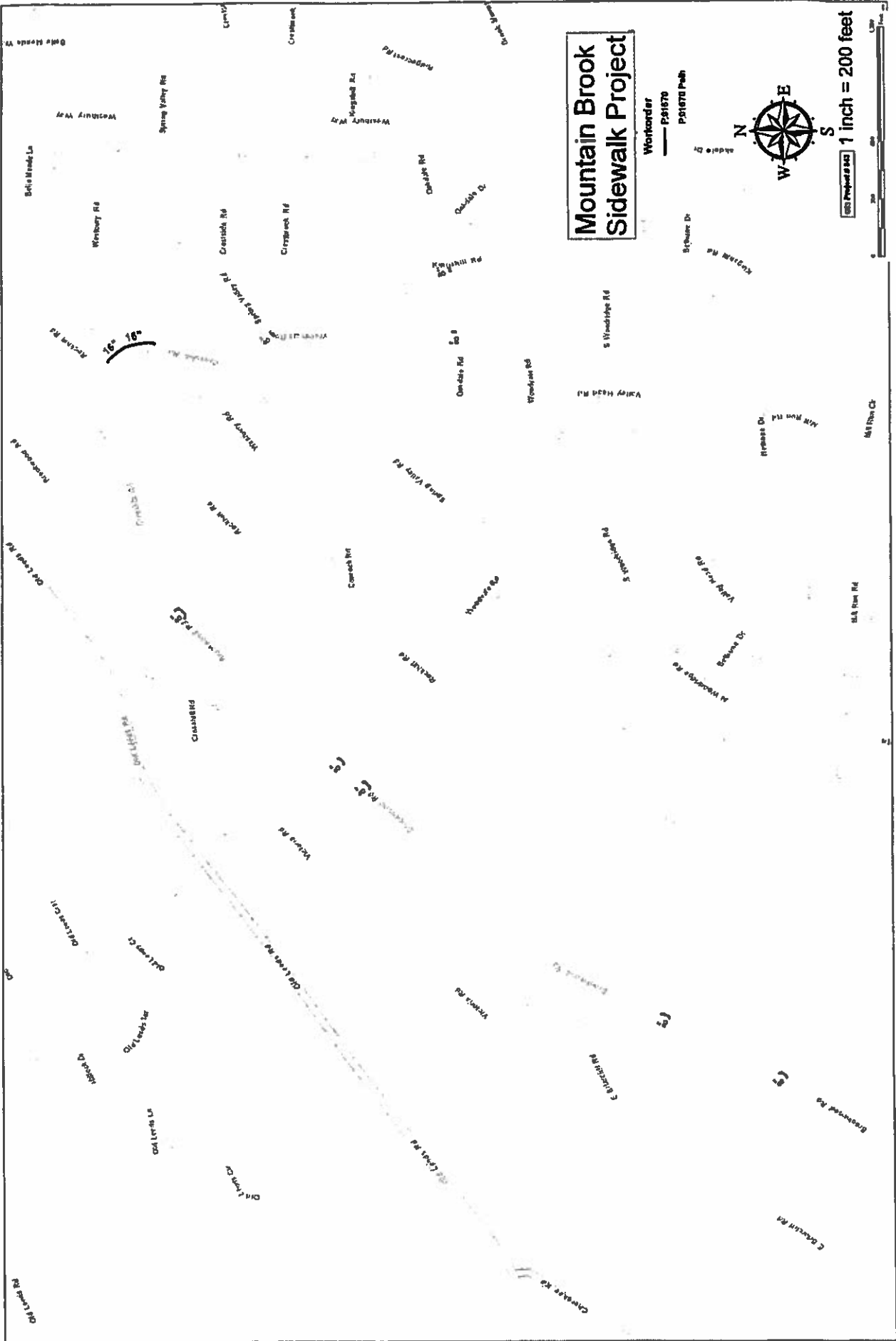


**Mountain Brook Sidewalk Project**

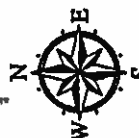


**1 inch = 200 feet**

Workorder  
P31670  
P31670 Pch



**Mountain Brook Sidewalk Project**



**1 inch = 200 feet**

Workorder  
P31670  
P31670 Pch

10



## ALABAMA DEPARTMENT OF TRANSPORTATION

1409 Coliseum Boulevard, Montgomery, Alabama 36110  
P.O. Box 303050, Montgomery, Alabama 36130-3050  
Phone: 334-242-6448 Fax: 334-353-6575



Robert Bentley  
Governor

John R. Cooper  
Transportation Director

August 1, 2016

Honorable Lawrence Terry Oden, Mayor  
City of Mountain Brook  
P.O. Box 130009  
Mountain Brook, AL 35213

Dear Mayor Oden:

RE: Project No. CMAQ-NR13(908)  
Jefferson County

We are transmitting our invoice in the amount of \$367,980.44 which represents the City of Mountain Brook's share of funds for construction costs plus E&I on the above-referenced project. Also enclosed is a copy of our detailed estimate providing a breakdown of costs for this work.

After you have reviewed this invoice, it will be appreciated if you will submit your check to this office no later than August 15, 2016.

Sincerely,

A handwritten signature in blue ink, appearing to read "Clay P. McBrien".

Clay P. McBrien, P.E.  
State Office Engineer

CPM/lmc

Attachment

cc: Mr. Bill Flowers w/attachment  
Attn: Tamiko Jordan  
Mr. DeJarvis Leonard, Region Engineer  
File

# INVOICE

## Alabama Department of Transportation

SOLD TO Honorable Lawrence Terry Oden, Mayor  
City of Mountain Brook  
P.O. Box 130009  
Mountain Brook, AL 35213

DATE 08/01/2016

PLEASE NOTE ➤

Make Remittance Payable to:  
**ALABAMA DEPARTMENT OF TRANSPORTATION**

Address Remittance To:  
OFFICE ENGINEER  
1409 Coliseum Boulevard Room E-101  
P.O. Box 3050  
Montgomery, AL 36130-3050

<p>City of Mountain Brook Jefferson County</p> <p>Project No. CMAQ-NR13(908) Jefferson County</p> <p>Total bid plus E&amp;I (15%) &amp; IC (13.63%)</p> <p>(80%)</p> <p>City Funds Due</p> <p>Billing as per agreement for this project dated 8/18/2014.</p>	<p>\$1,839,902.19</p> <p>\$1,471,921.75</p>	<p>\$367,980.44</p>
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STATE OF ALABAMA, MONTGOMERY COUNTY:—Personally appeared the undersigned and made oath in due form of law that the within account is correct, due and unpaid.

Sworn and subscribed to before me:

August 3, 20 16

X *C. P. McQueen*  
CLAIMANT'S SIGNATURE

*Ruthie Bonds*  
NOTARY PUBLIC



**Alabama Department of Transportation  
Final Detail Cost Estimate**

**Project ID: 13908**

**Federal/State Project Number: CMAQ-NR13(908)**

**Project Description: SIDEWALKS**

**Project Location: Along Brookwood Road, Cross Hill Road, Oakdale Drive,  
Spring Valley Road and Woodvale Road**

**Date Printed: 8/1/2016**



**Alabama Department Of Transportation**  
**Final Detail Cost Estimate**  
**JEFFERSON COUNTY, ALABAMA**

DATE: 8/1/2016

Page: 1

Project ID: 13908  
 Project Description: SIDEWALKS  
 Awarded Vendor: 02638

Federal/State Project No.: CMAQ-NR13(908)

Contract ID: 20160729028

BULLS CONSTRUCTION GROUP, LLC

**CONTRACT PRICES**

Category: 0001 Sidewalks

Funding Source(s) and Participation: M003 CMAQ and PM 2.5  
 Other Non-State/Non Federal

80.00%  
 20.00%

Construction Type: 12 Safety/Traffic/TSM  
 Work Classification: ROAD Roadway  
 Construction Class: 0000 DEFAULT

Category Length: 1.8130 MILES  
 Category Width: 0.0000 FEET

Line No.	Item Number	Item Description	Units	Quantity	Unit Price	Amount
0010	201A002	Cleaning And Grubbing (Maximum Allowable Bid \$ 4,000.00 Per Acre) (Approximately 3 Acres)	LS	1.000	12,000.00	12,000.00
0020	206C002	Removing Concrete Slope Paving	SQYD	95.000	25.00	2,375.00
0030	206C010	Removing Concrete Driveway	SQYD	401.000	20.00	8,020.00
0040	206D000	Removing Pipe	LF	81.000	20.00	1,620.00
0050	206D002	Removing Curb	LF	232.000	10.00	2,320.00
0060	206D005	Removing Gutter	LF	9,860.000	5.00	49,300.00
0070	206E001	Removing Inlets	Each	15.000	200.00	3,000.00
0080	209A000	Mailbox Reset, Single	Each	37.000	200.00	7,400.00
0090	210A000	Unclassified Excavation	CUYD	452.000	20.00	9,240.00
0100	210D000	Borrow Excavation	CUYD	1,239.000	25.00	30,975.00
0110	214A000	Structure Excavation	CUYD	3,056.000	15.00	45,840.00
0120	214B001	Foundation Backfill, Commercial	CUYD	733.000	50.00	36,650.00
0130	305A051	Coarse Aggregate, Section 801, For Miscellaneous Use	CUYD	696.000	50.00	34,800.00
0140	305B071	Coarse Aggregate, Section 801, For Miscellaneous Use	Ton	3,137.000	36.00	112,932.00
0150	424A360	Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range C/D	Ton	26.000	400.00	10,400.00
0160	424B885	Superpave Bituminous Concrete Lower Binder Layer, Patching, 1" Maximum Aggregate Size Mix, ESAL Range C/D	Ton	60.000	400.00	24,000.00
0170	530A001	18" Roadway Pipe (Class 3 R.C.)	LF	109.000	50.00	5,450.00



Alabama Department Of Transportation  
 Final Detail Cost Estimate  
 JEFFERSON COUNTY, ALABAMA

DATE: 8/1/2016

Project ID: 13908  
 Project Description: SIDEWALKS  
 Awarded Vendor: 02638

Federal/State Project No.: CMAQ-NR13(908)

Contract ID: 20160729028

BULLS CONSTRUCTION GROUP, LLC

CONTRACT PRICES

Line No.	Item Number	Item Description	Units	Quantity	Unit Price	Amount
0180	533A098	18" Storm Sewer Pipe (Class 3 R.C.)	LF	2,699.000	45.00	121,455.00
0190	533A348	18" Storm Sewer Pipe (Class 3 R.C.) (Extension)	LF	61.000	45.00	2,745.00
0200	533A349	24" Storm Sewer Pipe (Class 3 R.C.) (Extension)	LF	56.000	50.00	2,800.00
0210	600A000	Mobilization	LS	1.000	39,200.00	39,200.00
0220	613D000	Brick Curb	LF	337.000	30.00	10,110.00
0230	614A000	Slope Paving	CUYD	17.000	462.00	7,854.00
0240	618A000	Concrete Sidewalk, 4" Thick	SQYD	4,242.000	45.00	190,890.00
0250	618A001	Concrete Sidewalk, 6" Thick	SQYD	1,087.000	55.00	59,785.00
0260	618B003	Concrete Driveway, 6" Thick (Includes Wire Mesh)	SQYD	910.000	65.00	59,150.00
0270	619A002	18" Roadway Pipe End Treatment, Class 1	Each	1.000	1,000.00	1,000.00
0280	620A000	Minor Structure Concrete	CUYD	3.000	1,980.00	5,940.00
0290	621A004	Junction Boxes, Type 4	Each	1.000	3,600.00	3,600.00
0300	621A011	Junction Boxes, Type 1 Or 1P	Each	3.000	3,432.00	10,296.00
0310	621C036	Inlets, Type S1 Or S3 (1 Wing) (Modified)	Each	32.000	3,300.00	105,600.00
0320	621C049	Inlets, Type S1 Or S3 (2 Wing) (Modified)	Each	3.000	3,696.00	11,088.00
0330	621D015	Inlet Units, Type S1 Or S3	Each	20.000	660.00	13,200.00
0340	621E002	Manholes, Type L	Each	5.000	3,500.00	17,500.00
0350	623A004	Concrete Gutter (Modified)	LF	2,705.000	16.00	43,280.00
0360	623B002	Concrete Curb, Type A	LF	170.000	30.00	5,100.00
0370	623C003	Combination Curb & Gutter, Type C (Modified)	LF	6,781.000	16.00	108,496.00
0380	650A000	Topsoil	CUYD	777.000	26.00	20,202.00
0390	654A000	Solid Sodding	SQYD	1,730.000	5.50	9,515.00
0400	660C008	Shrubs, Azalea Indica (Indica Azalea) (Mrs. G. G. Gerbing)	Each	53.000	38.00	2,014.00
0410	660C037	Shrubs, Forsythia Intermedia (Forsythia)	Each	12.000	38.00	456.00



Alabama Department Of Transportation  
Final Detail Cost Estimate  
JEFFERSON COUNTY, ALABAMA

DATE: 8/1/2016

Project ID: 13908  
Project Description: SIDEWALKS  
Awarded Vendor: 02638

Federal/State Project No.: CMAQ-NR13(908)

Contract ID: 20160729028

BULLS CONSTRUCTION GROUP, LLC

CONTRACT PRICES

Line No.	Item Number	Item Description	Units	Quantity	Unit Price	Amount
0420	660C039	Shrubs, Hydrangea Quercifolia (Oakleaf Hydrangea)	Each	134.000	79.00	10,586.00
0430	660C040	Shrubs, Ilex Cornuta Burfordii Nana (Dwarf Burford Holly)	Each	13.000	72.00	936.00
0440	660C048	Shrubs, Ilex Vomitoria Nana (Dwarf Yaupon Holly)	Each	30.000	33.00	990.00
0450	660C050	Shrubs, Ilex Cornuta Carissa (Carissa Holly)	Each	23.000	33.00	759.00
0460	660C074	Shrubs, Liriope Muscari (Big Blue Liriope)	Each	350.000	16.00	5,600.00
0470	660C075	Shrubs, Leucothoe Fontanesiana (Drooping Leucothoe)	Each	5.000	72.00	360.00
0480	660C085	Shrubs, Nandina Domestica (Nandina Domestica)	Each	7.000	44.00	308.00
0490	660C097	Shrubs, Prunus Laurocarasus 'Schipkaensis' (Schip Laurel)	Each	12.000	113.00	1,356.00
0500	660C156	Shrubs, Spiraea X Burmalda (Anthony Waterer Spiraea)	Each	30.000	33.00	990.00
0510	660C172	Shrubs, Ligustrum Japonica (Waxleaf Ligustrum)	Each	18.000	58.00	1,062.00
0520	660C173	Shrubs, Loropetalum Chinese 'Ruby' (Ruby Loropetalum)	Each	46.000	45.00	2,070.00
0530	660C199	Shrubs, Helleborus Orientalis (Leten Rose)	Each	81.000	38.00	3,078.00
0540	660C202	Shrubs, Ilex Cornuta 'Needlepoint' (Needlepoint Holly)	Each	75.000	72.00	5,400.00
0550	660C221	Shrubs, Ilex 'Mary Nell' (Mary Nell Holly)	Each	4.000	475.00	1,900.00
0560	660K000	Pinestraw Mulch	BALE	247.000	11.00	2,717.00
0570	665J002	Silt Fence	LF	1,950.000	5.00	9,750.00
0580	665O001	Silt Fence Removal	LF	1,950.000	1.00	1,950.00
0590	665P005	Inlet Protection, Stage 3 Or 4	Each	35.000	310.00	10,850.00
0600	674A000	Construction Safety Fence	LF	200.000	4.00	800.00
0610	680A001	Geometric Controls	LS	1.000	25,000.00	25,000.00
0620	701A230	Solid Yellow, Class 2, Type A Traffic Strips (5" Wide)	Mile	4.000	6,710.00	26,840.00
0630	701C001	Solid Temporary Traffic Strips	Mile	4.000	4,880.00	19,520.00
0640	703A002	Traffic Control Markings, Class 2, Type A	SOFT	492.000	10.00	4,920.00
0650	703D001	Temporary Traffic Control Markings	SOFT	120.000	4.00	480.00



**Alabama Department Of Transportation**  
**Final Detail Cost Estimate**  
**JEFFERSON COUNTY, ALABAMA**

DATE: 8/1/2016

Page: 4

Project ID: 13908  
 Project Description: SIDEWALKS  
 Awarded Vendor: 02638

Federal/State Project No.: CMAQ-NR13(908)

Contract ID: 20160729028

BULLS CONSTRUCTION GROUP, LLC

**CONTRACT PRICES**

Line No.	Item Number	Item Description	Units	Quantity	Unit Price	Amount
0660	705A037	Pavement Markers, Class A-H, Type 2-D	Each	88.000	7.00	616.00
0670	710A115	Class 4, Aluminum Flat Sign Panels 0.08" Thick Or Steel Flat Sign Panels 14 Gauge (Type III Or Type IV Background)	SQFT	28.000	21.00	588.00
0680	710A126	Class 8, Aluminum Flat Sign Panels 0.08" Thick Or Steel Flat Sign Panels 14 Gauge (Type IX Background)	SQFT	109.000	22.00	2,398.00
0690	710B021	Roadway Sign Post (#3 U Channel, Galvanized Steel or 2", 14 Ga Square Tubular Steel)	LF	238.000	11.00	2,618.00
0700	740B000	Construction Signs	SQFT	468.000	8.00	3,744.00
0710	740D000	Channelizing Drums	Each	100.000	35.00	3,500.00
0720	740E000	Cones (36 Inches High)	Each	20.000	30.00	600.00
0730	740M001	Ballast For Cone	Each	20.000	10.00	200.00
0740	742A001	Portable Changeable Message Sign, Type 2	Each	1.000	7,920.00	7,920.00

<b>Category Total:</b>	\$1,408,004.00
<b>Eng &amp; Contg:</b>	\$211,200.60
<b>Total:</b>	\$1,619,204.60

**Sidewalks**

Length: 1.8130 MILES  
 Other \$323,840.92  
 M003 \$1,295,363.68  
 Total Estimated: \$1,619,204.60





**Alabama Department Of Transportation**  
**Final Detail Cost Estimate**  
**JEFFERSON COUNTY, ALABAMA**

DATE: 8/1/2016

Page: 5

Project ID: 13908  
 Project Description: SIDEWALKS  
 Awarded Vendor: 02638

Federal/State Project No.: CMAQ-NR13(908)

Contract ID: 20160729028

BULLS CONSTRUCTION GROUP, LLC

**CONTRACT PRICES**

Category: 0500 Utilities

Funding Source(s) and Participation: M003 CMAQ and PM 2.5 80.00%  
 Other Non-State/Non Federal 20.00%

Construction Type: 12 Safety/Traffic/TSM

Work Classification: UTIL Utilities

Construction Class: 0000 DEFAULT

Category Length: 0.0000 MILES

Category Width: 0.0000 FEET

Line No.	Item Number	Item Description	Units	Quantity	Unit Price	Amount
0750	107C000	Utilities - Water Works Board of the City of Birmingham	LS	1.000	202,333.32	202,333.32

Category Total: \$202,333.32

Eng & Contg: \$30,350.00

Total: \$232,683.32

Utilities

Length: 0.0000 MILES

M003 \$186,146.66

Other \$46,536.66

Total Estimated: \$232,683.32





**Alabama Department Of Transportation**  
**Final Detail Cost Estimate**  
**JEFFERSON COUNTY, ALABAMA**

DATE: 8/1/2016

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Project ID: 13908  
 Project Description: SIDEWALKS  
 Awarded Vendor: 02638

Federal/State Project No.: CMAQ-NR13(908)

Contract ID: 20160729028

BULLS CONSTRUCTION GROUP, LLC

**CONTRACT PRICES**

Category: 0700 Preliminary Engineering

Funding Source(s) and Participation: Other Q400 Non-State/Non Federal CONGESTION MITIGATION/AQ 20.00% 80.00%

Construction Type: 12 Safety/Traffic/TSM  
 Work Classification: PREL Preliminary Engineering  
 Construction Class: 0000 DEFAULT

Category Length: 0.0000 MILES  
 Category Width: 0.0000 FEET

Line No.	Item Number	Item Description	Units	Quantity	Unit Price	Amount
0770	107A000	Preliminary Engineering	LS	1.000	166,400.00	166,400.00

Category Total: \$166,400.00  
 Eng & Contg: \$0.00  
 Total: \$166,400.00

Preliminary Engineering

Length: 0.0000 MILES  
 Q400 \$133,120.00  
 Other \$33,280.00  
**Total Estimated: \$166,400.00**



**Alabama Department Of Transportation**  
**Final Detail Cost Estimate**  
**JEFFERSON COUNTY, ALABAMA**

DATE: 8/1/2016

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Project ID: 13908  
 Project Description: SIDEWALKS  
 Awarded Vendor: 02638

Federal/State Project No.: CMAQ-NR13(908)

Contract ID: 20160729028

BULLS CONSTRUCTION GROUP, LLC

**CONTRACT PRICES**

Category: 1000 Indirect Cost

Funding Source(s) and Participation: M003 CMAQ and PM 2.5 80.00%  
 Other Non-State/Non Federal 20.00%

Construction Type: 12 Safety/Traffic/TSM

Work Classification: IDC Indirect Cost

Construction Class: 0000 DEFAULT

Category Length: 0.0000 MILES

Category Width: 0.0000 FEET

Line No.	Item Number	Item Description	Units	Quantity	Unit Price	Amount
0780	1071000	Indirect Cost	LS	1.000	220,697.59	220,697.59

**Category Total:** \$220,697.59  
**Eng & Contg:** \$0.00  
**Total:** \$220,697.59

Indirect Cost

Length: 0.0000 MILES

Other \$44,139.52

M003 \$176,558.07

Total Estimated: \$220,697.59

**Project Item Total:** \$2,029,149.64  
**Estimate Total:** \$2,270,700.24



Alabama Department Of Transportation  
Detail Estimate Funding Summary  
JEFFERSON COUNTY, ALABAMA

DATE: 8/1/2016

Page: 1

Project ID: 13908  
Project Description: SIDEWALKS  
Awarded Vendor: 02638

Federal/State Project No.: CMAQ-NR13(908)

Contract ID: 20160729028

BULLS CONSTRUCTION GROUP, LLC

Category	Total	Fund	FA Funds	State Funds	Length
Sidewalks	\$1,619,204.60	M003	\$1,295,363.68	\$323,840.92	1.8130
Utilities	\$232,683.32	M003	\$186,146.66	\$46,536.66	0.0000
Utilities - Indirect Cost	\$31,714.73	M003	\$25,371.78	\$6,342.95	0.0000
Preliminary Engineering	\$166,400.00	Q400	\$133,120.00	\$33,280.00	0.0000
Indirect Cost	\$220,697.59	M003	\$176,558.07	\$44,139.52	0.0000
<b>Total Estimated Cost</b>	<b>\$2,270,700.24</b>		<b>\$1,816,560.19</b>	<b>\$454,140.05</b>	<b>1.8130</b>

Signed \_\_\_\_\_

Office Engineer



November 18, 2016

Mr. Jay Trimm  
Birmingham Water Works Board  
[Jay.trimm@bwwb.org](mailto:Jay.trimm@bwwb.org)

Re: Mountain Brook Phase 9 Sidewalks  
CMAQ-NR13(908)

Dear Mr. Trimm:

Please find the attached approval letter from ALDOT for the Rast Construction contract to relocate water lines in the City of Mountain Brook ahead of the Phase 9 Sidewalk Project CMAQ-NR13(908).

ALDOT requests that you submit a SAHD #6 Supplemental Agreement to cover the difference between the estimated constructions costs and the actual low bid received. You should also summarize the additional items and explain the increases from the approved contract bid documents prior to bidding. You are also reminded that it is your responsibility to insure work is done per the SAHD agreement, and to ascertain records that may be subject to audit.

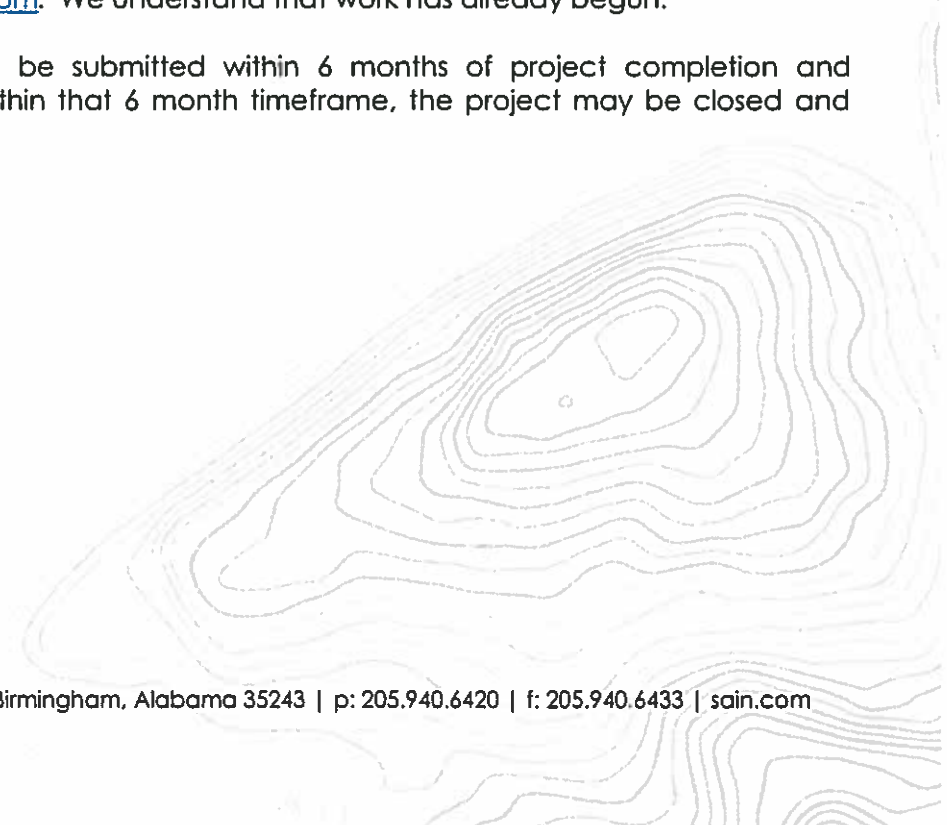
Sain will be the City's project manager during construction. If needed, please contact Matt Stoops at 205-263-2180 or at [mstoops@sain.com](mailto:mstoops@sain.com). We understand that work has already begun.

All requests for reimbursement shall be submitted within 6 months of project completion and acceptance. If an invoice is not within that 6 month timeframe, the project may be closed and reimbursement denied.

Sincerely,

Matt Stoops, PE  
Sain Associates

Cc: Sam Gaston – Mountain Brook  
Ken Couch, PE – ALDOT  
Lance Taylor, PE – ALDOT





**Robert Bentley**  
Governor

**ALABAMA**  
**DEPARTMENT OF TRANSPORTATION**

EAST CENTRAL REGION  
100 Corporate Parkway – SUITE 450  
Hoover, ALABAMA 35242  
P.O. Box 382348  
BIRMINGHAM, ALABAMA 35238-2348  
Telephone: (205) 327-4962



**John R. Cooper**  
Transportation Director

November 15, 2016

Ms. Alicia Bailey, PE  
Team Leader / Transportation  
Sain Associates  
Two Perimeter Park South, Suite 500 East  
Birmingham, Alabama 35243

RE: Jefferson County  
Project No. CMAQ-NR13(908)  
Mountain Brook Sidewalks Phase 9  
along Brookwook Road, Crosshill Road  
and Oakdale Dr.

Dear Ms. Bailey:

This is your authorization to notify The Water Works Board of the City Birmingham to award a construction contract in the amount of \$428,725.00 to the lowest bidder, Rast Construction for the relocation of their water facility that is in conflict with construction of the above referenced project.

Please notify the Utility of this authorization and copy this office with your transmittal letter. In your letter to the Utility, please respectfully request them to submit a SAHD No. 6 Supplemental Agreement to cover the difference between the estimated construction cost and actual low bid received. Also the Utility should submit a summarization of the additional items and explanation concerning several items which were increased from the approved Contract Bid Documents prior to solicitation of bids.

The Utility should also be reminded that it is their responsibility to insure that the work is executed in the manner stipulated in the SAHD Agreement and/or Contract, and to ascertain that the records are reasonable and accurate, as these records may be subject to audit. The Department may exclude payment for any additional work not included in the approved agreement and/or contract.

Ms. Alicia Bailey, PE  
November 15, 2016  
Page Two

The Utility should be provided the project manager's contact information in your letter and they should be remind to notify his or her office prior to beginning any physical construction work on this project. Your office, as the Project Sponsor's Representatives, should insure that adequate records and progress of the work are maintained.

Additionally, the Utility should be reminded that all request regarding eligible costs for reimbursement should be submitted within six (6) months following completion and final acceptance of the work. Please also state in your letter to the utility that the Department has advised that failure to provide an invoice within the aforementioned time may result in the closure of this project's account and that upon closure of this project's account no invoices will be considered for reimbursement.

If I can supply any information or clarify any point contained herein, please contact me at your convenience.

Sincerely,

DeJarvis Leonard  
East Central Region Engineer

By: Lance Taylor  
Lance Taylor  
Assistant Region Engineer,  
Pre-Construction

LAT/LJR/RAP  
C: Mr. Robert G. Lee  
Mr. Kenneth Couch  
File



**RESOLUTION NO. 2017-003**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute, for and on behalf of the City, a Pro Tanto Settlement Agreement between the City and NJK, LLC, in the form as attached hereto as Exhibit A, with respect to the City's vacation of Third Street.

**ADOPTED:** This 10th day of January, 2017.

\_\_\_\_\_  
Council President

**APPROVED:** This 10th day of January, 2017.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on January 10, 2017, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**IN THE TENTH JUDICIAL CIRCUIT COURT OF ALABAMA  
JEFFERSON COUNTY  
BIRMINGHAM DIVISION**

NJK, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. CV 2016 - 900522.00
THE CITY OF MOUNTAIN BROOK, ALABAMA;	)	
MARGARET ANN PETERSON; and FICTITIOUS	)	
DEFENDANTS A, B, C, D E, F, G, H, I and J,	)	
	)	
Defendants.	)	

**PRO TANTO SETTLEMENT AGREEMENT**

THIS PRO TANTO SETTLEMENT AGREEMENT (the "Agreement") is executed as of this \_\_\_\_ day of January, 2017, by and among plaintiff NJK, LLC ("NJK") and defendant The City of Mountain Brook, Alabama (the "City"— the City and NJK are collectively referred to herein as the "Parties").

**RECITALS:**

WHEREAS, NJK and the City are parties in the above-referenced lawsuit (the "Lawsuit") involving the proposed vacation of an unimproved, undeveloped and unused right-of-way located in the City of Mountain Brook in Jefferson County, Alabama which is known as "3<sup>rd</sup> Street", and which is more particularly described as follows:

A parcel of land situated in the Southwest quarter of the Southwest quarter of Section 33, Township 17 South, Range 2 west, Jefferson County, Alabama, said parcel being 3rd Street (40' ROW), being more particularly described as follows:

Commence at the Northwest corner of Lot 1A according to Calton Hill at Mountain Brook as recorded in Map Book 239, Page 9 in the office of Judge of Probate in Jefferson County, Alabama, point also being a found rebar stamped CA-560-LS, thence run South 88 degrees 25 minutes 31 seconds East along the North line of said Lot 1A for a distance of 48.03 feet to a found capped rebar, said point being the POINT OF BEGINNING; thence continue along the last described course for a distance of 5.41 feet, said point being on the Easternmost Right of Way of 3rd Street (40' ROW); thence run South 00 degrees 15 minutes 36 seconds East along said Right of Way for a distance of 344.03 feet to a point being on the Northernmost Right of Way of Montclair Road (80' ROW); thence run South 55 degrees 34 minutes 19 seconds West along said Right of Way for a distance of 48.34 feet to a found rebar stamped CA-560-LS, said point being the Southeast corner of said Lot 1A; thence leaving said Right of Way run North 00 degrees 15 minutes 36 seconds West along the East line of said Lot 1A for a distance of 332.79 feet to a found rebar stamped CA-560-LS; thence run North 83 degrees 44 minutes 54 seconds West along said lot line for a distance of 17.16 feet to a found rebar stamped CA-560-LS; thence run North 54 degrees 24 minutes 14 seconds East along said lot line for a distance of 63.31 feet to the POINT OF BEGINNING. Said parcel contains 14,006 square feet or 0.32 acres more or less ("3<sup>rd</sup> Street").

WHEREAS 3<sup>rd</sup> Street was dedicated pursuant to the plat entitled "Map of Resurvey of Evelyn Heights" which plat was filed in the Office of the Judge of Probate of Jefferson County, Alabama (the "Probate Office") on May 21, 1924 in Volume 13 of Maps, on page 95 (the "Plat");

WHEREAS NJK owns that certain real property located in the Birmingham Division of Jefferson County, Alabama, which borders the western boundary of 3<sup>rd</sup> Street and is more particularly described as:

Lot 1A of Calton Hill at Mountain Brook, as recorded on July 1, 2014 in Map Book 239 at Page 9 in the Probate Office (the "NJK Property").

WHEREAS the City is located solely in the Birmingham Division of Jefferson County, Alabama and is a duly incorporated municipal corporation under the laws of the State of Alabama;

WHEREAS 3<sup>rd</sup> Street is located solely within the municipal boundaries of the City;

WHEREAS NJK filed the Lawsuit to seek a judicial vacation of 3<sup>rd</sup> Street;

WHEREAS prior to the filing of the Lawsuit all landowners abutting 3<sup>rd</sup> Street - other than defendant Margaret Ann Peterson ("Peterson" -- who claims to own land bordering the northern border of 3<sup>rd</sup> Street) consented to the vacation of 3<sup>rd</sup> Street with title to all of 3<sup>rd</sup> Street reverting to NJK,

WHEREAS, since the filing of the Lawsuit, without the Court adjudicating whether Peterson has an ownership interest in lands abutting 3<sup>rd</sup> Street, Peterson now consents to the vacation of 3<sup>rd</sup> Street;

WHEREAS NJK has agreed to pay the City, and the City has agreed to accept, \$57,500 for fees associated with reversion of title to 3<sup>rd</sup> Street to NJK;

WHEREAS, NJK and the City agree to file a joint stipulation of dismissal with prejudice of the claims between it and the City in the Lawsuit (the "Motion"). The Motion will provide that the Parties have resolved their differences and that title to 3<sup>rd</sup> Street will revert to NJK;

WHEREAS, the Parties have, between themselves, negotiated a complete resolution of any and all disputes, claims or potential claims brought or which could have been brought in the Lawsuit;

NOW THEREFORE, for and in consideration of the Parties agreeing to the terms herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The above recitals are hereby made a part of this Agreement.

2. **Submission of Joint Stipulation of Dismissal and Proposed Final Order.**  
Upon execution of this Agreement, the Parties agree to file a Joint Stipulation of Dismissal of the Lawsuit. The Parties also agree to thereafter jointly submit to the court a proposed final order vacating 3rd Street and dismissing the Lawsuit with prejudice.

3. **Release/Waiver of Damages.** Except as otherwise provided in this Agreement, NJK, its successors and assigns, do hereby completely and irrevocably release, cancel, forgive, and forever discharge the City and its agents, attorneys, successors and assigns (provided that none of the foregoing – other than the City – are defendants to this Lawsuit), from all actions, claims, demands, damages, obligations, liabilities, controversies, and executions, of any kind or nature whatsoever, whether known or unknown, whether suspected or not, which have arisen, or may have arisen under the facts and circumstances surrounding the Lawsuit and/or the vacation of 3<sup>rd</sup> Street, and NJK specifically waives any claim or right to assert any cause of action or alleged cause of action or claim or demand against the City which has, through oversight or error intentionally or unintentionally or through mutual mistake, been omitted from this release. The City, its affiliates, agents, attorneys, successors or assigns, further hereby completely and irrevocably release, cancel, forgive, and forever discharge NJK, its agents, attorneys, successors and assigns, from all actions, claims, demands, damages, obligations, liabilities, controversies, and executions, of any kind or nature whatsoever,

whether known or unknown, whether suspected or not, which have arisen, or may have arisen under the facts and circumstances surrounding the Lawsuit and/or the vacation of 3<sup>rd</sup> Street.

4. **Opportunity to Review.** Each of the Parties represents and declares that, in executing this Agreement, it relied solely upon its own judgment, belief and knowledge, and each of the Parties has read this Agreement, has been represented or has had an opportunity to be represented by independent counsel, and that it has not been influenced to any extent whatsoever in executing the same by any representations or statements governing any matter made by any other parties or by any person representing any of such other.

5. **Non-Assignment or Transfer of Claims.** NJK and the City hereby represent and warrant to the other that neither has heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any claims, debts, liabilities, demands, obligations, damages, losses, costs, expenses, attorneys' fees, actions or causes of action released herein.

6. **Jurisdiction and Venue.** The Parties acknowledge that for the purpose of enforcing the terms of this Agreement or entering judgment, appropriate jurisdiction and venue shall lie with the Birmingham Division of the Circuit Court of Jefferson County, Alabama.

7. **Voluntary Execution and Mutual Assent.** Every Party to this Agreement has had the opportunity to investigate this matter, determine the advisability of entering into this Agreement and has entered into this Agreement freely and voluntarily. All of the Parties acknowledge that in executing this Agreement they have relied solely on their own judgment, belief and knowledge and on such advice as they may have received from their own counsel, and none of the Parties has been influenced by any representation or statements made by the

other party or its counsel. No provision in this Agreement is to be interpreted for or against any Party because that Party or that Party's counsel drafted such provision. No promise or agreement not herein expressed has been made by or on behalf of said Parties. The stated consideration is the sole and only consideration for the releases set forth herein and is accepted in full settlement and satisfaction of any and every claim previously described herein.

8. **Entire Agreement.** This Agreement embodies the entire understanding and agreement of the Parties concerning the resolution of all disputes, claims or potential claims that are set forth herein, including, without limitation, those claims related to the subject matter of the Lawsuit.

9. **Binding Effect.** The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each of the Parties. The Parties represent and warrant that the signatories to this Agreement have the requisite authority to bind the Parties, and that this Agreement has been approved pursuant to duly authorized proceedings and, therefore, is binding and legally effective.

10. **Timely Execution and Action.** The Parties, and each of them, agree to execute such other documents and take such other immediate action as may reasonably be necessary to accomplish the purpose of this Agreement.

11. **Severability.** In the event that any condition, covenant or other provision of this Agreement is held to be invalid or void by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Agreement and shall in no way affect any other condition, covenant or other provision of this Agreement. If such condition, covenant or other

provision is held to be invalid due to its scope or breadth, it is agreed that it shall be deemed to remain valid to the extent permitted by law.

12. **Non-Waiver.** No breach of any provision of this Agreement shall be deemed waived unless it is waived in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

13. **Amendment.** This Agreement can be amended or modified by only a written agreement duly executed by both of the Parties.

14. **Choice of Laws.** This Agreement shall be governed by and construed and enforced under the laws of the State of Alabama.

15. **Joint Drafting.** All parties to this Agreement have had an opportunity to contribute to the drafting of this Agreement. The Parties agree that in the event any action in a court of law is brought to enforce this Agreement, any ambiguity contained herein will not be construed against either Party by virtue of the fact that the Party drafted all or part of this Agreement.

16. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning, interpretation, or construction of any provision of this Agreement.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.



**IN WITNESS WHEREOF**, the undersigned have executed this Agreement as of the  
day, month and year above written.

**NJK, LLC**

**BY:** \_\_\_\_\_

\_\_\_\_\_

*PRINT NAME*

**ITS:** \_\_\_\_\_

**THE CITY OF MOUNTAIN BROOK, ALABAMA**

**BY:** \_\_\_\_\_

\_\_\_\_\_

*PRINT NAME*

**ITS:** \_\_\_\_\_

**RESOLUTION NO. 2017-004**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the conditional service use application submitted by Ryder Hollis to allow personal fitness classes at 2830 Culver Road, subject to the following condition:

- (1) That group class sizes and times be limited to that presented by the applicant in conjunction with the conditional use request, with the further prohibition of group classes between 10:00 and 4:30.

**ADOPTED:** This 10th day of January, 2017.

\_\_\_\_\_  
Council President

**APPROVED:** This 10th day of January, 2017.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on January 10, 2017, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



CITY OF MOUNTAIN BROOK

Dana O. Hazen, AICP  
Director of Planning, Building &  
Sustainability  
56 Church Street  
Mountain Brook, Alabama 35213  
Telephone: 205/802-3821  
Fax: 205.879.6913  
hazend@mtnbrook.org  
www.mtnbrook.org

DATE: January 5, 2017

TO: Mayor, City Council & City Manager FROM: Dana Hazen, City Planner

RE: Conditional Use – Personal Fitness  
2830 Culver Road, (previous Mike Meadows Balance Fitness)

**Background:**

In 2012 the council approved a personal fitness establishment in this same location at Mountain Brook Mall; it was one of the first fitness uses reviewed by the council after the zoning code was amended to require personal service uses to obtain council approval (which is mainly based on a proposed use's effect on parking). At that time the villages were much less saturated with fitness uses, and the related negative effects on parking were not yet realized. As such, the fitness use was approved with only one condition: that the class size between noon and 1:00 p.m. was limited to 8 clients. The council did not impose restrictions on class size for the remainder of the day.

**Recent Background:**

Since that time the council has been approached by several fitness uses for conditional use approval in all of the villages. The potential parking conflicts associated with group classes has, over time, become more and more apparent, and the council has attempted to balance the parking demands of these uses, retailers and restaurants by limiting group fitness classes to morning and late afternoon/evening.

**Proposed Use:**

The proposed use contains a mixture of group classes and one-on-one training:

Group classes are proposed from 5:00 a.m. to 10:00 a.m. and 3:00 p.m. to 7:00 p.m., with a maximum of 7 persons on-site at any time (2 trainers and 5 clients).

Personal training sessions would be available throughout the day and may include up to 2 trainers and 2 clients at a time.

Parking at the MB Mall is legal nonconforming in that it is required to have 100 parking spaces for its 20,000 sf (based on a retail ratio of 1/200) and there are 48 spaces on site (or 1 space for each 416 sf).

The subject tenant suite is 2,000 sf, thereby having 4 on-site spaces loosely dedicated to its portion of the overall square footage of the mall. The attached letter from the applicant indicates that the 1-2 instructors will park on-site, theoretically leaving 2 on-site spaces for clients, with the remaining 3 (during group classes) parking on the street.

**For reference:**

Neighboring conditional fitness uses:

1. Mountain Brook Yoga (2414 Canterbury Road), was approved by the council with a prohibition on group sessions between 10:30 and 4:00, Monday-Saturday.
2. MPower Pilates (2419 Canterbury Road), was approved by the council with a prohibition on group sessions between 10:30 and 4:30, Monday-Friday.

**Recommendation:** While recognizing that this proposed use places less demand on the public parking inventory than the previously-approved Mike Meadows use in the same space, staff recommends that group classes be prohibited between 10:30 and 4:00/4:30, to be consistent with more recent approvals of a similar nature.

## **Business Specifications**

**Type of Business:** Personal and Small Group Training

**Location:** 2830 Culver Road, Mountain Brook Alabama, 35223

**Building Size:** 2700 sqft

### **Small Group Training:**

**Operation Days/Times:** Monday-Saturday, 5:00am-10:00am, 3:00pm-7:00pm

**Max Capacity** 7 total people, (5 clients and 2 trainers.)

#### **Description:**

A small group training class is made up of four clients and one trainer. An additional trainer may also have a private training session during this time. Small group training would only take place early in the morning and late in the afternoon.

### **Private Training:**

**Operation Days/Times:** Monday-Saturday, 5:00am-7:00pm

#### **Description:**

A private session is between one trainer and one client. There may be up to two trainers each working with one client during this time. Unlike small group training, personal training would take place throughout the entire day.

Trainers will park behind the building so clients from our business and other businesses can use store front parking.

Please let me know if you have any more questions.

Thank you,  
Ryder

**RESOLUTION NO. 2017-005**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes either the Mayor or City Manager to execute, for and on behalf of the City, the First Amendment to Lease Agreement between the City and New Cingular Wireless PCS, LLC, in the form as attached hereto as Exhibit A, with respect to the wireless communications facilities located at 3021 Mountain Brook Parkway.

**ADOPTED:** This 10th day of January, 2017.

\_\_\_\_\_  
Council President

**APPROVED:** This 10th day of January, 2017.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on January 10, 2017, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

~~1. **Expansion of Permitted Use.** Tenant, its personnel, invitees, contractors, agents, subtenants, or its authorized subtenants, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and to modify, supplement, replace, upgrade, including but not limited to the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon (collectively, "**Communications Facility**"), or relocate the same within the Premises at any time during the term of the Agreement for any reason, with equipment of similar size and character as that presently located on the Premises as of the date of this Amendment. so long as these changes do not exceed the structural capacity of the tower/structure at this height, or at Tenant's sole expense upgrade the structural capacity, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services, or for any other reason. Notwithstanding the foregoing, Any change to the Premises involving an increase in the number or size of antenna, equipment or facilities of Tenant or otherwise impacting the aesthetic of the Property shall make all reasonable efforts to maintain the aesthetic of the Property, any substantial change to the aesthetic shall require Lessor consent, which, such consent shall not be unreasonably withheld. Lessor may, however, condition such change on the use of concealment measures, screening, reconfiguration or other measures designed to allow such change without compromising the aesthetic, historic nature or environmental character of the Property and surrounding areas, conditioned or delayed. Lessor shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. ~~If Lessor does not comply with the terms of this section, in addition to any other rights it may have at law, Tenant may terminate the Agreement and shall have no further liability to Lessor. If Lessor does not comply with the terms of this section, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Lessor's default and to deduct the costs of such cure from any monies due to Lessor from Tenant.~~~~

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**Rental Stream Offer.** If at any time after the date of this First Amendment, Lessor receives a bona fide written offer from a third party seeking an assignment or transfer of the Rent payments associated with the Agreement ("**Rental Stream Offer**") that Lessor intends to consider, Lessor shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Tenant chooses not to exercise this right or fails to provide written notice to Lessor within the ninety (90) day period, Lessor may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of the Agreement. If Lessor attempts to assign or transfer Rent payments without complying with this Paragraph, the assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement until Lessor complies with this Paragraph.

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**ORDINANCE NO. 1970**

**AN ORDINANCE AMENDING ARTICLES III, IV, V, VII, VIII, XVIII, XX, XIX OF THE CITY CODE REGARDING BUILDING LIMITATIONS IN RESIDENTIAL ZONING DISTRICTS, USE EXEMPTIONS, EXCEPTIONS TO REQUIRED SETBACKS FOR ARCHITECTURAL FEATURES, AND ACCESSORY BUILDINGS ON RESIDENTIAL LOTS**

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**BE IT ORDAINED** by the City Council of the City of Mountain Brook, Alabama, that Articles III, IV, V, VII, VIII, XVIII, XX, XIX of the City Code are hereby amended to as follows:

**Section 1.**

**“Article III. – Residence A District**

**Sec. 129-34. - Area and dimensional requirements.**

**(c) Building limitations.**

(1) Maximum building area .....25 percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

**Article IV. – Residence B District**

**Sec. 129-52. - Area and dimensional requirements.**

**(c) Building limitations.**

(1) Maximum building area .....35 percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

**Article V. – Residence C District**

**Sec. 129-62. - Area and dimensional requirements.**

**(c) Building limitations.**

(1) Maximum building area .....35 percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

**Article VII. – Residence D District**

**Sec. 129-92. - Area and dimensional requirements for townhouses.**

**(d) Building limitations.**

(1) Maximum building area .....50 percent of the total site area.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

**Sec. 129-93. - Area and dimensional requirements for duplexes and apartment houses.**

**(d) Building limitations.**

(1) Maximum building area .....37½ percent of the total area of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

**Article VIII. – Residence E District**

**Sec. 129-112. - Area and dimensional requirements for townhouses only.**

**(d) Building limitations.**

(1) Maximum building area: .....40 percent of the parcel.

Impervious surfaces are limited to 5% more than the allowed maximum building area, as specified in section 113-228 (e) of Chapter 113.

**Article XVIII. – General Regulations and Provisions**

**Sec. 129-292. - Use exemptions.**

Notwithstanding any other provision of this chapter, there may be constructed or installed in or upon a parcel located within any zoning district, such equipment and minor structures and improvements incidental to the provision and distribution of gas, electricity, water and telecommunication services, including, but not limited to, gas regulators, fogging stations, electric transformer stations without major rotating equipment, solar panel systems, poles, cables and towers for the transmission of electricity, water pressure regulator stations, water pumping stations, telephone exchanges, cables, poles, antennas and masts for antennas as may be approved by the planning commission.

**Article XX. – Exceptions to General Area and Dimensional Requirements**

**Sec. 129-336 – Exceptions to required setbacks for architectural features.**

Encroachments of certain architectural features may be allowed into required front, side, and/or rear setbacks in accordance with the standards of this subsection.

- (a) Cantilevered awnings and canopies may project into a required front, side, and/or rear setback no more than three (3) feet.
- (b) Bay windows and greenhouse windows may project into a required front, side, and/or rear setback no more than two (2) feet, including the drip line, with a maximum width of eight (8) feet.
- (c) Chimneys may project into a required front, side, and/or rear setback, no more than two (2) feet, with a maximum width of eight (8) feet.
- (d) Cornices, pilasters, sills, and other similar decorative architectural features may project into a front, side, and/or rear yard no more than one (1) foot.
- (e) Eaves may project into a front, side, and/or rear yard no more than two (2) feet, with a minimum of two (2) feet maintained to any adjoining lot line.

**Article XIX. – General Area and Dimensional Requirements**

**Sec. 129-314. - Accessory structures and accessory buildings on residential lots**

- (a) *Size.* Accessory buildings may not contain more than the greater of 800 square feet of floor area or 20 percent of the floor area of the principal building on the lot. The height of an accessory building may not exceed the height of the principal building on the lot.



(b) *Relationship to parcel and dwelling.* No accessory structure or accessory building in a residential district may be erected in any actual or required front yard. An accessory building may not be located closer than ~~ten~~ 10 feet to any other structure on the same parcel and may not occupy more than 15 percent of any actual or required rear or side yard. An accessory structure or accessory building must be located at least ~~five~~ 5 feet from the dwelling on the parcel on which the accessory structure or building is located, and may be attached to the principle structure by means of a covered, open breezeway that is no wider than 8 feet, is not enclosed (contains no more than two (2) walls) and is not heated nor cooled. Notwithstanding the foregoing, fences or walls can be erected up to the property line, and may be erected directly adjacent to the principal structure.

(c) *Setback requirements.* All accessory buildings which do not exceed ~~400~~ 625 square feet and ~~15~~ 25 feet in height (or the height of the principle structure on the lot, whichever is lower), must be at least ~~ten~~ 10 feet from all lot lines, except that such buildings may be allowed to conform to the required side setbacks for principal buildings on non-conforming Residence B and Residence C lots, as specified in sections 129-53 and 129-63 of this chapter. Accessory buildings exceeding ~~400~~ 625 square feet or ~~15~~ 25 feet (or the height of the principle structure on the lot, whichever is lower) shall be subject to the regular setbacks specified in the regulations for each zoning district. Notwithstanding any other provision contained in this chapter, no accessory structure or accessory building may be located in a front yard or nearer than 60 feet to the front street line of the parcel on which the accessory structure or accessory building is located.'

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

**ADOPTED:** The 10th day of January, 2017.

\_\_\_\_\_  
Council President

**APPROVED:** The 10th day of January, 2017.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on January 10, 2017, as same appears in the minutes of record of said meeting, and published by posting copies thereof on January 11, 2017, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street  
Overton Park, 3020 Overton Road

Gilchrist Pharmacy, 2805 Cahaba Road  
Cahaba River Walk, 3503 Overton Road

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City Clerk

## **Proposed Zoning Amendments**

The ZOR (Zoning Ordinance Review) Committee and the Planning Commission recently reviewed several proposed zoning amendments regarding the zoning code of the City of Mountain Brook, specifically pertaining to Articles III, IV, V, VII, VIII, XVIII, XX, XIX, and has forwarded the recommendations herein to the City Council. The ZOR Committee consisted of Phil Black, Susan Swagler and the BZA Chairman and Co-Chairman, Patrick Higginbotham and Will Hereford. Also, staff solicited the input of local architects with respect to items 3 and 4 below.

The exact language of all proposed changes is attached—new language is written and underlined in **red ink**.

All amendments are discussed at length below:

### **1. Insert a Reference to the Storm Water Detention Ordinance in the Zoning Code**

Within each residential article of the zoning code there is a regulation limiting the maximum building area for a lot in said district. The intent of this regulation is to limit the maximum lot coverage (or building footprint) for each lot. However there is an additional regulation that is derived from the storm water ordinance (which is not in the zoning code) which further limits *all* impervious area (which includes the building footprint, driveway, walkway, patio, etc.) on a residential lot to 5% more than the maximum building area specified in a particular zoning district.

The problem encountered by staff is that design professionals have a difficult time finding the storm water ordinance limitations. They arrive at the “maximum building area” regulation in the zoning code and then incorrectly assume this is the maximum impervious area, or if they know there is a separate regulation for the overall impervious area they have a hard time locating it.

The purpose of this zoning amendment is to link the two regulations together by inserting a note (actually a *link* for the on-line version of the municipal code) regarding the storm water ordinance regulation alongside the maximum building area regulations noted in each residential article of the zoning code. This will make it easier for citizens to quickly find the ordinance, and will look like this for Res-A:

“(c) *Building limitations.*

(1)Maximum building area .....25 percent of the total area of the parcel.

**Impervious surfaces are limited to 5% more than the allowed maximum building coverage, as specified in section 113-228 (e) of Chapter 113.**

(2)Maximum building height .....35 feet

(3)Maximum number of stories .....2”

The attached proposed language inserts this change into each of the following residential articles: Res-A, Res-B, Res-C, Res-D and Res-E.

**2. Insert Specific Language Regarding PC Review of Solar Panel Systems**

The purpose of this proposed zoning amendment is to specifically mention *solar panel systems* in Section 129-292, Use Exemptions, (Article XVIII – General Regulations and Provisions). This section of the zoning code allows for the installation of a variety of utility equipment and minor structures in any zoning district, with the approval of the Planning Commission, but does not specifically mention solar panel systems (simply because such systems were probably not common when the original provision was written).

The Planning Commission recently reviewed a request to install a ground mount solar panel system on a residential lot, and staff referenced this section of the zoning code for Planning Commission authority to review, but recognized the need to add specific language to the code.

**“Sec. 129-292. - Use exemptions.**

Notwithstanding any other provision of this chapter, there may be constructed or installed in or upon a parcel located within any zoning district, such equipment and minor structures and improvements incidental to the provision and distribution of gas, electricity, water and telecommunication services, including, but not limited to, gas regulators, fogging stations, electric transformer stations without major rotating equipment, solar panel systems, poles, cables and towers for the transmission of electricity, water pressure regulator stations, water pumping stations, telephone exchanges, cables, poles, antennas and masts for antennas as may be approved by the planning commission.”

**3. Exceptions to Required Setbacks for Architectural Features (all new language)**

This section is proposed as new language to be added under Article XX – Exceptions to General Area and Dimensional Requirements. This section will make specific reference to allowable encroachments of certain minor architectural features into required front, side, and/or rear setbacks.

The purpose of this section is to allow architectural enhancements to residential structures without the need for a variance. Decorative architectural features such as awnings, bay windows, cornices, and pilasters serve to add architectural interest and enhance the housing inventory of the city. However, the Board of Zoning Adjustment has often denied requests of this nature (in accordance with state law) since they rarely relate to a hardship inherent to the site. This has been especially true in cases where an older house may have a flat front elevation and the front door has no protection from the elements and is devoid of architectural interest. The house is usually built to the allowable front setback line and the request has come to BZA for a canopy over the door, which would then encroach into the required front

setback. Since there has typically been no hardship associated with such a request the BZA has been bound to deny, although the encroachments are minor in nature and would not be detrimental to the streetscape or adjoining properties.

*The proposed language in this section would allow minor architectural features to encroach into setbacks, but with limited parameters regarding the amount of allowable encroachment and, in some cases, the width of a particular architectural feature. Some of the language would permit encroachments not currently allowed in a required setback without a variance (such as bay windows, canopies and awnings) and some of the language will simply codify an existing practice of allowing certain types of encroachments without a variance (such as cornices and eaves).*



Figure 1 - Bay Window.

This bay window would be permitted in the proposed section, which states, "Bay windows and greenhouse windows may project into a required front, side, and/or rear setback no more than two (2) feet, including the drip line, with a maximum width of eight (8) feet."

**Figure 2 - Cornice.**

Cornices, such as the one to the right, add a distinction to the dwelling and provide a sense of character. This proposal will clarify language for allowance of these charming features. “Cornices, pilasters, sills, and other similar decorative architectural features may project into a front, side, and/or rear yard no more than one (1) foot.”



**Figure 3 - Awning.**

This awning would be permitted in the proposed section, which states, “Cantilevered awnings and canopies may project into a required front, side, and/or rear setback no more than three (3) feet.”

Also, the Board of Zoning Adjustment has requested that chimneys be a permitted encroachment (with limitations on the amount of encroachment and the width of the chimney).

Figure 4 - Chimney.

This chimney would be permitted in the proposed section, which states, "Chimneys may project into a required front, side, and/or rear setback, no more than two (2) feet, with a maximum width of eight (8) feet."



#### **4. Accessory Buildings on Residential Lots**

There are two parts to this section; one addresses the relationship of an accessory building to the principle structure (as far as what is consider "attached" or "detached"), the other addresses the allowable size and height of accessory buildings which are eligible for reduced side and rear setbacks.

##### **a. Is it attached or detached?**

It has historically been the practice of city staff to differentiate between detached and attached accessory buildings based on whether or not the "attachment" was heated and cooled. If so, it was considered to be attached. However, this interpretation is not in the zoning code, so the purpose of this this amendment is to codify this interpretation. The following language is proposed to be added to Section 129-314(b) of Article XIX (General Area and Dimensional Requirements).

An accessory building... "may be attached to the principal structure by means of a covered, open breezeway that is no wider than 8 feet, is not enclosed (contains no more than two (2) walls) and is not heated nor cooled."

This proposal will add clarity and regulation, allowing citizens to add this connection without adding additional square footage to their principal dwelling.



Figure 5 - Detached Accessory Building.

This open breezeway from the principle structure to the accessory building would be allowed under the proposed additional language.

It is:

- ✓ Not enclosed
- ✓ Not heated nor cooled
- ✓ Less than 8 feet wide

**b. Size and Height of Detached Accessory Buildings**

Also being proposed is a change to the existing maximum square footage and height limit for detached accessory buildings which are eligible for reduced side and rear setbacks (10 feet).

For the purpose of reference, the zoning code has an absolute cap on the size and height of accessory buildings (maximum size is the greater of 800 square feet or 20% of the principle building, and the maximum height is no higher than the principle building). The setbacks required for accessory buildings of this size and height are the same as the principle building for the zoning district in which it is located. *There is no change being proposed to this cap or the related setbacks.*

There is also a regulation that allows smaller detached accessory buildings to be 10 feet from the side and rear property lines. Those eligible for these reduced setbacks are currently limited to 400 square feet and 15 feet in height. *The proposal is to increase the square footage and height allowances for these types of buildings.*

Historically, 400 square feet (20x20) has been a common size for a two-car garage; this allows for two (10x20) parking spaces inside a garage. And while this size can accommodate SUV's and larger contemporary vehicles, it proves to be



somewhat of a tight squeeze. As such, homeowners often ask architects to design slightly roomier garages (perhaps with a little storage).

The Board of Zoning Adjustment frequently approves requests for new and remodeled detached accessory buildings (which slightly exceed 400 square feet) to be 10 feet from the side or rear property line. Local architects were asked for input on this issue and expressed that 25x25 (625 square feet) would be much more accommodating and result in fewer requests for variances.

Also, the Board of Zoning Adjustment occasionally reviews requests for detached accessory buildings to be higher than 15 feet. This is usually a result of the designer attempting to match (or nearly match) a steep pitched roof on the principle building. Many houses in Mountain Brook take their architectural roots from European design, which often entails steeper roof pitches. However, when the detached accessory building is limited to 15 feet in height, it ends up looking more like an afterthought (or a shed) than part of a thoughtful, integrated design. And since the height of a building rarely has any real relationship to the site (or hardship) BZA has had to deny, resulting in fewer architectural amenities in the city.

The proposed language is as follows:

*Setback requirements.* All accessory buildings which do not exceed 400 ~~625~~ square feet and ~~15~~ 25 feet in height (or the height of the principle building on the lot, whichever is lower), must be at least ~~ten~~ 10 feet from all lot lines, except that such buildings may be allowed to conform to the required side setbacks for principal buildings on non-conforming Residence B and Residence C lots, as specified in sections 129-53 and 129-63 of this chapter. Accessory buildings exceeding 400 ~~625~~ square feet or ~~15~~ 25 feet (or the height of the principle structure on the lot, whichever is lower) shall be subject to the regular setbacks specified in the regulations for each zoning district.

*It should be noted that in Res-B and Res-C (Crestline and English Village), for lots less than 70 feet wide, the code allows the principle building to be 8-9 feet from the side property line and be 35 feet high).*

The code currently does not differentiate between detached garages and accessory building with other uses, such as storage buildings, offices, pool houses and greenhouses. *No change is herein proposed.*