

**PRE-MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

**CITY HALL PRE-COUNCIL ROOM (A106)
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213**

FEBRUARY 10, 2020, 6:00 P.M.

1. Street light request at 3008 North Woodridge-Virginia Smith and Sam Gaston (See attached information.)
2. Two Village Design Review Committee appointments-Dana Hazen (See attached information. These items may be added to the formal agenda.)
3. Public Participation and R.O.W. acquisition services from Sain Associates for the Hagood sidewalk project-Tony Montanaro of Sain Associates (See attached information. This item may be added to the formal agenda.)
4. Request by The Emmet O'Neal Library to upgrade a part-time position to a full-time position-Lindsay Gardner (See attached information. This item may be added to the formal agenda.)
5. Beech Circle items (See attached information. These items may be added to the formal agenda.)
 - A. Proposal from Skipper Consultants to study before and after traffic patterns from the closure of Beech Circle-Richard Caudle of Skipper Consultants
 - B. Funding and Operating Agreement with Friends of Beech Circle Association-Steve Stine
 - C. Automatic Aid Agreement with the City of Birmingham-Steve Stine
6. Executive Session

Lighting Services NESC® Lease Agreement (Governmental)



Customer Legal Name City of Mountain Brook DBA 3008 N Woodridge Rd
 Service Address SHANNON LANE, BIRMINGHAM AL 35213 County Jefferson
 Mailing Address P.O. Box 130009, Birmingham, AL 35213
 Email Gastons@mtnbrook.org Tel # 205-802-3803 Alt Tel _____
 Tax ID _____ Business Description Municipal

Existing Customer? Yes No If Yes (and if possible), does Customer want Equipment added to an existing account? Yes No Existing Account 36128-68008
For informational purposes only

Equipment									
	Qty	Wattage	Type	Description	OH/UG	M/UM	Equipment Amount (\$)	Estimated Regulated Charge (\$)*	Estimated Monthly Charge (\$)*
(1)	1	108	LED	LED Cobra - 4000k - gray - 8500 to 14000 Lumens	OH	UM	\$12.02	\$2.53	\$14.55
(2)									
(3)									
(4)									
(5)									
(6)									
(7)									
(8)									
(9)									
(10)									
Monthly Total *									\$14.55

Project Notes: To install light on existing pole near 3008 N Woodridge Rd

Initial Term 36 months **Prepaid Amount** \$ 0.00

* The Regulated Charge is subject to change at any time as dictated by the Alabama Public Service Commission. The amount shown is an estimate based on the Unmetered Outdoor Lighting (ODL) rate in effect at time of Agreement proposal; actual charges may vary.

Customer agrees to lease the Equipment referenced above from Alabama Power Company on the attached terms and conditions and authorizes all actions noted above.

Customer Authorized Signature	Date	Alabama Power Company	Date
Sign Here _____	_____	Sign Here _____	_____
Print Name _____	_____	Print Name _____	_____
Print Title _____	_____	Print Title _____	_____

APC Internal Use Only - APC Reference Number (if applicable): _____

TERMS and CONDITIONS (NESC Governmental)

1. **Lighting Equipment Lease.** This Lease Agreement ("Agreement") states the agreed terms and conditions upon which Alabama Power Company ("APC") will: (i) lease to "Customer" (identified on Page 1) the "Equipment" referenced on Page 1 for use at the stated "Service Address" (the "Premises"); and (ii) provide electric service to operate the Equipment. The "Equipment" includes all poles, bases, wiring, conduit, fixtures, controls, and related items necessary to provide lighting service through the listed fixtures, unless expressly noted otherwise in "Project Notes." Customer acknowledges that regulatory change during the Agreement term may require APC to modify or replace some Equipment.
2. **Intent and Title.** This Agreement is not a sale of the Equipment to Customer. Customer expressly acknowledges that APC retains title to the Equipment and agrees that this Agreement only gives Customer the right to use the Equipment during the Agreement term, so long as Customer complies with all terms and conditions. Customer acknowledges that the Equipment, although attached to real property, always will remain the exclusive personal property of APC and that APC may remove the Equipment when this Agreement ends. Customer authorizes APC, without further consent or action, to file any UCC financing statement or security agreement relating to the Equipment and agrees that APC may record those documents. APC makes no representation or warranty regarding treatment of this transaction by the Internal Revenue Service or the status of this Agreement under any federal or state tax law; Customer enters into this Agreement in sole reliance upon Customer's own advisors.
3. **Term.** The initial Agreement term is stated on Page 1, calculated from the date of the first monthly bill. After the initial term, this Agreement automatically renews on a month-to-month basis until terminated by either party by providing written notice of intent to terminate to the other party at least 30 days before the desired termination date. APC's address for notice is P.O. Box 2641, Birmingham, Alabama 35203; Customer's mailing address is noted on Page 1.
4. **Payment.** APC will invoice Customer per the terms stated on Page 1, subject to any change in the electric service charge dictated by the Alabama Public Service Commission. Customer agrees to pay the amount billed by the due date (20 days after billing date). Applicable taxes included in the Equipment price are subject to change at any time. If a balance is outstanding past the due date, Customer agrees to pay the greater of 1.5% of the unpaid balance or \$2.00 and acknowledges that APC may require Customer to pay a deposit of up to two times the Estimated Monthly Charge in order to continue service. If applicable, Customer must provide a copy of its Alabama sales tax exemption certificate.
5. **Premises Activity.** Customer grants a license and right of access to APC, and its contractors and representatives, to enter the Premises with vehicles and equipment to: (i) install and connect the Equipment and, if applicable, remove or disconnect existing equipment (collectively, the "Installation"); (ii) inspect, maintain, test, replace, repair, or remove the Equipment; (iii) provide electric service for the Equipment; or (iv) conduct any other Agreement-related activity (items--(iv) collectively, the "APC Activity"). Customer will not cause or permit any obstruction that may interfere with APC's access to the Equipment. Customer represents that the individual signing this Agreement on its behalf has authority to do so and that it has express authority from all Premises owners (and any other party with rights in the Premises) to enter into this Agreement and to authorize the APC Activity. Customer is solely responsible for safety of the Premises and agrees that APC has no obligation to ensure the safety of the Premises or persons or property entering onto Customer's Premises.
6. **Installation.** Customer represents that: (i) the Premises' final grade will vary no more than 6 inches from the grade existing at the time of Installation; and (ii) if applicable and required for proper Installation, Premises property lines will be clearly marked before Installation.
 - A. **Customer Work.** If APC, upon Customer's request, allows Customer to perform any part of the Installation (including trenching) itself or through a third party, Customer warrants that the work will meet APC's installation specifications (which APC will provide to Customer and are incorporated by this reference). Customer is responsible for all reasonable additional costs arising from Customer's non-compliance with APC's specifications or lack of timely (i.e., 10 days') notice to APC that APC's Installation activity can commence.
 - B. **Underground Facility/Obstruction Not Subject to Dig Law.** Because APC Activity may require excavation not subject to the Alabama's Underground Prevention Legislation (Ala. Code §§ 37-15-1 - 37-15-11) ("Dig Law"), Customer must mark any private utility or facility (e.g., gas/ water/sewer line; irrigation facility; low voltage data/communication line) or other underground obstruction at the Premises that is not subject to the Dig Law. If APC causes or incurs damage due to Customer's failure to mark a private facility or obstruction before APC commences Installation, Customer is responsible for all damages and any resulting delay.
 - C. **Unforeseen Condition.** The estimated charges shown on Page 1 include no allowance for any subsurface rock, wetland, underground stream, buried waste, unsuitable soil, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, etc. not properly marked or identified ("Unforeseen Condition"). If APC encounters an Unforeseen Condition, APC, in its sole discretion, may stop all APC Activity until Customer either remedies the condition or agrees to reimburse all APC costs arising from the condition. Customer is responsible for all costs of Equipment modification or change requested by Customer or dictated by an Unforeseen Condition or circumstance outside APC's control.
7. **Equipment Protection and Damage.** After Installation and throughout this Agreement's term, in the event of any work or digging near the Equipment, Customer (or any person or entity working on Customer's behalf) must: (i) provide notices and locate requests by calling Alabama 811 or 1-800-292-8525; and (ii) provide notices to other utilities or operators as required by the Dig Law. As between Customer and APC, Customer is responsible for all damages arising from failure to comply with applicable law or for Equipment damage caused by anyone other than APC (or an APC contractor or representative).
8. **Maintenance.** During this Agreement's term, APC will maintain the Equipment and will bear the cost of routine repair or replacement. Customer must notify APC of any need for Equipment repair by calling the Business Service Center at 1-888-430-5787.
9. **Disclaimer; Damages.** APC makes no covenant, warranty, or representation of any kind (including warranty of fitness for a particular purpose or of merchantability) regarding the Equipment or any APC Activity. Customer also acknowledges that, due to the unique characteristics of the Premises, Customer's needs, or Equipment choice, the Equipment may not follow IESNA guidelines. Customer waives any right to consequential, special, indirect, treble, exemplary, incidental, punitive, loss of business reputation, or loss of use (including loss of revenue, profits, or capital costs) damages in connection with the Equipment or this Agreement, or arising from damage, hindrance, or delay involving the Equipment or this Agreement, whether or not reasonable, foreseeable, contemplated, or avoidable.
10. **Indemnity.** To the fullest extent allowed by law, Customer agrees to indemnify, release, hold harmless, and, at APC's request, defend APC and its affiliates and contractors (and their officers, directors, employees, representatives, and agents) from or against any loss, damage, cost, expense, or liability (including actual attorneys' fees reasonably incurred and all expenses of investigation and defense) for any damage or claim for personal or bodily injury (including death), property damage (including loss of use), monetary damage, or equitable relief caused by or arising out of any misrepresentation or act or omission of Customer involving this Agreement, the Equipment, or the Premises, whether or not caused by or arising out of the joint, concurrent, or contributory (but not sole) negligence of APC.
11. **Default.** Customer is in default if Customer does not pay the entire amount owed within 45 days of billing. APC's waiver of any past default will not waive any other default. If default occurs, APC, at its discretion, may immediately terminate this Agreement, collect all past due amounts (including late fees) and all amounts due for the Equipment during the remaining Agreement term, remove the Equipment from the Premises, and seek any other available remedy.
12. **Miscellaneous.** This Agreement contains the parties' entire agreement relating to the Equipment and replaces any prior agreement, written or oral. Only a written amendment signed by each party can modify this Agreement, except that either party may update administrative or contact information (e.g., address, phone, website) at any time by written notice to the other party. Customer will not assign, in whole or in part, this Agreement or its Agreement rights or obligations without APC's prior written consent. No assignment, whether with or without consent, relieves Customer of its Agreement obligations. Customer must provide advance notice of a change in control of all, or substantially all, of Customer's ownership or interest in the Premises. In this Agreement, "including" means "including, but not limited to." Alabama law governs this Agreement. If a court rules an Agreement provision unenforceable to any extent, the rest of that provision and all other provisions remain effective.



3008 North Woodridge Road

N Woodridge Rd

N Woodridge Rd

N Woodridge Rd

N Woodridge Rd

Google

RESOLUTION NO. 2020-

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Ellen Elsas is hereby appointed as a supernumerary to the Village Design Review Committee, to serve without compensation; the term of which will end on February 1, 2023.

ADOPTED: This 10th day of February, 2020.

Council President

APPROVED: This 10th day of February, 2020

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 February 10, 2020, as same appears in the minutes of record of said meeting.

City Clerk

RESOLUTION NO. 2020-

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Stutts Everett is hereby appointed as a regular member to the Village Design Review Committee, to serve without compensation; the term of which will end on February 1, 2023.

ADOPTED: This 10th day of February, 2020.

Council President

APPROVED: This 10th day of February, 2020

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 February 10, 2020, as same appears in the minutes of record of said meeting.

City Clerk

WORK AUTHORIZATION

TO: Mr. Sam Gaston
City Manager
City of Mountain Brook
56 Church Street
Mountain Brook, AL 35213

CC: Mr. Andrew Doelman, P.E.
Senior Civil Engineer
Department of Planning, Engineering, & Permits
City of Birmingham
710 20th Street North,
Birmingham, AL 35203

FROM: Tony Montanaro, P.E.
Project Manager

DATE: 1/22/19

SUBJECT: Hagood Street TAP Supplemental Scope – Right-of-Way and Public Involvement

PROJECT #: Sain #18-0079



SAIN
ASSOCIATES

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

I. SCOPE

In the initial project scope, right-of-way tract sketches and deeds and public involvement were excluded. After survey and preliminary design, it became evident that right-of-way acquisition would be required as part of the project. Three properties, all located in the city of Birmingham, will be affected. The first, 516 Hagood Street, is due to the property corner and property line being in the middle of the road. The other two, 1000 and 654 Hagood Street, are due to avoiding impact several AT&T cabinets. The AT&T Cabinets were a known issue, but the solution was unclear until survey and preliminary design were performed.

It has also been requested by the City of Birmingham that public involvement be added to the project. Public involvement was not required by the project for the level of environmental document, and the City of Mountain Brook had previously held a meeting with the public regarding the cities sidewalk plan. However, the portion of the project through Birmingham City limits has not been shown to the public, so the City of Birmingham has requested a public meeting.

No right-of-way is required in the City of Mountain Brook. However, the City of Mountain Brook will need to contact one property owner (915 Sims Avenue) to notify them that their fence will be relocated from the right-of-way during construction.

Right-of-Way Tract Sketches and Legal Descriptions

Tract sketches, also referred to as property plats, will be prepared on a maximum of 3 affected parcels as indicated on the attached exhibits A & B. In addition we will prepare acquisition deeds, also referred to as legal descriptions, for each parcel of property acquired. The tract sketches and acquisition deeds will be prepared using bearings and distances as well the standard ALDOT/Station & Offset method. Due to the populated nature of the work area

commencement points or land ties, to the public land survey system, may not be available. In the event that ties cannot be made to the Public Land Survey System ties will be shown to platted subdivisions on record in the Judge of Probate for Jefferson County Alabama. The sketches and deeds will be provided to the City of Birmingham for appraisals and acquisition.

Public Involvement

Sain will coordinate, advertise, and present at one neighborhood association meeting. The presentation will contain a brief project description. Sain will prepare color exhibits of the proposed layout showing ROW limits and proposed construction. These exhibits will be displayed after the meeting and representatives from Sain will be available to answer questions from the public.

II. BUDGET

We propose to provide the above described services based on the following fee schedule:

Right-of-Way Tract Sketches and Legal Descriptions.....	\$7,500
Public Involvement.....	\$8,500
Total Estimated Budget	(LUMP SUM) \$16,000

III. STATUS

We are available to begin this work upon authorization.

IV. TERMS AND CONDITIONS

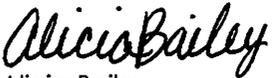
This contract is subject to the enclosed Terms and Conditions. All subsequent services required by you outside the scope of service specified will be performed on a time and materials basis according to the schedule of rates enclosed. Any modification to this contract document must be approved in writing by both parties with approval indicated by each signatory's initials and the date of approval.

V. PROPOSAL LIMITATIONS

We reserve the right to withdraw or modify this proposal if not contracted within 60 days.

Sincerely,
SAIN ASSOCIATES, INC.


Antonio Montanaro
Project Manager
PE #36735 AL


Alicia Bailey
Principal/Owner
AL #26339

APPROVED:
CITY OF MOUNTAIN BROOK

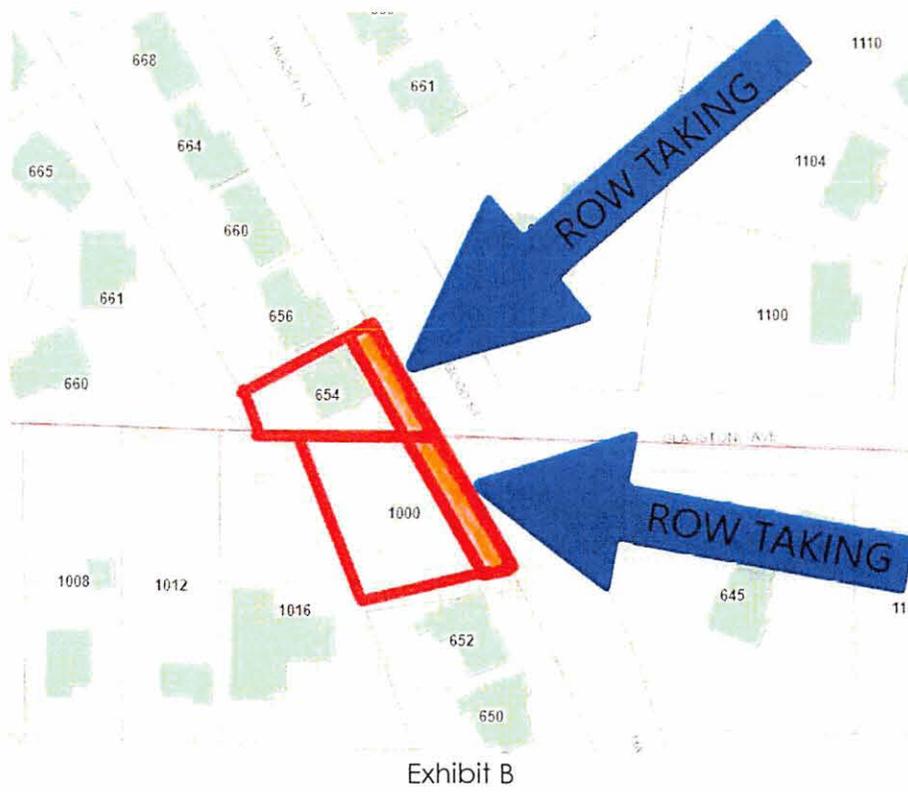
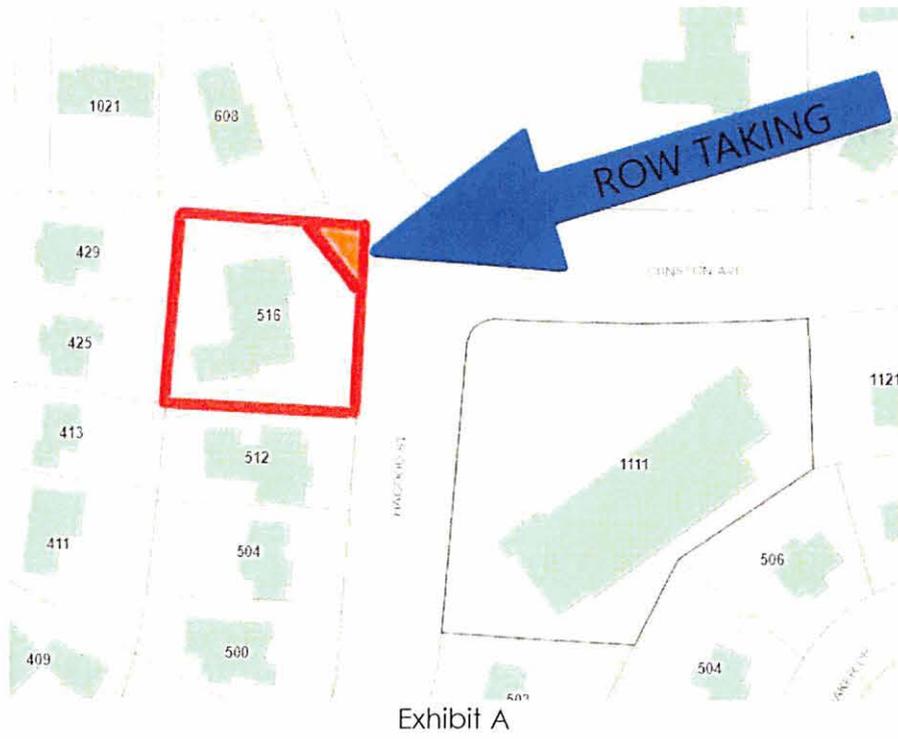
By: _____
Authorized Representative

Printed Name, Title

Date

Enclosures: Terms & Conditions, (Sch. 2020)
Insert additional enclosures

Exhibits



SAIN ASSOCIATES, INC.

TERMS AND CONDITIONS

Rates:

Principal	\$180.00 - \$200.00 per Hour
Engineer/Planner	\$98.00 - \$175.00 per Hour
GIS Professional	\$120.00 per Hour
Designer.....	\$82.00 - \$117.00 per Hour
Surveyor	\$93.00 - \$130.00 per Hour
Survey Crew (1-Person).....	\$90.00 per Hour
Survey Crew (2-Person).....	\$140.00 per Hour
Survey Crew (3-Person).....	\$180.00 per Hour
Survey Crew (Overtime, Holidays – 2-Person)	* \$180.00 per Hour
Survey Crew (Overtime, Holidays – 3-Person)	* \$220.00 per Hour
Survey Per Diem	\$150.00 per person per Night
Administrative Support	\$60.00 per Hour

* Overtime rate is based on working over 8 hours a day.

Reimbursable Expenses

Printing, contract carrier service, and travel expenses are not included within our basic fee and will be passed along to you at our cost, plus 10%.

Payment

To be made monthly based upon the percentage of work completed and invoiced to you. Your obligation to pay for services rendered hereunder is in no way dependent upon your ability to obtain financing, to obtain payment from a third party, or to obtain approval of any governmental or regulatory agencies, or upon your successful completion of the project. Payment for services and expenses hereunder is due in full within thirty (30) days after receipt of invoice. For past due accounts in excess of 120 days Sain will issue a past due statement with interest of 1½% per month from said thirtieth (30th) day. Sain may elect to seek assistance in collection of accounts in excess of 120 days in which case you will be billed for attorney's fees for collection in the amount of 1/3 of the outstanding balance or such greater amount as the court finds reasonable. We reserve the right to suspend services under this agreement until receipt of payment in full for all amounts due for services rendered and expenses incurred.

AL Immigration Law Compliance

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 there from.

Standard of Care

The standard of care for all professional services performed or furnished by Sain Associates under this Agreement will be the skill and care used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Sain makes no warranties, express or implied, under this Agreement or otherwise, in connection with Sain's services.

Responsibility of the Client

Client shall provide all criteria and full information as to his requirements for the Project, including budgetary limitations.

Schedules, Budgets and Estimates or Opinions of Cost

Any schedules or completion dates, budgets, or estimates of cost prepared by Consultant represent Consultant's professional judgment based on its experience and available information. Since neither Consultant nor Client has control over: the cost of labor, materials, or equipment, or contractor's methods of determining prices; competitive bidding or market conditions; utility conflicts or right-of-way acquisition; agency approval times or actions of a Consultant Program Manager not employed by Sain, the Consultant cannot and does not warrant or represent that actual schedules, budgets or completion dates or actual costs will not vary from schedules or completion dates, budgets or estimates of cost prepared by Consultant or proposed, established, or approved by Client.

Jobsite Safety/Construction Phase Services

The Contractor has sole responsibility for jobsite safety and construction means and methods, not the design professional. The Consultant/design professional is not responsible for the acts or omissions of any contractor, subcontractor or material supplier.

Use of Electronic Media

Copies of documents that may be relied upon by the Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data, graphic or other types that are furnished by Consultant to Client are only for convenience of the Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application, operating systems or computer hardware differing from those in use by Consultant at the beginning of this assignment.

Limitation of Remedies

Liability of remedies of Sain Associates, Inc. resulting from errors, omissions, or the negligence of Sain Associates, Inc., its agents or employees, pursuant to work under this agreement shall not exceed the lesser of the value of engineering or surveying services required to correct the deficiency or the basic consulting fee for work covered hereunder or the actual cost of the remedies. This provision is being agreed to as a result of the fees being charged.



SAIN ASSOCIATES, INC.

TERMS AND CONDITIONS

Dispute Resolution

Client and Sain Associates agree that if a dispute arises out of or relates to this contract, the parties will attempt to settle the dispute through good faith negotiations. If direct negotiations do not resolve the dispute, the parties agree to endeavor to settle the dispute by mediation prior to the initiation of any legal action unless delay in initiating legal action would irrevocably prejudice one of the parties. Mediation to take place in County where project is located and if mediation cannot be agreed upon by parties then it is agreed that AAA (American Arbitration Association) will appoint mediator.

Indemnification

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

Force Majeure

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

Termination of Contract

Client may terminate this Agreement with seven days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Consultant has been paid in full all amounts due for services, expenses and other related charges.

Ownership of Documents

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

Schedule 2020



Sam Gaston

From: Montanaro, Tony <TMontanaro@sain.com>
Sent: Friday, December 20, 2019 3:39 PM
To: 'Doelman T. Andrew'
Cc: Sam Gaston (gastons@mtnbrook.org); Bailey, Alicia
Subject: RE: Hagood TAP
Attachments: Cost Estimate_PSE.pdf

Andrew,

We can certainly add public involvement to our scope of work. We are going to need to submit for a supplement agreement to handle the tract sketches and deeds for the ROW acquisition, so that can be included with that. I copied Sam on this as well since they are the prime, so he is aware that you all are requesting the public involvement.

We have the plans about ready to submit for PS&E review from ALDOT. I have attached a cost estimate based on these plans. The Construction and CE&I number, about \$670K come in a good bit below the \$800K TAP fund, so there may still be around \$130K to play with. However, from what we've seen, bid prices are ever on the increase and there could be some indirect costs associated with the project that could pull that number much closer to the grant amount. Additionally, the ROW acquisition and supplemental contract may take a dip into both cities budget for the project.

We will look to submit the plans in January so we can get to ROW acquisition, as that will be the critical path moving forward to get to project letting. I will start pulling together a supplemental agreement for the sketches and deeds and public involvement as well.

Thanks,

Tony Montanaro, PE

Project Manager

Direct: (205)263.2116



SAIN
ASSOCIATES

From: Doelman T. Andrew [mailto:Andrew.Doelman@birminghamal.gov]

Sent: Friday, December 20, 2019 2:15 PM

To: Montanaro, Tony

Subject: RE: Hagood TAP

Tony,

I spoke to traffic engineering and our director, James Fowler, he thinks we should have some public involvement meetings, or at least one, on this one. I know it isn't in your current contract, but Alicia mentioned you guys were having to get a supplemental agreement already? It may be a good idea to see if we can add in community outreach to your supplemental.



PUTTING PEOPLE FIRST

WWW.BIRMINGHAMAL.GOV

Andrew Debaat Doelman, P.E.

Senior Civil Engineer

Department of Planning, Engineering, & Permits

City of Birmingham

p: 205-297-8258

Opinion of Probable Construction Cost - Hagood Sidewalk TAP					
12/20/2019					
Dunbarton Drive Sidewalk Improvements					
Pay Item No.	Item Description	Unit	Quantity	Unit Price	Amount
201A-002	Clearing & Grubbing (Maximum Allowable Bid \$4000 Per Acre) (1.5 Acre)	Lump Sum	1	\$6,000.00	\$6,000.00
206D-000	Removing Pipe	Linear Foot	34	\$11.34	\$385.53
206D-003	Removing Curb And Gutter	Linear Foot	224	\$14.04	\$3,145.30
206D-005	Removing Gutter	Linear Foot	440	\$10.81	\$4,756.40
206D-011	Removing Fence	Linear Foot	11	\$11.50	\$126.50
206E-000	Removing Headwalls	Each	2	\$435.17	\$870.34
206E-001	Removing Inlets	Each	2	\$524.12	\$1,048.25
209A-000	Mailbox Reset, Single	Each	34	\$334.16	\$11,361.29
210A-000	Unclassified Excavation	Cubic Yard	555	\$14.98	\$8,316.40
210D-011	Borrow Excavation (A-4 Or Better)	Cubic Yard	312	\$40.28	\$12,568.76
305B-071	Coarse Aggregate, Section 801, For Miscellaneous Use	Ton	369	\$48.24	\$17,801.48
533A-855	12" Storm Sewer Pipe	Linear Foot	14	\$57.50	\$805.00
533B-098	22" Span, 14" Rise Storm Sewer Pipe (Class 3 R.C.)	Linear Foot	140	\$67.29	\$9,420.11
602A-000	Right Of Way Markers	Each	6	\$467.84	\$2,807.06
610D-003	Filter Blanket, Geotextile	Square Yard	169	\$3.55	\$600.54
618A-000	Concrete Sidewalk, 4" Thick	Square Yard	2203	\$74.16	\$163,382.19
618B-003	Concrete Driveway, 6" Thick (Includes Wire Mesh)	Square Yard	762	\$54.10	\$41,221.15
620A-000	Minor Structure Concrete	Cubic Yard	1	\$1,496.55	\$1,496.55
621C-030	Inlets, Type "Special"	Each	5	\$5,088.31	\$25,441.57
623A-001	Concrete Gutter (Valley)	Linear Foot	561	\$38.40	\$21,541.56
623B-000	Concrete Curb, Type N	Linear Foot	49	\$37.79	\$1,851.66
623C-003	Combination Curb & Gutter, Type C (Modified)	Linear Foot	1779	\$32.41	\$57,652.05
637A-000	Fence Reset	Linear Foot	93	\$17.25	\$1,604.25
641R-515	1 Inch Water Meter And Box Reset	Each	6	\$830.09	\$4,980.56
641S-500	Valve Box Reset	Each	1	\$276.15	\$276.15
650A-000	Topsoil	Cubic Yard	157	\$32.53	\$5,107.76
654A-000	Solid Sodding	Square Yard	579	\$6.54	\$3,788.69
665A-000	Temporary Seeding	Acre	1	\$704.51	\$704.51
665B-001	Temporary Mulching	Ton	6	\$337.27	\$2,023.63
665I-000	Temporary Riprap, Class 2	Ton	50	\$61.20	\$3,060.15
665J-002	Silt Fence	Linear Foot	2968	\$3.68	\$10,922.24
665N-000	Temporary Coarse Aggregate, Aldot Number 1	Ton	106	\$34.95	\$3,704.54
665O-001	Silt Fence Removal	Linear Foot	2968	\$1.04	\$3,071.88
665P-005	Inlet Protection, Stage 3 Or 4	Each	11	\$458.75	\$5,046.21
665Q-002	Wattle	Linear Foot	20	\$11.50	\$230.00
674A-000	Construction Safety Fence	Linear Foot	200	\$3.23	\$646.30
701G-265	Solid Yellow, Class 2, Type A Traffic Stripe (5" Wide)	Linear Foot	298	\$3.16	\$942.43
703A-002	Traffic Control Markings, Class 2, Type A	Square Foot	1654	\$5.21	\$8,616.51
710A-160	Class 10, Aluminum Flat Sign Panels 0.08" Thick (Type Xi Background)	Square Foot	50	\$20.10	\$1,005.10
710A-165	Class 10, Aluminum Flat Sign Panels 0.08" Thick (Type Xi Background, Flourescent)	Square Foot	9	\$20.10	\$180.92
710B-021	Roadway Sign Post (#3 U Channel, Galvanized Steel Or 2", 14 Ga Square Tubular Steel)	Linear Foot	126	\$13.72	\$1,728.66
710C-000	Removal Of Existing Roadway Signs	Lump Sum	1	\$1,500.00	\$1,500.00
711A-000	Roadway Sign Relocation	Lump Sum	1	\$1,500.00	\$1,500.00
740B-000	Construction Signs	Square Foot	289	\$9.17	\$2,648.83
740D-000	Channelizing Drums	Each	168	\$37.19	\$6,248.09
740E-000	Cones (36 Inches High)	Each	30	\$7.91	\$237.36
740M-001	Ballast For Cone	Each	30	\$3.65	\$109.37
				Subtotal	\$462,483.81
	Contingency			10.00%	\$46,248.38
				Construction Costs	\$508,732.19
680A-001	Geometric Controls			1.30%	\$6,613.52
600A-000	Mobilization			9.70%	\$49,347.02
	Construction Engineering and Inspection			20.00%	\$101,746.44
				Total Estimated Construction Cost	\$666,439.17

NOTE: ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST PROVIDED IS MADE ON THE BASIS OF ENGINEER'S EXPERIENCES AND QUALIFICATION AND REPRESENTS ENGINEER'S BEST JUDGMENT WITHIN THE INDUSTRY. ENGINEER DOES NOT GUARANTEE THAT PROPOSALS, BIDS, OR ACTUAL COST WILL NOT VARY FROM ENGINEER'S OPINION OF PROBABLE COST.

Public Information Meeting
for
Project Number: TAPBH-TA19(930)
Sidewalk Project on Hagood Street from Euclid Avenue to Montclair Road
Project Sponsor: City of Mountain Brook and City of Birmingham



McElwain Baptist Church
4445 Montevallo Road
Birmingham, AL 35213
Thursday, February 27, 2020
6:00 PM

The purpose of the proposed project will be to install sidewalks along Hagood Street, connecting Euclid Avenue in Mountain Brook to Montclair Road in Birmingham. The sidewalks will also provide connectivity to Crestline Park and the commercial area at the intersection of Dunston Avenue. A preliminary layout of the planned sidewalk will be available for viewing.

The meeting will take place at the Crestline-Birmingham Neighborhood Association monthly meeting. There will be a short presentation, followed by an informal time for review of the layout and questions and answers. Please plan to attend. Your input is needed and desired.

**FOR ADDITIONAL INFORMATION OR FOR INDIVIDUALS REQUIRING SPECIAL ASSISTANCE
PLEASE CONTACT:**

Honorable Stewart Welch, Mayor
City of Mountain Brook
PO Box 130009
Mountain Brook, AL 35213
Attn: Mr. Sam Gaston, City Manager

**REQUEST FOR SPECIAL ASSISTANCE SHOULD BE RECEIVED AT LEAST FIVE (5) BUSINESS
DAYS PRIOR TO THE MEETING**

Technical Services Position Proposal

4

I would like to propose converting our Technical Services Children's Processor from a part-time position to a full-time position to better serve the citizens of Mountain Brook.

Why Now?

Birmingham Public Library could not replace catalogers. Since the 1970's Birmingham Public Library has provided some services to the Jefferson County Library Cooperative in lieu of paying full member fees. In recent years, the City of Birmingham has cut positions at Birmingham Public Library, including 5 catalogers.

Now, the Birmingham Public Library cannot handle the same amount of cataloging work for member libraries. Since Emmet O'Neal Library has always added its own order records, we were the logical choice to begin training on how to add full records. Nancy Sexton and Angela Moran have now completed 12 months of cataloging training which included learning OCLC Connexion, the software endorsed by the Alabama Public Library Service.

There are almost 50 different categories of children's materials at Emmet O'Neal Library, as designed by the Children's Department staff to help parents most easily find the right book for the right reading level and area of interest.

Bottom Line: We circulate about 300,000 print items per year, 200,000 of which are children's books. The time that it takes to add children's books to the catalog has increased by 30%. This is a chronic issue that impacts our core service – putting books in the hands of children.

Why is this the best solution?

- Converting this part-time position to a full-time position would allow us to keep pace with children's cataloging for the foreseeable future.
- More cataloging power would allow us to more quickly meet the demand for highly popular books.
- Technical Services has six employees – two of which are full-time. Only one of our current full-time employees has been trained to catalog. Having another full-time employee would allow for more cross-training and better coverage if a team member is unavailable.
- 40% of our collection is unique, and we are often the first in the county to get books. With more cataloging power, we can be more efficient and, again, get our books on the shelves faster.

What will it cost?

- For the remainder of the fiscal year, the cost would be \$12,860 in salary, plus about \$4,000 in benefits. This year, so far, we are \$20,000 under budget in salaries expenditures.
- For 2020-2021, this full-time position would add a total increase of \$18,462 in salaries and about \$6,000 in benefits.

5A

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

This Agreement is made by and between **the City of Mountain Brook, Alabama** ("Client"), doing business at 56 Church Street, Mountain Brook, Alabama 35213 and, **Skipper Consulting, Inc.** ("Consultant"), doing business at 3644 Vann Road, Suite 100, Birmingham, Alabama 35235.

WHEREAS, the Client requests that the Consultant perform professional traffic engineering services related to a traffic study to determine the impacts of the closure of Beech Circle in the City of Mountain Brook (the "Project" or "Services");

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

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

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

SEE SCOPE OF WORK SET FORTH ON EXHIBIT "A"

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

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

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

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

3. COMPENSATION/ BILLING/ PAYMENT: Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) for a fixed fee in the amount of **\$8,300.00**

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

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

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

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

4. STANDARD TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

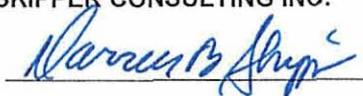
The Client's reuse of any report, documents or other deliverables prepared by the Consultant for the Project on any other project without written verification by the Consultant shall be at the Client's risk.

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

CLIENT: CITY OF MOUNTAIN BROOK, AL

CONSULTANT: SKIPPER CONSULTING INC.

By: _____

By: 

Printed Name: _____

Printed Name: Darrell B. Skipper, P.E.

Title: _____

Title: President

Date: _____

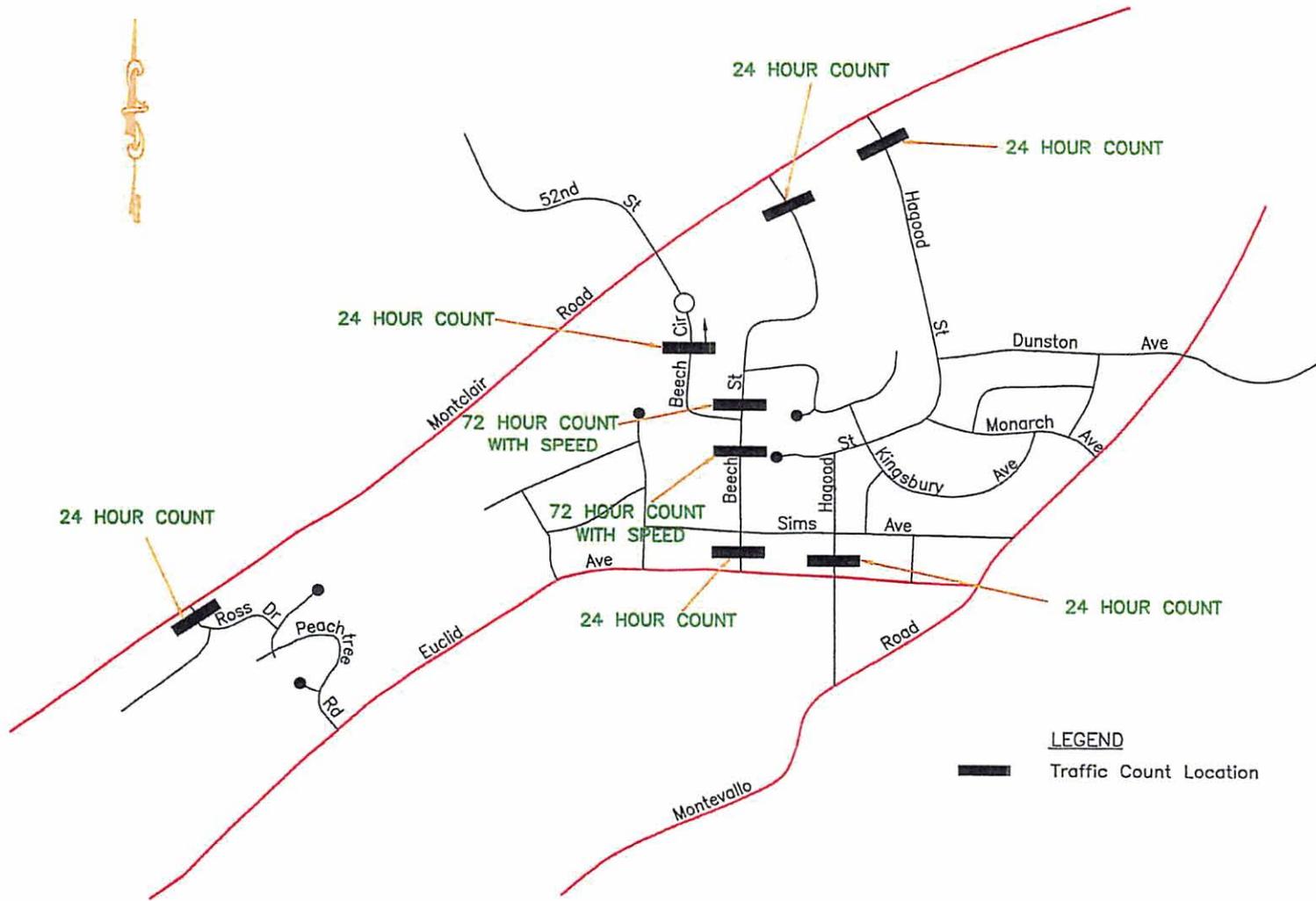
Date: January 28, 2020

EXHIBIT "A"
SCOPE OF WORK

The Consultant shall perform the following scope of work in relation to a traffic study of the impact of the closure of Beech Circle in the City of Mountain Brook.

- Conduct six (6) 24-hour weekday machine traffic counts at the following locations before Beech Circle is closed:
 - Ross Drive south of Montclair Road
 - Beech Circle at city limits
 - Beech Street north of Euclid Avenue
 - Xavier Circle south of Montclair Road
 - Hagood Street north of Euclid Avenue
 - Hagood Street south of Montclair Road
- Conduct two (2) 72-hour (Friday-Saturday-Sunday) machine traffic counts with speed data collection at the following locations before Beech Circle is closed:
 - Beech Street south of Beech Circle
 - Beech Street north of Beech Circle
- Conduct six (6) 24-hour weekday machine traffic counts at the following locations after Beech Circle is closed:
 - Ross Drive south of Montclair Road
 - Beech Circle at city limits
 - Beech Street north of Euclid Avenue
 - Xavier Circle south of Montclair Road
 - Hagood Street north of Euclid Avenue
 - Hagood Street south of Montclair Road
- Conduct two (2) 72-hour (Friday-Saturday-Sunday) machine traffic counts with speed data collection at the following locations after Beech Circle is closed:
 - Beech Street south of Beech Circle
 - Beech Street north of Beech Circle
- Compare the "before" traffic counts to the "after" traffic counts to determine the impacts of traffic rerouting due to the closure of Beech Circle
- Review the traffic counts and speed studies on Beech Street to:
 - Make recommendations regarding altering the speed limit on Beech Street
 - Make recommendations regarding the need for additional signing on Beech Street (such as "No Through Traffic" or "No Outlet" signs)
 - Determine the need for and conceptual design of traffic/speed control on Beech Street (such as speed humps, working with St. Francis Xavier church on gate times, etc.)
- prepare report of study findings and recommendations
- meet with City staff as required
- meet with area citizens and other stakeholders as required
- attend city council meetings to present study findings and recommendations as required

A map depicting the locations of recommended traffic counts is attached.



TRAFFIC COUNT LOCATIONS
"BEFORE" AND "AFTER" STUDY
BEECH CIRCLE CLOSURE
MOUNTAIN BROOK, ALABAMA
JAN. 2020

ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND SKIPPER CONSULTING, INC. – TRAFFIC ENGINEERING SERVICES (BEECH CIRCLE CLOSURE IMPACT ANALYSIS)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY: CITY OF MOUNTAIN BROOK

CONTRACTOR: SKIPPER CONSULTING INC.

By: _____

By: *Darrell B. Skipper*

Printed Name: _____

Printed Name: Darrell B. Skipper, P.E.

Title: _____

Title: President

Date: _____

Date: January 28, 2020

SB

FUNDING & OPERATING AGREEMENT

This **Funding & Operating Agreement** (the "Agreement") between the **City of Mountain Brook, Alabama** (hereinafter the "City") and **Friends of Beech Circle**, an unincorporated non-profit, association formed pursuant to the provisions of the Alabama Unincorporated Nonprofit Association Law (hereinafter the "Association"), is entered effective as of the date last signed below by either of them (the "Effective Date"). The City and Association may be individually referenced hereinafter as a "Party" or collectively as "Parties."

WHEREAS, the City maintains that certain two-way, public street on its north side that lies within its municipal limits and is known as Beech Circle (the "MB Segment");

WHEREAS, presently vehicular traffic headed north from Mountain Brook toward Montclair Avenue in the City of Birmingham, Alabama ("COB") may traverse Beech Circle for that purpose;

WHEREAS, the COB owns and maintains that part of Beech Circle that lies within its jurisdiction between Montclair Avenue and the City/COB municipal boundary (the "COB Segment");

WHEREAS, notwithstanding the posting of signs by the COB and other efforts by it to deter drivers from traveling south along the COB Segment into the City, a significant number of vehicles continue to drive in the wrong direction for that purpose;

WHEREAS, the properties lying along the MB Segment are used as private residences;

WHEREAS, the purpose of the Association is to enhance the quality of life for property owners who reside along or in the vicinity of Beech Circle;

WHEREAS, the Association has requested that the City Council of the City of Mountain Brook (the "City Council") enact an ordinance that would prohibit vehicular traffic from traveling in a northerly direction along Beech Circle from the City/COB municipal boundary into the COB (the "City Ordinance");

WHEREAS, in addition to the City Ordinance, the City Council is also considering installing certain traffic control devices known as bollards on the MB Segment at a point immediately south of the City/COB municipal boundary (the "Bollards");

WHEREAS, if the Bollards are installed, the City also intends to enter an Inter-Jurisdictional Automatic Aid Agreement with the COB providing for the City's Fire Department to respond to emergency calls to properties that lie in the COB at cul-de-sacs on Montgomery Drive and Camelia Drive (the "Automatic Aid Agreement");

WHEREAS, if the City Ordinance is enacted and the Bollards are installed, the City will purchase, own, install and maintain them pursuant to the terms herein;

WHEREAS, the Association desire to enter into this Agreement for the sole purpose of helping the City defer its expense to purchase, install and maintain the Bollards (collectively, the “City Expenses”); and

WHEREAS, pursuant to the terms and conditions below, the Parties enter this Agreement for the purposes stated herein.

NOW WITNESSETH

In consideration of the mutual covenants herein and other good and valuable consideration between the Parties, the receipt and sufficiency of which is acknowledged, the City and Association agree as follows;

1. Conditions to Perform. This Agreement will terminate and neither Party will owe any obligation to the other hereunder unless both of the following occur: (a) the City Ordinance is enacted; and (b) the Automatic Aid Agreement between the City and COB is executed within one hundred (100) days after the Effective Date (collectively, the “Conditions to Perform”). Notwithstanding the provision immediately above or elsewhere herein, the City, in the exercise of its sole discretion, may waive any requirement that the Automatic Aid Agreement between the City and COB be executed before this Agreement becomes effective.

2. Obligations of Parties. If the Conditions to Perform are satisfied (or waived by the City), the Parties will have the following respective responsibilities hereunder:

- a. *Initial Operations to Procure & Install Bollards*. Not later than thirty (30) days after satisfaction of the Conditions to Perform, the City will procure and install the Bollards (the “Initial Operations”). The estimated expense for these Initial Operations is approximately Fourteen Hundred Thirty Eight Dollars (\$1438.00). The City Clerk will provide notice to the Association of its actual expense for the Initial Operations after same are completed, and the Association agrees to reimburse the City for that expense by remitting payment to the City Clerk for it within five (5) days following said notice.
- b. *Maintenance*. During the term of this Agreement the City will own and maintain the Bollards in functional condition. The Parties anticipate that the City may incur expenses for the following work related to the Bollards:
 - (i) regularly scheduled maintenance recommended by its manufacturer;
 - (ii) repair or replacement of obsolete or inoperable components;
 - (iii) repair or replacement of them or their components caused by damage, vandalism, abnormal weather conditions or other casualty to the extent that the City’s expense (in part or whole) related to any such event is not covered or reimbursed by its

casualty insurer. An example of such expense includes, but is not limited to, a deductible payable by the City pursuant to its casualty insurance program;

- (iv) the City's expense to remove the Bollards and restore the subject area to that condition preceding the Effective Date if this Agreement is terminated by either Party or it expires; and
- (v) any other work or operation by the City to maintain the intended functionality of the Bollards.

(the above work in subparts (i) – (v) being collectively referenced herein as “Maintenance”). The City will bear responsibility for the expense of Maintenance during the Term; provided that if the City's expense for any Maintenance operation exceeds \$250, the City Clerk will provide the Association notice of the City's actual expense for any such operation, and the Association shall reimburse the City for that amount minus \$250 by remitting payment to the City Clerk within five (5) days following said notice.

- c. *Agreement to Pursue Insurance.* The City represents that the Bollards shall be covered by the City's property and casualty insurance policy in a manner consistent with other property owned by it. In the event of any damage to the Bollards that would require repair under Section 2(b)(iii) above, the City agrees to use good faith efforts to collect insurance proceeds relating to such damage before seeking reimbursement from the Association for Maintenance expense.

3. Agreement Representatives. Each Party will appoint a representative who will coordinate and administer matters related to this Agreement with the other (an “Agreement Representative”). The respective Agreement Representatives of each Party will be as follows:

For City:
City of Mountain Brook,
ATTN: City Manager
56 Church Street
Mountain Brook, AL 35213
email: gastons@mtnbrook.org

For Association:
Friends of Beech Circle,
J. Randall Pitts, Jr., Manager
58 Vine Street, Suite 100
Mountain Brook, AL 35213
email: jrp@southlawllc.com

or such other person or address as given by subsequent notice.

Notices contemplated herein will be deemed given to the other Party when hand delivered, emailed or sent by first class mail to the other Agreement Representative.

4. Term. This Agreement shall commence on the Effective Date and thereafter continue in effect for one year (the "Initial Term"). Thereafter, it shall extend for up to four (4) successive periods of twelve (12) months each if neither Party provides notice to the other of their intent to terminate at least thirty (30) days before the expiration of the then current twelve month period of the Agreement. The Initial Term and any renewal period(s) may be collectively referenced hereinafter as the "Term."

Notwithstanding, this Agreement may terminate before its expiration if either of the following occurs:

- a. On convenience of the City by it providing sixty (60) days advance written notice to the Association; or
- b. The failure of a Party to perform a material obligation owed to the other hereunder constitutes a "Breach". This Agreement will terminate effective fifteen (15) days after notice of a Breach is provided by a Party to the other and the defaulting Party fails to cure that Breach within that cure period. For purposes herein, a Breach shall include the Association failing to perform its funding obligations herein.

Upon the expiration or termination of this Agreement for any reason, the City may repeal the City Ordinance, remove and signage on or along the MB Segment and take other actions it deems appropriate to restore the condition of Beech Circle to that existing on the Effective Date.

5. No Assignment. The Association may not assign this Agreement or any of its rights or obligations hereunder to any third party or successor in interest without the advance written consent of the City, which consent shall not be unreasonably withheld.

6. Exclusion of Consequential Damages. In no event may the Association recover or receive from the City any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, punitive or exemplary damages, damages for lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the City's Breach of its obligations hereunder.

7. Independent Contractors. The City and Association are independent contractors. This Agreement does not create any partnership, joint venture or principal-agent relationship between them. Further, neither Party retains any control or authority with respect to its means and methods in which the other Party (or any of their representatives) perform any of their responsibilities or activities contemplated herein.

8. Miscellaneous. This Agreement

- a. contains and reflects all of the terms and conditions between the Parties concerning the Bollards and the other matters addressed herein, and any understanding or agreement concerning those matters that has been previously negotiated or discussed but is not expressed herein is merged into this

instrument and of no effect:

- b. may not be amended except in a writing signed by both Parties;
- c. is entered by the undersigned, duly authorized representatives of the respective Parties;
- d. may be executed in multiple counterparts which shall be construed together as a single original instrument and, when executed, each counterpart shall be binding upon and inure to the benefit of each Party whether reproduced in photographic, digital, computer, or other electronic form;
- e. shall be governed, enforced and interpreted by the laws of the State of Alabama; and
- f. is made only for the benefit of the Parties, and is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(Signature Page Follows)

FRIENDS OF BEECH CIRCLE (Association)

By: _____

Its: _____

Date: _____, 2020

CITY OF MOUNTAIN BROOK, ALABAMA (City)

By: _____

Its: _____

Date: _____, 2020

5c

INTER-JURISDICTIONAL AUTOMATIC AID AGREEMENT

This Agreement is entered by and between the **City of Birmingham, Alabama**, on behalf of the Birmingham Fire and Rescue Service, (hereinafter referred to as "BF&RS"), and the **City of Mountain Brook, Alabama**, on behalf of its Fire Department, (hereinafter referred to as "MBFD"). This Agreement shall become effective on the date it is last signed below by a party (the "Effective Date").

WITNESETH:

WHEREAS, each of the parties maintains and operates a fire department with equipment and personnel, and an emergency communications center to receive emergency calls and dispatch fire and rescue services in their respective jurisdictions;

WHEREAS, as a general matter, the fire department that serves a jurisdiction is the responding agency to fire and emergency alarms and calls that originate in their jurisdiction;

WHEREAS, on a situational basis, a fire department may request that agencies that regularly provide emergency fire and rescue service outside the jurisdiction of the responding agency assist them to provide fire and rescue services for locations within the jurisdiction of the responding agency;

WHEREAS, the following residences that are shown on the map attached as **Exhibit A** lie in the City of Birmingham, but are near its municipal boundary with the City of Mountain Brook and are readily accessible by the MBFD;

(a) six homes at the end of the Camellia Drive cul-de-sac with the following specific house numbers of 140, 141, 144, 145, 148 and 149; and (b) the seven homes at the end of the Montgomery Drive cul-de-sac with the specific house numbers 708, 712, 716, 720, 728, 732, and 736.

(collectively, the "Residences");

WHEREAS, the Residences lie in areas that the parties hereby designate as the "Mutual Response Zones" for purposes of this Agreement;

WHEREAS, the parties recognize and agree that it is mutually beneficial to them and in the public interest for the citizens in their respective jurisdictions to automatically respond to incidents, alarms and calls from or related to the Residences in the designated Mutual Response Zones; and

WHEREAS, the parties enter into this Agreement concerning responses to fire and rescue alarms and calls in times of emergency in the Mutual Response Zones.

NOW THEREFORE, the parties enter this Agreement pursuant to the following stipulations, provisions and conditions:

1. Automatic Response by Both Parties. In lieu of BF&RS making a specific request that MBFD assist it to provide emergency services in an area and MBFD affirmatively honoring that request, BF&RS and MBFD both agree to automatically respond to alarms and calls for emergency service originating in or related to the Mutual Response Zones.
2. Reporting of Emergency Calls to BF&RS. BF&RS initially will receive calls or alarms for emergency service in the Mutual Response Zones at its emergency communications center or other offices. When BF&RS receives a report of a structure fire in those Zones, BF&RS shall notify MBFD to respond to that report and MBFD's deployment of responding units shall consist of a minimum of one (1) engine. When BF&RS receives a report of a medical emergency in those Zones, BF&RS shall notify MBFD to respond to that report and MBFD's deployment of responding units shall consist of a minimum of one (1) Advanced Life Support Transport Unit.
3. Officer-in-Charge. If the emergency unit that is dispatched by MBFD to the Mutual Response Zones is first to arrive at the scene of the emergency, the officer-in-charge of that first arriving unit shall take command of the situation until relieved by the BF&RS. If the emergency unit that is dispatched by BF&RS to the Mutual Response Zone is first to arrive at the scene of the emergency and a unit dispatched by MBFD later arrives, the BR&RS shall remain in command.
4. Duties and Level of Service. When emergency services are performed within the Mutual Response Zones, no department, officer or employee of either party shall perform any function or service that is not within the scope of their duties or the kind of services that they perform within their respective jurisdiction. Subject to the understanding in section 3 above, the rendition of service, standards of performance, discipline of officers and employees, and other matters incident to performance of services and control of personnel by the BF&RS and MBFD who provide service in the Mutual Response Zone shall remain with their respective department and supervisors thereof.

Disputes or disagreements as to the level of services and standards of performance required of or performed by either party in the Mutual Response Zones shall be reported to both the Fire Chief of the BF&RS and the Fire Chief of MBFD, respectively. The decision of the Fire Chief of the BF&RS shall be final and conclusive as the level of services or standards of performance in those Zones by employees of BF&RS. The decision of the Fire Chief of MBFD shall be final and conclusive as to the level of services or standards of performance there by MBFD employees.

5. Employee Status. In performing the services and functions contemplated in this Agreement, no persons employed by either the BF&RS or MBFD shall have any claim or right to compensation of any type (including, without limitation, salary, wages, or worker's compensation), pension or other benefits paid by either of them to their employees), civil service or other employee rights or privileges that are granted by operation of law or otherwise extended by the other party to its own officers and employees.

6. Liabilities and Responsibilities of Parties.

- (a) Neither of the parties or their respective officers and employees shall be deemed to assume any liability for the acts, omissions, and negligence of the other party (or their officers or employees) in the performance of their respective services, functions and activities hereunder related to provision of emergency service for the Mutual Response Zones. In the event any third party asserts a claim against either of the parties (or their respective officers or employees) for damages, loss or injury arising from those activities, each party shall defend any such claim made against them (or their respective officers or employees) at their own expense and solely shall have responsibility for the conduct of their respective department, officers and employees.
- (b) All of the privileges and immunities from liability, exemption from laws, ordinances and rules, and benefit of pensions and relief, disability, workman's compensation and other benefits which apply to the activity of officers or employees of a party when performing their functions within the territorial limits for their respective agencies shall apply to the same degree and extent when those officers and employees perform such functions and duties extra-territorially pursuant to this Agreement.
- (c) Except as herein otherwise provided, all liability for injury to personnel employed by either party, and for loss or damage of equipment owned or utilized by them shall be borne by the party employing such personnel and owning such equipment.
- (d) The cost of fuel, expendable supplies and operations of the respective parties contemplated hereunder shall be the responsibility of the party providing that equipment, consuming those supplies and performing their respective operations.
- (e) All compensation for personnel (including, but not limited to, salaries, pensions, and other benefits) who perform services with respect to emergencies occurring in the Mutual Response Zones shall be borne by the party employing such personnel.
- (f) The BF&RS shall not be held liable for the actions or inactions of MBFD during emergency responses, including, but not limited to, MBFD not responding to incidents after being notified by the BF&RS. Further, MBFD shall not be held liable for the actions or inactions of the BF&RS during emergency responses, including, but not limited, to the BF&RS not responding to incidents related to their services or activities hereunder.

7. Effective Date & Term of Contract. The term of this Agreement shall begin on the Effective Date, and shall remain in effect until terminated by mutual agreement of both parties; provided, however, either party may terminate said Agreement by giving at least thirty (30) days advance written notice to the other party listed below.

8. Governing Law. This Agreement shall be governed by and be construed in accordance with the laws of the State of Alabama.
9. Integration. This Agreement constitutes the entire agreement between the BF&RS and MBFD with respect to the matters herein. Any discussions, understandings or matters not expressed herein are merged into this Agreement and of no effect.
10. Partial Invalidity. If any portion of this Agreement is determined by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining portions of this Agreement shall remain valid and of full force and effect.
11. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the BF&RS and MBFD.
12. Counterpart Signatures. This Agreement may be executed in multiple counterparts which shall be construed together as a single original instrument, and, when executed, each counterpart shall be binding upon and inure to the benefit of each party whether reproduced in photographic, digital, computer, or other electronic form

(Signature Page Follows)

CITY OF BIRMINGHAM, ALABAMA on behalf of the BF&RS

By: _____
Cory D. Moon

Its: Fire Chief

Date: _____, 2020

Address:
1808 7th Ave. North
Birmingham, Alabama 35203

CITY OF MOUNTAIN BROOK, ALABAMA, on behalf of its Fire Department

By: _____
Chris J. Mullins

Its: Fire Chief

Address:
102 Tibbett Street
Birmingham, Alabama 35213

EXHIBIT A – MAP DEPICTING MUTUAL RESPONSE ZONES