

**MEETING AGENDA OF THE
MOUNTAIN BROOK CITY COUNCIL**

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

MARCH 9, 2020, 7:00 P.M.

1. Resolution expressing gratitude to Dr. Adam Robertson for his volunteer service as medical director for the Fire Department.
2. Presentations by the 2019-2020 Leadership Mountain Brook students.
3. Approval of the minutes of the February 24, 2020, regular meeting of the Mountain Brook City Council.
4. Consideration: Resolution authorizing the execution of a professional services contract between the City and Skipper Consulting for a traffic study of the intersection of Dexter Avenue at Vine Street.
5. Consideration: Resolution authorizing the execution of the MWCF Deductible Addendum – 2020 with respect to the City’s high deductible workers’ compensation policy.
6. Announcement: The next regular meeting of the City Council is March 23, 2020, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
7. Comments from residents.
8. Adjourn.

RESOLUTION NO. 2020-034

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

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

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

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

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

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

ADOPTED: This 9th day of March, 2020.

Council President

APPROVED: This 9th day of March, 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 March 9, 2020, as same appears in the minutes of record of said meeting.

City Clerk

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
FEBRUARY 24, 2020**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:15 p.m. on the 24th day of February, 2020. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: None

Also present were City Attorneys Steve Stine and Tony Davis, City Manager Sam Gaston and City Clerk Steven Boone.

1. AGENDA

1. Overtime Policies-Steven Boone

Sergeant Chris Thompson inquired whether it was the intent of the City Council to exempt only the Fire Department personnel from the Fair Labor Standards Act on-premises rule (Sec. 8.4.2.2.a. 5).

Mr. Boone responded that originally, the on-premises rule was applied across all departments (barring defined public safety events and emergencies). However, the Fire Chief provided documentation that the potential savings in the Fire Department by changing the policy approximated only about \$5,000 annually. The committee agreed to recommend the exemption based on how well the Fire Department has managed its overtime and the potential savings were inconsequential. Mr. Boone also pointed out that the policy may be reviewed from time to time should there be unintended consequences or conditions warrant reconsideration and/or policy revisions.

Resolution No. 2020-032 was added for the formal meeting agenda.

2. Green equipment purchase and MOU with American Green Zone Alliance (AGZA) for Overton Park-Shanda Williams (Resolution No. 2020-031 was added to the formal meeting agenda.)
3. Street Light request behind Vogue Cleaners located at 2816 Cahaba Road in Mountain Brook Village-Officer Ro Burrow and Sam Gaston (Resolution No. 2020-033 was added to the formal meeting agenda.)
4. Use and access agreement between the City and Shades Parkway, LLC with respect to public parking in the private lot for Shades Creek Fest. (Resolution No. 2020-030 was added to the formal meeting agenda.)
5. Review of the other matters to be considered at the formal (7 p.m.) meeting

6. EXECUTIVE SESSION AND ADJOURNMENT

Council President Pro Tempore Pritchard made a motion that the City Council convene in executive session to discuss a matter that could lead to litigation. The City Attorney verbally certified that the subject matter of the executive session is permissible under the Open Meetings Act. The motion was seconded by Council President Smith. There being no further discussion, the vote was called with the following results:

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

Nays: None

Council President Smith thereupon declared that said motion carried by a vote of 5—0. She then announced that the City Council shall reconvene upon conclusion of the executive session at approximately 7 p.m. in Room A108. The pre-meeting was then adjourned at approximately 6:40 p.m.

7. 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 February 24, 2020, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

City Clerk
Approved by City Council March 9, 2020

**MINUTES OF THE REGULAR OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
FEBRUARY 24, 2020**

The City Council of the City of Mountain Brook, Alabama and met in public session in the City Hall Council Chamber at approximately 7:00 p.m. on the 24th day of February, 2020. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: None

Also present were City Attorney Steve Stine, City Manager Sam Gaston and City Clerk Steven Boone.

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

1. DEREK CHEN, FIELD REPRESENTATIVE FOR BRADLEY BYRNE, CANDIDATE FOR U. S. SENTATE

Introduced himself and, on behalf of Mr. Byrne, asked for the support of the governing body and members of the audience at the upcoming March 3, 2020, republican primary.

2. PRESENTATIONS

Mayor Welch presented the following proclamations and recognition:

- Proclamation No. 2020-027, March 6, 2020 proclaimed “Go Blue” day for Colorectal Cancer Awareness in the City—presented to Ms. Libba Hardwick of the American Cancer Society
- Proclamation No. 2020-028, April 19-26, 2020 proclaimed Arbor Week in the City—presented to Sim Johnson of the Board of Landscape Design
- Resolution No. 2020-027, honoring Gloria Repolesk, of the Emmet O’Neal Library, for her service on the 2020 Caldecott Medal Selection Committee

3. CONSENT AGENDA

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

Approval of the minutes of the February 10, 2020, regular meeting of the City Council

2020-025	Authorize the installation of a street light in the vicinity of 3008 North Woodridge Road	Exhibit 1, Appendix 1
2020-026	Resolution honoring Gloria Repolesk, of the Emmet O’Neal Library, for her service on the 2020 Caldecott Medal Selection Committee	Appendix 2
2020-027	March 6, 2020, proclaimed “Go Blue” day for Colorectal	Appendix 3

Proclamation	Cancer, in the City of Mountain Brook, Alabama	
2020-028 Proclamation	April 19-26, 2020 proclaimed Arbor Week in the City of Mountain Brook, Alabama	Exhibit 2
2020-029	Award bid for the Dunbarton Sidewalk Project to Southeastern Sealcoating and authorizing the execution of a contract for the same	Exhibit 3, Appendix 4
2020-030	Authorize the execution of an Access & Use Agreement between the City and Shades Parkway, LLC with respect to off-site parking for Shades Creek Fest to be held April 25, 2020, in Jemison Park	Exhibit 4, Appendix 5
2020-031	Authorize the execution of the American Green Zone Alliance (AGZA) Green Zone Certification Memorandum of Understanding	Exhibit 5, Appendix 6
2020-032	Amend Sec. 8.4 of the "Internal Control Policies and Procedures" by adding Sec. 8.4.2 "Overtime policies"	Exhibit 6, Appendix 7
2020-033	Authorize the installation of a street light in the vicinity of Cahaba Road in the alley near Vogue Cleaners	Exhibit 7, Appendix 8

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

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

Nays: None

Abstained: None

Council President Smith thereupon declared that said minutes, resolutions (Nos. 2020-025, 2020-026, 2020-029 through 2020-032) and proclamations (Nos. 2020-07 and 2020-028) were adopted by a vote of 5—0 that and as evidence thereof she signed the same.

Ms. Allison Morgan expressed her thanks for the installation of the street light in the vicinity of 3008 North Woodridge Road (Resolution No. 2020-025).

4. ANNOUNCEMENTS

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

5. ADJOURNEMENT

There being no further business or matters for discussion, Council President Smith adjourned the meeting at approximately 7:15 p.m.

6. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on February 24, 2020, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

 City Clerk
 Approved by City Council March 9, 2020

EXHIBIT 1**RESOLUTION NO. 2020-025**

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

1. That Alabama Power Company is requested to install one (1) 108 watt LED area, 4000K, gray – 8,500 to 14,000 lumens street light in the vicinity of 3008 North Woodridge Road as more fully described in Exhibit A attached hereto (Lighting Services NESC Lease Agreement (Governmental-S)).
2. That the City Manager is hereby authorized to execute and deliver, or cause to be executed and delivered, on behalf of the City such documents, instruments, and agreements that may be deemed necessary or appropriate with respect to said street light upgrades/installations.
3. That the City Clerk is directed to furnish the Alabama Power Company a certified copy of this resolution.

APPENDIX 1**EXHIBIT 2****PROCLAMATION NO. 2020-028****CITY OF MOUNTAIN BROOK**

56 Church Street
 Mountain Brook, Alabama 35213
 Telephone: 205.802.3800
 Facsimile: 205.879.6913
www.mtnbrook.org

ARBOR WEEK PROCLAMATION

Whereas, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

Whereas, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

RESOLUTION NO. 2020-035

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

ADOPTED: This 9th day of March, 2020.

Council President

APPROVED: This 9th day of March, 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 March 9, 2020, as same appears in the minutes of record of said meeting.

City Clerk

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 for the intersection of Dexter Avenue at Vine Street in the City of Mountain Brook (the "Project" or "Services");

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

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

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

SEE SCOPE OF WORK SET FORTH ON EXHIBIT "A"

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

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

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

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

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 **\$7,550.00**.

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.

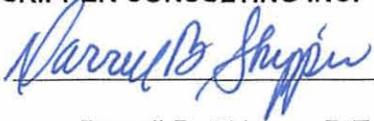
The Client's reuse of any report, documents or other deliverables prepared by the Consultant for the Project on any other project without written verification by the Consultant shall be at the Client's risk.

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: February 25, 2020

EXHIBIT "A"
SCOPE OF WORK

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

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

Schedule

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

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

THIS ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT (“the/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.

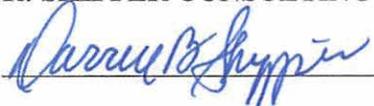
10. *Indemnification for Claims by Third Parties.* The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (collectively hereinafter the "Indemnitees") from and against all demands, actions, damages, judgments, expenses (including but not limited 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:  _____

Printed Name: _____

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

Title: _____

Title: President

Date: _____

Date: February 25, 2020

RESOLUTION NO. 2020-036

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

ADOPTED: This 9th day of March, 2020.

Council President

APPROVED: This 9th day of March, 2020.

Mayor

CERTIFICATION

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

City Clerk

MWCF Deductible Addendum - 2020

Dear City of Mountain Brook:

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

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

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

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

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

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

ALLOCATED LOSS ADJUSTMENT EXPENSE

1. The term "Allocated Loss Adjustment Expense" shall mean such of the following items of expense incurred or authorized by Service Company as may be reasonable and necessary in connection with its provision of the Basic Services. The below items are the claims cost items that are to be considered in determining self-insured retention levels as well as deductible levels:
 - A. Medical examination of claimants, including the reasonable and necessary transportation expenses of claimants.
 - B. Reports from attending or examining physicians.
 - C. Attorneys' fees, disbursements, and expenses.
 - D. Court reporter services and transcripts.

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

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

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

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

Addendum Authorizing Signatures for the City of Mountain Brook:

By: _____ Date: _____
Authorized Municipal Official

Witness: _____ Date: _____