PRE-MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL

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

MARCH 9, 2020, 6:00 P.M.

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1. Mariellan and Billy Morris and residents of Brookwood Road, between Crosshill Road and the northern city limits, to request sidewalks along this section of street. (See attached information.)

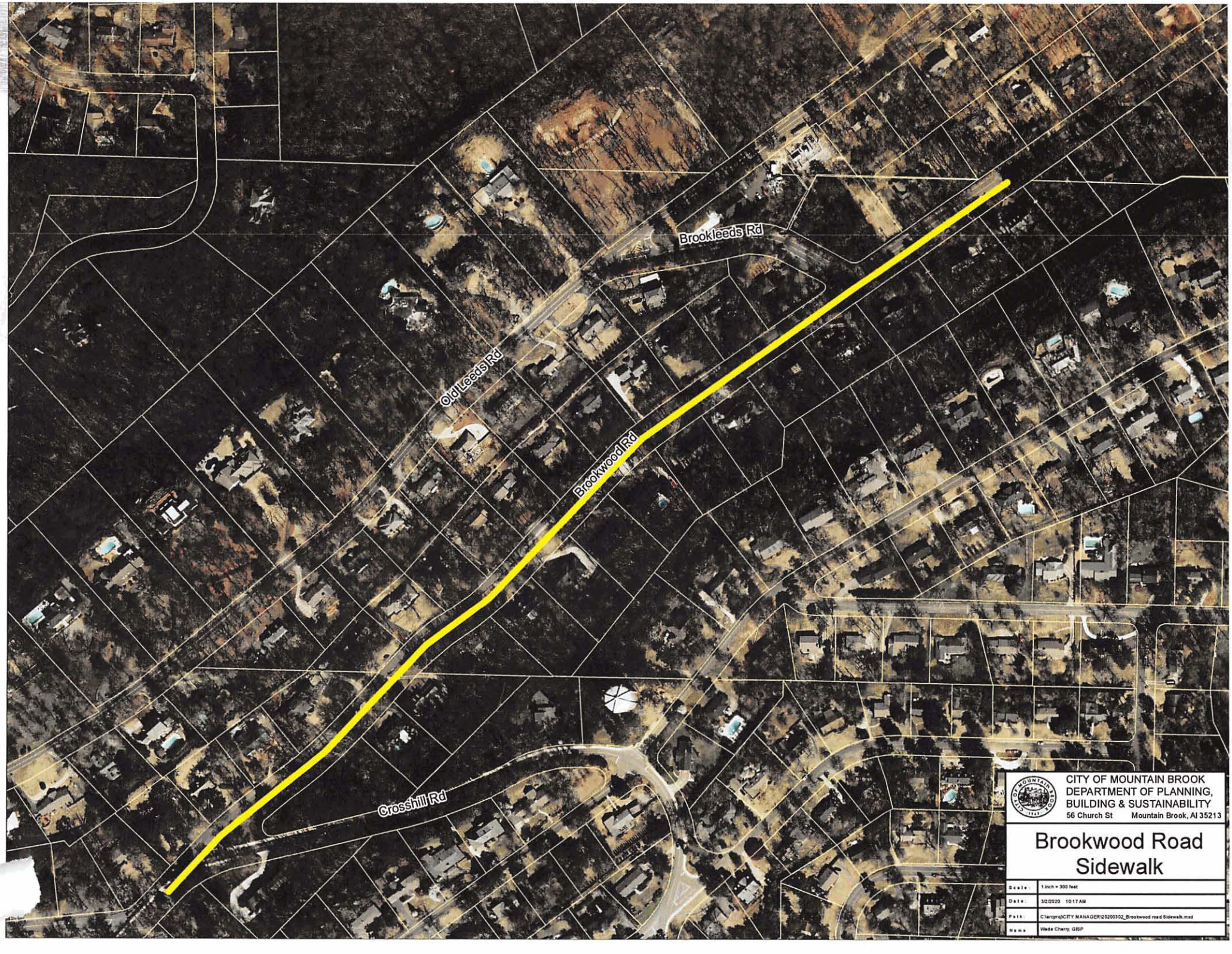
2. Additional evaluation for repairs on Smyer Road-David Marsh of ECS (See attached information. This item may be added to the formal agenda.)

3. CE and I contract with Sain Associates for the Dunbarton sidewalk project-Matt Stoops of Sain Associates (See attached information. This item may be added to the formal agenda.)

4. Property at 3339 North Woodridge (code violations)-Glen Merchant (See attached information.)

5. FY-2020 street paving list-Ronnie Vaughn (See attached information. This item may be added to the formal agenda.)

6. Traffic Island beautification project on Ridgeview Drive West-Shanda Williams (See attached information. This item may be added to the formal agenda.)


Brookleeds Rd
Old Leeds Rd
Brookwood Rd
Crosshill Rd
CITY OF MOUNTAIN BROOK
DEPARTMENT OF PLANNING,
BUILDING & SUSTAINABILITY
56 Church St Mountain Brook, Al 35213
Brookwood Road
Sidewalk
Scale: 1 inch = 300 feet
Date: 3/2/2020 10:17 AM
Path: C:\arcpro\CITY MANAGER\20200302_Brookwood road Sidewalk.mxd
Name: Wade Cherry, GISP

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

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

Total: $270,953.45
THIS QUOTE HAS A 5% OVERAGE ADDED DUE TO THE CHANGING PRICES OF MATERIALS.

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

PROJECT INFORMATION

Project Name:	**Smyer Road Repair Feasibility Study**	**ECS Project No.**	**TBD**
Street Address:	**Smyer Road**	**ECS Proposal No.**	**30-1468P**
Project Location:	**Mountain Brook, Alabama**	**Zip Code:**	**35216**

CLIENT INVOICE INFORMATION

Firm:	**City of Mountain Brook Alabama**	**Attn:**	**Ronnie Vaughn**
Mailing Address:	**56 Church Street**	**Phone:**	**(205) 802-2400**
City, State:	**Mountain Brook, Alabama**	**Zip Code:**	**35213**

Project Description: The project site is located on Smyer Road in Mountain Brook, Alabama. We understand that a portion of the slope adjacent to Smyer Road and the roadway are exhibiting signs of distress. The location of distress is approximately 300 feet along the alignment of Smyer Road west of US HWY-280 and east of Brookwood Place. ECS has previously prepared the Geotechnical Engineering Report dated November 21, 2019 (ECS Project No. 30-1857). Our report provided several repair considerations.

Services: ECS will perform a feasibility study to evaluate repair methods for the slope. ECS will provide a recommendations letter based the results of the study commenting on the feasibility of up to three (3) different repair methods. Typical slope repair cross section and details to allow the owner to obtain preliminary cost estimates. These details will not be sufficient for slope repair construction. The feasibility study may recommend additional subsurface exploration and shear strength testing for the various options.

Lump Sum Fee: ECS will evaluate the feasibility of several repair options for the slope for a lump sum fee of $5,000. ECS can provide final construction drawings for the slope repair once the repair method is selected. We anticipated the design fee will be on the order of $8,000.

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

Work Authorized By:

Signature:		**Date:**	
Print Name:		**Title:**	
Firm:			

Signatory warrants his/her authority to bind the entity represented

ECS SOUTHEAST, LLP:

Signature:	Mgn E Carden	**Date:**	**3/4/2020**
Project Manger	**Morgan E. Carden**		
Signature:		**Date:**	**3/4/2020**
Principal Engineer	**Marc F. Plotkin, P.E., D.GE**		

GEOTECHNICAL DESIGN SERVICES
FEE SCHEDULE

Professional & Administrative Services

Senior Principal Level	$225.00
Principal Level	$185.00
Senior Project Level	$135.00
Project Level	$115.00
Staff Professional Level	$95.00
Draftsperson	$75.00
Administrative Level	$50.00
Subcontract Services	cost + 15%

ECS SOUTHEAST, LLP
TERMS AND CONDITIONS OF SERVICE

The professional services (the "Services") to be provided by ECS SOUTHEAST, LLP ["ECS"] pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing shall form the Agreement between ECS and Client.

1.0 INDEPENDENT CONSULTANT STATUS - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants

2.0 SCOPE OF SERVICES - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.

3.0 STANDARD OF CARE

3.1 **In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.**

3.2 CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

3.3 If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.

3.4 If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.

4.0 CLIENT DISCLOSURES

4.1 Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.

4.2 "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.

4.3 If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

5.0 INFORMATION PROVIDED BY OTHERS - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT's agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.

6.0 CONCEALED RISKS - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readably apparent nor easily accessible, *e.g.*, subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.

7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES

7.1 CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

7.2 CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.

7.3 ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.

7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

8.0 UNDERGROUND UTILITIES

8.1 ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.

8.2 CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.

8.3 CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor's request for utility marking services made in accordance with local industry standards.

9.0 SAMPLES

9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.

9.2 Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process by-products in accordance with applicable laws and regulations.

10.0 ENVIRONMENTAL RISKS

10.1 When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.

10.2 When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.

10.3 Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.

10.4 In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

10.5 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.

10.6 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood

d of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with the Project for which the Documents of Service are provided until the completion of the Project.

11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, it's licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.

11.3 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.

11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

12.0 SAFETY

12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.

12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.

13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.

13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any contractor or consultant or any of their subcontractors or subconsultants.

13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from Work that was monitored or tested by ECS on a part time basis.

14.0 CERTIFICATIONS - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate of Professional Fees stated in these Terms shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.

15.2 CLIENT agrees that all Professional Fees and other unit rates shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.

15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.

15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.

15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.

15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.

15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.

15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

16.1 CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT's personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.

16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

17.0 INSURANCE - ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

18.1 CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING **ECS'** TOTAL LIABILITY TO **CLIENT** ARISING FROM **ECS'** PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.

18.1.1 If the proposed fees are $10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed $20,000, or the total fee received for the services rendered, whichever is greater.

18.1.2 If the proposed fees are in excess of $10,000, ECS' total aggregate liability to CLIENT shall not exceed $40,000, or the total fee for the services rendered, whichever is greater.

18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.

18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to $500,000.

19.0 INDEMNIFICATION

19.1 Subject Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)

19.2 To the fullest extent permitted by Law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.

19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.

19.4 IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.

19.5 IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.

20.0 CONSEQUENTIAL DAMAGES

20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

21.0 SOURCES OF RECOVERY

21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.

21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.

22.0 THIRD PARTY CLAIMS EXCLUSION - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.

23.0 DISPUTE RESOLUTION

23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.

23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.

23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

24.0 CURING A BREACH

24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.

24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

25.0 TERMINATION

25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.

25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

26.0 TIME BAR TO LEGAL ACTION - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.

27.0 ASSIGNMENT - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.

28.0 SEVERABILITY - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.

29.0 SURVIVAL - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.

30.0 TITLES; ENTIRE AGREEMENT

30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.

30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.

30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.

30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.

30.5 CLIENT's execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT's acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT

SAIN ASSOCIATES

Two Perimeter Park South
Suite 500 East
Birmingham, Alabama 35243
Telephone: (205) 940-6420
Fax: (205) 940-6433
www.sain.com

November 25, 2019
Revised February 27, 2020

Sam Gaston
City of Mountain Brook
56 Church Street
Mountain Brook, AL 35213
gastons@mtnbrook.org

Subject: Dunbarton TAP Sidewalk Project, TAPBH-TA18(931)
Proposal for CE & I Services
Sain Project #190270

Dear Mr. Gaston:

We appreciate the opportunity to submit this proposal to perform contract & bid services then followed with construction engineering & inspections for the Dunbarton TAP Sidewalk Project. The following is a description of our understanding of your project and the scope of services that we propose to undertake.

General Project Understanding

This project will install sidewalk, ADA ramps, adjust inlets & mailboxes, and mill and overlay a 1700' section of Dunbarton Drive from Woodridge Road to Locksley Drive. The project is being designed by Sain and is expected to be let locally by Mountain Brook in January 2020. The number of days for the project is established at 60 calendar days.

Scope of Services

Sain proposes to perform the following work for the City:

Construction Inspections - Sain expects to staff this project with one Level II inspector full time. Other inspectors will be used as needed. Inspectors will follow typical ALDOT inspection procedures and prepare required documents. Daily reports will be written to summarize the day's work and quantities for pay items. Photos will also be taken to document progress and problems. Concrete field testing will be performed by our inspectors and cylinders will be cured and tested by ALDOT. Density testing for subgrade and pavements is by visual inspection to the satisfaction of the engineer per plan note. The plans do not require and ADEM permit, but weekly QCI inspections for erosion control will be done.

Engineering – Our construction engineer will make field visits to the site at least on a weekly basis. Minor construction problems will be handled by staff in the field. For changes that will

have a significant cost impact, once a proposed solution is agreed upon with the contractor, those would be brought to the City and ALDOT for approval as a change order. The engineer of record would be responsible if any change requires significant design. Engineering will also include handling of monthly pay estimates, material certifications, correspondence, and any minor coordination with utilities, ALDOT, property owners, etc.

Meetings – Sain will prepare and lead the preconstruction meeting and hold progress meetings as needed.

Survey – Survey for earthwork quantities is not included in this project. Excavation is by special undercutting which is measured in place by the inspector. Borrow is by truck load measurement.

Final Inspections – Once all pay items have been completed, Sain will invite the City and ALDOT for a walk through to review the project, develop a punch list, and approve final acceptance.

Final Closeout – A field book which shows all measurements and calculations used to arrive at the quantities for pay will be delivered to ALDOT for review. Any issues will be addressed and any changes will be communicated with the contractor.

Exclusions

The following services are excluded from this proposal but can be provided if deemed necessary and requested by you:

- ROW coordination or acquisitions
- Surveying for quantities of excavation or borrow material
- Preparation of SACP forms

Fees

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

CE & I	Hourly	$ 69,662
Total Estimated Budget		**$ 69,662**

The CE & I estimate is amount is based on the current assumption of the project being 60 calendar days. If more than 60 calendar days are assigned, the number of man days and overall cost will need to be adjusted. Expenses such as mileage, field supplies, per diem, lab testing fees, etc. are included the above budget estimate.

Procedures for Changes in Scope of Work

The scope of work documented herein is based upon information known as of the date of this proposal. Should future changes (e.g. schedule, site plan, regulatory, project phasing, additional meetings, etc.) necessitate changes in the scope of work, we will contact you to discuss the scope of the additional work and its impact to our contracted fees and project schedule. No additional work will be undertaken by Sain or our subconsultants without your authorization.

Terms and Conditions

The ALDOT standard contract for CE & I services shall apply to this contract.

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.

Thank you for the opportunity to provide this proposal. If you have any questions or need clarification on any item, please contact me at 205-263-2180 or by email at mstoops@sain.com. We look forward to working with you.

Sincerely,

Matt Stoops, PE
Construction Engineer

OFFERED: SAIN ASSOCIATES, INC.
BY: Alicia Bailey, PE, Principal

Alicia Bailey

Signature of Authorized Representative

Date: February 27, 2020

Enclosures:
Sain Terms & Conditions (sch. 2020)
Project Man-Days Budget Estimate
ALDOT CE&I Standard Contract

ACCEPTED: CITY OF MOUNTAIN BROOK

BY:_____
Signature of Authorized Representative

_____
Print Name & Title

Date: _____

CE & I Cost Estimate
City of Mountain Brook
Dunbarton TAP Sidewalk Project
TAPBH-TA18(931)

Scope: Install 1700 LF sidewalk & misc work
Assigned Days: 60 Calendar Days

Sain Project #190270

Task	Task Description	Work Days	Contractor Days (=work days x 1.0)	Project Manager (=.3 x Insp Days)	Inspector #1 (=Contractor Days)	Inspector # 2	Administrative Assistant	Professional Civil Engineer	Instrument Person	Field Supervisor	Professional Land Surveyor	Field Supervisor (Survey Drafter)	Total
1	Project Set up / Preconstruction			2	1		1	0.5					
2	Inspections - mob / traffic control	1	1.0	1	1								
3	Inspections - removals	2	2.0	1	2								
3	Inspections - earthwork	2	2.0	1	2								
3.1	Earthwork - survey borrow pit		0.0	0	0				0	0	0	0	
3.2	Earhwork - survey excavation		0.0	0	0				0	0	0	0	
4	Inspections - RE Wall		0.0	0	0								
5	Inspections - drainage inlets	3	3.0	1	3			0.5					
6	Inspections - sidewalk & driveway	25	25.0	8	25			0.5					
7	Inspections - curb & gutter	4	4.0	2	4								
8	Inspections - mill & overlay	3	3.0	1	3								
9	Inspections - striping & signs	5	5.0	2	5								
10	Weekly payroll reviews			1	1		3						
11	Monthly estimate prep & review			2	1		1						
12	Monthly EEO & DBE tasks			1	1		2						
13	Punch List / Final Inspections			3	4		0.5	0.5					
14	Project Closeout Documentation			5	2		0.5						
	MANDAY TOTALS:	45	45	31	55	0	8	2	0	0	0	0	96
	HOURLY RATE:			$ 37.00	$ 24.00	$ 24.00	$ 19.00	$ 45.00	$ 23.00	$ 25.43	$ 40.00	$ 28.37	
	DAILY RATE:			$ 296.00	$ 192.00	$ 192.00	$ 152.00	$ 360.00	$ 184.00	$ 203.44	$ 320.00	$ 226.96	
	TOTAL DIRECT LABOR:			$ 9,176.00	$ 10,560.00	$ -	$ 1,216.00	$ 720.00	$ -	$ -	$ -	$ -	$ 21,672.00

Grey boxes are calculated cells based on working days

Estimated Construction Cost:	$	433,000.00
Low Bid:	$	379,045.00
High Bid:	$	507,977.00
% CEI / Low Bid:		18.38%
% CEI / High Bid:		13.71%

OVERHEAD 184.78%:	$	40,045.52
DIRECT JOB COSTS:	$	1,471.75
SUB-TOTAL:	$	63,189.27
PROFIT @ 10%:	$	6,318.93
TESTING SUB-CONSULTANT FEE:	$	-
SUB-CONSULTANT MARK-UP 5%:	$	-
FACILITIES CAPITAL COST 0.71%:	$	153.87
	$	69,662.07

Project No. TAPBH-TA18(931)
City / County City of Mountain Brook
Description Dunbarton TAP Sidewalk Project
CE&I
Project Length 0.50 Miles

Consultant Sain Associates

Out-of-pocket Expenses (Construction Engineering and Inspection)

TRAVEL COST

Mileage Cost	Trips	Miles/Trip	$/Mile	Total
Inspector trips from home base	45	12	$0.575	$ 310.50
Inspector daily mileage while on the project	45	2	$0.575	$ 51.75
Inspector daily mileage to lab	20	24	$0.575	$ 276.00
Secondary inspector	0	12	$0.575	$ -
Survey Team	0	12	$0.575	$ -
Project Manager	15	12	$0.575	$ 103.50
			$0.575	$ -
			$0.575	$ -
		Total Mileage Cost		**$ 741.75**

Subsistence Cost	Days	# People	$/Day	Total
Travel allowance (6 hour trips)	0	1	$12.75	$ -
Travel allowance (12 hour trips)	0	1	$34.00	$ -
Travel allowance (overnight)*** primary inspector	0	1	$100.00	$ -
Travel allowance (overnight)***, 2nd Insp, survey, manager	0	1	$100.00	$ -
				$ -
		Total Subsistence Cost		**$ -**
		Total Travel Cost		**$ 741.75**

PRINTING / REPRODUCTION COST

Type of printing/reproduction	# of Sets	Sheets/Set	Total Sheets	Cost/Sheet	Total
					$ -
					$ -
					$ -
					$ -
			Total Printing/Reproduction Cost		**$ -**

Communication Cost (telephone, fax, etc.)	Total
Monthly Phone - 2 months x $60 per month x 1.5 (1 inspector + 50% project manager)	**$ 180.00**

Postage Cost (overnight, stamps, etc.)	Total
Postage	**$ 150.00**

Other (provide description on next line)	Total
Geotech / lab costs	**$ -**
Field Supplies (marking paint, hand tools, PPE, tape, gloves, buckets, shovel, etc) 2 months x $200	**$ 400.00**

Total Out-of-pocket Expenses $ 1,471.75

Comments:

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
Level 1 Inspector	$75.00 - $90.00 per Hour
Level 2 Inspector	$80.00 - $95.00 per Hour
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

March 3, 2020

SAIN ASSOCIATES

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

To: Mr. Sam Gaston
City of Mountain Brook

SUBJECT: Dunbarton Sidewalk Project Update

Project Scope:

From North Woodridge to Locksley Dr (1754')

Typical: 6' wide sidewalks, reducing pavement width by 2', mill & overlay paving of Dunbarton,192' handrail

Project Funding:

Item	Cost	City	ALDOT
Design	$ 94,900	$ 94,900	$ -
ROW	$ 15,000	$ 15,000	$ -
Utility Relocations	$ -	$ -	$ -
Construction	$ 379,045	$ 75,809	$ 303,236
Inspections	$ 69,662	$ *24,177	$ 45,485
ALDOT Indirect Costs	$ 49,276	$ 9,855	$ 39,421
Subtotals Eligible for Agreement	*$ 497,983*	*$ 109,841*	*$ 388,142*
Total	$ 607,883	$ 219,741	$ 388,142

The ALDOT 2018 Funding Agreement was for up to $686,240 for construction, inspections & ALDOT Indirect costs.
80% Fed $548,992
20% City $137,248

*ALDOT has imposed a cap on the CE & I costs at 15% of the construction bid, which would be $56,857. Therefore making the city is responsible for the $12,805 difference from the $69,662.

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

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

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

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

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

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

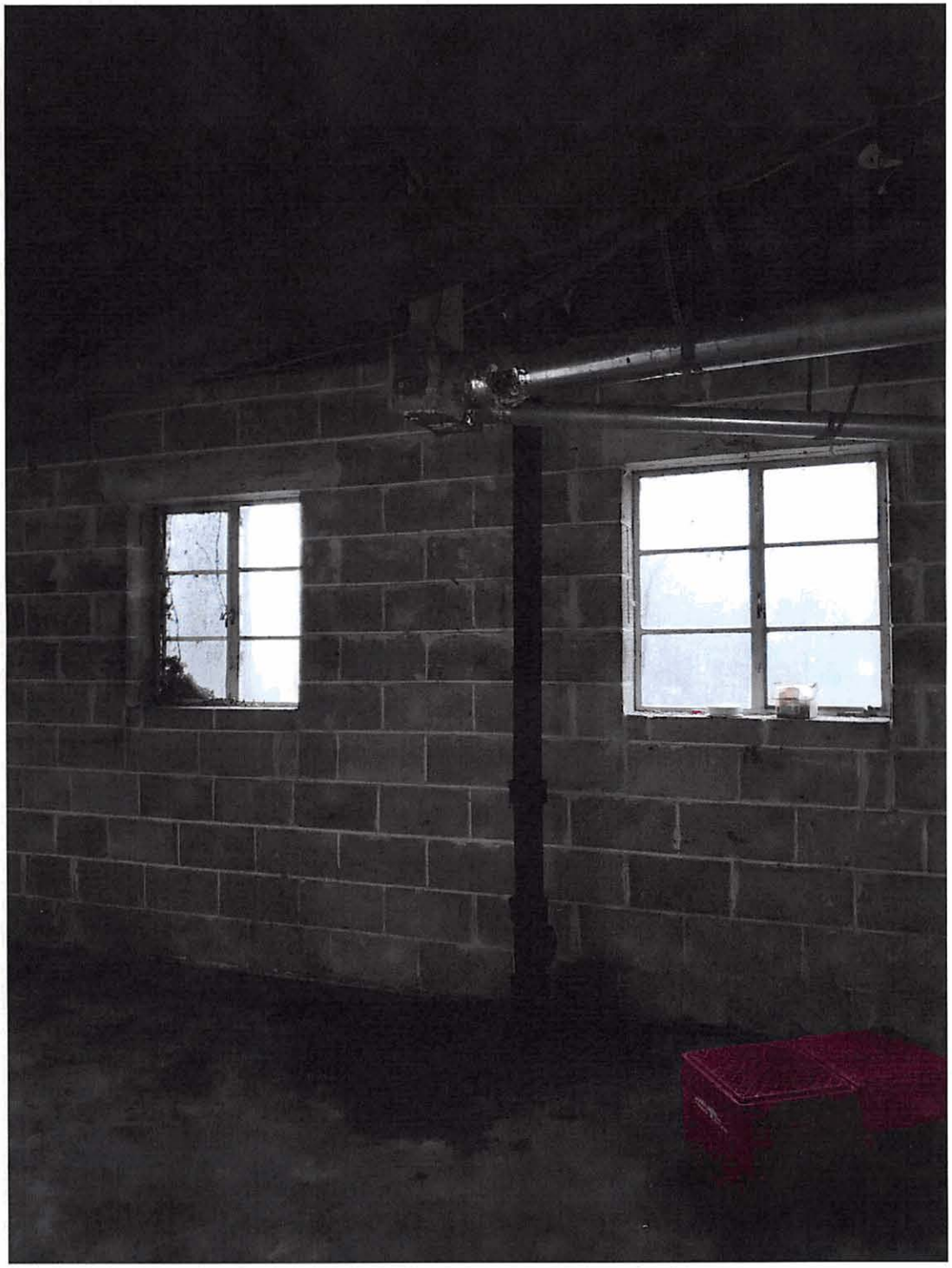
Complete Title Research – By March 20, 2020

Assess if Conditions in Yard Constitute Public Nuisance – Building Official to Complete by March 20, 2020

Assess if Structure Constitutes Public Nuisance – Building Official to Complete by March 20, 2020

Follow Up Report to City Council – March 23, 2020 Council Pre-Meeting

AMMO



2020 PAVING LIST

Sheridan Drive

Crestwood Drive

Crestview Drive & Crestview Circle

Delmar Terrace

Sheridan Place

Glencoe Circle

Glenview Circle

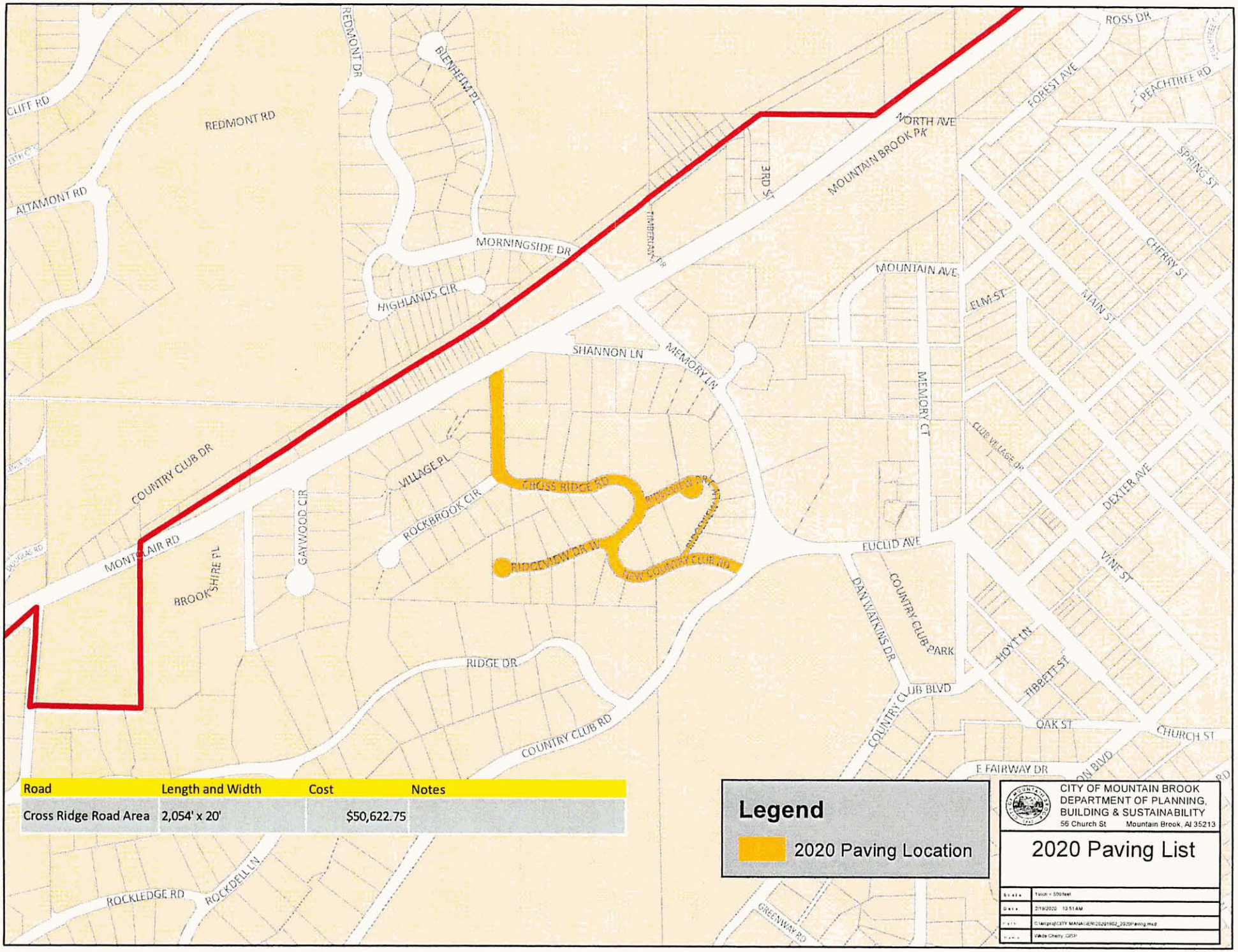
Brookwood Road (Crosshill - City Limit)

Overcrest Road

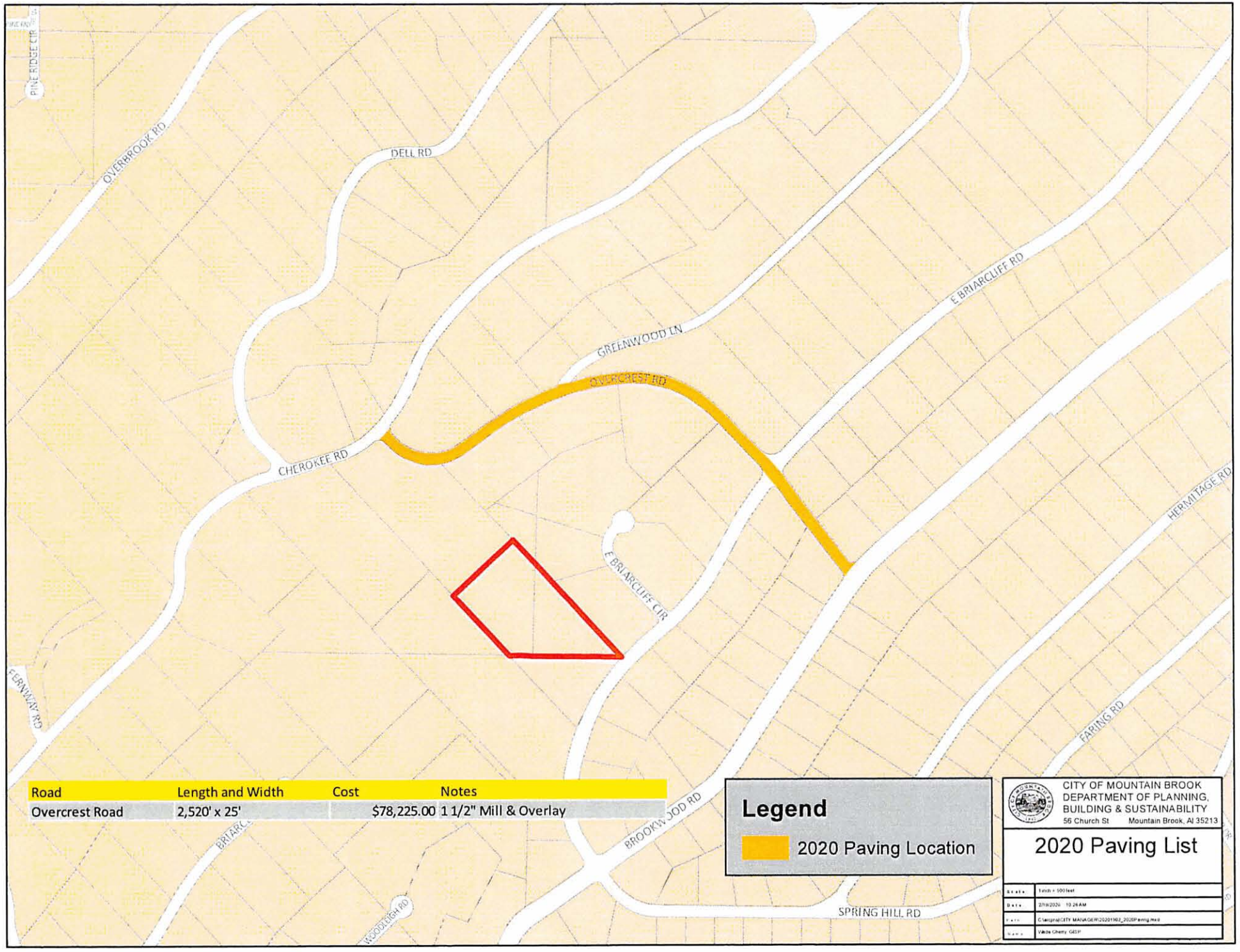
Crosshill (Brookwood - Rockhill)

Orleans Road

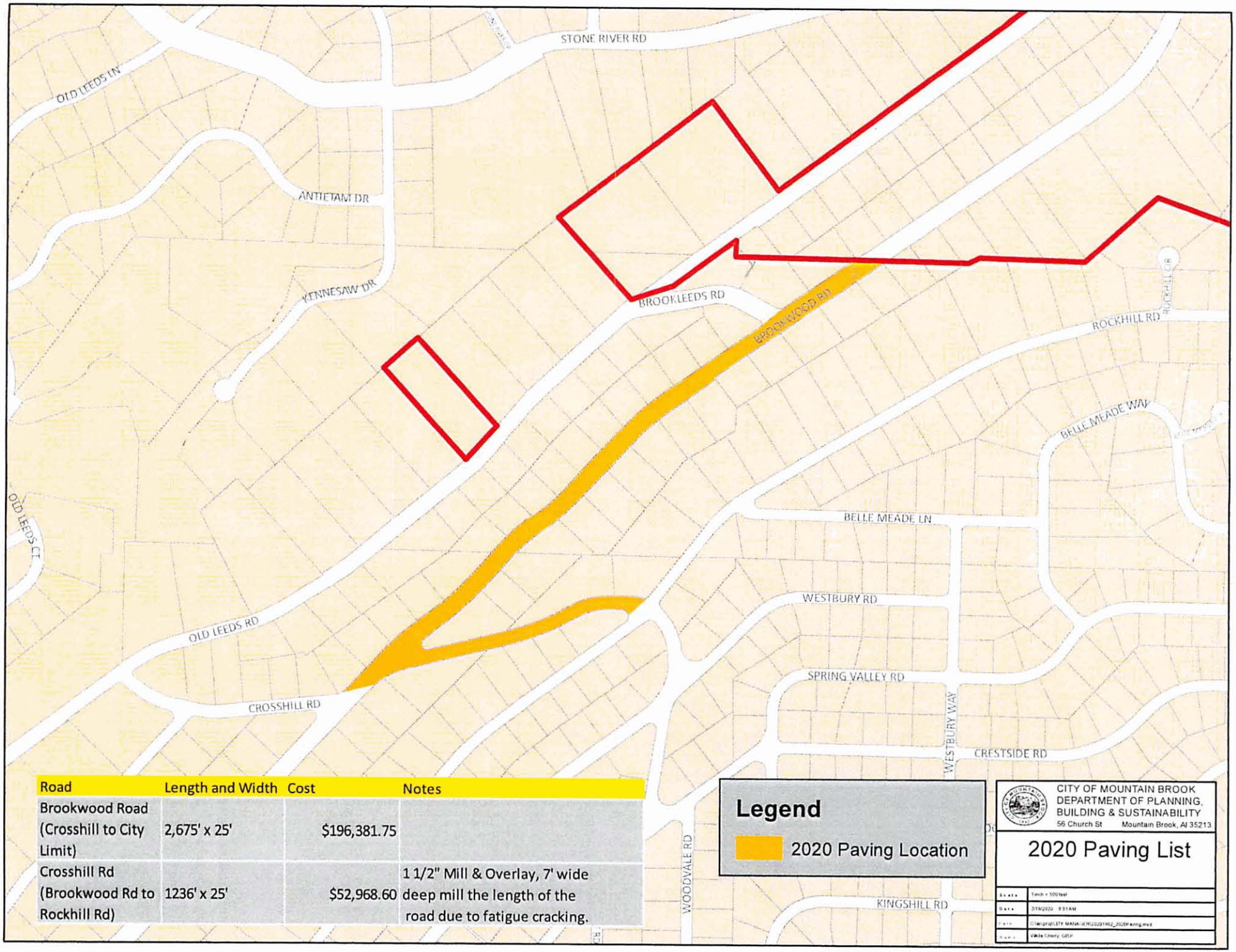
Cross Ridge Road



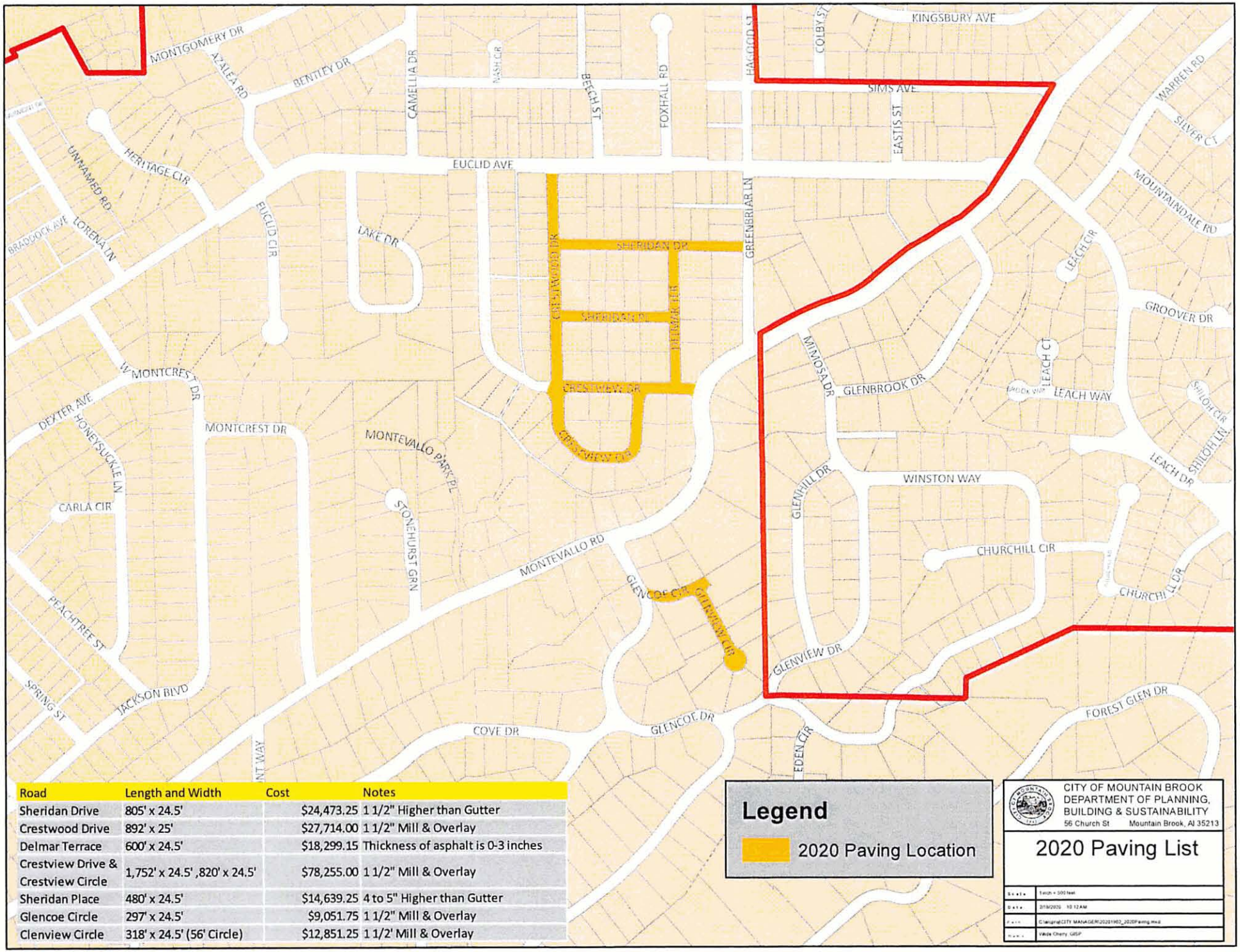
Road	Length and Width	Cost	Notes
Cross Ridge Road Area	2,054' x 20'	$50,622.75	



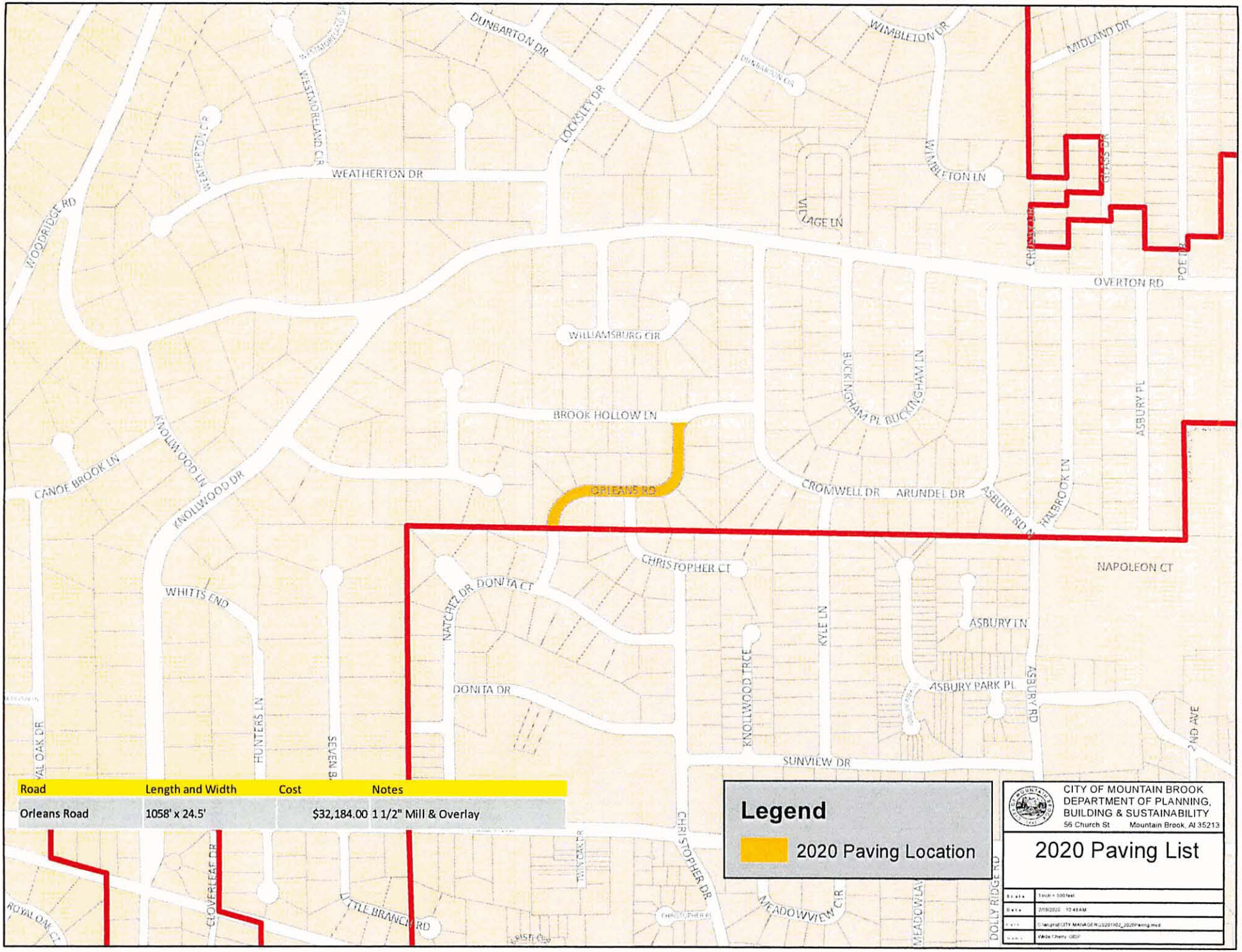
Road	Length and Width	Cost	Notes
Overcrest Road	2,520' x 25'	$78,225.00	1 1/2" Mill & Overlay



Road	Length and Width	Cost	Notes
Brookwood Road (Crosshill to City Limit)	2,675' x 25'	$196,381.75	
Crosshill Rd (Brookwood Rd to Rockhill Rd)	1236' x 25'	$52,968.60	1 1/2" Mill & Overlay, 7' wide deep mill the length of the road due to fatigue cracking.



Road	Length and Width	Cost	Notes
Sheridan Drive	805' x 24.5'	$24,473.25	1 1/2" Higher than Gutter
Crestwood Drive	892' x 25'	$27,714.00	1 1/2" Mill & Overlay
Delmar Terrace	600' x 24.5'	$18,299.15	Thickness of asphalt is 0-3 inches
Crestview Drive & Crestview Circle	1,752' x 24.5' ,820' x 24.5'	$78,255.00	1 1/2" Mill & Overlay
Sheridan Place	480' x 24.5'	$14,639.25	4 to 5" Higher than Gutter
Glencoe Circle	297' x 24.5'	$9,051.75	1 1/2" Mill & Overlay
Clenview Circle	318' x 24.5' (56' Circle)	$12,851.25	1 1/2' Mill & Overlay



Road	Length and Width	Cost	Notes
Orleans Road	1058' x 24.5'	$32,184.00	1 1/2" Mill & Overlay

Legend

2020 Paving Location

CITY OF MOUNTAIN BROOK
DEPARTMENT OF PLANNING, BUILDING & SUSTAINABILITY
56 Church St Mountain Brook, Al 35213

2020 Paving List

Scale	1 inch = 500 feet
Date	2/19/2020 10:49 AM
File	C:\arcgis\CITY MANAGER\U2201902_2020Paving.mxd
Author	Wade Cherry GISP

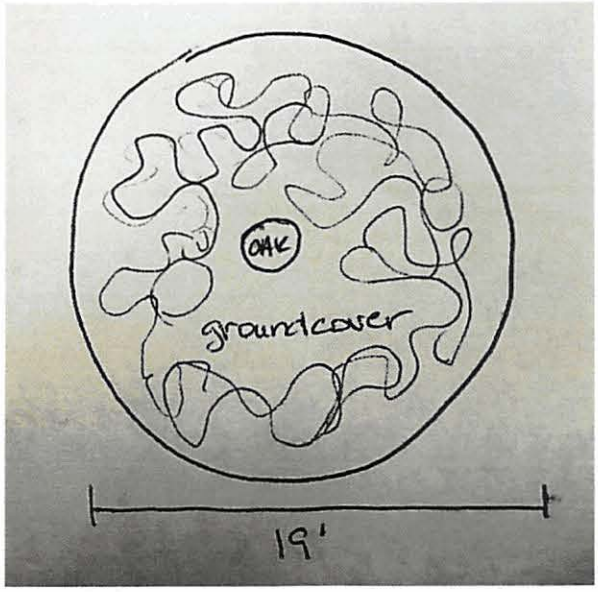
Traffic Island Policy Worksheet

Island Location Ridgeview Drive West

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

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

Sketch of Design



Other Details

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

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

Total Cost $1000

Resident Contact Information

Name	Email
Maria Mathews	Maria.Matthews@protective.com

Traffic Island Policy Worksheet

Partnership Agreement

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

Island Committee Comments **Date** March 2, 2020

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

Tree Commission Members: Ro Holman and Elizabeth Poyner

Park Board Members: Helen Drennen and Aimee Reese

Others: Shanda Williams

Police Department Comments **Date** March 3, 2020

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

Council Comments: **Date:**

_____

_____

Amount approved: _____

Construction Issues/Comments/Adjustments

_____

_____

Traffic Island Policy Worksheet

Before Picture:

After Picture: