MEETING AGENDA OF THE
MOUNTAIN BROOK CITY COUNCIL

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

APRIL 13, 2020, 7:00 P.M.

As authorized by the Governor of the State of Alabama on March 18, 2020, elected officials may deliberate by means of telephone conference, video conference or other similar means of communication. Members of the public are also invited to listen, observe and participate in public meetings by such means as well.

Due to COVID-19 and the mandate that public gatherings of 10 or more are not permitted, the City Council shall convene by way of electronic communications and public attendance at the meeting will not be permitted. Therefore, should anyone wish to listen, observe or participate in the City Council meetings of April 13, 2020 at 7 p.m. (pre-meeting at ___ p.m.), please join by way of the Zoom app (re: Meeting ID 318-161-059, password 043752).

1. Approval of the minutes of the March 23, 2020, regular meeting of the Mountain Brook City Council.

2. Consideration: Resolution appointing Marjorie K. Colvin to the Jefferson-Blount-St. Clair Mental Health Authority to serve without compensation through April 13, 2026.

3. Consideration: Resolution amending the City of Mountain Brook Employee Handbook with respect to the firefighter vacation and sick leave accrual rates.

4. Consideration: Resolution reappointing Turner Williams as municipal court judge with the term to end April 13, 2022.

5. Consideration: Resolution authorizing the execution of the professional services agreement between the City and Caprine Engineering, LLC with respect to the feasibility of constructing a new fire station on the existing site (3785 Locksley Drive).

6. Consideration: Resolution authorizing the execution of the professional services agreement between the City and Edmonds to assess the facilities and equipment at Fire Stations #2 and #3.

7. Consideration: Resolution authorizing the execution of a professional services agreement between the City and Schoel Engineering Company, Inc., with respect to the South Brookwood drainage project.

8. Consideration: Resolution authorizing the execution of a professional services agreement between the City and Sain Associates with respect to additional services (Birmingham plat and right-of-way acquisition) for the roundabout project (CMAQ-3715(266).

9. Consideration: Resolution authorizing the 1) temporary waiver of the City’s Home Occupation license requirements and 2) waiver of penalties for the delinquent filing and remittance of taxes resulting from logistical issues with respect to third-part tax providers and/or employee availability, schedule and access to accounting records.

10. Announcement: The next regular meeting of the City Council is April 27, 2020, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

11. Adjourn.
Pursuant to a proclamation issued by Governor Kay on March 18, 2020, elected officials were allowed to deliberate remotely by means of telephone conference and the public was encouraged to listen to, observe, or participate in the meeting by telephone. There were 32 separate remote call-in attendees (some repeats likely due to dropped calls) including Council member Alice Womack and City Attorney Whit Colvin. Mayor Welch also called in by way of a separate mobile telephone call. The matters to be discussed at the pre-meeting were limited to what the City Council considered to be essential minimum functions of the governing body or within the Council’s statutory authority necessary to respond to COVID-19.]

The City Council of the City of Mountain Brook, Alabama met informally in public session in the Council Room (A108) of City Hall at 6:30 p.m. on the 23rd day of March, 2020. The Council President called the pre-meeting to order and the roll was called with the following results:

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

Absent: None

Also present were City Attorney Whit Colvin (teleconference), City Manager Sam Gaston, City Clerk Steven Boone, Fire Chief Chris Mullins, Police Chief Ted Cook and Dave Giddens with Nimrod Long and Associates.

I. AGENDA

1. Requested changes in Hagood sidewalk project by City of Birmingham—Sam Gaston.

The City of Birmingham has requested a change-order to extend the sidewalk along Hagood Street between Kingsbury and Dunston on the east side of Hagood (the main sidewalk is on the west side). The project costs are estimated to be within budget including the proposed extension. Considering the City of Birmingham has agreed to limited participation in the cost of the sidewalk resulting in Mountain Brook picking up a disproportionate share of the total cost, the members of the Council expressed their opinion that any costs associated with the change-order should be paid by Birmingham. Mr. Gaston will confirm that understanding with Birmingham officials.


The City of Birmingham has stated that it does not want real cobble stone or brick in the roundabout for maintenance issues. A suggestion was presented illustrating stamped red concrete (Appendix 1). Council member Black expressed concern about the red concrete fading over time. Mr. Giddens expressed similar concerns noting such an experience he had with a splash pad park in Gadsden, Alabama. Mr. Giddens suggested a reddish brown tone perhaps including some grays combined with a clear sealer. The sealer would have to be reapplied every 5-7 years. It was suggested that City officials consult with Nathan Currie with Sain Associates more about Birmingham’s aversion to stone and explore further what materials and colors will be acceptable to both cities. It was suggested by Council member Black (and agreed to by the members of the governing body) that the Villages Design Review Committee study the material and color options
and make a recommendation keeping cost in mind. Mr. Giddens stated that no decision is required at this time.

3. Coronavirus situation update—Fire Chief Mullins.

Based on statements and instructions presented by Dr. Mark Wilson, Health Officer from the Jefferson County Department of Health, in his public statements earlier in the day:
- COVID-19 testing is now being performed by appointment only at UAB
- Only persons presenting virus-type symptoms are to be tested
- Unnecessary testing exhausts protective supplies and test kits both of which are limited in supply
- The County is considering opening five other testing sites around the county
- Regardless of the test results, unless emergent, all sick people with virus symptoms will likely be sent home with instructions to rest and treat the symptoms
- The Health Department is predicting the first peak wave of the virus to occur between March 25 and March 30 with other waves to follow. Should the predictions come to pass, it is projected that area hospitals could exceed their bed capacity as early as mid-April
- It could not be emphasized enough that the public is being asked to shelter in place at home to minimize the spread of the virus.
- Accordingly, the closure of businesses has been expanded starting at 5 p.m. today
- Hospitals are already experiencing shortages in personal protective equipment and supplies

4. Discussion of a subcommittee to monitor economic impact and developments due to the Coronavirus—Virginia Smith.

The following individuals were appointed to a subcommittee to monitor the economic impacts of the virus and identify available financial assistance that may be made available: Mayor Welch (leader), Council members Shelton and Womack, Chamber Director Doud and either City Manager Gaston or Finance Director Boone.

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

6. ADJOURNMENT

There being no further matters for discussion, Council President Smith adjourned the pre-meeting at approximately 7:00 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 (A108) on March 23, 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 April 13, 2020
MINUTES OF THE REGULAR OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
MARCH 23, 2020

[Pursuant to a proclamation issued by Governor Kay on March 18, 2020, elected officials were allowed to deliberate remotely by means of telephone conference and the public was encouraged to listen to, observe, or participate in the meeting by telephone. There were 32 separate remote call-in attendees (some repeats likely due to dropped calls) including Council member Alice Womack and City Attorney Whit Colvin. Mayor Welch also called in by way of a separate mobile call. The matters to be deliberated meeting were limited to what the City Council considered to be essential minimum functions of the governing body.]

The City Council of the City of Mountain Brook, Alabama met informally in public session in the Council Room (A108) of City Hall at 7:00 p.m. on the 23rd day of March, 2020. The Council President called the pre-meeting to order and the roll was called with the following results:

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

Absent:    None

Also present were City Attorney Whit Colvin (teleconference), City Manager Sam Gaston, City Clerk Steven Boone, Fire Chief Chris Mullins and Police Chief Ted Cook.

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

1. CONSENT AGENDA

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

Approval of the minutes of the March 9 2020, regular meeting of the City Council

Approval of the minutes of the March 16 2020, special meeting of the City Council

Thereupon, the foregoing minutes were introduced by Council President Smith and a motion for their immediate adoption made by Council member Shelton. The minutes were then considered by the City Council. Council member Black seconded the motion to adopt the foregoing minutes. 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

March 23, 2020
RESOLUTION NO. 2020-042

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Marjorie K. Colvin is hereby appointed to the Jefferson-Blount-St. Clair Mental Health Authority to serve without compensation through April 13, 2026.

ADOPTED: This 13th day of April, 2020.

________________________________________
Council President

APPROVED: This 13th day of April, 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 April 13, 2020, as same appears in the minutes of record of said meeting.

________________________________________
City Clerk
Margie Colvin

Graduated from UAB in 1970 with a B.S. in Nursing

Was on faculty of St. Vincent’s School of Nursing for 7 years.

Oversaw care for a patient with chronic schizophrenia for three years.

Worked at Hill Crest Psychiatric Hospital for 21 years in general psych (Depression, Bipolar, Schizophrenia, Eating Disorders for 9 years) and then 12 years in Chemical Dependency.

Since retiring, I have maintained my license and kept my Continuing Education Units updated by attending seminars, most of which are mental health related.
RESOLUTION NO. 2020-043

AMENDMENT OF THE CITY’S LEAVE POLICIES WITH RESPECT TO THE FIREFIGHTER VACATION AND SICK ACCRUAL RATES

WHEREAS Personnel Board of Jefferson County (PBJC) Rules 13.9 and 13.10 set forth the vacation and sick leave accrual rates and policies which heretofore the City of Mountain Brook has adopted by reference; and

WHEREAS it has been determined that the vacation and sick leave accrual rates specified in said PBJC rules for firefighters is based on a 27-day firefighter work period; and

WHEREAS the City of Mountain Brook Fire Department has adopted, and its firefighter salary schedule is based on, a 26-day work period; now therefore,

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that Section V of the City’s “Employee Handbook” is hereby amended as follows:

“V. LEAVES

Employees of the City of Mountain Brook are entitled to the following leaves under the terms outlined below:

A. Vacation Leave

The accrual and use of Vacation Leave for employees in the classified service are generally controlled by the "Rules and Regulations" (Rule 13.9) of the Jefferson County Personnel Board. The City has adopted these same policies for both classified and non-classified employees with the following Firefighting Personnel exceptions: The City has adopted these same policies for employees in non-classified service.

<table>
<thead>
<tr>
<th>Years of Service Completed</th>
<th>Hours of Vacation Time Accrued per Month (Firefighting Personnel)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 12</td>
<td>10.34</td>
</tr>
<tr>
<td>At least 12, but less than 25</td>
<td>15.51</td>
</tr>
<tr>
<td>25 or more</td>
<td>20.68</td>
</tr>
</tbody>
</table>

[Note: The accrual rates above are based on the City’s adopted 26-day work period and have been determined as follows: 2,688 annual hours / 26 biweekly pay periods per year / 10 workdays per biweekly pay period equals 10.34 hours or the equivalent of one day per month when used in conjunction with the firefighter 26-day work period salary schedule.]

In instances where an employee experiences a prolonged absence due to a personal injury or illness and where such employee’s accumulated leave (vacation, sick, and holiday) and compensatory time have been exhausted, they may request assistance from other City employees through their department supervisor under the “Donation of Vacation Leave” policy as provided for by Resolution No. 04-042 adopted on April 26, 2004 (Exhibit E). Such employees should first submit a claim under the City’s long-term disability insurance program (Sec. VI.B.3. below).
B. Sick Leave (and Bereavement Leave)

The accrual and use of Sick Leave, which includes Bereavement Leave, for employees in classified service are controlled by the "Rules and Regulations" (Rule 13.10) of the Jefferson County Personnel Board. The City has adopted these same policies for both classified and non-classified employees in non-classified service with the following Firefighting Personnel exception: 10.34 hours of sick leave (the equivalent of one day) accrued per month when used in conjunction with the firefighter 26-day work period salary schedule. Provided that, any non-classified employee who makes improper use of sick leave may be subject to disciplinary action at the discretion of the City, while any classified employees who makes improper use of sick leave may be subject to disciplinary action pursuant to the Personnel Board “Rules and Regulations”.

The accumulation of Sick Leave is a privilege of employment, not a right. Accordingly, in instances where Sick Leave appears to be abused, the sick employee’s supervisor may require a physician’s note or excuse. Examples of possible Sick Leave abuse include but are not limited to: 1) reporting sick the day immediately preceding or the day after a scheduled holiday or vacation, 2) using Sick Leave as it accumulates, 3) using Sick Leave when other leaves such as vacation, compensatory time, or holiday time, are not available, 4) use of Sick Leave in periods of less than the scheduled shift where no documented chronic condition exists or is evident to the employee’s supervisor.”

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama that the above policy amendment shall become effective on May 1, 2020; and

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama that the Appointment Authority of the City is hereby authorized and directed to submit the City’s amended leave policy to the Personnel Board of Jefferson County.

ADOPTED: This 13th day of April, 2020.

Council President

APPROVED: This 13th day of April, 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 meeting held on April 13, 2020, as same appears in the minutes of record of said meeting.

City Clerk
Steve Boone <boones@mtnbrook.org>

RE: Rule 13.9 and 13.10
1 message

Crenshaw, Jeffrey <Jeff.Crenshaw@pbjcal.org>
To: Steve Boone <boones@mtnbrook.org>

Wed, Mar 25, 2020 at 10:16 AM

Steve,

I hope you and all of the other employees in Mountain Brook are doing well and staying healthy. Are all of your non-public safety employees working remotely? We have transitioned to a full remote working arrangement, so we should all be available if you or anyone else at the City needs anything.

You are correct in that the Firefighter percentage accrual rate is slightly higher than the regular employee schedule percentage accrual rate. Each Fire Department in the Merit System has a different number of annual hours. Those hours have also changed for some departments over the years. My understanding is that the accrual rate was set based on the highest annual hours of these agencies at the time the accrual rate was established, but that has not been reviewed for quite some time. Based on my quick review this morning, under the premise of establishing the accrual based on the current highest annual firefighter hours from the various cities, it does appear that the accrual rate should be slightly adjusted (my very preliminary gathering of information and data would indicate the rate should drop from 10.6 to about 10.4). This still does not get to the level that would translate to true equity between Mountain Brook’s firefighter accrual rate and the regular accrual rate, as Mountain Brooks firefighter annual hours are lower than some agencies in the Merit System. My math checks out with yours in that the true comparable accrual rate for Mountain Brook would be 10.34.

I will confirm my numbers and talk with Lorren about the potential lowering of the accrual rate in the rules. As I mentioned, even once implemented, that won’t fully correct the issue for Mountain Brook (or any other city with lower firefighter annual hours), but it will help to reduce that difference. If Mountain Brook wishes to make the adjustment, then this rule does allow for establishing a policy with a different accrual rate. We would just need the City to notify the Board in writing and provide a copy of the rule to be applied in lieu of this Rule.

I’ll keep you updated on any change to this rule. Thanks for bringing this to my attention.

Regards,

Jeff

From: Steve Boone <boones@mtnbrook.org>
Sent: Wednesday, March 25, 2020 7:49 AM
To: Crenshaw, Jeffrey <Jeff.Crenshaw@pbjcal.org>
Subject: Rule 13.9 and 13.10

These rules specify firefighters shall accrue leave at 10.64 hours per month. In the 1995 Rules, the policy, Rule 7.12 stated "... fire personnel whole basis of pay is other than the standard work
week shall earn and use vacation time in a comparable manner as set by the executive order of the Director."

The 10.64 accrual appears to be based on a 27-day work period. Our adopted work period is 26-days. Our salary schedule hourly rates are based on annual hours of 2,688. Therefore, the biweekly hours is 103.38 (2,688/26 biweekly pay periods). It seems our accrual factors should therefore be based on 10.34 and multiples thereof.

<table>
<thead>
<tr>
<th>Rule</th>
<th>26-Day Accrual</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 12 years 10.64</td>
<td>10.34</td>
<td>2.9%</td>
</tr>
<tr>
<td>&lt; 25</td>
<td>15.96</td>
<td>15.51</td>
</tr>
<tr>
<td>&gt; 25</td>
<td>21.28</td>
<td>20.68</td>
</tr>
</tbody>
</table>

Am I missing something?

The reason this came up is the COVID-19 sick leave law requires full time employees be granted 10-days of sick leave in addition to other leaves already provided. As I was trying to make the calculations the issues above came up.

--

Steven Boone
City of Mountain Brook
P. O. Box 130009
Mountain Brook, AL 35213-0009
Direct: (205) 802-3825
Facsimile: (205) 874-0611

www.mtnbrook.org
http://mtnbrookcity.blogspot.com/
Twitter®: @mountain_brook
RESOLUTION NO. 2020-044

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Turner Williams is hereby reappointed as a Municipal Court Judge of the City of Mountain Brook, with the term to end April 13, 2022.

ADOPTED: This 13th day of April, 2020.

_____________________________
Council President

APPROVED: This 13th day of April, 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 meeting held on April 13, 2020, as same appears in the minutes of record of said meeting.

_____________________________
City Clerk
RESOLUTION NO. 2020-045

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 Caprine Engineering, LLC, in the form as attached hereto as Exhibit A, with respect to a Fire Station No. 2 feasibility study.

ADOPTED: This 13th day of April, 2020.

____________________________________________
Council President

APPROVED: This 13th day of April, 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 April 13, 2020, as same appears in the minutes of record of said meeting.

____________________________________________
City Clerk
March 4, 2020

Mr. Chris Mullins, MSEM, Fire Chief  
City of Mountain Brook – Fire Administration Office  
102 Tibbett Street  
Mountain Brook, AL 35213  
(205) 802-3838

Re:  Mountain Brook Fire Station No. 2.  
Feasibility Study

Dear Chief Mullins:

We appreciate your trust in Caprine Engineering, LLC and look forward to working with you on this project. Caprine Engineering will provide feasibility study services for the Fire Station No. 2 project located at 3785 Locksley Drive. Although we do not wish to be overly formal in our relationship, it helpful to confirm with our clients the nature and terms of our engagement. You and your company are referred to as “Client” below.

PROJECT UNDERSTANDING

Program Discussion
Our understanding is that the desire of the Fire Department is to demolish Fire Station 2 and replace it with all new construction. The Station crew will operate off-site during the Project. As discussed in an on-site meeting, the Program needs for the Station include, but are not limited to:

- Backup dispatch currently housed at Station 3 (2 staff).
- Safe space underground. Not FEMA, but safe for storm operations.
- Report room for Police patrol officers.
- Four double-depth drive-thru bays, including space for Captain trucks, Emergency vehicles, ATV, future Ladder Truck.
- Current shifts are 5 crew members - could grow to 8 if the Department moves the ladder truck from Station 1.
- Including the 1 patrol officer & 2 dispatch staff there would be a total of 11 people on site during each shift.
- Parking needs to allow for some overlap at shift change. The dispatch/patrol parking could occur off shift change time.
- Need for space to install car seats. Ideally this would be under cover out of the rain/snow.
- Continue to provide Blood pressure checks.
- Parking for the public for these functions.
- Possible space to accommodate voting in the future.
- Power transformer / coordinate requirement with APCO.
- Diesel fuel tank location - fuel for trucks.
- Emergency power generator fueled by natural gas.
- Trash pick-up is via trash cans (no dumpster).
- We discussed possibility of a 2-story section parallel to Locksley with living / public quarters on upper level with storage & other functions on lower (basement) level, opening onto finish floor elevation of the apparatus bay.
issues with Existing Property

There are a couple of questions that need to be answered to fully understand the limitations of the site where Station 2 is currently located. These questions include:

- Currently, there is no driveway access to Locksley Drive, and there is questions about a possible covenant that prohibits a driveway to the Station from Locksley. Adding a new driveway from Locksley is critical to allow for pull-through apparatus bay layout, as the current layout requires stopping traffic on Overton Road in order for trucks to back into the apparatus bay.
- Sanitary sewer is currently via septic system, and it has been very problematic for the Station. The team will explore options to connect to sewer further down Overton Road. If planning to use septic in future, would need space for primary and alternate field lines per State of Alabama requirements.

If either issue limits the existing site to the point that a new station will not fit, we discussed the need to consider other sites for the station. It was mentioned that we might explore the possibility of relocating the station to the Knesseth Israel Synagogue (KI) site. It appears that sanitary sewer is available and that the site is large enough with access to two streets. There may also be the opportunity to re-use much of the existing building. With the available space, the City could provide more of a municipal presence in the area that might include office and meeting space.

SCOPe OF WORK

- Program Development
  - Determine requirement of Fire Station
  - Confirm information gathered at initial project meeting
  - Develop outline of building space and site needs and adjacencies
- Site Assessment
  - Determine and validate the what the existing site conditions and constraints are and whether they are barriers to the program and plan
  - Memo describing the pros, cons, and/or viability of the site
- Investigation of Options
  - Site and building design opportunities will be explored and vetted among design team
- Recommended Design Plan
- Budget Cost Estimate

DELIVERABLES

- Preliminary conceptual design for site and building. Review and comment by MBFD.
- Final conceptual design for site and building. Review and comment by MBFD.
- Final Development Plan
  - Site plan, key spot elevations, utility routes
  - Building floor plan and elevation
  - Estimate of construction with specific construction line items

CLARIFICATIONS AND EXCLUSIONS

- The Consulting Team for this feasibility study will consist of:
  - Barrett Architecture Studio - Architects
  - Caprine Engineering - Civil Engineers
  - Scott Aycock - Project Estimator
- Services requested beyond those outlined above or that include additional fire stations or alternative sites beyond the KI site will be billed as additional services at the current hourly rates in effect at the time of request.
- Renderings, artwork, presentation boards, or other materials requested by the client beyond those outlined in the deliverables are not included and will be billed as a reimbursable at 1.2x actual costs.

**FEES/ COMPENSATION**

<table>
<thead>
<tr>
<th></th>
<th>Feasibility Study</th>
<th>Lump Sum $15,000</th>
</tr>
</thead>
</table>

**HOURLY RATE SCHEDULE**

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate (hr.)</th>
<th>Position</th>
<th>Rate (hr.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Civil Engineer</td>
<td>$150/h.</td>
<td>Architectural Associate II</td>
<td>$115/h.</td>
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<tr>
<td>Project Civil Engineer</td>
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<td>Architectural Associate III</td>
<td>$100/h.</td>
</tr>
<tr>
<td>Graduate Civil Engineer</td>
<td>$80/h.</td>
<td>Senior Interior Designer</td>
<td>$135/h.</td>
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<td>Principal Architect</td>
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<td>$115/h.</td>
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<tr>
<td>Senior Project Architect</td>
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<tr>
<td>Project Architect</td>
<td>$145/h.</td>
<td>Interior Consultant</td>
<td>$100/h.</td>
</tr>
<tr>
<td>Architectural Associate I</td>
<td>$135/h.</td>
<td>Architectural Project Administrator</td>
<td>$100/h.</td>
</tr>
</tbody>
</table>

**TERMS OF ENGAGEMENT**

Services described above shall be provided in accordance with the following terms and conditions:

- Caprine Engineering will provide all services to the level of care and skill ordinarily used by members of our profession under similar circumstances in our area. Caprine Engineering makes no express or implied warranties in connection with any services we provide.

- Client has agreed that Caprine Engineering is not a general contractor, and is not responsible for the disposal of asbestos, toxic agents, or other hazardous materials. We, further, are not engaged for the purpose of creating a plan for the disposal of asbestos, toxic agents, or other hazardous materials.

- The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the express, written consent of the other party before any attempt to assign or transfer those rights.

- This agreement may be terminated by either party upon 30 calendar days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party seeking to terminate the agreement. In the event of termination of this agreement due to the fault of someone other than Caprine Engineering, Caprine Engineering shall be paid for services performed to termination date, including reimbursements then due.

- This agreement shall constitute the entire agreement between the parties and any earlier understanding or representation of any kind before the date of this agreement is not binding upon either party except to the extent incorporated in this agreement.

- Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

- Client assumes responsibility for any and all changes made by other people, parties, or contractors to any plans we produce after the completion of our work, including changes made during the construction phase of any project.

- 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 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 the terms of this agreement where the causes of such failure shall include, but not be limited to, acts of God; strikes, lockouts, or other industrial disturbances; wars, whether declared or undeclared, blockades, insurrections, riots, or governmental action; explosions, fire, floods, or any other cause not within the reasonable control of either party.

• Caprine Engineering shall secure and maintain insurance to protect it from claims made under the worker’s compensation acts and claims for bodily injury, death, or property damage that may arise for the performance of this agreement. Certificates of such coverage will be provided to Client upon request.

• Client shall provide Caprine Engineering safe access to the project site necessary for Caprine Engineering to provide the services outlined.

• Caprine Engineering grants to Client a limited license to use documents or plans created for the Client. Reuse of any documents or other deliverables pertaining to the project by the Client other than for the project for which documents or deliverables were prepared without written verification by Caprine Engineering shall be at the Client’s risk, and violates the terms of this agreement.

• No employee or agent of Caprine Engineering shall have individual liability to the Client, and the Client is the only party to whom Caprine Engineering may have any liability at all. Client is responsible for indemnification against any other party. Neither Client nor any other party or person may seek consequential or special damages against Caprine Engineering.

• Due to factors outside the control of Caprine Engineering that affect pricing on any given project, Caprine Engineering makes no warranty or guarantee that Client’s actual project costs, economic feasibility, or schedules will not vary from Caprine Engineering’s opinions, projections, estimates or budgets.

• The representatives signing this agreement warrant that they have the authority to sign on behalf of the Client and Caprine Engineering.

• Caprine Engineering does not control Client’s safety program and shall not be responsible for the means, methods, or procedures used by the Client, Client’s contractor, or others for construction procedures or the health and safety of the Client, Caprine Engineering subcontractors, or others incident to this contract.

• It is agreed that this agreement shall be governed, construed, and enforced in accordance with the laws of the State of Alabama. Client agrees that all disputes with Caprine Engineering related to this contract for services shall be handled through mediation unless otherwise agreed between both parties. If mediation should fail, any suit filed based on this agreement must be filed in the courts of Jefferson County, Alabama.
Payment Terms

- This project is undertaken with the express understanding that the invoices for services of Caprine Engineering and related expenses should be paid in a timely manner. Services rendered under this proposal and contract for services will be invoiced monthly based on work completed. Invoices are due upon receipt and will be considered delinquent if not received within 30 calendar days after receipt.

- Caprine Engineering may, without legal consequences, suspend services until payment is received. Client also agrees to pay reasonable attorney’s fees and costs Caprine Engineering may incur in the event an action is commenced to collect on unpaid invoices.

- Invoices outstanding over thirty calendar days shall accrue interest at the rate of 1% per month.

I would be pleased to answer questions Client may have or to clarify the various points above. If this proposal meets with Client’s approval, a returned- signed copy will authorize us to proceed.

Best regards,

Chris Eckrote, P.E.
Caprine Engineering, LLC

Acceptance:

I accept terms and conditions in this letter.

Date: ___________________  Client Representative: ___________________________
ADDENDUM TO AGREEMENT BETWEEN
THE CITY OF MOUNTAIN BROOK AND
CAPRINE ENGINEERING, LLC
DATED APRIL 13, 2020

THIS ADDENDUM ("the/this Addendum") to the principal agreement between the City of Mountain Brook, Alabama ("the City") and Caprine Engineering, LLC ("the Contractor") dated April 13, 2020.

This Addendum is a part of the principal agreement, but supersedes and controls any conflicting or inconsistent terms or provisions in the principal agreement, particularly to the extent the conflicting or inconsistent terms or provisions 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 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.

   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 into an 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.

2. **Arbitration; Mediation; Alternate Dispute Resolution.** The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (1) the rights and remedies available under such arbitration rules or processes do not afford the Contractor greater relief (e.g., attorney’s fees, damages, etc.) than would be available under otherwise applicable law, (2) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (3) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.

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 at a rate higher than two-thirds of one percent per month (eight percent per annum), but 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 subject to late payment charges 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. **Alabama Immigration Law Compliance Contract.** Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the 1-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor’s hiring practices to execute an affidavit to this effect on the form supplied by the Board and return the same to the City. Contractor shall also enroll in the E-Verify
Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as the Board may require to confirm Contractor’s enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the City and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor’s failure to fulfill its obligations contained in this paragraph.

DATED this 13th day of April, 2020.

Caprine Engineering, LLC

By: ________________________________

Its: ________________________________

City of Mountain Brook, Alabama

By: ________________________________

Its: ________________________________
RESOLUTION NO. 2020-046

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 Edmonds Engineering, Inc., in the form as attached hereto as Exhibit A, with respect to the Fire Station Nos. 2 and 3 facility assessment study.

ADOPTED: This 13th day of April, 2020.

__________________________________
Council President

APPROVED: This 13th day of April, 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 April 13, 2020, as same appears in the minutes of record of said meeting.

__________________________________
City Clerk
4/6/20

City of Mountain Brook
PO Box 130009
Mountain Brook, AL 35213

Attention: Steve Boone
Subject: City of Mountain Brook – Facilities Assessment
Edmonds Project No.: FES19023

Dear Steve:

We are pleased to offer the following proposal for the assessment of the HVAC, Electrical, Plumbing, Fire Protection, Building Envelope and Roof systems for the subject project:

---

**FACILITY**

City of Mountain Brook buildings totaling 8,758 SF and 2 buildings. List of buildings included below.

---

**PROJECT SCOPE / DESIGN SERVICES**

1. Review existing building documentation and equipment inventory and documentation of all mechanical, electrical, plumbing, fire protection equipment, building envelope and roof systems at 2 facilities (see facilities list below).

2. Site survey all facilities to verify and provide additional documentation on equipment at each site as gathered from the site survey.

3. While on site, assess the age and condition of each piece of equipment and provide an engineering opinion of useful life remaining based on inspection and ASHRAE / BOMA standards to identify all equipment / building components with potential for replacement within the next 5 years.

4. Provide opinion of probable construction cost of the equipment or building component replacement / scope identified within the next 5 years.
<table>
<thead>
<tr>
<th>Facility</th>
<th>Appx Sq. Ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire Station #2</td>
<td>5,000</td>
</tr>
<tr>
<td>Fire Station #3</td>
<td>3,758</td>
</tr>
<tr>
<td>Total SF</td>
<td>8,758 SF</td>
</tr>
</tbody>
</table>

**NOT INCLUDED**

Our Proposal does not include the following:

1. Advertising for bids.
2. As-built drawings.
3. Design for renovation of existing facilities.

**INFORMATION PROVIDED BY CLIENT**

The Client agrees to furnish Edmonds Engineering, Inc. with the following:

1. Existing as-built drawings of facilities where available.
2. An existing equipment inventory list and other equipment documentation where available (i.e. service records, warranty claims, etc.)

**FEE**

Per your request, we offer a lump sum fee per building as follows:

<table>
<thead>
<tr>
<th>Facility</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire Station #2</td>
<td>$ 6,000.00</td>
</tr>
<tr>
<td>Fire Station #3</td>
<td>$ 6,000.00</td>
</tr>
</tbody>
</table>

**PAYMENT**

To be made monthly based on percentage of the work completed up to 90% of the fee. The remaining 10% will be paid upon delivery of the final report.

Any payments due over 60 days shall be subject to interest of 1 ½% per month, and we reserve the right to stop work until payment is received. Reasonable Attorney's fees that we incur for collections shall be paid by the client.
ADDITIONAL SERVICES

Edmonds Engineering, Inc. may also perform additional services not included above at the request of the Client. Additional services, which shall be billed on an hourly basis as set forth in the Hourly Fee schedule below, may include, but shall not be limited to:

3. Design work not within the “Scope of Work”.
4. Energy Analysis.
5. Subjective HVAC system comparison and report of recommendations.

<table>
<thead>
<tr>
<th></th>
<th>Hourly Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional Manager</td>
<td>$205 / hr.</td>
</tr>
<tr>
<td>Team Leader</td>
<td>$195 / hr.</td>
</tr>
<tr>
<td>Group/Account Manager</td>
<td>$180 / hr.</td>
</tr>
<tr>
<td>Project Manager 2</td>
<td>$160 / hr.</td>
</tr>
<tr>
<td>Project Manager 1</td>
<td>$155 / hr.</td>
</tr>
<tr>
<td>BIM Manager</td>
<td>$130 / hr.</td>
</tr>
<tr>
<td>Project Engineer 2</td>
<td>$115 / hr.</td>
</tr>
<tr>
<td>Project Engineer 1</td>
<td>$110 / hr.</td>
</tr>
<tr>
<td>Project Designer 3</td>
<td>$130 / hr.</td>
</tr>
<tr>
<td>Project Designer 2</td>
<td>$105 / hr.</td>
</tr>
<tr>
<td>Project Designer 1</td>
<td>$100 / hr.</td>
</tr>
<tr>
<td>Office Manager</td>
<td>$80 / hr.</td>
</tr>
</tbody>
</table>

LIMITATION OF LIABILITY

Client agrees to limit Edmonds’ liability to the sum of $50,000 or Edmonds’ fee, whichever is greater. The limitation shall apply regardless of the cause of action or legal theory pled or asserted and shall extend to Edmonds’ officers, directors and employees.

By signing this Proposal, Client agrees to Edmonds’ Terms and Conditions, which are attached to this Proposal and are part of this Proposal.

Thank you for the opportunity to submit this proposal. We look forward to working with you. If you have any questions, please call.
Sincerely,

EDMONDS ENGINEERING, INC.

[Signature]

Joey Roach, PE
GROUP MANAGER

Accepted by,

City of Mountain Brook

[Signature, Title & Date]
Terms and Conditions

1. These terms and conditions are incorporated into the letter proposal between Edmonds Engineering, Inc. ("Edmonds") and the Client as if set forth fully therein.

2. In providing services under its Proposal, Edmonds shall perform its services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession while acting under the same or similar circumstances at the same time and in the same locality. Edmonds makes no warranty, express or implied, as to its professional services provided under its Proposal.

3. Edmonds shall have no responsibility for any contractor’s means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs or safety practices, nor shall Edmonds have any authority or responsibility to stop or direct the work of any contractor. However, Edmonds shall have the authority to reject work which does not conform to Edmonds’ plans, drawings and/or specifications.

4. Any review by Edmonds of shop drawings or submittals shall be for general compliance with the contract documents and shall not relieve the contractor from compliance with the contract documents.

5. In performing its scope of work, Edmonds shall have the right to rely on the accuracy of documents provided by the Client or any contractor or other design professional hired by the Client.

6. Client is responsible for notifying Edmonds when site visits are to be made by Edmonds. Client shall provide Edmonds with reasonable notice of when Edmonds is to conduct its site visit(s).

7. In no event shall Edmonds or Client be liable to the other for special, indirect, incidental or consequential damages.

8. In the event of a dispute arising out of or relating to the Proposal or Edmonds’ scope of work, Edmonds and the Client agree to attempt to resolve any such disputes as follows:
   First: Edmonds and Client agree to attempt to resolve such disputes through direct negotiations between Edmonds and Client.
   Second: If such negotiations do not fully resolve the dispute(s) between Edmonds and Client, Edmonds and Client agree to attempt to resolve any remaining dispute(s) by formal non-binding mediation. Edmonds and Client agree mediation is a condition precedent to litigation. Edmonds and Client agree to split the costs of mediation equally.
   Third: Edmonds and Client agree the exclusive venue for any dispute arising out of or related to the Proposal or Edmonds’ scope of work shall be in State Court in Jefferson County, Alabama-Birmingham Division.

9. Edmonds agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client against all damages, liabilities or costs, including reasonable attorneys’ fees and defense costs, to the extent caused by Edmonds’ negligent performance of professional services under the Proposal or Edmonds’ scope of work. Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Edmonds, its officers, directors, employees and subconsultants against all damages, liabilities or costs, including reasonable attorneys’ fees and defense costs, to the extent caused by Client’s negligent acts in connection with the Proposal, Edmonds’ scope of work and the acts of Client’s contractors, subcontractors or consultants or anyone for whom the Client is legally liable. Neither the Client nor Edmonds shall be obligated to indemnify the other party in any manner whatsoever for the other party’s own negligence.

10. Edmonds shall carry the following insurance and limits of liability throughout its work for the Client under the Proposal:
   Commercial General Liability - $1,000,000 per occurrence/$2,000,000 aggregate/
   $5,000,000 umbrella aggregate.
   Worker’s Compensation Insurance - statutory
   Automobile Liability Insurance - $1,000,000 per accident
   Professional Liability Insurance - $2,000,000 per claim/$2,000,000 aggregate

11. All documents prepared by Edmonds arising out of or relating to the Proposal or Edmonds’ scope of work are instruments of service and shall remain the property of Edmonds. Such documents and instruments of service are not intended or represented to be suitable for reuse by Client or others on any other project.

12. Electronic files that are furnished by Edmonds are only for the convenience of Client. In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.

13. This Proposal shall be subject to termination by Edmonds or Client, with or without cause upon twenty (20) days advance notice in writing. Edmonds shall not be required to provide its instruments of service to Client until Edmonds is paid for the appropriate percentage of its work completed under the Proposal.
ADDENDUM TO AGREEMENT BETWEEN
THE CITY OF MOUNTAIN BROOK AND
EDMONDS ENGINEERING, INC.
DATED APRIL 13, 2020

THIS ADDENDUM ("the/this Addendum") to the principal agreement between the City of Mountain Brook, Alabama ("the City") and Edmonds Engineering, Inc. ("the Contractor") dated April 13, 2020.

This Addendum is a part of the principal agreement, but supersedes and controls any conflicting or inconsistent terms or provisions in the principal agreement, particularly to the extent the conflicting or inconsistent terms or provisions 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 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.

   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 into an 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.

2. **Arbitration; Mediation; Alternate Dispute Resolution.** The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (1) the rights and remedies available under such arbitration rules or processes do not afford the Contractor greater relief (e.g., attorney’s fees, damages, etc.) than would be available under otherwise applicable law, (2) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (3) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.

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 at a rate higher than two-thirds of one percent per month (eight percent per annum), but 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 subject to late payment charges pending resolution of the dispute.

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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. **Alabama Immigration Law Compliance Contract.** Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplied by the Board and return the same to the City. Contractor shall also enroll in the E-Verify
Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as the Board may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the City and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

DATED this 13th day of April, 2020.

Edmonds Engineering, Inc.                       City of Mountain Brook, Alabama

By: ____________________________               By: ____________________________

Its: ____________________________              Its: ____________________________
RESOLUTION NO. 2020-047

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 Sain Associates, in the form as attached hereto as Exhibit A, with respect to additional services (City of Birmingham plat and right-of-way acquisition) for the roundabout project (CMAQ-3715(266)).

ADOPTED: This 13th day of April, 2020.

____________________________________
Council President

APPROVED: This 13th day of April, 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 April 13, 2020, as same appears in the minutes of record of said meeting.

____________________________________
City Clerk
December 23, 2019
REVISED APRIL 1, 2020

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

SUBJECT: CMAQ-3715(266) / SA #15-0034
Cahaba Road/Hwy 280/Lane Park Road/Culver Road Roundabout
Supplemental Agreement to perform additional services
Mountain Brook, Alabama

Dear Sam:

We appreciate the opportunity to submit this proposal for surveying, engineering, and acquisition services. Following is a description of our understanding of your project and the scope of services that we propose to undertake.

General Project Understanding
A total of four properties will be acquired as part of the subject project. As part of our original contracted work, Sain will prepare the Right of Way map, tract sketches, and legal descriptions. The City of Birmingham has stated they will acquire the Birmingham Zoo and Birmingham Botanical Gardens properties. However, the City of Birmingham process requires a subdivision plat showing the newly acquired Right of Way limits, which was not part of our original contract.

The other two properties that house the businesses of Barton Clay and Ray & Poynor are located in the City of Mountain Brook. Mountain Brook has requested Sain, along with Wisener LLC, perform the required appraisals and coordination to acquire the needed land from these properties.

In addition to services related to Right of Way needs, two other tasks have been included within the scope of services below. First of all, due to the location of the project within the cities of Mountain Brook and Birmingham, and due to the location of the project within a FEMA Special Flood Hazard Area, floodplain permitting services and additional hydraulic design services are necessary. Secondly, given the significant updates that ALDOT has made to the standard drawings for the 2020 fiscal year, Sain is requesting additional fee for the plan updates that will be necessary.

Scope of Services

Task 1 - City of Birmingham Plat
We will perform the necessary field and office work in order to prepare a subdivision plat dedicating the proposed and newly acquired Right of Way of Cahaba Road (see attached map for platted area). Iron pins will be set at missing or calculated Right of Way points. Directions and distances will be shown along the proposed Right of Way lines. We will attend a total of two meetings with the City of
Birmingham’s Planning, Engineering, & Permits Department in order to facilitate the platting process and resolve any issues that may arise from the recording. The plat will be performed in accordance with the City of Birmingham’s Subdivision Regulations and the Standards of Practice for Surveying in the State of Alabama.

Task 2 - Right of Way Acquisition
Although the City of Birmingham is performing the acquisitions for parcels within the City of Birmingham, they have requested Sain meet and coordinate the project with the Zoo and Gardens. The coordination includes meeting, calling, and sharing files to coordinate the Zoo sign relocation, Zoo fence relocation, and Gardens future improvements and grading in the area of the acquisition. The Gardens is currently designing new signage that will be constructed prior to the roundabout construction, so the location of this signage must be coordinated now to avoid impacts by the project.

For parcels within the City of Mountain Brook, Sain will team with Wisener LLC to coordinate and acquire the necessary Right of Way and easements for the project. Based on previous discussions with the property owner of the Ray and Company property, we understand there are ongoing discussions between him and the developer of Lane Parke. As part of the Lane Parke development, the existing parking lot for the Ray & Poynor building will be reconstructed with an entry off of Cahaba Road, which has been planned and coordinated with the roundabout design. If this parking lot change does not occur with the Lane Parke development, the damages to this property will be significant and require additional appraisal work, along with plan changes on the entry/exits of the parking lot layout and driveways, neither of which are included in this supplement. Sain obtained preliminary files from the engineer of the Lane Parke development, and will continue to coordinate with this engineer on the Right of Way acquisition limits and parking lot layout. Sain will also coordinate with the Lane Parke developer to understand the agreement and schedule for the parking lot relocation and how it may impact this project.

Wisener will perform the appraisals and documents, and perform the coordination with the property owners. However, due to the history of the project and Sain’s prior involvement with these property owners, Sain anticipates attendance at one meeting with each property owner to assist in discussions on how the project will impact their properties.

Task 3 - Floodplain Permitting and Additional Hydraulic Design Services
Drainage design services were included in the initial scope of services for this project, but due to the location of the project within the floodplain and within both Mountain Brook and Birmingham, the design services required have exceeded those included in the initial scope. The initial scope assumed that a typical hydraulic design review would be performed by either ALDOT or the project sponsor. However, given the location of the project, each city has chosen to perform a separate review of the hydraulic design.

In addition, although coordination with Walter Schoel Engineering on drainage design was expected in order to address findings from their recent FEMA study, additional floodplain related services were not included. Since the project is located within a FEMA Special Flood Hazard Area, additional services are
necessary to permit and evaluate project impacts to the surrounding floodplain. These additional services include evaluation of project floodplain impacts, design revisions to mitigate impacts, submittals and reviews by both Mountain Brook and Birmingham, an additional meeting with the City of Birmingham floodplain administrator, and application for a floodplain development permit from Mountain Brook.

**Task 4 - Fiscal Year Updates**

Due to the significant updates that ALDOT has made to the standard drawings for the 2020 fiscal year, Sain is requesting additional fee as a part of this supplement for the plan updates that will be necessary. The fiscal year updates will require plan changes such as updating notes, standard drawings, details, specifications, and quantities.

**Exclusions**

The following services are excluded from this proposal but can be provided if deemed necessary and requested by you: ALTA or Boundary Survey; no easements, liens, Right of Ways, or other encumbrances as would be shown by a title search will be researched, staked, or drawn for this survey; staking of the acquired Right of Way, improvements, or utility relocations; irrigation or additional landscaping and lighting designs; review of improvements from the Lane Park development not affecting the roundabout project; revisions in design or appraisals arising from changes in the Ray & Poynor agreement with Lane Park; and appraisal review (performed by ALDOT).

**Fees**

We propose to provide the above described services based on the following fee schedule. See the attached manaday estimate for additional detail.

Survey Items:

**Task 1** - City of Birmingham Plat .................................................................Lump Sum $9,219
Total Survey Items ........................................................................................................ $9,219

Roadway Plans Items:

**Task 2** - Right of Way Acquisition.................................................................Lump Sum $46,522
**Task 3** - Floodplain Permitting and Additional Hydraulic Design Services Lump Sum $13,439
**Task 4** - Fiscal Year Updates .............................................................................Lump Sum $2,187
Total Roadway Plans Items ....................................................................................... $62,148

**Total Estimated Budget** ....................................................................................... $71,367

Reimbursable expenses such as printing, shipping, mileage, etc. are included in the above fees. Plat recordation fees will be determined by the City upon plat submittal. As a result, the recordation fees have been excluded from the above fees and will be the responsibility of the City of Birmingham.

**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. 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
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.

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

Schedule
Sain is currently progressing on the PS&E plans for submittal. Prior to starting any Right of Way work, Sain will confirm the Right of Way limits are acceptable to ALDOT and Cities. The acquisition work will start once the Right of Way funding is authorized by ALDOT.

Thank you for the opportunity to provide this proposal. If you have any questions or need clarification on any item, please call me. We look forward to working with you.

Sincerely,

SAIN ASSOCIATES, INC.

Nathan Currie, P.E.
Project Manager
AL #32400

Enclosures:
Sain Terms & Conditions (sch. 2019)
Manday Estimate

OFFERED:
SAIN ASSOCIATES, INC.
BY: Alicia Bailey, P.E.: Principal/Owner

Alicia Bailey
Signature of Authorized Representative

Date: 4/1/2020

ACCEPTED:
CITY OF MOUNTAIN BROOK
BY:
Signature of Authorized Representative

Print Name & Title

Date:
PLATTED AREA
November 25, 2019

Sain & Associates
Attn: Alicia Bailey, P.E.
Two Perimeter Park South
Suite 500 East
Birmingham, AL 35245

Re: Estimate for Right-of-Way Acquisition Services
Project: CMAQ-3715(266)
Cahaba Road Roundabout
City of Mountain Brook

Dear Ms. Bailey:

We would first like to thank you for considering our services for this project. We have reviewed your request concerning the above referenced project to provide the following services:

Appraisal (2 Tract)- Appraisal will be completed in accordance to State and Federal guidelines as a before and after report and following USPAP. We will be using an appraiser who is qualified with this type report and is on the State’s approved list.

Appraisal Reviews- (2 Tract)- The appraisal reviewer will follow guidelines as set out in the State and Federal guidelines as well as USPAP.

Negotiations- 2 Tract- All paperwork will be completed as required by ALDOT

Title Work and Closings

Project Management

Coordination between project and County
Assisting attorney appointed to project with tract information for closing
Coordination between project and design consultant on row issues

We have estimated that our fees will not exceed $22,700.00 to provide the above services. This fee is based on the acquired right of way as shown on the illustrations provided by your office and a visual inspection of the project. This proposal does not include appraisal updates, second appraisals, appraisals for court or expert witness fees. If it is determined that these services will be needed, we can add them in a supplemental agreement. Also, if tracts are revised, added or deleted we will adjust our proposal accordingly.

Thank you again for considering our services and we look forward to working with you. Please let me know if you have any questions.

Sincerely,

Bradley Wisener
BREAKDOWN OF FEES

Appraisals- 2 Tracts-
$5,500 each = $11,000
If the parking is not agreed upon on the Ray & Company parcel prior to right of way acquisition, the fee for the appraisal on that tract would be $9,500

Appraisal Review - 2 Tracts
$2,000 each = $4,000
If the parking is not agreed upon on the Ray & Company parcel prior to right of way acquisition, the fee for the appraisal review on that tract would be $4,000

Negotiations- $700 per tract (2 Tract) = $1,400

Project Management- 20 hours @ $65/hr = $1,300

Title work and closing- $2,500 per tract = $5,000

Total = $22,700
SAIN ASSOCIATES, INC.
TERMS AND CONDITIONS

Rates:
Principal .............................................................................................................. $180.00 - $200.00 per Hour
Engineer/Planner ................................................................................................ $98.00 - $152.00 per Hour
GIS Professional ................................................................................................. $110.00 per Hour
Designer ............................................................................................................. $82.00 - $117.00 per Hour
Surveyor ............................................................................................................. $93.00 - $150.00 per Hour
Survey Crew (1-Person) .................................................................................... $90.00 per Hour
Survey Crew (2-Person) .................................................................................... $140.00 per Hour
Survey Crew (3-Person) .................................................................................... $180.00 per Hour
Survey Crew (Overtime, Holidays – 2-Person) ..................................................... $180.00 per Hour
Survey Crew (Overtime, Holidays – 3-Person) ..................................................... $220.00 per Hour
Survey Per Diem ................................................................................................. $150.00 per person per Night
Administrative Support ...................................................................................... $60.00 per Hour

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

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, on your successful completion of the project. If any payment due for services and expenses hereunder is not made in full within thirty (30) days after receipt of invoice, the amounts due Sain Associates, Inc., shall include a charge at the rate of 1% per month from said thirtieth (30th) day, plus attorney’s fees for collection in the amount of 1/3 of the outstanding balance or such greater amount as the court finds reasonable. In addition, 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.

All 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.
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.
# Project Information

- **Project No.**: CMAQ-3715(266)
- **County**: Jefferson
- **Description**: Cahaba Road/Hwy 280/Lane Park Road roundabout
- **Scope of Work**: ROW acquisition; floodplain and hydraulic svcs; fiscal yr upd
- **Project Length**: 0.00 Miles
- **Consultant**: Sain Associates

## Grand Total of Fee Proposal

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<thead>
<tr>
<th>Description</th>
<th>Fee</th>
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<tbody>
<tr>
<td>Corridor Study</td>
<td>$0</td>
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<tr>
<td>Field Surveys</td>
<td>$9,219</td>
</tr>
<tr>
<td>Preliminary Roadway Plans</td>
<td>$0</td>
</tr>
<tr>
<td>Preliminary Bridge Plans</td>
<td>$0</td>
</tr>
<tr>
<td>Right-of-Way Map, Tract Sketches and Deeds</td>
<td>$0</td>
</tr>
<tr>
<td>Roadway Plans</td>
<td>$62,148</td>
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<tr>
<td>Bridge Plans</td>
<td>$0</td>
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<td><strong>GRAND TOTAL FEE</strong></td>
<td><strong>$71,367</strong></td>
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- Combined overhead rate (%): 184.78
- Facilities Capital Cost of Money (if used): 0.71

## Labor Rates

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<thead>
<tr>
<th>Classification</th>
<th>Daily Rate</th>
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<tbody>
<tr>
<td>Project Manager</td>
<td>$489.20</td>
</tr>
<tr>
<td>Engineer</td>
<td>$498.20</td>
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<tr>
<td>Environmental</td>
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<tr>
<td>Engineering Technician/CADD</td>
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<td>Environmental Technician</td>
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<tr>
<td>Clerical</td>
<td>$220.58</td>
</tr>
<tr>
<td>PLS</td>
<td>$362.08</td>
</tr>
<tr>
<td>Survey Crew</td>
<td>$538.80</td>
</tr>
</tbody>
</table>

**Certification of Out-of-Pocket Expenses:**
If Out-of-Pocket Expenses are included in this proposal, we hereby certify that these costs are not included in the Combined Overhead Rate and are typically invoiced to all clients as a direct job cost.

_Signed_  
_Alicia Bailey_  
_Date: 4/1/2020_

_People/Owner_  
_Position/Title_

_Form Revised 7-30-13_
<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>PLS</th>
<th>Crew</th>
<th>Tech/CADD</th>
<th>Clerical</th>
</tr>
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<tr>
<td>A-1</td>
<td>Mobilize/Demobilize</td>
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<td>A-2</td>
<td>Contact Property Owners</td>
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<td>A-3</td>
<td>Perform Basic Control Survey</td>
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<td>0.00</td>
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<tr>
<td>A-4</td>
<td>Conduct On-site Inspection</td>
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<td>A-5</td>
<td>Refresh Control</td>
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<td>A-6</td>
<td>Set Corners</td>
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<td>Task A Totals</td>
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<tr>
<td>B-1</td>
<td>Run Closure of Basic Control Survey/Prepare Closure Diagram</td>
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<td>-</td>
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</tr>
<tr>
<td>B-2</td>
<td>Establish Centerline/Obtain Ground Profile</td>
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<td>0.00</td>
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<tr>
<td>B-3</td>
<td>Obtain Topographic Data</td>
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<td>Task B Totals</td>
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<td>C-1</td>
<td>Traverse Cross-Reads and Railreads</td>
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<td>C-2</td>
<td>Stream Topography &amp; Cross-Sections/Complete HYD-100 &amp; 101 Forms</td>
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<td>C-3</td>
<td>Define Drainage Areas/Prepare Schematic Drainage Map</td>
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<td>C-4</td>
<td>Obtain Cross-Sections at 20 Meter Intervals and Ground Break Points</td>
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<td>Task</td>
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<td>Crew</td>
<td>Tech/CADD</td>
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</tr>
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<td>C-5</td>
<td>Field Locations</td>
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<td>Task C Totals</td>
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**Task D: Utility Surveys, Drainage Sections and Compilation of Data**

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>PLS</th>
<th>Crew</th>
<th>Tech/CADD</th>
<th>Clerical</th>
</tr>
</thead>
<tbody>
<tr>
<td>D-1</td>
<td>Identify/Locate Utilities</td>
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<td>D-2</td>
<td>Obtain Hydrological Location Survey</td>
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<tr>
<td>D-3</td>
<td>Tie All Available Section Corners &amp; All Available Front Corners of Affected Properties to Project Centerline</td>
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<td>0.00</td>
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<tr>
<td>D-4</td>
<td>Obtain Copies of Latest Deeds</td>
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<tr>
<td>D-5</td>
<td>Set &amp; Reference Pls., PC's, POTs, POC's, &amp; other critical points</td>
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<td>D-6</td>
<td>Reduce Survey Field Notes</td>
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<tr>
<td>D-7</td>
<td>Submit Work for Review/Sealed Mylar Plot of Accepted Field Map</td>
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<td>D-8</td>
<td>Create Plat</td>
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<td>Meetings with Cities</td>
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<td>Submit Work for Review/Sealed Mylar Plot of Accepted Subdivision Plat</td>
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## Personnel Cost

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<th>Position</th>
<th>Man-days</th>
<th>Daily Rate</th>
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<td>PLS</td>
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<td>Engineering Technician/CADD</td>
<td>2.00</td>
<td>$292.86</td>
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<tr>
<td>Clerical</td>
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<td>$220.58</td>
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<tr>
<td><strong>Total Direct Labor</strong></td>
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<tr>
<td>Combined Overhead (%)</td>
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<td>Out-of-Pocket Expenses**</td>
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<td><strong>Sub-Total</strong></td>
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## Sub-Consultants

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## Facilities Capital Cost of Money (% of Direct Labor)

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**Total Fee** $9,219.42
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*Total Out-of-pocket Expenses* $114.46

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***You must have ALDOT approval for ANY overnight trips of less than 100 miles.
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<td>Clerical</td>
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<td>$ 220.58</td>
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<tr>
<td><strong>Total Direct Labor</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Combined Overhead (%)</td>
<td>184.78</td>
<td>$</td>
</tr>
<tr>
<td>Out-of-Pocket Expenses**</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Operating Margin (10%)</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

**SUB-CONSULTANTS (attach man-day & fee FROM each sub-consultant; show total fee for each here)**

<table>
<thead>
<tr>
<th>Sub-Consultant</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wisener, LLC</td>
<td>$22,700.00</td>
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<tr>
<td>Subconsultant Administration Expense (5%)</td>
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<td><strong>Sub-Total</strong></td>
<td>$62,061.22</td>
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<table>
<thead>
<tr>
<th>Facilities Capital Cost of Money (% of Direct Labor)</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.71</td>
<td>$86.52</td>
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**TOTAL FEE** | $62,147.74 |

**See Grand Total Fee sheet**
<table>
<thead>
<tr>
<th>Mileage Cost</th>
<th>Trips</th>
<th>Miles/Trip</th>
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<tr>
<td>Meetings</td>
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<td>$ 46.40</td>
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</tr>
<tr>
<td>Total Mileage Cost</td>
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<td></td>
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<td>$ 46.40</td>
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<table>
<thead>
<tr>
<th>Subsistence Cost</th>
<th>Days</th>
<th># People</th>
<th>$/Day</th>
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<tr>
<td>Travel allowance (6 hour trips)</td>
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<td>0</td>
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<td>Travel allowance (12 hour trips - meal provided by others)</td>
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<tr>
<td>Travel allowance (overnight)***</td>
<td>0</td>
<td>0</td>
<td>$75.00</td>
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<tr>
<td>Total Subsistence Cost</td>
<td></td>
<td></td>
<td></td>
<td>$ -</td>
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</table>

| Total Travel Cost | $ 46.40 |

<table>
<thead>
<tr>
<th>PRINTING / REPRODUCTION COST</th>
<th># of Sets</th>
<th>Sheets/Set</th>
<th>Total Sheets</th>
<th>Cost/Sheet</th>
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<tbody>
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<td>$ -</td>
<td>$ -</td>
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<td>Total Printing/Reproduction Cost</td>
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<td>$ -</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Communication Cost (telephone, fax, etc.)</th>
<th>Total</th>
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<tbody>
<tr>
<td></td>
<td>$ -</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Postage Cost (overnight, stamps, etc.)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ -</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Other (provide description on next line)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ -</td>
</tr>
</tbody>
</table>

| Total Out-of-pocket Expenses | $ 46.40 |

**Comments:**

***You must have ALDOT approval for ANY overnight trips of less than 100 miles.
April 3, 2020

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

RE: Jefferson County  
Project No. CMAQ-3715(266)  
Intersection Improvements Cahaba Rd/SR-38  
(US-280)/Culver Rd/Lane Park Rd  
City of Mountain Brook – Supplemental #3

Dear Mr. Gaston,

Reference is made to the negotiated Supplemental man-day and fee proposal from Sain Associates to perform additional work on the above-referenced project.

The overhead rate and operating margin will be as previously approved by the Bureau of Finance and Audits, External Audit Section.

Attached is a copy of the man-day and fee proposal as submitted by the consultant. After consideration of the work involved in the request, for Roadway Plans, the fee has been revised from $68,680 to $62,148; for the additional Field Survey work, the Region agrees with the amount of $9,219. Therefore, the maximum fee has been revised from $77,899 to $71,367. We feel this fee amount is just and fair compensation for the required work in this supplement.

The City of Mountain Brook may proceed with the supplemental agreement with Sain Associates, using the aforementioned fee.

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

Sincerely,

DeJarvis Leonard, P.E.  
East Central Region Engineer

By: John S. Haynes, P.E.  
Region Pre-Construction Engineer

DL/JSH/wdj  
Attachment  
Cc: Ms. Dannette Ratcliff  
Project File w/att.
April 3, 2020

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

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DL/JSH/wdj  
Attachment  
Cc: Ms. Dannette Ratcliff  
Project File w/att.
ADDENDUM TO AGREEMENT BETWEEN
THE CITY OF MOUNTAIN BROOK AND
SAIN ASSOCIATES
DATED APRIL 13, 2020

THIS ADDENDUM ("the/this Addendum") to the principal agreement between the City of Mountain Brook, Alabama ("the City") and Sain Associates ("the Contractor") dated April 13, 2020.

This Addendum is a part of the principal agreement, but supersedes and controls any conflicting or inconsistent terms or provisions in the principal agreement, particularly to the extent the conflicting or inconsistent terms or provisions 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 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.

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 into an 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.

2. **Arbitration; Mediation; Alternate Dispute Resolution.** The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (1) the rights and remedies available under such arbitration rules or processes do not afford the Contractor greater relief (e.g., attorney’s fees, damages, etc.) than would be available under otherwise applicable law, (2) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (3) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.

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 at a rate higher than two-thirds of one percent per month (eight percent per annum), but 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 subject to late payment charges 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. **Alabama Immigration Law Compliance Contract.** Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the 1-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplied by the Board and return the same to the City. Contractor shall also enroll in the E-Verify
Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as the Board may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the City and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

DATED this 13th day of April, 2020.

Sain Associates

By: __________________________

Its: _______________________

City of Mountain Brook, Alabama

By: __________________________

Its: _______________________

Page 3 of 3
RESOLUTION NO. 2020-048

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 Schoel Engineering Company, Inc., in the form as attached hereto as Exhibit A, with respect to the South Brookwood Road drainage project.

ADOPTED: This 13th day of April, 2020.

__________________________________________
Council President

APPROVED: This 13th day of April, 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 April 13, 2020, as same appears in the minutes of record of said meeting.

__________________________________________
City Clerk
Agreement for Consulting Services  
South Brookwood Road Fuller Creek Culvert Repair  
Effective April 13, 2020  

This Agreement for Consulting Services ("Agreement") is entered into by and between The City of Mountain Brook, Alabama (hereinafter the "Client"), and Schoel Engineering Company, Inc., hereinafter the "Consultant") effective as of the date above.

In consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Client and Consultant agree as follows:

GENERAL PURPOSE

This Agreement is for professional Consulting Services associated with the design and repair to a culvert under South Brookwood Road, located in Mountain Brook, Alabama (the "Project").

PROJECT OVERVIEW

A tributary of Fuller Creek passes under South Brookwood Road in a 14-foot diameter metal culvert. The invert of the culvert has largely eroded away. Utilizing a competitive bid process required by Title 39-2-1 et. seq. of the Code of Alabama (the "Public Works Act"), Client will select a contractor to perform the Project (the "Contractor"). The scope of the repair is anticipated to include relining of a section of the culvert. The work to be provided by Consultant for the Project are customary engineering professional services (including design, preparation of Construction Documents and assistance to Client in bidding and construction administration) and other adjunct services specified herein (hereinafter collectively the "Services").

Consultant anticipates it will complete those Services outlined below in sections 1-3 of the Scope of Services by May 30, 2020.

SCOPE OF SERVICES

1. Boundary Survey of ROW of South Brookwood Road

The Consultant will field survey the location of the ROW of South Brookwood Road in order to understand issues of access, etc., to the site of the culvert repair. The detailed scope for the Survey is as follows:

- Field Survey property boundaries and ROW boundaries in study area
- Draft into CAD basemap
- If Consultant retains a sub-consultant to perform the Survey, Consultant will advise Client's Project Representative of that party's identity and that Representative shall approve their retention before that phase of Services is performed. Consultant shall at all times remain responsible to Client for any work, service, acts or omissions of any sub-consultant who may assist Consultant in providing Services.

Lump Sum Fee $4,300 – Payable w/i within 30 days after invoice evidencing completion of this Service

2. Design of Culvert Repair

The Consultant will prepare Construction Documents for the culvert repair. The detailed scope is as follows:

- Coordinate as required with Client
- Photograph culvert at 20 foot stations
- Develop preliminary design for review and approval by the Client
- Preparation of Final Construction Plans, including:
- Cover Sheet
- Topographic Plan
- Site Layout Plan
- Photographic Documentation Plan
- Storm Profile Sheet
- Design Details

- Preparation of technical specifications
- Submittal to the City for review

Lump Sum Fee $ 15,500 – Payable w/i 30 days after invoice evidencing completion & approval of these Services. Consultant does not anticipate retaining any sub-consultant to assist it to perform this phase.

3. Assistance with Bidding, Award, and Contracting

The Consultant will prepare the front-end documents for the bid process. The Consultant will manage the bid process in compliance with the Public Works Act, review the bids, and assist in the final selection of the Contractor to perform the work. The Detailed Scope for this phase of the Project is as follows:

- Develop bid documents, in accordance with the Client's requirements
- Attend pre-bid conference
- Address questions posed by prospective bidders, issue clarifications if required
- Attend bid opening
- Review bids
- Assist in the selection of the Contractor

Lump Sum Fee: $ 5,800 – Payable w/i 30 days after invoice & completion of this phase of Services. Consultant does not anticipate retaining any sub-consultant to assist it to perform this phase.

4. Construction Administration

The Consultant will perform Construction Review to evaluate the Contractor's general conformance with plans and specifications. The Consultant will review Shop Drawings, and work with the Contractor and Client in solving any minor construction related problems that may arise. The Consultant will review and approve pay request and assist with project closeout. The detailed scope is as follows:

- Review of shop drawings
- Construction observation to be performed on an as-needed basis and at the direction of the Client
- Attendance at OAC meetings during construction
- Minor construction-related revisions – Revisions required as a result of field conditions or as agreed upon by the Client
- Close out of Project

Fee: Not to Exceed $5,000. At the conclusion of this phase of the Project, Consultant will invoice Client for its actual personnel costs to provide these Services based on the Schedule of Hourly Rates set forth below. Consultant estimates its fee for this Phase of Services will be $3,000. Client will not pay more than $5,000 in fees for Services in this phase, unless agreed by the parties in a subsequent writing. Consultant does not anticipate retaining any sub-consultant to assist it to perform this phase.

OPERATIONS EXCLUDED FROM SCOPE OF SERVICES

1. Corps of Engineers Permitting (not required)
2. Construction Stakeout
3. Full Construction Engineering and Inspection (CEI) (not assumed to be required)
4. Preparation of construction easement documents (if any required)
5. Design to replace or completely re-line culvert
6. Design of flow diversion or pumping systems (design-build by Contractor)
7. Traffic Engineering or Consulting (which is to be provided at site by Contractor)

**FEE SUMMARY**

<table>
<thead>
<tr>
<th>Phase</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1 - Boundary Surveying</td>
<td>$4,300</td>
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<tr>
<td>Phase 2 - Design and CDs</td>
<td>$15,500</td>
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<tr>
<td>Phase 3 - Assistance with Bid and Award</td>
<td>$5,800</td>
</tr>
<tr>
<td>Phase 4 - Construction Administration</td>
<td>Not to Exceed 5,000</td>
</tr>
</tbody>
</table>

The above fees are inclusive of all expenses or charges that Consultant may incur in connection with provision of Services on the Project, including travel, mail, courier services, communication and a commercially reasonable quantity of copying and reproduction expenses.

**SCHEDULE OF HOURLY RATES – EFFECTIVE THROUGH 12/31/2020**

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Principal</td>
<td>$275.00 per hour</td>
</tr>
<tr>
<td>Principal</td>
<td>$200.00 per hour</td>
</tr>
<tr>
<td>Chief Land Surveyor</td>
<td>$200.00 per hour</td>
</tr>
<tr>
<td>Senior Project Manager</td>
<td>$150.00 per hour</td>
</tr>
<tr>
<td>Project Manager</td>
<td>$140.00 per hour</td>
</tr>
<tr>
<td>Assistant Project Manager</td>
<td>$130.00 per hour</td>
</tr>
<tr>
<td>Senior Professional</td>
<td>$140.00 per hour</td>
</tr>
<tr>
<td>Project Professional</td>
<td>$115.00 per hour</td>
</tr>
<tr>
<td>Staff Professional</td>
<td>$100.00 per hour</td>
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<tr>
<td>Senior Designer / Survey Drafter / Specialist</td>
<td>$100.00 per hour</td>
</tr>
<tr>
<td>Designer / Survey Drafter / Specialist 2</td>
<td>$85.00 per hour</td>
</tr>
<tr>
<td>Designer / Survey Drafter / Specialist 1</td>
<td>$75.00 per hour</td>
</tr>
<tr>
<td>Field Survey Party</td>
<td>$175.00 per hour</td>
</tr>
<tr>
<td>Laser Scanning and Registration</td>
<td>$3,000.00 per day</td>
</tr>
<tr>
<td>Modeler</td>
<td>$125.00 per hour</td>
</tr>
<tr>
<td>Admin Support/Intern</td>
<td>$70.00 per hour</td>
</tr>
</tbody>
</table>

**GENERAL TERMS AND CONDITIONS**

1) Services performed under this Agreement will be conducted in a manner consistent with that level of care and skill exercised by members of the profession currently practicing under similar conditions. Plans, specifications, and submittals will be prepared in accordance with the written standards of the governing authorities having jurisdiction. Any extraordinary requirements for approvals will be considered additional services. Except as expressed herein, no other warranty, expressed or implied, is made. Nothing in this agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

2) Consultant agrees that, to the fullest extent permitted by law, it will defend, indemnify, reimburse and hold Client harmless from the expenses (including those for attorneys’ fees, litigation costs and court expenses), damages (including those for bodily injury, death or damage to Clients’ property or that owned by third parties) and losses that Client might incur that arise from the following types of claims, causes, suits or actions relating to the Project, the Project site, or Consultant’s breach of its obligations under this Agreement (collectively, “Claims”):

(a) professional liability Claims by the Client against the Consultant to the extent caused by Consultant’s negligent performance of its professional services contemplated hereunder (a “Professional Liability Claim”); provided that (i) Consultant’s total liability for a Professional Liability Claim (including, but not limited to, those arising from its
negligence, errors and omissions, or those alleging strict liability, breach of contract or breach of warranty) shall not exceed the minimum limits of the Consultant’s Professional Liability insurance coverage required herein in subpart 7(a) below, and (ii) nothing in this provision obligates Consultant to indemnify Client from a Professional Liability Claims resulting from Client’s negligence or willful misconduct;

(b) any Claims for bodily injury, death, or property damage by third parties against the Client that arise out of any “occurrence” as that term is defined by Consultant’s policy of Commercial General Liability insurance required in section 7(b) below, provided that (i) Consultant’s total liability under this provision shall not exceed the amount of the minimum limits of the Comprehensive General Liability policy required in subpart 7(b) below; and (b) nothing in this provision shall obligate Consultant to indemnify the Client for Claims by third parties that result from the sole negligence or the willful misconduct of the Client. Nothing herein is intended or shall be interpreted to demand or require Consultant to defend or indemnify the Client from and against any third-party claims, demands, actions, proceedings or suits alleging or in any way arising out of Consultant’s breach of its professional services obligations or warranty hereunder, except to the extent provided for in subsection (a) above.

3) The fees for different phases of Services in this Agreement are based on the Scope of Services herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will be performed at the above hourly rates, or at a revised fee that the parties will negotiate to their mutual satisfaction. If construction of the Project is delayed and completed more than six (6) months following the anticipated completion date set forth herein, the Consultant reserves the right to adjust its Hourly rates for inflation costs on a one-year interval from the date of this proposal.

4) If a claim, dispute, and other controversy arises between Consultant and Client concerning this Agreement or the alleged failure to perform their respective responsibilities hereunder (a "Dispute"), the respective Project Representatives for the Parties will use good faith efforts to amicably resolve such Dispute. If the Dispute is not resolved by the Project Representatives, it will be escalated to the senior official or manager level of each party for consideration. If a Dispute other than as a result of Client’s failure to pay amounts undisputedly due hereunder is not resolved at the senior level, it will be submitted to mediation before, and as a condition precedent to, either party availing themselves of remedies provided by law. Mediation shall be held in the county where the Project is located, and if the parties cannot agree on a mediator, then one shall be appointed by the American Arbitration Association (AAA). The parties agree to equally split the cost billed by the mediator.

5) Services not expressly set forth in writing as basic or additional services and listed in the proposal to this Agreement are excluded from the scope of the Consultant's Services, and the Consultant assumes no duty to the Client to perform them unless agreed in a subsequent writing.

6) 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 Client’s files. The Consultant may rely on the information provided by the Client without verification. 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 Services within established schedules.

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

(a) Professional Liability with minimum limits of not less than One Million Dollars ($1,000,000.00) covering claims to the extent caused by Consultant’s negligent performance of professional services or breach of professional warranty. This Professional Liability policy shall include coverage on an occurrence basis;
(b) Comprehensive General Liability with minimum limits of not less than One Million Dollars ($1,000,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage on an occurrence basis for premises/operations, products/completed operations, assumed contractual obligations, and independent contractors; and

(c) Workers Compensation/Employer’s Liability: Workers’ Compensation as required by statute and Employer’s Liability with limits of Five Hundred Thousand Dollars ($500,000) per occurrence.

Consultant may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before commencement of any Services, the Consultant shall provide Client a certificate(s) of insurance evidencing compliance with the requirements in this section. Further, through an endorsement, Client shall be named an additional insured on the Comprehensive General Liability and any applicable umbrella and excess policies.

8) All reports, plans, documents, materials created by Consultant or its work product from its Services (collectively, the “Instruments of Service”) shall remain the property of the Consultant, and are intended solely for uses related to this Agreement and construction of the Project. Notwithstanding, Consultant grants Client a perpetual license to distribute to any third party, reproduce or otherwise use any of the Instruments of Service for purposes it deems reasonably necessary that relate to construction of the Project or conditions at the Project site. Client agrees and acknowledges any reuse of the Instruments of Service for purposes outside of this Agreement or the Project, or any failure to follow Consultant’s recommendations in those Instruments without Consultant’s written permission, shall be at the Client’s and other user’s sole risk.

9) This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure to perform in accordance with its terms by the other party through no fault of the terminating party. If this Agreement is terminated by Consultant due to default of Client, it agrees that Consultant shall be paid for total charges for work performed prior to the termination notice date.

Additionally, at Client’s convenience and without cause or default by Consultant, Client may suspend or cancel the Agreement, performance of Services or work on the Project at any time by providing written notice to Consultant. In the event of such suspension or cancelation, Client will compensate Consultant for Services performed up to through the date of that notice.

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

11) 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.

12) Consultant shall not be responsible for construction safety or construction procedures at the Project site, nor will it be responsible for the quality of the work performed by the Contractor or any consultants that are not retained by it.

13) At Client’s request and for its convenience, Consultant may provide documents and its work product in electronic format. Data, words, graphical representations, and drawings that are stored on electronic media or which are transmitted electronically, may be subject to uncontrollable alteration. The printed, signed and sealed hard copy is the actual professional Instrument of Service. In the event of a discrepancy between the electronic document and the hardcopy document, the hardcopy document will prevail.
14) This Agreement is entered with the expectation that it is not being used in a price comparison with other firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

15) Limitation of Liability. In no event may Consultant recover from Client any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the Client’s breach of its obligations hereunder or suspension or termination of this Agreement.

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

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

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

19) Consultant may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of Client, which consent may be withheld for any reason.

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

21) Consultant is an independent contractor of Client. This Agreement does not create any partnership, joint venture or principal-agent relationship between the parties. Further, Client retains no control or authority with respect to its means and methods in which Consultant (or any of its employees or representatives) performs their work or Services.

22) Immigration Law Compliance. Consultant represents and warrants to Client that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an “unauthorized alien,” as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the “Act”); (ii) it has enrolled or will enroll in the E-Verify program prior to performing any Services on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Consultant shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Consultant further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if Consultant is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
23) Amendment. Neither this Agreement nor any of the provisions herein may be amended or modified except in accordance with the terms of a subsequent written instrument that is signed by both parties.

24) This instrument sets forth the entire understanding between the parties concerning the matters herein, and, unless expressed herein, all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are of no effect and are deemed to have merged herein.

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

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

CITY OF MOUNTAIN BROOK, ALABAMA (CLIENT)

By: ______________________________
   Stewart H. Welch III

Its: Mayor

Date: ______________________________

SCHOEL ENGINEERING COMPANY, INC. (CONSULTANT)

By: ______________________________
   Walter Schoel III

Its: President

Date: March 26, 2020

Below please print or type the following information for the individual to whom invoices for payment should be sent, and enter the names of the respective Project Representatives.

Company: __________________________________________________________

Client: __________________________________________________________

Street Address: _____________________________________________________

City, State, Zip: ___________________________________________________

Phone Number: __________________ Fax Number: ______________________

Email Address: _____________________________________________________

Client's Project Number: __________________ Client's Purchase Order Number: __________

Consultant's Project Representative: ________________________________

Client's Project Representative: ________________________________
RESOLUTION NO. 2020-049

WHEREAS many businesses and individuals have suffered financially due to the business disruptions caused by government and business restrictions imposed to curtail the spread of the COVID-19 virus; and

WHEREAS currently only essential businesses may be open and social distancing measures, along with the closure of schools, and State Health Officer’s Stay at Home Order of April 3, 2020 have necessitated that residents conduct business operations from homes, and

WHEREAS the City understands that continued productivity and economic activities are necessary to the welfare of business owners, employees, families and the entire Mountain Brook community; and

WHEREAS, the City has detailed regulations in place concerning business operations that may be conducted in residential areas and those regulations are designed to protect the residential character of the City’s resintail zoning districts; and

WHEREAS, during these unprecedented times, the City finds that temporary suspension of some of those standards are appropriate and necessary to permit business operations and the economic vitality of the community to continue; and

WHEREAS, the City also wishes to provide additional temporary relief to businesses in the City with respect to licensing and tax filing requirements during the pendency of the current crises.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, pursuant to relevant provisions of the Emergency Management Agency Act of 1955, as amended, Governor Kay Ivey’s State of Emergency Proclamations and the Alabama State Health Officer’s Stay at Home Order of April 3, 2020, as follows:

1. The application and permitting process for Home Occupations, set forth in Section 129-392 and 129-395 of the City Code is temporarily suspended and no application nor permit shall be required to engage in a Home Occupation.

2. The following described provisions of Sections 129-393 and 129-394 shall be considered temporarily modified to the extent necessary to permit business activities to be conducted in residential areas provided that such home occupation activities do not adversely impact traffic, parking, or public safety of the area residents:

   a) Limitations related to the area of a residence where home occupations may be conducted, square footage, the use of accessory structures for home occupations, and times that activities may be conducted shall be temporarily suspended.

   b) Limitations related to increases in traffic, the number of vehicles permitted to be parked or associated with a home occupation, storage of equipment used in such home occupation, and visibility restrictions shall be temporarily suspended.

   c) Limitations related to persons who may engage in the home occupation, limitations restricting home occupations to residents, and limitations on customer or client engagement shall be temporarily suspended; provided, however that, under no circumstances, shall more than 10 persons be permitted to gather in a residence where business operations are being conducted and all public health regulations and pronouncements concerning social distancing shall fully apply regardless of the number of person who are gathered.
3. These provisions shall remain in place until such time as the City Council determines that the need for relief from the Home Occupation regulations is no longer necessitated by the COVID-19 emergency.

4. The City Manager is hereby authorized, at his discretion, to waive penalties for licenses and taxes filed and paid after their respective due dates when such delinquent filings and payments are determined to be reasonably attributable to business disruptions caused by COVID-19 restrictions\(^{(1)}\).

\(^{(1)}\) With respect to sales tax reporting and remittance, because sales taxes are pass-through receipts paid by the consumer to the merchant for further delivery to the City, such receipts by merchants should never be considered as working capital for business operations. Accordingly, cash flow shortages shall not be considered to be justifiable reasons for delinquent sales tax reporting and payment to the City. It is contemplated that penalty waivers shall be granted due to businesses inability to timely prepare returns and/or remit taxes for logistical issues with respect to third-party tax providers and/or employee availability, scheduling and access to accounting records.

**ADOPTED:** This 13th day of April, 2020.

________________________________________
Council President

**APPROVED:** This 13th day of April, 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 April 13, 2020, as same appears in the minutes of record of said meeting.

________________________________________
City Clerk